

Central Administrative Tribunal  
Principal Bench

**OA No.1399/2016**

MA No.2552/2016

MA No.4468/2017

New Delhi, this the 21<sup>st</sup> day of February, 2018

**Hon'ble Mr. Justice Permod Kohli, Chairman**  
**Hon'ble Mr. Uday Kumar Varma, Member (A)**

Charan Singh Chauhan, Aged about 39 years  
s/o of Shri Prem Singh Chauhan,  
H.No.40, Engineers Enclave  
(Phase-III), GMS Road, Dehradun-248001.  
District-Dehradun. ...Applicant

(By Advocate: Mr. A.K.Behera and Sh. Ashish Srivastava)

Versus

1. Union of India through Secretary  
Ministry of Home Affairs,  
Government of India,  
North Block, New Delhi-110001.
2. Director,  
Intelligence Bureau, Ministry of Home Affairs,  
Government of India, North Block,  
New Delhi-110001.
3. Secretary,  
Ministry of Personnel, Public Grievances & Pensions,  
Department of Personnel & Training,  
North Block, New Delhi-110001.
4. Secretary,  
Union Public Service Commission,  
Dholpur House, Shahjahan Road,  
New Delhi-110011.
5. Tracius Kujur (serial No.31 in the  
impugned seniority list dated 15.07.2014),  
Working as Section Officer in  
Intelligence Bureau,  
35, SP Marg, New Delhi – 110 021.
6. Babu Lal Meena, (serial No.32 in the in the  
impugned seniority list dated 15.07.2014),  
Working as Section Officer in  
Intelligence Bureau,  
35, SP Marg, New Delhi – 110 021.

7. Niranjan Chandra Das,  
(serial No.29 in the in the  
impugned seniority list dated 15.07.2014),  
Working as Assistant Director (Non-Police)  
in Intelligence Bureau, 35, SP Marg,  
New Delhi – 110 021.
8. Vinod Kumar Singh  
(serial No.59 in the in the  
impugned seniority list dated 09.06.2015),  
Working as Section Officer in  
Subsidiary Intelligence Bureau,  
110, Mall Road, Lucknow-226001  
Lucknow, UP.
9. Anil Kumar Agrawal s/o B.S. Agrawal,  
Present posted as Section Officer,  
Intelligence Bureau, 35, SP Marg,  
New Delhi – 110 021.  
R/o H-24, Green Park, New Delhi.
10. Vikram Pal Batra s/o Som Nath Batra,  
Presently posted as Section Officer,  
Intelligence Bureau, 35, SP Marg,  
New Delhi – 110 021.  
R/o A-602, New Rajput CGHS,  
Plot No.23, Sector 12, Dwarka,  
New Delhi – 78. ...Respondents

(By Advocate: Mr. Raunak Parkash and Sh. R.K. Jain)

### **ORDER (Oral)**

**By Hon'ble Mr. Uday Kumar Varma, Member (A):**

Brief facts of the case are that the applicant, on being successful in the Intelligence Bureau Assistants Grade Examination, 1999, joined the Intelligence Bureau (IB), Headquarters as Assistant on 14.06.2000. Thereafter, he was transferred to Subsidiary Intelligence Bureau (SIB), Dehradun on 01.05.2009 and since then he is posted

there. It is contended that according to the Intelligence Bureau Secretariat Service Rules (IBSSR), 2003 [hereinafter referred to as IB Rules, 2003] for the next promotional post of Section Officer (SO), 60% of the vacancies are to be filled up through promotion and 40% through Limited Departmental Competitive Examination (LDCE). The PAs and Assistants of IB with 4 years of approved and continuous service are eligible for appearing in the Limited Departmental Competitive Examination (LDCE) for promotion as Section Officer. The official respondents conducted LDCE in 2005 for promotion as Section Officers for the vacancy year 2005-06 and declared the result in Employment News dated 21-27, February, 2009 wherein the applicant and 9 others were declared to be qualified for appointment as SOs against the vacancy year 2005-06. Pursuant to the aforesaid result, respondent nos. 1 & 2 issued appointment order dated 06.04.2009 promoting the applicant along with others as SOs and posted the applicant at SIB, Dehradun.

2. It is further contended that applying rules 3 & 4 of IB Rules, 2003, the approved service of the applicant as Section Officer was counted w.e.f. 01.07.2005, and he was placed in the Pay Band-2 in the pay scale of Rs.9300-34800 + Grade Pay Rs.4800 (equivalent to pre-revised pay

scale of Rs.6500-200-10500/-) and counting 4 years therefrom, he was given Non-Functional Selection Grade (NFSG) w.e.f. 01.07.2009 vide order dated 27.04.2010.

3. The private respondents are Section Officers (SOs) promoted against 60% seniority quota. Private respondents nos. 5 to 8 were promoted in the vacancy year 2005-06, 2005-06, 2006-07 and 2007-08 respectively and also private respondents no.9 and 10 impleaded vide order dated 12.01.2016. The official respondent no.2 circulated a seniority list vide memorandum dated 19.03.2010 wherein applicant was incorrectly shown against the vacancy year 2009-10 and he was placed at sr. no.214 below the promotees of vacancy year 2006-07, 2007-08 and 2008-09 and rotated with the promotees of the vacancy year 2009-10. Aggrieved, the applicant made a representation dated 26.04.2010 claiming to be rotated with the promotees of the vacancy year 2005-06. Similar representations were made by other SOs appointed through LDCE, 2005. It is the case of the applicant that the respondent no.2 without referring the matter to the MHA and DOP&T replied the applicant vide reply dated 28.05.2010 that following the OM dated 03.03.2008 of DOP&T, he has been considered as 'available' in the year 2009 as the result of LDCE, 2005 was

declared in the year 2009 and was, thus, rotated with the promotees of vacancy year 2009-10. However, because of large number of representations from SOs promoted on the basis of LDCE, 2005, the respondent no.2 referred the matter of fixation of seniority of SOs appointed through LDCE 2005 to the MHA & DOP&T. It is further contended that the DOP&T, vide order dated 25.04.2012, gave an opinion to the effect that the SOs appointed through LDCE, 2005 are entitled to the seniority of the vacancy year 2005-06 as their approved service is counted from 01.07.2005. The respondent no.1 i.e. MHA also issued an advisory dated 26.11.2012 to the respondent no.2 to prepare the seniority list of SOs appointed through LDCE as per vacancy year and not as per the date of declaration of result of the LDCE. It is pertinent to mention here that MHA and DoP&T had directed the respondent no.2 to fix the seniority of LDCE SOs from the vacancy year as admitted by respondent no.2 in their Memorandum dated 24<sup>th</sup> January, 2013. The respondent no.2 issued a fresh seniority list dated 01.03.2013 following the aforesaid advice of MHA & DOP&T in respect of SOs appointed through LDCE, 2006 and subsequent years but not in respect of LDCE, 2005 because of which the applicant and other SOs appointed through LDCE, 2005 were shown and

rotated with the promotees of the vacancy year, 2009-10. The applicant and other similarly situated SOs made a representation dated 13.03.2013 against the aforesaid seniority list being in violation of the advice of MHA and DOP&T as also contrary to the rules with a request to rotate the LDCE SOs and promotion quota SOs in the vacancy year 2005-06 in the ratio prescribed in the recruitment rules. Consequently, the respondent no.2 issued a seniority list dated 15.07.2014 containing the names of officers who had been appointed as SOs against vacancies upto the vacancy year 2005-06. However, the name of the applicant and others appointed through LDCE, 2005 against the vacancy year 2005-06 were not included in the same, which was clearly against the rules and the law on the subject. It is the contention of the applicant that he along with other similarly situated persons was informed verbally that their cases for fixation of seniority were still under consideration and, therefore, their names have not been included in the seniority list dated 15.07.2014.

4. It is further contended by the applicant that respondents, without fixing his seniority and that of others appointed through LDCE, 2005, promoted 3 of Section Officers promoted against the vacancy year 2005-06 as

Assistant Director (Non-Police) vide order dated 23.12.2014. Thereafter, all of sudden, the respondents issued a fresh seniority list dated 09.06.2015 assigning the vacancy year 2009-10 to the applicant and other similarly situated SOs as against the vacancy year 2005-06 for which the LDCE, 2005 was held and they qualified the same while all other SOs, who had been promoted against the vacancy year 2006-07, 2007-08 and 2008-09 have been shown much above the applicant, which is contrary to the IB Rules, 2003. It is further submitted that though the seniority issue is still alive, yet the respondent no.2 and respondent no.4 are going ahead to hold a review DPC for promotion of private respondent nos. 5 & 6 on regular basis to the next higher grade of Assistant Director (Non-Police). Had the seniority been correctly fixed, the above private respondents, who belong to ST category, would have been junior to the applicant.

5. The respondents have filed their reply giving factual details of the case and denied the submissions of the applicant made in the OA.

6. When the matter was taken up, Mr. Behra, learned counsel for the applicant stated that the issue involved in this OA has been adjudicated by a coordinate Bench of this

Tribunal in ***Shiv Charan vs. Union of India & Ors.*** [OA No.1227/2016 decided on 27.02.2017] and seniority list dated 09.06.2015 has been quashed. He further stated that the impugned seniority list dated 15.07.2014 is Part-I whereas seniority list dated 09.06.2015 is Part-II.

7. In ***Shiv Charan vs. Union of India & Ors.*** (supra), it has been held as under:-

*“47. The main argument of the counsel for the applicant is that the seniority is nothing but a computation of length of service in a particular grade. However, he failed in establishing that tautology between approved service and seniority.*

*48. In view of the foregoing discussion and for the reasons stated, we quash the seniority list dated 09.06.2015. For the purpose of inter se seniority the DPC promotees from 2006-07 to 2009-10 shall be treated as ad-hoc till the year 2010-11 when in fulfilment of the statutory requirement the LDCE was also held. A list of DPC promotees from 2006-07 to 2010-11 shall be prepared in the same order as the settled position of seniority of the promotees and the same shall be rotated with the LDCE appointees of 2010-11 for fixation of inter se seniority in accordance with the OM dated 07.02.1986. It is an admitted fact that the respondents have already considered the approved service of the applicant from the year 2006 and given the financial benefits and NFSG as well, by applying rule 4 of the IBSSR. We have shown that is not the correct interpretation of the rule 4 in the context of the rule 3. However, the orders of counting of approved service the appointees LDCE 2010 from 2006 and granting consequential financial benefits including NFSG are not interfered with. OA is disposed of in terms of the above. No costs.”*

8. Learned counsel for the applicant submits that in view of the above decision of the Tribunal which has dealt with exactly the similar issue, the instant OA also deserves to be allowed in the same terms. Mr. R.K. Jain, learned counsel



for the respondents, at the time of oral hearing, did not dispute this statement made by Mr. Behra, learned counsel for the applicant.

9. Notwithstanding the difference between the facts and circumstances of the case in OA No.1227/2016 and the instant OA, what emerges without any dispute and without any doubt is that for all intents and purposes the Tribunal in the judgment in OA No.1227/2016 (supra) has held that in matters of *inter se* seniority between the groups of promotee officers namely DPC promotees and the position of LDCE promotees is *akin* to direct recruitment. The relevant part of the order of this Tribunal is reproduced below:-

*“45. The aforesaid judgment of Hon’ble Supreme Court is in the context of a situation where the Departmental examination is qualifying examination. In the instant case the Departmental Examination is a competitive examination where the seniority position of the successful candidates is determined by relative merit. Further their inter se seniority position is determined by rotating them with the promotees of that year. In the process the LDCE appointees are not placed en block below the promotees as was the case in the aforesaid Supreme Court judgment. There is no disagreement of the parties regarding rotation of vacancies except that the promotees of which year are to be rotated with the LDCE appointees. Such an admitted position establishes that the promotees and LDCE appointees do not belong to the same class of ‘promotees’ but the LDCE appointees are treated like direct recruits for the fixation of inter se seniority. The applicant has also relied on the order of this Tribunal in Nafisur Rehman that “though the said OM (dated 07.02.1986) pertains to inter se seniority of DR and promotees, the same principle is applicable when there are more than one method to fill up by promotion as well.” (para 16 of written argument of the applicant). N Ravindran therefore would not apply to the present case.”*

10. Perusal of the above order further reveals that the applicant therein was SO who had got promoted from the position of Personal Assistant. It may be clarified that the post of SO can be filled by promotion either from the post of Personal Assistant or from the post of Assistant. In the OA relied upon by the applicant, the main issue was that PAs who had taken the departmental examination in 2011 for the vacancy year 2006, 2007 & 2008 were given the seniority below the DPC promotees of the year 2011. It is seen that though the LDCE was held in 2011, the vacancies pertained to earlier years and, therefore, the Tribunal quashed the seniority list dated 09.06.2015 and directed the respondents to prepare a list of DPC promotees from 2006-07 to 2010-11 in the same order as the settled position of seniority of the promotees and the same shall be rotated with the LDCE appointees of 2010-11 for fixation of their inter se seniority in accordance with the OM dated 07.02.1986. In other words, the logic and ground for granting seniority to LDCE appointees was not based on the year of examination but from the year when these vacancies arose. Perusal of the order also reveals that the Tribunal had drawn parallel while coming to the said conclusion with the judgment in ***Union of India vs. N.R.***

**Parmar** [2012 (11) SCALE 437], the relevant portion of the Tribunal's order reads as under:-

*“22. The DOP&T OM on 07.02.1986 retained the principle of rota quota enunciated in the OM dated 22.12.1959 but effected some modification to deal with the complication arising when the direct recruitment vacancies could not be filled up in the relevant vacancy year and it was filled up in subsequent year or years. It 23 OA No.1227/2016 provided for placement of candidates appointed against such direct recruit vacancies to be placed at the end of the seniority list of the year of such recruitment after applying the principle of rota quota to the extent promote candidates were available. The official respondents have relied on the DOP&T OM dated 07.02.1986 but interpreting the year of availability as in the DOPT OM dated 24.06.1978 to argue that the applicant was treated as being available in the year 2011-12 when he joined on the basis of LDCE examination result. It is important to note that in N.R.Parmar (supra) the year of availability was defined as the year in which the recruitment process was initiated for at least one of the modes of recruitment. The judgment further laid down that if the process of recruitment by one mode was initiated the process of other mode of recruitment will also be deemed to be initiated on that date irrespective of the date of culmination of the selection process.”*

11. The instant OA, however, deals with the promotion of Assistants. Here the applicant and other Assistants, who had appeared in LDCE in the year 2005-06 against the vacancy year of 2005 was given promotion order in 2009. The seniority list issued by the respondents puts the applicant and other similarly placed candidates below those DPC promotees who had been promoted in the year 2006-07, 2007-08 and 2009-09 etc. and, therefore, it is the contention of the applicant that as such an arrangement has been declared faulty by the Tribunal in **Shiv Charan vs. Union of India & Ors.** (supra), he should also be given

the benefit of seniority based on the year of vacancy and later rotated with the promotees of the same vacancy year. In this particular OA the applicant further submits that the candidates, who appeared in LDCE 2006 were given seniority above DPC promotees of the following years whereas the applicant, who took the LDCE in 2005 has been denied the same. This fact has also not been refuted by the respondents. No explanation has been offered by the respondents as to why the applicant's case of seniority has allegedly been kept in limbo while the LDCE candidates who were appointed against 2005-06 vacancy have been given the seniority from the year of vacancy.

12. In view of the position elucidated in preceding paragraphs, we are of the considered opinion that the issue for consideration and adjudication and the findings of the Tribunal on the same, substantially address the issues involved in the instant OA and, therefore, it will be judicially appropriate to apply the same ratio as laid down in ***Shiv Charan vs. Union of India & Ors.*** (supra) to the OA before us. An additional reinforcement of the claim of the applicant arises from the admitted fact that the respondents have already considered the approved service of the applicant from the year 2005 and given the financial benefits and NFSG as well.

13. In view of the above discussion, we dispose of this OA with the following directions:-

- i) Seniority list dated 15.07.2014 is quashed and set aside to the extent it pertains to the applicant. The applicant shall be given seniority from the year the vacancy against which he was promoted and shall be rotated with the DPC promotees of the same year for fixation of *inter-se* seniority in accordance with OM dated 07.02.1986.
- ii) The above exercise may be carried out within two months from the date of receipt of certified copy of this order and any consequential benefits like promotion etc. due to him as per rules may be given effect to within two months thereafter.
- iii) MA Nos. 2552/2016 and MA No.4468/2017 also stand disposed of.
- iv) No costs.

**(Uday Kumar Varma)**  
Member (A)

**(Permod Kohli)**  
Chairman

/AhujA/