

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No.1628/2012
MA Nos.1353/2013, 2844/2013, 1444/2012
with
OA No.2906/2012
MA Nos.18/2013, 2972/2013**

Reserved on: 25.01.2017
Pronounced on: 15.07.2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Ms. Nita Chowdhury, Member (A)**

OA No.1628/2012

1. CSSS Gazetted Officers' Association
represented through its General Secretary
(Narayan Dutt, PS-SL:2006),
Room No.213 'A' Wing, Shastri Bhawan,
New Delhi-110001.
2. Anoop Kumar Bhardwaj, PS – SL:1994
(now Principal Private Secretary),
M/o Agriculture, Krishi Bhawan,
New Delhi-110001.
3. B. Mani, PS – SL:1995
(now Principal Private Secretary),
M/o Science & Technology,
Technology Bhawan,
New Delhi-110016.
4. Laxmi Narayan, PS – SL:1996
(now Principal Private Secretary),
M/o Shipping, Parivahan Bhawan,
New Delhi-110001.
5. Satish Kumar, PS – SL:1997
(now Principal Private Secretary),
M/o Communications & Information Technology,
Sanchar Bhawan, New Delhi-110001.

6. R. S. Rawat, PS – SL:1998
(now Principal Private Secretary),
M/o Defence, South Block,
New Delhi-110001.
7. H. P. Sreeramana, PS – SL:1999
(now Principal Private Secretary),
M/o Defence, South Block,
New Delhi-110001.
8. Shobana Menon, PS – SL:2000
(now Principal Private Secretary),
M/o Chemicals & Fertilizers,
Shastri Bhawan, New Delhi-110001. ... Applicants

(By Advocate : Mr. Neelansh Gaur)

Versus

1. Union of India through its Secretary,
Ministry of Personnel, Public Grievances
and Pensions, Department of Personnel & Training,
New Delhi-110001.
2. Union Public Service Commission
through its Secretary, Dholpur House,
Shahjahan Road, New Delhi-69.
3. Central Secretariat Section Officers' Association
through its General Secretary
(Shri D. N. Sahoo, Under Secretary),
[in representative capacity],
Room No.331, 'C' Wing, Nirman Bhawan,
New Delhi-110011.
4. Shri A. K. Aggarwal, SO – CSL No.5211
S.No.1 of SL 2008 of Gr-I (US)
(now Under Secretary) – in representative capacity
through Respondent No.1
(Secretary, M/o Personnel, Public Grievances &
Pensions, North Block, New Delhi).
5. Shri Pradeep Kumar, SO – CSL No.6128
S.No.67 of SL 2008 of Gr-I (US)
(now Under Secretary) – in representative Capacity

through respondent No.1,
 (Secretary, M/o Personnel, Public Grievances &
 Pensions, North Block, New Delhi). ... Respondents

(By Advocates: Mr. R. N. Singh, Mr.A. K. Behera, Mr. Naresh
 Kaushik)

OA No.2906/2012

1. CSSS Gazetted Officers' Association
 (represented through its President)
 S. C. Kargeti, PS (SL:2004)
 Room No.213, 'A' Wing,
 Shastri Bhawan, New Delhi.
2. Shri Satyendra Kishore, PS (SL:2002)
 S/o Late Joginder Kishore,
 Office: M/o Finance, D/o Expenditure,
 North Block, New Delhi-110001.
 R/o F-23, Sector-12, Noida (UP)-201301
3. Mukhtiyar Singh, PS (SL:2010)
 S/o Shri Jagan Nath,
 Office: M/o Corporate Affairs,
 Shastri Bhawan, New Delhi-110001,
 R/o 772, Sector-8, R. K. Puram,
 New Delhi-110022. ... Applicants

(By Advocate : Mr. Neelansh Gaur)

Versus

1. Union of India through its Secretary,
 Ministry of Personnel, Public Grievances
 and Pensions, Department of Personnel & Training,
 New Delhi-110001.
2. Union of India through its Secretary,
 Ministry of Finance, Department of Expenditure,
 North Block, New Delhi-110001.
3. Union Public Service Commission
 through its Secretary, Dholpur House,
 Shahjahan Road, New Delhi-110069.

4. Central Secretariat Section Officers' Association
through its General Secretary
(Shri D. N. Sahoo, Under Secretary),
[in representative capacity],
Room No.331, 'C' Wing, Nirman Bhawan,
New Delhi-110011.
5. Shri Debanand Sahoo, Under Secretary
[S.No.2: SL-2009 of Gr.I (US) – in representative capacity,
Office: M/o Health & Family Welfare,
331, 'C' Wing, Nirman Bhawan,
New Delhi-110001.
6. Shri Kailash Chand Meena, Under Secretary
[S.No.280: SL-2009 of Gr.I (US) – in representative capacity,
Office: DGFT, Udyog Bhawan,
New Delhi-110001.
7. Shri D. Choudhury, Under Secretary
[S.No.2: SL-2010 of Gr.I (US) – in representative capacity,
Office: D/o Legal Affairs, Shastri Bhawan,
New Delhi-110001.
8. Shri Raju Lal Meena, Under Secretary
[S.No.220: SL-2010 of Gr.I (US) –
in representative capacity,
Office: M/o Home Affairs, 3rd Floor,
NDCC-II Building, Sansad Marg,
New Delhi-110001.
9. Ms. R. Mythili, Under Secretary
[S.No.2: SL-2011 of Gr.I (US) – in representative capacity,
Office: Prime Minister's Office,
South Block, New Delhi-110001.
10. Shri Anjan Sarkar, Branch Officer
[S.No.337: SL-2011 of Gr.I (US) – in representative capacity,
Office: BIFR, 21st Floor, Jawahar Vyapar Bhawan,
Janpath, New Delhi-110001. ... Respondents

(By Advocates: Mr. R. N. Singh, Mr.A. K. Behera, Mr. Naresh Kaushik)

O R D E R

Justice Permod Kohli, Chairman :

These two OAs have been filed by Central Secretariat Stenographers Service Gazetted Officers' Association and some individual members of the said association. In OA No.1628/2012 following reliefs have been claimed:

- “(i) The Select List of Grade-I (Under Secretary) for the year 2008 issued on 7.1.2010, after deletion of the 1962 Rules, may be set aside.
- (ii) The Notifications G.S.R. 64(E) and 65(E) both dated 1.2.2008, issued unlawfully, arbitrarily, discriminately and fraudulently, if and when revived, may be set aside being violative of Article 14 and 16 of the Constitution of India.
- (iii) As a consequence of above, direct the Respondents No.1 and 2 to consider the names of officers of Grades A&B (merged) of CSSS (Private Secretaries) from the Select List Year 1994 to 2000, as the case may be, for appointment in Grade-I (Under Secretary) of CSS for Select List year 2008 or onward, as the case may be, on the basis of the 'single' list of "eligible officers" stipulated under the valid Recruitment Rules i.e. CSS Rules, 1962 as amended through Notification dated 26.2.1999, inter-alia, r/w Regulations 2, 3, 5A(1), 2(c)(iv), 3 and 6 of CSS Regulations, 1964.
- (iv) To grant any other relief(s) as may be deemed fit and proper in the circumstances of the case.”

Prayers (i) and (iii) would depend upon grant of prayer (ii). The applicants have grievance in respect to the amendment of Central Secretariat Service Rules. It is admitted case of the parties that

Central Secretariat Stenographers' Service (CSSS) is a distinct service than Central Secretariat Service (CSS). CSS was governed by CSS Rules, 1962. The hierarchy in this Service consists of Assistant, Section Officer, Under Secretary, Deputy Secretary, Director and Joint Secretary. The post of Under Secretary is a Grade-I post under the Rules of 1962. Recruitment to the Selection Grade and Grade-I was governed under rule 12 of the Rules of 1962. Rule 12 reads as under:

"12. Recruitment to Selection Grade and Grade I. - (1) Vacancies in the Selection Grade shall be filled by promotion of permanent 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):

Provided that no person included in a later Select List shall be eligible to be appointed to the Grade until all officers included in an earlier Select List have been appointed.

(2) 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 are included in the Select List for Grade I prepared under sub-rule (4):

Provided that no person included in a later Select List shall be eligible to be appointed to the Grade until all officers included in an earlier Select List have been appointed:

Provided further that if any person appointed to the Section Officers' Grade before the appointed day is considered for promotion to Grade I under this sub-rule, all persons senior to him in that Grade before that day shall also be so considered notwithstanding that they may not have rendered ten years' approved service in that Grade:

Provided further that an officer of Grade I of the Central Secretariat Stenographers Service appointed to the Section Officers' Grade against the Stenographers' quota before the appointed day who ranks senior to any of the permanent Section Officers eligible to be considered for promotion to Grade I of the Central Secretariat Service under the second proviso shall also be eligible to be considered for such promotion notwithstanding that he may not have been substantively appointed to the Section Officers' Grade.

(3) Substantive appointments to the Selection Grade and Grade I shall be made in the order of seniority of temporary officers of the respective Grade except when, for reasons to be recorded in writing, a person is not considered fit for such appointment in his turn.

(4) For the purpose of sub-rules (1) and (2), Select List for the Selection Grade and Grade I shall be prepared and may be revised from time to time. The procedure for preparing and revising the Select Lists shall be such as may be prescribed by regulations made by the Ministry of Home Affairs:

Provided that the regulations relating to the procedure for preparing and revising the Select List for Grade I shall be framed in consultation with the Commission and such Select List shall also be prepared in consultation with them.

(5) Notwithstanding anything contained in sub-rules (1) and (2), any person eligible to be considered for promotion to the Selection Grade under sub-rule (1) or to Grade I under sub-rule (2) may be appointed to a temporary vacancy not exceeding three months, in the Selection Grade or Grade I, as the case may be, if an officer included in the Select List for the relevant Grade is not available or cannot for any reason be appointed to such vacancy."

Eligibility for promotion to Grade-I is prescribed under sub-rule (2) of rule 12 whereunder the vacancies in Grade-I are to 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 are included in the select list for Grade-I prepared under sub-rule (4). Third proviso to sub-rule (2) creates a departure and provides that an officer of Grade-I of the CSSS appointed to the Section Officers' grade against the Stenographers' quota before the appointed day who ranks senior to any of the permanent Section Officers eligible to be considered for promotion to Grade-I of CSS under the second proviso shall also be eligible to be considered for such promotion, notwithstanding that he may not have been substantively appointed to the Section Officers' grade. Sub-rule (4) prescribes the mode of preparation of the select list as laid down under the regulations made by the Ministry of Home Affairs.

2. Rules of 1962 were later amended in the year 1999 vide GSR 153(E) dated 24.02.1999. For purposes of the present controversy, amended rule 12 is relevant, which reads as under:

“5. 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 Selection 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)."

Amended sub-rule (2) of rule 12 made a departure from the Rules of 1962 inasmuch as the recruitment/promotion to Grade-I under the amended rule is by promotion of regular officers of the Section Officers' grade having rendered not less than eight years' approved service in that grade, and of regular officers of Grades A and B (merged) of CSSS with not less than eight years' approved service in that grade and are included in the select list for Grade-I. This clearly means that the Section Officers with eight years' approved service and CSSS Grades A and B (merged) officers also with eight years of approved service, i.e., both categories having been included in the select list for Grade-I of the Service, were eligible and entitled to be considered for promotion to the Grade-I. The departure is that under the 1962 Rules the CSSS Grades A and B officers were required to be initially appointed to the grade of Section Officers and thereafter become eligible for promotion to Grade-I of CSS, whereas under the amended Rules without having been appointed as Section Officer, the CSSS officers of Grades A and B (merged) with eight years of approved service in the grade and included in the select list for Grade-I became eligible for such promotion. The aforementioned

Rules further came to be amended in the year 2008 vide notification GSR 64(E) dated 01.02.2008, whereby in rule 12 for sub-rule (2) following sub-rule has been substituted:

“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).”

By virtue of the aforesaid amendment, only the regular officers of the Section Officers’ grade who have rendered not less than eight years’ approved service in that grade are made eligible for promotion to the Grade-I, excluding the CSSS officers of Grades A and B (merged) from the purview of promotion to Grade-I (Under Secretary). The said amendment was based upon a Cabinet decision dated 27.07.2005. Said Cabinet decision reads as under:

“Sub: Lateral entry of Stenographers belonging to CSSS in the Grades of Section Officer & Under Secretary of CSS.

The Government had set up a ‘Group of Officers’ on Cadre Structure of Central Secretariat Stenographers Service (CSSS), in October, 2003. The Group submitted its report in February, 2004. The Report of the ‘Group’ has been considered by the Government and inter-alia the following decisions have been taken:

- (i) To discontinue the lateral entry of CSSS officers into Central Secretariat Service (CSS) at the level of Under Secretary of CSS.
- (ii) To allow only those Stenographer Grade ‘C’ who are graduates to participate in the

Limited Departmental Competitive
Examination for the Section Officer's Grade
of CSS.

2. Necessary notification relating to amendment to the CSS Rules will be issued separately."

This Cabinet decision was taken on the basis of report of the Group of Officers on Cadre Structure of CSSS, and by virtue of the aforesaid Cabinet decision, lateral entry of CSSS officers into CSS at the level of Under Secretary (Grade-I) was discontinued. This Cabinet decision became subject matter of challenge in OA No.2793/2005 by the CSSS Gazetted Officers' Association. The said OA was decided by this Tribunal vide judgment dated 24.04.2008. It may be useful to notice the relevant parts of the judgment. The issue involved before the Tribunal was noticed in para 1, which reads as under:

"The present application filed by CSSS Gazetted Officers' Association represented through its President and two other Private Secretaries is directed against DOP&T Order No. 21/41/2005-CS.I dated 29.07.2005 (Annexure-A) passed by the respondents whereby the following decision has been taken:-

- "(i) To discontinue the lateral entry of CSSS Officers into Grade-I of Central Secretariat Service (CSS) at the level of Under Secretary;
- (ii) To allow only those Stenographer Grade 'C' who are Graduates to participate in the Limited Departmental Competitive Examination for the Section Officers' Grade of CSS."

The basis for challenging the aforesaid Cabinet decision were also noticed by the Tribunal in paras 18 and 19 of the judgment, which read as under:

“18. Presumably, the impugned order was issued after the order dated 18.07.2005. The main argument adduced by learned counsel for applicants is on legal grounds inasmuch as the impugned order and the recommendations of the group of officers, which have been accepted by the Government are in violation of the sub-rule 2 of Rule 12 of CSS Rules, 1962. When the rules clearly provide for lateral entry of CSSS at the Under Secretary level, it is not open to the respondents to stop it by the Tribunal vide order dated 21.12.2005.

19. The second argument advanced by learned counsel was on the issue of stagnation. He vehemently contended that applicants have not been promoted in a similar way as the Section Officers of CSS for at least about 20 years in their cadre resulting in acute stagnation. He reiterated his statement in the OA that the Stenographers have not been promoted since 1986 whereas Section Officers have been continuously the beneficiaries of such promotion.”

During the pendency of the aforesaid OA, the amendment to the Rules came to be notified vide notification dated 01.02.2008 and was brought to the notice of the Tribunal, which the Tribunal noticed in para 20 of the judgment and reads as under:

“...In so far as the validity of the order dated 29.07.2005 (Annexure-A) goes, it is the culmination of the recommendations of the Vth CPC and the group of officers which was set up to go into the cadre structures of CSSS and CSS. He also highlighted Para-2 of the said order, namely, that necessary notification relating to amendment to CSS Rules will be issued separately. Thus, the impugned order is only a prelude to the amendment of the Rules and that this

order now stands merged with the amendment carried out vide Notification dated 01.02.2008....”

The Tribunal finally held as under:

“28. The above amendment, when read in conjunction with the earlier rules makes it clear that the select list for Grade-I would hence forth be prepared only from eligible SOs. It is also noted that consequent upon acceptance of the recommendations of the group of officers, the cadre strength of CSSS has been revised vide order dated 18.07.2005.

30. As it emerges from the submissions made on behalf of the applicants and the various contentions put forth by the respondents, there is a long standing history and genesis of this case. Although, in the earlier orders, the CSSS were having lateral entry into the CSS at varying times, it is now finally on the recommendation of the 5th CPC and on the recommendations of Group of officers as culminated in setting up separate hierarchy and separate promotion opportunities of both the cadres. Admittedly, the nature of duties, functions and responsibilities of the Stenographer cadre and SOs cadre are different. It is by now well settled position and as has been held by Hon’ble Supreme Court that creation of services, cadre structure and restructuring etc. are matters, which lie squarely within the domain of the executive. This being a policy decision of Government, it would be neither appropriate nor permissible for the Courts to interfere in these matters. Having regard to the settled position, we are in agreement with the submissions of the respondents and the prejudice projected appear to be wholly imaginary. O.A. deserves to be dismissed. We do so. No costs.”

3. The aforesaid judgment was challenged in the Hon’ble High Court of Delhi in WP(C) No.279/2009. This writ petition was decided with another writ petition, WP(C) No.8471/2009, by the

Hon'ble High Court vide judgment dated 14.09.2010 with the following observations:

“13. Accordingly we dispose of the writ petition declaring that the observations made in the impugned order dated 24.04.2008 and 09.01.2009 which impact the notification dated 01.02.2008 would not be taken into account by the Tribunal when OA No.3310/2009, OA No.1667/2008 and 2674/2009 are decided.”

The Hon'ble High Court refused to interfere in the judgment of the Tribunal insofar as the validity of the Cabinet decision is concerned, however, disposed of the writ petition in view of the pendency of the OAs before the Tribunal wherein the notification dated 01.02.2008 notifying the amendment in the Rules was challenged. It is relevant to note that the applicant No.1 Association in the present case was also applicant No.1 in the aforesaid OA.

4. OA No.2906/2012 has also been filed by the CSSS Gazetted Officers' Association and two of its members seeking following reliefs:

- “(i) The impugned Notifications G.S.R. 140(E) dated 27.2.2009 and G.S.R. 179(E) dated 19.3.2010 issued by the Respondent No.1, without the approval of the Union Cabinet, be declared null & void *ab initio* and quashed being arbitrary, discriminatory and also unconstitutional being violative of the provisions of Article 77(3) of the Constitution of India read with the Government of India (Transaction of Business) Rules, 1961.
- (ii) As a consequence, the impugned O.M. No.5/10/2009-CS.I(U) dated 2.12.2009, O.M.

No.5/11/2011-CS.I(U) dated 21.11.2011, O.M. No.5/11/2012-CS.I(U) dated 17.5.2012 and O.M. No.5/13/2012-CS.I(U) dated 8.8.2012 for preparation of Select Lists of Grade-I (Under Secretary) of the CSS for the years 2009, 2010, 2011 & 2012 under the impugned 2009 Rules and 2010 Regulations be also set aside and quashed.

- (iii) To grant any other relief(s) as may be deemed fit and proper in the circumstances of the case."

5. The basis for the relief claimed in this OA is the recommendations of the Sixth Central Pay Commission (CPC). Relevant recommendations of the Sixth CPC have been reproduced in para 4.4 of the OA. Same are noticed hereunder:

"3.1.10 Presently, distinct Stenographers' cadres exist 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.

3.1.11 The Commission, accordingly, recommends introduction of a new grade in the scale of Rs.14300-18300 in CSSS and all other analogous Stenographers' cadres in non-participating Ministries/

Departments/Organizations. Fifteen percent of the posts of PPS/Senior PPS in the Central Secretariat Stenographers Service/analogous services in non participating Ministries/Organizations would henceforth be upgraded and placed in the scale of Rs.14300-18300 corresponding to the revised pay band PB-3 of Rs.15600-39100 along with grade pay of Rs.7600. The new post so created shall be designated as Principal Staff Officer. The designation will continue till the time the cadres of office staff and stenographers in the Secretariat are merged. Once such merger takes place, a uniform designation, in any case, will attach to these posts.

3.1.12 Simultaneously, all future recruitment to CSS/CSSS/analogous Secretariat and Stenographers cadres in non participating Ministries/Organizations in the scale of Rs.6500-10500 will be made as Executive Assistants minimum recruitment qualification for which would include Graduation and one year Diploma in Computers. No recruitment should henceforth be made in the grade of Stenographers carrying the scale of Rs.4000-6000. All the vacancies arising in the scales of Rs.4000-6000/Rs.6500-10500 in CSSS/analogous cadres and in the scale of Rs.6500-10500 in CSS/analogous cadres would henceforth be filled by recruitment of Executive Assistants. These Executive Assistants will discharge the functions presently being carried out by Assistants as well as the Private Secretaries and in their case the cadres of CSS/CSSS and analogous cadres in other non- 163 participating Ministries/Organizations will be merged for promotional and all other purposes. Insofar as present incumbents to CSS/CSSS and analogous cadres in other non-participating Ministries/Organizations are concerned, they may continue as distinct cadres till the time the Administrative Ministry concerned evolves a procedure for their job enlargement/enrichment, retraining and re-deployment."

6. Based upon the aforesaid recommendations, the applicants claim that although the Sixth CPC recommended merger

of CSS and CSSS with full parity and uniform designations, however, the respondent No.1, contrary to the recommendations of the Sixth CPC, issued impugned notification, i.e., the Central Secretariat Service Rules, 2009, vide notification G.S.R. 140(E) dated 27.02.2009, for a separate Central Secretariat Civil Service. It is stated that the recommendations of the Sixth CPC are binding upon the respondent No.1. The applicants refer to some RTI query to canvass that the recommendations of the Sixth CPC have been accepted by the Government. In the application seeking information under RTI, following information was sought:

“Please give the following information under Section 6 of the RTI Act, 2005:-

- (i) Please inform whether approval of the Cabinet was obtained before issue of Notification GSR 140(E) dated 27.2.2009.
- (ii) certified copy(s) of Note for Cabinet and minutes of the Cabinet Meeting endorsed to DoP&T following which Notification GSR 140(E) dated 27.2.2009 was issued;
- (iii) file number and certified copy(s) of the Notesheet(s) in which the aforesaid Note for Cabinet and Notification GSR 140(E) has been processed.
- (iv) certified copy(s) of the comments furnished by the Ministries/Departments concerned regarding the aforesaid Note for Cabinet/Notification;
- (v) after getting the above information and copies of documents as requested, I will inspect the file(s) in which the above-mentioned Note for Cabinet and the Notification have been processed. At the

time of inspection, I may need certain other documents/note sheet/communication available in the file(s), certified copies of which may also be provided to be on demand."

Reply to the aforesaid RTI application was given vide letter dated 20.11.2009, which reads as under:

"I am to refer to your RTI Application dated 03/11/2009 on the subject cited above and to furnish the point-wise information as under:-

- (i) No.
- (ii) to (iv) Not applicable in view of (i) above.
- (iv) You are requested to come over to this officer with prior appointment for inspection of the relevant file and also get the copies of the documents."

7. The applicants also plead that the recommendations of Sixth CPC were accepted, and to establish that, reliance is placed upon a note-sheet dated 26.02.2009 of the Department of Expenditure, which reads as under:

"Department of Personnel & Training may please refer to their File No.20/51/2008-CS-II regarding implementation of Sixth CPC's recommendations relating to upgradation of 15% posts of Senior PPS + PPS belonging to the Central Secretariat Stenographer Service (CSSS) to the pre-revised scale of Rs.14300-18300 and designating them as Principal Staff Officers (PSOs).

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.

3. In this regard, a perusal of the file of DoPT indicates that in 2007, the sanctioned strength of PPS and Senior PPS in CSSS was 191 and 69 respectively and 15% of 191+69 comes to 39. Accordingly, as per the recommendation of Sixth CPC, 39 posts of Senior PPS are to be placed in the pay band PB-4 with grade pay of Rs.8700 and designated as Principal Staff Officer. Further, the orders to be issued in this regard will have prospective applicability and promotion of eligible Senior PPSs as PSOs will be done after following the due procedure of DPC etc.

4. In accordance with the position explained in the previous paragraphs, a draft Office Memorandum for implementing the decision of the Government on the above recommendation of Sixth CPC has been prepared and after the approval of Secretary (E), the same is placed on this file for issue by DoPT.

5. This issues with the approval of Secretary (Expenditure)."

Reliance is placed upon para 2 of the aforesaid note-sheet wherein it is mentioned that the entire report of the Sixth CPC has been accepted by the Government as a package. The contention of the applicants does not seem to be correct, as para 2 itself creates an exception for the modifications as per the Department's resolution dated 29.08.2008 which clearly indicates that the entire report of the Sixth CPC has not been accepted. It also stipulated that para 3.1.11 of the recommendations has been accepted only regarding the

upgradation of the posts. Aforesaid note does not establish that the recommendations of the Sixth CPC at paras 3.1.10 and 3.1.12 have been accepted. To the contrary, the respondents have placed on record note-sheet dated 03.08.2010 of the Department of Expenditure as Annexure R-VIII with the counter-affidavit filed on behalf of respondent No.1. Relevant extract of the aforesaid note-sheet reads as under:

“DOPT may please refer to their File No.10/6/2009-CS-I(P) seeking views of this Department in connection with representations received from CSSS organizations regarding non-implementation of recommendations of Sixth CPC on grant of full parity and uniform designation in the case of CSS and CSSS Services and merger of these services.

2. The matter has been considered. In this connection, attention of DOPT is drawn to their recent proposal to grant higher grade pay of Rs.4200 to Stenographers Gr.D/UDCs of CSCS/CSSS. The proposal was analyzed and our comments with regard to the proposal and the Sixth CPC's relevant recommendations were communicated vide U.O. of even number dated 22.7.2010. The said communication covered all the aspects raised by DOPY in the present proposal. In view of this, it is advised that:

- (i) A new grade in the scale of Rs.14300-18300 in CSSS named as CSO has already been created as per recommendations of Sixth CPC (para 3.1.10 and 3.1.11).
- (ii) As already communicated vide U.O. note dated 22.7.2010, a separate cadre with a suitable nomenclature to discharge the functions presently being carried out by CSS/CSSS may be evolved. This newly created separate cadre will start from the level of Executive Assistant in PB-2 with

grade pay of Rs.4200. The other level in this cadre would be analogous to the existing levels of CSS/CSSS. DOP&T may evolve suitable nomenclature for these levels.

- (iii) Further, as per the specific recommendation of Sixth CPC the existing incumbents in CSS and CSSS cadres shall continue as distinct cadres."

From this annexure, we find that the representation of the applicants for full parity of CSSS with CSS has not found favour and the Government maintained to keep both the cadres, i.e., CSS and CSSS as distinct and separate cadres and declined to accept the recommendation of the Sixth CPC in this regard.

8. The main contention of the learned counsel for the applicants, Mr. Neelansh Gaur, is that the amendment to the Rules of 1962 as amended vide notification dated 26.02.1999 vests a right in the members of the applicant No.1 Association for promotion to the Grade-I (Under Secretary) and this right has been illegally taken away vide the amendment dated 01.02.2008. His further contention is that this amendment is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution. The members of the applicant Association who were eligible for promotion to the grade of Under Secretary have been illegally denied such promotion under the garb of stopping the lateral entry.

9. We have heard the learned counsel for parties at length.

10. It is the common case of parties that the CSS and CSSS are two different Services created separately and governed by distinct recruitment rules. The CSS Rules define the 'cadre' and 'cadre officer' under rule 2(e) and (g), which reads as under:

“(e) “cadre” means the group of posts in the Grades of Section Officer and Assistant in any of the Ministries or Offices specified in column (2) of the First Schedule and in all the Offices specified against such Ministry or Office in column (3) of that Schedule;”

“(g) “cadre officer” in relation to the Section Officers' Grade or the Assistants' Grade means a member of the Service of the Section Officers' Grade or Assistants' Grade, as the case may be, and includes a temporary officer approved for long-term appointment to that Grade;”

Rule 10 provides for holding of duty posts by the cadre officers, and is reproduced hereunder:

“10. Duty posts to be held by cadre officers.- 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.

Provided that, subject to such instructions as the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions may, from time to time issue, officers of Grade A of the corresponding Cadre of the Central Secretariat Stenographers' Service, who have rendered not less than two years' service in that Grade may be posted to duty posts in the Section Officers' grade and officers of grade C Stenographers' of the corresponding Cadre of the Central Secretariat Stenographers' Service who have rendered not less than five years service in that grade may be posted to duty posts in the Assistant's Grade, the period of such appointment in either case

being limited to two years. Officers of the corresponding cadre of the Central Secretariat Stenographers' Service so appointed to duty posts in the Section Officers' and Assistants' Grade shall continue to draw the grade pay admissible to them in that service from time to time."

Under Secretary's post, i.e., Grade-I, is admittedly a cadre post. The definition of 'cadre' and 'cadre officer' does not include the officers from CSSS. Proviso to rule 10 permits posting of CSSS officers of the corresponding cadres with not less than two years' service in the grade to be posted to duty posts in the Section Officers' grade and officers of Grade-II of the corresponding cadre of CSSS who have rendered not less than five years' service in the grade to be posted to duty posts in Assistants' grade. However, rule 12(2) permits the filling up of Grade-I vacancies by promotion of permanent officers of Section Officers' grade who have rendered not less than ten years' approved service in that grade and are included in the select list.

11. A conjoint reading of rules 10 and 12 with the definitions of 'cadre' and 'cadre officer' suggests that only those officers from CSSS cadre who are permanently appointed to the duty posts of Section Officers' grade could be considered for promotion to Grade-I. The amendment of 1999, however, removed the barrier of two years' service as Section Officer and not only the Section Officers with not less than eight years' service as such, but also the regular officers of Grades A and B (merged) of CSSS having rendered not less than

eight years' service and included in the select list if Grade-I, were eligible for consideration for promotion to the post of Under Secretary. This privilege was, however, taken away by the amendment of 2008 referred to above. The amendment of 2008 is based upon the Cabinet decision dated 27.07.2005, which is further on the basis of the recommendations of the Group of Officers. Thus, it demonstrates that it was a conscious decision of the Government taking into consideration all the relevant factors. The respondents have also mentioned in the counter-affidavit that promotional avenues for CSSS have increased over the period of time, and keeping in view various factors including the grievance of the CSS cadre, the restructuring was considered and on the basis of recommendations of the Group of Officers the amendment was carried out. It is settled law that power to amend the rules has to be conceded to the Government provided it is a conscious decision and in accordance with law. It is the prerogative of the employer to lay down the service conditions for its employees which *inter alia* include the pay scale, hierarchy of the service, promotional avenues and so on. The Hon'ble Supreme Court in *P. U. Joshi versus Accountant General* [(2003) 2 SCC 632] held as under:

“....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/subtraction 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...."

12. The Cabinet decision dated 27.07.2005 was subject matter of challenge before this Tribunal in OA No.2793/2005. The challenge was not accepted by the Tribunal and the judgment of the Tribunal has been upheld by the Hon'ble High Court of Delhi. The impugned notification dated 01.02.2008 is culmination of the Cabinet decision into statutory rules. The basis of challenge to the Cabinet decision is

also the basis of challenge to the impugned notification. Same having been declined by this Tribunal and the Hon'ble High Court and no new plea having been raised, the challenge cannot be accepted, particularly in view of the law laid down by the Apex Court.

13. Relief (ii) claimed in OA No.1628/2012 has to be declined. The other reliefs (i) and (iii) being dependent upon the relief (ii), are also rejected. OA No.1628/2012 deserves to be dismissed.

14. The relief claimed in OA No.2906/2012 is also on the same premises as in OA No.1628/2012. Apart from that, the additional ground urged is the recommendation of the Sixth Central Pay Commission as relied upon by the applicants in this OA and noticed by us. The recommendation having not been accepted by the Government would have no binding effect. No relief can be granted to the applicants in this OA as well.

15. In the total analysis, both the OAs are dismissed. No costs.

(Nita Chowdhury)
Member (A)

(Justice Permod Kohli)
Chairman

/as/