

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No-2127/2013

Order Reserved on: 03.12.2015

Order Pronounced on: 23.07.2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Uma Shankar Mishra,
Son of Shri Hari Prasad Mishra,
Resident of B-8/1, 1st Floor,
Acharya Niketan,
Mayur Vihar, Delhi-110 091.

-Applicant

(By Advocate: Ms. Harvinder Oberoi with
Mr. Arvind Pandey)

Versus

1. Indian Council of Agricultural Research
Through its Secretary, Krishi Bhawan,
New Delhi.
2. Administrative Officer,
National Centre for Integrated Pest Management,
Lal Bahadur Shastri Bhawan, Pusa Campus,
New Delhi.
3. Indian Council of Agricultural Research
Lal Bahadur Shastri Bhawan, Pusa Campus,
New Delhi-110012.
4. Rajender Kumar Shah
Working as skilled support staff,
National Centre for Integrated Pest Management,
Krishi Bhavan, New Delhi.

-Respondents

(By Advocate: Shri B.S. Mor for R-1 to R-3
Shri Rahul Chaudhary for R-4)

ORDER**Per Sudhir Kumar, Member (A):**

The applicant of this OA has approached this Tribunal assailing the promotional appointment of Private Respondent R-4 to the post of T-1 (Lab Technician), which he has termed to be illegal.

2. The essential qualifications for promotion to the said post of Grade T-1 of technical service, from the feeder cadre of supportive staff, under 33.3% quota reserved for departmental candidates, were amended on 07.11.2003 through Annexure A-2.

3. As per the amended qualifications, an employee in the feeder cadre of supportive staff should possess (i) matriculate with at least one year certificate in relevant field, or (ii) matriculate with five years of working in the respective field, or (iii) matriculate with National Trade Certificate/National Apprenticeship Certificate or equivalent with three years' experience in the respective field, or (iv) National Trade Certificate/National Apprenticeship Certificate, having matric or equivalent with 5 years' experience of working in the respective field.

4. The official respondents issued an Office Order on 12.12.2012 for filling up of two vacant posts of Grade T-1, requiring the candidates to be matriculate with 5 years' experience in Laboratory. Both the applicant and the private respondent R-4 applied. The applicant has claimed that he was appointed as Supportive Staff Grade-1 on 26.10.1996, and from July 31, 1997 to 23rd May, 2003, he worked in Diagnostic and Bio Control Lab, and thereafter from August 27, 2007 till the date of filing of the OA, the applicant was working in the Bio Control Lab and field work

(rice crop), and thus claimed to have approximately 11 years of experience of having worked in the Laboratories.

5. His contention is that the Private Respondent R-4 is junior, as he was appointed later than him, i.e., on 11.11.1996, and does not possess the requisite Laboratory experience, as even the Office Order dated 31.07.1997 produced by him along with OA shows that while the applicant was working in the Diagnostic Lab, the Private Respondent R-4 was not posted to work in any Laboratory. Similar situation is reflected through Office Orders dated 27.08.2007 and 09.10.2007 according to the applicant.

6. The applicant is aggrieved that when DPC met on 17.06.2013, without any application of mind, even though the Private Respondent R-4 was not meeting the eligibility criteria, the DPC illegally recommended the promotion of Private Respondent R-4 under the Departmental Promotion Quota, and his case was not considered and recommended for promotion, for the reasons best known to the official respondents. He has, therefore, impugned the OM issued appointing Private Respondent R-4 to the promotional post through Annexure A-1 dated 17.06.2013.

7. The applicant has submitted that while he has been almost continuously working in Laboratories, the duties of the Private Respondent R-4 were simply opening and locking the rooms, and in his absence that work was sometimes additionally given to the applicant

also, who was working then in Diagnostic Laboratory at that time, as is evident from Annexure A-6 dated 02.02.2001, which states as follows:-

“F.N.8(16)/2000-Admn.

Dated the 2nd February, 2001.

OFFICE ORDER

It has been decided that Shri Uma Shankar Mishra, SS Grade I in the Diagnostic Laboratory **shall discharge the duties of Shri Rajender Kumar Shah, SS Grade I in respect of opening and locking of rooms of NCIPM during his absence on leave** falling during the months of February, 2001 & March, 2001.

Sd/-
ADMINISTRATIVE OFFICER

Copy is forwarded for information and necessary action to:

1. **Shri Rajinder Kumar Shah, SS Grade I through Incharge, Entomology Unit. He shall give the charge of opening and locking of rooms to Shri Uma Shankar Mishra, SS Grade I, whenever he goes on leave and also the register meant for keeping the records of Key.**
2. Shri Uma Shankar Mishra, SS Grade I thorough Incharge, Diagnostic Laboratory.
3. All units Incharges, NCIPM.
4. AO/AF&AO, NCIPM New Delhi.
5. Director's Cell, NCIPM.
6. Notice Board.”

(Emphasis supplied)

8. The applicant has further alleged that Private Respondent R-4 is a candidate with a grey background, inasmuch as his date of birth is mentioned differently at different places in his service records, and he does not have either of the qualifications mentioned for the purpose of selection, as reproduced by us above, and he has never worked in Laboratory, and has merely managed to procure one or two letters written arbitrarily by a few officers, which cannot go to show that he was ever posted in the Laboratories. He has further submitted that even though the Private Respondent R-4 has falsely mentioned in the application form that he has five years of experience of working in Bio control Laboratory from 11.07.2007 to 10.07.2012, however, there were

no documents to prove the same, and that he did not have 10 years' experience of working in any of the Laboratories, as wrongly claimed by him. It was further alleged by the applicant that the date of birth of the Private Respondent R-4 is shown in the service records as 27.09.1973, whereas at some other places it has been shown differently, and that in 2007, there was even a dispute regarding the caste certificate of the Private Respondent R-4, regarding which an investigation is going on.

9. The applicant has submitted that even though he had filed an objection representation against the promotion of the Private Respondent R-4, the official respondents have not cared to decide the issue. In the result, he had assailed the action of the respondents in having passed the impugned Memorandum Annexure A-1 dated 17.06.2013 on the ground that the Private Respondent R-4 is ineligible, and the action of the respondents promoting him and ignoring the eligible candidates is illegal, arbitrary and unfair, and against the law as laid down by the Hon'ble Supreme Court, whereby the fundamental rights of the applicant have been violated, and the impugned order promoting the Private Respondent R-4 needs to be quashed and set aside as bad in law.

10. The applicant has further taken the ground that the Private Respondent R-4 does not possess the requisite experience of five years' working in the Laboratory. His caste certificate is in doubt, in which an enquiry is going on, the different dates of birth in respect of the Private Respondent R-4 in various documents have not been looked into, and

the respondents have still favoured the Private Respondent R-4, while overlooking his merit, only due to malafide intentions.

11. The applicant has further taken the ground that an ineligible candidate cannot be promoted to the post for which he is not fit, in preference to the applicant, who is eligible and entitled to hold the post. He has further taken the ground that there were two posts, and only one has been filled up, and the other has been left out arbitrarily, in order to deny the benefit to the applicant, even though the annexed documents show that he has the required Laboratory experience of more than five years, which the Private Respondent R-4 does not have. He has further submitted that the Private Respondent R-4 has even been punished for sexual harassment, and such a person is not fit for being considered for such promotion, and even the Screening Committee had not agreed with the candidature of the Private Respondent R-4, and had doubted his documents, when even in the self-appraisal the Private Respondent R-4 had described himself as Farash, and has not mentioned having worked in any Lab or in any field research activity. As on the date of filing of the OA, Private Respondent R-4 had not joined duties and the applicant had, therefore, sought for the following reliefs and Interim Reliefs:-

“Reliefs:

- i) The impugned order dated 17.06.2013 appointing the private respondent for promotion to the post of T-I Lab Technician, may kindly be quashed and set aside;
- ii) The respondents may be directed to consider and promote the applicant to the above-mentioned post being eligible and fit for the said post.

iii) All consequential benefits may be granted to the Applicant.

iv) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, may also be passed in favour of the Applicant.

v) Cost of the proceedings be awarded in favour of the Applicant and against the Respondents."

Interim Relief:

Till the decision of this OA, as an interim measure, the respondent may be restrained from filling up the said post by restraining the private respondent from joining the promotional post of T-I (Lab Technician) and status quo of today may kindly be directed to be maintained."

12. When the case came up for admission before the Vacation Bench of one of us [Sudhir Kumar, Member (A)], while the operation of the impugned order was not stayed, however, it was ordered that the Respondents No. 1 to 3 shall maintain *status-quo* till the next date of hearing. That Interim Relief regarding *status-quo* thereafter continued to get extended from date to date.

13. The Private Respondent R-4 was the first to file the counter reply on 01.11.2013 through Shri B.S. Mor, Advocate. However, on 27.03.2014 Shri B.S. Mor, learned counsel appeared for official respondents, and submitted that due to inadvertence he had also filed Vakalatnama on behalf of Private Respondent R-4, and sought discharge from appearance on behalf of Private Respondent R-4, which prayer was allowed, and the following orders were recorded:-

"Mr. B.S. Mor, learned counsel for official respondents, submits that due to inadvertence he has also filed vakalatnama on behalf of private respondents also, and seeks discharge from appearance on behalf of private respondents,

which prayer is allowed. He will now be treated to be appearing only on behalf of official respondents henceforth. Learned proxy counsel for applicant seeks short accommodation to advance the arguments in this case by the arguing counsel, which prayer is allowed.
Call on 3.4.2014.

Interim order to continue till the next date of hearing”.

14. Thereafter, learned counsel Shri B.S. Mor appeared for Respondents No. 1 to 3, and learned counsel Shri Keshav Rai appeared for Private Respondent R-4 on many occasions. However, many adjournments were sought by both sides thereafter and on 20.08.2015, the following orders were recorded:-

“In this case the counter reply had been filed on 01.11.2013 on behalf of private respondent by the counsel who is otherwise appearing for official respondent. Thereafter, through order dated 27.03.2014, he had sought and was permitted to be discharged from appearance on behalf of the private respondent. Therefore, counter reply filed on 1.11.2013 has now become redundant. It has been submitted at the Bar that the private respondent has since engaged a new counsel but no Vakalatnama has been filed, as verified from Part 'C' file, and also no fresh reply has been filed on his behalf. More time is granted to the private respondent to file a fresh counter reply. Time is also granted to the applicant to file his rejoinder thereto, thereafter.

List on 08.10.2015. Interim relief to continue till the next date of hearing only”.

15. Thereafter on 08.10.2015 the matter was heard in part and finally the case was heard and reserved for orders on 03.12.2015.

16. The counsel for R-4 was changed twice, and Shri Rahul Chaudhary appearing for private respondent R-4 had submitted that he has filed his vakalatnama, but was adopting the arguments orally advanced by the

learned counsel appearing for official respondents No. 1 to 3. Therefore, since the counter reply dated 01.11.2013 filed on behalf of R-4 had been sought to be withdrawn, and had been withdrawn thereafter by the then counsel for Respondent No.4, we are not discussing the contents of that reply.

17. Counter reply on behalf of Respondents No. R-1 & R-2 was filed on 08.11.2013 by learned counsel Shri B.S. Mor. In his preliminary submissions, the respondents had submitted that the present OA is premature, and is not maintainable, and is liable to be dismissed for non-exhaustion of other remedies, i.e., by making a representation to the Competent Authority against the impugned Memorandum dated 17.06.2013, and, therefore, the present OA deserves to be dismissed. It was submitted that the Private Respondent R-4 was selected by the then Selection Committee in its meeting held on 07.10.1996, whereas the applicant was initially selected for appointment by the then Selection Committee held on 09.10.1996. It was, therefore, submitted that under law, Private Respondent R-4 is senior to the applicant for all purposes, though the applicant had joined his duties earlier, on 26.10.1996, whereas the Private Respondent R-4 had joined his duties later, on 11.11.1996, which was 16 days later. It was submitted that because of this, the Office Noting Sheet dated 06.02.2003, written in connection with the preparation of Seniority List of supporting staff, had shown the respective seniority of the applicant, and the Private Respondent R-4, on the basis of their dates of selection by the respective Selection Committees. It was further submitted that the applicant himself had

clearly conceded the seniority of Private Respondent R-4 above his own seniority through own hand written letter dated 17.02.2003 produced by the respondents as Annexure R-2. It was further submitted that the Seniority List of the supporting staff dated 02/06.03.2010 prepared by the office of National Centre for Integrated Pest Management (NCIPM, in short) was circulated vide letter dated 06/12.03.2010, and even affixed in the service books of all concerned through Annexure R-3, in which also the Private Respondent R-4 had been shown senior to the applicant, and the applicant had not raised any objection thereon, even though objections had been called for through Annexure R-4 dated 06/12.03.2010. Para-4 of the counter reply filed by official respondents R-1 & R-2 had stated as follows, which, somehow, reads as if this counter reply was from and on behalf of Private Respondent R-4:-

“That answering respondent has a vast experience of more than 15 years in the respective relevant field by successfully working with and assisting Dr. D.K. Garg, the then Principal Scientist & Unit Head (Entomology) for about 10 years and also Dr. O.M. Bambawale, the then Director NCIPM for 5 years, both posted at the NCIPM. On the other hand the applicant has an experience of merely 6 years in the respective field. In addition to that, academically, respondent No. 4 is intermediate whereas the applicant is simple matriculate. Thus, academically and experience-wise, answering respondent is far superior to the applicant. The copy of the experience certificates dated 24.07.2008 and 10.07.2012 are also attached herewith and marked as Annexure R-5 & Annexure R-6 respectively”.

18. It was further submitted in the reply of R-1 & R-2 that it is a settled principle of law that *inter-se-seniority* amongst the competitive candidates is always determined on the basis of their original merit list at the time of their respective selection, and in this case also, the merit list had been

reflected accordingly in the self-contained Note for DPC to be held on 17.06.2013 at 11.00 A.M., prepared and put up through Annexure R-7 colly, in the Annexure to which there were seven names of the Skilled Support Staff, containing their Bio-Data, and in which also Private Respondent R-4 had been shown to be higher at Sl. No.2, as compared to the applicant at Sl. No.3 (page-124 of the paper-book of the OA).

19. It was further submitted that the OA is bad for non-joinder of necessary parties, and instead of merely impleading the Administrative Officer for NCIPM as R-2, the Director NCIPM ought also to have been made a respondent party, as he was the only competent authority, who had approved the promotion of Private Respondent R-4. It was further submitted that the OA is also bad for mis-joinder of parties as Respondent No.3 has been unnecessarily impleaded as opposite party respondent.

20. Thereafter, in the para-wise replies, it was submitted on behalf of R-1 & R-2 that due to operation of vacancy-based roster, and allocation of vacancies between the different modes of recruitment, only one post of T-1 has to be filled up under the 33.33% departmental promotion quota, and that there was nothing wrong in the second post having been kept vacant. The documents produced by the applicant in respect of various postings were not denied, but it was submitted that as per the experience certificate produced by the Private Respondent R-4 through Annexure R-5 dated 10.07.2012, under the signature of the then Director Dr. O.M. Bambawale, and under the signature of Dr. D.K. Garg, the then Principal Scientist & Unit Head (Entomology), the Private Respondent R-4 was

considered as one of the eligible candidates, and the applicant was also considered as one of the eligible candidates, due not only to his experience certificates, but also due to his position as being at Sl. No.3 in the Seniority List of the supporting staff prepared by the Administrative Officer NCIPN, but he was not recommended for promotion.

21. It was, therefore, submitted that since the DPC had considered the cases of both the applicant and the Private Respondent R-4, and there was no dispute or disagreement regarding the seniority of Private Respondent R-4 *vis-a-vis* the applicant, the applicant could not be recommended when only one post of T-1 was to be filled up. It was further submitted in response to Para 4.15 of the OA that the date of birth of R-4, i.e., 27.09.1973, as mentioned in the Madhayama Certificate for the year 1990 from Bihar Sanskrit Siksha Board, Patna, had not been accepted till date as per the office record of the official respondents.

22. It was further submitted that the office of NCIPM went by available documents and records, and certificates issued by the officers like Dr. O.M. Bambawale, previous Director, and Dr. D.K. Garg (*supra*), *vis-a-vis* the corresponding office orders issued in respect of the applicant. It was denied that any fundamental right of the applicant had been violated, and it was submitted that a caste certificate was not material in the instant case, and that seniority-cum-fitness cannot be ignored as per the rules *in vogue* while selecting the candidate for 33.33% promotion quota.

23. In reply to Para 5.10 of the OA, it was submitted that even though two posts of T-1 were initially proposed to be filled up by promotion, but

due to the operation of vacancy-based Roster for allocation of vacancies between the two modes of recruitment, in accordance with percentage prescribed in the Recruitment Rules for the post of T-1, only one post could be filled up by promotion. In response to Para 5.13 of the OA, as regards the sexual harassment case against Private Respondent R-4, it was submitted that a candidate cannot be punished again for his past misdeed, which has already been settled, since the order passed in that case had clearly and categorically stipulated that the order of punishment would have no bearing on the future career of Private Respondent R-4. It was submitted that though the recommendations of any Screening Committee may or may not be accepted by the competent authority, the latter has acted justly and has provided equal opportunity to all eligible candidates. It was further alleged that the applicant has not exhausted all the remedies available to him, and it was prayed that the OA may be dismissed with exemplary costs.

24. On 07.01.2014, the applicant had filed his rejoinder to the counter reply filed on behalf of Respondent No.4 on 01.11.2013. However, since that counter reply itself has been discarded, as discussed above, we need not discuss the contents of rejoinder dated 07.01.2014 also.

25. Rejoinder to the reply of official respondents R-1 & 2 was filed by the applicant on 24.03.2014. In this, it was alleged that there is collusion between the official respondents and the Private Respondent inasmuch as the first counter reply on behalf of Private Respondent R-4, and the counter reply filed on behalf of Respondents No. 1 & 2 had been filed by the same counsel, and due to this collusion, since the matter was

urgent, the applicant was left with no alternative but to approach this Tribunal in the present OA.

26. It was further submitted that the settled position of law is that the seniority counts from the date of joining, and not from the date of selection, and the Office Notings produced by the official respondents were stated to be bad in law, and having no legal validity, and therefore, the same were null and void *ab initio*, and had no legal value. It was further submitted that even though, as is apparent from the letter dated 17.02.2003, Annexure R-2, itself, the applicant had objected to the seniority list as being wrong, but could not pursue the same due to assurances given by the authorities, and had prayed for the seniority list also to be set right.

27. It was further submitted that the present OA has not been filed on the basis of a claim for seniority, and the plea of seniority of Private Respondent R-4 is irrelevant for the purpose of the present OA, and since he does not possess the required experience of working in the Laboratory, which was the requirement for the promotion under 33.33% quota, as such the question of seniority does not arise in the present OA. It was submitted that Private Respondent R-4 has worked for 15 years merely assisting Dr. D.K. Garg for about 10 years and also Dr. O.M. Bambawale for 5 years, and has managed to procure the two alleged experience certificates, which are against and opposed to the office records, and even the very ACRs of the Private Respondent R-4. It was submitted that Private Respondent R-4 was interviewed for the post of Farash on 07.10.1996 and he joined on the post of Farash on 11.11.1996, and there

has been no order ever passed to show that he had ever been assigned the Laboratory duties and tasks, or had visited fields, or had tour programmes, submitted Tour Reports, TA Bills etc. It was submitted that since the Private Respondent R-4 had never worked as a Field/Lab Assistant of any Lab In-charge, even his attendance has never been marked in any of the Laboratories, and the applicant of the OA is the senior most Skilled Supporting Staff/Field/Lab Attendant to be considered for the post in question. As noted by us above also, it was alleged that even the official respondents have filed their counter reply as if it was filed by the Private Respondent R-4 by cut and paste method.

28. It was submitted that since the post in question requires experience in Laboratory for the purpose of eligibility, which criteria the Private Respondent R-4 does not meet, mere seniority, even if recognized, cannot be the basis for filling up the post in question. It was alleged that the experience certificates had been procured wrongly by the Private Respondent R-4 in order to take undue advantage, and it was pointed out that the certificate issued by Dr. O.M. Bambawale showed that R-4 had worked with him from 11.07.2007 to 10.07.2012, whereas the Office Order dated 28.07.2007 clearly shows that Private Respondent R-4 had actually joined the office of Dr. O.M. Bambawale only on 28.07.2007. It was further submitted that the Screening Committee has first rejected the application of the Private Respondent R-4 for the appointment to the post in question, but then the Screening Committee was illegally forced to re-consider its decision to appoint him, and it was prayed for the entire documents to be summoned. It was submitted that consideration of

procured documents by both the DPC, as well as by the Competent Authority, is the illegality committed on the part of the official respondents.

29. It was submitted that since the seniority was not the criteria, but only the Laboratory experience was the criteria, the admission of the official respondents that the principle of seniority had been followed in appointment of Private Respondent R-4 renders the appointment of Private Respondent R-4 to the post in question as illegal and against the eligibility criteria, even though it was not admitted that the Private Respondent R-4 is senior to the applicant. It was submitted that the applicant alone was eligible and competent to be selected for the post, and even if there was only one post to be filled up, since the Private Respondent R-4 was not even eligible, only applicant's case ought to have been considered, and, therefore, it was prayed that the OA be allowed.

30. On 18.11.2014, the official respondents filed a bunch of documents running into 106 pages through a covering Additional Affidavit sworn to by the Administrative Officer of NCIPM, containing photocopies of all documents pertaining to holding of the DPC, and the APARs of the Private Respondent R-4.

31. Learned counsel Shri Keshav Rai thereafter filed a fresh counter reply on behalf of Private Respondent R-4 on 10.09.2015. This was more or less a reiteration of the reply filed by the official respondents R-1 & R-2. It was submitted that since the applicant of the OA had himself accepted and conceded the seniority of the answering respondent Private

Respondent R-4, he was estopped from filing the present OA. It was submitted that Private Respondent R-4 has more than 15 years of experience, of working with and assisting Dr. D.K. Garg, the then Principal Scientist & Unit Head (Entomology) for about 10 years, and also Dr. O.M. Bambawale, the then Director NCIPM for 5 years. On the other hand, it was submitted that the applicant of the OA has merely 6 years' experience in the relevant field, and academically also Private Respondent R-4 is an Intermediate, whereas the applicant is simple a Matriculate. Other points as raised in this reply, being similar to the reply of official respondents as filed on 08.11.2013, are not being repeated here for the sake of brevity.

32. It was submitted that the answering respondent R-4 was appointed on the post of Farash reserved for ST category through the recruitment which had taken place in the year 1996, from amongst the candidates sponsored by the Employment Exchange, and he later on acquired qualification of Intermediate, as has been mentioned in the service book.

33. In reply to Para 4.15 of the OA, it was admitted that the date of birth, i.e., 27.09.1973 as mentioned in Madhayama certificate issued in the year 1990 by the Bihar Sanskrit Siksha Board, Patna, has not yet been accepted till date in the office records. It was submitted that since the principle of seniority had been followed in the selection by the DPC, no fundamental right of the applicant has been violated, though it was conceded that the caste certificate is not material in the instant case. It was submitted that while considering the seniority-cum-fitness, the certificates issued in his favour (Private Respondent R-4), they were

required to be taken into consideration, which was done correctly. All the other replies were the same as in the reply of official respondents, and in the end it was prayed that the OA may be dismissed, with exemplary costs.

34. Heard. As is a well established principle of law and has been upheld and reiterated by the Hon'ble Supreme Court in innumerable cases, the State has to act as a model employer, and cannot indulge in any acts for favouritism in between any two, or two-three sets of its employees.

35. The facts of the instant case smell foul, and it appears that the State, represented by the official respondents R-1 to R-3, has not been absolutely fair while dealing with the cases of the applicant *vis-a-vis* Private Respondent R-4.

36. No doubt, it is settled law that the State has a right to defend its actions, and to say that no wrong action was taken at any stage, but then it cannot take it upon itself to be the spokesperson of one of its employees, against another one of its employees, both of whom were required to be treated by the State equally, and provided equal protection of the Law and the Rules by the official respondents.

37. The requirements for filling up the technical post concerned of T-1 (Lab Technician), were already mentioned clearly in the Advertisement Circular, as has been mentioned by us at the very beginning, in Para-3/above. Therefore, what was required for filling up the post concerned

was the requisite experience of having worked in the Laboratory, and not merely seniority.

38. As regards seniority also, we may reproduce the initial portion of the Office Note put up on 06.02.2003, which was emphasized upon by the learned counsel for official respondents, which stated as follows:-

“The inter-se seniority in respect of Supporting staff in Grade I & II requires to be prepared. The provision of maintaining seniority as communicated vide G.O.I. DOPT OM No.22011/7/86-Estt.(D) dated 03.07.1986 (Xerox copy, placed below for perusal) is given, *inter alia*, as under:-

2.1 The relative seniority of all direct recruits is to be determined by the order of merit in which they are selected for such appointment on the recommendations of the Selecting Authority, Persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.

2.2 It has been given, *inter alia*, that where promotions are made on the basis of seniority subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted.

Since all of our S.S. Grade I staff are direct recruits, the provision as mentioned in 2.1 above/applicable in this case of S.S.Gr.II staff who are promotees on the basis of seniority, the provision as mentioned at 2.2 above should be applicable.

Keeping the above in view, the *inter se* seniority of our S.S. Gr.I staff may be maintained as under:-

Date of meeting of Selection Committee	Order of merit with name and designation (as indicated in Proceedings of Selection Committees)	Date of regular appointment in the grade of S.S. Gr. I	Order of seniority
07.10.1996	1. Shri Jagdish Poddar, S.S. Gr. I. 2.Shri Raj Kumar, SS Gr.I (Peon-cum-Messenger)	Resigned 26-10-1996 I

	3.Shri Rajinder Kumar Shah, S.S. Gr.I (Farash)	11-11-1996 (A/N)	II
09-10-1996	Shri Suresh Yadav, SS Gr.I (Lab. Attdt)	26-10-1996	III
	Shri Uma Shankar Mishra, S.S. Gr. I (Field) Attdt)	26-10-1996	IV

39. However, the DoP&T OM dated 03.07.1986, based upon which this Noting was prepared, had been considered by the Hon'ble Supreme Court in the case of **Union of India & Ors. vs. N.R. Parmar & Ors. (2012) 13 SCC 340** in great detail, though in the context of *inter-se-seniority* between the Direct Recruits and Promotees, but it was held as follows:-

50. The seniority rule applied in Jagdish Ch. Patnaik's case (supra) has been extracted in paragraph 24 of the said judgment. The seniority rule in question, inter alia expressed, that seniority would be determined with reference to the date of recruitment. In Suraj Prakash Gupta's case (supra), the relevant seniority rule was extracted in paragraph 53 which provided, that **seniority would be determined with reference to the date of first appointment. The rule itself expressed that the words "date of first appointment" would mean the date of first substantive appointment against a clear vacancy.** In Pawan Pratap Singh's case (supra) the question which arose for consideration, related to determination of inter se seniority between two sets of direct recruits. The first set comprised of vacancies advertised in 1987 which came to be filled up in 1994, and the second set comprised of vacancies of the year 1990 which came to be filled up in the year 1991. The controversy in Pawan Pratap Singh's case (supra) was conspicuously different from the controversy in hand. In view of the fact that the seniority rules, as also the factual matrix in the cases relied upon was substantially at variance with the relevant OMs dated 7.2.1986 and 3.7.1986 (which are the subject of interpretation in so far as the present case is concerned), as also the facts of the cases in hand, it is apparent, that the judgments relied upon by the learned counsel are inapplicable to determine the present controversy."

(Emphasis supplied).

40. However, this detailed judgment does not lay down any law in regard to *inter-se-seniority* of the persons who are all Direct Recruits, like

in the case before us. Those principles have to be elicited from the original DoP&T OM dated 22.11.1959 as clarified through OM dated 07.02.1986. The judgment is, however, directly applicable to the instant case in which it has been held that for the same post, the *inter-se-seniority* among Direct Recruits themselves shall be determined from the date of their respective selection by the Selection Committee, even though there may be delay in joining of a particular candidate. Therefore, the Private Respondent R-4 is senior even though he had joined later on 11.11.1996 (A/N), while the applicant joined earlier on 26.10.1996 (F/N).

41. But the basic thing is that these two persons were initially itself selected for two different categories of posts. While the applicant was selected on 09.10.1996 for the post of SS Grade I (Field Attendant), the Private Respondent R-4 had been selected two days prior to that on 07.10.1996 for the post of SS Grade I (Farash). Therefore, though they belonged to the same grade, but they did not belong to the same cadre, and could not obviously have been assigned the same work, as is apparent from the pleadings also that they were not so assigned similar work thereafter.

42. Neither the Private Respondent R-4, nor the official respondents, have been able to deny the contention put forward by the applicant through Annexure A-6 Office Order dated 02.02.2001, which showed that the Private Respondent R-4 was actually discharging the duties of Farash only, in respect of opening and locking of rooms of NCIPM, which is the normal duty of a Farash, while the same Office Order, as has already

been reproduced by us above, shows that the applicant was working in a Diagnostic Laboratory, though in the same grade SS-I. Neither in the reply of the official respondents nor in the reply of the Private Respondent R-4, has there been even a whisper regarding Annexure A-6 Office Order being incorrect.

43. Therefore, merely *inter-se-seniority* can become relevant only among the employees who are in the same cadre. It loses relevance when the Cadres themselves are different. When the post as advertised itself required the persons to be considered to have had experience of minimum 5 years of working in the respective technical field, the applicant, who had been appointed initially itself as a Field Assistant, and had joined as such on 26.10.1996, and had only discharged the additional functions of Farash during the period of absence of the Private Respondent R-4, without giving up his substantive work of Field Assistant, he cannot be stated to be having less Laboratory working experience than that of the Private Respondent R-4, who has had no such experience whatsoever because he was appointed only as a Farash.

44. We have gone through the two experience certificates issued by Dr. O.M. Bambawale and Dr. D.K. Garg, produced by the official respondents at Annexures R-5 & R-6. The certificate of the then Director Dr. O.M. Bambawale firstly indicates the wrong dates, as has been pointed out by the applicant himself, for R-4 to have helped him from 11.07.2007 to 10.07.2012, while he was assigned to work with the Director from a later date, as already mentioned above. Additionally, the then Director has

only mentioned that the Private Respondent R-4 additionally helped him in the Microbial Lab in preparation of media etc., maintenance of insect Pathogenic and Antagonistic Microbial Cultures, and their evaluation from time to time, and he did supporting work of cleaning of glass wares like reagent bottles, flasks, blender jars and test tubes etc. It is, thus, clear from the certificate itself that this task as described was not the basic task assigned to the Private Respondent R-4. Even the certificate issued by Dr. D.K. Garg through Annexure R-6 dated 24.07.2008 has mentioned that the Private Respondent R-4 has “in addition to routine duties” also assisted him in the Rice Integrated Pest Management Project by carrying out different field activities like installation of pheromone traps, recording of pest data and miscellaneous field work.

45. The respondents had been directed to file the copies of the ACRs of the Private Respondent R-4, which they have done, which disclose as follows:-

- i) In respect of the period from 11.11.1996 to 31.03.1997, his nature of work is shown to be “Farash”;
- ii) In respect of the period from 01.04.1997 to 31.03.1998, his nature of work has again shown to be “Farash” and “Messenger Work”;
- iii) In respect of the period from 11.04.1998 to 31.03.1999, the ACR shows his work to be “opening-closing the office (Farash and Messenger work)”;
- iv) In respect of the period from 01.04.1999 to 31.03.2000, no entry has been made in the ACR regarding the nature of work

for which he was employed, though the Principal Scientist Dr. R.N. Singh, who wrote the ACR, had recorded that he was very regular in attending to his duties and performing any assigned work;

- v) In respect of the period from 01.04.2000 to 31.03.2001, the ACR has again described his designation to be Farash, and Column-7 does not disclose the nature of work on which he was deployed;
- vi) The Special Work and Conduct Report in respect of Skilled Support Staff for consideration for grant of financial upgradation under the MACP Scheme merely shows the Private Respondent R-4 to be attached the Director's Cell.
- vii) The ACR for the period from 01.04.2009 to 31.03.2010 itself discloses the nature of 10 items of work, described by the applicant himself in Para-1 of Part-II Self Appraisal, and Para-2 Brief resume of work done, as was read out by the applicant, to point out that R-4 himself has not described or made any mention of his having helped the Director in Laboratory work;
- viii) In respect of the ACR for the period from 01.04.2010 to 31.03.2011 also it was pointed out that in Paragraph-1 of Part-II, the applicant has described 08 items of work in Hindi, and has described the work done by him in Para-2, but no

mention has been made by the applicant himself of his having worked in any Laboratory, which ACR was signed by the then Director Dr. O.M. Bambawale himself on 12.12.2011, as seen from page 252 of the paper book of the OA.

- ix) The same case was repeated and pointed out by the counsel for the applicant in respect of the ACR of the Private Respondent R-4 for the period from 01.04.2011 to 31.03.2012 also.
- x) For the first time in the ACR for the period from 01.04.2012 to 30.11.2012, at Point No. 5 of Para-1 of Part-II, and in response to Point No.2 of Part-II, the Private Respondent R-4 had on 25.04.2013 claimed to have helped the Director in the Microbial Laboratory, and participated in the field work as assigned to him by the Director. However, it is seen that the Reviewing Officer Dr. Saroj Singh, Principal Scientist, who was acting Director while reviewing the ACR, recorded at Point No.5 as follows, which shows that the claim of the applicant of his having worked in the Microbial Laboratory had not been endorsed by the Reviewing Officer at all:-

“ I do not agree with Point No.5 of Annexure-1 and part marked ‘x’ on Annexure-2, as I had not assigned these duties to him. He is hard working and dedicated to work assigned to him. Has positive attitude towards weaker sections”.

- xi) Private Respondent R-4 had made the same claim in his Self-Appraisal in respect of the period from 30.11.2012 to 31.03.2013 also, but that was not adversely commented upon

by the then Director, Dr. C. Chattopadhyay, for the broken period.

- xii) He had also claimed to have done some work in the field in the ACR for the period from 01.04.2013 to 31.03.2014, which was also not commented adversely by either the Reporting Officer, or by the Reviewing Officer, the then Director Dr. C. Chattopadhyay. However, the copies of the official documents as filed by the respondents do not bear out the contention of the Private Respondent R-4.

46. It is seen that the DPC had been first convened on 03.06.2013, the papers relating to which have not been produced by the official respondents before us. The papers produced before us contained the papers regarding the DPC convened later on, on 17.06.2013, and at pages 163 & 164 of the paper-book of the OA, the comments of the Administrative Officer Shri A.K. Aggarwal by way of reply to the observations of the DPC dated 03.06.2013 are included. It is seen that the Screening Committee first met on 28.05.2013, and had recorded its findings as follows:-

- “1. Shri Rajendra Kumar Shah was appointed as Farash on 11.11.1996 and he continued to do the same job till date. In the application for the post of T-1 (above post), he had submitted the experience certificate provided by Dr. D.K. Garg (July 1997 to July 2007) and Dr. O.M. Bambawale (11.7.2007 to 10.7.2012). However, the official and CR records do not support his claim, as he had never worked under Dr. Garg and Dr. Bambawale in laboratory/field.
- 2-4 xxxxxxxxxxxxxx (Not reproduced here)
5. Shri Uma Shankar Mishra joined the centre in 26.10.1996 as Field Attendant and his CR and documents attached also shows that he

worked in different laboratories to perform various duties in lab and field.

The following points emerged as per the documents and office records.

S. No.	Name	10 th Certificate attached	Date of Joining	Appointed as	Exp. Certificate enclosed or not
1.	Shri Rajendra Kumar Shah	Yes	11.11.1996	Farash	Yes
2 to 4	Not reproduced here				
5.	Shri Uma Shankar Mishra	Yes	26.10.1996	Field Attendant	Yes

47. Thereafter the DPC first time met on 03.06.2013, and as per the records produced at page-167 of the paper-book, it made the following observations:-

“Based on the documents, relevant rule position etc. placed before it, the DPC has made the following observations:-

1. The screening committee has considered only 5 candidates for the posts whereas all the incumbents in the feeder grade in the order of seniority should have been considered for the post.
2. In view of the above, the qualifications, the evidence of work experience and vigilance clearances of all the incumbents in the feeder grade should be obtained and the cases should be placed de-novo before the DPC.
3. Proceedings of the screening committee including the acceptability or otherwise of experience certificate provided by the candidates should also be approved by the Competent Authority in the institute.
4. Accordingly, the DPC stands deferred till all the above aspects are addressed”.

48. A reply to the observations of the DPC was thereafter prepared by the Administrative Officer on 15.06.2013, produced at pages 163 & 164 of the paper-book of the OA, whereafter the DPC on 17.06.2013 decided as follows:-

“Based on the documents placed before the committee i.e. work experience (duly verified by NCIPM Authority), seniority list of Skilled Support Staff, vigilance clearance, integrity certificate, check list and DPC self contained note etc., the Committee recommends the name of following Skilled Supporting Staff eligible for promotion to the post of T-1 (Laboratory Technician) in the Pay Band PB-1 (Rs.5200-20,200/-) with Grade Pay of Rs. 2,000/-.

Select List

(1) Rajender Kumar
Shah, SSS

**Reserved List (to be operative
in case the Selected
candidate does not
accept/joint the post**

(1) Shri Uma Shankar Mishra,
SSA”.

49. However, when till 28.05.2013, the designation of Private Respondent R-4 was only as Farash, and the Screening Committee had noted, as recorded above, that the ACR records do not support the experience certificate as claimed by the Private Respondent R-4, as he had never worked under Dr. D.K. Garg and Dr. O.M. Bambawale in the Laboratory in the field, we do not have any reason to doubt the conclusion arrived at by the people who were most proximate to the events occurring in the Respondent Organization.

50. Therefore, it is clear that DPC has fallen in error in taking into consideration the certificates procured by Private Respondent R-4, which were not found to be true by even the Screening Committee itself in its Meeting held on 28.05.2013 according to the records of the official respondents themselves.

51. The DPC having exceeded its role, and having decided to give benefit to the Private Respondent R-4, which was not due to him, we are clear in our mind that there has been a miscarriage of justice in this

case, and the impugned Memorandum dated 17.06.2013, selecting the Private Respondent R-4 to the technical post concerned, over-looking the candidature of the applicant, is, therefore, set aside.

52. The OA is allowed, and the matter is remanded back to the respondents to conduct a fresh DPC, preferably within a period of three months from the date of receipt of a copy of this order. However, there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.