

**Central Administrative Tribunal  
Principal Bench, New Delhi**

O.A.No.3394/2011

Monday, this the 2<sup>nd</sup> day of November 2015

**Hon'ble Mr. A.K. Bhardwaj, Member (J)**  
**Hon'ble Mr. V.N. Gaur, Member (A)**

Mr. D S Sajwan  
s/o (late) Mr. Bir Singh Sajwan  
Working as Tabulation Clerk  
Programme Evaluation Organisation  
The Niti Ayog (Erstwhile Planning Commission)  
Parliament Street, New Delhi

..Applicant

(Mr. Ramesh Dutta, Advocate)

Versus

Union of India & others : through

1. The Secretary / Chief Executive Officer (CEO)  
The Niti Ayog (Erstwhile Planning Commission)  
Yojana Bhawan, Parliament Street,  
New Delhi-1
2. The Advisor/ Joint Secretary (Admn.)  
The Niti Ayog (Erstwhile Planning Commission)  
Yojana Bhawan, Parliament Street,  
New Delhi-1
3. Mr. Rajeev Sharma (On deputation)  
Section Officer  
UIDAI, Regional Office  
TC-46/V, 3<sup>rd</sup> Floor  
Vibhuti Khand, Gomati Nagar  
Lucknow – 226010 (UP)
4. Mr. Sanjay Kumar Yadav  
Economic Investigator  
Regional Evaluation Office  
PEO, Niti Ayog (Erstwhile Planning Commission)  
Room No.311 & 313, Nirman Sadan, CGO Complex  
Arera Hills (Back Side of Govt. Press)  
Bhopal-462011
5. Mr. Anand Kumar Singh  
Economic Investigator  
Regional Evaluation Office

PEO, Niti Ayog (Erstwhile Planning Commission)  
Govt. of India  
Hall No.2, 7<sup>th</sup> Floor  
Kendriya Sadan, Sector H, Aliganj  
Lucknow (UP)

..Respondents

(Mr. A.K. Singh, Advocate for respondent Nos. 1 and 2 –  
Nemo for respondent Nos. 3 to 5)

## **O R D E R (ORAL)**

**Mr. A.K. Bhardwaj:**

The feeder grade for promotion to the post of Economic Investigator in Niti Ayog (Erstwhile Planning Commission) consists of Upper Division Clerks (UDCs), Lower Division Clerks (LDCs), Tabulation Clerks and Computers. For promotion to the post of Economic Investigator, the Recruitment Rules notified on 08.10.2002 were further amended on 07.07.2003. The amendment in the Recruitment Rules, as reproduced in the reply filed by the official respondents, read thus:-

“50% by promotion from amongst Upper Division Clerks or Lower Division Clerks or Tabulation Clerks / Computers of the Regional Evaluation Offices or Project Evaluation Offices and PEO (Headquarters) who

(a) possess the qualification prescribed for Direct Recruits and have put in thirteen years regular service (five years regular service in the case of Upper Division Clerks) in the respective grade, or

(b) have put in sixteen years’ regular service (eight years’ regular service in the case of Upper Division Clerks) in the respective grade.”

2. It is not disputed that the Departmental Promotion Committee (DPC) met on 15.02.2010 under the Chairmanship of Under Secretary (Ad.III) considered the UDCs/LDCs/ Tabulation Clerks/ Computers of Programme Evaluation Organization for promotion to the post of Economic Investigator and recommended Mrs. P Bhattacharya, UDC, REO, Kolkata,

Mrs. Sona Dhawan, UDC, REO, Chandigarh and Mr. K.S. Meena (ST), Tabulation Clerk, PEO (Headquarters), New Delhi for their promotion. The Committee also recommended eight more candidates for inclusion in the extended panel for promotion to the post. The select panel as well as the extended panel, as mentioned in the reply filed on behalf of respondent Nos. 1 and 2, reads thus:-

“3. On the basis of above criteria, a meeting of the Departmental Promotion Committee was earlier held on 15.02.2010 under the Chairmanship of Under Secretary (Ad.II) to consider the cases of UDCs/ LDCs/ Tabulation Clerks / Computers of Programme Evaluation Organisation for promotion to the post of Economic Investigator. The Committee recommended the regular promotion of the following officials for three vacant posts of Economic Investigator (one reserved for ST candidate) at PEO, Ahmedabad, PEO, Guwahati and REO, Jaipur:

- (i) Smt. P. Bhattacharya, UDC, REO, Kolkata
- (ii) Smt. Sona Dhawan, UDC, REO, Chandigarh
- (iii) Shri K.S. Meena (ST), Tab. Clerk, PEO (Hdqrs.), New Delhi

4. The Committee also recommended the names of following officials for inclusion in the extended panel for promotion to the post of Economic Investigator in the order of seniority:

- (i) Smt. P. Sujatha, UDC, REO, Hyderabad
- (ii) Shri Rajeev Srivastava, UDC, REO, Lucknow
- (iii) Shri Sanjay Kumar Yadav, UDC, REO, Lucknow
- (iv) Shri A.K. Singh, UDC, REO, Lucknow
- (v) Shri D.S. Sajwan, Tabulation Clerk, PEO (Hqr.) N. Delhi
- (vi) Smt. Nalini Borkar, Tabulation Clerk, PEO (Hqr.), N. Delhi
- (vii) Shri D.K. Kataria, Computer/ Tabulation Clerk, PEO (Hqr.), N. Delhi.”

3. When Mrs. P Bhattacharya, UDC, REO, Kolkata was unable to join the promotional post, first candidate in the extended panel Mrs. P Sujatha, UDC, REO, Hyderabad was offered promotion. Nevertheless, since the applicant questioned the promotion and litigation started, Mrs. P Sujatha, UDC, REO, Hyderabad was also not given promotion and as more than one year passed, the extended panel was not operated and a fresh DPC met for

promotion to the post in question. The fresh DPC recommended Mr. Rajeev Srivastava (private respondent No.3), Mr. Sanjay Kumar Yadav (private respondent No.4) and Mr. Anand Kumar Singh (private respondent No.5) for their promotions. The applicant, who had found place in the extended panel, questioned the same by filing the Original Application No.2487/2011. The same was disposed of in terms of Order dated 05.08.2011, which reads thus:-

“The grievance of the applicant in this case is with regard to non-consideration of his case for promotion to the post of Economic Investigator in the PEO although according to him, he fulfills the eligibility criteria and is senior to the private respondents. It is stated by the learned counsel for the applicant that a DPC for promotion to the post of Economic Investigator was held sometime in February, 2010 and that the willingness of Shri Rajeev Srivastava, Shri Sanjay Kumar Yadav and Shri Anand Kumar Singh, private respondents no.3 to 5 respectively, for promotion to the said post was also sought vide letter No.A-12026/07/2008-Adm.II dated 21.2.2011 but that the applicants case has not been given due consideration though he is senior & eligible. The applicant had accordingly made a representation in the matter alleging discriminatory treatment to the Member Secretary, Planning Commission (Annexure A7) and thereafter had filed another representation to the Joint Secretary (Admn.), Planning Commission vide his letter dated 1.8.2011 (Annexure A8) but no response to these has been received.

2. We find that the applicant has not annexed in the OA the documents such as promotion orders (ad hoc) of respondent no.3, copy of the letter dated 21.2.2011 in terms of which he states that willingness of persons junior to him has been sought etc. nor is there any document to indicate when the DPC was held. Normally, we would not have admitted the OA in the absence of these necessary documents, which are necessary to support the contentions made. However, when this was pointed out to the learned counsel, he drew our attention to the representation dated 1.8.2011 addressed to the Joint Secretary (Admn.), Planning Commission which has been marked to the Advisor ‘for action in accordance with the rules’, and stated that no response to the said representation dated 1.8.2011 (Annexure A8) has been received by the applicant nor has he been informed of action taken on his representation and seeks a direction to the respondent no.2 to look into his pending representation and take an early decision on the same.

3. In this view of the matter, and as the factual position will have to be verified by the respondents in the first instance, we deem it appropriate to dispose of this OA at the admission stage itself by

directing the respondent no.2 to look into the pending representations dated 4.3.2011 and 1.8.2011 of the applicant and take a considered decision thereon in accordance with the rules by issuing a speaking order on the subject within a period of one month from the date of receipt of a copy of this order. It is made clear that we have not gone into the merits of the case and that the directions issued above would not prejudice the rights of the respondents in any manner.

4. OA stands disposed of in the above terms.”

4. In the wake, the respondents passed the speaking order with a view that the Office Memorandum No.20011/1/88-Estt. (D) dated 12.12.1988 issued by the Department of Personnel & Training provided that those who are in the higher grade of the feeder categories should be ranked senior to those in the lower scale of pay. As is apparent from the terms and tenor of the order, the same was to be applied for the purpose of fixation of seniority of those who are promoted to same post but from different categories and not for the purpose of determination of the eligibility list. The Office Memorandum dated 12.12.1998 reads thus:

“Office Memorandum

Subject: General Principles of seniority- Preparation of a Combined Select List of promotees where quotas have been laid down for the various posts in the feeder grade.

The undersigned is directed to refer to this Department's O.M. No.20019/2/83-Estt. (D) dated the 10<sup>th</sup> September, 1985 which lays down the procedure for preparation of a consolidated order of merit where quotas for the feeder grades have been laid down in the Recruitment Rules. According to the instructions referred to above, where the posts in the feeder grade are in different scales of pay or even in identical or equivalent scales of pay, officers up to the number of vacancies for each feeder grade as Select List according to the grading and persons who are assigned order of merit with reference to the date arrived at after adding the requisite number of years of qualifying service in the feeder grade to their date of appointment in that grade i.e. with reference to the date from which they became eligible for promotion after rendering the prescribed qualifying service in the feeder grade, maintaining their inter se seniority in the present service/grade.

2. The matter has been re-examined in the light of a recent judicial pronouncement and it has been decided that the instructions quoted above may continue to be followed subject to the modification that among the persons in the feederr grades given the same grading, those in the higher scales of pay will rank senior to those in the lower scale of pay.

3. It is requested that this decision may be brought to the notice of all concerned for guidance/compliance.”

5. Thus in denying consideration of applicant for promotion to the post of Economic Investigator with reference to his position in the seniority list of Tabulation Clerk, in the wake of Office Memorandum dated 12.12.1988, the respondents committed an error. The order dated 05.09.2012<sup>1</sup> reads thus:-

“Order

The Hon’ble CAT, Principal Bench, New Delhi vide Order (Oral) dated 5<sup>th</sup> August, 2011 have directed that pending representations dated 04.03.2011 and 01.08.2011 of the applicant may be looked into and take a considered decision thereon in accordance with the rules by issuing a ‘speaking order’ on the subject within a period of one month from the date of receipt of a copy of this order. The copy of the order was received in the Planning Commission on 17<sup>th</sup> August, 2011.

2. In compliance with the directions of the Hon’ble CAT, Principal Bench, New Delhi dated 12<sup>th</sup> August, 2011, the representations dated 04.03.2011 and 01.08.2011 by Sh. D.S. Sajwan, Tabulation Clerk, Programme Evaluation Organisation PEO (HdQRS.), Planning Commission, New Delhi have again been examined and observations of the competent authority on the representations are as under.

(i) While going through the above representations of Sh. D.S. Sajwan, the main point raised in the representations is regarding seniority of Sh. D.S. Sajwan, Tabulation Clerk vis-à-vis the seniority of other candidates namely, Sh. Rajeev Srivastava, UDC, Sh. Sanjay Kumar Yadav, UDC and Sh. Anand Kumar Singh, UDC, of REO, Lucknow, with reference to the consideration of the candidatures of these officials for promotion to the post of Economic Investigator by the DPC. The DPC held on 15<sup>th</sup> February, 2010 had considered the name of Sh. D.S. Sajwan, Tabulation Clerk alongwith names of Sh. Rajeev Srivastava, UDC, Sh. Sanjay Kumar Yadav, UDC and Sh./Shri Anand Kumar Singh, UDC for promotion to the post of Economic Ingvestigator and recommended the name of Sh. D.S. Sajwan

alongwith others in the extended panel for promotion to the post of Economic Investigator.

(ii) As per the Recruitment Rules for the post of Economic Investigator (Grade-II) dated 08.10.2002 as amended by GSR No.259 dated 07.07.2003 (i) In Column 12, relating to “In case the recruitment by promotion/deputation/absorption, grades from which promotion or deputation or absorption is to be made”, for the portion beginning with “(a) 25% by promotion from amongst Upper Division Clerks or” and ending with “(eight years regular service in the case of Upper Division Clerks) in the respective grade” the following shall be substituted, namely:-

“50% by promotion from amongst Upper Division Clerks or Lower Division Clerks or Tabulation Clerks / Computers of the Regional Evaluation Offices or Project Evaluation Offices and PEO (Headquarters) who:

(a) possess the qualification prescribed for Direct Recruits and have put in thirteen years regular service (five years regular service in the case of Upper Division Clerks) in the respective grade. Or

(b) have put in sixteen years’ regular service (eight years’ regular service in the case of Upper Division Clerks) in the respective grade.”

(iii) The pay scales of the Upper Division Clerks, Lower Division Clerks and Tabulation Clerks/ Computers in Programme Evaluation Organisation are as under:

- |     |                                |  |
|-----|--------------------------------|--|
| (a) | Upper Division Clerks -        | PB-1 [Rs.5200-20200 plus Grade Pay Rs.2400/-] (Pre-revised Rs.4000-6000) |
| (b) | Lower Division Clerks -        | PB-1 [Rs.5200-20200 plus Grade Pay Rs.1900/-] (Pre-revised Rs.3050-4950) |
| (c) | Tabulation Clerks/ Computers - | PB-1 [Rs.5200-20200 plus Grade Pay Rs.1900/-] (Pre-revised Rs.3050-4590) |

The existing instructions of the Department of Personnel & Training issued vide OM No.20011/1/88-Estt. (D) dated 12<sup>th</sup> December, 1988 that “among the persons in feeder grades given the same grading, those in the higher scale of pay will be ranked senior to those in the lower scale of pay” Accordingly, DPC has placed the UDCs above the Tabulation Clerks by virtue of their being in the higher grade pay, while recommending their names for promotion to the post of Economic Investigator.

(iv) As far as drawing of higher salary and grade of Economic Investigator since 2002, on the basis of ACPS/MACPS is concerned,

DOP&T OM No.35034/3/2008-Estt. (D) dated 19<sup>th</sup> August, 1999 clarified that the financial upgradation under ACPS/MACPS is purely personal to the employees and shall have no relevance on his seniority position.”

6. In view of the aforementioned, the impugned order is quashed. The official respondents are directed to reconsider the matter by applying the appropriate Rules and Instructions on the subject. Needful be done within a period of three months from the date of receipt of a copy of this Order.

7. The Original Application stands disposed of. No costs.

**( V.N. Gaur )**  
**Member (A)**

**( A.K. Bhardwaj )**  
**Member (J)**

**November 2, 2015**  
/sunil/