

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

**OA No. 3450/2016  
with  
MA No. 2274/2017  
MA No. 1821/2017**

Order reserved on 27.07.2017  
Order pronounced on 31.10.2017

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

Jitender Khanna  
S/o Sh. B.S. Khanna,  
Aged 40 years,  
R/o A-2 Dharma Apartments  
Plot No. 2, I.P. extension,  
Patparganj  
Delhi-110092. ...Applicant

(Applicant in person)

Versus

1. Indian Council of Agricultural Research  
Krishi Bhawan, Dr. R.P. Road,  
New Delhi,  
Through Secretary, ICAR.
2. Sh. Ashutosh Gautam,  
S/o Late Sh. Ramkripal Singh,  
R/o B-12, Krishi Vihar,  
Josip Broz Tito Marg,  
New Delhi.

Also at Room No. 203-A,  
ICAR Krishi Bhawan  
Dr. Rajendra Prasad Road,  
New Delhi. ... Respondents

(By Advocates: Shri S.K. Gupta and Shri Amit Yadav)

**: O R D E R :**

**Justice Permod Kohli:**

The dispute in the present OA relates to *inter se* seniority between the applicant and respondent No.2.

2. The facts are being noticed hereunder:-

2.1 The respondent no.1 invited applications for filling up two posts of Assistant Legal Adviser in ICAR on deputation/direct recruitment basis vide advertisement Annexure A/3. Both the candidates, i.e., applicant and respondent No.2 applied for the said post. Before the interview, the candidates were asked to draft writ petition and stay application. The interview was held on 21.10.2009. On the basis of the performance, the Selection Committee in its meeting held on the same date recommended the names of applicant and respondent No.2 for appointment, whereas names of two candidates were placed in the reserve list. The minutes of the Selection Committee reads as under:-

“Proceedings of the meeting of the Selection Committee constituted for filling up the posts of Assistant Legal Adviser at ICAR Hqrs. held on 21.10.2009.

**PRESENT**

1.	Shri A. K. Upadhyay, Secretary, ICAR	Chairman
2.	Shri K. K. Bajpai, Director (P), ICAR	Member
3.	Shri M. K. Sharma, Additional Legal Adviser Dept. Of Legal Affairs, Min. of Law & Justice	Member
4.	Ms. Manju Bage, Under Secretary, ICAR	Member
5.	Shri P. K. Bage, Under Secretary, ICAR	Member
6.	Shri K. N. Choudhary, Under Secretary (A)	Member Secretary

The Committee noted that for two unreserved vacancies in the grade of Assistant Legal Adviser in the Pay Band-2, Rs.9300-34800

with corresponding Grade Pay of Rs.4600/- to be filled by Direct Recruitment/Deputation method, 25 candidates were shortlisted on the basis of detailed scrutiny of applications received.

Out of 25 shortlisted candidates, 20 candidates were present. At the outset the applicants were given a small exercise of drafting an appeal and stay petition. Thereafter, 19 candidates were interviewed. One candidate did not stay back for the interview. On the basis of their academic records, past experience, drafting ability and interview the Selection Committee recommends the name of the following candidates for appointment against the post of Assistant Legal Adviser:

**Select List**

1. Jitender Khanna
2. Ashutosh Gautam

A meeting of the Selection Committee constituted for filling up the two posts of Assistant Legal Adviser in ICAR in PB-2 Rs.9300-34800 with corresponding Grade Pay of Rs.4600/- on deputation/Direct Recruitment method was held on 21.10.2009. All applications have been received for appointment on Direct Recruitment basis. The proceedings of the meeting are placed at flag 'X'. The Committee has recommended the name of the following candidates for appointment against the post of Assistant Legal Adviser:

**Select List**

1. Sh. Jitender Khanna S/o Sh. B.S. Khanna
2. Sh. Ashutosh Gautam S/o Sh. Ramkripal Singh

**Reserve List:**

1. Mrs. Anjana Mistry W/o Sh. Chitra Mistry
2. Mrs. Ritu Chaudhary W/o Sh. Gopal Krishan

(This list would be operative only in case the candidates in select list do not accept the offer for the post)

Approval of Secretary, ICAR is solicited to the recommendations of the selection committee and for the appointment of the following against the post of Assistant Legal Adviser:

1. Sh. Jitender Khanna S/o Sh. B.S. Khanna
2. Sh. Ashutosh Gautam S/o Sh. Ramkripal Singh"

The recommendations of the Selection Committee were duly approved by the competent authority.

2.2 In the select list, the applicant is shown at Sl. No.1 whereas respondent No.2 is shown at Sl. No. 2. Vide Memorandum dated 23.10.2009, offer of appointment was made to the applicant and a similar memorandum was issued offering appointment to respondent No.2. The offer was required to be accepted within twenty days, failing which, it will be considered as automatically cancelled. Under Para 5 of the offer of appointment, it was stipulated that the appointment will be subject to the satisfactory verification of character and antecedents, whereas in Para 6, offer of appointment was further made subject to the condition that the candidate is declared medically fit for service by the prescribed medical authority.

2.3 The applicant accepted the offer of appointment within the stipulated time vide letter dated 04.11.2009 and also filled up the necessary form for his medical examination. On completion of all the formalities of character and antecedent verification, respondent No.2 joined on 01.02.2010. However, the applicant was not asked to join on account of delay in police verification. The respondent No.1 vide its office memorandum dated 22.04.2010 offered appointment to the applicant and he was required to join within 15 days from the date of issue of the memorandum. The applicant, however, vide his request letter dated 29.04.2010 sought extension of time to join the service of respondent No.1 on the ground that he has to return all cases/files/matters/paper-books to various clients (including cases

of Union of India) and he is also required to give prior requisite notice to statutory bodies with whom he was provisionally associated, and accordingly requested for extension of joining time up to 1<sup>st</sup> week of July, 2010. This request of the applicant was, however, accepted up to the extent that time was extended up to 31<sup>st</sup> May, 2010 vide Memorandum dated 10.05.2010. Vide communication dated 17.05.2010 the applicant again sought extension of time up to first week of July, 2010. His request was accepted vide memorandum dated 26.05.2010, and he was allowed time up to 1<sup>st</sup> week of July, 2010 to join. The applicant yet made another request vide his letter dated 23.06.2010 for joining by first week of August, 2010. The applicant, however, joined on 08.07.2010.

2.4 Vide Office Order dated 07.03.2014, the services of the applicant and respondent No.2 were confirmed, and the confirmation order reflected the name of applicant at Sl. No.1 and that of respondent No.2 at Sl. No.2. The date of confirmation of the applicant was 02.07.2012 and that of respondent No.2 was 31.01.2012. A provisional seniority list was circulated vide Circular dated 14.11.2014 inviting objections within 15 days. In this provisional seniority list, respondent No.2 was shown senior to the applicant. He was placed at Sl. No.1 and the applicant at Sl. No.2. The applicant submitted his objections/representation on 26.11.2014 to the aforesaid provisional seniority list claiming seniority over respondent No.2 on the basis of

his ranking in the Select List. The applicant relied upon DoP&T OM's in his representation as also some judgments in support of his contention. A copy of the DoP&T's OM No.20011/1/2008-Estt.(D) Dated 11<sup>th</sup> November, 2010 has been placed on record as Annexure A-14.

2.5 It is stated that on the representation of the applicant against the provisional seniority list, comments of Shri K. N. Chaudhary, the then Under Secretary and Member Secretary of the Selection Committee of ALA's were sought. Shri Chaudhary opined that the select list and reserve list were prepared in the order of merit and the applicant's name was shown on the top of list. It is further stated that the then Director General, ICAR who is Head of the Organization/Principal Executive Officer decided the issue of seniority on 30.09.2015 by placing the applicant's name at Rank No.1/Serial No.1, but despite that final seniority list was not issued. The applicant and respondent No.2 were granted personal hearings on 08.04.2016 by the Secretary, ICAR who directed the Deputy Secretary (Administration) to seek comments of other members of the Selection Committee to get the observations of Shri K. N. Chaudhary confirmed.

2.6 The applicant made a representation dated 09.05.2016 for submission to Secretary, DoP&T to be forwarded by respondent No.1. It is alleged that the said representation was not forwarded to

the Secretary, DoP&T. The ICAR, however, sent letters to all the remaining members of the Selection Committee. In response to the ICAR's letter, all the remaining five members of the Selection Committee submitted their reply confirming that the select list dated 21.10.2009 was prepared on the basis of merit. However, the Chairman of the Selection Committee stated to read the proceedings as it is. The comments of the Chairman and the Members of the Selection Committee have been placed on record as Annexure A-16 colly.

2.7 The applicant made another representation dated 24.08.2016 which has been rejected by the impugned memorandum (Annexure A-1) with the following observations:-

“3. In the absence of any mention of “order of merit” in the selection list and therefore, applying the principle of seniority, the name of Shri Gautam has correctly been placed at Sl.No. 1 in the provisional Seniority List of ALA upto 31.12.2013 circulated vide No.F.6(9)/2014-Estt.I dated 14<sup>th</sup> November, 2014.”

The respondent No.1 also circulated the final seniority list dated 24.08.2016 vide F.No.6(9)/2014-Estt.I, showing respondent No.2 as senior to the applicant. The applicant yet made another representation dated 05.09.2016 challenging the final seniority list as also the memorandum dated 24.08.2016. The present Application has been filed thereafter seeking following reliefs:-

- “a) Set aside and quash the Memorandum no. F6(9)/2014-Estt. I dated 24.08.2016, whereby the respondent no. 1-ICAR vide its impugned order/Memorandum dated 24.08.2016 disposed of representations of the applicant and inter-alia held that there is no mention of “order of merit” in the select list dated 21.10.2009 and therefore, placed respondent no. 2 above the applicant at Sl No. 1.
- b) Set aside and quash the Final Seniority List of Assistant Legal Adviser in the ICAR upto 31.12.2013 circulated by respondent no. 1 vide No. F. No. 6(9)/2014-Estt. I dated 24.08.2016 as the same is contrary to the law/rules governing seniority.
- c) Respondent no. 1 be directed to issue final seniority list of ALAs showing/placing the applicants name at Serial No. 1/Rank No. 1 as per the select list drawn on 21.10.2009 by the Selection Committee of the ICAR as per law/CSS Rules.
- d) Costs of the Original application may be directed to be paid to the applicant by the respondent no. 1.
- e) Any other relief(s) which this Hon’ble court may deem fit and proper in the facts and circumstances of the case.”

3. Respondent Nos.1 & 2 have filed their separate counter affidavits. Respondent No.1 in its counter reply referred to bye-law 30 (a) of the Bye-Laws of the ICAR Society which *inter alia* prescribed that except in regard to matters for which specific provision has been made in the Rules, Bye Laws, Regulations or Orders made or issued by the Society, the service and financial rules framed by the Government of India and such other rules and orders issued by the Government of India from time to time shall apply *mutatis mutandis* to the employees of the Society in regard to the matters concerning their service conditions. It is further stated that the ICAR follows

Rules and instructions related to fixation of seniority framed by the DoP&T to the employees in different grades in the ICAR. While referring to the Select List and Reserved List prepared by the Selection Committee on 21.10.2009, it is mentioned that respondent No.2 joined the post on 01.02.2010 and applicant joined on 03.07.2010. That while fixing the provisional seniority list, the then Secretary, ICAR observed that as the selection decision did not say that the names of the selected candidates have been put in the order of merit, the same cannot determine their relative seniority and in such a case, the individual who joined earlier has to be treated as senior. It is further admitted in the counter affidavit that the character and antecedents verification in regard to respondent No.2 were completed earlier and thus he joined on 01.02.2010, whereas the character and antecedents report in respect of the applicant up to 2007 was received on 21.01.2010 and for the subsequent period, the report was received on 21.04.2010, and thus the offer of appointment was given to the applicant vide letter dated 29.04.2010. The applicant sought extensions which were allowed up to first week of July, 2010, and the applicant was allowed extension of time to join the post up to 08.07.2010.

4. Respondent No.2 in its separate counter affidavit also reiterated the averments made by respondent No.1 restating therein their respective dates of joining, and claim seniority on that basis having

more length of service to his credit as Assistant Law Officer after the appointment. It is also contended that the respondent No.2 had completed 3 years regular and continuous service as Assistant Law Officer at ICAR Headquarter as on 31.01.2013, and as per DoP&T guidelines in vogue, he became eligible for consideration for promotion to the post of Law Officer w.e.f. 01.02.2013. Since he was not being considered, respondent No.2 submitted a representation dated 28.07.2014 for his promotion to the post of Law Officer w.e.f. 01.02.2013. The Establishment Section put up a draft DPC note on 12.09.2014 for approval of the competent authority. Since the updated seniority list is a pre condition for holding the DPC for promotion to a post, the proposal for publishing the seniority list was put up on 16.09.2016 by the Establishment Section before the then Secretary, ICAR. The Establishment Section proposed to circulate the provisional seniority list of Assistant Law Officers as per serial numbers mentioned in the recommendation dated 21.10.2009 of Selection Committee. It is stated that the said proposal was erroneous and the then Secretary, Shri Arvind Kaushal observed that in absence of any indication in the proceedings of Selection Committee that the two names were put in the order of merit, the matter was ordered to be looked into to get hold of relevant papers for purposes of determining the relative seniority of the two Assistant Law Officers. Accordingly, after getting the information, the

Secretary, ICAR, decided the matter related to seniority vide observations dated 11.10.2014. Thereafter, the provisional seniority list dated 14.11.2014 was circulated which has been declared as final vide circular dated 24.08.2016.

5. The applicant filed two separate rejoinders to each of the counters reiterating the averments made in the OA, and contested the manner in which the seniority has been determined by the then Secretary, ICAR. He relied upon Rule 16 of Central Secretariat Service Rules, 2009 which deals with the seniority. Reference to the same shall be made hereinafter. He has further referred to the comments of the Member-Secretary of the Selection Committee dated 30.07.2015, wherein, it is commented upon that the select list and reserve list were prepared in the order of merit. He has further noted that there was a delay in giving appointment to the applicant on account of delay in conducting police verification by the concerned police agencies, and it was only on 22.04.2010 that the applicant was given offer of appointment despite his higher merit in the select list.

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

7. Following two questions need to be determined in the present OA:-

(i) whether the recommendations made by the Selection Committee on 21.10.2009 for select list and reserve list are in

the order of merit or merely a panel communicating the names of the recommendees and

(ii) whether the seniority in the present case is to be fixed on the basis of merit in selection or from the date of joining.

8. Insofar as the factual averments are concerned, the position is admitted. Both the candidates, i.e., applicant and respondent No.2 appeared in the same selection process for which recommendations were made on 21.10.2009. The offer of appointment was made to both of them on 23.10.2009. The offer of appointment contains various conditions, following being relevant are reproduced hereunder:-

“1. The appointment will be governed by the Rules, By-laws and regulations of I.C.A.R. society.

5. His/Her appointment will be subject to the satisfactory verification of his character and antecedents. (If in any case adverse reports are received, which render persons unsuitable for appointment, the ICAR may get the services of the person terminated, without assigning any reasons or giving any indication that it is related to the report on the verification of his/her character and antecedents or informing the person concerned about the source of the information, which should be treated as confidential).

6. His/Her appointment will be subject to the condition that he/she is declared medically fit for service by the prescribed medical authority.

15. His/Her seniority in the post of Assistant Legal Adviser will be governed by the relevant rules/orders/staff regulations, which may be issued by the ICAR from time to time.

16. Other conditions of service will be governed by the relevant rules/orders/staff regulations, which may be issued by the Govt. of India/ICAR from time to time."

In terms of the aforesaid conditions, the final appointment could only be made after medical examination and verification of character and antecedents.

9. In case of respondent No.2, his character and antecedents were verified by the police and on that basis he was appointed on 01.02.2010. However, in case of applicant, verification of character and antecedents were delayed for few months. The final verification was made by the police in April, 2010 and based upon the said verification vide Memorandum dated 22.04.2010, appointment of the applicant was made. It is also admitted position that the applicant sought extension of time for joining vide his letters dated 29.04.2010, 17.05.2010 and 23.06.2010. His request for extension was granted and finally he joined the post on 08.07.2010 within the extended time.

10. In the initial note, the department prepared the seniority list treating the applicant to be senior to respondent No.2 on the basis of Select List dated 21.10.2009 wherein the applicant was shown at Sl. No.1.

11. The seniority in the ICAR is regulated by Rule 16 of Central Secretariat Service Rules 2009. Rule 16 reads as under:-

**"16. Seniority:-** (1) The relative seniority of members of the Service appointed to any Grade before the appointed day shall

be regulated by their relative seniority as determined before the said date:

Provided that, if the seniority of any such officer had not been specifically determined before the said date, it shall be as determined by the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions.

(2) The seniority of persons appointed to any Grade after the appointed day shall be determined as follows, namely:-

I. Senior Selection Grade, Selection Grade, Grade I and Section Officer:-

.....

II. Assistant's Grade.

.....

(b) Persons appointed regularly to a Grade from the Select List for the Grade shall be ranked inter-se according to the order in which they are so appointed.

(c) The relative seniority of direct recruits to a Grade and persons regularly appointed to the Grade from the Select List for the Grade shall be regulated in accordance with the provisions of Regulations made in this behalf by the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions."

Admittedly, the selection in question was made after the above rule came into operation. Apart from this, the DoP&T had earlier issued OM No.20011/1/2008-Estt.(D) Dated 11<sup>th</sup> November, 2010, which reads as under:-

#### "2.1 SENIORITY OF DIRECT RECRUITS

The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the U.P.S.C. or other

selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of subsequent selection. The relative seniority that used to be determined earlier according to the date of confirmation and not the original order of merit, (in case where confirmation was in an order different from the order of merit indicated at the time of their appointment), in accordance with the general principles of seniority, has been discontinued w.e.f. 4.11.1992 (**OM No.20011/5/90-Estt (D) dated 4.11.1992**). The general principles of seniority therefore stands modified to that extent.

2.1.1 Clarification : Appointment from the Reserve panel at a later date:

The interse seniority of candidates nominated from reserve panel will be fixed as per consolidated merit given by UPSC/SSC/Recruiting agency. However, instructions circulated vide this Departmewnt's **O.M. No.41019/18/97-Estt.(B) Dated 13<sup>th</sup> June 2000** should be strictly followed in operating or requesting for nominations from the reserve panel."

From the conjoint reading of Rule 16 of Rules 2009 read with DoP&T OM dated 11.11.2010, the relative seniority of all the direct recruits is to be determined by the order of merit in which they are selected for such appointment on the recommendations of the Selection Committee. OM further makes it clear that the inter se seniority of candidates nominated from reserve panel will be fixed as per consolidated merit given by UPSC/SSC/Recruiting agency.

12. The Selection Committee vide its Select List dated 21.10.2009 recommended two candidates for appointment and two candidates were kept in the reserve list. The recommendations refer the first two names as "Select List". The Select List was prepared on the basis of their academic records, past experience, drafting ability and

performance in the interview. Apart from the Selection List, two names were included in the Reserve List. The respondents have disputed this recommendation to be a Select List. To the contrary, the applicant's case is that this was a select list based upon *inter se* merit of the candidates. The validity of this recommendation which was referred to as a select list was never challenged by anybody. The dispute arose only when the question of *inter se* seniority came up for determination for notifying the Seniority list.

13. The notings on the file were initiated by the Establishment Section of the ICAR. The relevant extract of the notings is reproduced hereunder:-

"No.F.6-9/2014-Estt.I

**ICAR**

**Establishment I Section**

Subject:-Seniority List in the Grade of Assistant Legal Adviser in ICAR system.

The instant issue relates to circulation of Seniority List in the grade of Assistant Legal Adviser in ICAR system.

At present there are two sanctioned strength in the grade of Assistant Legal Adviser, ICAR. In the background, it may be stated that there were two position of ALA at ICAR. Hqrs. Subsequently, one post of ALA was transferred to IARI in public interest and the position of Law Officer, IARI was redeployed for the ICAR Hqrs. Later on it was also felt essential the both the position of ALA may be retained at ICAR Hqrs. itself.

These two posts were filled by Direct Recruitment in the year 2010 on the basis of the recommendation of the selection Committee.

As per the Recruitment Rules dated 25<sup>th</sup> August, 2006, the Recruitment process for filling up the two post of Assistant Legal Adviser was initiated and during the year 2009, the following two Assistant Legal Advisors were appointed on direct recruitment basis as per the recommendations of the Selection Committee headed by the then Secretary, ICAR. The Selection Committee in its meeting held on 21.10.2009 had recommended the names of the following two candidates for appointment:-

1. Shri Jitender Khanna
2. Shri Ashutosh Gautam

Subsequently, both the above mentioned candidates were offered the posts of ALA with the approval of the competent authority vide OM No.6-4/2005-Estt.I dated 23<sup>rd</sup> October, 2009 and both the above candidates joined the post of Assistant Legal Adviser with effect from date shown against each:-

Sl. No.	Name of the ALA	Date of appointment to the post of ALA
1.	Shri Jitender Khanna	03.07.2010
2.	Shri Ashutosh Gautam	01.02.2010

The DOPT OM No.3<sup>rd</sup> July, 1986 regarding seniority provides as under:-

“XXXX 2.1 The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.”

In view of above, it is proposed to circulate the Provisional Seniority List of Assistant Legal Adviser appointed on regular basis upto 31.12.2013 on provisional basis as per the order in which their names were recommended by the Selection Committee.

Section Officer

US (Admn.)

DS (A)

Dir (A)

Director (Personnel)  
Secretary, ICAR

- (i) Is the post of Law Officer a live post?
- (ii) There is no indication in the proceedings of the Selection Committee that the two names were put in the order of merit. Therefore, it is necessary to look at the marks secured by each of them in various components of the selection process. Please try to get hold of relevant papers, so that the relative seniority of the two LAs is beyond question.

(Arvind Kaushal)  
Addl. Secretary (DARE) &  
Secretary, ICAR  
18.09.2014."

The Secretary, ICAR, raised two issues, one pertain to the post of Law Officer and the other relating to seniority of two Law Officers. So far as the first issue is concerned, right now we are not concerned with the said issue. Regarding the other issue, i.e., the seniority, the issue was examined further and the following notings appeared on the file:

"II. As regards the second observation of Secretary, ICAR viz a viz seniority of two LAs, the following is submitted for consideration:-

- (i) The Selection Committee Chaired by the then Secretary, ICAR had recommended (in the meeting held on 21.10.2009) the appointment of following on the post of ALA:-

"Select List

- 1. Shri Jitender Khanna
- 2. Shri Ashutosh Gautam"

- (ii) It is submitted that as observed by Secretary, ICAR it is a fact that in the recommendations dated 21.10.2009 of the Selection Committee has not specifically mentioned

that the names of the recommended candidates {as in (i) above} are in “order of merit”, at the same it is also not mentioned that the recommendations of the Selection Committee are not in order of merit. However, since the candidates have been arranged in the order 1 and 2 we may consider them to be in order of merit for all purposes.

(iii) In so far as the component of selection process are concerned, it is stated that as per the recruitment rules of the post of ALA notified vide F.No.6-4/2005-Estt.1 dated 25.08.2006, on the basis of which the direct recruitment of two ALAs was undertaken in the year 2009, in case of direct recruitment (clause 11) the selection is to be made “....by interview of the shortlisted candidates.” Accordingly, interviews of 25 candidates were arranged to be held on 21.10.2009. No component other than “Interview” was introduced in this selection as per the records available with the Section. Only the Selection Committee recommendations (Flag 'A') were received in the section which were then put up for the approval of the competent authority which happened to be Secretary, ICAR, the post of ALA being a Group 'B' post. The offers of appointment were subsequently issued after due approvals.

Submitted please.

So (On leave)

US (Admn.)

DS (A)

With reference to queries of Secy, ICAR on page 2/n the notes on pages 3-5/N may kindly be seen for information/orders pls.

Sd/-7.10.14  
Namrta Sharma  
Dy.Secy.(Admn.)

Dir (A)

Sd/-  
J.Ravi  
Dir. (P&A)

Secretary ICAR

The inference drawn at 'A' overleaf is unsustainable. The question is critical for the career progression of the affected

individuals and hence cannot be decided on mere conjecture. As the selection decision did not say that the names of the selected individuals have been put in the order of merit, the same cannot determine their relative seniority. In such a case, the individual joining earlier has to be treated as senior.

2. Please take immediate action to have the post of Law Officer revived.

Sd/-

Arvind Kaushal  
11.10.2014"

From the above, it appears that Arvind Kaushal, the then Secretary, twice opined that there is nothing on record to indicate that the names of the selected candidates have been put in order of merit. Even though, the recommendations clearly indicate that it is a select list which obviously means in the order of merit. At the asking of Secretary, the provisional seniority list dated 14.11.2014 was issued inviting objections to it within seven days. The applicant submitted his representation against the provisional seniority list wherein the applicant was relegated to rank No.2 and the respondent No.2 was upgraded to rank No.1. The issue was further examined in the Establishment Section on the representation of the applicant and following was noted:-

"Since, there is no documentary evidence to prove that Sh. Jitender Khanna holds ranks/merit no.1, it cannot be presumed simply that Sh. Jitender Khanna holds higher merit than Sh. Ashutosh Gautam because his name appeared at Sl.No.1 in the said proceedings.

In the light of this, the rules quoted at point no.e on page 10/ante does not hold good and the person joining earlier will be treated as senior to the person joining later.

Therefore, Sh. Ashutosh Gautam has been appropriately place at Sl.No.1 at the seniority list. We may dispose off the representation of Sh.Jitender Khanna and finalise the provisional seniority list of ALAs issued vide Circular No.6(9)/2014-Estt.I

Submitted please.

(Namrta Sharma)  
Deputy Secretary(Admn.)  
6.1.2015

Director(Admn.)

For consideration please. The normal practice in such case has been brought out at 76 on page 5/N. Further as at y on pre-page it is presumed that the names have been proposed in the order of merit – both in the select list and the reserve list. May please see.

Sd/-

J. Ravi  
Director (Pers.)  
ICAR, Krishi Bhavan,  
New Delhi 110 001.

Secretary, ICAR

The provisional Seniority list of Asst. Legal Advisor (ALA) was issued on 14<sup>th</sup> Nov.2014 calling for discrepancies, omissions, objections, if any, before issue of the final seniority list. Sh. Jitender Khanna, ALA has submitted a representation regarding his position in the provisional seniority list circulated by Estt.-I Section. The provisional seniority of ALAs was circulated after much deliberation regarding inter-se seniority of the two ALAs. In this context notes on page No.1-7 of the note sheet may kindly be perused.

2. Sh. Jitender Khanna has represented that on the basis of the select list he was placed at Sl.No.1 which means rank/merit No.1 and therefore he should be placed at Sl.No.1 in the seniority list. In this context, it is submitted that in the proceedings of the meeting of the Selection Committee, it has nowhere explicitly written that the select list is order of merit and no other supporting documents like the evaluation sheet

etc. are available to assess the order of merit in respect of Sh. Jitender Khanna.

3. The offer of appointment was issued simultaneously to both Sh. Jitender Khanna and Sh. Ashutosh Gautam on 23.10.2009. However, after completion of codal formalities, Sh. Jitender Khanna joined the post on 03.07.2010 while Sh. Ashutosh Gautam joined on 01.02.2010.

4. The background of the case may please be seen vide P:8-10/ante. The consolidated DOP&T instructions regarding fixation of seniority vide No.F.22011/7/86-Estt.(D) dated 3.7.1986 may please be seen at F/A. The recommendations of the Selection Committee in its meeting held on 21.10.2009 declared the "Selection List" as follows:-

- (i) Sh. Jitender Khanna S/o Sh. B.S. Khanna
- (ii) Sh. Ashutosh Gautam S/o Sh. Ramkripal Singh

5. The two ALAs were appointed on DR basis as per recommendations of the Selection Committee and in the absence of relevant records it is not possible to verify their merit position. However, the very fact that the Selection List mentions Sh. Jitender Khanna at no.1, it may be presumed that his position was first in merit. Therefore, it may be appropriate to place Sh. Ashutosh Gautam at Sl.No.2 of the seniority list with Sh.Jitender Khanna being placed at Sl.No.1 of the seniority list. We may dispose of the representation of Sh. Jitender Khanna and finalise the seniority list of ALAs accordingly.

Submitted for consideration and orders please.

S Das Gupta  
9.7.2015

Following other notings appeared in the file, which reads as under:-

"Establishment I Section

The issue relates to finalization of Seniority List in the grade of Assistant Legal Adviser at ICAR Hqrs.

The provisional Seniority List in the grade of ALA upto 31.12.2013 was circulated on 14<sup>th</sup> November, 2014 calling discrepancies, omission, objects if any to the notice of the Council.

Shri Jitender Khanna, ALA has submitted representation to the provisional Seniority List of ALA. His representation was examined vide notes at page 8-12/N. On the same Senior Director (Admn.) has desired that view of Member Secretary of the Selection Committee may be obtained.

In this regard, it is stated that Shri K. N. Choudhary, Deputy Secretary, ASRB (the then US (Admn.), ICAR) was Member Secretary of the Committee constituted for filing up the post of Assistant Legal Adviser held on 21.10.2009.

In view of above, we may forward the file to Shri K N. Choudhary, DS (ASRB) to give his view in the matter."

From the above noting, it appears that the comments of K. N. Chaudhary, Deputy Secretary, ASRB (the then US (Admn.), ICAR) and the then Member-Secretary were called for. Shri K. N. Chaudhary made following comments:-

"As the undersigned recall at this late stage, the entire interview/selection process was conducted at the direction of Chairman and members, who all were senior officers. The select list and reserve list were prepared in order of merit but somehow, as it has been noticed now by Estt. the words "in order of merit" were not mentioned in the proceedings inadvertently. However, other members of the selection committee may also be consulted in the matter, if felt necessary."

On the above, the Under Secretary (Admn.) made following comments:-

"US(Admn.)

w.r.t. 'x' above it is stated that the Chairman and the then Director (pers) who was one of the members of the Committee have already retired from service quite some time back. The members at Sl.No.3 & 4 were from outside the system. The 5<sup>th</sup> member Shri P.K. Bage is still in ICAR and is now DS(HRM) It

is almost six years since the meeting was held. Seeking the view of the outside experts so late may not be in order. It is therefore proposed that the matter may be processed as per the comments of Shri K.N.Chaudhary that the select list was prepared on the basis of merit.

Rajashree Sunil  
5/8/2015

On further examination, Under Secretary (Admn.) made following comments:-

“In view of the rule position brought out in above paras and the comments of Shri K.N.Chaudhary, the select list of ALAs had been prepared by the Selection Committee in order of merit as under:-

1. Shri Jitender Khanna

A.

2. Shri Ashutosh Gautam

Submitted for consideration and approval please.

sd/-

sd/-

29.09.2015

30.09.2015

The order of seniority would be as per A above submitted.

Rajashree Sunil

30.09.2015”

The above note was considered at the level of Director General who approved it on 30.09.2015 and a draft seniority list dated 31.12.2013 was put up for approval. The relevant note reads as under:-

“D.G. called both the Sr.Dir.(Admn.) and U.S.(Admn.) in connection with the above mentioned case.

This was discussed that this case has been decided today. This was discussed in the chamber of D.C. today. 'A' for kind consideration and approval."

Sd/-  
Sr. Director  
30.09.2015

D.G.ICAR

Sd/-  
30.09.2015

SDA

Sd/-  
30.09.15

Estt.I Section

Ref above

Draft Final seniority list of ALA upto 31.12.2013 is accordingly put up for approval please.

US (Admn.)

May kindly like to see before issue

Rajashree Sunil  
6/X/2015"

It appears that the Secretary, ICAR was not inclined to accept the above position and he again put up the following comments:-

"Seniority cannot be finalized in an ad hoc manner without due analysis. I suggest that the entire sequence be properly put up in the form of a note before a decision is taken on this file. Rules need to be respected.

US (Admn)

Sd/-  
Secretary ICAR  
10.10.15

I have discussed with the DG. Any decision to refix seniority will create confusion of this stage. We may create one more post of Law officer and instead surrender the two posts of ALAs.

Sd/-  
Secretary ICAR  
13.10.15

This was again discussed on 29<sup>th</sup> with the DG, ICAR & Secretary DARE. There is no reconsideration of 'xx' may please be implemented.

Sd/-  
Secretary ICAR  
30.10.15."

It further appears that respondent No.2 submitted a representation dated 10.02.2016 which was again taken up and the issue was again reconsidered. The following comments came to be made:-

"Has the competent authority (DG,ICAR) decided the inter-se-seniority of these two officials?

Who is competent to take decision in this regard as per delegation of powers?

Sd/-  
Secretary ICAR

In this regard it is stated that DG, ICAR has approved the proposal for fixation of inter-se-seniority as proposed at 'A' on page 26/N, but the final seniority list was not issued. The then Secretary, ICAR had made certain observation on the issue (P-27/N). The issue could not be finally decided since then.

The Secretary, ICAR is the appointing authority in case of Assistant Legal Adviser in the pay scale of PB 2 Rs.9300-34800+4600 (Grade Pay).

The file is re-submitted for consideration and orders please.

US(Admn.)

Sd/-  
22/3/16

DS(Admn)

Sd/-  
22/3/16

Secy,ICAR

Pl. discuss  
Sd/-  
28/3/16

DS (Admn)

Discussed.

This case has unnecessarily complicated by dealing the matter without referring to established procedure/guidelines and jumping levels. Seniorities are determined as per merit at the time of selection and in absence of that, as per date of joining.

In the instant case, the selection committee has not recommended the two candidates as per merit. They have just recommended two candidates. The then DG interpreted the order of names as order of merit.

To resolve the issue, Secy,ICAR, being competent authority, may be authorized to given opportunity of being heard to the two contesting Assistants and pass speaking order for fixing their inter-se-seniority.

DG-ICAR

Sd/-  
30/3/16"

Further noting dated 08.04.2016 reads as under:-

"Secretary, ICAR heard both the ALAs in my presence. After hearing them, it was decided by Secretary, ICAR to got the observations of Shri K.N.Choudhary,Member Secy of the selection Committee confirmed from other members of the selection committee. Pl. put up a self contained note along with the letter to the committee members."

On the basis of the above comments, comments from other members of the Selection Committee were obtained. The same are noted as under:-

“ The comments have been received from the Chairman and the members of the Committee. They are brought here as under:-

1. Shri A.K. Upadhyaya, the then Secretary, ICAR and Chairman of the Selection Committee

“I have gone through the proceedings of the meeting of the selection committee dated 21.10.2009 for filling up the post of Assistant Legal Advisor. It is difficult to recall at this distance of time what the intent of the selection committee was. Furthermore, it may not be legally sustainable to add anything extra which is not recorded in the proceedings. Therefore, it appears prudent to read the proceedings as it is and accordingly apply the relevant rules for seniority in such cases where it is not specifically mentioned that it is in order of merit.

2. Shri K.K.Bajpai, the then Director(Personnel), ICAR

“As is the normal practice in appointment by DR, the select list was prepared in order of merit.”

3. Shri M.K. Sharma, Registrar (Consultant), (Member)

“ The candidates recommended in the select list dated 21.10.2009 are in the order of merit.”

4. Ms.Manju Bagai, Member

“ With reference to your letter No.Admn.6-9/2014-estt.1 dated 25<sup>th</sup> May, 2016, I would like to inform you, that as far as I recollect from my memory name of candidates were recommended in the order of merit only.”

5. Shri P.K. Bage, DS(NRM), ICAR Member”

“To my memory, the selected candidates were recommended as per convention in the order of merit only.”

It appears that the matter was again re-examined and at one stage a proposal was made to seek legal opinion and following proposal was made:-

“ Now, therefore, there appear the following options to go ahead in this case:-

- a) Seek legal opinion on the issue in the light of comments of the Chairman, Selection Committee to know if there exist any guidelines/Court directives in such a scenario to resolve the issue. A reference to DOPT may not be of much help as they very often do not give an opinion in an individual case;
- b) Alternatively, fix the seniority of ALAs keeping in view the DOPT guidelines on the subject and treating the recommendations of the Selection Committee as in ‘Order of Merit’ as opined by a majority of the members of the Selection Committee;

OR,

Treat the seniority of ALAs circulated on 14.11.2014 as final rejecting the submission made by the incumbent at s.no.1 in the “Select list” on the basis of which appointments were made in the grade.”

The issue again came to be considered regarding the extension sought by the applicant for joining. Accordingly, following note was put up:-

“The offer of appointment was issued to both the candidates on October 23, 2009 and the formalities like medical examination and verification of antecedents were to be completed.

Both the candidates accepted offer of appointment within a period of 20 days. The formalities i.e. medical and C&A verification were completed on 19.1.2010 in respect of Sh. Ashutosh Gautam and he joined w.e.f. 1.2.2010.

Similarly the formalities in respect of Sh. Jitender Khanna completed on 27.4.2010. However, Sh. Khanna with reference to his request regarding extension of joining time was directed to join the post on or before 1.6.2010. Further Sh.

Khanna represented on 17.5.2010 regarding extension of time for joining and is expected to join the post in the first week of July, 2010 failing which his candidature will be cancelled without any further communication. Sh. Khanna joined on 8.7.2010.

In the absence of any mention of 'order of merit' in the selection list of Sh. Jitender Khanna and Sh. Ashutosh Gautam, in order to determine their inter-se-seniority, it would be justified to resort to the basic principle of seniority i.e. continuous length of service in a particular grade. Since, Sh. Ashutosh Gautam has joined before Sh. Jitender Khanna, he may be placed senior to Sh. Jitender Khanna and we may finalise the seniority list accordingly.

Submitted please.

(Namrta Sharma)  
Deputy Secretary (Admn.)  
9.8.2016

Secretary, ICAR

I agree with 'A' above.

Sd/-  
9/8/2016

DS (Admn) on leave

US(A) Estt.1  
Sd/-

Estt.I Section

Draft is accordingly put up for approval please.

Sd/-  
11.8.16

US(A)

We have to dispose off the representation also simultaneously. Pl. put up draft for that also.

Estt.1 Section

Reference notes on pre-page

The following are submitted:-

1. The revised draft Seniority List in the grade of Assistant Legal Adviser in ICAR system upto 31.12.2013 is submitted for approval.
2. It is also stated that Shri Jitender Khanna, ALA has submitted a representation dated 9.5.2016 on the issue for forwarded to DOPT. The matter has been settled in the Council therefore it is proposed that we may dispose of all the representation of Shri Jitender Khanna along with the above as per DFA II.

Submitted.

Sd/-  
16.08.16

US(A)

As desired pl.

Sd/-  
17.8.16

US(A)

DFA-I &II for approval and signature Pl.

DS (Admn)

Sd/-  
24/8"

After this, the final seniority list impugned herein came to be issued and representation of the applicant has also been rejected vide the impugned order.

14. From the notings on record, it appears that the official respondents have made mockery of the system. Every time, some same decision is arrived at, the issue is reopened either by procuring representation from one or the other candidate which demonstrate

the manner in which the department had been functioning. Even when, the Director General took the decision to finalize the seniority by treating the applicant as senior on the basis of the Select List which was considered to be on merits by granting approval on 30.09.2015, the matter was again reopened, and suddenly it culminated in reversal.

15. As noticed by us and reproduced hereinabove, the Selection Committee in its minutes and recommendations clearly mentioned the Select List with two names, i.e., applicant at Sl. No.1 and respondent No.2 at Sl. No.2. Not only this, there were two candidates in the Reserve List which clearly indicate that they were placed in the order of merit in *seriatim*. There was no occasion for anybody to doubt the Select List that it is not according to merit. The Select List obviously means a final determination which has to be in the order of merit, but it appears that the then Secretary Mr. Arvind Kaushal had always tried to create confusion with the sole objective of helping Respondent No.2 regarding the Select List being not on merit. He ultimately succeeded in it. Unfortunately, all the authorities were swayed by his opinion. The comments clearly speak that the then Secretary, ICRA had taken a personal interest in the matter and never desired the seniority to be settled in accordance with the Select List. At the first place it was totally unwarranted to seek opinion of the UPSC Members of the Selection Committee after

finalization of selection, that too after their retirement. The Selection Committee becomes *functus officio* after selection. However, when opinion is sought, the majority of the members opined the select list to be a merit list, particularly, Mr. K. N. Chaudhary, who was the Member-Secretary and who had recorded the minutes of the selection committee. This would have been the end of the matter but interested persons wanted to decide the issue otherwise. There is nothing on record to indicate as to why the decision of majority of members of the Selection Committee has not been accepted. The Chairman, ICAR has not given any opinion, rather his opinion cannot be said to be fair. In a situation where the joining of the candidates appointed pursuant to the same selection is of different dates including the extension granted by the competent authority, the seniority is to be determined in accordance with the statutory rules read with OM No.9/23/71-Estt(D) dated 6<sup>th</sup> June 1978. As a matter of fact, the OM holds the field under the given circumstances. Thus, we hold that the Select List is undoubtedly the merit list. Question No.1 is answered accordingly.

16. Sub rule (b) of Rule 16 of CCS Rules, 2009 clearly provides that persons appointed regularly to a Grade from the Select List for the Grade shall be ranked *inter se* according to the order in which they are so appointed. The Select List dated 21.10.2009 indicates the name of applicant at Sl. No.1 and thus in terms of the Rules, 2009, the

applicant has to be considered to be on a higher merit than respondent No.2. The DoP&T OM dated 11.11.2010 also provides that the seniority of direct recruits is to be determined by the order of merit by which they were selected for such appointment on the recommendations of the Selection Committee. The recommendations dated 21.10.2009 ranked the applicant senior means it is in the order of merit. From the conjoint reading of the Rules, 2009 and the DoP&T instructions, there is no scope of doubt that seniority has to be determined in accordance with Select List.

17. However, the second issue as to whether the joining of the candidates would determine the seniority. In simple way, the answer is 'No' provided the joining is within the prescribed time including extended time. In the present case, joining was subject to the medical fitness and character and antecedent verification. The character and antecedents of respondent no.2 were cleared by the police earlier and he was appointed on 01.02.2010. In case of the applicant, his character and antecedent could only be cleared on 22.04.2010. This delay is not attributable to the applicant. The matter does not end here. The applicant admittedly sought extensions which were granted to him and he joined the office on 08.07.2010.

18. The Government of India issued consolidated instructions regarding regulation of seniority in cases of delay in reporting for

duty after selection vide OM No.9/23/71-Estt.(D) dated 6<sup>th</sup> June 1978.

Relevant instructions are extracted hereunder:-

“(ii) If, however, within the specified period, a request is received from the candidate for extension of time, it may be considered by the Ministries/Departments but extension beyond three months should not be granted liberally and it may be granted only as an exception where facts and circumstances so warrant and in any case only up to a maximum of six months from the date of issue of the original offer of appointment. An offer of appointment would lapse automatically after the expiry of six months from the date of issue of the original offer of appointment. The candidates who join within the above period of six months will have their seniority fixed under the seniority rules applicable to the service/post concerned to which they are appointed, without any depression of seniority.

19. In *D. P. Das vs. Union of India* (2011) 8 SCC 115, the Hon'ble Supreme Court held that seniority is an incidence of service and where the service rules prescribe the method of its computation, it is squarely governed by such rules. In the absence of a provision, ordinarily the length of service is to be taken into account. It has been further held that determination of seniority is a vital aspect in the service career of an employee. His future promotion is dependent on this. Therefore, the determination of seniority must be based on some principles, which are just and fair. This is the mandate of Articles 14 and 16 of the Constitution of India.

20. In *Chancellor and Another vs. Dr. Bijayananda Kar and Others* and other Civil Appeal reported in (1994) 1 SCC 169, it has been held by the Hon'ble Supreme Court that the function of the Selection

Committee comes to an end when the process of selection is completed and the proceedings are drawn. Every member of the Selection Committee has a right to give his independent, unbiased and considered opinion in respect of each candidate appearing before the Committee. Normally, it would not be considered a bona fide act on the part of a member of the Selection Committee to say, after the selection is over and he has signed the proceedings, that he "overlooked" certain qualifications in respect of a candidate. The sanctity of the process of selection has to be maintained.

21. In *Dr. Kripa Ram Mathur vs. State of UP and Ors.* (2001) 9 SCC 506, the Hon'ble Supreme Court has held as under:-

"8. Learned counsel appearing for the respondent No.4 submitted that Vide Annexure R-1, the Selection Committee had not determined the merit and ranking of the persons appearing before it but had only mentioned their names at random. It is contended that if the determination was on merit, the Committee must have mentioned the numbers obtained by each one of the candidates shown therein. Referring to Annexure P-5, he has contended as name of Dr.Prem Kumar Singh and Smt.Sneh Lata are mentioned as junior than the appellant and the respondent, the list cannot be held as based upon the determination of the merit. The argument cannot be accepted inasmuch as Annexure P-5 stands already quashed by the High Court vide its judgment dated 24.4.1997 (Annexure P- 6). The reference to the procedure adopted for determining the merit by the Selection Committee unequivocally indicates that the selection was based upon merit and ranking to the concerned was given accordingly. Merely because the respondent-State has failed to produce the marks at this belated stage cannot make the selection process either doubtful or be termed as not based upon the comparative merits of the candidates appearing before the Selection Committee. The presumption of genuineness of the official acts done in the due course of performance of the duties is attracted in the case particularly when the appellant accepted the position of determination of the merit and ranking for a period of over 8 years as is evident from Annexure P-5, mentioning that the appellant had submitted his representation only on 25.11.1992."

22. In *Chairman, Puri Gramya Bank and Anr. Vs. Ananda Chandra Das and Ors.* (1994) 6 SCC 301, the Hon'ble Supreme Court has held as under:-

"2. This appeal arises from the judgment of the High Court of Orissa in OJC No. 1007 of 1988, dated 4-3-1992. The respondent and others were selected by direct recruitment as managers of Rural Bank. His rank was No. 9 in the merit list. He was directed to be given seniority on the basis of the date of his reporting to duty. It is reported that the first respondent is dead. The only question in this case is that what shall be the ranking among the direct recruits? Is it the date on which they joined duty or according to the ranking given by the Selection Board? On comparative evaluation of the respective merits of the candidates for direct recruitment, the Board had prepared the merit list on the basis of the ranking secured at the time of the selection. It is settled law that if more than one are selected, the seniority is as per ranking of the direct recruits subject to the adjustment of the candidates selected on applying the rule of reservation and the roster. By mere fortuitous chance of reporting to duty earlier would not alter the ranking given by the Selection Board and the arranged one as per roster. The High Court is, therefore, wholly wrong in its conclusion that the seniority shall be determined on the basis of the joining reports given by the candidates selected for appointment by direct recruitment and length of service on its basis. The view, therefore, is wrong. However, we need not interfere with the order, since the first respondent has died."

23. In *Sh. Suresh Chandra Jha vs. State of Bihar* 2007 (3) SLR 227 (SC), the Hon'ble Supreme Court has held as under:-

"5. This Court in Chairman, Puri Gramya Bank and Anr. v. Ananda Chandra Das and Ors. 1994 (6) SCC 301) held as follows:

"This appeal arises from the Judgment of the High Court of Orissa in O.J.C. No. 1007/88, dated March 4, 1992. The respondent and others were selected by direct recruitment as in the merit list. He was directed to be given seniority on the basis of the date of his reporting to duty. It is reported that the first respondent is dead. The only question in this- case is that what shall be the ranking among the direct recruits? Is it the date on which they joined duty or according to the ranking given by the selection board? On comparative evaluation of the respective merits of the candidates for direct recruitment, the Board has prepared the merit list on the basis of the ranking secured at the time of the selection. It is settled law that if more than one are selected, the seniority is as per ranking of the direct recruits subject to the adjustment of the candidates selected on applying the rule of reservation and the roster. By mere fortuitous chance of reporting to duty earlier would not alter the ranking given by the Selection Board and the arranged

one as per roster. The High Court, is, therefore, wholly wrong in its conclusion that the seniority shall be determined on the basis of the joining reports given by the candidates selected for appointment by direct recruitment and length of service on its basis. The view, therefore, is wrong. However, we need not interfere with the order, since the first respondent has died."

6. Since there was no rule in operation, obviously the ranking in the merit list was to decide the respective seniority. The ratio in Chairman, Puri Gramya Bank's case (supra) has full application to the facts of the case. Appellant's claim that he was to be treated as senior to the respondent no.8 was rightly accepted by learned Single Judge. Unfortunately, the Division Bench did not address itself to the specific question and has placed undue stress on the respondent no.8 having joined earlier."

24. **In *D.P. Das v. Union of India*, (2011) 8 SCC 115**, the Hon'ble Supreme Court has held as under:

"13. Vide an Office Memorandum dated 22-12-1959, the Government of India, Ministry of Home Affairs issued general principles for the determination of seniority in Central Civil Services. It is pertinent to note that the OM dated 22-12-1959 does not supersede the Office Memorandum of 1946 but expressly discontinues the application of some previous office memorandums cited below:

- Office Memorandum No. 30/44/48- Appts., dated 22-6-1949.
- Office Memorandum No. 65/28/49 - DGS.(Appts.) dated 3-2-1950 and other subsequent office memorandum regarding fixation of seniority of ex-employees of the Government of Burma.
- Office Memorandum No. 31/223/50 - DGS, dated 27-4-1951 and other subsequent office memorandum regarding fixation of seniority of displaced government servants.
- Office Memorandum No. 9/59/56 - RPS dated 4-8-1956.
- Office Memorandum No. 32/10/49 - CS dated 31-3-1950.
- Office Memorandum No. 32/49/CS(C) dated 20-9-1952.

14. Para 4 of the annexure attached to the said OM dated 22-12-1959 specifically provides that:

"... the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment on the recommendations of

UPSC or other selecting authority, persons appointed as a result of subsequent selection."

But this circular fails to address the situation, where no combined merit list is prepared in the order of merit in which the candidates are appointed and their date of recommendation being the same, as in the present case.

25. In view of the statutory position noticed by us hereinabove and the clear and categorical instructions dated 06.06.1978, the relevant seniority of the candidates is to be determined on the basis of merit in the Select List, notwithstanding the different dates of joining. Question No.2 is thus answered accordingly.

26. From the careful analysis of the factual aspect and settled law, we are of the considered opinion that the impugned orders rejecting the representation of the applicant and the impugned seniority list are contrary to law. Both are hereby set aside. Consequently, we direct the official respondents to issue fresh seniority list ranking the applicant senior to respondent No.2 within a period of one month from the date of receipt of copy of this order.

27. All ancillary applications stand disposed of.

**(K. N. Shrivastava)**  
**Member (A)**

**(Justice Permod Kohli)**  
**Chairman**

/pj/