

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.639/2016
M.A.No.628/2016
M.A.No.4708/2018
M.A.No.4709/2018

With

O.A.No.4700/2015

Wednesday, this the 9th day of January 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)

O.A. No.639/2016

1. Uttam Dey Sarkar
ASO (Ad-Hoc), Department of Commerce
Ministry of Commerce and Industry
S/o Late P.R. Dey Sarkar
Aged 45 Years
Address-F-117, Moti Bagh-I,
New Delhi-110021
2. Kamlesh Salhotra
ASO (Ad-Hoc), Ministry of Agriculture and Farmers Welfare
W/o Shri Manoj Kumar Salhotra
ASO (Ad-Hoc),
Aged 46 years
Address-H.no.1163, Blick-D,
Sainik Colony, Sector-49, NIT, Faridabad
Haryana
3. Chander Ballabh,
ASO (Ad-Hoc), Deptt. of Legal Affairs,
Ministry of Law and Justice
s/o Late Sheri Gangaram
Aged 43 Years
Address-Block No.9, House No. 125
Ali Gunj, Lodhi Road, New Delhi-110003
4. Prem Singh
ASO (Ad-Hoc), Ministry of Road Transport and Highways
S/o Shri Nain Singh
Aged 50 years
Address-N-22, B-3, Dilshad Gardan,
New Delhi-110095

5. Sh. Krishan Pal
ASO (Ad-Hoc), Ministry of Urban Development
S/o Sh. Tilak Chand
Aged 45 years
Address-H.No.3, Gali No. 1,
Shivpuri, Sec.-9, Ghaziabad,
Uttar Pradesh
6. Sh. Deba Dutta Dash
ASO (Ad-Hoc), Ministry of Urban Development
S/o Sh. Dibakar Dash
Aged 47 years
Address-MEK.303-A, Gali No.4,
K-Block, Old Rangpuri Road,
Mahiplpur,
New Delhi-110037
7. Sh. Puran Chandra Mahalik
ASO (Ad-Hoc), Ministry of Urban Development
S/o Sh. Birendra Mahalik
Aged 49 years
Address-WC-23, Double Story,
IARI Pusa, New Delhi-110012
8. Dinesh
ASO (Ad-Hoc), Department of Industrial Policy and
Promotion,
Ministry of Commerce and Industry
S/o Late Sheri Janardhan
Aged 51 years
Address-H.No. 2646, Shadipur, New Delhi-110028
9. Madan Gopal Sharma
ASO (Ad-Hoc), Department of Industrial Policy and
Promotion,
Ministry of Commerce and Industry
S/o Shri I.D. Sharma
Aged 47 years
Address-H.No.106 B/2, Govind Puri,
New Delhi-110019
10. Sushmita Ghosh
ASO (Ad-Hoc), Ministry of Information and Broadcasting
C/o Dr. D.N. Mukerji
Aged 48 years
Address-A-206, Anandlok Apartments,
Mayur Vihar-I, Delhi-110091
11. Jagat Singh
ASO (Ad-Hoc), Ministry of Information and Broadcasting
S/o Late Shri Shiv Singh

Aged 54 years
Address-Q.no.796, Sector-9, R.K. Puram,
New Delhi-110022

12. Naresh Kumar Rustagi
ASO (Ad-Hoc), Ministry of Information and Broadcasting
S/o Late Sheri Om Prakash Rustagi
Aged 46 years
Address-e-59A, Gali No. 16 (near Khola Chowk)
Sadh Nagar, New Delhi-110045
13. Rajesh Kumar Datta
ASO (Ad-Hoc), Ministry of Information and Broadcasting
S/o Lt. Sh. Durga Datta
Aged 48 years
Address-49, Mahila Colony,
Gandhi Nagar, Delhi-110031
14. Manoj Kumar Sharma
ASO (Ad-Hoc), Ministry of Urban Development
S/o Late Sh. J.P. Sharma
Aged 46 years
Address-G-6/7, Sector-16, Rohini
Delhi-110089
15. Ms. K. Madhavi
ASO (Ad-Hoc), Ministry of Urban Development
W/o K.L.N. Murthy
Aged 43 years
Address-M-347, Sarojini Nagar,
New Delhi-110023
16. Anita
ASO (Ad-Hoc), Department of Industrial Policy and
Promotion,
Ministry of Commerce and Industry
W/o Late Shri Vinod Kumar
Aged 59 years
Address-G-24, Type-II, Nanakpura,
New Delhi-110021
17. Taruna
ASO (Ad-Hoc), Department of Industrial Policy and
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Ministry of Commerce and Industry
W/o Shri Ranjit Gambhir
Aged 46 years
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Delhi Road, Sonapat,
Harayana-131001

18. Naresh Kumar
ASO (Ad-Hoc), Department of Industrial Policy and Promotion,
Ministry of Commerce and Industry
S/o Late Narayan Dass
Aged 49 years
Address-DB-13F, Hari Nagar,
New Delhi-100064
19. Pankaj Kumar
ASO (ad-Hoc), Department of Industrial Policy and Promotion,
Ministry of Commerce and Industry
S/o Shri T.R. Sehgal
Aged 50 years
Address-C-8/16, Sector-15, Rohini,
Delhi-110089
20. Dhanpat Singh
ASO (Ad-hoc), Ministry of Information and Broadcasting
S/o Shri Kartar Singh
Aged 51 years
Address-Q. No. 268, Sector-VII, R.K Puram,
New Delhi-110022
21. Murari Singh
ASO (Ad-hoc), Department of Legal Affairs,
S/o Revti Prasad
Aged 58 years
Address- S-485, School Block, Shakarpur,
Delhi-110092
22. Anant Ram Yadav
ASO (Ad-hoc), Ministry of Health and Family Welfare,
S/o Sh. Lala Ram Yadav
Aged 47 years
Address-VIII. & P.O. Rajokari, New Delhi-110038
(Near Pankaj Light & Tent House)
23. Sh. Rajender Singh
ASO (Ad-hoc), Ministry of Law and Justice
S/o Lat Shri Nobat Ram
Aged 55 years
Address-VIII. & P.O. : H. No. 57, Nangal Thakran
Delhi-39
24. Md. Rafi
ASO (Ad-hoc) Department of Legal Affairs,
Ministry of Law and Justice
S/o Sattar Maiha

Aged 44 years
Address- D-II, Type-III, Dev Nagar,
Karol Bagh, Delhi-110005

25. Naval Kishore
ASO (Ad-hoc), Ministry of Agriculture and Farmers Welfare
S/o Sh. Shankar Lal
Aged 45 years
Address-16/326-H, Bapa Nagar,
Arya Samaj Road, Karol Bagh,
Delhi-110005.
26. Kedar Nath
ASO (Ad-hoc), Ministry of Agriculture and Farmers Welfare
S/o Late Shri Sheonath
Aged 58 years
Address-Q. No. 1534, Sector-V,
R.K Puram, New Delhi-110022.
27. Bimal Krishna Naskar
ASO (Ad-hoc), Ministry of Agriculture and Farmers Welfare
S/o Shri Sjaileendra Nath Naskar
Aged 50 years
Address-F-116, Bindapur, Pocket-3,
DDA Flats, Dwarka,
New Delhi-110059.
28. Saroj Bala
ASO (Ad-hoc), Ministry of Agriculture and Farmers Welfare
W/o Shri Ashok Kumar
Aged 54 years
Address-Q.No. 51, Type-III, NH-4
Faridabad, Haryana-121001.
29. Sh. Kailash Kumar
ASO (Ad-hoc), Department of Commerce,
Ministry of Commerce and Industry
S/o Late Shri Amir Singh
Aged 44 years
Address- House No. 387, Sector-12
R.K. Puram, New Delhi-110022
30. Sh. Gurvinder Kumar
ASO (Ad-hoc), Department of Personnel and Training,
Ministry of Personnel, Public Grievances and Pensions
S/o Late Shri Madan Lal
Aged 45 years
Address- BE-241, Hari Nagar,
New Delhi-110064

31. Sh. Malam Singh
ASO (Ad-hoc), Ministry of Urban Development
S/o Shri Balbir Singh
Aged 42 years
Address- Type-II, Q.No. S-94/Sector-IV,
DIZ Area, New Delhi.
32. Molly Thomas
ASO (Ad-hoc), Ministry of Power
W/o Shri Thomas John
Aged 43 years
Address- A/4/145, Paschim Vihar,
Delhi-110063.
33. Jatinder Singh
ASO (Ad-hoc), Department of Commerce,
Ministry of Commerce and Industry
S/o Late Shri Ajit Singh
Aged 47 years
Address-1497, Sector-5, R.K Puram,
Delhi-110022
34. Sultan Singh
ASO (Ad-hoc), Ministry of Agriculture and Farmers Welfare
S/o Late Shri Loka Ram
Aged 59 years
Address-H.No. 110, Block No. 26,
Saidulajab Colony, New Delhi-110030
35. Prithvi Nath
ASO (Ad-hoc), Ministry of Agriculture and Farmers Welfare
S/o Late Shri Paras Singh
Aged 52 years
94, Laxmibai Nagar,
New Delhi-110023
36. Ramphal
ASO (Ad-hoc), Ministry of Agriculture and Farmers Welfare
S/o Shri Kamal Singh
Aged 46 years
Address- VIII & PO-Kaunt,
District-Bhiwani, Haryana-127021
37. Raj Karan Singh
ASO (Ad-hoc), Ministry of Agriculture and Farmers Welfare
S/o Sh. Ratan Singh
Aged 47 years
Address- C-70 A, Rama Park,
Near Dwarka Mod, Delhi-110059

38. Santosh Kumar
ASO (Ad-hoc), Ministry of Agriculture and Farmers Welfare
S/o Late B. Pandey
Aged 46 years
Address-34-T, Sector-4, DIZ Area,
Gole Market Delhi-110001.
39. Anjum Nasir
ASO (Ad-hoc), Ministry of Agriculture and Farmers Welfare
S/o Md. Suleman
Aged 46 years
Address-H.No. 524, Kamla Nehru Nagar,
Ghaziabad (U.P)-201002
40. Sh. Longu Ram Choudhary
ASO (Ad-hoc), Department of Legal Affairs
Ministry of Law and Justice
S/o Lachhman Singh
Aged 59 years
Address Qtr. No. 1225, Sector 8,
R.K Puram, New Delhi-110022
41. Sh. Raghu Nath Sharma
ASO (Ad-hoc), Department of Legal Affairs
Ministry of Law and Justice
S/o Parmanand Sharma
Aged 57 years
Address-Qtr. No. 290, Sector 11, Type-II,
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42. Rajpal Sharma
ASO (Ad-hoc), Ministry of Power
S/o Shri Harnarayan Sharma
Aged 57 years
Address-VIII- Sadhrana,
PO-Darhi Harsaru, Distt Gurdaya,
Haryana.
43. Sh. Mukesh Kumar
ASO (Ad-hoc), Ministry of Home Affairs
S/o Late Shri Dayanand
Aged 41 years
Address-VIII & P.O. –Asudha,
Tehsil- Bahadur Garh,
District-Jhajjar (Haryana)
44. Subhash Chander
ASO (Ad-hoc), Ministry of Agriculture and Farmers Welfare
S/o Late Shri Gopi Ram
Aged 51 years

Address-C-3/333, Lodhi Colony,
New Delhi- 110003

45. Kishan Dutt
ASO (Ad-hoc), Ministry of Agriculture and Farmers Welfare
S/o Late Shri Gunanand
Aged 59 years
Address-8/519, Lodhi Colony, New Delhi
46. Arun Kumar
ASO (Ad-hoc), Ministry of Agriculture and Farmers Welfare
S/o Late Shri Janaradhan Prasad
Aged 47 years
Q. No. 51, sector-8, R.K Puram, New Delhi.
47. Kanwar PALSingh
ASO (Ad-Hoc), UPSC, DoPT,
Ministry of Personnel, Public Grievances & Pensions
S/o Shri Atraj Singh,
Aged 57 years
Address: H.No. 108, Sector-7
R.K. Puram, New Delhi
48. Sh. Bijender
ASO (AD-hoc), Staff Selection Commission, DoPT
Ministry of Personnel, Public Grievances & Pensions
S/o Sh. Daryab Singh
Aged 48 Years
Address-I-27, Nanak Pura, New Delhi
49. Chander Prakash
ASO (Ad-hoc), Ministry of Agriculture and Farmers Welfare
S/o Late Shri Mahanand
Aged 54 years
Address-H. No. 201,
Lodhi Road Complex,
New Delhi-110003
50. Som Dutt
ASO (Ad-hoc), Ministry of Agriculture
S/o Late Shri Devi Dutt
Aged 57 years
Address- Vill & PO Bhangrola, Distt- Gurgaon, Haryana,
51. Ratan Singh
ASO(Ad-hoc), Ministry of Tribal Affairs
S/o Late Shri Tikka Ram
Aged 59 years
Address- H.No. 131, Vill-Sehani,
PO-Nand Gram, Distt.- Ghaziabad, Uttar Pradesh

52. Sh. Bharat Singh
ASO (AD-hoc), Department of Industrial Policy and Promotion,
Ministry of Commerce and Industry
S/o Shri Jeet Singh
Aged 57 years
Address – Qr. No. 5/1, Sector-I,
M.B. Road, New Delhi
53. Sh. Sanjay Kataria
ASO (Ad-hoc), Department of Legal Affairs,
Ministry of Law and Justice
S/o Late Sh. Gainda Singh
Aged 40 years
Address-J-3/133, Laxmi Nagar, Delhi-92
54. Usha
ASO (Ad-hoc), Ministry of Power
D/o Late Sh. S.S. Negi
Aged 43 years
Address- H.No. N-649, Sector-VIII,
R.K. Puram, New Delhi
55. Sh. Surendra Prasad
ASO (Ad-hoc), Staff Selection Commission (Allahabad),DOPT
Ministry of Personnel, Public Grievances & Pensions
S/o Shri Charitra Prasad
Aged 46 years
Address- C/o KrintaKunj,
139F/12-A, Rasulabad,
P.O.-Teliyar Ganj, Allahabad,
Uttar Pradesh
56. Sh. S.R. Dey
ASO (AD-hoc), Department of Legal Affairs (Calcutta),
Ministry of Law and Justice
S/o Late Shri Niranjana Dey
Aged 48 years,
Address-B/29, Naba Nagar, Vidyasagar Park,
P.O.-Birati, P.S. Nimta, Kolkata
West Bengal

[Vide F.No.21/12/2010-CS.I(P) issued by DoPT
nomenclature of post of Upper Division Clerk (UDC)
changed to Senior Secretariat Assistant (SSA) and Assistant
changed to Assistant Section Officer (ASO)]

..Applicants

(Mrs. Avnish Ahlawat and Mr. N K Singh, Advocates)

Versus

1. Union of India
Through its Secretary
Department of Personnel and Training,
Ministry of Personnel, Public Grievances and Pensions
3rd floor, Lok Nayak Bahwan,
Khan Market, New Delhi-110003.
2. Shri Ram Nagina Prasad
ASO (Ad-hoc), Ministry of Coal,
Shastri Bhawan
Shri Rajendra Prasad Road, New Delhi-110001.
3. Shri Sushil Kumar
ASO (Ad-hoc), Department of Ferilizers,
Ministry of Chemical and Fertilizers
A-Wing, Shastri Bhawan
Dr. Rajendra Prasad Road,
New Delhi-110001.

..Respondents

(Mr. Subhash Gosain, Advocate for respondent No.1 –
Mr. Yogesh Sharma and Ms. Sonika Gill, Advocates for respondent
Nos. 2 & 3)

O.A. No.4700/2015

1. Sugam Arora, aged 41 years
D/o Shri R.D. Malhotra
Address – 35, SFS, DDA Flats,
Niti Bagh, New Delhi-49
2. Anita Singh aged 44 years
D/o Sh. S.S. Kanwar
Address – Qr. No. F-2976,
Netaji Nagar,
New Delhi-23
3. Simi Padmakaar Aged 45 years
D/o Sh. Ravindran Nair
Address – P.D. Pocket-284,
Dilshad Garden, Delhi-95
4. T. Kishore Singh aged 49 years
S/o Late T. Nagmal Singh
Address-E-18/F-3, Dilshad Colony
Delhi-95
5. Pankaj Kumar Sarkar aged 46 years
S/o Late Satish Chander Sarkar
Address-Qr. No. 10, Sector-9,
R.K. Puram, New Delhi

6. Chander Shekhar aged 46 years,
S/o Sh. Maharaj Kishan
Vill. & P.O.-Pataudi, Distt. Gurgaon
Haryana
7. Umesh Kumar aged 45 years
S/o Late Chand Ram
Address- H. No. 10, 3rd Floor,
Sahipur Village, Shalimar Bagh,
Delhi-88
8. Krishan Mohan Pandey aged 41 years
S/o Late B. Pandey
Address-Q. No. D-577, Netaji Nagar
New Delhi-23
9. Sajjan Pal aged 45 years
S/o Late Dhanpat Singh
Address- F-1/542, Dev Nagar
Karol Bagh, New Delhi-05
10. Pamela Halder aged 46 years
D/o Sh. P.N. Thakur
Address Block 23, 985, Baba Kharak Singh Marg
New Delhi-01
11. Manisha Rastogi aged 44 years
D/o Sh.. R.L. Dhawan
Address- Qr. No. 686, Laxmi Bai Nagar
New Delhi-23
12. Kavita Sharma Aged 44 years
D/o Sh. D.N. Sharma
Address 321, DJA Apartment, Plot No 1-A,
Sector-13, Dwarka,
Delhi-75
13. Uma Lohani aged 46 years,
W/o Sh. S.C. Lohani
Address H.No. 989, Sector-04
R.K. Puram, New Delhi
14. Sh. R.P. Kharwar aged 52 years
S/o Late Sh. Kisun Ram
Address: 2078, Lodhi Road Complex,
New Delhi-03
15. Pawan Kumar Sharma aged 50 years
S/o Late Sant Ram
Address Qr. No. 1619, Lodhi Road Complex
New Delhi-03

16. Rakesh Sharma aged 48 years
S/o Late J.S. Sharma
Address-423-B, Shakti Khand-1, Indirapuram
Ghaziabad, U.P.
17. Sanjay Sharma, aged 43 years
S/o Late V.N. Sharma
Address-F-II/447, Dev Nagar,
Karol Bagh,
New Delhi-05
18. Bharat Bhushan aged 58 years
S/o Late Bhagwan Dass
H.No. 210, Sector-7, Urban Estate
Gurgaon, Haryana
19. Anita Bhatt aged 42 years
W/o Sh. N.N. Bhatt
Address-404, Gaur Residency,
Chander Nagar, Ghaziabad
Uttar Pradesh
20. Neeraj Bhardwaj aged 53 years
S/o Late Girdhari Sharma
Address 276, Bagh Kare Khan, Kishan Ganj
Delhi-07
21. Kanwar Singh Panchal aged 51 years
S/o Late Sahib Singh
Address-Qr. No. 874, J-Block, Kali Bari Marg,
New Delhi
22. Deep Ram aged 56 years
S/o Late Baziru Ram
Address-H. No. 669, Sector -8,
R.K. Puram
New Delhi
23. Radha Ballabh aged 54 years
S/o Sh. Ramanand
Address-122, Lancer's Road, Timarpur,
Delhi-04
24. Uttam Singh aged 53 years
/o Late Bachan Singh

Address-Qr. No. 86, Sector-04,
R.K. Puram, New Delhi
25. Urvi Purvesh Joshi aged 42 years
S/o Sh. H.J. Thaker

Address-38/3C, Sector-II, Gole Market
DIZ Area, New Delhi

26. S.N. Mishra, aged 58 years,
S/o Late Suresh Mishra
Address-C-3/253, Lodhi Colony
New Delhi
27. Pawan Kumar, aged 45 years
S/o Late J.C. Sharma
G-405, Nauruji Nagar,
New Delhi-29
28. Bir Singh Rana aged 55 years
S/o Late M.S. Rana
Address-Qr. No. 140, Sector-7,
R.K. Puram, New Delhi
29. Sunil Kumar aged 43 years,
S/o Late Roop Chand
Address- House No. 188, B-Block,
Gopal Nagar, New Delhi
30. Om Prakash aged 54 years
S/o Late Jodha Ram
Address-House No. 14, Block C-II, 1st Floor
Lodhi Colony, New Delhi-03
31. S.R. Kotiyal aged 54 years
S/o Sh. Mool Chand
Address-House No. 14, Block C-II,
First Floor, New Delhi-03
32. Rajeev Kumar aged 47 years
S/o Late B.R. Sharma
Upper Division Clerk,
H.No. 473, Saraswati Vihar
New Delhi-34
33. Ranjit Kaur Walia aged 42 years
W/o Sh. Arvinder Pal Singh
Address-16/49-A, Tilak Nagar,
New Delhi-18
34. Sh. Niranjana Prasad aged 47 years
S/o Shri Prasad
Address-Flat No. 18, Kaweri Tower,
Sector-04, Ghaziabad,
Uttar Pradesh

(All above applicants are Upper Division Clerks, Group 'C', Ad-hoc Assistants)

..Applicants

(Mrs. Avnish Ahlawat and Mr. N K Singh, Advocates)

Versus

1. The Secretary,
(Department of Personnel & Training)
Government of India,
3rd Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-11000
2. Union of India
Through its Secretary
(Department of Personnel & Training)
Ministry of Personnel, Public Grievances & Pensions
3rd Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-11000

..Respondents

(Mr. Rajeev Kumar, Advocate)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

These two O.As. are filed challenging the Office Memoranda (O.Ms.) dated 06.10.2015, 02.11.2015, 16.11.2015, 08.12.2015 and 09.12.2015. In all these O.Ms., the seniority of the Upper Division Clerks (UDCs) working in the Central Secretariat Service (CSS) was fixed or attempted. The O.As. are preceded by an earlier round of litigation in the form of O.A. No.248/2012 before this Tribunal, W.P. (C) No.209/2013 & batch before the Hon'ble Delhi High Court and Civil Appeal No.7407/2018 (SLP (C) No.10342/2015) before the Hon'ble Supreme Court.

2. Briefly stated, the facts pertaining to these cases are as under:

3. The CSS broadly comprises of the posts of (i) Director, (ii) Deputy Secretary, (iii) Under Secretary, (iv) Section Officer, (iv) Assistant, (v) UDC and (vi) Lower Division Clerk (LDC). This Service caters to the needs of various Ministries of the Central Government. The promotions and other similar developments take place in a centralized manner, irrespective of the fact that the officers or employees of various categories are allotted to work in different Departments.

4. There has been a long pending demand for expansion of the size of the cadres in the CSS. In the year 2003, the Cabinet of the Central Government cleared the proposal for increasing the size. This, however, was for the stages between Director and Section Officer. The increase was as under:-

Posts	Number of posts created
Director	10
Deputy Secretary / Under Secretary	54
Section Officer	1405

Thus, there was an overall increase of 1469 posts in the entire CSS. By that time, quite a good number of posts were already vacant at higher levels. The exercise to fill up the newly sanctioned posts and the existing vacancies was started soon after the final decision was taken and was completed in the year 2009. It so happened that on account of upward movement of the officers of various categories, from one stage to another, the posts of Assistants became vacant. Steps were taken to fill these posts of Assistants,

by promoting that number of UDCs. This resulted in 2151 posts of UDCs becoming vacant. Large scale promotion of LDCs as UDC, became necessary.

5. It needs to be mentioned that for the post of UDC, there are two channels of appointment; (i) the promotion on seniority basis to the extent of 75% and (ii) remaining 25% by conducting Limited Departmental Competitive Examination (LDCE). Department of Personnel & Training (DoPT) issued an O.M. dated 03.05.2012 indicating the steps, to be followed in this behalf. Directions were issued to fill the vacancies duly following the ratio indicated above. It was also mentioned that since the Recruitment Rules of CSS were amended in the year 2003, the select list of UDCs for the year 2003 shall be treated as an extended one, to fill up 1614 vacancies of UDCs through seniority quota and 537 by LDCE. Another direction was that if there exist any LDCs, who cleared the LDCE in the year 2003, but were not appointed for want of vacancies, they shall be treated as qualified to fill 537 vacancies and remaining posts in that category shall be filled by conducting the special LDCE.

6. The posts were filled by drawing the candidates from left over list of LDCs, who were qualified in LDCE, conducted in the year 2003 and by conducting a special test. In the context of arranging the persons so appointed, several disputes arose. When an attempt was made to place the newly appointed UDCs against the LDCE category against 537 vacancies, above the UDCs, who

were already promoted as UDCs between 2004 and 2009 under both the categories, O.A. No.248/2012 was filed. It was allowed, holding that the persons, appointed in the year 2012, cannot be treated as seniors retrospectively to those, who have already been appointed earlier to such appointments. Reliance was also placed upon several judgments of the Hon'ble Supreme Court.

7. Some of the aggrieved private respondents in that O.A. filed W.P. (C) No.209/2013 & batch. The said W.P. was allowed and certain directions were issued in the context of fixing the seniority between the UDCs of different categories. This, in turn, was taken to Hon'ble Supreme Court by filing C.A. No.7407/2018 (SLP (C) No.10342/2015). However, the issue that was canvassed before the Hon'ble Supreme Court was that some UDCs were promoted, though they did not hold the requisite qualifications. Taking that into account, the Hon'ble Supreme Court, through its order dated 31.07.2018, left it open to the aggrieved parties to make representation(s).

8. The applicants contend that since a large number of vacancies have arisen on account of cadre restructuring in the year 2009, promotions to the post of UDCs could have been made in the regular course and invariably, the persons, appointed subsequent to 2009, must figure as juniors to those, who have been appointed earlier, be it under the seniority quota or LDCE category. They submit that the respondents went on making one experiment after the other by tossing the persons in the seniority

list as per their wishes and hardly there was any consistency, rhyme or rhythm, in the entire exercise.

9. The applicants contend that as many as 9 lists were prepared at one stage or the other and hardly there was any consistency. It is stated that the applicant No.1 in O.A. No.4700/2015, by the name Ms. Sugam Arora, who was at a higher place in the list of 2012, was pushed to the lowest in the bottom, without any basis or reasons. The applicants contended that the whole exercise smacks of arbitrariness and violation of the settled principles of seniority and appointment.

10. The respondents filed counter affidavits opposing the O.As. It is stated that 2151 vacancies were treated as part extended select list for the year 2003 and accordingly, the persons, appointed against such vacancies, were placed in the respective places in the seniority. It is also stated that the applicants cannot have a valid grievance against the exercise, which was undertaken in accordance with the relevant Rules.

11. The subject matter of these O.As. is the post of UDC in CSS. Promotions to that post are regularly taking place in the proportions of 3 : 1 between the promotees and LDCE qualified candidates, respectively, year after year. For promotion to the post of UDC, under seniority category, an LDC must have 8 years of service. In the context of LDCE, LDCs, who have completed 5 years of service, are eligible to appear in the examination and if

found successful therein, they would be appointed to the extent of the vacancies earmarked for that. It is axiomatic that if an LDC appeared in the LDCE of a particular year, but was not promoted for want of vacancy, he can appear in the examinations conducted in subsequent years and if he is not successful for three consecutive years, he automatically gets eligibility to be promoted in the seniority quota. Hardly there exists any occasion for an LDC to languish in that phase, even after his immediate junior is promoted under the seniority category.

12. All the applicants herein were promoted to the post of UDC between 2004 and 2009, be it under the seniority quota or LDCE. None of the LDCs has challenged their promotion, nor there existed any complaints that their seniority has been overlooked when the applicants herein were promoted or that anyone has been denied promotion wrongfully. Some of the applicants have been promoted to higher posts or have been extended the benefit of Non Functional Selection Grade (NFSG).

13. As observed earlier, in the year 2009, as many as 2151 posts of UDCs became vacant on account of *en bloc* promotion of the existing UDCs to the post of Assistants. The Recruitment Rules were amended in the year 2010 to incorporate the newly created vacancies in the respective cadre strength of posts other than UDC. However, they were deemed to have been amended with retrospective effect, i.e. from 03.10.2003. The cadre strength or other particulars of the post of UDC remained un-amended.

14. The entire confusion arose on account of an O.M. dated 03.05.2012 issued by the DoPT. It reads as under:-

“The undersigned is directed to say that it has been decided, with the approval of the Competent Authority, to extend the Select List Year 2003 of UDCs by including the names of additional 2151 UDCs in the Select List Year 2003 against the vacancies caused in the grade of UDCs for the Select List Year 2003 consequent upon promotion of 2151 UDCs to the Assistant Grade subsequent to the Cadre Restructuring of CSS. Accordingly, it has been decided to extend the List by filling up 2151 slots in the Select List Year 2003 (extended) in the following manner:

- (i) The 2151 slots will be filled up in accordance with CSCS Rules/Regulations as applicable at that time by 75% through Seniority Quota(SQ) and 25% through LDCE quota. As such, out of 2151 vacancies in the grade of UDC in the Select List of 2003 (Extended), a total number of 1614 slots will be filled up by SQ candidates and 537 by LDCE qualified candidates in the ratio of 3:1.
- (ii) The seniority quota slots will be filled up by eligible LDCs who had completed 8 years of approved service as on 01.07.2003.
- (iii) As for LDCE slots, candidates who had qualified the LDCE 2003 and their ACR dossiers were called for by SSC but could not be recommended for appointment due to non-availability of sufficient number of vacancies in the SL year 2003 under LDCE mode, will be first accommodated against the available vacancies and for remaining slots SSC will conduct Special LDCE for UDC for the Select List Year 2003 (extended) and all the LDCs who had rendered five years of service as on 01.07.2003 would be eligible to appear in the Limited Departmental Competitive Examination.

2. However, extension of Select List Year 2003 is subject to the outcome of the OA No. 248/2010 filed by Sh. Pankaj Kumar Mishra & Other before CAT Principal Bench, New Delhi. The Cadre Units are requested to verify the names of the UDCs included in the annexed list to this OM and also to circulate the list amongst the UDCs to enable them to point out discrepancies, if any, and send the same to this Department latest by 11th May, 2012.”

(emphasis supplied)

15. From this, it becomes evident that 2151 vacancies of UDCs were directed to be treated as part of select list of 2003. It is just un-understandable as to how, promotions to be effected in the year 2012 can be treated as part of select list of 2003. It is not as if the promotions did not take place in the year 2003 or thereafter. No amendments were made as regards the post of UDC. On account of this imagination, the respondents proceeded, as though the appointments to the post of UDC from the year 2003 onwards have to be undertaken afresh. Even the UDCs, who have been appointed between 2004 and 2009, were treated as occurring in the select list, notwithstanding the fact that they have not only been promoted to that post, but also were promoted to higher posts.

16. In Annexure to the O.M. dated 03.05.2012, a draft seniority list is appended; the beginning part of which reads as under:-

Sl. No.	S.No.	Name Shri/Smt/ Km.	Date of	Category	SL	Quota	Rank	Cadre where working
1.		A.K. Tomar	07/01/1959	Gen.	2004	SQ		Home Affairs
2.		Bishamber Dutt	15/12/1958	Gen.	2004	SQ		Earth Sciences
3.		Thakur Prasad	19/08/1961	Gen.	2004	SQ		Telecom.
	1					LDCE		
4.		Deepak Chadha	13/06/1972	Gen.	2004	SQ		Telecom.
5.		Sridevi Sridhar	05/06/1968	Gen.	2004	SQ		Telecom.
6.		S. Malini	21/04/1968	Gen.	2004	SQ		Telecom.
	2					LDCE		
7.		Meenakshi Gupta	03/05/1967	Gen.	2004	SQ		Expenditure

8.		Virender Kumar Luthra	30/03/1970	Gen.	2004	SQ		Expenditure
9.		Niranjan Prasad	01/05/1968	Gen.	2004	SQ		Expenditure
	3					LDCE		
10.		Latika Bhojwani	30/05/1972	Gen.	2004	SQ		Expenditure
11.		Mini Sebastian	23/11/1967	Gen.	2004	SQ		Posts
12.		Anitha S. Panicker	20/05/1967	Gen.	2004	SQ		Posts
	4					LDCE		
13.		Rajiv Sharma	07/09/1966	Gen.	2004	SQ		Posts
14.		Vivek Sharma	30/04/1971	Gen.	2004	SQ		Posts
15.		J.S. Nimje	05/07/1965	Gen.	2004	SQ		Agri. & Coop.
	5					LDCE		
16.		L.K. Khadgi	13/10/1965	Gen.	2004	SQ		Agri. & Coop.
17.		Krishan Kumar	16/11/1957	Gen.	2004	SQ		Labour
18.		Prithi Chand	10/07/1954	Gen.	2004	SQ		Labour
	6					LDCE		
19.		Rakesh Kumar Gupta	15/09/1967	Gen.	2004	SQ		Labour
20.		Sugam Arora	29/08/1974	Gen.	2004	SQ		Labour
21.		Dev Dutt	06/08/1968	Gen.	2004	SQ		Expenditure
	7					LDCE		
22.		Sandeep Dhingra	02/07/1967	Gen.	2004	SQ		Expenditure
23.		Madan Mohan Thakur	18/02/1968	Gen.	2004	SQ		Expenditure
24.		Anjali Agarwal	20/03/1968	Gen.	2004	SQ		I&B
	8					LDCE		
25.		Raj Kumar	10/07/1958	Gen.	2004	SQ		I&B

17. It needs to be noticed that though the slots were left for LDCE category, such appointments have already been made in the years 2004, 2005, 2006, 2007, 2008 & 2009. Added to that, all the persons shown in the list have already been promoted in the year 2004 itself, as indicated in the list. It is just not understandable as to how the official, who has been promoted to

the post of UDC in year 2004 or later, can be shown in the select list for the year 2003 by calling it an extended one, as late as in the year 2012.

18. Whenever the appointments are made either in the regular course or to fill a large number of vacancies that have arisen on account of re-organization of the cadre, invariably, the newly appointed officials (in the present cases, the UDCs), have to be placed immediately after the last candidate, appointed up to that date. The occasion to place a person subsequently appointed above the one, who was appointed earlier, would arise only when a Court of law decides that the former has been wrongfully denied the promotion and his place is to be restored. No such event has occurred in these cases.

19. In the category of LDCE also, the said O.M. dated 03.05.2012 created confusion. It mentioned that if the Lower Division Clerks, who were qualified in the LDCE held in the year 2003 but were not promoted for want of the vacancies, they shall be treated as eligible to be promoted against the 537 vacancies meant for LDCE that became available in the year 2009. This statement ignores the fact that (a) the candidate, who qualified in the LDCE conducted in the year 2003 but was not appointed for want of the vacancies, has a chance to appear in the subsequent examinations and to get promoted; and (b) even if he was not successful for three consecutive years, he acquired the eligibility to

be promoted on completion of 8 years of service under the promotion quota.

20. Whatever may have been the justification or purpose in appointing the candidates that were left over in the LDCE held in the year 2003, the question of their being placed above any of the UDCs promoted upto the year 2009, under whatever category, does not arise.

21. On account of an imaginary and totally uncalled for exercise undertaken by the respondents, almost a devastating result has emerged. This can be demonstrated by taking the example of one of the applicants, whose name figured in almost all the lists. Ms. Sugam Arora, applicant No. 1 in O.A. No.4700/2015 was appointed as UDC, on her getting qualified in the LDCE held in the year 2004. On account of *en bloc* promotions of 2151 UDCs, she rose to Sl.No. 20 in the list of the UDCs by 2009. In the list appended to O.M. dated 03.05.2012, she was shown at Sl.No. 20 (See paragraph 15 above).

22. It may be noticed that though her promotion was under the LDCE category, she was shown against the seniority quota. The abnormalities do not stop at this. In the list of 2013, she was pushed down to Sl.No. 29 and in the context of NFSG, she was shown at Sl.No.25. With slight change on 19.06.2015, she was shown at Sl.No.27. Suddenly, in the list dated 06.11.2016, she was pushed down to Sl.No.1938. One just cannot imagine such a devastating exercise. Added to this, she was shown slightly above

in the list dated 02.11.2015, at Sl. No. 1842. Similar detriments occurred to all the applicants herein.

23. The stock answer given by the respondents is that 2151 UDCs were appointed against the extended select list of the year 2003 and the persons so appointed were interspersed in the seniority list of UDCs. This is totally arbitrary and cannot be sustained in law. It is fairly well settled that (a) no person can be appointed from the date anterior to the date on which he is actually appointed; and (b) the seniority of an existing employee cannot be disturbed unless it is established that the persons, who are sought to be placed above him, have been wrongfully denied the appointment / promotion. No such instances have taken place in these cases.

24. This Tribunal discussed some of these facets in O.A.No.248/2012. In W.P. (C) No.209/2013 & batch, the Hon'ble Delhi High Court indicated certain guidelines. The attention of their Lordships was drawn to these anomalies. The Hon'ble Supreme Court dealt with totally different aspect, namely, the promotions of persons, who are not qualified.

25. Under these circumstances, we allow these O.As. and direct:

(a) None of the UDCs appointed against 2151 vacancies subsequent to year 2009 shall be placed above any of the UDCs

appointed up to that date and they shall take seniority in accordance with the dates of their appointment.

(b) The seniority and other benefits that accrued to the applicants up to 03.05.2012 shall remain intact and any proceedings that ensued adversely affecting the same, shall stand set aside.

26. In view of the aforesaid order, all pending M.As. shall stand disposed of.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

January 9, 2019
/sunil/