

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

**OA- 590/2013, MA-2045/2014, MA-2046/2014,
MA-3145/2014, MA-857/2014, MA-449/2013, MA-
2756/2013**

With

**OA-3921/2013, MA-2039/2014, MA-3165/2014, MA-
2967/2013, MA-2040/2014**

With

OA 4205/2013, MA-2047/2014, MA-2048/2014

New Delhi this the 11th day of September, 2019.

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

1. OA No. 590/2013

1. Radhe Shyam Singh,
S/o Sh. Ram Dayal Singh,
R/o 11/4A, Sec-2, Gole Market,
New Delhi.
2. Seema Kalra,
W/o Sh. Sanjay Kalra,
R/o 162, Double Storey,
New Rajendra Nagar,
New Delhi.
3. Davinder Singh Sachdeva,
S/o Late Sh. S. S. Sachdeva,
R/o A-337, Moti Bagh-,
New Delhi.
4. Bimla Kalra,
W/o Sanjeev Kalra,
R/o SE-558, Shastri Nagar,
Ghaziabad, U.P. 201002.
5. Sushma Bhardwaj,
W/o N. K. Sharma,
R/o DG-846, Sarojini Nagar,
New Delhi.

6. Vinod Kumar Kashayap,
S/o Late Sh. R. L. Kashyap,
9/26, R. K. Puram,
New Delhi.
7. K. M. Krishnan,
S/o K. Kalyan Sundaram,
R/o Plot No. 21 Flat-24D,
Gyatri Apartments,
Sec-9, Rohini,
Delhi – 110085.
8. Lalit Mohan Upadhyay,
S/o Late Sh. T. D. Upadhyay,
R/o II RM-135, Rajendra Nagar,
Sector – 2 shaibabd,
U.P.
9. Pashpa Pandey,
W/o Lalit Pandey,
R/o 857/XII R. K. Puram,
New Delhi – 22.
10. S. K. Sharma,
S/o Sh. Yash Pal Sharma,
R/o 148 Sec-9, R. K. Puram,
New Delhi.
11. Sanjay Kumar Jha,
S/o Late Sh. Nand Kishor Jha,
R/o Qr. No. 544, Laxmi Bai Nagar,
New Delhi-23.
12. Yogesh Taneja,
S/o Late Sh. G. L. Taneja,
R/o H. No. 4613-14, first Floor,
Sec-3, Pocket-II,
Faridabad (Haryana).
13. S. Subhash,
S/o Late Sh. S. S. Nair,
R/o B-2714, Netaji Nagar,
New Delhi – 23.
14. K. Balasubramiam,
S/o Shri R. Krishnamurthy,
R/o G-2314, Netaji Nagar,

New Delhi.

15. Asha B. Philip,
W/o Shri Benny K. Philip,
R/o 19-B, Pocket-B,
Mayur Vihar, Phase.II,
Delhi.

...Applicants

Versus

Union of India & Ors through:

1. The Secretary,
DOP&T, (CS-II Division)
Lok Nayak Bhavan,
New Delhi.
2. The Secretary,
Staff Selection Commission,
CGO Complex, Lodhi Road,
New Delhi.
3. Dilip Kumar Gupta,
S/o Shri M. C. Gupta,
R/o 320, Mahagun Villa,
Sector-4,
Vaishali, Ghaziabad, U.P.
4. Ms. Neelu,
D/o Shri R. P. Chawla,
R/o H. No. 5180, Gali No. 4,
Krishan Nagar, Karol Bagh,
New Delhi.
5. Ranjit Kumar,
S/o Shri Satyanarain Prasad,
R/o J-831, Kali Bari Marg,
New Delhi.
6. Asim Kumar Nag,
S/o Shri Ramesh Chandra Nag,
R/o B-309, Sarojini Nagar,
New Delhi.
7. Vikas Kuamar,
S/o Shri Birendra Kumar,
R/o R-402, Vrindavan Heights,
20-A Vrindavan Garden,

Sahibabad, Ghaziabad, U.P.

8. Shailendra Tripathi,
S/o Shri Hargovind Tripathi,
R/o H. No. 24, St. No. 22,
A-2 Block, Santnagar, West (Burari)
Delhi.
9. Udaveer Singh Baghel,
S/o Shri Chob Singh Baghel,
R/o H. No. 420, H-Block, Type.II,
Kali Bari Marg,
New Delhi.
10. Ms. Asha M. Nair,
D/o Shri M. Bhaskaran Nair,
R/o H-101, Yamuna Apartments,
Alaknanda,
New Delhi.
11. Shri Sanjay Kumar,
S/o Shri Gajendra Prasad Yadav,
R/o982/S-2,
Shalimar Garden Extn.I,
Sahibabad, Ghaziabad, U.P.

...Respondents

2. OA No. 3921/2013

1. Amarjeet Singh,
S/o Sh. Harbhajan Singh,
R/o L-2/81, New Mahavir Nagar,
New Delhi.
2. N. V. Rao,
S/o late Shri N. P. Rao,
R/o 45-c, Sector-IV, Gole Market,
New Delhi.
3. Bharat Bhushan Upadhyay,
S/o Late Sh. Chandra Bhushan,
R/o Sector-2/465, Sadiq Nagar,
New Delhi.
4. P.S.V.K. Viswanadham,
S/o late Shri P. Krishna Murthy,
R/o D-613, Sarojini Nagar,

New Delhi.

5. Umesh Kumar Bharadwaj,
S/o late Shri G. R. Bhardwaj,
R/o GI-936, Sarojani Nagar,
New Delhi.
6. Subhasis Roy,
S/o Sh. J. M. Roy,
A-56A, Deepak Vihar,
Uttam Nagar,
New Delhi.
7. Neeraj Kumar,
S/o Shri Rajendra Kumar,
R/o A-589, Palam Vihar,
Gurgaon.

...Applicants

Versus

Union of India & Ors through:

1. The Secretary,
DOP&T, (CS-II Division)
Lok Nayak Bhavan,
New Delhi.
2. The Secretary,
Staff Selection Commission,
CGO Complex, Lodhi Road,
New Delhi.

...Respondents

3. OA No. 4205/2013

1. Surit Dhar Chowdhury,
S/o Sh. S. Dhar Chowdhury,
R/o F-1092, Chittaranjan Park,
New Delhi – 110019.
2. Jawaharlal Padhee,
S/o Sh. L.P. Padhy,
R.o. 104-C, Pocket-2,
Sector-VI, DDA Flats,
Dwarka, New Delhi – 110075.

...Applicants

Versus

Union of India & Ors. through:

1. The Secretary,
DoP&T, (CS-II Division)
Lok Nayak Bhavan,
New Delhi.
2. The Secretary,
Ministry of Road Transport & Highways,
Parivahan Bhawan,
Sansad marg,
New Delhi.
3. The Secretary,
Ministry of Agriculture,
Dept. of Agriculture and Cooperation,
Krishi Bhawan,
New Delhi.

(Advocate for applicant: Mr. M. K. Bharadwaj)

(Advocates for respondents: Mr. R. V. Sinha with Mr. Amit Sinha, Ms. Aishwarya Dobhal for Mr. Hilal Haider, Ms. Anshita Rao for Mr. Naresh Kaushik and Mr. S. K. Tripathi for Mr. Gyanendra Singh)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman :

In these three OAs common questions of facts and law arise. Hence, these are disposed of through a common judgment.

2. The applicants joined the Central Secretariat Clerical Service as LDCs at different points of time. They were also promoted to the post of UDC. Next promotion is to the post of Assistant, as provided for under the Central Secretariat Service (CSS) Rules, 1962 (for short, the Rules). The appointment to the post of Assistant is by way of direct recruitment to the extent of

50% and by way of promotion against the remaining 50%. According to 2nd Proviso to Rule 13 (6A) of the Rules, if adequate number of candidates are not available for filling up the vacancies of Assistant, by way of direct recruitment, the unfilled vacancies in that post shall be filled by UDCs included in the Select List for promotion to Assistant.

3. The applicants contends that for the vacancy years 2003 to 2006, 156 posts of Assistants remained unfilled in the direct recruitment category and despite the mandate under the 2nd proviso they were not diverted to promotion category and thereby, the chances of their promotion were diminished or their promotions were delayed. With this background, they filled these OAs with prayer to declare the action of the respondents in not promoting them against the 156 unfilled vacancies, meant for direct recruitment to the post of Assistant referable to the recruitment years 2003-2006, as illegal arbitrary and to direct the respondents to promote them against the said unfilled vacancies.

4. The applicants contends that the very purpose of making the provision for diverting the unfilled vacancies of direct recruitment category was to ensure that the administration does not suffer and despite that, required steps were not taken by the respondents at relevant point of time. It is stated that

the delay in this behalf has its own cascading effect on the applicants and the similarly situated persons.

5. In certain OAs, private parties were also impleaded. The official respondents on the one hand and the private respondents on other filed separate counter affidavits. According to them, the proviso gets applied, if only the candidates were not available to fill the vacancies for direct recruitment and in none of the recruitment years referred to above, there was any dearth of candidate for appointment through direct recruitment. It is stated that orders of appointment were issued in respect of all the vacancies and the mere fact that some of the candidates did not join or have resigned later, does not confer any right on the applicant; to get promoted against such vacancies, out of turn.

6. We heard Mr. M. K. Bharadwaj, learned counsel for the applicants and Mr. R. V. Sinha with Mr. Amit Sinha, Ms. Aishwarya Dobhal for Mr. Hilal Haider, Ms. Anshita Rao for Mr. Naresh Kaushik and Mr. S. K. Tripathi for Mr. Gyanendra Singh, learned counsel for the respondents.

7. The applicants joined the service as LDCs and were also promoted as UDCs. The feeder post for promotion to the post of Assistant is UDC. Appointment to the post of Assistant is by way of promotion to extent of 50% and by way of direct

recruitment for the remaining 50 %. The relevant rule reads as under:-

“(6) ASSISTANTS’ GRADE

Fifty per cent of the regular vacancies in the Assistants’ Grade in any cadre shall be filled by direct recruitment on the basis of results of a competitive examination held by the Staff Selection Commission for this purpose, from time to time and the remaining vacancies shall be filled by regular appointment of persons included in the Select List for the Assistants’ Grade in that cadre.

(6A) The appointments under sub-rule (6) of the persons whose names have been included in the Select List shall be made in the order of seniority in that Select List:

Provided that where a person is not considered fit for such appointment in his turn, the reasons therefore shall be recorded in writing:

Provided further that if sufficient number of candidates are not available for filling up the vacancies in a cadre in any recruitment year by direct recruitment, the unfilled vacancies in that cadre shall be filled by appointment of persons included in the Select List of Assistants’ Grade in that cadre.”

8. The second proviso added to Rule (6A) is to the effect that in case adequate candidates are not available for direct recruitment the vacancies can be filled by appointment of candidates included in the select list. The expression “not available for filling up the vacancies” assumes significance in this regard. The occasion to divert the vacancies for direct recruitment would arise if the candidates for direct recruitment are not available. Even according to the applicants, and the information furnished in the counter affidavit, not a single vacancy meant for direct recruitments remained unfilled, in the three years referred to above. Against every vacancy that was

referred to Staff Selection Commission, candidates were recommended and orders of appointment were issued.

9. It is not uncommon that in every service and at every level, some of the candidates would not join or leave the service after joining, if they get a better opportunity. Such vacancies cannot be treated as remaining unfilled, at least from the point of view of proviso. The candidates were very much available for filing up the vacancies and were in fact appointed. It may be incidental that a few of them did not join or have left the service shortly after joining. In such cases the proviso does not get attracted at all.

10. Another important aspect is that relief is claimed in respect of vacancies referable to the year 2003-06. The OAs are filed in the year 2013, nearly a decade thereafter. None of the applicants were in the select list of the Assistants from the feeder category at that point of time. The applicants intend to deploy a very far fetched and impermissible logic viz that had their seniors been promoted to those vacancies at that time, they would have been promoted against the resultant vacancies much earlier. This has to be noted only to be rejected. It is brought to our notice that the proviso has since been dropped.

11. We do not find any merit in the OA. The same is, accordingly, dismissed. Pending MAs shall stand disposed of. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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