

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.991/2003

New Delhi, this the 30th day of November, 2004

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K. Naik, Member (A)**

1. Sh. Vijay Kumar
S/o (Late) Sh. Chuni Lal
31/A, Pocket-A, Mayur Vihar
Phase II, Delhi.
2. Shri Raj Kumar Gathwal
S/o Sh. M.R.Gathwal
180-Kirbi Place, Sainik Farm
Delhi Cantt.
3. Smt. L.Indumathy
W/o Sh. Rakesh Sharma
B-501, M Apartments
K.G.Marg, Nea Delhi -1.
4. Sh. Narain Dass
S/o Sh. Bishan Dass
48/4, Ashik Nagar
New Delhi - 110 018.
5. Shri A.K.Singh
S/o (Late) Shri Siya Ram
36, Anamika Apartments
99, I.P.Ext., Delhi - 110 092. .. **Applicants**

(By Advocate: Sh. V.S.R.Krishna)

Versus

1. Union of India through
The Secretary
Ministry of Personnel, PG & Pension
Department of Personnel & Training
Government of India
North Block
New Delhi.
2. Sh. S.K.Verma
S/o Shri S.L.Verma
R/o DII/364, Pandara Road
New Delhi.
3. Shri Prabhakar
S/o Capt. B.R.Sharma
R/o 2468, Netaji Nagar
New Delhi.

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4. Shri Vijay Kumar
S/o Late Shri B.L.Srivastava
R/o 20/34, Lodi Colony
New Delhi. ... Respondents

(By Advocate: Sh. K.R.Sachdeva for R-1 and Sh. L.R.Khatana for Rs No.2 to 4).

O R D E R

By Mr. Justice V.S.Agarwal:

The Central Secretariat Service (CSS) consists of the following four grades:

Grade	Classification
Selection Grade (Deputy Secretary)	Group 'A'
Grade-I (Under Secretary)	Group 'A'
Section Officers' Grade	Group 'B' – Gazetted
Assistants' Grade	Group 'B' Non-Gazetted

2. The grades of Deputy Secretaries and Under Secretaries are centralized while other two grades, namely, Section Officers' grade and Assistants' grade are decentralized into 33 cadres. Appointment to the decentralized grades are made cadre-wise by the 33 cadre controlling authorities. The mode of recruitment to the four grades is:

"The modes of recruitment to the four grades are given below:

Grade	Mode of recruitment	Quota	Feeder Grade for promotion/source of recruitment
Selection Grade of CSS (Dy. Secy)	Promotion	100%	Under Secretaries having 5 years qualifying services on the basis of Seniority-cum-fitness.
Grade I of CSS (Under Secretary)	Promotion	100%	Permanent SOs/Private Secretaries of

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			Central Secretariat Stenographers' Service (CSSS).
Section Officers	i) Direct Recrt. ii) Promotion (80%) a) Seniority- cum- fitness b) Limited Dept'l. Exam.	20% 40% 40%	Civil Service Exam. Assistants Assists. & Steno. Gr. 'C' of CSSS with 8 years of service are eligible for consideration.
Assistants	i) Direct Recrt. ii) Promotion (seniority-cum- fitness)	50% 50%	Graduate Level Exam. Upper Division Clerks

3. The promotion of CSS Officers to the grade of Deputy Secretaries and Under Secretaries are made in accordance with CSS (Promotion to Grade-I and Selection Grade) Regulations, 1964 framed under CSS Rules, 1962. For this purpose, selection lists of Deputy Secretaries and Under Secretaries are required to be prepared annually.

4. The select lists of Grade-I Officers (Under Secretaries) had been prepared for the years upto 1986 in accordance with the abovesaid Regulations. The process for preparing the Select List for the year 1987 had also been initiated by issuing the common eligibility list of Section Officers. However, certain promotee Section Officers had filed OA 1659/1987 in this Tribunal challenging the method of preparing the combined eligibility list of directly recruited and promotee Section Officers. This Tribunal on 31.8.1988, held that the 'rota quota' had broken down in case of recruitment to Section Officers grade and, therefore, the combined seniority list of directly recruited and promoted Section Officers

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should be prepared in accordance with the length of continuous service in the grade instead of 'rota quota' basis.

5. The Tribunal had quashed the eligibility list, which had been prepared for the years 1984-87 and a direction was given to recast the same in accordance with the directions that were passed by this Tribunal. In this manner, the select lists for the years 1984-86 and eligibility list of 1987 stood quashed.

6. The Union of India had filed Special Leave Petition in the Supreme Court. The Supreme Court directed that seniority list prepared by the Government in pursuance of its directions should be modified by applying every provision of the relevant rules and regulations. Pursuant to that, a common seniority list of Section Officers was prepared. It was submitted to the Supreme Court on 5.9.1990. The Supreme Court passed its final order on 18.8.1992 in the said Special Leave Petition and directed the Union of India to finalise the seniority list after considering the objections submitted by the affected parties. The seniority list had been prepared and the same was issued on 29.1.1993.

7. The said seniority list was challenged before the Tribunal in OA 996/1993 entitled **AMRIT LAL AND OTHERS v. UNION OF INDIA & OTHERS**. The Central Administrative Tribunal on 22.3.1995 had quashed the seniority list holding that it was contrary to the provisions of the CSS Rules and Regulations and a direction was given to the Union of India to prepare it afresh in accordance with the orders passed by the Tribunal.

8. In terms of the directions given by this Tribunal in its order dated 22.3.1995, a final common seniority list of Section Officers was prepared and issued on 15.5.1996. Against the said

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order passed by this Tribunal, certain direct recruit Section Officers had filed Special Leave Petition in the Apex Court. On 9.5.1997, the Supreme Court allowed the Special Leave Petition and directed that the common seniority list issued on 15.5.1996 should be redrawn in accordance with law declared by it. In terms of the directions of the Supreme Court, a common seniority list was issued on 3.12.1997.

9. Consequent to the final decision in the dispute between the promotee and direct recruit Section Officers over their inter-se seniority, the Department of Personnel & Training issued a common seniority list for review of the select lists of Under Secretaries for the years 1984, 1985 and 1986 and preparation of select lists for the subsequent years, i.e., 1987 onwards. On 9.5.2000, the Department of Personnel & Training notified select lists of Under Secretaries, as reviewed, for the years 1984 to 1988. The select lists for the years 1989 and 1990 were also notified on 27.7.2001 and the select lists for the years 1991 to 1994 were notified on 12.8.2002.

10. After having given the brief resume of the earlier litigation, one can conveniently refer to the statutory rules relevant to the question that is involved. As per Rule 12(2) of Central Secretariat Service Rules, 1962, the minimum length of approved service in the grade of Section Officer for promotion to Grade-I of CSS (Under Secretary) is **eight years** (upto the year 1977 it was **ten years**). In 1978, a proviso had been made that Section Officers of general category with minimum of **six years** and all senior Scheduled Caste and Scheduled Tribe officers, irrespective of the number of years of the approved service shall be considered



for promotion to the post of Under Secretaries. Rule 12(2) reads as under:

"(2) Vacancies in Grade I shall be filled by promotion of permanent officers of the Section Officers' Grade who have rendered not less than eight years approved service in that Grade and of permanent officers of the Grade A of the Central Secretariat Stenographers' Service who have rendered not less than eight years ** approved service in that Grade and have worked as Section Officers for at least a period of two years in accordance with the proviso to rule 10 and are included in the Select List for Grade I of the Service prepared under sub-rule (4):

Provided that an officer of the Grade A of the Central Secretariat Stenographers' Service who has not worked as a Section Officer for the said period of two years shall also be considered for promotion to Grade I if he is otherwise eligible for such promotion and the Central Government in the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs, for reasons to be recorded in writing, are satisfied that such a person was not appointed to the Section Officers' Grade in the exigencies of service:

Note:- Omitted.*

Provided further that no person included in a later Select List shall be eligible to be appointed to the Grade until all officers included in an earlier Select List have been appointed:

- [Note omitted vide Notification No.8/20/75-CS(I) dated 14-7-77]
** [vide DP&AR's Notification No.4/52/78-CS-I dated 27-11-78]

*Provided further that if any person appointed to the Section Officers' Grade is considered for promotion to Grade I under this sub-rule, all persons senior to him in the Section Officers' Grade, belonging to the Scheduled Castes and Scheduled Tribes, who have rendered not less than four years' approved service in that Grade shall also be considered for promotion.

Provided further that an officer of Grade B of the Central Secretariat Stenographers' Service appointed to the Section Officers' Grade against the Stenographers' quota before the appointed



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day who ranks senior to any of the permanent Section Officers eligible to be considered for promotion to Grade I of the Central Secretariat Service under the third proviso shall also be eligible to be considered for such promotion notwithstanding that he may not have been substantively appointed to the Section Officers' Grade.

Note:- The provisions contained in the fourth proviso shall apply to the officers in Grade B (hereinafter grade A) of the Central Secretariat Stenographers' Service appointed to the Section Officers' Grade before the appointed day, who finally opt to continue in the Section Officers' Grade after the coming into force of the Central Secretariat Stenographers' Service Rules, 1969."

11. On 8.3.1999, the said rules were amended and the relevant portion of it is as under:

"G.S.R. (E) In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Central Secretariat Service Rules, 1962, namely:-

1. (1) These rules may be called the Central Secretariat Service (2nd Amendment) Rules, 1999.

(2) They shall come into force from the date of their publication in the official Gazette.

2. In the Central Secretariat Service Rules, 1962,-

(a) in rule 12, in sub-rule (2), the third proviso shall be omitted;

(a) in rule 13, in sub-rule (2), the second proviso shall be omitted;"

12. In this process, vide amendment of 29.12.1984, all general category officers after **eight years** of approved service, were eligible to be considered. The clause relating to consideration of seniors with reference to juniors was retained in case of Scheduled Caste and Scheduled Tribe Section Officers. But, a requirement of four years approved service in the grade of Section Officer was

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prescribed for Scheduled Caste and Scheduled Tribe officers to be eligible for consideration for promotion. Vide amendment that was effected in 1999, this particular clause giving certain benefits to the Scheduled Castes and Scheduled Tribe officers who were eligible on conditions which we have reproduced above, had been omitted.

13. The applicants were appointed as direct recruit Section Officers in CSS. They belong to the category of Scheduled Caste and Scheduled Tribe. Their contention is that under the third proviso to Rule 12(2) of CSS Rules, as it stood and till amended in the year 1999, they were entitled to the benefit of the said proviso. The amendment made is **prospective in nature**. The applicants have to be considered for the select lists of the earlier period. Their contention is that the said benefit of the third proviso to Rule 12(2) of the CSS Rules is being denied to them.

14. By virtue of the present application, they seek quashing of the orders of 27.7.2001 and 12.8.2002 through which the official respondents had finalized the select lists of Officers of the CSS for the years 1987, 1988, 1989 and 1990 to 1994 for appointment to Grade-I (Under Secretary) of the Service. They further seek a direction to the respondents to ~~prepare~~ a revised select list in accordance with the relevant provisions of the said third proviso as it stood before the amendment.

15. Needless to state that the application is being contested by the respondents. Respondent No.1 has filed a separate reply while Respondents No.2 to 4 have filed their own replies denying the right of the applicants in this regard.



16. We have heard the parties' counsel and have seen the relevant record.

17. Learned counsel for the applicants, at the outset urged that the private respondents neither have any right nor locus standi because the applicants have challenged the general principles in which the said lists have been prepared. In our considered opinion, the argument has to be rejected. This is for the reason that MA 2335/2003 had been filed by these private respondents seeking that they should be arrayed as parties. On 27.11.2003, this Tribunal had considered the said application and held that the panel list is vested with a vital interest. The rights of the private respondents were being affected and therefore, they were arrayed as parties. This clearly shows that this question had already been adjudicated and consequently, the argument of the applicants' learned counsel necessarily must fail.

18. As already referred to above, the plea of the applicants is that their claim has to be considered on the basis of the Rules before the same were amended in the year 1999 because the panels have been prepared for the period earlier to 1999. Resultantly, they urged that the same had to be prepared in accordance with the third proviso to Rule 12(2) to which we have already referred to above.

19. Strong reliance in this regard was placed on the decision in the case of Y.V.RANGAIAH & ORS. v. J. SRINIVASA RAO & ORS., (1983) 3 SCC 284. The Supreme Court was consigned with the matter where panel for promotion was being prepared. There was a delay in preparing the same, which resulted in depriving of chances of promotion. There were certain amendments that had

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been affecting the promotional chances of eligible LDCs. The Supreme Court held that the panel should have been prepared as per the un-amended Rules. The findings of the Supreme Court in this regard are:

“9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than respondents 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade-II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.”

20. This decision of the Supreme Court had been considered in the case of **DR. K. RAMULU & ORS. v. DR. S. SURYAPRAKASH RAO & ORS.**, JT 1997(2) SC 80. The Supreme Court in the cited case had held that the concerned person had not acquired any vested right for being considered for promotion in accordance with repealed Rules. A clear distinction had been drawn where a conscious decision had been taken not to fill up the posts till the rules are amended. The Supreme Court held:

“14. It is seen that since the Government have taken a conscious decision not to make any appointment till the amendment of the Rules, Rule 3 of the General Rules is not of any help to the appellant. The ratio in the case of *Ramesh*

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Kumar Choudha & Ors. v. State of M.P. & Ors., JT 1996 (9) SC 528 = (1996) 7 SCALE 619] is also not of any help to the respondent. Therein, this Court had pointed out that the panel requires to be made in accordance with the existing Rules and operated upon. There cannot be any dispute on that proposition or direction issued by this Court. As stated earlier, the Government was right in taking a decision not to operate Rule 4 of the General Rules due to their policy decision to amend the Rules. He then relies on paragraph 14 of the unreported judgment of this Court made in *Union of India v. S.S.Uppal & Anr.* JT 1996(1) SC 258 = (1996) 1 Unreported Judgments (SC) 393]. Even that decision is not of any help to him. He then relies upon the judgment of this Court in *Gajraj Singh etc. v. The State Transport Appellate Tribunal & Ors. etc.* JT 1996(8) SC 356 = (1996) 7 SCALE 31] wherein it was held that the existing rights saved by the repealed Act would be considered in accordance with the Rules. The ratio therein is not applicable because the existing Rules do not save any of the rights acquired or accruing under the Rules. On the other hand, this court had pointed out in paragraph 23 thus:

“Whenever an Act is repealed it must be considered, except as to transactions past and closed, as if it had never existed. The effect thereof is to obliterate the Act completely from the record of the Parliament as if it had never been passed it, (sic) it never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was existing law. Legal fiction is one which is not an actual reality and which the law recognizes and the court accepts as a reality. Therefore, in case of legal fiction the court believes something to exist which in reality does not exist. It is nothing but a presumption of the existence of the state of affairs which in actuality is non-existent. The effect of such a legal fiction is that a position which otherwise would not obtain is deemed to obtain under the circumstances. Therefore, when Section 217(1) of the Act repealed Act 4 of 1939 w.e.f. July 1, 1989, the law in Act 4 of 1939 in effect came to be non-existent except as

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regards the transactions, past and closed or save."

21. In this process, the law, therefore, is not a subject matter of controversy. In the case of **Y.V.Rangaiah (supra)**, the Government therein had amended the Rules and applied the amendments without taking any conscious decision in order to fill up the posts pending amendment rules on the date. The new rules came into force. This was not true in case of **K. Ramulu (supra)**. Therefore, if the Rules were amended without taking a conscious decision, in that event, with respect to panels that had been prepared for the earlier period i.e. before the amendment, the unamended Rules would hold the field.

22. However, learned counsel for the private respondents eloquently pointed that the precedent could not be applied in discriminatory manner. According to him, as per the third proviso to Rule 12(2) of the CSS Rules, the members of the Scheduled Castes and Scheduled Tribes should have rendered not less than four years of service before they could be considered for promotion. But this is a contingent right, namely, that persons juniors to these persons should be so considered. According to the learned counsel, this contingent right accrued after the amendment of 1999. When the amendment was made and panels were drawn in the year 2000-01, the applicants' claim was rightly rejected. He relied upon the decision of the Supreme Court in the case of **PUNJAB NATIONAL BANK v. R.L.VAID AND OTHERS**, (2004) 7 SCC 698. The decision in the cited case provides us the guidelines that reason must be given as to applicability of a decision in a particular case. We do not dispute the said proposition which binds this Tribunal. But in the present case, we have already



given the reasons and it has to be reiterated that there was no conscious decision brought to our notice which was taken on behalf of the Government that till the Rules are amended, they do not intend to operate the old Rules.

23. Reverting back to the argument of the learned counsel for the private respondents, the plain language indeed reveals that it is a contingent right. The panels were not drawn at the appropriate time because of the prolonged litigation to which we have referred to above in the opening paragraphs of this order. When because of that litigation, the panels and the list could not be drawn, this cannot be termed to be a conscious decision taken by the Government. When the persons juniors to the applicants were being considered, and were being taken in the panels for the period before the amendments, the contingent right would also accrue for the period before the year 1999 when the Rules were unamended. The necessary consequence would be that the applicants' claim has also to be considered as per the rules as it existed before the amendment in the year 1999 and not as it is in the year 2000-2001. When private respondents were given the said benefit, necessarily the contingent right also would mature at the relevant time.

24. In that event, the learned counsel for the private respondents contended that under Section 6 of the General Clauses Act, 1897 when Act is repealed, it is completely obliterated from the records of the Parliament. According to the learned counsel third proviso to Rule 12(2) of the Rules referred to above had been omitted and therefore, he wanted to press Section 6 of the General Clauses Act, 1897 to contend that it was obliterated

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from the records of the Parliament and consequently the applicants cannot take advantage of the same. In support of his claim, he relied upon the decision of the Supreme Court in the case of **GAJRAJ SINGH etc. v. THE STATE TRANSPORT APPELLATE TRIBUNAL AND OTHERS**, AIR 1997 SC 412. To appreciate the arguments, we reproduce Section 6 of the General Clauses Act, which reads:

“6. Effect of repeal.

Where this Act, or any **A**[Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

[A] Substituted for “Act of the Governor-General in Council” by A.O. 1937.”

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25. Plain language of Section 6 would clearly show that this provision comes into play where any Central Act or Regulation made after the commencement of the said Act is repealed and then unless a different intention appears, the repeal shall not revive anything not in force or existing at the time when it was so repealed. There is no dispute with the said proposition.

26. Can the private respondents take advantage of it? In our considered opinion, the answer would be in the 'negative'. Perusal of the provisions as per the Act and action taken on 8.3.1999 clearly shows that this was not a repeal but an amendment of the Central Secretariat Service Rules, 1962. Third proviso to Rule 12(2) of the CSS Rules had been omitted. The amendment is something totally different from the repeal of an enactment. When a particular proviso is omitted, then in that case rigours of Rules/Section 6 of the General Clauses Act has no role to play. We have no hesitation, therefore, in rejecting the said argument so much thought of by the learned counsel.

27. The amendment was made and that was prospective in nature. Resultantly as already referred to above, no conscious decision was taken by the Government. We find little ground to uphold the contentions of the respondents.

28. Before concluding, it would be appropriate to deal with the other minor arguments and the two precedents that were cited at the Bar.

29. It was urged that in the case of **Y.V.Rangaiah (supra)**, the condition precedent was that person concerned should be eligible. That is not so in the present case.

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30. We have already considered this submission and keeping in view the findings recorded above and in face of third proviso to Rule 12(2) of the Rules referred above, the applicants must be held to be eligible because their juniors who had completed eight years service, were taken on the panel.

31. Reliance further has been placed on the decision of the Supreme Court in the case of **R.PRABHA DEVI AND OTHERS v. GOVERNMENT OF INDIA AND OTHERS**, AIR 1988 SC 902. The Supreme Court held:

“13.The Tribunal has held that:

“The qualifications for any post are prescribed having regard to the nature of the post and the duties and responsibilities attached to it. For due discharge of duties attached to a post, academic excellence alone may not be sufficient. Factors like experience over certain number of years in service and holding a post of a certain level are relevant. That gives them the opportunity to deal with several files, handle different situations, tackle varied problems, extract work from subordinates of varying capabilities and serve under superiors with differing styles of functioning. They acquire knowledge of men and matters and the necessary acumen to deal with issues arising from time to time. Academic brilliance and excellent performance at the competitive examinations by themselves cannot wholly substitute experience. They can only supplement. However brilliant a person may be, he needs experience such as can be gathered only by discharging the duties and responsibilities attached to a post. If recruitment to a post is by way of promotion, the minimum number of years one should serve in the lower post would have to be prescribed.

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Valuable experience gained in service better equips a person to shoulder higher responsibilities and man the superior post. Period spent in discharge of duties of a post has nexus to the object of enlisting experienced officers of proven merit with consistent good record over sufficiently long period to man the higher posts by way of promotion."

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16. We do not find any infirmity in the above findings arrived at by the Tribunal.

17. In the premises aforesaid we hold that the third proviso to sub-rule (2) of Rule 12 of Central Secretariat Service rules, 1962 as amended by Notification No.5/8/80-CS.I dated 29th December, 1984 is not ultra vires of Arts. 14 and 16 of the Constitution. The judgement and order of the Central Administrative Tribunal is hereby affirmed and the appeals are dismissed without costs."

32. There indeed cannot be any controversy in this regard. Herein as per the Rules, which would be applicable to the applicants, they fulfil the necessary qualifications. They had four years of service.

33. Lastly, reliance was placed on the decision of the Apex Court in the case of **S.VINOD KUMAR AND OTHERS v. UNION OF INDIA & OTHERS**, (1996) 6 SCC 580. Therein the Supreme Court held that making a provision for lower qualifying marks or lesser level of evaluation is not permissible in view of Articles 16(4) and 335 of the Constitution.

34. As can be noticed from the facts, that there is no lower qualifying marks. Only persons with specific number of years are eligible and thus the ratio decidendi in the case of **S.Vinod Kumar (supra)** will also not apply.

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35. For these reasons, we allow the present application and direct that respondents should prepare the revised Select List in accordance with the third proviso to Rule 12(2) of the CSS Rules, which was in force at the relevant time and consider the claims of the applicants in accordance with law.

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(S.K.Naik)
Member (A)


(V.S. Aggarwal)
Chairman

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