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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 686/2000 with O.A. 1640/2003,
O.A. 2024/2003, O.A. 2046/2003,
O.A. 2047/2003 and O.A. 2057/2003

New Delhi, this the 6th day of July, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, MEMBER (A)

O.A. No. 686/2000:

1. Mahesh C. Arora, D/o Education, R.No. 408 C, Shastri Bhavan, New Delhi
2. Braham Dev, M/o Health & Family Welfare, R.No.504-A, Nirman Bhavan, New Delhi-11.
3. D. Sudhakaran, M/o Consumer Affairs & Public Distribution, Krishi Bhavan, New Delhi-1.
4. J. Vaidhinathan, D/o Industrial Policy & Promotion, Udyog Bhavan, New Delhi-11.
5. D.R. Sharma, R.No.206(III), M/o Defence, South. Block, New Delhi-1.
6. A.S. Dhillon, D/o Company Affairs, R.No.528-A, Shastri Bhavan, New Delhi-1
7. S.R. Pandey, D/o Women & Child Welfare, Jeevan Deep Building, Parliament Street, New Delhi-110 001.
8. J.L. Kakkar, M/o Commerce, Udyog Bhavan, Room No.279-D, New Delhi - 11.
9. N.D. Grover, D/o Youth Affairs & Sports, Shastri Bhavan, New Delhi-1.
10. Sudesh Kumar, M/o Home Affairs, R.No. 11, North Block, New Delhi-1.
11. S.L. Gupta, DGFT, M/o Commerce Udyog Bhawan, New Delhi - 11
12. S.C. Gupta, Directorate of Estate, M/o Urban Development, R.No. 414 C, Nirman Bhavan, New Delhi-110 011.
13. P.K. Varma, M/o Information & Broadcasting, R.No. 543 - A, Shastri Bhavan, New Delhi-1.
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15. Dinesh Chander Bhatt, M/o Urban Development, R.No. 342-C, Nirman Bhavan, New Delhi-11
16. S.K. Grover, D/o Education, Shastri Bhavan, New Delhi-1.

17. K.S. Achar, M/o Env.& Forests, CGO Complex, Pariavaran Bhavan, New Delhi - 3.
18. S.C. Chawla, Ministry of Information & Broadcasting, Pub. Division, New Delhi.
19. N.K. Pushpakaran, M/o Health & Family Welfare, 330 C, Nirman Bhavan, New Delhi-11
20. T.C. James, D/o Education, Curzon Road Barrecks, K.G. Marg, New Delhi-1.
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22. V.J. Menon, M/o Civil Aviation, Rajiv Bhavan, New Delhi.
23. S.K. Verma, D/O Economic Affairs, North Block, New Delhi-1.
24. S.S. Jindal, DGHS, M/o Health & Family Welfare, Nirman Bhavan, R.No. 449 A, New Delhi-11.
25. S.L.S. Himanshu, AIR, M/o Information & Broadcasting, Akashwani Bhavan, New Delhi-1.
26. Satnam Singh, M/o Defence, Room No. 47, A Block, Hutmants, New Delhi-1.
27. T.P. Radhakrishnan, M/o Power, Shram Shakti Bhavan, New Delhi-1
28. U.C. Nangia, Ministry of Home Affairs, North Block, New Delhi-1.
29. A.L. Chawla, M/o Defence, 305 A, Sena Bhavan, D-I Wing, New Delhi-11.
30. P.S. Nair, M/o Steel, R.No. 395 B, Udyog Bhavan, New Delhi-11.
31. N.C. Bag, M/o Power, Shram Shakti Bhavan, New Delhi-1.
32. D.P. Singh, D/o Food & Civil Supplies, Krishi Bhavan, New Delhi-1.
33. P.V. Mathew, DGSD, D/o Supply, Jeevan Tara Building, New Delhi-1.
34. Smt. Rita Mathur, DGFT, M/o Commerce, Room No.109, Udyog Bhavan, New Delhi-11.
35. R.D. Chawla, D/o Food & Civil Supplies, Krishi Bhavan, New Delhi-1.
36. K.C. Chandrabhasan, D/o Telecom, R.No. 522, Sanchar Bhavan, New Delhi-1.
37. P.S. Pillai, Ministry of Home Affairs, North Block, New Delhi-1.

38. Bharat Prasad, D/o Personnel & Training,
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39. Y.R. Nandwani, M/o Commerce, Udyog Bhavan,
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40. Satyavir S. Rana, D/o Food & Civil Supplies,
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(Now on Dep.)

41. Vinod Ratti, M/o Commerce, Udyog Bhavan,
Room No. 224 -C, New Delhi-11.

42. S.K. Bandhopadhyaya,
D/o of Chemicals & Fertilizers, Shastri Bhavan,
New Delhi-1.

43. E.J. Jos, M/o Health & Family Welfare, R.No. 504 A
Nirman Bhavan, New Delhi-11.

44. B.B. Mehtani, M/o Commerce, Udyog Bhavan,
New Delhi-11.

45. N.P. Dwivedi, Air Headquarters,
M/o Defence, R.No.385, Vayu Bhavan,
New Delhi-11.

46. Acqueel Ahmed, D/o Fertilizers, R.No. 205-D,
Shastri Bhavan, New Delhi-1.

47. S.M. Sahariar, D/o Personnel & Training,
Lok Nayak Bhavan, New Delhi-3.

48. Smt. Kiran Kochhar, M/o Defence, South Block,
New Delhi-1.

49. K.S. Bhugra, Ministry of Defence, R.No.15,
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50. G.S. Virdi, Ministry of Defence, South Block, ND-1

51. Prakash Chand, D/o Personnel & Training,
Lok Nayak Bhawan, New Delhi-3.

52. A.N. Chakravarty, D/o Personnel & Training,
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53. L.K. Prasad, Ministry of Home Affairs,
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54. N.K. Dhingra, UPSC, Dholpur House,
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55. T.K.M. Pillai, DGHS, M/o Health & Family Welfare,
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56. M.P. Rao, Deptt. of Steel, Udyog Bhavan,
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57. Puran Chand, UPSC, Dholpur House,
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58. Jaswant Singh, DGHS,
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59. Lala Ram, DGHS, M/o Health & Family Welfare,,
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61. H.R. Jassal, M/o Commerce, Udyog Bhawan
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62. B.N. Nayak, DGHS, M/o Health & Family Welfare,
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63. S.K. Nag, M/o Health & Family Welfare,
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64. Babu Lal, M/o Home Affairs, North Block
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65. Virendra Singh, M/o Welfare, Shastri Bhavan,
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66. S.K. Batra, Banking Division, D/o Economic Affairs,
Jeevandeep, Parliament street, New Delhi-1.

67. Km V. Saraswathy, Deptt. Of Economic Affairs,
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68. Ashok Kumar Sethi, M/o Defence, R.No. 2 C,
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69. D.P. Goel, D/o Chemicals & Fertilizers,
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70. O.S. Narula, M/o Defence, R.No. 15,
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71. C.D. Peula, D/o Industrial Policy & Promotion,
Udyog Bhavan
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72. Raghunath Tripathy, D/o Consumer Affairs,
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73. J.P.S. Verma, D/o Commerce, Udyog Bhavan, New
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74. Subhash Mehtani, M/o Home Affairs,
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75. K.K. Chug, D/o Culture, Shastri Bhavan,
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76. H.N. Yadav, M/o Health & Family Welfare, 406 D,
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77. C.B. Prasad, Banking Div. , M/o Finance,
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79. A.N. Murty, DARE, M/o Agriculture, R.No. 4D,
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80. D.P. Saini, D/o Company Affairs, Shastri Bhavan,
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82. V.R. Sundaram, M/o Consumer Affairs & Public
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83. N. Venugopalan, M/o Defence, APO, 381,
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84. Ashok Mehta, D/o Health & Family Welfare,
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87. H.G. Kukreja, D/o Public Distribution,
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89. Krishan Lal - II, UPSC, Dholpur House,
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90. MS Chopra, M/o Rural Development, Krishi Bhavan,
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91. VN Tripathi, M/o Rural Dev. , Krishi Bhavan,
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92. K Ravindran, M/o Agriculture, Krishi Bhavan,
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93. A.K. Ailawadi, D/o SSI & ARI, M/o Industry
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96. R.S. Bisht, D/o Admn. Reforms,
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97. B.C. Pant, M/o Social Justice & Empowerment,
R.No. 253 A, Shastri Bhavan, New Delhi.

98. S.P. Tripathi, M/o Defence, R.No. 8E, South Block,
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99. S.P. Verma, D/o Economic Affairs, R.No.236, North Block, New Delhi-1.
100. S.K. Gupta, D/o Tourism, Transport Bhavan, New Delhi-1.
101. Thakur Saran, D/o Woman & Child Dev., Shastri Bhavan, New Delhi -1
102. D.R. Chattopadhyay, D/o Industrial Policy & Promotion, Udyog Bhawan New Delhi - 11
103. Karnail Singh, M/o Social Justice & Empowerment, Shastri Bhavan, New Delhi-1.
104. R.C. Saini, D/o Rural Development, Krishi Bhawan New Delhi-1.
105. N.K. Chadha, M/o Urban Dev., R.No. 220-G, Nirman Bhavan, New Delhi-11.
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107. A.K. Sood, D/o Tourism, Transport Bhavan, New Delhi-1.
108. Smt Radha Mani M/o Social Justice & Empowerment, Shastri Bhavan, New Delhi-1.
109. A.N. Sharma, Prasar Bharati, Doordarshan Bhavan, Copernicus Marg, New Delhi-1.
110. S.C. Gulati, D/o Women & Child Welfare, Shastri Bhavan, New Delhi-1.
111. S.K. Dargan, D/o Land Resources M/o Rural Development, R. No. 6 Nirman Bhawan, G-Wing, New Delhi - 11
112. S.C. Arora, M/o Commerce, Udyog Bhawan, Room No. 346, New Delhi - 11
113. U.D. Sidhwani, M/o Commerce, Udyog Bhawan, 3rd Floor, New Delhi- 11
114. V.K. Gupta, D/o Social Justice & Empowerment, R.No. 253, A Wing, Shastri Bhawan, New Delhi- 1
115. Prabhakar, M/o Defence, South Block, New Delhi-1.
116. Jagjit Singh, D/o Culture, Shastri Bhavan, New Delhi-1.
117. C Gosakan, D/o Company Affairs, Shastri Bhavan, New Delhi-1.
118. S.L. Vashist, D/o Science & Technology, Technology Bhavan, New Mehrauli Road New Delhi 16

- 7 -

119. M. Rai, M/o Non-conventional Energy
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120. Virendra Kapoor, D/o Science & Technology,
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121. R.P. Singh, D/o Science & Technology,
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122. Dr. Anil Kumar, UPSC, Dholpur House,
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123. Surinder Kumar, D/o Rural Development
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124. M.M. Chopra, UPSC, Dholpur House,
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125. R.S. Yadav, D/o Economic Affairs, North Block,
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126. S.S. Bharaj, D/o Admn. Reforms
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127. M.P. Singh, D/o Economic Affairs, North Block,
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128. K.V. S. Bhima Rao, M/o Health & Family Welfare
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(On deputation)

129. Satpal, D/o Company Affairs, Shastri Bhawan
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130. P.C. Bhatt, D/o Industrial Policy & Promotion,
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131. Ms. Asha, Deptt. of Economic Affairs, North Block,
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132. Prabhat Singh, M/o Commerce, Udyog Bhawan,
Room No. 283/284, New Delhi - 11

133. JB Srivastava, DGFT, M/o Commerce,
Udyog Bhawan, New Delhi-11.

134. B.C. Das
M/o Social Justice & Empowerment,
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136. Randhir Singh, D/o Education, R.No. 222, C-Wing,
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137. Jiwan Dass, DG S & D, Jeevan Tara Building
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138. K.V. Mathew, UPSC, Dholpur House, Shahjahan Road, New Delhi-11.
139. S.K. Jain, ISC Sectt. M/o Home Affairs, R. No. 352, Vigyan Bhavan Annex, New Delhi.
140. K. John, M/o Information & Broadcasting, Shastri Bhavan, New Delhi-1.
141. K.S. Sharma, D/o Education, Shastri Bhavan, New Delhi-1.
142. Kuldeep Kumar, UPSC, Dholpur House, Shahjahan Road, New Delhi-11.
143. Sushil Kumar, M/o Urban Development, R.No. 316-C, Nirman Bhavan, New Delhi-11.
144. R.L. Tapryal, Ministry of Water Resources, Shram Shakti Bhavan, R.No. 626, New Delhi-110 001.
145. Vijay Kumar, D/o Culture, R.No. 334 C Wing, Shastri Bhavan, New Delhi-1.
146. B.N. Singh, M/o Defence, South Block, New Delhi-1.
147. B.R. Chug, Deptt. of Economic Affairs, North Block, New Delhi-1.
148. C.L. Kaul, Deptt. of Economic Affairs, North Block, New Delhi-1.
149. Mehar Singh, UPSC, Dholpur House, Shahjahan Road, New Delhi-11.
150. S.D. Baijal, M/o Food Processing Industries, August Kranti Marg, Panchsheel Bhavan, New Delhi-49.
151. A.K. Tiwari, D/o Economic Affairs, R.No.161 A, North Block, New Delhi-1.
152. R.B. Joshi, M/o Defence, R.No. 207 A Sena Bhavan, D-I Wing, New Delhi-1.

.....Applicants

Versus

1. **Union of India represented by**
The Secretary
Ministry of Personnel & Training,
North Block, New Delhi- 110 001.

2. Secretary,
Union Public Service Commission,
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3. A. Bhattacharya,
Deputy Secretary,
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4. C.A. Subramanian
Deputy Secretary,(D) [Civ. I]
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5. Mrs. Sharada Ali Khan
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6) S. Rajagopalan
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Rajiv Gandhi Drinking Water Mission,
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Ministry of Rural Development
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7) Dr. A. Damodaran
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8) C.N. Gunjoo
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10) D.K. Goel, Deputy Secretary (GS-II)
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11) Umesh Kumar
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- 12) Ms. Sujaya Krishnan
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- 13) K.G. Verma
Director (Admn.)
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New Delhi-110 011.
- 14) V.K. Sharma
Deputy Secretary,
Ministry of Information & Broadcasting,
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- 15) Ms. Mukta Nidhi Samnotra
Deputy Secretary, Deptt. of Culture
Ministry of Human Resource Development
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- 16) Ms. Kalpana Narayan
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- 17) R.D. Sahay, Addl. Director of Estate, R.No.437-C,
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- 18) Surjit Singh, Deputy Secretary, Ministry of Home
Affairs, R.No. 172-C, North Block,
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- 19) Inderjit Singh
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- 20) M.C. Mehanathan
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- 21) Navin Soi
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Room No. 9, South Block, New Delhi 110 001
- 22) Atul Kaushik
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23) Ms. Gayatri Sharma
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24) Ms. Sarita Mittal
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25) D.B. Singh
Deputy Secretary,

Through
Under Secretary (Admn.)
Ministry of Law, Deptt. of Legal Affairs,
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26) Suresh Pal
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27) Ms. Saraswati Ramraj
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Through
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28) Ms. Sunita H. Khurana
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29) S.B. Sinha
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30) Ms. Anita Patheja
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31) Murli Manohar Singh, Deputy Director (Admn.)
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32) Ms. Rosy Sharma,
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33) K.V. Jacob
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34) S.K. Verma
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35) Dr. A.K. Saxena
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36) Dr. A.R. Goyal
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37) Ms. Kiran Puri
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39) Shyam Kapoor
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41) Ms. Bina Prasad
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42) Satish Kumar
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43) Rajiv Rai
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45) P. Kalyanasundaram
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46) Ms. Anita Chauhan
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48) P. Karuppasamy
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49) Ms. Divya Prasad
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50) R.K. Mitra
Dy. General Manager(Admn.)
Delhi Milk Scheme,
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51) Sudhir Kumar
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52) K.L. Sharma
Planning Officer (Defence)
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53) R.K. Ojha
Deputy Secretary,
Ministry of Defence, D(Works-II),
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54) Dr. (Ms.) Parvinder Kaur
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55) Vijay Kumar
Deputy Secretary,
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56) V.K. Gauba
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58) K.K. Mittal
Deputy Secretary,
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59) T. K. Murugan
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60) M.C. Luther
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61) Anil Bahuguna
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Dept. of Heavy Industry,
Room No. 116 A
Ministry of Industry, Udyog Bhavan,
New Delhi-110011

62) K. Mathivanan, Deputy Secretary,
Ministry of Human Resource Development,
A-1/W3, Curzon Road Barracks
New Delhi-110 001.

63) Mukul Ratra
Under Secretary (Vig.)
DGS & D
Dept. of Supply, Room No. 322,
Jeevan Tara Building,
New Delhi-110 001.

64) Ms. Preeti Srivastava
Under Secretary,
Ministry of Programme Implementation,
R.No. 225 B, Patel Bhavan, New Delhi

65) H.B. Mohanty
Deputy Secretary, Ministry of Home Affairs
C/o Director (C.S. Division),
Dept. of Personnel & Training,
Lok Nayak Bhavan,
New Delhi - 110 011.

66) Ms. Renu Jain
Under Secretary (Machinery),
Ministry of Agriculture,
R.No. 356, Krishi Bhavan, New Delhi-110 001.

67) Mrs. S.K. Aggarwal
Under Secretary,
Ministry of Health & Family Welfare,
R.No. 430, C-Wing, Nirman Bhavan,
New Delhi-110 011.

68) Smt. Bina Bahri
Under Secretary,
Ministry of Environment & Forests,
Room No. 928, Paryavaran Bhavan,
CGO Complex,
New Delhi-110 003.

Respondents.

with

O.A. 1640/2003

Piara Ram
S/o Shri Harnam Das,
R/o Flat No.A-302, Badhwar Appts.,
Plot No.3, Sector-6, Dwarika,
New Delhi-110045

... Applicant

versus

1. Union of India,
through Secretary to the Govt. of India,
Department of Personnel & Training,
Govt. of India,
North Block, New Delhi-110001
2. Secretary
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110003
3. Dr. Parvinder Kaur,
20/22, Lodi Colony,
New Delhi-110003
4. Shri M.C. Luther,
1311, A/B, Vasant Kunj
New Delhi-110070

.... Respondents

O.A. 2024/2003

G.C. Das,
R/o Flat No. M-92,
Plot No. 29, Ramakrishna Vihar,
Patparganj, Delhi-110092

....Applicant

versus

1. Union of India,
through Secretary to the Govt. of India,
Department of Personnel & Training,
Govt. of India,
North Block, New Delhi-110001
2. Secretary
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110003
3. Shri R.K. Ojha,
14/834, Lodi Colony,
New Delhi-110003
4. Shri K.K. Mittal,
1597, Sector-IV,
Urban Estate,
Gurgaon

....Respondents

O.A. 2046/2003

Ashok Chakrabarti,
S/o late Shri L.N. Chakrabarti,
R/o 42, Vasant Apartments,
Mayur Vihar Phase-I Extn.
Delhi-110091

....Applicant

versus

1. Union of India,
through Secretary to the Govt. of India,
Department of Personnel & Training,
Govt. of India,
North Block, New Delhi-110001
2. Secretary
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110003
3. Shri K.K. Mittal,
1597, Sector-IV,
Urban Estate,
Gurgaon.
4. Ms. Preeti Srivastava,
Deputy Secretary,
Ministry of Environment & Forests,
Parivarayan Bhawan, CGO Complex,
New Delhi

....Respondents

O.A. 2047/2003

S. K. Mukherjee,
S/o late Shri N.C. Mukherjee,
R/o K-5, Fine Home Apartments,
Mayur Vihar Phase-I,
Delhi-110091

....Applicant

versus

1. Union of India,
through Secretary to the Govt. of India,
Department of Personnel & Training,
Govt. of India,
North Block, New Delhi-110001
2. Secretary
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110003
3. Shri K.K. Mittal,
1597, Sector-IV,
Urban Estate,
Gurgaon.
4. Ms. Preeti Srivastava,
Deputy Secretary,
Ministry of Environment & Forests,
Paryavaran Bhawan, CGO Complex,
New Delhi

....Respondents

O.A. 2057/2003

D.R. Chattopadhyay,
R/o Sector 3/133, Type -IV,
Sadik Nagar,
New Delhi-110049

....Applicant

versus

1. Union of India,
through Secretary to the Govt. of India,
Department of Personnel & Training,
Govt. of India,
North Block, New Delhi-110001
2. Secretary
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110003
3. Shri K.K. Mittal,
1597, Sector-IV,
Urban Estate,
Gurgaon.
4. Ms. Preeti Srivastava,
Deputy Secretary,
Ministry of Environment & Forests,
Paryavaran Bhawan, CGO Complex,
New Delhi

....Respondents

(Shri L.R. Khatana, counsel for the applicants in all the
OAs
(Shri K.R. Sachdeva, counsel for official respondents in

all the OAs
(Shri N.S. Verma, counsel for private respondents No. 9,
13, 18, 41 and 50 in O.A. 686/2000 -
None for other private respondents in
OA-686/2000)
(None for private respondents in the remaining OAs)

ORDER

Justice V.S. Aggarwal, Chairman

By this common order, we propose to dispose of
the following six Original Applications:

- (i) O.A. 686/2000
- (ii) O.A. 1640/2003
- (iii) O.A. 2024/2003
- (iv) O.A. 2046/2003
- (v) O.A. 2047/2003
- (vi) O.A. 2057/2003

2. The Central Secretariat Service (for short 'CSS') comprises of the following grades:

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

3. Out of these grades, the grades of Deputy Secretaries and Under Secretaries are centralised while other two grades of Section Officers and Assistants are de-centralised into 33 different cadres. The appointment to de-centralised grades are made cadrewise by 33 Cadre Controlling Authorities and seniority in these two grades is also maintained cadrewise. The mode of recruitment to the four grades can be summarised as under:

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Grade	Mode of recruitment	Quota	Feeder Grade for promotion/source of recruitment
Selection Grade (Deputy Secretary)	Promotion	100%	Under Secretary
Grade I (Under Secretary)	Promotion	100%	SOs/Private Secretaries of Central Secretariat Stenographers Service (CSSS)
Section Officers	(i) Direct Recrt (ii) Promotion (a) Seniority- cum-fitness (b) Depttl. Exam	20% (80%) 40% 40%	Civil Services Exam Assistants Asstts. & Steno Gr. I.C of CSSS
Assistants	(i) Direct Recrt (ii) Promotion (a) Seniority- cum-fitness	50% 50% " " " "	Asstt. Grade Exam. Upper Division Clerks "

4. As per provisions of CSS Rules, 1962, recruitment to different grades through the modes of recruitment was made against substantive vacancies. Temporary vacancies in the grades of Section Officers and Assistants are filled by promotion only from feeder grades of Assistants and Upper Division Clerks respectively. In the rules that were amended in February, 1999, it was provided that recruitment to the above mentioned mode would be made against all regular vacancies.

5. Hereafter the curtain unfolds into the usual dispute between promotees and direct recruits. For the sake of convenience, we are taking the basic facts from O.A. 686/2000.

6. The applicants are members of Grade-I CSS and are working as Under Secretaries in various Departments and Ministries of the Union of India. The private respondents are those who are members of the

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service and have been given personal upgradation/promotion to the grade of Deputy Secretaries which is a promotional grade for Under Secretaries. Out of these, respondents 63 to 68 are those who have been included in the list for giving personal upgradation to the grade of Deputy Secretaries.

7. On 28.9.98, respondent no.1 had issued the office memorandum noticing that lack of promotional avenues had reached an acute level in CSS because of the fact that it was not possible to prepare any panel for Deputy Secretaries after the part panel of the year 1993. Some of the relevant extracts of the same are:

"The undersigned is directed to say that it has been noticed that the lack of promotions has reached an acute level in CSS, attributable mainly to the fact that it has not been possible to prepare any panel of the Deputy Secretaries after the part panel of 1993 due to non-availability of regular Under Secretaries. The Select Lists of Under Secretaries for the years 1984 to 1986, which had been prepared, had become the subject matter of cases filed in the CAT/Supreme Court challenging the inter-se seniority of Section Officers and, consequently, no select list of Under Secretaries could be prepared thereafter. Though the Common Seniority List (CSL) of Section Officers has since been issued on 3.12.1997 in pursuance of the Supreme Court's order dated 9.5.1997 in the case filed by Shri Surjit Singh & Ors., the process of reviewing/preparing the Select Lists of Under Secretaries/Deputy Secretaries is likely to take considerable time. After carefully considering the relevant aspects of the matter, it has been decided, with the concurrence of the Department of Expenditure, to upgrade temporarily 225 posts of Desk Officers/Section Officers to the grade of Under Secretaries, and 72 posts of Under Secretaries to the grade of Deputy Secretaries on a 'personal/ad hoc' basis. This upgradation of posts will be subject to the following conditions:-

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(i) The officers will be considered on the basis of seniority-cum-fitness by the Ministry/Department concerned. For this purpose, the CSL of Section Officers issued on 3.12.97 for Under Secretaries and the select list of Under Secretaries for the years upto 1986 for Deputy Secretaries will be operated. As the CSL is the subject matter of MA No. 640/1998 filed by Amrit Lal & Ors. And pending in the CAT, Principal Bench, New Delhi and the select lists of Under Secretaries for the years 1984 to 1986 are subject to the review, the appointments will also be subject to the outcome of the application and the review.

(ii) The appointments against the upgraded posts will not entitle the officers to any claim for regular appointment as Under Secretary/Deputy Secretary of seniority in the grade."

8. Thereafter on 6.8.99, respondent no.1 had issued another office memorandum. It was noticed that even after personal upgradation given to Under Secretaries vide office memorandum of 28.9.98, the level of stagnation continues to be acute. It was mentioned:

"The circumstances in which it became necessary to give personal upgradations to the officers, viz. non-preparation of the panels of Under Secretaries (due to litigation over the dispute relating to inter se seniority of direct recruit and promotee Section Officers) still remain unchanged. Consequently, it has not yet been feasible to make regular promotions to the grade of Deputy Secretary. It is noted that even after the personal upgradations given to the Under Secretaries against 65 out of 72 upgraded posts vide the aforesaid O.M. dated 28.9.98, the level of stagnation continues to be acute in the grade. The matter has been considered further in this Department. After carefully considering the relevant aspect of the matter, it has been decided with the concurrence of the Department of Expenditure to upgrade temporarily 184 more posts of Under Secretaries to the grade of Deputy Secretaries, keeping in view the approximate number of slots of

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Deputy Secretaries level which should have been given to the CSS officers during the last more than five years."

9. It is asserted by the applicants that while ordering upgradation of 191 Under Secretaries with a view to removing stagnation, respondent no.1 laid down a criteria of personal upgradation. In this process, promotions were made to the grade of Deputy Secretaries not on basis of seniority but on basis of seniority of the Section Officers. The seniority in the Under Secretaries' grade is being ignored. In this regard, it was observed in the said office memorandum:

"These upgradations will be subject to the following conditions:- Considering that the Under Secretaries are yet to be empanelled and as such there is no inter-se seniority list of these officers, it has been decided in consultation with the Ministry of Law to give upgradations to them on a personal/ad-hoc basis against the aforesaid 191 upgraded posts (which include 7 posts upgraded through the aforesaid O.M. dated 28.9.1998 yet to be utilised) in the order in which they appear in the Common Seniority List (CSL) of Section Officers issued on 3.12.97 in pursuance of the Supreme Court's judgement dated 9.5.97 in the matter of Surjit Singh & Ors. in the absence of any other rational basis. As the CSL is the subject matter of the MA No. 640/1998 filed by Amrit Lal & Ors. and pending in the CAT, Principal Bench, New Delhi, the appointments will also be subject to the outcome of the Application."

10. It has further been provided:

"(v) Only such officers as have completed the minimum prescribed five years service in the Under Secretary's grade after their appointment to the grade on a centralized basis by this Department and satisfy other requirements laid down in the general instructions will be considered for such personal upgradation."

11. By virtue of the present petitions, the applicants seek (after due amendments that were effected) that the criterion provided by respondent no.1 in sub-para

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(i) of the first paragraph in the impugned office memorandum dated 6.8.99 is illegal and arbitrary and respondents no.1 and 2 should be directed to consider them for personal upgradation/promotion with reference to their juniors and granted all consequential benefits from the date their juniors have been so granted.

12. Before proceeding further, we can have a peep into the past litigation in this regard. As already referred to above, the recruitment to the grade of Section Officers was being made 40% through Limited Departmental Examination, 40% by promotion of Assistants and 20% through Open Competitive Examination. The Section Officers who are promoted through Limited Departmental Examination and by promotion are known as promotees and those recruited through the Open Competitive Examination conducted by the Union Public Service Commission are known as direct recruits.

13. In the year 1983, the Select List Section Officers i.e. promotee officers to which the applicants belong, had challenged the eligibility list of Section Officers for promotion to the grade of Under Secretaries by filing W.P. Nos. 10618-10628/83 entitled H.V. Pardasani and ors. v. Union of India. It was on the ground that Direct Recruit Section Officers had been wrongly assigned higher position in the Select List by denying the Promotee Section Officers their rightful place. The Supreme Court had considered the same and concluded amongst others that if a Scheme constituting a service manned by direct recruits and promotees prescribes quota rule for determining their inter se seniority and the said quota rule is properly implemented, the Scheme is

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not arbitrary. It was held that once the quota rule fails, the rota rule can no longer be enforced without causing prejudice to the officers with longer period of service. Thereafter in the year 1987, the promotee officers challenged the eligibility list of the years 1983, 1984, 1985 and 1986 by filing O.A.No.1659/87 entitled Amritlal and others v. Union of India and others in this Tribunal. This Tribunal held that the quota rule had been totally broken down year after year and, therefore, rota rule had wrongly been applied to the disadvantage of the promotee officers. The eligibility lists of the abovesaid years were quashed. It was directed that eligibility list of the abovesaid years should be recast. The decision of this Tribunal was challenged by filing a Special Petition before the Supreme Court. The Supreme Court on 13.7.90 had recorded a finding that there existed a seniority list of Section Officers which was not correct. The common seniority list of the Union of India was not accepted by the Supreme Court. It directed the official respondents to update the list scrupulously. It was recorded by the Supreme Court that the list prepared by the Government was of the year 1987 and that this should be the list for promotion during pendency of the appeals. There are some other facts pertaining to the filing of the Contempt Petition and statement of the Attorney General which are not relevant for disposal of the present petitions.

14. In the year 1993, the common seniority list prepared and circulated by the Union of India was challenged before this Tribunal as already pointed above.

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This Tribunal, as already referred to above, decided that the CSS rules do not provide for carry-forward of the vacancies.

15. During the course of submissions, learned counsel for the official respondents very eloquently pointed to us that panels for the years 1984, 1985 and 1986 to 1988 had been issued on 9.5.2000. Panels for the years 1989 and 1990 had been issued on 27.7.2001. Panels for 1991 to 1994 had been issued on 12.8.2002 and panels for the years 1995 and 1996 had been issued on 21.4.2004.

16. It is on these broad facts that the reliefs to which we have already referred to above are being pressed contending that the impugned paragraph in the office memorandum is arbitrary. It is also the plea that it is in any case unfair. It ignores the seniority of the applicants who as per the revised panels had been shown senior to the private respondents and goes contrary to the rules i.e. CSS Rules.

17. The facts in other O.As. are by and large the same as are flowing from O.A. 1640/2003. Therein the applicants have arrayed private respondents contending that they have been given the said benefit though the private respondents are junior to them.

18. Needless to state that the applications are being contested.

19. On behalf of the official respondents, it had been urged that this was basically an administrative decision and, therefore, this Tribunal should not

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interfere in it in judicial review, because according to the learned counsel, it was only a temporary measure and criteria was fixed to avoid stagnation.

20. We do not dispute that normally in judicial review, the administrative decision shall not be interfered with. However, if the affect is arbitrary and discriminatory, in that event the Tribunal would be duty bound to interfere. It had often been stated that reasonableness and arbitrariness are sworn enemies. It is in this backdrop that we take liberty in referring to some well-known precedents without delving into large number of cases on the subject.

21. In the case of ARMADA DAYARAM SHETTY v. THE INTERNATIONAL AIRPORT AUTHORITY OF INDIA AND OTHERS, AIR 1979 SC 1628, the question, of course, was pertaining to acceptance of tenders. But in this regard, the above said controversy as is before us, came up for consideration and the Supreme Court upheld the decision of the Kerala High Court and held:

"12. We agree with the observations of Mathew, J., in V. Punnan Thomas v. State of Kerala, AIR 1969 Ker 81 (FB) that: "The Government, is not and should not be as free as an individual in selecting the recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal""

22. In the well-known decision of AJAY HASIA ETC. v. KHALID MUJIB SEHRAVARDI AND OTHERS, ETC., AIR 1981 SC 487, the Supreme Court quoted the following

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passage from an earlier celebrated decision in the case of

E.P. ROYAPPA v. STATE OF TAMIL NADU. (1974) 2 SCR 348

and held:

""The basic principle which therefore informs both Articles 14 and 16 is equality and inhibition against discrimination. Now what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life". and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies: one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.""

23. More recently, in the case of INDIAN RAILWAY CONSTRUCTION CO. LTD. v. AJAY KUMAR, 2003(2)

AISLJ 334, the scope of judicial interference in administrative decision had been considered and it was held:

"12. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of Governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside. If there is manifest error in the exercise of such power or the

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exercise of the power is manifestly arbitrary. (See State of U.P. and Ors. v. Renusagar Power Co. and Ors., AIR 1988 SC 1737. At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work "Judicial Review of Administrative Action" 4th Edition at Pages 285-287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires."

24. It is in this backdrop that one has to see whether the decision so taken is arbitrary, irrational and is outrageous, ignoring certain principles which calls for interference or not.

25. We have already reproduced above the basic extracts of the impugned paragraph. It does refer to that there was an acute stagnation and to avoid the same, the said decision had been taken. It refers to the fact that

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the Under Secretaries had yet to be empanelled. There was no inter-se seniority list of the officers and therefore it had been decided to give upgradation on personal/adhoc basis against 191 upgraded posts. To state that it was a temporary measure and the intentions were not mala fide would be one thing but when the State perpetuates as would be seen hereinafter the discrimination between equals and ignores the claims of the seniors, in that event, such a decision perpetuating the affect would be hit by Articles 14 and 16 of the Constitution. It is true that it was a point that there was no panel that was prepared with respect to the seniority of Under Secretaries. But if that was so, there was an undue haste in giving the said benefits because it would have been in the fitness of things to wait as such.

26. Central Secretariate Service Rules, 1962 had been framed in exercise of the powers under Article 309 of the Constitution. Recruitment to selection grade and Grade-I has to be made in accordance with Rule 12 which reads as under:

"12. Recruitment to Selection Grade and Grade I - (1) Vacancies in the Selection Grade shall be filled by promotion of regular officers of Grade I who have rendered not less than five years' approved service in that Grade and are included in the Select List for the Selection Grade prepared under sub-rule(4);

(2) Vacancies in Grade I shall be filled by promotion of regular officers of the Section Officers' Grade who have rendered not less than eight ** years' approved service in that Grade and of regular officers of the Grade A and B (merged) of the Central Secretariat Stenographers Service who have rendered not less than eight years' approved service in that Grade and are included in

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the Select List for Grade I of the Service prepared under sub-rule (4);

(4) For the purpose of sub-rules (1) and (2) a Select List for the Selection Grade and Grade I shall be prepared and may be revised from time to time. The procedure for preparing and revising the Select Lists shall be such as may be prescribed by regulations made by the Central Government in the Department of Personnel in the Ministry of Personnel, Public Grievances and Pensions;

Provided that the regulations relating to the procedure for preparing and revising the Select List for Grade I shall be framed in consultation with the Commission and such Select List shall also be prepared in consultation with them.

(5) Notwithstanding anything contained in sub-rules (1) and (2) may be appointed to officiate in a temporary vacancy for a Selection Grade under sub-rule (1) or to Grade I under Sub-rule (2), may be appointed to officiate in a temporary vacancy for a period not exceeding three months in the Selection Grade of Grade I, as the case may be, if an officer included in the Select List for the relevant Grade is not available or cannot for any reason be appointed to such vacancy.

Provided that the aforesaid period of three months mentioned above, may in exceptional cases and with the approval of the Department of Personnel in the Ministry of Personnel, Public Grievances and Pensions: be extended to six months in public interest."

27. In other words, so far as the post of Deputy Secretary is concerned, it is a selection post and has to be filled up by promotion of regular officers of the Grade-I. Herein, the same has totally been ignored and in violation of the rules, Section Officers have been considered as such. The Select Lists are prepared to Grade-I and regulations have been drawn in exercise of powers under Sub-Rule (4) to Rule 12 of the Rules referred

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to above. In accordance with the same, fresh Select List of Grade-I had been prepared at least once in every year and the field of selection had to be determined by the selection committee by taking the required number of seniormost eligible Grade-I officers in order of their seniority. What has happened in the present cases that the seniormost people as would be seen hereinafter are in the wait list while because of the above said decision, the junior people are taking the benefit in this regard.

28. We have noted above that it had been pointed out that this has been done to avoid stagnation. If an administrative decision in this regard had to be taken, the person stagnated would have been given the benefit. Herein, the seniors have been ignored. Once they formed part of two different streams, i.e., direct recruits and promotees, the seniors could not be discriminated and once rules have been framed, the respondents had no option but to follow the same rather than ignoring the same by virtue of the administrative decision. We have support in this regard of the decision of the Supreme Court in the case of A.K. BHATNAGAR AND OTHERS v. UNION OF INDIA AND OTHERS, (1991) 1 SCC 544. When the Government framed the rules under proviso to Article 309, it must strictly follow the same.

29. What we have stated above is in fact even admitted by the respondents in their Office Memorandum of 12.9.2001. The operative part of the same reads:

"The undersigned is directed to say that this Department has issued orders vide Order No. 21/18/2001-CS.I dated 12th September, 2001 upgrading 96 posts of Under Secretaries to the Grade of Deputy Secretary on personal upgradation/in-situ basis subject to the



conditions laid down therein. This is in addition to 72 posts of Under Secretaries upgraded to the level of Deputy Secretaries as personal to the incumbents vide OM NO.21/48/97-CS.I dated 28.09.1998 and 184 posts of Under Secretaries upgraded to the level of Deputy Secretaries as personal to the incumbents vide order No.21/48/97-CS.I dated 6th August 1999.

2. This Department has notified the Select List of Under Secretaries of CSS for the year 1989 and 1990 vide OM No.4/9/2000-CS.I dated 27th July 2001. With this notification, it has been found that 96 inservice regular Under Secretaries are still awaiting for upgradation as Deputy Secretaries whereas several of their juniors, who will become eligible for empanelment in the subsequent Select List of Grade I (Under Secretaries) of CSS, are already working as Deputy Secretaries on in-situ basis with effect from 09.08.1999. In view of this, the decision has been taken to upgrade 96 posts of Under Secretaries to the grade of Deputy Secretaries on personal basis with effect from 09.08.1999. The list enclosed alongwith this OM contains names of 95 officers who are to be promoted as Deputy Secretaries on in-situ basis. The decision in respect of remaining one person will be taken separately.

3. The appointment as Deputy Secretary on in-situ basis will be subject to the following conditions:-

- a) The appointment will be effective from 09.08.1999, i.e. the date of promotion of the officers junior to these 95 officers. The officers who are promoted on personal upgradation/in-situ basis will be entitled to draw arrears of pay accordingly;
- b) The appointment against upgraded posts will not entitle the officers concerned to make any claim for regular appointment as Deputy Secretary or seniority in that grade;
- c) The officers appointed, as Deputy Secretaries by personal upgradation of the post of Under Secretaries held by them shall not be adjusted against regular vacancies at the level of Deputy Secretaries in the respective Ministries/Departments. The regular vacancies at the level of Under Secretary and above are to



be filled under the Central Staffing Scheme by following the prescribed procedure on the recommendations of the Civil Services Board. The officers concerned would continue on the upgraded posts till the officers being appointed as Deputy Secretary on personal basis are adjusted against regular vacancies by following the procedure prescribed under the Central Staffing Scheme. The Ministries/Departments may, therefore, refer all vacancies at the level of Deputy Secretary to Department of Personnel & Training to take action to fill them as per the provisions of the Central Staffing Scheme.

d)

The officers appointed as Deputy Secretaries on personal upgradation basis will continue to perform the same duties/functions as they are doing at present till they get adjusted against regular vacancies of Deputy Secretaries. Some internal adjustment in regard to the level/channel of submission of papers by the incumbents of the upgraded posts may be necessary, which may be made by the concerned Ministry/Department internally; and

e)

Officers who were on leave on 9th August 1999 shall be appointed as Deputy Secretary from the date of their return to duty from leave."

30. In other words, it admits that senior

regular Under Secretaries were waiting for upgradation as Deputy Secretaries while juniors have already been given the benefit who will become eligible for empanelment in the subsequent years. It is here that there is violation of the principles of equality and unreasonableness prevailed in the said order.

31. This fact has amply been demonstrated in other connected OAs. We refer to OA 1640/2003 in which it has been demonstrated that the applicant therein had been

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placed senior to the private respondents. We are, therefore, of the considered opinion that Paragraph (i) of the impugned order cannot be sustained.

32. Accordingly, we hold:

- (a) Paragraph (i) of the impugned order of 6.8.1999, is quashed to be arbitrary.
- (b) The monetary benefits that had been accrued to the private respondents and other parties, as a result of which has already accrued, shall not be withdrawn.
- (c) Fresh exercise should be made within one month to consider eligible senior people as per the post available and thereupon the benefit should be given to those persons only.
- (d) Monetary benefits should be given to the applicants from the date their juniors have been so given.
- (e) This exercise should be completed preferably within one month of the receipt of the certified copy of the order.

(S. A. Singh)
Member (A)

(V. S. Aggarwal)
Chairman

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Om Pandey
13/7/04
SC (J-1)