

Central Administrative Tribunal
Principal Bench

OA No.2291/2003

New Delhi this the 21st day of October, 2005.

Hon'ble Mr. V.K. Majotra, Vice-Chairman (A)
Hon'ble Mr. Shanker Raju, Member (J)

Avadhesh & Others

-Applicants

(By Senior Counsel Shri P.P. Khurana with Ms. Seema Pandey,
Advocate)

-Versus-

1. Secretary,
M/o Urban Development and Poverty Alleviation,
Govt. of India,
Nirman Bhawan,
New Delhi & Others

-Respondents

(By Advocate Shri K.R. Sachdev)

1. To be referred to the Reporters or not? *yes*

2. To be circulated to other Benches of the Tribunal or not? *yes*

S. Raju
(Shanker Raju)
Member (J)

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Hon'ble Mr. Shanker Raju, Member (J)

1. Avadhesh,
S/o Shri Ayodhya Prasad,
R/o 862, Sector XII, R.K. Puram,
New Delhi-110022.
2. Arvind Singh Bhandari,
S/o Shri J.S. Bhandari,
R/o 52, Laxmi Bai Nagar,
New Delhi-110023.
3. Sanjeev Kumar,
S/o Shri Ramesh Chand,
R.o 945-E, East Babarpur,
Shahara,
Delhi-110032.
4. Sunil Kumar,
S/o Shri Ramesh Chand,
R/o 945-E, East Babarpur,
Shahdara,
Delhi-110032.
5. Ajay Kumar,
S/o Shri Ravindra Prasad Verma,
R/o 54, M.S. Block, Chitra Gupta Road,
Ranaji Enclave, Najafgarh,
New Delhi-110043.
6. Kum. Geeta,
D/o Shri Gusain Dutt,
R/o G-I/1080, Sarojini Nagar,
New Delhi-110023.

-Applicants

(By Senior Counsel Shri P.P. Khurana with Ms. Seema Pandey,
Advocate)

-Versus-

1. Secretary,
M/o Urban Development and Poverty Alleviation,
Govt. of India,
Nirman Bhawan,
New Delhi.

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2. The Secretary,
Department of Personnel & Training,
North Block,
New Delhi.

3. The Secretary,
Staff Selection Commission,
Lodhi Road,
New Delhi.

4. Land & Development Officer,
Land & Development Office,
Nirman Bhawan,
New Delhi.

-Respondents

(By Advocate Shri K.R. Sachdev)

O R D E R

Mr. Shanker Raju, Hon'ble Member (J):

Applicants through this OA have assailed respondents' order dated 21.07.2003, whereby their request for induction in Central Secretariat Clerical Service has been turned down and have sought for the following reliefs:

"(i) Direct the Respondents to merge the posts of the Applicants as Lower Division Clerk in the office of the Respondent No.4 with the corresponding posts in CSCS cadre of Respondent No.1.

(ii) Thereafter, direct the Respondents to assign the Applicants the appropriate seniority in CSCS cadre of the Respondent No.1 on the basis of their initial appointments made on regular basis as has been done in the case of the Technical Staff and the LDCs of 'Y' category belonging to the 1997 batch."

2. With the grievance that applicants had been imparted invidious discrimination vis-à-vis 'Y' category LDCs despite Land and Development Office (L&DO, for short) having been declared as an attached office, they sought resort to Articles 14 and 16 of the Constitution of India to seek the relief of

induction in CSCS in OA No.2291/2003. By an order dated 21.7.2004 OA was dismissed as bereft of merit basically on the ground that having made a policy decision the action of respondents not to encadre applicants in CSCS is against the recruitment rules.

3. The aforesaid decision was assailed by applicants in RA-248/2004, which was allowed on 17.12.2004 by the Tribunal. While deliberating upon the contentions raised in RA it has been specifically observed that respondents in OA had admitted that Technical posts in L&DO were encadred with comparable grades under the Director General of Works, Central Public Works Department (CPWD). In the course of recording reasons to allow the RA a conclusion has been drawn that the Government has failed to show any policy decision taken to encadre the post. On the ground that no satisfactory explanation with regard to meeting out differential treatment to applicants and LDCs nominated to L&DO in CSCS cadre of 'Y' category pertaining to the year 1997 has forth-come.

4. A brief factual matrix relating to the OA is relevant to be highlighted. CSCS is one of the three Services of the Central Secretariat though subordinate offices are not participating in the services, Department of Personnel and Training (DoPT) is the cadre controlling authority. The posts included in Group 'B' and Group 'C' in these services are decentralized in 33 cadres. Staff Selection Commission (SSC) is the recruiting agency for Group 'C' posts in Ministries/Departments and

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attached offices on the basis of direct recruitment examination. Up to 1997 direct recruitment to the post of LDC was made on the basis of Clerks Grade Examination (CGE) conducted by SSC. Qualified candidates in the hierarchy of merit were placed in 'X' and 'Y' categories respectively. Services in CSCS and other organized services were included in category 'X' whereas others in subordinate offices were allotted category 'Y'.

5. Applicants on the basis of CGE 1996 conducted by SSC were recruited as LDCs in L&DO which were subordinate offices and were not found part of CSCS. They were recommended for appointment in 'Y' category. Vide notification dated 4.4.2000 by a Presidential order status of L&DO, Ministry of Urban Development and was altered to an attached office in the Ministry of Urban Development with the concurrence of DoPT. The issue of inducting the staff in three Central Secretariat Offices had arisen as the rules of Central Secretariat Service (CSS) did not permit induction of outsider staff with the consultation of DoPT only vacant posts in the L&DO were decided to be encadred in the appropriate grade in CSCS/CSS cadre of Ministry of Urban Development and Poverty Alleviation. 32 vacancies in the LDC grade were inducted by the L&DO to the SSC on the basis of results of CGE, 1997 under 'Y' category as office was subordinate one. But before actual appointment of 32 LDCs in L&DO due to change of status of the office as an attached office the posts were encadred in CSCS of the Ministry of Urban Development and candidates were appointed in CSCS. The representation



preferred by applicants who were recruited through CGE, 1996 for want of any provision under the CSCS Rules of 1992 were not encadred. This has given rise to the present controversy.

6. Learned Senior Counsel Shri P.P. Khurana, along with Ms. Seema Pandey, Advocate, appearing for applicants, contended that as it is established and no more *res integra* even on admission of respondents that Technical Posts in L&DO were encadred with comparable grades in Director General (Works), CPWD and the decision of the respondents to encadre the post in CSCS and to declare the office of L&DO as an attached office not being a policy decision without any satisfactory explanation meeting out differential treatment to 'Y' category, the LDCs nominated in L&DO in 1996-97 has no reasonable nexus with the object sought to be achieved and non-intelligible differentia the action of respondents does not pass the test of equality enshrined under Article 14 of the Constitution of India. Shri Khurana would contend that once L&DO is declared as an attached office in the Ministry of Urban Development the current staff working in the office *suo moto* gets the status of the employees of the attached office as upgradation of the status of the office without upgradation of the status of the existing incumbents has no relevance.

7. Shri Khurana contended that applicants who belong to 1996 batch of CGE in 'Y' group and were posted in L&DO similarly circumstanced who qualified in 1997 CGE in 'Y' category having been encadred in CSS an invidious

discrimination has been meted out. This discrimination between the two batches is arbitrary and unconstitutional.

8. Learned Senior Counsel further contended on one hand Technical Staff of L&DO along with posts were encadred with the comparable grades under CPWD and another attached office discriminated between the Technical and Non-Technical staff in the matter of encadrement when both the offices are attached is not in consonance with law.

9. Placing reliance on the decision of the High Court of Delhi in CWP No.1080/21001 in ***Arjun Singh v. Union of India***, decided on 25.1.2002, it is stated that on conclusive determination of question of merger of the existing cadres in the Ministry of Urban Development, inter-se-seniority would be determined on the basis of regular appointment.

10. By this discrimination learned Senior Counsel highlighted the loss of promotional avenues and prejudice in the matter of service benefits as by non-encadrement in CSS the promotional avenues of applicants have been completely wiped out. This according to learned Senior Counsel is alteration in service conditions of applicants without affording them a reasonable opportunity.

11. Learned Senior Counsel states that as respondents have given no reason whatsoever, their decision is irrational and malafides, leaving the seniors and encadring juniors, juniors would compete for higher posts. It is stated that before a decision was taken to encadre 32 posts in CSCS of 'Y' category



on the basis of CGE, 1997 recruitee, these persons had already joined L&DO, as such assuming a policy decision is taken by respondents if it violates Articles 14 and 16 of the Constitution of India it is amenable to judicial review.

12. On the other hand, learned counsel of respondents Shri K.R. Sachdeva opposed the contentions and stated brief history of CSCS and contended that applicants who had been recruited as LDCs on the basis of CGE 1996 in L&DO when its status was that of a subordinate office and was not a part of CSCS were appointed in 'Y' category. However, the status of L&DO was changed from subordinate office to an attached office of Ministry of Urban Development and Poverty Alleviation w.e.f. 4.4.2000, the question of inducting the staff of that office in the three services of Central Secretariat was examined in consultation with the cadre controlling authority i.e. Department of Personnel and Training. As the scales of pay, nomenclature, classification and mode of recruitment etc. of various posts of L&DO are not identical to those of the comparable posts/grades in CSS, determination of seniority of non-CSS staff inter-se the CSSs officials by any method is bound to lead to legal/administrative complications. However, as a policy decision it is decided that vacant posts in the L&DO may be encadred in the appropriate corresponding grade of CSCS/CSS/CSSS cadre of Ministry of Urban Development & Poverty Alleviation. However, after change of status of L&DO 32 vacancies of LDCs in 'Y' category were intimated by L&DO to SSC on the basis of result of CGE 1997. Before their actual appointment on change of status of office

these posts were encadred in CSS. The only ground to justify such a decision is that amalgamation of staff of an upgraded office with other offices of the Ministry being a slow process it has been decided to encadre only future vacancies with other cadre of Ministry as and when vacancies arise.

13. Shri Sachdeva would contend that there are no provisions in the CSCS Rules, 1962 for induction of LDCs working in subordinate offices/other offices not participating in CSCS. It was decided to continue them in L&DO as a separate block and to encadre the post as and when rendered vacant on permanent basis. Learned counsel lastly stated that case of Shri Sardar Singh Joon cannot be cited as being irrelevant and in case of Shri Krishan Kumar after declaration of L&DO as an attached office the process for encadrement was taken up. It is submitted that despite being a separate block promotional avenues of applicants are not affected as they would avail the benefit of ACP as per DoPT OM dated 9.8.99 and are free to compete in open examination on age relaxation for career progression.

14. In the rejoinder applicants have reiterated their pleas.

15. By way of supplementary affidavit certain issues have been raised by respondents to defend the cases of Shri Joon and Shri Krishan Kumar.

16. On careful consideration of the rival contentions of the parties it is relevant to clarify as to the policy of the Government, its repercussions and interference in a judicial



review. A decision of the Government on administrative side in the best interest of running of administration rests solely on its prerogative. A policy decision, *inter alia*, includes any decision pertaining to any service law and the conditions of service of a government employee. Any decision which concerns alteration, modification, abolition, creation, nomenclature of post/cadre, prescription of qualification, conditions regarding avenues of promotion would amount to a policy decision. In **P.U. Joshi and others v. Accountant General, Ahmedabad and others**, (2003) 2 SCC 632, the scope and ambit of interference in a judicial review is well explained with the following observations:

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and with in the exclusive discretion and jurisdiction of the state subject of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotions or impose itself by substituting its view for that of the state. Similarly, it is well open and within the competency of the State to challenge the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion from time to time, as the administrative exigencies may need or necessitate. Likewise, the state by appropriate rules is entitled to amalgamate departments

or bifurcate departments into more and constitute different categories of posts or cadres by underrating further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service. "

17. Having regard to the above, if the decision is unreasonable, arbitrary or unfair with an irrational policy decision, being unconstitutional, comes within the scope of judicial review lest the prerogative of Government to frame policy cannot be questioned in law.

18. If one has regard to the above though in a review Tribunal has observed that the contentions of respondents as to the policy decision is not supported, yet as encadrement to CSCS by the cadre controlling authority, i.e., DoPT if considered to be a policy decision then the only ground which emanates to justify such a decision is that whereas 32 vacant posts of LDCs in L&DO of which a request was sent to SSC and candidates of CGE 1997 were available and were issued appointment letters before their actual joining a decision was taken to encadre these 32 posts. The intelligible differentia

shown in case of applicants who belong to CGE 1996 is that they had already been working in L&DO and CSCS Rules of 1962 do not permit such encadrement which would prejudicially affect the promotional avenues of existing CSCS officers is the object sought to be achieved to prevent any adverse or prejudicial action or repercussion on encadrement upon the current CSCS officers. Another ground taken is that determination of seniority of the encadred officers would be difficult.

19. Article 14 of the Constitution of India envisages right of equality to the equals. If two equals are treated unequally or differently and the action has no intelligible differentia and reasonable nexus with the object sought to be achieved, the action, *per se*, would contravene Article 14 of the Constitution of India and would be arbitrary. A Constitution Bench of the Apex Court in **D.S. Nakara & others v. Union of India**, 1983 SCC (L&S) 14, while laying down the concept of equality, observed as under:

“13. The other facet of Article 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of classification. As was noticed in Maneka Gandhi case in the earliest stages of evolution of the constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that Article 14 forbids discrimination and there will be no discrimination where the classification making the differential fulfils the aforementioned two conditions. However, in E.P. Royappa v. State of T.N., it was held that the basic principle which informs both Article 14 and 16 is equality and inhibition against discrimination. This Court further observed as under: (SCC p. 38, para 85)

From a positive 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.

14. Justice Iyer has in his inimitable style dissected Article 14 in Maneka Gandhi case as under at SCR p.728: (SCC p. 342, para 94)

That article has a pervasive processual potency and versatile quality, egalitarian in its soul and allergic to discriminatory diktats. Equality is the antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knight-errants of 'executive excesses' - if we may use current cliché - can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it is that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law : Be you ever so high, the law is above you.

Affirming and explaining this view, the Constitution Bench in Ajay Hasia V. Khalid Mujib Sehravardi held that it must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that 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. After a review of large number of decisions bearing on the subject, in Air India V. Nergesh Meerza the Court formulated propositions emerging from an analysis and examination of earlier decisions. One such proposition held well established is that Article 14 is certainly attracted where equals are treated differently without any reasonable basis.

15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin test of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

16. As a corollary to this well established proposition, the next question is, on whom the burden lies to affirmatively establish the rational principle on which the classification is founded correlated to the object sought to be achieved? The thrust of Article 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of things the society being composed of unequals a welfare State will have to strive by both executive and legislative action to help the less fortunate in the society to ameliorate their condition so that the social and economic inequality in the society may be bridged. This would necessitate a legislation applicable to a group of citizens otherwise unequal and amelioration of whose lot is the object of State affirmative action. In the absence of doctrine of classification such legislation is likely to flounder on the bed rock of equality enshrined in Article 14. The Court realistically appraising the social satisfaction and economic inequality and keeping in view the guidelines on which the State action must move as constitutionally laid down in Part-IV of the Constitution evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succour. Legislative and executive action may accordingly be sustained if it satisfied the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlated to the objects sought to be achieved. This approach is noticed in *Ramana Dayaram Shetty v. International Airport Authority of India (1979) 3 SCR 1014* when at page 1034 (SCC p.506), the Court observed that a discriminatory action of the Government is

liable to be struck down unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

20. If one has regard to the above, Article forbids class legislation but only permits reasonable classification which has to qualify the twin tests that this classification is founded on an intelligible differentia which distinguishes persons who are grouped together from those who are left out of the group and this differentia must has nexus with the object sought to be achieved.

21. Having in mind the underlined principle above, the only object sought to be achieved by the respondents was not to disturb the promotional and other service avenues of officers in CSCS. Accordingly, as CSCS rules 1962 do not permit induction of outsiders it has been decided not to induct existing incumbents of L&DO in CSCS. However, identically situated CGE 1997 LDCs of 'Y' category who had been issued appointment letters but could not join on these vacant posts had been encadred with CSCS and as a result thereof these officers had been encadred both against the CSCS Rules of 1962 and encroaching upon the service prospects.

22. As regards seniority, in CWP No.1080/2001, **Arjun Singh v. Union of India**, decided on 25.1.2002 by the High Court of Delhi when the LDCs working in L&DO on change of attached office had sought encadrement as regards seniority the following observations have been made:

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"The learned counsel appearing for respondent, on the other hand, has drawn our attention to paragraphs 7 and 8 of the judgment of the learned Tribunal and submitted that whereas in the earlier petition the petitioner had been claiming parity in pay-scale with the Junior Engineers of CPWD, now they have turned around and contended that their duties and responsibilities are separate. The learned counsel pointed out that even the question of fixation of seniority list has been considered by the Central Government inasmuch as it has categorically been stated before the learned Tribunal that the seniority would be determined on the basis of regular appointments or officers and the relevant extant orders of Government.

A bare perusal of the order dated 10th April 2000 would clearly go to show that the technical posts in Land & Development Office had been encadred, to which petitioner also belonged, with those comparable cadres/grades/posts under the Directorate General of Works, CPWD. Although in the order, the expression merger of cadre had not been mentioned specifically, the very fact that a decision to encadre the technical post in Land & Development Office has been taken with those of comparable cadres/grades/post under the Directorate General of Works, CPWD, the same in our opinion, would amount to merger of two cadres. It has rightly been pointed out by learned counsel for the respondent that in OA No.2126/96 the applicants who were not working as Overseers in the Land & Development Office had claimed parity in pay scales and now therefore they cannot be permitted to turn around and contend that their duties and responsibilities are quite different. The learned Tribunal, in our opinion, has rightly arrived at a finding to the effect that such a policy decision on the part of the State cannot be questioned nor the court or the Tribunal will ordinarily interfere therewith unless the same is held to be violative of Article 14 of the Constitution of India.

In fact this legal position was not disputed by the learned counsel for the petitioner whose only apprehension was that the respondents having not specifically laid down the criteria of fixing inter-se seniority, this may pose problems in future.

However, we may notice that the respondents in their counter affidavit have categorically

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stated referring to paragraph 8 of the judgment, that seniority of the persons in CPWD and Land & Development office would be decided on the basis of dates of their regular appointments. In that view of the matter, we are of the opinion that the apprehension raised by Mr. Mittal to the effect that the question of seniority may raise problems and may give further rise to the litigation in future is misplaced. We, therefore, do not find any merit in this writ petition which is dismissed accordingly."

23. It is no more *res integra* that seniority would be reckoned from the date of regular appointments. The seniority of encadred persons vis-à-vis existing incumbents in CSCS has been settled while laying down the principle for determination of seniority. As the decision has not been challenged further has attained finality. The respondents are estopped from taking the plea of seniority as an impediment to the existing CSCS officers.

24. As regards comparison of duties and responsibilities of LDCs in L&DO and CSCS a finding to that effect, negating the plea, has been recorded by the High Court, which has also attained finality.

25. In our considered view when a decision has been taken despite existence of CSCS Rules of 1962 and keeping in light the effects of induction of the existing CSS officers, i.e., LDCs yet the CGE 1997 candidates in 'Y' category once being encadred no different yardstick can be adopted to deny the claim to LDCs of 'Y' category of CGE 1996 merely on the basis of their having working in L&DO. This has no intelligible

differentia and we do not find any reasonable nexus with the object sought to be achieved.

26. Unequal treatment to equals like CGE 1996 LDCs of 'Y' category and those of 1997 being identically situated is an anti thesis to Article 14 of the Constitution of India.

27. When a policy decision, though objected to by the learned Senior Counsel, shows unfairness, arbitrariness and irrational attitude of Government discriminating in violation of Articles 14 and 16 of the Constitution of India, the decision is not only amenable to judicial review but the Tribunal has power to set aside this decision.

28. However, as a follow up action in a policy decision, which has not been found to be in accordance with law and avers to Constitution of India the only way out is to re-direct the matter to the Government for re-consideration, as held by the Apex Court in ***Union of India v. Kannadera Sanghatanegana Okkuta and Kannadigara & Ors.***, 2002 (10) SCC 226.

29. Having regard to the above reasoning recorded by us, this OA is partly allowed. Impugned order is set aside. The matter is remanded back to respondents to re-consider in the light of our observations made above pertaining to the issue of encadrement of applicants in CSCS, respondents shall decide the issue by passing a detailed and speaking order to be passed within a period of three months from the date of receipt of a copy of this order. In the event it is decided to

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encadre applicants they would be entitled to all consequential benefits. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Vice Chairman (A)

'San.'