

UNREPORTABLE

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) No. 3269/2003 & CM No. 5589/2003
WP (C) No. 3912/2003 & CM No. 697/2003

% Reserved on : March 06, 2009
Pronounced on : July 03, 2009

1. WP (C) No. 3269/2003

R.K. Ojha & Ors. Petitioners

through : Mr. A.K. Mishra, Advocate

VERSUS

Union of India & Ors. Respondents

through : Mr. A.K. Bhardwaj, Advocate
for the respondent No.1/UOI.
Mrs. Bindra Rana, Advocate
for the respondent No.2/UPSC.
Mr. L.R. Khatana, Advocate
for the respondent Nos. 3 to 5.

2. WP (C) No. 3912/2003

Preeti Srivastava Petitioner

through : Mr. A.K. Mishra, Advocate

VERSUS

Union of India & Ors. Respondents

through : Mr. A.K. Bhardwaj, Advocate
for the respondent No.1/UOI.
Mrs. Bindra Rana, Advocate
for the respondent No.2/UPSC.
Mr. L.R. Khatana, Advocate
for the respondent Nos. 3 to 5.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?

3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The learned counsel for the petitioner had submitted that these petitions *qua* petitioner No.4 is to be withdrawn as he did not want to continue with this writ petition. Accordingly, name of the petitioner No.4 shall be deleted from the array of parties.
2. There was a dispute of *inter se* seniority between the direct recruits and the promotees among the Section Officer grade of the Central Secretariat Service. This long pending dispute went upto the Supreme Court and was finally decided in the year 1997. After the decision, a common seniority list was prepared as per the directions contained in the judgment of the Supreme Court. Because of the pendency of the said dispute, promotions on regular basis from the post of Section Officer to the post of Under Secretary could not be made for number of years. During the pendency of the said dispute, OM dated 4.12.1991 was issued pursuant to the interim directions issued by the Supreme Court for filling up all the vacancies that existed as on that date. However, ad-hoc promotions were made to the higher post. After preparation of the common seniority list, the official respondents, for the purpose of undertaking the exercise of regular promotions to the post of Under Secretary, prepared year-wise eligibility list from 1987 onwards and on that basis referred the

matter to the UPSC for considering the cases of eligible persons for promotions.

3. In order to be eligible for promotion to the post of Under Secretary, eight years of approved service as Section Officer is required. Naturally, those who were included in the said panels were selected the officers who had rendered eight years of approved service. The petitioners herein are the direct recruits who joined as Section Officer in the year 1984. Therefore, they could complete eight years of service only in the year 1992 and were not included in the eligibility list prepared for the years 1987, 1988, 1989 & 1990.
4. The petitioners, however, challenged the promotions made by filing OAs before the Central Administrative Tribunal on the ground that selections were not proper. Details of these OAs are as under :-

Date of the OM	Panel Year	Details of the OA	Writ Petition Number
9.5.2000	1987	OA No. 2467/01	3269 of 2003
9.5.2000	1988	OA No. 2467/01	3269 of 2003
27.7.2001	1989	OA No. 2467/01	3269 of 2003
27.7.2001	1990	OA No. 2467/01	3269 of 2003
12.8.2002	1991	OA No. 2315/01	3912 of 2003
12.8.2002	1992	OA No. 2315/01	3912 of 2003

5. The Tribunal has dismissed the OAs vide impugned judgment dated 2.5.2003 holding that since the petitioners were not qualified for promotion to the post of Under Secretary in the years 1987 to 1990, as they became eligible only in the year 1992, they have no *locus standi* to challenge the promotions made by the UPSC from the said eligibility list. The learned Tribunal, in this behalf, referred to Rule

12(2) of the Central Secretariat Service (Promotion to Grade I and Selection Grade) Regulations, 1964 as well as the judgment of the Supreme Court in the case of *R. Prabha Devi & Ors. v. Govt. of India, through Secretary, Ministry of Personnel and Training, Administrative Reforms & Ors.*, 1988 (2) SLR 110.

6. As per the judgment in *Prabha Devi* (supra), even those persons who are senior, but not eligible for consideration to promotion to a higher post, can be ignored vis-à-vis the juniors who have rendered necessary service, making them eligible for promotion. Therefore, according to the Tribunal, even if some persons who were juniors to the petitioners, but rendered the qualifying service, could be included in the panels of 1987-90 and the petitioners were incompetent to raise any objection thereto.
7. Insofar as *locus standi* of the petitioners, on the premise that they had not become eligible for promotion to the higher post, is concerned, the Tribunal has referred to the two judgments of the Supreme Court, namely, *R.K. Jain v. Union of India*, (1993) 4 SCC 119 and *Dr. Umakant Saran v. State of Bihar & Ors.*, AIR 1973 SC 964. The operative portion of the judgment highlighting this aspect is as under :-

“8. The Supreme Court in the case of *R.K. Jain v. Union of India*, (1993) 4 SCC 119 held that in service jurisprudence it is settled law that it is for the aggrieved person i.e. non-appointee to assail the illegality of the offended action. A third person has no right to do so. More close to the facts is the decision of the Supreme Court in the case of *Dr. Umakant Saran v. State of Bihar and Others*, AIR 1973 SC 964. Therein Dr. Umakant Saran was not eligible for appointment and,

therefore, he had no right to question the appointment. We reproduce para 10 of the judgment which answers the question:-

“10. This court has pointed out in *Dr. Rai Shivendra Bahadur v. The Governinig Body of the Nalanda College*, 1962 (2) Supp SCR 144 = (AIR 1962 SC 1210) that in order that mandamus may issue to compel the authorities to do something it must be shown that the statute imposes a legal duty and the aggrieved party had a legal right under the statute to enforce its performance. It is contended on behalf of the State that apart from the fact that respondents 5 and 6 had been validly appointed in accordance with the practice followed by the Government. Dr. Saran, who was not eligible for consideration for appointment at the time had no right to question the appointments since he was not aggrieved.”

In other words when the applicants were not eligible for being considered for the panels in question because they did not have the qualifying service in terms of Rule 12(2) of the Rules they must be held to be having the locus standi to file the present applications.”

8. The admitted position as per records, thus, is as under :-

(i) The petitioners herein are the direct recruits of the year 1984.

They became eligible for consideration to the post of Under Secretary only in the year 1992. Thus, their names could not have been included in the select list of 1987 to 1990.

(ii) All those whose names were included in those select lists were the persons who have rendered eight years of approved service. Many of them were juniors to the petitioners. However, they were promotee officers and had been promoted as Section Officers in the year 1979 or earlier and, therefore, had completed eight years qualifying service in the year 1987 and onwards. Therefore, their cases could have

been considered for promotion having regard to the ratio of the Supreme Court in the case of *Prabha Devi* (supra).

- (iii) Certain persons who were in the select list but were ignored for promotions, never came forward to challenge their non-promotion. The Tribunal, to that extent, is correct that it was for such aggrieved persons to make grievance about their non-promotions and the petitioners who were not even eligible could not have racked up such an issue.

9. Faced with the aforesaid situation, learned counsel for the petitioner has endeavoured to argue that wrong promotions made in those years have adversely affected the cases of the petitioners, even if they were to be considered for promotion in the select list of the year 1992. In this behalf, he has advanced following two contentions:-

(a) Many persons who were included in the select lists of 1987 to 1991 had retired by the year 2000 when the exercise was undertaken by the UPSC. Only because they had retired they were not given promotion. By ignoring them, the posts which would have, in normal course, gone to those retirees, were filled up from amongst the promotees, including the private respondents herein. Those private respondents stole march over the petitioners insofar as the next higher post, namely, Under Secretary, is concerned.

(b) Upto the year 1991 there were only 460 vacancies available. As against these 460 vacancies, 600 persons were promoted. It

benefitted those promotees and since posts in excess were filled, that affected the chances of promotions of the petitioners when they became eligible subsequently as the posts were not available because they were already consumed.

10. We shall deal with these two submissions and at that time we would also take into consideration the detailed arguments of counsel for the parties.

11. **Re. 1:- Non-inclusion of retiree officers**

Submission of learned counsel for the petitioner in this behalf is that though the DPC met in the year 2000, it considered the cases of promotion of officers for the select lists of 1987 to 1991. Therefore, all those officers who were in service on the crucial dates, i.e. between 1987 to 1991 should have been included for consideration even if they had retired by the year 2000. The petitioners have relied upon the OM dated 12.10.1998 read with OM dated 10.4.1989, as amended vide OM dated 27.3.1997, for contending that as no actual promotions are required to be given to the employees in case of the drawing of panels for the previous years, not only the retirees cannot be excluded from the panels for the past years for want of their ACRs for the relevant periods but also that the panels are required to be drawn on a notional basis in the cases where for some or the other reason the panels have not been drawn for the past years.

12. Without prejudice to the above, it is submitted that the case of the petitioners' cannot be allowed to be prejudiced by the alleged failures of the official respondents to keep the ACRs of the retiree officers till the time of the completion of their panels, which was more so necessary in view of the fact that their panels were yet to be prepared for the year 1987 onwards and so pending litigation and preparation of the panels the said ACRs could not have been allowed to be destroyed in terms of the OM dated 21.10.1991, which position was clarified vide OM dated 14.5.2001 bearing No. 210011/6/2001-Estt (A) issued by the DOPT.

The alleged non-availability of the ACRs of the retirees could not prevent putting their names in the impugned panels in view of the clear provisions that they were not required to be given promotion with retrospective effect. On the contrary, irrespective of the fact whether or not they were to be so promoted, these officers needed to be included in the panels for the respective years to ensure that their non-inclusion did not result in any distortion of the panel and such officers as would not have been legitimately entitled to be included in those panels, did not get included. The fact that these officers had actually been promoted on being found fit as Under Secretary, should have weighed with the department even if their ACRs had not been made available in the year 2000.

13. It is also submitted that the averments made by the respondents regarding the alleged non-availability of the ACRs are *per se* false and

incorrect. In this regard, learned counsel for the petitioner has drawn attention to the official records of File No. 4/9/2000/CS-I which was given for inspection on 6.3.2009. From these records the following illegalities are clearly visible :-

- In the table the ACRs of many officers have been stated to be with the UPSC as on the crucial dates but out of this category, only those officers' names have been indicated as 'assessed', with their names included in the impugned panels, who were in service even on the date of the preparation of the final impugned panel in the year 2000 and the names of the other employees who were not in service in the year 2000; have not been mentioned in the impugned panels. Accordingly, even the DOPT had taken the view that the panel should be returned.

14. Reference is also made to the following portion of the impugned OMs:-

“7. The officers who were in service on crucial dates but had retired as Section Officers subsequently on superannuation or otherwise have also been considered for inclusion in the select list of Grade-I in pursuance of DOPT's O.M. No. 22011/4/91-Esst. (D) dated 12.10.1998. However, their appointments need not be notified as promotions can take place prospectively and retired persons would not be available to avail of the actual promotion from the prospective date.”

It is pointed out that 112 officers' names were not included in the panels for the year 1989 whereas 92 number of officers were not included in the panel for the year 1990 on the ground that their ACRs were not available.

15. The learned counsel for the UPSC countered the aforesaid submissions. He pointed out that on the basis of the information and documents furnished by the Department, the Commission convened the Departmental Promotion Committee to prepare the Select List of Grade-I of the CSS for the year 1987 and 1988 in the manner laid down in the Central Secretariat Service (Promotion to Grade-I and Selection Grade) Regulations, 1964. While doing so, the Commission also took into consideration the DOPT OM dated 12.10.1998 wherein it had been laid down that where year-wise panels could not be drawn for reasons beyond control then officers who had retired and who were within the zone of consideration in the relevant years should also be considered for the relevant years. The Selection Committee accordingly considered 246 senior most eligible officers for the year 1987 against 82 vacancies (including 10 reserved for ST) and 312 senior most eligible officers for the year 1988 against 104 vacancies (including 7 reserved for ST). In accordance with the CSS Promotion Regulations 1964, the DPC is required to classify such of the officers included in the field of selection as are considered fit for appointment to Grade-I as 'Outstanding', 'Very Good' and 'Good' on the basis of merit (Sub-Regulation No.4). The recommendations of the Selection Committee together with upto date confidential records of the concerned officers and such other information as may be relevant, be forwarded to the commission for their advice (Sub-Regulation No.5). In accordance with Sub-Regulation No.7, the Select List shall be prepared by including

number of names first from amongst the officers finally classified as 'Outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good'. The order of names *inter se* amongst each category shall be the order in which the names are arranged in the single list prepared under clause 2.

16. In accordance with the above principles, the Selection Committee, which met on 27th to 30th March 2000, prepared the Select List for the year 1987 and 1988 on the basis of assessment of the Annual Confidential Reports of the eligible officers. Where the ACRs of officers were not available as they had retired, the gradings assigned to such officers by the previous Selection Committees held for preparation of the Select List for the years 1986, 1985, 1984, 1983 etc. were taken into consideration and accepted as such. In cases where no ACR was available, the Selection Committee could not assess such officers for want of ACRs as the Department could not furnish any records relating to these officers. Accordingly, a Select List of 72 names was prepared for the year 1987 and a panel of 97 names was prepared for the year 1988. All officers who had since retired as on the date of Selection Committee meeting but were included in the zone of consideration in the relevant year i.e. 1987 and 1988 were duly considered by the Selection Committee and where such officers had retired during the relevant year, extended

panel to the extent of such retirements during the same year was also given in the Select List, as per Government instructions.

17. Mr. Khatana, on the other hand, led the frontal attack on behalf of the private respondents and vehemently countered the submissions of the petitioner's counsel. He pointed out that in the scheme in place, for making promotions to Grade-I (Under Secretary), there is no possibility of any person, who has not retired, being taken as such in the context of determination of the size of a Select List for a particular year. He referred to the following formula approved by the Central Establishment Board which determines the size of the Select List :-

“The size of a Select List is determined according to the formula approved by the Central Establishment Board, which has the following components :-

- i) Retirement of CSS Grade I officers during the Select List Year;
- ii) Number of Grade I officers expected to be promoted to the Selection Grade (Deputy Secretaries of the CSS) – equivalent to the strength of fixed for Select List;
- iii) 2/3 of existing vacancies available in the Under Secretaries' Grade;
- iv) Number of officers of the previous Select List remaining unabsorbed on 1st July of the Select List year.

Strength of the Select List = (i) + (ii) + (iii) – (iv)”

He demonstrated the working of this formula with the following illustration :-

- We presume 'X', date of birth 01.12.1936, was included in the Select List of Grade-I for the year 1987, which was notified in the year 2000. He thus superannuated on 01.12.1994 (attaining the age of 58 years prevalent at that point of time). It is further

presumed owing to delay in notification of the Select List, he though included in the Select List of 1987 yet missed out his actual promotion. The formula, however, ensures that he constructively neutralized the slot even though without a promotion till Select List year in which his superannuation fell, that is the year 1994. As explained above, the Select List year has a span of one year, staring from 01/07 of the year and concluding on 30/06 of the subsequent year. The span of Select List year was from 01/07/94 to 30/06/95 within which the superannuation of 'X' fell contributing thereby a slot to that Select List Year. Thus a person included in a Select List constructively neutralizes a slot till his superannuation irrespective of the fact whether he was actually promoted or not.

18. He argued that the extended Select List (panel) issued by the respondent No.1 is in conformity to this principle, that vacancies owing to retirement must be utilized in the relevant Select List year itself. For instance, Shri M.J. Thirunavakarsu, included in the Select List for the year 1990, was retiring from the same year and the vacancy caused thereby, must therefore be reckoned for filling up in the same year. The Extended Panel for that year, thus, included the name of Mr. G.S. Virdhi in lieu of him. Shri Virdhi retired in April 2003 and the resultant vacancy created a slot in the Select List for the year 2002 (as stated above the "Select List Year" for the select list of 2002 being from 1st July, 2002 to 30th June 2003).

19. From the self-same reason, the respondent No.1 prescribed the following regulatory dispensation in terms of Para 3 of its OM No. 4/9/2000-CS.I dated 27.07.2001 :-

“The appointment of these officers on regular basis could not be made/notified in due course for the reasons mentioned in this Department’s O.M. No. 4/24/98-CS.I dated 9.5.2000. The vacancies against which officers have been included in the Select List for the year 1989 relate to the period from 1.7.1989 to 30.6.1990 and those included in 1990 Select List relates to from 1.7.1990 to 30.6.1991. As regular Select Lists could not be drawn within the period prescribed for such panels, due to protracted litigation and the panels have gone in arrears by almost 11/12 years, their appointments may be deemed to have been made effective with effect from 1.7.1989 and 1.7.1990 respectively for the purpose of approved service and for fixing their pay as Under Secretary on a notional basis as was allowed to officers included in the Select Lists of Grade-I (Under Secretary) for the years 1987 and 1988 with the consent of Estt. Division of this Department.”

20. Admitted position which comes on record is that the DPC for considering the cases of promotions of officers for the Select List of 1987-1991 could not be held in time because of the pendency of the dispute of seniority before the Supreme Court. It was pursuant to the directions given by the Supreme Court in the case pending before it, that select list was prepared and DPC met in the year 2000. Many officers who were in service between 1987-91 had retired by the year 2000. OM dated 12.10.1998 of the DOPT, in such cases, provides that such officers who had retired but within the zone of consideration for relevant years should also be considered for the relevant years. It is explained by the UPSC in its affidavit that keeping in view the aforesaid provision as well as CSS Promotions Regulations, 1964, the DPC which met on 27th-30th March 2000

considered the cases of eligible officers. Where the ACRs of the officers were not available as they had retired, the gradings assigned to such officers by previous Selection Committee held for preparation of Select List for the years 1983-86 were taken into consideration and accepted as such. In cases where no ACRs were available, the Selection Committee could not assess those officers for want of those ACRs. It is also explained that all officers who had since retired as on the date of Selection Committee meeting, but were included in the zone of consideration, were duly considered and where such officers had retired during the relevant year, extended panel to the extent of such retirements during the same year was also given in the Select List.

This approach, we find, is as per the Government instructions.

21. We find that the exercise done by the DPC was as per the formula approved by the Central Establishment Board, relevant portion whereof has already been reproduced above. Extended select list could be prepared in conformity with the principle laid down therein. We are unable to accept the submission of learned counsel for the petitioners that this formula would not be applicable.

22. **Re.2:- The number of vacancies/inflated panel:**

The submission of learned counsel for the petitioner was that total number of vacancies for the period 1987-91 were 460, which was clear from the reply furnished by the Minister in response to a Parliament Question as well as the contents of affidavit given by the

respondents in the Supreme Court as well as other documents. As against this, as per the official records shown to the petitioners on 6.3.2009, it is noted that even the Union of India had mentioned that the total number of posts (filled/unfilled) in the Grade of Under Secretary till 1990 were only 700. The total number of vacancies tenable by CSS officers, when calculated on that basis alone, could at any point of time not have been more than 464, i.e. 2/3rd of 700 of the total posts in this grade. The respondents have through the impugned panels included over 600 officers for the years 1987 to 1991.

23. According to the petitioners, the formula provided under the Central Staffing Scheme was not applicable for preparation of the panels for the past years, which was to be guided by the '*actual vacancies*' that arose in the concerned years in terms of Clause 6.4.1 of OM dated 10.4.1987, as amended vide OM dated 27.3.1997 as well as OM dated 10.12.1998. Components C & D could not be operated for the panels which were being drawn up for the past years. Hence, the numbers worked out on the basis of this formula are apparently wrong. In the circumstances, the panels need to be redrawn after recalculating the right number of vacancies, taking into account the exact number of vacancies available upto year 1991, i.e. 460, as the respondent No.1 has admitted in the Supreme Court and operationalised as per the directions of the Supreme Court vide order dated 20.10.1991. It is relevant to mention that even the DOPT has

conceded in their OM dated 30.1.1992 that the total number of vacancies available till the notification of the OM dated 4.12.1991 were 460 and due to this reason, the 86 SC/ST employees, who ought to have been given place out of the 460 employees who were given promotion pursuant to the OM dated 4.12.1991, were actually given *ad-hoc* promotion on personal basis to be adjusted against the future vacancies. It may be noted that there was no vacancy in the year 1992 due to which the next order for appointing the Section Officers to Grade-I was issued vide order dated 30.3.1993.

24. On this basis, submission was that appointing much more persons than the vacancies available marred the chances of the petitioners as no vacancies were available when the petitioners became eligible. Moreover, by appointing juniors to the petitioners in excess of quota, they have been made seniors to the petitioners thereby affecting their further career progression.
25. As per the UPSC, proper procedure was followed by the Selection Committee, which met on 24th, 25th, 31st January 2001 and 1st and 22nd February 2001 for the vacancies for the years 1989 and 1990. The DOPT reported 139 vacancies plus 17 unfilled ST vacancies for the year 1989 and 142 vacancies plus 20 unfilled ST vacancies for the year 1990 in their letter dated 8.8.2000. Along with this letter, the Department also had furnished eligibility lists for the years 1989 and 1990, which consisted of officers upto S.No. 3813 and 3996 respectively of the Common Seniority List of Section Officers' of the

Central Secretariat Service who had completed required 8 years of service as on 1.7.1989 and 1.7.1990 respectively, excluding the names of the petitioners who were not eligible for promotion to Grade-I of the CSS for the years 1989 and 1990 as they had not completed the prescribed 8 years of service as Section Officers as on the crucial date prescribed under the Promotion Regulations, 1964.

It is also submitted that selection process was undertaken by DPC in accordance with the provisions of Rules and Regulations of the Central Secretariat Service, 1964 and instructions contained in OM dated 12.10.1998 for year-wise vacancies for each year, i.e. 1987, 1988, 1989-1990. The DPC considered the vacancies for the different years from 1987 to 1990 and after assessment thereof prepared year-wise panels, which were forwarded to the department. This position is clearly reflected in the counter affidavit filed on behalf of the respondent No.2.

26. Mr. Khatana, learned counsel appearing for the private respondents, argued that on the basis of the promotions ordered on ad hoc basis in pursuance of the interim orders of the Supreme Court on 4.12.1991, the petitioners have sought to project as if there were only 460 vacancies from the year 1987 to 1991. He submitted that this is blatantly false, misleading and misconceived inasmuch as the said 460 vacancies were actual vacant positions available (physically) at that point of time against which the ad hoc promotions could be made in pursuance of the Supreme Court's interim directions. This

did not mean that that was the absolute number of vacancies for the select lists of the years 1987 to 1991 because the select list vacancies are calculated in terms of the approved formula taking into account the various components giving rise to regular vacancies in a particular select list year, which is reckoned from 1st July of a year to 30th June of the next year, as explained/illustrated in the succeeding paragraphs.

27. Referring to the formula approved by the Central Establishment Board, which has already been reproduced above, he argued the determination of size of a Select List is an arithmetical function with no discretion of any kind left to the authorities. Accordingly, as per this formula, the strength of the Select Lists for the years 1987 to 1990 was fixed as under :-

1987	82
1988	104
1989	139
1990	142
Total	467

28. Out of the above, the number of vacancies actually utilized (filled) by officers included in the Select Lists for 1987 to 1990 was only 439 as under :-

1987	72
1988	97
1989	133
1990	137
Total	439

Thus, the number of vacancies actually filled during the above four select list years were much less than the number of vacancies

available, which gives lie to the assertion made by the petitioners that more persons were promoted than the vacancies available and hence prejudice was caused to the petitioners.

29. He further submitted that the period span of a Select List is one year, beginning from the 1st of July of the Select List year and upto 30th June of the following year. Thus, the period span of the Select List year 1991 was from 1.7.1991 to 30.6.1992. The Select List anticipates vacancies over a period of one year and has nothing to do with vacancies on a particular day. For instance, vacancies for the Select List year 1991 were to be an anticipation of vacancies from 1.7.1991 to 30.6.1992 covering all the components mentioned earlier. The claim of the petitioners that vacancies for the years 1987 to 1991 were 460 is a stark misrepresentation as those were physically available vacancies on 4.12.1991 covering only one component, namely, retirements. The aggregation for the five years would obviously be substantially more if the period from 5.12.1991 to 30.6.1992 (larger segment of the Select List year 1991) and the other components of the Select List were also reckoned. He stated that the following factual position will need to be taken cognizance of in this context :-

- (i) Based on the Civil List (Corrected upto 30.6.1987) and the Select Lists for the years 1987 to 1990, the number of Grade-I Officers (Under Secretaries) who retired during this period (5.12.1991 to 30.6.1992) was about 60. The number of

persons who died, resigned or left service voluntarily during the period would be over and above. Obviously, these vacancies were over and above the alleged 460 vacancies.

- (ii) The size of the Select List of the Selection Grade (Deputy Secretaries) for the year 1991 was 33 and this was an add-on while determining the vacancies for the Select List of Grade I for the year 1991. The number 460 did not include the figure of 33 as it was a late date determination.
- (iii) Component (iii) of the formula approved by the Central Establishment Board, which is mentioned above, diverts 2/3rd of the existing vacancies in the Under Secretaries's Grade, out of the allocation for the officers of other services, to the Selection List for Grade-I officers (Under Secretaries of the CSS). Obviously, the vacancies on 4.12.1991 had not been accounted for this additional element.
- (iv) Further, the actual strength of the Select Lists for the years 1988 to 1990 should have been much higher than that was fixed above because at the time of fixing the strength, the Grade-I Select Lists upto only the year 1986 were available at that time. Since the Select List for the years 1987 to 1990 were not available at that time, the resultant retirement vacancies of the officers included in these Select Lists could not be assessed and taken into account. A number of officers included in the Select List for 1987 retired during the 1988 to 1990. Similarly, some of those included in the Select List for 1988 retired during 1989

and 1990. And some of those included in the Select List for 1989 retired in 1990. The total number of such retired officers, which could have been an add-on to the strength of the Select Lists for the years 1988, 1989 and 1990 was 58. Reckoning these 58 vacancies (not accounted for), the size of the Select Lists for the years 1987 to 1990 should have been larger than that fixed, as shown below :-

1987	82
1988	108
1989	158
1990	177
Total	525

30. It is his further submission that the petitioners have misrepresented that available vacancies (460) on 4.12.1991 were the vacancies for five Select List Years (1987 to 1991) and not four Select List Years (1987 to 1990) as afforded by the respondent No.1. As the fact stands, the figure of 467 – aggregation of vacancies for the years 1987 to 1990 – was less by 58 and the actual utilization at 439 was still less by 28. The fact that vacancies for the Select List Year 1991 were over and above the aggregation of vacancies for the four Select List years, i.e. from 1987 to 1990, will also be evident from the following arithmetical exercise which will give a gross indication of the vacancies which were available for the Select List year 1991 independent of vacancies (460) on 4.12.1991 :-

(i)	Period span of the Select List year 1991	1.7.1991 to 30.6.1992
(ii)	Number of retirements of Grade I Officers during 5.12.1991 to	60

	30.6.1992	
(iii)	Number of vacancies available for being utilized in Select List Year 1991 owing to the fact that the SL 88, SL 89 and SL 89 could not take into account retirement vacancies arising from SL 87, SLs 87-88 and SLs 87-89 respectively	58
(iv)	Number of persons included in the Selection List of Selection Grade (Deputy Secretaries) for the year 1991 – an add-on to the SL 1991 of Grade-I as per the formula	33
(v)	Number of vacancies though available for the SLs 1987-90 but not utilized and therefore available for the SL 1991	28
	TOTAL	179

Incidentally, the Select List of Grade-I officers for the year 1991 included 196 persons. The difference of 17 is explained by the component (iii) of the formula approved by the Central Establishment Board (for determination of vacancies for the Select List of Grade-I Officers) not reckoned here and this is 2/3rd of existing vacancies available in the Under Secretaries' Grade at the All Secretariat Level.

31. It is evident from the above that whereas the petitioners state that the vacancies which were filled were over and above the sanctioned strength, the official as well as private respondents dispute this. They have given their own calculations, as noted above, on the basis of which it is sought to be argued that the appointments were correctly done and the existing number of vacancies were not over short by taking extra persons. It is not possible to verify the claim of either

the petitioners or the respondents. However, we would not like to go into this exercise at this juncture inasmuch as these promotions were made in the year 2000; they related to the period 1987 to 1991 and more importantly, when these promotions were made, the petitioners were not even eligible to be considered. It would, therefore, be proper to unsettle the position at this juncture and on this ground alone we find that the judgment of the Tribunal need not be interfered with.

32. We, accordingly, dismiss these writ petitions leaving the parties to bear their own costs.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

July 03, 2009
nsk

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) No. 3912/2003 & CM No. 697/2003

%

Reserved on : March 06, 2009
Pronounced on : July , 2009

Preeti Srivastava

. . . Petitioner

through :

Mr. A.K. Mishra, Advocate

VERSUS

Union of India & Ors.

. . . Respondents

through :

Mr. A.K. Bhardwaj, Advocate
for the respondent No.1/UOI.
Mrs. Bindra Rana, Advocate
for the respondent No.2/UPSC.
Mr. L.R. Khatana, Advocate
for the respondent Nos. 3 to 5.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

For orders, see WP (C) No. 3269/2003.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

July 03, 2009

nsk