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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No.1735/2010**Decision : 8th December, 2011****RAMESH CHAND SANWAL & ORS.**

..... Petitioners

Through : Mr. R.K. Saini, Mr. Vikram Saini,
Mr. Vikas Saini and
Mr. K.G. Gopalakrishna, Advs.

Versus

DELHI HIGH COURT THROUGH REGISTRAR**GENERAL**

..... Respondent

Through : Mr. Viraj Datar, Adv.

CORAM:**HON'BLE MS. JUSTICE GITA MITTAL****HON'BLE MR. JUSTICE J.R. MIDHA****Gita Mittal, J (Oral)**

1. *"The organization that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffective performance, among both non-managerial employees and their supervisors."* - Personnel Management, Dr. Uday Pareek, p. 277.

In the pronouncement reported at **(1989) 4 SCC 635** while considering an issue relating to the failure of an employer to provide avenues for promotion for certain categories of employees, the Supreme Court quoted the above which quotation is apt so far as the facts of the instant case are concerned. The petitioners are agonized by the failure of the respondents to provide an avenue or a channel for promotion for the employees who have

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been appointed in the posts of Despatch Rider/Process Servers.

2. Before dealing with the specific contentions raised by the petitioner, certain essential facts are required to be considered. The process serving agency of the Delhi High Court was constituted in the year 2000 with the objective of effecting service of process efficiently and in a time bound manner. For this purpose, the respondent created 10 posts of "Despatch Rider/Process Servers". Pursuant to recommendations of the Selection Committee of the respondents which were approved on 15th March, 2000, this post came to be included in the Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972 at serial no.23A. The prescription in the rules made by the respondents in respect of the minimum eligibility requirements, as well as the mode of appointment, may be usefully extracted in extenso and reads as follows :-

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Sl.No.	Category of post	Minimum qualification prescribed for the appointment to the post	Mode of appointment.
23-A	Despatch Rider/Process Server (Selection Post)	a. For members of the Establishment of the High Court: Matric/higher Secondary with 3 years service in any of the post of Despatch Van Driver (Rider) and categories 24 A to 32 i.e. 24 A (Gestetnor Operator Grade-II) 25 and 27 (Usher), 26(Library Attendant), 28 (Court Attendant), 29 (Room Attendant), 30 (Security Attendant) 31, (Safaiwala) and 32 (Lawn Attendant) of Class-IV mentioned in Schedule-1, with valid driving licence of light motor	a.50% of the vacant posts by selection from the incumbents of categories of posts specified in column 3 on the basis of written test, driving test and interview, failing which, posts will

		vehicles/motor cycle and 2 years unblemished driving experience.	be filled up from direct quota.
		b. For direct recruits: Matric/Higher Secondary with Driving Licence of light motor vehicles/motor cycle and 2 years unblemished driving experience.	b. 50% of the vacant posts by selection on the basis of written test, driving test and interview.

Applications were accordingly invited, vide a circular dated 3rd April, 2000, from members of the establishment of the court for filling up the said posts. At the same time, applications for appointment as direct recruits were invited through an advertisement published in national dailies for filling up five posts. The appointments of the Despatch Rider/Process Servers were effected in terms of the aforementioned rules, upon their satisfactorily undertaking a written test as well as an interview. We are informed that the 10 notified vacancies were filled up from both the streams i.e. by direct recruitment through an open examination – 8 posts and departmentally 2 posts. The petitioner nos. 1 to 8 had applied pursuant to the said recruitment process and were appointed pursuant to the action taken in the year 2000.

3. Subsequently on increase in the total number of posts to 13, further appointments were effected to the post of Despatch Rider/Process Servers. As a result, other petitioners were promoted from within the establishment. As such, while six petitioners were appointed on direct recruitment after undertaking the aforementioned selection process, seven petitioners were appointed from within the establishment of the Delhi High Court.

4. The petitioners make a grievance that the extant rules i.e. the Delhi High Court (Establishment, Appointment & Conditions of Service) Rules, 1972 (hereinafter referred to as the 'Rules') do not provide for any channel

or avenue for promotion for the petitioners. It is submitted that even class IV employees, who are placed below the petitioners in the hierarchy of posts, have better career advancement prospects within the high court establishment inasmuch as they are entitled to promotion in their own line. Such of those class IV employees who are matriculates can be promoted as junior judicial assistant against the 20% prescribed departmental quota. It is therefore urged that, that by the failure to provide a channel for promotion, the respondents have violated a basic right of an opportunity to advance in the career span of the petitioners which cannot be abrogated in any manner. Mr. R. K. Saini, learned counsel for the petitioners has placed reliance on pronouncements of the Supreme Court in support of his contentions that the action of the respondents is in violation of settled principles of law and cannot be permitted to stand.

5. The respondents in fact received three representations dated 4th April, 2008; 12th August, 2008 and 5th March, 2009 from the petitioners as well as a request dated 4th November, 2008 from the petitioner no.2 making the above grievance seeking remedial action. These were placed before the Rules Committee which recommended rejection of the same, observing as under :-

“If the request of the representationists is acceded to and they are included in the feeder cadre for promotion to the post of Judicial Assistant, they are likely to occupy higher posts in future, without their being subjected to any test in English language and typing, thereby creating a situation where undeserving hands may even reach the higher posts without their being able to efficiently discharge the functions attached to the post of Judicial Assistant. An anomalous situation as regards fixation of seniority amongst the Junior Judicial Assistants/Restorers and Chauffeurs, Dispatch Van Driver (Rider), Despatch Rider, Despatch Rider/Process Server is

likely to occur. Moreover, Graduate employees with 5 years service or Matrix/Higher Secondary employees with 8 years service on the establishment of this court are eligible to appear in the examination for appointment to the post of Senior Judicial Assistant under 50% quota by selection on merit, for which examination the representations are also eligible. The representationists, even otherwise are entitled to the Assured Career Progression Scheme. The representations are recommended to be rejected."

The said recommendations were approved by the Chief Justice on 7th December, 2009 and intimation of the rejection of the representations were duly communicated to the petitioners wide memo dated 2nd January, 2010 as under :-

"With reference to the joint representations dated 04.04.08 and 12.08.2008, Mr. Ramesh Chand Sanwal, Despatch Rider/Process Server is hereby informed that the same has been considered and rejected."

6. The petitioners by way of the present writ petition challenge the rejection of their representations by the said memorandum dated 2nd January, 2010, as legally untenable and that the petitioners are entitled to an appropriate mandamus to the respondents to ensure reasonable promotional opportunities to the petitioners who have been employed as Despatch Rider/Process Servers since 2000 onwards.

7. On the other hand, appearing for the respondents, Mr. Viraj Datar, learned counsel has submitted that the rules have been framed by the respondents keeping in view the nature of duties against the posts and that the representations of the petitioners have been considered in the light thereof. Mr. Datar therefore supports the decision of the respondents in rejecting the representation for the very reasons stated in the order passed by the rules committee, which had rejected the same.

8. Mr. Datar additionally supports the decision of the respondents contending that the said rules render the petitioners eligible to appear in the open examination for appointment to the post of senior judicial assistant under the 50% quota by 'selection on merit' and that in any case, they are entitled to the 'Assured Career Progression Scheme' by virtue of which they are entitled to financial benefits at three stages. Mr. Datar has urged at length that the qualifications and requirements for the post of Despatch Rider/Process Server on one hand and the junior judicial assistant on the other, were of a completely distinguishable nature, both requiring technical skills of a separate kind.

9. We have given our considered thought to the submissions made by both sides, conscious of the limitations on the scope of judicial review by the court.

10. Pursuant to the powers vested under Article 229 of the Constitution of India, the Chief Justice of the Delhi High Court has made the rules titled the Delhi High Court Establishment (Appointment & Conditions of Service) Rules, 1972. An amendment to these Rules was approved by the Chief Justice on 15th March, 2000. Having regard to the nature of the controversy, it would be appropriate to consider the prescription in these rules for the post of Judicial Assistant (serial no.15); Junior Judicial Assistant (serial no.19); Restorer (serial no.20); Chauffeur (serial no.21); Despatch Van Driver (serial no.22); Despatch Rider (serial no.23) and Despatch Rider/Process Server (serial no.23-A) which read as under :-

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Sl. No.	Category of post	Minimum qualification prescribed for the appointment to the post	Mode of appointment.
23-A	Despatch	a. For members of the Establishment of	a.50% of the vacant

	Rider/Process Server (Selection Post)	the High Court: Matric/higher Secondary with 3 years service in any of the post of Despatch Van Driver (Rider) and categories 24 A to 32 i.e. 24 A (Gestetnor Operator Grade-II) 25 and 27 (Usher), 26(Library Attendant), 28 (Court Attendant), 29 (Room Attendant), 30 (Security Attendant) 31, (Safaiwala) and 32 (Lawn Attendant) of Class-IV mentioned in Schedule-1, with valid driving licence of light motor vehicles/motor cycle and 2 years unblemished driving experience. b. For direct recruits: Matric/Higher Secondary with Driving Licence of light motor vehicles/motor cycle and 2 years unblemished driving experience.	posts by selection from the incumbents of categories of posts specified in column 3 on the basis of written test, driving test and interview, failing which, posts will be filled up from direct quota. b. 50% of the vacant posts by selection on the basis of written test, driving test and interview.
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11. It is also undisputed that the Despatch Rider/Process Server are placed in the same pay band as Junior Judicial Assistants and Restorers. It is also on record that all three posts are Group C posts. The petitioner has set out the pre-revised and revised scales of these posts, which are as under :-

“Pre-revised scale : Rs.4500-125-7000
Revised scale : Rs.5200-20200 + (Grade Pay – 2800)”

12. A reading of the rules also elucidates the several promotion opportunities which are available for various posts in the Delhi High Court establishment. For instance, the court masters have been rendered eligible for promotion as Assistant Registrars alongwith the Administrative Officers (judicial). Similarly, the Senior Judicial Translators, readers and court

officers are promoted as Administrative Officials and Court Masters alongwith the Senior Judicial Assistants. We also find that the Judicial Assistants as well as the Chief Cashiers are eligible for promotion as Senior Judicial Assistants under these Rules.

Therefore, it is evident that so far as the Restorers and the Junior Judicial Assistants are concerned, the rules render them eligible for promotion as Judicial Assistants. However, the said rules have not provided any channel for promotion for the post of the Despatch Rider/Process Servers.

13. We may also notice the opportunities which are available to class IV employees. Class IV employees in the Delhi High Court are also enjoying good prospects for advancement within the establishment. The class IV employees have the opportunity of being promoted in their own line whereas the said class IV employees who are matriculates, are also eligible for accelerated promotions as Junior Judicial Assistants against the 20% departmental quota prescribed for them.

14. We find that the minimum qualifications and the mode of appointment to the posts of Despatch Rider/Process Servers as prescribed by the respondents permit appointments by two modes; 50% of the vacant posts have been prescribed for appointment by selection from incumbents of all categories of posts specified in the rules while the remaining 50% of the vacancies are required to be filled up by open selection, in other words by direct recruitment. It is noteworthy that, be it appointments from incumbents in the establishment or open selection, the candidate has to undertake and qualify a written test, a driving test as well as an interview, as part of the selection process.

15. Mr. R.K. Saini, learned senior counsel for the petitioners has drawn

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our attention to the nature of the written tests which the Despatch Riders/Process Servers have to undertake as part of the selection procedure for appointment which includes the following :-

- “(1). A brief note in English or Hindi on a subject like “Festival in India” “Visit to a picnic place, Zoo” “Hobbies”;
- (2). General knowledge questions to test general awareness;
- (3) A brief note on locating a house in a given locality
- (4) A note regarding service of notice/summons on a party-record of observation by Process Server.”

16. Our attention has also been drawn to the memo dated 7th November, 2000 issued by the respondents requiring one Amit Kumar (petitioner no.8) to appear in the written test wherein the syllabus was also prescribed.

17. The petitioners have also submitted before this court that certain class IV employees had requested the respondents for exemption in undertaking the written test for appointment to the post of Despatch Rider/Process Server. This request was rejected by the respondents vide a memo dated 15th November, 2000 clearly emphasizing the importance given to the written test, which a candidate has to successfully qualify before being considered for appointment as a dispatch rider/process server.

18. We find that the petitioners have placed a qualification wise tabulation of the qualifications held by Chauffeur; Despatch Van Riders and Despatch Riders as against Despatch Rider/Process Servers. The same suggests that higher educational qualifications have been prescribed for the posts of Despatch Riders/Process Servers as against the lower educational qualifications prescribed for the posts of Chauffeurs and Despatch Riders. Clearly, this difference in the qualification prescription for eligibility is based on the differential nature of duties.

19. So far as the nature of duties which are assigned to the post of

Restorer/Junior Judicial Assistant and Despatch Riders/Process Servers is concerned, the petitioners have pointed out that the duties assigned to them are extremely onerous and serious inasmuch as service of summons and notices issued by the court is fundamental to expeditious dispensation of justice. The service of summons and notices as prescribed by the Code of Civil Procedure as well as by the Delhi High Court Rules and Orders governing the same, mandates not only a submission of a detailed report upon the process, but also, recording of an affidavit thereon. The process servers are also maintaining a register of the service of the notices which is effected by them. It cannot be disputed that the duties which are discharged and performed by the petitioners entail responsibility and gravity is attached to their work. There is no contest to the submission that the petitioners are called upon to attend the work of Junior Judicial Assistants, in the absence of the required incumbents, in order to meet the exigencies and administrative imperatives.

20. The petitioners make a grievance that on the other hand, Restorers who are facilitating reference work and records connected therewith in the court rooms and maintenance of files, are treated at par with Junior Judicial Assistants. It is contended that on the very analogy that Restorers are equated to Judicial Assistants and have been made eligible for promotion to the post of Judicial Assistants, there is no warrant for excluding the Despatch Riders/Process Servers from the same entitlement and consideration.

21. The respondents have prescribed appointment to the post of Junior Judicial Assistants by promotion from members of the establishment of the court. The Despatch Riders/Process Servers can compete in the 50% establishment quota for appointment only to the post of Senior Judicial

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Assistants. We find that the rules have rendered all employees including the class IV employees who have matriculation/higher secondary certificates with eight years service in the establishment or possess a graduation degree with five years service, in a post carrying pay scale of not less than Rs.4000-6000/-, eligible for participating in the said selection.

22. So far as promotion to the post of Senior Judicial Assistants is concerned, only the Judicial Assistants have been rendered eligible for consideration for promotion. Inasmuch as promotions to the post of Judicial Assistants are permitted only from Junior Judicial Assistants, the petitioners who are Despatch Riders/Process Servers, stand excluded for consideration in the 50% promotion quota. It is also evident that the post of Senior Judicial Assistant is a post above the post of Despatch Riders/Judicial Assistants. Even otherwise, the petitioners, as Dispatch Riders/Process Servers are placed two posts below the post of senior judicial assistant. Therefore, the availability of an opportunity to undertake the examination for appointment to the post of judicial assistant is really not in the nature of a promotional avenue for the petitioners

23. The writ petition sets out the educational qualifications of the petitioners. Seven of the petitioners are holding either a B.A. or a B.Com degree; one of the petitioners is holding a B.A. as well as a diploma in library science; three of the petitioners have passed their 12th class while two of the petitioners have passed their 10th class. The petitioners are stated to be in the age group between 28 to 42 years. Eight of the petitioners have about nine years of service in the post. The petitioners have all claimed to be possessing experience in typing.

25. The availability of the ACP scheme is distinct from availability of and grant of promotion. Such a scheme certainly cannot substitute a promotional

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scheme for an employee of an organization. On this very issue, we may also usefully advert to the observations of the Supreme Court in para 9 of the judicial pronouncement reported at **(1989) 4 SCC 635 Council of Scientific and Industrial Research & Anr. Vs. K.G.S. Bhatt & Anr.** (para 9):-

“9. Respondent-1 is not a lay-man. He is a highly qualified engineer. Although joined service with a diploma in Engineering, he later passed Bachelor of Engineering (B.E.) and also acquired M. Tech. degree and one more diploma (D.P.M.). He was however, left without opportunity for promotion for about twenty years. This is indeed a sad commentary on the appellant's management. It is often said and indeed, abroitly, an organisation public or private does not 'hire a hand' but engages or employees a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See : Principles of Personnel Management by Flipo Edwin B. 4th Ed. p. 246). Every management must provide realistic opportunities for promising employees to move upward.”

26. The Supreme Court placed reliance on the observations of Dr. Pareek reproduced in the beginning of this judgment and extracted from Chapter 12 of the 'Management of Personnel in Indian Enterprises' by Professor N.N. Chatterjee and observed as follows :-

“9. There cannot be any modern management much less any career planning, man-power development, management development etc. which is not related to a system of promotions.”

27. The applicability of the 'Assured Career Progression Scheme' to the posts of Despatch Rider/Process Servers is also of no avail so far as the case of the petitioners in the present petition is concerned. This scheme is

applicable to all eligible employees, including those who are occupying posts of Junior Judicial Assistant; Judicial Assistants and Senior Judicial Assistants. It is not as if the respondents have denied promotional opportunities to the other employees to whom the said scheme applies. In this background, the denial of the promotional opportunity to the petitioners on the ground that they are entitled to the benefit of Assured Career Progression Scheme, is really unjustifiable.

28. The petitioners draw support for their case from the Recruitment Rules, which have been framed for recruitment to the various posts in the district courts in Delhi. We find that a process server in the district court process serving agency, has been placed in the pay band of Rs.3450-3490. A Bailiff in the district court, has been placed in the same pay band. Both these posts form the feeder cadre for promotion to the post of Naib Nazir. Then Naib Nazir has a promotional avenue to be promoted to the higher post of 'Civil Nazir'.

28. There does not appear to be any justification at all, for not providing the promotional avenue to the petitioners even though the same has been permitted to the posts of Junior Judicial Assistants and Restorers, who have been placed in the same pay band as the petitioners and given the duties which are being performed by the Despatch Riders/Process Servers noticed hereinabove.

29. The respondents appear to be nurturing an apprehension that an undeserving person may reach a higher post in the establishment. Availability of promotional opportunities is a recognition of the principles that every employee deserves an opportunity to excel and progress.

30. The very fact that the respondents require their employees to undergo written examinations and interviews, which is an intensive selection process

for appointment, by itself underscores the seriousness with which promotions or appointments are effected. It is also a fact that the rules enable employees who are placed in class IV, at the bottom of the hierarchy also to enhance their skills and undertake the examinations for senior positions, including Senior Judicial Assistants and, therefore, join the mainstream of the establishment.

31. We are also unable to accept that there would be any difficulty in fixation of seniority. This is one of the reasons which has been propounded for the denial of the promotional opportunity to the petitioners. The respondents have been able to ensure that there is no difficulty or dispute in fixation of seniority amongst the different posts which are the feeder posts for appointment to one higher post. Merely because Despatch Rider/Process Servers are made eligible for participation in the selection process to a higher post, certainly would not in any manner create any anomaly when already more than four posts are eligible for promotion to the said post.

32. At this stage, we may usefully refer to the various judicial pronouncements which have been brought to our notice by Mr. R.K. Saini, learned counsel for the petitioner. In the pronouncement of the Supreme Court reported at *(2008) 5 SCC 100 Food Corporation of India & Ors. vs. Parashotam Das bansal & Ors.*, the Supreme Court held that an employee of a State, although has no fundamental right of promotion, but has a right to be considered therefor. The court observed that what is necessary, is to provide an opportunity of advancement; promotion being a normal incidence of service. So far as the jurisdiction of the court is concerned, in para 12 the Supreme Court observed that when employees are denied an opportunity of promotion for long years on the ground that they fell within the categories of employees excluded from promotional prospects, the superior court will

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have the jurisdiction to issue necessary direction. It was further emphasized that the court must issue direction as to the manner in which a scheme should be formulated but the jurisdiction to issue direction to make a scheme cannot be denied to the superior court of the country. In this regard, it was observed in para 21 thus :-

“21. How the employees would be structured is undoubtedly within the realm of the statutory authority but by reason thereof, it cannot tinker with their essential fundamental right.”

33. In *1990 (Supp.) SCC 688 Dr. Ms. O.Z. Hussain vs UOI*, the Supreme Court was concerned with an avenue for promotion for non-medical group-A scientists in the establishment of the DGHS as against availability of such provision for similarly placed officers. The court commented on the essentiality of the availability of a promotional avenue, in the following terms :-

“7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other Ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate.”

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34. On this very aspect in *AIR 1988 SC 1033 Raghunath Prasad Singh vs. Secretary, Home (Police) Department, Government of Bihar & Ors.*, the Supreme Court observed as follows :-

“4. Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly.

35. The post of Despatch Rider/Process Server was undoubtedly created as a stand alone post by effecting amendment to the Delhi High Court (Establishment Appointment & Conditions of Service) Rules, 1972 in the year 2000 keeping in view the imperative needs of effective justice dispensation and administrative exigencies. Such appointments were effected to effectuate the prime objective of expediting justice dispensation, for which services of Process Servers/Despatch Riders makes a large contribution.

36. It is trite that languishing in the same post for decades together would certainly erode the efficiency with which an employee would render service in a post. Lack of a promotional avenue would add to the apathy and discourage the effort necessary for self-improvement in the discharge of duties.

37. The process serving agency requires enthusiasm in the discharge of the functions as a process server. Process serving can brook no inefficiency. Certainly a lack of promotional avenue may instill dejection. It shall certainly add to the feeling of degeneration and stagnation in such employees.

38. Given the above enunciation of the principles laid down by the Supreme Court and the factual narration noticed by us, we have no hesitation

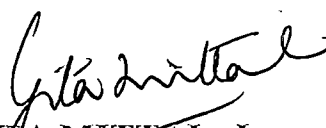
in concluding that the failure to provide a promotional avenue to the petitioners is factually unjustified and unfair as well as legally untenable. More so, when persons similarly placed have been considered eligible for and provided promotional avenues. There is substance in the petitioners' contention that they are entitled for consideration for promotion to the post of Judicial Assistants who have been placed at serial no. 15 of Schedule II, pursuant to the Rule 7 of the Delhi High Court Establishment (Appointment & Conditions of Service) Rules, 1972.

This writ petition is accordingly allowed and it is directed that the respondents shall reconsider the rules, for providing suitable promotional avenue to the Despatch Rider/Process Server for consideration for promotion to the post of 'Judicial Assistants' within five months from today.

There shall be no order as to costs.

DECEMBER 08, 2011

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GITA MITTAL, J

J.R. MIDHA, J