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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.2979/2013 & CM Nos.5629/2013 & 5632/2013**

+ **Reserved on: 4th September, 2017**
Date of Decision: 18th September, 2017

PATANJALI SHARMA Petitioner
Through: Mr.Shanker Raju, Advocate with
Mr.Nilansh Gaur, Advocates.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr.Sanjeev Narula, CGSC with
Ms.Anumita Chandra, Advocate
for R-1.
Mr.Naresh Kaushik, Advocate
with Mr.Devik Singh & Ms.Anjali
Sharma Advocates for R-2.
Mr.A.P. Singh, Advocate for
Mr.A.K. Behera, Advocate for
R-64.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

WP(C) No.2979/2013

1. The present writ petition assails the order dated 16.12.2011 passed by the Central Administrative Tribunal, Principal Bench,

New Delhi in OA No.3310/2009 whereby the Tribunal has vide its common order, dismissed the OA filed by the Petitioner along with OA No.3294/2009 filed by another similarly placed person. The Petitioner had preferred the said OA, challenging the non-consideration of Grade 'A' and 'B' (merged) Stenographers of Central Secretariat Stenographers Service (hereinafter referred to as 'CSSS') for promotion to the post of Grade-I (Under Secretary) of the Central Secretariat Services (hereinafter referred to as 'CSS') during the years 2003 to 2007.

2. The facts relevant for the adjudication of the present petition are, that the Petitioner had joined the Central Government as a Stenographer Grade 'C' (Personal Assistant) in the Department of Personnel and Training on the basis of Stenographer Grade 'C' Examination 1995 conducted by the UPSC. The Petitioner thereafter, appeared for the Section Officers/Stenographers Grade 'A' and 'B' (merged) Limited Departmental Competitive Examination 1991 and competed for the posts of both Section Officer as well as of Stenographer Grade 'A' and 'B' (merged). The Petitioner was, however, unable to qualify for the post of Section Officer and could qualify for the post of Stenographer Grade 'A' and 'B' (merged), which he, accordingly joined and thus he belongs to the 1991 select list of Stenographers Grade 'A' and 'B' (merged).

3. The CSS and CSSS are two different services, having qualitative differences in terms of nature of work, duties,

responsibilities and method of recruitment at different levels. While the CSS was constituted for ensuring continuity in policy administration in the Central Secretariat, the CSSS is meant for providing stenographic and secretarial assistance to the officers in the Central Secretariat and give them support in discharge of their duties. The promotional hierarchy of both the services is as under:-

CSS		CSSS	
Assistant	Group-‘B’	Steno. Grade ‘D’	Group ‘C’
Section Officer	Group-‘B’ (Gazetted)	Steno. Grade ‘C’ (PA)	Group ‘B’
Grade-I (Under Secretary)	Group-‘A’ (Gazetted)	Steno. Grade ‘A’ & ‘B’ (Merged) (PS)	Group ‘B’ (Gazetted)
Selection Grade (Deputy Secretary)	-do-	Principal Private Secretary (PPS)	Group ‘A’ (Gazetted) (Introduced w.e.f. 01.01.1996).
Sr. Selection Grade (Director)	-do-	Senior Principal Private Secretary (Sr. PPS)	-do- (Introduced w.e.f. 01.01.1996).
		Principal Officer(PSO) Staff	-do- (Introduced w.e.f. 01.01.2006).

4. The Petitioner who was in 2003 working on the post of Stenographer Grade A & B(merged) in the CSSS, was desirous of induction in the CSS by way of promotion to Grade I of the CSS. However neither the Petitioner nor any other Stenographer Grade A & B (merged) from the CSSS was considered for placement in the Select List for promotion to the Grade I of the

CSS. Feeling aggrieved by his non-consideration and non-placement in the select list for promotion to the Grade-I (Under Secretary) of the CSS for the vacancies arising during the period 2003 to 2007, the Petitioner made representations seeking consideration for promotion to Grade-I(Under Secretary) in the CSS and upon rejection of his representations on the ground that, having not worked as Section Officer for 2 years he was not eligible for promotion to Grade I in the CSS, he preferred the instant OA before the Tribunal wherein he sought the following reliefs:-

"8.1 To call for the records of this case.

8.2 Declare the applicants/regular officers of Grades A and B (merged) of the CSSS to be eligible to be considered for promotion to the post of Under Secretary against the vacancies for the years 2003 to 2007, in accordance with Rule 12 (2) & (3) of CSS Rules, 1962 and CSS (Promotion to Grade I and Selection Grade) Regulations, 1964 in force for the vacancies and consistent with Articles 14 and 16 of the Constitution of India.

8.3 Declare the action of Respondent No.1 to deny the right of the applicants to be considered for promotion to the post of Under Secretary against the vacancies arisen for the years 2003 to 2007 and that of the first and the second Respondents to prepare Select List Panel of Grade I for the year 2003 from common Seniority List of Section Officers as discriminatory, arbitrary and violative of Articles 14 and 16 of the Constitution of India.

8.4 Direct the Respondent No.1 to consider preparation of the 'single list' of "eligible officers"/Eligibility List comprising the names of Section Officers and the applicants/regular officers of Grades A and B (merged) of the Central Secretariat Stenographers' Service as the feeders grade for promotion to Grade I (Under Secretary),

in accordance with Rule 12 (2) & (3) of CSS Rules, 1962 and CSS (Promotion to Grade I and Selection Grade) Regulations, 1964 in force for the vacancies for the years 2003 to 2007.

8.5 Direct the Respondent No.1&2 to consider inclusion of names of the Section Officers and the applicants and other regular officers of Grades A and B (merged) of the CSSS in the Select List panels of Grade I (Under Secretary) of the CSS for the years 2003 to 2007, in accordance with provisions of Rule 12 (2) & (3) of CSS Rules, 1962 and CSS (Promotion to Grade I and Selection Grade) Regulations, 1964 in force for the vacancies and consistent with provisions of Articles 14 and 16 of the Constitution with all consequential service benefits and to determine the seniority of the applicants.

8.6 Direct the Respondent No.1 to consider inclusion of names of the applicants for the mandatory Level 'D' training programme, as envisaged for the Section Officers, before promotion to the post of Under Secretary.

8.7 Cost of the application may be awarded in favour of the applicants and against the answering Respondents.

8.8 Any other relief, as deemed fit, may also be awarded in favour of the petitioners and against the respondents in the interest of justice."

5. Before the Tribunal, the case set up by the Petitioner was that in accordance with the Central Secretariat Services Rules, 1962 as amended on 24.02.1999(hereinafter referred to as Rules), the official Respondents were enjoined to prepare a select list for promotion to Grade I of the CSS, by including all eligible officers both from the Stenographers Grade 'A' and 'B' (merged) in the CSSS and the Section Officers in the CSS. The Respondent Authorities had, however failed to prepare a proper

list, as while preparing the select list, they had included only the CSS officers and deliberately excluded all the eligible CSSS officers, on the ground that they did not have two years experience on the post of Section Officer in the CSS. According to the Petitioner, the requirement of working for two years as a Section Officer, as being a pre-condition for eligibility for promotion to Grade-I, stood abolished after the amendment of Rule 12 (2) carried out pursuant to notification dated 24.02.1999. The basic plea of the Petitioner before the Tribunal, thus was, that Rule 10 had become redundant after the amendment notification dated 24.02.1999 and under the amended Rule 12(2) there was no requirement for the Petitioner's cadre to have worked as a Section Officer for at least a period of two years, for being eligible to be placed in the select list for promotion to Grade-I (Under Secretary) of CSS. The alternate plea of the Petitioner before the Tribunal was that since even otherwise, it was an admitted fact that the Respondents did not post any Stenographers Grade A & B (merged) from the CSSS to work as Section Officer, the member of the CSSS could not be denied their entitlement to be promoted as Grade-I (Under Secretary) because of the failure on the part of the Respondents in deputing the eligible Stenographers Grade A & B (merged) to work as Section Officer.

6. The Respondents-both official and private while opposing the OA, contended before the Tribunal, that only those officers of Grade 'A' and 'B' (merged) of the CSSS who had served as

Section Officer, constituted the feeder cadre of Grade-I (Under Secretary) of the CSS and since the Petitioner had never worked as a Section Officer, he was not eligible for being considered for inclusion in the select list of Grade-I. It was also brought to the notice of the Tribunal that vide notification dated 01.02.2008 the Government had altogether stopped the lateral entry of CSSS officers to any grade of CSS and thus it was contended that both the services were now totally separate.

7. The Tribunal vide its impugned order, has dismissed the OA, by holding that as per the Rules, it was necessary for Stenographer Grade A & B(merged) (Private Secretaries) from the CSSS to have two years experience as a Section Officer in order to become eligible to be promoted as Grade-I (Under Secretary) in the CSS. The Tribunal held that till 01.02.2008, the Private Secretaries coming from CSSS were eligible for lateral entry at the Section Officers level of CSS, and there was no provision for implantation of Private Secretaries (Stenographers Grade A & B (merged)) directly to the promotional posts of Under Secretary in the CSS. While dismissing the OA, the Tribunal also took note of the fact that pursuant to the notification of 2008, the link for lateral entry of officers of the CSSS to the CSS was completely snapped and both the services i.e. CSSS ad CSS became completely distinct, with specific promotional avenues for officers belonging to these cadres, without any provision for lateral entry of the CSSS officers to any post in the CSS.

8. Aggrieved by the dismissal of his OA, the Petitioner has preferred the present petition.

9. Before us, Mr.Shanker Raju, Advocate arguing for the petitioner has raised three contentions and even though they are similar to the ones raised before the Tribunal, we propose to deal with each of them separately. The core issue however, which needs to be determined in the present case, is as to whether it was mandatory for officers of the CSSS with the requisite 8 years service in their Grade, to have 2 years experience of working as a Section Officer, before being placed in the select list for Grade-I of the CSS, which list was used as the base for promotion to Grade I (Under Secretary) in the CSS.

10. The first and foremost plea raised by Mr.Shanker Raju, learned counsel for the Petitioner is that recruitment to Grade I (Under Secretary) of the CSS was regulated only by Rule 12(2) of the CSS Rules 1962. He contends that Rule 10, on which reliance had been placed by the Tribunal to dismiss the OA, was not at all relevant for determining the eligibility of officers of the CSSS for being placed in the select list for promotion to the post of Grade I in the CSS. According to him it is only Rule 12(2) of the CSS Rules which regulated the recruitment to Grade I (Under Secretary), and only Rule 12(2) of the CSS could form the basis for preparation of the Select Lists for the years 2003-2007. As per the learned counsel, once the provisions of sub-rule (2) of Rule 12 were clear and unambiguous, the Respondents could not be allowed to rely on Rule 10 or Regulation 5(2)(a) to determine

the eligibility of the CSSS officers for being placed in the select list of Grade I of the CSS.

11. The second plea raised by Mr. Shankar Raju is that, even if the requirement to be posted as Section Officers before consideration for promotion to Grade I of the CSS, is considered mandatory, the onus to fulfill any such requirement was squarely on the Cadre Controlling Authority and the Petitioner could not be penalised for the default committed by the official Respondents. He submits that Respondent No.1 and 2 having failed to appoint Petitioner and other similarly placed officer as Section Officer for 2 years, cannot now deprive the Petitioner and other Stenographer Grade A & B(merged) in different Ministries/Departments of their right to be placed in the Select List of Grade I of the CSS.

The submission of Mr. Raju, thus is that once posting of employees of the CSSS was the prerogative of the Respondents, Petitioner and other CSSS officers could not be deprived of their valuable right to earn promotion to the post of Under Secretary (Grade I) in CSS on account of the Respondent's inaction to post them as Section Officer.

12. The third and last submission of the learned counsel for the Petitioner is that, in any event, once the Respondents failed to discharge their obligation to post the Petitioner and other similarly placed officers of the CSSS, as Section Officer in the CSS, they ought to have exercised their discretion to invoke the exigency clause by placing them in the Select List by relaxing the

requirement of having two years experience in the post of Section Officer. He contends that once the lapse in not posting the Petitioner and other CSSS officers as a Section Officer, was that of the Respondents, they ought to have taken recourse to the exigency clause, to ensure that the interest of the, otherwise eligible, CSSS officer is safeguarded.

13. On the other hand, Mr. Sanjeev Narula, the learned counsel for the Respondent no.1 while supporting the impugned order submits that the Petitioner who belongs to the CSSS, cannot claim promotion to Grade I in the CSS, as he has admittedly not put in even a single day of service in any of the grades of CSS. He submits that a combined reading of Rule 10 and 12(2) of the CSS Rules clearly shows that the requirement of working as a Section Officer for Stenographer Grade A & B (merged) belonging to CSSS was a pre-condition for promotion to the Grade I of CSS, which always existed. He submits that this mandatory requirement flows from Rule 10 and Regulation 5(2)(a) and the same has not changed in any manner after the amendment of Rule 12(2) on 24.02.1999.

14. While reiterating that the two services CSS and CSSS are entirely different and independent of each other, learned counsel has further submitted that based on the recommendations of the Vth CPC and an expert Committee of officers, the Government of India-with the approval of the Union Cabinet, had taken a decision in July 2005 itself, for immediate stoppage of lateral entry of CSSS officers in the Grade I (Under Secretary) of the

CSS. Mr. Narula has further drawn our attention to the fact that, even otherwise, the Petitioner has adequate promotional opportunities in his own service(CSSS) and he is eligible for earning promotion up to the post of Principal Staff Officer (equivalent to Director of CSS). He further points out that in 2010 itself, the Petitioner stood promoted to the post of Principal Private Secretary, which is a Group 'A' gazetted post and, therefore, submits that the writ petition deserves to be dismissed.

15. We have heard learned counsel for the parties, examined the impugned order as well as the Central Secretariat Service Rules, and the Central Secretariat Service (Promotion to Grade I and selection Grade) Regulations 1964.

16. Before we proceed further, it would be apt to set out the relevant provisions of the Central Secretariat Service Rules, 1962 (the 'Rules') which deal with the controversy in the present case. The relevant rules, as they stood at the time of accrual of vacancies of Grade I in the CSS from 2003 to 2007 with which we are concerned, read as under:-

2(e) "cadre" means the group of posts in the Grades of Section Officer and Assistant in any of the Ministries or Offices specified in column (2) of the First Schedule and in all the Offices specified against such Ministry or Office in column (3) of that Schedule;

(g) "cadre officer" in relation to the Section Officers' Grade or the Assistants' Grade means a member of the Service of the Section Officers' Grade or Assistants' Grade, as the case

may be, and includes a temporary officer approved for long term appointment to that Grade;

(j) "duty post" in relation to any Grade means a permanent or temporary post of that Grade and shall, in relation to Grade I and the Section Officers' Grade, include the posts specified in column (2) and (3) respectively of the Second Schedule in respect of the offices specified in column (1) of that Schedule;

(q) "Select List" in relation to the Selection Grade and Grade I or the Section Officers' Grade and the Assistants' Grade means the Select List prepared in accordance with the regulations made under sub-rule (4) of the rule 12 or under the regulations contained in the Fourth Schedule, as the case may be;

(r) "Service" means the Central Secretariat Service;

3. Composition of the Service.- (1) There shall be four grades in the Service classified as follows, namely:-

Grade	Classifications
(i) Selection Grade (Deputy Secretary to the Govt. of India or equivalent)	Central Civil Service Group A Ministerial
(ii) Grade I (Under Secretary to the Govt. of India or equivalent)	
(iii) Section Officers' Grade	Central Civil Service Group B Ministerial
(iv) Assistant's Grade	

7. Exclusion of duty posts from the cadre.- Except in the case of the Selection Grade or Grade I of the Service, any duty post in a Grade may be declared by the cadre authority, with the concurrence of the Central Government in the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions to be excluded from the Cadre -

(i) if such post is required, for the time being, to be filled by the appointment of persons possessing special or technical qualifications or experience; or

(ii) if it is necessary, for the time being, to fill such post by a person other than a cadre officer of the appropriate Grade.

and the post shall remain excluded from the cadre so long as such declaration remains in force.

10. Duty posts to be held by cadre officers.- Every duty post in a cadre shall, unless declared to be excluded from the cadre under rule 7, or held in abeyance for any reasons, be held by a cadre officer of the appropriate Grade.

[#]Provided that, subject to such instructions as the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions may, from time to time issue, officers of Grade A of the corresponding Cadre of the Central Secretariat Stenographers' Service, who have rendered not less than two years' service in that Grade may be posted to duty posts in the Section Officers' grade and officers of grade C Stenographers' of the corresponding Cadre of the Central Secretariat Stenographers' Service who have rendered not less than five years service in that grade may be posted to duty posts in the Assistant's Grade, the period of such appointment in either case being limited to two years. Officers of the corresponding cadre of the Central Secretariat Stenographers' Service so appointed to duty posts in the Section Officers' and Assistants' Grade shall continue to draw the grade pay admissible to them in that service from time to time.

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

(2) Vacancies in Grade I shall be filled by promotion of regular officers of the Section Officers' Grade who have rendered not less than eight years' approved service in that Grade and of regular officers of Grade A and B(merged) of the Central Secretariat Stenographers' Service who have rendered not less than eight years' approved service in that grade and are included in the Select List for Grade I of the Service, prepared under sub-rule (4).

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

Provided that the regulations relating to the procedure for preparing and revising the Select List for Grade 1 shall be framed in consultation with the Commission and such Select List shall also be prepared in consultation with them.

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

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

17. It may also be relevant to refer to Rule 12(2) as it stood prior to the amendment effected on 24.02.1999, which read as under:-

12(2) "Vacancies in Grade I shall be filled by promotion of permanent officers of the Section Officers' Grade who have rendered not less than ten years' approved service in that Grade and of permanent officers of the Selection Grade of the Central Secretariat Stenographers Service who have rendered not less than ten years' approved service in that Grade and have worked as Section Officers for at least a period of two years in accordance with the proviso to rule 10 and are included in the Select List for Grade I of the Service prepared under sub-rule (4):

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

Note- In the case of officers of the Selection Grade of the Central Secretariat Stenographers Service appointed at the initial constitution of that service, approved service shall also include the approved service rendered by them in Grade I of the Central Secretariat Stenographers Service prior to their appointment to the Selection Grade of that service. Similarly, in the case of Grade I Stenographers appointed to the Section Officers' Grade after the appointed day who finally opt to continue in the Section Officers' Grade after the coming into force of the Central Secretariat Stenographers Service Rules, 1969, approved service shall also include the approved service rendered by them in Grade I of the Central Secretariat Stenographers Service prior to their appointment to the Section Officers' Grade."

18. At this stage, it is also necessary to refer to Regulations 2(f) & 5(2)(a) of the Central Secretarial Service (Promotion to

Grade-I and Selection Grade) Regulations, 1964 hereinafter referred to as the Regulations. The same read as under:-

"2(f) "Select List" means the list of eligible officers considered fit for appointment to Grade I or the Selection Grade, as the case may be, and prepared in accordance with regulations.

5. Preparation of the Select List

(1) **xxxxxx**

(2) *The names of all such eligible officers shall be arranged in a single list by the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions in the following order:*

(a) *Officers appointed to the Section Officer's Grade in a regular capacity before the appointed day, Officers of the erstwhile Grade I of the Central Secretariat Stenographers Service appointed to the Section Officers Grade against the Stenographers Quota before the appointed day, and Officers of the erstwhile Grade I of the Central Secretariat Stenographers Service regularly appointed to the Section Officers Grade against the Stenographers Quota in any cadre after the appointed day but before the commencement of the Central Secretariat Stenographers Service Rules, 1969, who rank senior to any of the officers appointed regularly to the Section Officers Grade before the appointed day, arranged in the order of their seniority in that Grade."*

19. As per Rule 12(2), there were two feeder categories for promotion to the Grade-I (Under Secretary) of CSS i.e. (i) Section Officers of CSS and (ii) Stenographers Grade 'A' and 'B' (merged) of CSSS. The Officers belonging to Stenographers Grade 'A' and 'B' (merged) of the CSSS were

eligible for consideration for promotion to the post of Grade-I (Under Secretary) of CSS. However, the said consideration was subject to those officers fulfilling the criteria prescribed in the other Rules and Regulations, to which we would be referring in some detail hereinafter. Rule 10, which deals with filling up of all duty posts, prescribes that every duty post of the CSS should be held by a cadre officer of CSS, unless, it was declared as excluded by the Cadre Controlling Authority with the concurrence Department of Personnel & Training. The proviso to Rule 10 further provides that officers of Grade 'A' of the corresponding cadre of the CSSS, who have rendered not less than 2 years service in that Grade, may be posted to duty posts in the Section Officer grade and the period of such appointment would be limited to two years. Thus, while Rule 10 and its proviso make a provision for posting of Stenographers Grade 'A' and 'B' (merged) of the CSSS as Section Officers in the CSS for a period of two years, it is Rule 12 which deals with recruitment to Grade-I from amongst eligible officers who are included in the select list of Grade-I.

20. A conjoint reading of the above Rules shows that inclusion in the select list is a pre-condition for being considered for promotion to Grade-I in the CSS. The eligibility for inclusion in the select list for Grade-I of the CSS-both for the cadre officers of the CSS and Officers of the CSSS, is spelt out by way of Regulation 5(2)(a) which, in turn, provides that both regular Section Officer of CSS and Stenographer Grade A & B

(merged) from CSSS appointed as Section Officer would be included in the Select List.

21. Pertinently, this provision for inclusion of lateral entry of Stenographers Grade 'A' and 'B' (merged) of the CSSS in Grade-I(Under-Secretary) to the CSS, was altogether removed by issuance of notification dated 01.02.2008. Vide this notification, the official Respondents have, by amending the CSS Rules, removed the Officers of the CSSS cadre from the feeder category for promotion to the post of Grade-I(Under-Secretary) in the CSS. Thus, the period which is relevant for purposes of adjudication of the present petition is between 2003 to 2007 as the Petitioner has claimed his stake to the vacancies in Grade-I (Under Secretary) of this period, as it is the common case of the parties that after 01.02.2008, employees in the CSSS are not eligible for being absorbed in the CSS in any grade.

22. The first and foremost rule, dealing with the issue arising in the present case, according to us, is Rule 10. This rule clarifies the position that all duty posts in the CSS can be occupied only by cadre officers. However, there is a proviso in the said rule which permits posting of Grade A officers of the CSSS to be appointed to the duty posts in the Section Officers Grade of the CSS. This rule thus clearly prescribes that normally the duty posts of CSS shall be held by CSS officers only, but by way of a special proviso, Stenographers Grade A & B (merged) can be posted as Section Officers only for a limited period of 2 years, so as to make them eligible for consideration

for promotion to the rank of Grade I (Under Secretary) in the CSS. A careful perusal of Rule 10, including proviso thereto, shows that the purpose of this proviso is to ensure that CSSS officers are able to gain the experience in the grade of Section Officer of CSS, which would then make them eligible for further promotion to the post of Under Secretary i.e. Grade I in the CSS.

23. Since much emphasis has been laid by the learned counsel for the Petitioner on the amendment of Rule 12(2) in the year 1999, in support of his plea that the requirement of being posted as Section Officer for 2 years before being considered for further promotion stood abolished after the amendment, it would be appropriate to compare the amended and un-amended provision of Rule 12 dealing with Recruitment to Selection Grade and Grade I in a tabular form, as set out herein below:-

Rule 12 (2, 3 & 4) prior to amendment:	Amendment in Rule 12 (2 & 3) in the year 1999:
(2) Vacancies in Grade-I shall be filled by promotion of regular officers of the Section Officers' Grade who have rendered not less than eight years' approved service in that Grade and of regular officers of Grade A and B (merged) of the Central Secretariat Stenographers' Service who have rendered not less than eight years' approved service in that Grade and are included in the Select List for Grade I of the Service prepared under sub-rule(4).	(2) Vacancies in Grade-I shall be filled by promotion of regular officers of the Section Officers' grade who have rendered not less than eight years' approve service in that Grade and of regular officers of Grade A and B (merged of the Central Secretariat Stenographers' Service who have rendered not less than eight yearsapproved service in that Grade and are included in the Select List for Grade I of the Service prepared under sub-

Provided that no person included in a later Select List shall be eligible to be appointed to the Grade until all officers included in an earlier Select List have been appointed. Provided further that if any person appointed to the Section Officers' Grade before the appointed day is considered for promotion to Grade-I under this sub-rule, all persons senior to him in that Grade before that day shall also be so considered notwithstanding that they may not have rendered ten years' approved service in that Grade : Provided further that an officer of Grade I of the Central Secretariat Stenographers Service appointed to the Section Officers' Grade against the Stenographers' quota before the appointed day who ranks senior to any of the permanent Section Officers eligible to be considered for promotion to Grade I of the Central Secretariat Service under the second proviso shall also be eligible to be considered for such promotion notwithstanding that he may not have been substantively appointed to the Section Officers' Grade. (3) Substantive appointments to the Selection Grade shall be made in order of seniority of temporary officers of the respective Grade except when, for reasons to be recorded in writing, a person is not considered fit for such appointment in his turn. (4) For the purpose of sub-rules (1) and (2) a Select List for the Selection Grade and Grade I shall	rule(3). (3) For the purpose of sub-rules (1) and (2) a Select List for the Selection Grade and Grade shall be prepared and may be revised from time to time. The procedure for preparing and revising the Select Lists shall be such as may be prescribed by regulations made by the Central Government in the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions. Provided that the regulations relating to the procedure for preparing and revising the Select List for Grade-I shall be framed in consultation with the Commission and such Select List shall also be prepared in consultation with them.
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be prepared and may be revised from time to time. The procedure for preparing and revising the Select Lists shall be such as may be prescribed by regulations made by the Central Government in the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions.	
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Provided that the regulations relating to the procedure for preparing and revising the Select List for Grade I shall be framed in consultation with the Commission and such Select List shall also be prepared in consultation with them.	
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We have carefully examined both the amended and un-amended rules and on comparison of the same, we are unable to agree with the contention of the Petitioner that the requirement of two years service as a Section Officer for the CSSS officers stood abolished after the amendment of Rule 12 (2) in 1999.

24. Pertinently even when Rule 12(2) was amended in the year 1999, Rule 10 as it stood, continued to exist in the statute book; similarly Regulation 5 (2)(a) also continued to exist. The inevitable conclusion thus is that there was no change in the eligibility criteria for being placed in the Select List of eligible officers considered fit for appointment to Grade I. No particular Rule can be read in isolation. The rules have to be read as a whole, and given effect to on their wholesome reading. A conjoint reading of the aforesaid provisions of Rule 10 and 12(2), both amended and un-amended, show that before an

officer of the CSSS can be considered for recruitment to Grade I of CSS, he has to meet the eligibility prescribed in Rule 10 and, thus, there is no merit in the submission of the learned counsel for the Petitioner that once Rule 12(2) stood amended in the year 1999, the earlier Rule 10 or Regulation 5(2)(a) had become redundant and officers of the CSSS could be straightaway inducted in the CSS at the level of Under Secretary without acquiring the experience of 2 years as a Section Officer in CSS.

25. There is yet another reason as to why we are of the view, that this mandatory requirement of having 2 years experience as a Section Officer was not removed. The two services i.e. the CSS and the CSSS have very different roles to play in the administration and, therefore, there appears to be a rationale to insist that Stenographers from the CSSS cadre should first gain experience as a Supervisory Officer in the post of Section Officer before being considered for the higher responsibility of an Under Secretary, who unlike the officers of CSSS, is expected to take various independent decisions from time to time. Another factor, which is relevant and on which emphasis has been laid by the learned counsel for the Respondents, is that even though the Cadre Controlling Authority for both the services is the same, but both the services are completely different and have their own distinct channels of promotion. It is undisputed that the normal channel of promotion for a Section Officer in the CSS cadre is the Under Secretary i.e. Grade I, while the normal channel for promotion for Stenographers

Grade A & B (merged) in CSSS is the post of Principal Private Secretary which post is in the grade equivalent to the Under Secretary grade of the CSS. Pertinently, Section Officers in the CSS cadre could not have crossed over to the CSSS cadre.

26. As noticed above, even though till 01.02.2008 there was a provision for one-way lateral entry of CSSS officers into the CSS, but the Union Cabinet had after considering all relevant factors including the recommendation of the VTH Central Pay Commission and of the Expert Committee as well as keeping in view the parallel structure of both the services, taken a decision by issuance of O.M dated 27/29.7.2005 to stop lateral entry of members of the CSSS into Grade I of CSS, which was subsequently notified in the gazette by way of notification dated 01.02.2008. This subsequent development, whereby the entry of CSSS into the CSS had been totally stopped, goes a long way to show that the intent of the CSS Rules, was not to give an additional promotional channel to the officers of CSSS, unless they gained experience of working for two years in the entry level post of the CSS i.e. as Section Officer. The provisions for lateral entry of CSSS officers into the CSS by way of Rules 10 and 12, was only meant to be used as an enabling provision, whereby, whenever the Cadre Controlling Authority felt the need, it could induct CSSS officers in the CSS after ensuring that they have the requisite experience of 2 years as Section Officers.

27. We are of the view, that Rule 10 and 12 which were only enabling provisions gave a discretion to the Cadre Controlling Authority, to induct eligible CSSS officers in the CSS, if the need so arose. We are, thus, unable to agree with the submission of the learned counsel for the Petitioner, that the Respondents having not posted the Petitioner and other Officers of the CSSS as Section Officers, they cannot take benefit of their own fault to deprive the Petitioner and other CSSS officers of their right to be considered for promotion on the ground that they do not have the requisite experience of having worked as Section Officer for 2 years. Pertinently, the Petitioner never appears to have raised the issue of his not being posted as a Section Officer in the CSS, and did not seek any judicial remedy in that regard. Only now, the Petitioner is claiming the right to be considered as eligible for being placed in the select list for consideration for promotion as Under Secretary Grade I by grant of a relaxation to dispense with the requirement of two years experience as Section Officer.

28. The third submission of Mr. Shanker Raju, the learned counsel for the Petitioner, to the effect that the Respondents should have exercised their discretion and granted relaxation from the mandatory requirement of 2 years experience as Section Officer to the CSSS officers, so as to make them eligible for being placed in the Select List for promotion to Grade I of the CSS, is equally without any merit. The record shows that it has been the consistent stand of the Respondents,

that there was always availability of adequate number of eligible Section Officers in the CSS cadre who could be considered for promotion to the post of Under Secretary and for whom this was the only and natural channel of promotion. In fact, the Respondents emphasized on the fact that there is a stagnation in the CSS cadre and, therefore, the Cadre Controlling Authority never deemed it appropriate to either post CSSS officers as Section Officers, or to consider officers of CSSS for induction into the CSS cadre.

29. We also find force in the submission of the learned counsel for the Respondent, that the creation of services cadre structure, prescription of eligibility criteria and channels of promotion etc., are policy matters, in which it would not be appropriate for the Courts to interfere. We are of the view that once the Cadre Controlling Authority has decided not to induct any CSSS officer in the CSS cadre for valid & justifiable reasons, their action cannot be faulted and there is no reason for this Court to hold that the Respondents ought to have posted the Petitioner and other similarly placed persons as Section Officer in the CSS, or to have considered them for promotion to the post of Grade I (Under Secretary) in the CSS.

30. In this regard, we may refer to the decision of the Supreme Court in ***Tamil Nadu Electricity Board & Another v. Tamil Nadu Electricity Board Thozhilalar Aykkiya Sangam*** (2008) 3 SCC 359. In this case, the Supreme Court was examining the power of the Board to divert the promotional

channel from administrative posts to technical posts. The Supreme Court held that it was for the Board to decide as to who will be suitable for a particular post, and as to what should be the channel of promotion for such post. In para 10 of the decision, the Supreme Court observed as follows:-

"This is a policy decision taken by the Board and it has been incorporated in service regulation. Therefore, the candidates were recruited on the post of Helper possessing this qualification, their channel of promotion is only to technical post and there cannot be any doubt about it. This was a categorical policy decision taken by the Board and therefore, the channel of promotion of these persons now will be only to the technical post and not to the administrative post. Therefore, this provision which has been made in the service condition cannot be said to be discriminatory or arbitrary or violative under Article 19(1)(g) in any manner. This is a policy decision of the Board and it is the Board who has to decide that who will be suitable for the post and what should be the channel of promotion for such post. It is not for the incumbent serving as a Helper to insist that the Board should amend the Regulation which suits him. It is the prerogative of the Board to decide that what shall be the channel of promotion for technical and for non technical persons. In this case the Board has decided on a rational basis that the channel of promotion of technical persons will be on technical side and not on the administrative side."

In fact the judgment in the case of **S.B. Mathur & Ors. V. Chief Justice of Delhi High Court & Ors.**, 1989 Supp (1) SCC 34 on which reliance has been placed by the learned counsel for the Petitioner, also fortifies our aforesaid conclusion. In para 13 of **S.B. Mathur** (*supra*), the Supreme Court observed as under:-

The view which we have taken, as set out earlier, finds support from the decision of this Court in V.T. Khanzode v.

Reserve Bank of India, rendered by a Bench comprising three learned Judges of this Court. In that case, by Administrative Circular No. 8 dated January 7, 1978 the Reserve Bank of India stated that it had decided to combine the seniority list of all officers on the basis of their total length of service (including officiating service) in Group I (Section A), Group II and Group III. The seniority of all officers in each of the three Groups was to be combined with effect from May 22, 1974 on the basis of their total length of service, including officiating service, in the grade in which they were then posted on a regular basis. The Circular introduced combined seniority with retrospective effect from May 22, 1974 (the date of an earlier Administrative Circular No. 15) as it was "fair and equitable to the officers as a class". The effect of this decision was that the groupwise system of seniority which was in existence in the bank for more than 27 years stood substituted by a combined seniority for officers in the aforesaid grades with retrospective effect. This adversely affected the existing seniority of many officers, particularly those in Group I. The validity of this Administrative Circular was challenged. This Court held that the said Administrative Circular No. 8 and the draft combined seniority list prepared pursuant to it did not violate the rights of the petitioners under Articles 14 and 16 of the Constitution. Whether there should be a combined seniority in different cadres or groups is a matter of policy which does not attract the applicability of the equality clause. The Court pointed out that the past events showed that the various departments of the Reserve Bank of India were grouped and regrouped from time to time. Such adjustments in the administrative affairs of the bank were a necessary sequel to the growing demand of new situations which are bound to arise in any developing economy. The court pointed out further that no scheme governing service matters can be foolproof and some section or the other of employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and mala fides will of course render any scheme

unconstitutional but the fact that the scheme does not satisfy the expectations of every employees is not evidence of these. This decision clearly leads to a conclusion that grouping and regrouping of different categories of employees is inevitable in a large organisation with a view of meeting changing situations and needs of a live organisation. Merely because the chances of promotion of some employees are adversely affected by such grouping or regrouping, that does not lead to a conclusion that it is against the law. We may point out that in the case before us, there is no contention urged before us that the equating of posts or the combined seniority list was promoted by any mala fides. We fail to see how the combined seniority list or the treating of the said posts as equal status posts can be said to be arbitrary in the absence of any material and, particularly, in view of the fact that the learned Chief Justice and the learned Judges of the Delhi High Court considered the facts and took the view that it was necessary in order to provide for transfers from one department to another and to provide adequate promotional opportunities to various sections of the employees of the Delhi High Court.

31. In these circumstances, we are unable to find any justification for directing the Respondents to consider induction of the CSSS officers in the CSS, and that too in the face of the admitted position that none of them has ever worked as a Section Officer and gained the requisite experience. We find no infirmity in the order of the Tribunal. The present writ petition has no merit and is dismissed without any order as to costs.

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In view of the writ petition having been dismissed these applications do not survive for adjudication and are dismissed as infructuous.

**(REKHA PALLI)
JUDGE**

**(VIPIN SANGHI)
JUDGE**

September 18, 2017

gm/saurabh

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