

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

% **Reserved on: January 18, 2023**

Pronounced on: February 07, 2023

(i) + W.P.(C) 5259/2019 & CM APPLs.23260/2019; 38322/2022 & 38323/2022

RAM NAGINA PRASAD AND ANR. Petitioners
Through: Mr. Ankur Chhibber, Advocate

Versus

UNION OF INDIA AND ORS. Respondents
Through: Ms. Nidhi Raman CGSC with
Mr. Zubin Singh, Advocate for
respondent No.1
Mrs. Avnish Ahlawat, Ms. Tania
Ahlawat, Mr. Nitesh Kumar Singh,
Ms. Palak Rohmetra, Ms. Laavanya
Kaushik & Ms. Aliza Alam,
Advocates for respondents No. 2 to 5
and 7 to 56.
Ms. Jyoti Dutta Sharma, Mr. C.K.
Bhatt, Mr. Himanshu Gautam &
Mr. Ayush Bhatt, Advocates for
respondent No.46

(ii)+ W.P.(C) 8454/2019 & CM APPLs.34889/2019; 34892/2019; 32074/2022 & 38474/2022

UNION OF INDIA AND ORS. Petitioners
Through: Ms. Bharathi Raju Senior Panel
Counsel with Mr. Rohit Singh,
Advocate & Mr. Arun Bhardwaj,
Central Government Standing
Counsel

Versus

W.P.(C) 5259/2019; 8454/2019 & 8616/2019

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UTTAM DEY SARKAR ASO (AD-HOC) AND ORS.

..... Respondents

Through: Mrs. Avnish Ahlawat, Ms. Tania Ahlawat, Mr. Nitesh Kumar Singh, Ms. Palak Rohmetra, Ms. Laavanya Kaushik & Ms. Aliza Alam, Advocates for respondents No.1 to 56 (except No. 45)
Ms. Jyoti Dutta Sharma &
Mr. Ayush Bhatt, Advocates for respondent No.45
Mr. Prateek Dhanda, Advocate for respondent No.57 to respondent No.62

(iii) + **W.P.(C) 8616/2019 & CM APPL.35622/2019; 35625/2019; 32075/2022; 38603/2022 & 38604/2022**

UNION OF INDIA AND ORS.

..... Petitioners

Through: Mr. Arun Bhardwaj, Central Government Standing Counsel

Versus

SUGAM ARORA AND ORS.

..... Respondents

Through: Mrs. Avnish Ahlawat, Ms. Tania Ahlawat, Mr. Nitesh Kumar Singh, Ms. Palak Rohmetra, Ms. Laavanya Kaushik & Ms. Aliza Alam, Advocates for respondents No.1 to 34
Mr. Prateek Dhanda, Advocate for respondent No.35 to 40

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The above captioned first and second petitions [W.P.(C) 5259/2019 & W.P.(C) 8454/2019] have been preferred by the petitioners seeking issuance of a writ of certiorari for quashing of order dated 09.01.2019 in O.A.639/2016 passed by the learned Central Administrative Tribunal, Principal Branch, New Delhi (henceforth referred to as the “Tribunal”).
2. The above captioned third petition [W.P.(C) 8616/2019] has been preferred by petitioner- Union of India seeking quashing of order dated 09.01.2019 in O.A. 4700/2015 passed by CAT.
3. Since challenge in these petitions is to common impugned order dated 09.01.2019 passed by the Tribunal, therefore, with the consent of learned counsel for the parties, these petitions were heard together and are being disposed of by this common judgment.
4. The background of these petitions, as spelt out in W.P.(C) 5259/2019, is that Central Secretariat Clerical Service (‘CSCS’) in the Central Secretariat has two grades of posts viz. Junior Secretariat Assistant (JSA) and Senior Secretariat Assistant (SSA) and is governed by CSCS Rules, 1962. That is the only feeder cadre for Central Secretariat Service (‘CSS’) which includes the post of Assistant Section Officer, Section Officer, Under Secretary, Deputy Secretary and Director; they are governed

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by CSS Rules, 2009. A separate cadre unit has been constituted in respect of both services i.e. CSCS and CSS for each Ministry of Government of India and DOPT is the Cadre Controlling Authority in respect of them.

5. Prior to implementation of the recommendation of First Cadre Restructuring Committee of CSS, 85% of JSAs inducted in Select List of every year were recruited through Staff Selection Commission on all India basis and top rankers in the examination were posted in the Central Secretariat as erstwhile Lower Divisional Clerks (LDC). Direct recruitment for this post had been stopped for the Select List 2000 onward vide DoPT O.M. dated No.9/2/2003-CS-II dated 20.04.2005.

6. The promotions are made in Central Secretariat Services each year through Select List and as per rules, the Select List for a year consists of the vacancies arising during the period from 1st July of that year to 30th June of the following year. The promotional post for JSA of Central Secretariat Clerical Service is the post of SSA which is filled up by two modes of promotion viz 75% by seniority-cum-fitness from eligible JSAs having 8 years of approved service in the post and 25% from JSAs having rendered 5 years of services in the post through Limited Departmental Competitive Examination (LDCE).

7. It is further averred in the petition that Government of India constituted a Committee in 2001 which submitted their report in February, 2002. This was the first such committee who made recommendations for restructuring of the cadre of CSS including its feeder cadre of CSCS. Pursuant to the recommendations of the Committee and with approval of cabinet as well as DoPT, new posts in Central Secretariat Services were

added in the total sanctioned strength of Director, Deputy Secretary, Under Secretary and Section Officer of CSS, which were considered from the select list of 2003 and promotions in all the aforesaid Grades were made from time to time between 2005 to 2009 from the said Select List of the year 2003.

8. Thereafter, the Government of India constituted another committee in April, 2009 to ascertain the exact vacancies arising against Select List Year of the 2003 in the erstwhile Assistant Grade. According to the committee, there existed 2151 (1469 chain of vacancies percolated down from promotions in higher posts and 682 vacancies restored) vacancies and it recommended to fill up these vacancies. The DoPT filled up these 2151 vacancies from eligible erstwhile UDC out of the Select List of 2003. Thereafter, the Unions requested to DoPT to fill up the 2151 chain vacancies to the grade of UDC from the erstwhile stagnating LDCs as per Select List of the year 2003. The DoPT vide O.M. No. 12/5/2010-CS.II dated 07.09.2010 circulated to fill up 2151 vacancies to the post of LDC as per CSCS Rule, 1962, i.e. 75% by seniority and 25% by a Special Limited Departmental Competitive Examination.

9. Accordingly, the DoPT vide its O.M. No. 12/1/2011-CS.II (B) dated 03.05.2012 circulated the decision of approval of the Competent Authority to extend the Select List Year 2003 of UDCs by including the names of additional 2151 UDCs in the Select List Year 2003 against the vacancies caused in the grade of UDCs for the Select List Year 2003 consequent upon promotion of 2151 UDCs to the Assistant Grade subsequent to the Cadre Restructuring of CSS. Along with this OM dated 03.05.2012, a Draft Select

List (the provisional eligibility list) containing the names of LDCs of Select List Years from 1989 to 1994 was also attached and discrepancies, if any were invited. This list contained the names of only those LDCs who had completed 08 years of service as per CSCS Rules. Also, a Special Limited Departmental Competitive Examination ('LDCE') was held in July, 2012 for 25% quota through Staff Selection Commission in which LDCs having 5 years rendered service in the post on 01.07.2003 could participate.

10. In the meantime, a few of LDCs, who had qualified LDCE for UDC select list years 2004, 2005 and 2006, aggrieved against the aforesaid O.M. dated 03.05.2012 preferred O.A. No.248/2012, titled as ***Pankaj Kumar Mishra & Ors. Vs. Union of India & Ors.***, before the learned CAT raising the grievance that DoPT was giving retrospective promotions to LDCs who were junior to the petitioners therein. The said O.A. No.248/2012 was allowed by learned CAT, against which some of the private respondents invoked writ jurisdiction of this Court by filing W.P.(C) No. 209/2013, titled as ***Shri. Ravinder Kumar Jha & Ors .Vs. Union of India and Ors.***, which was allowed. Against the order of this Court, the petitioners in O.A. No.248/2012, ***Pankaj Kumar Mishra (Supra)***, preferred CIVIL APPEAL NO(S). 7407/2018, (Arising From SLP(C) No.10342/2015), which was disposed of by the Hon'ble Supreme Court upholding the order passed by this Court in W.P.(C) No. 209/2013 while giving liberty to the appellants therein to point out such candidates to the competent authority who were given promotion contrary to the rules.

11. In terms of aforesaid O.M. dated 03.05.2012, the respondents accommodated on the top in the seniority list on 02.07.2013 those 132

candidates whose ACRs were called for UDC-LDCE and also included on 14.02.2014 those 373 candidates who had qualified in Special LDCE 2003 in LDCE blank slots of Draft Select List of 2003. Thereafter, a list containing names of 1552 officials was circulated by the DoPT vide O.M. No. 12/1/2011-CS.II (B) dated 27.01.2015, stating that these officials were included in the Select List of 2003 (extended) pursuant to decision of this Court in W.P.(C) No. 209/2013. Thereafter, DoPT further included 380 officials vide O. M. dated 09.2.2015; 146 officials vide O. M. dated 27.03.2015 and 259 officials vide O.M. dated 24.04.2015 in the UDC Select List 2003 (extended). The DoPT vide O.M. dated 19.06.2015 issued a consolidated Draft Select List 2003 (extended) of UDC containing the names of 2162 officials, wherein all the cadre units were called upon to intimate errors and omission.

12. The DoPT, vide O.M. No. 12/1/2011- CS.II (B) dated 12.02.2015 circulated for *ad hoc* promotion to the rank of Assistant to those 1552 UDCs whose names were included in the O.M. dated 27.01.2015. Thereafter, DoPT on 18.06.2015 directed the cadre units to grant NFSG to 1104 UDCs as per seniority defined in O.M dated 27.01.2015.

13. The petitioners in the above captioned petitions are Union of India through Department of Personnel and Training ('DoPT') and those persons whose seniority has been refixed pursuant to DoPT O.M. dated 03.05.2012. The respondents in these petitions have challenged the arbitral issuance of as many as nine extended promotion lists, whereby their seniority has been disturbed.

14. According to petitioners, the LDCs who were included in LDCE quota for UDC Select List from 2004 to 2007 and completed 08 years of approved service, though were placed in Seniority List 2003 (extended) but were not appropriately given seniority, which was inconformity with the CSCS Rules and Regulations and many of their juniors were placed above in the select list. According to petitioners, even those LDCs who were debarred in the year 2004 to 2007 have been placed at UDC Select List 2003 (extended) in between the places where UDC of SL2004 to 2007 were placed.

15. According to petitioners, different Departmental Promotion Committees were held on different dates, resulting in supersession of senior LDCs in different cadres; in contravention of O.M. No. 35034/7/97-Estt(D) dated 8.2.2002 issued by the DoPT, wherein it has been stated that the candidates who are found eligible and fit by the DPC, shall be named in the panel for promotion on the basis of their inter-se seniority in their feeder cadre. The DoPT, thereafter, issued different seniority lists vide O.M. No.12/1/2011-CS.II(B) (Vol.11) and O.M. No. 12/1/2011-CS.II(B) dated 06.10.2015; O.M. No.12/5/2015-CS.II(B) dated 02.11.2015, changing the position of respondents in UDC Select List 2003 (extended). Again, vide O. M. No. 12/1/2011-CS.II(B) dated 16.11.2015 the DoPT revised the position of the officers who were granted NFSG.

16. Aggrieved against the change in their seniority by virtue of O. M. No. 12/5/2015-CS.II(B) dated 02.11.2015 and O. M. No.12/1/2011-CS.II(B) dated 16.11.2015; a few UDCs (ad hoc) filed O.A. No. 639/2016

before the Tribunal. The said O.A. No. 639/2016 was decided by the learned Tribunal vide judgment dated 09.01.2019, while holding as under:-

“a) None of the UDCs appointed against 2151 vacancies subsequent to year 2009 shall be placed above any of the UDCs appointed up to date and they shall take seniority in accordance with the dates of their appointment.

b) The seniority and other benefits that accrued to the applicants up to 03.05.2012 shall remain intact and any proceedings that issued adversely affecting the same, shall stand set aside.”

17. During the course of hearing, counsel appearing on behalf of petitioners submitted that the learned Tribunal erroneously allowed the OA No. 639/2016 filed by respondents No. 2 to 57 wherein the prayer was only for quashing of the Office Memoranda in which inter se seniority of UDCs was revised, but the learned Tribunal passed the aforesaid directions failing to appreciate that the order dated 21.01.2018 passed by this Court in W.P.(C) No. 209/2013, had attained finality by virtue of decision dated 31.07.2018 by the Supreme Court's in Civil Appeal No. 7407/2018, wherein it is held that the Government shall fill 2151 vacancies of UDC w.e.f. 2003 in line with the DoPT's decision dated 03.05.2012.

18. Learned counsel for petitioners submitted that the Supreme Court in the case of **Pankaj Kumar Mishra (Supra)**, had granted liberty to the appellants therein only to the extent of pointing out to respondents if any promotion has been given contrary to the rules and did not give liberty to reopen the issue which has been decided by the High Court and affirmed by the Supreme Court and in that view, 2151 percolated vacancies for UDC

should be filled up for the UDC Select List 2003. Learned counsel submitted that this Court in W.P.(C) No. 209/2013 had held that the O.M. dated 03.05.2012 indicated a fair method of filling up posts i.e. as per rules that those LDCE who could not be promoted for want of vacancies in 2003 and conducting DPC for senior quota on one hand and a special LDCE who could not avail the benefit for the intervening period. Leaned counsel submitted that from 2004 till 2009, respondents had lost their position from 2004 till 2009 either through senior quota or LDCE and when the additional vacancies for UDC select list 2003 arose, the DoPT included the eligible persons promoted earlier in the select list from 2004 to 2009.

19. The petitioners have claimed that as per Section 11(3) of CSCS Rules, 1962, DoPT has a statutory right to prepare and revise the Select List from time to time and the learned Tribunal has failed to understand the difference between the Select List and the Common Seniority List. It is claimed that revision of the Common Seniority List of the year 2003 by the DoPT is in accordance with the CCS Rules which stipulates that 75% promotions to the grade of UDC has to be through Seniority Quota and 25% through LDCE. It was empathically submitted that a seniority list has to be taken from the feeder cadre of LDC and not from UDC Select List. It was also submitted that the persons promoted on the 2151 additional vacancies to the grade of UDC for Select List 2003 were in fact eligible in the year 2003 but were stagnated due to undue delay in administrative action due to no promotion in the higher grades of CSS. The persons earlier promoted in the Select List 2004-2009 were also included in the Select List 2003 in Seniority Quota or LDCE. It was next submitted that the

respondents have not challenged the O.M. dated 03.05.2012 whereby decisions was taken to extend the select list of the year 2003 of UDCs by including the names of additional 2151 UDCs. Lastly, it was submitted on behalf of the petitioners that the impugned judgment dated 09.01.2019 passed by the learned Tribunal deserves to be set aside and OM No. 12/1/2011-CS.II(B) dated 06.10.2015; OM No. 12/5/2015-CS.II(B) dated 02.11.2015 vide which Select List of 2003 (Extended) and Common Seniority List of SL-2003 (Extended) were finalized, deserve to be upheld.

20. On the other hand, learned counsel appearing on behalf of respondents submitted that there is no dispute to the fact that with the approval of the cabinet, 1469 additional posts were created on 3.10.2003 in the Grade of Director (10), Dy. Secretary (0), Under Secretary (54), Section Officer (1405), Assistant/ Upper Division Clerk and Lower Division Clerk (0) in CSS. No new posts were created in the category of Assistant / UDC/ LDC and only because of upward movement of the officers of various categories from one stage to other, the posts of Assistants became vacant, which were filled-up between 2009-2011. Due to this, 2151 posts of UDC fell vacant and were filled-up as per O.M dated 3.5.2012, which was approved by this Court vide judgment dated 15.1.2015.

21. Learned counsel for respondents submitted that respondents in these petitions are the ASOs (erstwhile UDCs), who had joined the services as Lower Division Clerk (LDC) and were included in the select list of UDC's of each respective year (2004, 2005, 2006) under Seniority Quota as well as LDCE. According to respondents, though a common seniority list of UDCs of 2006 and 2007 was finalized, however, thereafter seniority list of UDC

dated 24.6.2011 for the years 1995-2005 was said to be final. Thereafter, vide O.M. dated 16.12.2011 stipulated that common seniority list is of no relevance as seniority in the grade of LDC and UDC is determined in the ratio of 3:1 (Seniority Quota: LDCE) on the basis of date of joining. The seniority list of 24.6.2011 and O.M dated 16.12.2011 (the common seniority list) was challenged before the learned Tribunal in O.A No. 248/2012, which was allowed vide Judgment dated 27.9.2012. Some of the respondents in O.A.No. 248/2012 preferred writ petition being W.P.(C) No. 209/2013 challenging the aforesaid order and judgment dated 27.09.2012 passed by the learned Tribunal. During pendency of the said petition, O.M dated 3.5.2012 was notified by the respondents indicating the method of filling up of the posts. This Court did not agree with the decision of the Tribunal, however, affirmed the procedure prescribed in O.M dated 3.5.2012. The judgment of this Court was affirmed by the Supreme Court vide order dated 31.7.2018. In the meanwhile, the DoPT on 27.01.2015 circulated list of 1552 officials, which included the select list of 2003 (extended). Thereafter, DoPT issued another O.M dated 9.2.2015 including 380 officials of select list of 2003; O.M dated 24.4.2015 including names of 259 officials and vide O.M dated 18.6.2015 issued list of 1104 officials who were granted non functional scale. Thereafter, DoPT, vide O.M dated 19.6.2015 issued a draft select list of 2162 officials of select list 2003 subject to outcome of the SLP. Respondents are aggrieved that even thereafter, vide another O.M dated 6.10.2015, the DoPT has drastically and arbitrarily changed their seniority without inviting any objections.

22. Learned counsel for respondents strenuously submitted that the

learned Tribunal has rightly directed the petitioners that none of the UDCs appointed against 2151 vacancies subsequent to the year 2009 shall be placed above any of the UDCs appointed up to that date and they shall take seniority in accordance with the dates of their appointment. Further emphasized that the learned Tribunal has rightly directed that the seniority and other benefits that accrued to the respondents up to 03.05.2012 shall remain intact. Further submitted that the OM dated 6-10-2015 issued by the DoPT giving retrospective promotion after changing the list dated 3.5.2012, deserves to be set aside and the list dated 03.05.2012 needs to be restored.

23. In rebuttal, learned counsel appearing on behalf of petitioners submitted that the amendments to the Select List appended with O.M. dated 03.05.2012 went on up to 19.06.2015. However, when proposal to fill up percolated 2151 vacancies of UDC came up, which would have resulted in placement of existing 2004 and 2005 select list candidates; the select list was drawn up from 1993 till 2003 and was finalized on 16.11.2011. By this time select list of the years 2006-07 were also drawn up and those candidates who had fulfilled the eligibility criteria for UDC Select List 2003 but had not figured in Select List of 2006 & 2007, were also brought in Select List of 2003 (extended). Learned counsel for petitioners submitted that all the Select Lists pertaining to the years 2003, 2004, 2005 and 2006 were prepared in terms of CSCS Rule 1962 read with CSCS (Preparation of Common Seniority List), Regulations, 1971. Thereafter, the Select list vide O.M. dated 03.05.2012, which was prepared till 19.06.2015, was revisited and a fresh Select List on the basis of cadre seniority and Common Seniority was issued on 06.10.2015.

24. It was pointed out by learned petitioners' counsel that as on 03.05.2012, DPC for promotion against 2151 vacancies available under Select List 2003(extended) were not held. Just because 2151 vacancies were available in Select List 2003 (extended), UDCs of 2004 to 2007 cannot be directly moved en-block upward in the select list, as zone of consideration, vigilance status and assessment matrix for 2003 undergo change. Since the procedure adopted was erroneous, the Cadre units of CSCS were requested vide DOP&T's O.M. 12/1/2011- CS.II(B) dated 02.07.2013, to convene DPC to consider promotion of eligible 484 UDCs of their Cadre Units against extended Select List year 2003 of UDC Grade. Thereafter, similar request vide 12/1/2011-CS.II(B) dated 14.02.2014 was made to the Cadre Units to convene DPC to promote the remaining UDCs of SL years 2004-2007. The petitioners have claimed that the respondents herein are 1544 officials of Select Years 2004-2007 of UDC Grade in respect of whom the Cadre Unit were requested to conduct DPC for upward movement against the 2151 vacancies available in the SL year 2003. Meaning thereby, the respondents are among the UDCs appointed against 2151 vacancies subsequent to year 2009 and so, the directions issued by the Tribunal are not applicable to these respondents. Hence, it was submitted that the initial seniority of the respondents based upon the wrong procedure was not final and it was made final only on 06.10.2015.

25. Upon hearing learned counsel for the parties and on perusal of the material placed before this Court, we find that the challenge in this petition is to the impugned judgment dated 09.01.2019 passed by the learned Tribunal, whereby two O.As challenging the Office Memoranda dated

06.10.2015, 02.11.2015, 16.11.2015, 08.12.2015 and 09.12.2015 with regard to seniority of UDCs working in CSS have been decided.

26. The applicants before the learned Tribunal were those who had been promoted to the post of UDC between 2004 and 2009 and when in the year 2009, 2151 posts of UDCs became vacant on account of *en bloc* promotion of existing UDCs to the post of Assistants, the recruitment rules were amended to incorporate the newly created vacancies in the respective cadre strength. The learned Tribunal observed that the confusion had arisen on account of O.M. dated 03.05.2012 along whereof seniority list of even date was annexed. The aforesaid O.M. dated 03.05.2012 reads as under:-

“No. 12/1/2011-CS.II (B)
Government of India
Ministry of Personnel, Public Grievances &
Pension
Department of Personnel & Training
3rd Floor, Lok Nayak
Bhawan, Khan Market,
New Delhi dated the
03rd May 2012.

OFFICE MEMORANDUM

Subject: Extension of Select List 2003 of
UDCs of CSCS—reg.

The undersigned is directed to say that it has been decided, with the approval of the Competent Authority, to extend the Select List Year 2003 of UDCs by including the names of additional 2151 UDCs in the Select List Year 2003 against the vacancies caused in the grade of UDCs for the Select List Year 2003 consequent upon promotion of 2151 UDCs to the Assistant Grade subsequent to the Cadre Restructuring

of CSS. Accordingly, it has been decided to extend the List by filling up 2151 slots in the Select List Year 2003 (extended) in the following manner:

- (i) The 2151 slots will be filled up in accordance with CSCS Rules/Regulations as applicable at that time by 75% through Seniority Quota (SQ) and 25% through LDCE quota. As such, out of 2151 vacancies in the grade of UDC in the Select List of 2003 (Extended), a total number of 1614 slots will be filled up by SQ candidates and 537 by LDCE qualified candidates in the ratio of 3: 1.*
- (ii) The Seniority Quota slots will be filled up by eligible LDCs who had completed 8 years of approved service as on 01.07.2003.*
- (iii) As for LDCE slots, candidates who had qualified the LDCE 2003 and their ACR dossiers were called for by SSC but could not be recommended for appointment due to non-availability of sufficient number of vacancies in the SL year 2003 under LDCE mode, will be first accommodated against the available vacancies and for remaining slots SSC will conduct Special LDCE for UDC for the Select List Year 2003 (extended) and all the LDCs who had rendered five years of service as on 01.07.2003 would be eligible to appear in the Limited Departmental Competitive Examination.*

2. However, extension of Select List Year 2003 is subject to the outcome of the O.A. No. 248/2012 filed by Sh. Pankaj Kumar Mishra & Other before CAT Principal Bench, New Delhi. The Cadre Units are requested to verify the names of the UDCs included in the annexed list to this OM and also to circulate the list amongst the UDCs to enable them to point out discrepancies, if any, and send the same to this Department latest by 11th May, 2012.

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27. The learned Tribunal while taking note of afore-noted OM dated 03.05.2012, observed as under:-

“17. It needs to be noticed that though the slots were left for LDCE category, such appointments have already been made in the years 2004, 2005, 2006, 2007, 2008 & 2009. Added to that, all the persons shown in the list have already been promoted in the year 2004 itself, as indicated in the list. It is just not understandable as to how the official, who has been promoted to the post of UDC in year 2004 or later, can be shown in the select list for the year 2003 by calling it an extended one, as late as in the year 2012.

18. Whenever the appointments are made either in the regular course or to fill a large number of vacancies that have arisen on account of re-organization of the cadre, invariably, the newly appointed officials (in the present cases, the UDCs), have to be placed immediately after the last candidate, appointed up to that date. The occasion to place a person subsequently appointed above the one, who was appointed earlier, would arise only when a Court of law decides that the former has been wrongfully denied the promotion and his place is to be restored. No such event has occurred in these cases.

19. In the category of LDCE also, the said O.M. dated 03.05.2012 created confusion. It mentioned that if the Lower Division Clerks, who were qualified in the LDCE held in the year 2003 but were not promoted for want of the vacancies,

they shall be treated as eligible to be promoted against the 537 vacancies meant for LDCE that became available in the year 2009. This statement ignores the fact that (a) the candidate, who qualified in the LDCE conducted in the year 2003 but was not appointed for want of the vacancies, has a chance to appear in the subsequent examinations and to get promoted; and (b) even if he was not successful for three consecutive years, he acquired the eligibility to be promoted on completion of 8 years of service under the promotion quota.

20. *Whatever may have been the justification or purpose in appointing the candidates that were left over in the LDCE held in the year 2003, the question of their being placed above any of the UDCs promoted upto the year 2009, under whatever category does not arise."*

28. It is pertinent to mention here that during the course of hearing, learned counsel appearing on behalf of petitioners had submitted that in the impugned judgment, though the learned Tribunal has noted that petitioner's counsel had placed reliance upon decisions in **Ravinder Kumar Jha (Supra)** and **Pankaj Kumar Mishra (Supra)**, however, held that the issue in these petitions were on different aspects.

29. As has already been noted above, against the aforesaid O.M. dated 03.05.2012, those LDCs who had qualified LDCE for the post of UDC in the select list years 2004, 2005 and 2006 had preferred O.A. No.248/2012, titled as **Pankaj Kumar Mishra (Supra)** before the learned Tribunal challenging the retrospective promotions to LDCs who were junior to them,

which was allowed by the learned Tribunal. However, the said decision of the Tribunal was reversed by this Court in ***Ravinder Kumar Jha (Supra)*** while holding as under:-

“36. There can be no doubt that retrospective seniority cannot be given to a promotee (or a direct recruit) so as to affect the seniority rights of an existing member of a cadre. The question here is whether retrospective seniority was accorded to the Petitioners in the manner that is impermissible. If the applicants were promoted as UDCs for the period 2004-2007 according to their turn, after clearing the LDCE test, in respect of the 25% quota provided under the Rules and if the petitioners were given retrospective promotion on the basis of the restructuring report accepted by the Union Cabinet, there is no doubt that such action would be legally vulnerable. However, in the present instance, certain other features are peculiar to this case. They are:

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37. There is yet another dimension to the controversy. The decisions relied on by CAT and the applicants, to say that retrospective assignment of seniority is arbitrary, dealt with cases where the two sources of recruitment were by promotion and direct recruitment. In the present case, the CSCS Rules applicable to the cadre of UDCs exclusively required - at the relevant time, appointment only by promotion. Of this source (promotion) 75% was to be seniority based (SQ) whereas the rest (25%) was to be on the basis of a limited departmental examination (LDCE). For SQ, the minimum eligibility prescribed was 8 years' service in the grade of LDC; for LDCE quota, the candidate could compete if she or he had completed 5 years in the

feeder cadre (LDC). Concededly, the petitioners were senior to the applicants in the LDC quota and were eligible to be considered for the UDC cadre in the Seniority Quota. However, they could not be considered, because there were no vacancies then. Even the applicants were promoted to the LDCE vacancies subsequently. In these circumstances, when the sources of recruitment were the same, i.e. promotion, the only difference being the method of promotion (seniority and limited departmental exam) the claim of being adversely affected made by the applicants could not have been of the same order as in the case of retrospectively promoted or regularized promotees, who may not enter the cadre regularly.”

30. The aforesaid decision of this Court was challenged before the Supreme Court in ***Pankaj Kumar Mishra (Supra)*** [CIVIL APPEAL NO(S). 7407/2018 ARISING FROM SLP(C) NO.10342/2015], wherein the Supreme Court held as under:-

“1. The crucial issue raised in this appeal pertains to the promotion in 2151 posts in the cadre of Upper Division Clerk (UDC) as on 2003. It is the case of the respondents that on account of cadre restructuring in the Central Secretariat Service (CSS) there was a percolating effect of 2151 vacancies in the cadre of UDC arising in the Central Secretariat Clerical Service, in 2003. The said 2151 Signature Not Verified vacancies had to be filled up in the ratio of 75:25 by the Seniority Quota and Limited Departmental Competitive Examination quota respectively. It is the case of the appellants that as a matter of fact there was no such cadre restructuring in the Central Secretariat Clerical Service. According to them, they have become

qualified in the 25% quota meant for Limited Departmental Competitive Examination category from the year 2004 onwards and, therefore, the contesting respondents, who are otherwise juniors to them in UDC cadre, cannot get an ante dated promotion on the basis of a hypothetical calculation of vacancies available as on 2003.

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6. If, as a matter of fact, any person has been appointed to the cadre of Assistant without the required qualification/experience, as mandated under the Rules at the relevant time, and in case the appellants have a case that they were available as eligible, as per Rules, for such promotion, it is a matter to be examined.

7. Therefore, we grant liberty to the appellants to point out such instances of promotions granted contrary to Rules, within a period of two months from today. The Competent Authority shall examine such instances and take appropriate remedial steps to ensure that the promotions are done only as per Rules. The appellants concerned or any other affected party shall also be given an opportunity of hearing in the process. The needful, as above, will be done within a period of four months from the date of receipt of the representation.

8. Subject to the above, the appeal is disposed of, making it clear that we have not otherwise interfered with the impugned judgment of the High Court.”

31. Relevantly, the learned Tribunal while taking note of the decisions in ***Ravinder Kumar Jha (Supra)*** and ***Pankaj Kumar Mishra (Supra)*** observed as under:-

“ 24. This Tribunal discussed some of these facets in O.A.No.248/2012. In W.P. (C) No.209/2013 & batch, the Hon'ble Delhi High Court indicated certain guidelines. The attention of their Lordships was drawn to these anomalies. The Hon'ble Supreme Court dealt with totally different aspect, namely, the promotions of persons, who are not qualified.”

32. Pertinently, in ***Ravinder Kumar Jha (Supra)***, in Para-36, it has been observed as under:-

36. (1) There can be no doubt that retrospective seniority cannot be given to a promotee (or a direct recruit) so as to affect the seniority rights of an existing member of a cadre. The question here is whether retrospective seniority was accorded to the Petitioners in the manner that is impermissible. If the applicants were promoted as UDCs for the period 2004-2007 according to their turn, after clearing the LDCE test, in respect of the 25% quota provided under the Rules and if the petitioners were given retrospective promotion on the basis of the restructuring report accepted by the Union Cabinet, there is no doubt that such action would be legally vulnerable. However, in the present instance, certain other features are peculiar to this case.....

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(10) The respondent/applicants' claim of being prejudiced hinged entirely on the fact that the common seniority list was - in their reckoning finalized on 24th June 2011. The developments which took place in the meanwhile, i.e approval of the Committee report, assimilation of 2151

vacancies after their inclusion in the cadre strength, through an amendment, creation of those posts w.e.f 03-10- 2003, in effect inject fluidity to the entire process. Therefore, even though the common seniority was declared as "final" in June 2011, it could not be said that the applicant/respondents' rights had acquired a settled character. This meant that the process of assimilation (of the 2151 UDC posts and their filling up) could have - and did- potentially result in the review of that seniority list.

These peculiar features meant that the Central Government's eventual decision in promoting the present Petitioners, with effect from the date the vacancies arose in 2003, on the basis of their eligibility- since they were entitled to be considered for UDC cadre that year, was not a "retrospective promotion". It was the filling up of vacancies which were created with effect from a date prior in point of time, and effectuating that decision (i.e post creation with effect from a past date- the decision being unchallenged even till date) by filling the posts from those eligible to be considered at that relevant time. No exception can be taken to this course, additionally because the OM of 03-05-2012 indicated a fair method of filling the posts, i.e in accordance with rules, after accommodating those LDCE candidates who could not be promoted for want of vacancies in 2003, and conducting review DPC for SQ promotees on the one hand and a special LDCE for those who could not avail that benefit for the intervening period.

37. There is yet another dimension to the controversy. The decisions relied on by CAT and the applicants, to say that retrospective assignment of seniority is arbitrary, dealt with

cases where the two sources of recruitment were by promotion and direct recruitment. In the present case, the CSCS Rules applicable to the cadre of UDCs exclusively required - at the relevant time, appointment only by promotion. Of this source (promotion) 75% was to be seniority based (SQ) whereas the rest (25%) was to be on the basis of a limited departmental examination (LDCE). For SQ, the minimum eligibility prescribed was 8 years' service in the grade of LDC; for LDCE quota, the candidate could compete if she or he had completed 5 years in the feeder cadre (LDC). Concededly, the petitioners were senior to the applicants in the LDC quota and were eligible to be considered for the UDC cadre in the Seniority Quota. However, they could not be considered, because there were no vacancies then. Even the applicants were promoted to the LDCE vacancies subsequently. In these circumstances, when the sources of recruitment were the same, i.e promotion, the only difference being the method of promotion (seniority and limited departmental exam) the claim of being adversely affected made by the applicants could not have been of the same order as in the case of retrospectively promoted or regularized promotees, who may not enter the cadre regularly.”

33. The afore-noted observations in **Ravinder Kumar Jha (Supra)** show that this Court had observed that “OM of 03-05-2012 indicated a fair method of filling up of posts”. In the O.M. dated 03.05.2012 the methodology directed to fill the 2151 posts of UDCs was subject to outcome of O.A. No. 248/2012, **Pankaj Kumar Mishra (Supra)**, which was reversed in **Ravinder Kumar Jha (Supra)**, wherein the Supreme Court had

refrained to interfere. This Court in ***Ravinder Kumar Jha (Supra)*** had correctly taken note of the fact that there are two source of appointments, one by 75% Seniority Quota and second 25% on the basis of LDCE examination. The Court further observed that under the Seniority Quota, the candidate should have completed 08 years of service and to appear in LDCE, the candidate should have completed 05 years in the feeder cadre (LDC). However, since the petitioners before the Court in ***Ravinder Kumar Jha (Supra)*** were senior under the LDC quota and were eligible to get promotion in the Seniority Quota, but could not be promoted due to no vacancy at the relevant time, accordingly the Court held that the claim of being *adversely affected made by the applicants could not have been of the same order as in the case of retrospectively promoted or regularized promotees, who may not enter the cadre regularly*. With aforesaid, the Court in ***Ravinder Kumar Jha (Supra)*** set aside the decision of the Tribunal wherein it was held *that due to re-organization of CSS cadre in the year 2009, which has been given effect to from the year 2003, during which period vacancies to the post of LDCs and UDCs have been notified from year to year, and the concerned UDCs posts have been filled up under 25% LDCE quota and 75% through Seniority Quota; when in fact there were no vacancies and promotions had been made on different dates and then assigning notional seniority positions to those candidates who had in effect been stopped against the strength of UDC quota then, is unsupported in law*.

34. With regard to determination of seniority on promotion, it is settled position of law that seniority shall be reckoned from the date of

appointment and not retrospectively from the date when the vacancy arose.

35. The Supreme Court in a recent decision in ***Union of India Vs. Manpreet Singh Poonam***, 2022 SCC OnLine SC 272, observed that a mere existence of vacancy per se will not create a right in favour of an employee for retrospective promotion when the vacancies in the promotional post are specifically prescribed under the rules, which also mandate the clearance through a selection process. To observe above, the Supreme Court relied upon another decision of Supreme Court in ***Ganga Vishan Gujrati and Others Vs. State of Rajasthan and others*** (2019) 16 SCC 28 wherein it is held as under:-

“21. Similarly, this Court in Ganga Vishan Gujrati v. State of Rajasthan has held that :

“45. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in Direct Recruit Class II Engineering Officers’ Association v State of Maharashtra¹⁴. The principle was reiterated by this Court in State of Bihar v Akhouri Sachindra Nath¹⁵ and State of Uttaranchal v Dinesh Kumar Sharma¹⁶. In Pawan Pratap Singh v Reeven Singh¹⁷, this Court revisited the precedents on the subject and observed:

“45. ... (i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the

issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.'

This view has been re-affirmed by a Bench of three Judges of this Court in P. Sudhakar Rao v. U. Govinda Rao (2013) 8 SCC 693."

36. The undisputed position of law is that an employee cannot claim seniority to the post from a date when the vacancy did not even exist. Keeping this in mind, what is required to be resolved in these petitions is as to whether subsequent upon accrual of vacancies to the post of UDC in the year 2009 due to restructuring of other cadres in CSS, the LDCs who have

been promoted to the post of UDCs under Promotion Quota from the year 2003 and given seniority over and above those LDCs who secured promotion to the post of UDC either through LDCE or Promotion Quota in the years 2004 till 2009, is arbitrary or justified in the eyes of law.

37. The foundation of the promotions granted rests upon the O.M. dated 03.05.2012. According to it, the 2151 promotional posts of UDCs in the select year 2003 will be filled by 75% Seniority Quota and 25% through LDCE. For the Promotion Quota, those LDCs who had completed 08 years of service as on 01.07.2003 were eligible and under the LDCE quota, those who had qualified LDCE 2003 but not recommended for appointment due to non availability of posts, were directed to be first appointed and thereafter, special LDCE for those LDCs who had completed five years of service, was directed to be held. We note it has nowhere been mentioned in the O.M. dated 03.05.2012 that those who have already been appointed to the post of UDC by either way, Seniority Quota or LDCE, since the year 2003 till 2009 were required to be disturbed. Also, it is substantial to mention that along with this OM dated 03.05.2012, a draft list of UDC grade of CSCS for the select year 2003 was also annexed.

38. It requires to be noted here that pursuant to the aforesaid draft list, DoPT had issued different seniority lists vide O.M. No.12/1/2011-CS.II(B) (Vol.11) & O.M. No. 12/1/2011-CS.II(B) **dated 27.01.2015**; OM No. 12/2/2015-CS.II (B) dated **18.06.2015** and OM No. 12/1/2011-CS.II(B) dated **19.06.2015** different draft lists were issued. Thereafter, vide OM No. 12/1/2011-CS.II(B) (Vol. II) dated **06.10.2015** the final select list of 2003 (extended) was issued. Again vide O.M. No. 12/2/2015-CS.II(B) dated

16.11.2015 a revised list of Non Functional Selection Grades in the grade of UDC was issued. Relevantly, in the O.M. No. 12/2/2015-CS.II(B) dated 16.11.2015 it has been categorically mentioned that as seniority of many officials had undergone a change due to finalization of common seniority list, the list was revised. However, pursuant to issuance of O.M. dated 16.11.2015, the position of respondents in the seniority list drastically changed and they were positioned much below than they were actually while they were initially appointed to the post of UDC. For example, Ms.Sugam Arora, whose name as per list of 03.05.2012 appeared at serial No. 20, was brought down to 1842 and another, Ms. Anita Singh, whose name appeared at Serial No.27 in the list of 03.05.2012, was dragged down to serial No. 841 in the list on 16.11.2015. The objection of petitioners-UI that there has been a huge delay in challenging the aforesaid promotional lists on behalf of the respondents cannot be accepted in view of the fact that the undisputed position is that different respondents have been making representations to the competent authority after notification of final common seniority list dated 16.11.2015 and also approached the learned Tribunal to challenge the same.

39. Moreover, the petitioner- Union of India has miserably failed to convince this Court to understand under what authority of law it has positioned those UDCs who were promoted to the post of UDC pursuant to accrual of vacancies in the year 2009; over and above those LDCs who secured promotion to the post of UDC either through LDCE or Promotion Quota in the years 2004 till 2009. For the purpose of filling 2151 vacancies falling for the post of UDC, a direction was issued by the Union of India to conduct Special LDCE with the eligibility of five years of service on the

post of LDC and for Seniority Quota, to have 08 years' of service in hand. We cannot ignore the fact that those officials who had already cleared LDCE in the years 2004 to 2009, cannot be countermand by those LDCs who had initially joined in the year 2003 but were not able to make to the post of UDC through LDCE in the years 2004 till 2009. Similarly, those who were promoted to the post of UDC under promotion quota during the years 2004 till 2009 cannot be superseded by those who have been promoted under promotion quota or have been granted NFSG subsequent upon accrual of vacancies due to restructuring. Meaning thereby, those LDCs who were either promoted from their feeder cadre to the post of UDC under promotion quota as well those LDCs who had qualified LDCE during the relevant years i.e. 2004 to 2009, who might even be junior to those who have since arbitrarily been given benefit of promotion under the Seniority Quota on the ground of holding seniority in the year 2003, shall hold seniority above those who have been given benefit of promotion to the post of UDC pursuant to accrual of additional vacancies with retrospective effect. Even otherwise, this Court cannot lose sight of the fact that such persons have been holding position of UDC and working since their promotions and those who have gained promotions subsequent to accrual of vacancies, though with retrospective effect to the year 2003, cannot be permitted to steal the march and walk over them.

40. In the aforesaid opinion of this Court, we find no fault in the decision dated 09.01.2019 passed by the learned Tribunal. We hereby direct the respondents to implement the O.M. dated 03.05.2012 in its true sense. The O.M. dated 03.05.2012 lays down the criteria to fill the 2151 vacancies but

is apparently silent with regard to determination of seniority of those who have since been promoted to the post of UDC under Promotion Quota or through LDCE during the period 2004-2009. Thereby, Union of India is directed to place those LDCs who have been promoted to the post of UDC after accrual of 2151 vacancies; below those who have been promoted to the post of UDC in the years 2004-2009, whether under Promotion Quota or LDCE Quota.

52. The respondents are accordingly directed to publish a fresh seniority list in the manner noted above within four weeks. Needless to say, if any further promotions to upper cadres have been made in the meanwhile, the seniority in respect thereof shall change accordingly.

53. With directions as aforesaid, these petitions and pending applications are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 07, 2023

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