



2026:DHC:206-DB



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 29.11.2025*  
*Pronounced on: 12.01.2026*

- + W.P.(C) 5945/2017 & CM APPL. 24684/2017
- + W.P.(C) 6603/2017 & CM APPL. 27367/2017
- + W.P.(C) 10845/2018 & CM APPL. 42313/2018, CM APPL. 23807/2020, CM APPL. 10435/2021, CM APPL. 30250/2023, CM APPL. 4573/2025
- + W.P.(C) 376/2018 & CM APPL. 1581/2018, CM APPL. 23808/2020, CM APPL. 10436/2021, CM APPL. 30416/2023, CM APPL. 4577/2025
- + W.P.(C) 13428/2019
- + W.P.(C) 1708/2020

ELINA DAS & ORS .....Petitioners  
RAJIVE KUMAR SHARMA .....Petitioner  
UNION OF INDIA & ORS .....Petitioners  
YASH MAURYA AND ORS. ....Petitioners  
PRADEEP AND ORS. ....Petitioners

Through: Mr.Padma Kumar S. and  
Mr.Gurpreet Singh, Adv. in  
W.P.(C) 5945/2017, W.P.(C)  
6603/2017, W.P.(C)13428/2019  
and W.P.(C) 1708/2020

Mr.Arun Bhardwaj, Sr. Adv.  
with Mr.Vikram Jetly, CGSC,  
Ms.Shreya Jetly, Ms.Neha  
Mishra, Ms.Muskan Jain and  
Mr.Ashu Tiwari, Adv. for UOI  
in W.P.(C) 10845/2018 &  
W.P.(C) 376/2018

versus

SHIV CHARAN & ORS .....Respondents  
CHARAN SINGH CHAUHAN & ORS .....Respondents

Through: Mr.A. K. Behera, Sr. Adv. with  
Mr.Amarendra P. Singh, Adv.  
for Shiv Charan



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with Mr.Vikram Jetly, CGSC,  
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Mishra, Ms.Muskan Jain and  
Mr.Ashu Tiwari, Advs. for UOI  
Mr.Padma Kumar S. and  
Mr.Gurpreet Singh, Advs. for  
private respondents in W.P.(C)  
10845/2018 and W.P.(C)  
376/2018

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE MADHU JAIN**

**J U D G M E N T**

**NAVIN CHAWLA, J.**

1. The present batch of writ petitions, W.P.(C) 5945/2017, W.P.(C) 6603/2017, W.P.(C) 376/2018 and W.P.(C) 13428/2019 have been filed challenging the Order dated 27.02.2017 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, the Tribunal), in O.A. No. 1227/2016, titled *Shiv Charan v. Union of India & Ors.*, whereby the learned Tribunal had been pleased to dispose of the said O.A. with the following directions:

*“48. In view of the foregoing discussion and for the reasons stated, we quash the seniority list dated 09.06.2015. For the purpose of inter se seniority the DPC promotes from 2006-07 to 2009-10 shall be treated as ad-hoc till the year 2010-11 when in fulfilment of the statutory requirement the LDCE was also held. A list of DPC promotes from 2006-07 to 2010-11 shall be prepared in the same order*



*as the settled position of seniority of the promotes and the same shall be rotated with the LDCE appointees of 2010-11 for fixation of inter se seniority in accordance with the OM dated 07.02.1986. It is an admitted fact that the respondents have already considered the approved service of the applicant from the year 2006 and given the financial benefits and NFSG as well, by applying rule 4 of the IBSSR. We have shown that is not the correct interpretation of the rule 4 in the context of the rule 3. However, the orders of counting of approved service the appointees LDCE 2010 from 2006 and granting consequential financial benefits including NFSG are not interfered with. OA is disposed of in terms of the above. No costs."*

2. W.P.(C) 10845/2018 and W.P.(C) 1708/2020 have been filed, challenging the Order dated 21.02.2018 passed by the learned Tribunal in O.A. No. 1399/2016, titled **Charan Singh Chauhan v. Union of India & Ors.**, whereby the learned Tribunal, following its order in **Shiv Charan** (supra), disposed of the said O.A. with the following directions:

*"13. In view of the above discussion, we dispose of this OA with the following directions: -*

*i) Seniority list dated 15.07.2014 is quashed and set aside to the extent it pertains to the applicant. The applicant shall be given seniority from the year the vacancy against which he was promoted and shall be; rotated with the DPC promotees of the same year for fixation of inter-se seniority in accordance with OM dated 07.02.1986.*

*ii) The above exercise may be carried out within two months from the date of receipt of certified copy of this order and any consequential benefits like promotion etc. due to him per rules may be given effect to within two months thereafter"*



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3. In W.P.(C) 1708/2020, the petitioners have further challenged the Order dated 03.09.2019 passed in R.A. 74/2018, titled ***Pradeep & Ors. v. Charan Singh Chauhan & Ors.***, whereby the learned Tribunal was pleased to dismiss the Review Application seeking review of the order dated 21.02.2018 passed in the above O.A..

4. At the outset, we may note that the present batch of petitions involves similar issues of law and arises from a common bundle of facts, therefore, it is deemed appropriate to adjudicate them *vide* this common judgment.

5. The dispute concerns the *inter se* seniority of the Section Officers (SO) in the Secretariat Cadre of the Intelligence Bureau (IB), which is governed by Intelligence Bureau Secretariat Service Rules, 2003 (hereinafter referred to as, 'IBSSR, 2003'). The IBSSR, 2003 provides that the promotion to the said post shall be made 60% on basis of promotion and 40% by way of a Limited Departmental Competitive Examination (LDCE).

6. For the sake of convenience, reference shall be made to the facts in W.P.(C) 376/2018, titled ***Union of India & Ors. v. Shiv Charan & Ors.***, and the officers promoted as SO under the promotional quota shall be referred to as the petitioners, and the officers promoted under the LDCE quota as the respondents.

### **FACTUAL MATRIX**

7. The respondent no.1 joined the IB as Personal Assistant (PA) pursuant to his selection in the Intelligence Bureau Personal Assistants Grade Examination, 1995, on 12.12.1996.



8. At the time of his appointment, the service conditions in the IB were governed by executive instructions. The IBSSR, 2003 were promulgated and brought into force with effect from 12.03.2004.

9. Under the IBSSR, 2003, the next promotional avenue available to the posts of PA and Assistants is that of Section Officer (SO). The said post is filled by two methods: 60% vacancies are filled through the promotional quota and 40% vacancies through the LDCE conducted by the Union Public Service Commission (UPSC). PAs and Assistants with 8 years of service are eligible for consideration against promotional quota, and those with four years of service are eligible for competing in the LDCE.

10. Rule 3 of the IBSSR, 2003 provides for preparation of a Select List for each vacancy year, however, the IBSSR, 2003 do not contain any express provision for governing the fixation of *inter se* seniority between the officers promoted through the Departmental Promotion Committee (DPC) and those appointed through LDCE. Therefore, the fixation of seniority is governed by executive instructions issued by the Department of Personnel and Training (DoP&T), such as Office Memorandums dated 24.06.1978 and 07.02.1986.

11. We must herein itself note that, before the learned Tribunal, the respondent no. 1 herein had submitted that Rule 3 read with Rule 4 of IBSSR, 2003 and the 'other matters' specified in Column 5 to 14 of the Schedule to the IBSSR, 2003 would show that as the 'approved service' for the LDCE appointees is to be counted from the 1<sup>st</sup> day of July of the year of vacancies, the same shall also



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govern seniority. This submission of the respondent no. 1 was, however, rejected by the learned Tribunal and it was held that the IBSSR, 2003 do not govern seniority and that the same shall be determined in terms of the general principles of seniority for Central Government employees. There is no challenge in these writ petitions to this finding of the learned Tribunal. We shall therefore, proceed on the basis that the IBSSR, 2003 do not contain any provision for determination of the seniority of SOs and that the same is governed by the various instructions issued by the Central Government in this regard.

12. In July 2006, the UPSC issued a notification for conduct of the LDCE for promotion to the post of SO, for the vacancy year 2005. The examination was conducted in December 2006, however, declaration of results was delayed due to pendency of W.P.(C) No. 4876/2007, titled *The Central Secretariat Stenographers Service Association & Ors. v. The Central Secretariat Service, Direct Recruit Assistants Association & Ors.*, before this Court concerning the eligibility of Stenographers to appear in the LDCE. Though the IB was not a party to the said litigation, the results of LDCE-2005 were ultimately declared only in February 2009, and the officers appointed through LDCE-2005 were assigned seniority from the year 2009. A seniority list reflecting the said position was issued on 19.03.2010.

13. LDCEs for the vacancy years 2006-07 to 2009-2010 could not be conducted within the normal timeframe due to the continued pendency of the aforesaid writ petition. During this period,



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promotions to the posts of SO through the 60% DPC quota continued to be effected on a year-to-year basis.

14. The department claims that on 07.07.2010, with the approval of the DOP&T, 85 LDCE vacancies were temporarily diverted to promotional quota as a one-time measure, with the condition that shortfall in the LDCE quota would be made good at the time of future vacancies. On 20.08.2010, 69 officers were promoted against the diverted vacancies, promotion orders were issued and seniority was also granted to them accordingly.

15. In the meantime, on 30.07.2010, UPSC inquired about the LDCE vacancy positions and was informed that 10 vacancies for the year 2006, 14 vacancies for 2007, and 05 vacancies for 2008 were available. Thereafter, the UPSC advertised these posts on 20.08.2010; examination was conducted in December 2010; and the result thereof was declared on 01.10.2011.

16. Upon appointment, by applying Rules 3 and 4 of the IBSSR, 2003, the officers so appointed were granted 'approved service' as SO with effect from 1<sup>st</sup> July of the vacancy year against which they were appointed, and upon completion of four years of approved service, they were also granted Non-Functional Selection Grade (NFSG).

17. On 01.11.2012, the IB circulated directions issued by the Ministry of Home Affairs (MHA) and the DoP&T, indicating that seniority of SO appointed through LDCE was to be fixed from the vacancy year, based on the concept of approved service. In pursuance thereof, a draft Seniority List dated 01.03.2013 was



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issued, wherein officers appointed through LDCE-2006 were shown against the vacancy year 2006-07 and were placed above the officers promoted through the DPC against subsequent vacancy years.

18. The draft Seniority List dated 01.03.2013 gave rise to representations from officers promoted through the 60% promotional quota, objecting to the fixation of seniority of LDCE officers from the vacancy year.

19. Thereafter, a final Seniority List dated 09.06.2015 was issued, whereby officers appointed through LDCE were assigned seniority with reference to the year 2011-12, and officers promoted earlier through the DPC were placed above them.

20. Aggrieved by the above Seniority List dated 09.06.2015, Shri Shiv Charan, that is, the respondent no. 1 herein, an LDCE officer, filed O.A. No. 1227/2016 before the learned Tribunal, which has been disposed of by the learned Tribunal with the above quoted directions.

21. As a matter of factual background, it is relevant to note that in WP(C) 10845/2018 and WP(C) 1708/2020, the concerned officers had appeared in the LDCE conducted in the year 2005–2006 for the vacancy year 2005; however, their promotion orders were issued only in the year 2009, during which period promotions through the DPC continued to be made for subsequent vacancy years. As a result, the said LDCE appointees came to be placed below the DPC promotees of the years 2006, 2007 and 2008 in the Seniority List. The same was challenged by the respondents by way of O.A. No. 1399/2016, which was disposed of by the learned Tribunal *vide* its



Order dated 21.02.2018, applying the Order passed in *Shiv Charan* (supra) and quashing the Seniority List. Review Applications filed by promotee officers against the Order dated 21.02.2018, were also dismissed.

22. Aggrieved by the Orders dated 27.02.2017 and 21.02.2018, and the consequential directions affecting seniority, promotions and service benefits, the Union of India and officers promoted through the DPC have approached this Court by way of the present writ petitions under Article 226 of the Constitution of India.

**RELEVANT PROCEEDINGS IN THE WRIT PETITIONS:**

23. On 25.03.2025, this Court called upon the Union of India to answer the following queries:

*“3. In order to adjudicate the present dispute, we find it appropriate that an affidavit disclosing the following facts be filed by the respondent nos. 2 to 5 in W.P.(C) 5945/2017:*

*a. how many vacancies were available in the above post, year wise, between 2005 and 2010;*

*b. how many personnels were appointed in the above post, year wise and channel wise, between 2005 and 2010; and*

*c. in case, it is admitted that certain personnel were promoted in excess of the channel quota for a particular year, the details of such personnel be also disclosed.*

*4. It is the case of the petitioner that 85 posts from the quota of LDCE were diverted to the promotion quota with the prior approval of the DoPT and in consultation with the UPSC, on 07.07.2010. The same is disputed by the learned Senior Counsel appearing for the respondents. Let another affidavit be filed by the respondent no. 2-5 in W.P.(C) 5945/2017, placing on record the order by which the*



*diversion had taken place, the approval received from the DoPT, and the consultation with the UPSC. In case any personnel have been appointed against these diverted vacancies, their particulars, including the date from which they were granted seniority, be also disclosed in the affidavit.”*

24. In answer to the above, an Affidavit dated 16.04.2025 was filed by the Additional Deputy Director, (IB), Ministry of Home Affairs, stating therein, as under:

*“I say that as per IBSSR 2003, notified on 12.3.04, 60% of the posts in the rank of Section Officer (SO) were to be filled by promotion & 40% by Limited Departmental Competitive Examination (LDCE). The total sanctioned strength of SO was 242 out of which 145 (60%) posts were earmarked for Promotion Quota (PQ) & 97 (40%) posts were earmarked for LDCE quota.*

*Till vacancy year 2006-07 (April to March), the vacancy calculation was done post-based. The vacancies occurring due to attrition in any mode of recruitment were filled by the same mode of recruitment only, i.e., vacancy occurring due to promotion/retirement/voluntarily retirement etc. of an officer under LDCE quota were filled by LDCE only and similarly vacancies occurring in promotion quota (PQ) were filled by promotion based on seniority only.*

*The vacancy position in the rank during vacancy years 2005-06 to 2010-11 are as under:*

| Year                 | Total Vacancies |      | Vacancies filled |      |
|----------------------|-----------------|------|------------------|------|
|                      | PQ              | LDCE | PQ               | LDCE |
| 2005-06 (Post-based) | 29              |      |                  |      |
|                      | 19              | 10   | 19               | A    |
|                      |                 |      |                  |      |



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|         |    |     |    |   |
|---------|----|-----|----|---|
| 2006-07 | 45 |     | 35 | A |
|         | 35 | 10# |    |   |

*DoP&T vide OM dt. 19.1.07, introduced vacancy-based method for distribution of vacancies among different modes of recruitment, as per which all the vacancies occurring in a year were combined and distributed among different modes of recruitment as per percentage prescribed in the RRs. Accordingly, all the vacancies available in the rank of SO till 2007-08 were clubbed together and bifurcated into PQ and LDCE quota, in terms of RRs, i.e., 60% and 40% respectively. **Total 84 vacancies were available till 2007-08 which were bifurcated as 50(60%) in PQ and 34(40%) in LDCE quota. Out of these 34 vacancies of LDCE quota, 10 vacancies were allotted to LDCE of 2005-06 and 10 to LDCE of 2006-07, as these vacancies were already notified to the UPSC for the respective LDCEs vide letters dt. 6.5.05 and 28.6.07 respectively. As such, remaining 14 vacancies (34-10-10) were available for LDCE 2007-08.***

|                                   |     |     |    |   |
|-----------------------------------|-----|-----|----|---|
| <b>2007-08</b><br>(vacancy based) | 84  |     | 50 | A |
|                                   | 50  | 14# |    |   |
| 2008-09                           | 102 |     | 61 | A |
|                                   | 61  | 41# |    |   |
| 2009-10                           | 50  |     | 30 | A |
|                                   | 30  | 20# |    |   |
| 2010-11                           | 33  |     | 20 | - |
|                                   | 20  | 13  |    |   |
|                                   | 85# | -   | 69 | - |

~ ~ ~ ~ ~

|   |                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| # | <i>A total of 85 vacancies of LDCE quota of the years 2006-07 to 2009-10 (10+14+41+20) remained unfilled for a long time, as UPSC was not convening the exam for these years. Accordingly, with the approval of DOP&amp;T dt. 7.7.10, these 85 LDCE quota vacancies were temporarily diverted to PQ, as a one-time measure with the condition that shortfall in LDCE quota is made good at the time of future vacancies</i> |
| A | <i>The details of vacancies filled by LDCE is as appended below.</i>                                                                                                                                                                                                                                                                                                                                                        |

Signature Not Verified

Digitally Signed  
By: REYMON VASHIST  
Signing Date: 12.01.2026  
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W.P.(C) 5945/2017 &amp; connected matters

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| Details of LDCE                                                                                                          |                    |             |                  |
|--------------------------------------------------------------------------------------------------------------------------|--------------------|-------------|------------------|
| LDCE year                                                                                                                | Vacancies notified | Result year | Vacancies filled |
| 2005                                                                                                                     | 10                 | 2009        | 10               |
| 2006                                                                                                                     | 10                 | 2011        | 10               |
| 2007                                                                                                                     | 14                 | 2011        | 12               |
| 2008                                                                                                                     | 5                  | 2011        | 4                |
| 2009                                                                                                                     | 3@(c/f)            | 2013        | 2                |
| 2010                                                                                                                     | -                  | 2013        | -                |
| @3 vacancies notified for LDCE 2009-10 (in year 2012) were carried forward unfilled vacancies of year 2007-08 & 2008-09. |                    |             |                  |

*I say that in response to the question raised in paragraph no. 3 c in the order dated 25.03.2025 namely:-*

*“c. in case, it is admitted that certain personnel were promoted in excess of the channel quota for a particular year, the details of such personnel be also disclosed”.*

*I say that No personnel were promoted in excess of the channel quota for a particular year. I further say that, in the year 2010, 85 LDCE quota posts were diverted to promotion quota as a one- time exemption to the RR with the prior approval of the DoP&T. Thereafter, 69 personnel were promoted legitimately through Supplementary DPC 2010-11.”*

25. Another Affidavit dated 16.04.2025 was filed by the Additional Deputy Director (IB), in answer to the query raised in Paragraph 4 of the Order dated 25.03.2025, stating as under:

*“4. It is the case of the petitioner that 85 posts from the quota of LDCE were diverted to the promotion quota with the prior approval of the DoPT and in consultation with the UPSC, on 07.07.2010. The same is disputed by the learned Senior Counsel appearing for the respondents. Let another affidavit be filed by the respondent no. 2-5 in W.P.(C) 5945/2017, placing on record the order by which the diversion had taken place, the approval received from the DoPT, and the consultation*



*with the UPSC. In case any personnel have been appointed against these diverted vacancies, their particulars, including the date from which they were granted seniority, be also disclosed in the affidavit."*

*I say that as regards diversion of vacancies, it is submitted that in the year 2010, 85 vacancies of LDCE quota of the years 2006-07 to 2009-10 remained unfilled for a long time, as UPSC was not convening the exam for these years due to pending court case of CSS. SO's grade LDCE examination by the UPSC could not be conducted since 2006 due to the pending of court case filed by the stenographers of the CSS in Delhi High Court against the orders of the CAT. The CAT has ruled that the Stenographers (PAs) are not eligible to write the examination.*

*I further say that as such a large number of vacancies was affecting the functioning of the department, a proposal (3.9.09) was moved to the MHA/DOP&T requesting to grant approval to fill up all the vacancies by 100% promotion as a one-time exemption to the RRS and UPSC vide our letters dt.1.12.09, 6.1.10 and 20.4.10 were requested to convene the exam for IB for filling up these vacancies, as IB was not a party in the said case.*

*I further say that UPSC, vide letter dated 13.5.10, informed that the Commission and DoP&T were under a consultative process to find a route map for holding SO's LDCE 2006 onwards in light of Hon'ble Delhi High Court's interim order 19.3.10, in which it was mentioned that the exam may be conducted with the condition that the result of the exam shall be kept in a sealed cover subject to final outcome of the Writ Petition WP(C) 4876/2007.A copy of letter dated 13.5.10 of UPSC is annexed herewith as Annexure R-1. However, keeping the result in sealed cover would not help with filling up of vacancies, which was adversely affecting the functioning of the department. Subsequently,*



*MHA/DOP&T was requested to grant approval for filling up the vacancies as a one-time measure.*

*I further say that DoP&T granted approval for temporary diversion of 85 vacancies of LDCE quota on 7.7.10 (Vacancy Year 2010-11), as a one-time measure with the condition that shortfall in LDCE quota is made good at the time of future vacancies.*

*I further say that accordingly, the temporary diversion of vacancies was done with the approval of DoP&T and after consultation with the UPSC.*

*I further say that out of 85 temporarily diverted vacancies in the year 2010-11, only 69 were utilized for promotion of Assistants by convening Supplementary DPC in 2010-11 (held on 6.8.10), as only 69 Assistants were found eligible.*

*Subsequently, when UPSC notified LDCE for 2006-07 to 2008-09 on 30.7.10, 16 remaining vacancies out of 85 diverted vacancies along with 13 accrued vacancies were notified (09.08.10) with the approval of the Head of the Department (DIB) to UPSC for LDCE of the year [2006-07 (10), 2007-08 (14) & 2008-09 (05)] respectively in order to provide opportunity for those aspiring to write the examination (particularly PAs).*

*Further I say that the restoration of 69 vacancies of LDCE quota has been initiated in the year 2023 with the approval of DIB under intimation to MHA. Till LDCE2024, 20 vacancies [2023=15, 2024=5] have been restored to LDCE quota. Rest of the vacancies would be restored in due course.*

*I further say that, in the year 2010, 85 LDCE quota posts were diverted to promotion quota as a one-time exemption to the RRs with the prior approval of the DoP&T. Thereafter, 69 personnel were promoted legitimately through Supplementary DPC 2010-11."*



26. On the above factual background, submissions were made by the learned counsels for the parties, which we shall deal herein under.

**SUBMISSIONS ON BEHALF OF THE LEARNED COUNSELS FOR THE PETITIONERS**

27. Mr. Arun Bhardwaj, the learned Senior Advocate appearing for the Union of India, submits that the promotions effected under DPC for the years 2006 to 2010 were actually based on the quota prescribed under the IBSSR, 2003 and, therefore, the officers appointed against their own quota cannot be treated as ad-hoc.

28. He submits that it was not the case of the respondents (LDCE officers) that the Department was not informing the UPSC of the quota for the LDCE or was under-reporting the same. He submits that in absence of any such allegation or finding, the direction of the learned Tribunal to treat all officers who had been regularly promoted against the promotional quota to be treated as ad-hoc, cannot be sustained. In support, he places reliance on the judgments of the Supreme Court in *G. S. Lamba & Ors. v. Union of India & Ors.*, (1985) 2 SCC 604; *B. S. Murthy & Ors. v. A. Ravinder Singh & Ors.*, (2022) 14 SCC 119 and of this Court in *Prashant Kumar Sona & Ors. v. Union of India & Ors.*, (2024) SCC OnLine Del 4609.

29. He submits that the DoP&T's O.M. dated 07.02.1986 does not bar the regular promotions against the promotional quota, even if the LDCE quota vacancies have not been reported to the UPSC; it, at best, restricts the regular promotions only to the extent of the vacancies that are available within the quota during the relevant year, and any



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promotion made beyond the same is to be treated as ad-hoc, which is not the case herein inasmuch as the promotions were effected on seniority basis only against the 60% promotional quota and no excess promotions were made during the relevant years.

30. He submits that the LDCE for the relevant years could not be held due to pending litigation in W.P.(C) No. 4876/2007 before this Court concerning the issue of eligibility of Stenographers for appearing in the LDCE. The delay, therefore, cannot be attributed to the Department.

31. On the issue of diversion of posts, he submits that the diversion was made with the approval of the DoP&T as the LDCE posts could not be filled during the relevant years and there was a need to meet the work requirement of the Department. Against the 85 vacancies that were temporarily diverted, 69 officers were promoted and were assigned their respective seniority. He submits that as the diversion had taken place in accordance with law, no fault can be found in the same nor can these officers be treated as ad-hoc.

32. He submits that implementing the direction issued by the learned Tribunal would amount to giving retrospective seniority to the respondents/LDCE officers even before they are borne in the cadre; the same is impermissible in law. In support, he places reliance on the judgment of the Supreme Court in ***K. Meghachandra Singh & Ors. v. Ningam Siro & Ors.***, (2020) 5 SCC 689.

33. Mr. Padma Kumar S., the learned Advocate, appearing for various officers from the promotional quota, while adopting the submissions of Mr. Bhardwaj, further submits that some of these



officers could not have given the LDCE as they were already promoted against the promotional quota. He submits that, therefore, now to give effect to the Impugned Orders, would result in grave injustice to them as they would lose their seniority without any fault of theirs.

34. He submits that there was no challenge made in the O.A. by the respondents to the diversion of 85 vacancies from LDCE quota to the promotional quota and, therefore, the respondents are now estopped from challenging the same. He submits that once the diversion is accepted, any promotion made against the same is to be treated as regular and not ad-hoc.

**SUBMISSIONS OF THE LEARNED COUNSELS FOR THE RESPONDENTS**

35. On the other hand, Mr. A. K. Behera, learned Senior Advocate appearing for the respondents (LDCE officers), submits that the Affidavit dated 16.04.2025 filed by the IB shows that officers in excess of promotional quota had been appointed for the years 2004-05 to 2009-10:

| <i>Year</i> | <i>40% vacancy meant for LDCE</i> | <i>60% vacancy meant for promotion by seniority.</i> | <i>Comment of the contesting respondent/excess promotion made beyond 60% quota.</i> |
|-------------|-----------------------------------|------------------------------------------------------|-------------------------------------------------------------------------------------|
| 2005-06     | 0                                 | 29                                                   | Thus, the promotion made is excess by 14.                                           |
| 2006-07     | 0                                 | 40                                                   | Thus, the promotion made is excess by 25.                                           |
| 2007-08     | 0                                 | 55                                                   | Thus, the promotion made is excess by 34.                                           |
| 2008-09     | 0                                 | 61                                                   | Thus, the promotion made is excess by 53.                                           |



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|         |   |    |                                           |
|---------|---|----|-------------------------------------------|
| 2009-10 | 0 | 41 | Thus, the promotion made is excess by 36. |
| 2010-11 | 0 | 20 | Thus, the promotion made is excess by 20. |

36. He submits that even for the years 2006-07, 2007-08 and 2008-09, the LDCE vacancies reported by the IB to the UPSC were only 10, 14 and 05 respectively; consequently, the corresponding 60% promotional quota vacancies should, therefore, have been 15, 21 and 08 respectively; however, the Additional Affidavit dated 16.04.2025, show that 35, 50 and 61 vacancies were shown against the promotional quota for these respective years. He submits that this itself shows that the promotions were made in excess of the prescribed quota and any officer appointed in excess of the quota is to be treated as ad-hoc in terms of the DoP&T O.M. dated 07.02.1986.

37. He submits that once the respondents admit that no vacancies were reported to the UPSC against the 40% quota for the LDCE in the respective years, in terms of the DoP&T O.M. dated 07.02.1986, the officers appointed against the other sources, that is, promotional quota, are to be treated as ad-hoc. He submits that, therefore, no fault can be found in the learned Tribunal's direction to treat all officers appointed during this period under promotional quota as ad-hoc and thereafter, a Seniority List to be prepared interpolating the officers in terms of the prescribed quota. In support, he places reliance on the judgment of the Supreme Court in *Pilla Sitaram Patrudu & Ors. v. Union of India & Ors.*, (1996) 8 SCC 637.



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38. He submits that the plea of the IB that the LDCE vacancies were not reported due to the pendency of the writ petition before this Court, is also ill-founded inasmuch as the IB was not even a party to the said litigation. Even otherwise, nothing prevented the IB from moving an application seeking intervention or impleadment in the said case. Therefore, the IB cannot be allowed to take advantage of the pendency of the litigation.

39. Coming to the issue of diversion of the LDCE vacancies, he submits that Rule 8 of the IBSSR, 2003, permits relaxation only by passing a specific order giving specific reasons in writing and with consultation with the UPSC. The petitioners, other than saying that they had the approval of the DoP&T to relax the rules and divert the vacancies, have not been able to produce any specific order in this regard. Even otherwise, on the date of the said approval by the DoP&T, that is, 07.07.2010, the writ petition that was pending before this Court and was made a basis for not holding the LCDE, already stood adjudicated by a Judgment dated 26.05.2010. Therefore, there was no occasion to divert the vacancies much less to make appointments thereagainst by Orders dated 20.08.2010. He submits that these promotions were made after the UPSC had already requisitioned the vacancy position for the LDCE from the IB on 30.07.2010, and such information was supplied to the UPSC on 09.08.2010. He submits that, therefore, the diversion of vacancies and promotions made in haste were all *mala fide*. He places reliance on the judgments of the Supreme Court in **Keshav Chandra Joshi & Ors. v. Union of India & Ors.**, (1992) Supp 1 SCC 272; **Syed Khalid Rizvi &**



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*Ors. v. Union of India & Ors.*, (1993) Supp 3 SCC 575; *M. Mazruddin Ali & Ors. v. Govt. of A.P. & Ors.*, (2000) 10 SCC 383; *Bhupendra Nath Hazarika & Anr. v. State of Assam & Ors.*, (2013) 2 SCC 516; *State of Uttaranchal v. Alok Sharma & Ors.*, (2009) 7 SCC 647; *Union of India & Anr. v. Wing Commander R. R. Hingorani*, (1987) 1 SCC 551; *UPSC & Ors. v. Praveen Srivastava & Ors.*, (2018) SCC Online SC 3950; and in *Praveen Srivastava & Ors. v. UPSC & Ors.*, (2017) SCC Online Del 8710.

40. He further submits that even in the advertisement issued by the UPSC for LDCE on 28.08.2010, for the recruitment years 2006-07 to 2008-09, the eligibility criteria prescribed was on a year-to-year basis, clearly showing that the officers were to be appointed against the vacancies of a particular year and consequentially, be granted seniority of the particular vacancy year. He submits that the respondents cannot be denied this benefit on account of defaults of the Department.

41. He submits that the issue of diversion of post was raised before the learned Tribunal and the learned Tribunal gave adequate opportunity to the parties to make submissions on the same. Therefore, merely because a specific prayer was not made in this regard in the O.A., would not act as an impediment on the respondents challenging such diversion, and on the learned Tribunal, adversely finding against the same. In support, he places reliance on the judgments of the Supreme Court in *J. Ganapatha & Ors. v. N. Selvarajalou Chetty Trust & Ors.*, (2025) SCC Online SC 633; *Charanjit Lal Chowdhury v. UOI & Ors.*, 1950 SCC 833; and, in *State of Kerala v. Kumari T.P. Roshana & Anr.*, (1979) 1 SCC 572.



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42. He submits that as far as the reliance of the petitioners on the judgment of the Supreme Court in *K. Meghachandra* (supra) is concerned, the same has been referred to a Larger Bench in *Hariharan v. Harsh Vardhan Singh Rao*, (2022) SCC Online SC 1717, wherein the Supreme Court has also directed that all cases in which occasion for fixing seniority arose prior to 19.11.2019, in the interregnum, will be governed by the judgment of the Supreme Court in *Union of India & Ors. v. N. R. Parmar & Ors.*, (2012) 13 SCC 340. He submits that such prospective overruling is also recognised by the Supreme Court in *Managing Director ECIL v. B Karmakar*, (1993) 4 SCC 727.

43. With regard to the plea of Mr. Padma Kumar S., learned Advocate, that certain officers could not take the LDCE because they had already been promoted, the learned Senior Advocate for the respondents submits that this plea is contrary to the record inasmuch as not only were these officers allowed to appear in the LDCE, but were also given an option to have their seniority determined either under the LDCE or from the promotional quota. He submits that many of them opted for their seniority to be determined under the LDCE quota, as would be reflected from the details given in the Additional Affidavit dated 16.04.2025 filed by the IB.

44. He submits that therefore, no fault can be found in the Impugned Orders passed by the learned Tribunal and the present set of writ petitions deserves to be dismissed.



### **ANALYSIS & FINDINGS**

45. We have considered the submissions made by the learned counsels for the parties.

46. From the above narration of facts, it is not in dispute that in terms of the IBSSR, 2003, a quota of 60:40 for promotions:LDCE is prescribed for the post of SO. It is also not in dispute that the LDCE for the years 2006-07 to 2008-09 were not held till 2010, while at the same time, regular promotions were being made against the promotional quota during these years. Similarly, though for the vacancy year 2005, LDCE was held in December, 2006, results were declared only in February, 2009, while in the meantime, officers under the promotional quota continued to be promoted to the post of SO.

47. The learned senior counsel for the IB has stated that the examination for LDCE could not be conducted due to pendency of a writ petition, being W.P.(C) No. 4876/2007, titled ***The Central Secretariat Stenographers Service Association & Ors. v. The Central Secretariat Service, Direct Recruit Assistants Association & Ors.***, before this Court on the question of eligibility of Stenographers to participate in such examination. On the other hand, the learned senior counsel for the respondents/LDCE officers submits that the said litigation would have had no effect on the conduct of the regular examination for LDCE inasmuch as the IB was not a party in that litigation.

48. In our view, decision of the UPSC not to hold LDCE due to the pendency of the above referred writ petition and the uncertainty attached to it, cannot be faulted. We find adequate justification for the



LDCE examination not being conducted for these years. We are fortified in our opinion by the fact that while regular promotions were being made and the LDCE was not being conducted, there was no challenge made by any officer to the same during the relevant time. Even in the O.A.(s) filed, it does not appear to be the case of the respondent that the LDCEs were not being conducted due to some *mala fide* or unjustified reasons. In fact, the retrospective seniority was prayed on basis of the vacancy year against which the LDCE appointments were being made.

49. Similarly, the plea of the learned senior counsel for the respondents that promotions were being made over and above the promotional quota, cannot be accepted. This is not the basis on which the O.A.(s) were filed before the learned Tribunal or decided by the learned Tribunal.

50. This now brings us to the effect of the situation where promotions are being made on a regular basis against the promotional quota, while the LDCE is not being conducted.

51. The seniority in the above scenario is governed by the DoP&T O.M. dated 07.02.1986, the relevant portion of which reads as under:

*“3. This matter, which was also discussed in the National Council has been engaging the attention of the Government for quite some time and it has been decided that in future, while the principle of rotation of quotas will still be followed for determining the inter-se seniority of direct recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years, thereby giving them unintended seniority over promotees who are already in position, would be dispensed with. Thus, if adequate number of*



*direct recruits do not become available in any particular year, rotation of quotas for purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits are not available, the promotees will be benched together at the bottom of the seniority list below the last position upto which it is possible to determine seniority on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter, in that year while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed en-bloc below the last promotee (or direct recruit as the case may be) in the seniority list based on the rotation of vacancies for that year. The same principle holds good in determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent years.*

xxx

5. With a view to curbing any tendency of under-reporting/suppressing the vacancies to be notified to the concerned authorities for direct recruitment, it is clarified that promotees will be treated as regular only to the extent to which direct recruitment vacancies are reported to the recruiting authorities on the basis of the quotas prescribed in the relevant recruitment rules. Excess promotees, if any, exceeding the share



*falling to the promotion quota based on the corresponding figure, notified for direct recruitment would be treated only as ad-hoc promotees.”*

52. As noted hereinabove, it is the case of the Department that not only were the promotions being made only against the promotional quota and not in excess thereof, but also that there was no allegation of ‘*under reporting/suppressing the vacancies*’ for the LDCE quota. It is, therefore, submitted that the excess promotions, if any, cannot be treated as ad-hoc, as directed by the learned Tribunal. We find merit in the said submission.

53. Once it is held that promotions were being made against the promotional quota and not in excess thereof, the officers so promoted cannot be treated as ad-hoc only because the officers from the other stream, that is, LDCE, could not be promoted. They cannot be denied the benefit of their promotion. In **B. S. Murthy** (supra), the Supreme Court held that Paragraph 5 of the O.M. dated 07.02.1986 is meant to cater to a contingency of under-reporting which results in an unfair advantage to one stream and allows it to steal a march over the other. The same cannot be said in the present case inasmuch as, we do not find that there was a *mala fide* under-reporting for allowing the promotee officers to steal a march over the LDCE officers. We may quote from the judgment as under:

*“62. Hence, it is essential to keep in mind that Para 5, (which has been the basis of the High Court judgment, to hold that the PRIs were in excess of their quota) was meant to cater to a contingency that is of underreporting direct recruit vacancies to the Public Service Commission (in this case, the*



*SSC) which resulted in an unfair advantage to promotees who would “steal a march” over such direct recruits, appointed later. It was in such contingencies, that is, of under-reporting vacancies, that the consequence of deeming promotions to be ad hoc could be resorted to. If one keeps this perspective in mind, the correct direction of inquiry, (which in this Court's opinion was undertaken by CAT) was to see what were the number of regular vacancies relative to the quotas, with specific reference to the vacancy register. This approach, however, was discredited by the High Court, which held that the vacancy register : (A. Ravinder Singh case [A. Ravinder Singh v. Commr. of Customs & Central Excise, 2005 SCC OnLine AP 1274] , SCC OnLine AP para 26)*

*“26. ... at the most indicates the vacancy position in DRI/PRI cadre and it is not intended to confer the benefit of promotion on in-service candidates more especially when the promotions are to be effected with reference to the vacancies indented for DRIs. Therefore, the observation of the Tribunal that only in case of detection of under-reporting/suppression the bunching process had to be adopted and in other cases the vacancies position vis-à-vis the promotion has to be identified from the vacancy register is untenable.”*

*63. As discussed, the materials on record indicate that promotional vacancies did exist, at the relevant period. There was a ban on direct recruitment. The reasons for the ban are now obscure; but the fact remains that it was in force for six years (1984-90). During this period, undoubtedly, no requisitions were made to the SSC for filling direct recruit vacancies. However, the linear logic, applied by the High Court, to conclude that by virtue of Para 5 of the OM of 1986, the promotions made during the same period had to be treated as in excess of the quota, because they were*



*not in proportion to the requisitions for direct recruitment. This view is plainly fallacious, because it equates executive policy—of not filling vacancies, due to financial or other compulsions with deliberate underreporting, meant to result in unfair advantage to the PRIs. In the present case, direct recruitment through the SSC was not resorted to because of a ban, and not due to under-reporting. Thus, the contingency visualised in Para 5 never arose. Not only were promotions made within the quota, and were regular (as they were preceded by proceedings of the Departmental Promotion Committee, and culminated in regularisation, in 1988), there were in fact regular vacancies, within the promotee quota.*

64. *The existence of PRI vacancies is a matter of objective fact — as can be seen from the replies to the RTI queries (see footnotes 13 to 15 supra [Ed. : See paras 18 to 20 and paras 46 and 47, above] ). Those vacancies fell to the share of PRIs, in terms of the 25% quota earmarked for them, under statutory rules. In such circumstances, to say that those promoted, by resort to DPCs and regularised later, should be treated as ad hoc promotees, would be contrary to express rules. In other words, by giving effect to Para 5 of the 1986 OM, (and treating the promotions as ad hoc for purposes of inter se seniority), the statutory rules are virtually given a go-by. It is also contrary to the stated objective sought to be achieved by Para 3 of the 1986 OM, which is to “present practice of keeping vacant slots for being filled up by direct recruits of later years, thereby giving them unintended seniority over promotees who are already in position, would be dispensed with”. The promotions of the PRIs before this Court therefore, have to be treated as regular. This Court is of the opinion, that the reasoning of the High Court, in overlooking these aspects, is clearly in error.”*



54. In **G. S. Lamba** (supra), the Supreme Court held that even where it is assumed that promotions were being made in excess of the quota, once there is a power to relax the mandatory quota rule, such appointments made in excess of the quota would not be illegal or invalid but regular and legal. In the present case, it has been held by us that the promotional quota was not being exceeded, and even if it was, the promotions so made cannot be termed as illegal or invalid and certainly not ad-hoc, thereby denying the benefit of such promotion to the officers so promoted, including in terms of their seniority.

55. In **Prashant Kumar Sona** (supra), dealing with almost identical facts, this Court held that non-holding of the LDCE would only show that the quota rule has broken-down, however, this would neither denude the officers promoted against their quota of the benefit of such promotion for seniority nor give a right to the LDCE officers to claim a retrospective seniority by operation of the quota rule. We quote from the judgment as under:

*“34. Even though this plea of the petitioners appears to be attractive on the first blush, on applying the same to the factual matrix of the present case, we are of the view that the petitioner’s claim for grant of retrospective seniority has to be rejected. Even if the petitioners and other beneficiaries of LDCE were not at fault for deferment of the LDCE for five years, the fact remains that during this entire period of five years when the LDCE exam was on hold, promotions to the post of SOs were being regularly made. We are, therefore, of the view that as held by the Apex Court in G.S. Lamba (supra), in the present case as well on account of the LDCE not being*



*held for almost five years, the quota rule had as a matter of fact broken down. Merely because the quota rule had broken down due to unavoidable factors, cannot change the position that the said rule like in the case of G.S. Lamba (supra), had broken down. Consequently, the rota rule could not have been applied to grant retrospective seniority to LDCEs appointed as SOs only in the year 2011. It would, therefore, be highly unjust to the promotees, if the SOs appointed/promoted through LDCE in 2011, like the petitioners, are accorded seniority over them. We cannot lose sight of the fact that while the promotees had been working as SOs since 2006 onwards, the petitioners and other employees recruited through LDCE joined the post of SO only in 2011 and were admitted, during the period between 2006 and 2011, working on the junior posts of Assistant Grade II or lower.”*

56. In **Suraj Prakash Gupta v. State of J&K & Ors.**, (2000) 7 SCC 561, on which much reliance has been placed by the learned senior counsel for the respondents, the Court had held that there was lethargy of the State and total inaction on its part in not asking the Service Commission to make direct recruitment. The Court held that delay on the part of the Government appeared to be motivated for the purpose of blocking the quota of the direct recruits and giving a part of it to the promotees. The Court held that the Rules therein gave power to relax the same where suitable candidates are *not available*. The Court held that such non availability of the candidates cannot be inferred and therefore, there was no breakdown of the quota rule. The said judgment cannot have application in the facts of the present writ



petitions as we do not find any *mala fide* in the department in not holding the LDCE.

57. Coming to the issue of diversion, we may, at the outset, note that though the same was never put in challenge before the learned Tribunal, the learned Tribunal, however, considered the same and held that no regular appointment could have been made against these diverted posts. We quote from the Impugned Order as under:

*“27. In the reply filed by the private respondents it has been averred that, with the concurrence of MHA and DOPT, 85 vacancies were diverted from LDCE quota to promotion quota in the year 2010 on an undertaking that the same will be restored to LDCE quota later. There is no document or even averment to show that such a diversion was in relaxation of the rules by exercising power under rule 8(Power to relax) of the IBSSR. It goes without saying that if such relaxation were granted there would be no need to restore the LDCE quota. The context indicates that it was only a measure to temporarily fill up the vacancies by promotion. The approval of MHA and DOPT, as has been averred, was for temporary diversion. No regular appointment could have been made against temporarily diverted post which had to be restored to the original quota subsequently”*

58. Rule 8 of the IBSSR-2003 vests with the Central Government a power to relax any of the provisions of the said Rules. It reads as under:

*“8. Powers to relax - Where the Central Government is of the opinion that it is necessary or expedient so to do, may, by order, for reasons to be recorded in writing and in consultation with the Union Public Service Commission, relax any of the*



*provisions of these rules with respect to any class or category of person.”*

59. The only document sought to be relied upon by the petitioners as a relaxation to the Rules and for diversion of the posts, is the following Noting of the DoP&T:

*“Department of Personnel & Training  
Estt. (RR) Division*

*MHA have submitted the proposal relating to diversion of vacancies earmarked for Limited Departmental Competitive Examination (LDCE) in Section Officer Grade in IB to promotion quota. The RRs for the post of Section Officer prescribe the method of recruitment 60% by promotion, 40% through LDCE, Assistants with 8 years services are eligible for promotion. For LDCE regular Assistants/Stenographer Grade II/Personal Assistant (IB) with not less than 4 years are included In the field of consideration. It is indicated that due to non-holding of LDCE by UPSC the vacancies under this category have remained unfilled which is adversely affecting the functioning of IB. As per the communication dated 13.5.10 from UPSC, it is seen that the Commission and DOPT are under a consultative process to find a route map for holding LDCE from 2006 onwards.*

*2. The proposal for diversion of vacancies from LDCE to promotion*

*quota may not be in order for the reasons indicated in para 6 of p. 7/N. However, considering the functional difficulties arising due to a large number of vacancies in the SO Grade, we may, as a one time measure, agree for temporary diversion of 85 vacancies of SOs from LDCE quota to promotion quota with the condition that the shortfall In the LDCE quota is made good at the time of future vacancies. Alternatively, the vacancies may be filled up on ad hoc basis.”*



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60. The Department, treating the above to be an approval of the DoP&T for the diversion of 85 vacancies of SO(s) from LDCE quota to promotional quota, has filled up 69 of such posts on 20.08.2010, that is, prior to the promotion being granted to the respondents/LDCE officers in 2011, thereby making such officers senior to the respondents/LDCE officers.

61. The learned senior counsel for the respondents is correct in his submission that no specific order of such diversion of vacancies has been placed on record before the learned Tribunal or before this Court by the Department.

62. The above-quoted Noting of the DoP&T would show that a proposal has been mooted for the diversion of the vacancies, giving reason for the same as the inability to hold LDCE for the year 2006 onwards resulting in functional difficulties due to a large number of vacancies in the SO Grade. The said reasons were accepted by the DoP&T and the proposal was granted approval with the condition that such diversion shall be temporary and shall have to be made good at the time of future vacancies. Therefore, it is to be assumed that the proposal to relax the quota rule had been granted due approval by the DoP&T. However, the Department has not placed on record any specific order whereby it has exercised the power to relax the rules and to formally divert the LDCE vacancies to the promotional quota.

63. In terms of Rule 8 of the IBSSR-2003, there is a requirement for a specific order giving reasons 'in writing' and in consultation with the UPSC to relax the rules. Neither have we been shown a specific



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order giving reasons for the diversion of vacancies, nor has it has been shown to us that there was any consultation with the UPSC or that its approval was taken before making the diversion of the posts.

64. Even the Note of the DoP&T, which has been sought to be relied upon by the Department, shows that there was an alternative of the vacancies to be filled up on ad-hoc basis. We must herein also note that the judgment in writ petition pending before this Court, which was the reason for not holding the LDCE, had been reserved on 15.05.2010 and was pronounced on 26.05.2010. The impediment for holding the LDCE was, therefore, no longer in existence when the above-quoted Note of the DoP&T was made. The UPSC, in fact, on 30.07.2010, had requisitioned from the IB the number of vacancies for the LDCE quota for the years 2006 to 2008. By that time, the promotions had yet not been made by the IB. In fact, they were not made even when the information about the LDCE quota for these years was sent by the IB to the UPSC. On 20.08.2010, when the promotion orders were issued, in fact, the UPSC had also advertised the examination for filling up the vacancies of the LDCE quota.

65. In the above facts, the decision of the IB to appoint officers against the diverted LDCE vacancies cannot be accepted. The officers promoted against such diverted vacancies, therefore, are to be treated as ad-hoc for the purposes of determining their seniority.

66. In *Syed Khalid Rizvi* (supra), the Supreme Court while interpreting almost an identical rule to that of Rule 8 of the IBSSR, 2003, held that it would require an express order in writing and invoking a fiction of deeming relaxation would emasculate the



operation of the rules and regulations and be fraught with grave imbalances and chain reactions. We quote from the judgment as under:

*“33. Rule 3 of the Residuary Rules provides the power to relax rules and regulations in certain cases — where the Central Government is satisfied that the operation of — (i) any rule made or deemed to have been made under the Act, or (ii) any regulation made under any such rule, regulating the conditions of service of persons appointed to an All India Service “causes undue hardship in any particular case”, it may, by order, dispense with or relax the requirements of that rule or regulation, as the case may be, to such an extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a “just and equitable manner”. Rule 3 empowers the Central Government to relieve undue hardship caused due to unforeseen or unmerited circumstances. The Central Government must be satisfied that the operation of the rule or regulation brought about undue hardship to an officer. The condition precedent, therefore, is that there should be an appointment to the service in accordance with rules and by operation of the rule, undue hardship has been caused, that too in an individual case. The Central Government on its satisfaction of those conditions, have been empowered to relieve such undue hardship by exercising the power to relax the condition. It is already held that conditions of recruitment and conditions of service are distinct and the latter is preceded by an appointment according to Rules. The former cannot be relaxed. The latter too must be in writing that too with the consultation of UPSC. In Mohapatra [(1969) 2 SCC 149 : (1970) 1 SCR 255] and Khanna [(1972) 1 SCC 784 : (1972) 3 SCR 548] this Court held that approval by the Central Government and UPSC are mandatory. In A.K. Chowdhury*



*case [(1975) 4 SCC 7 : 1975 SCC (L&S) 192 : (1975) 3 SCR 878] it was held that requirement of Rule 3(3)(b) of Seniority Rules is mandatory. In Amrik Singh case [(1980) 3 SCC 393 : 1980 SCC (L&S) 415 : (1980) 3 SCR 485] an express order in writing under Rule 3 of Residuary Rules is mandatory. In this case neither any representation to relax the rules was made nor any order in writing in this behalf was expressly passed by the Central Government. The fiction of deeming relaxation would emasculate the operation of the Rules and Regulations and be fraught with grave imbalances and chain reaction. It is, therefore, difficult to accept the contention that there would be deemed relaxation of the Rules and Regulations.”*

67. In **M. Mazruddin Ali** (supra), the Supreme Court again emphasised the need for a specific order for relaxation of the rules to operate.

68. In view of the above, it must be held that the power to relax the IBSSR, 2003, was not properly exercised by the Central Government and the 69 officers promoted thereagainst, therefore, are to be treated as only ad-hoc and are not entitled to claim any seniority based thereon. They would need to be adjusted against the future vacancies of the post of SO against their respective quotas for the purposes of determination of their seniority.

69. This now brings us to the additional submission of Mr. Padma Kumar S., learned Advocate, that certain officers were not allowed to take the LDCE as they had been promoted against the diverted vacancies. He has given a specific example of one, Ms. Manjula Devi. The said submission has been rebutted by the learned senior



counsel for the respondents by contending that Ms. Manjula Devi had applied and had been issued an admit card for the LDCE examination. He submitted that there were other similarly placed candidates who had appeared for the LDCE and though they had been granted promotion against the diverted vacancies, on their selection in the LDCE, were given an option whether they would like to continue on the promoted post in the promotional quota or be assigned seniority under the LDCE quota. These officers opted for LDCE quota seniority as would be evident from the Additional Affidavit filed by the Department.

70. From the Additional Affidavit dated 16.04.2025, filed by the IB, it would be evident that certain officers, though were promoted against the diverted vacancies, opted for their seniority to be determined as an LDCE candidate on successfully appearing in the LDCE. This negates the submission of Mr. Padma Kumar S., learned Advocate, that such officers were not allowed to participate in the LDCE as they had already been promoted against the diverted vacancies. In any case, once we have held that the diversion of the vacancies was not in accordance with the Rules, such officers who were promoted against these diverted vacancies cannot claim seniority.

71. In view of the above, we dispose of this batch of writ petitions by holding as under:

a) The Impugned Orders of the learned Tribunal insofar as they hold that the promotions made to the post of SO against the promotional vacancies for the years 2005 to 2010 shall be treated as



ad-hoc, cannot be sustained. These promotions, having been made against the vacancies of the promotional quota, are treated as regular, giving the seniority benefits to such officers;

b) The alleged diversion of 85 vacancies from the LDCE quota to the promotional quota was not in accordance with the IBSSR, 2003, and, therefore, cannot be sustained. The promotion of 69 officers made against the alleged diverted vacancies would, therefore, be treated as ad-hoc, not vesting such officers with any seniority benefit. These officers will gain their seniority only on their turn by applying the respective quota in terms of the IBSSR, 2003;

c) Certain officers who were promoted against the alleged diverted vacancies, however, on their selection in the LDCE, had opted for their seniority to be determined in the LDCE. These officers would, therefore, retain their seniority under the LDCE quota. In case any other officer who was promoted under the diverted vacancies and in spite of successfully clearing the LDCE chose for the seniority to be determined under the promotional quota, would be given another option to seek seniority according to his/her rank in the LDCE;

d) The officers who were promoted under the LDCE would gain their seniority only from the date of their promotion and not from the year(s) of their vacancy;

e) In case any officer claims that he/she was not allowed to appear in the LDCE having been promoted against the alleged diverted vacancies, he/she can raise this grievance with the Department, which shall consider the same in accordance with the law and pass a reasoned order thereon within a period of four weeks of receipt of



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such representation;

f) A fresh Seniority List on basis of our above directions for the posts of SO shall be prepared by the Department within a period of eight weeks. It shall, however, be open to the officers to challenge the same, if they are aggrieved thereby, in accordance with law.

72. With the above directions, the writ petitions along with the pending applications are disposed of.

73. There shall be no order as to costs.

**NAVIN CHAWLA, J.**

**MADHU JAIN, J.**

**JANUARY 12, 2026/sg/pb**