

(2002) 03 DEL CK 0035
In the Delhi High Court
Case No : L.P.A. No. 16 of 1984

Mr. S.K. Jain

APPELLANT

Vs

Mr. P.S. Gupta and Others

RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

Citation : (2002) 4 AD 596

Hon'ble Judges : Usha Mehra, J;C.K. Mahajan, J

Bench : Division Bench

Advocate : P.H. Parekh, E.R. Kumar and Ruchi Khurana, for the Appellant; G.D. Gupta, for the Respondent

Judgement

Usha Mehra, J.—The employees of the Delhi University were governed by the rules known as The University Non-teaching Employees (Terms and Conditions of Services) Rules 1971 (hereinafter called the Rules). These Rules provided for creation of posts, recruitment, appointment and seniority of the staff of the University. Schedule of posts were indicated by the Executive Council from time to time. Prior to the passing of these Rules such matters were governed by the Regulations which were approved by the Executive Council. In the Schedule of posts under the Rules as well as under the Regulation there existed a post of Superintendent. According to the Resolution of the Executive Council No. 36 dated 20th April, 1964 Steno-Typists as well as Stenographers were eligible for consideration for promotion to the post of Senior Assistants and Superintendents. The eligibility condition was that they must be Graduate and should have good confidential reports. However, the Executive Council by its Resolution No. 304 dated 20th October, 1966 empowered the Selection Committee to consider relaxation of the said condition at the time of promotion of Stenographers to the post of Superintendent. It was considered desirable that the Stenographer in order to get promotion as Superintendent should have at least experience of noting and drafting. Therefore, vide Resolution No. 208 dated 24th August, 1968 the Executive Council decided that employees working in the

identical time scales but in different cadres may be transferred from one cadre to another cadre. It was also brought to the notice of the Committee that the Stenographer were not borne on the seniority list of Senior Assistant for purposes of promotion to the post of Superintendent, Therefore, opinion was expressed that a Stenographer should not be promoted as Superintendent straightaway as they would have no experience of noting and drafting while working as Stenographers. It was Therefore decided that before the proposal of interchange of employees from one cadre to another could be accepted it was essential to provide for some "in-service training course" for the employees of the University. Training was to be organized at the earliest and thereafter it was suggested that a test be conducted as envisaged in Rule 44. That vide Resolution No. 17 dated 3rd April, 1972 the Executive Council decided that all the Steno-Typists should be borne on the common seniority list of Assistants and Steno-Typists for the purpose of promotion to the cadre of Senior Assistants. That all such Stenographers as were directly recruited as Stenographers should also be borne on the common seniority list of Assistants and Steno-Typists. Further such of the Steno-Typists on the basis of their date of appointment as Stenographers as are subsequently promoted as Stenographers and those who were directly recruited as Stenographers be considered for proforma promotion to the cadre of Senior Assistants in accordance with their position in the combined seniority list of Assistants/Steno-typists, subject to the satisfactory report about their work as in other cases. Therefore, the Stenographers placed in the cadre of Senior Assistants be considered for promotion to the Superintendent's cadre according to their seniority in the gradation list of Senior Assistants, subject to the satisfactory report of their work. That there would be no qualifying test for the Stenographers for placement as Superintendents but they be promoted on the basis of their position in the gradation list of Senior Assistants on trial basis. Thus the Stenographers were made eligible for being considered for promotion to the post of Superintendent, however, for the purpose of seniority they were treated at par with the Steno-Typists/Assistants. It was their placement at par with Steno-Typists/Assistants which was subsequently rescinded by Resolution No. 777 dated 28th March, 1973 of the Executive Council.

2. On the rescission of Resolution No. 777 of the Executive Council, the Senior Assistants felt aggrieved. They protested the rescinding of placement of seniority of Stenographers and consequently promotion of the Stenographers to the posts of Superintendents. They, Therefore, made representation to the Pro-Vice Chancellor of the University of Delhi. The Executive Council by its Resolution dated 18th April, 1973 authorised the Vice Chancellor to take such action as he may consider appropriate after getting the matter further examined. The Vice Chancellor discussed the matters with the representatives of the parties as well as employees union. After hearing them he gave the decision on 2nd May, 1973 thereby laying down: (i) That relative seniority of Steno-Typists/Stenographers for the purpose of promotion be considered from the level of Assistants. (ii) That those who possess the basic qualification will naturally get promotion when their

turn comes but in the case of those who lack these basic qualifications as required in resolution of 1964 may be considered for relaxation on the condition mentioned in "A" which read as under;

(a) A Steno-Typist/Stenographer should have at least one "very good" and two "outstanding" confidential reports during the three consecutive years immediately before the date of his consideration for promotion;

(b) such of the Steno/Typists/Stenographers as fulfill the requirements mentioned in (i) above will be interviewed by a committee.

3. The decision of the Vice Chancellor was approved by the Executive Council vide its Resolution No. 81 dated 21st May, 1973.

4. The Stenographers felt aggrieved with the decision of the Vice Chancellor as well as of Executive Council dated 2nd May, 1973 and 21st May, 1973 respectively. Hence challenged the same by way of a writ petition. They prayed that the decision of the Vice-Chancellor as well as of Executive Council be set aside. The learned Single Judge held that imposition of condition (a) was unjust to the Stenographers because service rendered by Stenographers in higher scale could not be equated with Assistants. This prejudiced the right of the Stenographers on promotion to the post of Superintendents. There was no rationale behind the decision of the Executive Council. Hence the condition imposed by the Vice Chancellor and as approved by the Executive Council thereby fixing the relative seniority of Stenographers for the purpose of promotion at the level of Assistants was quashed. Petitioners were declared at par with Senior Assistants provided they had the requisite qualification prescribed by the Executive Council in its Resolution No. 36 of 20th April, 1964 and subject to relaxation as laid down by Vice-Chancellor vide decision dated 2nd May, 1973 and as approved by the Executive Council dated 21st May, 1973.

5. Aggrieved by this decision the present appeal was preferred by the appellant, a Senior Assistant. The impugned judgment has been assailed primarily on the ground that the staff members who are holding the post of Senior Assistants having the same pay-roll as that of Stenographers, because of the impugned order have been adversely affected. They have been deprived of similar opportunity to get promoted to the post of Personal Assistants which is exclusively manned by the stenographers. There always existed separate cadre for different categories of staff of the University of Delhi. They have hierarchy of their own. Therefore, by the impugned judgment allowing the Stenographers to cross over to the ministerial staff cadre and get equated with the post of Sr. Assistants for the purpose of promotion to the post of Superintendent and also enjoy exclusive right to get promotion to the post of Personal Assistants has given double benefit to the Stenographers. They would not only be promoted in their own channel of promotion to the post of Personal Assistants, but would also have a chance to get promoted to appellant's channel of promotion i.e. to the post of Superintendents whereas vice-versa is not permissible. This decision has

adversely affected the chance of promotion of the appellant and similarly situated Sr. Assistants. According to appellant, the Vice Chancellor took a balanced view of the matter but the learned Single Judge upset the same by setting aside condition (a) of the Vice Chancellor decision and as approved by the Executive Council. Because of deletion of this condition it has created anomaly. It would deprive legitimate expectations of the appellant and similarly situated staff of promotion to the post of Superintendent because their chances of promotion have become bleak rather scuttled. This is so apparent from the affidavit filed by the University of Delhi in response to the order passed by this court vide proceedings dated 20th September, 1984 in order to ascertain the effect and consequences of the impugned judgment. Delhi University through its Registrar filed affidavit dated 10th October, 1984 showing the effect of the impugned judgment passed by the learned Single Judge as under:

(i) the result of the judgment of the Delhi High Court in the case of stenographers would be that 26 persons in each of the Cadre of Section Officers (Superintendents), Sr. Assistants, and Assistants would be reverted to the next lower cadre and 26 junior Assistant-cum-Typist (Clerk-Typist) would become surplus.

(ii) Out of the total posts of 49 Stenographers, 26 will be promoted as Superintendents (Section Officers). 4 will become Private Secretaries and 11 would become Senior Personal Assistants. This way the impugned judgment if implemented would adversely effect the Ministerial Cadre officials.

6. The University of Delhi has been treating the appellants (Sr. Assistants) and respondents 1 to 7 (Stenographers) belonging to two separate cadres. They have their own hierarchy right from the time the 1965 Rules were framed. However, from time to time efforts were made to resolve the controversy in order to find out whether "Stenographers could also be made eligible for promotion to the post of Superintendent. As indicated above various Resolutions were passed from time to time by the Executive Council but controversy continued. 1965 rules provided that appointment to a post in any grade would be considered from employees in the post in the next lower grade. In 1966 the Executive Council decided that only Senior Assistants would be recommended for promotion to the post of Superintendents. It was considered by the Executive Council in the year 1966 itself that the Stenographers be also given chance for promotion to the post of Superintendent but subject to certain conditions. Then in 1968 Resolution No. 208 was passed, whereby the Establishment Committee after considering the note of the Finance Officer regarding transfer from one cadre to another of the employees working in the identical time scale but in different cadres, decided that it would not be advisable to straight away promote Stenographers to the post of Superintendent, rather a departmental test/training be conducted before the proposal of inter change of employees from one cadre to other could be accepted. After coming into force Rule 1971 it was decided that promotion shall be made from amongst the employees serving in the next lower grade and every

such appointment is to be made on the basis of merit-cum-seniority and considering the record of service. In spite of all these Resolution passed from time to time the question with regard to promotion of Stenographers to the post of Superintendent remained in the boiling pot, hence the stenographers knocked the doors of the court and the learned Single Judge instead of setting aside the decision of Vice-Chancellor and of Executive Council dated 2nd May, 1973 and 21st May, 1973 set aside only the condition (a) whereby for purpose of seniority these stenographers were treated at par with Assistants.

7. It is in this backdrop that we have to appreciate the arguments and the contention raised by learned counsel for the parties. At the outset Mr. G.D. Gupta, appearing for the respondent took objection on the maintainability of this appeal. According to him since the appellant Mr. S.K. Jain has since retired during the pendency of this appeal, Therefore this appeal has become infructuous. He further pointed out that while admitting the LPA this Court stayed the operation of the impugned judgment as a result of which the appellant got all the benefits accrued in his favor as Superintendent. Since the appellant has already taken advantage of the retrial benefits of the higher post because of the stay granted by this Court now nothing survives in this appeal. Moreover University of Delhi will not claim refund of the higher amount paid to him.

8. Mr. P.H. Parekh, counsel for the appellant, countering this argument contended that respondents have no authority to give concession that amount in excess will not be recovered. Delhi University will not waive the amount paid to the appellant in higher pay scale. The effect of the impugned judgment of the learned Single Judge has a far reaching effect on all the Senior Assistants as a class. Moreover, by the impugned judgment the learned Single Judge effected the class and categories of employees. In fact by the impugned judgment Stenographers would get double benefits. They would get promotion to the higher post as Superintendent which post was to be filled up only by the Senior Assistants. This will now be shared with the Stenographers, Therefore, Assistants and Senior Assistants as a class are effected. Therefore, mere retirement of the appellant will not make this appeal infructuous.

9. After hearing counsel for the parties and perusing the record we find no merits in the arguments of Mr. G.D. Gupta. To our mind, retirement of the appellant in no way effect the merits of the case. The impugned judgment has a bearing and consequences on the cadre of Assistants and Sr. Assistants. The challenge to the impugned judgment of learned Single Judge survives so long a class of officers of a cadre are affected. Moreover, appellant cannot be left at the mercy of the University to waive off the amount paid to him in higher scale of pay. There is another reason why we say that the appeal has not become infructuous because during the pendency of this appeal, some of the Senior Assistants wanted to get imp leaded as parties. They accordingly filed applications bearing Civil Misc. Nos. 1170-1171/1984. They contended that they were necessary parties in the writ petition but respondents 1 to 7 did not implead them. Writ petition was decided

in the absence of necessary parties. Because they were not imp leded as parties hence they were not aware but now since the impugned judgment has taken away their valuable right and has in fact adversely affected their chance of promotion, Therefore, they be imp leded parties in this appeal and be heard. Though these applicants were not formally made parties but on their behalf Mr. P.H. Parekh was heard. As pointed out by the University of Delhi vide its affidavit dated 10th October, 1984 large number of "Assistants, Sr. Assistants and Junior Assistants-Cum-Typists would be affected by the impugned judgments. Their fate has been sealed without affording them opportunity of being heard. Therefore, in order to do justice and understand how their rights were affected we feel that with the retirement of Mr. S.K. Jain, appeal has not become infructuous. While holding so we have kept in view the fact that the decision in appeal will also affect various class of employees, Therefore, Mr. P.H. Parekh should be heard on merits even on their behalf. For the reasons stated we don't find any merits in the objection of Mr. G.D. Gupta.

10. Similarly the objection taken by Mr. P.H. Parekh that writ petition ought to have been dismissed for non joinder of necessary party, we find no merits in this objection. According to Mr. Parekh the writ petitioners imp leded only four Senior Assistants as respondents in their personal capacity and not in a representative capacity. According to him the writ petitioners challenged the decision of the Vice Chancellor dated 2nd May, 1973 and as approved by the Executive Council vide Resolution dated 21st May, 1973 whereby the rule of seniority was prescribed in the matter of promotion to the post of Superintendents. Since the dispute raised in the petition was against a class, Therefore, the writ petitioners ought to have imp leded all the Senior Assistants or those four Sr. Assistants in a representative capacity. Having not done so, it was fatal for the survival of the writ petition. Since the necessary parties were not imp leded, Therefore, the writ petition ought to have been dismissed on this short ground. The learned Single Judge could not have set aside the decision of the Executive Council dated 21st May, 1973 against all the Superintendents, Sr. Assistants and Assistants. He could have confined his decision only to the parties before him. Having set aside part the decision of the Executive Council in the absence of necessary parties the impugned judgment is liable to be set aside on this ground.

11. Mr. G.D. Gupta found fault in this argument of Mr. P.H. Parekh for the simple reason that in the writ petition the respondents herein only challenged the principle of determination of seniority of the writ petitioners who were performing the job of Stenographer viz-a-viz the Senior Assistants for the purpose of promotion to the post of Superintendent. The persons who are likely to be affected in such a case are not necessary parties. Moreover, University of Delhi was imp leded as a party against whose order the writ was filed. Therefore, non impleading of every Senior Assistant could not have made the writ petition bad in law. Those Senior Assistants in the waiting to become Superintendent and who could have been imp leded as party, as best can be

called proper parties but definitely not necessary parties. Therefore, their absence was not fatal to the writ petition.

12. To support their contentions Mr. P.H. Parekh as well as Mr. G.D. Gupta placed reliance on various decisions. After going through those decision and the arguments of the learned counsel, we are of the view that when there is a challenge to the principle of determination of seniority the persons who are likely to be adversely affected are not necessary parties. They are at the most a proper party. Their absence is not fatal to the maintainability of the writ petition. In this regard we are supported by the decisions of Supreme Court in the case of (i) A. Janardhana Vs. Union of India (UOI) and Others, ; (i) State of U.P. and Anr. v. Ram Gopal Shukla 1981 (2) SLR 3 and (iii) The General Manager, South Central Railway, Secundrabad and Anr. v. A.V.R. Siddhanti and Ors. 1974 (1) SLR 597. In view of the law laid down by the Supreme Court we find that non impleading of each and every Assistant or Senior Assistants was not necessary nor fatal to the writ petition.

13. Now turning to the merits of the impugned judgment we must keep in mind the nature of duties and functions of the post of Assistant, Sr. Assistants and that of Steno-Typists or Stenographers. Admittedly they have to perform different duties and functions. Their criteria of appointment is also different. From the Assistant to become Senior Assistant the eligibility criteria is 10 years minimum service as Assistant. Whereas no such criteria is laid down for Stenographer. Stenographer can also be directly recruited and his basic qualification is only metriculation. Whereas there cannot be a direct recruitment to the post of Senior Assistant. Stenographers in their hierarchy can be promoted to the post of Section Officer (Superintendent)"s scale of pay as Senior Personal Assistant and Private Secretary. Thus their method of recruitment, qualification and duties and responsibilities are different. Besides the Stenographers there are other staff who are performing different duties for example Cartographic Assistants (They prepare catalogue for books purchased by University), Technical Assistants and Record Keepers. They have not been considered for promotion to the post of Superintendent, though they are having the same pay scale as that of Stenographers. Hence the Vice Chancellor after taking into consideration the representations of all the parties and the office bearers of University took the decision which, to our mind, was a very balanced view of the conflicting and competing claims of the parties. That while deciding that the Stenographers for the purpose of seniority will be treated at par with the Assistants, the Vice-Chancellor took into consideration that the rule of relaxation qua the qualification be made applicable to these Stenographers, otherwise for promotion to the post of Senior Assistants the basic qualification is graduation. It is keeping in view this competing claim that he took the decision that the Stenographers be given relaxation in basic qualification and then seniority be treated at par with Assistants. But by upsetting this condition the learned Single Judge created anomaly. The Stenographers will not only have an additional channel of promotion to the detriment of the Senior Assistants but will also enjoy relaxation

in basic qualification thereby prejudicing the interest of the Senior Assistants. From various resolutions quoted above it transpires that the Stenographers do not possess requisite experience of noting and drafting and even this condition at the time of promotion to the post of Superintendent will not be insisted upon if the decision of the learned Single Judge is allowed to stand. By quashing part of the decision of the Vice chancellor dated 2nd May, 1973 and as approved by the Executive Council on 21st May, 1973 the learned Single Judge has granted double benefit to the Stenographers.

14. Perusal of the record show that whenever the matter came up before the Executive Council regarding common seniority and promotion of Stenographers, it was invariably put off on one pretext or the other because it was found that the post of Stenographer would not be an appropriate source where from the promotion could be made to the post of Superintendent. In fact by interfering with the decision of the Executive Council the learned Single Judge has tilted the balance only on one side. Under the Rules it is the Executive Council which is empowered to prescribe the service condition including those relating to promotion. The qualification required for the post as also other requirements are matters which belong to the area of administrative policies and in the exclusive domain of the Executive Council. These are not amenable to judicial review unless these are arbitrary or unfair or unreasonable to attract the provision of Article 14 of the Constitution of India. The learned Single Judge did not test the decision of the Executive Council on the touch stone of Article 14 of the Constitution.

15. That by setting aside the condition (a) it would mean the Stenographer even if not having requisite qualification would be eligible for promotion by applying the rule of relaxation as provided under condition (b) of Vice Chancellor's recommendation dated 2nd May, 1973. That the Registrar of Delhi University in his affidavit has stated that there is not direct recruitment to the post of Senior Assistants and the minimum qualification required for appointment to the post of Assistant is passing of the first degree examination. Whereas minimum qualification for the post of Stenographer is metriculation. Therefore, these two posts could not be equated even on the basis of their minimum requisite qualifications. In fact the decision of the Vice Chancellor dated 2nd May, 1973 and as approved by the Executive Council on 21st May, 1973 had a rationale. Otherwise if what the learned Single Judge has decided is given effect to it would mean that practically Stenographer would be monopolising posts in their cadre as well as in the cadre of the appellant i.e. in the ministerial cadre thereby leaving large number of Senior Assistants without chance of promotion.

16. Mr. G.D. Gupta's contention that both sets of Stenographers i.e. directly recruited as well as promoted from Steno-Typist were entitled to promotion to the post of Superintendent along with Senior Assistants on the basis of joint seniority of Stenographers and Senior Assistants, to our mind has no legs to stand in view of the various Resolutions quoted above. Fact of the matter is these

respondents in their rejoinder affidavit admitted in para 4 of the preliminary objections that there was no combined seniority as such maintained by the University. That Resolution of 1964 put a condition that the Stenographers would be eligible for promotion to the post of Superintendent along with Senior Assistants only if the Stenographers fulfill the basic qualification of first degree examination. It thus shows that there was in fact no common seniority list amongst two groups of staffs. Though at times decision was taken to maintain joint seniority but it was never implemented at any time. It remained under consideration because for implementation Stenographers had to cross the hurdles imposed by way of one or the other conditions. Mr. Gupta's argument that there existed a common seniority is neither supported from the record of the Delhi University nor from the pleadings of the respondent. Their admission in the rejoinder affidavit rather negates Mr. Gupta's arguments.

17. That the eligibility of the Stenographers to the post of Superintendent as pointed out above was taken up for the first time vide Resolution dated 20.4.1964. Perusal of that Resolution shows that it did not refer to the Stenographers who were directly recruited. The Committee decided that a Stenotypist shall be considered for promotion to the post of Senior Assistants if he possesses the basic qualification i.e. metriculation and that he was initially appointed as a Clerk. A Stenographer would be considered for promotion to the post of Superintendent if he possessed basic qualification of first degree examination provided he was initially appointed as Assistant. In fact the affidavit filed by the University through its Registrar in the writ court indicate that persons who were to be recommended for promotion to the post of Superintendent were only those who had acted as Senior Assistants and were qualified as such to be considered for such promotion. Therefore, it would not be correct for the respondents to contend that Stenographers were eligible right away to get promotion along with Senior Assistants. In the meeting of the Establishment Committee held on 27th August, 1966 it was decided that only those persons who were Senior Assistants would be recommended to the post of Superintendent. The Committee again expressed its opinion on 24th August, 1968 that it would not be advisable to promote a Stenographer as Superintendent straight away because of lack of experience of noting and drafting. Resolution was passed deciding that a departmental test/training be conducted before the proposal for inter-change of employees from one cadre to another could be accepted. As already pointed out above the implementation of this decision was postponed till the test/training could be conducted. Therefore, it would not be correct for Mr. Gupta to contend that the eligibility of the Stenographers to get promotion at par with Senior Assistants was automatic or straight away without any rider or condition. In the meeting of the Establishment Committee held on 4th November, 1971 and 2nd December, 1971 recommendation was made that Stenographers be borne on the common seniority list of Assistants and Steno-Typists for the purpose of promotion to the cadre of Senior Assistants. It further resolved that Stenographers directly

recruited should be borne on the common seniority list of Assistants and Steno-Typists on the basis of their date of appointment as Stenographer, meaning thereby that seniority of Stenographers would be on the basis of their position in the gradation list of Senior Assistants on trial basis. They were to get absorbed in the cadre of Superintendents subject to their satisfactory performance during the trial period. Though this recommendation was accepted by the Executive Council vide its Resolution but the same was rescinded vide Resolution No. 777 dated 28th/29th March, 1973. Therefore, it cannot be said that Delhi University at any point of time ever considered or decided to promote the Stenographers straight away as Superintendent at par with Senior Assistants nor maintained a common seniority. University of Delhi in its affidavit stated that there was no joint/common seniority of Stenographers and Sr. Assistants. The matter remained unresolved for a considerable long time. Establishment committee and various other sub-Committees had been making numerous recommendations from time to time. Ultimately the Executive Council on the recommendation of the Vice Chancellor dated 2nd May, 1973 tried to resolve the dispute. Hence passed the Resolution No. 81 dated 21st May, 1973. But net result was disgruntlement of Stenographers.

18. Interestingly writ petitioners wanted the recommendation of Vice Chancellor dated 2nd May, 1973 and Resolution of the Executive Council dated 21st May, 1973 in toto to be declared illegal, void, ineffective, ultra-vires, unconstitutional, discriminatory, arbitrary and malafide. We confronted Mr. G.D. Gupta with the prayer clause of the writ petition whereby the writ petitioners sought setting aside of the decision of the Vice Chancellor and the Resolution No. 81 dated 21st May, 1973 of the Executive Council. Mr. G.D. Gupta tried to explain it away by saying that there appears to be a slip/ typographical error in framing the prayer clause. That the prayer clause should be read and understood in the light of the case as made out in the writ petition including the grounds. Explanation rendered by Mr. Gupta does not cut any ice. In fact the writ petitioners never prayed deletion of only one condition i.e. treating the Stenographers at par with Assistants for purpose of seniority. All through the writ petitioners had been asking for setting aside of the Resolution No. 81 as a whole and not in part. Learned Single Judge could not effect by adopting a middle path i.e. by ordering deletion of only condition (a) out of the Resolution No. 81. The Relief given by the learned Single Judge was not even prayed by the writ petitioners. Admittedly in the Resolutions quoted above the question of eligibility of Stenographers to the post of Superintendent was not in doubt though at times some or the other rider or condition was attached. There is no doubt that the Resolution passed from time to time by the Executive Council or for that matter by other Committees have been considering the grievance of the Stenographers for promotion to the post of Superintendent, but could not find a solution. Even the decision given by the Vice Chancellor dated 2nd May, 1973 and Resolution of the Executive Council dated 21st May, 1973 have not improved the position for the better. By down grading the seniority of the Stenographers or equating them with that of the

Assistants because they lacked expertise in noting and drafting, to our mind, by equating them with Assistants for purposes of seniority will not improve their deficiency in noting and drafting. Therefore to equate them at par with Assistants for purposes of seniority would be unfair. Moreover persons who got promotion to the post of Stenographer from the lower rank as Steno-Typist would be adversely affected. Stenographers have two source of recruitment namely direct recruitment and other promoted from lower posts. So far as the promotee Stenographers are concerned they must have put in number of years service as Steno-Typist which post is equivalent to that of Assistant. Therefore, for the purpose of promotion equating their seniority with that of the Assistants is not only unjust and unfair but would violate the principle of natural justice. At the same time by declaring the condition (a) as recommended by the Vice Chancellor and as approved by the Executive Council as illegal, unfair and bad the learned Single Judge has handed out double benefit to the Secretarial staff consisting of Stenographers and others. By the impugned judgment the learned Single Judge not only allowed inter-change of the cadre but in fact upset the hierarchy of their respective cadres and categories thereby creating imbalance amongst employees of different cadres. In fact the solution propounded by the learned Single Judge is worst than the disease. Moreover, the Resolution No. 81 dated 21st May, 1973 was a composite one. None of its condition was severable. Relaxation condition was subject to treating Stenographers at par with Assistants for purpose of seniority. Hence learned Single Judge could not sever one condition and declare it illegal, unfair and bad in law. If he found it so then he should have declared the Resolution No. 81 as a whole bad.

19. For the reasons stated above, we cannot subscribe to the view of the learned Single Judge. Accordingly set aside the impugned judgment as well as the recommendation of the Vice Chancellor dated 2nd May, 1973 as well as the Resolution No. 81 dated 21st May, 1973 of the Executive Council. In these circumstances we deem it proper to direct the University of Delhi to consider the matter afresh.