

(2019) 08 CAT CK 0055

In the Central Administrative Tribunal

Case No : Original Application No. 3900 Of 2013, Miscellaneous Application No. 2956 Of 2013

Sanjeev Kumar Kaushik And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 27-08-2019

Acts Referred:

Administrative Tribunals Act, 1985 — Section 12, 13, 13(2), 35, 35(2)(c), 36, 36A, 36(b), 37
Constitution Of India, 1950 — Article 14, 72, 309

Citation : (2019) 08 CAT CK 0055

Hon'ble Judges : S.N. Terdal, J;Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Harpreet Singh, Rajinder Nischal, S. Sunil

Final Decision : Disposed Off

Judgement

Pradeep Kumar, Member (A)

1. The applicants are working as Private Secretaries (PSs) in Central Administrative Tribunal. They were appointed as PSs in the grade Rs.6500-10500/ Rs.7500-12000 by promotion on different dates. Applicant Nos.1 to 8 have also been granted Non-Functional Selection Grade (NFSG) of Rs.8000-13500 on completion of four years' regular service in the PS grade.

2. Central Administrative Tribunal (CAT) (Group 'A' Posts) Recruitment (Amendment) Rules, 2012 notified on 31.12.2012 and which were published on 02.01.2013, have been challenged in so far as they relate to appointment by way of promotion to the post of Deputy Registrar. It has been pleaded that PSs should be declared to be entitled to be considered for the post of Deputy Registrar along with Section Officers and Court Officers (SOs and COs).

The applicants have brought out that the CAT was established on 01.11.1985. Initially various posts were filled up on deputation basis for which executive

instructions were issued. The staff so appointed on deputation basis, were from different organizations and fulfilled the eligibility criteria prescribed in the relevant Recruitment Rules (RRs) applicable for deputation to Central Government organizations.

3. At that time, there were following Group 'A' posts in CAT, which were initially sanctioned:

(i) Deputy Registrar. There were 32 posts and they were in scale Rs.3000-4500. It is presently in PB-3+Grade Pay Rs.6600.

(ii) Joint Registrar, there was one post and it was in scale Rs.3700-5000. It is presently in PB-3+Grade Pay Rs.7600.

(iii) Registrar (OB), there were 14 posts and they were in scale Rs.4500-7000. It is presently in scale Rs.5900-6700. It is presently in PB-4+Grade Pay Rs.8700.

(iv) Registrar (Principal Bench). There was one post and it was in scale Rs.5900-6700 and it is now called Principal Registrar. It is presently in PB-4+Grade Pay Rs.10000.

The channel of promotion was from (i) to (iv) in sequence.

3.1 In respect of Ministerial cadre there were the following two streams:

Clerks:

(i) Lower Division Clerk (LDC) which is in PB-1+Grade Pay Rs.1900.

(ii) Upper Division Clerk (UDC) which is in PB-1+Grade Pay Rs.2400.

(iii) Assistant, which is a Group 'B' non-gazetted post in PB-2+Grade Pay Rs.4600.

iv) Section Officer, which is Group 'B' gazetted post in PB-2+Grade Pay Rs.4800. They were to be granted NFSG pay scale PB-3+Grade Pay Rs.5400 after four years of service in GP Rs.4800.

Stenographers:

i) Stenographer Grade 'D'

ii) Stenographer Grade 'C', which is a Group 'B' non-gazetted in PB-2+Grade Pay Rs.4600.

iii) Senior Personal Assistant, which is a Group 'B' gazetted post.

iv) Private Secretary, which is a Group 'B' gazetted post. The pay scale is the same as that of Section Officers given above.

3.2 Sections 13, 36, 36A and 37 of the Administrative Tribunals Act, 1985 provide for the relevant rules, which read as under:

"13.Staff of the Tribunal.-(1) The appropriate Government shall determine the

nature and categories of the officers and other employees required to assist a Tribunal in the discharge of its functions and provide the Tribunal with such officers and other employees as it may think fit.

(1A) The officers and other employees of a Tribunal shall discharge their functions under the general superintendence of the Chairman.

(2) The salaries and allowances and conditions of service of the officers and other employees of a Tribunal shall be such as may be specified by rules made by the appropriate Government."

"36. Power of the appropriate Government to make rules.- The appropriate Government may, by notification, make rules to provide for all or any of the following matters, namely:-

(a) the financial and administrative powers which the Chairman of a Tribunal may exercise over Benches of the Tribunal under Section 12;

(b) the salaries and allowances and conditions of service of the officers and other employees of a Tribunal under sub-section (2) of Section 13; and

(c) any other matter not being a matter specified in section 35 in respect of which rules are required to be made by the appropriate Government."

"36A. Power to make rules retrospectively.-

The power to make rules under clause (c) of sub-section

(2) of section 35 or clause (b) of section 36 shall include the power to make such rules or any of them retrospectively from a date not earlier than the date on which this Act received the assent of the President, but no such retrospective effect shall be given to any such rule so as to prejudicially affect the interests of any person to whom such rule may be applicable."

"37. Laying of rules.-(1) Every rule made under this act by the Central Government shall be laid, as soon as may be after it is made before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or amendment shall be without prejudice to the validity of anything previously done under that rule.

(2) Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature."

4. Rules for Group 'A' posts were notified by the Ministry of Personnel, Public Grievances and Pensions on 27.10.1988 in the official gazette. For the post of Deputy Registrar, there were 32 posts in the pay scale of Rs.3000-4500. These

were to be filled up as per selection process and the method specified in column 11 and the criteria for such promotion was specified in column no. 12 thereof. The respective provisions in these two columns of said rules read as under:

"Column 11. 50% by promotion and 50% by transfer/transfer on deputation. Even against 50% promotion quota, the posts may be filled in by transfer on deputation in case promotion is not otherwise possible.

Column 12. In case of promotion:

Section Officers/Court Officers and Private Secretaries having not less than 8 years service in all of which at least two years shall be as Section Officer/Court Officer/Private Secretary in the Tribunal.

Desirable:

Officers holding a degree in law may be given preference. However, it is clarified that a deputationist in the Central Administrative Tribunal will not be eligible for consideration against the promotion channel."

4.1 Therefore, such of the SOs/COs as well as PSs, who had total 8 years' service, out of which two years was to be in Tribunal, were eligible to be considered for Deputy Registrar. These rules were amended on 20.11.1989, 20.08.1991 and 20.08.1997. These amendments are not relevant for the question at hand in this OA, hence not summarised.

4.2 The amendment dated 23.02.2000 provided a new Schedule for the post of Deputy Registrar and number of posts also changed. Now there were three posts of Jt. Registrar and that of Deputy Registrar were 27. As per this notification, the post of Deputy Registrar was now to be filled by selection-cum-seniority method and the method was prescribed as "promotion failing which by deputation". For promotion the relevant provision in column 12 reads as under:

"Column 12. In case of promotion:

Section Officers/Court Officers and Private Secretaries in the Central Administrative Tribunal with eight years regular service in the respective grade.

Note 1: A deputationist in the Central Administrative Tribunal shall not be eligible for consideration against promotion channel.

Note 2: Where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors shall also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligibility service."

4.3 Therefore, in accordance with the notifications upto 23.02.2000, the applicants were eligible for consideration for the post of Deputy Registrar and

thereafter for the higher assignments also as per para-3 (i to iv) above.

4.4 Now another amendment has been issued on 31.12.2012 and published in the official gazette on 02.01.2013 where a new Schedule has been prescribed. The number of posts now are:

Principal Registrar : 01

Registrar : 09

Joint Registrar : 11

Deputy Registrar : 24

This also indicates that the post of Deputy Registrar is required to be filled by promotion and for this purpose, the relevant rule in column 12 now reads as under:

"Column 12. Promotion:

Section Officer/Court Officer in the Central Administrative Tribunal with combined regular service of six years in the grade of Rs.4800/- and 5400/.

Note 1: Where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors shall also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligibility service.

Note 2: For the purpose of computing minimum qualifying service for promotion, the service rendered on a regular basis by an officer prior to 01.01.2006 (the date from which the revised pay structure based on the 6th CPC recommendations has been extended), shall be deemed to be service rendered in the corresponding Grade Pay/Pay Scale extended based on the recommendations of that Commission."

4.5 The applicants plead that with this notification dated 31.12.2012, the PSs have now been excluded from the zone of consideration for the post of Deputy Registrar. This is their grievance and they have challenged the legality and validity of this amendment dated 31.12.2012 in this OA.

4.6 They further plead that the posts of SO/CO and PSs are both classified as General Central Service (Group 'B' gazetted Ministerial) even though the RRs for these two groups are different. In respect of SOs/COs the RRs are as per CAT (Group 'B' and 'C' Miscellaneous Posts) Recruitment Rules, 1989, as amended from time to time. In respect of PSs, RRs are as per CAT Stenographers (Group 'B' and 'C') Recruitment rules, 1989.

4.7 The applicants have pleaded that when the SO/CO and PS were considered

eligible for the post of Deputy Registrar, further channel of promotion was available upto the post of Registrar of Principal Bench which was in the pay scale of Rs.5900-6700, which was known as Senior Administrative Grade (SAG). With exclusion, the career progression chances for PSs have got severely curtailed as they have not been granted any alternative equivalent avenue.

4.8 It is further pleaded that a common seniority list of SO/CO and PS was prepared for consideration for the post of Deputy Registrar. The last such list, as on 31.12.2009, was issued on 30.07.2013. This list contains the names of the applicants also.

5. Meanwhile, certain bifurcation in the cadre of SO/CO and PS was also effected as per recommendations of 5th CPC and the PSs were given channel of promotion up to the level of PPS only, which is equivalent to the post of Deputy Registrar in terms of pay.

It was fairly mentioned that one post of PPS was also sanctioned in the pre-revised scale of Rs.3000-4500 for Chairman, CAT, vide notification dated 31.07.1996. The applicants pleaded that PSs to the Secretaries in Government of India, were upgraded to the pay scale of Rs.3000-4500 and were re-designated as PPS. However, such similar upgradation was not given to the PSs attached to the Chairman/Vice-Chairmen in the CAT. Feeling aggrieved, one OA No.777/1992 - S.K. Sareen v. Union of India, was filed in the Tribunal. This OA was allowed vide orders dated 20.12.1998. In compliance thereof, one post of PPS with the Hon'ble Chairman, CAT was upgraded to that of Senior PPS from Rs.10000-15200 to Rs.12000-16500 and other 16 posts of PS attached to Vice-Chairmen were upgraded to PPS from Rs.6500-10500 to Rs.10000-15200 w.e.f. 09.02.2005.

5.1 With this, the cadre structure of Stenographers in CAT and channel of promotion worked out as under:

(i) Stenographer Grade D

(ii) Stenographer Grade C/Court Master (66 posts)

(iii) Private Secretary (64 posts)

(iv) Principal Private Secretary (16 posts) (Scale Rs.10000-15200, which is now PB-3+GP Rs.6600). This is same as that of Deputy Registrar.

(v) Senior Principal Private Secretary (one post) (Scale Rs.12000-16500), which is now PB-3+GP Rs.7600). This is same as that of Joint Registrar.

5.2 It is pleaded that the amendment dated 31.12.2012, has now denied the erstwhile channel of promotion to the post of Principal Registrar in scale PB-4+GP Rs.10000/-, to PSs, which was available earlier. It was also pleaded that even with the changes as per para 5.1 supra, the chances of reaching to these levels are very slim as total number of posts is much less as compared to those for SO/COs.

5.3 It was also pleaded that the said amended rules dated 31.12.2012 were not placed before the Parliament and hence they have to be treated as non-est.

5.4 It was also pleaded that certain promotions to the post of Deputy Registrar are presently under consideration, where PSs are not considered eligible and hence there is urgency.

6. The following reliefs have been sought:

(i) Quash and set aside the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) Notification No.GSR 3(E), dated 31.12.2012, containing Central Administrative Tribunal (Group 'A' posts) Recruitment (Amendment) Rules, 2012, as published in the Gazette of India (Extraordinary) on 2.1.2013, in so far as they relate to appointment by way of promotion to the grade of Deputy Registrar in the Central Administrative Tribunal.

(ii) Hold and declare that the Private Secretaries are entitled to be considered, along with Section Officers/Court Officers, for promotion to the post of Deputy Registrar.

(iii) Grant any other relief/reliefs to which the applicants are entitled."

The following interim relief was also sought:

"(i) Stay the operation of the impugned amendment rules (Annexure A/3) in so far as they relate to the post of Deputy Registrar, and

(ii) Direct the Respondents to consider the applicants and other similarly placed Private Secretaries along with Section Officers/Court Officers for promotion against the existing vacancies in the post of Deputy Registrar in accordance with the Central Administrative Tribunal (Group 'A' posts) Recruitment Rules, 1988, as it stood prior to the impugned amendment."

6.1 During the hearing on 01.11.2013, the following interim order was passed:

"Learned counsel for applicants seeks direction on her prayer for interim relief. However, it is made clear that the promotions made, if any, to the post of Deputy Registrar henceforth will be subject to the outcome of this O.A."

7. A total of 09 number of SOs/COs have also filed MA No.151/2014 for impleadment as private respondent Nos.3 to 11, as they apprehended that they would be directly and adversely affected, if the instant OA is allowed. This impleadment was permitted on 26.11.2015.

8. The instant applicants have also filed MA No.2956/2013 for joining together as the issue involved is the same. For the reasons mentioned in the MA and in the interest of justice, MA No.2956/2013 for joining together is allowed.

9. Counter reply has been filed by respondent Nos. 1&2 as well as by private respondent Nos.3 to 11. Respondents 1&2 opposed the OA. The following has been pleaded in their counter-affidavit.

9.1 The Promotion to a higher post from the officers of a particular cadre, would depend upon a large number of factors e.g. a person may retire, he may be departmentally proceeded against, he may be sent on deputation, he may resign, cessation of employment etc. If the number of posts is limited, despite uncertainty with regard to arising of any vacancy on any higher post, the validity of such a rule would be open to question. Promotions are granted to a higher post to avoid stagnation as also frustration amongst the employees. The Govt., keeping in view that objective, having found itself unable to provide such promotional avenue, provided for the scheme of MACP.

9.2 The cadres and the service conditions of the two services i.e. Ministerial Cadre and Stenographers Cadre have changed a lot and promotional avenues have been ensured in their own line of hierarchy. The opportunities for promotion of Private Secretaries have also been increased by the Government. The Government has issued an order vide letter No.A-11013/26/2003-AT dated 9.2.2005 whereby 16 posts of PS in CAT were upgraded to PPS in the scale of Rs.10,000-15,500/- and 01 post of PPS to Sr. PPS to the Hon'ble Chairman in the grade of Rs.12,000-16,500/-.

Since the posts of PPS and Sr.PPS have been introduced now in CAT, which are equivalent to the post of Deputy Registrar and Jt. Registrar, respectively, the promotion of Private Secretaries to the post of Deputy Registrar will tantamount to dual promotional channel for Private Secretaries when they have posts of PPS and Sr. PPS in their own stenographic cadre.

It was submitted that after creation of adequate promotional avenues to the stenographers cadre, Recruitment Rules have been amended and notified vide Notification dated 24.2.2014. Thus, the applicants, once they enter the stream of PS, could be considered for promotion in their own cadre to the higher grades i.e. PPS & Sr.PPS on the basis of their seniority in the feeder categories and eligibility and suitability. As such there is absolutely no hurdle or any restriction in the promotion of Private Secretary's cadre.

No injustice has been done with the applicants as their cadre has been full-fledged managed by amending the Recruitment Rules and by providing their own cadre promotional avenues. Thus amended RRs are not required to be set aside as prayed by the applicants.

9.3 It was pleaded that, the Govt. took policy decision and recruitment rules, under challenge, were amended w.e.f. 2.1.2013. There cannot be any doubt whatsoever that a policy decision and, in particular, legislative policy should not ordinarily be interfered with and the Superior Courts, while exercising its power of judicial review, shall not consider as to whether such policy decision has been taken mala fide or not. A policy decision as reflected in a statutory rule pertains to the field of subordinate legislation and the same would only be amenable to judicial review only on the ground of being violative of Article 14 of the Constitution of India. {Vasu Dev Singh & Ors. vs. Union of India & Ors. [2006 (1)

SCALE 108] and State of Kerala & Ors. v. Unni & Anr. [(2007) 2 SCC 365].

9.4 It was also pleaded that the merger or bifurcation of a cadre, is an executive act and the Govt. has to take steps for framing proper rules. Again, when the conditions of service are changed, the proviso to Article 309 of the Constitution would be attracted and accordingly necessary rules have to be framed, as was also held by the Apex Court in a similar case where rules were challenged on the grounds of reduction in the chance of promotion. In the matter of Shri S.P. Shiv Prasad Pipal Vs. Union of India & Ors. 1998 (4) SCC 598, the Hon'ble Supreme Court of India has given the following judgment:-

"The seniority Rules have thus been carefully framed taking all relevant factors into consideration. The respondents have also pointed out that as a matter of fact, by reason of the merger, the appellant has not, in fact, suffered any prejudice and he has also received promotions. However, it is possible that by reason of such a merger, the chance of promotion of some of the employees may be adversely affected, or some others may benefit in consequence. But this cannot be a ground for setting aside the merger which is essentially a policy decision. This court in Union of India v. S.L. Dutta (supra) examined this contention. In S.L. Dutta's case (supra) a change in the promotional policy was challenged on the ground that as a result, service conditions of the respondent were adversely affected since his chance of promotion were reduced. Relying upon the decision in the State of Maharashtra v. Chandrakant Anant Kulkarni (supra) this court held that a mere chance of promotion was not a condition of service and the fact that there was a reduction in the chance of promotion would not amount to a change in the conditions of service. In the premises, we do not find that there is any adequate ground for setting aside the Central Labour Service Rules, 1987. The appeal is, therefore, dismissed. Under the circumstance there will, however, be on order as to costs."

In accordance with above, the applicants have no locus standi to challenge the conscious decision of the Government. In accordance with the policy of the Government and the requirements of the service, the rules governing the service conditions of the services, have been framed/amended by the Government from time to time. The Government has the absolute power, within the parameters of the Constitution of India to frame/amend rules or regulations governing the service conditions of its employees to balance the promotional avenues to the Stenographers Cadre as well as Ministerial Cadre.

9.5 It was mentioned that some of the PSs who were promoted to the posts of Principal Private Secretary (PPS) declined promotion and instead opted for consideration for the post of Deputy Registrar as the said post had opening to higher levels up to Principal Registrar. In this context, it has further been pleaded that if the request of Private Secretaries for promoting them as Deputy Registrar is allowed, it would lead to administrative chaos and will also result to an anomalous situation where one category of employees would be benefited at the cost of other category.

9.6 Moreover, in regard to the present matter it would be relevant to mention here that in the case of P.U. Joshi & Ors. Vs. Accountant General, Ahmedabad and Others, [2003 (2) SCC 632]. Hon'ble Supreme Court has taken a view as under:-

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

(Emphasis supplied)

9.7 Further, in the case of Tech. Executive (Anti Pollution) Welfare Association Vs. Commissioner of Transport Dept. & Anr., [JT 1997 (4) SC 172], Hon'ble Supreme Court has taken a view that the Tribunal is not competent to give direction to lay down the policy or to issue directions to create promotional avenues. Such a direction would amount to entrenching upon area of policy making which is exclusively within the purview of the appropriate Government.

9.8 In regard to the plea of applicants that notification dated 31.12.2012 was not laid on the Table of the House, it was brought out that the relevant notification has already been laid on the Table of the House. Following averment has been made in counter-reply (para 5.8):

".....The amendment in subject challenged RRs were also sent to Secretariat of

both the Houses of Parliament vide OM dated 23.01.2014 for placing on the Table of Lok Sabha/Rajya Sabha and as per information available in public domain on the website of Lok Sabha, these rules were laid in the Lok Sabha on 05.02.2014."

9.9 The respondents also brought out that the Stenographers cadre (PS) and other clerical staff (SO/CO) are analogous respectively to CSSS and CSS in Central Government. Earlier, the lateral entry from CSSS to CSS was allowed. However, this was changed by the 5th Central Pay Commission. Stoppage of lateral entry from CSSS to CSS, came under challenge and adjudication by CAT, Principal Bench in OA No.2793/2005 which was decided on 24.04.2008. The decision by the Government to discontinue the lateral entry was upheld. In this regard, following averment was made in counter-reply (para 5.9- 5.14):

"It would be relevant to mention here that earlier in the Ministry the CSSS were having lateral entry into the CSS at varying times, but on the recommendation of the 5th CPC and on the recommendations of Group of Officers, a separate hierarchy and separate promotion opportunities of both the cadres have been formed. The employees of CSSS cadre filed OA No.2793/2005 before the Hon'ble CAT, Principal Bench challenging the decision of the Government to stop lateral entry of members of CSSS into Grade I of CSS. The OA No. 2793/2005 was considered by the Hon'ble Tribunal and dismissed on merit vide order dated 24.4.2008. The operational part of the order/judgment of this Tribunal is as under:-

As it emerges from the submissions made on behalf of the applicants and the various contentions put forth by the respondents, there is a long standing history and genesis of this case. Although, in the earlier orders, the CSSS were having lateral entry into the CSS at varying times, it is now finally on the recommendations of the 5th CPC and on the recommendations of Group of officers as culminated in setting up separate hierarchy and separate promotion opportunities of both the cadres. Admittedly, the nature of duties, functions and responsibilities of the Stenographer cadre and SOs cadre are different. It is by now well settled position and as has been held by Hon'ble Supreme Court that creation of services, cadre structure and restructuring etc. are matters, which lie squarely within the domain of the executive. This being a policy decision of Government, it would be neither appropriate nor permissible for the Courts to interfere in these matters. Having regard to the settled position, we are in agreement with the submissions of the respondents and the prejudice projected appear to be wholly imaginary. O.A. deserves to be dismissed. We do so. No costs."

While deciding this OA, the Tribunal had relied upon a judgment in OA No.145/2006 and OA No.669/2006 which was decided on 25.05.2007 wherein the CAT, Principal Bench has made the following observations:

"28. With due respect we may observe that judgment in Joginder Lal Sahni (supra) dealt with two aspects. For the first question, whether Assistant alone

should be allowed to compete or whether Stenographer should be allowed to compete, it was concluded to be 'entirely administrative', with further observation that: "there is no law involved in it. For second alternative contention, it was observed that Assistant and Stenographer were not unequal and four different reasons were assigned for it. We may note that it is not the case of Stenographers that they don't have channel of promotion available in the normal hierarchy. We may note that Vth CPC examined several suggestions made on behalf of Stenographers and vide para 45.37 observed that:

"Our analysis reveals that Stenographers in the Secretariat are at a more advantageous position, as far as time taken for promotion from one grade to another is concerned, when compared to their counterparts in the subordinate offices and almost at the same position with other comparable service in the Secretariat. While we recognize the need that each service should have reasonable opportunities for career progression, at the same time we are of the firm view that the promotion prospects of a particular service cannot be improved at the expense of another service."

The OAs were dismissed.

This question, however came under adjudication once again vide OA No.611/2012 which was decided on 15.03.2018 and the OA was dismissed. The relevant orders read as under:

"12. Finally, on the basis of recommendations of these Committees, the Central Government decided to have a complete segregation of CSS and CSSS cadres. As noticed hereinabove, accepting the report of the Committee on Cadre Restructuring of CSSS cadre, the Central Government created additional posts at various levels in CSS cadre, as also created a post of PSO at Director level on the recommendations of the 6th CPC. All these things were apparently done by the Central Government to see that the career prospects of CSSS officers were, in no way, inferior to those of the CSS officers. It is important to mention that in CSS cadre, the posts identified are:

- i) Director - Rs.14300-18300
- ii) Deputy Secretary - Rs.12000-16500
- iii) Under Secretary - Rs.10000-15200
- iv) Section Officer - Rs.6500-10500
- v) Assistant - Rs.5500-9000
- vi) UDC - Rs.4000-6000

On the similar lines in CSSS cadres, the following posts are identified:

- i) PSO - Rs.14300-18300
- ii) ii) Sr. PPS - Rs.12000-16500

iii) iii) PPS - Rs.10000-15200

iv) iv) PS - Rs.6500-10500

v) v) Personal Assistant - Rs.5500-9000

vi) vi) Stenographer Grade "D" - Rs.4000-6000

13. Looking at the above posts and their pay scales, it is clear that the post of PSO is equal to Director, Sr. PPS is equal to the DS, PPS is equal to US, PS is equal to SO, PA is equal to Assistant and Stenographer Grade "D" is equal to UDC. Hence, we are of the view that the Central Government has been absolutely fair to both CSS and CSSS cadres in regard to their service prospects.

14. The rule-making powers of the Central Government cannot be questioned as has been held by the Hon"ble Apex Court in R. Prabha Devi (supra).

15. The Union Cabinet approved the recommendations contained in Cabinet Note dated 24.05.2005 referred to in paragraph 2.9 (supra) and thus the lateral entry of CSSS into CSS at the level of US has been done away with. Accordingly, the amendment to CSS Rules 1962 was effected and the impugned CSS Rules, 2009 were notified.

16. The contention of learned counsel for applicants that 6th CPC had recommended merger of CSS and CSSS cadres and that Ministry of Finance, in its Note dated 26.02.2009, had intimated respondent No.1 that the report of 6th CPC has been accepted by the Central Government and hence in accordance with Article 72 of the Constitution, the respondents could not have dispensed with the promotional entry of CSSS officers at the level of US in CSS, is specious and unacceptable. After all, the Union Cabinet, while considering the Cabinet Note dated 24.05.2005, had taken a conscientious decision to do away with the lateral entry arrangements. Needless to mention that the recommendations of 6th CPC are only recommendatory in nature and it is up to the Central Government to accept them or not. Even after having accepted the recommendations, nothing prevented the Central Government to withdraw its acceptance in respect of certain recommendations of the 6th CPC. Furthermore, the DoPT order dated 27.07.2005 was challenged in O.A. No.2793/2005, which was dismissed by the Tribunal vide order dated 24.04.2008. The applicant No.3 in the instant O.A. was applicant No.6 in the said O.A.

17. In the conspectus of discussions in the foregoing paragraphs, we are of the view that the Central Government has taken a well thought out policy decision to maintain CSS and CSSS cadres as completely separate and distinct from each other. While doing so, the Central Secretariat Manual of Office Procedure has also been taken into account by the Government. Such a decision cannot be subjected to judicial review. As noticed hereinabove, the rule-making powers of Central Government cannot be questioned. The Central Government has replaced the CSS Rules 1962 by CSS Rules 2009. The 2009 Rules have made it clear that the post of US is a promotional post for SO of CSS. The scope of lateral entry of

CSSS officers to it has been thus done away with. Hence, we do not find any merit in this O.A. It is accordingly dismissed. No order as to costs."

Thus, discontinuation of lateral entry was upheld.

10. Private respondent Nos.3-11 have pleaded that the applicants are eligible for promotion as PPS and even though applicant nos.1 & 2 have already been promoted to this post, yet they are seeking channel of promotion to another line for Deputy Registrar which has the same pay scale as that of PPS, whereas the Deputy Registrar's posts are meant for SOs/COs.

During the pendency of the OA, private respondent no.3 unfortunately expired and now only respondent nos.4 to 11 are represented. On their behalf, it has been pleaded that they are adopting the counter-reply filed by respondent nos. 1&2.

11. In keeping with the above, respondents 1&2 and the private respondents pleaded that the OA be dismissed.

12. In regard to respondents' contention that Tribunal does not have jurisdiction (para-9.3, 9.6 & 9.7 supra) the applicants have given counter arguments and relied upon the following two judgments of the Hon'ble Apex Court:

i) Food Corporation of India & Ors. v. Parashotam Das Bansal & Ors., [(2008) 5 SCC 100] where the question as to the jurisdiction of the Courts for issuing direction to State for promotional avenues, was adjudicated by the Hon'ble Apex Court and following observations and directions were made:

"3. Respondents herein were appointed in the Engineering section. Although Food Corporation is not an engineering oriented organization, services of engineers are necessary for maintenance of godowns and other structures. They constitute about one per cent of its total work force.

xxx xxx xxx

13. If there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the Court although may not issue any direction as to in which manner a scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in different departments and officers of the Government but the jurisdiction to issue direction to make a scheme cannot be denied to a Superior Court of the country.

xxx xxx xxx

20. So far as the contention of the learned counsel that the cadre of Assistant Engineers is not important for the appellant for providing promotional avenue to them is concerned, the same is stated to be rejected.

21. We fail to understand how the cadre of Medical Officers would be important, as like the respondents, they also do not contribute towards the main functions

of the appellant. Such a plea even otherwise is wholly untenable. An employee is an employee. How the employees would be structured is undoubtedly within the realm of the statutory authority but by reason thereof, it cannot tinker with their essential fundamental right."

(Emphasis supplied)

ii) A. Satyanarayana & Ors. v. S. Purushotham & Ors., [(2008) 5 SCC 416]. The Applicants pleaded that even in regard to policy decision, where the respondents are pleading that it is not open to judicial review, the Hon'ble Apex Court in this case has ruled as under:

"24. The High Court, therefore, in our opinion, was not wholly correct when it opined that a policy decision cannot be a subject matter of judicial review. If the State has the power to fix a quota, the Rule underlying the legislative policy must stop at that and the necessary consequences thereof must ensue. Indisputably, again although the State was entitled to provide for quota as also a guideline as to how the roster should work out itself, but thereby it cannot be permitted to put a cap on promotion for the entire service period."

13. It was also pleaded that in respect of Stenographer cadre, the 6th Central Pay Commission recommended introduction of a new post of Principal Staff Officer (PSO) in the pay scale of Rs.14300-18300 (pre-revised), which at present corresponds to PB-4+Grade Pay Rs.8700 which was accepted vide DoP&T OM dated 20.03.2009 and following directions were issued:

"The undersigned is directed to say that the recommendation of the 6th Central Pay Commission that 15% posts of Sr. PPS & PPS belonging to Central Secretariat Stenographers' Service (CSSS) be upgraded from Sr. PPS & placed/operated in the pay scale of Rs.14,300-18,300/-(pre-revised), corresponding to the revised Pay Band - 4 (Rs.37,400-67,000+Grade Pay of Rs.8,700) and that such of those posts of Sr.PPS as are upgraded in this grade shall be designated as Principal Staff Officer (PSO), has been accepted by the Government vide Ministry of Finance, D/o Expenditure's U.O.No.7.32/11/2009-IC dated 26/2/2009. Accordingly, sanction of the President is hereby conveyed to the upgradation of 39 posts of Senior Principal Private Secretaries of CSSS (PB-3 - Rs.15,600-39100 + Grade Pay of Rs.7,600/-) to the level of Principal Staff Officer in the Pay Band - 4 (Rs.37,400-67000 + Grade Pay Rs.8,700) from the existing sanctioned posts of Sr. PPS. Thus, no additional posts of Sr. PPS will need to be created.

2. Promotions of eligible Sr. PPSs of CSSS as PSOs will be given as per the prescribed procedure of DPC etc. There would, however, be flexibility to the extent that these 39 upgraded posts would be operated as & when the Sr. PPS of CSSS become eligible for consideration for promotion against these posts and till such time these posts would continue to be operated at the level of Sr. PPS."

13.1 Further, the applicants have to work with the Members of the Tribunal and

accordingly their working is equivalent to that being discharged by their counterparts in CSSS in Central Government. However, this corresponding scale of PSO made available to CSSS, has also not been granted to the Stenographers' cadre of CAT.

13.2 The applicants also mentioned that the Members of Central Administrative Tribunal have the status of High Court Judges and they all are in the same pay scale as that of a Secretary to the Government of India.

In this context, it was further brought out that vide DoP&T OM dated 12.09.2017 proposals for 3rd cadre review of Central Secretariat Stenographers' service (CSSS) were required to be sent by all the Ministries. As per this cadre review, the following entitlement of supporting staff was prescribed for Secretary/Special Secretary and equivalent rank"

Sl. No.

Category of Officers

Existing

Revised

Entitlement

Entitlement

1.

Secretary/Spl.

PSO/Sr.PPS -1

PSO/Sr. PPS -1

Secretary &

Equivalent rank

PPS-1

PS

-1

PA-1

PA

-1

As against this, in the CAT there is no post of PSO and there is only one post of Senior PPS attached with the Chairman, CAT.

13.3 In keeping with above, the promotional avenues of Stenographers' cadre of

CAT are very much limited even in comparison to similarly placed staff in Central Government. This is like double jeopardy for them as the chances of PSs in CAT to seek promotion up to the level of Principal Registrar which were available have been denied even as avenues of promotion as are available to similarly placed Central Government staff, are also not granted. There is no justifiable reason for the denial of avenues which are already given to other similarly placed staff in other wings of Central Government.

14. The matter has been heard at length. Shri Harpreet Singh, learned counsel represented the applicants, Shri Rajinder Nischal, learned counsel represented respondent nos.1 & 2 and Shri S. Sunil, learned counsel represented the private respondent nos. 4 to 11.

15. In the past the SOs/COs as well as PSs were all considered eligible for promotion to the post of Deputy Registrar and higher levels based upon a combined seniority. This system continued from very beginning and was changed at the time of 5th CPC. Formal amendment to the RRs has now been issued on 31.12.2012 wherein channel of promotion of SO/CO lies to Deputy Registrar and higher levels whereas that of PS lies to PPS and Senior PPS only.

There is no vested right amongst the employees for promotion. They have a right for consideration only. As per the rulings by the Hon'ble Apex Court in P.U. Joshi (para 9.6 supra) the State has the power to decide service conditions of their employees, which includes promotional avenues.

The primary need to segregate SO/CO and PS emanates from the time of 5th CPC. It has been implemented and it came to be adjudicated by the CAT also and the decision to segregate was upheld. (OA No.2793/2005 as well as OA No.145/2006 with OA No.669/2006 and OA No.611/2012, para 9.9. supra).

In keeping with this, the bifurcation done at the time of 5th CPC and amendment dated 31.12.2012 cannot be faulted.

16. The present OA appears to have emanated from the fact that when common seniority was followed, SO/CO as well as PS, both streams could look forward to promotion for Deputy Registrar and thereafter up to the post of Principal Registrar, which was in the pay scale of Rs.5900-6700, which was equivalent to SAG at that time. This scale at present is replaced by PB-4+Grade Pay Rs.10000. After the segregation was done as per the 5th CPC, the channel of promotion of PSs in CAT, now lies up to Senior PPS only, which is in the pay scale of PB-3+Grade Pay Rs.7600.

This appears to have happened because the DoP&T OM dated 20.03.2009 (para 13 supra) was somehow not implemented for the Stenographers of CAT and the directions for 3rd cadre review as per DoP&T OM dated 12.09.2017 (para 13.2 supra) has also not been processed in respect of the applicants.

17. Since the cadre-review and service conditions lie in the domain of the respondents and the respondent nos.1&2 in their counter-reply have also made

the following averment:

"7(v) If the Private Secretaries have genuine grievance relating to their promotions they should submit a representation to the authority concerned instead of seeking promotion in some other cadre/service, which can be termed as highly illogical, unreasonable and misconceived."

we dispose of this OA with the following directions:

- a) The applicants have agitated the grievance of denial of promotional prospects which were already available to them. The basic grievance, therefore, appears to be non-availability of promotional prospects to them on equitable basis after 5th CPC. The DoP&T have already issued certain policy directives vide their OMs dated 20.03.2009 and 12.09.2017 (para 13 & 13.2 supra) for Stenographers cadre in CSSS under Government of India. Hence, it is held that there is no need for separate representation by applicants, although they have liberty to file a representation within one month through respondent No.2, if they so wish.
- b) The respondent Nos.1&2 shall examine and decide the issue of improving the promotional prospects of PSs in CAT, on merits, within a period of 04 months of receipt of a certified copy of this order, in keeping with the existing policy directives and the existing cadre review scheme issued vide DoP&T OMs dated 20.03.2009 and 12.09.2017 respectively. In case a representation is received as per (a) above, the same shall also be taken into account.
- c) The stay granted on 01.11.2013 is vacated.
- d) Applicants retain liberty to seek remedies as per law. No costs.