

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S). 7407/2018
(ARISING FROM SLP(C) NO.10342/2015)**

PANKAJ KR. MISHRA & ORS.

APPELLANT(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

J U D G M E N T

KURIAN, J.

Leave granted.

2. I.A. Nos.3/2015 and 95102/2018 are allowed in terms of the prayer(s) made in the applications.

3. The crucial issue raised in this appeal pertains to the promotion in 2151 posts in the cadre of Upper Division Clerk (UDC) as on 2003. It is the case of the respondents that on account of cadre restructuring in the Central Secretariat Service (CSS) there was a percolating effect of 2151 vacancies in the cadre of UDC arising in the Central Secretariat Clerical Service, in 2003. The said 2151 vacancies had to be filled up in the ratio of 75:25 by the seniority quota and Limited Departmental Competitive Examination quota respectively. It is

the case of the appellants that as a matter of fact there was no such cadre restructuring in the Central Secretariat Clerical Service. According to them, they have become qualified in the 25% quota meant for Limited Departmental Competitive Examination category from the year 2004 onwards and, therefore, the contesting respondents, who are otherwise juniors to them in UDC cadre, cannot get an ante dated promotion on the basis of a hypothetical calculation of vacancies available as on 2003.

4. We have heard Mr. V. Shekhar, learned senior counsel appearing for the appellants, Ms. V. Mohana, learned senior counsel appearing for the Union of India and learned counsel appearing for the contesting respondents extensively.

5. Mr. Shekhar, learned senior counsel for the appellants, also pointed out that in the process of the ante dated promotion of Lower Division Clerks to Upper Division Clerks and further as Assistants, some of the Lower Division Clerks were promoted to Assistants even without having actually served as Upper Division Clerks or without having the required length of service as Upper Division Clerk. It is submitted that as per the settled legal position, even for ad-hoc promotion, qualified and eligible

candidates, if available, cannot be overlooked. This is seriously disputed by Ms. Mohana, learned senior counsel appearing for the Union of India and learned counsel appearing for the contesting respondents.

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

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

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

9. Pending applications, if any, shall stand disposed of.

10. There shall be no orders as to costs.

.....J.
[KURIAN JOSEPH]

.....J.
[SANJAY KISHAN KAUL]

NEW DELHI;
JULY 31, 2018.