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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.956/2002 with OA No.1388/2002

New Delhi, this 30th the May, 2003

Hon'ble Shri Justice V.S.Aggarwal, Chairman
Hon'ble Shri V.K.Majotra, Member(A)

1. OA No.956/2002

1. Smt. Manju
C-633, New Friends Colony
New Delhi
2. Surinder Kumar Datta
First Secretary
Embassy of India, Berlin
3. Ashutosh Agarwal
First Secretary
Embassy of India, Bogota
4. Smt. Padmaja
100, Maitri Apartment
Mayur Vihar Phase I, Delhi
5. Smt. L. Savithri
2/3, Doctors Lane
Gole Market, New Delhi
6. Sushil Singhal
BD-58, Janakpuri,
New Delhi ..

Applicants in OA 956/2002

Shri Devesh Singh, Advocate)

versus

Union of India, through

1. Foreign Secretary
Ministry of External Affairs
South Block, New Delhi
2. Secretary
Deptt. of Personnel & Training
North Block, New Delhi
3. Secretary
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi
4. Ram Rattan
5. S.L.Sagar
6. R.K.Kalra
7. S.C. Chawla
8. S.N.Srinivasan

9. Sudhir Kumar
10. R.K. Jha
11. Kishan Swarup
12. P.D. Budgular
13. R.C. Nair
14. R.K. Puri (R-4 to R-14 to be served through Respondent 1) .. Respondents
(Shri N.S. Mehta, Senior Counsel)

2.OA 1388/2002

1. Smt. M. Subashini
Chancellor
High Commission of India
Lusaka (Zambia)
2. Azad Singh Toor
Chancellor
High Commission of India
Dar-Es-Salaam (Tanzania)
3. C. Romel
First Secretary
Embassy of India
Pyong Yong (Laos)
4. JK. Tripathi
Sr. Programme Director
ICCR, Azad Bhawan, I.P. Estate
I.T.O.
New Delhi
5. A.K. Trigunayat
First Secretary
Embassy of India
Stockholm (Sweden)
6. A.K. Sharon
First Secretary
High Commission of India
Lusaka (Zambia)
7. A.K. Malhotra
Assistant High Commissioner of India
Kandy (Srilanka)
8. S.N. Ray
Deputy Secretary (Africa)
Ministry of External Affairs
South Block, New Delhi
9. D. Ramamoorthy
First Secretary
High Commission of India
Harare (Zimbabwe)

10.C.Gururaj Rao
First Secretary
Embassy of India
Kathmandu.

... Applicants in OA 1388/02

(Shri M.N.Krishnamani, Sr. Counsel with Ms.Rita
Upadhyaya, Advocate)

versus

Union of India, through
Foreign Secretary
Ministry of External Affairs
South Block, New Delhi

Respondent

(Shri N.S. Mehta, Senior Counsel)

ORDER

Justice V.S. Aggarwal

The Indian Foreign Service Branch (B) (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 (for short "the Rules") have been framed in exercise of the powers conferred by proviso to Article 309 of the Constitution of India. It has three sources for induction therein. Presently, the controversy is pertaining to the seniority integrated to Grade II and Grade III of the general cadre. Rule 13 provides for recruitment to posts in integrated Grades II and III of the General Cadre. The said rule reads:-

"13. Recruitment to posts in the Integrated Grades II and III of the General Cadre - *(1)(a) One sixth of the substantive vacancies, in the Integrated Grades II and III of the General cadre shall be filled, by direct recruitment on the results of competitive examinations held by the Commission for this purpose from time to time. The remaining vacancies shall be filled by the substantive appointment of persons included in the Select List for the Integrated Grades II and III of the General Cadre. Such appointments shall be made in order of seniority in the Select List except when, for reasons to be recorded in writing, a person is not considered fit for such appointment in his turn.

Provided that:

i) the number of vacancies to be filled by the substantive appointment of persons included in the Select List for the Integrated Grades II and III of



the General Cadre, in a recruitment year, shall be proportionate to the vacancies to be filled by direct recruitment for that year;

ii) If sufficient number of candidates are not available for filling up the vacancies in any recruitment year either by direct recruitment or by appointment of persons included in the Select List for the Integrated Grades II and III of the General Cadre, the unfilled vacancies shall be carried forward and added to the number of vacancies of the same mode of recruitment to be filled in the next year.

iii) the unfilled vacancies shall be carried forward for not more than two recruitment years, beyond the year to which recruitment relates, whereafter the vacancies, if any, still remaining unfilled belonging to one mode of recruitment, shall be transferred as additional vacancies for the other mode of recruitment."

(b) Temporary vacancies in the Integrated Grades II and III of the General Cadre shall be filled by the appointment of persons included in the Select List for the Integrated Grades II and III of the General Cadre. Any vacancies remaining unfilled thereafter shall be filled first from among the persons approved for inclusion in the Select List and thereafter by the temporary promotion on the basis of seniority subject to the rejection of the unfit of permanent officers of Grade IV of the General Cadre and Grade II of the Cypher Sub-cadre who have rendered not less than eight years of approved service in any one Grade or the two Grades and are within the range of seniority. Such promotions shall be terminated when persons included in the Select List for the Integrated Grades II and III of the General Cadre become available to fill vacancies.

*(2) The Select List referred to in Clauses (a) and (b) of sub-rule(1) shall be prepared in the following manner:

* Substituted vide notification No.20/GA/75 dt. 12.2.75 (file No.Q/GA/792/1/73 dt. 12.2.1975).

(i) 33-1/3 percent of the quota for inclusion in the Select List shall consist of persons to be promoted on the basis of a limited competitive examination to be held by the Commission for this purpose from time to time; and

(ii) the rest of the promotion quota for inclusion in the Select List shall consist of persons to be promoted on the basis of seniority subject to the rejection of the unfit of the officers of the Grade IV of the General Cadre and Grade II of the Cypher Sub-Cadre who have rendered not less than eight years of approved service in any one Grade or both the Grades.

Provided that if any officer referred to in clause (ii) is considered for promotion to the Integrated Grades II and III of the General Cadre in accordance with the provisions of this rule, all persons senior to him in that Grade and belonging to the Scheduled Castes or the Scheduled Tribes, who have rendered not less than four years' approved service in their respective Grades shall also be considered for promotion."

(3) The Controlling authority shall from time to time, lay down the ratio in which the available vacancies in the Integrated Grade II and III of the General Cadre shall be filled from Grade IV of the General Cadre and Cypher Assistants of the Cypher Sub-Cadre. This ratio shall be fixed, as far as possible on the basis of the relative strength of the respective cadre posts.

Illustration-If the strength of Grade IV of the General Cadre is 720 and that of the Cypher Assistants of the Cypher Sub-Cadre 120, the ratio for promotion shall be 6:1)

*(4) Deleted (*Vide Notification No.44/GA/71 dated 19.3.1971 effective from 1.8.69)."

Chapter-III of the Rules contains provisions for fixation of seniority in different grades and Rule 21 lays down general provisions for fixation of seniority. Sub-rule (4) to Rule 21 is relevant and we reproduce the same for the sake of facility:-

"Rule 21(4) Subject to the other provisions of this Rule, persons promoted or recruited earlier on the basis of earlier selection or recruitment shall be senior to those promoted or recruited on the basis of subsequent selection or recruitment."

Similarly Rules 22, 23 and 24 of the Rules provide for seniority inter se of direct recruits; seniority inter se of officers promoted on the results of Limited Competitive Examination and seniority inter se of officers promoted to a grade on the recommendations of a Departmental Promotion Committee. Rule 25 provides for seniority inter se of the officers appointed to a grade

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from different sources. The said Rule reads as under:-

"25. Seniority inter se of the officers appointed to a Grade from different sources - (1) Integrated Grades II & III of the General Cadre - (i) The eligible persons in Grade IV of the General Cadre and Cypher Assistants of the Cypher Sub-Cadre shall be arranged in separate lists in the order of their relative seniority in their respective grade. Thereafter the Departmental Promotion Committee shall select persons for promotion from each list upto the prescribed quota as indicated in Rule 13 and arrange all the persons selected from the two lists in a consolidated order of merit which will determine the seniority of persons on promotion to Integrated Grades II & III of the General Cadre.

(ii) Officers substantively appointed to a Grade from the Select List for the Grade and direct recruits to the grade shall be assigned seniority inter se according to the quotas of substantive vacancies in the Grade reserved for the appointment of persons included in the Select List and direct recruitment, respectively.

Provided that persons appointed substantively in a Grade in a particular year against the unfilled vacancies brought forward from previous years shall be placed below the last slot, be it for a direct recruit or for an officer included in the Select List as determined on the basis of the rotation of vacancies between direct recruits and persons included in the Select List in that year."

2. It is not in dispute, as already referred to above, that recruitment to posts in the integrated grades II and III of the general cadre is from three sources. Direct recruitment is as a result competitive examination held by the Union Public Service Commission for the purpose from time to time and 1/6th of the vacancies are to be filled by direct recruitment and the 1/3rd of the remaining vacancies are to be filled through the limited competitive examination and the remaining vacancies are to be filled by departmental promotion of Assistants and

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Cypher Assistants.

3. The impugned seniority list dated 20.7.2001 has been issued and two Original Applications Nos.956/2002 and 1388/2002 have been filed. Both the applications have been preferred by the direct recruits. The questions involved basically would be the same, but in one matter the direct recruit applicants contend that the rota quota system had been adopted and was approved by this Tribunal in the case of **M.S.Mandhaiya vs. Union of India & ors.** in OA No.306/1997 decided on 17.8.2000 for the years 1981 - 1984 and, therefore, the said applicants not only have to be given the benefit of the decision rendered in the case of M.S.Mandhaiya but also the seniority list which does not give that benefit to them has to be set aside. In the other connected matter filed by Smt.M.Subashini and others, the seniority list is being assailed primarily on the ground that the applicants have been discriminated. The seniority list should be recast based on a uniform criteria i.e. for direct recruits, the year of recruitment should be treated as the year of examination. According to the applicants, the recruitment year for the departmental promotees is the year in which the Departmental Promotion Committee is held and the recruitment year for direct recruits is the year in which the result of the examination is declared and the recruitment year for the Limited Departmental Examination promotees is the year in which they appeared for the examination. The same is illegal.

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4. Needless to state that the applications as such have been contested by the respondents particularly the Union of India. It has been pointed that the revised seniority list has been approved only in accordance with the directions of this Tribunal. The yearwise recruitment of Section Officers for these years from 1970 has been shown to be:-

" Year	DPs	LDEs	DRs
1970-71	28	-	-
1971-72	32	19	-
1972-74	35	30	-
1974-75	-	-	14
1975-76	39	15	4
1976-77	27	5	8
1977-78	53	5	5
1978-79	36	19	3
1979-80	42	18	3
1980-81	100	15	6
1981-82	22	12	3
1982-83	101	12	2
1983-84	25	26	4
1984-85	-	14	5
1985-86	117	16	7
1986-87	6	11	-
1987-88	18	31	-
1988-89	4	4	-
1989-90	13	15	-
1990-91	17	11	-
1991-92	20	10	-
1992-93	18	10	-
1993-94	17	9	-
1994-95	41	24	-
1995-96	20	2	-
1996-97	18	8	-
1997-98	28	8	-
1998-99	11	5	-
1999-00	14	4	-
2000-01	12	6	-

From the aforesaid, it has been pointed that recruitment has not proceeded according to the prescribed quota in any year since 1970. Even from 1981-1984, the ratio of

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recruitment from the three sources was:-

"	DRs	DPs	LDEs
Prescribed ratio	4	14	7
1981-82	4	30	16
1982-83	4	202	24
1983-84	4	25	26
1984-85	4	-	11"

Thus there was a normal departure from the prescribed quota for those years. When the seniority list of 28.6.1994 was drawn, the approved service of the direct recruits was counted from the year of the examination on basis of which they were recruited. On rechecking, it was found that it was not in accordance with the rules. Sub-rule (6) to Rule 12 of the Rules reads as under:-

"(6) In the case of direct recruits from the Integrated Grades II and III of the General Cadre, the approved service referred to in sub-rule (2) shall count from the 1st July of the year following the year of competitive examination on the results of which they have been recruited provided that where there is a delay of more than 3 months in the appointment of any candidate, such delay is not due to any fault on the part of such direct recruit."

It has further been pleaded that in case of persons recruited into the All India Services and the Allied Services in various Ministries and departments on basis of the Civil Services Examination, the year of declaration of result (which is the year following the year in which the examination is held) is taken the year of recruitment. The respondents demonstrated that the year of examination and dates of actual joining of direct

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recruit from the civil services examinations held in 1981 to 1984 as under:-

Year of exam	Approved service counts from	Dates of actual joining
1981	01/07/82	Between 24/6/83 & 08/07/83
1982	01/07/83	Between 25/6/84 to 24/9/84
1983	01/07/84	Between 19/7/85 to 03/09/85
1984	01/07/85	Between 18/6/86 to 01/9/86

It has been pointed that in drawing the seniority list of 28.6.1994, counting of service of direct recruit Section Officers from the year of examination was not in order. As a result of the exhaustive review and rechecking of the seniority list of Section Officers in accordance with the directions of this Tribunal, the following discrepancies were determined in the seniority list of 28.6.1994:-

- (a) that in drawing up the seniority list for the years 1981 to 1984, the rota rule of seniority had been on basis of an erroneous conclusion that the recruitment from the three sources had been according to the prescribed quotas during these years whereas the fact was that during the said years there had been enormous departure from the prescribed quota; and
- (b) in determining the seniority of direct recruit Section Officers, their service had been erroneously reckoned from the year of examination on basis of which they were recruited whereas the service should have been reckoned from the 1st July of the year following the year of the examination.

The said facts had been taken into consideration and thus

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the revised seniority list had been approved..

5. We have heard the parties' learned counsel and by this common order dispose of both the applications.

6. The controversy of the seniority between these branches of service is not new. The Supreme Court had taken note of the same in the well-known case of **G.S.Lamba and others v. Union of India and others**, (1985) 2 SCC 604. The interpretation of the relevant rules was once again under the gaze of the Supreme Court. The Supreme Court had found that the quota and the rota rule had broken down and thereupon had fallen back on the decisions of **A.Janardhan v. Union of India**, (1983) 3 SCC 601 and **P.S.Mahal v. Union of India**, (1984) 4 SCC 545. The Supreme Court held:-

"21. The sum total of the aforementioned three judgements may be freely restated in the telling expression in **A.Janardhana** (SCC p.628, para 38) case which reads as under:

It is, therefore, time to clearly initiate a proposition that a direct recruit who comes into service after the promotee was already unconditionally and without reservation promoted and whose promotion is not shown to be invalid or illegal according to relevant statutory or non-statutory rules should not be permitted by any principle of seniority to score a march over a promotee because that itself being arbitrary would be violative of Articles 14 and 16.

Now proceeding on the assumption that Rule 25(1)(ii) is valid and therefore seniority inter se between recruits from three different sources has to be computed according to the quota by rotating substantive vacancies in the grade reserved for each source, if in actual implementation it creates disparities between persons who are similarly circumstanced and thereby



deny equal treatment, the rule would be violative of Article 16. The outcome is not on account of an invidious implementation of the rule but non-implementation of a part of rule for years. The end product as will be demonstrably established is unjust and unfair and yet this unjust and unfair action is being supported by the Union of India which was responsible for utter inaction in implementing the rule in its letter and spirit and for unreasonably long intervals. As pointed out earlier, direct recruitment has not been made for years. Limited competitive examination has also not been held for years. Promotions from the select list have been presumably in excess of the quota but they were appointed to substantive vacancies in the service and have been holding the posts as in the case of petitioners for over 6 to 8 years. The promotions were not styled as temporary, ad hoc or stopgap. Blanks related to allocated vacancies kept open for future direct recruits and candidates qualifying at limited competitive examination in the seniority list indicate that if the next direct recruitment is made, say in 1990, and the limited competitive examination is held in 1988, the recruits from the aforementioned two sources will have to be placed at S.No.170 in the case of direct recruits and little down below in case of a candidate qualifying at the limited competitive examination. The direct recruit already placed at Sr.No.170 of 1990 would score a march over departmental promotees of 1978 and persons in service after qualifying at the limited competitive examination in 1988. The emerging situation would be in pari materia with what was found by this Court in A. Janardhana case and O.P.Singla case and the reasons therein mentioned will mutadis mutandis apply for quashing the seniority list for the selfsame reason."

Sub-rule (4) to Rule 21 and Rule 25 (1) (ii) of the Rules were also construed harmoniously and the Supreme Court held that a block of recruits in a given year coming from three independent sources may be integrated inter se according to quota and rota. The block in subsequent year would be always junior to the block of recruits in the earlier years. The findings of the Supreme Court are as under:-

"22. Approaching the matter from a slightly different angle, in our opinion, Rule 21(4) and Rule 25(1)(ii) both can be harmoniously read because they operate in two different areas. Rule 21(4) provides that subject to other provisions of

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this rule (not all rules) persons promoted or recruited earlier on the basis of earlier selection or recruitment shall be senior to those promoted or recruited on the basis of subsequent selection or recruitment. If the expression 'selection' refers to those promoted via the select list and the expression 'recruitment' refers to those entering service by direct recruitment, in view of Rule 21(4) those who enter service by 'recruitment' or 'selection' at any time will always necessarily be senior to those promoted or recruited on the basis of a subsequent selection or recruitment. This is what Rule 21(4) provides. In terms it caters to a situation where recruitment or selection is at intervals with a time lag. Vacancies in the cadre or the grade arise every year. Normally the substantive vacancies in the cadre have to be filled in as they occur or within a reasonable time. The process of selection and recruitment must continuously be in operation roughly from year to year. By the impact of Rule 21(4), the selection or recruitment of one year shall have precedence over selection or recruitment of the next year and this is what is known in service jurisprudence as seniority according to continuous officiating in the cadre or the grade which has been statutorily recognised in sub-rule (4) of Rule 21. This is in tune with fair play and justice and ensures equality as mandated by Article 16. Now Rule 25(1(ii)) provides for integrating direct recruits and persons entering via the select list to a grade. It is implicit in sub-clause (ii) of Rule 25(1) that it would operate at a time when in a given year almost simultaneously or within a measurable distance from each other recruitment is made from all the other sources. To illustrate if in a given year candidates are selected for appointment to the grade by direct recruitment as also by holding the limited competitive examination and giving promotion and if all the three enter the service or the grade at or almost at the same time or within the year and within a reasonable time lag from each other, a question is bound to arise how to integrate all of them entering service from different sources in the common seniority list. Rule 25(1)(ii) caters to this situation and helps in integrating appointees from three sources to be integrated into common seniority list according to quota. Now contrast Rule 25(1)(ii) with Rule 21(4) and the meaning of Rule 25(1)(ii) reveals itself and becomes clear and understandable. A block of recruits in a given year coming from three independent sources may be integrated inter se according to quota and rota. The block in subsequent year would be always junior to the block of recruits in the earlier years. This is now Rules 21(4) and 25(1)(ii) can be harmoniously read and it is unquestionable that they operate in two different situations and both have to be given

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effect to."

Finally coming to the conclusion that when quota and rota has broken down, the Supreme Court held that in that event the continuous officiation is the settled principle. In such an eventuality, Rule 25 (1)(ii) cannot be given effect to. The findings in the case of G.S.Lamba (supra) were:-

✓ " 28. Once the promotees were promoted regularly to substantive vacancies even if temporary unless there was a chance of their demotion to the lower cadre, their continuous officiation confers on them an advantage of being senior to the later recruits under Rule 21(4)). If as stated earlier by the enormous departure or by the power to relax, the quota rule was not adhered to, the rota rule for inter se seniority as prescribed in Section 25(1)(ii) cannot be given effect to. In the absence of any other valid principle of seniority it is well established that the continuous officiation in the cadre, grade or service will provide a valid principle of seniority. The seniority lists having not been prepared on this principle are liable to be quashed and set aside."

✓ 7. At this stage, we deem it necessary to mention some of the subsequent decisions of this Tribunal because this controversy kept on arising out of the decision of the G.S.Lamba (supra).

8. In the case of **M.P.Singh and Ors. v. Union of India and Ors.** in OA No.2338/1991 decided by this Tribunal on 9.2.1996, M.P.Singh and others were working as Section Officers. They claimed their seniority from the dates of their appointment and relied upon the directions of the Supreme Court in the case of **Karam Singh v. Union of India** in Writ Petition No.2635 of 1980 decided on 11.12.1987. It appears that certain

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supernumerary posts had been created. This Tribunal had concluded that they cannot compare themselves with the applicants in the other cases because the applicants in the case of M.P.Singh occupied supernumerary posts to avoid reversion. They, therefore, held the posts only by virtue of the compassionate order passed by the Supreme Court to avoid reversion.

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9. Another decision which was very strongly relied upon on behalf of the applicants is the decision in the case of M.S.Mandhaiya (supra). This Tribunal had taken care of the fact that Shri Mandhaiya had been promoted departmentally and further that for the years 1981-1984, the respondents had been following Rule 25(1)(ii) of the Rules as the rota quota rule was implemented and accordingly, the application was dismissed. The respondents had also strongly relied upon the decision of this Tribunal in the case of **Shri Sanjay Vyas and others v. Union of India** in OA No.567/1999 rendered on 10.1.2001. The Tribunal on perusal of the facts had directed:-

" 11. In the above facts and circumstances of the case, the OA is disposed of as follows:

(i) the respondents are directed to review/recheck and reconsider the impugned seniority lists of Section Officers in Grade II and III of IFS(B), taking into account the relevant judgements, including those mentioned above and in particular the order of the Tribunal dated 9.2.1996 in M.P.Singh's case (supra) which has become final and binding with reference to the earlier seniority lists dated 28.6.1994 and 4.10.1996;

(ii) The respondents shall issue a general notice to all concerned persons who are likely to

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be affected by a change in the aforesaid seniority lists and afford them a reasonable opportunity to present their case, and if need be by giving them a personal hearing;

(iii) The respondents shall issue a final seniority list in the aforesaid cadre as early as possible and in any case within six months from the date of receipt of a copy of this order in accordance with the relevant law, rules and instructions on the subject."

It is on these directions that the respondents relied upon in re-drawing the entire seniority list.

10. When this matter had earlier come up for consideration, both the parties stated that the judgement in the case of M.S.Mandhaiya and Sanjay Vyas (supra) did not reconcile. Resultantly, a Full Bench had been constituted. The Full Bench found that there was no inconsistency between the two judgements and the same can be reconciled. However, in para 17, the Full Bench recorded:-

" 17. On considering the rival contentions as raised by the parties, we find that while deciding the OA in Mandhaiya's case (OA 306/97) the court had taken into consideration all the relevant judgements right from G.S.Lamba, P.N. Tandon, Karam Singh, K.J.Francis, M.S.Rao and B.N.Jha and others and thereafter on considering the legal provisions arrived at a conclusion that principles of continuous officiating has to be followed in determining the seniority inter-se direct recruits and promotees barring the 4 years, i.e. from 1981 to 1984 when the rule of quota-rota was implemented for the block period of 1981 to 1984 and Rule 25 (1) (ii) was the Rule which could be applied when rota-quota was implemented otherwise the seniority was to be determined as per Rule 21(4) and following the earlier judgements, the Court specifically came to the conclusion that during the block year 1981 to 1984 rota-quota was implemented so the court upheld the seniority list and declined

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to interfere the seniority list of 28.6.94."

✓ 11. Acting on the directions given in the case of Sanjay Vyas (supra), the impugned seniority list has been re-drawn. We can have a glance as to what prevailed with the respondents and what method was adopted in drawing the said seniority list. The respondents in this regard had drawn the seniority list of all the Section Officers including the departmental promotees and others appointed on basis of the examination for the years 1981-1984 on basis of continuous officiation. So far as the recruitment year is concerned, the following principle has been adopted:-

"(ii) Year of recruitment

For the purpose of determining an officer's seniority, his/her recruitment year has been determined as under:

✓ (a) For DP SOs, the year for which the Departmental Promotion Committee was held and recommended the promotions, has been taken as the year of recruitment.

(b) For LDE SOs, the year for which examination was held has been taken as the year of recruitment.

(c) For DRs, the year in which the result of the examination was declared by the UPSC has been taken as the year of recruitment. This is in keeping with the practice followed in case of IFS/IAS whose year of allotment is the year of declaration of result. This is also in tune with the date from which their approved service is reckoned."

In addition to that, for purposes of seniority of the Section Officers recruited through different modes but belonging to same recruitment year, the date of continuous officiation has been determined. In case of

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departmental promotees, the date of the Departmental Promotion Committee and in the case of Limited Departmental Examination, the date of declaration of result has been taken as date of continuous officiation. In case of direct recruit Section Officers, it has been pointed that the only plausible date prior to date of joining which can be reasonably taken as the date of continuous officiation is the date of announcement of the result. Thereupon all the recruits of one recruitment year, irrespective of the mode of recruitment have been arranged according to the date of continuous officiation. This is how, the department has read the relevant rules on the subject.

12. With this backdrop, we can conveniently refer to the first aspect of the argument. It is not in dispute that in the earlier litigation, the respondents had been taking the plea that from the years 1981-1984, they have been adopting the quota and rota rule and this was even so adopted in the case of Sanjay Vyas (supra). The factual position as such is incorrect. In the counter filed by the respondents in the case of **M.S.Rao and others v. Union of India and Ors.** in OA No.201/1989, the respondents pleaded:-

"....there is a rational and valid classification in drawing distinction among section officers recruited directly and promoted through DP/LDE by giving them continuous officiation for the period 1977-80 and 1985-91 but not from 1981-84, because as per Supreme Court judgement in G.S.Lamba vs UOI read with CAT judgment K.J.Francis vs UOI principle of continuous officiation is to be adhered when the principle of rota-quota has

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failed. It was considered that for the period 1981-84, the principle of rota-quota had not failed and therefore Rule 25 of IFS(B), RCSP Rules for fixation of seniority has been applied for that period which has not been applied for other periods."

In the case of M.S.Mandhaiya (supra), the respondents pleaded:-

"....The respondents submit that even the Hon'ble Supreme Court observed that in their opinion, Rule 21(4) and Rule 25 can be harmoniously read because they operate in two different areas. Rule 25(1) has never been struck down in any of the judgements cited by the applicant. The contention of the applicant that the seniority should be determined solely on the basis of continuous officiation is not in line with the provisions of rules. It can be determined on the basis of rota-quota also. Rule 21(4) of IFS(B) rules cannot be implemented in isolation. It has to be implemented in consonance with Rule 25(1)(ii) of IFS(B) RCSP rules. As such no relief can be granted to the applicant."

Presently as already pointed above, in the present case in the counter of the Union of India, they have taken a summersault and pleaded which we have already referred to above that this was an erroneous assumption that the quota and rota rule was not followed for the years 1981-1984.

13. Obviously, the questions that crop up for consideration in this regard are:-

(a) what is the effect of an admission made when subsequently it is shown to have been made erroneously ? and

(b) what is the effect of certain findings arrived at in the case of M.S.Mandhaiya (supra)



recognising this fact?

✓ 14. Before venturing into the same, we deem it necessary to express our anguish in the manner the Union of India has taken different stands. As a model employer, it is expected that they should be fair to the private parties. They are expected to inform the correct position of the facts rather than fluctuating like a pendulum. It is those stances of the Union of India which have aggravated the dispute between the private parties pertaining to seniority. We hope and ~~trust~~^{trust} that such factual mistakes shall not be repeated in future and the Foreign Secretary should ensure that in future such mistakes are not repeated.

✓ 15. We have already reproduced above, the fact that the respondents had been pleading and the facts acted upon at times by this Tribunal that for the years 1981-1984, quota rule had been followed. Presently, now it is being asserted that even in the year 1984-1985, the said rule had not been followed and we have already reproduced above, the figures given by the respondents to support the said plea.

16. The principle of law which was pressed into service by the applicants that admission made cannot be allowed to be withdrawn is not in dispute, but there is just exception to the same. Admission in civil law binds the party making the same. However, if it is erroneous and ~~explains~~^{explains} to be so, the same need not bind a party.

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In the present case, the fact which was not in dispute before us was the figures provided by the respondents pertaining to the recruitment of direct recruits, departmental promotees and Limited Departmental Examination. A perusal of the same indicated that the quota rule was not followed for the years 1981-1984. Once it was not followed, the admissions so made are held to be erroneous in the previous litigations.

17. However, it is not the end here. The applicants' learned counsel strongly relied upon the decision in the case of M.S.Mandhiya (supra) to contend that this admission made had been accepted by this Tribunal. Resultantly, once a decision had been so given by this Tribunal, there is no option but to conclude that the respondents are bound by the same.

18. At the outset, it may well be taken that the Full Bench decision inter se between the parties had not been given with respect to the said controversy. The only controversy referred to the Full Bench, as we have already pointed above, was as to if there are contradictory views in the cases of M.S.Mandhaiya and Sanjay Vyas (supra). The Full Bench concluded that contradictory decisions are not there and they can be reconciled. The Full Bench did not go into the correctness in the view of M.S.Mandhiya (supra). In paragraph 17, the Full Bench had referred to the findings of the decision in the case of M.S.Mandhaiya (supra)

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without going into the other intricacies thereto.

19. A perusal of the record reveals that against the decision of this Tribunal, Shri M.S.Mandhaiya (supra) had preferred Civil Writ Petition No.155/2001 titled as M.S.Mandhaiya v. Union of India and others. The short order passed by the Delhi High Court on 13.9.2001 reads:-

"It is submitted by L/C for petitioner that Respondent had issued a revised seniority list of Section Officers integrated Grades II & III dated 20.7.2001 in which petitioner was assigned proper place. He only want his case for consequential benefits to be considered so as to withdraw this petition.

Petition is dismissed as withdrawn and Respondent is directed to examine Petitioner's case for grant of consequential benefits pursuant to re-determined seniority in accordance with rules within four months from receipt of copy of this order."

Perusal of the same clearly shows that before the Delhi High Court, it was pointed that by virtue of the present seniority list which is in controversy in the case of M.S.Mandhaiya, he had been given seniority and, therefore, he was not interested in prosecuting the writ petition. Permission was given to withdraw the same. The most important aspect is that the respondents had been directed to examine his case for grant of consequential benefits as a result of re-determination of seniority as per Rules. This takes ~~out~~ the wind out of the sail. So far as the contention that the case of M.S.Mandaiya (supra) has become final and should be followed is concerned, in the peculiar facts such a finality cannot be given because in fact, though his application was dismissed by this Tribunal, the Delhi

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High Court while allowing the dismissal of the petition even directed that as per re-determined seniority, he should be given the benefits.

20. When such is the situation and even for the years 1981-1984 the quota rule was not followed, necessarily in terms of the decision rendered in the case of G.S.Lamba (supra), the seniority has rightly been determined on basis of continuous officiation because all these years the quota rule had broken down.

21. On behalf of the applicants, it was contended that as already urged that different yardsticks have been prescribed for counting the seniority of direct recruits, the limited departmental examination promotees from the post of Assistant. The learned counsel very eloquently described this to be unreasonable.

22. For the sake of repetition, we take liberty in pointing out again as to how the said formula has been arrived at. The respondents have pointed that only plausible date prior to the date of joining which can be taken as the date of continuous officiation is the date of announcement of result by the Union Public Service Commission. The year of recruitment thus has been taken as the year of announcement of the results. This has to be done keeping in view the rigour of Rule 21(4) and Rule 12 of the Rules. We have reproduced above, the manner in which for the direct recruits, the year in which the examination was declared has been taken as year of

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recruitment. The approved service is counted from the next year when the result is declared though the actual date of joining is beyond the same year which is invariably two years after the date of examination. The respondents have counted the approved service from the year when the result was declared and reckoned the same from the following year of the examination. In fact as referred to above, they joined much later. This is ~~not~~ fair to the applicants because the year of recruitment and date of continuous officiation are two different aspects. All officers in the grade are firstly arranged as required under sub-rule 4 to Rule 21 and those belonging to the earlier years rank higher to those belonging to the subsequent years. Thereafter the officers belonging to each year are arranged according to the date of their continuous officiation. In case of Limited Departmental Examinations Section Officers, the year for which the examination was held is taken as the year of approved service and in case of departmental promotion when the Departmental Promotion Committee meeting is held. The applicants indeed cannot make a grievance out of it because the said rule appears to be reasonable and fair and keeps the scales even.

23. Resultantly on both counts, the applications must be held to be without merit and accordingly are dismissed.



(V.K. Majotra)
Member (A)



(V.S. Aggarwal)
Chairman

/sns/