

**Central Administrative Tribunal
Principal Bench**



OA No.1719/2012

Order Reserved on: 29.01.2020
Order Pronounced on: 29.02.2020

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

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- Applicants

(By Advocates: Sh. MK Bhardwaj and Ms. Harvinder Oberoi)

-Versus-

Union of India & Ors through:

1. The Foreign Secretary,
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South Block, New Delhi.
2. The Secretary
Ministry of Personnel, Public Grievances and Pensions,
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- Respondents

(By Advocates: Sh. AK Behera with Sh. AP Singh, Sh. Gyanendra Singh & Sh. Ankur Chhibber with Sh. Nijunj Arora,

: O R D E R :

Per Hon'ble Sri Justice L. Narasimha Reddy:

The 1st applicant joined the Ministry of External Affairs as Assistant in the year 1985, through the process of direct recruitment. He was promoted to the post of Section Officer (SO), Integrated Grades-II & III of the General Cadre of Indian Foreign Service 'B' [IFS(B)], in the year 2005. The 2nd



applicant was initially recruited as Assistant, Grade – II of Cypher Sub-Cadre of IFS(B) in the year 1989. Thereafter, he was promoted to the post of SO in the General Cadre of IFS 'B' in May, 2011. The promotion from SO is to the post of Under Secretary.

2. There are two sources of appointment to the post of SO, under Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 (hereinafter after referred to as 'the Rules'): (i) 80% are to be filled by promotion; and (ii) 20% by conducting Limited Departmental Competitive Examination (LDCE). While the promotions have taken place promptly in the concerned years, there was some delay in holding the LDCE. It is stated that the LDCE was held in the year 2010 for the vacancies for many years earlier thereto. Based on the results, the private respondents were promoted to the post of SOs, under LDCE category.

3. It appears that the candidates, who were selected and promoted through LDCE process, were shown against the vacancies of the respective years, which are much earlier to the date of conducting of the LDCE. The seniority list was



published on 02.07.2007 by interpolating the names of the promotes, through LDCE of the concerned years.

4. The 1st applicant made a representation, raising objection to that seniority list. Thereafter, another seniority list was published on 12.03.2017. OA No. 1253/2012 was filed, challenging the said seniority list. It was disposed of by directing the respondents to pass a detailed order on the representation. Accordingly, an order dated 02.05.2012 was passed. It was mentioned that whenever LDCEs was not held for the concerned year, the vacancies for that year were carried forward, and once examination is held, the successful candidates were assigned the places in the vacancy year, for which LDCE was held. It was also mentioned that the 1st applicant was promoted as SO in the year 2005 against the vacancy year 2005, on 18.05.2005, and he was placed below the qualified candidates of LDCE conducted for the vacancies for the years 2003 and 2004, irrespective the date of conducting the LDCE. It was further stated that the Ministry of External Affairs has a separate set of rules to regulate the manner of appointment to the various grades and the general rules enunciated by the DoPT do not apply to them. Having passed the order dated 02.05.2012, the 2nd respondent included the names of the private respondents in the select

list for the promotion to the Grade-I through OM dated 16.05.2012.



5. This OA is filed, challenging the orders dated 02.05.2012, 16.05.2012 as well as the seniority list dated 17.01.2012. The applicants have also prayed for a direction to the respondent no.2 to fix the seniority of SOs in the Department, based on the date of substantive appointment, and not from any notional dates on which vacancy has arisen. They have also challenged the proceedings of the DPC conducted on 03.05.2012.

6. The applicants contend that the date of substantive appointment to any post through whatever means, becomes the relevant factor for determination of seniority, and there is no scope or basis for adopting any notional date in this behalf. They submit that even according to the Rules, seniority of an official promoted through the process of LDCE, can be reckoned only from the date of publication of results, and not earlier thereto. They submit that the view taken the 2nd respondent in the impugned order does not accord with law.



7. Separate counter affidavits were filed by the official respondents on the one hand and private respondents on the other hand. They contend that in the roster prepared for the post of SOs, points are earmarked for different categories, namely, promotion under LDCE, and delay in conducting the LDCE, does not have any relevance, when the places are allocated to the respective candidates in the roster. They submit that the seniority list was prepared strictly in accordance with the relevant rules, and in the impugned order, the rule position is explained. They contend that the OA is devoid of merit and deserves to be dismissed.

8. We heard Ms. Harvinder Oberoi & Sh. MK Bhardwaj, learned counsel for the applicant and Sh. AK Behera with Sh. AP Singh, Sh. Gyanendra Singh & Sh. Ankur Chhibber with Sh. Nijunj Arora, learned counsel for the respondents, in detail.

9. The grievance of the applicant started way back in the year 2007, but the OA was filed in the year 2012. The controversy still exists.



10. We are concerned with the seniority in the post of SO in IFSB. Rule 13 of the Rules deals with the post of SO which is in the grades of General Cadre and it reads as under:-

“ (1) Omitted.

(2) The Select List for promotion to Integrated Grades II and III shall be prepared in the following manner:-

(i) twenty percent of the vacancies in a recruitment year shall be filled by persons to be promoted on the basis of Section officers' and Stenographers' (Grade 'B' and Grade-I) Limited Departmental Competitive Examination to be held by the Commission for this purpose from time to time; and

(ii) eighty percent of the vacancies shall be filled by persons to be promoted on the basis of seniority subject to the rejected of the unfit of the officers of the Grade IV of the General Cadre and Grade II of Cypher sub-cadre who have rendered not less that 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) Vacancies in the Integrated Grade-II and III of the General Cadre shall be filled from Grade IV of the General Cadre and Grade II of the Cypher Sub-cadre in the ratio of 7:2.”

11. It has already been mentioned that the applicants were promoted to the post of SOs in the year 2005 and 2011



respectively, on the basis of seniority. The record is not clear as to the exact dates on which the LDCEs were held for various years. However, it is common case that the LDCEs for certain years, including 2003 and 2004, were not held in time. It was held in 2010 for all the vacancies, referable to various years. After the results were declared, the successful candidates were promoted against the vacancies of the different years, depending upon their places in the merit list, and their names in turn were interpolated in the seniority list of the SOs for the concerned years, which is already in existence. The result was that they were shown to have been promoted with effect from a date, much earlier to the one on which they were qualified and selected. When the 1st applicant raised an objection in this behalf, it was not acted upon. He filed OA No. 1253/2012 and in compliance with the directions issued by the Tribunal, the 2nd respondent passed an order dated 02.05.2012. The order reads, *inter alia*, as under:-

“3. Vacancy is considered carry forward vacancy only if attempt made to fill the vacancy does not fructify. In cases where holding of Limited Departmental Competitive Exam provided in the statutory Recruitment Rules, is delayed, such vacancy will be considered only against the year in which it occurred and is not the carry forward vacancy. Accordingly, in the instant case, the seniority of officers appointed through promotion or Limited Departmental Examination is to be assigned as per the vacancy year for which the exam was held.



4. In terms of above Rules, Shri Mukherjee who was appointed as Section Officer w.e.f. 18.05.2005 (against vacancies for the year 2005 has been rightly placed before the qualified candidates of LDE conducted for the vacancies for the year 2003 and 2004 irrespective of the actual date of declaration of result or appointment, because they were included in the Select List for the years 2003 and 2004 respectively. It may also be pointed out to Shri Mukherjee that the submission made by him in para 2 of his representation dated 2nd July, 2007 that the LDE 2003 Examination was held in December, 2004 is incorrect, since this examination was held in December, 2003 itself.”

12. From this, it becomes clear the 2nd respondent has taken the view that irrespective of the date on which the LDCE is conducted, the candidates who are successful in the process, shall be entitled to be promoted against the vacancies of the concerned year. He has also taken the view that the General Rules enunciated by the DoPT do not apply sine the Ministry of External Affairs has a separate set of rules.

13. The DoPT has issued a detailed and comprehensive instructions and guidelines on seniority, which is a compilation of the orders passed from the year 1959 onwards.

In Para 2.4.3, the following is mentioned:-

“2.4.3 Starting point in the recruitment roster for the purpose of interse seniority of officers through Director Recruitment Promotion, Absorption etc.

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The starting point in the roster should be that mode of recruitment prescribed in the Recruitment Rules for which the selection process had been completed first. For this purpose, the date of the completion of the selection process will be determined as follows:-

Direct Recruitment	Date of completion of selection process
(a) Through examination conducted by UPSC or any other authorities.	Date of publication/announcement of results
(b) Through interviews conducted by UPSC or any other authorities.	Date of Commission's letter containing their recommendations
Promotion	
(a) Where UPSC is associated	Date of UPSC's letter containing their recommendations ratifying the promotion
(b) Where UPSC is not associated or its formal concurrence is not required.	Last date of DPC meeting.
(c) Limited Departmental Examination	Date of announcement of results.

14. In Para 6.4.1 and 6.4.4 of the Guidelines issued by the DoPT on the Departmental Promotion Committees, the procedure to be followed, where the DPC could not meet for a number of years, is dealt with. They read as under:-

“6.4.1. Where for reasons beyond control, the DPC could not be held in an year(s), even though the vacancies arose during that year (or years), the first

DPC that meets thereafter should follow the following procedure:

- (i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.
- (ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.
- (iii) Prepare a 'Select List' by placing the select list of the earlier year above the one for the next year and so on:

XXX

XXX

XXX

6.4.4. While promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancies relate to earlier year(s)."

15. From this, it becomes clear that even there is a delay in convening of DPC, the actual promotion can be only prospective, notwithstanding the fact that the appointment is against the vacancy of earlier year. In case, there exists any different provisions under the MEA Rules, the view taken by the 2nd respondent can certainly be justified. In rule 25(6)(ii) the Rules, the following is mentioned:-

"Person appointed on the results of a Departmental Examination shall be allotted seniority from the date of publication of the results of the Examination. The inter se seniority of such persons shall be according to the ranks obtained by them in that Examination."





16. This completely accords with the general rules enunciated by the DoPT. Therefore, the statement contained in the impugned order that the Ministry of External Affairs has a different set of rules, is without any basis.

17. The promotion in the MEA itself was the subject matter of the judgment in **G.S. Lamba & Ors. vs. Union of India & Ors.**, 1985)2 SCC 604. There again, the problem arose on account of the delayed conducting of the LDCE. The manner in which the rights of the LDCE candidates vis-à-vis the promotees shall be determined, was laid down as under:-

“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 Sec. 25(1)(ii) cannot be given effect. In the absence of any other valid principle of seniority it is well established that the continuous officiation in the cadre, grade of 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.

29. Accordingly these writ petitions succeed and the rule is made absolute. The impugned seniority lists challenged by the petitioners have been drawn up in violation of the provisions of Arts. 14 and 16 of the Constitution and therefore they are quashed. The first respondent is directed to draw up fresh seniority list in the light of the observations made in this judgment within a period of three months from today. All



promotions granted since the filing of the petitions are subject to the decision herein given and they must be readjusted to be brought in consonance with this judgment. It the circumstances of the case, there will be no order as to costs.”

18. Recently, the Hon’ble Supreme Court dealt with this very question in detail in **Ganga Vishan Gujrati & Ors. vs. State of Rajasthan & Ors.**, Civil Appeal No. 6007/2019 dated 21.08.2019. Para 45 of the judgment of the Hon’ble Supreme Court in **Pawan Pratap Singh vs. Reeven Singh** (2011)3 SCC 267, was taken note of and it reads as under:-

“45. ... (i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the



relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

It was also mentioned that the view taken by the Hon’ble Supreme Court in the judgment of Pawan Pratap Singh was re-affirmed by a Bench of three judges in **P. Sudhakar Rao v. U. Govinda Rao**, 2013)5 SCC 693.

19. The concluding para of the judgment of the Hon’ble Supreme in **Ganga Vishan Gujrati** reads as under:-

“37 For the above reasons, we are of the view that the Division Bench of the High Court was justified in coming to the conclusion, though for the reasons which we have indicated, that the claim for seniority with reference to the date of the accrual of the vacancy will not be maintainable merely on the ground that no competitive examination was held in the years in which the vacancies had arisen. The view taken by the Division Bench of the Rajasthan High Court is in accord with the principles of law enunciated in the decisions of this Court and consistent with the statutory rules as they held the field at the material time.

38 For the above reasons, we find no merit in the appeals. The appeals are accordingly dismissed. There shall be no order as to costs. Pending application(s), if any, shall stand disposed of.”

20. The ratio of the above judgment squarely applies to the facts of the present case. The respondents have appointed the LDCE candidates against the posts of earlier years and as



a result, they were deemed to have been promoted, much earlier to the date on which they cleared the LDCE. That is contrary to law laid down by the Hon'ble Supreme Court.

21. Hence, the OA is allowed, and the orders impugned therein are set aside. The respondents 2 and 3 shall prepare the seniority list afresh in such a way that an SO promoted through LDCE is not treated as having been promoted with effect from any date, earlier to one on which he was actually promoted. If any promotions to higher posts have taken place in accordance with the impugned seniority list, the same shall be revisited. The exercise shall, however, be confined to the re-fixation of seniority and shall not lead to reversion of the officers who have already been promoted. The exercise in this behalf shall be completed within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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