

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO. 2184/2001

New Delhi, this the 11<sup>th</sup> day of July, 2002

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN  
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

1. IFS (B) Stenographers' Association (Regd)  
Through its Secretary, R.K. Nagpal,  
Ministry of External Affairs,  
New Delhi

2. Harsh Verdhan Singh Negi  
A-674, Sector-19,  
Noida-201 301

..... Applicants

(By advocate : Shri Ajit Kumar Sinha)

Versus

1. Union of India,  
Through its Secretary,  
Ministry of External Affairs,  
South Block, New Delhi

2. Union of India  
Through its Secretary, Ministry of Finance,  
North Block, New Delhi

3. The Union of India  
Through its Secretary,  
M/o Personnel & Public Grievances & Pensions,  
Department of Personnel & Training,  
North Block, New Delhi

..... Respondents

(By Advocate : Shri N.S. Mehta)

O R D E R

By S.A.T. Rizvi, Member (A):

IFS (B) Stenographers' Association (Regd.)  
through its Secretary Shri R.K. Nagpal and one Shri  
H.V.S. Negi, both applicants in the present OA, are  
aggrieved by the order passed by the respondents on  
20.8.2001 (Annexure-A) by which the respondents have  
held that a Private Secretary (PS) could be promoted on  
in-situ basis only to the post of Principal Private  
Secretary (PPS) and like-wise a Section Officer (SO) can  
be promoted on in-situ basis only to the post of Under

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Secretary (US). Accordingly, the prayer made is that the aforesaid office memorandum should be quashed and set aside and the respondents directed to implement the options exercised by the applicants and already accepted by the respondents.

2. We have heard the learned counsel on either side and have perused the material placed on record.

3. When the same matter came up before us in OA No. 1959/2001, we decided the case on 6.8.2001 (Annexure-N) by directing the respondents to give their decision in the matter in the light of the discussion held between the applicants and the respondents on 30.1.2001. We also then directed the respondents to pass a reasoned and a speaking order with a copy thereof being made available to the applicants before the decision taken is implemented. We had also noted that the very same matter had earlier come up before this Tribunal firstly when OA No.2400/1999 was filed and thereafter again when another OA No.1113/2000 was filed. The aforesaid two OAs were disposed of respectively on 10.3.2000 and 8.1.2001. In both these OAs, the respondents were directed to give a hearing to the applicants before taking a decision in the matter. It was in pursuance of the latter order of 8.1.20021 that the meeting dated 30.1.2001 was held between the parties including applicants and the respondents.

4. The learned counsel appearing on behalf of the applicants at the outset proceeded to rely on rule 7 (2)

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of the Indian Foreign Service, Branch 'B' (Stenographers' Cadre, Private Secretary (Group A) posts) Recruitment Rules, 1962 (hereinafter referred to as 1992 Rules) which provides that in the matter of appointment to the post of Private Secretary (Group A) Grade, the officers included in the eligibility list shall be given an option to indicate whether they wanted to be considered for promotion to Grade-I of General Cadre of IFS, (Branch B) or to the Private Secretary (Group A)'s Grade of Stenographers' Cadre of IFS (Branch-B). The aforesaid rule further provides that the names of the officers who opt to be considered for the post of Grade-I of General Cadre of IFS (Branch-B)/Under Secretary shall stand excluded from the eligibility list for promotion to the post of Principal Private Secretary (PPS), and like-wise the names of officers who opt to be considered for Private Secretary (Group A)'s Grade of Stenographers' Cadre of IFS (Branch-B) shall not be considered for promotion to Grade-I of General Cadre of IFS (Branch-B)/Under Secretary For the sake of convenience, we are reproducing the aforesaid rule in the following:

"7. PREPARATION OF THE LISTS:-

(1)      xxx      xxx      xxx      xxx      xxx

(2) Officers included in the eligibility list shall be offered an option to indicate whether they want to be considered for promotion to Grade I of General Cadre of Indian Foreign Service, Branch 'B' or to the Private Secretary's (Group A) Grade of Stenographers' Cadre of Indian Foreign Service, Branch-'B'. The names of the officers who opt to be considered for the post of Grade-I of General Cadre of Indian Foreign Service, Branch-'B' will be excluded from the eligibility list. Similarly, the names of the officers, who opt to be considered for the

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Private Secretary's (Group A) Grade of Stenographers' Cadre of Indian Foreign Service, Branch 'B' shall not be considered for promotion to Grade I of General Cadre of Indian Foreign Service, Branch 'B' in future."

5. The learned counsel for the applicants' submission is that since the applicants herein had clearly opted out of consideration for appointment to the post of PPS whether on regular, on ad-hoc or on in-situ basis (Annexure-E), by applying the aforesaid rule the applicants were to be considered for appointment only to the post of US whether on regular basis or on ad-hoc or on in-situ bases. The option exercised by them as above was in terms of the aforesaid rule and is irrevocable. Grave illegality has, therefore, been committed by the respondents, according to the learned counsel, by promoting the applicants herein to the post of PPS, even if on in-situ basis.

6. The learned counsel appearing on behalf of the respondents has, on the other hand, argued that the aforesaid rule 7 (2) of the 1992 Rules will find application only when regular promotions are to be made and not at all when only in-situ promotions are required to be made. He has drawn our attention to respondents' office memorandum dated 2.11.2000 (page 84 of the paper book) which clearly lays down that in-situ promotion is a staff welfare measure devised with a view to redressing financial hardship faced by officials in the absence of regular promotions due to lack of vacancies in higher grades. The said office memorandum, inter alia, provides as under:

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"xxxx        xxxx        xxxx        xxxx        xx

- (i) The employees will get promotion in-situ to the next higher scale available to them in the normal line/hierarchy of promotion.
- (ii) employees given promotion in-situ will continue to be borne on the seniority list of the lower cadre/post and will be considered for functional promotion against available vacancies as per provisions of the recruitment rules.
- (iii) Promotion under the scheme, which is in-situ, does not involve assumption of higher duties and responsibilities. However, financial benefits of the higher scale are allowed as a special dispensation.

2.        xxxx        xxxx        xxxx        xxxx

3.        xxxx        xxxx        xxxx        xxxx

"In situ upgradation is to be allowed only to the next higher scale available in the line of promotion. For this purpose the normal line of promotion for Section Officer is Under Secretary, whereas for a Private Secretary the normal line of promotion is Principal Private Secretary, even if he has opted for his consideration and promotion in the grade of Under Secretaries. The point can be established by the fact that employees given upgradation in-situ continue to be borne on the seniority list of lower cadre/post. In-situ upgradation does not involve assumption of higher duties and responsibilities and when there is no change in duties, the normal line of promotion should be PPS and not the Under Secretary for PS of IF Stenographers' service." "

(emphasis supplied)

7. The provision of the office memorandum dated 2.11.2000 reproduced in the latter part of the extract at No. 3 above is the clarification rendered in the matter by the DOP&T which is the nodal department charged with the responsibility of for clarifying such issues by issuing executive/administrative instructions.

*2* Drawing our attention to the list enclosed with the

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office memorandum dated 3.9.2001 (Annexure R-2), the learned counsel appearing on behalf of the respondents has shown that all the eligible applicants in the present OA already stand upgraded to the post of PPS on in-situ basis, the posts in question having become available due to temporary upgradation of an equal number of posts of PS to the level of PPS.

8. On a further consideration of the facts of the case, we find that on the basis of 4th Central Pay Commission's recommendations, 21 posts of PS (Group-B) were upgraded to the level of PPS in the pay scale of Rs.3,000-4,500/-. Ad-hoc appointments to the aforesaid upgraded posts were made from time to time until the 1992 Rules came into force. Thereafter, the DOP&T insisted that officers be appointed as PPS only on regular basis. Ad-hoc appointments were accordingly discontinued, and options were invited from all the eligible PSs with 8 years of approved service according to the 1992 Rules. In the letter dated 18.9.1996 (pages 39-40 of the paper book) issued for the purpose it was indicated that those who opted for PPS/PS (Group A) posts will not be considered for appointment to the post of Under Secretary. Besides pay fixation of such officers in the pay scale of Rs.3,000-4,500/-, no other financial advantage in the shape of foreign allowance etc. was to accrue to such officers upon their appointment as PPS. It appears that the aforesaid letter of 18.9.1996 was followed by another letter dated 17.9.1999 (page 38 of the paper book) whereby the options as above were invited once again. The officers

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(PSs) were required by the aforesaid letter to state clearly whether they would like to be considered for promotion to the post of PPS or to the post of US. In order to give them one more opportunity to exercise their option properly, it was stated that the options earlier exercised would be treated as cancelled. The applicants seem to have responded to the aforesaid letter of 17.9.1999 and have by various letters sent to the respondents from time to time indicated that they would like to be considered for appointment to the post of US on regular basis, ad-hoc basis or on in-situ basis. The applicants' case is that each one of them had clearly indicated at the same time that they would not like to be considered for appointment to the post of PPS regularly or on ad-hoc basis/in-situ basis. From the language used in the aforesaid letters dated 18.9.1996 and 17.9.1999 it is clear that options were invited only accordance with the 1992 Rules. No option was invited insofar as appointment/promotion on ad-hoc basis or on in-situ basis is concerned. Thus, it is immaterial that in their letters the applicants had excluded the possibility of their appointment as PPS on ad-hoc or in-situ basis. We have already seen that in-situ promotion is not governed by the 1992 Rules. Such promotions are rather looked upon as a welfare measure to which a recourse is made with a view to removing financial hardship of officers arising from delays in regular promotions. Those promoted on in-situ basis are required to continue to work in the posts already held by them and such promotions (on in-situ basis) are to be made in the same line in which the

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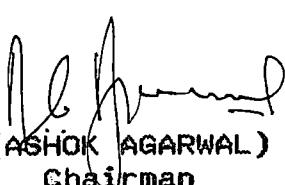
officers have been working. An arrangement different from this is, according to the respondents, likely to lead to administrative difficulties and complications for, if some one <sup>is</sup> promoted on in-situ basis from the post of PS to the post of US, the officer concerned will cease to work as PS while the very basis of in-situ promotion is that the officer continues to hold the same post. The options exercised by them are part of the record and will, no doubt, be given effect to by the respondents whenever the opportunity to make regular promotions comes their way. The applicants will accordingly have a grievance if at the time of making regular promotions the options exercised by them as above are not taken into account.

9. After a careful consideration of the rival contentions raised by the parties, we are inclined to conclude, and we do so without any hesitation that respondents' action in this case is fully covered by the rules and instructions issued by the respondents and no fault can be found with the promotion of the applicants to the post of PPS on in-situ basis. In the circumstances, we hold that the impugned office memorandum dated 20.8.2001 (Annexure-A) is in order and consistent with the rule position.

10. In the light of the foregoing, the OA is found to be devoid of merit and is dismissed. No costs.

  
(S.A.T. RIZVI)  
Member(A)

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(ASHOK AGARWAL)  
Chairman