

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1777/99

New Delhi this the 22<sup>nd</sup> day of May, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)  
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Indian Foreign Service (B)  
Gazetted Officers Association  
Ministry of External Affairs,  
New Delhi through its Secretary  
Shri Rajesh Kapoor.
2. Sh. Rajesh Kapoor,  
Section Officer, Ministry of  
External Affairs, South Block,  
New Delhi.
3. Sh. P. Balachandran, Section Officer,  
Ministry of External Affairs,  
South Block,  
New Delhi.
4. Sh. Shyam Datt Sharma,  
Section Officer,  
Ministry of External Affairs,  
South Block,  
New Delhi.
5. Sh. A.R. Radhakrishnan,  
Section Officer,  
Ministry of External Affairs,  
South Block,  
New Delhi.
6. Sh. Shashendra Jain,  
Section Officer,  
Ministry of External Affairs,  
South Block,  
New Delhi.

...Applicants

(By Advocate Mrs. C.M. Chopra)

-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 Home Affairs,  
North Block, New Delhi.
3. The Union of India through  
its Secretary, Ministry of  
Personnel, Public Grievances and Pensions,  
Department of Personnel & Training,  
North Block,  
New Delhi.
4. I.F.S (B) Stenographers  
Assn. (Regd.) Through Its  
Secy. Mr. R.K. Nagpal Secretary  
I.E.S (B) Stenographers Assn. M/o  
External Affairs, New Delhi.

...Respondents

(By Advocates Shri N.S. Mehta and Shri A.K. Sinha).

By Mr. Shanker Raju, Member (J):

19

The present application has been filed by Indian Foreign Service (B) Gazetted Officers' Association comprising of Section Officers of integrated grades II and III of the General cadre of Indian Foreign Service Branch 'B' which is governed by the Indian Foreign Service, Branch 'B' (for short, IFS (B)) (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 (hereinafter referred to as RCSP, Rules). The applicants have questioned the validity of part-I of Rule 12 of the RCSP Rules, which provides lateral entry of the Private Secretary to Grade-I, which is the post of Under Secretary in the General Cadre of Indian Foreign Service (B). The applicants have further sought directions to the respondents to implement the recommendations contained in paragraph 45.37 (iv) of the Vth Central Pay Commission in respect of stoppage of lateral entry of the Private Secretaries in the General Cadre Grade I of the IFS Branch-B and also consequential relief of not including Private Secretaries in IFS 'B' for the purpose of preparing select list for promotion to Grade I. Vide an order dated 8.9.99 the Tribunal directed that any promotion made during the pendency of the OA will be subject to the result of the OA.

2. In order to resolve the controversy, it is necessary to know the brief history of the case. The IFS Branch 'B' consists of General cadre, Stenographer cadre and Cipher sub-cadre. The applicants belong to integrated grade II and III being the Section officers. With effect from 1.1.986 on the recommendations of the IVth CPC all posts of Senior Personal Assistant (SPA) and Private Secretary (PS) had been merged into a common pay scale of

20

Rs.650-1200 making it equivalent to the pay scale of the Section Officer (SO). Earlier the PS was eligible for promotion to the post of Under Secretary and only half of the service as SPA and full service as PS was counted for that purpose. This resulted in a minimum of 12 years of service for a SPA to reach the promotion zone as compared to SO who required 8 years for reaching the promotional zone. As the pay scale had been made equal the requirements for both the cadres had become 8 years for reaching the promotional zone. Rule 12 of the RCSP Rules is reproduced as under:

"12. Recruitment to Grade I of the General Cadre:

(1) Subject to the provisions of sub-rule (2), vacancies in Grade I of the General Cadre shall be filled by promotion of the permanent officers of the Integrated Grades II and III of the General Cadre and of permanent officers of the Selection Grade of the Stenographers' Cadre who have worked as Section Officers in the Integrated Grades II and III of the General Cadre for at least a period of two years.

Provided that an officer of the Selection Grade of Stenographers' Cadre who has not worked in the Integrated Grades II and III for the said period of two years shall also be considered for promotion to Grade I of the General Cadre if he is otherwise eligible for such promotion and the controlling authority, for reasons to be recorded in writing, is satisfied that such officer had not worked in the Integrated Grades II and III of the General Cadre owing to exigencies of service."

3. In accordance with this rule the permanent officers of selection grade of the Stenographer cadre who had worked as Section Officers in the integrated grades II and III in the General Cadre at least for two years were the feeder cadre for recruitment to grade I of the general cadre and those who had not worked two years if are otherwise eligible and the controlling authority records

(2)

his satisfaction regarding not working in the integrated grades II and III owing to the exigencies of service are also eligible for promotion to grade I to the post of Under Secretary, if they have rendered 8 years service in the respective grade. Subsequently, the Vth CPC in paragraph 45.37 made the following recommendations:

"Our recommendations:

45.37: We have given our most sympathetic consideration to the several suggestions made on behalf of Stenographers by their respective associations and have analysed their promotion prospects with reference to their counterparts in offices outside the Secretariat and other comparable services. We have been informed by the Government of a series of measures taken for improvement of promotion prospects of Stenographers at different levels. These measures have been listed elsewhere in this Chapter under the heading "Central Secretariat Service" 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 services in the Secretariat. While we recognise 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. We have also noted the observations of the Third CPC that the experience gained by good Private Secretaries should continue to be utilised in the line in which such experience had been gained instead of the senior and experienced CSSS officers branching out into a somewhat different line at this level. Pursuing the policy and principles enunciated by our predecessors to provide adequate opportunities for career progression in their own line, we make the following recommendations to further improve the promotion prospects of Stenographers at different levels in the Secretariat:

PPS to Additional Secretaries:

(I) At present there are only 93 posts of Principal Private Secretary as against 1367 posts of Private Secretary and the average time taken for promotion from Private Secretary to Principal Private is around 13 years. We recommend that officers holding posts of Additional Secretary or equivalent rank may be provided stenographic assistance at the level of Principal Private Secretary. As per information furnished by the Department of Personnel and Training, this would need upgradation of 65 posts of Private Secretary to the level of Principal Private Secretary in the CSSS. We recommend upgradation of 65 posts of Private Secretary to the level of Principal Private Secretary. This would raise the total number of posts of PPS to 158.

Senior PS:

(ii) Availability of 158 promotion posts of PPS against 1302 posts in the feeder grade of Private Secretary appears to be inadequate. With a view to ensuring that Private Secretaries have almost the same promotion avenues as are available to members of other comparable services, we recommend that 25% of posts of Private Secretary may be placed in the pay scale of Rs.2500-4000. Such of the Private Secretaries who are placed in this pay scale should be known as Senior Private Secretaries.

Senior PPS:

(iii) At present Principal Private Secretaries do not have any promotion avenues. With a view to ensuring their continued availability to the senior functionaries and meeting their career aspirations, we recommend that of the 158 posts of Principal Private Secretary, 58 posts (approximately 37% of Principal Private Secretaries) may be placed/operated in the pay scale of Rs.3700-5000. Such of those Principal Private Secretaries as are placed in this grade may be designated as Senior Principal Private Secretaries and their replacement in this grade should be made strictly on the basis of selection.

Lateral entry to CSS:

(23)

(iv) With the acceptance of our above recommendations coupled with Assured Career progression Scheme which would be equally applicable to CSSS Officers their promotion prospects would improve considerably in their own line. This calls for a review of the existing practice of lateral entry of CSSS officers in the level of Section Officer and Under Secretary. We have noted that after 1986, promotions to the grade of Under Secretary are being made on ad hoc basis because of seniority dispute between direct recruit and promotee Section Officers and as a result thereof no Private Secretary has been promoted as Under Secretary. It has also been reported by the Government that as on 1.7.94, only 17 Private Secretaries were working as Under Secretaries. On the other hand, CSS Section Officers are also facing acute stagnation and the actual time taken for promotion to the grade of Under Secretary has risen to 16 years as against the provision of 8 years in the recruitment rules. Keeping in view the insignificant number of Private Secretaries who are working as Under Secretaries and the stagnation afflicting CSS, we recommend that lateral entry of Private Secretaries in the grade of Under Secretary should be discontinued. As regards entry of Stenographers Grade 'C' at the level of Section Officer, recognising that merit should be encouraged, we recommend that only those Grade 'C' Stenographers who are graduates should be allowed to participate in the departmental examination for the Section Officer's grade. Once a Stenographer becomes a Section Officer on the basis of LDCE, he can avail himself of the promotion prospects available to CSS Officers. As the CSSS officers would have promotion opportunities up to the pay scale of Rs.3700-5000, we recommend that for direct recruitment at the level of Stenographer Grade 'C' the educational qualification should be raised to graduation.

Second ACP:

(v) In regard to second financial upgradation under the Assured Career Progression Scheme, the CSSS Officers shall be entitled to the same concessions as extended to CSS officers in para 45.27 as a special dispensation.

Further upgradation:

2X

(vi) The upgradation of posts as a result of our above recommendations would be a one-time measure and we recommend that further upgradations in future should be made in consultation with Internal Finance."

4. One of the recommendations was upgradation of 65 posts of PS to the level of PPS and the other one was placing PS in the pay scale of Rs.2500-4000 changing the nomenclature to Senior PS (SPS). Apart from it, 158 posts of PPS are re-designated as Senior PPS and the recommendations of the IVth CPC was regarding stoppage of lateral entry of PS to the grade of Under Secretary on the ground that the CSSS officers by virtue of recommendations No.(i), (ii) and (iii) and ACP Scheme would be benefited in their promotional prospects. The lateral entry has been causing acute stagnation in the CSS Section Officers cadre and the PS should avail promotion in its own line. These recommendations are also made applicable to all Government departments, which included IFS 'B'. The grievance of the applicants is that by lateral entry the actual time of their promotion has increased to several years and since 4th CPC recommendations came into effect 59 PSs have been promoted as Under Secretaries out of total cadre strength of 147 in the Ministry of External Affairs at the costs of the Section Officers. It is contended that the duties attached to the posts of PSs and SOs are absolutely distinct and different and those of SOs are more onerous, carrying more responsibilities and as such there cannot be a comparison to these cadres. The apprehension of the applicants is that by not-stopping this lateral entry the PSs would be occupying at least 50% of the posts of Under Secretary in the near future. It is contended that after hectic consultation and application of mind the expert

committee, i.e., the Vth CPC had come to the conclusion an recommending to the Government of removal of stoppage of lateral entry of PS to the cadre of CSS SO for the purpose of promotion as Under Secretary. The Government have not accepted the recommendations contained in para 45.37 (iv) regarding stoppage of lateral entry of PS to the cadre of SO. It is further alleged that continuance of treatment of PS at par with SO despite several opportunities of better avenues of promotion vide memorandum dated 10.6.99 is a discriminatory treatment accorded to them at the cost of the applicants. The applicants contended that the respondents are duty bound to implement the recommendations of the Vth CPC as a whole as contained in para 45.37 and to immediately discontinue the lateral entry of PS to grade I of General Cadre of IFS (B). Relying upon the Constitution Bench decision of the Apex Court in Purshottam Lal v. Union of India, AIR 1973 SC 1088, it is contended that non-implementation of the report of the Pay Commission in respect of certain posts is violative of Articles 14 and 16 of the Constitution of India. It is further contended that the PSs have encroached upon the promotional avenues of the applicants for being accorded promotion to the posts of Under Secretary. The applicants have also questioned the IVth Pay Commission's recommendation to merge the pay scale of PS, making it at par with the SO. It is contended that on account of interpolation of lists of SOs and PSs the opportunity of SOs has been reduced. It is contended that after having accepted the recommendations relating to PSs and whereby additional posts of PPs and new posts of Senior PPS have been created the lateral entry has not been stopped. It is further contended that despite not stopping the lateral entry the respondents have given the PS an

option to opt for PPS or Under Secretary, which is bad in law and this has left to the choice of the PSs which amounts to unfair and unjust practice. While making challenge to part (1) of Rule 12 of the Rules ibid it is contended that the same is discriminatory as promotion in any service must be in their own direct line as an officer who gains experience in his own line is provided further career progression in his own line, benefiting the employer and maintaining the efficiency and quality of the work, whereas the officers who have different job profile cannot be brought within their line to another service for the sake of providing them avenues, what has been exactly provided in the rules. By referring to the rules it is contended that portion x-1 to x-2 of Rule 12 (1) is severable from rest of the portion of the rule 12 and is liable to be set aside and declared ultra vires, as discriminatory and illegal. It is further contended that the SOs of grades II and III have no other promotional avenues except to have grade I of the General Cadre. It is also contended that under the pretext of exigency of service and on certification by the controlling authority it had become possible for those PSs who have failed to pass the departmental examination to become Section Officer and further entitled for promotion to grade I.

5. On the other hand, the respondents in their reply refuted all the contentions of the applicants and stated that although there has been a recommendation for dis-continuation of the lateral entry of PS to the grade of Under Secretary, but as Rule 12 of the Rules ibid provides for such consideration the Ministry is following the rule position as the recommendation of the Vth CPC is only



recommendatory and it is for the Government to accept it or not. Placing reliance on a ratio of the Apex Court in Suryanarayan Sahu v. Council of Scientific & Industrial Research, 1998 (2) SCC 162 it is contended that the Government is not bound to adopt all the recommendations of the Pay Commission. It is contended that the OA is barred by limitation as the recommendations of the IVth CPC had been made in 1986 but the same had been challenged only in the year 1999 without any application for condonation of delay or reasonable explanation for delay. It is contended that the Ministry of External Affairs though the cadre controlling authority of IFS (B), is not empowered to amend the rules pertaining to recruitment and service conditions of any of the grades without the concurrence of DOP&T (including of UPSC and Ministry of Law, Justice and Company Affairs) which is the nodal authority for such matters. Justifying Rule 12 of the Rules ibid it is contended that both SOs and PSs who have rendered 8 years qualifying service are eligible to be considered for promotion to grade I as merger had taken place w.e.f. 1.1.86 whereby PS and SO have been brought at par in the matter of promotion to the grade of Under Secretary as such there is no question of comparing their qualifications, experience and job profile which was not the criterion when the lateral entry was introduced. As regards the counting of half service of SPA and full service of PS the same has lost its significance after the merger. It is contended that promotion to the grade I to the post of Under Secretary is considered from the interpolated list of SOs/PSs in which the SOs of a year are given preference over the PSs of the same year. Thus the claim of the SOs has been given due regard in the matter of promotion. As this lateral entry

had been continuing for several years the rules are being challenged after a long lapse of time without any reasonable explanation of delay and by remaining in force for several years, the rules cannot be challenged at this belated stage, as they had stood the test of time and held the field over a long period of time. It is contended that the posts of Under Secretary have not been sliced out for the PS and the same are filled up by SO and PS who are in the zone of consideration and no deduction in the cadre strength is done on the ground that the posts are occupied by the PS. It is contended that the recommendations of the Vth CPC regarding discontinuation of lateral entry has not been implemented in CSS also. The recommendation of upgradation of 65 posts of PS to PPS and recommendation of 65 posts to Senior PPS have been implemented and the lateral entry has not been discontinued. It is contended that the Fundamental Right of the SOs has not at all been infringed as no attempt had been made to take away their right for consideration to the posts of Under Secretary. It is contended that the recommendation of the Pay Commission is only an executive instruction which cannot over-ride the statutory rules framed under Article 309 of the Constitution of India. It is further contended that by the recommendation of the Vth CPC promotional avenues of PSs have been enlarged by introduction of additional posts of PPS and the Senior PPS which has not been done at the costs of SOs. It is lastly contended that Vth CPC gave recommendations pertaining to the Stenographers belonging to CSS and applicable to other service including IFS (B) since the recruitment rules of IFS (B) are based on the line of CSS, there cannot be a question of any change in the rules unless the same is incorporated in the CSS.

(29)

6. The impleaded Stenographers Association of Ministry of External Affairs in their counter-reply contended that the Government has rejected the recommendation of stoppage of lateral entry as the matter has been discussed in the 54th meeting of the JCM of DOPT and decided. The rules for Under Secretary Grade I are not changed and once in operation for such a long time, it cannot be questioned at a belated stage. The recommendations of the Pay Commission is not binding on the Government. It is contended that the Stenographers suffer more acute stagnation than the SO as the PS of particular batch will be placed enbloc senior of the same year though qualified the examination as LD candidate. As the IVth Pay Commission's recommendations had been made effective from 1.1.86 regarding parity of pay scale for the purpose of promotion of Stenographer and PS the same cannot be challenged at this belated stage. As regards the duties of Section Officers and PSs it is contended that they are performing equally onerous duties. It is contended that members of General Cadre have risen to the level of Joint Secretary but the same has been denied to the members of the Stenographers. According to the respondents their cadre has no promotional avenues beyond Senior PPS whereas the Section Officer can rise to the level of Secretary as such there is more stagnation in the Stenographer cadre than the Section Officer. It is contended that introduction of PPS scheme has improved further the promotional avenues as interpolating for promotion to Under Secretary as a PS who opts for PPS Scheme is taken within the line of promotion to the post of Under Secretary and these posts are to be occupied by the SOs. As regards the

occupation of the posts of Under Secretary by the PS cadre, it is contended that it is less than 15%. The Government of India has not accepted the recommendations of stoppage of lateral entry of PS as promotional prospects of PSs have not been increased with the introduction of the PPS Scheme and feeder cadre in Stenographer cadre faces an acute stagnation. It is contended that the prayer of the applicants for deleting a portion of Rule 12 is not legal and is barred by the doctrine of severability and aforesaid doctrine does not apply to a subordinate legislation as the statutory provision is inextricably attached and to delete a portion of the rule is unjust and for this the learned counsel for the impleaded respondents relies upon the ratio of the Apex Court in Harakchand v. Union of India, AIR 1970 SC 1543 and M/s. Laxmi Khandsari v. State of U.P., AIR 1981 SC 873. It is further contended that the recommendation of a Pay Commission is not binding upon the Government and for this reliance has been placed on A.K. Roy v. Union of India, AIR 1982 SC 710. It is contended that interpolation of entry to grade I under the rules ibid has been continuing for long years and IFS (B) RCSP Rules, 1964 have been made applicable to all the Ministries concerned because it follows the CSS pattern.

7. The applicants in their rejoinder have reiterated their contentions taken in the OA.

8. We have carefully considered the contentions of the rival parties and perused the material on record.

(31)

9. As regards the first contention of the applicants that in pursuance of the IVth CPC the merger of pay scale of SPA and PS and bringing it to the equivalent pay scale of Section Officer had adversely affected the promotional avenues of the applicants as the actual time taken for promotion to grade I as Under Secretary has become 15 years instead of 8 years as stipulated in the recruitment rules and on account of this merger the Stenographers had been considered at par with SO to Grade I is concerned, we are of the confirmed opinion that the recommendations of the IVth CPC and its subsequent implementation by the Government by merging the two pay scale of Stenographers cadre and bringing it at par with the SO has not been challenged for these long years and as such now once the decision of the Government has been implemented it would not be in the fitness of things and in the interest of service to unsettle the settled position. Apart from it, the belated claims of the applicants to challenge the merger and question the decision of the Government on the basis of the recommendations of the IVth CPC would be clearly barred by limitation as envisaged under Section 21 of the Administrative Tribunals Act, 1985. Apart from it, a conscious decision was taken to merge the pay scale of SPA and PS which is done away with the requirement of half of the service of SPA and full service as PS to be reckoned for the purpose of giving them promotion and as such for all practical purposes including promotional avenues to the next higher grade of grade I the pay scales have been merged. The contention of the learned counsel of the applicants that there was difference in

32

qualification, experience and job profile cannot be of any significance and relevance to the present controversy of discontinuation of lateral entry.

10. Another challenge by the applicants is that the respondents, i.e., Government despite the recommendations made by the Vth CPC relating to CSS Service which equally apply to the IFS (B) have not accepted the recommendation containing in clause (iv) of paragraph 45.37 regarding discontinuance of lateral entry of PS to the grade of Under Secretary without any justification. In this background it is contended that the recommendations of the Vth CPC are to be accepted as a whole and once the recommendations contained in para 45.37 (i), (ii) and (iii) have been accepted the remaining recommendation for discontinuing the lateral entry is not justified and shows arbitrary action of the respondents. It is further contended that the PS should get promotion in its own line and should not have encroached in a different line to affect the promotional avenues of SO cadre for the purpose of getting promotion to Grade I which would amount to encroachment to their cadre resulting in reduction of promotional avenues to the applicants. On the other hand, the respondents plea that the recommendations of an administrative body like Vth CPC is not binding upon the Government and it is for the Government to decide what recommendation should be accepted or not. It is further contended that Rule 12 of the Rules ibid are statutory in nature framed under Article 309 of the Constitution of India and would over-ride any administrative instructions or administrative recommendations of the Vth CPC. Apart from it, it is contended that the recommendations of the

33

CPC is based on the line of CSS. Their cannot be any question of change in the recruitment rules of IFS (B) unless the changes are made in CSS. It is further contended that the request made by the JCM regarding stoppage of lateral entry has also not been acceded to. We agree with the contention of the respondents to the extent that the recommendations of the Vth CPC cannot be enforced upon the Government as the Government has every right to accept or not to accept the recommendation but there should be some justified reasons to resort to such an action. In the present case, though admittedly the recommendations made by the Vth CPC was to stop the lateral entry of PS in the grade of Under Secretary but the same has not been agreed to by the Government on the ground that there exists a statutory rule, i.e., Rule 12 of the Rules ibid which permits lateral entry of PS into grade of IFS General Cadre and as these rules are statutory framed under Article 309 of the Constitution, the same would over-ride any administrative instruction or decision of an executive body like Vth CPC. In this view of ours we are fortified by the ratio of the Apex Court in Suryanarayanan's case (supra) wherein the CSIR has not accepted all the recommendations of the IIIrd CPC and the decision was held to be illegal. The resort of the applicants to the ratio in Purshotam Lal's case (supra) will be of no avail to them as the facts therein are distinguishable as in that case the Government has accepted the recommendations in respect of the employees except a few which was held to be a case of discrimination under Articles 14 and 16 of the Constitution of India. In the instant case the Government has not at all accepted the recommendations and the same was also not accepted in CSS in view of Rule 12, which permits lateral



entry of PS to be included in the Grade I cadre of Under Secretary. In a judicial review the Tribunal would not have any jurisdiction to direct the respondents, i.e., the Government to accept the recommendation No.(iv) in para 45.37 of Vth CP in absence of any proof of arbitrariness and discrimination as alleged by the applicants.

11. The next contention of the applicants is that by the lateral entry their promotional avenues had been adversely affected and the PSs have taken over a substantial portion of their promotional quota for the posts of Under Secretary in grade I. We find that the promotion to the grade of Under Secretary is considered from an interpolated list of eligible SOs and PSs in which SOs of the particular year are given preference over the PSs of the same year in placement to the interpolated list. As such the SOs are given due regard in the matter of promotion. It is also not a case that any PS who had been promoted to the post of Under Secretary has been found to have discharged his functions in a less efficient manner to come to the conclusion that the PS would not be in a position to discharge the responsibility with experience. We also find that no deduction in the cadre strength on the ground that the posts are occupied by the PS which could have affected the promotional avenues of SO for promotion to grade I of IFS (B). While according promotion to the PS in grade I the rules are followed and only after the PS is found suitable and eligible conforming to the criteria, is promoted. There has not been an infringement of the Fundamental rights of the SOs as they are still considered for the post of Under Secretary and their promotional avenues have not been affected or reduced in any manner.

65

The aforesaid promotion is accorded to the PS under Rule 12 of the Rules ibid which has been duly approved by the DOPT and UPSC. We also find that with the introduction of ACP and in situ promotion schemes which have been implemented in the Ministry of External Affairs also the allegation of the applicants regarding stagnation in their grades appears to be imaginary and not well founded. In fact the PS promoted as US constitute only 28% as compared to the SOs promoted as Under Secretary i.e. 72%. For example 19 vacancies filled up during 1988-89 only six PSs have been promoted whereas 13 SOs have been promoted. Another aspect of the case which indicates towards the fact that the contention of the applicants regarding deduction in their promotional avenues and stagnation is that the existence of the recommendations of Vth CPC regarding PPS and Sr. PPS and consequent option for the PS to opt for PPS or Under Secretary there had been a reduction in the strength of PS being competing for the post of Under Secretary and this has also enhanced the promotional avenues of SOs. The creation of posts of PPS is not adverse to the SOs as none of the posts of Under Secretary have been taken to create additional posts of PPS. In pursuance of the recommendations only 30% of the posts of the PPS will be upgraded to Senior PPS and will not result in any cut down of the posts of PS. The promotional avenues of PS have been increased not at the cost of SO and this would not amount to any infringement of Articles 14 and 16 of the Constitution of India. The PPS Scheme and option in our view have also narrowed the number from the feeder cadre of PS and has enhanced the promotional avenues of SOs. From the figures drawn out by the impleaded Stenographers Association it becomes clear that even after the PPS Scheme

and continuation of lateral entry 28% of the posts have gone to PS and 72% to SOs, as such the contention of the applicants that there can be a situation where 50% of the posts in future will go to Stenographers cadre is not as per the record and is also not well founded. Regarding the plea that promotional prospects of a particular cadre cannot be improved at the expenses of another cadre will not be tenable in the present circumstances as on merger of PS and SPS w.e.f. 1.1.86 they have been brought at par with the SOs and in the instant case both the cadres belong to the same cadre i.e. IFS (B). We go along with the contention of the Stenographers Association that the Govt. of India has not accepted the recommendations firstly as there is a statutory provision under the rules and secondly promotional prospects of PS have not been increased with the introduction of PPS Scheme resulting in stagnation in the Stenographer cadre. This has resulted because of non-creation of additional posts to upgradation of existing posts of PS. In our view the Government taking all these factors into consideration have decided not to accept the recommendations of stopping lateral entry of the Stenographers to Grade I. In our view there has not been a reduction in the promotional avenues of SOs for promotion to Grade I and the Stenographers have not encroached upon their promotional avenues in grade I. Rather the SOs are still given preference over the PSs for according promotion to grade I as Under Secretary. As such the contention of the applicants is not well founded and is rejected.

12. The applicants have also challenged a portion of Rule 12 of the Rules ibid, which permits lateral entry to PSs for their promotional avenues to grade I to

(31)

the posts of Under Secretary by contending that the rule is discriminatory as the promotion in any service should be in the direct line and the officers who gained experience in their own line are provided further progression and promotion benefiting the employer and helping efficiency and quality of out put of work as the job profile of SOs and PSs are different they cannot be brought within their line to another service at the costs of the applicants for providing them promotional avenues. It is also contended that the mode of job and requirements of the SOs are different and higher than the PSs and the PSs who fail to pass the examination become Section Officers and can compete with the SOs for Grade I promotion on the satisfaction of the controlling authority dispensing with the requirement of rendering two years working experience as SO. It is pointed out by the learned counsel of the respondents and the Stenographers Association that these rules had come into force in 1964 and also in the rejoinder to the amended application the applicants have admitted that the first time PS got into General Cadre in 1972-73. The applicants despite knowing this discrimination in the Rules have kept silent for such long years allowing the PSs to become Under Secretary and had only raised this issue in the year 1999 taking resort to the recommendations of the 6th CPC and on the ground that their representation was not disposed of by the respondents. As per the provisions of Section 21 (2)(a) and (b) the Tribunal has no jurisdiction where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act, i.e., w.e.f.

38

1.11.1985. Applying these provisions to the present case we find that the action of the applicants in challenging the vires of the rules which had come into existence in the year 1964 and also the action of bringing in PSs in grade I which had started in 1972-73 falls beyond the prescribed period envisaged under the statutory rules which have come into effect in 1964 but the grievance is made by the applicants only in the year 1999. As such the Tribunal has no jurisdiction to go into the grievance of the applicants regarding the vires of the Rule 12 ibid. The claim of the applicants is also liable to be rejected on the ground that the rules of 1964 ibid has stood the scrutiny of time for all those long years and as a result of various officers have been promoted to the Grade I. The aforesaid rule is in existence for last several years and had been uniformly applied in all the Ministries concerned of the Government of India. The applicants seek modification of the rule whereby certain portion of Rule 12 is prayed to be declared as illegal discriminatory and unconstitutional. This rule has been framed under Article 309 of the Constitution and after hectic consultation with the DOPT and other Government departments having an objective to enhance the promotional avenues of PSs the aforesaid rule does not prescribe any discrimination by providing lateral entry to the PS as this has not affected the promotional avenues of the applicants. The provision that the PSs who have not worked as SOs owing to exigencies of service the rule takes care of SOs as in the interpolated lists they are placed enbloc senior to PSs for consideration of promotion to grade I to the post of Under Secretary. We also find that the work of PS and SO is equally important. PSs have also been assigned onerous duties like SO. Apart from it, once

39

on the recommendations of the IVth CPC and after merger of PS and SPA the parity has been accorded to them vis-a-vis SOs and this would hold good also for the next promotional avenues of Grade I irrespective of the duties etc. As the question before us is not of involving equal pay for equal work but parity for the purpose of promotional avenues. The policy decision of the Government cannot be interfered by the Tribunal if it is not found arbitrary as held by the Apex Court in Director, Lift Irrigation Corporation Ltd. & Others v. P.K. Mohanty & Others, 1991 (1) SCALE 399. The challenge to the rule is also likely to fail on the ground that the doctrine of severability does not apply to a subordinate legislation since the statutory provision is inextricably attached and the prayer of the applicants to delete the portion of Rule 12 cannot be sustained. The contention of the learned counsel for the applicants that as the respondents admitted in para 5.26 that the portion x-1 to x-2 of the rule is severable would be of no help to them as we find no arbitrariness and discrimination to the applicants by way of providing promotional avenues to Stenographers cadre to Grade-I. As such the challenge to the rule made by the applicants is not well founded and is not legally tenable.

13. We also find that these rules have not been challenged by the applicants during all these long years by making a representation to the Government. It was incumbent upon the applicants to have moved to the Government persuading them to reconsider the issue but the same had not been done and subsequently when a favourable recommendation with regard to stoppage of lateral entry by the Vth CPC was given their action to resort to challenge

the rule is not justifiable at this highly belated stage, when the applicants have not been subjected to any discrimination or any arbitrary action and their promotional avenues have not been affected by the PSSs for promotion to grade-I.

14. Having regard to the above discussion and the reasons recorded, we find no merit in the OA and the same is accordingly dismissed. The interim order passed on 8.9.99, subjecting the promotion to the final outcome of this OA, is also vacated. No costs.

*S.Raju*  
(Shanker Raju)  
Member(J)

'San.'

*V.K. Majotra*  
(V.K. Majotra)  
Member(A)