

Central Administrative Tribunal, Principal Bench

Original Application No.2352 of 1996

New Delhi, this the 29th day of March, 2000

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Hon'ble Mr.Justice Ashok Agarwal Chairman
Hon'ble Mr.V.K.Majotra, Member (Admnv)
Shri K.P.Ram son of Shri Sagam Ram,
resident of C-42, External Affairs Hostel,
Kasturba Gandhi Marg, New Delhi-110001 - Applicant

(By Advocate -None)

Versus

Union of India through the Secretary to the
Government of India, Ministry of External
Affairs, South Block, New Delhi. - Respondents

(By Advocate -None)

O R D E R (Oral)

By V.K.Majotra, Member(Admnv) -

The applicant is a member of the senior scale of Indian Foreign Service (for short 'IFS') Branch 'A' and at the time of filing the OA was posted as Deputy Secretary in the Senior Scale Rs.3950-5000 in the Ministry of External Affairs, New Delhi. He initially joined as Section Officer (for short 'SO') in the Integrated Grades-II and III (for short 'IGs-II & III') of IFS Branch 'B' on 1.5.1978 through direct recruitment ^{in the IAS etc.} on the basis of ~~1~~ Combined Competitive Examination held by the Union Public Service Commission (UPSC) in 1976. The applicant was promoted to the post of Under Secretary in the scale of Rs.3000-4500 {Grade-I of IFS (B)} with effect from 27.1.1984. Certain writ petitions (WP Nos.13248-13257 of 1983) were filed in the Hon'ble Supreme Court challenging inter alia the validity of the seniority list of SOs IGs-II & III of the general cadre of IFS(B) dated 25.6.1979 and 30.6.1983. The Hon'ble Supreme Court held that once promoted officers had been promoted even though in the vacancies earmarked for the method of direct recruitment, the quota to that extent broke down and the Rules of 1964 stood relaxed to that

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extent and that being so the promotion of the promoted officers was valid and, therefore, the seniority of the promoted officers became liable to be determined on the basis of continuous officiation. According to the applicant in pursuance of the said decision of the Hon'ble Supreme Court in the case of G.S.Lamba and others Vs. Union of India and others, a revised seniority list of SOs was issued on 21.6.1985 (Annexure-C). As a result of the aforesaid revision of the seniority list of SOs, a DPC for reviewing the DPC already held for promotion to the post of Under Secretary Grade-I of IFS(B) on the basis of the pre-revised list of SOs, was held and on the basis of the said review DPC the applicant was included in the select list of SOs IGs II&III of IFS(B) and issued revised memorandum dated 16.4.1986 (Annexure-D). The select list was to be operative for one year with effect from 28.1.1986. The applicant was promoted to officiate in Grade-I of the General cadre of IFS(B) with effect from 28.1.1986 vide Notification dated 10.5.1986 (Annexure-E). The validity of the aforesaid seniority list dated 21.6.1985 was also challenged before this Tribunal in the case of K.J.Francis & others Vs. Union of India, OA No.937 of 1986, decided on 16.3.1993. According to the applicant as per the directions given in the case of G.S.Lamba (supra) and the aforesaid OA, seniority has to be determined on the basis of continuous officiation. It has been alleged that while issuing the impugned seniority list vide memo dated 21.6.1985 the respondents have violated the directions of the Hon'ble Supreme Court.

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2. As per the directions given in the case of K.J.Francis (supra) the seniority list was to be recast in accordance with the directions given in the case of G.S.Lamba (supra). A revised seniority list of SOs in IGs III & III was redrawn vide memorandum dated 28.6.1994 (Annexure-F). On the basis of the said revised seniority list of SOs DPCs were held for reviewing the panels for promotion to Grade-I of IFS(B) for the years 198³-92 and revised select list was issued vide memorandum dated 10.8.1994 (Annexure-G). The applicant's name was included in the 1984 Select List of officers selected for promotion to Grade-I of IFS(B). The applicant was ordered to be promoted to Grade-I of General cadre of IFS (B) with effect from 25.8.1984 vide notification dated 19.9.1994 (Annexure-H).

3. A DPC was held in April, 1995 for consideration for promotion of the officers of Grade-I of IFS(B) to Senior Scale of IFS and also to carry out the review of the earlier panels for the said Senior Scale in the light of the revised select list and/or revised promotion orders for Grade-I of IFS(B). As a result, combined select list of officers approved for promotion to the Senior Scale of IFS from Grade-I of IFS(B) for the years 1992-93 and 1993-94 was issued by the memo dated 2.11.1995 (Annexure-I). The name of the applicant was not included. However, no revised select list of officers for promotion to Senior Scale of IFS(A) for the years 1990 and 1991-92 was issued. On the basis of the said select list dated 2.11.1995 promotion orders to Senior Scale for the years 1992-93 and 1993-94 were

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issued with effect from 27.4.1995 vide orders dated 22.11.1995 (Annexure-J). The applicant has claimed that he was ~~verbally~~ informed by the Administration Section concerned that he had been approved for promotion to Senior Scale with effect from 27.4.1995 and that he should submit his charge assumption report in the Senior Scale of IFS accordingly. By his note dated 23.11.1995 the applicant assumed charge in the Senior Scale of IFS (A), with effect from 27.4.1995 (Annexure-K). The applicant requested the respondents through a note dated 27.11.1995 for a copy of the select list in which his name was included as in the gazette notification issued on 20.11.1995, promoting certain officers of Grade-I of IFS(B) to officiate in the Senior Scale of IFS(A). The respondents vide their reply dated 1.12.1995 (Annexure-R) observed as under-

"As a matter of fact, the Select List is issued pending availability of vacancies and confirmation whether the concerned officers work on duty on the day they were approved for promotion. In the case of Shri Kamla Pati Ram no Select List was issued as requisite number of vacancies were available in the Senior Scale of IFS for the officers in the panel in which his name was not included".

4. The applicant made a representation to the respondents on 8.12.1995 asking for a supply of the copy of the Select List/ Panel in which his name was included. He made another representation on 16.1.1996. In the meantime the civil list of officers of various grade of IFS(B) and IFS(A) was issued in May, 1996. In that list while the officers whose names are given at serial no.1 to 23 of the Notification dated 21.11.1995 (Annexure-M) were shown to have been allotted the year of allotment as 1984, the applicant whose name appeared at serial no.24 was shown to have been allotted the year

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of allotment as of 1987. The applicant has alleged that before allotting him 1987 as the year of allotment, while his juniors were allotted 1984 as the year of allotment, he was not provided any opportunity of being heard. The applicant has sought direction to the respondents to produce the revised select list for promotion to Senior Scale for the year 1990; to declare the applicant entitled to be allotted the year of allotment 1984 and given promotion from the date from which his juniors i.e. the persons whose names are shown at serial nos. 3 to 23 of the Notification dated 20.11.1995 (Annexure-M) have been given promotion i.e. from 26.2.1992. He has also asked for consequential benefits.

5. According to the respondents as per their counter the applicant was promoted to the Senior Scale of IFS with effect from 27.4.1995 on the basis of the recommendations of the DPC chaired by a Member of the UPSC on 18-19 April, 1995 and 26-27 April, 1995. The select list is required to be issued only to confirm whether the officer was on duty on the date his promotion was recommended and whether a vacancy is available to promote him. In case of applicant, the select list was not issued as vacancy was available in the Senior Scale of IFS and as the officer submitted the assumption of charge report with effect from the date of promotion, the notification effecting his promotion with effect from 27.4.1995 was issued. According to the respondents, IFS (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 (hereinafter referred to as 'the Rules of 1961') are applicable to his case. In terms of Rule 15 of the Rules of 1961 the year of allotment in case of an officer promoted to the Senior Scale from Grade-I of IFS (B) he is given year of allotment corresponding to a date three years prior to the date

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from which he was continuously holding post in Grade-I of IFS (B) or in an equivalent and a higher post provided further that the year of allotment so determined shall not be earlier than the year, 8 years preceding the date of actual promotion. Incidentally, the applicant has not at all referred to the Rules of 1961 in his application. The respondents have contended that since the applicant has been promoted with effect from 27.4.1995 only, hence his year of allotment has to be 1987 only and not earlier.

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6. In the Notifications dated 1.5.1992 (Annexure-O) and dated 15.1.1993 (Annexure-Q) the applicant's name was not included as the DPC had not recommended his name for promotion. No select list for the years 1990 and 1991-92 has been issued. Hence the question of applicant's name figuring at a particular position in those lists does not arise. As also the question of supply of a copy of the same to him does not arise. The year of allotment is based solely on the date of actual promotion, which in the case of the applicant is 27.4.1995. Hence, according to the respondents, he has been correctly allotted 1987 as the year of allotment. The respondents have clarified that the officers whose names appear at serial no.1 and 3 to 10 of Annexure-M were recommended for promotion with effect from 26.2.1992 (relevant notification is at Annexure-O) and the officers whose names appear at serial nos. 11 to 23 of Annexure-M were recommended for promotion with effect from 2.12.1992 (relevant



notification is at Annexure-Q). The officer at serial no.2 of Annexure-M was also recommended for promotion with effect from 26.2.1992. His name was, however, kept in a sealed cover. He has been subsequently cleared his for promotion effective from 26.2.1992. The review DPC in its meeting held in April, 1995 did not recommend any change in the date of promotion of these 23 officers, hence they have been correctly allotted 1984 as the year of allotment. The applicant's name was not recommended for promotion to Senior Scale of IFS by any of these DPCs in the meeting held on 26.2.1992 or 2.12.1992. He was actually promoted with effect from 27.4.1995 only.

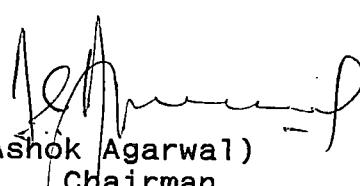
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7. We have considered the material available on record. We find that the Rules of 1961 are applicable in matter of allocation of the year of allotment in the case of officers promoted to the Senior Scale from Grade-I of IFS(B). The year of allotment is allocated which corresponds to a date three years prior to the date from which an officer has been continuously holding a post in Grade-II of IFS(B) or an equivalent higher post. The respondents have adequately explained the reasons for issuing a select list. They have also explained why in the case of the applicant select list was not issued when he was promoted to the Senior Scale with effect from 27.4.1995. It was not issued as vacancy was available in the Senior Scale of IFS and as he had submitted the assumption of the charge report with effect from the date of promotion. Incidentally, the notification effecting his promotion with effect from 27.4.1995 was issued.

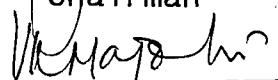
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8. As per records, no select list for the years 1990 and 1991-92 was issued. Thus, the applicant's claim that his name has figured in those lists is not established at all. The officers whose names appear at serial no.1 to 23 of Annexure-M and who are stated to be junior to the applicant had been recommended for promotion during 1992. The applicant's name had been left out from said recommendation. The review DPCs were held in April, 1995 which did not make any change in the date of promotion of these 23 officers who were stated to be junior to the applicant. Thus, the allotment of 1984 as the year of allotment of these 23 officers cannot be faulted with. The applicant's name was recommended for promotion in the DPC held in April, 1995. He was promoted to the Senior Scale of IFS with effect from 27.4.1995 accordingly. The year of allotment solely depends upon the actual date of promotion. As the applicant was promoted with effect from 27.4.1995, he was correctly assigned 1987 as the year of allotment.

9. In the light of the above reasons, we find that the present application is devoid of any merit and is thus dismissed. No order as to costs.


(Ashok Agarwal)

Chairman


(V.K. Majotra)

Member (Admnv)

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