

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA.No.306 of 1997

New Delhi, this 17<sup>th</sup> day of August, 2000

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)  
Hon'ble Smt. Shanta Shastry, Member(A)

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M.S. Mandhaiya  
S/o Shri Harphul Singh  
R/O 283-DG-III Vikaspuri  
New Delhi 110018.

... Applicant

(By Advocate: Dr D.C.Vohra)

versus

1. Union of India, through  
Foreign Secretary  
Government of India  
Ministry of External Affairs  
South Block  
New Delhi.
2. Ms. Anna Kumari Singh  
Section Officer  
C/o Cadre Cell  
Ministry of External Affairs  
South Block, New Delhi-110011.
3. Shri V.S. Dhavle  
Under Secretary  
C/o PA-II Section  
Ministry of External Affairs  
South Block  
New Delhi-110011.
4. Shri A.K. Aggarwal  
Under Secretary  
C/o PA-II Section  
Ministry of External Affairs  
South Block, New Delhi-110011.
5. Smt. Padmaja  
Under Secretary  
C/o PA-II Section  
Ministry of External Affairs  
South Block  
New Delhi-110011.
6. Smt. L. Savitri  
Under Secretary  
C/o PA-II Section  
Ministry of External Affairs  
South Block, New Delhi-110011.
7. Shri Mahinder Pratap  
Section Officer  
C/o PB Section  
Ministry of External Affairs  
Akbar Bhawan  
New Delhi-110021.

8. Shri Radha Kishan Sharma  
Under Secretary  
C/o PA-II Section  
Ministry of External Affairs  
South Block  
New Delhi-110011.
9. Shri S.K. Singhal  
Under Secretary  
C/o PA-II Section  
Ministry of External Affairs  
South Block  
New Delhi-110011.
10. Shri N. Balasubramanian  
Under Secretary  
C/o PA-II Section  
Ministry of External Affairs  
South Block  
New Delhi-110011.
11. Shri K.R. Rajappan Pillai  
Under Secretary  
C/o PA-II Section  
Ministry of External Affairs  
South Block  
New Delhi-110011.
12. Shri K.N. Mohan Kumar  
Section Officer  
C/o PB Section  
Ministry of External Affairs  
Akbar Bhawan  
New Delhi-110011.
13. Shri Kunal Roy  
Under Secretary  
C/o PA-II Section  
Ministry of External Affairs  
Akbar Bhawan  
New Delhi-110011.
14. Shri Balachandran Nair  
Under Secretary  
C/o PA-II Section  
Ministry of External Affairs  
Akbar Bhawan  
New Delhi-110011.
15. Shri Madhukar Asnani  
Section Officer  
C/o PB Section  
Ministry of External Affairs  
Akbar Bhawan  
New Delhi-110021.
16. Shri J.K. Sharma  
Section Officer  
C/o PB Section  
Ministry of External Affairs  
Akbar Bhawan  
New Delhi-110021.

17. Shri Suresh Kumar  
Under Secretary  
C/o PA-II Section  
Ministry of External Affairs  
South Block  
New Delhi-110021.

18. Shri Mohinder Nath Devar  
Section Officer  
C/o PB Section  
Ministry of External Affairs  
South Block  
New Delhi-110021.

19. Shri Jarnail Singh Varaiah  
Under Secretary  
C/o PA-II Section  
Ministry of External Affairs  
South Block  
New Delhi-110011.

20. Shri Daya Nand  
Under Secretary  
C/o PA-II Section  
Ministry of External Affairs  
South Block  
New Delhi-110011.

21. Shri B.S. Parwana  
Under Secretary  
C/o PA-II Section  
Ministry of External Affairs  
South Block, New Delhi-110011.

22. Shri P.S. Meena  
Section Officer  
C/o PB Section  
Ministry of External Affairs  
Akbar Bhawan  
New Delhi-110021.

...Respondents

(Service to the respondent nos. 2 to 22 to be effected through the respondent no. 1)

(By Advocates: Shri N.S. Mehta, for respondent No. 1 and Shri A.K. Behera for respondent nos. 14 & 16).

ORDER

By Smt. Shanta Shastri

The applicant has sought the following reliefs:

i) An order/direction by this Tribunal elaborating its direction dated 18.12.1995 in OA.No.566/95 to the respondent no.1 and to so

modify the seniority list of Section Officers dated 28.6.1994 as would meet the mandate of Rule 21(4) of the IFS(B)RCSP Rules, the ratio in the cases of G.S.Lamba, K.J.Francis, P.N.Tandon-II as directed in M.S.Rao & ors' case and to give the applicant seniority from the date of his appointment on 8.6.1983 in preference to his juniors, viz. the respondents nos.2-22;

ii) To give all consequential benefits of his correct seniority as Section Officer with effect from 8.6.1983 from the date his first junior was promoted to the grade of Under Secretary, with interest on the arrears.

2. The applicant belongs to the Indian Foreign Service Group 'B'. He was promoted as Section Officer against the reserved post for SC/ST in the Integrated Grades II & III of the aforesaid Service. His promotion however was subject to the final decision in WP.No.2635/80 in the case of Karam Singh & Ors Vs. UOI and 2 other WPs in the cases of G.S. Lamba Vs UOI (WP(C)Nos.13248-57/83) in the Hon'ble Supreme Court and P.N.Tandon Vs UOI (WP.No.565/74 transferred to the Tribunal as TA.129/85) in the Hon'ble Delhi High Court. The prayer in all these petitions was <sup>that</sup> the incumbents' seniority be determined on the principle of continuous officiation as the later appointees could not



score a march over the earlier ones. The decisions/judgements were pronounced in the case of G.S.Lamba (supra) on 23.3.1985 and in the case of P.N.Tandon on 21.11.1986.

3. In TA.No.129/85 in Tandon's case (supra) the Tribunal set aside the impugned seniority list of 1.8.1977 of the Assistants and had directed that the same should be redrawn on the basis of seniority based upon total length of service including continuous officiation irrespective of whether the same was ad hoc or temporary. This decision was accepted and was implemented. Accordingly, the seniority list of officers of Grade-IV (Assistants) of IFS(B) was issued on 18.5.1987. While issuing the Memorandum dated 18.5.1987 it was mentioned that the seniority list would be subject to the final decision in the case of Karam Singh (supra). Karam Singh's case was disposed of by the Hon'ble Supreme Court on 11.12.1987 observing that since the decision in TA.No.129/85 had been accepted and had been implemented, no direction in the WP for quashing the seniority list or redrawing the seniority list was necessary to be given. Thus the decision dated 21.11.1986 in TA.No.129/85 was re-affirmed by the Hon'ble Supreme Court. Accordingly, the seniority list of Assistants of 18.5.1987 became final. Thereafter the applicants in TA.No.129/85 again approached the

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Tribunal in OA.No.762/87 (P.N.Tandon-II) seeking the benefits of arrears of pay and promotion in respect of their seniority in Grade-IV of the IFS(B) in pursuance of judgement dated 21.11.1986. This OA was disposed of on 12.2.1988 giving directions in regard to consequential benefits. Keeping in view the directions, the respondents held review DPCs to consider Assistants for promotion as Section Officers as per the revised seniority list dated 18.5.1987. On 12.5.1988 a number of orders were issued. Thereafter a seniority list of officers of the Integrated Grades II & III (Section Officers) of the general cadre of the Indian Foreign Service Branch 'B' as on 15.9.1993 was circulated. In this order it was stated that placement of officers in this seniority list for the years 1970-80 and 1985-1991 is based on the principle of continuous officiation as stipulated in the Supreme Court's judgement in the case of G.S.Lamba(supra) as also the CAT's decision in the case of K.J.Francis & ors Vs UOI (OA.No.837/86 decided on 16.3.1993) and in consonance with Rule 21(4) of the IFS(B) RCSP Rules except for the beneficiaries of the judgement of CAT in TA.No.129/85 (P.N.Tandon & ors Vs UOI) and the judgement of the Supreme Court in WP.No.2635/80 (Karam Singh Vs UOI). The placement of officers for the years 1981-84 is in accordance with the Rule 25(1) of the IFS(B) RCSP

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Rules. It was further stated in the OM. dated 16.9.1993 that this seniority list would be further subject to the final decision of the courts in the cases of (a) SLP.No.11481/80 - UOI Vs Om Prakash (p.321 Annexure R-4); (b) OA.No.201/89 - M.S.Rao & ors Vs. UOI and (c) OA.No.2338/91 - M.P.Singh & ors Vs. UOI. Before this, one M.S.Rao & 4 others had filed OA.No.201/89 challenging order nos.1&2 dated 12.5.1988 on the ground that these orders did not flow from the judgement of this Tribunal in the two cases of Tandon decided on 21.11.1986 and 12.2.1986 and the judgement of the Supreme Court in the case of Karam Singh & ors decided on 11.12.1987. This OA was decided on 3.6.1994 with the directions to respondent to (i) recheck the dates of regular promotion as Section Officers of the applicants (direct recruit Assistants/promotee Section Officers) vis-a-vis the other promoted Assistants. (ii) It has to be ensured that May 1987 seniority list of Assistants is correctly followed, and (iii) While doing so, the guidelines given in the 2nd case of P.N.Tandon vide order dated 12.2.1988 had to be scrupulously followed. In pursuance of these directions in the OA.No.201/89, a revised seniority list of officers of the Integrated Grades II & III of the general cadre of the IFS Branch 'B' as on 28.6.1994 was circulated on the same date superseding the earlier seniority list

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for the years 1970-80 and 1985-91. It was repeated therein that the placement of officers in the seniority list for the years 1970-80 and 1985-91 is based on the principle of continuous officiation as stipulated in the Supreme Court judgement in the case of G.S.Lamba & ors Vs. UOI as also CAT's decision in the case of K.J.Francis & ors Vs.UOI and in consonance with Rule 21(4) of the IFS'B' RCSP Rules. Placement of officers for the years 1981-84 is in accordance with Rule 25(1) of the IFS'B' RCSP Rules. It was further stated that this seniority list is subject to the final decision in SLP.No.11481/80 - UOI Vs. Om Prakash & Ors and OA.No.2388/91 - M.P.Singh & ors Vs. UOI. In this seniority list of 28.6.1994, the applicant's seniority was pushed down to sl.no.769. Shri M.S.Rao and others who were earlier shown below the applicant are <sup>now</sup> shown above the applicant. So also respondents nos.2-22 have been shown above the applicant though earlier they were shown junior to the applicant. The applicant is aggrieved by the this depression of his seniority.

4. In the meantime, as soon as the decision in the case of M.S.Rao & ors (supra) was given on 3.6.1994, the applicant filed OA.No.566/95 praying that his case was fully covered by the order and judgement of the Tribunal in the case of M.S.Rao & ors (supra) and accordingly he



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should get the benefit. OA.No.566/95 was disposed of with a direction to the respondents to apply the directions contained in M.S.Rao's case (supra) to the applicant also and to take a final decision in the matter in accordance with law within a period of three months from the date of receipt of a copy of the judgement. Thereafter the applicant filed CP.No.272/96 alleging disobedience of this Tribunal's directions in OA.No.566/95. The CP was dismissed on 14.11.1996. However it was stated that the disposal of the petition will not stand in the way of the petitioner in seeking such original remedies as he may have. Thereafter the applicant kept on making representations on 9.12.1996, 18.12.1996 and 15.1.1997. His representations were rejected after examining them repeatedly in detail. Finally the respondents passed the impugned order dated 30.12.1996.

5. It is the contention of the applicant that in his case, Rule 21(4) of the IFS(B) (RCSP) Rules should have been applied and not Rule 25(1). According to the various judgements pronounced it is the date of continuous officiation which should be taken into consideration for the purpose of seniority and quota-rota rule should not have been made applicable only for <sup>the years</sup> 1981-84. The applicant

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belongs to the earlier selection/recruitment and therefore he should have been retained as senior to respondents nos.2-22, who belong to the later selection/recruitment. Rule 25 has no application unless the quota-rota rule is applied on year to year basis. The respondents instead, have clubbed the years from 1981-84 and have made the applicant junior. The applicant, has repeated that his case is fully covered by the order and judgement of the Tribunal in the case of M.S.Rao & Ors (supra). He argues that the action of the respondents in giving a different treatment to the block years 1981-84 than the one given to the incumbents of the years 1970-80 and 1985-89 is illegal and unlawful and is violative of the ratio of the judicial pronouncements in the cases of G.S.Lamba (supra) and K.J.Francis (supra). The respondents introduced the arbitrary distinction between the officers recruited/promoted from year to year by applying the quota-rota rule when the principle of continuous officiation had been followed for years prior to 1981-84 and for the subsequent years. Rule 25(1) which has been made applicable for the block 1981-84 can be applied only if there is year to year rotation. The applicant has also contended that the respondents have not observed the mandatory provisions of rules and instructions in respect of reservations for SC/ST.

6. The respondents in the counter reply, have <sup>h</sup>assured that they have followed the directions of the Hon'ble Tribunal in OA.No.566/95. They have faithfully rechecked the seniority of the applicant but found no anomaly in the seniority assigned to the applicant. The applicant did not provide any instance of anomaly wherein an Assistant junior to him in the seniority list of 1987 has been promoted earlier to him by Departmental promotion. While acknowledging that the applicant was promoted against a reserved vacancy, the respondents have submitted that the rosters are intended to be an aid to determining the number of vacancies to be reserved. They are not meant to be used for determining the order of appointment or seniority. The respondents have also raised the plea of limitation and res-judicata. According to them, the applicant is basically challenging the seniority of 28.6.1994 whereas he has filed the OA in 1997. The applicant has not raised any new point other than what was prayed for in OA.566/95.

7. 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

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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 the IFS(B) Rules cannot be implemented in isolation. It has to be implemented in consonance with Rule 25(1) (ii) of the IFS(B) RCSP Rules. As such, no relief can be granted to the applicant.

8. Respondents nos.14 & 16 have also filed counter reply. The learned counsel on behalf of respondent nos.14 & 16 has refuted the contentions of the applicant and has drawn our attention to the judgement in the case <sup>of</sup> M.P.Singh & Ors Vs UOI in OA.No.2338/91 which has not been mentioned by the applicant though it is the latest judgement on seniority of Section Officers in the Ministry of External Affairs and is in the knowledge of the applicant. Some of the respondents like respondent no.2 is no longer alive. Respondent no.7 is retiring and reason nos.18 and 21 have already retired on 31.12.1995 and 31.1.1997 respectively. These respondents may not be in a position to defend themselves. The judgement in the case of M.P.Singh (supra) was delivered on 9.2.1996. This judgement upheld the orders issued on 12.5.1988. The OA was dismissed. The applicant in the present OA had

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filed Review Application No.52/96. That was also rejected vide order dated 9.10.1996. In both cases of M.S. Rao & ors (OA.No.201) and M.P.Singh & Ors OA.No.2338/91 the applicants were direct recruit Assistants and departmentally promoted Section Officers and are similarly placed as applicant himself is so far as reckoning of seniority as Section Officer is concerned. In the seniority list of 1993, S/Shri M.S.Rao, D.V.Chopra, Bhupender Singh, H.R.Arya were shown as juniors to the applicant. However, after the implementation of the judgement in M.S.Rao's case a fresh seniority list was issued on 28.6.1994 showing them as senior to the applicant. The applicant never made a grievance of his seniority against the orders dated 16.9.1993.

9. We have heard both the learned counsel for the applicant as well as the Government counsel and the counsel for private respondents nos.14 & 16 and have given careful consideration to the arguments advanced and the pleadings.

10. The applicant has claimed relief on the basis of the judgement in the case of M.S.Rao & ors (supra) and according to Rule 21(4) of the IFS'B' RSCP Rules. It is, therefore, desirable to look into the provisions of the Rules. Rule 21 relates to the general provision of fixation

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of seniority. Under sub-rule 4 of Rule 21 it has been provided that 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. Rule 25 provides for inter se seniority amongst the officers appointed to the Grade from different sources, i.e. (a) by promotion on the basis of a panel drawn by a duly constituted Departmental Promotion Committee; (b) by promotion on the basis of limited competitive examination; (c) by direct recruitment on the results of competitive examination held by the Commission. The seniority has to be determined according to the rotation of vacancies amongst these three categories in the order indicated above based on the quotas of vacancies. The applicant's seniority has therefore been fixed according to Rule 25(1).

11. In the present case, the applicant was promoted departmentally. He was not an ad hoc promotee on continuous officiation. The applicant's seniority, therefore, has to be reckoned with reference to the seniority of those who were promoted departmentally vis-a-vis those who were recruited directly and those who were promoted through limited departmental examination as per their respective quotas. Since Rule 21(4)

is only a general provision providing a guideline and Rule 25(1)(ii) ~~which~~ is specific, the respondents have followed Rule 25(1)(ii) as the rota-quota rule was implemented for the block period of 1981-84. Both the provisions have to be read harmoniously. As there was no violation of the rota-quota during 1981-84, the respondents have rightly applied Rule 25. It has not been struck down in any of the judgements. We have already discussed the various judgements cited by the applicant. We are concerned in this case specifically with the judgement in the case of M.S.Rao & ors (supra) on the basis of which the applicant is claiming relief. The respondents have from time to time acted in pursuance of the aforesaid judgements and they cannot be faulted. The judgement in the case of M.S.Rao & ors. has also taken into consideration the other judgements in the case of G.S.Lamba, K.J.Francis, P.N.Tandaon as well as Karam Singh on which the applicant is relying. Therefore, it should suffice to focus on the decision given in M.S.Rao's case. It has to be noted that the court gave the relief to the applicant in OA.566/95 by directing the respondents to recheck his seniority in the light of the directions given in M.R.Rao's case. The respondents did comply with this direction but found that there was nothing wrong with the seniority assigned to the applicant. The applicant's contempt petition

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was also dismissed. The applicant only prolonged the matter by making representations and filing the present OA. Since the Tribunal itself had directed the applicant to go in to seek other remedies available, we do not hold the plea of limitation against the applicant. The applicant has not raised any new points in this OA except to harp on the fact that the respondents have not cared to apply their mind to the various judgements cited and the guidelines given in M.R.Rao's case (supra). It is to be seen that the applicant was shown as senior to M.S.Rao & ors in the seniority list of 16.8.1993. However in the seniority list of 28.6.1994 issued in pursuance of the judgement in M.S. Rao's case, M.S.Rao and others have stolen a march over the applicant. The applicant has not challenged the upward revision of seniority of M.S.Rao who was earlier junior to him in the seniority list of 16.8.1993 but he has challenged the seniority of other respondents nos.2-22 who according to him are juniors to him. In a way the applicant does not appear to have any grievance against the upward revision of M.S.Rao who was earlier shown junior to him.

12. We find that the applicant's case had been thoroughly examined in the OA.566/95 wherein the respondents had countered the various points

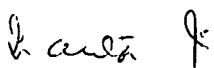


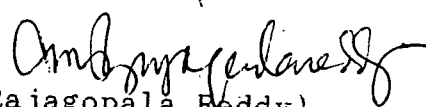
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raised by the applicant. They also followed the directions given in the OA.No.566/95 scrupulously.

13. The respondents have averred that the applicant's seniority has been rightly fixed even after applying the directions given in the case of M.S.Rao & ors. It is not for us to dispute the facts. Moreover, the applicant also filed a review petition against the judgement given in M.P.Singh's case (supra). The same was also dismissed. The applicant has not advanced any new grounds or arguments. His original seniority as Assistant on 18.5.1987 has not been disturbed at all. His seniority has been depressed because of the implementation of various judgements including the judgement in the case of M.S.Rao & ors and because of the rota-quota rule followed as per Rule 25(1) of the IFS'B' Rules. We, therefore, find no substance in the arguments advanced by the applicant nor do we consider it necessary to interfere with the seniority list of 28.6.1994.

14. The OA is, therefore, dismissed as devoid of merit. We do not order any costs.

  
(Smt. Shanta Shastry)  
Member(A)

  
(V. Rajagopala Reddy)  
Vice Chairman(J)

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