

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 1651/1989

New Delhi this the 6th May 1994

The Hon'ble Mr. J.P. Sharma, Member (J)

The Hon'ble Mr. S.R. Adige, Member (A)

Shri S.R. Dhawan,
Son of Shri Jitlal Dhawan,
Second Secretary,
Embassy of India,
Tunis,
C/o Ministry of External Affairs,
South Block, New Delhi-110 011. Applicant
(By Advocate : Shri D.C. Vohra)

Versus

1. Union of India
through the Foreign Secretary,
Government of India,
Ministry of External Affairs,
South Block,
New Delhi-110 011.

2. Embassy of India in Tunis,
Through the Head of Chancery,
C/o Ministry of External Affairs,
South Block,
New Delhi-110 011.

3. Shri M.S. Grover,
Under Secretary (Cadre),
Ministry of External Affairs,
South Block,
New Delhi-110 011.

4. Shrimati M. Subhashini,
Under Secretary (FD),
Ministry of External Affairs,
South Block,
New Delhi-110 011.

.... Respondents

(By Advocate: Shri N.S. Mehta)

O R D E R

Hon'ble Member Shri J.P. Sharma, Member (J)

The applicant was promoted to the rank of Under Secretary of Grade I of the General Cadre of the Indian Foreign Service (B) on 22.12.1987. By the Order dated 6.7.1989 in supersession of the order of 22.12.1987, a corrigendum dated 2.3.1988 and 1.7.1988, the name of the applicant was deleted

from the list approved for officiating promotion to Grade I of the General Cadre of IFS(B) and the name of Smt. M. Subhashini was substituted in his place. The grievance of the applicant is that the deletion of his name from the list of names approved for Grade of General Cadre of IFS(B) has been wrongly done as he has already been promoted since 17.6.1988 as Under Secretary and was functioning in the same substantive rank of Second Secretary in the Embassy of India at Tunis. The applicant made a representation on July 28, 1989 and thereafter filed this application in August 1989 for the following reliefs:

1. An order by this Hon'ble Tribunal quashing/revoking/setting aside the following orders as show the name of Respondent No. 4 taking seniority from 1.7.1989 instead of the date of continuous officiation in terms of the Hon'ble Supreme Court Judgement in the case of G.S. Lamba & Ors. V. Union of India.
 - (a) Interpolated seniority list dated 20.5.1989 (S.Nos. 15 & 26).
 - (b) Order dated 6.7.1989 inserting the name of the Respondent No. 4 at S.No. 23 vice the applicant;
2. A declaration that the Select List of Officers of the Integrated Grades II and III of the General Cadre of IFS(B) as drawn on 22.12.1987 should remain in tact and the position of the applicant in the Select List should not be disturbed unless permitted by the IFS(B)-RCSP Rules 1964 and the Indian Foreign Service Branch 'B' (Promotion to Grade I) Regulations 1976.

3. A notice was issued to the respondents who contested the application. It is stated in the reply that the applicant did not possess the approved service of 8 years in the Integrated Grade II and III of the General Cadre of IFS(B) as on 1.7.1987, which is the pre-requisite condition for consideration for promotion to Grade I under Rule 12(2), of IFS(B) RCSP Rules 1964. The promotion of the applicant to the Grade I was made erroneously in the 1987 panel of Grade I. On detection of the irregularity, a review of the panel was done and the result thereof, the applicant's name was removed from the list of eligible persons by the Review OPC chaired by a Member of the Union Public Service Commission in June 1989. The criterion for counting of the approved service in the Integrated Grades II and III for promotion to the Grade I is laid down in Note 2 below sub-rule 3 of Rule 12 of the Rules of 1964. It states that the approved service for the purpose of this Rule shall count from the first July of the year in which the name of the officers are included in the Select List. In the case of Direct Recruit from the Integrated Grade II and III of the General Cadre such service shall count from the first July of the year following the year of competitive examination. The applicant was promoted to the Integrated Grades II and III in the 1980 panel. His approved service, therefore, should have been taken from 1.7.1980. The applicant had, therefore, rendered 7 years of approved service as on 1.7.1987 and was not eligible for consideration for promotion to the Grade I in the 1987 panel. As regards

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Smt. M. Subhashini she is a direct recruit Section Officer from 1987 examination. Her approved service for the purpose of promotion to the Grade I is to be reckoned from 1.7.1979 though she is junior to the applicant in the seniority list of the officers of the Integrated Grades II and III drawn on the basis of continuous officiation on the basis of the directions in the case of G.S. Lamba and ors Vs. Union of India, yet she is eligible for promotion to Grade I as she has rendered 8 years of approved service in the Integrated Grade II and III as on 1.7.1987. In view of the above facts, it is stated by the respondents that the applicant is not entitled to any relief. The respondents have also annexed a copy of the relevant rules alongwith the reply.

4. The applicant has also filed rejoinder stating that the action of the respondents of deleting the name of the applicant from the select panel of 1987 is against the principles laid down under Article 311 (2) of the Constitution and the CCS(CCA) Rules 1965. The applicant has also referred to the Regulation 5(c) of the Indian IFS(B) Promotion to Grade I Regulation 1975 where it is laid down that the name of such categories of approved candidates shall ^{not} be removed from the select list which are mentioned therein Serial No. I to Serial No. V. It is further stated that by the time the promotion was made the applicant has completed full 8 years of service and his promotion cannot be termed as erroneous.

5. We have heard the learned counsel of the parties at length and perused the record. During the course of the arguments it appears that the applicant has since retired on 31.3.1991 by an interim direction issued to the respondents on 12.9.1989 it was directed

that the status quo on the post of Under Secretary regarding the applicant shall be maintained which shall be subject to the outcome of this O.A. During the course of the hearing the learned counsel for the applicant has also placed on record a decision given in the case of K.J. Francis and Others Vs. Union of India passed in O.A. No. 837 of 1986 by the Principal Bench, CAT, New Delhi on 16.3.1993 by which the respondents were directed to ^{draw} ~~case~~ the seniority list on the decision of the case of Shri G.S. Lamba's case. The scheme of the rule lays down that there are 3 feeder channels with direct recruits, promotees and those who are selected by limited departmental examination, it is the continuous officiation, which should have been the decisive fact of determining the seniority. Since the applicant has already been retired he has not to gain any benefit or set back because of the interim direction issued he continued on the post of Under Secretary in the IFS(O) Grade I and normally the terminal benefits are given on the basis of the pay last drawn. Regarding the merits of the case it is evident that the applicant could not have been empanelled in 1987. The applicant was promoted to the Integrated Grade II and III in the 1980 panel. He has not completed 8 years of approved service for the purpose of promotion to the Grade I in which case his approved service should be taken into account with effect from 1.7.1980. In 1987 he has completed only 7 years of service and he was not eligible for consideration ~~or~~ for promotion to the Grade I but his name was wrongly included in the panel vide that of Smt. M. Subhashini who entered as direct recruits Section Officer from 1978 examination has to be reckoned

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for regular service with effect from 1.7.1979 she was ignored and therefore by the review DPC she has been included in the panel of 1987. In view of this fact the applicant has no case to be placed in the panel of the 1987. However, the respondents have included the applicant in the panel of July 1980 before his retirement. The respondents have also prepared the revised seniority list circulated by the Memo dated 19.2.1991. The name of the applicant was shown as regular appointee in Grade I with effect from 31.5.1990. Thus, the applicant is entitled to all benefits of the post of Grade I at the time of his retirement. Regarding the period of his working as Under Secretary in Grade I of IFS(B) with effect from 17.6.1988 he continued to work on the post on the interim direction issued by the Tribunal as said above till his regular empanelment by the OM dated 9.7.1990, he cannot be reverted from Grade I though he was not eligible for empanelment in the year 1987.

6. In view of this fact nothing survives in this original application as the applicant has been partly granted the relief by the Interim Direction issued by this Tribunal in September 1988 and later on by the Administrative order by OM dated 9.7.1990. The applicant has since retired on 31.3.1991, and he has also been assigned seniority by the memo dated 19.2.1991. The application, is therefore disposed of as infructuous leaving the parties to bear their own costs.

Adige
(S.R. Adige)
Member(A)

Sharma
(J.P. Sharma)
Member(J)

Mittal