

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 701/88

DATE OF DECISION: 2.3.1990.

SHRI J.P. SHARMA

APPLICANT

SHRI J.P. SINGH

ADVOCATE FOR THE APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

SHRI P.P. KHURANA

ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the judgement? *yes*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal *no*

J U D G E M E N T

(Of the Bench delivered by the Hon'ble Mr. I.K. Rasgotra, Member(A))

Shri J.P. Sharma, applicant filed OA No. 701/88 under section 19 of the Administrative Tribunals Act, 1985 against his nomination to Central Secretariat Stenographers Service (CSSS) instead of to the Ministry of External Affairs (MEA), Indian Foreign Service Grade B (IFS Gr.B). This matter was the subject in the judgement pronounced on 11.5.1989 by a bench in which one of us (T. S. Oberoi) was a party. The position that emerged was that the applicant was No. 27 in the order of merit

in the list of 250 successful candidates and his first preference for appointment was in IFS(B), MEA. The Ministry of External Affairs had reported 27 vacancies in IFS(B) which included 21 general, 4 scheduled castes and 2 scheduled tribes. As there were no scheduled tribe candidates available, the two ST vacancies were added to 21 general vacancies. The applicant was therefore covered by the vacancies available in the IFS Gr-B in accordance with his preference and rank in the merit list. However, after nomination it came to notice that one Shri B.K. Anand who was nominated earlier to the Ministry of Civil Supplies had also given his first option for the IFS 'B'. This mistake was remedied and subsequently the applicant was offered Central Secretariat Stenographers Service. This position was confirmed by the Tribunal in the said judgment after perusal of the records.

2. The applicant filed an MP after the above judgement was pronounced stating that one of the candidates who had been nominated to the IFS Gr.B, MEA has expired and the respondents may therefore be directed to adjust him in that vacancy. The respondents however contended that a nomination once made is not changed unless there is any bonafide mistake. Further, if after making such nomination any vacancy occurs for any reason, including the reason of death, the vacancy is carried forward to the next year and filled on the basis of the result of the subsequent examination. The application was, therefore, rejected by the Tribunal.

3. MP No.1163/89 in OA No.701/88 was filed by the

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The Ld. Counsel for the applicant submitted that Rule 6(B) of the said examination provided for the age relaxation for departmental candidate which was availed by Km. Inderjit Kaur for appearing in the examination. The note(i) under the said rule reads as under:

"The candidature of a person who is admitted to the examination under the age concession mentioned in Rule 6(B) above shall be cancelled if after submitting his application he resigns from service or his services are terminated by his department either before or after taking the examination. He will, however, continue to be eligible if he is retrenched from the service or post after submitting his application."

It is therefore obvious that Miss. Inderjit Kaur's candidature became invalid on the date her resignation was accepted on 16.1.1987. In this view of the matter the candidature of Km. Inderjit Kaur, rank 17 should have been cancelled immediately after her resignation was accepted. This was a patent error and mistake committed by the respondents and had this been remedied, the applicant, would have received the offer of appointment for his first preference in IFS(B).

The plea of the respondents that this could not be done as neither the DOP nor the UPSC were aware of this development was of no consequence as it was the duty of the respondents to ensure coordination between the various Departments of the Government.

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petitioner praying for setting aside the Tribunal's judgement dated 11.5.1989 passed on merit in the absence of the applicant. Having regard to the circumstances brought the Tribunal vide judgement dated 27.11.1989, allowed the said RA/MP. The case was ordered to be listed for final hearing and was heard on 11.1.1990, 12.1.1990, 21.2.1990. In the meantime, MP No. 210/90 was filed by the misc. petitioner (applicant) filing some documents which had been referred to in the original application and submitted that Km. Inderjit Kaur, one of the candidates nominated to MEA (IFS Gr.B), was a departmental candidate and that she had submitted her resignation on 9.1.1987. which had become effective after acceptance on 16.1.1987 (AN). The petitioner prayed that the documents may be taken on record .

4. In their written statement dated 21.2.1990 in reply to the MP, the respondents have accepted that the resignation of Km. Inderjit Kaur was accepted on 16.1.1987. However, this was done by the Director General of Inspection, Customs and Central Excise (where she was working) and neither the Department of Personnel & Training nor the Union Public Service Commission were aware of this development. The respondents also submitted that the offer made for appointment lapses after a period of 9 months from the date of appointment and with the efflux of time the offer of appointment made by the Department of Science and Technology, to the applicant lapsed in December, 1988. The mere pendency of the OA would not keep the offer alive.

We have heard the Ld. Counsel of both the parties and gone through the records carefully. We feel that litigation in this case was avoidable and had taken place as a result of two mistakes.

- (i) Shri B.K. Anand was not given his first preference which was remedied later. This remedial action however affected the applicant adversely;
- (ii) Km. Inderjit Kaur had resigned from service on 9.1.1987 which was accepted by the competent authority on 16.1.1987. Being a departmental candidate, her candidature should therefore have been cancelled much before the process of nominating the candidates to various services started.

It however appears that there was delay in communication of information between the Customs & Excise Department and the Department of Personnel and MEA. Be that as it may, since the applicant has been denied his first preference on account of a patent error in not disqualifying Km. Inderjit Kaur, we have no hesitation in allowing the application. Accordingly, we order and direct that the applicant should be offered an appointment^{ment} in IFS (B) within 8 weeks from the date of communication of this order, based on the result of the Stenographers Examination, 1986. He should be placed below his batch for the purpose of seniority as in any case he was the last person to be nominated for the

vacancies which were reckoned for the 1986 examination. His salary and allowances etc,. however will become payable to him from the date he joins the service. There will be no orders as to the costs.

I.K. Rasgotra
(I.K. Rasgotra)

Member (A) 2/3/90

T.S. Oberoi
2/3/90
(T.S. Oberoi)

Member (J)