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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

OA 979 of 1988

Decided on 6-4-90

S.K.Chhibbar & others Applicants

versus

Union of India through Secretary,
Ministry of External Affairs,
South Block, New Delhi..

For the applicants - Mr. R.K.Kamal, Advocate
For the respondents - Mr. N.S.Mehta, Advocate

B.S.SEKHON:

The factual conspectus necessary to be noticed for adjudication of the instant Application lies within a short compass. In the landmark case of G.S.Lamba and others vs. Union of India and others, the Supreme Court quashed the impugned seniority list of the members of the Indian Foreign Service Branch 'B'. The petitioners who were members of the Service belonging to Integrated Grade II and III in the General Cadre of IFS 'B' had impugned the seniority list. The Union of India was directed to draw up fresh seniority list in the light of the observations made in the judgment within a period of three months. It was also ruled that all promotions granted since the filing of the petitions are subject to the aforesaid decision and they must be readjusted to be brought in consonance with the judgment. Revised

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seniority list of IFS 'B' Cadre was prepared in implementation of the judgement of the Supreme Court in G.S.Lamba(supra). In the revised seniority list, applicants herein were accorded higher seniority and on the basis thereof were promoted to officiate in Grade I of the General Cadre of IFS 'B'. By virtue of the impugned order dated 13th May, 1986 (Annexure A-3), promotions to the applicants to Grade I were accorded with effect from 28th December, 1984. However, the financial benefits were stated to be admissible from the date the officer concerned actually discharged the duties of promoted post i.e. 16th April, 1986. Vide order dated 24th June, 1986 (Annexure A-5), the financial benefits were stated to be admissible with effect from 15th January, 1986, even though the applicants have, admittedly, assumed the charge of the promoted post w.e.f. 28th December, 1984. As per the Corrigendum issued vide impugned order dated 27th April, 1988 (Annexure A-1) the recoveries of pay and allowances from the officers whose pay fixation was done from 15-1-86 was also directed to be made. Promotions on the basis of the revised Select List were made subject to the decision of the Supreme Court in the following cases:-

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- i) SLP No. 11481/80 - Union of India vs. Shri Om Prakash and others.
- ii) Writ Petition No. 8060 of 1981 - Shri M.P. Garg & others vs. Union of India.
- iii) Writ Petition No. C.W. 675/78 - Shri Balram Phul & others vs. Union of India.
- iv) Writ Petition No. 2365 of 1980 - Shri Karam Singh and others vs. Union of India.

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The grievance agitated by the applicants is regarding denial of the financial benefits of the promoted post with effect from 28th December, 1984 as also against the decision for making recoveries for the period 15-1-86 to 15-4-86. According to the applicants, the action of the respondents and the impugned order are violative of the operative portion of the judgment in G.S.Lamba(supra), of Articles 14 & 16 of the Constitution and the decision of the Tribunal in Shri P.N.Tandon & another vs. Union of India & others². Applicants have also averred that on the basis of FR 17(1) and equity, fairness and justice, they are entitled to the financial benefits from 28th Dec., 1984. Applicants have prayed for quashing of the impugned orders dated 16-4-86, 13-5-86 and 8-4-88 to the extent the aforesaid orders grant financial benefits to them with effect from 15-1-86 and not from 28th December, 1984. Applicants have further prayed for quashing the impugned order dated 27-4-88 (Annexure A-1) to the extent the same grants financial benefits to the applicants with effect from 16-4-86 and orders recoveries of pay and allowances for the period 15-1-86 to 15-4-86, as also for a direction to the respondents to grant financial benefits to them for Grade I of IFS 'B' General Cadre with effect from 28th December, 1984.

2. Respondents have contested the Application, inter-alia, on the grounds that the applicants cannot get pay of an Under Secretary unless they started to work in the said post which was w.e.f. 16-4-86. on the

2. ATLT 1988(1) CAT 295.

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basis of the principle 'no work - no pay' and on the basis of the Govt. of India decision contained in OM 200011/1/77-Estt(D) dated 19-4-78 given under FR 27 and the provisions of FR 17. The financial benefits were stated to have been ^{erroneously} allowed to the applicants vide order dated 24-6-86 with effect from 15-1-86, which ^{order} was rectified vide order dated 27-4-88. Refuting the allegations about the violation of Articles 14 and 16 of the Constitution and the operative portion of the judgment in G.S.Lamba(supra), respondents have averred that the decision of the Tribunal in P.N.Tandon's case is on different facts and circumstances and is not applicable to the instant case. Respondents have further averred that no discrimination has been meted out to the applicants and the equity and fairness warrant that the benefits should be enjoyed only after the commensurate responsibilities have been shouldered and obligations discharged.

3. We have heard the arguments addressed by the learned counsel for the parties and have given our anxious and earnest consideration to the matter.

4. During the course of arguments, the learned counsel for the applicants submitted that applicants' case is squarely covered by the decision of the Principal Bench in P.N.Tandon and others vs. Union of India and others (ATLT 1988(1) CAT 295) ; and that the denial of financial benefits to the applicants would not only be discriminatory, but would also be inequitable, unjust and unfair. According to the learned counsel, the denial of financial benefits

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from the date the applicants have been promoted i.e. w.e.f. 28th December, 1984 would not be proper implementation of the judgment of the Apex Court in G.S.Lamba (supra); and that the claim of the applicants is supported by the decision of the Supreme Court in Dr. Y.P.Gupta vs. Union of India & others 1985(3)SLR 55 and of the Tribunal in P.N. Tandon (supra). The learned counsel for the respondents countered by submitting that the Application is barred by the principles of constructive resjudicata as also by virtue of Order II, Rule 2 of the Code of Civil Procedure (for short 'the Code'). The learned counsel added that decision in P.N.Tandon (supra) is not applicable as the aforesaid case was decided on its own facts and circumstances which are distinguishable from xxxxxxxx those of the present case.

5. Although the respondents have not raised the plea of constructive resjudicata as also the bar of Order II, Rule 2 of the Code in the counter, yet these being legal pleas, we are entertaining the same. The same are dealt with in the succeeding paragraph.

6. The learned counsel elaborated the aforesaid pleas by submitting that the applicants were also petitioners in the writ petition decided in G.S.Lamba (supra) and ^{as} they did not claim the consequential benefits of arrears and salary; they are estopped from agitating this claim on the basis of the principles of constructive resjudicata and in view of the bar of Order II, Rule 2 of the Code. In support of his submission, the learned counsel also placed reliance on the decision of the Principal Bench dated 8-7-88 in QA 334 of 1986 entitled "Shri D.N.Srivastava vs. Union of India and another". The learned counsel for the applicants met the aforesaid attack by submitting that the cause of action to the applicants

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arose only when the impugned orders were made and that in view thereof the question of applicants claiming this relief in G.S.Lamba(supra) did not arise. The real grievance of the applicants which they seek to get redressed in this case is regarding the denial of financial benefits from the date they were accorded promotions i.e. with effect from 28-12-84. The cause of action for this grievance arose only as and when the impugned orders denying the applicants financial benefits for the period commencing from 28th December, 1984 were made as also on the date the recoveries of pay and allowances for the period 15-1-86 to 15-4-86 were ordered to be made. In view thereof, the question of applicants including this claim in the writ petition filed in the Apex Court simply does not arise. Likewise, principle of constructive resjudicata would not come in the way of the applicants as it cannot be said that the applicants might and/or ought to have claimed this relief in the writ petition. In this connection it will be apposite to point out that the right to claim financial benefits arose to the applicants only on the assignment of higher seniority and the resultant promotion to Grade I of IFS 'B' on the basis of the revised seniority. The question of claiming the financial benefits prior to their promotion on the basis of revised seniority could not conceivably arise at the time of filing the writ petition by the applicants. As regards the decision of the Principal Bench in Shri D.N.Srivastava(supra), relied upon by the learned counsel for the respondents, suffice it to point out that the question agitated by the petitioner in the said case was far different and was held to be barred

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by the principles of constructive resjudicata. We may state that the question agitated by Shri Srivastava who was one of the respondents in G.S.Lamba's case was regarding the legality and validity of the seniority list dated 21st June, 1985. The case of Shri Srivastava precisely was that although he was a confirmed officer, ^{yet} he had been placed junior to the promotees who were made permanent against the substantive posts much after his confirmation in the impugned seniority list in utter violation of Rule 21(5) of the Recruitment Rules. Recruitment of temporary officers in the grade is governed by Rule 13(1)(iii) and not by Rule 13(1)(a) and that Rule 25(1)(ii) governed fixation of inter-se seniority in the cadre of directly recruited officers with substantively appointed select list officers and not temporary officers in the grade. He had also pleaded that Rule 13(1)(b) was not at all considered by the Supreme Court in G.S.Lamba's case as it was not germane to the point in issue before the Supreme Court. The learned Vice Chairman who delivered the final judgment on account of disagreement between the two Members constituting the Bench, held that it would amount to ^{an} abuse of process of the court to allow new proceedings to be started in respect of the matters which could have been well agitated in the previous litigation; and that the Application is barred by the principles of constructive resjudicata. As already stated hereinabove, the cause of action in the instant case had arisen long after the decision of the Supreme Court in G.S.Lamba (supra). In view thereof,

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it would not be correct to say that the applicants could have agitated their grievance in respect of the subsequent cause of action in the writ petition decided by the Supreme Court. Shri Srivastava's decision is thus of little avail to the applicants. The plea of the respondents about the Application being barred by the principles of constructive resjudicata or on the basis of the provisions of Order II, Rule 2 of the Code is, therefore, hereby negatived.

6. We need not dilate upon the merits as the matter stands squarely covered by the decision of the Principal Bench in P.N.Tandon(supra). In P.N.Tandon's case decided by the Principal Bench, respondents were directed to give arrears of pay and allowances with retrospective effect to the applicants therein i.e. promotees Section Officers. In that case also the respondents had revised the seniority list on the basis of the dicta of the Supreme Court in G.S.Lamba (supra) and Narender Chadha, who had been granted consequential benefits from the date their juniors were promoted. The reasoning and the ratio of the aforesaid decision applies squarely to this case. Even though applicants's case of promotion is to the post of Under Secretary, there is hardly any distinguishing feature between the two cases except the difference in rank. We have been given to understand that the judgment in P.N.Tandon has not only attained finality but has also been implemented. That being so, it would be wholly inequitable, unjust and unfair ^{not} to extend the same benefits to another

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class of officers. In any case, being a Bench of coordinate jurisdiction, we respectfully agree with the decision in P.N.Tandon(supra). In line with the aforesaid decision, we hereby quash the impugned orders dated ^{27-4-88(Annexure A-1)} 8-4-88(Annexure A-2), 13-5-86(Annexure A-3) and 16-4-86(Annexure A-4) to the extent they deny the consequential benefits to the applicants to the post of Under Secretary for the period 28th December 84 till 15th April, 1986 and direct recoveries of the financial benefits for the period 15-1-86 to 15-4-86. The respondents are directed to grant arrears of pay and allowances of the post of Under Secretary to the applicants with effect from 28-12-84. Respondents are directed to comply with the directions given hereinabove within a period of two months from today. In the circumstances no order is made as to costs.

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6/5/1990
(P.C.Jain)
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B.S. Sekhon
(B.S. Sekhon)
VC.

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