

In the Central Administrative Tribunal
Principal Bench, New Delhi. 5

Regn. Nos.:

Date: 16.11.1990.

1. OA-1173/88

Shri T.S. Bhatia Applicant

Versus

Union of India through Respondents
Secy., Miny. of External
Affairs & Another

2. OA-1785/90

Shri T.S. Bhatia Applicant

Versus

Union of India through Respondents
Secy., Miny. of External
Affairs.

For the Applicant Shri R.K. Kamal, Advocate

For the Respondents Shri M.L. Verma, Advocate

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to
see the Judgement? Yes

2. To be referred to the Reporter or not? No

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

As common questions have been raised in these two
applications filed by the applicant, who is working as a
Section Officer in the Ministry of External Affairs, it
is proposed to deal with them in a common judgement.

2. The prayer contained in OA-1173/88 is that the
respondents be directed to treat the applicant as belonging
to the permanent strength of the Ministry of External
Affairs w.e.f. 1.6.1976. He has also prayed for quashing
the impugned order dated 15.6.1988, whereby the respondents
have sought to relieve him from the Ministry of External
Affairs on 30.6.1988.

3. OA-1173/88 was filed in the Tribunal on 20.6.1988. On the same day, the Tribunal passed an ad-interim order to the effect that status quo as regards the continuance of the applicant as Section Officer in the Ministry of External Affairs be maintained. The interim order was made absolute on 4.7.1988.

4. The relief sought in OA-1785/90 is that the respondents be directed to include the name of the applicant in the eligibility list for consideration for promotion to the post of Under Secretary in the Ministry of External Affairs.

5. OA-1785/90 was filed in the Tribunal on 29.8.1990. On 4.9.1990, the Tribunal passed an ad-interim order to the effect that in case any D.P.C. for promotion to the post of Under Secretary is going to be held, the suitability of the applicant for the post of Under Secretary, should also be considered provisionally subject to the outcome of the present application.

6. The facts of the case in brief are as follows. The applicant initially joined the Ministry of Finance (Dept. of Expenditure) as a Lower Division Clerk in February, 1960. He was promoted as Assistant as a result of the competitive examination held by the U.P.S.C. in 1973. He continued to work as Assistant in the Ministry of Finance (Department of Expenditure) upto 1976.

7. Consequent upon the introduction of the scheme of 'Integrated Financial Advisers', the Ministry of Finance (Department of Expenditure) transferred one temporary post of Joint Secretary and 26 permanent posts of various categories, including six posts of Assistants, to the Ministry of External Affairs w.e.f. 1.6.1976. It was simultaneously decided to abolish one temporary post of Director, one permanent post of Stenographer and one permanent post of Peon in the Department.

of Expenditure w.e.f. the same date (vide Annexure A-1 to OA-1173/88, pages 9-10 of the paper-book).

8. On 2.6.1976, the Ministry of Finance (Department of Expenditure) issued an office order whereby the services of 27 members of staff, including that of the applicant, were placed at the disposal of the Ministry of External Affairs w.e.f. 1.6.1976 (vide Annexure A-2 in OA-1173/88, page 11 of the paper-book).

9. On 21.6.1976, the Ministry of External Affairs issued an Office Memorandum with reference to the letter of the Ministry of Finance dated 2.6.1976 mentioned above, whereby they conveyed the sanction of the President to the inclusion of 27 posts in the sanctioned strength of that Ministry. The O.M. further stated that the officers and staff shown against each of the respective posts on their transfer from the Ministry of Finance on 1.6.1976 on introduction of the 'Integrated Finance Scheme' "will be on deputation to the Ministry of External Affairs until further orders and no deputation allowance is admissible". (Vide Annexure A-3 in OA-1173/88, pages 12-13 of the paper-book). The name of the applicant, who was working as an Assistant, figures in the list of staff so deputed to the Ministry of External Affairs w.e.f. 1.6.1976.

10. On 8.2.1978, the Ministry of Finance (Dept. of Expenditure) issued an Office Memorandum relating to the transfer on a permanent basis of staff pursuant to the 'Integrated Financial Advisers' scheme. As the said Office Memorandum is the sheet-anchor of the case of the applicant, it is reproduced as under:-

"The undersigned is directed to refer to para. 5 of this Ministry O.M. No.10(29)-E(Coord)/73 dated the 6th October, 1975, on the above subject, and to say that in accordance with the provisions of the Integrated Financial Advisers Scheme, as approved by Cabinet, members of the decentralised cadres of

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various Grades of Central Secretariat Service/Central Secretariat Clerical Service/Central Secretariat Stenographers' Service were transferred on loan basis from the Finance Cadre to the cadres of the various administrative Ministries/Departments as a purely temporary measure. The question of formation of a separate Finance Cadre for such staff has been considered but such a Cadre has not been found practicable. Accordingly, it has been decided in consultation with the Department of Personnel and Administrative Reforms that the members of the decentralised cadres of various Grades of Central Secretariat Service/Central Secretariat Clerical Service/Central Secretariat Stenographers' Service, presently borne on the Cadre of the Ministry of Finance and working on temporary loan basis in the Integrated Finance Divisions of the various Departments/Ministries should, be treated as having been transferred on a permanent basis to the cadres of the respective Departments/Ministries, with effect from the 1st February, 1978.

2. Since the transfer of these persons from the Finance Cadre to the cadres of the various Ministries/Departments is being effected in public interest, the seniority etc. of the transferred staff will be regulated in accordance with the Central Secretariat Service (Seniority of Transferred Officers) Regulations, 1963, as amended from time to time, and will not be affected adversely in any way."

(Vide Annexure A-4 in OA-1173/88, page 14 of the paper-book).

11. The contention of the applicant is that his lien was transferred permanently from the Ministry of Finance to the Ministry of External Affairs along with his permanent post w.e.f. 1.6.1976. There was no permanent post left for him in the Ministry of Finance against which he could/retained be shown as having a lien in that Ministry after 1.6.76.

12. As against the above, the respondents have contended that the applicant was appointed in the Ministry of External Affairs purely on deputation basis w.e.f. 1.6.1976 until further orders, that he was continued to be treated on deputation basis, that no separate post was created for him and others who were taken on deputation from the Ministry of

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Finance, and that his lien was in the Cadre of the Ministry of Finance and the period of his deputation had been extended on a year-to-year basis. In this context, they have relied upon Office Memoranda issued by the Ministry of Finance (Dept. of Expenditure) on 21.7.1986 and 9.6.1987.

13. Office Memorandum dated 21st July, 1986 reads as follows:-

"The undersigned is directed to refer to the Ministry of External Affairs' O.M. No.Q/BFI/561/11/76-PF, dated the 25th June, 1986 regarding retention of the services of Shri T.S. Bhatia, Section Officer, of the Ministry of Finance Cadre and to convey the concurrence of this Department to the retention of services of Shri Bhatia by the Ministry of External Affairs for a further period of one year with effect from 1.7.86 to 30.6.87 on loan basis. It may, however, be noted that it will be the last extension granted to him and someone may be trained to take over from him at the end of his present period of deputation."

(Vide Annexure B-III to the counter-affidavit in OA-1785/90, p.43 of the paper-book).

14. The O.M. dated 9th June, 1987, reads as follows:-

"The undersigned is directed to refer to the Ministry of External Affairs' O.M. No.Q/BFA/561/11/76-PF, dated the 25th May, 87 regarding retention of the services of Shri T.S. Bhatia, Section Officer, of the Ministry of Finance Cadre and to convey the concurrence of this Department to the retention of services of Shri Bhatia by the Ministry of External Affairs for a further period of one year with effect from 1.7.87 to 30.6.88 on loan basis."

(Vide B-I to the Counter-affidavit in OA-1785/90, p.41 of the paper-book).

15. The applicant was promoted as Section Officer in the Ministry of External Affairs w.e.f. 27.2.1982 on the basis of the Limited Departmental Competitive Examination held by the U.P.S.C. for Assistants and Personal Assistants belonging to the Central Secretariat Service. According to him, he was accommodated against a permanent post of Section Officer when Shri H.C. Mathur, Section Officer, retired. The

respondents have stated that consequent upon his promotion as Section Officer, he was continued to be on deputation in the Ministry of External Affairs against an isolated ex-cadre post of Section Officer which was purely a deputation post.

16. The respondents have produced a copy of an Office Memorandum dated 1st March, 1982 issued by the Ministry of Finance (Department of Expenditure). The said O.M. states that the applicant, who was working as Assistant in the Finance Branch of the Ministry of External Affairs, has been approved for appointment to the post of Section Officer in the Ministry of Finance (Dept. of Expenditure). The Ministry of External Affairs were requested to relieve him of his duties in that Ministry with instructions to report to the Department of Expenditure immediately for appointment as a Section Officer (vide Annexure B-II to the counter-affidavit, p.42 of the paper-book in OA-1785/90). The respondents have also produced a copy of the seniority list of Section Officers Grade of the Finance Cadre as on 1.7.1990 in which the name of the applicant figures at serial No.83 with the remarks that he was "on loan basis to MOEA" (vide Annexure A-1 to the counter-affidavit of the respondents in OA-1785/90, pages 39-40 of the paper-book).

17. The applicant has contended that he was never paid any deputation allowance or pay during the entire period of working in the Ministry of External Affairs from 1976 to 1988. According to him, this indicates the fact of transfer of his lien on permanent basis to the Ministry of External Affairs. He has also stated that he throughout acted on the belief that he belonged permanently to the Ministry of External Affairs after June, 1976, and that he had been

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given verbal assurances in this regard. He has stated that at present, there is no permanent post in the Ministry of Finance (Department of Expenditure) against which he is shown to have a lien after 1976.

18. As against the above, the respondents have stated that the applicant's lien is in the cadre of the Ministry of Finance in the Central Secretariat Service. As his deputation period was to expire on 30.6.1988, the Ministry of External Affairs decided to revert him to his parent department, namely, the Ministry of Finance. The respondents have also contended that the applicant was neither eligible nor confirmed in any post in the Indian Foreign Service(B). According to them, there is no provision in the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 for absorption of the applicant in the Ministry of External Affairs. He had also not given any representations for his absorption in the Indian Foreign Service (B).

19. The applicant has contended in OA-1785/90 that as he was promoted as Section Officer on 27.2.1982, he became eligible for consideration for promotion to the post of Under Secretary, i.e., Grade I of the General Cadre of the I.F.S.(B) on 27.2.1990 after completing 8 years of service, which is the minimum service required to be eligible for consideration. He is aggrieved by the impugned seniority list of eligible Section Officers for promotion to Grade I of the I.F.S. (B) for the year 1990 circulated by the Ministry of External Affairs on 13.8.1990, wherein his name does not figure.

20. We have carefully gone through the records of the case and have considered the rival contentions.

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21. The applicant has relied upon the same documents in both the applications in support of his contentions. It is true that pursuant to the scheme of Integrated Financial Advisers, the Ministry of Finance transferred certain posts to the Ministry of External Affairs w.e.f. 1.6.1976. The services of some staff were also placed at the disposal of the Ministry of External Affairs. The Ministry of Finance made certain consequential changes in their staffing pattern. After the posts along with the incumbents were so transferred from the Ministry of Finance to the Ministry of External Affairs, the Ministry of External Affairs issued an Office Memorandum on 21.7.1976 to the effect that the officers and the staff concerned will be on deputation to the Ministry of External Affairs until further orders and that no deputation allowance would be admissible. The intention underlying the arrangement was that the persons concerned should be transferred on permanent basis to the Cadre of the administrative Ministry concerned. The Ministry of Finance (Department of Expenditure) had clarified in their Office Memorandum dated 24th October, 1977 that formal orders to this effect would issue shortly and that in the meantime, the persons who had already been transferred on loan basis, should not be transferred back to the Ministry of Finance since the posts which they were holding had already been transferred to the administrative ministries/departments concerned (vide Annexure A-4, p.16 of the paper-book in OA-1785/90). Subsequently, on 8th February, 1978, the Ministry of Finance (Dept. of Expenditure) issued another Office Memorandum. The said Office Memorandum says that it has been decided in consultation with the Department of

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Personnel & Administrative Reforms that the Members of the decentralised cadres of various Grades of Central Secretariat Service/Central Secretariat Clerical Service/ Central Secretariat Stenographers' Service presently borne on the cadre of the Ministry of Finance and working on temporary loan basis in the Integrated Finance Divisions of the various departments/ministries, should be treated as having been transferred on a permanent basis to the cadres of the respective departments/ministries w.e.f.

1.2.1978. It was also mentioned that the transfer of these persons from the Finance Cadre to the Cadre of the various Ministries/Departments was being effected in public interest. Nevertheless, the applicant has not brought to our notice any order issued by the Ministry of External Affairs treating him as deemed to have been absorbed the I.F.S.(B). He has also not brought to our notice any order issued by the Ministry of External Affairs whereby any of the other 26 persons who were also transferred on deputation basis along with him to that Ministry, have been absorbed therein. Rule 29-A of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964, deals with the power of the controlling authority to relax any of the provisions of the said Rules with respect to any class, or category of persons or posts, if it is of the opinion that it is necessary or expedient to do so. There is nothing on record to indicate that in the instant case, the controlling authority relaxed the provisions of the Rules and encumbered the applicant as also others who were transferred from the Ministry of Finance to the Ministry of External Affairs together with their posts.

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22. The respondents have brought to our notice that the applicant had been treated as on deputation from the Ministry of Finance to the Ministry of External Affairs. Copies of the Office Memoranda dated 21st July, 1986 and 9th June, 1987 issued by the Ministry of Finance, have been produced before us. This would indicate that formal absorption of the applicant in the Ministry of External Affairs had not taken place. The applicant was appointed as a Section Officer as he appeared in the Limited Departmental Examination through the Central Secretariat Service and qualified in the same in 1980. He was allocated to the Ministry of Finance as a Section Officer. The Ministry of Finance promoted him as Section Officer w.e.f. 27.2.1982. The Ministry of Finance wrote to the Ministry of External Affairs to relieve the applicant from his duties in that Ministry for appointment as Section Officer. Instead of relieving him, the Ministry of External Affairs themselves issued an office order on 23rd April, 1982 whereby he was promoted as Section Officer in the Ministry of External Affairs. This by itself will not conclusively prove that the applicant has been appointed to the Section Officer's Cadre in the Ministry of External Affairs. The office order dated 23rd April, 1982, relied upon by the applicant, relates only to the fixation of his pay as Section Officer under F.R.22-C. He has not produced a copy of the Notification dated 23.4.1982, whereby he was shown as promoted as Section Officer in the Ministry of External Affairs.

23. In the conspectus of the facts and circumstances of the case, DA-1173/88 and DA-1785/90 are disposed of with

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the following orders and directions:-

A. OA-1173/88

- (i) We do not see any infirmity in the impugned order dated 15.6.1988 passed by the Ministry of External Affairs relieving the applicant on 30.6.1988 to join duty in the Ministry of Finance on completion of his period of deputation with that Ministry.
- (ii) In case the Ministry of External Affairs has absorbed any of the persons who had been sent on deputation to that Ministry from the Ministry of Finance pursuant to the implementation of the scheme of Integrated Financial Advisers, they shall consider the case of the applicant also for absorption on similar footing.
- (iii) Similarly, in case the Ministry of External Affairs decides to relax the rules by invoking the power to relax under Rule 29-A of the I.F.S. Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 in respect of any of the persons similarly placed, the applicant should also be given the benefit of such a relaxation.
- (iv) The interim order passed on 20.6.1988 and continued thereafter, is hereby vacated.

B. OA-1785/90

- (i) We hold that in the absence of any formal order passed by the Ministry of External Affairs absorbing the applicant as Section Officer in that Ministry, the applicant is not entitled to be considered for promotion

to the post of Under Secretary in that Ministry. Therefore, his prayer for including his name in the eligibility list for consideration for promotion to the post of Under Secretary under the Ministry of External Affairs, is rejected.

(ii) The interim order passed on 4.9.1990 and continued thereafter, is hereby vacated. There will be no order as to costs.

D. K. Chakravorty
(D. K. Chakravorty)
Administrative Member
16/11/1990

P. K. Kartha
16/11/1990
(P. K. Kartha)
Vice-Chairman (Judl.)