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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH NEW DELHI

Original Application No. 837 of 1986

K.J. Francis & Others Applicants

Versus

Union of India & Others Respondents

Hon'ble Mr. Justice U.C.Srivastava, V.C.

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

(By Hon'ble Mr. Justice U.C.Srivastava, V.C.)

The applicants who were members of Indian Foreign Service and posted as Under Secretaries in the scale of Rs. 1200-1600 in the Ministry of External Affairs were reverted, have approached this tribunal praying that the seniority which was prepared may be quashed and it may be declared that the seniority list was liable to be determined on the basis of rule 21(4) of the Rules of 1964 and a fresh seniority list may be prepared and the reversion order may not be given effect to. The tribunal passed an interim order, with the result that the applicants are continuing to hold the post prior to the dispute. A dispute of seniority ^{by the} person of the same cadre was taken before the Supreme Court in the case of G.S. Lamba & Others Vs. Union of India & Others, Writ Petition No. 13248 to 13257 of 1983 decided on 6.11.1985, the dispute of seniority between promotee direct recruit and recruits as per result of limited competitive examination quota and rota rule was taken before the Supreme Court after considering the earlier cases. While deciding the case, the court made the following observations :-

" 22. Approaching the matter from a slightly different angle, in our opinion, Rule 21(4) and Rule 25(1)(ii) both can be harmoniously

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read because they operate in two different areas. Rule 21(4) provides that subject to other provisions of this rule (not all rules) 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. If the expression 'selection' refers to those promoted via the select list and the expression 'recruitment' refers to those entering service by direct recruitment, in view of Rule 21(4) those who enter service by 'recruitment' or 'selection' at any time will always necessarily be senior to those promoted or recruited on the basis of a subsequent selection or recruitment. This is what Rule 21(4) provides. In terms it caters to a situation where recruitment or selection is at intervals with a time lag. Vacancies in the cadre or the grade arise every year. Normally the substantive vacancies in the cadre have to be filled in as they occur or within a reasonable time. The process of selection and recruitment must continuously be in operation roughly from year to year. By the impact of Rule 21(4), the selection or recruitment of one year shall have precedence over selection or recruitment of the next year and this is what is known in service jurisprudence as seniority according to continuous officiation in the cadre or the grade which has been statutorily recognised in sub-rule 4 of Rule 21. This is in tune with fair play and justice and ensures equality as mandated by Art. 16. Now Rule 25(1)(ii) provides for integrating direct recruits and persons entering via the select list to a grade. It is implicit in sub-clause(ii) of Rule 25(1) that it would operate at a time when in a given year almost simultaneously or within a measurable distance from each other recruitment

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is made from all the other sources. To illustrate if in a given year candidates are selected for appointment to the grade by direct recruitment as also by holding the limited competitive examination and giving promotion and if all the three enter the service or the grade at or almost at the same time or within the year and within a reasonable time lag from each other, a question is bound to arise how to integrate all of them entering service from different sources in the common seniority list. Rule 25(1)(ii) caters to this situation and helps in integrating appointees from three sources to be integrated into common seniority list according to quota. Now contrast Rule 26(1)(ii) with Rule 21(4) and the meaning of Rule 25(1)(ii) reveals itself and become clear and understandable. A block of recruits in a given year coming from three independent sources may be integrated inter-se according to quota and rota. The block in subsequent year would be always junior to the block of recruits in the earlier years. This is how Rule 21(4) and 25(1)(ii) can be harmoniously read and it is unquestionable that they operate in two different situations and both have to be given effect to."..... The impugned seniority lists challenged by the petitioners have been drawn up in violation of the provisions of Arts. 14 and 16 of the constitution and, therefore, they are quashed. The first respondent is directed to draw up fresh seniority list in the light of the observations made in this judgement within a period of three months from today. All promotions granted since the filing of the petitions are subject to the decision herein given and they must be readjusted to be brought in consonance with this judgement."

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It was thereafter, the impugned seniority list was drawn and according to the applicant, the impugned seniority list has not been drawn as direction given by the Supreme Court. While according to the respondents, the same has been faithfully drawn in the light of Supreme Courts' decision.

2. The grievance of the applicant is that the quota and rota rule has been broken and between three feeder channels with direct recruits, promotees and those who ^{was} selected by limited departmental examination, it is ^{made} the continuous officiation, which should have been ^{the} decisive fact of determining the seniority, it is the date of joining has been made the decisive fact of determining the seniority, with the result those who were senior have been made junior. According to the applicant, the seniority list would show that the name of the applicants which have been shown at serial no.s. 353, 354, 402, 403 and 404 respectively, while the names of the applicants no. 1 and 2 should have been shown at sl. no. 315 and 316 and similarly, the names of the applicants no. 3 to 5 should have been shown at sl. nos. 322, 323 and 324 respectively, but instead, they have been placed at the lower position although, the applicants no. 1 and 2 belong to the I.A.S. examination held in 1977, and the result of which was announced on 30.5.1978. They have been made junior to those whose names appeared at serial nos. 315 to 319, who were appointed through the method of limited departmental examinations, the result of which was announced on 21.9.1978, while the result of the applicant was announced on 31.5.1978. Even if the date of D.P.C. is taken as the date of selection, the applicants are entitled to get precedence over those who have been made

senior to them and the similar other instances have been given and accordingly to the applicants it is because of certain formalities etc., the persons were not able to join earlier. The respondents have given seniority to the members of other feeder channel who joined earlier and thus, the negativizing directions given by the Supreme Court in Lamba' case, they have evolved the new formula by giving the date of joining as the date of continuous officiation in particular case for re-determining the seniority.

3. The respondents refuted the claim made by the applicants and according to them, the seniority has been correctly fixed and they have also given instances, which are as below :-

Sr.No.in seniority list	Explanation
3 to 8	Officers figuring at S.Nos. 1 to 8 are from the same select list and therefore, their inter-se seniority has been maintained in the order of their respective positions in the Select List.
9 to 14	Officers from Sl. No. 9 to 14 come from same select list and in their case also the seniority indicated in the Select List has been maintained.
15 to 28	Officers from Sl.No. 15 to 28 are from same select list and have been placed in the order of their seniority in the list.
33,38,47,51, to 55,57,61, to 63,65,66, 69,70,80,83, 84,85 & 86.	In 1972, the select list for departmental promotions was approved and the results of limited departmental examination(LDE) were declared on the same date. Under the circumstances, Officers from the two sources have to be interspersed in the ratio of quotas prescribed for the two sources and the excess LDE candidates placed at the end of the interspersed list

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While interspersing the candidates from two sources, the inter-se seniority of candidates from within the same source has been maintained, in accordance with the judgement of the Hon'ble Supreme Court in G.S.Lamba case.

- 105,110,107 Officers from Sl.Nos. 96 to 125 belong to same select list and appear in the order of their respective positions in the Select list.
- 134 to 144 Officers from Sr. No. 134 to 144 come from same departmental examination and appear in the order of their merit in the examination
- 152 to 169 Officers at Sl.Nos. 152 to 169 in the seniority list belong to same select list and appear in the order of their respective positions in the select list.
- 184 to 197 Officers at Sl.Nos. 184 to 197 are from same batch of Direct recruits and their inter-se seniority as per their respective positions in the merit list has been maintained.
- 213 to 224 Officers at Sl.Nos. 213 to 224 belong to same select list and their seniority has been maintained as per their positions in the select list.
- 225 The officer at Sl.No. 225 belongs to the 1975 select list but his seniority has been downgraded because of unregularised absence from duty for a certain length of period.
- 229 Officer at Sl.No. 229 cannot be placed below his direct recruit batchmates at Sl.Nos.230 to 232, who secured lower ranks than him.

In the remaining instances mentioned in paras 6(12)(g) and 6(12)(h) of the application, the following groups of officers come from same select list/merit list and their inter-se seniority has been maintained in the order of their respective positions in their respective select lists/merit lists :-

- a) 235,236,238 and 240 to 242 - 1976 select list
b) 284,286 to 288,290 to 292, - 1977 select list
294 & 296

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- c) 297 to 301 - 1976 Exam.(DHS)
- d) 302 to 314 - 1978 select list
- e) 323 to 352 - 1979 select list
- f) 353 to 355 - 1977 Exam.(DHS)
- g) 402 to 404 - 1978 Exam.(DHS)

It is submitted that the criteria adopted for preparing the revised seniority list is in consonance with the Hon'ble Supreme Court's judgement and hence the seniority list prepared on the basis of the above criteria is also in accordance with the said judgement.

Thus, according to the respondents, the continuous officiation started only w.e.f. the date a particular person joined the post. In case, those who were selected earlier of a particular channel and ^{joined} later on and it is those who in the other channel joined earlier will rank senior in view of the directions given by the Supreme Court in Lamba's case, as continuous officiation cannot start unless a person joins the service. The learned counsel for the applicant contended that so far as the continuous officiation for the purposes of instant case is concerned; that has been very well defined in Lamba's case and the respondents could not have evolved out a new formula or could not have relied of any other criteria. As he has further contended that selection or recruitment has nothing to do with the date of joining which only follows the selection or recruitment. Observations made by the Supreme Court as extracted above that question for continuous officiation is concerned; that has been very well defined in this case and so far lamba's case, this is what was to be implemented. It was observed :-

" Selection or recruitment in one year shall have precedence over selection or recruitment of the next year and this is what is known in service jurisprudence as seniority according to continuous officiation in the cadre or the grade

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which has been statutorily recognised in sub-rule 4 of Rule 21. This is in tune with fair play and justice and ensures equality as mandated by Art. 16."

Sub Rule 4 of Rule 21 reads as follows :-

"Subject to the other provisions of this rule persons promoted or recruited earlier on the basis of earlier selection of recruitment shall be senior to those who promoted or recruited on the basis of subsequent selection or recruitment."

Thus, as the Supreme Court in its directions laid down that those who were selected earlier will be senior to those who were selected subsequently and the grade of continuous officiation has not been made dependent on the actual date of joining. Obviously, it is those who were selected earlier notwithstanding the fact that they joined earlier, the date of continuous officiation starts from before the date of actual joining. It appears that the date of continuous officiation has been taken not the actual date, but by legal fiction it has been changed and it has been even given retrospective effect. As far as the question of seniority inter-se between one particular channel is concerned; we have not called upon to decide as to how the seniority will be determined, but in view of the observations made in Lamba's case we have got to accept the same and we cannot express any other opinion. Accordingly, this application deserves to be allowed and the respondents are directed to re-cast the seniority list within a period of four months in accordance with directions

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as given in the lamba's case as has been observed by us, which is not dependent on the date of actual joining. After re-casting of the seniority list, the necessary consequences will follow. No order as to costs.

Ryfelige
Member(A)

Lee
Vice-Chairman

Dated: 16.3.1993

(RKA)