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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

REGN.NO. O.A. 1691/87.

Date of decision: 27.5.93.

S.N. Chopra & Ors.

Petitioners.

Versus

Union of India through
The Secretary, Govt. of India,
Ministry of External Affairs,
New Delhi.

Respondent.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER(A).

For the Petitioners.

Shri R.K. Kamal, Counsel

For the Respondents.

Shri P.P. Khurana,
Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioners in this case are Stenographers Grade-II in the Indian Foreign Service, Branch 'B'. Whereas the first petitioner was appointed on 23.11.1976, the second petitioner was appointed on 19.7.1986. The first petitioner was confirmed w.e.f. 11.9.1981. A revised seniority list of Stenographers Grade-II as on 15.7.1986 was notified as per Annexure A-2 dated 25.7.1986. The name of the first petitioner in the said list is at Serial No. 279. Under the relevant entries, 23.11.1976 is the date taken into account as the date of promotion to the cadre and in the other appropriate column the date of confirmation 11.9.1981 has been entered. The petitioner made a representation as per Annexure A3, dated 2.7.1987 contending that the seniority list suffers from certain discrepancies in respect of a number of persons having been placed above him in the said list. The said represen-

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tation was rejected by order, Annexure A-1, dated 21.9.1987 whereby the petitioner was informed that the seniority list was prepared following Rule 25(4) of the Indian Foreign Service, Branch 'B' (Recruitment Cadre, Seniority and Promotion) Rules, 1964 (hereinafter referred to as 'the Rules'). It is in this background that the petitioners have approached this Tribunal with this application in which they have prayed for quashing of the order, Annexure A-1, dated 21.9.1987 rejecting their representation and for quashing of the seniority list, Annexure A-2. They have also prayed that the relevant portions of Rule 18A of the Rules fixing higher quota for direct recruits and providing further weightage in their favour be struck down as violative of Articles 14 and 16 of the Constitution. The other prayer is to direct revision of seniority list on the basis of length of continuous officiation in Grade-II for recruits from various sources and for other incidental and consequential reliefs.

2. As regards the challenge to the impugned order, Annexure A-1, rejecting the petitioners' representation is concerned, it does not need much of discussion. The representation of the petitioners was that persons appointed later had been shown above them in the seniority list and that, therefore, the seniority list is bad. The authorities have rejected the representation pointing out that they have followed in the matter of preparing of seniority list Rule 25(4) of the Rules, which is an express provision

regulating determination of seniority. If Rule 25(4) which regulates determination of seniority is followed, the rejection of the petitioners' representation cannot be faulted.

3. The respondents have placed materials before us to show that the seniority list has been prepared strictly following Rule 25(4) of the Rules. The said provision states that the seniority should be determined by placing persons recruited from three different sources in the following order:

(1) promoted on the basis of panel drawn by a duly constituted Departmental Promotion Committee,

(2) promoted on the basis of a Limited Competitive Examination,

(3) directly recruited on the basis of the results of Competitive Examination held by the Commission.

Separate quotas have been prescribed under Rule 18A. Rule 25(4) mandates the order in which the persons recruited by three different sources should be included in the seniority list. The petitioners have not been able to demonstrate the violation of Rule 25(4) of the Rules. Hence, the first prayer cannot be granted.

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4. The quashing of the seniority list, Annexure A2 depends upon the reliefs sought by the petitioners in other prayers. Hence, we will examine the other prayers first.

5. Rule 18A of the Rules has been challenged on the ground that higher quota has been fixed for direct recruits and it has provided further weightage in their favour by making available those vacancies which remain without being filled up by promotion to be filled up by direct recruitment. Under Rule 18A of the Rules, separate quotas have been prescribed, one for direct recruitment and another for promotion by the conduct of a Limited Departmental Examination and the third for promotion on the basis of consideration by the DPC. 62 1/2 is the percentage fixed for direct recruitment which, the petitioners maintain, is excessive. Ordinarily, the prescription of the percentage for different modes of recruitment is regarded as a matter of policy. It is for the petitioners who challenge the statutory provision to make out a case that such prescription is so manifestly unreasonable as to justify interference with it as arbitrary and that, therefore, violative of Articles 14 and 16 of the Constitution. The prescription of 2/3rd of the vacancies to be filled by direct recruitment is the normal pattern, we find, in many of the service rules. There is nothing unreasonable in prescription of 62 1/2 per cent of the vacancies to be filled up by direct recruitment for Stenographers Grade-II. The petitioners' counsel further submitted that there is vagueness in Rule 18A which justifies

the interference that the said prescription is violative of Articles 14 and 16 of the Constitution. It was urged that 62 1/2 per cent of the vacancies are meant for direct recruitment and some persons from amongst Hindi Stenographers working in the corresponding scales of pay from a date earlier than the 3rd November, 1972 are also required to be recruited. The argument regarding vagueness ignores the plain language of Rule 18A(i) of the Rules which makes it clear that 62 1/2 per cent of the vacancies in Grade-II of Stenographers shall be filled up by direct recruitment on the results of an open competitive examination held by the Union Public Service Commission to which the Hindi Stenographers working in the corresponding scales of pay and who have entered earlier than 3.11.1972 are also eligible. There is no separate quota fixed for the Hindi Stenographers. They have also been brought into the eligibility criteria for which the quota fixed is only 62 1/2 per cent. The entire remaining 37 1/2 per cent of the quota, as is clear from Rule 18A (2) of the Rules, is available for being filled up by promotion. There are two modes of promotion, the first to be filled up by consideration by the Departmental Promotion Committee for which 33 1/3 per cent of the vacancies are reserved for being filled up on the basis of a Limited Competitive Examination to be held by the Staff Selection Commission and the rest of the promotion quota to be filled up from amongst the cadre of Stenographer Grade-III. Thus, there is no vagueness whatsoever and the percentage of

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vacancies available for being filled up by three different modes are clearly prescribed by Rule 18A of the Rules. It is also not possible to agree with the contention of the petitioners's counsel that a deliberate attempt has been made by providing 62 1/2 per cent of the vacancies to be filled up by the direct recruitment. This is the normal pattern to be followed in the service rules. Besides, it is not demonstrated that as a matter of fact that vacancies which were meant for the promotees were made available for direct recruitment. The material produced by the respondents in the reply on the contrary shows that they are strictly maintaining the prescription of Rule 18A. Hence, it is not possible to accede to the contention of the petitioners' counsel that Rule 18A is liable to be struck down as violative of Articles 14 and 16 of the Constitution.

6. The other prayer of the petitioners is that we should issue a mandamus to prepare the seniority list of Stenographers Grade-II on the basis of the length of continuous officiation in Grade-II for recruits from various sources. At the outset, it is necessary to point out that when there is a statutory provision regulating the manner in which the seniority should be fixed, the petitioner cannot call upon us to issue a direction to the respondents in violation of the said provision. Rule 25(4) of the Rules in terms prescribes the manner in which the seniority list of persons recruited from three different modes has to be determined. That being the position, we cannot be called upon to grant relief, which is opposed to the statutory

provision contained in Rule 25(4) of the Rules. The learned counsel for the petitioners contended that this is a case in which the quota and rota rule has broken down and, therefore, Rule 25(4) should not be invoked for the purpose of preparing the seniority list and that such a list should be prepared only taking into account the length of continuous officiation in Grade-II. At the outset, it is necessary to take into account the stand of the learned counsel for the respondents that the quota and rota rule has not been broken down. Besides, the respondents have placed materials to show that quota and rota rule has been operated upon as best it could be. They have filed along with their reply a statement containing the number of vacancies, as per Annexure R-II, which were available for direct recruitment from the years 1976 to 1986 and the number of persons actually recruited during those years. We find from the information produced before us that in none of the years direct recruitment exceeded the number of vacancies available for direct recruitment. Annexure R-I (iii) gives information in regard to number of vacancies notified to the Staff Selection Commission. An attempt has been made to show us the omission every year in filling up the required number of vacancies according to quota. The number of vacancies to be filled up by all the modes is also furnished. Ann.R-1(iv) is the list containing the names of persons appointed in pursuance of the selection by the Departmental Promotion Committee. As the quota and rota rule has been operated upon every year, the mere fact that during some of the years they

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were not able to get required number of persons from a particular quota, it is not possible to draw an inference that the quota and rota rule has failed or broken down. Hence, it is not possible to accede to the contention of the petitioners' counsel that quota and rota rule has broken down and we must direct the authorities to prepare the seniority list on the basis of the length of continuous officiation in the cadre.

7. In the reply filed by the respondents, they have stated that whereas persons promoted in pursuance of selection by the DPC became immediately available for being posted to the post to which they are promoted, it takes nearly 1-1 1/2 year so far as the quota to be filled up by the Staff Selection Commission is concerned. It is further pointed out that it takes 1 1/2 to 2 years to complete the process of direct recruitment. Hence, if the vacancies of direct recruitment are notified in the year 1976, the direct recruits would be available only after 1 1/2 - 2 years and are appointed sometime in 1978 upon declaration of the results by the UPSC. So far as the promotees are concerned, they would be in position in the same year in the vacancies meant for them. It is on account of these reasons that some of the persons appointed by direct recruitment became available only after 1 1/2 to 2 years. Thus, in the very nature of the things in exigencies of the administration it takes such a long time for completing the process of selection. When prompt attempt is made for the purpose of

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following the quota and rota rules and the results are obtained later, it is not possible to draw an inference that the quota and rota rule has broken down. It, therefore, follows that the seniority list already prepared as per Annexure-2 does not suffer from any infirmity to justify interference. We would like to say that though at one stage of the proceedings, we were inclined to examine the question as to whether the petition should fail on the ground that persons likely to be affected by allowing this petition should have been impleaded as necessary parties, as on merits the petition has to fail, we do not consider it necessary to deal with this aspect of the matter. This petition fails and is, therefore, dismissed. No costs.

B. N. DHOUNDIYAL

(B.N. DHOUNDIYAL)
MEMBER(A)

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V. S. MALIMATH

(V.S. MALIMATH)
CHAIRMAN