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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 7 of 1987
~~T.A. No.~~

DATE OF DECISION 6-4-1987

G.S.Narula & others Petitioner

Shri M.C.Bhandare Advocate for the Petitioner(s)

Versus

Union of India and another Respondent

Shri M.L.Verma Advocate for the Respondent(s)


CORAM :

The Hon'ble Mr. V.S.Bhir, Member (A)

The Hon'ble Mr. G.Sreedharan Nair, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?


(G.SREEDHARAN NAIR)
MEMBER (J)


(V.S.BHIR)
MEMBER (A)

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

O.A.No.7 of 1987.

6-4-1987.

G.S.Narula & others ... Applicants.

vs.

Union of India and another ... Respondents.

For applicants: Shri M.C.Bhandare, Sr.counsel.

For respondents: Shri M.L.Verma, counsel.

Coram:

The Hon'ble Mr.V.S.Bhir, Member (A)

The Hon'ble Mr.G.Sreedharan Nair, Member (J)

(The Judgment of the Tribunal delivered by
The Hon'ble Mr.G.Sreedharan Nair)

The applicants are presently employed as Under Secretaries (Senior Scale of I.F.S. Branch 'A'/Grade I of the Indian Foreign Service, Branch 'B') having been duly promoted from the integrated Grades II and III of the Indian Foreign Service, Branch 'B'. Some of the Officers of the Indian Foreign Service, Branch 'B' promoted to the Integrated Grades II and III during the period 1976-79 filed Writ Petitions 13248 to 13257 of 1983 challenging the seniority lists published by the Government of India in respect of the Officers in the Integrated Grades II and III of the Indian Foreign Service, Branch 'B' on 25-6-1979 and 30-6-1983. The Supreme Court quashed those seniority lists holding that they have been drawn up in violation of the provisions of Articles 14 and 16 of the Constitution. The Government of India was directed to draw up a fresh seniority list in the light of the observations in the judgment. It was further held that "all promotions

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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 judgment". Pursuant to the judgment, the seniority list was redrawn in June 1985. Following that the promotions of the applicants to Grade I made long before the filing of the writ petitions before the Supreme Court were reviewed by holding a D.P.C. in January 1986. It is alleged by the applicants that on its basis steps are being taken to revert the applicants. Hence they pray for quashing the proceedings of the D.P.C. held in January 1986 and for directing the respondents not to revert them. It is alleged that the respondents have incorrectly implemented the judgment of the Supreme Court. The petitioners in the Writ Petitions never wanted to disturb the seniority of these applicants and the Supreme Court has also not directed the disturbance of the promotions that they have already secured. There is also the plea that any subsequent revision of seniority in the Integrated Grades II and III should not in any way affect the seniority of the applicants in Grade I to which they stood promoted even before the filing of the Writ Petitions and as such the action of the respondents is arbitrary and violative of Article 16 of the Constitution.

2. A reply has been filed by the first respondent. It is contended that though the applicants have not been parties to the Writ Petitions before the Supreme Court, since the seniority lists have been quashed by the Supreme Court no promotion based on those lists could be sustained. When the seniority list was revised

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as directed by the Supreme Court some of the Officers who were junior to the applicants in the earlier lists became senior and as such had a claim for being considered and granted promotion. It was on that count that a review of all promotions made on the basis of the earlier lists was done, as, such promotions had become vitiated in view of the judgment of the Supreme Court. It is contended that those Officers who have become senior to the applicants as a result of the review have precedence over them to be considered for promotion to the Senior Scale of the Indian Foreign Service and it will be against the principles of natural justice to allow the applicants to supersede such Officers.,

3. From the pleadings stated above, it is clear that the issue is simple. Its determination centres round a correct understanding of the scope and operation of the judgment of the Supreme Court in Writ Petitions 13248 to 13257 of 1982, which may be referred to as the decision in Lamba's case.

4. In the general cadre of Indian Foreign Service, Branch 'B', there is an Integrated Grade II and III which is filled up by three modes, by direct recruitment, through a limited departmental examination and by mere promotion from the lower cadre. On 25-6-1979, the first respondent published a seniority list of Officers in the Integrated Grades II and III. Another list was published on 30-6-1983. These lists were under attack in Lamba's case as violative of Articles 14 and 16 of the Constitution. The plea was that the quota reserved for direct recruitment was not filled in for a long time and the vacancies allotted to that source were carried forward and later the direct recruits were given deemed seniority over the promotees,

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which, it was alleged, ~~has~~^{is} the pernicious tendency to give an undeserved advantage to a later recruit over the earlier one and as such ^{is} violative of Articles 14 and 16. This plea was accepted. It was held that once the promotees were promoted regularly to substantive vacancies even if temporarily, unless there was a chance of their demotion to the lower cadre, their continuous officiation confers on them an advantage of being senior to the later direct recruits and that if by the enormous departure or by the power to relax, the quota rule was not adhered to, the rota rule for inter-se seniority cannot be given effect to and as such the continuous officiation in the cadre, grade or service has to be treated as providing a valid principle of seniority. The seniority lists that were under attack having not been prepared on this principle were quashed and set aside. The Government of India was directed to draw fresh seniority list in the light of the aforesaid observations.

5. Acting on the judgment of the Supreme Court, the first respondent issued a revised seniority list in respect of the Officers in the Integrated Grades II and III of the Indian Foreign Service, Branch 'B'. The first respondent ~~was~~^{went a} ~~they~~ stepped further in purported implementation of the judgment and reviewed the promotions made to the higher cadre of Grade I on the premise that such promotions automatically stand vitiated in view of the revision of the seniority in the lower cadre. Applicants 1 and 3 were appointed to the Integrated Grades II and III on 15-1-1972 after passing the limited departmental examination, while the second applicant is a direct recruit

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appointed to the Integrated Grades II and III on 27-1-1975. The first applicant was promoted to Grade I on 24-12-1981 and he had been further promoted to the next higher grade, namely Senior Scale of I.F.S., Branch 'A' with effect from 11-2-1985. The second applicant was promoted to Grade I on 24-12-1981 and the third applicant on 21-12-1982. Thus it is clear that the appointment of the applicants to the Integrated Grades II and III was prior to the appointment of the petitioners in Lamba's case. All the applicants had been promoted to Grade I prior to 21-11-1983, the date on which the petitions in Lamba's case were filed before the Supreme Court. The question is whether in such circumstances though the seniority list in the cadre of Integrated Grades II and III have been quashed, the promotions of the applicants to the next higher cadre of Grade I granted prior to the decision of the Supreme Court in Lamba's case, and even prior to the filing of the petitions which gave rise to the decision, can be reviewed and they be reverted to the lower cadre of Integrated Grades II and III. Though Shri M.L.Verma, counsel of the respondents, strenuously attempted to support the stand of the first respondent, we are unhesitatingly of the view that the stand cannot be supported in law. This is a case where the first respondent has proceeded to revise the seniority list solely on account of the mandate contained in the decision in Lamba's case. The first respondent was well justified in doing so; indeed, the first respondent was bound to do so. As regards readjustment in respect of promotions granted on the basis of the earlier seniority list, the Supreme Court had only said "all promotions"

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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 judgment."

As such the first respondent is not in order in
readjusting the promotions granted prior to the filing
of the petitions in the guise of purported implementation
of the judgment. In this context, it is worthy to
refer to the reliefs claimed in the petitions before
the Supreme Court. The prayer was for quashing the
seniority list and for directing the respondents to
make all future appointments in accordance with the
list of seniority to be refixed. The prayer made in
the petitions for stay accompanying the writ petitions
was to restrain the promotion of the respondents
to the higher grade. Admittedly, the present
applicants were not parties in Lamba's case and from
the nature of the averments in the petitions in that
case there was no scope for their impleadment.

6. It was submitted by the counsel of the
first respondent that in view of the revision of the
seniority list some of the Officers ~~XXX~~ have become
senior to these applicants and hence they have to be
considered for promotion to the higher cadre and it will
be violative of the principles of natural justice to
allow these applicants to supersede such persons
and, therefore, the review of the promotions given to
the applicants is well-justified. We find it difficult
to agree with this submission. Since the selection
to the higher cadre is not on the basis of mere
seniority, there cannot be any such objection. At any
rate, when the promotion to Grade I of the Indian
Foreign Service, Branch 'B' is by selection and not on
the basis of seniority-cum-fitness in the lower grade,
such subsequent revision of seniority in the lower grade

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cannot affect the promotion to the higher cadre. The decision of the Supreme Court in S.K.Ghosh vs. Union of India (A.I.R.1968 S.C. 1385) is directly in point. The petitioners in that case were shown as being senior to the respondents in the time scale of Class I service. They were selected for promotion to the grade of Director of Postal Services. The respondents were also later on appointed to such posts. The Government sought to disturb the order of seniority in the grade of Director to the prejudice of the petitioners on the ground that their seniority while in the time scale was wrongly determined. It was held that though the Government could justifiably revise their seniority in the time scale of Class I Service, it could not so revise their order of seniority in the grade of Director and such an action by the Government was arbitrary and liable to be struck down as violative of Article 16 of the Constitution.

7. Counsel of the first respondent invited our attention to the decision of the Supreme Court in Shitla Prasad Sukla vs. State of U.P. (A.I.R. 1986(2) S.C. 389) and submitted that so long as the competent authority has acted bonafide and on principles of fairness and fair play, the Tribunal should not overturn the determination in matters of seniority. We have referred to the submission only for the purpose of rejecting the same, for, we are not able to find anything in the said judgment to support the stand of the first respondent.

8. It follows that the applicants are entitled to succeed. We hereby direct the respondents not to revert the applicants from ~~xxx~~ Grade I of the Indian Foreign Service, Branch 'B'. The proceedings of the D.P.C. held



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in January 1986 so far as it relates to the review of the applicants in the matter of their promotion to Grade I of the Indian Foreign Service, Branch 'B', are hereby quashed.

9. This application is allowed as above.

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6-4-1987
(G. SREEDHARAN NAIR)
MEMBER (J)
6-4-1987

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(V.S. BHIR)
MEMBER (A)
6-4-1987