

(6)

In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No.979/87

Date of decision: 03.12.1992.

Shri Gopal Krishan Sharma & Others

...Petitioners

Versus

Union of India through the
Secretary, Ministry of External
Affairs & Another (UPSC)

...Respondents

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman
The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioners

Shri D.C. Vohra, Counsel.

For the respondents

Shri P.P. Khurana, Counsel.

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

The petitioners in this case have challenged the validity of sub-rule 5 of rule 12 of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964, promulgated by the President in exercise of the powers conferred under Proviso to Article 309 of the constitution. The impugned rule reads as follows:-

"12(5.) In case of officers included in the Select List for the integrated Grades II and III of the General Cadre, approved service referred to in sub-rule (2) shall count from the 1st July, of the year in which the names of the officers are included in the Select list."

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The petitioners were all in the selection grade of Stenographers. We are basically concerned with the promotion to the cadre of Grade-I. Sub-rule 12 of the rules prescribes the feeder cadres. The feeder cadres for Grade-I consist of permanent officers of the integrated grades II and III of the General cadre and of permanent officers of the Selection Grade of Stenographer's cadre who have worked as Section Officers in the integrated grades II and III of the general cadre for at least a period of two years. The eligibility criteria is prescribed by sub-rule 2. It provides that no person shall be eligible for promotion to Grade-I unless he has rendered at least eight years of approved service in his respective grade. The expression 'approved service' is defined in rule 2 (b) as follows:-

"approved service" in relation to any Grade means the period or periods of services in that Grade, rendered after selection, according to prescribed procedure, for a long term appointment to that Grade and includes any period or periods:-

(i) taken into account for purposes of seniority in the case of those appointed at the initial constitution of the service;

(ii) during which an officer would have held a duty post in that Grade but for being on leave or otherwise not being available for holding

✓ such posts."

So far as promotion to Grade-I is concerned, special provision is made for the purpose of computing the approved service in sub-clauses 4,5 and 6. We have already extracted clause-5 which has been impugned in this case. It prescribes a special rule for computing the approved service. This rule deviates from the principle contained for computing the approved service as defined in rule 2(b). Instead of counting the service from the date of continuous officiation after regular recruitment into the cadre, sub-rule 5 prescribes that first of July of the year in which the names of the officers are included in the Select List should be taken as the date from which approved service can be counted. An attempt is made to make special provision for computing the approved service in respect of other categories which are also feeder cadres for Grade-I. Sub-rule 4 is a provision which regulates computation of approved service of selection grade Stenographers. It provides that the period of approved service rendered in the integrated grades II and III of the general cadre before 1.8.1969 and half of the approved service rendered in the said grade I after 1.8.1969 as the case may be shall be taken into account. It is clear from reading of this clause that certain benefit or advantage ^{is} conferred in the matter of computing the approved service so far as the selection grade Stenographers are concerned. Not only the period of service rendered by them in the cadre of selection grade which ^{the} is the feeder category but

also the service rendered by them in the lower category from which they stood promoted is also taken into account for the purpose of computing approved service. So far as the service rendered in Grade-I of Stenographers before 1.8.1969 is concerned, the entire period is counted. So far as the period of service rendered in Grade-I after 1.8.1969 is concerned, half of the said period is to be taken into account. It is no doubt true that we are not concerned directly with this provision. This is the provision which actually regulates the computation of the approved service of the petitioners who belong to the selection grade. What is apparent from the reading of this sub-rule is that a deviation has been made in their favour from the definition of the approved service by conferring them added advantage of counting service in the lower cadre of Stenographers Grade-I. So far as the personnel in the integrated grades II and III of the General cadre are concerned, no such benefit has been conferred on them. The only prescription is that so far as this particular feeder category is concerned their approved service will count from the fixed date viz. first July of the year in which the names of the officers are included in ^{the} select list and not from the actual date on which they are appointed in pursuance

of their selection. Sub-rule 6 of Rule-12 also requires examination as that is also a part of the integrated scheme provided ^{by the} / sub-rule for computing approved service.

This sub-rule speaks of those who came by the integrated grades II and III by the process of direct recruitment.

The approved service so far as this clause is concerned, it is provided that it shall count from the first of July of the year following the year of competitive examinations on the results of which they have been recruited provided that where there is a delay of more than three months in the appointment of any candidate such delay is not due to any fault of such direct recruit.

We thus see that sub-rules 4, 5 and 6 prescribed a special mode of computing approved service for the purpose of determining eligibility for promotion to grade-I as prescribed by sub-rule 2 of rule 12.

2. The principal contention of Shri Vohra, learned counsel for the petitioners is that sub-rule 5 confers un-just benefit on the officers included in the select list for integrated grades II and III of the general cadre by fixing arbitrarily the first July of the year in which the names of the officers are included in the select list. It was pointed out that by the operation of this rule the person whose name gets included long after the first July will be entitled to count for the

purpose of approved service from the first July, of the year in which the names of the selected candidates are included in the select list. It is obvious that in such situations the persons would be enabled to claim the benefits of the period from the first of July till the date on which his name is actually included in the list for the purpose of computing approved service, even though, in fact he was not in the integrated grades II and III during that period. This, it is submitted acts to the detriment of the selection grade Steno-graphers and should be struck down, as violating Articles 14 and 16 of the Constitution.

3. As the rule making authority has prescribed a special mode for computing the approved service in sub-rule 5 deviating from the one prescribed by the rule 2 (b), it has to justify the choice of the date of first July in which the names of the officers are included in the select list as the relevant date for computing the approved service for the purpose of sub-rule 2 of rule 12.

4. Shri Khurana, learned counsel appearing for the respondents submitted that having regard to the fact that it has not always been found possible to hold examination for promotion to integrated grades II and III on account of the administrative problems, it was

felt that the eligible persons should not unduly suffer on account of the delay or latches flowing from administrative laxity or difficulties. Our attention was drawn to the justification pleaded in this behalf in the reply filed by the respondents. It would be convenient to extract the explanation offered in the reply as follows:-

"A brief background of the genesis of the impugned amendment dated 20.3.1981 would be useful for better appreciation of the issues arising in the instant case. Basically, this emerges out of difference in the mode of recruitment of Section Officers and Private Secretaries. In the case of Private Secretaries, the only source of recruitment is Departmental Promotion. All the officers in this grade promoted against vacancies available in a particular year will be appointed more or less at the same time. In contrast to this, in the case of Section Officer, the sources of recruitment are three. They are:-

1. Departmental Promotion
2. Limited Departmental Competitive Examination.
3. Direct recruitment through IAS etc. Examination.

The first category is comparable to the Private Secretaries as far as the mode of recruitment and time of appointment are concerned. The other two, the methods of recruitment involve an examination by the UPSC. Compared to the first category,

the officers belonging to the second category are being appointed after a time-lag of six months to one year due to administrative delays. In the case of third category, the time lag on account of administrative reasons is one year to two years. This situation is peculiar to the Integrated Grades II & III of the General Cadre. The same is conspicuous by its absence in the case of Private Secretaries. It is this peculiar situation, coupled with the minimum service condition which rendered senior officer in the Integrated Grade II & III ineligible for promotion to Grade I of the General Cadre, which prompted this Ministry to issue the Amendment now being challenged. It is pertinent to emphasize that all the Secretariat Services of Government of India viz., Central Secretariat Service, Railway Board Service, the AFHQ Service like IFS(B) are having similar provisions in their relevant rules. In fact the impugned amendment was introduced only after it had already been introduced in the Central Secretariat Service.


It may be submitted that in service matters the IFS(B) follows almost the same pattern as the Central Secretariat Service.


The amendment is thus an attempt to achieve uniformity in reckoning of approved service of

officers recruited from three different sources of recruitment. As this is not the case in respect of other grade, it was made applicable only to the relevant grade."

It is stated that experience shows that the examinations were not being held within the time. Because of this delay on the part of the administration in holding the examination senior persons were being deprived of their right to be considered for promotion. Hence an attempt has been made to neutralise the problem caused by the administrative delays in the matter of holding the examinations. A similar attempt has been made to confer certain benefit to other feeder categories dealt with by sub-rule 4 and 6. Hardship caused by administrative delays is sought to be meted out by the impugned provision. It is just, fair and reasonable. The choice of the date of first July of the year in which the examination is held appears to be reasonable, it being a date in the middle of the year. We are, therefore, satisfied that the impugned provision is not arbitrary, liable to be struck down, as violating Articles 14 and 16 of the Constitution.

5. For the reasons stated above, this petition fails and is dismissed. No costs.


(I.K. RASGOTRA)
MEMBER(A)


(V.S. MALIMATH)
CHAIRMAN