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Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.2407/90

New Delhi this the 10th Day of March, 1995.

Hon'ble Mr. J.P. Sharma, Member(J)
Hon'ble Mr. B.K. Singh, Member(A)

1. Indian Foreign Service(B),
Gazetted Officers' Association,
Ministry of External Affairs,
South Block,
New Delhi-11.

2. Sh. S.P. Kanjlia,
S/o Sh. B.D. Kanjlia,
Under Secretary (AMS),
Ministry of External Affairs,
South Block,
New Delhi-11.

Applicants

(through Sh. D.C. Vohra, advocate)

versus

1. Union of India,
through the Foreign Secretary,
Govt. of India,
Ministry of External Affairs,
South Block,
New Delhi-11.

2. Indian Foreign Service Association,
through its Secretary,
Ministry of External Affairs,
South Block,
New Delhi-11.

Respondents

(through Sh. N.S. Mehta, Sr. Standing Counsel)

ORDER

delivered by Hon'ble Mr. B.K. Singh, Member(A)

This application No.2407/90 under Section 19 of the Administrative Tribunals Act, 1985 has been filed against Order No. 20/PA-II/89 dated 5.6.1989 (annexure-D) and Order No.11/PA-II/90 dated 4.5.1990 (annexure-F). Both these orders have been issued by Mr. P.S. Raghavan, Deputy Secretary (FSP), Ministry of External Affairs, New Delhi.

Applicant No.1 is an association representing all the gazetted officers in the general cadre of the Indian Foreign Service (B) in the grades II &

III integrated and Grade-I of the service and is responsible for looking after the service interests of its members. Applicant No.2, a grade-I officer of the IFS(B) is working as Under Secretary in the office of respondent No.1 and is an aggrieved person and has joined in this application to meet the legal requirements as laid down in Rule 4(5)(b) of the Central Administrative Tribunal(Procedure) Rules, 1987 as amended in 1988.

The main controversy centres round interpretation of Rule 13 of the Recruitment and Promotion Rules of the Indian Foreign Service. Rule 13 of the Rules determining the recruitment, cadre, seniority and promotion reads as follows:-

"13. APPOINTMENT TO SENIOR SCALE POSTS -

(1) There shall be no direct recruitment to a cadre post in the senior scale of the service.

(2) Such number of posts in the senior scale of the service as do not exceed 22.5 percent of the senior scale and higher posts in the cadre (excluding one-half of the posts of Heads of Missions/Posts, but including deputation reserve, if any) shall be filled in consultation with the Commission by promotion on the basis of merit from among officers of Grade-I of the Indian Foreign Service Branch B who have completed not less than three years of service in that grade:....."

The learned counsel for the applicants has worked out the details how the promotion quota of 22.5 percent should be calculated. A perusal of the rules will itself indicate that all the Senior Duty Posts plus deputation reserve will be taken into consideration minus 50 percent of the posts of Heads of Missions/Posts. Although the Senior Duty Posts include the officers working in the Foreign Missions but Government of India

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have reserved 50 percent of the Senior Duty Posts particularly of Head of Missions/Embassies for persons other than the Indian Foreign Service Officers. They may be politicians, they may be journalists, they may be eminent citizens of the country who may be appointed against 50 percent posts of Head Missions. The calculation has been given of the entire cadre strength of I.F.S. in senior scale as follows:-

Cadre strength of the IFS in senior scale to Grade-I	No. of Posts
Senior Scale	256
Grade-IV	80
Grade-III	97
Grade II	28
Grade I	21

Total Posts (Senior Scale to Gr.I/IFS) = 482

LESS ONE-HALF OF THE POSTS OF HEADS OF MISSIONS/POSTS ABROAD (137 Missions/Posts during 1986-87)

137 - = 68.5 = 69

NET NUMBER OF POSTS (TOTAL) = 413

ADD DEPUTATION RESERVE = 20

TOTAL POSTS IN IFS CADRE RELEVANT TO RULE 13 OF THE IFS(RCSP)RULES	=	433
		22.5
22.5 PERCENT OF THE ABOVE TOTAL	=	433x-----
		100
	=	97.42(=97)

The grievance of the applicants is that the implementation of the rule by respondent No.1 is defective with the result it is causing hardship to the officers of I.F.S.(B). The learned counsel for the applicants has cited that 22.5 percent of the I.F.S. cadre i.e. Senior Duty posts would be 97. In O.A. it

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has been shown that till 1986 only 55 officers of I.F.S. were holding Senior Duty posts. It is further alleged that in the panel of 1987, only 5 persons were inducted in the panel as against 42 vacancies meant for them and the association lost 37 vacancies. They have placed a copy of this at annexure-D of the paperbook.

In the O.A. it has been stated that the applicants made several representations but to no avail and their grievance still persists.

The reliefs sought are:-

- "(1) A direction to the respondent No.1 to issue regular yearly panels and to scrupulously follow the mandate of the Rule 13 of the India Foreign Service (RCSP)Rules, 1961, for induction of Grade-I officers of the IFS(B) into the senior scale of the IFS, and for this purpose work out vacancies to the extent of 22.5% of the I.F.S. cadre (senior scale to Grade-I), with adjustment with regard to half of the posts of Heads-of Missions/posts abroad and the deputation reserve, for location in senior scale (IFS);
- (2) A direction to the respondent No.1 to call Review DPC for the panels in respect of 1987 and 1988 so as to allocate to the IFS(B) Grade-I officers all the vacancies that belonged to them without taking into account the once-upon-a-time IFS(B) officers, now working in Grade-IV and above in the IFS;
- (3) A direction to the respondent No.1 to promote all Grade-I IFS(B) officers to the senior scale with effect from the availability of vacancies in the senior scale with all the consequential benefits in terms of Rule 13 of the said Rules;
- (4) The costs of these proceedings may be awarded in favour of the applicant No.1/association and against the respondent No.1 who has afflicted this

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litigation on the applicant
No.1/association and its members such
as applicant No.2."

A notice was issued to the respondents who filed the reply and contested the application and grant of reliefs prayed for.

We heard the learned counsel of both the parties. A list of officers promoted from Grade-I of I.F.S.(B) to hold the senior duty posts as on 31.12.1989 has been placed at Annexure-H of the paperbook. It has been indicated that 1987 panel was issued on 5.6.1989. This is annexure-D of the paperbook. Similarly it has been indicated that panel for 1988 was issued on 4.5.1990 vide annexure-F of the paperbook. Annexure-Q at page 55 gives the number of posts in Grade-I, Grade-II, Grade-III, Grade-IV and Senior Duty Posts, Junior scale posts, Training reserve posts, leave reserve and deputation reserve posts respectively. Thus the total strength of the cadre is shown as 615. The total number of senior duty posts plus deputation reserve comes to 526. Half of the number of posts of Head Missions/posts are excluded. If we subtract 70 posts out of 526 which are the senior duty posts plus deputation reserve it will come to 456. 22.5 percent of 456 works out to 102 posts. The vacancies in promotion quota is shown as 33 and it has been shown that there are 69 in position out of 102.

The figures arrived at by the learned counsel for the applicants and the figures arrived at by the respondents is practically the same. The respondents also vide annexure R-1 have stated that the total number of posts in Grade-I to Grade-IV of I.F.S. and Senior Scale

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posts in IFS is 482 and the deputation reserve is 20.

This makes 502. Thus the calculation made out by the

learned counsel for the applicants and the learned counsel

for the respondents remains the same. There are 140

Missions/Posts which are designated as Senior Duty Posts

but 50 percent of it is reserved for non IFS officers-may

be eminent citizens of country, may be politicians, may be

other eminent people coming from legal professions or from

any discipline in the country. The discretion is with the

government. If we take out 50 percent of 140 posts, it

will be 70 posts. These 70 posts are excluded from 502

and the figures works out to 432. Thus 22.5 percent of

432 works out to 97.

The learned counsel for the respondents argued that officers in position on 1.1.1987 are 100 as against 97 to which the Association of IFS(B) is entitled. He further mentioned that retirement during 1987 was 8. Thus the net vacancies available for promotion to Senior Scale of I.F.S. will be 8 minus 3 is equivalent to 5. The total 5 posts were available for empanelment of officers in 1988. It is conceded by the learned counsel for the applicants that only 5 persons were inducted in the panel and thus this figure tallies with the figures given by the learned counsel for the respondents. The respondents have also enclosed a chart alongwith Annexure R-1 which gives the list of officers holding the Senior Duty Posts inducted from I.F.S.(B) and first man is S. Sivaswami and the last man is Gulzari Lal. Annexure-2 shows that according to rules 1988 panel was prepared and it is indicated in Column No.8 that net vacancies available for promotion to Senior Scale of IFS 102-97 is equivalent to 5

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posts. Thus according to the learned counsel for the respondents there is no anomaly in the implementation of Rule 13 giving 22.5 percent of the duty posts to IFS(B) officers. Annexure-II also gives the list of officers promoted from Grade-1 of IFS(B) to the Indian Foreign Service as on 1.1.1988 and this figure is 97. At page 15 of the counter reply is the list of officers in position as on 1.1.1989 and this is 101.

After hearing the rival contentions of the parties, it is clear that neither there is any ambiguity in the rule nor is there any infirmity in the application of the relevant rules for calculation of vacancies for promotion to the Senior Scale Posts. In the application at one stage it is averred that it is not understood as to how 101 officers are shown to be in position when the figure should be 97 only. It may be pointed out that the benefit of officiation to officers is available even when D.P.C. is yet to meet and officer can be promoted to Senior Duty post and if he is not reverted and the D.P.C. meets and promotes him in a regular manner, he gets the benefit of officiation and any direct recruit who is promoted subsequently will rerank junior and officer of Grade-1 of IFS(B) so promoted will rank senior on account of this officiating promotion given to him. There is no bar to promote an officer of Grade-1 of IFS(B) to Senior Duty post. It is also an admitted fact that the posts in the junior scale, the posts included as training reserve are excluded from the calculation of Senior Duty posts. The calculation of vacancies made by the applicants in para 4.9 is not correct on the applicants own showing. The respondents have demolished the calculation by giving

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a chart at Annexure R-1 of the number of vacancies which works out on 1.1.1987. As per the calculation in that annexure, the quota for promoted officers works out to 97. There were 100 officers in position as on 1.1.1987 and these 100 officers were all holding senior duty posts. The number of Senior Duty posts in the promotion quota was only 92. This means that the vacancies for promotion to the Senior Scale in the year 1987 were 97 minus 92 i.e. 5. The respondents rebutted the contention of the learned counsel for the applicants that if the officers promoted to Grade-IV of I.F.S. were excluded from consideration, the total number of promoted officers was 90 i.e. there were only 90 officers holding the Senior Duty posts. Even if we accept this contention of the applicants, the vacancies available would be 97-90 i.e. 7 and there would be 8 more vacancies due to retirement in promotion quota. There would be total 15 vacancies only. Therefore, the entire argument that there were 37 vacancies and these were lost to IFS(B) is not correct. The respondents have stated that this is patently an incorrect picture of the loss promotional opportunities.

It is clear that respondent No.1 has correctly calculated the vacancy to the Senior Scale and this is based on the correct interpretation of Rule 13 of the Rules. The method of calculation has been uniformly and consistently applied in all previous years. The applicants' new interpretation of the wording of the Rule 13 of the IFS(RCSP) rules has no basis. The wording of Rule 13 is clear and unambiguous and nothing can be imported in the rule. The rule clearly envisages that the quota for promoted officers is to be considered in

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relation to all the Senior Duty posts in the IFS which includes the Senior Duty posts plus 20 percent deputation reserve minus 70 posts of Head Missions/Posts. The rules seek to regulate the comparative number of direct recruit officers and promoted officers in the entire IFS cadre. The words "such number of posts in the Senior Scale of the Service" are only meant to indicate that the vacancies are to be filled up in the Senior Scale. These words do not, in any way, indicate that only promoted officers in the Senior Scale of the Service would be considered when calculating vacancies for promotion of officers in Grade-I of IFS(B). The rule has to be read harmoniously to arrive at the correct interpretation. The well accepted interpretation for promotion of officers into Grade-A service is that wherever quota for promotion is formulated, it must be with reference to the total number of Senior Duty posts. It was further argued by the learned counsel for the respondents that the representations of the applicants were replied by the respondents based on correct interpretation of Rule 13 of IFS(RCSP) Rules. The Senior Scale panel for the year 1988 was issued in accordance with Rule 13 of the IFS(RCSP) Rules. It was further admitted by the learned counsel for the respondents that though no written reply was given to applicant No.1. i.e association, the correct position was explained verbally on several occasions when there was a meeting between the staff side of the IFS(B) and the concerned officers belonging to Ministry of External Affairs. The respondents have further fortified their view by annexing Annexure R-2 and Annexure R-3 which indicate the calculation of vacancies in the Senior Scale panels of 1988 and 1989. These annexures also indicate

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the number of promoted officers in Senior Duty posts. These annexures completely demolish the claim of the applicants that they have lost 37 posts, factually it is incorrect. The applicants are not being deprived of vacancies in the Senior Duty posts of IFS. As a matter of fact, respondent No.1 is not only consistently going by their entitlement but he is also promoting officers to Senior Duty Posts even when DPCs have not met to promote them in a regular fashion. From the annexures filed, it is also clear that they have been magnanimous in evolving percentage to exceed 22.5 percent by giving benefit of officiation to officers of IFS(B) for holding the Senior Duty posts without being promoted in a regular fashion and that is how the difference of 97 and 101 is reconciled, if we accept the contention of the learned counsel for the applicants. We do not find any arbitrariness in the action of respondent No.1 and he has acted in conformity with the provisions of Rule 13 of IFS(RCSP) Rules and has shown maximum consideration to the cadre aspirations of applicant No.1 by applying the maximum limit in the quota for promotions to Senior Scale. Since Rule 13 of the IFS(RCSP) Rules has been consistently applied to all officers of the IFS(B) gazetted officers association, no discrimination is involved and the grievance, if any, can be described as imaginary. The learned counsel for the respondents could even prove that Senior Duty posts are being given to the officers even when their cases are yet to be recommended by a regular D.P.C. and thus the benefit of officiation goes to them and the direct recruits rank junior to them in such a situation. After going through the records also we find that respondent No.1 is not guilty of any lapse or irregularity but rather

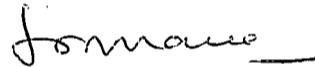
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has been generous as an administrative authority charged with the responsibility of correctly applying existing rules and regulations governing all officers and officials under his administrative control. He has been just and equitable to both promoted officers and direct recruits. The allegation that individual officers of Respondent No.1 are acting in contravention of the rules to the disadvantage of members of applicant No.1 is not borne out by facts placed before us.

Neither there is any distortion in interpretation of Rule 13 nor is there any wrong with the implementation of the rules. The respondents' counsel has fairly and correctly argued that no case is made out by the applicants to grant the reliefs prayed for by them. The application thus fails and is dismissed, leaving the parties to bear their own costs.


(B.K. Singh)

Member(A)


(J.P. Sharma)

Member(J)

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