

Central Administrative Tribunal  
Principal Bench  
New Delhi

O.A.No.2182/2013  
M.A.No.1687/2013  
M.A.No.2515/2013

Order Reserved on: 12.10.2015  
Order pronounced on 01.12.2015

Hon'ble Shri V. Ajay Kumar, Member (J)  
Hon'ble Shri P. K. Basu, Member (A)

1. IFS (B) Gazetted and Non-Gazetted Officers  
(Stenographers Cadre) Association of  
Ministry of External Affairs  
Through its Secretary  
Shri Pramod Kumar Sharma  
Room No.182, South Block  
New Delhi.

2. Shri Arvinder Singh Dutta  
Principal Private Secretary  
Ministry of External Affairs  
Room No.78, South Block  
New Delhi.

... Applicants

(By Advocate: Ms. Jyoti Singh with Ms. Arati Mahajan Shedha,  
Ms. Tinu Bajwa and Shri Amandeep Joshi)

Versus

1. Union of India  
Through Foreign Secretary  
Ministry of External Affairs  
South Block  
New Delhi.

2. Department of Personnel & Training

Through Secretary  
North Block  
New Delhi – 110 001.

3. Indian Foreign Service `B' Gazetted Officer  
Association of Ministry of External Affairs  
Through its Secretary  
Ministry of External Affairs  
Jawaharlal Nehru Bhawan  
New Delhi. ... Respondents

(By Advocate: Shri Rajender Nischal and Sh. M.K.Bhardwaj)

### **ORDER**

**By V. Ajay Kumar, Member (J):**

The first applicant is the IFS (B) Gazetted and Non-Gazetted Officers (Stenographers Cadre) Association and the 2<sup>nd</sup> applicant is one of its members and was a Private Secretary and presently working as Principal Private Secretary.

2. The respondents No.1 and 2 are the Ministry of External Affairs and the Department of Personnel & Training respectively and the 3<sup>rd</sup> Respondent is Indian Foreign Service `B' Gazetted Officers' Association of Ministry of External Affairs.

3. The applicants filed the OA seeking the following relief(s):

- i) To direct the respondent to proportionately distribute among the general and stenographers cadres of IFS(B)/divert to the stenographers cadre of IFS (B), certain percentage of the 120 posts created/approved at the Senior Scale level of IFS to be operationalised over 10 years and to be filled by IFS (B) officers, under MEA expansion Plan 2008, (which were approved before the stoppage of lateral entry from post of PS in stenographer cadre of IFSB to post of US in general cadre of IFSB in MEA) as both the stenographers' cadre and the general cadre are integral parts of IFS (B).

- ii) To direct the respondent to determine the modalities (sic. modalities) for the above said purpose in a time bound manner.
- iii) To grant all consequential reliefs to the applicants.
- iv) To grant cost of this application to the applicants.
- v) To grant any other relief/reliefs as may be deemed fit and proper under circumstances of the case.

4. Indian Foreign Service Branch `B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964, as amended (upto 4.03.2005), [Annexure A5], provides for composition of three cadres, i.e., General Cadre, Stenographer's Cadre and Cypher Sub-Cadre, and also provides for recruitment to Grade-I of General Cadre from General Cadre and also from Stenographer's Cadre, and the relevant Rules read as under:

3. **Composition of the Service-** There shall be the following Grades in the Indian Foreign Service, Branch `B', and they shall be classified as follows:-

Grade Character	Designation	Classification
<b>GENERAL CADRE</b>		
Grade I	Under Secretaries at Hqrs. First Secretaries and Second Secretaries in Missions or Posts abroad.	Group -A (Gazetted) Non-Ministerial
Integrated Gr.II & III	Attaches and Section Officers at Hqrs., Vice Consuls and Registrars in Missions or Posts abroad.	Group-B (Gazetted) Ministerial
Grade-IV	Assistants at Hqrs. And in Missions or Post abroad	Group-B (Non-Gazetted) Ministerial
Grade-V	Upper Division Clerks at Hqrs. and in Missions or Posts abroad	Group-C (Non-Gazetted) Ministerial
Grade VI	Lower Division Clerks at or Posts abroad	Group-C (Non-Gazetted) Ministerial
<b>STENOGRAPHERS' CADRE</b>		
Selection Grade	Personal Secretaries at Hqrs. and in Missions or Posts	Group - B (Gazetted) Ministerial

	abroad.	
Grade-I	Senior Personal Assistants at Hqrs. and in Missions or Posts abroad.	Group – B (Gazetted) Ministerial
Grade-II	Personal Assistants at Hqrs. and in Missions or Posts abroad.	Group – B (Non-Gazetted) Ministerial
Grade-III	Stenographers at Hqrs. and in Missions or Posts abroad.	Group – C (Non-Gazetted) Ministerial
<b>CYPHER CADRE</b>		
Grade-I	Cypher Superintendents at Hqrs. and in Missions or Posts abroad.	Group – B (Gazetted) Ministerial
Grade II	Cypher Assistants at Hqrs. and in Missions or Posts	Group – B (Non-Gazetted) Ministerial

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**“12. Recruitment to Grade I of General Cadre:**  
(1) Subject to the provisions of sub-rule(2), Vacancies in Grade I of the General Cadre shall be filled by promotion of the permanent officers of the Integrated Grades II and III of the General Cadre and of permanent officers of the Selection Grade of the Stenographers’ 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.

Provided that an officer of the Selection Grade of Stenographer Cadre who has not worked in the Integrated Grades II and III for the said period of two years also be considered for promotion to Grade I of the General Cadre if he is otherwise eligible for such promotion and the controlling authority, for reasons to be recorded in writing, is satisfied that such officer had not worked in the Integrated Grades II and III of the General Cadre owing to exigencies of service.

(2) No person shall be eligible for promotion to Grade I of the General Cadre unless he has rendered at least eight (8) years’ of service in his respective Grade.

Provided that if any officer of the Integrated Grades II and III of the General Cadre is considered for promotion to Grade I of the General Cadre under this rule, all officers senior to him in the Grade and belonging to the Scheduled Castes or the Scheduled Tribes, who have rendered not less than four years’ of approved service in the Grade, shall also be considered for promotion.

(3) (a) Notwithstanding anything contained in sub-rules (1) and (2) vacancies in Grade I decided to be filled up from among members of the Scheduled Castes or the Scheduled Tribes, and for which eligible officers are not available, shall be filled on the basis of results of a Limited Departmental Competitive Examination held by the Commission from time to time, in order of their merit.

(b) The Limited Departmental Examination, referred to in clause (a) shall be held in accordance with the regulations made by the Government of India in the Ministry of External Affairs.

(4) The period of approved service referred to in sub-rule(2) in the case of an officer of the Selection Grade of Stenographers' Sub-Cadre shall include the period of approved service rendered in the Integrated Grade II and III of the General Cadre or in Grade I of the Stenographers Cadre before the 1<sup>st</sup> August, 1969 and half of the approved service rendered in the said Grade I after the 1st August, 1969, as the case may be.

(5) In case of officers included in the Select List for the Integrated Grades II of the General Cadre, the approved service referred to in sub-rule (2) shall count from the 1<sup>st</sup> July, of the year in which the names of the officers are included in the Select List.

(6) In the case of direct recruits from the Integrated Grades II and III of the General Cadre, the approved service referred to in sub-rule (2) shall count from the 1<sup>st</sup> July of the year following the year of competitive examination on the results of which they have been recruited provided that where there is a delay of more than 3 months in the appointment of any candidate, such delay is not due to any fault on the part of such direct recruit.

\*(7) For the purpose of the rule, the Controlling Authority in consultation with the Commission:-

- i) Shall prepare a Select List for Grade I of the General Cadre on the basis of selection from amongst officers eligible for promotion under sub-rule(i) and
- ii) May revise such Select List from time to time.

(8) The Select List referred to in sub-rule(7) shall be prepared and revised in accordance with regulations made in this behalf by the Controlling Authority in Consultation with the Commission.

(9) Notwithstanding anything contained in sub-rules (1) to (8) any vacancy in Grade I of the General Cadre may, in exceptional cases and in public interest, be filled by the Controlling Authority, in consultation with the

Commission, by transfer of an officer holding a permanent Group 'A' ex-cadre post in the Ministry of External Affairs.

(10) Seniority of an officer referred to in sub-rule (9) in Grade of the General Cadre shall be such as may be determined by the Controlling Authority in consultation with the Commission.

(\*Substituted vide Notification No.Q/CAD/792/1/2002 dated 3<sup>rd</sup> March 2005)"

5. The aforesaid Rules were amended in the year 2008 (Annexure A6), and after amendment, Rule 12 reads as under:

**INDIAN FOREIGN SERVICE BRANCH 'B' (RECRUITMENT, CADRE, SENIORITY AND PROMOTION) RULES, 1964 (AS AMDNDED UPTO 17<sup>TH</sup> OCTOBER, 2008)**

12. Recruitment to Grade I of General Cadre: "(1) Subject to the provisions of sub-rule(2), vacancies in Grade I of the General Cadre shall be filled by promotion of the regular officers of the Integrated Grades II and III of the General Cadre.

[Amended vide G.S.R. 738(E) dated 17<sup>th</sup> October, 2008]

(2) No person shall be eligible for promotion to Grade I of the General Cadre unless he has rendered at least eight (8) years' of approved service in his respective Grade:

Provided that if any officer of the Integrated Grades II and III of the General Cadre is considered for promotion to Grade I of the General Cadre under this rule, all officers senior to him in the Grade and belonging to the Scheduled Castes or the Scheduled Tribes, who have rendered not less than four years' of approved service in the Grade, shall also be considered for promotion.

(3)(a) Notwithstanding anything contained in sub-rules (1) and (2) vacancies in Grade I decided to be filled up from among members of the Scheduled Castes or the Scheduled Tribes, and for which eligible officers are not available, shall be filled on the basis of results of a Limited Departmental Competitive Examination held by the Commission from time to time in order of their merit.

(b) The Limited Departmental Examination, referred to in clause (a) shall be held in accordance with the regulations made by the Government of India in the Ministry of External Affairs.

(4) Omitted #

(5) Omitted #

(6) Omitted #

# (vide Notification No.Q/CAD/792/1/95 dated 11/12/95)

(7) For the purpose of the rule, the Controlling Authority in consultation with the Commission:

i) Shall prepare a Select List for Grade I of the General Cadre on the basis of selection from amongst officers eligible for promotion under sub-rule (i) and

ii) may revise such Select List from time to time.

(8) The Select List referred to in sub-rule (7) shall be prepared and revised in accordance with regulations made in this behalf by the Controlling Authority in Consultation with the Commission.

(9) Notwithstanding anything contained in sub-rules (1) to (8), any vacancy in Grade I of the General Cadre may, in exceptional cases and in public interest, be filled by the Controlling Authority, in consultation with the Commission, by transfer of an officer holding a permanent Group 'A' ex-cadre post in the Ministry of External Affairs.

(10) Seniority of an officer referred to in sub-rule (9) in Grade 1 of the General Cadre shall be such as may be determined by the Controlling Authority in consultation with the Commission."

6. It is submitted by the applicants that on 21.08.2008, the Ministry of External Affairs got the Cabinet approval for its expansion plan and in terms of the said expansion plan, 514 posts were approved/created to be operationalized over 10 year period in entire MEA at different levels. Out of these, 120 posts were created/approved at senior scale of IFS to be filled over 10 years from among IFS (B).

7. It is contended on behalf of the applicants that while approving/creating the said 120 posts, the cumulative strength of all the stakeholders in IFS(B), i.e., General Cadre and Stenographers Cadre, was taken into account. However, after the 2008 amendment to Rule 12 (supra), the MEA has stopped the lateral entry of Private Secretaries of IFS (B) for promotion to the post of Under Secretary. It is also submitted that at the time of discontinuation of lateral entry from Private Secretaries to Under Secretary, the MEA did not do any

restructuring of the Stenographers' Cadre nor did it divert to the Stenographers Cadre of IFS(B), any of the 120 posts created/approved at the senior scale of IFS, to be filled by officers of IFS(B), under the MEA expansion plan 2008 over a period of 10 years. As a result, the promotional prospects of the General Cadre were enhanced unjustly and arbitrarily at the cost of Stenographers' Cadre. It is further submitted that since Ministry had taken into account the strength of Stenographers cadre also for arriving at the figure of 120 posts at senior scale for the entire IFS(B), there was no creation/approval of new posts at the level of PSO, Sr. PPS and PPS for Stenographers cadre in the MEA expansion plan.

8. The applicants further submit that there is a huge stagnation in the Stenographers Cadre as compared to the General Cadre, and hence, prayed for allotting certain percentage (i.e., 30%) of posts out of the aforesaid 120 posts created at the Senior Scale Level of IFS to the Stenographers Cadre of IFS (B), and also drew the attention of this Tribunal to the Judgement of the Hon'ble High Court of Delhi in Writ Petition (C) No.5348/2001 [Indian Foreign Service (B) Gazetted Officers' Association, MEA, New Delhi & Ors. v. Union of India & Others] decided on 29.01.2014 (Annexure A33).

9. On the other hand, Shri Rajender Nischal, appearing for the official Respondents No.1 and 2, submitted that the Expansion Plan envisages creation of 514 posts over a period of 10 years. Out of an average of 51 posts to be created each year, 32 belong to officer



grades and 19 posts in staff grades. A total of 320 posts to be created over 10 year period (2008-18) would be filled by (i) promotion of Grade-I of IFS B (Under Secretary level) to Senior Scale of IFS-120 posts, (ii) direct recruitment of IFS officers – 80 posts and (iii) lateral entry from other GOI services for specialised work – 120 posts. The Plan also envisages creation of dedicated 90 posts for Stenographers to provide support to the officers.

10. The learned counsel further submits that the 120 posts that were approved by the Cabinet under the MEA Expansion Plan for promotion of Under Secretaries of Grade I of IFS(B) to Senior Scale of IFS. 12 such posts were to be created every year for 10 years. 72 such posts have been created so far in 6 years with the approval of the Cabinet and 72 officers of Grade I of IFS(B) have been promoted to the Senior Scale of the IFS 'A' against these 72 posts. Thus out of the 120 posts that were approved by the Cabinet 72 have already been created and promotions have been effected against these posts, while the remaining 48 posts would be created over the next 4 years with the approval of the Cabinet.

11. Further, it is stated by the learned counsel that the applicants have argued that with the stoppage of lateral entry, all of the 72 posts created under the MEA Expansion Plan so far have been filled up by promotion of officers of Grade I of IFS (B) (Under Secretaries) excluding officers of the Stenographer Cadre. However, even before stoppage of lateral entry only officers from Grade I of IFS(B) were

promoted to the Senior Scale Scale of the IFS. PS's who had worked for 2 years as Section Officers were considered for promotion to Grade I of IFS (B) alongwith Section Officers of the General Cadre of IFS(B). There was never any provision in the rules for direct promotion of officers of the Stenographers Cadre into the IFS `A'. Even now, officers at PA grade in the Stenographer Cadre have the option to become Section Officers through a LDCE and be subsequently promoted to Grade I of IFS (B) and then be inducted into the IFS `A'.

12. Finally, it is submitted by the learned counsel that the 120 posts proposed to be created under the MEA Expansion Plan were meant to increase the strength of India's diplomatic presence abroad by providing extra posts of diplomatic officers at First Secretary/Second Secretary level in Missions/Posts abroad. Officers of the Stenographer Cadre were, even before stoppage of lateral entry, first promoted as Grade I of IFS(B) and subsequently inducted into the IFS (A) and the option of being promoted to Grade I of IFS(B) is still available to them through the LDCE route.

13. The learned counsel further submits that in any event creation of 120 vacancies of Under Secretaries for promotion from the General Cadre is a policy decision of the Government and that Courts/Tribunals cannot interfere with policy decisions or cadre management of the Government and the same should be left to the executive and placed reliance on the decision of the Hon'ble Apex Court in **P.U.Joshi &**

**Others v. Accountant General, Ahmedabad and Others, (2003) 2 SCC 632.**

14. Shri M.K.Bhardwaj, learned counsel appearing for the private Respondent, submits that there is more stagnation in General Cadre, i.e., Section Officers' cadre when compared to Stenographers' Cadre. He further submits that the Private Secretaries have more promotional avenues and have exclusive promotional channel and hence, cannot demand for division of the Under Secretary vacancies exclusively created for promotion from General Cadre. The learned counsel placed reliance on a decision of this Tribunal in OA No.2139/2012 dated 18.07.2013.

15. Heard the learned senior counsel, Ms. Jyoti Singh with Ms. Arati Mahajan Shedha, Ms. Tinu Bajwa and Shri Amandeep Joshi, for the applicants and, Shri Rajender Nischal and Shri M.K.Bhardwaj, learned counsel for the official respondents and private respondent respectively, and perused the pleadings on record.

16. M.A.No.1687/2013, filed under Rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987, for filing a single application, is allowed.

17. Neither the first applicant-Association nor the 2<sup>nd</sup> Applicant - one of the members of the said Association - have sought for any

specific relief in respect of any specific person or member of the Association.

18. The relief, as narrated above, is to direct the official respondents to allot certain percentage of 120 posts created or approved at the senior scale level of IFS to the Stenographers Cadre. It is not forthcoming which specific member of the 1<sup>st</sup> Applicant-Association or the 2<sup>nd</sup> applicant himself was affected by the action of the respondents in which specific manner or will get any specific benefit, if the OA relief is granted.

19. The applicants though sought for quashing of the aforesaid impugned proceedings on various grounds, but on perusal of the pleadings it appears that the OA is in the nature of a Public Interest Litigation and accordingly not maintainable before this Tribunal.

20. We are fortified in our view by a Judgement of the Hon'ble Apex Court in **Girjesh Shrivastava & Ors Vs. State Of M.P. & Ors,** (2010) 10 SCC 707 wherein it was, held as under:

"16. In the case of **Dr. Duryodhan Sahu and others vs. Jitendra Kumar Mishra and others** (1998) 7 SCC 273, a three judge Bench of this Court held a PIL is not maintainable in service matters. This Court, speaking through Srinivasan, J. explained the purpose of administrative tribunals created under Article 323-A in the backdrop of extraordinary jurisdiction of the High Courts under Articles 226 and 227. This Court held "if public interest litigations at the instance of strangers are allowed to be entertained by the (Administrative) Tribunal, the very object of speedy disposal of service matters would get defeated" (para 18). Same reasoning applies here as a Public Interest Litigation has been filed when the entire dispute relates to selection and appointment.

17. In **B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association and**

**others**, reported in (2006) 11 SCC 731 (II), this Court held that in service matters only the non-appointees can assail the legality of the appointment procedure (See para 61, page 755 of the report).

18. This view was very strongly expressed by this Court in **Dattaraj Nathuji Thaware v. State of Maharashtra and others**, reported in (2005) 1 SCC 590, by pointing out that despite the decision in **Duryodhan Sahu** (supra), PILs in service matters 'continue unabated'. This Court opined that High Courts should 'throw out' such petitions in view of the decision in **Duryodhan Sahu** (supra) (Para 16, page 596).

19. Same principles have been reiterated in **Ashok Kumar Pandey v. State of W.B.**, reported in (2004) 3 SCC 349, at page 358 (Para 16).

20. In a recent decision of this Court delivered on 30.8.2010, in **Hari Bansh Lal v. Sahodar Prasad Mahto and others**, (MANU/SC/9654/2010), it has been held that except in a case for a writ of 'Quo Warranto', PIL in a service matter is not maintainable (See paras 6 and 7).

21. Even on merits, as rightly pointed out by the respondents, creation of posts to a particular cadre is a policy of the Government and no Court/Tribunal can interfere with the same.

22. In **P.U.Joshi (supra)**, the Hon'ble Apex Court observed as under:

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into

more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/ posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

23. Even according to the applicants themselves, the lateral entry from the Stenographers Cadre to the General Cadre was discontinued by virtue of the amendment to the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 (as amended upto 17<sup>th</sup> October, 2008) issued under Article 309 of the Constitution of India. The challenge made to the said amended Rules, by a similarly placed person, was dismissed by this Tribunal in OA No.2139/2012 (supra).

24. In WP (C) No.5348/2001, the issue which fell for consideration is as under:

"The issue which falls for consideration in this writ petition is whether the Section Officers, are entitled to the relief of i.e. drawing the eligibility list for promotion to the Grade-I posts of IFS(B), i.e., Under Secretary by excluding the Private Secretary, with effect from 1999, even though, the lateral entry of Private Secretary was stopped pursuant to an amendment to the Rule 12 of 1964 Rules, on October 16, 2008?"

The Hon'ble High Court dismissed the said WP on 29.01.2014 by upholding the decision of this Tribunal in OA No.1777/1999 dated 22.05.2001, for the reasons mentioned therein. Since the issue

involved in the said Writ Petition is different from that of the issue in the present OA, the said decision would not help to the case of the applicants.

25. In OA No.2139/2012, the applicant therein, who was originally joined as Personal Assistant in the Ministry of External Affairs and was subsequently promoted as Private Secretary, filed the same seeking to quash and set aside the Notification dated 17.10.2008 amending Rule 12(1) of the Indian Foreign Service Branch B (Recruitment, Cadre, Seniority and Promotion), Rules, 1964, vide which the officials belonging to the Stenographers cadre became ineligible for promotion to the post of Under Secretary, along with other reliefs. This Tribunal by its order dated 23.10.2013, dismissed the said OA.

26. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly the same is dismissed. M.A.No.2515/2013, filed for interim relief also, accordingly, disposed of. No costs.

(P. K. Basu)  
Member (A)

(V. Ajay Kumar)  
Member (J)

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