

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA-3357/2013
MA-2825/2013**

Reserved on : 17.08.2017.

Pronounced on : 04.09.2017.

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)

1. Sh. S. Satish Kumar,
Under Secretary (EAMO),
Ministry of External Affairs,
Room No. 167, South Block,
New Delhi-110001.
2. Ms. Esha Srivastava,
Deputy Secretary (Europe West),
Ministry of External Affairs,
Room No. 270-B, South Block,
New Delhi-110001.
3. Mr. Ninad S Deshpande,
Under Secretary (China),
Ministry of External Affairs,
Room No. 270-A, South Block,
New Delhi-110001.
4. Sh. S. Raghuram,
Under Secretary (E&SA),
Ministry of External Affairs,
Room No. 268-D, South Block,
New Delhi-110001.
5. Sh. Amit Audumbarayan Shukla,
Under Secretary (Bangladesh),
Ministry of External Affairs,
Room No. 68-B, South Block,
New Delhi-110001.
6. Ms. R. Anitha Nandhini,
Under Secretary (EAMO),

Ministry of External Affairs,
Room No. 167, South Block,
New Delhi-110001.

.... Applicants

(through Sh. Pradeep Dahiya, Advocate)

Versus

1. Union of India through
Foreign Secretary,
Ministry of External Affairs,
South Block, New Delhi-110001.
2. Special Secretary (Administration),
Ministry of External Affairs,
South Block, New Delhi-110001.
3. Joint Secretary (Admn.),
Ministry of External Affairs,
South Block, New Delhi-110001.
- 3-A. Department of Personnel & Training
Through The Secretary,
North Block, New Delhi-110001.
4. Union Public Service Commission
Through Secretary,
Kota House,
Shah Jahan Road,
New Delhi-110001.
5. Sh. S.N.V. Ramana Rao,
First Secretary,
Embassy of India,
Buenos Aires.
6. Sh. Sandip Mitra,
First Secretary,
Embassy of India,
Zagreb.

7. Sh. Sri Kumar Menon,
Deputy Secretary (EW),
Ministry of External Affairs,
Room No. 270-B, South Block.
8. Sh. Anil Kumar,
First Secretary,
Embassy of India,
Prague.
9. Sh. Ghotu Ram Meena,
First Secretary,
Embassy of India,
Warsaw.
10. Sh. I.P. Lakra,
Consul,
Counsulate General of India,
Edinburgh,
Scotland (U.K.).
11. Sh. T.J. Suresh,
First Secretary,
Embassy of India,
Acra.
12. Sh. Arun Kumar Sharma,
First Secretary,
Embassy of India,
Bucharest.
13. IFS-B Gazetted Officers Association
Through Secretary,
Sh. Ramesh Kumar Bisla,
R/o F-401, HSIDC, Apartment,
Sector-31, Gurgaon,
Haryana.

..... Respondents

(through Sh. Rajinder Nischal, Advocate for respondents No.1,2,3 & 3A, Sh. Girish Panda and Mr. Ravinder Agarwal, Advocate for R-4, Sh. M.K. Bhardwaj, Advocate for R-13 and Sh. A.K. Behera, Advocate for interveners)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicants are all direct recruit officers belonging to Indian Foreign Service (IFS) of batches between 2004 to 2008. While applicant No.2 is working as Dy. Secretary, others are working as Under Secretaries in the Ministry of External Affairs (MEA). Their grievance relates to fixation of their seniority *vis-à-vis* those who are appointed to IFS on promotion from IFS 'B'. Respondents No. 1 to 4 are official respondents, R-4 being UPSC. Respondents No. 5 to 13 are promotee officers, who have been arrayed as party in representative capacity.

2. The applicants have submitted that the problem stems from the rule pertaining to the fixation of seniority. According to them, the fundamental flaw in Rule-15 Sub Rule (4) of the IFS (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 (hereinafter called IFS Service Rules) is that it provides that year of allotment of the promotees shall be antedated 03 years from the date of actual promotion to Grade-I of the IFS 'B'. Their submission is that there is no rationale behind this provision for granting antedated seniority. They have admitted that this rule has been in existence since 1961 and has affected several batches of IFS. However, the problem did not come to notice because of huge stagnation in the feeder cadre.

Now, there has been a drastic change in the cadre scenario as also in the age profile of IFS 'B' officers. This has happened because of stoppage of entry of 'stenographers' cadre' into general stream of the IFS 'B'. Consequently, the stagnation of Section Officers (SO) of IFS 'B' has vanished since 2008. Moreover, the Ministry of External Affairs Expansion Plan- 2008 has reserved 12 out of 32 additions to the IFS Cadre every year for promotees. This has also created promotional avenues for the promotees due to which the problem of stagnation in their cadre had disappeared. This is evident from the fact that during the period November, 2010 to September, 2012, 149 officers of IFS 'B' have found promotion to IFS. This is also evident from the fact that after September, 2012 promotions could not be held as no officer having qualifying number of years service is available.

3. The applicants have further submitted that when a promotee officer joins IFS and gets antedated seniority, he displaces many direct recruit IFS officers who are already working in the Senior Scale. Thus, a Group-I IFS 'B' officer, who is allotted 2005 as his year of allotment on being promoted to IFS in the year 2013 becomes senior to direct recruit officers of the batches 2005 to 2008, who are already in the Senior Scale. Further, in some cases, it also happens that a promotee officer, who is just a Section Officer and clearly junior when a direct recruit IFS officer joins service becomes senior to him

on a subsequent date. This is because, according to the applicant, a direct recruit officer joins as Under Secretary in the junior scale. Thus, the situation is anomalous.

4. According to the applicants the respondents are probably assuming that Grade-I of IFS 'B' is equivalent to Senior Scale of the IFS. However, this assumption is erroneous because Rule-15(4) clearly states that induction from Grade-I of IFS 'B' to Senior Scale of IFS is promotion. Moreover, officers on being so inducted are also granted an increment, which is granted only on promotion. While, it is true that grade pay of Grade-I of IFS 'B' and Senior Scale of IFS is now same at Rs. 6600 after the recommendations of the 6th Central Pay Commission have been accepted, prior to that the Senior Scale of IFS was higher. Thus, Senior Scale of IFS was Rs. 10650-15850 whereas Grade-I of IFS 'B' was Rs. 10000-15200. The applicants have asserted that the prescription for seniority fixation as provided under the Rules was against all tenets of seniority determination as found in service jurisprudence.

5. The applicants have further submitted that this problem has also been aggravated due to incorrect determination of vacancies under the promotion quota subsequent to the Expansion Plan of MEA enunciated in the year 2008. According to the Cabinet approval of this Plan granted in the year 2008, 120 officers from IFS

'B' will get promoted to IFS over 10 years commencing from the year 2008 over and above the quota of 22.5% provided for promotees in the Rules. The contention of the applicants is that the respondents have incorrectly interpreted the amendment to the Rules carried out under the aforesaid Plan and the quota of 120 posts provided for the promotees is wrongly being reckoned over and above the 22.5% quota. The amendment simply stated that 12 posts be given to IFS 'B' officers every year and cannot be taken to mean that this was over and above the 22.5% ceiling prescribed in the Rules. This is also distorting the ratio between the direct recruits and the promotee officers. In view of the situation prevailing due to the above misinterpretation of the Rules, there is an urgent need to revisit and rationalize the five decade old IFS Service Rules as this is going against all the accepted principles of service jurisprudence and is not existing in any other All India Service, such as, IAS, IPS and IFoS.

6. The applicants have gone on to state that insofar as Indian Administrative Service is concerned, the State Civil Service Officer joins his service as a Dy. Collector in the same pay scale as a direct recruit IAS officer. The State Civil Service officer has to spend a minimum of 12 years in the State Civil Service before becoming eligible for appointment by promotion to the IAS. He is given weightage of 01 year for every 04 years for first 12 years of service and 01 year for every 03 years after 12 years of service. His seniority is

accordingly determined and given retrospective effect. However, in the IFS the emerging scenario is such that an Assistant in MEA will end up having identical profile as a direct recruit IFS officer. This is a result of accelerated seniority granted to them as also their younger age profile. Since the IFS enjoys parity in respect to all service matters with the IAS, it would be in fitness of things if the seniority rules are also applied in the same manner.

7. The applicants have also submitted that grant of retrospective seniority to the promotees and additional posts under the expansion plan has led to large scale demotivation and demoralization of the direct recruit officers working in the Senior Scale or Junior Administrative Grade. They have quoted examples to state that a Section Officer joining MEA in 1997 gets seniority of 2002 whereas a Dy. Collector joining service in 2001 gets seniority of 2010 in the IAS.

8. The applicants have further submitted that after issue of MEA Notification dated 05.10.2010, the IFS Rules have been so notified that the role of UPSC from the Departmental Promotion Committee (DPC) for induction of promotee officers to IFS has been removed. This particular amendment is also in contravention with the provisions of Article-320 of the Constitution, which lays down the functions of Union Public Service Commission (UPSC). For this, the applicants have asserted that UPSC's concurrence to this amendment was

obtained by misrepresentation of the facts by the official respondents whereby UPSC was informed that since the DPC for promotion from the grade of SO to Grade-I of IFS 'B' take place under the Chairmanship of UPSC, there was no need for UPSC to participate in the DPC for promotion from Grade-I of IFS 'B' to Senior Scale of IFS. The applicants contend that promotion from Grade-I of IFS 'B' to Senior Scale of IFS being promotion to Group-A Central Service attracts the provisions of Article-320, Sub-Article-3(b) of the Constitution, which provides for mandatory consultation with UPSC in such matter.

8. The applicants submit that they have made several representation dated 10.10.2012, 10.05.2013 and 02.9.2013 to the competent authorities but have not received any reply from the respondents till date. Hence, they have approached this Tribunal by filing the instant O.A. seeking the following relief:-

- “(i) Declare Rule 15 Sub Rule (4) of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 as *ultra vires* the provisions of Articles 14 and 16 of the Constitution of India.
- (ii) Quash and set aside Ministry of External Affairs, Government of India Memorandum No. Q/PA-II/584/5/2009 dated 29th of November 2010, Memorandum No. Q/PA-II/584/4/2010 dated 16th of August 2011, Memorandum No. Q/PA-II/584/7/2011 dated 9th of March 2012 and Memorandum No. Q/PA-II/584/1/2012 dated 27th of September 2012, whereby Officers of Grade-I of IFS 'B' have been promoted to the Senior Scale of the Indian Foreign Service and have been allotted the notional month and year of allotment as per details against their names in accordance with the provisions of Rule 15 Sub Rule (4) of the Rules.
- (iii) Declare the IFS (RCSP) Amendment Rules, 2010 as violative of the provisions of Article 14, 16 and 320 of the Constitution.

- (iv) Direct the Official Respondents to recalculate the number of vacancies reserved for Grade-I of the IFS 'B' on promotion to the IFS (Senior Scale) in accordance with the provisions of Rule 13(2) (a) of the IFS (RCSP) Rules, 1961 for the five DPCs convened in July 2009, October 2010, June, 2011, December 2011 and September 2012 pursuant to which the above referred impugned Memoranda were issued and promotions from Grade-I of the IFS 'B' to IFS (Senior Scale) were given affect to.
- (v) Direct the Official Respondents to recast and re-fix the *inter se* Seniority between Grade – I IFS 'B' Officers *vis-à-vis* IFS (Senior Scale) Officers on promotion of Grade – I IFS 'B' Officers to IFS (Senior Scale) and accordingly re-fix their respective years of allotment.
- (vi) Pass any such other or further order(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice and in favour of the Applicant."

9. In reply filed by respondents No. 1 to 3, it has been stated that MEA has various cadres of personnel manning its posts situated in the headquarters as well as in the Missions abroad. Majority of these personnel are from IFS or IFS 'B'. The IFS cadre is governed by IFS (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 whereas IFS 'B' is governed by IFS Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964. The cadre structure of these cadres is given below:-

S.No.	Name of the Post (Group 'A')	Pay Scale	Grade Pay
1.	Grade-I of IFS (Secretary)	Apex Scale 80000 (fixed)	
2.	Grade-II of IFS (Additional Secretary)	HAG scale 67000-79000	
3.	Grade-III of IFS (Joint Secretary)	SAG, Pay Band 4 (37400-67000)	10000
4.	Grade-IV of IFS (Director)	Selection grade, Pay Band 4 (37400-67000)	8700

5.	Junior Administrative Grade of IFS (Deputy Secretary)	Pay Band 3 (15600-39100)	7600
6.	Senior Scale of IFS (Under Secretary)	Pay Band 3 (15600-39100)	6600
7.	Junior Scale of IFS (Under Secretary)	Pay Band 3 (15600-39100)	5400

Indian Foreign Service Branch B (IFS 'B') cadre

S.No.	Name of the Post	Pay Scale	Grade Pay
1.	Grade-I of IFS B (Under Secretary) (Group 'A')	Pay Band 3 (15600-39100)	6600
2.	Integrated Grade II & III of IFS B (Section Officer) (Group 'B')	Pay Band 2 (9300-34800)	4800
3.	Grade-IV of IFS B (Assistant) (Group 'B')	Pay Band 2 (9300-34800)	4600
4.	Grade-V of IFS B (UDC) (Group 'B')	Pay Band 1 (5200-20200)	2400
5.	Grade-VI of IFS B (LDC) (Group 'B')	Pay Band 1 (5200-20200)	1900

During arguments it was stated on behalf of the respondents that SOs get non-functional grade carrying Grade Pay of Rs.5400 in Pay Band-2 after 04 years of service.

9.1 Further, it has been stated that Rule-13 of the IFS Rules governs the promotion of Grade-I of IFS 'B' to Senior Scale of IFS. Rule-15(4) determines the seniority of officers so promoted. As per this rule, the year of allotment granted to IFS 'B' officers is antedated to 03 years prior to their actual date of promotion to Grade-I of IFS 'B' or 08 years prior to the actual date of promotion to Senior Scale of IFS, whichever is later. Rule-15(4) has been in existence since 1961 and has been uniformly implemented by the Ministry since then.

9.2 It has further been submitted that an Expansion Plan in the Ministry was approved by the Union Cabinet in the year 2008 to address the need for enhancement of nation's diplomatic engagement with the world. Under this plan, 314 posts were to be created over a period of 10 years. Out of these, 120 posts were to be filled by promotion. Rule-13 of IFS Rules was amended on 05.10.2010 to provide for the additional 120 posts for promotion from Grade-I of IFS 'B' to Senior Scale of IFS. The amendment was carried out after following the prescribed procedure and after obtaining the concurrence of the DoP&T, UPSC and Ministry of Law and Justice. It was notified in the Gazette of India on 05.10.2010. An amendment was also carried out to exclude consultation with UPSC in making promotions from Grade-I of IFS 'B' to Senior Scale of IFS. This amendment was also carried out after following the proper procedure and after obtaining necessary approval of DoP&T, UPSC and Ministry of Law and Justice. It was also notified in the Gazette of India on 05.10.2010.

9.3 Official respondents have further stated that promotions from IFS 'B' to Senior Scale of IFS have become faster since the year 2008 on account of additional 12 posts being created under the promotion quota under the MEA Expansion Plan. So far 06 tranches of 12 posts each totaling 72 posts have been created and operationalised by giving promotions to the eligible officers. The

stoppage of lateral entry of Stenographers Cadre since 2008 has also helped in removing stagnation in promotion of SOs. Thus, now promotions from IFS 'B' to IFS are being affected on completion of minimum qualifying service prescribed under the Rules and stagnation has been significantly eliminated.

9.4 Official respondents have gone on to state that the seniority fixation of promotee officers is done strictly according to the IFS Rules, according to which seniority is antedated 03 years prior to their appointment as Grade-I of IFS 'B'.

9.5 Further, it has been submitted that each service or cadre is governed by separate Recruitment Rules. The Recruitment Rules for IFS cannot be applied to IAS, which has its own set of Rules. Similarly provisions of IAS (Regulation of Seniority) Rules, 1987 or IAS (Regulation of Seniority) Amendment Rules, 2012 are not applicable to IFS. Even the calculation of vacancies allotted to the promotion quota has been done strictly according to the extant Rules and in this regard also there cannot be any comparison to the All India Services.

9.6 Regarding consultation with UPSC, the official respondents have stated that UPSC is consulted when promotion is made from SO (Group-B) to Grade-I of IFS 'B' (Under Secretary – Group A). Since Grade-I of IFS 'B' and Senior Scale of IFS are both in Group-A,

consultation with UPSC was not considered necessary for the aforesaid induction and was, therefore, waived off by an amendment to the Rules on 05.10.2010.

10. Reply has also been filed by private respondent No. 13 (wrongly mentioned as reply on behalf of respondent No.2). According to him, the OA filed by the applicants is misconceived and deserves to be dismissed because the applicants have woefully failed to demonstrate any grievance or adverse affect on their service conditions by the operation of this rule. The entire O.A. is built on denying the respondents their rightful claim for promotions and consequential seniority flowing from the statutory provisions of IFS Rules framed under Article 309 of the Constitution. The vires of Rule-15(4) as already been established by this Tribunal in OA-1663/2006 wherein this provision was found to be in conformity with Articles 14 and 16 of Constitution of India. The Constitutionality of this Rule has thus attained judicial finality and the applicants have no legal right whatsoever to challenge the vires of this Rule again.

10.1 He has further stated that the applicants, who belong to IFS, enjoy uninterrupted and time bound promotions till their retirement. In fact, even after filing of this O.A. applicant No.1 has received promotion to the grade of Dy. Secretary.

10.2 The applicants are fully aware that promotions of the private respondents take place under separate set of provisions and their induction in IFS takes place only against the quota ear-marked for them. Therefore, the applicants have no legal right to challenge these promotions.

10.3 On the other hand, officers of IFS 'B' have to face acute stagnation in their service. By the time, they reach the level of Grade-I, they do not have much service left. Most of them retire at the level of Dy. Secretary and few reach upto the level of Director. Many of them do not even reach the stage of being inducted in the IFS. With such stark disparities existing between two services, filing of this O.A. was unjust, unfair and demonstrative of utter callousness and insensitivity on the part of the applicants.

10.4 Challenge to remove consultation with UPSC in DPCs for promotion to Senior Scale of IFS on the ground that it was violative of Article-320 of the Constitution of India is also based on flimsy ground. The applicants have not taken note of the fact that consultation with UPSC was removed by DoP&T Notification in the year 1999 itself.

10.5 Private respondent No.13 has further stated that the Rule-15(4) was logical, rationale and was meant to ensure parity and equality in promotion. It was in consonance with Articles 14 & 16 of the Constitution of India. The contention of the applicants regarding

direct recruit officers being displaced by junior officers of IFS 'B' was also not acceptable. This is because the seniority of direct recruits vis-à-vis the promotees is provisional and tentative till such time it is correctly determined after induction of promotees of IFS. Thus, this contention of the applicants is based on imaginary and illusionary grounds. He has further submitted that promotee officers bring to the cadre rich experience in noting and drafting skills, interpretation of rules and regulations and critical inputs in formulation of policies. This enriches the service and contributes to its overall efficiency. A number of officers coming to the Senior Scale go through the Limited Departmental Examination conducted by UPSC apart from departmental promotions. This examination is widely known to test all round knowledge and skills in fields as diverse as Constitution of India, Office Procedure, Rules and Regulations of Central Government, preparation of Cabinet notes etc. This examination is also highly competitive.

10.6 Private respondent No.3 has further stated that Rule-13 of IFS Rules was amended vide Notification dated 05.10.2010 to create a provision for absorbing 12 promotional posts in the cadre, which were created by the Union Cabinet vide approval dated 21.08.2008. These posts were put over and above the 22.5% quota of the promotees as is clear from the language of the Notification itself. There is no merit in the contention of the applicants that these

additional posts should count within the 22.5% quota allocated to the promotees. Further, there is no merit in the contention of the applicants that a promotee officer on appointment in IFS displaces a direct recruit officer. As per Government of India norms, 04 years of qualifying service is required for promotion from a post carrying Grade Pay of Rs. 4800 to a post carrying Grade Pay of Rs. 5400. A Section Officer, however, has to render 08 years of minimum qualifying service as Section Officer and another 03 years in the Senior Scale of IFS-B before induction in the IFS.

10.7 Private respondent No.3 has also submitted that the applicants appear to be assuming that their higher rank in the competitive examination confers on them an inalienable right to seniority in perpetuity. This obviously is not acceptable because till such time as seniority of the promotee officers is fixed vis-à-vis the direct recruits the seniority of direct recruits remains only tentative and provisional. Lastly, the respondent No.3 has submitted that Rule-15(4) has been in existence for more than 50 years and has withstood the test of time. This itself is proof of its efficacy, reasonableness and validity. This Tribunal in OA-1663/2006 has already upheld the constitutionality of this rule and the applicants cannot be allowed to challenge it again.

10.8 MA-1458/2017 had been filed by two officers of IFS-B, namely Sh. Sanjeev Jain and Sh. Bhupendra Singh, who were working as

Under Secretaries in December, 2015. Appearing on their behalf, learned counsel Sh. A.K. Behera submitted that these persons will be affected by any order passed by the Tribunal and sought their impleadment on this ground. By our order dated 19.07.2017, we had allowed these two applicants to be interveners without any right to file pleadings while declining their prayer for impleadment as respondents. Sh. Behera was allowed to appear on their behalf and render assistance to this Tribunal.

11. We have heard learned Senior Counsel Ms. Jyoti Singh with learned counsel Sh. Pradeep Dahiya for the applicants, learned counsel Sh. Rajinder Nischal for official respondents and learned counsel Sh. M.K. Bhardwaj for private respondents. Sh. A.K. Behera was also heard for interveners.

11.1 Applicants have relied on the judgment of Apex Court in the case of **P. Sudhakar Rao and Ors. Vs. U. Govinda Rao and Ors.**, (2013) 8 SCC 693 in which the Apex Court has noted its judgment in the case of **State of Bihar Vs. Akhoury Sachindra Nath**, 1991 SCC (L&S) 1070 wherein it was held that retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre. It has also been observed in the same judgment that when quota is provided for, then the seniority of the employee would be reckoned when vacancy arises in his or her quota and not from any

anterior date. The Court has also taken note of the judgment given in the case of **Uttaranchal Forest Rangers' Assn. (Direct Recruit) Vs. State of U.P.**, 2006(10) SCC 346 on the same issue. On the same issue, they have relied on the judgment of **State Bank of India Vs. Yogender Kumar Srivastava**, (1987) 3 SCC 10.

11.2 The private respondents, on the other hand, have relied on several judgments, which are as follows:-

(i) In the case of **P.U. Joshi Vs. Accountant General, Ahmedabad & Ors.**, AIR 2003 SC 2156 the Apex Court has observed as followed:-

"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."

(ii) In the case of **Government of Andhra Pradesh & Ors. Vs. P. Laxmi Devi (Smt.)**, (2008) 4 SCC 720 while opining on when a Act can be declared invalid, the Apex Court has observed as follows:-

“44. In our opinion, there is one and only one ground for declaring an Act of the legislature (or a provision in the Act) to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. This violation can, of course, be in different ways, e.g. if a State legislature makes a law which only the Parliament can make under List I to the Seventh Schedule, in which case it will violate [Article 246\(1\)](#) of the Constitution, or the law violates some specific provision of the Constitution (other than the directive principles). But before declaring the statute to be unconstitutional, the Court must be absolutely sure that there can be no manner of doubt that it violates a provision of the Constitution. If two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. Also, the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope vide [Mark Netto vs. Government of Kerala and others](#) AIR 1979 SC 83 (para 6). Also, it is none of the concern of the Court whether the legislation in its opinion is wise or unwise.”

(iii) In the case of **Dilip Kumar Garg and Another Vs. State of Uttar Pradesh and Ors.**, (2009) 4 SCC 753 Apex Court has observed that Article-14 should not be stretched too far, otherwise it would make the functioning of the administration impossible.

(iv) In the case of **UOI Vs. Pushpa Rani and Ors.**, (2008) 2 SCC (L&S) 851 with connected cases the Apex Court while commenting on the limitations of powers of judicial review has ruled as follows:-

“37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for

improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open the Court to make comparative evaluation of the merit of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration."

(v) In the case of **State Bank of India Vs. Yogendera Kumar Srivastava**, (1987) 3 SCC 10 with connected case the Apex Court observed that in service jurisprudence, there cannot be any rule, which would satisfy each and every employee. Thus, constitutionality of rule has to be adjudged by considering whether it is fair, reasonable and does justice to the majority of the employees.

11.3 Arguing for interveners, learned counsel Sh. A.K. Behera placed reliance on the Apex Court judgment in the case of **Bharat Petroleum Corpn. Ltd. and Anr. Vs. N.R. Viaramani and Anr.**, (2004) 8 SCC 579 in which Apex Court has held that Courts should not place reliance on decisions without discussing as to how factual situation of the case at hand fits in within the situation described in the decision relied upon. Observations of the Court must be read in the context in which they appear in the judgment relied upon. Judgments of Courts are not to be construed as Statutes. In this context, Sh. Behera argued that the judgments relied upon by the applicants, namely, **P. Sudhakar Rao & Ors.** (supra) and **Yogendera Kumar**

Srivastava (supra) were distinguishable from the facts of the instant O.A. He submitted that the cited cases were dealing with fixation of seniority between direct recruits and promotees whereas the instant case is one of fixation of seniority between two sets of promotees. He clarified that even the direct recruits of IFS join in the junior scale of pay and are promoted to senior scale of pay, therefore, have to be regarded as promotee to that scale. Further, he submitted that in cited cases the seniority was fixed afresh in each grade separately without reference to any "year of allotment" whereas in the instant case the seniority was fixed based on the concept of "year of allotment" and once year of allotment is fixed, the same does not change during the entire service time of the officers. Further, Sh. Behera submitted that in the cited cases, there was only one feeder grade from which promotions were made but in the instant case direct recruit IFS officers in the junior scale in the grade pay of Rs. 5400 are promoted to direct senior scale having grade pay of Rs. 6600 whereas officers of IFS-B are already working in the senior scale of IFS-B with grade pay of Rs.6600 when they are inducted in the senior scale of Indian Foreign Services.

11.4 Sh. Behera has also produced charts to demonstrate the career profile of private respondents/interveners as well as applicants and submitted that the direct recruit IFS officers including the applicants have invariably got senior scale in 04 years of service.

On the other hand, the promotee officers have taken 20 years or more to reach that level. He also argued that even in comparison to All India Services, although the same was not justified, it will be found that seniority rules do not favour the promotee officers.

12. We have considered the submissions of all the parties. The applicants have mainly relied on two grounds to support their case. First one is that the promotee officers under the existing rules were getting back dated seniority, which would make many of them senior to direct recruits after fixation of seniority though before that they work under the direct recruits as Section Officers. They have also stated that IFS Rules were favouring the promotees inasmuch as they were getting the back dated seniority whereas such a situation does not exist in other All India Services. They have also argued that exclusion of UPSC while holding DPC for induction of IFS-B officers into the IFS was against Article-320(b) of the Constitution and has been done by the Government by misrepresenting the facts to UPSC. Further, they have submitted that the Government has misinterpreted the decision of the Union Cabinet regarding Expansion Plan of MEA inasmuch as additional posts created under the promotee quota have been kept outside 22.5% quota allocated to them under the Rules. We discuss each of the grounds taken by them as hereunder:-

12.1 The first ground taken by them was that the Rules were favouring the promotees as back dated seniority was being given to them unlike promotees to other All India Services. In our opinion, comparison with All India Services was not justified. Service Rules are framed in each cadre considering the functional requirements of that cadre. If all Service Rules had to be similar, there was no necessity to frame separate Service Rules for each service. Moreover, IFS is a Central Service, which primarily serves the Central Government only. On the other hand, All India Service officers have liability to serve both the States as well as the Centre. Their nature of duties is entirely different. The Service Rules of All India Services are framed by the Central Government in consultation with the States. The feeder cadre in the case of All India Services is State Civil Service officers, State Police Officers and State Forest Officers. Before being inducted in All India Services, they work under the State Governments having been appointed by State Public Service Commissions and not by UPSC. Each State has also evolved pay structure of its own for these officers. In some cases in States even at the entry grade, the State Civil Service officers get the same pay scale as is given to a direct recruit All India Service officer. Thereafter, the State officers continue to get promotions in their cadre till they become eligible for induction in the All India Service. While induction takes place in the Senior Scale of All India Service

only, due to delayed induction, the State Civil Service officers earn several promotions in their own cadre, and in some cases reach even high as SAG/HAG grade by the time they become eligible for induction in the All India Service. Thus, comparison with All India Services is not justified as the situation prevalent in these services is quite different from what is existing in IFS.

12.2 Even if such a comparison is made, we find that as per proviso to Regulation-5(2) of IAS (Appointment by promotion Regulations) 1955, the minimum service required by a State Civil Service Officer for induction into IAS is 08 years on the post of Dy. Collector or equivalent. Once he is inducted in the IAS, his seniority is fixed as per Indian Administrative Service (Regulation of Seniority) Rules, 1987. Rule-3(3)(ii) of these Rules reads as follows:-

“(ii) The year of allotment of a promotee officer shall be determined with reference to the year for which the meeting of the Committee to make selection, to prepare the select list on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him in the State Civil Service not below the rank of a Deputy Collector or equivalent, upto 31st day of December of the year immediately before the year for which meeting of the Committee to make selection was held to prepare the select list on the basis of which he was appointed to the service, in the following manner:-

- a. for the service rendered by him upto twenty one years, he shall be given a weightage of one year for every completed three years of service, subject to a minimum of four years;
- b. he shall also be given a weightage of one year for every completed two years of service beyond the period of twenty one years, referred to in sub-clause (a).”

12.3 A mere reading of this Rule would reveal that if a State Civil Service Officer gets promoted to the IAS after 08 years of minimum

qualifying service, then he shall be assigned year of allotment 04 years prior to his induction in the IAS. Thus, there is provision in the All India Service Rules also for giving benefit of service rendered in the State Civil Service cadre prior to induction in the IAS. Even when induction to IAS is delayed, a promotee officer gets benefit of service rendered in State Civil Service.

12.4 Moreover, we notice that the difference between a direct recruit IAS officer and a promotee officer will at least be of 04 years even if the State Civil Service officer is inducted immediately after completing the minimum qualifying service of 08 years. However, in the IFS, a SO of IFS-B will take minimum 08 years to get promoted to Senior Scale of IFS-B. Thereafter, he has to wait for another 03 years before getting inducted into IFS. Thus, minimum qualifying service counted from the grade of SO prior to induction in the IFS is 11 years whereas in IAS it is 08 years. Moreover, an officer getting promoted immediately on completing the minimum qualifying service will get benefit of 03 years service in the grade of SO as compared to 04 years in the case of State Civil Service officer getting inducted into IAS. Consequently, the difference between a direct recruit IFS and a promotee officer joining SO's grade in the same year will be at least 05 years as compared to only 04 years in the case of State Civil Service officer joining the IAS.

12.5 Thus, this analysis will bring out that as far as the IFS Rule-15(4) is concerned, it does not favour the promotee officer if comparison is made to the IAS Rules even though such a comparison is not justified.

12.6 The applicants had argued that the direct recruit officers join as Under Secretaries in the Junior Scale and many of the promotees are working under them as SOs at that time. Thereafter, on their induction into IFS they become senior to the direct recruits by virtue of getting ante dated seniority after giving them benefit of service rendered in the SO's grade. Thus, senior directly recruited IFS officers are then made to work under their juniors.

12.7 In our opinion, no comparison can be made in seniority of persons working in different services. When they are working as SO, these officers are in IFS-B till their induction in the IFS. Comparison of their seniority with the officers of IFS cannot be countenanced. In any case, it is not clear as to how the IFS officers are posted as Under Secretaries in the Ministry even while working in the Junior Scale of IFS. This is because the post of Under Secretaries and above are covered under the Central Staffing Scheme. Under this Scheme, minimum 05 years of service is required for being appointed as Under Secretary in the Government of India. Since IFS officers indisputably are getting Senior Scale within 04 years of their appointment in IFS, as

per provisions of Central Staffing Scheme they would not be eligible to work as Under Secretary while in the Junior Scale of IFS. If the provisions of Central Staffing Scheme are strictly adhered to then the problem of junior becoming senior as stated by the applicants would be largely eliminated. The following illustration would clarify this position. Take for instance the current year i.e. 2017. The junior most direct recruit IFS officer who can be posted as a Under Secretary would have year of allotment as 2012 since 05 years of service is a necessary condition before being posted as Under Secretary. On the other hand, senior most Section Officer, who is due for promotion to Senior Scale of IFS-B in 2017 and posted as Under Secretary will be inducted in IFS only after completing 03 years in service of Senior Scale of IFS-B i.e. in the year 2020. As per Rule-15(4) his year of allotment will be fixed as 2014 after giving him benefit of 03 years of service rendered in the feeder grade. Even then he will remain 02 years junior to the direct recruit. Thus, it is evident that the problem of junior becoming senior has arisen due to non adherence to the provisions of the Central Staffing Scheme and not because of the Rule-15(4).

12.8 The applicants had also argued that the respondents have misinterpreted the Cabinet decision of 2008 and are counting the additional 12 posts being created in the promotee quota every year

as over and above their 22.5% quota. We have perused the Notification dated 05.10.2010. The relevant part reads as follow:-

"G.S.R.....(E). In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Indian Foreign Services (Recruitment, Cadre, Seniority and Promotion) Rules, 1961, namely:-

1. (1) These rules may be called the Indian Foreign Services (Recruitment, Cadre, Seniority and Promotion) Amendment Rules, 2010.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In rule 13 of the Indian Foreign Services (Recruitment, Cadre, Seniority and Promotion) Rules, 1961, for sub-rule (2), the following sub-rule shall be substituted, namely:-

"(2)(a) Such number of posts in the Senior Scale of the Service as do not exceed 22.5% of the Senior Scale and higher posts in the Cadre including deputation reserve, if any, but excluding-

- (i) one-half of the posts of Head of Missions/Posts; and
- (ii) posts which are created on an annual basis subsequent to the 21st day of August, 2008.

shall be filled by promotion on the basis of selection from among officers of Grade-I of the Indian Foreign Service, Branch 'B' who have completed not less than three years of regular service in that grade;

(b) Out of the posts referred to in sub-clause (ii) of clause (a),-

(i) if the number of posts created on an annual basis is only upto 32 posts, then, twelve posts shall be filled by promotion on the basis of selection from among officers in Grade I of the Indian Foreign Service, Branch 'B' who have completed not less than three years of regular service in that grade;

(ii) if the number of posts created on an annual basis is more than 32, then the excess number of posts over and above the 32 posts shall be filled by the method referred to in clause (a).

Provided that such promotion shall be subject to issue of order of creation of posts from time to time."

12.9 Reading of para-2(2)(a) of the Notification above makes it clear that the posts, which are created on annual basis subsequent

to 21.08.2008, shall be excluded from the 22.5% quota allocated to the promotee officers. Moreover, had the intention of the law framers been to keep these posts within the 22.5% quota, there was no need to specify in para-2(2)(b)(i) that 12 posts out of 32 posts shall be filled by promotion. In such a situation all the 32 posts would have gone to the IFS cadre and 22.5% of the same would have been filled by promotion as is the case with all other Senior Scale posts. Thus, in our opinion, there is no error in the action of the respondents and there is no merit in the contention of the applicants that the Cabinet decision as contained in the above Notification has been misinterpreted by the respondents.

12.10 The applicants had argued that the respondents had wrongly disassociated UPSC from DPCs being held for induction of promotee officers to IFS. Their contention was that UPSC was misled by the respondents and excluded on the grounds that induction of promotees in IFS is promotion from one Group-A post to another and that in any case UPSC is associated while holding DPCs for promotion of these officers from SOs to Senior Scale of IFS-B. The private respondent No.3 had, however, argued that this was done in accordance with the directions of DoP&T issued in the year 1999.

12.11 We have considered the submissions of both sides and have also perused the DoP&T Notification dated 21.05.1999 (page-270 of the paper-book), the relevant part of which reads as follows:-

“5. Promotion by Selection-cum-seniority :

It shall not be necessary to associate the Union Public Service Commission while making promotion to any Group 'A' service or post the maximum of the scale of pay of which is less than Rs. 16500, of an officer holding any Group 'A' service or post.”

12.12 A reading of this makes it clear that it was not necessary to associate UPSC while making promotion from Group-A post to another provided the maximum of the scale of the pay of the promotional post was less than Rs. 16500/-. We also notice that the maximum scale of the pay of the Senior Scale of IFS at the relevant time was indisputably less than Rs. 16500. Hence, disassociation of UPSC was in accordance with the DoP&T Instructions. The respondents have also made it clear that this was done in consultation with DoP&T as well as UPSC after following the prescribed procedure and necessary amendment was also carried out in the relevant service rules. We, therefore, do not find any irregularity in the same nor is there any merit in the contention of the applicants that Executive Instructions have over-ridden the service rules.

12.13 The applicants have prayed that Rule-15(4) of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules,

1961 be declared ultra vires of the provisions of Articles 14 & 16 of the Constitution on the grounds discussed above. While, we have not found the grounds advanced by the applicants to be tenable, even if these grounds were accepted, they would not be sufficient for declaration of the Rule to be ultra vires of the Constitution. In the case of **P. Laxmi Devi (Smt.)** (supra) relied upon by the respondents, the Apex Court had held that the Courts should be extremely circumspect while declaring an act of the Legislature or a provision in the Statute to be invalid. The Apex Court further observed that only if a provision was found to be violative of the Constitution beyond any doubt, should such a declaration be made. Further, it has been observed that Courts must make every effort to uphold the Constitutionality of a Statute even if that requires giving a strained construction or narrowing down its scope. If we apply this strict standard to the instant case, we find that sufficient reasons have not been advanced by the applicants for declaring the aforesaid rule to be ultra vires of the Constitution. A Rule cannot be declared to be Unconstitutional merely because it does not please each and every section of the employees. In fact, there cannot be any Rule, which satisfies all the employees as has been held by the Apex Court in the case of **Yogender Kumar Srivastava** (supra). In the instant case, we find that the vires of the Rules is being challenged by the applicants merely because this Rule gives, if their contention is to be accepted,

benefit of certain number of years of service to the promotees in fixation of seniority. This, in our opinion, would not be sufficient to strike down a Rule, particularly a Rule which has been in existence for last more than 50 years and has withstood the test of time.

12.14 In the case of **P.U. Joshi** (supra) the Apex Court had ruled that it was exclusively within the purview of the Executive to decide method of recruitment, eligibility criteria or avenues of promotion in a service and it is not justified for the Courts to interfere in the same. Similar view was expressed by the Apex Court in the case of **Pushpa Rani & Ors.** (supra). If the framers of the Rule have in their wisdom decided to follow a particular method of seniority fixation, there appears to be no reason for us to interfere in the same, merely because it does not please a section of employees.

12.15 The applicants had relied on the Apex Court's judgment in the case of **P. Sudhakar Rao and Ors.** (supra) to say that retrospective seniority cannot be given to employees from a date when they were not even borne in the cadre. Learned counsel Sh. A.K. Behera has given several reasons why this judgment cannot be applied to the instant case. These reasons have been enumerated in earlier part of the judgment. However, we also find that the issue involved in the cited case was change of Rules of seniority fixation retrospectively by issue

of GOM's. Such a situation does not exist in the instant case. Here there has been no amendment to the Rules, which has been in existence since last more than 50 years. Moreover, the seniority fixation Rules provides for seniority fixation by giving benefit of service rendered in the feeder cadre. A promotee officer acquires eligibility for induction into service on the strength of his service in the feeder cadre. We do not see anything wrong in giving benefit of part of this service while fixing their seniority in the cadre in which they were inducted as mentioned above. Such provisions are existing in All India Services as well.

13. Thus, after considering arguments of all the parties, we are of the opinion that there is no merit in this O.A. and the same is dismissed. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

(Permod Kohli)
Chairman

/Vinita/