

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved On: 19th November, 2010
Judgment Delivered On: 22nd November, 2010

+ **WP(C) 6697/2010**

RAJU SHARMA & ORS. Petitioners
Through: Mr.Ajit Sinha, Senior Advocate
with Mr.Ashwarya Sinha, Advocate

versus

UNION OF INDIA & ANR. Respondents
Through: Mr.A.K.Bhardwaj, Advocate with
Mr.Ashok Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Exercising power under Article 309 of the Constitution of India, "Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964" were promulgated. The composition of the service, as per Rule 3, was divided into 'General Cadre' and 'Stenographers' Cadre'.
2. Posts in the General Cadre were divided into Grade-I, Grade-II, Grade-III, Grade-IV, Grade-V and Grade-VI Posts.
3. Similarly, posts in the Stenographers' Cadre were divided into Grade-I, Grade-II and Grade-III Posts.
4. Relevant would it be to note that evidenced by Rule 12, promotions within the two cadres were distinct and separate, except for the posts of Grade-I in the General

Cadre i.e. the posts of Under Secretaries, First Secretaries and Second Secretaries in Missions abroad. Rule 12 of the 1964 Rules stipulates as under:-

“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 or permanent officers of the Selection Grade or 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 Stenographers’ Cadre who has not worked in the Integrated Grades II and III for the said period of two years shall 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 II 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)
- (4)
- (5)
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- (7)
- (8)
- (9)
- (10)

5. It is apparent that officers holding posts of Grade II and Grade III of the General Cadre as also officers in the Stenographers' Cadre were eligible to be promoted to Grade-I Posts of the General Cadre i.e. the posts of Under Secretaries, First Secretaries and Second Secretaries in the Mission abroad.

6. In the year 1992, "Indian Foreign Service, Branch 'B' (Stenographers Cadre, Principal Private Secretary posts) Recruitment Rules, 1992" were promulgated and as per Rule 7 thereof it was stipulated as under:-

"7. Preparation of the Lists :- (1) The Ministry of External Affairs shall prepare an eligibility list based on the seniority list of officers of the erstwhile Selection Grade and Grade I of Stenographer's Cadre of Indian Foreign Service, Branch 'B' and/or officers holding the post of Private Secretary in the Ministry of External Affairs. Zone of consideration shall be restricted according to the rules in force time to time.

(2) Officers included in the eligibility list shall be offered an option to indicate whether they want to be considered for promotion to Grade I of General Cadre of Indian Foreign Service, Branch 'B' or to the Principal Private Secretary Grade of Stenographers' Cadre of Indian Foreign Service, Branch 'B'. The names of the officers who opt to be considered for the post of Grade-I of General Cadre of Indian Foreign Service, Branch 'B' will be excluded from the eligibility list."

7. Relevant would it be to note that as per Sub Rule 2 of Rule 7, officers in the Stenographers Cadre who had reached the post of Private Secretary had an option to choose whether they desired promotion to the post of Grade-I in the General Cadre of the Indian Foreign Service Branch 'B' or to the post of Principal Private Secretary Grade of Stenographers Cadre.

8. It is the case of the petitioners all of whom have risen in the Stenographer Cadre and are working as Private Secretaries that on 3.2.2003 options were invited from Stenographers who had reached the post of Private Secretary to exercise option contemplated by Sub Rule 2 of Rule 7 of the 1992 Rules, whether they desired promotion to the post in Grade-I of the General Cadre or desired to earn promotion in the Stenographer Cadre i.e. to the post of Principal Private Secretary and that in response to the Office Memorandum dated 3.2.2003, they had exercised options in the month of February 2003, as per which they opted for promotion to a post in Grade-I of the General Cadre.

9. Relevant would it be to further note that as per the Office Memorandum dated 3.2.2003, vide para 3, it was clearly indicated that the option exercised would be treated as final and no change of option would be permitted. It was further indicated that officers who opted for being considered for promotion in a particular Grade would not be considered for promotion in the other Grade.

10. On 16.10.2008, exercising power under Article 309 of the Constitution of India, Sub Rule 1 of Rule 12 of the 1964 Rules was substituted as under:-

“(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.”

11. It is thus apparent that by virtue of the amendment to the 1964 Rules, persons in the Stenographer Cadre were not eligible to be promoted to posts in Grade-I of the General Cadre and thus could earn promotion only to a higher post in the Stenographer Cadre.

12. Indisputably, prior to 16.10.2008 none of the petitioners, who are in the Stenographer cadre, became entitled to be promoted to any post in Grade-I of the General Cadre on account of there being enough persons senior to them in the Stenographer cadre. Petitioners who have risen in the Stenographer cadre and are working as Private Secretaries sought promotion to posts in Grade-I of the General Cadre, inter-alia, urging that a right vested in them when as per office memorandum dated 3.2.2003 they were called upon to exercise option whether they desired promotion within the Stenographer Cadre i.e. to the post of Principal Private Secretary or they desired promotion to the posts in Grade-I of the General Cadre and having exercised the option for the latter, it being a term of the memorandum dated 3.2.2003 that the options were irrevocable, they claimed that a statutory contract had come into existence and thus the amendment brought about to sub-rule 1 of Rule 12 of the 1964 Rules with effect from 16.10.2008 could not apply to them. They pleaded promissory estoppel.

13. They additionally buttressed their argument by pleading that inasmuch as Rule 7 of the 1992 Rules was not amended, their right to exercise option under sub-rule 2 of Rule 7 remained intact. They urged that since Rule 7 of the 1992 Rules remained unamended and they had exercised option to be considered for promotion to posts in Grade I of the General Cadre and not to the post of Principal Private Secretary in the Stenographer Cadre, the department was obliged to consider their candidature for promotion to the posts in Grade I of the General Cadre notwithstanding the amendment incorporated by substituting sub-rule (1) of Rule 12 of the 1964 Rules.

14. Not finding success at the departmental level the petitioners approached the Central Administrative Tribunal.

They have not found success inasmuch as vide order dated 12.11.2010, the Tribunal has dismissed their Original Application, holding that once the channel of promotion to the post in Grade I in the General Cadre had been closed qua the Stenographers by virtue of amendment to the 1964 Rules, the option exercised by them at a prior point of time would evaporate.

15. It was the grievance of the learned counsel for the petitioners that the Tribunal erred in not deciding whether principle of promissory estoppel applied and secondly what was the effect of Rule 7 of the 1992 Rules not being amended and lastly what was the effect of the option exercised by the petitioners under the existing Rule? It was urged that by inviting options vide office memorandum dated 3.2.2003, since options invited were pursuant to a statutory provision, exercise of option by the petitioners resulted in a statutory contract.

16. It is true that the Tribunal has not settled the issues of law which arose for consideration and to this extent the grievance of learned counsel for the petitioner is correct.

17. The central issues which arise for consideration are: (i) Whether a statutory right enforceable by law accrued to the petitioners when they exercised their options pursuant to the memorandum dated 3.2.2003? (ii) Whether promissory estoppel applies?

18. It is settled law that a civil servant does not have any vested or statutory right to be promoted. The only right is to be considered for promotion as per the Recruitment Rules.

19. Way back in the year 1967, in the decision reported as AIR 1967 SC 1889 Roshan Lal Tandon vs. UOI & Ors., in para 6 the Supreme Court has observed as under:-

“6. We pass on to consider the next contention of the petitioner that there was a contractual right as regards the condition of service applicable to the petitioner at the time he entered Grade ‘D’ and the condition of services could not be altered to his disadvantage afterwards by the notification issued by the Railway Board. It was said that the order of the Railway Board dated January 25, 1958, Annexure ‘B’, laid down that promotion to Grade ‘C’ from Grade ‘D’ was to be based on seniority-cum-suitability and this condition of service was contractual and could not be altered thereafter to the prejudice of the petitioner. In our opinion, there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of a status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor of India under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not

by agreement between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follows:-

‘So we may find both contractual and status-obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligation defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status.’

(Salmond and Williams on Contracts, 2nd Edition, p.12)”

20. The Court concluded that the petitioners therein had no vested contractual right in regard to the terms of his service.

21. We note that the decision of the Supreme Court in Roshan Lal Tandon's case (supra) was followed with approval in the decision reported as AIR 1999 SC 2012 State of J.K. vs. Shiv Ram Sharma & Ors. It was noted by the Supreme Court that by virtue of the amendment to the Recruitment Rule, pertaining to a promissory estoppel, the grievance of the respondent was that his right to be promoted was adversely affected inasmuch as when he joined service he did so under the belief that he could earn promotion to the post in question. It was urged that when he took appointment the applicable recruitment rule did not prescribe as a necessary condition the passing of a matriculation examination which was sought to be introduced by amending the Rule in the year 1990. The claim of Shiv Ram Sharma was accepted by the High Court. In appeal, the Supreme Court overruled the decision of the High Court and held, in para 6, that there was no indefeasible right in Shiv Ram Sharma to claim for promotion to a higher grade to which qualifications could be prescribed and that there was no guarantee that those rules framed by the Government in that behalf would also be favourable to him. Noting the decision in Roshan Lal Tandon's case (supra), it was held that once appointed, an employee has no vested right in regard to the terms of the service, but acquires a status and, therefore, the rights and obligations are no longer determined by consent of parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government.

22. In the decision reported as 2003 (2) ATJ 624, in para 10, it was 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 restriction 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/subtraction 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 underrating 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. (underlining emphasized)."

23. The aforesaid jurisprudence pertaining to service law is sufficient answer to the claim of learned counsel for the petitioner that the principle of promissory estoppel

prohibited the government to act under the amended Recruitment Rule.

24. Suffice would it be to state that to apply promissory estoppel it has to be shown that the person concerned has altered his position on a representation made by the opposite party.

25. We could have understood if persons were promoted in the Stenographers Cadre and they were junior to the petitioners. Having exercised the option to be promoted in the General Cadre, the petitioners could have then claimed that they had altered their position to their prejudice and thus the Rule could not be amended to their disadvantage.

26. We note that no person junior to the petitioners has been promoted as a Principal Private Secretary in the Stenographer Cadre. We note that the seniority position of the petitioners did not enure entitling them to be promoted to a post in Grade-I of the General Cadre till when notification dated 16.10.2008 was promulgated.

27. It is not a case where promotional avenues are being denied to the petitioners. Hitherto, they had two avenues of promotion which stands restricted to only one. We note that the petitioners have not challenged the vires of the notification dated 16.10.2008 amending sub-rule 1 of Rule 12 of the 1964 Rules.

28. It is true that Rule 7 of the 1992 Rules pertaining to the Indian Foreign Service Branch 'B' (Stenographers Grade), Principal Private Secretary posts, Recruitment Rules 1992 has not been amended and that sub-rule 2 thereof continues to permit an option to be exercised by officers in Stenographer Cadre to opt for being considered for promotion to Grade I of the General Cadre of the Indian Foreign Service, but in the absence of a promotional avenue to them in the General Cadre, on account of promulgation of

the notification dated 16.10.2008, the provision retaining the option has been rendered meaningless. It would be a surplus provision and by no means can be interpreted to override the mandate of the amended sub-rule 1 of Rule 12 of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules 1964.

29. The Government be advised to delete/amend Rule 7 of the Indian Foreign Service Branch 'B' Stenographers' Cadre, Principal Private Secretary Post Recruitment Rules 1992.

30. We find no merit in the writ petition which is dismissed.

31. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

NOVEMBER 22, 2010
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