

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

Judgment Reserved on January 10, 2014

Judgment Delivered on January 29, 2014

+ **W.P.(C) 5348/2001**

INDIAN FOREIGN SERVICE (B) GAZETTED
OFFICERS' ASSOCIATION, MEA, NEW DELHI & ORS.

.....Petitioners

Represented by: Mr.A.K.Behera, Advocate

versus

UNION OF INDIA AND ORS.

..... Respondents

Represented by: Ms.Meera Bhatia, Advocate for
R-1.

Ms.Jyoti Singh, Sr.Advocate with
Ms.Tinu Bajwa and Mr.Ashwarya
Sinha, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition is to the order dated May 22, 2001 whereunder the Central Administrative Tribunal has dismissed OA No.1777/1999 filed by the petitioners.

2. 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?

3. The brief facts are that the members of the first petitioner herein

belong to the Integrated Grade-II and III Service of the General Cadre of Indian Foreign Service, Branch 'B' [(hereinafter referred as IFS (B)], which is governed by IFS(B) (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 [for short, Rules, 1964]. The IFS (B) consists of the General Cadre, Stenographer Cadre and Cipher Sub-Cadre.

4. Pursuant to the recommendations of the IVth Central Pay Commission, all posts of Senior Personal Assistants and Private Secretaries were merged into a common pay scale of ₹ 650-1200 which was the equivalent pay scale of Section Officers. The Rules, 1964 as existed then contemplated through Rule 12 the post of Under Secretary (Grade-I) to be filled by the Private Secretary and only half of the service as Senior Personal Assistant and full service of the Private Secretary was to be counted for eligibility. In view of this position, a Senior Personal Assistant would reach in the promotion zone after 12 years as compared to 8 years in the case of Section Officer. In view of the commonality of pay scale, both the Cadres have become 8 years for reaching the promotional zone.

5. The recruitment to Grade I of the General Cadre in terms of Rule 12 was 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 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 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 the 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 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 Schedules Castes or the Schedules Tribes, who have rendered not less than four years' of the 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 Schedules 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.

[Sub-rules (4), (5) & (6) omitted vide Gazette (Extraordinary) Notification No. Q/CAD/792/1/95 dated 11th December, 1995]

(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 merit 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 any 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 I of the General Cadre shall be such as may be determined by the Controlling Authority in consultation with the Commission.

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

6. The Rule 12 of Rules, 1964 as reflected above would reveal that an officer of Selection Grade in the Stenographer Cadre, who had worked in the Integrated Grade of II and III i.e. Section Officer for the period of two years shall be considered for the promotion to Grade I of the General Cadre, if he is otherwise eligible for such promotion and the Controlling Authority for the reasons to be recorded in writing, is satisfied that such officer had not worked in the Integrated Grade of II and III of General Cadre owing to exigency of service.

7. In the year 1997, the Vth Central Pay Commission has made recommendations in para 45.37 whereby it, inter alia, recommended that lateral entry has been causing acute stagnation in the CSS Section Officers' Cadre, the Private Secretaries should avail promotion in its own line, the lateral entry be stopped. These recommendations of the Pay Commission were universally made applicable to all the departments/services including IFS (B).

8. The grievance of the petitioners before the Tribunal primarily was that in view of the rules contemplating promotion to the post of Under Secretary from the Stenographer Cadre, their actual time of promotion

has got deferred to several years and even after the Vth CPC recommendations, which recommended promotion from the Private Secretary in its own line, 59 Private Secretaries have been promoted as Under Secretary out of the total cadre strength of 147 in the Ministry of External Affairs at their cost.

9. For the sake of convenience, we reproduce the reliefs prayed for by the petitioners in the original application:

“(a)Direct the respondents to implement the recommendations of the 5th Central Pay Commission contained in para 45.37 Clause (iv) in respect of the stoppage of lateral entry of the Private Secretaries in General Cadre Grade-I of IFS Branch-B.

(b) This Hon’ble Tribunal may be further pleased to declare the portion of Rule 12(i) from X-1 to X-2 in Annexure-X which provides for lateral entry of permanent officers of Stenographers Cadre in Grade-I of general cadre and detailed above in para 5.25 of IFS(B) as illegal, discriminatory and unconstitutional.

(c) Issue directions to the respondents not to include Private Secretaries in IFS (Branch-B in future in the select list for promotions to Grade-I of General Cadre of IFS (Branch-B).

(d) Direct the respondents not to prepare interpolated list of Private Secretaries and Section Officers of IFS (Branch-B) general cadre for consideration of Officers to the post of Under Secretary Grade-I of General Cadres IFS (Branch-B); for the year 1998-99 onwards.

(e) Direct the parity of scale is not the criteria for promotion to higher posts in a service.

(f) Direct the respondents to discontinue lateral entry of Private Secretaries in Grade-I of General Cadres of IFS (Branch-B)”.

10. It was the case of the petitioners that the duties attached to the post of Private Secretaries and Section Officers are absolutely distinct and different and those of Section Officers are more onerous carrying more

responsibilities and as such, there cannot be any comparison between them. It was stated in the original application that if this rule of considering the Stenographers' cadre for promotion in Grade-I is not stopped, then, there is a likelihood that the half of the total cadre strength of the Under Secretaries would be occupied by the officers from the Stenographers' Cadre. It was the case of the petitioners that the government has not accepted the recommendations contained in Para 45.37 (iv) regarding stoppage of lateral entry of Private Secretary to the cadre of Section Officer but, they would contend that the government has accepted the recommendation relating to Private Secretaries, whereby additional post of Principal Private Secretary and Sr. Principal Private Secretary have been created. In other words, without stopping the lateral entry to Grade-I of IFS (B), they have been given an option to opt for Principal Private Secretary or Under Secretary, which is unfair and unjust practice. The petitioners relied upon the Constitutional Bench' Judgment of the Supreme Court reported as AIR 1973 SC 1088 Purushottam Lal & Ors. Vs. UOI & Anr. to contend that the non-implementation of the report of the pay commission in respect of certain post is violative of Article 14 and 16 of the Constitution of India. We may only note that petitioners have challenged the vires of that portion of Rule 12(1) to the extent it provides for lateral entry of permanent officers of Stenographers' cadre in Grade-I of General Cadre as being illegal and discriminatory and unconstitutional.

11. It was the case of the respondent No. 1/Ministry of External Affairs that the Rule 12 of the Rules, 1964 provides promotion from Stenographers' Cadre to Grade-I of IFS (B). They have contended that the recommendations of the Vth Central Pay Commission which is a

recommendatory body only, it is for the government to accept it or not. They would state that the recommendations of the IVth Central Pay Commission was made in the year 1986 and the same had been challenged only in the year 1999. Meaningfully read, the respondent No. 1 has justified the existence of the Rules. They would also contend that this Rule governing lateral entry has been continuing for several years, the said rule stood the test of time. The Rule had not affected the Cadre strength of the Section Officers.

12. Further, the respondent has justified the non-implementation of the recommendation of the Vth Central Pay Commission in para 45.34 on the ground that the same was not effected/nor implemented in CSS cadre also.

13. We note that the Stenographers' Association had also impleaded itself before the Tribunal. They also take the similar pleas as has been taken by the Ministry of External Affairs. That apart, they contend that the Stenographers suffer from acute stagnation. They would also contend that as a Private Secretary, they also perform equally onerous duties. Further, they justify the recommendation of the Vth Central Pay Commission, providing avenues like P.P.S. and Sr. P.P.S. by contending that an officer of the Stenographers' Cadre can go only upto the level of Sr. Principal Private Secretary, whereas an officer of General Cadre of IFS(B) can go upto the level of Secretary in the Ministry. The implementations of the recommendations have improved the promotional avenues of the Stenographers' cadre, by giving an option for promotion either to the Under Secretary grade or for Principal Private Secretary. It was their case that they only occupy less than 50% post of Under Secretary.

14. The Tribunal in the impugned order has dealt with all the contentions raised in the following manner:

(i) As regards the merger of pay scale of Senior Personal Assistant and Private Secretary and bringing it to the equivalent pay scale of Section Officer had adversely affected their promotional avenues as the actual time taken for promotion to Grade-I as Under Secretary has become 15 years instead of 8 years, the Tribunal held that the Section Officers have not challenged the rule for these long years and once the decision of the Government has been implemented, it would not be in the fitness of things and interest of service to unsettle the settled position. That apart, it is belated claim of the petitioners to challenge the merger on the basis of the recommendations as the same would be barred by limitation under Section 21 of the Administrative Tribunals Act, 1985.

(ii) In so far as the contention that despite Vth Central Pay Commission recommending in Para 45.37 relating to Central Secretariat Stenographers' Service which equally apply to IFS(B) for discontinuance of lateral entry of Private Secretaries to the grade of Under Secretaries and not implementing the same, is without justification. Accepting a part of the whole recommendations and not accepting the discontinuance of lateral entry, is arbitrary. The Tribunal was of the view that since the Government has not accepted the recommendation for stopping of the lateral entry on the ground there exist a statutory rule which permits lateral entry of Private Secretaries into the IFS Grade-I and the same

would over-ride administrative instructions or decision of the executive body like the Central Pay Commission. In support, the Tribunal relied upon the judgment of the Supreme Court in 1998 (2) SCC 162 Suryanarayan Sahu Vs. Council of Scientific & Industrial Research, and distinguished the judgment relied upon by the petitioner in Purushottam Lal's case (supra) on facts inasmuch as in Purushottam Lal's case, the recommendations were accepted with regard to certain employees and same benefit was denied to the other set of employees on the ground being violative of Article 14 and 16 of the Constitution of India.

(iii) Insofar as the contention of the petitioners that the lateral entry has adversely affected their (SOs) promotional avenues and the Private Secretaries have taken over a substantial portion of their promotion quota for the post of Under Secretary in Grade-I is concerned, the Tribunal held that the promotion to the Grade of Under Secretary is considered from interpolated list of eligible Section Officers and Private Secretaries, in which the Section Officers of the particular year are given preference over the Private Secretaries of the same year in placement to the interpolated list. In other words, the Tribunal was of the view that Section Officers are given due regard in the matter of promotion. The Tribunal was also of the view that it is not the case of the petitioners that the Private Secretary who has been promoted to the post of Under Secretary has been found to have discharged his functions in a less efficient manner to come to a conclusion

that the Private Secretaries are not in a position to discharge the responsibilities with expedience. The Tribunal also found that there is no reduction in the cadre strength on the ground that the posts are occupied by the Private Secretaries which could have affected the promotional avenues of the Section Officers for promotion to Grade-I of IFS (B). The Tribunal held that the promotion is being affected under Rule 12 of the Rules, 1964, which have been duly approved by the DOP&T and the UPSC. The Tribunal was also of the view that the Private Secretaries promoted as Under Secretaries constitute only 28% as compared to Section Officers as Under Secretaries i.e. 72%.

(iv) Insofar as the challenge of the petitioners to the portion of Rule 12 of the Rules, 1964 which permits lateral entry to Private Secretaries for their promotional avenues to Grade-I is discriminatory is concerned, suffice would it be to say that the Tribunal was of the view that the Rule was in existence since 1964 and the action bringing Private Secretaries in Grade-I has started in the year 1972-73 and the grievance has been made in the year 1999, and therefore, the Tribunal has no jurisdiction to go into the said aspect at this point of time.

15. Mr. A.K.Behera, the learned counsel for the petitioners has taken us to the provisions of Rule 12 of the Rules, 1964 and made almost similar submissions as advanced on behalf of the petitioners before the Tribunal. The thrust of the argument of Mr. Behera was that because of the Rule position, the officers belonging to Stenographers' grade had occupied the maximum posts of the IFS (B) Grade-I which is arbitrary.

He has took us through the recommendations of the Vth Central Pay Commission to highlight the recommendations of the Commission in Para 45.37 wherein in para (iv), the Pay Commission, inter alia, recommended that the lateral entry of Private Secretaries to the Grade of Under Secretaries should be discontinued. He would further state that even though the said recommendations was under the heading of Central Secretariat Stenographers' Service, the same was made applicable to the other services in terms of Para 45.38 which, inter alia, stated that since the IFS Grade (B) Railway Board Stenographers' Service, Armed Forces Headquarters' Stenographers' Services are structured on the lines of Central Secretariat Stenographers' Service, the benefit of the recommendations made in sub-para (i) to (vi) which included the recommendations in para (iv), be extended to the members of the service. Mr. Behera would state that unfortunately, this para (iv) was not accepted by the government even though the recommendations in the earlier paras (i) to (iii) were accepted way back in the year 1997. He would state that it was only on October 16, 2008 when the recommendations given in sub-para (iv) of para 45.37 have been accepted by the Government whereby they have amended Rule 12 of the Rules, 1964 by stopping the lateral entry to the Grade-I of IFS(B) from the Stenographers' Cadre. He would submit that between the period, the recommendations were made and the date when the amendment had taken place in Rule 12, the petitioners continued to suffer and their valuable rights had been taken away by continuing to promote the officers from the Stenographers' Cadre at the cost of Section Officers. Meaningfully read, he would state that the promotions which have been made between the period 1999 to 2008, need to be set aside. He relies

upon the judgment of this Court in the case of (1996) 7 SCC 256 Purushottam Lal's case (supra), Joint Action Council of Service Doctors' Organizations & Ors. Vs. Union of India & Anr., and 1987 (Suppl.) SCC 18 P. Parmeshwaran & Ors. Vs. Secretary to the Government of India, in support of his case.

16. We may state here that the petitioners filed a CM No. 19212/2012 wherein, they, inter alia, sought a prayer that the respondent be directed to prepare a fresh select-list for filling the post of Under Secretary which is post of General Cadre from the year 1999 onward.

17. On the other hand, Ms. Meera Bhatia, Advocate appearing for the respondent No. 1 would justify the actions on the basis of the reply filed by the respondent No. 1 before the Tribunal and in this Court. Ms. Jyoti Singh, Sr. Advocate representing the Stenographers' Association/respondent No. 4 would contest the challenge of the petitioners by stating that the challenge to the Rule 12 of the Rules, 1964 has been made after 35 years of its existence and the same is barred by limitation. She would further submit that the recommendations of the IVth Central Pay Commission are different from the Vth Central Pay Commission. In any case, the government had already implemented the resolution and recommendations to the extent that no justification exists for maintaining a distinct Stenographers' Cadre in any government office. She would justify the lateral entry of the officers of the Stenographers' Cadre to the Grade-I of IFS (B). She would submit that at no point of time, the provision of lateral entry of officers of the Stenographers' Cadre had affected the chances of the promotion of the Section Officers. She would submit that the Section Officers always had more vacancies for their promotion to the post of Under Secretaries as

compared to the post of Private Secretary. In fact, according to her, there was a stagnation in the post of Private Secretary. She tried to highlight the disparity between the Section Officers and Private Secretaries. She would state that lateral entry of Stenographers has stood the test of time for over 35 years and the attempt of the petitioners to seek relief with retrospective effect from the year 1999 is uncalled for. Moreso, Rule 12 provided Stenographer Cadre as a source for promotion to the post of Under Secretary. She relied upon the judgment of the Supreme Court in the case 1988 2 SCC 201 K.B. Subba Rao and Ors. Vs. Govt. of Andhra Pradesh, to contend that the conditions cannot be altered with retrospective effect to the disadvantage of a government servant.

18. We heard this matter on several occasions including on October 29, 2013 on which date we thought it fit to seek factual information as to how many Private Secretaries earned promotion to the post of Under Secretaries after August 18, 1999 till the year 2008. Similarly, how many Section Officers earned promotion to the post of Under Secretaries in the same period. Information was also asked as to how many Private Secretaries and Sr. Private Secretaries earned promotion as Principal Private Secretary and also how many Principal Private Secretaries earned promotion to the post of Sr.Principal Private Secretaries, and how many Under Secretaries earned promotion to the post of Deputy Secretary during the said period. The affidavit filed by the respondent No. 1 gives the following position:

**(a) Number of Private Secretaries promoted as
Grade I of General Cadre of IFS 'B'**

<i>S. No.</i>	<i>Recruitment year</i>	<i>Total number of officers</i>
<i>1</i>	<i>1999-2000</i>	<i>Nil</i>
<i>2</i>	<i>2000-01</i>	<i>Nil</i>

3	2001-02	5
4	2002-03	Nil
5	2003-04	Nil
6	2004-05	32
7	2005-06	8
8	2006-07	5
9	2007-08	3
	Total	53

(b) Number of Section Officer promoted as Grade I of General Cadre of IFS 'B'

<i>S. No.</i>	<i>Recruitment year</i>	<i>Total number of officers</i>
1	1999-2000	2
2	2000-01	5
3	2001-02	4
4	2002-03	Nil
5	2003-04	3
6	2004-05	86
7	2005-06	27
8	2006-07	19
9	2007-08	27
	Total	173

(c) Number of Private Secretaries promoted as Principal Private Secretary

<i>S. No.</i>	<i>Recruitment year</i>	<i>Total number of officers</i>
1	1999-2000	33
2	2000-01	Nil
3	2001-02	12
4	2002-03	2
5	2003-04	9
6	2004-05	3
7	2005-06	5
8	2006-07	7
9	2007-08	4
	Total	75

(d) Number of Principal Private Secretaries promoted as Senior Principal Private Secretary

<i>S. No.</i>	<i>Recruitment year</i>	<i>Total number of officers</i>
<i>1</i>	<i>1999-2000</i>	<i>5</i>
<i>2</i>	<i>2000-01</i>	<i>3</i>
<i>3</i>	<i>2001-02</i>	<i>4</i>
<i>4</i>	<i>2002-03</i>	<i>13</i>
<i>5</i>	<i>2003-04</i>	<i>3</i>
<i>6</i>	<i>2004-05</i>	<i>3</i>
<i>7</i>	<i>2005-06</i>	<i>3</i>
	<i>Total</i>	<i>34</i>

(d) Number of Under Secretaries promoted as Deputy Secretary

<i>S. No.</i>	<i>Recruitment year</i>	<i>Total number of officers</i>
<i>1</i>	<i>1999-2000</i>	<i>17</i>
<i>2</i>	<i>2000-01</i>	<i>18</i>
<i>3</i>	<i>2001-02</i>	<i>12</i>
<i>4</i>	<i>2002-03</i>	<i>15</i>
<i>5</i>	<i>2003-04</i>	<i>13</i>
<i>6</i>	<i>2004-05</i>	<i>14</i>
<i>7</i>	<i>2005-06</i>	<i>48</i>
<i>8</i>	<i>2006-07</i>	<i>33</i>
<i>9</i>	<i>2007-08</i>	<i>30</i>
	<i>Total</i>	<i>200</i>

2. No. of officer promoted in different grade after stoppage of lateral entry:

(a) Number of Private Secretaries promoted as Grade I of General Cadre of IFS 'B'

<i>S. No.</i>	<i>Recruitment year</i>	<i>Total number of officers</i>
<i>1</i>	<i>2008-09</i>	<i>Nil</i>
<i>2</i>	<i>2009-10</i>	<i>Nil</i>
<i>3</i>	<i>2010-11</i>	<i>Nil</i>
<i>4</i>	<i>2011-12</i>	<i>Nil</i>

5	2012-13	Nil
6	2013-14	Nil
	Total	Nil

(b) Number of Section Officer promoted as Grade I of General Cadre

<i>S. No.</i>	<i>Recruitment year</i>	<i>Total number of officers</i>
1	2008-09	39
2	2009-10	33
3	2010-11	26
4	2011-12	51
5	2012-13	80
6	2013-14	48
	Total	277

(c) Number of Private Secretaries promoted as Principal Private Secretaries

<i>S. No.</i>	<i>Recruitment year</i>	<i>Total number of officers</i>
1	2008-09	5
2	2009-10	27
3	2010-11	Nil
4	2011-12	56
5	2012-13	7
6	2013-14	43
	Total	138

(d) Number of Principal Private Secretaries promoted to Senior Principal Private Secretaries

<i>S. No.</i>	<i>Recruitment year</i>	<i>Total number of officers</i>
1	2008-09	4
2	2009-10	4
3	2010-11	9
4	2011-12	3
5	2012-13	7
6	2013-14	4
	Total	31

(d) Number of Under Secretaries promoted to Deputy Secretaries

<i>S. No.</i>	<i>Recruitment year</i>	<i>Total number of officers</i>
<i>1</i>	<i>2008-09</i>	<i>20</i>
<i>2</i>	<i>2009-10</i>	<i>26</i>
<i>3</i>	<i>2010-11</i>	<i>21</i>
<i>4</i>	<i>2011-12</i>	<i>68</i>
<i>5</i>	<i>2012-13</i>	<i>71</i>
<i>6</i>	<i>2013-14</i>	<i>46</i>
	<i>Total</i>	<i>252</i>

19. That apart, the respondent No. 1 has tried to justify the reasons for not implementing the recommendations of the Para 45.37 (iv) in the following manner:

*“3. The argument that the MEA was lethargic in timely implementation of the recommendations of the 5th CPC is baseless and without merit. MEA had initiated action to implement the recommendations of 5th CPC on the stoppage of lateral entry of Stenographers in the Grade I of IFS (B) (Under Secretary) without any loss of time. As the IFS (B) is broadly structure on the lines of the comparable services in the Central Secretariat, which is controlled by DoPT, a reference was sent to that department in September, 1998 to ascertain the position on their side. We were informed by DoPT that this issue is under consideration of the Government of India and they had not arrived at any decision. Therefore, in the absence of any decision on the above issue, it was considered administratively prudent to await outcome of the exercise already under process in DoPT as a policy matter. In this connection, MEA’s reference to DoPT and that Department’s response of 30th December, 1998 respectively is placed at **Annexure-I** and*

Annexure-II.

4. *Before any decision could be arrived at, the CSS Gazetted Officers' Association had filed a petition with Hon'ble CAT, Principal Bench, New Delhi in July, 2005, praying against the discontinuation of lateral entry in the CSS. With this, the larger question of stoppage of lateral entry also became subjudice and it was only prudent for MEA to await the outcome of this legal process before examining the matter further based on its functional and other utility to the MEA.*

5. *Later on in April, 2008, the Hon'ble CATT dismissed the petition filed by the CSSS Gazetted Officers' Association against the stoppage of lateral entry. DOPT on their part had taken an administrative decision to stop lateral entry with effect from February 2008 (**Annexure III**). These developments become an important input in the MEA's examination of the matter which eventually led to the stoppage of lateral entry in MEA with effect from October 2008 (**Annexure IV**).*

6. *As is evident from the above facts, the MEA's position was based on administrative prudence and logic and was not the result of any lethargy in implementing the decision of the 5th Pay Commission. As stage earlier, while MEA is the cadre controlling authority in respect of IFS 'B' and is fully competent to take decision with regard to such recommendation, it is always prudent and advisable to avoid any significant diversions and be in sync with the larger CSS Rules, on which the IFS 'B' is broadly modeled, keeping in view with the post precedents.*

7. *For the sake of comparison and to understand the implications of the relatable issues under consideration, a demonstrative comparison of the Schedule of Implementation of Pay Commission's recommendations in MEA and CSS is as follows:*

S. No.	5th Pay Commission Recommendation	CSS approval	MEA's approval
1.	As per para 45.37 (1) "Officers holding the post of Additional Secretary or equivalent rank may be provided stenographic assistance at the level of Principal Private Secretary	DOPT vide order no.20/27/98-CS-II dated 25 th January 1999 approved upgradation of 58 posts of PPS to the level of Sr. PPS (Annexure V)	MEA vide order no. Q/CCP/576/1 68/99 dated 24 th February, 2000 approved upgradation of 22 posts of PPS to the level of Sr. PPS (Annexure VI)
2.	As per para 45.37 (1) "Lateral entry of Private Secretaries to the grade of Under Secretary should be discontinued"*	DOPT vide G.S. R. 64 (E) dated 1 st February 2008 stopped the lateral entry of Personal Secretaries o the post of under Secretary (Annexure VII)	MEA vide G.S. R. 738(E) dated 16 th October 2008 vide gazette notification stopped the lateral entry of Personal Secretaries to the post of Under Secretary/Gra de-I of IFS (B) (Annexure VIII)

20. It is noted that the petitioners as well as the Stenographers' Association have filed their response to the additional affidavit.

21. Having heard the counsel for the parties, the only issue which now needs to be adjudicated is whether the select list for filling the post of Under Secretary i.e. Grade-I of the IFS (B) with effect from 1999 as prayed for by the petitioners in the CM referred above is required to be prepared or not.

22. We may only state here that this aspect was not raised before the Tribunal for the reason when the OA was decided, the OM dated October 16, 2008 was not issued. Since this is a development which has taken place in the interregnum during the pendency of the writ petition, we thought it fit to consider this issue also, rather than remanding the matter back to the Tribunal. Having considered the rival submissions of the counsel for the parties, what really falls for our consideration is that whether a revised list need to be prepared for promotion to the post of Under Secretary, Grade-I. For this, the primary intent of ours was to see whether the non-amendment of Rule 12 of Rules, 1964 pursuant to the recommendations of Vth Central Pay Commission was intentional without any justification which has resulted in grave prejudice to them. From the statistics which have been filed by the official respondents and reflected above, it is noted here that number of Section Officers promoted to the post of Under Secretary, Grade-I between the year 1999 to 2008 are 173 as compared to Private Secretaries promoted to Principal Private Secretary, who are 75 in total. Similarly, we find that number of Private Secretaries promoted the post of Under Secretaries between the year 1999 to 2008 were only 53. In other words, the ratio of Section Officers getting promoted to the post of Under Secretary was much higher than the Private Secretaries getting promotion to the post of Under Secretary. We do not see many promotions have been made from

the post of Private Secretaries to the Grade-I/Under Secretary which had actually affected/delayed the promotion of Section Officers. To that extent, no prejudice has been caused to the Section Officers. In fact, we note with approval, the reasoning given by the Ministry for the delay that has occurred in effecting the changes in the Recruitment Rules stopping the lateral entry. The lateral entry in the CSS Cadre was also effected only on February 01, 2008. The respondent No. 1/Ministry of External Affairs, within no time, stopped the lateral entry immediately thereafter on October 16, 2008.

23. The relief as sought for by the petitioners for redrawing of eligibility list to the Grade-I of IFS (B) i.e. Under Secretary is totally uncalled for and cannot be granted inasmuch as the same would be contrary to the Rule position under Rule 12 of the Rules, 1964 and no direction of this nature can be given against a Rule position. That apart, it would create an administrative inconvenience by reviewing all the promotions which have been effected between the period 1999 to 2008, statistics of which has already been reflected above.

24. Insofar as the reliance placed by the learned counsel for the petitioners on the judgment of the Supreme Court referred to above, the same would not be applicable in the facts of this case. In Purushottam Lal's case (*supra*), the Supreme Court was dealing with the case where the recommendations of the Pay Commission have been implemented with regard to some employees denying the benefit to other set of employees. It is in this background the Supreme Court held that it is a case of violation of Article 14 and 16 of the Constitution. In so far as the judgment of the Supreme Court in P. Parmeshwaran's case (*supra*) is concerned, the same is also on the same lines of Purushottam Lal's case

(*supra*). The Supreme Court has said that implementations of the Pay Commission's recommendations should be the same for all categories of employees. In the present case, the petitioners relied upon the recommendations made in the Vth Central Pay Commission in the year 1996. It is noted that the original application was filed by the petitioners only in the year 1999 seeking implementation of the recommendations in Para 45.37 (clause iv). Even otherwise, it is seen that the respondents had justification in not implementing the recommendations. In fact, this Court also note that the recommendations primarily with regard to the lateral entry in the Central Secretariat Stenographers' Service which were also made applicable to IFS (B), the lateral entry was stopped only in the month of February 2008. Immediately after that, even the lateral entry in IFS Grade 'B' was stopped. Insofar as the judgment of the Supreme Court in the case of Joint Action Council of Service Doctors' Organizations (*supra*) is concerned, the same would also have no bearing insofar as the facts of this case are concerned, for the reason that the Supreme Court has held that rejection of recommendations of the Pay Commission' report by the government cannot be rejected without cogent reasons. In this case, the lateral entry having been stopped in the year 2008, no direction for reviewing the select list with effect from 1999 can be given.

25. To sum up, the petitioners by seeking redrawing of the select list with effect from 1999 are in effect seeking amendment of Rule 12 of the Rules, 1964 from a back date instead of October 16, 2008. Not only that, they are seeking promotions on the basis of the amendment from a back date. Such a relief cannot be granted. We only note for benefit the judgment of the Supreme Court in AIR 1990 SC 405 P. Mahendran Vs.

State of Karnataka, wherein the Supreme Court in Para 5 and 7 held as under:

“5. It is well-settled rule of construction that every statute or statutory Rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the Rule must be held to be prospective. If a Rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rule of 1987 does not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the Rule with retrospective effect. Since the amending Rule was not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force. The amended Rule could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter.

6. X X X X X

7. In view of the above the appellants' selection and appointment could not be held as illegal as the process of selection had commenced in 1983 which had to be completed in accordance with law as it stood at the commencement of the selection. The amended Rule could not be applied to invalidate the selection made by the Commission. Strangely the Tribunal did not follow the latest authority of this Court as laid down in Calton's case (AIR 1983 SC 1143), on the ground that the view taken in that case was contrary to the Constitution Bench decision of this Court in State of Andhra Pradesh v. T. Ramakrishna Rao, (1972) 2 SCC 830 : (AIR 1972 SC 2175). We have carefully considered the decision but we do not find anything therein contrary to the view taken in Calton's case”.

26. In view of the above, we do not see any merit in the writ petition and the same is dismissed with no order as to costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JANUARY 29, 2014
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