

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

+ **W.P.(C) 1769/2015 & CM APPL. No. 3165-66/2015**

MANOHAR LAL Petitioner
Through Mr. Ashwarya Sinha & Mr.
Himanshu Chaubey, Advocates

versus

UNION OF INDIA AND ORS. Respondents
Through Mrs. Bharathi Raju, Central
Government Standing Counsel for
R-1 to R-3

Mr. Naresh Kaushik, Ms. Amita
Singh Kalkal, Advocates for R-4

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE I.S.MEHTA

ORDER
% **24.02.2015**

KAILASH GAMBHIR, J. (ORAL)

CM APPL. No. 3165/2015 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

W.P.(C) 1769/2015 & CM APPL. No. 3166/2015 (Stay)

Challenge in the present Writ Petition filed under Articles 226 and 227 of the Constitution of India is the impugned order dated 24.12.2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (*hereinafter referred to as the 'CAT'*) in O.A. No.3707/2013

preferred by the petitioner.

Assailing the said order, Mr. Ashwarya Sinha, the learned counsel for the petitioner submits that the learned CAT erred in upholding the validity of OM dated 02.09.2013, which was totally contrary to the Statutory Rules provided under Indian Foreign Service, Branch 'B'(Recruitment, Cadre, Seniority and Promotion) Rules, 1964 (*hereinafter referred to as the 'IFSB Rules'*). The learned counsel also submits that as per the IFSB Rules, the conduct of the Limited Departmental Competitive Examination is governed by Rule 12 (3) and the said rule commence with the non-obstante clause thereby conferring an over-riding effect on the Rule 12(3) over Rules 12(1) and (2). The learned counsel also submits that the learned CAT did not appreciate the fact that the petitioner was illegally denied the opportunity to appear in a Limited Departmental Competitive Examination (*in short 'LDCE'*), which was to be conducted by the respondents in terms of the un-amended Rule 12(3) of the IFSB Rules. The learned counsel further submits that by the impugned Circular dated 02.09.2013, only one sub cadre of IFS (B), i.e. Section Officer was permitted to appear in the departmental examination while the similarly placed sub-cadre, i.e. Private Secretaries belonging to SC/ST categories were excluded. The learned counsel also submits that provision of lateral entry of the

petitioner into Grade-I level is stipulated in the Statutory Rules & Regulations in terms of Rule 12 of IFSB Rules and thus, the statutory right of the petitioner could not be taken away by way of an amendment changing the service condition retrospectively.

We have heard the learned counsel for the petitioner at considerable length and given our thoughtful consideration to the arguments advanced by him.

This petitioner is primarily challenging the circular dated 02.09.2013 issued by the Ministry of External Affairs, Government of India vide which he was deprived to appear in the Special Limited Department Examination for SC/ST Officers which was conducted by the Union Public Service Commission (*hereinafter referred to as the 'UPSC'*) on 26.10.2013 and 27.10.2013 for appointment of the Section Officers to the post of Under Secretary. As per the respondents, the petitioner who belonged to the Stenographer cadres of the IFS 'B' is no longer eligible for promotion to Grade-I of IFS 'B' after amendment of the Rules effective from 17.10.2008. Indisputably, prior to this amendment, the petitioner was eligible for promotion to the Grade-I of IFS 'B'. It has also not been disputed by the learned counsel for the petitioner that the lateral entry of Stenographer to the promotion Grade was discontinued in October, 2008 and since the vacancies under

consideration was of the select list 2009-2010, therefore, clearly this petitioner was not eligible to be considered for promotion against the vacancy for the said year through Special Limited Department Examination. The learned Tribunal in the impugned order has also observed that amendment dated 17.10.2008 in Rule 12(1) of the IFSC Rules has already been upheld in the case of *Suresh Kumar v. Union of India & Ors., O.A No. 2139/2012 decided on 23.10.2013* and this position has not been disputed by the learned counsel for the petitioner.

In the light of the aforesaid facts we find no justifiable ground to disagree with the reasoning given by the learned CAT holding that the petitioner was ineligible to appear in the Limited Department Competitive Examination to the post of Under Secretary for the vacancies for the year 2009-2010, after the rules were amended in the year 2008.

There is no merit in the present petition and the same is hereby dismissed.

KAILASH GAMBHIR, J.

I.S.MEHTA, J.

FEBRUARY 24, 2015

v