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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 01.07.2024
Date of decision:05.07.2024

- + W.P.(C) 4339/2020, CM APPL. 15627/2020 –Stay, CM APPL. 20400/2020 –Vac. of stay (R-1&2), CM APPL. 20462/2020 –Vac. of stay (R-4) & CM APPL. 24843/2023 –Impleadment.
- + W.P.(C) 4346/2020 & CM APPL. 15646/2020 –Addl. Doc.
PRASHANT KUMAR SONA & ANR.
BRIJESH KUMAR & ORS

..... Petitioners

Through Mr.Ankur Chibber, Adv. in W.P.(C)
4339/2020

Mr.Sanjoy Ghose, Sr. Adv. with Mr.Anshuman
Mehrotra & Mr.Rohan Mandal, Advs. in W.P.(C)
4346/2020

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr.M. K. Bhardwaj, Ms.Priyanka M
Bhardwaj& Mr.Mariya Mugesh Kannan, Advs.

Mr.V.C.Shukla, Mr.Mukul Rathore &
Mr.Siddharth Relan, Advs. for R-112.

Mr.Ravinder Agarwal & Mr.Lekh Raj Singh,
Advs. for UPSC

Mr.Ripu Daman Bhardwaj, CGSC with Mr.Ajith
Joshua, Adv.

Mr Padma Kumar S, Adv. for R5.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****REKHA PALLI, J****JUDGMENT**

1. The present writ petitions under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 29.02.2020 passed by



the Central Administrative Tribunal in O.A. No. 1719/2012. Since the challenge in the two writ petitions is to the same impugned order, we are for the sake of convenience, referring to the parties as per their position in W.P.(C) No. 4339/2020.

2. Vide the impugned order, the learned Tribunal has allowed the Original Application (O.A.) filed by the respondent nos. 4 and 5 (hereinafter referred to as private respondents) and has therefore quashed the seniority list of Section Officers (hereinafter referred to as SO) issued on 17.01.2012 along with orders dated 02.05.2012 & 16.05.2012, whereby the representations of these private respondents were rejected. The Tribunal has, consequently, directed the respondent nos. 1 to 3/ Union of India (hereinafter referred to as official respondents) to prepare a fresh seniority list of SOs in such a way that no SO promoted through the Limited Departmental Competitive Exam (LDCE) is treated as having been promoted with effect from any date, earlier to the date of his actual promotion. At this stage itself, it may be noted that the official respondents have not assailed the impugned order and it is only the SOs promoted through LDCE in the year 2011 and granted retrospective seniority from the date of accrual of vacancy, who are aggrieved with the impugned order.

3. Before we deal with the rival submissions of the parties, the brief factual matrix as emerging from the record may be noted.

4. The private respondents belonging to the integrated Grades II & III of the General Cadre of Indian Foreign Service (Branch B) were promoted to the post of SOs on 18.05.2005 and 05.05.2011 respectively. As per Rule 13 of the Indian Foreign Service Branch B (Recruitment Cadre, Seniority and Promotion) Rules 1964 (hereinafter referred to as MEA Rules) promotions



to the post of SO are made from two sources; with 80% of the posts earmarked for promotion and 20% to be filled through LDCE. It is the common case of the parties that while the promotions under the 80% quota were being regularly held year-wise, promotions under the LDCE quota, though being regularly held till the year 2005, the examination for the vacancy years 2006-07, 2007-08 and 2008-09, was held only in 2010 and consequently promotions through the LDCE were made in 2011 against the vacancies for all the four years. This, it is the case of the petitioners, who as noted hereinabove were appointed as SOs under the LDCE quota, was on account of the restraint order passed by this Court in W.P.(C) No. 4876/2007, which order, it is claimed was vacated only on 25.05.2009.

5. Taking into account that promotions to the post of SO were being made from two different sources, the official respondents were, from time to time, issuing seniority list by placing the SOs promoted through the two sources as per their respective quotas. It appears that a provisional seniority list was issued in 2007, to which respondent no. 4, who had been promoted as SO on 18.05.2005, objected but received no response thereto from the official respondents. Consequently, a final seniority list was issued on 17.01.2012, wherein the respondent no.5, who had been promoted as SO on 05.05.2011 was placed below such persons, who had been appointed/promoted as SOs in September and October, 2011 on the basis of the LDCE held in the year 2010 against vacancies pertaining to the year 2006-07, 2007-08 and 2008-09. It may be noted that the result of this LDCE held in 2010 was declared only in the year 2011.

6. Upon realizing that various candidates, who had been promoted to the post of SO through the LDCE pertaining to the year 2006-07, 2007-08 and



2008-09, had been granted retrospective seniority with reference to the year in which the vacancy under the LDCE quota had arisen, the private respondents submitted detailed representations dated 17.02.2012 and 12.03.2012 to the official respondents with a request to correct the seniority list by assigning seniority to all SOs from the date of their actual promotions. Since these representations remained unanswered, these respondents approached the learned Tribunal by way of O.A. No.1253/2012, which was disposed of by the learned Tribunal on 17.04.2012 with directions to the official respondents to decide their pending representations by passing a reasoned and speaking order. Vide orders dated 02.05.2012 & 16.05.2012 passed by the official respondents, the representations came to be rejected, again compelling the private respondents to approach the Tribunal by way of O.A. No. 1719/2012, which has been allowed under the impugned order.

7. Before the learned Tribunal, even though the private respondents had, in their OA arrayed only 08 of the large number of persons who had been promoted to the post of SO through the LDCE quota on the basis of the LDCE held in 2010, impleadment applications were filed by many of the affected parties. Consequently, by the time the O.A. came to be decided by the learned Tribunal, besides the three official respondents, there were 112 other respondents before the Tribunal. Vide its impugned order, the learned Tribunal has, after considering the effect of the MEA Rules as also the decisions of the Apex Court in *G.S.Lamba & Ors. v. Union of India & Ors.*[1985 (2) SCC 604], *Ganga Vishan Gujrati & Ors. v. State of Rajasthan & Ors* [(2019)16 SCC 28] and *P.Sudhakar Rao v. U Govinda Rao* [2013(8)SCC 693], allowed the O.A and as noted hereinabove, directed



the official respondents to draw a fresh seniority list in lieu of the seniority list dated 17.01.2012 by ensuring that no SO promoted under the LDCE quota is granted retrospective seniority from a date prior to the date of his actual recruitment.

8. Being aggrieved, six of the persons who had been promoted to the post of SO through the LDCE held in 2010 have approached this Court by way of these two writ petitions, wherein, besides the three official respondents and the two private respondents, who were the original applicants before the Tribunal, 114 persons who were promoted under the LDCE quota and like the petitioners, granted retrospective seniority with reference to the year of the vacancy, have been impleaded as proforma respondents.

9. In support of the petition, Mr. Ankur Chhibber, learned counsel for the petitioner has raised three submissions. The first and foremost being that in terms of MEA Rules 2(b)(ii), the approved service of persons promoted as SO through the LDCE is to be reckoned from the first day of July of the year for which such examination was held. His plea, thus, being that their seniority in terms of Rules 13 & 25(1)(ii)(b) has to be necessarily reckoned from the first day of July of the year to which the vacancy pertains, irrespective of the date they had been actually promoted under the LDCE quota. He submits that Rules 25(1)(i) & 25(1)(ii)(b) categorically state that the seniority of officers appointed in the Integrated Grade II and III is required to be fixed according to rotation of vacancies between the two categories of promotees & LDCEs based on the prescribed quota as indicated in Rule 13. He has, therefore, urged that irrespective of the fact that the LDCE examination for the years between 2006-07 to 2009-10, was



held in 2010, the officers promoted under the said quota have to be granted seniority from the retrospective date, i.e. from 1st July of the year of accrual of vacancy, especially when it is clear that the examination for these four years could not be held only on account of the interim stay granted by this Court in W.P.(C) No. 4876/2007.

10. Mr. Chhibber, therefore, contends that once the rules of the service to which the parties belong categorically provides the manner in which the seniority is to be determined, the learned Tribunal could not have faulted the grant of retrospective seniority to candidates promoted through LDCE only on the basis of the general circulars issued by the DoPT on 02.05.2012 and 16.05.2022. His plea, thus, being that in the present case, the parties are governed by the specific MEA Rules which clearly envisage grant of retrospective promotion in case of persons promoted through the LDCE quota.

11. He next submits that the learned Tribunal has also failed to appreciate that the private respondents, who belong to the promotion quota were in a similar manner themselves granted retrospective promotions under the promotion quota from a date prior to their date of actual promotion and, could therefore, not be permitted to urge that retrospective promotion was not permissible under the MEA Rules.

12. Finally, by drawing our attention to the additional affidavit filed by the official respondents, he submits that even though the Ministry of External Affairs was initially inclined to accept the impugned order, the DoPT has categorically opined that in view of the MEA Rules of the Indian Foreign Service (Branch B), the grant of retrospective seniority to candidates promoted under the LDCE quota was justified. Furthermore, the



Ministry had itself, while rejecting the representations submitted by the private respondents, taken a categorical stand that grant of retrospective seniority was permissible under the applicable MEA Rules.

13. Further, the reliance placed by the learned Tribunal on the decisions in *G.S.Lamba & Ors. (supra)*, *Ganga Vishan Gujrati (supra)* and *P.Sudhakar Rao (supra)*, he contends, was wholly misplaced as the learned Tribunal has failed to appreciate that the factual matrix of the issue under consideration before the Apex Court in *G.S.Lamba (supra)* was entirely different from the factual matrix of the present case. In *G.S.Lamba (supra)*, the Court had, as a matter of fact, found that the quota rule had not been implemented for years together, which is not a position in the present case. Similarly, the decisions in *Ganga Vishan Gujrati & Ors. (supra)* and *P.Sudhakar Rao (supra)* have been erroneously relied upon by the Tribunal without appreciating the fact that in the present case, specific rules exist with a provision for grant of retrospective seniority. He, therefore, contends that the general proposition that seniority will be granted only from the date of actual promotion on which basis the learned Tribunal has proceeded, would not be applicable to the present case. He, therefore, prays that the writ petition be allowed.

14. Mr. V.K. Garg, learned senior counsel for the respondent no. 65 and 72, also supports the petitioners. Besides adopting the submissions made by Mr. Chhibber, he submits that the decision in *G.S.Lamba (supra)* is not applicable to the present case, as unlike in *GS Lamba (supra)*, the quota for the two sources of filling up the post of SO prescribed under the MEA Rules has been strictly adhered to. His contention, being that it is always open for an employer to fix a quota for different modes of recruitment and prescribe



how the inter se seniority of persons appointed through the different sources of recruitment is to be determined. The prescription of quotas is, thus, valid and cannot be said to be violative of Article 14 of the Constitution of India. It is only when the *quota* rule breaks that the *rota* rule becomes inapplicable. He contends that, in the present case, once it is not even the case of the private respondents that the quota rule has broken, the seniority has to be fixed in accordance with the principle laid down in Rules 25(1)(i) & 25(1)(ii). In support of his plea, he places reliance on the decision of the Apex Court in *J. Singhani vs. UoI and Ors* [1967 SCC Online SC 6] and *M.S Sandhu and Anr. vs State of Punjab and Ors* [(2014) 6 SCC 514].

15. Further, by placing reliance on the decision of the Apex Court *D.Ganesh Rao vs State of Jharkhand and Others* [2005 (8) SCC 454], he contends that the quota rule can be said to have broken down only when it becomes impossible to follow the same for a number of years and not merely when appointments under one quota are deferred for a few years. In the present case the LDCE for the years 2006-07 to 2009-10 had to be postponed for about four years only on account of the interim stay granted by this Court in W.P.(C) No. 4876/2007. Further, there was a delay on the part of the official respondents in declaring the result of the LDCE conducted in 2010 and consequently the SOs appointed against the LDCE quota could join only in 2011. The factual matrix in the instant case can, therefore, not be compared with *GS Lamba (supra)* or *D.Ganesh Rao(supra)* and, therefore, prays that the writ petition be allowed.

16. Similarly, Mr. Sanjoy Ghosh, senior advocate, who appears on behalf of the petitioner in W.P.(C) No. 4346/2020, Mr.V.C.Shukla, who appears for respondent no.112 and Mr Ripu Daman Bhardwaj, learned counsel for



the official respondent, while adopting the submissions made by Mr. Chibber and Mr. Garg, contend that in *GS Lamba (supra)*, as against the prescribed quota of 55% of promotees, 60.32% promotees were occupying the posts of SO. It is only in such circumstances that the Apex Court opined that there was a complete breakdown of the prescribed quota. In the present case, the prescribed quota has been strictly adhered to without there being any diversion of post from one quota to another. They, thus, contend that there is no reason as to why the prescribed *rota* rule for determination of inter se seniority of SOs appointed through two different sources should not be applied. Mr. Bhardwaj further submits that though initially the official respondents were seeking to defend the impugned order, once opinion from the DoPT was obtained it was realized that grant of retrospective to the LDCEs were justified. They, therefore, pray that the impugned order be set aside.

17. On the other hand, Mr. M.K Bhardwaj, learned counsel for the private respondents, supports the impugned order and submits that the learned Tribunal opined that grave injustice is being caused to the promotees, like the private respondents, who were granted seniority from the actual date of their promotion, whereas the petitioners, promoted under the LDCE quota, were granted ante-dated seniority of almost 5 years by misinterpreting the MEA Rules.

18. He submits that in this factual matrix, when LDCE was not held at a stretch for four years, it is clear that the rule of rota-quota had broken down. Merely because these appointments could not be made on account of an interim order passed by this Court, would not be a ground to grant retrospective seniority from 2006 to those SOs who were appointed in 2011



based on the LDCE held in the year 2010. The learned Tribunal found that grave injustice was being caused to the promotees like the private respondents, as while they were granted seniority from the date of their actual promotion, the petitioners and other SOs appointed under the LDCE quota were, by misinterpreting the MEA Rules, granted retrospective seniority of almost five years.

19. He, therefore, contends that the learned Tribunal was justified in holding that the ratio of *G.S.Lamba (supra)*, wherein also it was found that the rota-quota rule had broken down on account of no appointments being made under the LDCE quota for years together, was squarely applicable to the facts of the present case, where also no appointment under the LDCE quota was made for five years. Further by drawing our attention to the decision in *Ganga Vishan Gujrati (supra)*, he submits that the Apex Court, after considering all its earlier decisions on this question of grant of retrospective seniority opined that merely because LDCE could not be held in time would not be a ground to grant ante-dated seniority to those employees who were appointed against LDCE vacancies for the earlier years.

20. Furthermore, Rule 2(b)(ii), which defines approved service, and is being vehemently relied upon by the petitioners is not at all relevant for determining the *inter se* seniority of SOs appointed through the two quotas. This *inter se* seniority, he contends, is required to be determined strictly in accordance to Rule 21, which clearly states that persons promoted or recruited earlier shall be senior to those promoted or recruited on the basis of subsequent selection or recruitment. Furthermore, Rules 25(1)(i) and 25(1)(ii)(b) are also inapplicable to the facts of the present case; these Rules,



he contends would be applicable only in a situation where candidates are selected under both quotas at the same time. In the present case, once no candidate was selected between 2006 to 2010 under the LDCE quota, there could be no rotation of vacancies in terms of Rule 25(1)(i) or Rule 25(1)(ii)(b). The learned Tribunal was, therefore, correct in holding that the inter se seniority of the SOs appointed through the two sources had to be determined from the date of their actual appointment.

21. Finally, he submits that even though the official respondents are now seeking to support the petitioners, their initial categorical stand before this Court was that no retrospective seniority could be granted to those LDCs, who were appointed in 2011, as that would enable them to steal a march over those promotees who had been working as SOs from 2006 onwards. Furthermore, the opinion of the DoPT that retrospective promotions granted to LDCs were valid is contrary to their own OM dated 10.04.1989, which clearly provides that even where there is a delay in holding of a DPC and vacancies pertain to an earlier year, promotions will be granted only with prospective effect. He, therefore, prays that the writ petition be dismissed.

22. Having considered the submissions of the learned counsel for the parties and perused the record, we may begin by noting the findings of the learned Tribunal as contained in paragraph 11, 14, 17-21 of the impugned order. The same read as under:-

“11. It has already been mentioned that the applicants were promoted to the post of SOs in the year 2005 and 2011 respectively, on the basis of seniority. The record is not clear as to the exact dates on which the LDCs were held for various years. However, it is common case that the LDCs for certain years, including 2003 and 2004, were not held in



time. It was held in 2010 for all the vacancies, referable to various years. After the results were declared, the successful candidates were promoted against the vacancies of the different years, depending upon their places in the merit list, and their names in turn were interpolated in the seniority list of the SOs for the concerned years, which is already in existence. The result was that they were shown to have been promoted with effect from a date, much earlier to the one on which they were qualified and selected. When the 1st applicant raised an objection in this behalf, it was not acted upon. He filed OA No. 1253/2012 and in compliance with the directions issued by the Tribunal, the 2nd respondent passed an order dated 02.05.2012. The order reads, inter alia, as under:-

“3. Vacancy is considered carry forward vacancy only if attempt made to fill the vacancy does not fructify. In cases where holding of Limited Departmental Competitive Exam provided in the statutory Recruitment Rules, is delayed, such vacancy will be considered only against the year in which it occurred and is not the carry forward vacancy. Accordingly, in the instant case, the seniority of officers appointed through promotion or Limited Departmental Examination is to be assigned as per the vacancy year for which the exam was held.

4. In terms of above Rules, Shri Mukherjee who was appointed as Section Officer w.e.f. 18.05.2005 (against vacancies for the year 2005 has been rightly placed before the qualified candidates of LDE conducted for the vacancies for the year 2003 and 2004 irrespective of the actual date of declaration of result or appointment, because they were included in the Select List for the years 2003 and 2004 respectively. It may also be pointed out to Shri Mukherjee that the submission made by him in para 2 of his representation dated 2nd July, 2007 that the LDE 2003 Examination was held in



December, 2004 is incorrect, since this examination was held in December, 2003 itself.”

* * * * *

14. In Para 6.4.1 and 6.4.4 of the Guidelines issued by the DoPT on the Departmental Promotion Committees, the procedure to be followed, where the DPC could not meet for a number of years, is dealt with. They read as under:-

“6.4.1. Where for reasons beyond control, the DPC could not be held in an year(s), even though the vacancies arose during that year (or years), the first DPC that meets thereafter should following the following procedure:

(i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.

(ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.

(iii) Prepare a „Select List” by placing the select list of the earlier year above the one for the next year and so on:

xxx xxx xxx

6.4.4. While promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancies relate to earlier year(s).”

17. The promotion in the MEA itself was the subject matter of the judgment in G.S. Lamba & Ors. vs. Union of India & Ors., 1985)2 SCC 604. There again, the problem arose on account of the delayed conducting of the LDCE. The manner in which the rights of the LDCE candidates vis-à-vis the promotees shall be determined, was laid down as under:-



“28. Once the promotees were promoted regularly to substantive vacancies even if temporary unless there was a chance of their demotion to the lower cadre, their continuous officiation confers on them an advantage of being senior to the later recruits under Rule 21(4). If as stated earlier by the enormous departure or by the power to relax, the quota rule was not adhered to, the rota rule for inter-se seniority as prescribed in Sec. 25(1)(ii) cannot be given effect. In the absence of any other valid principle of seniority it is well established that the continuous officiation in the cadre, grade of service will provide a valid principle of seniority. The seniority lists having not been prepared on this principle are liable to be quashed and set aside.

29. Accordingly these writ petitions succeed and the rule is made absolute. The impugned seniority lists challenged by the petitioners have been drawn up in violation of the provisions of Arts. 14 and 16 of the Constitution and therefore they are quashed. The first respondent is directed to draw up fresh seniority list in the light of the observations made in this judgment within a period of three months from today. All promotions granted since the filing of the petitions are subject to the decision herein given and they must be readjusted to be brought in consonance with this judgment. It the circumstances of the case, there will be no order as to costs.”

18. Recently, the Hon’ble Supreme Court dealt with this very question in detail in Ganga Vishan Gujrati & Ors. vs. State of Rajasthan & Ors., Civil Appeal No. 6007/2019 dated 21.08.2019. Para 45 of the judgment of the Hon’ble Supreme Court in Pawan Pratap Singh vs. Reeven Singh (2011)3 SCC 267, was taken note of and it reads as under:-

“45. ... (i) The effective date of selection has to be understood in the context of the service rules under



which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

It was also mentioned that the view taken by the Hon’ble Supreme Court in the judgment of Pawan Pratap Singh was re-affirmed by a Bench of three judges in P. Sudhakar Rao v. U. Govinda Rao, 2013)5 SCC 693.

19. The concluding para of the judgment of the Hon’ble Supreme in Ganga Vishan Gujrati reads as under:-

“37 For the above reasons, we are of the view that the Division Bench of the High Court was justified in coming to the conclusion, though for the reasons which we have



indicated, that the claim for seniority with reference to the date of the accrual of the vacancy will not be maintainable merely on the ground that no competitive examination was held in the years in which the vacancies had arisen. The view taken by the Division Bench of the Rajasthan High Court is in accord with the principles of law enunciated in the decisions of this Court and consistent with the statutory rules as they held the field at the material time. 38 For the above reasons, we find no merit in the appeals. The appeals are accordingly dismissed. There shall be no order as to costs. Pending application(s), if any, shall stand disposed of.”

20. The ratio of the above judgment squarely applies to the facts of the present case. The respondents have appointed the LDCE candidates against the posts of earlier years and as a result, they were deemed to have been promoted, much earlier to the date on which they cleared the LDCE. That is contrary to law laid down by the Hon’ble Supreme Court.

21. Hence, the OA is allowed, and the orders impugned therein are set aside. The respondents 2 and 3 shall prepare the seniority list afresh in such a way that an SO promoted through LDCE is not treated as having been promoted with effect from any date, earlier to one on which he was actually promoted. If any promotions to higher posts have taken place in accordance with the impugned seniority list, the same shall be revisited. The exercise shall, however, be confined to the re-fixation of seniority and shall not lead to reversion of the officers who have already been promoted. The exercise in this behalf shall be completed within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.”

23. From a perusal of the aforesaid findings, what emerges is that the learned Tribunal has, after considering the guidelines issued by the DoPT, observed that as per the DoPT itself, even when there was delay in convening the DPC pertaining to an earlier year, promotion could only be granted prospectively. The learned Tribunal, therefore, held that as per



these guidelines, even if the SOs appointed under the LDCE quota in 2011 were to be adjusted against their vacancies for the earlier years, they could not be granted retrospective promotion. Consequently, these SOs appointed in 2011 could not be granted seniority over those promotees, who were already working as SOs at the time of their appointment in 2011.

24. From the impugned order, we also find that the learned Tribunal, upon examining the MEA Rules, has arrived at a conclusion that there was no specific rule therein which provided for grant of retrospective seniority to employees who were appointed against vacancies pertaining to earlier years in the LDCE quota. The learned Tribunal further examined the decision in **G.S.Lamba (supra)** where the very same MEA Rules were under consideration for grant of retrospective seniority to employees under the LDCE quota on the same premise as canvassed in the present case that vacancies pertained to earlier years, but the claim was rejected by the Apex Court. The learned Tribunal also considered two other decisions of the Apex Court in **Ganga Vishan Gujrati & Ors. (supra)** and **P.Sudhakar Rao (supra)** wherein the Apex Court held that claim for seniority with reference to the date of accrual of vacancy would not be maintainable merely on the ground that no competitive examination was held in the vacancy years. The learned Tribunal found that even the ratio of these two decisions of the Apex Court was squarely applicable to the facts of the present case, where appointment under the LDCE quota were not held for over five years. In these circumstances, the learned Tribunal has held that the action of the official respondents in promoting the LDCE candidates against the vacancies arisen in the earlier years and granting them seniority from a date



much earlier to the date on which they had cleared the said examination, was contrary to the principles laid down by the Apex Court.

25. In the light of these findings of the Tribunal, we have also perused the DoPT's OM dated 10.04.1989 and find that the Tribunal was correct in holding that as per para 6.4.4, which reads as under, even promotions made against vacancies pertaining to earlier years are to be made with prospective effect:-

“6.4.4. While promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancies relate to earlier year(s)”

26. Having found that as per the DoPT's guidelines, promotions pertaining to vacancies of earlier years should be granted only with prospective effect, we may now deal with the petitioner's plea that irrespective of the DoPT's general guidelines, once the MEA Rules, categorically provide for grant of retrospective seniority with effect from 01st July of the year to which the vacancy pertains, promotions from the due date granted to the LDCEs were justified. In our considered opinion, there can be no quarrel with this proposition canvassed by the petitioner and we, therefore, have no hesitation in accepting the petitioner's plea that if the rules of any particular service specifically provide for retrospective promotion, the same can be granted to employees in the said service. Having said so, it would now be necessary to examine the relevant MEA Rules on which both sides have relied upon to determine as to whether retrospective promotion can be granted to employees being promoted through LDCE to the post of SOs in the Indian Foreign Services (Branch B).



We may, therefore, begin by noting Rule 2(b)(ii), which defines approved service and has been heavily relied upon by the petitioners. The same reads as under:-

“2. (b) "approved service" in relation to any Grade means –

* * * *

ii) in respect of an officer recruited to that grade through departmental examination, period or periods of regular service rendered in that grade including period or periods of absence during which he would have held a post on regular basis in that grade but for his being on leave or otherwise not being available to hold such post, from the first day of July of the year for which such examination was held;”

27. We may now refer to Rule 25(1)(i) and Rule 25(1)(ii)(b), which have also been relied upon by the petitioners to urge that they were rightfully granted seniority from the date of approval of vacancies from the LDCE quota. The same read as under:-

“Rule 25.

25. Seniority inter se of the officers appointed to a Grade from different sources:-

(1) Integrated Grades II & III of the General Cadre: (i) The eligible persons in Grade IV of the General Cadre and Cypher Assistants of the Cypher Sub-Cadre shall be arranged in separate lists in the order of their relative seniority in their respective Grade. Thereafter the Departmental Promotion Committee shall select persons for promotion from each list upto the prescribed quota as indicated in Rule 13 and arrange all the persons selected from the two lists in a consolidated list. The relative seniority of persons in the consolidated list shall be determine according to rotation of vacancies among these two categories based on the prescribed quota for each category.”

(ii) The relative seniority of persons-



* * * *

(b) promoted on the basis of Section Officers' and Stenographers' (Grade B and Grade I) Limited Departmental Competitive Examination in terms of sub rule(2) of rule 13 shall be determined according to rotation of vacancies between these two categories based on the quota prescribed for each category as stated in rule 13.

28. Finally, we may refer to Rule 21(4) on which reliance has been placed by the private respondents as also the Tribunal, the same reads as under:-

"21. General Provisions

* * * *

(4) Subject to the other provisions of this rule, persons promoted or recruited earlier on the basis of earlier selection or recruitment shall be senior to those promoted or recruited on the basis of subsequent selection or recruitment."

29. From a perusal the aforesaid, what emerges is that as per Rule 2(b)(ii), 'approved service' in respect of an officer recruited through limited departmental examination would imply service from the 01st of July in the year for which such examination was held. Further, as per Rules 25(1)(i) and 25(1)(ii)(b), persons selected against different quotas, as indicated in Rule 13, are required to be arranged in the seniority list as per their respective prescribed quota. Thus, it is clear that in the Indian Foreign Service (Branch B) the approved service of employees promoted/recruited to the higher post is generally to be reckoned w.e.f 1st of July in the year to which the vacancy pertains. This, however, cannot per se lead to a conclusion that seniority to persons recruited/ promoted under any of the two promotional quotas must be granted w.e.f. 01st July of the year to which the vacancy pertains, even when the appointments under one of the quotas



were not made for years together. In the present case, it is an admitted position that no appointments to the post of SOs were made under the LDCE quota from 2006-2010, during which period promotions to the post of SO under the promotee quota continued to be made on a regular basis. Even though the deferment of LDCE till 2010 was on account of the interim stay granted by this Court, the fact remains that before these LDCEs could join as SOs in 2011, the employees promoted under the promotee quota in a timely manner had been discharging service as SOs. Consequently, depending upon the year of their promotion, the SOs appointed under the promotee quota had already acquired one to five years of experience as SOs when the LDCEs came to be selected for the post of SOs.

30. In this factual matrix, even though Rule 25(1)(i) and Rule 25(1)(ii)(b) lay down the employees appointed/promoted ought to be placed in the seniority list by rotation of vacancies of the two quotas, can it be said that this methodology must be applied even when the promotions against one quota were admittedly deferred for a period of about five years? The answer, in our considered view, is a clear “No”; this is for two reasons. Firstly, because the provisions of Rule 25 cannot be read in isolation by ignoring Rule 21(4), which lays down the general provision for fixation of seniority. Secondly, because it is undisputed that for five years, i.e between 2006 to 2011, the quota rule was given a complete go-bye. It would, therefore, be highly unjust to fix the inter se seniority of SOs appointed between 2006-2011 by resort to rotation of vacancies between the two quotas, when admittedly no appointments were made against one of the quotas, i.e LDCE, for years together. We find that even though the learned Tribunal has not specifically observed that the quota rule had broken it has



held that the decision in *G.S Lamba (supra)* where the quota rule was found to be not followed for six to eight years was squarely applicable to the present case. In the light of these findings of the Tribunal and the admitted factual position that no appointments to the post of SOs were made under the LDCE quota during 2006-2010, it is evident that the quota rule was not being followed during these five years between 2006 to 2011 and therefore, can be taken as having been broken down during this period.

31. Furthermore, as rightly urged by the learned counsel for the private respondents, the MEA Rules contain a specific provision for fixation of seniority by way of Rule 21(4), which provides that persons promoted or recruited on the basis of an earlier selection or recruitment shall be senior to those promoted or recruited on the basis of subsequent selection or recruitment. This rule, we find, lays down the primary principle based on which the inter se seniority of employees is to be determined and has to be mandatorily given effect to. The provisions of Rule 2(b)(ii) or Rule 25, in our view, have to be read in conjunction with Rule 21(4), which as noted hereinabove, lays down the primary principle of fixation of inter se seniority of employees.

32. In our considered view, once Rule 21(4) specifically provides that persons recruited on the basis of an earlier selection/recruitment have to be treated as senior to those recruited later, the provisions of Rule 2(b)(ii) and Rule 25(1)(i) cannot be interpreted in such a manner so as to make Rule 21(4) redundant. In the light of the aforesaid, we are in agreement with the learned counsel for the private respondents that the MEA Rules cannot be read in such a manner so as to grant retrospective seniority to persons recruited through the LDCE quota against vacancies which may have been



remained unfilled for years together as this would amount to giving a complete go bye to Rule 21. Interestingly, though learned counsel for the petitioners have, during arguments, vehemently relied on Rule 2(b)(ii) and Rule 25(1)(i), failed to provide any justifiable reason as to why Rule 21(4) would not be applicable to the facts of the present case.

33. We have also considered the decision in ***G.S.Lamba (supra)***, and find that the Apex Court was dealing with almost an identical situation where the departmental examination was deferred for about six to eight years. It was in those circumstances that the Court opined that in situations where the departmental exam was deferred for a large number of years, it had to be presumed that there was a departure from the *quota* rule and, therefore, the *rota* rule could not be applied for fixing of seniority. Before us, learned counsel for the petitioners as also the learned senior counsel for the respondent nos.65 & 72 have vehemently urged that in the present case the departmental examination was postponed for only about four years and, therefore, the decision in ***G.S.Lamba (supra)***, could not be applied to the present case. Furthermore, by placing reliance on ***Asis Kumar Samanta & Ors. v. State of West Bengal & Ors. [(2014) 10 SCC 357]***, they have urged that since the departmental examination was delayed due to the intervention of the Court in W.P.(C) No. 4876/2007, the petitioners should not be deprived of their seniority, which would have been rightfully accorded to them, had the departmental examination been conducted in time.

34. Even though this plea of the petitioners appears to be attractive on the first blush, on applying the same to the factual matrix of the present case, we are of the view that the petitioner's claim for grant of retrospective seniority has to be rejected. Even if the petitioners and other beneficiaries of LDCE



were not at fault for deferment of the LDCE for five years, the fact remains that during this entire period of five years when the LDCE exam was on hold, promotions to the post of SOs were being regularly made. We are, therefore, of the view that as held by the Apex Court in ***G.S.Lamba (supra)***, in the present case as well on account of the LDCE not being held for almost five years, the quota rule had as a matter of fact broken down. Merely because the quota rule had broken down due to unavoidable factors, cannot change the position that the said rule like in the case of ***G.S.Lamba (supra)***, had broken down. Consequently, the rota rule could not have been applied to grant retrospective seniority to LDCEs appointed as SOs only in the year 2011. It would, therefore, be highly unjust to the promotees, if the SOs appointed/promoted through LDCE in 2011, like the petitioners, are accorded seniority over them. We cannot lose sight of the fact that while the promotees had been working as SOs since 2006 onwards, the petitioners and other employees recruited through LDCE joined the post of SO only in 2011 and were admitted, during the period between 2006 and 2011, working on the junior posts of Assistant Grade II or lower.

35. We have also perused the decisions in ***J. Singhani(supra)***, ***M.S Sandhu (supra)*** and ***D.Ganesh Rao(supra)*** relied upon by the petitioners but find that the same are not applicable to the factual matrix in the present case and therefore, do not forward the case of the petitioners. We find that in none of these decisions relate to a situation where, like the present case, no appointments could be made under LDCE quota, ie. one of the two modes of recruitment for over five years. Similarly, the decision in ***Anis Kumar (supra)***, is also not applicable to the facts of the instant case as we find that the same did not pertain to promotions based on any competitive exam like



the LDCE in the present case, where promotions were dependent upon the performance of the employees in the exam. It is only after these employees emerged successful in 2011 in the limited departmental competitive exam, that they could be said to have acquired the right to be appointed as SOs under the said quota. Examined from this angle as well, it would be highly unjust to grant retrospective seniority to these SOs promoted through the LDCE on the presumption that even if the departmental exam had been held in time, they would have emerged successful.

36. For the aforesaid reasons, we find absolutely no infirmity in the impugned order. The writ petitions, being meritless, are dismissed along with all pending applications. Consequently, all interim orders stand vacated.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

JULY 05, 2024

sr/kk/dv