

seniority with rota quota

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Respondent No. 26 in person.

The Judgment of the Court was delivered by DESAI, J. We are back to square one. The same rigmarole of unending disputes as to inter-se **seniority** between promotees, direct recruits and recruits as per the result of the limited competitive examination with **quota-rota** as the guiding star for determining inter se **seniority** are put in the lap of The Court.

This time the service is the Indian Foreign Service Branch 'B' ('IFS 'B' for short). This service was constituted by the memorandum of Govt. Of India, Ministry of External Affairs dated July 16, 1956. The service was consisted of two cadres; a general cadre and two sub cadres

The Under Secretary in the Ministry of External Affairs filed an affidavit-in-opposition. Averment in Para II of the petition that petitioners were working as permanent section officers in the integrated Grade II and III in the general cadre of the IFS 'B' was not controverted. After referring to Rule 13 of the 1964 Rules, it was stated that both the impugned **seniority** lists were drawn up in accordance with the principles governing **seniority** in the grade as per Rule

25. It was stated that where recruitment to a service or cadre is from more than one source and each source is assigned a **quota** of vacancies, in order to do justice to recruits from all sources, the **seniority** is to be determined according to **rota** keeping in view the available vacancies to each source. It was conceded that in integrated grade II and III, the recruitment is done from three different channels and **quotas** have been fixed for all these channels, but the recruitment is not done at the same time. While the depart- G mental promotion is made after departmental promotion committee makes recommendations, the recruitment through examination is time-consuming because there is a time gap between publication of results and joining of candidates. It was further stated that it is not practically possible to strictly adhere to the **quota** in any particular year because candidates nominated by the Union Public Service Commission may even decline to join service and additional candidates can be taken from subsequent examinations only. It was further submitted that the administration overcomes this difficulty by adhering to the **quota** by **rotation** of vacancies ensuring that over a period of time, the **quota** requirement is fully met. The two impugned **seniority** lists were sought to be sustained on the footing that by and large **quota** was adhered to and a slight delay or variation in time schedule would not permit an inference that as the **quota** rule was not adhered to, the **rota** rule of **seniority** cannot be given effect. Replying to the averments made in the petition that vacancies allotted to each source and not filled in at the relevant time were being carried forward for years and that when the carried forward vacancies were filled, the recruits were given retrospective deemed date for **seniority** relatable to the coming into existence of the vacancy for that source without such a provision being found in 'the relevant rules, it was stated that vacancies have been carried forward, if at all because of the non-availability of the candidates and in the absence of a stipulation in the relevant rules permitting diversion of vacancies from one **quota** to another, it was inevitable that the **quota** of vacancies allotted to a source have to be carried forward. Replying to the averments that in the impugned **seniority** list blank spaces have been left open for giving **seniority** to persons who have still not joined the service and are likely to join at some

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uncertain date, it was submitted that this process would not push down the **seniority** of the petitioners as they would occupy the same serial No. in the **seniority** list.

If Rule 25(1)(ii) which provides for inter-se **seniority** of direct recruits to a grade and persons substantively appointed to the grade from the select list for the grade, upon its true construction, permits leaving open placement in the **seniority** list to be filled in at a later date by recruits coming from the source for whom placements according to **rotation** are kept open, would such rule or such implementation of the rule of **seniority** be violative of Art. 16 ?

It is too late in the day to dispute that it would be open to the Government, while constituting a service, to provide for recruitment to it from more than one source and also to reserve **quota** for each source. As a logical corollary, it would equally be open to the Government to provide for **seniority** rule related to **rotation** of vacancies. Shortly this is called **quota** rule of recruitment and **rotation** of rule of **seniority** inter-linking them. So far there is no controversy. The contention of the petitioners is that in implementing this rule there has been such large scale deviation that it results in denial of equality to the members of the service similarly circumstanced. It will be presently demonstrably established that where **rotation** rule of **seniority** is interlinked with **quota** of rule of recruitment, and if the latter is unreasonably departed from and breaks down under its own weight, it would be unfair and unjust to give effect to the **rotation** rule of **seniority**. To some extent this is not res integra. Though some advance has been made on this proposition in later decisions.

"The **rotational** rule of **seniority** is inextricably linked with the **quota** rule and if the **quota** rule is not strictly implemented and there is large deviation from it regularly from year to year, it would be grossly discriminatory and unjust to give effect to the **rotational** rule of **seniority**."

In the period between the decisions in B.S. Gupta's case and A.K. Subramana's case, this Court threadbare examined the legal position in relation to **quota-rotation** rule and a large scale deviation from it with its consequent effect on the **seniority** rule. In Janardhana's case this Court in terms held that 'As **quota** rule was directly inter related with the **seniority** rule, and once the **quota** rule gave way, the **seniority** rule became wholly otiose and ineffective. It is equally well-recognised that where the **quota** rule is linked with the **seniority** rule, if the first breaks down or is illegally not adhered to giving effect to the second would be unjust, inequitable and improper. It may incidentally be mentioned that this view was approved and reiterated in P.S. Mahal's case.