

Central Administrative Tribunal
Principal Bench

O.A. No. 1131 of 2001

New Delhi, dated this the 19th February, 2002.

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

R.S.Garg,
Dy Secretary,
Dept. of Animal Husbandry & Dairying,
Ministry of Agriculture & Co-operation,
Krishi Bhawan,
New Delhi-1.
(In person) ... Applicant

Versus

Union of India,
through
the Secretary,
Govt. of India,
Dept. of Personnel & Training,
Ministry of Personnel, Public Grievances and
Pensions,
North Block,
New Delhi
(By Advocate: Shri K.R. Sachdeva) ... Respondents

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the suitability list (Annexure.A-1) in which his name does not find place for promotion to Director grade. He seeks a direction to respondents to hold DPC meeting to evaluate his ACRs for the period April, 1991 to March, 1996 and to declare a fresh suitability list which included his name for promotion to the post of Director at par with his batchmates.

2. Applicant's case is that he was appointed as Section Officer in Central Secretariat Service (CSS) w.e.f. 1.6.78 on the basis of IAS etc. Combined Competitive Examination, 1976. On completion of two years' probation on 31.5.80 he was appointed substantively to the Section Officer's Grade of CSS

w.e.f. 1.6.80 and was included in the 1983 panel for promotion to the next higher post of Under Secretary vide DOPT'OM dated 4.1.84, along with his batch mates, in which his name was shown at Sl.No.18 out of 149 candidates (Annexure.A-3). He was further included along with his batchmates in the 1992 panel for promotion as Deputy Secretary in the CSS Selection Grade vide DOPT's order dated January, 1994, in which his name was shown at Sl.No.19 in the panel of 40 candidates. Applicant states that for promotion to the post of Director in the pay scale of Rs.14300-18300, DOPT prepared a suitability list 1997 of 26 officers from among the 30 eligible Deputy Secretaries of 1992 panel. Applicant's name was shown at Sl.No.151 of the civil list indicating seniority list of Deputy Secretaries (Annexure.A-5). He states that DOPT issued suitability list to the concerned Departments/Ministries vide DO letter dated 21.2.2000 informing them of the individual names of the selected officers working there as Deputy Secretaries. Department of Animal Husbandry & Dairying, where the applicant was posted as Deputy Secretary, did not get any such letter and on enquiry from DOPT, applicant was informed that his name did not find place in the suitability list. Applicant submitted a representation against his non-inclusion in the aforesaid suitability list, and not having received a favourable reply, he has filed the present OA.

2

9

3. Respondents in their reply challenge the OA. They contend that CSS consists of four grades, namely Assistant's grade, Section Officer's grade, Grade I (Under Secretary and equivalent) which is filled in 100% by promotion from SOs' Grade of CSS, and Selection grade (Deputy Secretarry and equivalent) which is filled in 100% by promotion from Grade I (By selection). It is contended that the highest grade to which the CSS Officers are entitled for promotion under the CSS Rules, 1962 is that of Selection Grade of the CSS (post of Deputy Secretary and equivalent in GOI). In order to provide promotional avenues to meritorious officers of the CSS, provision has been made in the Central Staff Scheme for their appointment at the level of Director and above. The post of Director is not a cadre post of the CSS and hence DPC procedure is not followed but the suitability of the officer is assessed as per the provisions contained in the Central Staffing Scheme. According to the provisions contained in the Central Staffing Scheme, officers belonging to the CSS Cadre should have at least 5 years of service in the Selection Grade of the service, to be eligible to hold posts of the level of Director. The suitability of CSS officers for inclusion of their names in the panel for appointment to posts at the level of Director is assessed by the Five Members of the Central Establishment Board(CEB). All officers who have completed 5 years of service in the selection grade of CSS and those officers who have earned two more ACRs after having been assessed not suitable by the CEB for inclusion in the Directors' suitability

7

10

list of a particular year(review cases), are to be taken up together as a batch for consideration for inclusion in the CSS Directors' suitability list. As per extant policy the Members of the CEB assess the suitability of each officer for inclusion in the CSS Directors' suitability list. The assessment in respect of each officer considered for inclusion in the Directors' suitability list, separately recorded by the CEB's Members, is consolidated and placed in the meeting of CEB. From the assessment made by the Chairman/Members of CEB, the Board makes recommendations strictly on the basis of the criteria laid down in this regard, and upon these recommendations being approved by Minister Incharge of the Ministry of Personnel, Public Grievances and Pensions, the officers so approved are included in the CSS Directors' suitability list.

4. Respondents further state that applicant's name was included in the CSS Selection Grade Select List for the year 1992 on the basis of which he was appointed as Deputy Secretary. In view of the provisions contained in the Central Staffing Scheme, he became eligible to be considered for inclusion in the CSS Directors' suitability list for the year 1997. The case of the applicant along with other eligible officers was considered by the CEB in its meeting held on 27.9.99. On the basis of the consolidated positions of the gradings given by the Members of the CEB, the Board found that the applicant did not meet the required Bench Mark as per the approved norms. Hence the Board did not find him

7

11

D

suitable for being recommended for inclusion of his name in the Directors' suitability list, and the Board did not recommend inclusion of his name in the said list. The recommendation made by the CEB was approved by the Prime Minister as Minister-in-charge of the Ministry of Personnel, Public Grievances and Pensions. In this connection respondents in reply to para 4(v) of applicant's OA specifically aver that suitability of the officers is assessed as per provisions of Central Staffing Scheme and for assessing the suitability of the officer for inclusion in the Directors' suitability list, entire service records of the officer is to be taken into account and not only the five years' ACRs for the years 1992-93 to 1996-97.

5. It is also stated that the applicant's case is due for review in the CSS Directors' suitability list for the year 1999.

6. We have heard applicant who argued his case in person and Shri Sachdeva for the respondents. We have also perused the contents of File No. 29/13/98-EO(MM-I) on the subject of Drawing up of the CSS Directors' suitability list for the year 1997. Relevant notings at pages 26 and 27 of the said file reveal that the CEB in its meeting held on 27.9.99, considered the names of the remaining 30 officers, including applicant, for inclusion in the CSS Directors' suitability list for the year 1997.

2

According to the guidelines approved by the ACC, the following criteria was to be followed for the preparation of the CSS Directors' suitability list.

- (a) Only those who get at least 4 "Very Good" gradings out of the assessment made by the five members of the Central Establishment Board may be considered for inclusion in the suitability list.
- (b) If an officer gets 4 Very Good and one Average gradings, his CR dossier will be assessed by two Secretaries to the Govt. of India, nominated by Secretary(Personnel) on behalf of the CEB. If on re-assessment, the officer gets at least Good grading from both the Secretaries, he may be considered suitable for inclusion in the Directors' suitability list.
- (c) If an officer gets 3 Very Good and 2 Good/Average gradings, his CR dossier should be got re-assessed by two Secretaries to Govt. of India nominated by Secretary(Personnel) on behalf of CEB. If on re-assessment, the officer gets at least one Very Good and one Good gradings, then only he should be considered suitable for inclusion in Directors' suitability list.

7. The aforesaid file contains a Tabular Statement showing the assessment made by each Member of the Five Member CEB which met to consider preparation of the suitability list for the year 1997. The aforesaid Tabular Statement indicates that applicant was assessed as "Very Good" by two Officers of the Five Member CEB while the other 3 rated as Good, on the basis of which it is contended that applicant did not meet the required Bench Mark for inclusion in Directors' seniority list.

8. We have perused applicant's ACRs from the start of his service onwards. For the period 9.1.79 to 31.12.79 he has been rated a Very Good Section Officer. For the period 1.1.80 to 31.12.80 he has

again been rated as a Very Good Officer. For the period 1.1.81 to 31.12.81 the Reporting Officer described him as Outstanding and the Reviewing Officer has rated him as an Excellant Officer. For the year ending 31.12.82 the Reporting Officer has rated him as Outstanding which remarks have been upheld by the Reviewing Officer. For the year 1983 he has been rated as an Outstanding Officer. For the year ending 31.12.84 the ACRs are in two parts. In the earlier (and shorter part) his efforts have been described as really commendable and one Reporting Officer has described him a very capable officer. It is true that for the second (and longer) part of that year 1984 another Reporting Officer has observed that applicant had to apply himself more thoroughly to the task assigned and bring to the fore his analytical abilities to get a grasp of the complex issues he dealt with, and he has also observed that applicant is a little temperamental and has not been able to establish rapport with his subordinate to the extent desireable, but the Reviewing Officer has disagreed with those adverse remarks and has overall graded applicant a Good Officer. Govt. has accepted the remarks of the Reviewing Officer in toto because there is no material in the ACRs to indicate that the aforesaid adverse remarks were ever communicated to him.

9. The remarks for the year ending on 31.12.85 are again in two parts. For the first part from 15.3.85 to 9.7.85 the Reporting Officer has rated him as Average. While for the second part i.e. 10.7.85

to 31.12.85 the Reporting Officer has rated him as Good which has also been agreed to by the Reviewing Officer. For the year ending on 31.12.86 the Reporting Officer has rated him Very Good while the Reviewing Officer has rated him as Good. For the year ending on 31.12.87 the Reporting Officer has rated him as Good which has been agreed to by the Reviewing Officer. For the period from 1.8.88 to 31.3.89 (the ACRs now begin to be written according to financial year), the Officer has been rated Very Good. For the period 13.8.89 to 22.3.90 applicant has been rated as Very Good. For the period 1.7.90 to 31.1.91 applicant has been rated as Outstanding. For the period from 1.2.91 to 31.3.92 applicant has been rated as Outstanding.

10. For the period 1.4.92 to 31.3.93 applicant has been rated as Outstanding. For the period from 24.5.93 to 10.1.94 applicant has been rated as Outstanding. Again for the period from 1.2.94 to 12.2.95 the Reporting Officer has rated him Outstanding while the Reviewing Officer has rated him Very Good. For the period 13.2.95 to 31.3.96 the Reporting Officer has rated him as an Average Officer and certain adverse remarks have also been recorded but the Reviewing Officer has disagreed with the Reporting Officer and rated applicant as Outstanding. There is no material in applicant's ACRs to indicate that the adverse remarks recorded by the Reporting Officer were ever communicated to applicant, from which it is clear that the remarks of the Reviewing Officer rating him Outstanding for the aforesaid

period were accepted by the respondents. For the period 1.4.96 to 9.1.97 no remarks were recorded as applicant remained on leave for 152 days from 3.6.96 to 1.11.96 in connection with medical treatment of his daughter and from 2.11.96 to 9.1.97 he was placed on Compulsory Waiting and was on duty only for 63 days i.e. from 1.4.96 to 2.6.96.

11. From the foregoing discussion, it is clear that if applicant's five years ACRs for the period 1992-93 to 1996-97 are alone to be taken into account, he has earned Outstanding remarks for the year 1992-93 and 1993-94 and Outstanding/Very Good for the year 1994-95. For the year 1995-96 as annual remarks recorded by the Reporting Officer do not appear to have been communicated to applicant, we must proceed on the basis that respondents have accepted the remarks of the Reviewing Officer who after disagreeing with the Reporting Officer has rated him as Outstanding. For the year 1996-97, no remarks were recorded as applicant was on leave and was subsequently placed on compulsory waiting. it is settled law that whenever remarks for a particular period are not available, respondents are required to take the preceding ACRs back for an equivalent period. Thus if the remarks for the year 1991-92 are taken into account, in place of the year 1996-97 for which no ACRs are available, applicant has again been rated as Outstanding for that year.

12. Thus manifestly if applicant's five years' ACRs for the period 1992-93 to 1996-97 were alone to be taken into consideration, it would be difficult to deny applicant a place in the suitability list.

D

13. Even if, as contended by respondents, it is not the applicant's five years' CRs for the period 1992-93 to 1996-97 alone, but his entire service record which have to be considered for inclusion in the suitability list, a perusal of applicant's ACRs from the start of his service career onwards as extracted in Paragraphs 8, 9 and 10 above reveals that it can quite conceivably be rated overall as Very Good, and indeed as pointed out above, two Members of the Five Member CEB did rate him overall as Very Good. If one more Member had rated him as Very Good instead of merely as Good, then as per respondents' own criteria extracted in para 6 above, he would have been entitled to ~~have~~ his CR dossier reassessed by two Secretaries of Government of India nominated by the Secretary, Personnel on behalf of CEB, While observing thus, we are conscious that it is not within the jurisdiction to sit in appeal over the findings of the CEB. We are only pointing out the factual position in the background of applicant's performance record as reflected in his ACRs from the start of his career onwards, and respondents' own suitability criteria.

14. In the particular facts and circumstances of this case which in no manner shall be treated as a

7

12

precedent, we therefore consider it fit and proper to call upon respondents to get applicant's CRs dossier reassessed in terms of respondents' own criteria extracted in para 6(c) above, and if on reassessment applicant gets the gradings prescribed therein, he should be considered for inclusion in the suitability list for promotion as Director for the year 1997, with consequential benefits in accordance with rules and instructions and judicial pronouncements. These directions should be implemented as expeditiously as possible and preferably within four months from the date of receipt of a copy of this order.

15. The OA succeeds and is allowed to the extent contained in para 14 above. No costs.

A. Vedavalli

/ug/

(Dr. A. Vedavalli)
Member (J)

S. R. Adige

(S. R. Adige)
Vice Chairman (A)