

15

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-790/2001

New Delhi this the 30th day of October, 2002.

Hon'ble Dr. A. Vedavalli, Member(J)
Hon'ble Sh. Govindan S. Tampi, Member(A)

Sh. S. Thankachan,
S/o late Sh. P.K. Nanu,
R/o Type-III/75,
North West Moti Bagh,
New Delhi.

.... Applicant

(through Sh. B.B. Raval, Advocate)

Versus

1. Union of India through
the Cabinet Secretary,
Government of India,
Rashtrapati Bhawan,
New Delhi-1.

2. The Director General(Security),
Cabinet Secretariat,
Government of India,
Room No.7,
Bikaner House Annexe,
Shahjehan Road,
New Delhi-11.

3. The Inspector General,
Special Frontier Force,
Cabinet Secretariat,
East Block-V,
Rama Krishna Puram,
New Delhi-66.

4. Sh. R.N. Shukla,
Section Officer,
C/o Respondent No.3.

.... Respondents

(through Sh. M.M. Sudan, Sr. Standing Counsel for
Respondents No. 1 to 3 and Sh. Sher Singh for R-4)

O R D E R

Hon'ble Dr. A. Vedavalli, Member(J)

The applicant S. Thankachan who is working as
an Asstt. in the office of the Inspector General, Special
Frontier Force (SFF for short), Cabinet Secretariat, New

A

Delhi (Respondent No.3) is aggrieved by the non-disposal of his representation dated 26.2.2001 (Annexure-A) and the Office Memorandum dated 5.2.2001 (Annexure-B) issued by the Directorate General of Security (Respondent No.2) promoting three Asstts./ Personal Asstts. to the post of Section officers so far as it relates to the promotion of R.N. Shukla (Respondent No.4).

2. Heard the learned counsel for the parties. Pleadings and the material papers placed on record have been perused.

3. Facts of this case briefly are as under:-

The applicant joined service of Government of India in Special Service Bureau (SSB for short) under the Directorate General of Security (Respondent No.2) on 1.7.1966 and in due course was promoted to the post of Assistant on 29.9.1987. He is posted in SFF under the said respondent at the time of filing of the OA.

The Directorate General of Security (Secretarial) Service Rules were promulgated in 1975 (Annexure A-1). A common service known as Directorate General of Security (Secretarial) Service was constituted. The said service consists of four cadres (i) Secretarial Cadre (ii) Ministerial Cadre (iii) Stenographer Grade & (iv) Accounts Cadre.

Each cadre consists of several categories of posts as indicated in the aforesaid rules.

AV

4. The applicant is an Assistant in the Ministerial Cadre (Class-II) (Non-Gazetted). He is posted at present in the Special Frontier Force (SFF). The other units in the Directorate General of Security are Aviation Research Centre (ARC for short) Special Service Bureau (SSB for short) and Chief Inspectorate of Armaments (CIOA for short).

5. The relevant post of Section Officer in the Ministerial Cadre to which the applicant belongs is a non-selection post. 60% posts of Section Officer are filled up by promotion of Asstts. with 8 years continuous service in the grade and 40% are filled up by Limited Departmental Competitive Examination (LDCE for short) from among Asstts/Stenographers Grade-I & Grade-II with 5 years service in the grade.


6. An Office Memorandum dated 5.1.2000 was issued by the Asstt. Director (Coordination), Directorate General of Security Coordination Cell inviting applications for filling up of three posts of Section Officers in the Directorate General of Security through LDCE to be held from 11th to 13th September, 2000 (Annexure A-2). All Asstts. and PAs of the Directorate General of Security who have rendered 5 years service in the grade as on 1.8.2000 were eligible to appear in the examination and the component units were asked to forward the applications of eligible persons after due scrutiny. The applicant did not participate in the said examination.

[Signature]

7. On the recommendation of DPC held on 5.3.2001 to finalise the result of the above LDCE, three person, namely, R.N. Shukla, Santilata Mohanty and Palden Namgyal Asstt. were promoted to the post of Section Officers and were nominated to the unit indicated in the said O.M. R.N. Shukla (Respondent No.4) who was an Assistant in SFF was allocated to the same unit by the aforesaid O.M. dated 5.3.2001 (Annexure-B) which has been impugned by the applicant in the present OA.

8. Consequent upon the recommendations of the Task Force of Intelligence Apparatus, the Prime Minister approved the transfer of SSB from Cabinet Secretariat to the Ministry of Home Affairs by an order dated 15.1.2001 (Annexure A-3 Colly.) before the issue of the aforesaid promotion order dated 5.3.2001 (Annexure-B). The office of the Principal Director SSB and CIOA along with their entire staff were also transferred to Ministry of Home Affairs by another order dated 15.1.2001 (Annexure A-3 Colly.). Inter alia, the designation of Principal Director SSB was changed to Director General SSB by an order dated 2.3.2001 (Annexure A-5).

9. The applicant submitted a representation on 26.2.2001 (Annexure-A) which is stated to be still pending.



10. The applicant seeks the following reliefs in this DA:-

- "(i) To quash the impugned Annexure "B" only to the extent of promotion of Shri R.N. Shukla as being illegal, arbitrary and violative of the Recruitment Rules of prescribing 60% and 40% quotas for promotees and LDCE and also violative of the Fundamental Rights of the applicant guaranteed under Articles 14 and 16 of the Constitution of India.
- (ii) Consequent to relief at (I) being directed, direct the Respondents to consider the applicant for promotion to the post of Section Officer from promotee quota arose.
- (iii) AWARD exemplary cost for this application with a further request to pass any other order/orders or direction/directions or grant any other relief/reliefs as deemed fit and proper in the light of the facts and circumstances of the case."

11. Learned counsel for the applicant Sh. B.B. Raval submits that the applicant was governed by the Directorate General of Security (Secretarial) Service Rules, 1975 from 4.11.1975 to 14.1.2001. He contends that from 15.1.2001 the Directorate General of Security (Secretarial) Cadre split into two with the SSB & CIOA crossing over to the control of Ministry of Home Affairs. The ARC & SFF i.e. the unit to which the applicant belongs remained with the Cabinet Secretariat as part of the erstwhile Directorate General of Security (Secretarial) Cadre. He further submits that all the four constituent units of the Directorate General of Security, namely, ARC, SSB, SSF and CIOA were directed to form their

own Recruitment Rules for the post of Ministerial and Secretarial Cadres under them and hence the erstwhile Directorate General of Security (Secretarial) Rules, 1975 ceased to apply to them with effect from 15.1.2001 i.e. the date of the split.

12. Learned counsel for the applicant further contends that as the results of the aforesaid LDCE were not published before the date of split of Directorate General of Security i.e. 15.1.2001 and the permission/approval for the promotion of R.N. Shukla (Respondent No.4) was given by the Principal Director SSB i.e. holder of a non-existing post who is not the competent authority. The said promotion is void ab initio and unsustainable under the law.

Learned counsel also stated that Director, SSF or Cabinet Secretary or Director General, ARC are competent to give permission/approval to the promotion of Respondent No.4 as they are in the Cabinet Secretariat now. He further contends that even otherwise, the vacancy caused by the promotion of one Sh. D.S. Khatri against which Respondent No.4 was promoted through Limited Departmental Examination falls to the promotee quota because one Section Officer from LDCE is already holding the slot out of the three posts of SFF and Khatri's post belongs to the promotee quota.

A

Learned counsel contends that the promotion of Respondent No.4 to the said post is, therefore, invalid under the law and the applicant has a legitimate claim for being considered against the said post which belongs to the promotee quota.

13. The official respondents i.e. Respondents No.1, 2 & 3 in their reply have raised a preliminary objection as to the maintainability of the grievance of the applicant against the candidates selected on the basis of the concerned LDCE stating that as the applicant did not choose to compete in the said LDCE his grievances are liable to be rejected in limine.

14. The official respondents have also stated that there are only two methods of recruitment to the post of Section Officer, namely, (i) 60% by promotion of Assistants with 8 years continuous service in the grade and (ii) 40% by LDCE from amongst Asstts. Stenographers Grade-I & Grade-II with 5 years service in the grade as per the aforesaid rules of 1975.

15. The official respondents in their reply have also stated that the Cabinet Secretariat vide their letter dated 15.1.2001 (Annexure A-3 Colly. to OA) have transferred SSB and the post of Principal Director along with staff under the administrative control of Ministry of Home Affairs and that the Principal Director was redesignated as Director General SSB on 2.3.2001. They

have submitted that the Directorate General of Security (Secretarial) Service has not yet been bifurcated. It was further submitted that none of the vacant posts of Section Officers filled up by LDCE was meant for promotion quota and hence the grievance of the applicant is not maintainable. They have further submitted that even otherwise, the applicant's name appears at Serial No.14 of the seniority list of Asstts. in Directorate General of Security (Secretarial) Service (Annexure R-2) and hence he cannot claim as a matter of right his promotion and as it is no vacant post of Section Officer is available at present in the promotion quota.

16. The official respondents in their additional affidavit filed on 20.02.2002 have stated that consequent to the Cabinet Secretariat's Order dated 15.01.2001 supra, the Special Secretary, Cabinet Secretariat, convened a meeting on 23.1.2001 in order to frame the modalities of trifurcation of the constituent units of the Directorate General (Security) and the apportionment of DGS Secretarial Service of SSB & CIOA of one side and ARC, SFF, DACS and IFU on the other. It was agreed that the Ministerial staff of the DGS Secretarial Service should be apportioned on "as is where is" basis. It was also agreed to that the incumbents of the apportioned post be allowed to continue in their respective units on "as is where is basis". The comments/views of the constituent units

A/

Q

27/

were also solicited before issuance of the Notification regarding trifurcation of DGS Secretarial Service into SSB Secretarial Service ARC Secretarial Service and SFF Secretarial Service vide Cabinet Secretariat O.M. dated 16.4.2001 (Annexure R-3) to additional affidavit. Thereafter, the DGS Secretarial Service was trifurcated into three parts, namely, (i) SSB Secretarial Service (ii) ARC Secretarial Service & (iii) SFF Secretarial Service by a Cabinet Secretariat Notification dated 23.8.2001 (Annexure R-4 to additional affidavit). Subsequently, the Director General Security Coordination Cell who is the cadre controlling authority issued an Office Memorandum dated 5.10.2001 (Annexure R-5) intimating the trifurcation of DGS Secretarial Cadre and asked the units to prepare separate seniority lists. They also published separate seniority list in respect of all posts of secretarial cadres of SSB, ARC and SFF. Seniority list in respect of Assistants of SFF was published by the DGS Coordination Cell. Provisional seniority list of Asstts. in SSF as on 1.9.2001 is enclosed with Annexure R-6(additional affidavit). The applicant's name is at Serial No.2 of the said list.

3

17. Respondents have further stated in their additional affidavit that based on the trifurcation order dated 23.8.2001 HQ SFF prepared draft Recruitment Rules for SFF Secretarial Cadre and submitted the same to the Cabinet Secretary whose approval is still awaited.

AM

18. Learned counsel for respondents Sh. M.M. Sudan submitted that the orders dated 15.1.2001 (Annexure A-3 Colly.) (pages 39 & 40 of the paperbook) are only transfer orders. There is no trifurcation or bifurcation as on date and as the draft rules have still not been approved and issued the existing rules governed the selection to the post of Section Officer. He contended that the contentions of the applicant, therefore, are not sustainable in law and deserve to be rejected summarily.

19. The private respondent No.4, R.N. Shukla, in his counter has adopted the reply given on behalf of official respondents i.e. Respondents No. 1 to 3. Learned counsel for the said respondent Sh. Sher Singh during the course of hearing has also submitted that the Directorate General of Security (Secretarial) Service Rules, 1975 still hold good and no separate Special Frontier Force Secretarial Rules have been promulgated till date and that, therefore, the promotion of Respondent No.4 alongwith two others is in order. He prayed that the OA may be dismissed with costs as it is devoid of any merit.

X 20. We have considered the matter carefully. Two main questions arise for consideration, namely, (i) whether the promotion of Respondent No.4 as Section Officer after selection through the concerned LDCE and on the recommendation of the DPC is void due to the alleged incompetency of the authority who has given his

M

permission/approval for the said promotion; (ii) whether the applicant has any legally enforceable right to be promoted to the said post held now by him Respondent No.4.

21. Re question No.1 it is seen that with reference to the statement of the official respondents in their reply that the Directorate General of Security (Secretarial) Service Rules, 1975 are still in vogue and the Cabinet Secretariat's order dated 15.1.2001 transferring SSB and CIOA alongwith the office of Principal Director SSB to Ministry of Home Affairs is only a transfer order and does not indicate any change in the aforesaid rules, the applicant has not been able to deny the said contentions with supporting material. He has also not been able to establish as to how he is competent to question the competency of Principal Director SSB to give his approval/recommendation regarding the promotion of Respondent No.4 to the post of Section Officer since he himself has not participated in the concerned LDCE held in September 2000. We find that the applicant has not been able to show that the aforesaid existing rules i.e. DGS (Secretarial) Service Rules, 1975 have been repealed/modified or amended duly in accordance with law and that new Rules have come into existence regarding the trifurcation or bifurcation of the cadre or that separate Rules for each category have been promulgated. He has also not been able to prove with supporting material as to how the Principal Director SSB is not competent to approve/recommend the

AM

promotion of Respondent No.4 as there is still no change in the existing rules. Moreover, the applicant admittedly has not appeared in the aforesaid LDCE held in September, 2000.

22. In view of the above, we find no merit in the contention of the applicant regarding alleged incompetency of the authority who has approved/recommended the promotion of Respondent No.4 to the post of Section Officer by the impugned order.

23. Re the question No.2 it is seen from the reply of the respondents as noted earlier, inter alia, that none of the vacant posts of Section Officer filled through the aforesaid LDCE are meant for promotee quota and even otherwise the applicant's name appears at Serial No.14 of the seniority list of Asstts. in the DGS (Secretarial) Service (Annexure R-2). The respondents have also stated that the applicant, therefore, cannot claim promotion as a matter of right above his seniors against the posts fallen vacant in the promotion and even otherwise, no post of Section Officer is lying vacant against the promotion quota at present.

24. On a consideration of the matter, we are of the view that the applicant has not been able to establish with supporting material that the promotion of Respondent No.4 to the post in question has resulted in the violation of any of his vested legal rights. A

A

27

-13-

25. On the facts and circumstances of the case and in view of the foregoing discussion, we are of the opinion that the OA is devoid of any merit and hence the impugned order dated 5.3.2001 (Annexure-B) does not warrant any judicial interference. O.A. is, therefore, dismissed. No costs.

(Govindan S. Tampi)
Member (A)

/vv/

A. Vedavalli
30/10/2002

(Dr. A. Vedavalli)
Member (J)