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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No. 15/1998

New Delhi this the 6<sup>th</sup> Day of March 1998

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)  
Hon'ble Shri S.P. Biswas, Member (A)

Shri M.S. Sokhanda,  
Joint Secretary (E/PG) & CVO,  
Ministry of Defence,  
South Block,  
New Delhi-110 011.

Petitioner

(By Advocate: Shri G.D. Gupta alongwith  
Shri S.P. Mehta)

-Versus-

1. Cabinet Secretary,  
Government of India,  
Rashtrapati Bhawan, New Delhi-110 011.
2. Secretary,  
Ministry of Personnel, Public Grievances &  
Pension,  
Government of India,  
North Block, New Delhi-110 011.
3. Shri T.S.R. Subramanian,  
Cabinet Secretary,  
Government of India,  
Rashtrapati Bhawan, New Delhi-110 011.
4. Shri S.K. Malhotra,  
Additional Secretary and Advisor,  
Inter State Council Secretariat,  
Ministry of Home Affairs,  
North Block, New Delhi-110 011.
5. Shri M. Venkateswara Iyer,  
Additional Secretary,  
Ministry of Finance,  
Dept. of Expenditure,  
North Block, New Delhi-110 001.
6. Shri Surendra Singh,  
(Former Cabinet Secretary),  
C/o Cabinet Secretariat,  
Rashtrapati Bhawan, New Delhi-110 011.
7. Shri M.S. Mathur,  
Under Secretary,  
Cabinet Secretariat,  
Rashtrapati Bhawan,  
New Delhi-110 011.

Respondents

(By Advocate: Shri V.S.R. Krishna & Shri R.V. Sinha)

This case came up for final hearing on 9.2.1998. We have heard the parties at length and we pass the following orders.

2. The case of the petitioner is that even though he is eligible in 1994 and available in accordance with the rules he has not been considered for the post of Additional Secretary both in the year 1995 as well as in the year 1996 in accordance with the rules and on the other hand the Special Committee referred to para 14 of the Seniors Staff Scheme proceeded to scrutinize the personal records of the petitioner and for reasons unknown to the petitioner, his candidature was not presented to the ACC which is the appointing authority as far as the petitioner is concerned according to his rank and status. It is alleged that the respondents had deliberately and with a malafide intention did not process the name of the petitioner and place the same before ACC.

3. The respondents on the other hand stated that in the year 1995 the said Committee did consider the candidature of the petitioner but did not recommend the same to ACC and the respondents had made a statement to this effect at the time of hearing of this petition. It was further submitted that the Select Committee referred to para 14 of the Scheme stated above is an authority which makes the selection and the panel prepared is presented to ACC and since the petitioner's name was not presented to the ACC and his name was not in the approved panel, there is no question of considering his name for promotion to the post of Additional Secretary by the ACC.

4. When the petition came up for hearing this court had initially issued notices and after notice to the parties this court had issued an interim order on 6.1.1998 and the matter was listed for hearing on 13.1.1998. In the meantime upon mentioning

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the matter on 8.1.1998, the hearing of the case was preponed and this court had to issue a modifiction of the interim order on the basis of the production of an order said to have been issued on 26.12.1997 after approval of the Appointment Committee of the Cabinet (ACC).

5. Subsequently, on 3.2.1998, it was brought to our notice by the petitioner that the respondents have obtained the said modification order from this court namely the one dated 9.1.1998 on misrepresentation of facts and misleading the court with untruth. Being a serious matter one more opportunity was given to the respondents to produce the file containing the ACC approval which was undertaken to be produced even on the previous hearing. The respondents then sought further time to produce the said file and a reply affidavit to para no. 3 of the rejoinder filed by the petitioner. The respondents at that time submitted that the delay was due to the pre-occupation of the respondents in the Republic Day celebrations. The petitioner on the other hand is seeking re-modification of the order in the nature of "status-quo" as on 6.1.1998 that is the date on which the first interim order was passed.

6. Accordingly on the sade date we had issued the following order:

"Further, considering the seriousness of the matter we are giving the respondents one more last opportunity to produce the concerned file containing the ACC approval as referred above, latest by 6.2.1998 and in the absence of the same we intend to take 'suo moto' action, in accordance with law and all the respondents including the officer who has signed the disputed

order dated 26.12.1997 shall be present in court on 9.2.1998 to take appropriate orders. Let this matter be listed in the category of ORDERS. on 9.2.1998. Copy of this order be out today".

7. Even though the matter was not listed on 6.2.1998 the same was mentioned at 3.30 p.m. in court by the counsel for the respondents and stated that the concerned ACC approval file as referred to in our order dated 3.2.1998 is being produced and in view of the same, this court may defer the order of personal appearance due to accordingly passed an order dispensing with the personal appearance as per our previous order dated 3.2.1998.

8. To our surprise when the sealed covers were opened we found the ACC file as referred to in our previous order was not within the sealed covers rather the said file has been referring only to our initial order of posting and on the basis of which the Minister concern had given the approval for posting and it was stated on affidavit that this is the ACC file. The counsel for the petitioner on the other hand submitted that what is produced before us was not the ACC file rather it is a file in which the posting was done and the ACC file bearing No. 4/6/96 CS(A) was the concerned file and the same is still in the custody of the respondents and the respondents are not producing the same with impunity. It was stated by the petitioner that the respondents are still taking this court for a ride. This is a serious matter that the respondents in the first instance mislead the court and again on the second time the same action has been repeated and a modification order has been obtained again by stating untruth and misleading the court. It goes without saying that appropriate action needs to be taken against the respondents who are

responsible to state the non-facts to the court for the second time and it is directed that the Registrar of this Tribunal may frame appropriate charges *suo moto* and same be issued in due course in accordance with rules prescribed for the purpose. In these circumstances status quo ante as on 6.1.1998 as in the first interim order needs to be maintained.

9. The submissions of the respondents was that an approval of ACC is deemed to have been obtained, after the PM had given his approval in his capacity as Chairman. But the notification of the Government in regard to the constitution of the ACC prescribes none of the members as Chairman. Moreover, without obtaining ACC approval appointment/posting on the basis of the so called "Post-facto" approval by the concerned Minister that is the members of ACC, is clearly illegal and the action taken is a non-est, even if it is a long standing practice.

10. It was further told to the court that the petitioner has been empanelled and selected and ACC approval for the same has been taken vide file No. 9/1/97 CS(A). In the circumstances appointment and posting of the petitioner shall be in Ministry of Defence in accordance to para 17.10 of the Central Staffing Scheme. In case the petitioner succeeds while being considered prior to 1998 as being directed by us in the first paragraph of this judgement, the seniority of the petitioner shall be determined as per the selection in a year prior to 1998.

11. On merits of the case, it is found that in accordance with the para 14 of the Senior Staff Scheme, the respondents are bound to present the details of all the candidates belonging to different groups to ACC ; on the other hand the

respondents in the case of the petitioner has not presented the details of all the eligible candidates belonging to different groups at the same time for the purpose of finding the comparative merit by the appropriate authorities namely ACC. The presentation of the papers of various candidates at different times, some times with a gap of about two years, is to be construed to be a prejudice towards a particular service and the ACC is highly prejudiced to the extent that the power of appointment given to the appropriate authority was not able to exercise the same in accordance with law. Committee of Secretaries alongwith the Cabinet Secretary does not have any power to stop any eligible and available candidate from being considered by the appropriate authority namely the ACC. The respondents had heavily relied upon the case of the Union of India Vs. Samar Singh as reported in JT 1996 (9) SC 184 and stated that the selection and empanelment of the petitioner by the Committee of Secretaries cannot be called in question unless malafide is alleged. It is pertinent to mention that the petitioner had alleged malafide and respondents have not replied nor rebutted to, nor is the case of Samar Singh directly applicable to the present case. The grievance of the petitioner in this case is that the appropriate authority namely, ACC, did not get a chance or occasion to discharge the function of appointing authority due to the reason that no records or minutes were sent or forwarded to the ACC. On the other hand Samar Singh's case was concerned with the selection by the Committee of Secretaries only. It is further to be noticed that the appointing authority being the ACC, it is the duty of the Secretaries and the Cabinet Secretary to place the candidature of all the candidates eligible and available alongwith its recommendation to ACC for

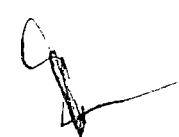
appropriate action. In the present case the respondents have not complied with the procedure prescribed as per the guidelines and has stopped the candidature of the petitioner at the level of the Committee of Secretaries without being forwarded the same to the ACC. It is also come to light that in the year 1995 there was a panel of candidates belonging to different groups and in accordance with the Scheme the same should have been sent alongwith the candidates eligible and available in the CSS group as well.

In the absence of the same the respondents are duty bound to reconsider the case of the petitioner by presenting the records of the petitioner to the ACC alongwith its recommendation according to para 14 of the Senior Staff Scheme within a period of one month from the date of receipt of the copy of this order. In case the ACC after its appraisal find the petitioner is not fit for appointment to the post of Additional Secretary, the Committee of Secretaries shall make the appropriate recommendations in accordance with the rules for the year 1996 as well subsequently for the consideration of the ACC and in the event at either of the times in case ACC finds that the candidature of the petitioner is acceptable, the relief sought by the petitioner namely posting and other consequential benefits shall be given with effect from the date as on which his colleagues in the same batch had been given <sup>benefits</sup> by the respondents. ✓

With this, this OA is disposed of with no order as to costs.

  
(S. P. Biswas)  
Member (A)

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(Dr. Jose P. Verghese)  
Vice-Chairman (J)