

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./~~TX~~ NO. 763 /1995 Decided on : 1.8.1995

K. L. Gupta Applicant(s)

(By Shri/~~Mr.~~ J. K. Bali Advocate)

versus

Union of India & Ors. ... Respondent(s)


(By Shri/~~Mr.~~ M. M. Sudan Advocate)

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THE HON'BLE SHRI JUSTICE S. C. MATHUR, CHAIRMAN

THE HON'BLE SHRI K. MUTHUKUMAR, MEMEBR (A)

1. To be referred to the Reporter or not ? *Yes*
2. Whether to be circulated to other Benches *Yes*
of the Tribunal ?


(S. C. Mathur)
Chairman

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 763 OF 1995

New Delhi this the 1st day of August, 1995.

C O R A M :

HON'BLE SHRI JUSTICE S. C. MATHUR, CHAIRMAN

HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

K. L. Gupta, I.A.S.,
Officer on Compulsory Waiting Home (PAR),
Government of West Bengal,
Writers Building,
Calcutta.

... Applicant

(By Shri J. K. Bali, Advocate)

-versus-

1. Union of India through
Cabinet Secretary,
Rashtrapati Bhawan,
South Block, New Delhi.
2. The Secretary,
Department of Personnel & Admn. Reforms,
Ministry of Home Affairs,
North Block, New Delhi.
3. Principal Secretary to the
Prime Minister,
New Delhi.
4. Chief Secretary,
Government of West Bengal,
Writers Building,
Calcutta.

... Respondents

(By Shri M. M. Sudan, Advocate)

O R D E R (O R A L)

Shri Justice S. C. Mathur -

The applicant, Shri K. L. Gupta, a member of the Indian Administrative Service (IAS), 1964 batch, belonging to the West Bengal Cadre, is aggrieved by his non empanelment in the years 1993 and 1994 for appointment to the post of Additional Secretary in the Central Government. For the redressal of this grievance, he has prayed for the

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following reliefs :-

"8.1 declaring the applicant for empanelment for the post of Addl. Secretary with retrospective effect from the date from which the other officers belonging to 1964 IAS batch have been appointed/promoted and to give him suitable post;

8.2 direct the respondents to empanel the applicant on the post of Additional Secretary with retrospective effect from the date from which the other officers belonging to 1964 IAS batch have been appointed/promoted and to give him suitable post;"

2. The facts necessary for the disposal of the application are as follows :

The applicant joined the IAS and was allocated to 1964 batch. He was assigned the West Bengal cadre. About the year 1974 he was sent on Government of India deputation to work as Zonal Director for Tribal Development and SC Welfare and Zonal Director for SC & ST under the Ministry of Home Affairs. Thereafter, he was sent on deputation to the Bihar Government. After returning from that deputation, he held postings under the Government of West Bengal. He got his second deputation when he was appointed as Chief Vigilance Officer, Western Coal Field, Nagpur, under the Coal India Limited in the rank of Joint Secretary to the Govt. of India. After the conclusion of this deputation he again came back to West Bengal and held various postings. He again had a stint of deputation in the State of Bihar. He returned from this deputation on or about 17.11.1992 but was not given any posting by the West Bengal Government. Up to the time of filing the present original application, the

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applicant was waiting for a posting order. In 1993 a special committee met to draw a panel of officers for appointment as Additional Secretary under the Government of India. At this time, the applicant's name was not included in this panel. Again, a panel was drawn in the year 1994. The applicant's name was not included in this panel also. The applicant asserts that at the time the special committee met on these two occasions, they did not have his Annual Confidential Reports (ACRs) for the periods 1990-91 and 11.10.1991 to 31.3.1992. During this period, the applicant was on deputation with the Bihar Government and that Government had not forwarded the ACRs for the said periods to the Central Government. It is only in October, 1994 that the Bihar Government sent the ACRs to the Central Government. The applicant asserts that in his entire service record, he has not received any adverse entry and from 1964 to 1986 his grading was 'very good' and from 1987 to 1990 his grading was 'good'. He points out that in the ACRs which have now been sent, his performance is exemplary. According to him, for the year 1990-91 he has been graded 'outstanding' and for the year 1991-92 as 'very good'. According to the applicant, with this service record, the only reason for exclusion of his name in the two panels is the non-availability of the ACRs for the two periods mentioned hereinbefore. With this plea the applicant made representations dated 17.12.1993 and 20.8.1994 seeking initiation

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of steps for inclusion of his name in the panel. The applicant was unsuccessful and accordingly, he filed the O.A. in the Tribunal on 24.4.1995. Subsequently, the applicant filed additional affidavit dated 12.5.1995 asserting therein that officers of 1965 batch have also been empaneled for appointment to the post in question. This assertion has been made to emphasise the applicant's plea that juniors to him have been empaneled while he has been left out. The applicant has described the action of the respondents as arbitrary.

3. In the reply filed on behalf of the respondents, the fact that the aforementioned ACRs were not available at the time of the preparation of the two panels has not been disputed. It has also not been disputed that officers junior to the applicant have been empaneled. The respondents, however, deny the charge of arbitrariness or discrimination. They point out that the post of Additional Secretary is filled up on deputation basis on a consideration of factors mentioned in the scheme framed by the Government of India for preparing the panel which is designated as the 'Central Staffing Scheme'. It is asserted that there are three sources of manning the posts at various levels in the Central Government, viz., (1) officers drawn from All India Services; (2) officers drawn from organised Central Services Group 'A'; and (3) Central Secretariat Service. From this it would appear that appointment to the

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post of Additional Secretary is not confined to officers of the Indian Administrative Service. Officers of other services mentioned herein can also be appointed to the post. At the time of arguments, the learned counsel for the respondents submitted that the applicant's claim cannot be considered on the basis of the law relating to promotion in service but it will have to be considered on the basis of the law governing deputation postings. According to him, a Government servant, if he falls in the promotion channel, can claim promotion if he is, without reason, left out therefrom but so far as deputation is concerned, an officer is selected therefor on entirely different considerations, primarily on the consideration of suitability of the officer for the borrower.

4. Along with the respondents' reply a copy of the booklet entitled, "The Central Staffing Scheme", has been filed as Annexure R-I. Paragraph 3 of this Scheme mentions, "Appointment to all other posts of the rank of Under Secretary and above in the Government of India are filled under the Central Staffing Scheme, by borrowing officers from the All-India Services and participating Group 'A' services; the cardinal principle being that all officers who are so borrowed will serve the Government of India for a stipulated tenure on deputation and, thereafter, return to their parent cadre. Their growth, development and career prospects will be mainly in their own service." From this it would indeed

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appear that appointment to the post of Additional Secretary is by deputation. (emphasised).

To the above effect is the provision contained in paragraph 5 also. Relevant portion of the paragraph reads as follows :-

"5. The scope of the Central Staffing Scheme is bound by the following parameters :-

(i) All posts of the rank of Under Secretary and above in the Government of India may be filled on tenure deputation from the all-India Services and the participating Group 'A' Services of the Central Government, excluding such posts of Under Secretary and Deputy Secretary as are filled by CSS officers.

(ii) xxx xxx xxx

(iii) In terms of the provisions of article 312 of the Constitution, the Indian Administrative Service, the Indian Police Service and the Indian Forest Service are all India Services common to the Union and the States. Every State cadre of each of these Services provides for a central deputation quota which in turn requires additional recruitment to be made to these Services to provide for trained and experienced members of these services to serve on posts in the Central Government. Accordingly, utilisation of the central deputation quota of different State Cadres is an important factor governing the scale at which officers are borrowed from the various State cadres of these all-India Services. However, no post so filled by a member of any all-India Service on tenure deputation can be deemed to be a cadre post of that Service. Similarly, no individual member of an all-India Service can claim any right to a post or appointment under the Government of India on this ground." (emphasised)

From the emphasised portion in the above paragraph, it is apparent that the State cadre provides for the Central Pool from which appointment is made to specified posts under the Central Government. These posts are outside the cadre. Appointment to such posts cannot be claimed as a matter of right.

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Paragraph 7 deals with drawing up of the panel. It states that the exercise is normally conducted on an annual basis considering the officers with the same year of allotment together is one group. Paragraph 9 reads as follows :-

"9. The panel approved by the ACC on the recommendation of the Civil Services Board will be utilised for making appointments to posts under the Government of India, but inclusion in the panel would not confer any right to such appointment under the Centre." (emphasised).

This provision also emphasises the fact that inclusion in the panel does not confer any right to appointment under the Centre. Paragraphs 10 and 11 deal with review of panel. Paragraph 10 states that cases of officers who are not included in any panel in a particular year would be reviewed together after a period of two years. The purpose of providing for two years is to have ACRs on performance for two more years. Under paragraph 11 a special review may be made in case of any officer whose confidential report undergoes a material change as a result of his representation being accepted against the recording of adverse comments on his ACR. The provision in regard to empanelment for the post of Additional Secretary/Special Secretary/secretary is contained in paragraph 14 which reads as follows :-

"14. Selection for inclusion in the panel of officers adjudged suitable for appointment to the posts of Additional Secretary or Special Secretary/Secretary to the Government of India and posts equivalent thereto, will be approved by the ACC on the basis of proposals submitted

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by the Cabinet Secretary. In this task, the Cabinet Secretary may be assisted by a Special Committee of Secretaries for drawing up proposals for the consideration of ACC. As far as possible, panels of suitable officers will be drawn up on an annual basis considering all officers of a particular year of allotment from one service together as a group. Inclusion in such panels will be through the process of strict selection and evaluation of such qualities as merit, competence, leadership and a flair for participating in the policy making process. Posts at these levels at the Centre filled according to the Central Staffing Scheme are not to be considered as posts for the betterment of promotion prospects of any service. The needs of the Central Government would be the paramount consideration. While due regard would be given to seniority, filling up of any specific post would be based on merit, competence and the specific suitability of the officer for a particular vacancy in the Central Government." (emphasis supplied).

Under this provision, the duty of preparing a panel is cast primarily on the Cabinet Secretary. The Cabinet Secretary in the discharge of this onerous duty may be assisted by a special committee of Secretaries. This paragraph also lays down that as far as possible, the panel shall be drawn on annual basis. It is emphasised that names shall be included in the panel through the process of strict selection and evaluation of such qualities as merit, competence, leadership and flair for participation in the policy making process. It is emphasised that the posting at the Centre is not to be considered as a betterment of promotion prospects. The paramount consideration

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for empanelment is not service prospects of the officer but the needs of the Central Government. Indeed in a deputation posting it is the need of the borrowing department which has paramount consideration. It is, therefore, for the borrowing department to consider whether despite the non-availability of ACRs for a particular period, it will proceed to consider the officer as possessing the qualities mentioned in paragraph 14 so as to include his name in the panel. Since normally the process of empanelment is an annual exercise, the process cannot be deferred merely on account of non-availability of ACRs of certain officers. ACRs are indeed important in assessment of suitability of an officer for a particular post but they are not all in all in judging the merit or suitability of a person for a particular post. There are other service records which can also be looked into for making an assessment. It also needs to be pointed out that the special committee referred to in paragraph 14 comprises of officers who are members of the same service to which applicant/himself belongs. They can be expected to have some knowledge of the merits of the applicant. Taking into account the scheme of appointment, the Central Government may be accused of arbitrariness and discrimination only if it excludes from consideration a person who is otherwise entitled to consideration under the scheme, but it cannot be so accused when the eligible officers are considered but found unsuitable on the basis of their existing record of service.

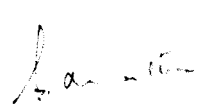
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5. On behalf of the applicant, reliance has been placed upon the decision of the Tribunal in the case of Jagdish Chander Jetli vs. Union of India. A copy of the judgment was not produced before us, but the learned counsel for the respondents has invited our attention to Annexure R-II to the counter reply from which it appears that the propositions of law occurring in the said judgment were not approved by their lordships of the Supreme Court in I.A. No. 1 (Civil Appeal No. 935/88) Union of India vs. J. C. Jetli & Anr. In the last but one paragraph of the order their lordships have observed, "We accordingly set aside the findings and the propositions of law occurring in the impugned judgement and sustain the conclusion only to the effect that respondent No.1 is senior to respondent No.2 and on that basis is entitled to the relief."

6. In view of the above, the application lacks merit and is hereby dismissed but without any order as to costs. Interim order, if any operating, shall stand discharged.


(K. Muthukumar)
Member (A)

/as/


(S. C. Mathur)
Chairman