

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. No.1279/1996

Hon'ble Smt. Lakshmi Swaminathan, Member (J)  
Hon'ble Smt. Shanta Shastry, Member (A)

New Delhi, the 6th January, 2000

D.K. Kathuria, Sr. Prosecutor  
Directorate of Prosecution  
S/o Dr. B.B. Kathuria  
Aged 53 years (Approximately)  
R/o 771, Dr. Mukherjee Nagar  
Delhi 110 009

....Applicant

(By Advocate: None)

Versus

1. Govt. of National Capital Territory of Delhi, through its Principal Secretary Home Department  
5, Shamnath Marg, Delhi
2. Directorate of Prosecution Through its Director  
Tis Hazari, Delhi
3. Union Public Service Commission Through its Chairman  
Dholpur House  
Shahjahan Road, New Delhi

...Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R (ORAL)

Smt. Shanta Shastry, Member (A)

None appeared for the applicant even on the second call even uptill 3.00 p.m. when the case was taken up for hearing today. Accordingly, we have decided to proceed with the case on merits on the basis of the available record and after hearing the learned counsel Shri Vijay Pandita for the respondents.

2. The applicant in this case joined as a Prosecutor in the Directorate of Prosecution in the year 1969. He was thereafter promoted as Sr.

Prosecutor in the year 1985 on 16.4.1985 and was regularised along with others through a regular selection procedure vide appointment order dated 16.4.1985 and 29.9.1987. He was further promoted as Additional Public Prosecutor on 25.5.1985. In the year 1995 a Selection Board was constituted for selection of candidates for the post of Chief Prosecutor. The Selection Board selected seven candidates vide the notification dated 31.5.1995 for the post of Chief Prosecutor. The applicant was not promoted.

3. The main grievance of the applicant is that he was not selected to the post of Chief Prosecutor while juniors to him were promoted by impugned notification dated 31.5.1995. He has, therefore, sought the quashing and setting aside of the impugned notification dated 31.5.1995 and a direction to the respondents to constitute a fresh review DPC to consider his claim in accordance with law for promotion to the post of Chief Prosecutor and to declare the selections made by the Selection Board earlier as void ab-initio. He has also prayed that the records of selections made by the Selection Board/UPSC for the post of Chief Prosecutor and record pertaining to the consequent appointments vide notification dated 31.5.1995 be called for.

4. The applicant's main contention is that though he was qualified and had the requisite service, he was not considered by the Selection Board for promotion to the post of Chief Prosecutor. The two chief grounds

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for his grievance are that the Selection Board which was to comprise of Chairman/Member, UPSC, Chief Secretary, Delhi Administration, Secretary concerned in Delhi Administration and Head of the Department, according to recruitment rules was not in full strength on the relevant date of selection. One of the members, i.e. the Chief Secretary, Delhi Administration was not present at the time of selection. Therefore, the selection is vitiated. Secondly, the Selection Board did not adopt a fair procedure inasmuch as the annual confidential report for the year 1992-93 of the applicant had not been taken into consideration. Equal number of ACRs were not taken into account, thus committing an irregularity.

5. The learned counsel for the respondents submits that proper procedure was followed. He, however, admits that one of the members of the Selection Board, namely, Chief Secretary, Delhi Administration, was not present at the time of the selection. But, this by itself would not vitiate the proceedings of the Selection Board. The learned counsel further states that though the confidential report of the applicant for the year 1992-93 was not available, a certificate to that effect had been furnished to the Selection Board in time with a note that nothing adverse had come to the notice of the administration against the officers, including the applicant. According to the respondents, the

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Selection Board had followed the procedure correctly and there was no irregularity. The applicant's case was fully considered but he was not found fit.

6. After perusing the record and hearing the learned counsel for the respondents, we are satisfied that the Selection Board had gone about fairly in the matter of selection of officers to the post of Chief Prosecutor in accordance with the relevant rules and instructions in the matter. As regards the absence of the Chief Secretary, Delhi Administration from the Selection Board on the relevant date, our attention has been drawn by the learned counsel for the respondents to the Govt. of India's instructions reproduced in para IV of the Swamy's Manual on Establishment & Administration (1996 Edition)(page 776) which clarifies the position regarding validity of the proceedings of the DPC when one member is absent. It has been clearly explained therein that the proceedings of the DPC shall be legally valid and can be acted upon notwithstanding the absence of any member of the Board provided that the member was duly invited but he absented himself for one reason or the other and there was no deliberate attempt to exclude him from the deliberation of the DPC and provided further that the majority of the members are present in the meeting of the DPC. In the instant case, only the Chief Secretary was absent and as such we do not consider the proceedings of the Selection Board as vitiated, as contended by the applicant.

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7. The applicant has raised the issue of non-availability of his ACR for the year 19992-93. We are satisfied by the explanation given by the learned counsel for the respondents that as per the instructions in vogue, the respondents have given the necessary certificate well before the holding of the meeting of the Selection Board on the relevant date. The learned counsel for the respondents has denied the applicant's contention that equal number of the confidential reports were not considered by the Selection Board.

8. In the facts and circumstances of the case we find that there is no merit in the O.A. and the same is dismissed accordingly. No order as to costs.

*Shanta Shastri*  
(Smt. Shanta Shastri)  
Member (A)

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan)  
Member (J)

SC\*