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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1475/1997

New Delhi, this 20th day of July, 2000

Hon'ble Justice Shri V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry Member(A)

S.C. Gupta
1000/S-VII, R.K. Puram
New Delhi-110 022

.. Applicant

(By Shri A.K. Behra, Advocate)

versus

Union of India, through

1. Secretary
Research & Analysis Wing
Room No.7, Bikaner House Annexe
Shahjahan Road, New Delhi

2. Director (SR)
Cabinet Secretariat
Bikaner House Annexe
Shahjahan Road, New Delhi .. Respondents

(By Shri Madhav Panicker, Advocate)

ORDER(oral)

By Justice Rajagopala Reddy

The applicant was initially appointed as Assistant by the Research and Analysis Wing. He was promoted as Section Officer with effect from 25.8.1986. The next promotional post to the applicant was Under Secretary. According to the recruitment rules, a minimum service of 8 years is required for the purpose of promotion. There was one anticipated vacancy in 1996 and for filling it up, the DPC was constituted on 16.12.1996. 5 officers including the applicant were considered and they are:

1. Shri K.S. Chatwal
2. Shri S.C. Gupta (applicant)
3. Shri M.B. Vashisth
4. Smt. Nirmala Malla
5. Shri A.K. Chaturvedi

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2. The DPC recommended the name of Shri K.S.Chatwal. Accordingly he was appointed. Few days later, Shri Chatwal retired from service on 31.12.1996. To fill up that vacancy, a DPC was held on 7.1.1997. The applicant and four others were considered for promotion and the recommendations of the DPC, having ^{been} approved by the competent authority, were sent to the Cabinet Secretariat for approval of the Government. But the Cabinet Secretariat directed the DPC to reconsider its recommendations as it was of the view that it found a variation in the assessments of the officers from the DPC held on 16.12.1996. A Review DPC was thereafter constituted on 28.5.1997 but the Review DPC, instead of reviewing its recommendations made on 7.1.1997, has taken into consideration the ACRs for the year 1996-97 to fill up two more vacancies of Under Secretaries along with the vacancy that arose on 1.1.1997. Thus the DPC had recommended the appointment of 3 persons other than the applicant. Eventually the Cabinet Secretariat approved the recommendations of the DPC and the persons who were appointed, they are Shri M.B. Vashist, Smt. Nirmala Malla and Shri A.K. Chaturvedi, by orders dated 18.6.1997, 25.6.1997 and 5.1.1998. Their appointments were however made subject to the outcome of the present OA. It is however stated by the learned counsel for the respondents that the applicant was also promoted on 17.7.1998 as Under Secretary by the subsequent DPC.

3. The main grievance of the applicant in this case is that the DPC held on 28.7.1997 had not reviewed the

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recommendations made by the earlier DPC held on 7.1.1997. It has taken into consideration the ACRs of subsequent years of 1996-97 and also filled up two other vacancies on the basis of the material available as on 28.5.1997, which is contrary to the directions given by the Cabinet Secretariat.

4. A preliminary objection is raised by the learned counsel for the respondents. He argues that the persons who have been appointed as Under Secretary in the DPC held on 25.8.1997; are necessary parties in this case. Learned counsel for the respondents however brought to our attention the final seniority list in the grade of Under Secretary where it is seen ^{that} although the above three officers have been appointed in June 1997 and January 1998 but their appointments were made subject to the outcome of the instant OA. Hence it cannot be said that their rights would be affected by passing any order in favour of the applicant. It is also seen that in this OA an order was passed on 4.7.1997 clearly mentioning that any promotions made during the pendency of the OA will be subject to the outcome of the OA. In the circumstances, the above objection of non joinder of necessary parties has to be rejected.

5. In the counter it admitted the entire case of the applicant. It is averred that the DPC which was held on 7.1.1996 was constituted to fill up one vacancy in the grade of Under Secretary where 5 Section Officers

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including the applicant were considered. The DPC minutes were duly approved by the competent authority and they were submitted to the Cabinet Secretariat for seeking Government approval. The Cabinet Secretariat on 9.2.1997 after referring the minutes of the DPC held on 16.12.1996 sought clarification for the change undertaken in categorisation of the officers by the DPC held on 7.1.1997 vis-a-vis the assessment of the DPC which met on 16.12.1996. In response to this suggestion, the competent authority approved that a DPC be convened for the year 1996-97 which had become available by then. In the meantime, two posts were created resulting in two more vacancies. The DPC was held on 28.5.1997. The recommendations of the DPC were duly accepted by the competent authority which were forwarded to the Cabinet Secretariat for approval. The cabinet Secretariat conveyed its approval to the appointment of Shri M.B. Vashisht to the post of Under Secretary against the existing vacancy. Hence it is urged that there is no irregularity in the proceedings of DPC held on 28.5.1987.

6. We have given careful consideration to the pleadings as well as the contentions raised by the learned counsel for the applicant and the respondents.

7. The crucial question in this case is whether the directions given by the Cabinet Secretariat in its proceedings dated 9.2.1997 have been complied with by

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the competent authority in the DPC held on 28.5.1997. It should be remembered that the DPC held on 7.1.1997 where the applicant and 4 other persons namely, Shri M.B. Vashisht, Shri A.K. Chaturvedi, Smt. Nirmala Malla and Shri J.S. Kalra and Shri S.C. Gupta (applicant) were considered for promotion. Admittedly the Cabinet Secretariat directed to reconsider the recommendations made by the DPC held on 7.1.1997. It is seen in the proceedings of the Cabinet Secretariat it also directed that all the vacancies likely to arise after 31.3.1997 should also be taken into account by the DPC. The DPC held on 28.5.1997 was purportedly to review the proceedings of the DPC held on 7.1.1997. It is seen that as two more vacancies arose meanwhile the DPC also considered as directed, the filling up of those two more vacancies. A perusal of the minutes of the DPC held on 28.5.1997 does not show that it has kept in mind the observations made by the Cabinet Secretariat in its proceedings dated 9.2.1997. It has merely considered 10 Section Officers along with the applicant and other Section Officers who were also considered in the DPC held on 16.12.1996 and after noting their categorisation from their service record, recommended promotion of 3 officers. The learned counsel for the applicant therefore rightly contends that the minutes of DPC of 28.7.1997 did not comply with the directions given by the Cabinet Secretariat as there was no review of the proceedings of the DPC held on 7.1.1997.

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8. We have perused the minutes of the DPC held on 28.5.1997. We are at a loss to find any reference to the observations made by the Cabinet Secretariat. The Cabinet Secretariat in its proceedings dated 9.2.1997 has observed as under:

"It is seen from the minutes of the DPC that Shri M.B. Vasisht, Shri A.K. Chaturved and Shri J.S.Kalra have been categorised as 'Outstanding'. While Shri S.C. Gupta and Smt. Nirmalla Malla have been categorised as 'Very Good'. However, in the DPC held on 16.12.1996, Shri S.C.Gupta, Shri M.B. Vashisht, Smt. Nirmala Malla and Shri A.K. Chaturvedi had all been categorised as 'Very Good', based on assessment of the same 8 years CRs from 1988-89 to 1995-96."

After observing that the DPC had altered its own categorisation of the officers concerned, it directed as under:

"It is, therefore, suggested that the DPC may reconsider its recommendations made on 7.1.1997. All vacancies likely to arise upto 31st March 1997 should be taken into account by the DPC, as required in para 4.1 of consolidated instructions for Departmental Promotion Committees, vide Deptt. of Personnel & Training OM dated 22011/5/86-Estt(D) dated 10th April, 1989."

9. It was, therefore, necessary for the DPC to have considered and explain and justify as to how there was change in categorisation of the same officers when both the DPCs were held within a span of four months on the same ACRs. The learned counsel for the respondents however submits that the DPC held on 28.5.1997 has taken into consideration the marks that were awarded to the respective officers and on that basis the categorisation must have been altered by the subsequent DPC. Prima facie, this explanation does not merit acceptance, but

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it is not for the counsel at this stage to supplement what should have been done by the DPC itself. The subsequent ACRs made available should not have been taken into consideration because it was a Review DPC. It could have considered filing up 3 vacancies instead of one but it should be on the available record as on 1.1.1997. It cannot function like a normal DPC. The learned counsel for the applicant rightly submits that the categorisation of the same officers as 'outstanding' and appointing them is wholly arbitrary. We are, therefore, of the view that the proceedings of the DPC held on 28.5.1997 are wholly irregular and unlawful. The OA, therefore, succeeds. The minutes of the DPC held on 28.5.1997 as well as the appointment of the officers in the post of Under Secretary who were appointed in pursuance of the recommendations made by the said DPC are quashed.

10. We direct the respondents to convene a review DPC in the light of the findings and observations made by us ^{in para 9 above,} within a period of four months from the date of receipt of a copy of this order.

11. The OA is accordingly allowed with costs of Rs.3000.

Shanta
(Smt. Shanta Shastry)
Member(A)

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V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice Chairman((J)