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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A.No.1205 of 1989

New Delhi this 27th of July, 1994.

Hon'ble Mr. J.P. Sharma, Member (J)

Hon'ble Mr. S.R. Adige, Member (A)

R. Padmanabhan,
s/o Shri V. R. Jagopalachari (Late)
r/o 1079, Sector 3,
R.K. Puram,
New Delhi 110022

Place of Employment:

Private Secretary,
Department of Youth Affairs and Sports,
Ministry of Human Resources Development,
Room No. 102-C, Shastri Bhavan,
New Delhi 110001. Applicant.

By Advocate Shri P.P. Khurana.

Versus

Union of India through

The Secretary to Government of India,
Department of Personnel and Training,
Ministry of Personnel, Public Grievances and Pension,
(CS II Section)
Nirvachan Sadan,
6th Floor,
New Delhi. Respondents.

By Advocate Shri N.S. Mehta.

JUDGMENT

By Hon'ble Mr. S.R. Adige, Member (A).

In this application, Shri R. Padmanabhan has prayed that the O.M. dated 11.5.89 (Annexure-A14) be quashed and the respondents be directed to reframe the seniority list wherein the entire service of the applicant while posted as Grade 'B' Officer in the Ministry of Industry be taken into consideration. It has also been prayed that the respondents be directed to consider the applicant for promotion to the post of Private Secretary in the grade of Rs. 3000-4500/- with effect from the date his immediate junior in rank in the

al
Limited Department/Competitive Examination was appointed in the said grade.

2. The applicant joined the Central Secretariat Stenographers Service as Grade 'C' Stenographer Rs. 425-800/- in March, 1960 on the basis of results of all India examination conducted by UPSC in 1959 and was initially appointed in Ministry of Health where he worked till March, 1963, when he was re-allocated to the Ministry of Agriculture & Cooperation under a scheme of decentralisation. He became ^{a/m} permanent Grade 'C' Stenographer in 1968 and continued to work in the Cadre of Agriculture and Cooperation till 30.10.78. Holding lien on this post, the applicant went ^{on} to deputation to various posts till 30.10.78. During the entire period from 1963 to October, 1978, he was shown in the cadre of Ministry of Agriculture & Cooperation. The ladder of promotion from Grade 'C' stenographer to Grade 'B' Stenographer and the method of recruitment is by way of i) promotion based on seniority-cum-fitness-25% and ii) through Limited Departmental Competitive Examination held by UPSC-75%. The applicant appeared in ^{The Senior} ~~UPSC~~ Examination of 1977 wherein he ranked 17 and was appointed as regular Grade 'B' Stenographer and was allotted to cadre of Ministry of Industry w.e.f. 30.10.78. Next promotion from Grade 'B' used to be to erstwhile Grade 'A' Stenographer and the promotion was on the basis of seniority-cum-fitness. According to the applicant, the Central Secretariat Stenographer Service (CSSS) was centrally controlled by the then Department of Personnel till 1963, when it was decentralised. To minimise disparities in the promotion in different cadres, the Department of Personnel and Training started a Zoning System in 1983 for Grade 'B' Stenographers vide O.M. dated 3.7.83 and in pursuance of this Zoning Scheme,

the Industry Ministry vide its O.M. dated 5.10.83 issued a select list of 17 officers working as Grade 'B' Stenographers who, according to them, were in the zone for making additions to the select list of Grade 'A' Stenographers of the cadre of Ministry of Industry. The applicant's name appeared at S.No.10 in the said O.M. (Annexure-A3). The applicant has drawn attention to the said O.M. wherein it was stated that it was not possible to include all these officers in the select list of the Industry Ministry's cadre and the Officers were requested to forward an option in the prescribed proforma to them indicating whether the optee was interested in transfer to other cadres so as to be considered for inclusion in the select list of those cadres under the Zoning Scheme. It was further stated that if the Officers had opted for inclusion in the select list of other cadres under the Zoning Scheme, and were nominated to another cadre by the Department of Personnel & Training, then they would have to go to the cadre where they were nominated and in the event of their refusal for the same, they would be debarred from promotion for three years. As specifically stated in Para 4.5 of the O.A., the applicant did not consider it fit to give his option and thus continued to remain in the cadre of Industry. However, when the zone of consideration for Grade 'B' to Grade 'A' was again extended in 1985 by the Department of Personnel and Training, the applicant exercised his option in July, 1985 to be considered for promotion as Grade 'A' Officer in cadres other than Industry Cadre, where he was already working as permanent Grade 'B' Stenographer, and he was nominated by the Department of Personnel and

Training to the cadre of Department of Education for inclusion in the select list of Grade 'A' of CSSS with effect from 31.7.86. He states that he was never asked about his nomination to any particular cadre, and the Education's cadre was allotted by the respondents of their own volition. Meanwhile, according to the IVth Pay Commission's recommendation, Grade 'B' and Grade 'A' of CSSS was merged into one grade and the post of P.S. to Secretary and equivalent Officers were upgraded and given the scale of Rs.3000-4500/-. The said recommendations were implemented w.e.f. 1.1.86 and pursuant to that it was proposed that all officers appointed to the erstwhile Grade A of CSS on regular basis after inclusion in the select list irrespective of the period of service rendered in the grade, should be considered for selection by merit in consultation with the UPSC for appointment to the new grade of Private Secretary at its initial constitution. Accordingly, a select list was prepared, Part A of which comprised the officers who had been substantively appointed as Grade A Stenographers while Part B comprised of the officers of Grade A who had not then been substantively appointed to Grade 'A'. In this select^{list}, applicant's name appeared at Serial No.103. The applicant states that he represented against that select list that he was shown junior even against the appointees of the 1978 Departmental Examination held for promotion from Grade C to Grade B Stenographers, but he received no reply. Meanwhile, the existing posts of Private Secretaries to Secretaries and equivalent officers

were upgraded, and pending finalisation of the modalities of filling up these posts by selection on centralised basis, adhoc promotions were made on the basis of seniority-cum-fitness from the erstwhile Grade 'A' officers and the applicant was promoted on adhoc basis w.e.f. 12.10.87.

3. Thereupon the respondents vide their O.M. dated 2.2.89 prepared a tentative list of officers belonging to different decentralised cadres for consideration for regular appointment to the post of Private Secretaries in the scale of Rs.3000-4500/- following certain pre-determined criteria. On this basis the Education Department circulated the tentative eligibility list on 1.3.89 and invited representations against the same. The applicant's name appeared at Serial No.188 in that tentative list of merged Grades 'A' and 'B' in Education Cadre. He represented that he was wrongly shown as promotee although he was a LDCE candidate of 1977 having secured 17th rank. **The candidate** appearing against S.No.75 viz. Shri Subhas Chander of Cadre of Agriculture and Cooperation was the one who had obtained 19th rank in the LDCE of 1977 i.e. who was below the applicant, was shown at S.No.75, whereas the applicant should have been above S.No.75 but his name has been shown at S.No.188.

4. The applicant contends that the respondents thereafter issued O.M. dated 11.5.89(Annexure-A14) regularly appointing officers referred to in the Annexure to the said O.M. in the scale Rs.3000-4500/-

but the applicant's name did not appear in the said Annexure- He states that he represented against his non-inclusion on 25.5.89 and 26.5.89 (Annexure- A-15 and A-16), but received no response, compelling him to file this O.A.

5. In their reply, the respondents have challenged the contents of the O.A. They point out that consequent to the 4th Pay Commission recommendations the cadre of Grade A and Grade B Stenographer were merged into a single cadre and the Rules for promotion to the new financial grade of Private Secretaries were formulated in consultation with the staff side of the Departmental council as well as the CSS Association and published on 16.6.89 (Annexure-R1). Since the new Private Secretary Grade was being introduced for the first time, the Government sought to take a pragmatic view and decided to formulate an eligibility list of officers based on a minimum of eight years approved service in erstwhile Grade A and erstwhile Grade B (presently merged Grade A & B) of CSSS. While doing so, the prospects and confirmation in service in the decentralised grades in various cadres was kept in view. The placement of such officers of erstwhile Grade A and Grade B in the combined eligibility list of merged Grade A and B cadre was based upon certain well defined criteria, available in Schedule II to the Rules dated 16.6.89 (Annexure-R1). The respondents state that the list circulated by O.M. dated 16.7.87 (Annexure R-II) and referred to by the applicant was only a tentative list and not based upon the criteria finally decided by them. After the tentative list was issued, various representations were received from individual officers as

well as the CSSS Association, and having regard to them, the respondents took a conscious decision and laid down norms for preparation of eligibility list in consultation with the staff side of the departmental council ^{as well as} ~~and~~ the CSSS Association. Based on these norms, a provisional eligibility list was prepared and circulated on 22.2.89 (Annexure-RIII) which was later finalised in consultation with UPSC and a final list of regularly appointed Private Secretaries was issued vide impugned orders dated 11.5.89. By that orders adhoc appointments of Private Secretaries stood terminated from that date. The respondents state that the applicants' name was also considered by the Selection Committee in the UPSC for promotion as P.S. on regular basis, but as per extant rules his name could not find place in the order dated 11.5.89 as he was too junior. Hence his contention challenging the order dated 11.5.89 is not legally tenable.

6. We have heard Shri P.P.Khurena for the applicant and Shri N.S.Mehta for the respondents.

7. The first ground taken is that the applicant was treated as belonging to the Education Ministry's Cadre and the service rendered by him in the capacity of Grade B Stenographer, including the period from 30.10.78 in the Industry Ministry as a Grade B Stenographer has been totally ignored. Related to this is the argument that the applicant's posting to the Education Ministry's cadre was not of his own volition. The respondents have correctly pointed out that this ground has no force because if the applicant's service in grade B had in fact

been ignored he could not have been included in the eligibility list and considered for promotion to P.S. grade. The applicant admits in his O.A. that hoping to find better promotion prospects in cadres other than the Industry Ministry's cadre, he exercised his option in July, 1985 to go to another cadre on promotion to grade A and was nominated by DPAR to the Education Ministry's cadre. The applicant has not challenged the nomination procedure in this O.A., and never represented against his nomination to the Education Ministry's cadre. The respondents further point out correctly that it is well established that officers who opt to go out to avail promotion opportunities available in other cadres, lose seniority at the time of their placement in the new cadre as per statutory rules, and the fact that the applicant acquiesced in this, is proved by the fact that he did not object to his placement in the seniority list of Education Ministry Cadre erstwhile Grade A Officers. The applicant's plea in his rejoinder that his seniority in Grade A in Education Ministry was not known to him till July, 1989 in defence of not representing, carries no force, as he could have represented even after that but did not do so.

8. The second ground taken is that the respondents have been shifting their stand from time to time. In O.M. dated 16.7.87, the respondents had stipulated that appointments to the upgraded posts of P.S. would be by way of selection, but in the impugned orders dated 11.5.89, that criteria was discarded and illogical and arbitrary yardsticks were adopted. The respondents have pointed out correctly that this ground also has no force,

because they were in the process of evolving rational criteria/norms for making the combined eligibility list from the decentralised grades of erstwhile grade A and grade B of CSSS, and the applicant has failed to point out what was illogical or arbitrary about this criteria which was finally determined after proper consultation with representatives of the affected officers both in the Departmental Council and their Staff Associations.

9. The third ground taken is that the respondents should have prepared the eligibility list for promotions to P.S. on a centralised basis placing the grade A officers above those in Grade B and determining the interse seniority of Grade A officers on their position in the IDCE and according to the service rendered by them in Grade B, with the rider that candidates of the earlier exam./years should rank senior to the candidates of subsequent exams. This suggestion made by the applicant takes no account of the fact that the cadres were decentralised since 1963 and the applicant had himself opted to join another cadre on promotion to erstwhile grade A of CSSS on the basis of zones of consideration. The criteria adopted by the respondents cannot be said to be irrational or arbitrary or violative of Articles 14 and 16 of the Constitution as already mentioned in the paragraph above.

10. We have no reason to doubt the averments made by the respondents that the applicants' name was considered by the UPSC Selection Committee for regular promotion as a

P.A. but his name could not find place in the order dated 11.5.89 because according to the existing rules he was too junior. The applicant has failed to establish that the manner of preparation of the seniority/eligibility list for regular promotion to P.S. was in any way infirm or arbitrary, or discriminatory, or violative of Articles 14 and 16 of the Constitution.

11. Under the circumstances, the impugned order warrants no interference and the application is dismissed. No costs.

S.R. Adige
(S.R. Adige)
Member(A)

J.P. Sharma
(J.P. Sharma)
Member(J)