

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A. No. 1382/89

15
.. Date of decision: 12.5.1992

Shri S.L. Dutt

.. Applicant.

Verus

Union of India & Ors.

.. Respondents.

Sh. P.P. Khurana

.. Counsel for the Respondents.

CORAM

HON'BLE SH. JUSTICE RAM PAL SINGH, VICE CHAIRMAN (J)
HON'BLE SH. I.P. GUPTA, MEMBER (A)

JUDGEMENT

(Delivered by Hon'ble Sh.I.P. Gupta, Member (A))

This is an application filed under Section 19 of Administrative Tribunals Act, 1985. The applicant joined Government Service as Section Officer (Probationer) on August 10, 1959 on the basis of the IAS and Central Services Examinations, 1957. Between 1959 and 1985, he was promoted to the post of Under Secretary (1972), Deputy Secretary (1979) and Director (1985) in his turn.

The applicant was appointed as Director in the National Wastelands Development Board, Ministry of Environment & Forests with effect from 21st January, 1986 and is continuing in that post.

2. The contention of the applicant is that in May-June, 1988, officers included in the Select List, 1979 (CSS) (Deputy Secretary) due for empanelment as Joint Secretary in 1987 were actually considered. But the applicant who also belongs to the select list, 1979, apparently did not feature in the list of officers to be appointed to the post of Joint Secretary.

3. The applicant's apprehension is that his up-to-date ACRs were not available. In support of his apprehension, he has stated that in pursuance of his representation dated 27th June, 1988 to the Minister of State for Home, Personnel etc. against his supersession to the post of Joint Secretary,

He received enquiries from the Deptt. of Personnel about his CRs for the years 1982 to 1985. In this connection, he has also enclosed his letter dated 8th August, 1988 to the Joint Secretary, Ministry of Environment & Forest requesting that his CR dossier should be sent to the E.O., Deptt. of Personnel. A letter dated 12th Nov. 1987 from the Ministry of Environment & Forests to the Deptt. of Personnel & Training shows that his ACR for 1986 was sent to Department of Personnel vide letter dated 30th Oct. 1987. A further communication from the applicant dated 18th August, 1988 shows that the Ministry of Environment & Forests had intimated that the CR Dossier was returned to the Department of Personnel vide letter dated 12th August, 1988. The applicant made further representations dated 14.9.88 and 20.9.88 to the Minister of State for Home, Personnel etc. and Establishment Officer respectively. He stated that his candidature for empanelment to the post of Joint Secretary went by default in as much as an officer junior to him (Sh. R. Ramanujam) found a place in the panel when his claim was not considered at all. The applicant has also mentioned that nothing adverse has ever been communicated to him from his ACR and therefore, no reasons to believe that he would not be getting his due promotion. He should not be made to suffer because of a report relating to one particular year. He made another communication dated 30.3.89 to the Cabinet Secretary. The applicant has stated that it was only after the list of officers belonging to Select List 1979 was finalised in May-June, 1988 that he got a call from the Deptt. of Personnel & Training inquiring about his CR Dossier so that his case for empanelment as Joint Secretary could be considered. After considerable personal effort, the CR Dossier was located by the Department of Personnel & Training in September, 1988.

4. The applicant has sought for the following reliefs :-

- (i) Quashing the 1987 panel of Joint Secretaries (CSS) and to direct Respondents to prepare the panel in accordance with law. Or alternatively, to direct the Respondents to include the name of the applicant in 1987 panel;
- (ii) Respondents may be directed to appoint the applicant as Joint Secretary with effect from the date any of his juniors got promotion and to give him consequential benefit.

5. In the counter filed by the Respondents, it has been observed that the posts of Under Secretary and above are covered and filled in accordance with the Senior Staffing Scheme. The Scheme provides for filling up the post covered under it on tenure deputation basis by officers of All India/ Organised Group 'A' Central Services including the Central Secretariat Service. Unlike other services, the tenure rule is not applicable to the CSS officers because upto the level of Grade-I and Selection Grade, the posts held by the CSS Officers are treated as Cadre posts and beyond that level i.e. the level of Director, Joint Secretary etc., the posts are covered under the Senior Staffing Scheme. The first stage of eligibility for holding Joint Secretary and equivalent post is that the name of the officer irrespective of the service to which he belongs, should be included in the Joint Secretary's suitability list. In the case of officers of the CSS, as also in the case of officers of other services, their names are assessed for inclusion in the J.S. suitability list in accordance with the prescribed procedure. As per this procedure, the CSS Officers are assessed by a Screening Committee, comprising 4 Secretaries to the Government of India. The assessment of the Screening Committee is placed before

the Civil Services Board constituted vide Department of Personnel & Training's O.M. dated 8.4.87, who after considering the cases of the officers makes recommendations thereon. The recommendations of the Civil Services Board are submitted to the competent authority for its approval. The names of such of the officers who are finally approved by the competent authority, are included in the J.S. suitability list. The cases of CSS officers who fail to get included in the JS suitability list in the first instance, are reviewed after adding one ACR and the whole process is repeated again.

6. The counter admits that the applicant belonging to 1979 Selection Grade Select List of CSS became eligible for consideration for inclusion of his name in the JS suitability list in the year 1987. He along with other eligible officers was duly considered in accordance with the prescribed procedure for inclusion of his name in the JS suitability list, but was not approved for such inclusion by the competent authority. It has been added in the counter that cases of the officers including that of the applicant were considered according to the prescribed procedure in two batches- one in May 1988 and the other in April 1989. In May, 1988, 23 officers were considered and April 1989, 6 officers of the same batch were considered. The applicant was considered in the batch of 6 officers,

7. The applicant brought out inconsistency in the counter in the sense that at one place it was stated that he was not approved for inclusion in the year 1988 whereas at another place it has been stated that he was considered in the second batch of 6 officers in April 1989. He also cited several cases to support his case, but we would not like to burden this order with those citation. Since, the facts in this

case became clearer on the scrutiny of the concerned files and documents which were requisitioned. Nevertheless we are discussing some of the cited cases. The case of P. Banerjee Vs UOI & Ors. (ATJ (Vol. I) 1986 page 97) says that the Tribunal has power to requisition any public record or documents. This power has been exercised and the files relating to preparation of JS's panel were called for and scrutinised by the Bench.

In the case of Kamlesh Trivedi Vs ICAR & Anr. (ATR 1988(2) CAT 116) is regarding transfer but observations have been made therein that Articles 14 & 16 of the Constitution strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality.

It has been further observed that malafide exercise of power and arbitrariness are different lethal radiations emanating from the same vice; in fact the latter comprehends the former.

Both were inhibited by Arts 14&16. The issue ^{here} in short is whether there has ^{been} any malafide exercise of power or arbitrary use of power. The case of Jagdish Chander Jetli Vs UOI & Anr. (Vol. 4 1988(1) ATJ 589) was also cited where it was held inter alia that the DPC must take into consideration the past record of all officers for a uniform period. Whether this was done or not in this case would be clear from what follows.

8. The documents relating to empanelment of CCS officers of 1979 shown to the Bench indicates that a consolidated statement showing the merit gradings secured by officers of CSS Select List (1979) for holding the post of JS/equivalent posts at the centre was prepared. This consolidated statement is dated 9th May, 1988. In this statement, the gradings given for each officer by 4 Secretaries to the Government of India were indicated. The Civil Services Board considered these 23 officers and it was mentioned that the remaining

6 officers would be considered as soon as their CR Dossiers were complete. Eight officers were finally approved out of 23 for inclusion in the JS suitability panel. The applicant was not considered along with this batch of 23. The remaining 6 officers were considered in a similar fashion after the consolidated assessment of suitability of officers on the basis of ACRs up-to 1986 were taken into account. This consolidated statement was prepared in April 1989 and the Board recommended 3 officers out of 6 for inclusion in the panel. The applicant was considered alongwith that group of 6 but was not found suitable on assessment of his ACR. The names of the 3 selected officers out of 6 were added to the panel. Thus, the total panel became a panel of 11 officers. In view of what has been said above, which is borne out by the records, it is clear that it is not a case of a selected officer who has been superseded by a junior. It is also not a case where the officer's ACRs were not up-to-date at the time of consideration. The assessments of ACRs of all the officers upto 1986 were ~~uniformly~~ ^{uniformly} ~~informally~~ ^{informally} taken into consideration in two batches on two occasions. Further, it is also not a case where due to some adverse remarks which were not communicated to him, the applicant was not selected on assessment of his ACRs which ranged from Average to Good, whereas others who were selected had either Very Good or Outstanding reports according to the assessment of various Secretaries to Government of India. The applicant was not found

either in the batch of 23 or in that of 6
9. Nobody has a right to promotion but has a right to be considered for promotion. The applicant was considered but not found suitable. The records do not go to prove any malafide or arbitrariness in the selection process. The ACR dossiers had been circulated to various members in advance and they had made their own assessments in respect of each officer after a study each one's ACR dossier. The consolidated statements showing the assessment by various Secretaries were made. It is

suitable even on a review in Sept-Oct.'89 on the basis of reports upto 1987.

true that the batch 1979 was considered in two groups of 23 and 6, instead of the whole group being considered at one point of time. It could have been a different matter worth consideration if the applicant was selected in the group of 6 but promoted from a date later than that of a junior selected in the group of 23. This is not ~~the~~ case either in respect of the applicant, and it is not necessary to go into this aspect in depth.

10. In the conspectus of the aforesaid facts of this case, we do not find any good ground for grant of reliefs prayed for. The application is therefore, dismissed with no order as to costs.

I.P. Gupta
(I.P. Gupta) 15/5/92
Member (A)

Ram Pal Singh
(Ram Pal Singh)
Vice Chairman (J)