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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2153/89
T.A. No.

198

DATE OF DECISION 18.01.1990.

Shri Thomas Mathew Applicant (s)

In person Advocate for the Applicant (s)

Union of India & Others ^{Versus} Respondent (s)

Shri A.K. Behra, Counsel for
Shri P.H. Ramchandani, Sr. Advocate for the Respondent (s)
Counsel for the respondents.

CORAM :

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

(of the Bench delivered by Hon'ble Shri P.K. Kartha,
Vice- Chairman(J))

The applicant, who is working as Under Secretary in the Ministry of Surface Transport, New Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

(i) to quash the Order No.24/14/88-EO(MM) dated 21.6. 1989 issued by the Establishment Officer, Department of Personnel & Training;

(ii) to quash the instructions regarding the procedure to be observed by the Departmental Promotion Committees contained in para 2.3.1(ii) of the Departmental of Personnel's Office

Memorandum No.22011/5/81-Estt.D dated 10.3.1989;

(iii) call for all the relevant records leading to the finalisation of the select list for selection grade of the Central Secretariat

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Service for the year 1988;

(iv) to re-assess the Confidential Reports of the officers within the zone of consideration for inclusion in the Select List for the year 1988; and

(v) to include the name of the applicant in the Select List for promotion to selection grade of the Central Secretariat Service for the year 1988.

2. By way of interim relief, the applicant has prayed for staying the operation of the impugned Select List for promotion to selection grade of the Central Secretariat Service for the year 1988 and for granting injunction against the promotion of Shri N.S. Sharma, who is junior to the applicant.

3. The case was listed for admission on 27.10.1989 when the Tribunal directed issue of notice to the respondents on admission and interim relief. The case was listed for admission on 12.1.1990 when we heard the applicant in person and the learned counsel of the respondents. Though the respondents have not filed their counter-affidavit, they were good enough to produce before us the relevant records relating to the preparation of the CSS Selection Grade Select List for 1988. We have perused the records of the case including the file produced before us carefully. We feel that the application could be disposed of at the admission stage itself.

4. The facts of the case in brief are that after qualifying the I.A.S. etc. examination conducted by the Union Public Service Commission in 1973, the applicant was

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appointed as Section Officer in the then Ministry of Shipping and Transport with effect from 2nd June, 1975. In 1980 his name was included in the Select List for promotion to Grade I of the Central Secretariat Service. He was promoted as Under Secretary in the said Ministry with effect from 6th June, 1981. He became eligible for consideration for selection grade of the Central Secretariat Service after completion of 5 years regular service in the Grade I of the Central Secretariat Service. He completed this period in 1985. He was, however not in the zone of consideration of the Central Secretariat Service due to lack of vacancies. He came within the zone of consideration in 1988. His name appeared at S.No.99 in the Civil List of Grade I of the Central Secretariat Service. For the year 1988, the number of vacancies in the selection grade of the Central Secretariat Service was 37. In the Select List prepared by the respondents vide their order dated 21st June, 1989, the applicant's name did not figure. However, the name of Shri N.S. Sharma who is junior to him figured in that List.

5. The case of the applicant is that he has been performing his duties to the full satisfaction of his seniors and that having regard to his good work and performance, his name ought to have been included in the Select List. He has stated that he could only imagine two

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situations under which he could have been excluded from the Select List, namely (a) that in his Annual Confidential Report for the year 1985, some advisory observations were made by the Reviewing Officer and the same were communicated to him^{and} the authorities might have taken the report as adverse and excluded him from the Select List; and (b) that the authorities ^{the} Report for the year 1985 at all and Confidential did not consider his Confidential Reports for the years 1982, 1983, 1984, 1986 and 1987 excluding the Confidential Report for the year 1985 were considered and the overall grading of less than very good has been made.

6. With regard to the above, the applicant has contended that according to the Office Memorandum dated 30.1.1978 issued by the Department of Personnel, adverse remarks should not be deemed as operative if any representation filed within the prescribed time-limit is pending. He had made a representation against the observations contained in the report for the year 1985 and the same was pending when his case was being considered for inclusion in the Select List. The so called adverse remarks have since been expunged from the Annual Confidential Report for the year 1985 vide the Office Memorandum issued by the Ministry of Surface Transport on 24.7.1989.

7. The overall assessment on the basis of his Annual Confidential Reports for the years 1982, 1983, 1984, 1986, ^{not} and 1987 could have been made as less than very good in any circumstances.

8. The applicant has also impugned the validity of the OM dated 10.3.1989 issued by the Department of Personnel regarding the procedure to be followed by Departmental Promotion Committees, which is set out at Annexure G, pages 32 to 37 of the application. In the said OM it has been stipulated, inter alia, that " in respect of all posts which are in the level of Rs.3700-5000 and above, the benchmark grade should be 'Very Good'. However, officers who are graded as 'Outstanding' would rank en bloc senior to those who are graded as 'Very Good' and placed in the select panel accordingly upto the number of vacancies, officers with same grading maintaining their inter se seniority in the feeder post". According to him, such a stipulation is unjust, inequitable and discriminatory. He contends that even if an officer has been graded good, he cannot be denied promotion.

9. We have gone through the proceedings of the Central Establishment Board which met on 28.1.1989 and drew up the CSS Selection Grade Select List for the year 1988. After looking into the records of 105 officers including that of the present applicant, the Board recommended a list of 33 names in the order of merit for empanelment as Deputy Secretary. The panel was prepared after taking into view the overall service records of the officers. The list of officers who have been included in the Select List have

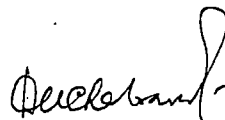
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been graded better than the applicant. In view of this, we do not consider it necessary to go into the soundness of the guidelines laid down in the OM dated 10.3.1989.

10. The post of Deputy Secretary is a selection post. The applicant has neither alleged nor substantiated any malafides on the part of the respondents in processing and finalising the Select List in accordance with the relevant rules and instructions on the subject. Being a selection post, promotion is not a matter of right which can be claimed by seniority alone. What the applicant can claim is only his right to be considered for promotion along with others (Vide Harinandan Vs. S.N. Dixit, 1969 SLR 468; Union of India & Others Vs. Durgadass and Others, 1979(1) SCC 59; and R.S. Dass Vs. U.O.I., AIR 1987 SC 593). He has been duly considered by the respondents for the post of Deputy Secretary. In a case of this kind, this Tribunal cannot interfere with the decision of the respondents. The Tribunal cannot reappraise the Character Rolls of the applicant and substitute its opinion for that of the Central Establishment Board.

11. In the light of the forgoing, we see no merit in the present application and the same is dismissed at the admission stage itself. The parties will bear their own costs.


(D.K. CHAKRAVORTY)
MEMBER (A) 18/11/1990


18/11/90
(P.K. KARTHA)
VICE CHAIRMAN (J)