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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 827/88

Dated: 8th October, 1988

G.S. Bhasin

Applicant

Vs.

Government of India & Ors.

Respondents

Present: The applicant in person

Ms. Pratima Mittal proxy counsel for

Shri K.C. Mittal counsel for the respondents.

CORAM

1. Hon'ble Mr. C.J. Roy, Member (J)
2. Hon'ble Mr. B.K. Singh, Member (A)

JUDGMENT

(Delivered by Hon'ble Mr. B.K. Singh, Member (A))

This O.A. No. 827/88, Shri G.S. Bhasin as applicant and Government of India & Ors. as respondents, is directed against Ministry of Personnel, Public Grievances & Pensions, for not enforcing the provisions contained in D.M. No. 45011/6/85-E-1 dated 23rd September 1985 regarding promotion of the applicant from Grade 'B' to Grade 'A' of CSS.

2. The applicant has now retired from service w.e.f. 30th November 1991. The applicant was working as Private Secretary (Grade 'A') in the Department of Industrial Development, Ministry of Industries (under respondent No. 2) on ad hoc basis w.e.f. 23.1.82. He was officiating as P.S. (Grade 'A') on regular basis w.e.f. 18.5.83. He was not included in the select list of the

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Department of Industrial Development as PS Grade 'A' for want of permanent post.

3. Under Rule 11(2) of the Central Secretariat Stenographers Service (CSSS) a panel has to be prepared by the cadre controlling authority i.e. Ministry of Personnel, P.G. & Pensions for circulation to other departments/Ministries. Accordingly, the respondent No.1 i.e. Ministry of Personnel, P.G. & Pensions issued O.M. No.5/9/84-CS-2 dated 4th September 1985 to all Ministries including the respondent No.2 and the present applicant was in the zone of consideration for empanelment to the select list of Grade 'A' of CSSS. Respondent No.2 was asked to invite options from Private Secretaries working in that department for onward transmission to respondent No.1.

4. On 23.9.85 respondent No. 2 issued O.M. No.45011/6/85-ET indicating that it was not possible for respondent No.2 to adjust the applicant on a regular basis or to include him in the select list of Stenographers Grade 'A' in their Ministry and advising the respondent No.1 to nominate the applicant to some other Ministry for empanelment in select list of Grade 'A' Stenographers as per circular O.M. No.16/1/79-ES-1 dated 3.9.1983 issued by respondent No.1 which stipulates that in the event of refusal by applicant, he would be debarred for promotion for three years and the applicant along with others was directed to exercise his option which he did for being considered for select list of any other Department/Ministry in the Zoning Scheme. The applicant's/junior S/Shri R. Padmanabhan, M.L. Sanghvi and O.P. Vij also exercised their option.

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5. All the four were nominated by respondent No.1 to respondent No.3 and Shri O.P. Vij was nominated to respondent No.4. Shri O.P. Vij joined respondent No.4 on 13.2.86, Shri R. Padmanabhan and Shri M.L. Sanghvi joined the respondent No.3 on 31.7.86 and 1.9.86 respectively.

6. Aggrieved by the selection of juniors in preference to the applicant, he protested to the cadre controlling authority and sought personal interviews to issue directions under Rule 23 of Rules and Regulations of CSSS to respondent No.3 to take the applicant on their rolls since the selection of juniors in preference to him amounted to discrimination and was against the principles of natural justice.

7. After introduction of revised pay-scales of Rs.3000-100-3500-125-4500 as per recommendations of Fourth Pay Commission, the respondent No.1 circulated a list of permanent Stenographers Grade-A in Part-I and Temporary Stenographers Grade-A in Part-2 to other department/Ministries. None of these lists contained the name of the applicant. In the meanwhile respondent Nos 2 and 3 made ad hoc promotions on seniority-cum-fitness basis in the revised grade of Rs.3000-4500 for a period of 3 months with the concurrence of Department of Personnel and these ad hoc promotions were extended till 8.4.1988 with the approval of respondent No.1. The applicant has stated that if he had been taken on the rolls of respondent No.2 in preference to his juniors he would have got the benefit of ad hoc promotion as a result of which the applicant suffered a monetary loss of Rs.450/- per month. He has further stated that nothing concrete happened in spite of the fact that he met several officers including the Under Secretary, Shri Gopalaswamy in the Ministry of Personnel, P.G. & Pensions.

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8. We have heard the proxy learned counsel Ms. Pratima Mittal on behalf Shri K.C. Mittal for the respondents and the applicant argued his case in person, and have also perused the records of the case. The learned counsel for the respondents could not throw enough light on the facts and circumstances of the case since most of the officers who had assisted the learned counsel for the respondents in drafting the counter have either retired or posted outside and as such she was handicapped in presenting the case in its entirety. She argued that the applicant had refused promotion. This was stoutly rebutted by the applicant.

9. A perusal of the record shows that the respondent No.1 had circulated the name of the applicant along with his juniors and as such no motive can be attributed to respondent No.1. It is another matter that respondent No.2 preferred his juniors in preference to the applicant. The Department of Personnel is not a super-regulatory department and as such in matters of selection from a panel their writ does not run. The Ministry of Personnel cannot dictate to other Ministries who are also cadre controlling authorities in their own Ministries to select No.1 or No.2 or No.3. The fact that the name of the applicant was circulated along with three of his juniors in 1986 to respondents No.2 and 3 is not in dispute. It is also not controverted that other Departments/Ministries did not select the applicant though he was senior. As a regulatory department the job of the Ministry of Personnel, P.G. & Pensions is to send a panel of names arranging them according to seniority but it is not a binding on the Ministries to pick up the first name according to seniority. In such a selection the Ministries do not even record reasons even in cases of civil services where the names are circulated and ACC desires that reasons must be recorded if No.1

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in the panel is not selected but in spite of ACC's instructions people at No. 2 or No. 3 get selected and no one bothers to record the reasons for such a selection. The O.Ms. of Ministry of Personnel, P.G. & Pensions are advisory in nature and do not have the ^{force} ~~case~~ of statute so far as other cadre controlling authorities are concerned.

10. It is admitted that the juniors of the applicant were selected by Respondents No. 2, 3 and 4 in preference to the applicant but in the counter it has been denied that there was any favouritism in selection of the juniors. It has been stated that selection is made on the basis of suitability and ACRs which are enclosed along with the names. Even if a directive had been issued under Rule 28 of the CSSS, it is doubtful whether this directive would have been accepted by the other cadre controlling authorities.

11. We do not find adequate reasons to sustain the argument that there was discrimination and Art. 14 of the Constitution gets attracted. When this prerogative of selection is with other Departments/Ministries and the selection takes place on the basis of suitability as judged from the ACRs, it will be out of question to accept the plea of discrimination. It is, however, true that Ministers and Ministries do not function like computers and there is a possibility of some subjective element in such selections but the same will not amount to discrimination under Art. 14 of the Constitution. If the applicant's name had not been nominated by Respondent No. 1, there would have been a genuine grievance ^{but} ~~that~~ his name was duly circulated along with his juniors No. 2 and 3 in the panel. Mr. Padmanabhan and Mr. Sanghvi were selected. If the Department of Culture, Ministry of Human Resource Development, had picked up a person outside the panel circulated by respondent No. 1 there could be a charge of nepotism which is not the case here.

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The discretion of the Department in selection of a person if confined to a panel circulated by the cadre controlling authority, cannot be questioned and there could be no grievance of discrimination or violation of Art. 14 of the Constitution. It also does not mean the denial of principles of natural justice. When the freedom of choice in selection rests with other Departments/ Ministries, their discretion in judging the suitability of a junior in preference to his senior from the same panel cannot be challenged.

12. The applicant was only officiating as Private Secretary (erstwhile Stenographer Grade 'A' of CSSS) w.e.f. 18.5.83 on a temporary basis and not on a regular basis. The applicant was already in receipt of the maximum of pre-revised of Grade-A of the CSSS i.e. Rs. 650-1200 on 1.1.1986. His transfer to respondent No. 3 would not have entitled him to any financial benefit at that time. There is nothing on record to show that the applicant sought interviews with so many officers of the Department of Personnel. The matter of non-acceptance of the applicant by the Department of Culture (Respondent No. 3) was taken up in September-October, 1986 but in view of the acceptance of recommendation of the Fourth Pay Commission regarding merger of Grades A & B of the CSSS w.e.f. 1.1.86 there was no case for considering the promotion of the applicant from the erstwhile Grade 'B' to erstwhile Grade 'A'. It was felt that there was no need to pursue the case further with regard the transfer of the applicant to the Department of Education (Respondent No. 3).

13. The modalities of promotion in revised grade of Rs. 3000-100-3500-125-4500 on a centralised basis have since been worked out and as such the application has now become infructuous. The claim

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of the applicant for declaration of permanency in erstwhile Grade 'A' of CSSS is not tenable because promotion in Grade 'A' of CSSS was not on the basis of permanent vacancies, and secondly in the decentralised Grades transfers under the Zoning Scheme did not entitle one to any benefit unless he or she was nominated and thereby became a member of that Grade in the nominated cadre. Thus the applicant is not entitled to claim any benefit of ad hoc promotion in the new Grade of 'Private Secretary' in a different cadre since these were ordered on the basis of cadre seniority in the decentralised set-up. There were many officers in cadres with many years of service in the merged Grades who were not lucky enough to get ad hoc promotion in the new Private Secretary's grade whereas in certain other cadres many officers with lesser number of ^{years of} service in the merged grade of 'A' and 'B' got such ad hoc promotion in the new PS grade on account of availability of such posts in those cadres. These are fortuitous circumstances determining the destiny of the individual. The applicant's case is not isolated one. It is gathered that the Department of Personnel did receive large number of representations regarding such anomalies from various individuals. When pay-scales ^{are} ~~were~~ revised a new comer and a man who has put in 10 years service are all brought at par. The Government tries to remove some of the anomalies by grant of stagnation increments but some individuals always remain at a disadvantageous position at some point of time and do suffer some financial loss. Sometimes juniors start drawing higher pay-scales than their seniors.. The Government evolves methods and issues guidelines to remove such anomalies.

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14. We have also perused the recruitment rules of CSSS particularly Rule 11 (i) and (ii). It refers to substantive appointment with reference to substantive vacancies in Grade 'A' or Grade 'B' to be made in order of seniority in the select list except for reasons to be recorded in writing that a person is not fit in his ~~term~~ ^{turn}. This is possible in a centralised cadre but not in a decentralised cadre with a Zoning Scheme.

15. The applicant has now been given pay-fixation vide letter No. 44/8/SSPC/89-Admn. of Ministry of Welfare dated 19th March 1990. His pay has been fixed at Rs. 3625.00 per month in pay-scale of Rs. 3000-100-3500-125-4500 under F.R. 20(c) with effect from 12.10.87. His pay will be Rs. 3750.00 as on 1.10.88 and Rs. 3875.00 as on 1.10.89 after giving benefit of annual increment in the pay-scale of Rs. 3000-100-3500-125-4500.

16. The para 2 of the same letter states that notwithstanding the fixation of pay of Shri G.S. Bhasin in the scale of Rs. 3000-4500 w.e.f. 12.10.87, arrears of pay will not be admissible to him since 12.10.87 but would be admissible only w.e.f. 16.5.89, the date when he assumed charge in the Grade of Private Secretary in the pay-scale of Rs. 3000-4500.

17. In the light of what has been stated, we do not find any merit in the present application and the same is accordingly dismissed. There will be no order as to costs.

(B.R. Singh)
Member (A)

(C.J. Roy)
Member (J)

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