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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.916/88

DATE OF DECISION: 6.3.1992

SHRI R.K. SINGH

...APPLICANT

. VERSUS

UNION OF INDIA & ANR.

...RESPONDENTS

CORAM:

HON'BLE MR. B.S. SEKHON, VICE-CHAIRMAN (J)

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI K.K. RAI, COUNSEL

FOR THE RESPONDENTS

SHRI P.P. KHURANA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, Shri R.K. Singh, the applicant who belongs to C.S.S. has challenged the panel of promotion for the post of Joint Secretary for the year 1986 although the panel of Joint Secretaries is not notified he apprehends that panels are going to be given effect immediately, compelling the applicant to file this Original Application.

2. The applicant (who belongs to Central Secretariat Service (CSS)) was promoted to the rank of Deputy Secretary w.e.f. 1.5.1979 on the basis of the select list of 1978 and was further promoted as Director w.e.f. 31.12.1984. He became eligible for consideration for appointment to the post of Joint Secretary in 1986. The post of Joint Secretary is not a cadre post but all the Directors/Deputy Secretaries are eligible for appointment to the said post. The procedure for actual placement in the said select list for appointment as Joint Secretary is laid down in

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OM No.33(1)(EO)/70 dated 27.10.1970 (Annexure B). According to the said OM the Senior Selection Board, with Cabinet Secretary as the Chairman and 5 other Secretaries as mentioned therein are required "to make recommendations having regard to the merits, claims and availability of all officers in the field of choice:

- a) for appointment to posts of Joint Secretary to the Government of India....."

The Senior Selection Board was, however, superseded vide Department of Personnel and Training's OM No.36(65)-EO/85 dated 8.4.1987 and instead the Civil Services Board (CSB) constituted enlarging the scope of the function of the Senior Selection Board so as to make recommendations for appointment to the posts of Deputy Secretary, Director and Secretary under the senior staffing scheme, keeping in view the "merits claims and availability of the officers in the field of choice." The CSB is assisted by a Screening Committee which grades all the eligible officers, and thereafter the CSB is "to consider the assessment made by the Screening Committee and to make recommendations thereon to the Appointments Committee of the Cabinet (ACC) for inclusion of officers in the Joint Secretaries' suitability list."

The applicant contends that the procedure of selection laid down in the OM dated 27.10.1970 as amended by OM dated 8.4.1987 does not make any distinction ^{between IAS officers} /on the one hand and those of CSS on the other, yet in practice different norms are applied to the officers of IAS and the CSS to the detriment of the officers belonging to the latter service. Further the uniform guidelines have been laid down for comparative assessment of merit, claims and suitability of all officers

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eligible for appointment as Joint Secretary for the guidance of the Screening Committee. In actual practice separate panels are prepared for officers belonging to various services referred to in the Central Staff Scheme (Annexure A). The composition of the Screening Committee referred to in OM dated 8.4.1987 is also not uniform for the officers of the various feeder services. Consequently, different standards for assessment of CRs in respect of different services are applied. He alleges that respondent No.1 had adopted different criteria in respect of different Services in preparation of 1986 panels of officers for the posts of Joint Secretary, inasmuch as all the Deputy Secretaries/Directors of IAS and other Central Services graded as 'Very Good' had been empanelled, the Deputy Secretaries/Directors of the CSS grade 'very good' have been ignored and that only those CSS officers graded 'outstanding' have been empanelled. The applicant contends that the 1986 panel of officers for the posts of Joint Secretary has been prepared in most arbitrary and discriminatory manner offending Articles 14 and 16 of the Constitution of India. The applicant made a representation to respondent No.1 on 23.12.87 but it was of no avail. He further alleges that although initially only 10 officers^{were} graded 'outstanding' from CSS,^{yet} the panel was subsequently enlarged by including four more officers. One of these officers is respondent No.2 who is junior to the applicant, as he figures at srl. No.59 in the civil list of CSS (Selection Grade and Grade I as on 1.1.1987), whereas, the applicant is at srl. No.58. He does not consider himself in any way inferior in merit to his junior viz. respondent No.2 who has superseded him. The fact

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that four officers who were not considered suitable by the Screening Committee and subsequently included in the 1986 panel of CSS is alleged to constitute evidence of departmental bias and discrimination against the applicant.

By way of relief the applicant prays that the Tribunal may:

- a) "quash all the 1986 panels prepared for promotion to the posts of Joint Secretary;
- b) direct respondent No.1 to prepare a fresh panel of the officers of the Deputy Secretary/Director who became eligible in 1986 for promotion to the rank of Joint Secretary;
- c) declare the empanelment of respondent No.2 to be void and appoint the applicant to the post of Joint Secretary."

3. Shri K.K. Rai, learned counsel for the applicant submitted that the assessment made by the Screening Committee was arbitrary, as no guidelines have been issued for the purpose to Screening Committee. He also prayed that the Tribunal may call for the original record relevant to 1986 selection as that would substantiate that different norms were applied for selection of officers from the different Services for appointment to the post of Joint Secretary. The learned counsel further stated that while good/very good officers from the IAS have been empaneled as Joint Secretaries in the case of the officers of the CSS to which the applicant belongs grading of 'outstanding' has been made a pre-requisite. He also submitted that the respondents be directed to produce the guidelines issued to the Screening Committee to

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determine the suitability of the officers for empanelment. The service parentage should not be allowed to determine the criterion for selection, as adoption of such a procedure is repugnant to Articles 14 and 16 of the Constitution of India. The learned counsel further submitted that according to the ACC's direction the empanlement has to be done keeping in mind **the cadre profile, reasonable promotions expectations and over all requirement of efficiency and merits**, whereas the OM dated 8.4.1987 directs that the selection should be made "having regard to merits, claims and availability of all officers in the field of choice". He, therefore, contended that the direction of the ACC is at variance with the functions entrusted to the Screening Committee and urged that the facts of the case merit a direction to the respondents to produce all relevant record for perusal of the court and the applicant in the interest of justice.

4. Shri P.P. Khurana, learned counsel for the respondents on the other hand submitted that documents of the Cabinet are privileged papers and cannot be allowed to be produced by the applicant. Considerable time was devoted by the learned counsel for the respondents and the applicant to justify claim of privilege and to controvert the said privilege respectively. Ultimately, in the interest of justice the learned counsel for the respondents offered to produce the relevant record for the perusal of the Court, to which proposal the learned counsel for the applicant gave his consent giving up his claim for perusing the ACC's record. The learned counsel for the respondents thereafter submitted the relevant record to the Court. Refuting the averment of

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the applicant the learned counsel for the respondents Shri Khurana submitted that there is a well established procedure for selection of officers from the various services who are in the field of choice for empanelment and that this is done in accordance with ACC's direction keeping in mind the cadre profile, reasonable promotion, expectations and over all requirement of efficiency and merit. A Special Committee of Secretaries to Government is appointed every year to look into the confidential reports and the other record of the CSS officers eligible to be assessed, to determine their suitability for empanelment. The recommendations of the Special Committee are considered by the CSB constituted as per OM dated 8.4.87. The CSB looks into the merit of all the officers in the field of choice and makes its recommendations to the ACC. This procedure with some modifications has been followed for a number of years and cannot be said to be arbitrary or discriminatory and has stood the test of time. He also contested that the CSS has been discriminated in the matter of appointment as compared to the officers of the IAS and other Central Services. Uniform standards as far as practicable are adopted for assessment of officers to assess their suitability to hold the posts of Joint Secretary at the Centre, having regard to all relevant factors. The learned counsel affirmed that guidelines are provided to the Special Committee of Secretaries which goes into the service record of the officers being assessed. The assessment made by the Special Committee is placed before the CSB who adjudge the suitability of the officers to be recommended/to be placed on the panel before

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making recommendations to the ACC for final decision. Regarding the other issues raised by the applicant, the learned counsel submitted that selection is inter alia made on the basis of the merits, claims, and availability of all eligible officers considered without any bias or discrimination. Distinguishing the claim from the right to promotion the learned counsel submitted that the claim is not tantamount to right, as is being made out by the applicant. The 'claim' merely seeks to underline that the officers of the same seniority in the same service have a claim for being considered for the purpose of assessment for the post of Joint Secretary. He denied that separate panels of the officers of the six categories listed in Annexure A are prepared and affirmed that the exercise is undertaken for each batch of each service separately at different points of time. Since the number of officers assessed are very large it is not possible for the Screening Committee with a uniform composition to look into the records of all the officers. The assessment of the Special Committee is placed before the CSB which is the common and final assessing and recommendatory body at the official level. The recommendations of the CSB are placed before the ACC. This procedure has stood the test of time and provided the greatest objectivity that is humanly possible. He further stressed that the ACC is the final decision making authority for preparing the panel of the officers considered fit for holding the posts of Joint Secretary in Government of India. The applicant was eligible to be considered for appointment to the post of Joint Secretary in 1986 and he was duly considered in accordance with the procedure as prescribed but he did not make the grade and as such he should have no grievance.

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5. We have heard the learned counsel for both the parties and considered the matter in depth. We have also perused the record made available to us. Barring the peculiar aspect of non-inclusion of the applicant in the panel of Joint Secretaries the other issues agitated by the applicant had earlier come up for consideration in 1098/87 **R.N. Tewari & Others v. UOI & Ors. & OA No.2461/88 Vinay K. Vasishtha & Ors. v. UOI & Ors.** These were decided through a common judgement by the Principal Bench on 18.4.90. Briefly the applicants in OA 1098/87 who belonged to Central Secretariat Service (Selection Grade) had challenged the suitability list for the year 1986 and in OA 2461/88 the suitability list for the year 1987, for the post of Director in the Central Secretariat. They had assailed the method and procedure adopted for drawing up suitability list on grounds of arbitrariness and discrimination. They had also assailed the greater selectivity and more rigorous standard applied to the Central Secretariat Service as compared to the Indian Administrative Service and other Central Service Group 'A'. After considering these aspects in detail the Bench held:-

"16. We feel that it should be open to Government to choose senior officers, including Directors, from any source provided in the rules and there need not be any definite proportion between various Services. It may even be open to the Central Government to fill in majority of the posts from even one source if they find such a source more useful to them. It is seen that the Central Government keep about 20% of the Deputy Secretaries posts in the scale of Directors and it cannot be justified that all Deputy Secretaries who have completed 5 years of service must be appointed as Directors when the post of Director is not in their cadre. There is a lot of force in the arguments on behalf of the respondents that while Government may like to have a few posts

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filled by officers in the CSS, they may prefer a different type of experience for filling in majority of the posts from sources like All India and other Group 'A' Central Civil Services. It is also not the legal right of any particular Service to hold posts in the Central Secretariat. In fact, a large number of officers of different cadres may not be brought to the Central Secretariat at any time in their career. It should, therefore, be open to the Central Government to choose officers from any Service for higher posts. The argument that officers of the C.S.S. have gone through rigorous test before working as Deputy Secretary may not be quite relevant in the sense that their past experience as Under Secretary etc. may not necessarily be relevant for managing senior posts. It is possible that an officer of Central Civil Services tenure on reversion to his cadre may not get selection grade in his own cadre even though he may have completed 14 years of service.

Taking into consideration the above factors, we feel that merely on the ground that Central Sectt. Service officers in the rank of Deputy Secretary are eligible for appointment as Director on completion of 5 years of service in that rank does not entitle them automatically to be appointed as Director on the ground that others are so appointed Director after completion of 14 years of service. It has to be taken into account that such persons are normally appointed to the Directors' posts on getting Selection Grade in their own cadre and although the post of a Director is nonfunctional in the Central Secretariat, the test of fitness or suitability may be quite rigid. It is not a case of normal promotion where the rules provide for promotion by seniority

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subject to fitness. Here, we are not dealing with promotion as such although in the case of CSS officers working as Deputy Secretaries it does amount to promotion for all practical purposes even though technically these posts are non-functional and inter-changeable. We, therefore, hold that the method of appointment to the post of Director in the case of All India Services and Central Civil Services Group 'A' and those of the Central Secretariat Service officers cannot be the same although all may be eligible for such appointments. Things would have been different if there was a case for promotion within a cadre or if there were certain feeder posts for appointment to a higher post, but such a concept is not applicable in the present case. The challenge on the ground of discrimination because ^{of} a different criteria is adopted in the case of C.S.S officers and others, therefore, fails.

17. We now come to the question of preparing of Suitability Lists for the years 1986 and 1987. As discussed earlier, the Suitability List cannot be based on the normal concept of fitness of officers of the C.S.S. The standard of fitness in the case of Secretariat officers for whom a higher grade is being contemplated can be quite high and it is for the Government to decide what would be this standard. The highest grade for the C.S.S. is Rs.3700-5000 whereas for Services like I.A.S. or the Indian Audit Service & Accounts Services and others it may be as high as Rs.8,000.00 p.m. As far as selection is concerned, a Dy. Secy. belonging to the C.S.S. can also be selected as a Joint Secretary in the Govt. of India and even higher without even being appointed a Director but that would again be selection on merit

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and not on fitness criteria. The panel for Director is ultimately approved by the Appointments Committee of the Cabinet. The A.C.C. may accept the recommendations of the Central Establishment Board or the Screening Committee or the Civil Services Board fully or partly or reject the same. If the A.C.C. accepts the recommendations of the Central Establishment Board, it may not be necessary for us to go into the question whether the Central Establishment Board was competent to prepare the Select List unless it can be established that there has been a malafide or arbitrariness in the selection process. The argument that the Central Establishment Board went through the entire proceedings within a matter of one hour and, therefore, there was non-application of mind may not be entirely correct. If the ACR dossiers had been circulated to the members in advance and if assistance from the Establishment Officer's office was available, it cannot be said that the members would have been influenced by anyone or that they had no time to apply their mind.

18. We are not dealing with any case of punishment where reasons must be recorded, but dealing only with the cases of promotion as promotion of a Deputy Secretary in the Central Secretariat can only be to a Joint Secretary, the Director being a non-functional post, and it is quite possible that on the criteria for promotion to the post of Joint Secretary, some of the CSS officers who are working as Deputy Secretary may be promoted as Joint Secretary, without being Directors in the Central Secretariat. It is also possible that some persons who have been appointed as Directors may not get promoted as Joint Secretary as the criteria for promotion would be different. No

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malafide as such has been established against Respondent No.2. She may have been the Chair-person of the Central Establishment Board, but there is no evidence that she used her position in favour or against any particular person. It is quite possible that some member of the Central Establishment Board may even be senior than the Secretary of the Department of Personnel. We see no reason to interfere with the Suitability Lists prepared by the Central Establishment Board for 1986 and 1987 and approved by the A.C.C. but direct the respondents to re-examine the cases of Shri Jagannath Smt. Vijay Lakshmi Reddy and Shri Satish Kumar, mentioned in the applications, to ensure that their inclusion or otherwise in the Suitability List was justified or not."

In view of the above, we do not consider it necessary to go over these issues. We have perused the record produced by the respondents germane to the selection in question in the present O.A. We find that 31 eligible officers belonging to the CSS were considered for empanelment at Joint Secretary level. The assessment of the Screening Committee, as approved by the MOS (PP) and cleared by the CSB at its meeting held on 15.6.1987 was submitted to ACC for approval. The ACC, however, observed that fewer officers had been empanelled as compared to the last year and most of the officers recommended for empanelment were from the first half of the eligible officers giving rise to the unreasonable inference that none in the second half had qualified on the basis of record and directed that the entire matter be reconsidered on the basis of the above observations alongwith other points raised by the ACC/- Screening Committee/CSB. the Committee of Secretaries which had made earlier assessment, however, expressed certain

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difficulties and in the circumstances regretted its inability to do the exercise afresh. The matter was, therefore, resubmitted to the ACC for its decision. The ACC appears to have applied its mind in view of its observations made earlier and enlarged the panel by including four more names, in addition to the 10 names earlier recommended. Respondent NO.2 is one of them, figuring at serial No.14 of the panel. We do not find any evidence from the record that the ACC had acted arbitrarily and without proper application of mind. The mere fact that the applicant has not been placed on the panel cannot be construed as arbitrariness in the selection and empanelment. There are no allegation of malafides either. The applicant had the right to be considered for promotion and has admittedly been considered for empanelment to the post of Joint Secretary. He has, however, not made the grade. The mere fact that one of his junior was placed on the panel by the ACC does not give him any right to promotion; in fact the applicant did not make the grade even after a detailed exercise was^{done} at the level of the ACC.

In the circumstances of the case, we do not find any merit in the application and the same is accordingly dismissed with no order as to costs.


(I.K. RASGOTRA)

MEMBER(A)


(B.S. SEKHON)


VICE-CHAIRMAN(J)

March 6, 1992

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B.S. SEKHON

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Pronounced by me today in the Open Court.


(I.K. RASGOTRA)
MEMBER(A)
6.3.92.