

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.No. 060/1203/2019

Chandigarh, this the July 21, 2020.



**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER(J).
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

Dr. Ashok Khemka, Indian Administrative Service: 1991(Haryana), presently posted as Principal Secretary to Government of Haryana, Science & Technology Department, Room No.403, New Haryana Secretariat, Sector 17, Chandigarh-160017(Group A).

Applicant

(BY ADVOCATE: Mr. Shreenath K.Khemka)

Versus

1. Union of India through its Cabinet Secretary at Rashtrapati Bhawan, New Delhi-110 004.
2. State of Haryana through its Chief Secretary at Haryana Civil Secretariat, Sector 1, Chandigarh-160001.

BY ADVOCATE: Mr. Mukesh Kaushik, for Respondent no.1

Mr. Kiran Pal Singh, for respondent no.2

.. Respondents

O R D E R
HON'BLE MRS. AJANTA DAYALAN, MEMBER(A)

1. The present Original Application (OA) has been filed by the applicant Dr. Ashok Khemka, IAS, seeking direction to respondent no.1 to consider his empanelment for holding Additional Secretary or equivalent post at the Centre which has been denied to him, within a time bound period.



2. The case of the applicant as stated in para 4 of the OA is that in the year 2010 (in fact it was in the years 2011 and 2012 that he was empanelled and not in the year 2010), he was empanelled for appointment to Joint Secretary/Equivalent post in the Centre in the first consideration of 1991 batch of IAS Officers. On 9.10.2019 (Annexure A-1), names of 31 IAS Officers (in fact there were 32 officers in the list) of 1991 batch were notified for appointment to Additional Secretary level post at the Centre. However, applicant's name was not in it. In reply to his RTI query, the applicant was informed (Annexure A-2) that he was not considered for empanelment in terms of para 6(b) of Empanelment Guidelines. As per para 6(b) of Empanelment Guidelines (Annexure A-3), officers "who have not worked on Central deputation for a minimum period of three years at the level of DS and above" are to be excluded from the panel. Applicant had earlier made a representation to respondent no.1 on 26.6.2018 (Annexure A-4) wherein he had pointed out that he was not given an opportunity to serve at the Centre for no fault on his part and, therefore, he should not be penalized by excluding him from consideration of empanelment.
3. The applicant has further pleaded that he offered himself for empanelment on several occasions first in 2000 as Deputy Secretary and then in 2011, 2012 and 2014 as Joint Secretary. He was also placed in offer list in 2011



and 2012 for appointment as Joint Secretary. Even in 2014, the Civil Services Board made a specific recommendation to the Appointments Committee of the Cabinet for his appointment in Prime Minister's Office. However, he was not appointed at the Centre for no fault on his part.

4. The applicant has further pleaded that he has outstanding academic credentials holding B.Tech., Ph.D., M.B.A., M.A. and LL.B. degrees and thus has academic credentials for holding a post of highest level of competency and responsibility in the Government-Central or State. He has also stated that he has outstanding performance appraisal reports in the last 12 years with an average grade of 9.66 out of 10.
5. Applicant has also quoted cases of three other IAS Officers who were considered, empanelled and appointed to the post of Additional Secretary in the Centre without having worked for a minimum period of three years as prescribed in para 6(b) of the Empanelment Guidelines.
6. Applicant has argued that the right to serve at the Centre and the State for a member of All India Services is a constitutional right conferred under Article 16(1) read with Article 312. The terms of such appointment, therefore, must withstand the touch-stone of reasonableness and non-discrimination enshrined under Articles 14 & 16(1) of the Constitution of India. The right



to serve at the Centre cannot be arbitrarily taken away by making unreasonable classification wherein service in the top administrative rank in the State Government is not counted, but service in much junior rank in autonomous Board is counted for consideration. According to the applicant, this is without an intelligible differentia and reasonable nexus to the objective of having sufficient experience of working in the Central Government and is, therefore, violative of Article 14 of the Constitution of India. He has also argued that there cannot be a dilution in the application of statutory rules more so when such application is discriminatory. The applicant has further stated that non-empanelment at this stage would lead to cascading effect and the applicant will never be able to serve at the Centre. The applicant has, therefore, prayed that he be granted the relief requested by him in the present OA.

7. Respondent No.1 has strongly contested the claim of the applicant as well as grounds. It is stated that empanelment at senior levels cannot be claimed as a matter of right and it is for the competent authority to decide the suitability of the officers for empanelment in terms of guidelines and instructions. Respondent no.1 has further stated that inclusion in the panel or retention of officer on the offer list does not confer any right to appointment at the Centre and the officers available on offer list are picked up on the basis of availability of



vacancies and suitability of officers for manning the available vacancies.

8. Respondent no.1 has further stated that provisions of para 5(iii) of the Central Staffing Scheme, inter-alia, provide as follows :-

"(iii) In terms of the provision of Article 312 of the Constitution, the Indian Administrative Service, the Indian Police Service and the Indian Forest Service are All India Services common to the Union and the States. Every State cadre of each of these services provides for a central deputation quota which in turn requires additional recruitment to be made to these services to provide for trained and experienced members of these services to serve on posts in the Central Government. Accordingly, utilisation of the central deputation quota of different State Cadres is an important factor governing the scale at which officers are borrowed from the various state cadres of these All India Services. However, no post so filled by a member of any All India Service on tenure deputation can be deemed to be a cadre post of that service. Similarly, no individual member of an All India Service can claim any right to a post or appointment under the Government of India on this ground."

9. It is further stated that in terms of Empanelment Guidelines, one of the criteria for consideration for empanelment as Additional Secretary is that the officer should have worked on central deputation for a minimum period of three years at the level of Deputy Secretary and above. Further, in April 2016, the competent authority approved that the Officers who have not completed one year of central deputation, but are currently serving at the Centre, may be considered for empanelment along with their next batch, and those serving at the centre for more than a year may be considered for empanelment



with their batch. Since the applicant had nil central experience at the time of consideration of his batch for empanelment at Additional Secretary level, he did not fulfil the eligibility criteria and was not considered along with his batch-mates.

10. Respondent no.1 has also stated that in the year 2000 when the applicant applied for retention under Central Staffing Scheme, he could not be retained in view of adverse entries and disciplinary proceedings. The State Government was also accordingly informed vide DoPT letter dated 12.6.2000 (Annexure R-1). Later, on 4.9.2000, the State Government forwarded representation of the applicant dated 22.8.2000 (Annexure R-2) wherein the applicant himself stated that that there was no disciplinary proceeding against him as on that date, but the applicant withdrew his candidature for the post of Deputy Secretary.
11. In so far as retention of the applicant on offer list for the years 2011 and 2012 is concerned, respondent no.1 has submitted that based on the applications forwarded by the State Government of Haryana, the applicant was retained on offer lists for these years. However, the applicant was not picked up for appointment at the Centre.
12. Regarding offer list for 2014, Government of Haryana was requested to furnish certain clarification/ information



as per Annexure R-3, including latest status of charge-sheet against the officer. In response, the State Government vide letter dated 18.2.2015 conveyed the availability of the officer and also stated that the officer had submitted reply to the charge-sheet on 12.2.2015, which was being examined. Since even the extended period of offer year 2014 (normal validity period being till 31.12.2014) was due for closure on 31.3.2015, the State Government being Cadre Controlling Authority was asked to send fresh consent and application of the applicant for consideration in the offer year 2015(Annexure R-6). However, no such application was received for the offer year 2015.

13. Respondent no.1 has also stated that Shri Anil Malik, an officer mentioned by the applicant, was empanelled with his batch as he had completed more than one year on central deputation at the time of empanelment of his batch. Another officer Sh. Shiv Das Meena quoted by the applicant was considered with his next batch i.e. 1990 batch since he was serving at the Centre, but had not completed one year of central deputation. Regarding another officer Shri Vikram Kapur quoted by the applicant, it is submitted by respondent no.1 that Tea Board is a statutory body of the Central Government under the Ministry of Commerce. The executive record sheet of Sh. Kapur indicates his posting as Executive Director in the Department of Commerce as posting at the



Centre. Further, while Shri Kapur was posted with Tea Board, his work was graded by Additional Secretary and Secretary, Department of Commerce (Annexure R-12). Thus, the contention of the applicant that the service under Tea Board is not service under Central Government and his experience as Principal Secretary to a State Government is more relevant to working of Central Government as compared to the experience of Shri Kapur in Tea Board, is misplaced.

14. The contention of the applicant regarding specific recommendations made by the Civil Services Board to the ACC for his appointment as Joint Secretary in Prime Minister's office has been denied by the respondent.
15. Finally, respondent no.1 has reiterated that empanelment as senior level cannot be claimed as a matter of right. It is for the competent authority to decide the suitability of the officer for empanelment in terms of the relevant guidelines/instructions. The applicant was left out from empanelment as Additional Secretary because he did not fulfil the eligibility criteria. They have also denied that rules have been discriminately applied to the detriment of the applicant. In view of all above, it is stated that the present OA is liable to be dismissed being devoid of merit.
16. The State Government i.e. Respondent no.2 in its reply to the OA has stated that respondent no.1 is the competent authority to consider cases of members of Indian



Administrative Service for empanelment to Additional Secretary or equivalent posts at the Centre. The case of the applicant for empanelment at Additional Secretary level could not be considered in view of para 6(b) of the Empanelment Guidelines. They have also stated that no relief is sought from the State Government, the Central Government being the competent authority.

17. The applicant has filed rejoinder to reply filed by respondent no.1. He has also filed written arguments. Mainly, he has reiterated the submissions already made by him in the OA. In addition, he has challenged April 2016 relaxation as the same has not been incorporated in the Empanelment Guidelines and has also not been placed on record. He has stated that April 2016 relaxation is nullity in law. The officer has also challenged April 2016 relaxation as according to the applicant, this allows even a day's service at the Centre to confer eligibility for such appointment.
18. Respondent no.1 has filed reply to rejoinder. It is stated therein that provisions regarding consideration of officers who are currently serving at the centre for empanelment along with the same/next batch, have duly been approved by the competent authority and its application is not discriminatory. The respondent has also contested the contention of the applicant that there is no statutory basis to have relaxed the eligibility criteria. It is also stated



that officers specified by the applicant have been considered at the Additional Secretary level in terms of these provisions.

19. Respondent no.1 has also stated that the executive record sheet of the applicant indicates that he had worked in State PSEs. These can neither be assumed as serving at the Centre nor counted as eligibility for the purpose of consideration for empanelment. It has further been stated that every year through annual circulars, nominations for retention of suitable officers on offer list are solicited from various Cadre Controlling Authorities of the participating services under the Central Staffing Scheme. The proposals for retention of the officers on offer list are considered on the basis of nominations from respective Cadre Controlling Authorities and all communications in this regard are undertaken only with such authorities and not with individual officers. The fact remains that the applicant was not retained on offer list in the year 2014 at JS level and nominations of the officer was not received from the Cadre Controlling Authority in the subsequent years. As the applicant did not fulfill the eligibility criteria for empanelment as Additional Secretary level, he could not be considered for the same.

20. In view of all above, the respondents have stated that the OA filed by the applicant needs to be dismissed being devoid of merits.



21. We have perused the pleadings in the case including the rejoinder/written arguments filed by the applicant and the written statements and replies submitted by the respondents. We have also heard the opposing parties during various hearings in the case. We have given thoughtful consideration to the entire matter.
22. The matter relates to empanelment of the applicant for holding Additional Secretary/ equivalent post at the Centre which according to the applicant has been denied to him wrongly. The case of the applicant in short is that the eligibility criteria for such empanelment requires minimum three years service at the Centre at the level of Deputy Secretary and above. According to the officer, he offered himself on number of occasions, but was not appointed without any fault on his part. On the other hand, number of other officers who did not fulfill the said criteria have been appointed and three cases have been cited by him in this regard. He has also stated that non-empanelment at this stage would lead to cascading effect and he will not be able to serve at the Centre permanently.
23. We have gone through the Empanelment Guidelines at Annexure A-3. These are quite clear and specifically exclude officers who have not served in Centre on deputation for a period of three years at the level of DS



and above. It is not disputed by the applicant himself that he does not fulfill these guidelines.

24. We observe that the guidelines for empanelment at Additional Secretary level have been in operation for substantive period. The applicant being a member of premier service would have been aware of these guidelines. It is normal expectation that if he was really keen to serve at the Centre, he should have taken sincere and sustained efforts to fulfill the eligibility criteria.

25. We note that the applicant has claimed that he offered himself for deputation at the Centre on several occasions namely in the years 2000, 2011, 2012 & 2014. In the year 2000, the applicant himself had withdrawn his name from empanelment vide his letter dated 22.8.2000 (Annexure R-2). As such, the statement made by the applicant in para 4 E of the OA that he was not appointed despite offering himself for appointment is not completely true.

After 2000, the applicant as per his own submissions, has not offered himself for appointment for another ten years and has offered himself for appointment as JS only in 2011 and 2012. In these two years, his name was not picked up for appointment despite it being on offer list. In 2014, when the applicant again offered himself for appointment at JS level, the Central Government sought certain clarifications including



regarding latest status of charge-sheet against the officer. The State Government responded on 18.02.2015 by saying that the officer had submitted reply to charge-sheet on 12.2.2015 which was being examined. The officer has not disputed this statement. It is also not disputed that there was disciplinary proceeding pending against the officer in the year 2014. Normal validity period of the panel was 31.12.2014 and extended period was till 31.3.2015. Hence, it was logical for the Central Government to ask for fresh consent and application of the applicant for offer year 2015. However, no such application was received by the Cadre Controlling Authority for the offer year 2015. The applicant himself has nowhere claimed that he offered himself for appointment subsequent to 2014. Hence, applicant's efforts for appointment on Central deputation were at best, intermittent and not sustained.

26. The applicant's submission that Civil Services Board specifically recommended his name for appointment in Prime Minister's Office has been categorically denied by the respondents. The applicant has also not provided any proof in this regard in the OA. As such, we cannot rely on this statement of the applicant. In fact, it is not likely for the Civil Services Board to recommend posting of an individual officer to any specific office – least of all to Prime Minister's Office, as the Board only judges the



suitability of the officers for empanelment and not for placement against specific vacancies.

27. Some other arguments of the applicant like his academic achievements are not directly relevant for deciding the present issue before us.

28. The case of Shri Vikram Kapur being quoted by the applicant is clearly on a different footing. He, as an Executive Director of Tea Board, was considered as part of Department of Commerce, Union Government, in view of the submissions made by the respondents. His performance is evaluated by Additional Secretary and Secretary of Department of Commerce, Union Government. It is also not disputed that the applicant had not worked in Central Public Sector Enterprises, but has only worked in State Public Sector Enterprises. This fact is borne out by the Executive Record Sheet of the applicant (Annexure R-7). As such, for the applicant to find equivalence of his case with Mr. Kapur's case does not stand to much scrutiny.

29. We also note that the allegation of the applicant about non-reasonability of classification for not counting the State service in top administrative ranks for eligibility, does not appeal to reason. Firstly, the applicant has nowhere challenged Empanelment Guidelines which themselves contain such classification. Secondly, considering the fact that appointment at top level posts



in the Union Government requires some level of experience at lower level of posts in the Union Government to understand its systems and functioning, is a perfectly logical expectation, such classification or categorization cannot be said to be unreasonable or unintelligible differentia. In fact, in our opinion, this classification is perfectly reasonable and justified and is directly linked to the objective of having competent officers experienced in the working of the Union Government to man top level posts in Union Government.

30. We also find that the other two cases of the three cases quoted by the applicant are covered by April 2016 orders of the Union Government. We note that as per categorical statement of the respondents, this dispensation is with the approval of the competent authority. We also note that this dispensation is not specific to any individual, but is a general dispensation for all officers covered under that class / category. We also note that the dispensation is only for those officers who are already on deputation with the Central Government under the Central Staffing Scheme. As such, these officers have already undergone certain verification and processes required for judging their eligibility and suitability for Central deputation, and they cannot be put at par with officers who are yet to be empanelled and are yet to be so appointed. Further, as officers already on Central deputation do have some experience of having



worked in the Central Government, the differentia given in April 2016 order cannot be said to be devoid of reason or unintelligible differentia, as already stated above. We also note that this dispensation of April 2016 has been in operation for the last four years. There is no allegation that this is being applied discriminately on various officers already on Central deputation. No mala fide is alleged in the OA and no person has been made party by name. In any case, the applicant in the O.A. has not challenged the Empanelment Guidelines or April 2016 order. It is also not disputed that the applicant does not fulfil the eligibility criteria given in the Empanelment Guidelines. Hence, the case of the applicant that his name needs to be empanelled despite being ineligible in view of Empanelment Guidelines is on a very weak footing.

31. Even otherwise, inclusion of name of an individual in the panel is only the first step to his appointment under the Central Staffing Scheme. This does not, in any manner, guarantee his appointment as Additional Secretary in Central Government. There are number of officers whose names get empanelled, but are not finally appointed to such posts. Further, it is settled law that Empanelment Guidelines are only guidelines and are not enforceable in a court of law.
32. Besides all above, an important issue before us is whether a person can claim empanelment as Additional



Secretary in Union Government as a matter of right. Central Staffing Scheme clearly provides that appointment under Union Government under Central Staffing pattern is not a matter of right. This is specifically so provided in para 5(iii) of the Central Staffing Scheme itself, which is quoted above. Even the applicant has not challenged the Central Staffing Scheme. These posts are ex-cadre posts in which officers who are members of various specified services including IAS, IPS and other Central Services are appointed. As such, no individual officer or no individual service can claim any right on these posts.

33. In view of all above, we do not find much merit in the OA and the same is accordingly dismissed. No costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER(J)

Place: Chandigarh
Dated: 21.7.2020.

KKS