

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. C.A. 19/1987.

DATE OF DECISION: May 4, 1990.

Shri N.K. Seth Applicant.
Shri G.D. Gupta Advocate for the Applicant.
V/s.
Union of India & Anr. Respondents.
Shri N.S. Mehta Senior Standing Counsel for the Respondents.

CORAM: Hon'ble Mr. G. Sreedharan Nair, Vice Chairman.
Hon'ble Mr. P.C. Jain, Member (A).

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.

(P.C. JAIN)
Member (A)

(G. SREEDHARAN NAIR)
Vice Chairman.

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(Judgement of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed the rejection of the recommendation of the Planning Commission for giving him a pay of Rs.3,500/- per month on the post of Adviser, Planning Commission, which he held in rank of Additional Secretary to the Government of India (on a pay of Rs.3,000/- per month) and prays for quashing the decision of the Appointments Committee of the Cabinet in rejecting his claim for appointment as Adviser on a pay of Rs.3,500/- per month at least from the date the Planning Commission had recommended it i.e., March, 1985 with all consequential benefits.

2. The relevant facts, in brief, are that the applicant joined the Indian Administrative Service in 1952 and was borne on the cadre of Andhra Pradesh. He was posted on deputation to the Centre as Adviser in the Planning Commission in the rank of Additional Secretary to the Government of India and assumed charge of the said post on 15.9.1983. Vide order dated 16.6.1986 (Annexure P-9), the Appointments Committee of the Cabinet approved his extension of tenure from 15.9.1986 to 31.12.1986 (the date of his superannuation).

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He retired on superannuation on 31.12.1986 (A.N.). He has pleaded that even though he was senior and suitable for promotion to the post of Secretary / Special Secretary to the Government of India, he was denied that promotion. It is stated that before being posted as Adviser, Planning Commission, in the rank of Additional Secretary, on the basic pay of Rs.3,000/- per month, he was also drawing the same pay from September, 1980 under the Government of Andhra Pradesh. When he found that his hopes of being promoted as Secretary to the Government of India or to an equivalent post were ignored, he submitted a representation to the Cabinet Secretary on 20.9.1984 protesting against his such non-promotion. It is further stated that simultaneously he also claimed for his appointment in the rank of Special Secretary in the Planning Commission or for grant of a pay of Rs.3,500/- per month in the post of Adviser in the Planning Commission vide his note dated 21.9.1984 submitted by him to the Minister for Planning. He sent reminders on 25.1.1985 and in February, 1985. The Planning Commission, in March 1985, took up the matter with the Cabinet Secretary by recommending a pay of Rs.3,500/- per month for him in his post of Adviser, Planning Commission. The proposal of the Planning Commission was reiterated in July, 1986, but it was rejected vide D.O. letter dated 3.10.1986. He submitted a Memorial to the President of India on 8.10.1986, which was also rejected and the rejection was conveyed to him vide letter dated 5.1.1987 (Annexure A to the Rejoinder).

3. The applicant has set up a case that the Planning Commission had recommended for grant of a pay of Rs.3,500/- per month to him in the post of Adviser, Planning Commission after going through the records of the applicant and finding him fit and suitable. It is stated that the proposal of the Planning Commission was processed by a high-level Committee of Secretaries and that Committee had also come to a definite conclusion that he was fit and

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suitable for appointment to a post equivalent to that of a Secretary / Special Secretary on a pay of Rs.3,500/- per month. It is further stated that the above recommendation of the Committee of Secretaries was approved by two out of three Members of the Appointments Committee, but the third Member rejected the proposal of the Planning Commission. He has thus challenged the decision of the Appointments Committee as wholly arbitrary and unjustified. He has asserted that he was offered an appointment to the post of Member in the Central Administrative Tribunal and that that post is of greater importance than an appointment even of a Secretary to the Government of India and this offer established his suitability for promotion to the higher post. He has also alleged that once a person is selected for appointment to a post equivalent to that of an Additional Secretary, his non-appointment to a post of Secretary or at least to an equivalent post is bound to be arbitrary as there cannot be said to be much difference in the nature of duties attached to the two posts. He has also mentioned that under similar circumstances, several officers like S/Shri K.K. Srivastava, M.N. Chaudhuri, P. Dubhasi, R.K. Tikku etc., had been provided equivalent posts of Secretary, and that one Dr. S.P. Gupta, another Adviser in the Planning Commission, was given a pay of Rs.3,500/- per month on the same post. He has thus alleged discrimination and also violation of Articles 14 and 16 of the Constitution. It is also pleaded that he became entitled to the post of Secretary or at least to the post equivalent to the post of Spl Secretary automatically and consequently to a pay of Rs.3,500/- per month automatically. It is further stated that if he had known that his claim for a pay of Rs.3,500/- per month on the post of Adviser, Planning Commission, was going to be rejected, he could go back to his parent cadre where he would have got the appointment as Chief Secretary or to a post equivalent thereto and would have automatically got the pay of Rs.3,500/- per month more than two years back and

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consequently enhanced pensionary benefits.

4. In their reply, the respondents have refuted the contention in regard to violation of Articles 14 and 16 of the Constitution, as the case of the applicant is said to have been duly considered by the competent authority and rejected. Appointments to the posts of Secretaries to the Government of India are stated to be made from amongst officers of All India and Organised Central Services who have been first assessed suitable for holding such posts. But it is also stated that merely because an officer has been assessed suitable will not entitle him as of right to appointment as Secretary to the Government of India because such appointments have to be and are made keeping in view the job requirements of posts and the qualifications and experience of the officers in the field of choice. Such appointments are made with the approval of the competent authority. It is also stated that the applicant was appointed as Adviser, Planning Commission, in the rank of Additional Secretary to the Government of India, purely on compassionate grounds since he had represented personally to the then Cabinet Secretary that he had been left with only $3\frac{1}{2}$ years of service before retirement and he wanted a posting at Delhi on account of his domestic problems as he hailed from the Northern Region. The proposals made by the Planning Commission in March 1985 and July, 1986 in respect of the grant of Rs.3,500/- per month as pay to the applicant as Adviser, Planning Commission, in situ position, were considered by the competent authority, which did not approve the same because the applicant was not eligible and was not found suitable for the same. The offer of appointment to the post of Member, Central Administrative Tribunal, is stated to be irrelevant to his promotion as Secretary to the Government of India, as the post of Member, C.A.T., carries the pay scale of Additional Secretary. Further, the applicant did not

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accept the offer of appointment to the post of Member, C.A.T., as he wanted to be at Delhi only. It is pleaded that the applicant could have indicated his unwillingness to continue at the Centre before the expiry of his tenure and steps could then be taken to repatriate him to his parent cadre, but the applicant never wanted to go out of Delhi. It is also stated that the Special Committee of Secretaries did not recommend the grant of pay of Rs.3,500/- per month to the applicant in situ position as the post of Adviser (State Plans) in the Planning Commission fell under the Central Staffing Scheme and he was not eligible for appointment at Secretary level thereunder; the Committee was of the view that he could only be considered by Government for appointment to a post carrying a pay of Rs.3,500/- per month falling outside the Central Staffing Scheme. The Appointments Committee of the Cabinet is stated to be a composite body and unless any proposal is approved by all the Members of ACC, it cannot be said to have the approval of the ACC or Government. As the applicant was not eligible for appointment to the Secretary level, the decision of the competent authority not to promote him to a Secretary level position or grant him pay of Secretary's rank cannot be said to be either arbitrary or unjustified. The cases of S/Shri K.K. Srivastava, M.N. Chaudhuri, P. Dubhasi, R.K. Tikku mentioned by the applicant are stated to be not relevant as these officers had been approved for Secretary level post or equivalent. Dr. S.K. Gupta is also stated to have satisfied the eligibility conditions and as such, his case was approved by the competent authority for granting him pay of Rs.3,500/- per month in-situ position.

5. We have perused the material on record and have also heard the learned counsel for the parties.

6. There are averments in the application as well as in copies of the representations enclosed thereto in regard to the applicant's non-promotion to the post of Secretary / Special Secretary to the Government of India, while his juniors had been so promoted. However, the applicant has

neither assailed the promotion of any of his juniors in his cadre nor has he made any such junior as a party to the application. In fact, in his representation dated 20.9.1984 (Annexure P-1), he himself stated that even at the time he was posted to the Centre on deputation as Adviser in the Planning Commission in the rank of Additional Secretary, some of his juniors were already working as Secretary to the Government of India. Such a process continued during the entire period of stay of the applicant on deputation with the Central Government until his retirement on 31.12.1986 and he did not choose to assail his supersession by his juniors in the matter of promotion to the post of Secretary or Special Secretary to the Government of India. He has also not prayed for any such relief in this application. We, therefore, do not consider it necessary to go into the applicant's suitability or otherwise for promotion to the post of Secretary / Special Secretary to the Government of India.

7. The learned counsel for the applicant urged before us that if the applicant had known that he was not going to be granted a pay of Rs.3,500/- per month on the post of Adviser, Planning Commission held by him, the applicant would have opted for going back to his parent cadre and availed of a higher pay there, which would have entitled him to a higher pension. The pleadings in this case do not give any material to substantiate the truth of such a contention. We say so because the applicant himself pressed for his posting to the Centre on deputation in the rank of Additional Secretary to the Government of India, even though some of his juniors, according to his own admission in his representation dated 20.9.1984, had already been promoted, as he wanted to be in Delhi. Similarly, when he was offered the post of Member, Central Administrative Tribunal, in the Additional Bench at Nagpur, he declined the offer solely on the ground that he wanted to be posted in Delhi, even though he himself considered this post higher in importance than even the post

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of Secretary to the Government of India. Further, nothing prevented him to opt for repatriation to his parent cadre when the proposal of the Planning Commission made in March, 1985 had not materialised.

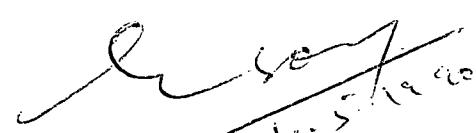
8. Another point, which was vehemently urged by the learned counsel for the applicant, is to the effect that once two out of three Members of the Appointments Committee of the Cabinet had agreed to the proposal of the Planning Commission and the Cabinet Secretary for giving to the applicant a pay of Rs.3,500/- per month on the post of Adviser in the Planning Commission, the third Member's decision rejecting the proposal cannot be taken to be a decision of the Committee as even in High Courts and other Judicial forums, the decisions are by majority and as such in this case also, the majority decision should have been followed. The respondents have stated that the Appointments Committee of the Cabinet is a composite body and there is no provision in the relevant rules for a decision by majority. The applicant has also not shown to us any rule or order of the Government in connection with the transaction of business rules or otherwise that decisions of the Cabinet or a Committee of the Cabinet are to be taken by majority. We are, therefore, of the view that this contention of the applicant has no legal basis.

9. Emphasis was also laid by the learned counsel for the applicant on the point that the posts of Adviser in the Planning Commission are not borne on any fixed scale and can be operated at levels and scales in the range from Rs.2,500 to Rs.3,500 per month; thus, when the Planning Commission made a recommendation for allowing to the applicant a pay of Rs.3,500/- per month, on the post of Adviser, held by him, and further when the Cabinet Secretary recommended that proposal for approval of the Appointments Committee of the Cabinet, the decision of one Member of the Committee disagreeing with that proposal must be deemed to be arbitrary. As
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regards the decision of the Committee, we have already discussed above the legal position in regard to the manner of taking a decision by a Committee of the Cabinet. The respondents have stated that the post of Adviser in the Planning Commission, irrespective of the pay range from Rs. 2,500 to Rs. 3,500 came under the purview of Central Staffing Scheme, and as the applicant was not found suitable for promotion to a post of Secretary or Special Secretary in the Central Staffing Scheme, even though he was considered, his claim for a pay of Rs. 3,500/- per month on that post was not accepted by the competent authority. No rules have been shown to us in regard to recruitment to or appointment on the post of Adviser in the Planning Commission. Merely because the applicant had adequate seniority for being considered for appointment to the post by upgrading it to the pay of Rs. 3,500/- per month would not ipso-facto confer any legal right on him for actual appointment to such a post on a higher pay. He was considered for such appointment, but the competent authority did not approve of the proposal. The broad reasons for non-approval have already been discussed above.

7. In view of the above discussion, we are of the view that the application is devoid of merit and deserves to be rejected. We direct accordingly. Parties to bear their own costs.

(P.C. JAIN) | 5/1990
MEMBER(A)


(G. SHEEDHARAN NAIR)
VICE CHAIRMAN.