

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 835/87. 198
T.A. No.

DATE OF DECISION 14-9-1988

Shri Karam Chand Petitioner

In person Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri P.H. Ramchandani, Advocate for the Respondent(s)
Senior Standing Counsel.

CORAM

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman (Judicial)

The Hon'ble Mr. Birbal Nath, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000

14/9/88
(BIRBAL NATH)
MEMBER

(J.D. JAIN)
VICE CHAIRMAN.

18

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

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DATE OF DECISION. 14-9-1988

Regn. No. O.A. 835/87.

Shri Karam Chand ... Applicant

Vs.

Union of India & Ors. ... Respondents.

CORAM:

Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

Hon'ble Mr. Birbal Nath, Administrative Member.

Applicant present in person.

For the respondents: Shri P.H. Ramchandani,
Senior Standing Counsel.

JUDGMENT

(delivered by Hon'ble Mr. Birbal Nath, AM)

Office Memorandum No. 29/18/79(MM) (i)

dated 1st October, 1980, issued by the Government of India, Ministry of Home Affairs, Department of Personnel & A.R. provides for the upgradation of the posts of Deputy Secretary to the level of Director in case of officers who are due to retire. The said O.M. reads as under:-

"Subject: Upgradation of the post of Deputy Secretary to the level of Director in the Central Secretariat appointment of Central Secretariat Service officers approved for appointment to the level of Director.

....

Reference is invited to this Department's O.M. of even number dated the 21st October, 1980 on the subject noted above, conveying decision of the Appointments Committee of the Cabinet that in the case of officers of the C.S.S. whose names figure in a suitability list, for promotion to the posts of Director, may be appointed as Directors by upgrading the posts of Deputy Secretary held by them on personal basis provided such officers are due to retire on or before the 31st December, 1980.

2. In partial modification of the orders contained in the O.M. referred to above, it has been decided, with the approval of the Appointments Committee of the Cabinet, that the posts of Deputy Secretary held by the CSS officers, whose names figure in the 'suitability list' of Director,

issued from time to time, and who are retiring within one year, may be upgraded to the level of Director as personal to them.

3. It is requested that proposals for appointment of CSS Officers as Director to the posts duly upgraded in consultation with the Associated Finance, in the light of the above decision, may be sent to the Establishment Officer for further necessary action.

4. The orders will come into force with immediate effect.

xxx xxx xxx xxx"

2. The applicant, Shri Karam Chand, who was working as Under Secretary in the Union Public Service Commission has filed O.A. No. 835/87 on 15th June, 1987 in the Tribunal under Section 19 of the Administrative Tribunals Act, 1985, praying that since he was due to retire, his post should also be upgraded in the manner as provided in the O.M. dated 1st October, 1980, reproduced above.

3. The other relevant facts leading to the applicant may be noted as follows. The applicant is a member of the Central Secretariat Service. On 28th January, 1987, the Department of Personnel and Training issued a Select List of 37 CSS Grade I officers (Under Secretaries) considered fit to be promoted to the posts of Deputy Secretary. The applicant ranks 35 in the said Select List. Since he could not be promoted to the post of Deputy Secretary, he submitted a representation on 16.2.1987 to the Department of Personnel and Training for getting upgradation of the post of Under Secretary in the UPSC which he was holding to the level of Deputy Secretary on the analogy of the principle enunciated in the O.M. of 1st October, 1980 reproduced above.

Though the applicant sent a reminder also: *UPSC was always*
by the respondents *replied* that the matter relating to upgradation of the post on personal basis in respect of the CSS Selection Grade Select List officers was under examination and the case of the applicant shall be decided in accordance with the decision to be taken by the Government on that issue. Ultimately, the Government decided not to provide such

- 3 -

upgradation. Hence, the grievance of the applicant.

It may be noted here that the applicant has since retired from service in the grade of Under Secretary on 30.11.1987.

4. Before we deal with the contentions raised by the applicant, a few relevant facts relating to the C.S.S. may be noted. The Central Secretariat Service was constituted out of the Imperial Secretariat Service of the pre-independence days. Prior to 1st October, 1962, there were no statutory rules to regulate the appointments in the Central Secretariat. The Central Secretariat Service Rules were notified in 1962. It is the stand of the respondents that the posts of Under Secretaries and equivalent and Deputy Secretaries in Central Secretariat are not reserved to any particular service. The posts of the level of Deputy Secretaries are filled from amongst the Selection Grade officers of the C.S.S. as also from the officers belonging to other Services under the Central Staffing Scheme. This matter was also examined by the Delhi High Court in the case of M.L. Sharma & Ors. Vs. Union of India & Ors. (C.W.P. No. 242/83) wherein the respondents had taken the position that the posts of Under Secretary and above in the Central Secretariat were not created in any particular service and are not the exclusive preserve of any particular service and these posts can be filled up by drawing officers from various services like All India Services, Group 'A' Services and Central Secretariat Service etc. In the instant case also, it is the stand of the respondents that after computing likely number of vacancies in addition to officers who become available for promotion to the posts of Deputy Secretary, there is a list of All India Services who are retained on offer for Central deputation for the posts of Deputy Secretaries. According to them, a large number of people are kept on offer Lists.

4. Against the above background, we may now examine the contentions of the applicant and specific stand of the respondents. The first contention of the applicant is that his name was brought on the Select List of 37 CSS Grade I officers, the respondents had identified an equal number of vacancies in the CSS Selection Grade i.e. Deputy Secretaries and he should have been given promotion against one of the identified posts. However, the respondents have contested this claim of the applicant on the ground that when they draw up a select list, there is no identification of the posts of Deputy Secretaries and no particular post of Deputy Secretary is identified with any particular Service. They take into account not only the Central Secretariat Service officers but also officers from other Central Services as well as the All India Services. According to them, the inclusion of the name of an officer in the Select List for appointment at the level of Deputy Secretary does not necessarily lead to his actual appointment to that post because his name is offered to various Ministries and his selection depends on his suitability being judged for that particular post. The name of the applicant being on the Select List, his name was sent to various Ministries but they did not accept him. We are persuaded by the plea of the respondents that when they have a large number of officers of various Services on the waiting list for the posts of Deputy Secretary, such a situation does arise. From the counter, it appears that the applicant's name had been recommended by the respondents for appointment as Deputy Secretary but he was not accepted by the user Ministries/Departments.

5. The next contention of the applicant is that he has been discriminated by the respondents because in the case of Shri C.P. Sabharwal, C.S.S. (Grade I) Select List, 1983 in the Ministry of Irrigation, the post held by him was upgraded as a measure personal to him as he was retiring within

- 5 -

two months. This order of promotion was issued by the Department of Personnel & Training vide their order No. 29/5/84-EO (MM) dated 1.4.1985. In reply, the respondents maintained that the case of Shri C.P. Sabharwal was not on all fours with that of the applicant and the two cases were not comparable. Shri Sabharwal was holding the post of Section Officer which was upgraded to the level of Under Secretary as a measure personal to him, whereas the applicant was holding the post of Under Secretary and wanted to be promoted to the grade of Deputy Secretary, which was on a different level. They further maintained that the duties and responsibilities between the posts of Deputy Secretary and Under Secretary are enormously different. Since the post of Deputy Secretary is much more important post dealing with very important policy matters, the upgradation to this post would be detrimental to the working of the Secretariat, just to provide promotion to an officer. Upgradation of the post held by an officer on the eve of his retirement would lead to numerous demands which would undermine the efficiency of the Central Secretariat itself. The learned Sr. Standing Counsel for the respondents stated at the bar that 12 officers of the rank of Under Secretaries could not be absorbed from the Select List of 37 officers. In case upgradation is to be given to the applicant, they would have to contend with the claim of the others. It was further argued by him that 11 of those who could not be absorbed to the posts of Deputy Secretary were senior to the applicant and one of them has already retired. If the post of the applicant was to be upgraded over the head of his seniors, it will create problems. He further referred to various applications filed by several officers of the Central Secretariat Service in the Tribunal itself about their non-promotion which are pending. According to

him, ignoring the seniors to upgrade the post of the applicant would be legally impermissible. He went on to argue that the mere fact that his name was brought on the Select List did not imply automatic promotion. The vacancies are not relatable to any particular post and since the ultimate selection is left to the Ministry concerned, every one on the Select List cannot be promoted.

The applicant who argued his case in person sought to repel these arguments by contending that if the post of a Section Officer could be upgraded, the refusal to upgrade the post of Under Secretary is violative of his rights under Articles 14 and 16 of the Constitution. The applicant relied in this regard on the judgment of the Tribunal in the case of Dr. (Mrs.) Vimla Mehta and Shri A.K. Sur Vs. Union of India & ORS¹, wherein the court relying on the judgment of the Supreme Court in the case of D.S. Nakara and others v. Union of India, (1983 (1) SLJ 131) had allowed the application holding that the cut-off date was fixed without rational basis. Evidently, the ratio of this judgment will not apply to the case of the applicant because his claim is not based on any cut off date but on the general principle whether denial of upgradation of the post held by the applicant whereas similar upgradation has been allowed in the case of the Section Officer and Deputy Secretaries to the posts of Director constitutes arbitrariness leading to discrimination. The claim of the applicant that there has been discrimination under Articles 14 and 16 of the Constitution was resisted by the learned Sr. Standing Counsel for the respondents on the ground that the doctrine of equality applies among equals. He further argued that one swallow does not make a summer and the case of Shri Sabharwal cannot act as a precedent for cases to follow. It has to be noted here that none of

the posts of Under Secretary has been upgraded by the respondents because of the impending retirement of incumbents.

6. The next contention of the applicant is that upgradation of the post of Deputy Secretary has been allowed to the post of Director by virtue of O.M. dated 1st October, 1980 reproduced above. On behalf of the respondents, it was argued that the post of Director is not covered by the C.S.S. Rules, 1962. In this behalf, the Secretary, Ministry of Personnel has filed an affidavit averring that the post of Director is not a promotional avenue though the CSS officers who have put in five years of service as Deputy Secretary are assessed by a Screening Committee to determine their suitability for holding Director-level post and those who are found suitable on the basis of their service records are included in the Director's suitability list. It was further averred regarding the duties and responsibilities discharged by Deputy Secretaries and Directors, that the posts at the level of Deputy Secretary or Directors are middle level posts in the established hierarchy in the Central Government. The post of an Under Secretary is an operational post where the officer concerned has duties and functions relating specifically to processing of relevant material so as to facilitate decision making at the requisite level. In the middle level posts, in addition to facilitation of decision making, wider supervisory duties are also added. The posts of Deputy Secretary and Director are inter-changeable in certain cases. The post of Director can also be operated at Deputy Secretary level in special circumstances when the Ministries/Departments feel that the officer selected is not senior enough to be Director but otherwise is most suited to discharge the duties of the

post. In the case of C.S.S., however, such interchangeability is not possible. The CSS officers included in the Director's suitability list are appointed against clear vacancies of Director except in the case of personal upgradation for officers who are retiring within one year.

7. In view of the averments made on behalf of the respondents, it is clear that whereas the post of Director is not a promotional avenue for CSS officers and the posts of Deputy Secretary and Director are inter-changeable and have almost same duties and functions, the post of Under Secretary is at a different level than the level of the Deputy Secretary. It is clear that the posts of Under Secretary and Deputy Secretary are not only on different footing, but involve different functions. We have only to see, therefore, whether non-upgradation of the post of Under Secretary in the case of the applicant constitutes a discrimination violative of the provisions of Articles 14 and 16 of the Constitution. It is true that in the case of one Section Officer, the post was upgraded to the level of Under Secretary and in the case of Deputy Secretaries, upgradation to the posts of Director is allowed by the O.M. of 1st October, 1980. However, there has been no upgradation so far of any post of Under Secretary to the post of Deputy Secretary. The doctrine of equality will not apply to the unequals i.e. the upgradation of the post of Deputy Secretary to that of Director cannot provide basis for upgradation of the post of Under Secretary to Deputy Secretary suo motu. If the respondents-Union of India allow the upgradation of the posts of Deputy Secretary to the posts of Director, which are inter-changeable, there is no logic that such upgradation confers a similar right upon the Under Secretaries to seek upgradation of their posts to the

posts of Deputy Secretary. The respondents have
have explained in detail the mechanism of promotion of
Under Secretaries to the posts of Deputy Secretary.
The applicant's name was approved for promotion to
the post of Deputy Secretary but he was not promoted
to that post because of his not having been found
acceptable by the concerned Ministry. If the logic of this
application is accepted, then the upgradation of the posts
of incumbents due to retire will have to extend to each
post, i.e. posts of all categories and levels. Such
upgradations will have to be done on a vast scale and
would result in unmanageable and chaotic conditions in
the management of promotions. So far as the lone case
of Shri Sabharwal is concerned, the upgradation of Section
Officer's post to that of Under Secretary cannot lead to
laying down general principles of upgradation. Again, it
is clear from the counter filed on behalf of the respondents
that they had considered the case of the applicant on the
analogy of Shri Sabharwal, but they could not do so as it
would have caused prejudice to his seniors etc.

In view of the above discussions of facts and
rules, we find that the application cannot be accepted
as being devoid of merit. The same is accordingly rejected,
with no order as to costs.

9 14/9/88
(Birbal Nath),
ADMINISTRATIVE MEMBER

J. D. Jain
(J.D. Jain),
VICE CHAIRMAN

Sept 14, 1988.