

Reg. No. OA 1098 of 1987

Date of decision: 18.4.1990

1. R.N. Tewari & Others

Applicants

Vs.

Union of India & Others

Respondents

Shri M. Wadhvani with Shri Gujjar Mal, counsel for the applicants.

Shri P.H. Ramchandani, Sr. Standing Counsel for the respondents.

2. Regn. No. OA 2461 of 1988

Vinay K. Vasishtha & Others

Applicants

Vs.

Union of India & Others

Respondents

Shri M. Wadhvani with Shri Gujjar Mal, counsel for the applicants.

Shri P.H. Ramchandani, Sr. Standing Counsel for the respondents.

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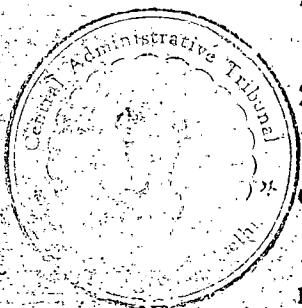
Hon'ble Shri Justice Amitav Banerji, Chairman.

Hon'ble Shri B.C. Mathur, Vice-Chairman.

(Judgement of the Bench delivered by Hon'ble Shri B.C. Mathur, Vice-Chairman.)

Both the above applications are identical and are, therefore, being disposed of through a common order. The applicants are officers belonging to the Central Secretariat Service (Selection Grade) holding posts of Deputy Secretaries in different Ministries/ Departments of the Govt. of India. The applicants in OA 1098/87 are officers who were under consideration for drawing up of Suitability List for the year 1986 for the posts of Directors in the Central Secretariat while the applicants in OA 2461/88 are officers for the 1987 List.

2. The applicants have challenged the Suitability Lists of 1986 and 1987 prepared for appointment of the Central Secretariat Service Officers working as Deputy Secretaries under the Government of India to the non-functional posts of the level of



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adopted for drawing up the Suitability Lists on grounds of arbitrariness, discrimination etc.

3. The applicants belong to the Central Secretariat Service (Selection Grade) and are presently working as Deputy Secretaries in the Grade of Rs. 3700-5000 in various Ministries/Departments of the Central Government. There are certain posts in the Grade of Rs. 4500-5700 in the Central Secretariat which are designated as Directors. These posts are non-functional, inter-changeable and are equivalent in status to that of the post of Deputy Secretary held by the applicants. Except for the nomenclature of the designation and the scale of pay, everything else, namely, the nature of duties and responsibilities etc. are identical in both the cases.

While the post of Deputy Secretary is functional, the post of Director is non-functional. The posts of Directors are filled up from three sources, namely, All India Services, Central Services

Group 'A' and Central Secretariat Service (Selection Grade). There is no quota allotted to any of the three sources for filling up

the posts of Directors. It has been claimed that it would be just and proper to presume and hold that the first preference for

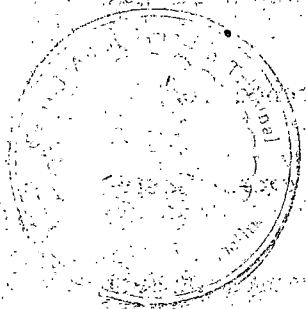
appointment to the post of Director has to be from Central Secretariat Service (for short C.S.S.) and that posts of Director in fact belong to the C.S.S. Cadre. The eligibility conditions for appointment

to Directors are that in the case of C.S.S., the officer

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concerned should have put in 5 years' service in the Selection Grade, but in the case of the remaining two sources an officer becomes eligible on entering 14th year of service.

4. The applicants have stated that until 1987 it was the function of the Central Establishment Board to prepare the Suitability List of eligible officers of CSS (Selection Grade). However, with effect from April, 1987, this function has been assigned to the Civil Services Board according to the circulars dated 8.4.87 and 19.6.87 issued by the Government of India (Annexures 2 and 3 to the application in OA 2461 of 1988). While the posts of Under Secretaries and Deputy Secretaries in the C.S.S. are Selection posts, in the case of Directors no process of selection is involved. Only the Suitability List of available officers is prepared and this list has to be prepared on the basis of "subject to rejection of unfit". It is the duty of the Civil Services Board to make recommendations having regard to the merits, claims and availability of officers in the field of choice for appointment to the posts of Deputy Secretary, Director, Joint Secretary under Senior Staffing Scheme. The eligibility conditions for the posting of CSS (Selection Grade) officers as Directors is that the officers should have put in five years in the Selection Grade. It has been pointed out by the applicants that by the time a CSS officer puts in 5 years in the Selection Grade, he has already put in nearly 20 or more years of service, more than half of which is in Group 'A' and that in order to be in the Selection Grade, the officers of the



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CSS have to undergo severe procedures of selection. It has been pointed out that the established procedure and method of preparing

Suitability List has been that a Screening Committee goes through the service records, including the confidential reports of eligible officers and after assessing the records gives the certificate whether the officer is fit or not fit for being posted as Director.

The Screening Committee comprises of the Secretary, Department of Personnel, who acts as ex-officio Chairman of the Committee

and three Secretaries of different Ministries by rotation and the Establishment Officer as Member Secretary of the Screening Committee. A final list of officers categorised as "fit" and "not yet

fit" is placed by the Establishment Officer before the Central

Establishment Board (C.E.B.) for adoption and forwarding it to the Appointments Committee of the Cabinet (A.C.C.) for approval.

In contrast to the procedure adopted for C.S.S. officers, the procedure of selection and appointment of officers of All India Services

and Central Services Group 'A' is different in as much as these officers become eligible for appointment as Directors in the Central

Secretariat immediately on their entering the 14th year of service and no Screening Committee or the Central Establishment Board

examines or assesses their fitness or categorises them as "fit"

or "not as yet fit". These officers are taken on deputation from various cadres. On receipt of their names from the cadre authorities,

as available for deputation, the Establishment Officer examines

their confidential reports and retains such officers whom he finds suitable for being appointed in various Ministries. If officers of these cadres are already on deputation to the Central Government and become eligible for appointment as Directors, they are immediately and w.e.f. the date they become so eligible are posted as Directors and there is no bar to their being posted in the same Ministry unlike the officers of the CSS who are not posted as Directors in the same Ministry where they are working as Deputy Secretaries. In the case of All India Services, if a post of Deputy Secretary is already held by an officer of such service, then such post is redesignated as Director (personal to the officer) till the vacancy of Director arises and then he is absorbed as Director against such regular posts although before actually being appointed as Director, formal approval of the A.C.C. is obtained through the Establishment Officer. It has been stated by the applicants that while the number of CSS officers included in the Suitability List was about 90% in 1982 of those considered, the number was drastically reduced in the years 1986 and 1987. In the year 1986, names of 35 officers were referred to the Screening Committee which assessed all the candidates and made its recommendations for inclusion of the names in the Suitability List. According to the applicants, they believe that the Screening Committee had found 30 officers fit for the posts of Directors, but the Secretary, Department of Personnel, who was the Chair-person of the Screening

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Committee decided to scrap the list and have another Suitability List prepared afresh and this act was without jurisdiction and malafide.

5. It has been stated that on or about the 13th January, 1987, the C.E.B. (not all of its five members) held a meeting in the chamber of Secretary, Department of Personnel (Respondent No.2). The meeting lasted for about an hour and a Suitability List is alleged to have been prepared in this meeting. On 8th

April, 1987, the Government of India decided to establish Civil Services Board in supersession of Service Selection Board and have also modified functions of the Central Establishment Board. The circular of the 8th April, 1987 says that one of the functions of the C.E.B., namely, merits claims and availability of all officers in the field of choice for appointment to the posts of Deputy Secretaries, Directors and Joint Secretaries, under the Senior Staffing Scheme, was withdrawn from the C.E.B. and entrusted to Civil

Services Board. The applicants believe that they were found fit by the Screening Committee but the same was scrapped by the Secretary of the Department of Personnel with malafide intentions.

6. The case of the applicants is that the post of Director being non-functional, no selection procedure is involved. The attributes required for both the posts of Deputy Secretary & Director

are identical. It was argued that in the case of E.P. Royappa

Vs. State of Tamil Nadu (AIR 1974 SC 555) their Lord-

ships in the Supreme Court have held that equivalence of posts

is to be judged on the nature and responsibilities of duties and

not the pay attached to the post. The attributes cannot be differ-

ent merely because the sources from which officers are drawn

are different and as the Group 'A' Central Services and All India

Services officers are appointed as Directors on completion of 14

years of service, the C.S.S. officers in the Selection Grade must

also be appointed as Director on completion of 5 years of service

in the Selection Grade. It has been pointed out that an IAS officer

or a Group 'A' Central Services officer becomes eligible for

appointment as Deputy Secretary on completion of 9 years of service

and upon entering 14th year of service, he becomes eligible to

be appointed as Director. Thus, officers of all the three sources

are required to have an experience of five years in the Grade

of Rs. 3700-5000 or equivalent grade before they become eligible

to be appointed as Directors. According to the applicants, an

officer of Central Services Group 'A' on getting Rs. 4,000.00 as

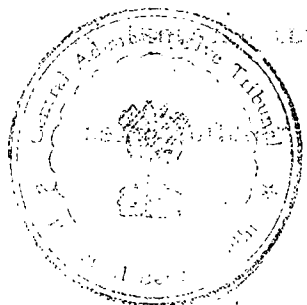
salary becomes eligible to be posted as Director regardless of

the fact whether he gets Selection Grade in his parent cadre or

not. If a different method is adopted in the case of CSS Selection

Grade officers, it would amount to discrimination. The applicants

have cited the case of Roshan Lal Vs. Union of India (AIR 1967



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21 S.C 1883) that whenever different sources of personnel get amal-

gamated at any given point/level of their service, then after such

amalgamation, they will be governed by the same principles and

there cannot be different procedure for different sources. It has

been further pointed out that if the Central Establishment Board

was not competent to appoint a Screening Committee, it was

also not competent to dispense with the Committee. Until 1986,

the Screening Committee was preparing the Suitability List.

In the case of OA 1098 of 1987 Shri R.N. Tewari, vs. Union

of India, it is claimed that the Screening Committee had also

been appointed and it had discharged its functions by making assess-

ment and the Establishment Officer was to submit the final list

to the Appointments Committee of the Cabinet. The decision to

abrogate the Screening Committee was taken in a meeting of the

Central Establishment Board on 13.1.1987 and not on 30.10.86 as

stated by the respondents and whatever decision the C.E.B. took

was in respect of the Suitability List for 1986 in isolation and

not as a permanent change. There was no justification to scrap

the Screening Committee and then to adopt more rigid tests.

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There is no logic because if any rigid tests were to be conducted

then the procedure for rigid tests should have been laid first and

the same should have been applied in the case of all sources and

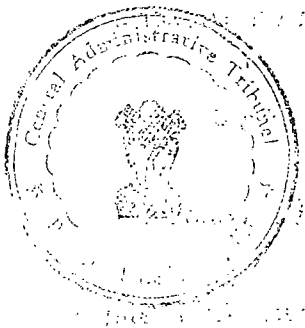
not only in the case of C.S.S. It has been stated that in a very

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short period, say, about an hour, it would have been impossible for the Central Establishment Board to have made their assessment adopting more rigid tests. It has been said that the assessment was done with the secretarial assistance of the Establishment Office and, therefore, the personal influences and biases of the members of the Board could not be ruled out. The criteria before 1986 eligible officers and even later is to include all subject to the rejection of the "unfit". It has been further argued that a person would be unfit only if there is something specific against him in his CRs which means adverse entries in his CRs. None of the applicants have received any notice of adverse entry during the preceeding five years whereas some of them received appreciation letters. It has been further claimed that after the Suitability List had been prepared, some names were added. These included Shri Satish Kumar and Mrs. Vijaylakshmi Reddy.

7. It has also been argued that in the event of a person being excluded in any panel, the reasons for such exclusion must be recorded, but this was not done. It was argued before the

Tribunal that on the recommendations of the Third Pay Commission, non-functional Selection Grade in Group 'A' Central Services was introduced to contain frustration on account of stagnation where promotion outlets were either limited or non-existent. Non-functional Selection Grade was directed to be introduced only after doing away with the functional Selection Grade wherever it existed.



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The 4th Pay Commission recommended the continuation of non-functional Selection Grade in the Central Services Group 'A' with the modification that the condition regarding stagnation at the maximum of Junior Administrative Grade (Rs. 3700-5000) for two years for promotion to Selection Grade should be removed and that the criteria and basis of computing the number of Selection Grade posts should be uniform for all the services. It was also argued that in the case of one Shri Jagannath, who was found unfit for the post of Director, his CR for the year 1986 was not available for consideration. All the applicants who were considered for appointment as Directors have been working as Deputy Secretaries and at the time of selection to the posts of Deputy Secretary which is Selection Grade for them, their CRs were critically examined and all of them must have at least been categorised as "Very Good". In case, there was any fall in their performance, the same should have been communicated to them, otherwise the same has to be ignored. As the selection of Directors from All India Services and other Central Services Group 'A' is not on the consideration same, the Suitability Lists for 1986 and 1987 should be quashed, having been prepared arbitrarily and illegally. By adopting different criteria and by exercising authority not vested in the C.E.B.

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8. The respondents in their reply, including the additional reply, have denied any arbitrariness or malafide in preparing the

Suitability List. It has been said that senior posts in the Central Secretariat are filled in accordance with the "Scheme for Staffing Senior Administrative Posts" under the Government of India (Annex.

R-1). No senior Administrative post under the Central Government covered by the Scheme is reserved for any particular Service.

No such post is included in the cadre of any particular Service.

Such posts are filled by borrowing officers from the cadres of

All India Services, Central Services Group 'A' and State Civil

Service etc. C.S.S. officers can also be considered. As and when

vacancies are reported to the Establishment Officer by the

concerned Ministries/Departments, the matter is placed before

the Civil Services Board for suggesting a panel of names for making

a selection by the Ministry. The panel may consist of officers

from different Services. The panel is prepared keeping in view

the job requirements of the post in question and experience etc.

of the officer whose name is suggested. The post of Director

is not a cadre post included in the cadre of the Central Secretariat

Service and the highest post included in the CSS Cadre is the

Selection Grade equivalent to Deputy Secretary in the pay scale

of Rs. 3700-5000. The respondents have stated that applicants

cannot claim appointment to the posts of Directors as a matter



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of right. Government have necessarily to take into consideration

the availability of a particular officer for a particular post with

reference to the job requirements of the post. This is done by

the Civil Services Board at the time of preparation/finalisation

of the panels for posts at this level. All the CSS officers who

have completed 5 years of service in the selection Grade are

considered for inclusion in the Suitability List. Unlike in the case

of preparation of Select List for promotion within the Cadre, the

size of the Suitability List is not restricted by number of vacancies

existing or likely to arise but is based on the fitness of the officer

to serve at the required level. It has been stated that the proce-

dures followed upto 1985 for preparation of the Suitability List

of officers for appointment to the level of Directors was that

CR dossiers of all the eligible officers were first assessed by a

Screening Committee constituted by the Central Establishment

Board and the recommendations of the C.E.B. were then submitted

to Government for approval. The Screening Committee was set

up only to assist the C.E.B. otherwise it was the function of

the C.E.B. to recommend to the Government names of those fit

for inclusion in the Suitability List. In the year 1986, it was felt

that there no need to have a separate Committee of Secretaries

for the purpose of assessing the suitability of CSS officers for

inclusion in the Directors' Suitability List since this work could

be done by the Board itself as the Screening Committee consisted

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of four Secretaries to the Govt. of India and as four of the five

members of the Board were themselves Secretaries to the Govt.

of India. For drawing up the Directors' Suitability List for 1987,

a special meeting of the C.E.B. was held in January 1988 and

after assessing 23 officers, Government approved the inclusion

of 10 officers in the Suitability List. There has been no illegality,

arbitrariness or discrimination in the preparation of the Suitability

List.

9. It has been stated that the Central Secretariat Service

rules do not provide for a non-functional Selection Grade unlike

the All India and Central Civil Services Group 'A'. As such, CSS

officers found suitable for appointment at the level of Director

are appointed only against sanctioned posts in the scale of pay

of Director and such appointment is treated as a promotion. On

the other hand, officers from the other two sources are appointed

to non-functional Selection Grade and on getting the rank of

Director, their pay is fixed under FR 22-A as against under FR

22-C in the case of C.S.S. officers. Under the Central Secretariat

set-up, both Deputy Secretary and Director can submit files to

a Joint Secretary and to that extent there is interchangeability

between Deputy Secretary and Director. A Director is always

considered senior to a Deputy Secretary. It was explained that

in many cases, Directors are required so that in the absence of



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a Joint Secretary who may be away on tour, important matters can be handled by the Director whereas it may not be possible to entrust such matters to a Deputy Secretary, specially a junior Deputy Secretary. In the case of CSS, there is no fixed size for the Suitability List and there is no zone for consideration and, therefore, the zone for consideration is also not fixed. All officers who become eligible are categorised "fit" and "not yet fit" for the post of Director. In the case of All India Services and Central Civil Services Group 'A' officers, the eligibility criteria have been laid down with the approval of the Appointments Committee of the Cabinet. The names offered by the cadre authorities are scrutinised with reference to pre-determined eligibility criteria and their service records. Only those officers are retained on the "offer" list who are found eligible and suitable for appointment against vacancies arising out of the Senior Staffing Scheme. The criteria are communicated to the cadre authorities at the time of inviting names of suitable and eligible officers for Central deputation. There are instructions permitting upgradation of the post of Deputy Secretary as Director on a personal basis. It has been stated by the respondents that the applicants were considered for preparing the Directors' Suitability List and they have no reason to be aggrieved by the procedure adopted in the earlier years.

It has been denied that the function of preparing the Suitability

List was taken away from the Central Establishment Board. The applicants have not apparently understood the difference between drawing up Suitability List of a particular Service and preparation of a panel (short - list) of three names for consideration against any particular vacancy. There has been no haste in preparing the Suitability List as the service record of the officers in the zone of consideration were circulated several weeks in advance to the Members and Chairman of the Board. The posts are non-functional. It is correct that the seniority of the officers found suitable is not changed because the posts at the level of Director are not cadre posts in the Central Secretariat Services. It is stated that the Central Establishment Board recommended names of 9 officers for inclusion in the Suitability List of 1987, but Government after considering the recommendations of the Central Establishment Board accepted inclusion of 10 officers in the Suitability List. It is said that Government is free to accept, reject or accept with modifications the recommendations of the Central Establishment Board. As the posts of Directors are not included in the cadre, the applicants have no right as such to these posts. The dispensing with the procedure of the Screening Committee does not result in any discrimination or affect fair assessment as the Suitability Lists are prepared by the Central Establishment Board according to the same norms.



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28 10. To the allegation of the applicants that the Screening

Committee had assessed all the candidates and had forwarded its recommendation to the Central Establishment Board and that the

Secretary of the CEB was in the process of compiling the Suitability

List, when Respondent No. 2 took upon herself the preparation

of the Suitability List afresh and that Respondent No. 2 was not

competent to scrap the List, it has been stated that a meeting

of the Screening Committee to assess the suitability of CSS officers

for appointment to Director level posts was held on 12.9.86. The

Committee wanted certain guidelines from the Government regard-

ing preparation of the Suitability List. After consideration, Govern-

ment issued the necessary guidelines to the Committee on 10.11.86.

After the issue of the guidelines, only two Members out of five

Members had completed the assessment and the assessment by

the other three Members was pending as on 1.1.87. This assessment

was not complete and was to be given to the respondents at any

time upto 22.4.87 when the special meeting of the CEB was

convened for the purpose of drawing-up of the List.

11. The learned counsel for the applicants besides arguing

the case also submitted written arguments on behalf of the appli-

cants. It has been argued by the learned counsel for the applicants

that the number of Selection Grade posts in the All India Services

and Group 'A' Central Civil Services should be at par and there

cannot be any discrimination as far as the CSS officers are

concerned. According to the 4th Pay Commission, any Service

having a maximum pay of Rs. 4,000/- in Group 'A' is eligible for

Selection Grade. Selection Grade is meant for avoiding frustration.

If the overall performance of an officer is good which only means

that there should be no adverse remarks against, his name cannot

be withheld from the Suitability List for Director's post. A number

of court cases were cited on the question of discrimination and

on ignoring guidelines issued by Government. Cases were also

cited to show that when reasons for supersession are not disclosed,

the selection is vitiated and that sanctity of the departmental

procedures and instructions by an executive authority must be

upheld. In this case, the Central Establishment Board deviated

from the established procedure and thus vitiated the preparation

of the Suitability List by superseding the Screening Committee.

12. The learned counsel for the respondents emphasised

that there is a lot of difference between the Central Secretariat

Services and All India Services and Group 'A' Central Civil Services.

He emphasised that under the Central Staffing Scheme to man

senior positions, Government are free to choose their officers

from various sources. It is for the Government to decide to whom

to appoint. Any one claiming a post must establish his claim

to that post, specially when the posts under the Central Secretariat

are not borne on any cadre. Even an IAS officer has no legal right



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to be appointed Director or Joint Secretary in the Government of India. He stated that according to CSS Rules of 1962, an officer of the CSS can go upto the level of Deputy Secretary.

A Deputy Secretary's post is a promotion post from the post of

Under Secretary and is itself a Selection Grade for CSS. The CSS

cadre stops at Deputy Secretary level. Right to promotion in

their case is only upto the level of a Deputy Secretary and there

is no legal right to go up as Director and above. It is entirely

upto the Government to decide how to fill up senior posts in

Government. Even Annexure R-1, the basis of Staffing Scheme,

is not statutory but only an administrative instruction. Government

has a choice to make a selection from a wide field. Officers under

Categories 'A' and 'B', namely, All India Services and Central

Civil Services Group 'A' officers have their own field of specialisa-

tion and after they complete their tenure with the Central Secre-

tariat they go back to their cadre, whereas a C.S.S. officer, who

may get promoted to a non-functional post of a Director, will

not go back to his own cadre. The consideration by Government

can be different. They may want a variety of experience as availa-

ble to officers of All India Services and Central Civil Services

Group 'A'. Government wants people with field experience to

work in the Central Secretariat and also take secretariat experience

to the field in the overall interest of the country. Officers of
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the Central Secretariat Service do not bring any experience outside

selection of a Deputy Secretary of the CSS may be on totally different considerations than in selecting a Director from other Services.

13. Shri Ramchandani, Sr. counsel for the respondents, emphasised that when there are two classes of persons belonging to different cadres, and what standards would apply for bringing them to the Secretariat does not amount to any discrimination against CSS officers. The Selection Grade in the case of CSS officers is the post of Deputy Secretary which is the apex post. There is no comparison between two different classes of Services.

One has come to the end of its career, the other is in the middle of its career. Selection Grade is a part of their service and does not come towards the end of the Service. In fact, Government looks for different and wide experience at the senior positions like Director, Joint Secretary, Additional Secretary and Secretary to Govt. of India. Shri Ramchandani said that for this reason, none of the senior posts are put in the cadre of any particular Service except in the case of CSS which has a cadre upto a Deputy level.

Secretary. He also said that the question of amalgamation of different services at the level of Director does not arise. There is no amalgamation and, therefore, the argument of the learned counsel for the applicants that the attributes required from various Services are identical and that being a non-functional post, no

is not valid.

rigorous selection is required/ He said that the ruling of the

Supreme Court in the case of Roshan Lal Vs. Union of India cited

by the applicants is not applicable as that relates to personnel who

get amalgamated at any given point/level of their Service. All

India Services and other Central Civil Services Group 'A' officers

come for a definite tenure and go back to their cadres whereas

CSS officers remain in the Central Secretariat. There is no

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amalgamation of any job/and Government are free to choose their

senior officers from whatever source they deem fit. Shri

Ramchandani said that officers of the Indian Administrative Service

etc. have a different culture and ethos. Their training, their expe-

rience and their promotion in their cadre are all different than

the culture and experience of the CSS officers who have been

in the Secretariat and worked as Assistants, Section Officers, Under

Secretaries, etc. He said that officers of the All India Services

have an innovative culture, have initiative and drive of a different

type. They are also subjected to rigorous selection standards.

He denied that Respondent No. 2, Secretary of the Department

of Personnel, Mrs. Trivedi, upset the whole scheme. There was

a special meeting and additional attention was given to the Suita-

bility List. The policy of a more rigorous selection was adopted

not only for the post of Director, but also for other higher posts.

Government even informed the Parliament that selection to the

higher posts must be on real merit and not sort of escalator promo-

tion: Government even changed the ACR columns to bring out selection criteria. He said that even now, there is no Screening Committee. After the Central Establishment Board makes the panel, the Civil Services Board sends names to the Ministries for selection. The Civil Services Board does not prepare the Suitability List but selects out of the panel three names to be sent to the Ministries. Even now, the Central Establishment makes all the selection. He said that it is not necessary for any Selection Committee to give reasons for not including anyone in the Select List. He cited the Supreme Court case of Shri R.N. Das (1986 - Supplementary S.C.C. 617) which lays down that in the absence of any rule even natural justice does not demand that Selection Committee must give reasons when superseding any officer. It is for the appointing authority to decide. The same principle was followed in the UPSC Vs. H.L. Dey 1988(2) SCC 242.

14. The learned counsel for the applicants has emphasised that the question of selection does not arise in the case of a non-functional Selection Grade. He said that Group 'A' Central Civil Services officers working as Deputy Secretaries are promoted as Directors after 14 years of service and there is no reason why CSS officers working as Deputy Secretaries should not also be appointed as Directors on completing five years in that Grade.



Both are working in the Central Secretariat in the same capacity

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and there cannot be two different criteria for such promotions.

He said that criteria has been fully laid down by the Department

of Personnel in their letter of 6th July, 1988. Even NBR advantage

has been given to junior CSS officers on deputation. NBR is given

only when there is a direct line of promotion. Once the CSS

officers are in Group 'A', there cannot be any further classification

among Group 'A' officers. Shri Wadhvani said that promotion is

a condition of service and it continues even beyond one's life.

15. We have carefully gone through the pleadings and the

arguments by the learned counsel on both sides, including the

written arguments filed by the counsel for the applicants. We

have to consider whether the Suitability Lists for the years 1986

and 1987 for posting of CSS officers (Selection Grade) working

as Deputy Secretaries to the non-functional posts of Director have

been prepared properly or whether the Lists so prepared should

be quashed on the grounds of discrimination etc. To appreciate

the position, we have to consider the following points:

(i) While the officers of All India Services and the

Central Civil Services Group 'A' as well as officers

of the Central Secretariat Service (Selection Grade)

are eligible for appointment to the posts of Directors,

the post of Directors in the Central Secretariat is

not included in the cadre of any Service. Government

of India are free to fill senior positions from any

source. An officer of any Service, including an IAS

officer, cannot claim it as a matter of right merely

on completion of 14 years of service. It, of course,

is the minimum requirement for eligibility to hold

the post of the Director.

(ii) Selection Grades are provided to avoid stagnation.

Selection Grade for the CSS has been provided at the

level of Deputy Secretary whereas there is a Selection

Grade in the scale of pay of All India Services and

other Group 'A' Central Services somewhere in the

middle of their career and not towards the end of

the career.

(iii) It has been stated that Group 'A' officers, including

All India Services officers, are given the posts of Direc-

tor only when officers of their seniority have already

reached the Selection Grade in their own cadres. As

these officers come to Government of India on deputa-

tion, their interests on deputation have to be protected

and as such when in any cadre, officers of 14 years

of service have been given Selection Grade in their

own cadre, officers on deputation get it automatically.

It has been clarified that where an officer has not

reached Selection Grade in his own cadre, and if he



is already working as a Deputy Secretary in the

Government of India, he is not automatically promoted

as Director, but such an officer may be promoted

as Director if there is a vacancy in the Ministry. It

was explained that generally 20% of the posts of Deputy

Secretaries in a Ministry are in the Director's rank

although it may not be so in all the Déptts. I.A.S.

and other Group 'A' officers would be considered for

appointment as Directors on completion of 14 years

of service if there is a vacancy in the Ministry and

if they have completed 14 years of service and have

not reached the Selection Grade in their own cadre but

if there is no vacancy, they would not be so appointed.

It was also explained that when a person is appointed

to the post of a Director against a vacancy, when

he has not reached the Selection Grade in his own

cadre, it is not automatic and a rigorous test is adopted

to ensure his suitability. No Suitability List is prepared

are for officers of other Services as they, appointed as

Director only on reaching the Selection Grade in their

own cadre and this Grade is the same as that of a

Director to the Government of India.

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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 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 Group 'A' appointed as Director for a short period during his Central 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



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officers in the rank of Deputy Secretary are eligible for appoint-

ment 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 non-functional 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 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. officers and others, therefore, fails.

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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 the I.A.S. or the Indian Audit

& 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. without even being appointed a Director

of India and even higher, but that would again be selection on

merit 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



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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 preparation of a Suitability List. We are also not dealing 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 ~~were~~^{are} 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 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

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with the Suitability Lists prepared by the Central Establishment and approved by the A.C.C.

Board for 1986 and 1987, 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

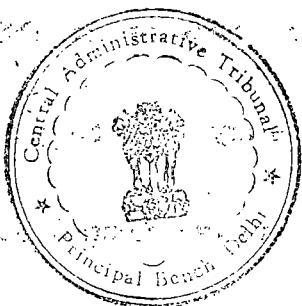
inclusion or otherwise in the Suitability List was justified or not.

19. With these observations, both the applications are dismissed. Parties to bear their own costs.

(B. G. Mathur)
Vice-Chairman

(Amitav Banerji)
Chairman

18/4/90



CERTIFIED TRUE COPY
A. K. ALHANI
Section Officer
Central Administrative Tribunal
Principal Bench, New Delhi