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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1129/87

Date of decision: 14-1-93.

R.K.Jindal & Others

...Applicants

Versus

Union of India & Others

...Respondents

CORAM:

THE HON'BLE MR. JUSTICE V.S.MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R.ADIGE, MEMBER(A).

For the applicants

...Shri M.Chandersekharan, Sr. Counsel
With Shri Madhav Panikar, Counsel

For the respondents

...Shri P.H.Ramchandani, Sr. Counsel
With Shri A.K.Behra, Counsel

JUDGMENT (ORAL)

(BY HON'BLE MR. JUSTICE V.S.MALIMATH, CHAIRMAN) :

The ten petitioners in this case are all in the cadre of Deputy Secretaries in the Central Secretariat Service. They all aspire for promotion to the cadre of Directors in the Central Government. The petitioners' case is that a Directors' Suitability List 1985 was prepared as per Annexure I in which the names of the petitioners are included. They allege that persons who are juniors to the petitioners in the said list have been accorded promotions to the cadre of Directors ignoring the superior claims of the petitioners. Thus, they claim that there is an infraction of Article 14 of the Constitution justifying their prayer for a direction to the respondents to accord to them the promotions to the cadre of Directors from the dates on which their juniors from the Select List have been promoted and for consequential benefits. The entire case of the petitioners rests on their inclusion in the Directors' Suitability List of 1985. According to the petitioners, a suitability list having been prepared and the names of the candidates

selected having been included in a particular order, the authorities could make appointments only in the order in which the names are included in the said list. The petitioners have given the names of persons who have been placed below the petitioners in the said list who have been given promotions. There is no dispute about such promotions having been given. Whereas the petitioners maintain that the list Annexure I titled 'Directors' Suitability List 1985' is a select list of candidates who have been found fit and suitable for promotion to the cadre of Directors, the stand taken by the respondents is that it is only a list of persons who come within the zone of consideration for promotion by selection to the cadre of Directors.

2. Though the list Annexure I is described as Directors' Suitability List, 1985, we find that the names of 39 officers included in the said list have been arranged in the order of seniority in the cadre of Deputy Secretaries. This would not have been normally the position if it was a list of candidates who were selected on the basis of relative merit for appointment to the cadre of Directors. The respondents have taken the stand that the list Annexure I is not a list of candidates selected for appointment to the cadre of Directors. They say that they may advert to the procedure followed in this behalf. They have taken the stand that there is a scheme as per Annexure R-I which regulates the filling up of the vacancies to the cadre of Directors and other superior posts. They have produced this scheme as Annexure R-I issued in October 1957. The object stated therein is to ✓ provide for systematic arrangements for manning senior administrative

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posts at the centre of and above the rank of Deputy Secretary.

Paragraph 2 of same indicates sources from which the appointments have to be made. Clause (c) of that paragraph adverts to the source to which we are concerned, namely, officers of the Selection Grade of the Central Secretariat Service. Paragraph 3 of the same speaks of the Controlling Authority. Paragraph 4 speaks of the Central Establishment Board. Paragraph 5 speaks of Reference to the Appointments Committee of the Cabinet. Part II of the scheme deals with the tenure deputation.

The respondents have also produced as per Annexure R-II ^{/dated 27-10-1970} / Office Memorandum prescribing the procedure for the selection and appointment of officers to Secretariat post of and above the rank of Under Secretaries to the Government of India and certain important Non-Secretariat posts. Paragraph (1) speaks of the Establishment Officer and prescribes his functions. Paragraph 2 speaks of the constitution and functions of the Senior Selection Board and Central Establishment Board. So far as the functions of the Central Establishment Board are concerned, it is, inter alia, provided that having regard to the merits, claims and availability of all officers in the field of choice for any particular vacancy, to make recommendations for the selection and appointment to all posts ^{/of} and above the rank of Under Secretary but below the rank of Joint Secretary to the Government of India in the Secretariat. Paragraph 3 deals with the Establishment Officer to the Government of India and prescribes his duties. Paragraph 4 contains the procedural instructions. For the sake of convenience, we shall extract the procedural instructions contained in paragraph 1 :

✓ "(1)(a) All vacancies, actual or impending in posts lying within

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the purview of the respective Boards shall be reported forthwith to the Establishment Officer to the Government of India with full details as to the nature and duration of the vacancy, a detailed description of the specific duties and responsibilities of the posts and the qualifications required and special qualifications, experience etc. if any, needed in the incumbent.

It will be open to Ministries and Departments to indicate at the same time the names of any particular officer or officers whose claims and suitability they wish the respective Boards or the Appointments Committee to consider.

- (b) The Establishment Officer, acting on behalf of the Boards, shall in all cases consider the claims, merits and availability of all officers within the field of choice and recommend a panel of three names for each vacancy, keeping in view educational qualifications, service, experience and special training required for effective performance of the job.

Provided that where a sufficient number of officers possessing the qualifications and experience necessary for a particular post is not readily available, the Establishment Officer may reduce the number of officers so included in the panel to two or one.

- (c) In considering the names suggested, every effort should be made by the Ministries to confine the final selection for a vacancy from among the names on the panel, and if in any particular case, the names on the panel are not acceptable, the Ministry concerned will inform the Establishment Officer of the detailed reasons as to why each officer suggested is not considered suitable.
- (d) The Establishment Officer, may then suggest another panel of names to the Ministry/Department for making a selection. If the Ministry/Department fail to make a selection out of the two panels, the Establishment Officer shall report the matter to the Board concerned for further instructions.
- (e) The Establishment Officer will present all relevant material together with his own recommendations, if any, for the consideration of the respective Boards and/or the Appointments Committee, as the case may be.

- (f) In all cases which do not require the orders of the Appointments Committee, final selection shall be made by the Minister concerned on the basis of the recommendations of the respective Board. All other cases shall be submitted by the Establishment Officer for the final orders of the Appointments Committee. "

3. These instructions contemplate the vacancies to the posts of Directors and other posts to be reported to the Establishment Officer with full details as to the nature and duration of the vacancy, the detailed description of the specific duties and responsibilities of the posts and the qualifications required and special qualifications, experience etc., if any, needed in the incumbent. The Establishment Officer is required to act on behalf of the Boards, and ^{/to} consider the claims, merits and availability of the officers in the field of choice. After such consideration, he has to recommend a panel of three names for each vacancy keeping in view educational qualifications, service, experience and special training required for effective performance of the job. The Ministry has to make a selection from the panel submitted by the Establishment Officer. If the Ministry does not find any one in the panel suitable for appointment, the Establishment Officer is required to prepare and forward another panel of three names. If the Ministry or the Department does not select any one from the second panel as well, the Establishment Officer has to report the matter to the Board concerned for further instructions. The Board has to be furnished with all relevant materials together with the recommendations of the Establishment Officer, if any, for consideration of the Board. The Board has to make the final selection. These are the broad features of the procedure required to be followed in the matter of selection for the

posts of Directors. The preparation of the list like Annexure I is not contemplated either by the scheme Annexure R-I or the procedure prescribed by Annexure R-II. It is, however, explained in the reply affidavit that such a list is prepared after receiving the names from all the Departments of persons who are found fit and suitable for consideration for selection to the cadre of Directors. It is pleaded that no element of selection is involved in the preparation of such a list. It is only a list consisting of names of persons who possess the requisite qualifications and whose names can be considered for selection and appointment to the cadre of Directors in accordance with the scheme and the procedure prescribed by Annexures R-I and R-II. In this background, it is not possible to accede to the contention of the petitioners that the list Annexure I is a list of candidates selected for promotion to the cadre of Directors and that, therefore, the vacancies in the cadre of Directors should be filled up in the order in which the names are included in the said list. As we are satisfied that it is not a select list of candidates for appointment to the cadre of Directors, the same not having been prepared following the scheme and procedure prescribed in respect thereof, the petitioners are not entitled to claim a relief on the basis of the inclusion of their names in the said list. It is obvious that if some of the candidates whose names are placed below the names of petitioners have been given promotion to the cadre of Directors, it is by subjecting them to the process of selection in accordance with the scheme and procedure prescribed by Annexures R-I and R-II. We have, therefore, no hesitation in holding that the petitioners are not entitled to seek a direction for

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appointment to the cadre of Directors as on the date on which persons whose names are placed below them in Annexure I have been appointed to that cadre.

4. It is not possible to accede to the contention that the procedure prescribed for selection is arbitrary on the ground that no guidelines which have the nexus with the object of securing the best man for the job have been prescribed. We find from the detailed instructions which we have summarised earlier that whenever there is a vacancy for the post of Director in a particular Department, they are required to notify the vacancy to the Establishment Officer and also specify the job requirements. The panel has to be prepared by the Establishment Officer having regard to the job requirements of the particular post. The Ministry or the Department is also required to make a selection from the panel taking into consideration the job requirements, specified earlier, while notifying the vacancies. The job requirements are required to be specified having regard to the nature and duties of the particular post so that the persons with the requisite qualifications and experience is selected for job. It is, therefore, not possible to accept the contention of the petitioners that the procedure is arbitrary for want of suitable guidelines. It is, however, maintained that one of the guidelines issued is that in the matter of making a selection, a Deputy Secretary who has served in a particular Department for a fixed long number of years, shall ^{/not} be considered for appointment to a vacancy in that Ministry of Department. It was submitted that experience in a particular Department should ordinarily be reckoned as qualification and not a disqualification. Even if the learned counsel for the petitioners is right in principle in maintaining

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that a candidate cannot be excluded on the basis of such an impermissible criteria, ~~we~~ have to examine ^{/whether} if such a guideline has in fact been prescribed. No order or communication has been produced by the petitioners in support of their case that such guidelines have been issued. A statement to this effect is made only for the first time in the rejoinder. Apart from the assertions made belatedly in the rejoinder, there is no material to indicate that such a guideline has been issued. Having regard to the scheme and the procedure as per Annexures R-I and R-II, it is difficult to comprehend the issuance of such a guideline. Be that as it may, we are not satisfied with ^{/the submission of} the petitioners that any guidelines have been issued.

5. It was also contended that in fact promotions have been given to the cadre of Directors on the basis of the list like Annexure I. In support of this contention, reliance is placed on the Order dated 4-1-85 filed by the petitioner along with the rejoinder. By the said Order, the President has accorded proforma promotion to Shri D.P.Das, Selection Grade Officer of the Central Secretariat Service working at the relevant point of time on deputation to the post of Vice-Chairman in the Central Board of Secondary Education, New Delhi. He has been accorded proforma promotion to the post of Director in the Central Secretariat with effect from the afternoon of 31st December, 1983, i.e., the date on which Shri T.V. Nayar who was senior to Shri Das in the suitability list was appointed as Director, until further orders. Firstly, it is necessary to point out that this plea is taken for the first time in the rejoinder and the respondents had, therefore, no opportunity to meet this part of the case. It is not possible to draw an inference on a perusal of this

Order that the suitability list like Annexure I was regarded as the basis for according promotions and not any further selection as contemplated by the scheme and procedure discussed earlier. From the perusal of this Order, it is clear that proforma promotion was given to Shri Das who was at the relevant point of time on deputation. The proforma promotion has been given from the date on which Shri T.V.Nayar was accorded promotion. It is reasonable to expect in the circumstances that the procedure prescribed was followed and that Shri Das was duly selected for promotion to the cadre of Directors but as Shri Das was not available for being posted as a Director he being on deputation in another post, the case of Shri Nayar who was next to him, was considered and he was selected for appointment. If both of Shri Das and Shri Nayar were thus subjected to the process of selection and Shri Das could not be given posting because he was on deputation, it is obvious that he has to be given proforma promotion as on the date on which Shri Nayar was actually promoted as Director. No inference from the said order is possible to draw to the effect that suitability list like Annexure I was regarded as the select list affording the foundation for appointment to the cadre of Directors without subjecting to the candidates to the procedure prescribed by Annexures R-I and R-II.

6. For the reasons stated above, this petition fails and is dismissed. No costs.

Anfodge
(S.R.ADIGE)
MEMBER(A)

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V.S. Malimath

(V.S.MALIMATH)
CHAIRMAN