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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1330/2004

New Delhi, this the 8th day of November, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)

Shri Jagdish Lal
S/o Late Shri Uttam Chand
Office Superintendent, CBI Academy
Hapur Road, Kamla Nehru Nagar
Ghaziabad (U.P.)
R/o H.No.B-1, Village Gazipur
Near Shiv Mandir, Delhi 110 096. ... Applicant

(Applicant in person)

Versus

1. Union of India through
Secretary
Cabinet Secretariat
DSPE Division, North Block
New Delhi.
2. Director
Central Bureau of Investigation
Block No.3, CGO Complex
Lodhi Road
New Delhi - 110 003. .. Respondents

(By Advocate: Sh. K.C.D.Gangwani)

ORDER

By Mr. Justice V.S.Aggarwal:

Applicant (Jagdish Lal), by virtue of the present application, seeks that being senior most Office Superintendent, his name should be allowed to be considered by holding a Departmental Promotion Committee meeting by Central Bureau of Investigation and quashing of the orders of 25.11.2003 and 15.12.2003. By virtue of the said orders, the representation of the applicant has been rejected. The order of 25.11.2003 reads:

"CBI may please refer to their ID
No.DPWSU203/00212/2/18/2001 dated 2-3-
2003, on the subject cited above.

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- 2 -

2. The matter was referred to CS Division/DOP&T who has stated that since the two posts of Administrative Officers, in question are cadre posts of CSS, it may not be possible to accede to the proposed decadrement specially in view of the fact that various grades in CSS are already facing acute stagnation."

2. Some of the relevant facts can conveniently be delineated.

The applicant joined as Lower Division Clerk in the year 1965. He was selected as Senior Clerk (Steno) in 1967 and worked upto 20.6.1976. He was further promoted as Head Clerk-cum-Accountant on 21.6.1976 and worked in these capacities till 28.11.1980. Thereafter, he was promoted as Crime Assistant and worked from 29.11.1980 to 15.2.1989. He was also promoted as Office Superintendent on 7.7.1989 and worked upto 7.1.1993. The suspension period was from 8.1.1993 to 29.4.1998. According to the applicant, the suspension period has to be treated as qualifying service. After the suspension was revoked, he continued to work as Office Superintendent.

3. The Central Bureau of Investigation was an attached office of Ministry/Department of Personnel & Training but presently it is under the Cabinet Secretariat.

4. The applicant contends that he is the senior most Office Superintendent. Two posts of Administrative Officers in question are cadre posts of Central Secretariat Service. The applicant is eligible to be considered and press that he should be so promoted after due consideration. In support of his claim, he contends that Shri Puran Chand and Shi Shyam Bihari Lal Sharma have been given such promotions.

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5. The application has been contested. Respondents plead that there was no post available with the Central Bureau of

Investigation in the rank of Assistant Director. The post of Assistant Director in Central Bureau of Investigation was withdrawn from the purview of the Central Bureau of Investigation by the Department of Personnel & Training after the retirement of Shri Shyam Bihari Lal Sharma and an officer of CCS cadre, namely, Dr. Tarsem Chand was posted as Administrative Officer in Central Bureau of Investigation. It is denied that the applicant is being discriminated.

6. The applicant appeared in person and made his submissions. We have also heard the respondents' learned counsel.

7. The applicant urged that two other similarly situated persons have been given the benefit and the applicant cannot be discriminated. As against this, respondents' plea was that the two posts with the designation of Administrative Officer in Central Bureau of Investigation were included as duty post in Grade-I of CSS cadre as per entry V under the Ministry of Home Affairs, in pursuance of Second Schedule to the CSS Rules, 1962 and consequently, once it had been decided to restore the post of Assistant Director to its original status as Grade-I of CSS, the applicant cannot be granted the said relief. In support of his claim, the respondents relied upon the Office Memorandum of 13.11.1996, which reads as under:

"The undersigned is directed to refer to CBI's ID No.4/6/87-Ad.V dated 21st June, 1996 on the subject mentioned above and to say that the proposal of the CBI to continue the post of AD(E) in CBI has been considered in consultation with the Central Services Division of this Department and the Union Public Service Commission. The UPSC has opined that two posts with the designation of Administrative Officer in the CBI is included as duty post in

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Grade I of CSS as per entry V under MHA under the second schedule to the CSS Rules, 1962. The Commission has also stated that one of these two posts was excluded from CSS during 1988 without consultation of the Commission. Whereas under the CSS Rules, no posts in the selection Grade/Grade-I of CSS could be excluded from CSS without their consultation.

2. The UPSC has further opined that it is essential that the post in question is manned by experienced personnel like CSS or other Central Group 'A' services and that it is not in the interest of administrative efficiency that the post is manned by a departmental officer of CBI who exclusively come from the clerical cadre of the CBI.

3. In view of the reasons mentioned above it has been decided to restore the post of AD(E) to its original status as Grade-I of CSS of the MHA cadre and to fill it from amongst a CSS officer. Further necessary action being taken to fill this post at an early date."

8. So far as the plea of discrimination is concerned, we find no reason to accept the same. If certain persons have been given some benefit, it necessarily does not amount to discrimination. Facts of each case necessarily have to be viewed and examined. As is apparent from Office Memorandum of 13.11.1996, there were two posts of Assistant Directors. The same were withdrawn and they were restored in the Grade-I of CSS. In that view of the matter, once the posts, which were given to the CBI, are withdrawn and placed in the cadre of Grade-I of CSS, the applicant cannot claim that he has been discriminated. Necessarily, the applicant can only be considered for promotion in the present set up.

9. In exercise of the powers under Article 309 of the Constitution of India, the Central Secretariat Services Rules, 1962 have been drawn. The cadre has been within Rule 2(e) of Group

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'B' of Section Officer and Assistant in different Ministries. It reads as:

"(e) "cadre" means the group of posts in the Grades of Section Officer and Assistant in any of the Ministries or Offices specified in column (2) of the First Schedule and in all the Offices specified against such Ministry or Office in column (3) of that Schedule;"

10. Cadre officer has also defined under Rule 2(g) and it means a member of the Service of the Section Officers' Grade or Assistants' Grade, as the case may be, and includes a temporary officer approved for long term appointment to that Grade. Rule 7 of the said Rules is important and reads as under:

"7. Exclusion of duty posts from the cadre.- Except in the case of the Selection Grade or Grade I of the Service, any duty post in a Grade may be declared by the cadre authority, with the concurrence of the Central Government in the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions to be excluded from the Cadre-

- (i) if such post is required, for the time being, to be filled by the appointment of persons possessing special or technical qualifications or experience; or
- (ii) if it is necessary, for the time being, to fill such post by a person other than a cadre officer of the appropriate Grade.


and the post shall remain excluded from the cadre so long as such declaration remains in force."

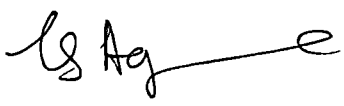
Perusal of this Rule clearly indicates that except in the case of Selection Grade or Grade-I, any duty post in the grade can be declared by the authority concerned after concurrence of the Central Government to be excluded from the cadre. The post is to remain excluded from the cadre so long as such declaration remains in force. Once the post had been withdrawn and brought

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back in the fold of the Central Secretariat Service, we find no reason to hold that applicant has a right that he must be promoted or considered for the promotion. Once the posts have been so withdrawn, channel of promotion has been put an end to. Resultantly, we find that the plea of the applicant in this regard cannot be accepted.

11. For these reasons, the Original Application, being without merit, must fail and is dismissed.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Chairman

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