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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 304 /2004

This the 21st day of JULY, 2004

BENCH :

HON'BLE SH. SHANKAR RAJU, MEMBER (J)

HON'BLE SH. S. A. SINGH, MEMBER (A)

HON'BLE _____

T. K. GHOSH — Sh. A.S Saran, Sr. Adv. with Sh. Amit Kumar.

vs.

UOI — Sh. K. R. Sachdeva.

1) Whether to be referred to Reporter? Yes ✓

2) Whether to be circulated to other Benches? Yes. ✓

3) Whether to be released to Press? No

S. Raju

(SHANKAR RAJU)
Member ~~(A)~~ (~~J~~)

(5)

Central Administrative Tribunal
Principal Bench

Original Application No. 304 of 2004

New Delhi, this the 21st day of July, 2004

Hon'ble Shri Shankar Raju, Member (J)
Hon'ble Shri S.A. Singh, Member(A)

T.K. Ghosh, IAS,
Director,
Ministry of Coal,
Shastri Bhawan,
New Delhi - 110 001. ...Applicant

(By Advocate: Sh. A.S. Saran, Senior Advocate with
Shri Amit Kumar)

-versus-

Union of India through
Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievance &
Pensions, North Block,
New Delhi. ...Respondent

(By Advocate: Shri K.R. Sachdeva)

O R D E R

By Shankar Raju, Member (J):

Applicant has assailed criteria adopted by the respondent whereby denying him empanelment to the post of Joint Secretary, with the following reliefs:

> "(a) Direct the respondent to consider the applicant for empanelment of the applicant to the post of Joint Secretary;
>
> (b) Pass such further orders as it may deem fit and proper in the facts and circumstances of the case."

2. A brief factual matrix relevant for the adjudication is enumerated. Applicant admittedly belongs to Bihar Cadre of Indian Administrative Service and was

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promoted as Joint Secretary in his cadre in the scale of Rs. 18400/22400/- on 12.5.2003 and was eligible as per Central Staffing Scheme of the Govt. of India for being considered for empanelment as Joint Secretary on central deputation.

3. Applicant, who was on central deputation from his home cadre till 13.5.2004, as informed by the learned senior counsel his tenure had been extended.

4. Applicant along with other batch members on the basis of ACRs upto ~~the~~ year 1999 have been assessed for being considered for empanelment at the level of Joint Secretary in the year 2001 which was completed in 2002 on the basis of recommendation of Civil Services Board (hereinafter referred to as CSB). The Appointments Committee of the Cabinet (hereinafter referred to as ACC) approved the empanelment of 1983 batch of IAS officers holding Joint Secretary and equivalent post in February, 2003. However, in case of the applicant, as he was not found suitable, he was not empanelled. However, as a review, he was to be considered on availability of further ACRs for the years 2000 and 2001. However, his case was not taken up for the review on the ground that as on 31.12.2003 he had less than three years to retire on superannuation, gives rise to the present O.A.

5. As per CSS, which has been issued by the DOP&T, a Member of the IAS, who is allotted different State cadre, is to claim promotion to the higher rank in his parent cadre. Those who are on central deputation

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are given options on their turn for promotion to opt parent cadre to avail promotion. Appointments to the post of Joint Secretary, which are not included in the cadre of any service, are made under the CSS. Not only members of the All India Service but members of other Central Civil Services Grade'A' also participate in the Central Staffing Scheme along with members of the Central Sectt. Services and on their fitment on assessment, they are empanelled. These are tenure deputations which extend to five years. The Scheme is in vogue for more than 35 years. Those who are taken on tenure deputation following procedure laid down in the Scheme have to serve at the Centre. Even if one is empanelled, he is to be kept in a pool and on exigency and requirement with the concurrence of the concerned Minister, they are taken on central deputation. Otherwise one has no right to be appointed to the post or being empanelled. A common pool is prepared to that effect. Though the CSS does not provide any cut off date for consideration in initial screening or on first and second review as well as special review for empanelment yet as an established practice, the cut off date of 31st December of each year in which a particular batch is considered for empanelment is followed. The batchmates of the applicant have been considered on the basis of this cut off date. Those who are to attain the age of retirement on superannuation within three years from this date, have not been considered in the initial assessment held in February, 2003. The circulation for first review was initiated on 16.4.2003, which is not disputed.

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6. In the above backdrop, we may now highlight the submissions made by the rival parties. Learned senior counsel appearing on behalf of applicant Shri A. Saran with Sh. Amit Kumar vehemently opposed the cut off date by citing a Constitutional Bench's decision of the Apex Court in the case of **D.S. Nakara vs. Union of India,** 1983 SCC (L&S) 145 contended that any action of the Govt. and classification made has to pass twin tests of intelligible differentia and reasonableness with the object sought to be achieved. If the cut off date is arbitrary offends the principle of equality, the action of the respondents cannot be countenanced.

7. In furtherance of the above, it is contended that the cut off date has no bearing as to the empanelment to the post of Joint Secretary. The date of superannuation has also no role to play. By referring to CSS, it is stated that as a fundamental right, the applicant has a right to be considered and this cannot be curtailed on flimsy grounds. The cut off date has no reasonable nexus with the object sought to be achieved.

8. Learned counsel states that after one central deputation of an officer of IAS in State cadre one has to go back to avail the cooling off period but the same has been condoned in several cases one of which is Shri Sunil Kumar, IAS (1967:MT) and Shri J.S. Burgia, IAS (Jharkhand 1981). It is further stated by highlighting invidious discrimination violative of Articles 14 and 16 of the Constitution that one Smt. Rashmi Verma, IAS 1982 batch of Bihar cadre was empanelled as Joint Secretary when she had less than 3 years left for her retirement.

Accordingly, it is stated that this cut off date has not been adhered to uniformly rather metes out hostile discrimination.

9. Learned counsel states that the only instructions are CSS which do not prescribe any cut off date except 31st May in para 17.03 for reversion to the parent cadre. The respondents have assigned the cut off date not on the basis of any circular, rule, instructions and guidelines but it is on the basis of practice followed which cannot be countenanced for want of any guidelines. Prescription of cut off date is arbitrary only as it violates fundamental right of consideration for empanelment.

10. On the other hand, respondent's counsel vehemently opposed the contentions. Shri K.R. Sachdeva contends that the CSS is a code in itself which is in vogue for more than 35 years. One has no right for appointment under the Centre even on inclusion. According to him, assuming the applicant is empanelled in the first review even then a common pool is prepared from which persons are taken on central deputation. Once a central deputation tenure as per CSS expires, a cooling off period of three years is a pre-requisite for consideration for next central deputation. Even if the applicant had been empanelled in 2003, he would have to wait for another three years and those who have approached the date of superannuation, the relief claimed is not practicable.

11. Shri Sachdeva contends that along with the batch of 1983, the process of which was completed in 2002, CSB with the approval of the ACC empanelled certain persons on the posts of Joint Secretary. However, applicant was not found suitable. By the time the internal circulation started on 16.4.2003, on availability of two additional ACRs of the applicant, as per CSS his case was not taken up in review as he had less than three years service and thereafter has to attain the age of superannuation on 30.11.2006. As per the CSS, five years' tenure is prescribed as Joint Secretary and Director and, therefore, the applicant would not have been deputed on central deputation. Applicant, who was duly considered as per extant procedure and norms, has no valid grievance.

12. Referring to the several decisions of the Apex Court, it is stated that a policy decision of the Govt. and fixation of cut off date if does not meet out differential treatment and treats equals at par, the same cannot be questioned in judicial review.

13. The reasonableness and its nexus with the objects sought to be achieved has been explained by stating that several officers of same batch, who were to be considered for empanelment in a particular year have different dates of superannuation. To simplify the procedure and to avoid chaotic situation, the last date of the year has been taken as a cut off date which has been equally applied to the similarly circumstanced members of 1983 batch and as a few of them are not even considered in initial assessment on the ground of their

approaching the age of superannuation, there is no invidious discrimination and the action of the respondents is perfectly legal and valid and in consonance with Article 14 of the Constitution of India.

14. We have carefully considered the rival contentions of the parties and perused the material on record.

15. No doubt, fixing of cut off date is a policy decision and is in the exclusive domain of the executive and cannot be assailed in a judicial review unless it is found to be violative of Articles 14 and 16 of the Constitution of India or the action is malafide. In the above conspectus, we may refer to two important judgments of the Apex Court. In **P.U. Joshi vs. The Accountant General, Ahmedabad & Ors.**, 2003(1) SCSLJ p.237, the following observations have been made:

> "10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and with in the exclusive discretion and jurisdiction of the State subject of course, to the limitations or restriction envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtruction the qualifications, eligibility criteria and other conditions of service including avenues of

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promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts r cadres by underrating further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

In the case of **Balco Employees' Union (Regd.) vs. Union of India,** (2002)2 SCC 333, the following ratio has been laid down:

"46. It is evident from the above that it is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

47. Process of disinvestment is a policy decision involving complex economic factors. The courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as

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> both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on Part III of the Constitution or Article 311 then it cannot stand to reason that like the petitioners, non/government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of Part III of the Constitution, can claim a superior or better right than a government servant and impugn its change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision."

16. If one has regard to the above, what is discernible is that the scope of judicial review would extend only when the policy is violative of the principle of equality, contrary to law or is malafide.

17. It is trite law that cut off date is the prerogative of the Executive. However, its reasonableness and relevance to the object sought to be achieved is to be examined to remove any possibility of

unreasonableness to a class of people offending principle of equality. The Constitutional Bench in the case of **D.S. Nakara vs. Union of India, 1983** SCC (L&S) 145 on discrimination, the following observations have been made:

> "16. As a corollary to this well established proposition, the next question is, on whom the burden lies to affirmatively establish the rational principle on which the classification is founded correlated to the object sought to be achieved? The thrust of Article 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of things the society being composed of unequals a welfare State will have to strive by both executive and legislative action to help the less fortunate in the society to ameliorate their condition so that the social and economic inequality in the society may be bridged. This would necessitate a legislation applicable to a group of citizens otherwise unequal and amelioration of whose lot is the object of State affirmative action. In the absence of doctrine of classification such legislation is likely to flounder on the bed rock of equality enshrined in Article 14. The Court realistically appraising the social stratification and economic inequality and keeping in view the guidelines on which the State action must move as constitutionally laid down in Part IV of the Constitution, evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succour. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle co-related to thee object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but co-relate it to the objects sought to be achieved. This approach is noticed in Ramana Dayaram Shetty vs. International Airport Authority of India when at SCR page 1034 (SCC p.506), the Court observed that a discriminatory

> action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

18. Regarding cut off date, an observation made in **D.S. Nakara's** case (supra) is relevant to be highlighted.

> "53. The Court held that the Central Government cannot pick out a date from a hat and that is what it seems to have done in saying that a period prior to that date would not be deemed to be approved by the Central Government within the second proviso. In case before, us, the eligibility criteria for being eligible for liberalised pension scheme have been picked out from where it is difficult to gather and no rationale is discernible nor one was attempted at the hearing. The ratio of the decision would squarely apply to the facts of this case."

19. As regards to equality, in the light of policy decision, the following observations have been made by the Apex Court in the case of **Vijay Lakshmi vs. Punjab University,** 2004 SCC(L&S) 38:

> "(b) Now, we would next refer to the decision in Air India vs. Nargesh Meerza which propounds the right of equality under Article 14 after considering various decisions. In that case, the constitutional validity of Regulation 46(i)(c) of the Air India Employees' Service Regulations was challenged, which provides for retiring age of an air hostess. The Court (in para 39) summarized thus: (SCC pp.353-54)
>
> "39. Thus, from a detailed analysis and close examination of the cases of this Court starting from 1952 till today, the following propositions emerge:
>
> (1) In considering the fundamental right of equality of opportunity a technical, pedantic or doctrinaire approach should

not be made and the doctrine should not be invoked even if different scales of pay, service terms, leave, etc., are introduced in different or dissimilar posts.

Thus, where the class or categories of service are essentially different in purport and spirit, Article 14 cannot be attracted.

(2) Article 14 forbids hostile discrimination but no reasonable classification. Thus, where persons belonging to a particular class in view of their special attributes, qualities, mode of recruitment and the like, are differently treated in public interest to advance and boost members belonging to backward classes, such a classification would not amount to discrimination having a close nexus with the objects sought to be achieved so that in such cases Article 14 will be completely out of the way.

(3) Article 14 certainly applies where equals are treated differently without any reasonable basis.

(4) Where equals and unequals are treated differently, Article 14 would have no application.

(5) Even if there be one class of service having several categories with different attributes and incidents, such a category becomes a separate class by itself and no difference or discrimination between such category and the general members of the other class would amount to any discrimination or to denial of equality of opportunity.

(6) In order to judge whether a separate category has been carved out of a class of service, the following circumstances have generally to be examined:

(a) the nature, the mode and the manner of recruitment of a particular category from the very start,

(b) the classifications of the particular category,

(c) the terms and conditions of service of the members of the category,

(d) the nature and character of the posts and promotional avenues,

(e) the special attributes that the particular category possesses which are not to be found in other classes, and the like." (emphasis in original).

9. Apart from various other decisions, the Court referred to **Western U.P. Electric Power & Supply Co. Ltd. vs. State of U.P.**, wherein this Court held thus: (SCC p. 821, para 7):

"7. Article 14 of the Constitution ensures among equals: its aim is to protect persons similarly placed against discriminatory treatment. It does not however operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law.""

20. As regards the cut off date, the Apex Court in the case of **Ramrao & Ors. vs. All India Backward Class Bank Employees Welfare Assocciation & Ors.**, 2004 SCC (L&S) 337, has made the following observations:

"29. It is now well settled that for the purpose of effecting promotion, the employer is required to fix a date for the purpose of effecting promotion and, thus, unless a cut off date so fixed is held to be arbitrary or unreasonable, the same cannot be set aside as offending Article 14 of the Constitution of India. In the instant case, the cut-off date so fixed having regard to the directions obtained by the National Industrial Tribunal which had been given a retrospective effect cannot be said to be arbitrary, irrational, whimsical or capricious.

30. The learned counsel could not point out as to how the said date can be said to be arbitrary and, thus, violative of Article 14 of the Constitution of India.

31. It is not in dispute that a cut-off date can be provided in terms of the provisions of the statute or executive order. In **University Grants Commission vs. Sadhana Chaudhary** it has been observed: (SCC p. 546, para 21).

"21...It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming

for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide off the reasonable mark (See: **Union of India vs. Parameshwaram Match Works,** SCC at 310: SCR at p. 579 and Sushma Sharma (Dr) vs. State of Rajasthan, SCC at 66: SCR at p. 269)"

32. If a cut-off date can be fixed, indisputably those who fall within the purview thereof would form a separate class. Such a classification has a reasonable nexus with the object which the decision of the Bank to promote its employees seeks to achieve. Such classifications would neither fall within the category of creating a class within a class or an artificial classification so as to offend Article 14 of the Constitution of India.

33. Whenever such a cut-off date is fixed, a question may arise as to why person would suffer only because he comes within the wrong side of the cut-off date, but, the fact that some persons or a section of society would face hardship, by itself cannot be a ground for holding that the cut-off date so fixed is ultra vires Article 14 of the Constitution.

34. In **State of W.B. vs. Monotosh Roy** it was held : (SCCC pp. 765-77), paras 13-15).

"13. In **All India Reserve Bank Retired Officers Assn. vs. Union of India** a Bench **of this Court** distinguished the judgment in Nakara and pointed out that it is for the Government to fix a cut-off date in the case of introducing a new pension scheme. The court negatived the claim of the persons who had retired prior to cut-off date and had collected their retiral benefits from the employer. A similar view was taken in **Union of India vs. P.N. Menon.** In **State of Rajsthan vs. Amrit Lal Gandhi** the ruling in P.N. Menon case was followed and it was reiterated that in matters of revising the pensionary benefits and even in respect of revision of scales of pay, a cut off date on some rational or reasonable basis has to be fixed for extending the benefits.

14. In **State of U.P. vs. Jogendra Singh** a Division Bench of this Court held that liberalized provisions introduced after an employee's retirement with

regard to retiral benefits cannot be availed of by such an employee. In that case the employee retired voluntarily on 12.4.1976. Later on, the statutory rules were amended by notification dated 18.11.1976 granting benefit of additional qualifying service in case of voluntary retirement. The Court held that the employee was not entitled to get the benefit of the liberalized provision which came into existence after his retirement. A similar ruling was rendered in **V. Kasturi vs. Managing Director, State Bank of India.**

15. The present case will be governed squarely by the last two rulings referred to above. We have no doubt whatever that the first respondent is not entitled to the relief prayed for by him in the writ petition."

35. In **Vice-Chairman & Managing Director, A.P. SIDC Ltd. vs. R. Varaprasad** in relation to "cut-off" date fixed for the purpose of implementation of Voluntary Retirement Scheme, it was said: (SCCC p.580, para 11).

"The employee may continue in service in the interregnum by virtue of clause (i) but that cannot alter the date on which the benefits that were due to an employee under VRS were to be calculated. Clause (c) itself indicates that any increase in salary after the cut-off point/date cannot be taken into consideration for the purpose of calculation of payments to which an employee is entitled under VRS."

36. The High Court in its impugned judgment has arrived at a finding of fact that the Association had failed to prove any malice on the part of the authorities of the Bank in fixing the cut-off date. A plea of malice as is well known must be specifically pleaded and proved. Even such a requirement has not been complied with by the writ petitioners.""

21. If one has regard to the above, fixing of cut-off date cannot be faulted. Cut-off date though affects a section of persons who would face hardship but this has been prescribed for effecting the promotion and in the present case 'empanelment'. Cut-off date should not be arbitrary or unreasonable and should have a

reasonable nexus. Merely because few of the persons are affected cannot be a ground to declare it ultra vires of Article 14 of the Constitution of India.

22. In order to sustain an infringement to the concept of equality, denial of equal treatment as sine qua non preceedes establishment of unequal treatment between persons similarly circumstanced.

23. In the light of the above case laws, let us examine the contentions putforth by the respective counsel.

24. There cannot be getting away from the fact that right to consider for promotion is a fundamental right as per Articles 14 & 16 of the Constitution of India as ruled out by the Apex Court in the case of **Dwarka Prasad & Ors. vs. Union of India, 2004(1) ATJ SC 591.** However, empanelment for central deputation under the CSS is governed by clauses 10 to 13, which are reproduced as under:-

> "10. The cases of such officers who were not included in any panel in a particular year would be reviewed together after a period of two years i.w. when two more annual confidential reports on their performance have been added to their CR dossiers. Another such review maybe conducted after a further period of two years.
>
> 11. A special review may be made in the case of any officer whose CR undergoes a material change as a result of his representation being accepted against recording of adverse comments on his annual confidential report.
>
> 12. The Cadre Controlling authorities would be informed of the names of officers under their administrative control as and when they are included in the panel finalised with the ACC approval.

> 13. Inclusion in the panel of officers adjudged suitable for appointment as Joint Secretary or equivalent would be a process of selection based on the criteria of merit and competence as evaluated by the senior members of the Committee/Board on the basis of CR dossiers."

25. If one has regard to the above, at the level of post of Joint Secretary, CSB finalises the panel for submission to the ACC. No doubt one has a right to be considered for empanelment but inclusion in the panel would not alone confer an indefeasible right for appointment in the Centre.

26. The case of the applicant was considered for empanelment along with officers of 1983 batch to which he belongs, in February, 2003 on the basis of ACRs upto the year 1999. On meticulous assessment, the applicant was not found fit for empanelment. However, the first review as envisaged in para 10 of the Scheme ibid on availability of two ACRs for the years upto 2001, was to be undertaken, which circulated in April, 2003. His case was though considered but was not processed for assessment as the respondents had on a past recognized practice while considering the batches of IAS for empanelment for central deputation of those who are to attain superannuation within three years on 31st day of December of the year in which a particular batch is taken up either for initial assessment or second review. Therefore, it would be a futile exercise.

27. In so far as vires of the cut off date is concerned, in view of Nakara's case (supra), the cut off date cannot emerge from the hat of the Government without any reasonable basis. This cut off date has to pass twin

tests of intelligible differentia and object sought to be achieved in consonance with Article 14 of the Constitution of India.

28. Under the CSS, the maximum tenure for central deputation as Joint Secretary/Director is five years from the parent cadre. This can be curtailed or extended in exceptional cases. There are instances when a person has been empanelled with less than three years' service to his/her credit. There are also examples where the cooling off period of three years has been condoned but exceptions cannot be examples. In the peculiar facts and exigency of service, the decision taken would not create a precedent.

29. After the central deputation, one has to avail cooling off period of three years in the State cadre before seeking consideration for empanelment. The applicant, whose tenure of central deputation had come to an end in May, 2004 and he was to attain the age of superannuation on 30.11.2006. Accordingly after cooling off period is availed, there is hardly any service left to be empanelled for Joint Secretary and picked up for central deputation. This is one of the reasons for which the applicant had not been assessed in the review.

30. As regards the cut off date on 31.12.2003, apart from the officers of IAS from different batches who attained superannuation in different months of the year, if three years' embargo is applied from month to month basis, it would lead to an administrative chaotic situation. To avoid this and to work out simplified procedure, which is transparent, i.e., 31st day of the

last month i.e. December has been picked up as the cut off date so that all the officers of the batch whose dates of birth are varying from month to month, a uniform decision to consider empanelment and to levy the embargo of less than three years can be applied. We do not see any irrationality or arbitrariness in fixation of this cut off date. This cut off date is based on an intelligible differentia with an object sought to be achieved i.e. to induct those persons who have utility and service to their credit for central deputation. A common pool is also prepared from where officers are picked up as per their expertise and performance in the field. This is also with a view to have smooth administration and excellence in the field. Though cooling off period, as stated by the learned senior counsel appearing on behalf of the applicant, has been condoned in few cases but those are in exceptional circumstances. Where the Joint Secretaries have been empanelled who have less than three complete details, no discrimination can be alleged. Moreover, we find that the case of Smt. Rashmi Verma cited by the applicant is of a different batch.

31. It is not established that any person having less than three years from 1983 batch had been empanelled de hors the cut off date as Joint Secretary for central deputation rather about 13 officers on an assessment held in February, 2003 who had to superannuate within three years have not even been considered for initial assessment taking the cut off date. In the first review as well, apart from the applicant two more incumbents,

who had less than three years' service as on 31.12.2003, have not been subjected to the assessment in first review.

32. One of the contentions raised is that except in para 17.03 of the CSS, no cut off date is prescribed. The respondents are not within their rights without any instructions, rules, guidelines and notifications to prescribe such a cut-off date. This cannot be countenanced. Assuming the only code for empanelment is CSS, if this is silent on cut off date, the same can be supplemented through an administrative decision which does not override the Scheme and is not inconsistent with it. We do not find any inconsistency between the cut off date and the CSS as the Scheme does not provide any cut off date. Being a policy decision, if passes the twin tests under Article 14 of the Constitution of India and does not amount to an arbitrary or malafide action of the respondents, cannot be a matter of judicial review and is valid in all respects. This cut off date of last month of the year is being consistently followed as a practice and a policy decision of the Government is being uniformly applied to all the batches of the IAS officers.

33. The Apex Court in **Ramrao's case** (Supra) has clearly held that only because a person comes on the wrong side of the cut off date cannot be a ground for declaring the cut off date as ultra vires. The cut off date is arbitrary and offends principle of equality only when the effect of it creates a separate class. Apart from it, even if there is a separate class and if the classification has reasonable nexus with the object sought to be achieved, principle of equality is not offended.

All the batch officers of 1983 are treated equally. The cut off date i.e. 31.12.2003 has been uniformly applied to them. Accordingly, we do not find the action of the respondent as arbitrary or irrational.

34. In **Vijay Lakshmi's** case (supra) a rational classification is not an antithesis to the Article 14 of the Constitution. It has to be established that the persons similarly circumstanced have been meted out differential treatment and batchmates of the applicant are treated alike and even if it is assumed that the other batch officers have been given differential treatment, the same has been given in exceptional circumstances and has a reasonable nexus with the object sought to be achieved which do not partake the character of invidious discrimination.

35. In our considered view, the applicant though considered on the basis of this reasonable cut off date, was not found fit to be empanelled would not acquire an indefeasible right for empanelment or for central deputation.

36. In this view of the matter, we do not find any merit in the O.A. which is accordingly dismissed with no order as to the costs.

(S.A.Singh)
Member (A)

(Shankar Raju)
Member (J)

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