

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the day, 08th day of July Two Thousand Twenty One

PRESENT:

THE HON'BLE Shri S.N. TERDAL, MEMBER(J)

THE HON'BLE Shri T. JACOB, MEMBER(A)

M.A./310/212/2020

IN &

O.A.310/1599/2018

Dayanand Kataria I.A.S. (TN-1989),
R/o.A-1/12, SAF Games Village,
Koyambedu,
Chennai- 600 107.

.....Applicant(Both in MA&OA)

(By Advocate: M/s. V. Vijay Shankar)

Vs.

Union of India Rep. by the
Secretary to Government,
Department of Personnel and Training,
North Block,
New Delhi- 110 001.

...Respondent (Both in MA&OA)

(By Advocate: Mr. Su. Srinivasan, Sr. CGSC)

ORDER

(Pronounced by Hon'ble Mr. S.N. Terdal, Member(J))

M.A.212/2020 filed by the applicant for advance hearing of the OA is heard and allowed.

2. The applicant in the OA has sought for the following reliefs:-

"Declaring the "360 Degree Appraisal" system ab initio illegal and void and violative of the principles of natural justice and consequently issue directions to the Respondent for empaneling the applicant as Additional Secretary to GOI w.e.f. 19/07/2018 i.e. the date on which the IAS batch of 1989 was considered for empanelment."

3. The brief facts of the case, according to the applicant, are as follows:-

The applicant is a 1989 batch IAS Officer of Tamil Nadu State Cadre and has served for more than 29 years with outstanding career records. He was duly empanelled as 'Joint Secretary' in the year 2012 along with other IAS officers of 1989 batch. However, despite being no dis-qualification, he was not empanelled as 'Additional Secretary' in the year 2018 when IAS officers of 1989 batch were taken up for consideration. He understood that he was not empaneled as 'Additional Secretary' because of "360 Degree Appraisal" which is a new component of empanelment process introduced in 2016. As the applicant was not given the reason as to why he was not empaneled even after his representation, he applied under RTI Act seeking certified copies of all the papers including notice and correspondence under the relevant file and

○ also the proceedings of the Appointments Committee of the Cabinet (ACC) wherein his empanelment was dealt with, but his RTI application was turned down. His further RTI application seeking details of the members of the Expert Panel (EP) was also turned down. His empanelment as 'Additional Secretary' is extremely vital and entry-gate for consideration of future promotion as 'Secretary' to Government of India and Cabinet Secretary and, as such, he is prejudicially affected in his career advancement by the said "360 Degree Appraisal". The said appraisal system is contrary to the Central Staffing Scheme (CSS) dated 5.1.1996 and subsequent guidelines dated 01.01.2008 and it is inconsistent with various provisions of All India Services (Performance Appraisal Report) Rules, 2007 (hereinafter called 'Rules of 2007'). Under the said Rules of 2007, APARs are prepared by the immediate Supervising Authority who has supervised the working of the officer for at least three months of the relevant assessment year and the said reports are reviewed by the Reviewing Authority who has also seen the performance of the Officer for at least three months of the relevant assessment year and the Accepting Authority also must have seen the officer at least three months for the year for which the APAR is written. The applicant has been assessed by more than 87 Supervising Officers in his service career upto the year 2012. Under the said Rules of 2007, if the Reporting authority or Reviewing Authority or

Accepting Authority has not seen the performance of the officer for at least the said three months, then they are not entitled to write or review or accept the APARs; if the said authorities are required to write, review or accept the APARs, within a time schedule; in case they do not write, review or accept within the time schedule, they are disentitled to do the same; in case the entire process for the year is not completed before December, then no APAR shall be written for that year; in case any of this Reporting, Reviewing or Accepting Authorities were to retire, then they cannot Write, Review or Accepting the APAR after their retirement; for every year APARs attain finality in the month of December of the subsequent year and, thereafter, there is no question of reopening the APARs; there is no scope for giving any feedback under the said rules of 2007 by any person who has not seen or supervised the work of the officer. The '360 Degree Appraisal' is inconsistent with the said Rules of 2007 and, therefore, the said 2016, '360 Degree Appraisal' is capricious, opaque, unscientific, unjust and unfair. Further, the '360 Degree Appraisal' has been seriously objected by Rajya Sabha's "Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice" in its 92nd Report. The said averments made by the applicant in this OA are as extracted below:-

A) The applicant belongs to the 1989 batch of the Indian Administrative Service (IAS), Regular Recruit, borne on the Tamil Nadu State cadre of the said service. Applicant is presently posted as Principal Secretary to Government of Tamil Nadu, Department of Co-operation, Food &

Consumer Protection, Secretariat, Chennai-600009. Over the past 29 years, the applicant has had an outstanding career record as an IAS officer and has discharged his duties with the utmost sincerity, efficiency, integrity, dynamism and creativity. He has earned an excellent reputation for his ability to take decisions quickly, implement them resolutely, deliver results and improve systems while maintaining cordial relationship with all stakeholders.

B) The applicant was duly empanelled by the Government of India (GoI) as Joint Secretary to the GoI in the year 2012 along with such other IAS officers of the 1989 batch as were found eligible for empanelment after a rigorous process of scrutiny prescribed for the purpose. The post of Joint Secretary to GoI is just one rank below that of Additional Secretary to GoI and two ranks below that of Secretary to GoI. The criteria for the empanelment for Joint Secretary, Additional Secretary and Secretary level posts are exactly the same and are as stipulated in the Central Staffing Scheme dated 05.01.1996 and the guidelines dated 01.01.2008 for assessing the suitability of IAS officers for such empanelment.

C) To the utter surprise and dismay of the applicant and despite there being no disqualification whatsoever attached to his claim, the applicant was not empanelled as Additional Secretary to GoI in July, 2018 when IAS officers of the 1989 batch were taken up for consideration. The applicant's name doesn't appear in the Department of Personnel and Training (DoPT)'s Information Note No. 35/2/2018-EO(SM-I)(1) dated 19.07.2018 which indicates the names of 34 IAS officers of the 1989 batch empanelled as Additional Secretaries and 7 officers as Additional Secretaries-equivalent. In spite of the applicant making a representation dated 21.07.2018 to the DoPT to disclose the reasons for his non-empanelment followed by a reminder dated 10.09.2018, the respondent has steadfastly not disclosed the reasons for the same.

D) The applicant submits that he had been empanelled as Joint Secretary to GoI in the year 2012 which is proof that the applicant had a fine career until that point of time. In fact even subsequently, the applicant had obtained only "OUTSTANDING" ratings in the Annual Performance Appraisal Reports (APAR) in all the years from 2011 onwards. The applicant's integrity has been impeccable throughout his 29-year career in the IAS, and no Vigilance Enquiry was ever ordered or is pending against him. Therefore, there was absolutely no ground for not empanelling the applicant as Additional Secretary to GoI. The action of the respondent in not empanelling the applicant is arbitrary, unfair and unjust, and its refusal to furnish the reasons therefor reveals lack of transparency, sincerity and accountability.

E) The applicant understands that the probable reason why he was not empanelled as Additional Secretary to Gol is the "360 Degree Appraisal" or "Multi Source Feedback" (MSF) done by the respondent which is a new component of the empanelment process introduced in April 2016. According to the written submission made in the year 2017 by DoPT before the Rajya Sabha's Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice during hearings relating to "Appraisal and Empanelment of Civil Servants under the Central Government", the "360 Degree Appraisal" provides for collection of feedback about an officer from a minimum of 5 stakeholders such as Seniors, Juniors, Peers, External Stakeholders and serving Secretaries by an "Experts Panel" constituted by Gol. The Experts Panel takes feedback on seven attributes which include decision making, ownership, pro-activeness, delivery, leadership, honesty and suitability for higher positions. Thus, the assessment of the officer is "supposedly made not just on his ACR/APARs, but also on the above qualities and his/her general reputation as determined by the "360 Degree Appraisal".

F) The applicant submits that the "360 Degree Appraisal" component of the empanelment process introduced by Gol in April 2016 rests neither on any legislation nor any rules; is neither transparent nor fair; and is neither reasonable nor rational. It is the worst example of arbitrariness, lack of transparency and exercise of executive authority far in excess of the scope of any delegated legislation. It is a tool of discrimination by means of which Gol can capriciously exclude any IAS officer not fitting into its scheme of things.

G) The applicant submits in this regard that no less a body than the Rajya Sabha's "Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice" in its 92nd Report on the "Appraisal and Empanelment of Civil Servants under the Central Government" (2017) has observed as follows:

"The Committee finds the present 360-Degree appraisal system opaque, non-transparent and subjective ... Feedback in this process is obtained informally, making the process susceptible to being manipulated. Further, the feedback received from subordinates and stakeholders may be biased and lack objectivity, particularly if the officer had to discipline his subordinates or he was unable to meet the unjustified demands of stakeholders. Further, acting on feedbacks so received puts the concerned officer in a disadvantageous position as the remedies available to him in case his APAR/ACR has not been written objectively are not available to him in this process. Acting on such feedback behind the back of the officer may not be legally tenable particularly if it adversely affects his empanelment prospects. Moreover, there is no statutory backing to the scheme and it is based on executive instructions only. The Committee, therefore, impresses upon the Government to take necessary

steps to make the process of empanelment more objective, transparent and fair."

H) The further proof of the arbitrary and whimsical manner in which the "360 Degree Appraisal" is being done is established by the fact that officers who were considered 'unsuitable' by the Experts Panel after its "360 Degree Appraisal" are somehow considered 'suitable' by the another Experts Panel after another "360 Degree Appraisal" within a few months. For example, in the case of the 1988 batch of IAS, out of the officers who were initially overlooked for empanelment as Additional Secretaries to Gol vide DoPT Information Note No.35/2/2017-EO(SM-I) dated 13.06.2017, 6 officers were subsequently empanelled as Additional Secretaries and 9 officers were empanelled as Additional Secretaries-equivalent vide DoPT Information Note No.35/2/2017-EO(SM-I) dated 27.12.2017. A further 7 officers were subsequently empanelled as Additional Secretaries and 8 officers were empanelled as Additional Secretaries-equivalent vide DoPT Information Note No.35/2/2018-EO(SM-I)(3) dated 19.07.2018. Since the Annual Performance Appraisal Reports (APARs) are a 'given' and there can be no changes to them, the only change that could have occurred within the few months must have been in the appraisal of the Experts Panel doing the "360 Degree Appraisal". Surely, these officers who were initially held 'unsuitable' by the Experts Panel based on the 7 attributes could not have radically and dramatically improved in these 7 attributes overnight?! This shows that Gol is including, excluding and subsequently including names of officers in the empanelment list arbitrarily and in an opaque manner without adducing any reasons for their inclusion/exclusion/subsequent inclusion.

I) Since the respondent refused to disclose the reasons for the applicant's non-empanelment as Additional Secretary to Gol, the applicant made a further attempt to ascertain the reasons by filing a petition under the Right to Information (RTI) Act 2005 before DoPT vide DOP&T/R/2018/53715 dated 20.07.2018 seeking certified copies of all Papers including notings and correspondence in relevant file and also the proceedings of the Appointments Committee of the Cabinet (ACC) wherein the matter was dealt with and decided. But the applicant's request for the relevant information was negatived. The applicant filed one more petition under the RTI Act 2005 before DoPT vide DOP&T/R/2018/53795 dated 24.07.2018 seeking the details of the Members of the Experts Panel who had processed his case for empanelment as Additional Secretary to Gol and also the details of his subordinates, peers, stakeholders etc. with whom the Members of Experts Panel had made enquiries regarding the applicant. Once again, the applicant's request for the relevant information was negatived.

J) The applicant submits that process of empanelment as Additional Secretary to GoI, which is an extremely vital entry-gate for consideration for future promotion as Secretary to GoI and Cabinet Secretary, which carry much higher responsibility in terms of territorial jurisdiction, international interaction and scale and quantum of operations. Since only the officers empanelled as Additional Secretary are considered for the promotional post of Secretary to GoI and later for Cabinet Secretary, the non-empanelment of the applicant amounts to denial of his right/legitimate expectation to be considered for the post of Secretary to GoI and Cabinet Secretary.

K) Therefore, the present Original Application is being filed seeking quashing of the "360-Degree Appraisal" system and the issuance of directions to the respondent for empanelling the applicant as Additional Secretary to GoI w.e.f. 19/07/2018 i.e. the date on which the IAS Batch of 1989 was considered for empanelment. It is submitted that the applicant has done due diligence and exhausted all departmental modes of grievance redressal and has been left with no other option than to approach this Honourable Tribunal.

5) Grounds with Legal Provisions

A. The "360 Degree Appraisal" is ab initio illegal as it does not have the backing of any Act or Rules and amounts to untrammelled discretion being exercised by GoI.

B. The applicant submits that the Government of India have issued OMs contained in the Central Staff Scheme dated 5.1.1996 and subsequent guidelines dated 1.1.2008 setting out and formulating the criteria for assessment of IAS officers for empanelment as Joint Secretary/Additional Secretary to the Government of India. These guidelines have been in vogue for a long time and periodical empanelment of IAS officers as Joint Secretary and above is done in accordance with these guidelines. While so, the impugned "360 Degree Appraisal" by the respondent in the form of an unofficial note/instructions cannot have the affect of altering, superseding or overriding the existing guidelines which have the status of Office Memorandums of the Government of India. Therefore, the impugned assessment of the applicant made by the respondent in accordance with the unofficial note/instructions are not legal or valid and are nonest and void.

C. In the case of APARs, the officer submits a detailed self-assessment report which is scrutinized by not one but three supervisory officers, namely, the Reporting Authority, Reviewing Authority and Accepting Authority and the officer's performance, potential and integrity are continuously and closely monitored over the length of his career. The applicant has been subjected to such continuous, close and rigorous monitoring-cum-assessment for the past 29 years by at least $(29 \times 3) = 87$

Supervisory Officers. The applicant was duly empanelled 'as Joint Secretary to GoI in the year 2012 based on his consistently outstanding career record, and he has had only 'OUTSTANDING' APARs between the years 2012 to 2018. So, there is no basis for overturning this assessment of the applicant's performance, potential and integrity done by 87 Supervisory Officers over a 29-year period by a single, one-off, assessment by the Experts Panel by enquiring just 5 so-called stakeholders by way of its "360 Degree Appraisal". The APARs spread over a period of 29 years are far better proof of the officer's standing in respect of the 7 attributes, namely, decision making, Ownership, pro-activeness, delivery, leadership, honesty and suitability for higher positions than any summary assessment made by the Experts Panel. It is utterly wrong on the part of DoPT to assume that the "360 Degree Appraisal" can capture any qualities of an officer better than the APARs system.

D. The 2007 Rules relating to APARs provide that the Reporting Authority and Reviewing Authority should write their assessment only if they have seen the performance of the officer for a minimum period of three months. But the retired officers forming part of the Experts Panel can evaluate an officer even if they have never worked with the officer under consideration and even when they are not directly in a position to make any assessments of his performance, potential or integrity. It is a well-known rule of evidence that hearsay evidence is not valid evidence. When the members of the Experts Panel have no personal knowledge of the officer themselves and rely on the feedback about him obtained from 5 stakeholders such as Seniors, Juniors, Peers, External Stakeholders and serving Secretaries, it is clearly a case of hearsay evidence. If these stakeholders have also 'at actually seen the officer in action and their opinions about his performance, potential and integrity are also based on hearsay, then it becomes a case Of 'hearsay upon hearsay'. Moreover, an IAS officer such as the applicant with 29 years of experience Interfaces with thousands of stakeholders during his long career. Even statistically speaking, a sample size of just 5 stakeholders out of several thousand is grossly inadequate, and conclusions drawn from this 'statistically insignificant' sample size is bound to be erroneous. Further, the 5 stakeholders enquired by the Experts Panel are not Privy to the self-assessment reports submitted by the officer and are likely to give 'off-the-cuff' remarks which are Subjective, superficial, shallow and grossly inaccurate. It would be a grave travesty of justice to overturn the considered, continuous, wide-ranging and objective 29-year assessment by way of APARs based on the superficial, one-off, subjective, hearsay evidence based on an inadequate sample relied upon.

E. Further the APARs system provides safeguards against arbitrariness, bias and vindictiveness in assessments by providing for a transparent system of representations, reviews and appeals which can be filed by the aggrieved

officer. But no such safeguards are provided in the 360-Degree Appraisal system and the officer can be condemned unheard. If a senior or a junior or external or other stakeholder is aggrieved with the officer for any reason and consequently gives a false and misleading feedback about officer's attributes behind his back, the officer is not in a position to know who said what, nor can he represent against the same. This is again a violation of the principles of natural justice.

F. Further the applicant submits that the "360 Degree Appraisal" bypasses the institutional/statutory mechanisms like ACRs and Vigilance clearance and replaces them with evaluations based on hearsay, whims and fancies of retired officers who are provided with no credible information about the functioning of the officer under consideration.

G. Moreover, the "360 Degree Appraisal" is an opaque system which even entails telephonic feedback from officers who have no document/material/report/ to assess the officer Upon. In certain situations feedback can be sought from retired officers who have sought re-employment in the private sector, which can lead to conflict of interest.

H. The applicant reliably understands that no less a body than the Rajya Sabha's Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its 92nd Report on the "Appraisal and Empanelment of Civil Servants under the Central Government" (2017) has observed as follows:

"The Committee finds the present 360-degree appraisal system opaque, non-transparent and subjective ... Feedback in this process is obtained informally, making the process susceptible to being manipulated. Further, the feedback received from subordinates and stakeholders may be biased and lack objectivity, particularly if the officer had to discipline his subordinates or he was unable to meet the unjustified demands of stakeholders. Further, acting on feedbacks so received puts the concerned officer in a disadvantageous position as the remedies available to him in case his APAR/ACR has not been written objectively are not available to him in this process, Acting on such feedback behind the back of the officer may not be legally tenable particularly if it adversely affects his empanelment prospects. Moreover, there is no statutory backing to the scheme and it is based on executive instructions only. The Committee, therefore, impresses upon the Government to take necessary steps to make the process of empanelment more objective, transparent and fair,"

The virtual rejection and strictures by the Parliamentary Committee debunking the procedure as non-transparent

and without any rule base or guidelines base is a categorical declaration of its being illegal, null and void.

I. The whole purpose of introducing the capricious, Opaque, unscientific, unjust and unfair "360 Degree Appraisal" system seems to be the elimination of officers who do not fit the government's scheme of things. It is not open to Gol to introduce such an entirely different procedure to overturn the consistent, continuous, considered and careful appraisal of an officer's performance, potential and integrity as assessed by not one but by three superior officers under the ACR/APAR system."

4. The respondents have filed reply. In the preliminary submission they have stated that the said empanelment is not a promotion but it is a process of assessing an officer for holding senior position in Government of India and it has been done on the basis of recommendation of Special Committee of Secretaries (SCoS) under the Chairmanship of Cabinet Secretary. For that purpose, SCoS is assisted by Expert Panel (EP) comprising of five Experts and that the members of the EP are carefully chosen retired officers of high merit and integrity representing various regions/cadres. Initially guidelines were issued in 2008 and to make the process more comprehensive and to ensure qualitative assessment of officers for their suitability to hold senior positions, in 2016, it was decided that the EP, apart from assessing the ACTs/APARs of the officers, will also assess the reputation of the officers in terms of their integrity, efficiency, suitability and leadership quality etc and, accordingly, guidelines for EP were framed. The said EP does a comprehensive evaluation of the overall profile of officers and discern their suitability to occupy senior positions at the level of Secretary/Additional Secretary to

Government of India. It takes input from a wide range of sources including, Past Performance Records (ACR/APAR), Multi-Source Feedback (MSF) from relevant stakeholders and any other enquiries/deliberations as deemed fit by the EP and that EP ensures that the grading match the performance and achievements of the officer and that there is consistency in the assessment and that they have to give their own assessment based on justification given/not given by the Reviewing authority/Accepting Authority. In Multi-Source Feedback (MSF), minimum of 05 stake holders such as Seniors, Juniors, Peers, External Stakeholders and Serving Secretaries are interacted by the EP to collect holistic MSF. The EP takes feedback on seven attributes including decision making, ownership, pro-activeness, delivery, leaderships, honesty and suitability for higher positions to be scored on a scale of 1 to 5 and, thereafter, based on a detailed assessment of ACRS/APARs, MSF from the relevant stakeholders and any other inquiries/deliberations as deemed fit, gives a clear recommendation to the SCoS about the suitability of the officer or otherwise for getting empaneled. There is also a review mechanism to look into the cases of officers who could not be empaneled and that the Review Expert Panel(REP) collects fresh MSF from at least 10 stake holders different from those spoken to by the EP. When the case of the applicant was taken up for empanelment as 'Additional Secretary' along with other officers of his batch, he was not recommended by

the EP. His case was taken up for review but, however, following the above said procedure, the REP did not recommend his case. Further, there is no allegation of malafide made by the applicant with regard to his non-empanelment as 'Additional Secretary' and, therefore, in the absence of any such allegation, the applicant cannot challenge a selection and that as held by the Hon'ble Supreme Court, the Courts or Tribunals cannot sit over the decision of the expert body and as the said MSF is a policy decision, the courts cannot decide on policy decision. The relevant portions of the reply of the respondents are as extracted below:-

"(i) It is humbly submitted that empanelment is not a promotion but a process to assess the suitability of officers for holding senior positions in the Government of India. Empanelment at Secretary/Additional Secretary Level is done with the approval of the Appointments Committee of the Cabinet (ACC) on the basis of recommendations of Special Committee of Secretaries (SCoS) under the chairmanship of Cabinet Secretary. For this purpose, SCoS is assisted by an Experts Panel (EP) comprising five experts. Members of EP are carefully chosen retired officers of high merit and integrity representing various regions/cadres.

2. It is humbly submitted that as per guidelines for empanelment at Secretary/Additional Secretary level issued in 2008, the EP was required to examine ACRs in detail and give its own assessment of grading of officers. In order to make the process more comprehensive and to ensure qualitative assessment of officers for their suitability to hold senior positions in the Government of India, it was decided in 2016 that the EP, apart from assessing the ACRs/ APARs of the officers, will also assess the reputation of the officers in terms of their integrity, efficiency, suitability and leadership quality, etc. It was also decided that detailed guidelines may be framed in this regard. Accordingly, guidelines for EP have been framed.

3. It is further submitted that as per these guidelines, EP does a comprehensive evaluation of the overall profile of officers, and discern their suitability to occupy senior positions at the level of Secretary/Additional Secretary to the Government of India. In doing so, EP takes inputs from a wide range of sources including:

- i. Past Performance records (ACR/APAR);
- ii. Multi-Source Feedback (MSF) from relevant stakeholders; and
- iii. Any other enquiries / deliberations as deemed fit by the EP.

While assessing ACRs/ APARs, EP, inter-alia, ensures that:

- The gradings match the performance and achievements of the officer in the light of the officer's self-assessment and the remarks of the Reporting/Reviewing/Accepting Authority;
- Whether the assessment given in one or two years by a particular authority is out of tune with the overall trend of other ACRs/ APARs obtained by the officer from other superior authorities;
- In those cases where Reviewing/Accepting Authority has downgraded/upgraded the grading given by the Reporting/Reviewing Authority, EP is required to give its assessment based on the justification given/not given by the Reviewing Authority/Accepting Authority.

4. It is humbly submitted that with respect to Multi-Source Feedback (MSF), EP interacts with a minimum of 05 stakeholders such as Seniors, Juniors, Peers, External Stakeholders and Serving Secretaries to collect holistic MSF. The EP takes feedback on 07 attributes which include decision making, ownership, pro-activeness, delivery, leadership, honesty and suitability for higher positions to be scored on a scale of 1 to 5. The EP captures each stakeholder's opinion of the officer in prescribed MSF forms. Each filled MSF form is attached with the final Pen Picture of each officer to make the system well documented. In order to elicit honest and accurate feedback, anonymity and confidentiality of Stakeholders is ensured by the EP.

5. It is further submitted that the EP, based on detailed assessment of ACRs/APARs, MSF from relevant stakeholders and any other enquiries/deliberations as deemed fit, gives a clear recommendation to the SCoS about the suitability of the officer or otherwise for getting empanelled. Thereafter, based on the recommendations of the EP, overall service record, vigilance inputs, evaluation of qualities such as merit, competence, leadership and flair for participating in policy making process etc., SCoS makes its recommendations to the ACC for empanelment or otherwise.

6. It is humbly submitted that to avoid injustice of any kind, a review mechanism is also in place to look into cases of officers who could not be empanelled at the time of initial consideration. Cases of such officers along with representations submitted, if any by them are taken up for review by Review Experts Panel (REP) comprising 5 experts other than those on the EP. Like EP, members of REP are also carefully chosen retired officers of high merit and integrity representing various regions/cadres. The REP collects fresh MSF on the same seven attributes from at

least 10 stakeholders different from those spoken to by EP. Like EP, REP also gives its clear recommendations regarding suitability of officers for empanelment on the basis of detailed assessment of ACRs/ APARs and MSF from relevant stakeholders.

7. It is submitted that the case of empanelment of the applicant was taken up for assessment for empanelment at Additional Secretary level along with the other officers of his Batch as per the extant guidelines. However, after taking into account the service record, recommendations of EP, vigilance status etc. and evaluation of qualities such as merit, competence, leadership and flair for participating in policy making process, he was not found suitable for empanelment at Additional Secretary level. As already submitted, there is a provision of review of officers who do not get empanelled at the time of initial consideration. Accordingly, the case of applicant was also taken up for review. However, after taking into account the service record, recommendations of REP as well as EP, vigilance status etc. and qualities such as merit, competence, leadership and flair for participating in policy making process, he was again not recommended by SCoS for empanelment at Additional Secretary level and the same has been approved by the ACC.

There is no allegation of malafide in the empanelment of officers as Additional Secretary and therefore in the absence of such specific allegations, the applicant cannot challenge the selection and as held by Hon'ble Supreme Court, neither the High Courts nor the Tribunals can sit over the decision of experts body as appellate authority and therefore, on this ground also this Application is liable to be rejected."

"16. It is submitted that the Hon'ble Supreme Court in *Union of India and Another vs. Samar Singh and Others*, whilst considering the empanelment for the post of Secretary to the Government of India or equivalent post under Central Staffing Scheme had observed as under:

"11. This would show that the Committee, keeping in view the record and experience including the conceptual and leadership abilities, achievements and potential for general managements positions, had recommended 19 I.A.S. officers for holding the post of secretaries and 7 I.A.S. officers for holding a non-secretarial post. Merely because the minutes of the Committee do not contain the reason for non-selection of the respondent does not mean that there has been no proper consideration of the merits and suitability of the respondent and as a result the selection is vitiated. From the minutes of the Special Committee, it is evident that in the matter of empanelment of officers the Special Committee has taken into account the criteria that are laid down for holding such selection in para 14 of the Central Staffing Scheme and, therefore, it cannot be said that the said

selection is vitiated on account of non-inclusion of the name of the respondent in the panel.

The Hon'ble Supreme Court in **Sanjeev Babu Vs N.K.Santhosh** (order dated 19.10.2012) in Para 18 held as "It is clear that in a matter of appointment/selection by an Expert Committee/Board consisting of qualified persons in the particular field, normally, the Courts should be slow to interfere with the opinions expressed by the experts, unless there is any allegation of mala fides against the experts who had constituted the Selection Committee. Admittedly, in the case on hand, there is no allegation of mala fides against the 3 experts in the Selection Committee. In such circumstances, we are of the view that it would normally be wise and safe for the courts to leave the decision of selection of this nature to the experts who are more familiar with the technicalities/nature of the work. In the case on hand, the Expert Committee evaluated the experience certificates produced by the appellant herein, interviewed him by putting specific questions as to direct sale, home delivered products, hospitality/service industry etc. and awarded marks. In such circumstances, we hold that the High Court ought not to have sat as an appellate Court on the recommendations made by the Expert Committee.

The Hon'ble Supreme Court in the case of **Basavaiah (Dr.) vs. Dr.H.L.Ramesh & Ors., reported in (2010) 8 SCC 372**, pointed out that it is a settled legal position that Courts have to show deference and considerations to the recommendations of an expert committee consisting of distinguished experts in the field, when there is no allegation of malafides, it would normally be wise and safe for the Courts to leave the decision of selection of this nature to the experts, who are more familiar with the technicalities/nature of the work. The Expert Committee having evaluated the experience certificate produced by the candidate, interviewed him by putting specific questions as to direct sale, home delivered products, hospitality/service industry etc., and awarded marks, the High Court ought not to have sat as an appellate Court on the recommendations made by the Expert Committee. It was further held that the High Court was not justified in upsetting the decision of the Selection Committee, particularly in the absence of any malafides against the Selection Committee and there is no warrant for direction to reassess the marks of the appellant therein afresh, in the light of the detailed explanation offered by the corporation about the mode of selection"

In National Institute of Mental Health and NeuroSciences Vs. Dr.K.Kalyana Raman and Others, the Hon'ble Supreme Court observed that in the first place it must be noted that the function of the selection committee is neither judicial nor adjudicatory.

It is purely administrative. The High Court seems to be in error in stating that the selection committee ought to have given some reasons for preferring Dr. Gowri Devi as against other candidates. The selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility. There is no rule or regulation brought to our notice requiring the selection committee to record reasons. In the absence of any such legal requirement, the selection made without recording reasons cannot be found fault with. [Also see B.C.Mylarappa Vs. Dr.R.Venkatasubbaiah (2008) 14 SCC 306 J.]”

5. The applicant has filed rejoinder to the reply of the respondents. He mainly stated that inspite of his best efforts, the details of the members of the Expert Panel or the members of the Stake Holders were not disclosed nor supplied to him, as such, he was not in a position to point out whether any of them had malafide intention against him or not. He further stated that the decisions of the Hon'ble Supreme Court referred to by the respondents are of the years prior to 2016 and, therefore, they are not applicable to his case. The relevant portion of the rejoinder are as extracted below:-

4) It is submitted that the Respondent has filed a Reply Statement which was received by the Applicant on 11.6.2019. The Respondent has made certain averments with regard to questions of fact as well as questions of law which are tantamount to suppressio veri, suggestio falsi and which need to be countered properly. Therefore, it has become necessary for the Applicant to file the rejoinder so as to place the correct facts and law before this Hon'ble Tribunal.

5) It is submitted that the Respondent has failed to counter and has completely glossed over the comments made by no less a body than the Rajya Sabha's "Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice" in its 92nd Report on the "Appraisal and Empanelment of Civil Servants under the Central Government" (2017) which the applicant had cited in Para 4(G) and 5(H) of his original Application. The Committee had observed as follows:

"The Committee finds the present 360 Degree appraisal system opaque, non-transparent and subjective... Feedback in this process is obtained informally, making the process susceptible to being manipulated. Further, the feedback received from subordinates and stakeholders may be biased and lack objectivity, particularly if the officer had to discipline his subordinates or he was unable to meet the unjustified demands of stakeholders. Further, acting on feedbacks so received puts the concerned officer in a disadvantageous position as the remedies available to him in case his APAR/ACR has not been written objectively are not available to him in this process. Acting on such feedback behind the back of the officer may not be legally tenable particularly if it adversely affects his empanelment prospects. Moreover, there is no statutory backing to the scheme and it is based on executive instructions only. The Committee, therefore, impresses upon the Government to take necessary steps to make the process of empanelment more objective, transparent and fair."

The categorical strictures against the "360 Degree Appraisal" system by the Parliamentary Standing Committee together with the Respondent's omission or inability to counter the Committee's observations amounts to an admission that the Respondent's case has no leg to stand upon.

6) It is submitted that nowhere in the Reply Statement has the Respondent stated anything adverse about the Applicant or pointed out any blemish in his career record. The Applicant had been empanelled as Joint Secretary to Gol in the year 2012 which is proof that the Applicant had a stellar career until that point of time. In fact, even subsequently, the Applicant had obtained only "OUTSTANDING" ratings in the Annual Performance Appraisal Reports (APAR) in all the years from 2011 onwards. The applicant's integrity has been impeccable throughout his 29-year career in the IAS. No Vigilance Enquiry was ever ordered against him, and he has the necessary Vigilance clearance. Nowhere in the Reply Statement has the Respondent rebutted these contentions of the Applicant. Therefore, there was absolutely no ground for not empanelling the Applicant as Additional Secretary to Gol. The action of the Respondent in not empanelling the Applicant is arbitrary, unfair and unjust, and their refusal to furnish the reasons therefor reveals lack of transparency, sincerity and accountability.

7) It is submitted that the four Supreme Court case laws cited by the Respondent in support of their decision not to empanel the Applicant as Additional Secretary predate the impugned issue of "360 Degree Appraisal" or "Multi Source

Feedback" by several years and even decades. Therefore, they are completely irrelevant to the present case.

8) The ratio of the four case laws cited by the Respondent is that normally the Courts should be slow to interfere with the choices made by the experts constituting a Selection Committee provided that (i) there is no illegality or patent material irregularity in the constitution of the Selection Committee or the selection procedure followed by it, or (ii) there is no proven mala fide on the part of any of the experts. In other words, the Courts are not entitled to sit in judgement over the choices of the experts in the absence of the exceptional circumstances cited above. These four case laws are, in turn, based on three earlier judgements of the Supreme Court in "The University of Mysore and another v. C.D. Govinda Rao and another" [AIR 1965 SC 491], "Dalpat Abasaheb Solunke & Others v. Dr. B.S. Mahajan & Others" [(1990) 1 SCC 305], and "R.K.Jain v. Union of India"[(1993) 4 SCC 119]. For instance, in "Dalpat Abasaheb Solunke", the Supreme Court had observed as follows:

"Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc."

Again, in "R.K.Jain", the Hon'ble Supreme Court has held that it is concerned only with 'judicial review' and not 'merit review', and that 'judicial review' is concerned with whether the incumbent possessed requisite qualification for appointment and whether the manner in which the appointment came to be made or the procedure adopted was fair, just and reasonable.

9) The applicant respectfully submits that the four case laws cited by the Respondent are actually adverse to their position and buttress the Applicant's position because the impugned "360 Degree Appraisal" system suffers from "illegality and patent material irregularity in the constitution of the so-called Expert Panel and in its adoption of a procedure that is unfair, unjust and unreasonable" thereby vitiating the selection. Even the Parliamentary Standing Committee has held it to be so.

First, the "360 Degree Appraisal" is *ab initio* illegal as it does not have the backing of any Act or Rules and amounts to untrammelled discretion being exercised by Gol. It is neither transparent nor fair; is neither reasonable nor rational; is the worst example of arbitrariness and exercise of executive authority far in excess of the scope of any

delegated legislation; and is a tool of discrimination by means of which Gol can capriciously exclude any IAS officer not fitting into its scheme of things.

Second, in the case of Annual Performance Appraisal Reports (APARs), the officer submits a detailed self-assessment report which is scrutinized by not one but three supervisory officers, namely, the Reporting Authority, Reviewing Authority and Accepting Authority and the officer's performance, potential and integrity are continuously and closely monitored over the length of his career. The Applicant has been subjected to such continuous, close and rigorous monitoring-cum-assessment for the past 29 years by at least $(29 \times 3) = 87$ Supervisory Officers. They are the "real experts" when it comes to the proper evaluation of the Applicant, and not the retired officers forming part of the so-called 'Experts Panel' who do the "360 Degree Appraisal". The latter are evaluating an officer even if they have never worked with him and are not directly in a position to make any assessments of his performance, potential or integrity by relying on the oral feedback about him obtained behind his back from five stakeholders such as Seniors, Juniors, Peers, External Stakeholders and serving Secretaries. This is clearly hearsay evidence that is not admissible in law. If these five stakeholders have also not actually seen the officer in action and their opinions about his performance, potential and integrity are also based on hearsay, then it becomes a case of 'hearsay upon hearsay' thereby vitiating the 'selection' even further. If even the Courts are not supposed to sit in judgment over the choices made by the experts constituting the Selection Committee, how can these retired officers who have no personal knowledge of the Applicant sit in judgment over the assessment made by the "real experts" i.e. the 87 Supervisory Officers spread over a period of 29 years?

Third, an IAS officer interfaces with thousands of stakeholders during his long career. Even statistically speaking, a sample size of just five stakeholders out of several thousand is grossly inadequate, and conclusions drawn from this "statistically incorrect" sample size are bound to be erroneous. Further, the five stakeholders enquired by the Experts Panel are not privy to the self-assessment reports submitted by the officer and are likely to give 'off-the-cuff' remarks which are subjective, superficial, shallow and grossly inaccurate.

Fourth, in para 8 of the judgment in "National Institute of Mental Health and Neuro Sciences v. Dr.K. Kalyana Raman and Others" (1991) cited by the Respondent, the Hon'ble Supreme Court had held as follows:

"The procedural fairness is the main requirement in the administrative action. The 'fairness' or 'fair procedure' in the administrative action ought to be observed. The Selection Committee cannot be an

exception to this principle. It must take a decision reasonably without being guided by extraneous or irrelevant consideration."

The Applicant's contention in the present case is that the Respondent has not followed a 'fair procedure' in its "360 Degree Appraisal" system. It bypasses the institutional/statutory mechanisms like ACRs and Vigilance clearance and replaces them with evaluations based on hearsay, whims and fancies of retired officers who are provided with no credible information about the functioning of the officer under consideration. It would be a grave travesty of justice to overturn the considered, continuous, wide-ranging and objective 29-year assessment by way of APARs based on the superficial, one-off, subjective, hearsay evidence based on a grossly inadequate sample relied upon by the so-called Experts Panel. The "360 Degree Appraisal" system cannot be an exception to the principle of procedural fairness. Thus, there is patent illegality and material irregularity not only in the constitution of the so-called Experts Panel but also in the procedure adopted by it.

10) In para 7 of the Reply Statement, the Respondent has stated: "There is no allegation of malafides in the empanelment of officer as Additional Secretary and therefore in the absence of such specific allegations, the applicant cannot challenge the selection and as held by Hon'ble Supreme Court, neither the High Courts nor the Tribunals can sit over the decision of experts body as appellate authority and therefore, on this ground also this Application is liable to be rejected." In this connection, it is submitted that when the Applicant had sought for, under the RTI Act, details of the members of Experts Panel who had processed his case for empanelment as Additional Secretary to Gol and also the details of his subordinates, peers, stakeholders etc. with whom the Members of Experts Panel had made enquiries regarding the applicant, the Respondent had refused to furnish the same. If the Respondent had made these names available to the Applicant, then the Applicant would have been in a position to point out whether any of them had mala fide intentions against him or not. So, it is completely unfair on the part of the Respondent to say that there are no allegations of malafide without even disclosing the concerned names to the Applicant.

11) The Respondent has stated that 'empanelment' is not a promotion but a process to assess the suitability of officers for holding senior positions in the Government of India, and that it is not a matter of right. It is submitted that process of empanelment as Additional Secretary to Gol is an extremely vital entry-gate for consideration for future promotion as Secretary to Gol and Cabinet Secretary, and non-empanelment of the Applicant through the "360 Degree Appraisal" system amounts to denial of his right/legitimate expectation to be considered for the post

of Secretary to Govt and Cabinet Secretary. Procedural fairness is the essential requirement of any administrative action, and the empanelment process cannot be an exception to this principle. Even the so-called 'review' of the Applicant's non-empanelment is vitiated by the same "illegality or patent material irregularity in the constitution of the so-called Expert Panel" and in its "adoption of a procedure that is unfair, unjust and unreasonable" and in its utter "lack of transparency".

6. The respondents have filed reply to the rejoinder of the applicant. In the said reply, they mainly stated that the said Appraisal process is governed by well laid down guidelines and is objective, fair and transparent. The members of the Expert Panel or Review Expert Panel are carefully chosen retired officers with high merit and integrity representing various positions/cadres. The EP does comprehensive evaluation of the overall profile of officers by assessing the reputation of the officers in terms of integrity, efficiency, suitability and leadership quality etc by collecting a holistic MSF from a minimum of 05 stake holders and in case of Review Experts Panel (REP), comprising a different set of 5 experts, who carry out another independent MSF from 10 Stakeholder different from those spoken to by the EP. The relevant portion of the said reply to the rejoinder filed by the respondents is extracted below:-

"1. With regard to paragraph 5, it is submitted that the observations of the Rajya Sabha's "Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice" in its 92nd Report regarding '360 Degree Appraisal System' are a matter of record. However, as clearly brought out in the preliminary submissions of the counter reply filed in the OA, it is reiterated that the extant empanelment process is governed by well laid out guidelines and is objective, fair and transparent. It is also emphasized that 360 degree appraisal does not comprise Multi Source Feedback (MSF)

only. Rather, the Experts Panel (EP), based on detailed assessment of ACRs/APARs, MSF from relevant stakeholders and any other enquiries/deliberations as deemed fit, gives a clear recommendation to the Special Committee of Secretaries (SCoS) about the suitability of the officer or otherwise for getting empaneled. Thereafter, based on the recommendations of the EP, overall service record, vigilance inputs, evaluation of qualities such as merit, competence, leadership and flair for participating in policy making process, etc., the SCoS makes its recommendations to the Appointments Committee of the Cabinet (ACC). Finally, officers are empaneled with the approval of the ACC.

2. With regard to paragraph 6, it is submitted that the applicant's contention regarding his unblemished career record and impeccable integrity are not matters to be commented upon by the respondent. However, the contention of the applicant that the action of the respondent in not empaneling him as Additional Secretary is arbitrary, unfair and unjust, and refusal to furnish the reasons reveals lack of transparency, sincerity and accountability is vehemently denied. In this regard, it is reiterated that the applicant was considered along with other officers of his batch for empanelment at Additional Secretary level as per the extant guidelines. However, after taking into account the service records, recommendations of EP, vigilance status, etc and evaluation of qualities such as merit, competence, leadership and flair for participating in policy making process, he was not found suitable for empanelment at Additional Secretary level after due consideration. The case of the applicant was further taken up for review. After taking into consideration the service records, recommendations of REP as well as EP, vigilance status, etc, he was again not recommended by the SCoS and the same has been approved by the ACC. It is emphasized that the process followed during initial consideration as well as review was strictly as per extant guidelines and there is no arbitrariness or favour shown to anyone.

3. With regard to paragraphs 7 and 8, it is submitted that the applicant's claim is denied. All citations referred to in the reply have contextual relevance. The four Supreme Court cases pertain to the Hon'ble Court's observations regarding recommendations made by the Expert/Selection Committee for appointment/selection to senior level positions and these does not deal with any specific procedure for empanelment/selection. As such, the argument that they are irrelevant to the present case is misplaced.

4. With regard to paragraphs 9 and 10, it is submitted that the applicant's submissions are inappropriate and vehemently denied. It is reiterated that the extant process of empanelment is governed by well laid out guidelines and is objective, fair and transparent. Members of the Experts

Panel (EP) are carefully chosen retired officers of high merit and integrity representing various regions/cadres. Apart from assessing the ACRs/APARs of the officers, the EP does a comprehensive evaluation of the overall profile of officers by assessing the reputation of the officers in terms of integrity, efficiency, suitability and leadership quality, etc by collecting a holistic MSF from a minimum of 05 Stakeholders (such as seniors, juniors, peers of the officer and external stakeholders as deemed relevant by the EP) whose anonymity and confidentiality are ensured in order to elicit honest and accurate feedback. Thereafter, based on the recommendations of EP, overall service record, vigilance inputs, evaluation of qualities such as merit, competence, leadership and flair for participating in policy making process, etc, the Special Committee of Secretaries (SCoS), headed by the Cabinet Secretary, makes its recommendations to the ACC for empanelment or otherwise. Further, to avoid injustice of any kind, there is a provision of review of officers not empaneled at the time of initial consideration. The cases of such officers are taken up by the Review Experts Panel (REP), comprising a different set of 5 experts, who carry out another independent MSF from 10 stakeholders different from those spoken to by the EP. Subsequently, based on the recommendations of REP and after careful consideration of all other aspects as was done during the initial assessment, the SCoS makes its recommendations to the ACC. Thus, the extant empanelment process is a comprehensive, objective and rational system encompassing all aspects for assessing the suitability of an officer to hold senior level positions in the Government of India.

5. With regard to paragraph 11, it is submitted that the applicant's submission that the process of empanelment as Additional Secretary to Gol is an extremely vital entry-gate for consideration for future empanelment as Secretary to Gol and Cabinet Secretary is not disputed. It is evident that the applicant acknowledges the importance of choosing officers carefully for empanelment at Additional Secretary level. It is for this reason that the empanelment process has been made more comprehensive as already explained in reply to the OA and preceding paras in this present reply. It is reiterated that the extant process of empanelment is governed by well laid down guidelines incorporating a comprehensive evaluation of various aspects like overall service record, vigilance status, qualities such as merit, competence, leadership and flair for participation in policy making process, etc. Therefore, the entire process of empanelment is reasonable, objective, fair and transparent.

7. Heard Learned counsel for the respective parties and perused the pleadings and documents available on record and considered all the points raised.

8. At the time of hearing, the counsel for the applicant vehemently and strenuously submitted that the said 360 Degree Appraisal is not in consonance with the Central Staffing Scheme (CSS). He particularly brought to our attention paras 13 and 14 of the said Central Staffing Scheme which are extracted below:-

"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 the CR dossiers.

ADDITIONAL SECRETARY/SPECIAL SECRETARY/SECRETARY

14. Selection for inclusion on the panel of officers adjudged suitable for appointment to the posts of Additional Secretary or Special Secretary/Secretary to the Government of India and posts equivalent thereto, will be approved by the ACC on the basis of proposals submitted by the Cabinet Secretary. In this task, the Cabinet Secretary may be assisted by a Special Committee of Secretaries for drawing up proposals for the consideration of ACC. As far as possible, panels of suitable officers will be drawn up on an annual basis considering all officers of a particular year of allotment from one service together as a group. Inclusion in such panels will be through the process of strict selection and evaluation of such qualities as merit, competence, leadership and a flair for participating in the policy-making process. Posts at these levels at the Centre filled according to the Central Staffing Scheme are not to be considered as posts for the betterment of promotion prospects of any service. The needs of the Central Government would be the paramount consideration. While due regard would be given to seniority, filling up of any specific post would be based on merit, competence and the specific suitability of the officer for a particular vacancy in the Central Government."

He further brought to our attention the following paragraphs with regard to the said Appraisal of 2016 which are extracted below:

ANNEXURE-II]
Guidelines for Secretary/Additional Secretary/Joint Secretary Level Empanelment including guidelines for Expert Panel

Prime Minister has approved as follows:

- (i) For the purpose of evaluating the overall performance, numerical values of 10, 8, 5 and 0 may be assigned to 'Outstanding', 'Very Good', 'Good' and 'Average overall grades given by the Reporting, Reviewing and Accepting Authorities during the 14 year period from the cut-off date. If there are gaps in the availability of ACRs during this period due to the officer being on Study Leave or for any other reason not within the control of the officer, at least 10 full years ACRs would be taken into account by considering the ACRs of not more than 5 years immediately preceding the period, In the event that it is still not possible to get 10 full years ACRs, the case would be deferred until this condition is fulfilled.
If the ACRs of an officer are missing for 3 or more years, during the 14 year period due to his being on leave other than Study Leave, his empanelment would be deferred until the officer earns one more ACR for gaps of less than 4 years and two more ACRs for gaps of 4 years or more.
- (ii) Based on the statistical analysis done by the Cabinet Secretariat, all scores while working in the State Government would be multiplied by the moderation factor which is ratio of the average grade of officers of a particular cadre while on Central deputation to their average grade while in the State, to obtain the 'moderated score'.
- (iii) For the purpose of calculating moderation factors, smaller North Eastern cadres Manipur-Tripura, Sikkim and Nagaland, would be combined together to draw valid conclusions, Similarly, the newly formed cadres Jharkhand, Chhattisgarh and Uttarakhand would be combined with Bihar, MP and UP respectively. The moderation factor would be valid for one year. This would be revised in the beginning of each calendar year to take into account additional data entered into the database during the course of the previous calendar year.
- (iv) On a scale of 10, the weighted (by the number of years) average of (i) score at the Center and (ii) moderated score while in the cadre will be an officer's numerical assessment score.
- (v) A list in a descending order of the numeral assessment scores will then be prepared for consideration by the Special Committee of Secretaries (SCoS). The benchmark will be a (a) minimum numerical assessment score of 9.5 and a minimum average score of 9.0 on Central deputation if the period of such deputation exceeds 2.5 years but is less than five years or (b) average score of 9.3 for Central deputation of five or more years.
- (vi) The Committee would also take into account the experience profile of officers, carefully scrutinize the ACR dossiers with special emphasis on the text of remarks contained in the ACRs as well as upgrading/downgrading of overall assessments and it would evaluate such qualities as

general reputation, merit, competence, leadership and a flair for participating in the policy making process to recommend the list of officers to be included in the panel.

- (vii) Officers fulfilling the prescribed benchmark will be excluded if they are in the following categories:
- (a) those who are not included in the panel of officers to hold JS level posts (for empanelment at the level of AS) or AS level posts (for empanelment at the level of Secretary) at the Centre, or
 - (b) those who have not worked on Central deputation for a minimum period of three years at the level of DS and above, or
 - (c) those not vigilance clear, or
 - (d) those who have less than two years residual service on the 1st day of the year in which the empanelment takes place for empanelment at the level of Secretary, or less than three years residual service for empanelment at the level of Additional Secretary, or
 - (e) those who do not fulfill the requirements of clause 16 of the Central Staffing Scheme. According to Clause 16 of the Central Staffing Scheme "An officer who is or was on a foreign assignment for a period of two years or more will be considered for empanelment at the level of Joint Secretary only if on return from such an assignment he has served for a period of at least two years in his cadre and has earned two annual confidential reports thereon, Similarly, such an officer will be considered for empanelment at the levels of Additional Secretary/Secretary after he has served for a period of one year in his cadre and has earned one annual confidential report."
- (viii) However, officers who have less than the required residual service but are otherwise found suitable for empanelment would be placed in a separate category, Officers found suitable for holding the posts of Secretary would be given the pay of Secretary and placed as Principal Adviser in Ministries, where officers senior to them are holding post of Secretary and they will report to the Secretary concerned, officers found suitable for holding the post of Additional Secretary would be given the pay of Additional Secretary and placed as Senior Adviser.
- (ix) Cases of officers who were on leave, excluding study leave for more than five years during the 14-year period would be deferred. These cases would be considered only after sufficient number of fresh ACRs become available to offset the period of the leave in excess of five years.
- (x) The size of the panel for each year will be based on the number of anticipated vacancies during the next one

year provided that the number of officers empanelled (i) at the level of Additional Secretary shall generally not exceed 40% of the batch strength and (ii) at the level of Secretary shall generally not exceed 35% of the batch strength.

- (xi) In case the selection process does not lead to adequate representation of categories like SC/ST, women, particular State cadres, the North East etc., in the panel, the criteria for empanelment would be suitably relaxed to give due representation to these. For this purpose, adequacy of representation would mean the cumulative representation in four batches i.e. the current batch and the immediately preceding three batches being less than $66 \frac{2}{3}$ % of the all India percentages of empanelment. The number of officers to be selected on this basis shall not exceed 15% of the number included in the panel and these selections would follow the process outlined above albeit with suitably relaxed norms.
- (xii) Review will be conducted batch-wise. Cases will not be taken up on an individual basis. The reviews shall be taken up once a year. No officer's case shall be taken up for review more than twice. However, if there is a significant change in the status of ACRs in a particular case, SCOS may consider the case after six months after empanelment without waiting for a regular review. Batch-wise consistency shall be maintained at the empanelment, and subsequent review stages.
- (xiii) The above guidelines may be reviewed after three years.

2. In the context of paragraph I(vii)(b), it is clarified that while applying the criteria of three-year prior Central experience, relaxation will be given to officers (i) who have earlier opted in writing to come to the Centre but whose names have not been forwarded by the Cadre Controlling Authority (except where the name has not been forwarded due to vigilance reasons), or (ii) who have earlier opted in writing to come to the Centre and whose names have been forwarded by the Cadre Controlling Authority, but have subsequently not been offered appointment under Central deputation (except where offer for Central deputation has been withheld due to vigilance reasons). Such relaxation shall be given to the first three batches taken up for empanelment for each of the levels of Additional Secretary and Secretary from the date that these particular norms have come into force.

3. In the context of paragraph I(vii)(e), the empanelment of officers covered by Clause 16 of the Central Staffing Scheme shall be considered in accordance with the evaluation criteria in the Guidelines.

4. (a) There shall be an Expert Panel consisting of five Experts in connection with empanelment at Additional Secretary level. A mix of panelists will be ensured, both of persons who have been in recent touch with administration and those who may be from earlier batches and perhaps better placed for having an outlook of unattached objectivity. Regional balance will also be another objective in selection of the Expert Panel, as far as possible. The Expert Panel will be required to examine the ACRs year-wise in detail for each batch to ensure that the gradings match the performance and the achievements of the officer in the light of the officer's self-assessment and the remarks of the Reporting/Reviewing/Accepting Authorities. The Expert Panel will also examine whether the assessment given in one or two years by a particular superior authority is out of line with the trend of other ACRs obtained by the officer from other superior authorities. The Expert Panel will give their own assessments of the gradings of officers for each year, which will be taken into account by the SCOS in suitably re-adjusting overall gradings for the purpose of assigning points.

(b) The Expert Panel will not be required to prepare a list of officers to be empanelled.

5. The process of empanelment will begin during the early part of the year.

Guidelines for Experts Panel (EP) for evaluation of officers for empanelment as Additional Secretary (AS)/Secretary

An EP has been constituted with the approval of the Appointments Committee of the Cabinet for assisting the Special Committee of Secretaries (SCoS) in evaluating the overall profile and suitability of officers for empanelment at the level of AS and Secretary. The EP will assist in:

(i) Assessing the ACRs/APARs

(ii) Evaluating the Overall Profile and Suitability of officers

(a) **Assessment of ACRs/APARs:**

For empanelment at the level of Additional Secretary and Secretary, ACRs/APARs of 14 years are taken into account which should have ACRs/APARs for at least 120 months. If there are gaps in the availability of ACRs during this period due to the officer being on Study Leave or for any other reason not within the control of the officer, ACRs/APARs of not more than 5 years immediately preceding this period are taken into account. EP is required to examine the ACRs/APARs in detail, year-wise, for the batch which is being assessed, and give its own assessment of the gradings of the officer for each year. In assessing the ACRs/APARs, EP would be guided by the following points:

1. EP will ensure that the gradings match the performance and achievements of the officer in the light of the officer's self-assessment and the remarks of the Reporting/Reviewing/Accepting Authority.

2. EP will also examine whether the assessment given in one or two years by a particular authority is out of tune with the overall trend of other ACRs/APARs obtained by the officer from other superior authorities.

3. If a Reporting/Reviewing Authority is known or appears to be liberal or conservative in her/his assessment, this may be taken into consideration while assessing the ACRs/APARs. Whether an officer has been liberal or conservative could also be inferred from a comparison with the other reports on the officer.

4. There may be more than one Reporting Authority in case of some officers during a particular reporting period. For example, an officer in a State Secretariat may combine several charges and his work might have been assessed by different Reporting Authorities.

Suitable assessment may be made in such cases.

5. In those cases where Reviewing/Accepting Authority has downgraded/upgraded the grading given by the Reporting/Reviewing Authority, EP is required to give its assessment based on the justification given/not given by the Reviewing Authority/Accepting Authority.

6. In case of ACRs/APARs where the officer has submitted his self-assessment in time, but the comments of Reporting/Reviewing/Accepting Authority are time barred, EP may give its assessment based on self-appraisal of the officer. The comments of Reporting/Reviewing/Accepting Authority may also be considered during such assessment.

7. While assessing the ACRs of upto 2006-07 (old system of ACRs) obtained while working in the States, special care would need to be taken to ensure that officers of certain Cadres do not get either undue advantage or disadvantage due to either liberal or conservative culture of gradings in that Cadre.

8, If representations of officers are referred to the EP by the Cabinet Secretariat with regard to particular ACR/APAR, it would suitably assess such ACR/APAR after duly considering the representations.

(b) Evaluation of Overall Suitability:

EP will do a comprehensive evaluation of the overall profile of officers, and discern their suitability to occupy senior positions at the level of AS and Secretary to the

Government of India, In doing so, EP is to take inputs from a wide range of sources including:

- (i) Past Performance records (ACR/APAR).
- (ii) Multi-Source Feedback from relevant stakeholders.
- (iii) Any other enquiries/deliberations as deemed fit by the EP.

9. To collect holistic Multi-Source Feedback (MSF) on the officer being evaluated, EP will interact (telephonically) with a range of connected stakeholders, such as, her/his (i) Seniors, (ii) Juniors, (iii) Peers, (iv) External stakeholders, and (v) Serving Secretaries. MSF is to be collected from across as diverse a range of these stakeholders as possible, covering not less than 5 people. EP is to capture each stakeholder's opinion of the officer in a MSF format (enclosed at Annexure A), having 7 simple questions to be scored on a 1 to 5 scale. Each filled MSF form (minimum of 5) is to be attached with the final Pen Picture of each officer submitted by the EP. EP is to assure MSF stakeholders of their anonymity and confidentiality, to elicit honest and accurate feedback."

9. He further submitted that the said '360 Degree Appraisal of 2016 is inconsistent with the provisions of All India Services (Performance Appraisal Report) Rules 2007. Therefore, the said impugned '360 Degree Appraisal' is bad in law in view of the Judgment of the Hon'ble Supreme Court in para 28 in the case of 'Public Service Commission, Uttaranchal vs. Jagdish Chandra Singh Bora and Anr.' reported in (2014) 8 SCC 644 and para 18 in the case of 'State of Punjab and Others Vs. Anita and Others reported in (2015) 2 SCC 170. He further submitted that ACR/APAR system is time tested procedure and it provides adequate safeguard in the matter of assessment of officers by the Reporting/Reviewing/Accepting Authorities. The said rules of 2007 envisages furnishing of entire APAR to the officer concerned to enable him to make objections, but the impugned Appraisal of

2016 do not provide any of the above said safeguards. In support of the said submission, the learned counsel brought to our attention para 15 of the judgment of the Hon'ble Supreme Court in the case of State Bank of India vs. Kashinath Kher and Ors reported in (1996) 8 SCC 762 and paras 36 and 37 in the case Dev Dutt vs. Union of India & Anr. reported in (2008) 8 SCC 725.

10. Counsel for the applicant further submitted that the entire '360 Degree Appraisal' is arbitrary, perverse and capricious in view of the law laid down by the Hon'ble Supreme in Para 172, 176, 180, 221, 225, 264 and 278 in the case of Delhi Transport Corporation vs. DTC Mazdoor Congress and Ors. reported in (1991) Suppl. (1) SCC 600.

11. Learned counsel for the respondents equally, vehemently and strenuously submitted that the functions of the Selection Committee is neither judicial nor adjudicative and its purely administrative and the administrative authority is not under any legal obligation to record reasons. In support of his submission, he invited our attention to para -7 of the judgment of the Hon'ble Supreme Court in the case of 'NIMHNS vs. Dr. K. Kalyana Raman' reported in (1992) Suppl. 2 SCC 481. Apart from all the points raised by the respondents in their counter and reply to the rejoinder, the learned counsel further submitted that it is not the functions of the court to hear the appeals over the decision of the selection committee and scrutinize the relative merits of the

○ candidates and that it is for the Selection Committee to assess whether the candidate is fit for a particular post or not. In support of the said contention, learned counsel for the respondents referred to paras 6 -10 and 12 of the judgment of the Hon'ble Supreme Court in the case of Union of India vs. Samar Singh reported in (1996) SCC (10) 555 and also paras 18, 22, 26, 31-34, 46 and 47 of the judgment of the Hon'ble High Court of Delhi in the case of Dr. Prasannanshu vs. Selection Committee for Vice Chancellor, National Law University dated 25.09.2020 in W.P. (C) No. 5497 of 2020. It is further submitted that the courts should be slow in interfering with the opinion expressed by the experts unless there is any allegation of malafides against the experts and that in this case the applicant has not made any allegation of malafides and in support of this submission, the learned counsel for respondents brought to our notice para 18 of the judgment of the Hon'ble Supreme Court in the case of Sajeesh Babu vs. N.K. Santhosh & Ors. dated 19.10.2012 in Civil Appeal No. 7599 of 2012 (arising out of SLP (c) No. 13499 of 2011) and also paras 15 to 17 of the judgment of the Hon'ble Supreme Court in the case of Union Public Service Commission vs. M. Sathiya Priya and Others reported in Civil Appeal No. 10854 of 2014 dated 13.4.2018. Learned counsel for the respondents further submitted that the challenge to the Multi Source Feedback (MSF) guidelines has already been considered by the Central Administrative Tribunal, Principal Bench

in the case of Jagmohan Singh Raju Vs. Union of India in O.A. 2261 of 2017 and by the order dated 12.10.2018, the said O.A. was dismissed. The appeal filed by the applicant therein before the Hon'ble High Court of Delhi in W.P (c) No. 13808 of 2018 was also dismissed after considering various aspects of the said MSF guidelines by order dated 23.01.2020. Paras 6 to 13 of the said judgment are reproduced below:-

"6. The question posed by learned counsel for the Petitioner was whether it was open to the Respondent to consider his case for empanelment as Additional Secretary after May, 2016 by complying with the MSF guidelines which were in fact not issued?

7. Having perused the MSF Guidelines in light of the minutes of each of the meetings of the Committee of Secretaries, the Court is of the view that the MSM Guidelines were not intended to be 'issued' i.e. placed in the public domain. They were to serve as internal guidelines for the Committee of Secretaries/Empanellment Committee [CoS/EPC], when he undertook the task of deciding to empanel Additional Secretaries. The precise question raised by the Petitioner was whether the MSF guidelines were 'issued? When in fact they were not 'issued', the answer in the negative cannot be said to be incorrect. Further, since they were to aid the CoS/EPC in carrying out their task, their use of arriving at a decision cannot be said to be illegal.

8. Learned counsel for the Petitioner produced before the Court an order dated 12.02.2019 issued by the Secretariat to the Appointments Committee of the Cabinet (ACC), Government of India, pursuant to the order dated 07th December, 2018 passed by this Court in W.P. (C) 6125/2017. The said order traces the entire process by which the case of the Petitioner was considered for empanelment as Additional Secretary on multiple occasions prior to and after May 2016. It also refers to the recommendations of the Experts Panel (EP) as well as the Review Experts Panel ('REP') which is stated to "carry out a fresh MSF exercise and also consider the representations, if any, submitted by the officers".

9. At this stage, the Court would like to re-produce the brief note submitted to it explaining the work of the REP. It is stated as under:-

"1. In order to ensure justice for the officers who are not empaneled at the level of

Secretary/Additional Secretary at the time of initial consideration, a Review Experts Panel (REP) was constituted in August, 2016 which also comprises five retired Secretaries to Government of India, who are different from the members of Experts Panel (EP) that assesses Officers at the initial stage. The Members of the REP are carefully chosen from amongst officers of high merit, repute and represent different regions/cadres of the committee.

2. The REP follows the same procedure as prescribed for the EP with the exception that for obtaining Multi Source Feedback (MSF) from connected Stakeholders, REP interacts with at least 10 stakeholders (i.e. W.P. Number) who are different from the ones with whom the EP had interacted at the time of initial assessment with respect to a particular officer. The REP also takes into account the representations, if any, submitted by aggrieved officers."

10. The files produced before the Court contain the Minutes of each of the meetings and the deliberations of both the EP as well as the REP, as far as the case of the Petitioner is concerned. Para 11 of the order dated 12th February 2019 correctly summarizes the position as under:-

"After detailed deliberations and taking into account the service record of the officer, recommendations of the EP as well as the REP, representations of the officer, evaluation of his overall qualities, the Committee did not recommend his empanelment at Additional Secretary level. The Appointment Committee of the Cabinet has also approved non-empanellment of Shri Jagmohan Singh Raju at Additional Secretary level on 06.02.2019."

11. Under Article 226 of the Constitution, a High Court has to primarily consider the validity of the decision making process and not so much the ultimate decision itself. The scope of the petition before the CAT would be no different in matters of this nature. The Court is satisfied that in the petitioner's case the decision making process is non-vitiated for being unreasonable or arbitrarily. It was not for the CAT to sit in an appeal over the ultimate decision of the EP and the REP in relation to the petitioner's empanlement as Additional Secretary.

12. As far as the contention put forth by the learned counsel for the petitioner about the non-issue of the MSF guidelines is concerned, the Court finds nothing unreasonable in the respondents' action, for the reasons set out herein above.

13. There is no error in the impugned order dated 12th October, 2018 of the CAT which calls interference, as such,

the Writ Petition is dismissed. The pending applications are disposed of."

12. We have considered all the facts and grounds raised by the applicant and the replies filed by the respondents and the submissions made by the learned counsel for the respective parties. We are of the view that the assessment process or the decision making process in the above MSF guidelines has already been upheld by the Hon'ble High Court of Delhi (Para 11) in W.P. 13808/2018 dated 23.01.2020 by deciding that it is not vitiated for being unreasonable or arbitrary. Further, in view of the submissions of the Learned Counsel for the respondents that it being a policy decision, the Hon'ble Supreme Court has held that the Courts or Tribunals cannot go into the policy decisions.

13. Judicial review in administrative action is no more res integra. Trite is the position of law that "it is not the domain of the court to embark upon uncharted ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be.

14. The applicant was considered along with other officers of his batch as per the impugned guidelines. However, after taking into account the Service Record, recommendations of EP, Vigilance Status etc. and evolution of qualities such as, merit, competence,

Q leadership and flair for participating in policy making process, he was not found suitable for empanelment at Additional Secretary level. The case of the applicant was further taken up for Review. He was again not recommended by the SCoS for empanelment at Additional Secretary level which has been approved by the ACC. Empanellment guidelines provide that the number of officers empaneled at Additional Secretary level shall generally not exceed 40% of the Batch strength. This implies that not all the officers considered for empanelment get empaneled and only the best out of any Batch are considered to man senior positions in the Government of India. The claim of the applicant does not merit consideration from the point of view either of law or logic.

15. In the conspectus of the above facts and circumstances of the case and the judgments referred to supra, we find no sufficient ground to grant the reliefs as prayed for by the applicant. In the circumstances, the O.A. is liable to be dismissed and is accordingly dismissed as devoid of merits. There shall be no order as to costs.