

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-645/2013

New Delhi this the 26th day of October, 2016.

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)

Sh. Narain Dass,
S/o Sh. Bishan Dass,
Aged 51 years,
R/o 48/4, Ashok Nagar,
New Delhi-110018.

.... Applicant

(through Sh. Saqib, Advocate)

Versus

1. Union Public Service Commission
through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi.

2. The Secretary,
Department of Personnel & Training,
Ministry of Personnel, PG & Pension,
North Block, New Delhi.

..... Respondents

(through Sh. Ravinder Agarwal, Advocate for R-1 and Sh. R.N. Singh,
Advocate for R-2)

ORDER (ORAL)

Mr. Shekhar Agarwal, Member (A)

The applicant belongs to SC category and joined Central Secretariat Service (CSS) on 12.10.1992. On 08.03.1999, an amendment was made to the CSS (Second Amendment) Rules and the third proviso to Rule-12 Sub-Rule (2) was omitted. Five affected eligible employees belonging to SC/ST category including the

applicant were aggrieved by the action of respondent No.2 in denying the benefit of the said amendment to them. They filed OA-991/2003 praying, *inter alia*, that respondent No.2 therein be directed to prepare revised select lists of officers of CSS for the years 1987 to 1994 in accordance with the relevant provision of the third proviso to Rule-12(2) of CSS Rules as they stood at the relevant time and consider the applicants for promotions to Grade-I of the service. This O.A. was allowed and directions were given to respondent No. 2 therein to prepare the revised select list in accordance with the rules, in force at the relevant time. RA-106/2005 filed against the aforesaid order came to be dismissed. Thereafter, respondent No.2 (DoP&T) vide its letter dated 24.05.2010 sent a proposal to respondent No. 1 (UPSC) for convening limited review DPC in compliance of the order of the Tribunal dated 30.11.2004. In the aforesaid proposal, DoP&T had proposed candidature of the applicant for Under Secretary select list of the year 1994. When no action was taken by respondent No. 2, CP-726/2011 was filed in OA-991/2003. The order dated 30.11.2004 of this Tribunal was challenged by the respondents before Hon'ble High Court of Delhi in Writ Petition (C) No. 13352/2005. However, the said Writ Petition was dismissed on 29.03.2011. Thereafter, review DPCs were held in UPSC on 12.10.2011 and 13.10.2011. The minutes were communicated to DoP&T by UPSC on 14.10.2011. On the basis of the aforesaid minutes, respondent

No.2 issued impugned order dated 28.10.2011 in which the applicant was placed in select list for the year 1995 instead of 1994. The applicant submitted a representation on 27.12.2011 to the respondents to place him in the select list of 1994. Separately, he also filed an RTI application in DoP&T seeking copy of the proposal sent to the UPSC by them for conducting the Limited Review DPC. The respondents replied on 10.05.2012 stating that complete dossiers of the officers were forwarded to UPSC, which may have contained ACRs upto the year 2008-2009. The applicant made another representation on 12.07.2012 in which he stated that the assessment of review DPC was wrong and manipulated and again requested that he be included in the select list of 1994 above the name of Smt. Rukhmini Karunakaran (CSL No. 3441). In reply to the representations of the applicant, DoP&T on 01.11.2012 informed him as follows:-

"5. Further, it is reiterated that the DPC could not assess Shri Narain Das for USSL-1994 for want of ACRs. For USSL-1994 ACRs upto 1992-93 are to be taken into account. Shri Narain Das joined DR SO on 12.10.1992 and as such he had only one reckonable ACR for USSL-1994 during which period he was under foundational training at ISTM. It appears that Shri Das is under the wrong impression that his subsequent ACRs should have been taken into account for assessing him for USL-1994. Further, not only Shri Das, but two other officers viz. Shri Vijay Kumar and Shri R.K. Ghatwal were not recommended for the years in which their juniors were included. In view of this, there is no merit in the representation of Shri Das and accordingly disposed of."

2. The applicant also submitted an RTI application to UPSC on 18.10.2012 and got the following response:-

"4. For consideration of an officer for promotion to the Grade-I (Under Secretary) of CSS, for the Select List Year 1994, the preceding 5 years' ACRs for the years 1989-90 to 1993-94 were required to be assessed by the DPC. However, only two ACRs i.e. for the year 1992-93 and 1993-94, were available against the minimum three years' ACRs for making the assessment by the DPC. As such DPC minuted that "Assessment not possible for want of requisite ACRs" in your case for the Select List 1994. Therefore it is not the case of misrepresentation or misguiding by any official."

3. Aggrieved by the actions of the respondents, he has filed this

O.A. before us seeking the following relief:-

"(a) declare the action of the respondents in placing the applicant in the Select List year 1995 Grade I (US) instead of Select Year 1994 being against the own recommendation of respondent no.2 vide its letter dt. 24.05.2010 to the promotion to Grade-I (Under Secretary) CSS in the Limited Review DPC held on dt. 12-13.10.2011 as null and void being illegal, unjust and arbitrary; and

(b) to direct the respondents to abide by clause 6.2.1 para (c) of the O.M. dt. 10.04.1989 issued by respondent no.2; and

(c) to direct the respondents to hold a review DPC and issue promotion to the applicant as per Select List year 1994 to Grade-I (Under Secretary) CSS alongwith all consequential benefits with all consequential monetary and other benefits of service; and

(d) to allow this OA with cost of the litigation in favour of the applicant;

(e) to pass such other and further order, which this Hon'ble Court deem fit and proper in exiting circumstance of the case."

4. The contention of the applicant is that the DPC has denied to him his fundamental right guaranteed under Article-16 of the Constitution of India as he has not been fairly considered in the matter of promotion. He has relied on the judgment of three Judge

Bench of the Hon'ble Supreme Court in the case of **The Manager, Government Branch Press and Anr. Vs. D.B. Belliappa**, (1979) 1 SCC 477 wherein it has been held that the essence of guarantee epitomized under Articles-14 and 16 was fairness founded on reason. He has further relied on the judgments of Hon'ble Supreme Court in the case of **S.B. Bhattacharjee Vs. S.D. Majumdar and Ors.**, AIR 2007 SC 2102 and **Union of India & Ors. Vs. Sangram Keshri Nayak**, [(2007)(6) SCC 704] to say that even though a person has no fundamental right to be promoted, he has a fundamental right to be fairly considered for the same. He has alleged that the respondents have not adhered to the Instructions of DoP&T, which lay down as follows:-

“Where one or more CRs have not been written for any reasons during the relevant period, the DPC should consider the CRs of the year proceeding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered. **If this is also not possible, all the available CRs should be taken into account.**” It is, therefore, submitted that the D.P.C. could have considered the applicant's CRs accordingly and has in fact acted in violation of the guidelines thus depriving the applicant of promotion.”

4.1 Thus, by their arbitrary action, the respondents have defeated the legitimate expectation of the applicant of being included in the select list for the year 1994.

4.2 The applicant has further stated that Hon'ble High Court of Madhya Pradesh in the case of **State of Madhya Pradesh Vs.**

Surendra Nath, IAS and Ors., [2006(1) ATJ 1) have held that while a Court cannot sit in appeal over the decision of the DPC and substitute its own view, but if it comes to the conclusion that fair treatment has not been accorded or that the approach of DPC is vitiated by arbitrariness or bias, it can interfere with the recommendations made. Since in this case the action of the respondents was wholly illegal, arbitrary and discriminatory, it was a fit case for interference by this Tribunal.

4.3 The applicant has also relied on the judgment of Hon'ble Supreme Court in the case of **Council of Scientific and Industrial Research and Anr. Vs. K.G.S. Bhatt and Anr.**, 1989 (4) SCC 635 to say that in public service it was necessary for providing career advancements and the organization that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale and ineffectual performance of both non-managerial and supervisory staff.

5. Both UOI as well as UPSC have filed their replies. UOI in their reply have stated that the 1994 select list of Under Secretaries is for the period 01.07.1994 to 30.06.1995. For preparation of the aforesaid, ACRs have to be gathered atleast six months prior to the crucial date i.e. by January, 1994 so that DPC can be convened in

March/April. By that time, ACR for the year 1993-1994 would not have become available as it is written only after 01.04.1994. These ACRs upto 1992-1993 only were reckonable for preparation of 1994 select list. Since the applicant had joined service only on 12.10.1992, only one of his ACR was available for the period 12.10.1992 to 31.03.1993. For want of necessary number of ACRs, DPC did not assess him in select list of 1994. Even if his ACR for the year 1993-1994 had been considered, only 1 ½ years ACR would have become available to the DPC.

6. UPSC in their reply have stated that the review DPC for considering the case of the applicant was held on 12/13.10.2011. As far as applicant's assessment for select list of 1994 was concerned, the DPC has recorded "Assessment not possible for want of requisite ACRs." The applicant was recommended against the panel of 1995. They have further stated that non availability of sufficient number of ACRs was an issue under the control of respondent No.2 i.e. DoP&T.

7. We have heard the parties and have perused the material on record. In our opinion, the respondents have committed a grave error by not assessing the applicant for inclusion of his name in the select list of 1994. It is not in dispute that by an amendment to the Rules carried out on 08.03.1999, the applicant had become eligible to be considered for inclusion in the select list of 1994. He had also

obtained an order from the Tribunal in his favour in OA-991/2003. By not assessing the applicant for the year 1994, the respondents not only denied him a right that had accrued to him by virtue of amendment in the Rules but have also acted against the order of this Tribunal in OA-991/2003. Learned counsel for the respondents had argued that conventionally UPSC were assessing officers only if three years ACRs were available. He submitted that such Instructions have also been issued in the year 2009 although he did not produce a copy of the same during arguments. He stated that in the instant case only 1 ½ years ACRs were available. Hence, the applicant was not assessed. Be that as it may, these Instructions could not have been applied in the instant case. The DPC should have assessed him on the basis of available material. This is because by virtue of the existing Rules at that time, the applicant had become eligible for promotion to the next grade within almost 1 ½ years of his joining service. Thus, while he had joined service only on 12.10.1992, he had become eligible for being considered for inclusion in the select list of Under Secretaries for the year 1994, the period for which commences from 01.07.1994. In this case, at the most, ACRs for 1 ½ years could have been available if period upto the year 1993-1994 is counted. As per material placed on record, these ACRs were available. Thus, it was not a case of missing ACRs but a case in which promotion had become due within 1 ½ years. In such a

situation, not to assess the candidate on the ground that atleast three ACRs were not available was against the Rules, which provided for promotion to the applicant within 1 ½ years.

8. However, the applicant's contention that his subsequent ACRs i.e. ACRs for the period after 1993-1994 could have been taken into consideration cannot be accepted. This is because this is against the "Scope and Procedure" prescribed for review DPCs in the Instructions issued by DoP&T. In this regard, we place reliance on Para-18.2 of Chapter-VI under the caption Review DPCs "Scope and Procedure" of Swamy's Compilation on Seniority and Promotion. The aforesaid para reads as follows:-

"A Review DPC should consider only those persons who were eligible as on the date of meeting of original DPC. That is, persons who became eligible on a subsequent date should not be considered. Such cases will, of course, come up for consideration by a subsequent regular DPC. Further, the review DPC should restrict its scrutiny to the CRs for the period relevant to the first DPC. The CRs written for subsequent periods should not be considered. If any adverse remarks relating to the relevant period were toned down or expunged, the modified CRs should be considered as if the original adverse remarks did not exist at all."

9. Thus, the respondents' action of not assessing the applicant for 1994 select list and instead placing him in 1995 select list is unsustainable. We, therefore, allow this O.A. and quash the impugned order dated 28.10.2011 qua the applicant. Under normal circumstances we would have directed that respondents hold a fresh review DPC to adjudge suitability of the applicant for inclusion

in the 1994 select list in the light of observations made above. However, in the instant case, we notice that the applicant has been adjudged suitable for inclusion in the 1995 select list and granted promotion based on the same 1½ years ACR along with one extra ACR. Therefore, no useful purpose would be served by holding review DPC. We direct that the name of the applicant be included in the select list of the year 1994 at appropriate place commensurate with his seniority and he be appointed as Under Secretary with all consequential benefits except back wages. The above benefit may be extended to the applicant within a period of 08 weeks from the date of receipt of a certified copy of this order. No costs.

(Shekhar Agarwal)
Member (A)

(Permod Kohli)
Chairman

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