

**Central Administrative Tribunal  
Principal Bench  
New Delhi**

**OA No.1070/2014  
MA No.1146/2014**

This the 1<sup>st</sup> day of March, 2017

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

S. D. Kaushik S/o Shyam Sundar Kaushik,  
R/o 93-C, Jhang Apartments,  
Sector 13, Rohini, Delhi-110085. .... Applicant

( By Advocate: Mr. D. S. Chaudhary )

Versus

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

( By Advocates: Mr. R. N. Singh )

**O R D E R**

**Justice Permod Kohli, Chairman :**

This OA has been filed seeking following reliefs:

“(i) to call for the records in the two O.Ms No.3/1/2011-CS-I(D) dated 7/3/2014 issued by the respondent and set aside the same in so far as it denied the applicant his promotion to the grade of Director, on the ground that “in view of the ongoing litigation with regard to relaxation of eligibility conditions in favour of the direct recruit Section Officers for promotion to the grade of Under Secretary, which, if settled, in favour of the direct recruits, would affect the US SL 2003 and consequently DS SL 2010” by

declaring the same as ultra vires in law and Articles 14 and 14 (4) of the Constitution of India.

- (ii) To direct the respondent to convene a review DPC to consider the applicant for promotion, based on the eligibility list already prepared and grant consequential benefits w.e.f. 7.3.2014, the date from which similarly placed persons have been granted benefit of promotion.
- (iii) Any further orders as may be deemed fit by this Hon'ble Tribunal in the interest of justice."

2. Brief facts leading to the filing of this OA are that the applicant was working as Deputy Secretary and posted in the Ministry of Shipping in the year 2010. The next promotion of Deputy Secretary is to the post of Director in the Senior Selection Grade. As per the eligibility conditions prescribed in the Central Secretariat Service (CSS) Rules, 2009, five years' approved service as Deputy Secretary is required for promotion to the grade of Director (Senior Selection Grade). For making promotion to the grade of Director in the CSS for the year 2013 (01.07.2013 to 30.06.2014), the DOP&T prepared a panel of 108 officers. In view of the large number of vacancies in the grade of Director and for non-availability of officers with requisite five years' approved service in the Deputy Secretary grade, representations were made by officers of 2009 and 2010 select list of Deputy Secretaries seeking relaxation of the eligibility conditions. The competent authority relaxed the eligibility conditions in favour of Deputy Secretaries of 2009 and 2010 select list as under:

“5 years approved service, failing which a combined approved service of 10 years in the grades of Under Secretary and Deputy Secretary with not less than three years' regular service in the grade of Deputy Secretary.”

These conditions were further relaxed as under:

“(5) Further, in respect of those officers not having three years' regular service as on 1.7.2013, the crucial date of eligibility for the Select List year 2013, the competent authority has also granted relaxation to the extent that they should have 3 years' regular service as Deputy Secretary as on the date of promotion to the grade of Director.”

3. Vide office memorandum dated 19.12.2013 ACRs and vigilance clearance in respect of 122 officers were obtained for purposes of consideration for promotion to the grade of Director. The applicant figures at serial number 69 of the said list of 122 officers. A DPC was convened and agenda for the meeting was forwarded vide memorandum dated 17.02.2014. In the meantime, some direct recruit Section Officers officiating as Deputy Secretaries on *ad hoc* basis, opposed the proposal for promotion of Deputy Secretaries to the grade of Director on the basis of the 2010 select list. The matter was also taken to this Tribunal. The DPC held its meeting on 20.02.2014. 108 vacancies were referred to the DPC. The DPC was informed that there are at present 119 regular Deputy Secretaries who were to be considered for promotion to the grade of Director under the relaxed norms. These officers were promoted to the Deputy Secretary grade on regular basis prior to the drawing of

provisional list of Under Secretaries-2003. The DPC was also informed that immediate junior to the senior-most direct recruit Section Officer included in the provisional list is figuring at serial number 49 of the regular Deputy Secretaries list before the committee, and if the Tribunal's order in Graima Singh's case is finally implemented, about 16 direct recruit Section Officers would also be included. Taking into consideration this factor, the DPC decided to recommend 48 Deputy Secretaries for regular promotion to the grade of Director, and filling up of the remaining 60 slots by *ad hoc* promotion of Deputy Secretaries from the select list 2010, subject to final outcome of the ongoing litigation. On the basis of the recommendations of the DPC, the Government appointed Selection Grade Deputy Secretaries of CSS as Senior Selection Grade Directors for the year 2013 vide order dated 07.03.2014. The applicant retired from service as Deputy Secretary on 31.03.2014. This Application has accordingly been filed claiming promotion on the basis of consideration by the DPC in its meeting held on 20.02.2014 wherein the applicant was figuring at serial number 69 of the eligibility list under the relaxed norms.

4. The respondents have filed their counter-affidavit. They have referred to the recruitment rules, the quota of direct recruit Section Officers as also the promotees in the CSS. The details are not relevant for purposes of the present OA and are thus not delved. It

is, however, mentioned that one Garima Singh who was a direct recruit Section Officer of 1996 Civil Services Examination, filed OA No.1864/2009 before the Calcutta Bench of the Tribunal. The said OA was transferred to the Principal Bench at New Delhi and re-numbered as OA No.3278/2012. The OA was decided vide judgment dated 09.05.2011. Accepting the plea of the applicant, the Tribunal issued direction for preparation of a select list for 2003 for promotion of Section Officers to the grade of Under Secretary by considering such of the direct recruits who would be short of the eligibility service by up to two years as per approved seniority list of Section Officers, and make promotions accordingly. The Tribunal accordingly directed to reduce the criteria for direct recruits by two years. The judgment was challenged by some private parties before the Hon'ble High Court of Delhi, and the DOP&T filed an SLP before the Hon'ble Supreme Court which was dismissed allowing the High Court to decide the matter finally. Thereafter, a writ petition was filed by DOP&T before the Hon'ble High Court. The Hon'ble High Court permitted the Government to make promotions as per the select list prepared by it, but the last nine candidates were not to be promoted and nine posts were kept vacant and promotions made were subjected to the final outcome of the writ petition, vide its interim order dated 17.04.2012. This interim order was challenged by a group of direct recruit Section Officers in SLP No.9653/2012. The

Apex Court set aside the interim order dated 17.04.2012 and the High Court was allowed to proceed with the matter on merits. In view of the aforesaid pending litigation, the respondents decided to fill up only 48 vacancies, which fact was conveyed to the DPC. It was under these circumstances that the DPC recommended only 48 names.

5. We have heard the learned counsel for parties.

6. It is not in dispute that as against 108 vacancies referred to the DPC, only 48 have been recommended and 42 appointed. The entire case of the applicant is that he being in the eligibility list and 108 vacancies being available, he was entitled to be considered for promotion. The respondents have given reasons for not filling up the vacancies. It is settled law that the Government is entitled not to fill up all the available vacancies for valid reasons. A Constitution Bench of the Apex Court in *Shankarsan Dash v Union of India* [(1991) 3 SCC 47] held as under:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the

vacancies has to be taken bona fide for appropriate reasons....."

Thus, what emerges is that the competent authority must record reasons for not making appointment against the available vacancies. In the present case, the respondents have filed additional affidavit dated 06.10.2016. In para 4.9 thereof reference is made to the Tribunal's judgment dated 09.05.2011 in *Garima Singh's* case (*supra*) and the directions contained therein. It is accordingly stated that if the said judgment is to be implemented as the same has not been stayed, 36 direct recruit Section Officers of 1995 and 1996 batches are to be interpolated in the provisional list of Under Secretaries of 2003 only for making *ad hoc* promotions to the grade of Deputy Secretary, and they would be accordingly required to be promoted as Deputy Secretaries. It is further stated that at the time of relaxation, 16 direct recruit Section Officers were also to be considered, out of which 13 were officiating as Deputy Secretaries on *ad hoc* basis.

7. The respondents have also placed on record notings on the file recording reasons for not filling up all the vacancies. Relevant extract of the notings reads as under:

"6. Any attempt to promote all the regular Deputy Secretaries of SLs 2009 & 2010 may have legal complications. We may, therefore, limit ourselves to the promotion of the Deputy Secretaries of SL 2009 and those Deputy Secretaries of SL 2010 who would not be affected by any outcome of the pending litigation. As mentioned in the preceding notes, 25 Deputy Secretaries of SL 2009 and prior years and 97 Deputy

Secretaries of SL 2010 have been given relaxation for consideration for promotion to the grade of Director. Of the 122 Deputy Secretaries, the first 48 officers (25 of 2009 and prior years, 23 of SL 2010) are not affected by the final outcome of the court case. In view of this, decision is required to be taken for their regular promotion to the grade of Director, subject to the final outcome of the pending litigation."

8. On going through the aforesaid notings, we are of the considered opinion that there were valid reasons for not filling up all the available vacancies and the opinion of the Government in this regard cannot be faulted. In any case, while exercising power of judicial review, this Tribunal cannot go into the merits of the decision of the competent authority so long as the decision is rational and not *mala fide*. Mere inclusion of the name in the eligibility list does not confer any right upon the applicant. Otherwise also, the applicant figures at serial number 69 of the eligibility list. There were 21 candidates above the applicant in the list. They have a preferential right for seeking promotion. The applicant cannot claim any right of promotion under the given circumstances.

9. This OA is without any merit. Dismissed as such. No costs.

( Shekhar Agarwal )  
Member (A)

( Justice Permod Kohli )  
Chairman

/as/