

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

O.A.No.2644/2011

Order reserved on 20th September 2017

Order pronounced on 27th October 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Randhir Singh
s/o late Mr. Diwan Singh
r/o 1/75, Sadar Bazar, Delhi cantt.
New Delhi – 110 010

(Mr. L R Khatana, Advocate)

..Applicant

Versus

1. Union of India
Through Secretary to the Govt. of India
Department of Personnel & Training
North Block, New Delhi
2. Secretary
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi – 110 003

..Respondents

(Mr. R N Singh and Mr. Amit Sinha, Advocates)

O R D E R

Mr. K. N. Shrivastava:

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

“A) to declare that the impugned order dated 17th June 2010 as illegal, arbitrary, unreasonable, discriminatory and unjust and therefore, bad in law and quash and set aside the same and direct the respondents to consider the applicant for inclusion in the Select List of Grade I of CSS for the year 1994 against one of the 6 vacancies

caused due to revision / modification of Select List of Selection Grade for 1994, on the basis of the assessment of the year 1994 or in the alternative by holding a review DPC.

B) as a consequence of granting prayer (A), direct the Respondent No.1 to consider the case of the applicant for grant of the benefit of the O.M. dated 11.3.2005 with consequential arrears of pay and allowances w.e.f. 9.8.1999, as given to the other officers of Grade I belonging to the Select List of the year 1994 and grant the consequential relief of further promotions as per the relevant rules and the law.”

2. The factual matrix of the case is as under:-

2.1 This the third round of litigation in this matter before the Tribunal between these parties.

2.2 The applicant joined as an Assistant through the Assistant Grade Examination conducted by the Union Public Service Commission (UPSC) and belongs to 1976 batch of Assistants. He thus belongs to Central Secretariat Service (CSS). This Service has got four Grades, namely (a) Selection Grade (Deputy Secretary to the Govt. of India or equivalent), (b) Grade I (Under Secretary to the Govt. of India or equivalent), (c) Section Officers Grade (Gazetted) and (d) Assistants Grade (non-gazetted). (a) & (b) are classified as Group ‘A’ gazetted, (c) as Group ‘B’ Ministerial and (d) is non-gazetted.

2.3 The service conditions of CSS cadre are governed by the Central Secretariat Service Rules, 1962 (for short ‘Rules 1962’) and Central Secretariat Service (Promotion to Grade I and Selection Grade) Regulations, 1964 (for short ‘Regulations 1964’).

2.4 Vacancies in Grade I of CSS (Under Secretary) are filled up 100% by promotion from eligible permanent Section Officers / Private Secretaries of Central Secretariat Stenographers Service (CSSS). Like-wise, vacancies of Selection Grade (Deputy Secretary) are filled up 100% by promotion from eligible Grade I Officers.

2.5 The applicant belongs to Scheduled Caste category. He was promoted to the grade of Section Officer in the year 1981.

2.6 The respondents issued a select list of Grade I officers (Under Secretary) of CSS considered fit for promotion to the Selection Grade of CSS (Deputy Secretary) for the year 1994 vide O.M. dated 12.12.2002 (Annexure A-5 (colly.)).

2.7 One Sahadeo Ram approached this Tribunal in O.A. No.2098/2003 against non-inclusion of his name in the select list for the year 1994, which was allowed vide order dated 05.07.2004 with the following observations/directions:-

“2. What we have recorded in the preceding paragraph is because of the reason that the applicant’s claim is that he should have been included in the select list for the year 1994. Unhesitatingly, the respondents made available to us the proceedings of the Departmental Promotion Committee. It reveals that the claim of the applicant has been considered in the light of Department of Personnel and Training’s OM No.35034/7/97-Estt. (D) dated 08.02.2002. By virtue of this Office Memorandum, there has been a slight change in considering the names for select list but admittedly, the claim of the applicant had to be considered in the select list of 1994. In all fairness, it should have been done as per rules and instructions available on that date. In that order, therefore, it appears that there has been inadvertent mistake in this regard.

3. Resultantly, subject to what we have recorded above, without expressing any opinion on other questions, we direct that a review Departmental Promotion Committee meeting pertaining to the claim

of the applicant may be held preferably within four months of the receipt of the certified copy of the present order and matter be reconsidered in accordance with law. With these directions, the O.A. is disposed of.”

2.8 The respondents revised the select list for Grade I officer considered fit for promotion to the Selection Grade of CSS (Deputy Secretary) for the year 1994 in view of the above directions of the Tribunal in **Sahadeo Ram**. Accordingly, a modified select list vide O.M. dated 25.05.2005 was issued by the respondents and six more names were added, including that of Sahadeo Ram (applicant in O.A. No.2098/2003).

2.9 The claim of the applicant is that after the implementation of Tribunal's judgment in **Sahadeo Ram** whereby six Grade I officers (Under Secretary) were promoted to the Grade of Selection Grade of CSS (Deputy Secretary), six additional vacancies got created in Grade I (Under Secretary) and thus he became entitled for consideration for promotion to Grade I against one such vacancy. Applicant's contention is that he was earlier not considered for promotion to Grade I in the vacancy year 1994 entirely on the ground that by the time his turn came, all the vacancies had already got utilized, *albeit* he was found fit for promotion on the basis of his career records.

2.10 The applicant made Annexure A-7 (colly.) representations to respondent No.1 but the same was not considered. Consequently, he approached this Tribunal in O.A. No.1241/2006, which was disposed of vide order dated 13.09.2007 (Annexure A-8). The Tribunal made the following observations in its order:-

“10. The only issue for decision in this OA is that applicant contests his non-inclusion in the select list of the Grade-I (Under Secretary) of

the Central Secretariat Service for 1994, hereinafter referred to as the 1994 Under Secretary panel. His case is that firstly he was not included in the said panel because of incorrect calculation of Under Secretary vacancies for the year 1994. This has not been agreed to by the respondents. We will leave it at that without expressing an opinion. What is, however, admitted is that the applicant – a Scheduled Caste officer – was not included in the 1994 Under Secretary panel for want of vacancies, but was included in the 1995 Under Secretary panel. Secondly, the applicant has contended that when the size of the select list of the Selection Grade of the Central Secretariat Service, hereinafter referred to as 1994 Deputy Secretary panel, was expanded from 40 to 46, all the 6 additional vacancies went to Scheduled Caste under secretaries. He should have been included in the 1994 panel in the consequent of Under Secretary. The respondents have countered this contention on two grounds. First, that occurrence of vacancies in the Deputy Secretary panel has no link to vacancies in the Under Secretary panel. Secondly, that even if the 7 (not 6) consequential vacancies of Under Secretary in 1994 had been available for that year's Under Secretary panel, only one or two vacancies would have been assigned to the Scheduled Caste candidates as per government policy. The applicant, being third in order of seniority, would have still missed the 1994 Under Secretary panel."

The Tribunal issued the following directions to the respondents:

"12. The stand of the respondents in the matter is far from clear. They cannot say that there is no link between Deputy Secretary vacancies and Under Secretary vacancies, because 100% of Deputy Secretary vacancies are filled by eligible Under Secretaries. Admittedly, the size of the Under Secretary panel is dependent on the number of Under Secretary vacancies likely in a particular year. When they included 7 more Under Secretaries in the 1994 Deputy Secretary panel, who are the 7 persons who filled the consequent 1994 Under Secretary vacancies? Similarly, reduction of 7 vacancies of Deputy Secretary in 1995 would automatically reduce the number of vacancies available in 1995 for the Under Secretary panel. On checking the DPC file for notifying the 1994 Deputy Secretary panel, we find that addition of 7 vacancies (and reduction of 7 vacancies from the 1995 Deputy Secretary panel) was an ad hoc invention to comply with this Tribunal's order of 5.7.2004. This expedient does not justify denial of consequent addition of 7 vacancies to the 1994 Under Secretary panel and reduction in the size of the 1995 panel. The respondents also cannot argue in the same breath that had these 7 vacancies of Under Secretary been available, only 1 or 2 would have gone to the Scheduled Castes. The central question still remains – who were the 7 persons who stepped into the vacancies of Under Secretary that were selected in 1994 to become Deputy Secretary? Similarly, was the size of the 1995 Under Secretary panel reduced

consequent upon reduction in the number of vacancies of Deputy Secretary in that year? We are inclined to take the view that the case of the applicant requires serious and objective consideration on principle, no matter whether he himself becomes an eventual beneficiary or not.”

2.11 As per the directions of the Tribunal, in its Annexure A-8 order, the case of the applicant was reconsidered by respondent No.1. His request was, however, turned down by respondent No.1 vide Annexure A-9 order dated 14/17.12.2007. The relevant portion of this order is extracted below:-

“4. And whereas, the name of Shri Randhir Singh, the then Section Officer of CSS, was considered for inclusion in the Select List for the year 1994, which was issued in August, 2002 but his name could not be included in the Select List for the year 1994 since the vacancies were filled up before his turn came.

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7. And whereas on the direction of the CAT, Principal Bench, New Delhi in O.A. No.2098/2003, the name of Shri Sahdeo Ram and 5 others, all belonging to SC/ST category were included in the Select List of Selection Grade for the year 1994 after revision of the panel. The additional number of vacancies of the revised panel was reduced from the panel of D.S. for the subsequent year 1995.

xx xx xx xx

13. And whereas from the Select List of Grade I of CSS for the year 1995, it is seen that S/Shri Gurdiyal Singh (CSL No.3752) and T.P. Mandal (CSL No.3755) belong to SC category, who are included in the Select List of 1995 above the name of Shri Randhir Singh. If the additional vacancies, occurred due to Review DPC for Select List of Selection Grade for the year 1994, are taken into account by way of a Review DPC for Select List of Grade I of the CSS for the year 1994, only one vacancy will go to the SC category. Since, there are two SC officers senior to Shri Randhir Singh, in any case he may not be included in the Select List of 1994.”

2.12 Aggrieved by Annexure A-9 order of respondent No.1, the applicant approached this Tribunal again in O.A. No.504/2008, which was disposed

of by this Tribunal vide order dated 22.05.2009 with the following directions:

“11. Resultantly, OA is partly allowed. Impugned order is set aside. Respondents are now directed to pass a fresh order, a speaking one, strictly in pursuance of questions posed before them and record specific findings as per paragraph 12 of the earlier order of the Tribunal, as quoted *ibid*. This shall be done within a period of three months from the date of receipt of a copy of this order. No costs.”

2.13 Pursuant to the directions issued by the Tribunal vide order dated 22.05.2009 in O.A. No.504/2008, the respondents issued the impugned Annexure A-1 order dated 17.06.2010 wherein, *inter alia*, it has been stated that in pursuance of the implementation of Tribunal’s aforesaid order, the size of 1994 panel of Under Secretary of CSS would stand reduced from 68 to 61. Consequently, the applicant has not been considered for inclusion in the select list of 1994.

2.14 In the impugned order, the respondents have stated that prior to the year 2002, Under Secretary and Deputy Secretary Grades of CSS were operated under Central Staffing Scheme and under this Scheme, officers of All India Services and other Organized Group ‘A’ Services, were allowed to man the posts as per functional requirements of the participating Ministries and Departments from time to time. However, after the cadre restructuring of the CSS in October, 2003, the posts of Under Secretary in all Ministries/Departments, barring a few, were encadred into CSS to be filled exclusively by officers of the Service. It is further stated that in the absence of fixed sanctioned strength of Under Secretary and Deputy Secretary Grades of CSS, prior to 2003, the posts were being allocated for the two Grades on a year-to-year basis, allocating certain number of the posts

operating under CSS based on the demands of the participating Ministries and Departments each year. It is also stated that the sanctioned and authorized permanent strength of the two Grades was fixed for the first time by a Cabinet decision only in October, 2003, which became applicable from 2003 and panels of later years in the two Grades.

Aggrieved by the impugned Annexure A-1 order, the applicant has filed this O.A. praying for the reliefs as indicated in paragraph (1) above.

3. The applicant has pleaded the following grounds in support of the reliefs claimed:

3.1 As per the formulae devised by respondent No.1, vacancies for framing select list of Deputy Secretary Grade are determined by taking into account the number of Grade I officers included in the select list of Selection Grade. Since in the modified select list of Selection Grade, the number of Grade I officers included had increased from 40 to 46, hence 6 vacancies caused in Grade I was necessarily to be taken into account by the respondents for inclusion in the select list of Grade I for the year 1994.

3.2 All the 6 vacancies in Grade I became available after the inclusion of 6 SC category officers in the select list of the Selection Grade. Hence, these freshly accrued 6 vacancies in Grade I were necessarily required to be filled up by SC category officers, the applicant being one of such officers.

3.3 The respondents have given benefit of Annexure A-6 O.M. dated 11.03.2005 to all the Under Secretaries included in the select lists for the years 1991, 1992, 1993 & 1994 and, therefore, as a result of revision of select

list of Grade I of 1994, the applicant would also be entitled for the benefit of said O.M.

3.4 The Tribunal, in its order dated 13.09.2007 passed in O.A. No.1241/2006, had clearly desired to know the 7 persons, who stepped into the vacancies of Under Secretary that got created after inclusion of additional 7 Under Secretaries in the select list for the Selection Grade in 1994. This question has not been clearly answered by the respondents.

4. Pursuant to the notice issued, only respondent No.1 entered appearance and filed reply. In its reply, respondent No.1 has made the following important averments:-

4.1 In compliance with the judgment of this Tribunal dated 05.07.2004 in O.A. No.2098/2003, 6 SC/ST category officers were included in the select list of Selection Grade of CSS (Deputy Secretary) for the year 1994 vide O.M. dated 26.05.2005. Resultantly, the number of vacancies included in the revised select list for Selection Grade of CSS (Deputy Secretary) got increased to 47.

4.2 Prior to the year 2003, the Under Secretary/Deputy Secretary posts were operated under Central Staffing Scheme and under the Scheme, the officers of All India Services and other Organized Group 'A' Services were appointed to these posts as per functional requirements of the participating Ministries/Departments from time to time. But after the cadre restructuring of the CSS in October, 2003, the posts of Under Secretary in all Ministries/Departments, barring a few, were encadred into CSS to be filled exclusively by officers of the Service.

4.3 The sanctioned and authorized strength of two Grades, i.e., Under Secretary and Deputy Secretary was fixed for the first time by a Cabinet decision only in October, 2003 and became operational from then onwards.

4.4 As per the direction of the Tribunal in **Sahadeo Ram** (supra), the panel of Deputy Secretary grade for the year 1994 was increased in the year 2005 vide O.M. dated 26.05.2005. This was confined to Deputy Secretary grade only. Theoretically this should have resulted in equal number of vacancies in the grade of Under Secretary for the year 1994. This was never provided for, nor was it categorically intended in the order of the Tribunal in **Sahadeo Ram**. The judgment in the said case came in the year 2004 for modifying 1994 select list of Deputy Secretary. A review of 15 panels from 1994 onwards up to 2008 would have led to large scale administrative difficulties and would have resulted in unsettling the settled panels of previous years, leaving the possibility for further litigation. Hence, exercising the power under Rule 6 (1) of Rules 1962, the panel size of Under Secretary for the year 1994 was reduced by 7 from 68 to 61 for the reasons mentioned above.

5. The applicant has filed a rejoinder to the reply filed on behalf of respondent No.1, in which, by and large, the averments made in the O.A. have been reiterated.

6. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 20.09.2017.

7. Mr. L R Khatana, learned counsel for applicant, besides re-stressing the averments made by the applicant in the O.A., also drew our attention to the observations made in the following judgments:-

(i) Judgment of Hon'ble Apex Court in **Ajit Singh & others (II) v. State of Punjab & others**, (1999) 7 SCC 209, wherein it has been held as under:

“22.... Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right.”

(ii) Judgment of Hon'ble High Court of Bombay (Nagpur Bench) in **Hussain Khan v. Shah Babu Education Society**, (W.P. No.542/1993) decided on 26.04.2006, wherein it has been held as follows:-

“19. The correct reading of Ajit Singh (II)’s case reveals that when a person by virtue of ‘conditions of service is eligible’ comes to in to the Zone of consideration, and refusal to consider thereafter would offend the Article 16 (1) of the Constitution of India. Thus, ‘eligibility’ as per the set of rule in vogue has to be the criteria. Ajit Singh (II)’s case is thus, of no use for supplying to the petitioner foundation for testing the legality, validity and virus of Sub-section (2) of Section 3 of Maharashtra Employee of Private Schools (Conditions of Service) Regulation Act, 1977.”

8. Mr. Khatana argued that the query raised by this Tribunal in aforesaid order dated 13.09.2007 as to who were the 7 persons, who stepped into the vacancies of Under Secretary created pursuant to the promotion of their incumbents to the grade of Deputy Secretary, has not been satisfactorily answered by respondent No.1. He further submitted that

the order passed by respondent No.1 pursuant to the directions of the Tribunal in O.A. 504/2008 dated 22.05.2009 has not satisfactorily addressed to the issues raised in paragraph 12 of the Tribunal's order dated 13.09.2007.

9. *Per contra*, Mr. R N Singh, learned counsel for respondents, besides reiterating the averments made by respondent No.1 in its reply, vehemently argued that the earlier two orders of the orders of the Tribunal in O.A. Nos.1241/2006 and 504/2008 filed by the applicant, have been duly complied with by the respondents and cogent reasons have been given for non-consideration of the applicant in the select list of 1994 the post of Under Secretary.

10. We have considered the arguments of learned counsel for the parties and have also perused the pleadings.

11. Respondent No.1 has clarified in its reply that there was no authorized strength fixed for the Selection Grade (Deputy Secretary) and Grade I (Under Secretary) for the CSS cadre prior to October 2003 and that these posts were being operated under the Central Staffing Scheme, under which, besides the CSS officers, even the officers belonging to All India Service and other Group 'A' organized Services, were also being appointed. In the absence of fixed sanctioned strength for Under Secretary and Deputy Secretary Grades of the CSS, prior to 2003, every year, posts in these two Grades were being allocated for CSS officers. It is further stated that the cadre strength of CSS for Under Secretary and Deputy Secretary Grades were fixed for the first time in the year 2003 after obtaining the approval of

the Union Cabinet in October 2003 and thereafter panels for these two Grades of CSS are regularly being prepared and implemented.

In view of this clarification, it is quite natural to assume that the promotion of CSS officers to the Grades of Under Secretary and Deputy Secretary, prior to 2003, was completely dependent upon the number of posts allocated for CSS by the Government every year.

12. It is noted that the respondents promoted 6 Under Secretaries belong to CSS (all SC/ST candidates) to the Grade of Deputy Secretary by increasing the allocation of posts of Deputy Secretary for CSS in that year. The respondents have further mentioned in the reply to paragraph 4 (g) to (k) of the O.A. that after promotion of 6 officers from the post of Under Secretary to Deputy Secretary in compliance with the aforesaid order of the Tribunal in **Sahadeo Ram**, the strength of Under Secretary of the CSS stood reduced from 68 to 61. Thus, the query raised by the Tribunal, in its order dated 13.09.2007, gets answered. The details furnished by respondent No.1 in regard to factual position, as is existed pre-2003, vis-a-vis, CSS cadre, fully answer the issues raised by the Tribunal in paragraph 12 of order dated 13.09.2007.

13. The judgments relied upon by Mr. Khatana, referred to above, would not apply to the instant case, as we notice that there has not been any violation of the service conditions of the applicant as well as he has not been denied his right to equality. The applicant has been considered for promotion by the respondents in accordance with the CSS Rules and the

vacancies available and after 2003 in terms of the sanctioned strength of Under Secretary and Deputy Secretary of CSS.

14. In the conspectus of the discussions in the foregoing paragraphs, we do not find any merit in this O.A. Accordingly, it is dismissed. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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