

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

OA-4471/2013

Reserved on : 12.01.2017.

Pronounced on : 24.01.2017.

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Sh. Himmat Singh,
S/o Late Gp/Cpt Charanjit Singh, VRC, VSM
R/o 1513, Sector-34D, Chandigarh. Applicant

(through Sh. M.K. Bhardwaj, Advocate)
Versus

UOI & Ors.

1. Cabinet Secretariat,
Govt. of India,
New Delhi
Through its Cabinet Secretary.
2. The Secretary,
DOP&T, North Block,
New Delhi.
3. State of Punjab through
the Chief Secretary,
Punjab, Chandigarh,
UP. Respondents

(through Sh. Rajinder Nischal with Sh. Ashish Nischal, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant is an IAS officer of 1980 batch of Punjab cadre. According to him, he has an outstanding record of service and has got timely promotions at various levels. He got Chief Secretary's grade, which is equivalent to the grade of Secretary to Government of India, on 20.12.2010. He became entitled for consideration for empanelment for the post of Secretary to Government of India. He was considered along with other batchmates but was not found eligible for empanelment. Aggrieved by this decision of the respondents, he

submitted a detailed representation to them. However, he has stated that no action was taken by the respondents on his representation. He has, therefore, approached this Tribunal seeking the following relief:-

- "(i) To declare the action of respondents in not including the name of applicant in panel prepared for appointment to the post of Secretary, Govt. of India as illegal, arbitrary and unconstitutional.
- (ii) To direct the respondents to reconsider the case of applicant for inclusion of his name in panel for appointment to the post of Secretary, Govt. of India on the basis of his outstanding service record reflected in ACRs and service profile.
- (iii) To allow the OA with cost.
- (iv) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case."

2. The contention of the applicant is that the decision taken by the respondents was without application of mind. He has alleged that his case has not been considered in accordance with the Central Staffing Scheme and has been rejected on the basis of conjectures and surmises. He has given an account of his achievements at various posts held by him during his service career and stated that he was entitled to be empanelled. The respondents' action of ignoring him was violative of his Constitutional rights and suffered from the vice of discrimination. In this regard, he has relied on the following judgments:-

- "(i) **State of Bengal Vs. Rabindra Nath Sengupta**, 1998(2)SLR (No.) 535.
- (ii) **Marine Products Export Development Authority Vs. A. Geetha**, 1997(6)SLRNo.331.
- (iii) **UOI Vs. Anil Kumar**, 1999(4)SLR(No.) 298."

He has also stated that merely because he was on long sanctioned leave, he cannot be denied empanelment. Further, on the date of the meeting of the Selection Committee, he was not facing any disability, which could have disentitled him from empanelment. Thus, action of the respondents was without any justification. He has relied on the judgment of Hon'ble Supreme Court in the

case of **Delhi Jal Board Vs. Mohinder Singh**, 2000(7)SCC 210 to assert that he had a fundamental right to have been considered for empanelment in a fair manner.

3. In their reply the respondents have explained how the process of empanelment to different posts in the Government of India is carried out. According to them, this is done as per the Central Staffing Scheme. The respondents have further submitted that the applicant was considered for empanelment along with his batchmates in the meeting of Special Committee of Secretaries held on 18.09.2013. A total of 74 officers of the 1980 batch were considered on the basis of their service record, recommendations of the Expert Panel and were assessed for such qualities as merit, competence, leadership and flair for participating in the policy making process. Their vigilance status was taken into account. The SCOS recommended 28 officers of the batch but did not recommend the applicant.

3.1 The respondents have further submitted that the applicant was not empanelled even at the level of Additional Secretary. Moreover, at the time of the Selection Committee Meeting, he was not clear from vigilance angle inasmuch as CVC had advised placing the facts before the Competent Authority while considering his suitability for empanelment. Further, the officer did not have ACRs for ten full years during the relevant period for empanelment.

3.2 The respondents have gone on to state that 13 officers of 1980 batch including the applicant, who were not empanelled, submitted representations seeking review of their cases. Their cases were again considered by the Special Committee of Secretaries on 13.01.2014. Even in that meeting, the applicant was not recommended for empanelment.

3.3 In their additional affidavit filed on 18.05.2016, the respondents have submitted that the case of the applicant was further considered in the meeting of SCOs held on 15.12.2014 to review the cases of those 1980 batch officers, who could not be empanelled in the first round. Even in that meeting, the applicant was not recommended for empanelment.

4. We have heard both sides and have perused the material placed on record. To ascertain the reasons as to why the applicant was not empanelled, we summoned the original record of the respondents, which contained minutes of the meetings of SCOS held on 18.09.2013, 13.01.2014 and 15.12.2014. On perusal of these minutes, we find that the common reason for not recommending the applicant for empanelment in any of the three meetings are the following remarks against the name of the applicant available in the chart considered by the Committee for empanelment:-

“Vigilance not clear, no AS, less ACRS.”

4.1 From the above, it is obvious that primarily three reasons have been given by the respondents for rejecting the applicant's case. We consider each one of them as hereunder:-

NO AS

Learned counsel for the respondents stated that the empanelment of the officers is considered under the Central Staffing Scheme. Further, on 04.10.2007, Hon'ble Prime Minister had also approved certain additional guidelines for considering representations regarding empanelment as Addl. Secretary/Secretary level. In these guidelines, one of the conditions imposed for empanelment is that for an officer to be empanelled as Secretary, he should already be empanelled as Addl. Secretary. Learned counsel argued that the applicant had not been empanelled as Addl. Secretary and, therefore, in terms

of the above guidelines approved by the then Hon'ble Prime Minister, he was not eligible to be empanelled as Secretary.

4.2 Learned counsel for the applicant on the other hand argued that the empanelment of the officers has to be done in accordance with Central Staffing Scheme and the guidelines issued by the then Hon'ble Prime Minister were not part of the same. Hence, the applicant's case could not have been rejected on this ground. Moreover, certain officers, who had not been empanelled as Addl. Secretaries, were empanelled even though the case of the applicant was rejected on this ground. Thus, the treatment meted out to the applicant was discriminatory.

4.3 We have considered the submissions of both sides. It is not disputed by either side that the empanelment of the officers for holding higher level post in India is done in accordance with the Central Staffing Scheme. The Constitutional validity of this Scheme was considered by the Apex Court in its judgment in the case of **Satya Narain Shukla Vs. UOI & Ors.** (Appeal No. 2082/2003) dated 11.05.2006. While upholding the validity of this Scheme, Apex Court has noted that this Scheme was first formulated on 17.10.1957 by a Resolution of the Government of India and was intended to make adequate arrangements for staffing Senior Administrative posts over and above the rank of Deputy Secretary to the Government of India. At that time, it was also noted therein that the Scheme has been formulated in consultation with the State Governments and other authorities concerned. This stands to reason as the Scheme deals with empanelment of officers of All India Service also, who have liability to serve both the State Governments as well as the Central Government. Thus, Apex Court noted that even though the Scheme was not a Rule or Regulation framed under All India Services Act, it was framed after consultation with the State Governments in the same way as any Rule or Regulation under All

India Services Act is framed. Thus, what can be deduced from the above is that Central Staffing Scheme has been framed by a Resolution of the Government i.e. by a Cabinet decision and after consultation with the State Governments. It would, therefore, stand to reason that any amendment/addition to this Scheme is also done in the same manner. In the instant case, we find that while rejecting the case of the applicant one of the grounds taken by the respondents is that he had not been empanelled as Addl. Secretary. We also find that empanelment as Addl. Secretary was not a condition in the original Staffing Scheme. This was part of the Guidelines approved by the then Hon'ble Prime Minister on 04.10.2007. However, there is no record of these Guidelines being incorporated in the Central Staffing Scheme by following the procedure of consultation with the State Government and thereafter placing the matter before the Union Cabinet. As such, these Guidelines, in our opinion, cannot form part of the Central Staffing Scheme and read with the Central Staffing Scheme while considering empanelment of officers. After approval of the Hon'ble Prime Minister, it was incumbent on the DoP&T to take steps to incorporate these Guidelines in the Central Staffing Scheme. However, they do not appear to have done so and, therefore, these Guidelines cannot be applied while considering empanelment cases.

4.4 We also notice from the record produced by the respondents that some officers have been empanelled in the same Selection Committee Meeting for Addl. Secretary as well as Secretary together. In this regard, case of one Sh. Anthony J.C. Desa of the same batch belonging to Madhya Pradesh cadre has been cited. This officer has been empanelled as Secretary as well as Addl. Secretary in the same Meeting. Similarly, the case of one Sh. Rakesh Srivastava of 1981 batch of Rajasthan cadre has been cited by the applicant. He was also simultaneously empanelled for both levels. However, in the case of the

applicant a discriminatory treatment has been meted out as he has not been considered for simultaneous empanelment. Therefore, we find considerable merit in the aforesaid submission of the applicant and come to the conclusion that case of the applicant could not have been rejected on the ground that he had not been empanelled as Addl. Secretary.

Vigilance Status

4.5 It has been stated that in the case of the applicant CVC vide letter dated 11.07.2013 had stated that insofar as vigilance clearance of the applicant was concerned, alleged misuse of funds of the Farm Councils while the applicant was posted as Managing Director of Punjab Agro be verified and the facts placed before the Competent Authority while considering applicant's case for empanelment. The respondents have submitted that thus the applicant's conduct was under cloud at the time of Selection Committee Meeting held on 18.09.2013 and, therefore, he was not eligible for empanelment. Learned counsel for the applicant, however, argued that empanelment could not have been denied to the applicant merely on the basis of unverified and unsubstantiated allegations. He further submitted that in the O.M. No. 22011/4/1991-Estt.(A) dated 14.09.1992 circumstances under which promotion can be denied to an officer are spelt out. According to this, promotion can be denied only when an officer is under suspension or charge sheet has been issued to him in departmental proceedings or prosecution for criminal charge is pending against him. In the instant case, none of the circumstances existed. Hence, respondents erred in not treating the applicant as clear from vigilance angle.

4.6 We have considered the aforesaid submission. In our opinion, in **S.N. Shukla's** case (supra) Apex Court had clearly ruled that empanelment was not same as promotion. When an officer of All India service goes to the Centre on

deputation, while accepting such a deputationist, Central Government has a right to be choosy and select only those whose integrity in their opinion is above board. Therefore, an officer aspiring posting in Central Government cannot claim the same as a matter of right in the same way in which he can lay claim on a promotional post in his own cadre. The Centre has every right to frame from stringent criteria for empanelling officers particularly at higher levels. They, therefore, cannot be constrained by the conditionalities mentioned in the O.M. 14.09.1992 and were well within their rights to adopt a different criteria. However, such criteria should have been formulated in clear terms and incorporated in the Central Staffing Scheme.

4.7 In the instant case, we find that as far as the vigilance status is concerned, no such special criteria has been mentioned in the Scheme. Thus, the only laid down Instructions on the subject are those contained in the O.M. dated 14.09.1992. Since it is not disputed that the applicant was neither under suspension nor had been charge sheeted in departmental proceedings at the time of holding of the Selection Committee Meeting, in our opinion, leaving him out on the ground that his vigilance status was not clear, is unsustainable as no transparent criteria existed in dealing with such cases. In any case the respondents have not even followed CVC advice that all facts relating to the alleged misuse of funds be placed before competent authority for him to take decision regarding vigilance clearance of the applicant. They have just treated him as not clear from vigilance angle.

Less ACRs

4.8 The third reason given by the respondents was that enough ACRs of the applicant were not available for the Committee to judge his suitability for empanelment. In this regard, we have seen the availability of ACRs of the

applicant as handed over to us by learned counsel for the respondents and not disputed by the applicant as per chart below:-

1 Shri Himmat Singh (PB: 1980) (DoB: 24.08.1957)			
NO	Year	Period	In months
	1993-94	01.04.93-02.07.93	3.1
		06.07.93-31.03.94	8.8NRC (Training abroad)
	1994-95	01.04.1994-30.06.94	3-NRC (Training abroad)
		01.07.94-31.03.95	9
	1995-96	01.04.95-06.12.96	8.2 NRC (Did not work under any authority for three months)
		07.12.95-31.03.96	3.8
	1996-97	01.04.96-26.08.96	4.8
	1997-98	01.04.97-03.10.97	6.1-NRC (Did not work under any authority for three months and remained on leave)
		14.10.97-31.03.98	5.5
	1998-99	01.04.98-26.08.98	4.8
	1999-00	27.12.99-31.03.00	3.1
	2000-01	01.04.00-27.06.00	2.9- NRC (Did not work under any authority for three months)
		15.01.2001-31.03.01	2.5-NRC
	2001-02	01.04.01-27.11.01	7.9-NRC
	2002-03	01.04.02-30.03.03	12
	2003-04		12-NRC
	2004-05		12-NRC
	2005-06		12-NRC(Did not submit his self appraisal)
	2006-07	01.04.06-31.03.07	12
	2007-08		NRC
	2008-09		NRC
	2012-13	01.04.12-31.03.13	12

This chart reveals that when the case of the applicant was first considered in the Meeting held on 18.09.2013 his ACRs for 58.1 months were not available. Thereafter, when he was considered in the Meeting held on 13.01.2014 his reports for 67 months were not available. Further, in the meeting held on 18.09.2013 reports for 58 months were not available. Learned counsel for the

respondents submitted that this happened because the applicant being academically oriented had been on study leave as well as other kinds of leave and, therefore, no reports about him could be written. Applicant's counsel, on the other hand, argued that the applicant cannot be left out only because he was on long sanctioned leave. While this argument of applicant's counsel could have been acceptable had it been a case of promotion where the officer concerned had a right to be considered for promotion, in the instant case, as mentioned above and has held by Apex Court in the case of **S.N. Shukla** (supra) empanelment was different from promotion. In the case of empanelment the Central Government have every right to choose an officer in accordance with the Central Staffing Scheme, who as per their assessment was best suited to be appointed as Secretary. In the present case, since ACRs of the applicant for long periods were not available, we agree with the respondents that enough material about the applicant was not available to judge his suitability for being appointed as Secretary. We were not impressed by the argument of the learned counsel for the applicant that if some ACRs were missing then ACRs of preceding years should have been evaluated. This is because in the instant case if that was done ACRs which pertained to period when applicant was in very junior position and remote from the date of empanelment would have come into reckoning. These reports would not have given correct picture about the applicant's suitability for empanelment as Secretary. Hence, we find considerable merit in this ground taken by the respondents.

5. On the basis of findings given above, we find that this O.A. fails because of the last ground, namely, enough ACRs were not available to decide the

suitability of the applicant for empanelment as Secretary. Accordingly, we dismiss this O.A. No costs.

6. Registry is directed to return the original records (containing four files) to the concerned with proper receipt.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

/Vinita/