

**Central Administrative Tribunal
Principal Bench**

OA No.4102/2013

New Delhi, this the 31th day of July, 2019

**Hon'ble Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Shri S.C. Sagar
S/o Late Sh. Shyam Lal Sagar
R/o D-II/203, Kaka Nagar, New Delhi.
Aged about 58. ...Applicant

(By Advocate: Shri Amit Anand)

Vs

Union of India & Ors.

1. Cabinet Secretary
Chairman, CSB, Cabinet Secretariat
Rastropati Bhawan
New Delhi.
2. The Secretary
Department of Personnel & Training
North Block, New Delhi. ...Respondents

(By Advocate: Shri Rajesh Katyal)

ORDER(ORAL)

Justice L. Narasimha Reddy:

The applicant joined the Central Secretariat Service(CSS) as Section Officer in the year 1980 by way of direct recruitment. Over the period, he earned promotions to the post of Under Secretary, Deputy

Secretary and Director. He belongs to SC category. His case was considered in the year 2004 for empanelment to the post of Joint Secretary in the Central Staffing Scheme. However, the Civil Service Board (CSB) did not find him fit for empanelment. Thereafter, his case was reviewed in the year 2009 and 2011. There again, the CSB did not recommend the case of the applicant and the view taken by the CSB was approved by the Appointments Committee of Cabinet (ACC). The applicant made representations to various authorities, including the National Commission for Scheduled Castes and Parliament. At the relevant stages, the respondents informed that the applicant was not found fit to be empanelled on account of the overall assessment.

2. Recently, the case of the applicant was considered by the CSB at its meeting held on 03.06.2013. The factum of the non recommendation of the case of the applicant, at the initial stage, and two reviews thereafter, was taken note of. The observations made by the National Commission for Scheduled Castes were also kept in view. The CSB

decided not to recommend the case of the applicant for empanelment.

3. This OA is filed with a prayer to call for the records pertaining to the initial consideration of the applicant as well as the subsequent reviews, to quash the respective recommendations of the CSB; and to direct the respondents to re-consider his case, if necessary, by reassessing his ACRs, academic record and experience. The applicant submits that the successive CSBs have applied totally irrelevant parameters and thereby denied him, the empanelment. It is also stated that while on certain occasions, the parameters applicable to general category candidates were applied to him in other cases, the un-communicated, below bench mark gradings in the ACRs, were taken into account.

4. The respondents filed a detailed counter affidavit opposing the OA. It is stated that the applicant cannot seek judicial review of the decisions of the CSB which met a decade ago, at this stage. They further submit that the procedure involved independent assessment by the respective members of the

Screening Committee which was confirmed by the CSB and the assessment made by them cannot be limited to the one of taking note of the ACRs. They further submit that in the minutes of the meeting held on 03.06.2013, it was categorically stated that on overall consideration of the general reputation of the applicant, type of assignments handled by him and the variety of experience etc., it was decided not to recommend the case of the applicant.

5. We heard Shri Amit Anand, learned counsel for the applicant and Shri Rajesh Katyal, learned counsel for the respondents.

6. The OA was filed at a time when the applicant was in service. During the pendency of the OA, he retired from service on 31.05.2015. Therefore, what needs to be examined is as to whether: (a) the applicant was entitled to be empanelled for the post of Joint Secretary and if so, (b) with effect from which panel year.

7. From the post of Director, there is no promotion in the CSS. Empanelment to the post of Joint Secretary is not confined to the officers in CSS.

Officers from the cadres of the various States and Union Territories are also eligible. By no stretch of imagination, the empanelment can be treated as promotion. Though the ACRs of the officers under consideration can be one of the aspects to be taken into account, it is difficult to take the view that such of the officers whose ACRs are found to be up to the required level, are entitled to be empanelled straightaway. The various aspects such as the general reputation of the officer, the nature of assignments he handled before he came to be considered, the experience he has gained over the years, need to be taken into account.

8. Having regard to the importance of the duties discharged by the officers holding the post of Joint Secretary, the screening process itself is evolved in a very detailed and meticulous manner. At the first stage a list of eligible officers is prepared. In the second stage, each member of the Screening Committee is required to make his independent assessment of each officer, under consideration. The gradings, so given, are taken into

account, by the CSB. Thereafter the matter is placed before the ACC. When such is the rigorous nature of selection, it is very difficult to rest the entire selection process on the ACRs.

9. The applicant became eligible to be considered in the year 2004. The cut off year for that was 2001-2002. The assessment by the Screening Committee resulted in two "Very Good" and two "Good". During that selection, there were four Scheduled Caste officers belonging to CSS under consideration for empanelment as Joint Secretary. The normal requirement adopted by the selecting agency, was three "Very Goods". It so happened that two officers from SC/ST were assessed as Very Good by three members and were empanelled. It needs to be noted here that certain standards such as, requirement of minimum "Very Good" are relaxed to a limited extent, in case the representation of SC officers is not found to be adequate. Since four out of the two officers were selected, the necessity to relax the condition as to three "Very Good" for the concerned selection, did not arise.

10. In the review, which took place in 2009, the applicant was graded by the Screening Committee in such a way that all the four members assessed him as "Good". There was no scope for his being empanelled. In the second review held in the year 2011, he was assessed as one "Very Good", two "Good" and one "Average". This time also he did not make it to the selection.

11. The applicant made representations to the NCSC as well as to the parliament. Having regard to the observations made by the said authorities, the case of the applicant was once again considered by the CSB at its meeting held on 03.06.2013. This time, the CSB examined the case from the point of view of his general reputation, the type of assignments handled by the applicant and the variety of experience, without giving much importance or emphasis to the gradations. In the result, he was found not fit.

12. It is strongly argued on behalf of the applicant that the below bench mark ACRs were not communicated to the applicant. Here a distinction

needs to be maintained between the ACRs that are maintained in respect of the officers year after year on the one hand, and the gradations given by the members of the Screening Committee, on the other. The applicant is under the impression that what is mentioned in the impugned order, reflects the ACRs of the concerned years. This is not correct.

13. In para 6 of the counter affidavit, the nature of assessment undertaken by the Screening Committee, the date of meetings of successive CSBs, the recommendations etc. are furnished as under:-

“6. That the applicant, an officer of Central Secretariat Service (SGSL:92) belonging to Scheduled Caste category was assessed at initial, First Review and Second Review stage. The grading secured by him and the status of his JS level empanelment are given under:

S. No.	Stage of Assessment	Initial	First Review	Second Review
1	Cut off year	2001-02	2006-07	2008-09
2	Gradings given by the Screening Committee to Shri S.C. Sagar	2 'Very Good' 2 'Good'	4 'Good'	1 'Very Good' 2 'Good' 1 'Average'
3	Date of CSB Meeting	14/07/2004	27/01/2009	23/08/2011
4	Status of CSB recommendation	CSB did not recommend	CSB did not recommend	CSB did not recommend
5	Status of ACC approval	The ACC did not approve	The ACC did not approve	The ACC did not approve

14. Once the grading as "Very Good", "Good" or "Average" are the ones given by the Screening Committee, the question of communicating them to enable the officer to make representation, does not arise. Therefore, the application of the principle enunciated by the Hon'ble Supreme Court in **Dev Dutt's** case does not become relevant in this context.

15. The second limb of argument is that the assessment was not objective in nature, and that the entire process needs to be re-examined. In this context, we may refer the judgment of the Hon'ble Delhi High Court in **Charanjit Lal Khatri Vs. Secretary General, Rajya Sabha Secretariat** in LPA No.39/2012 decided on 21.12.2012. Para 12 reads as under:-

"12. We, in exercise of power of judicial review are incompetent to sit in appeal over the overall gradings given by the Reporting and Reviewing Officer who have written the ACRs of the appellant for the various years. We also are of the opinion that for this Court to issue a direction for review as sought, it is necessary first to record a finding of disagreement with the overall ratings and for which we do not find any case to have been made out. It is well-nigh possible that a candidate individually and separately assessed on different parameters may be "Very Good" but the overall impact

and effect or the working may still be "Good" and not "Very Good". The composite evaluation has to encompass consideration of several elements which transcend or go beyond the individual qualities."

16. Reliance was placed upon the judgment of the Hon'ble Supreme Court in ***State Bank of India Vs. Mohd. Mynuddin*** (1987) 4 SCC 486 which reads as under:-

"The Court is not by its very nature competent to appreciate the abilities, qualities or attributes necessary for the task, office or duty of every kind of post in the modern world and it would be hazardous for it to undertake the responsibility of assessing whether a person is fit for being promoted to a higher post which is to be filled up by selection. The duties of such posts may need skills of different kinds scientific, technical, financial, industrial, commercial, administrative, educational etc. The methods of evaluation of the abilities or the competence of persons to be selected for such posts have also become nowadays very much refined and sophisticated and such evaluation should, therefore, in the public interest ordinarily be left to be done by the individual or a committee consisting of persons who have the knowledge of the requirements of a given post, to be nominated by the employer."

17. Keeping in view the principles enunciated by the Hon'ble Supreme Court and Delhi High Court, we are of the view that the facts of the present case do not

permit any judicial review at this stage. The case of the applicant was considered for empanelment with reference to the relevant parameters and we do not find any serious error or flaw in that. The OA is accordingly dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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