

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 4013/2014

New Delhi, this the 18th day of July, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

M.M. Singh,
S/o Late Sh. Kedar Narayan Singh
Aged about 58 years,
Director, Ministry of Drinking Water & Sanitation,
R/o House No.65, Block No.20,
Lodhi Colony, New Delhi-110003.

.. Applicant

(By Advocates : Shri Amit Anand Tiwari with
Shri Shashwat Singh)

Versus

Union of India
Through Secretary,
Department of Personnel and Training,
Ministry of Personnel, Public Grievances and Pensions.

.. Respondent

(By Advocate : Mrs. Avinash Kaur)

O R D E R (ORAL)

Justice L. Narasimha Reddy, Chairman

The applicant joined the Central Secretariat Services in the year 1983 as Assistant Director in Ministry of Urban Development. He was promoted as Under Secretary in the year 1990 and became eligible for

promotion to the post of Deputy Secretary in the year 1996. DPC was convened for this purpose in the year 2005. However, since the applicant was issued with a Charge Memorandum in the year 1999, followed by another Charge Memorandum dated 14.03.2004, the sealed cover procedure was adopted. In both the cases, the applicant was imposed punishment. However, on challenge made by him, the punishment was set aside in the year 2002 in 1st case and in other case, on 11.08.2011. Once the issue reached finality, the respondents opened the sealed cover. On finding that the DPC found him 'Fit', an order was issued on 28.06.2011 promoting him against the vacancy year 2009. On a representation made by him, the year was changed to 2001, through an order dated 26.11.2012.

2. The applicant made representation stating that he was entitled to be promoted with effect from the year 1996. When it was not considered, he filed O.A. No.2628/2014. That O.A. was disposed of on 05.08.2014, directing the respondents to pass orders on the representation. Acting on the same, the respondents clarified that the case of the applicant was considered by

the DPC with reference to the years 1996 to 2007 and he was found 'Fit' only against the select year 2001. Reference was also made to other correspondence. This O.A. is filed challenging the order dated 26.11.2012 and order dated 01.09.2014.

3. The applicant contends that though the sealed cover procedure was adopted on account of pendency of disciplinary proceedings, he was entitled to be promoted against the vacancy year 1996, and if the DPC found any factor to deny him the promotion with reference to that year, it was under an obligation to furnish the reasons.

4. The respondents filed a detailed counter affidavit opposing the O.A. It is stated that the case of the applicant was considered against the vacancies of the years 1996 to 2007 and the DPC found him 'Fit' only against the year 2001. It is stated that the sealed cover was opened soonafter the punishment imposed on him was set aside and that, initially, he was promoted with effect from the year 2009, it was rectified to the year 2001 based on the recommendations of the DPC.

5. We heard Shri Amit Anand Tiwari, learned counsel for the applicant and Mrs. Avinash Kaur, learned counsel for the respondent.

6. It is not in dispute that the case of the applicant was considered for the years 1996 to 2007 for promotion to the post of Deputy Secretary. The sealed cover procedure was adopted, since he was facing two chargesheets, at that time. It is necessary to mention that he was imposed with punishment and the punishment was set aside by this Tribunal in two separate O.As. As a result of the proceedings, the sealed cover was opened and the applicant was extended the benefit of promotion.

7. The respondents have categorically stated that the DPC found the applicant 'Fit' for promotion against the select year 2001. A perusal of the Office Memorandum dated 26.11.2012 discloses this. It reads as under:

“OFFICE MEMORANDUM”

Subject : Revision of Select Lists for Selection Grade (Deputy Secretary) of the Central Secretariat Service for the year 2001 and 2009.

The undersigned is directed to say that the case of regular promotion of Shri M.M. Singh (CSL No.2193) to Selection Grade (Deputy Secretary) of the Central Secretariat Service (CSS) for the years 1996 to 2007 was kept in sealed cover. On opening

of sealed cover, Shri M.M. Singh has been found fit for promotion against the Select List year 2001. With the approval of the competent authority it has been decided to include his name in the Select List of Selection Grade (Deputy Secretary) CSS for the year 2001.

2. Accordingly, in partial modification of the annexure to this Department's OM No.4/1/2007-CS-I(D) dated 7th November, 2007 circulating the Select List for Selection Grade (Deputy Secretary) of CSS for the year 2001, the name of Shri M.M. Singh is placed at the top of the Select List for Selection Grade (Deputy Secretary) at S.N. 0 above the name of Shri Jeevan Lal (CSL No.3355), whose name appears at S.N.1.

3. Consequently, the name of Shri M.M. Singh shall stand deleted from the Select List of Selection Grade (Deputy Secretary) of CSS for the year 2009."

8. Once the DPC has assessed the applicant as 'Fit' for promotion only against the select year of 2001, no one can substitute it with any other year. The plea of the learned counsel for the applicant that the DPC was under obligation to explain the reasons, is totally untenable.

9. The applicant placed reliance upon the Office Memorandum dated 09.05.2014. Firstly, the O.M. does not cover the issue as it was not in force, when the DPC met in the year 2005. Secondly, even according to the O.M., the DPC was required only to indicate whether an officer is 'Fit' or 'Unfit'. In other words, the DPC was advised not to give any reasons. Time and again, the Hon'ble Supreme Court has also indicated neither the

Tribunal nor the Courts have to sit over the assessment made by the DPC.

10. Reliance is also placed upon O.M. dated 08.02.2002. There again, we find that it was indicated in para 3.2 that a DPC shall only indicate whether an officer is 'Fit' or 'Unfit'. The other procedure stipulated therein is not relevant for the purpose of the O.A.

11. We do not find any merit in the O.A. and, accordingly, it is dismissed. There shall be no order as to costs.

**(Mohd. Jamshed)
Member (A)**

**(Justice L. Narasimha Reddy)
Chairman**

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