

**Central Administrative Tribunal
Principal Bench**

OA No.2631/2014

Reserved on : 18.07.2019.

Pronounced on : 26.07.2019

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

M. M. Singh (Director)
S/o Late Shri kedar Narain Singh,
Aged about 58 years,
R/o House No. 65, Block 20,
Lodhi Colony, New Delhi – 110003.

... Applicant

(By Advocate: Mr. Amit Anand Tiwari with Mr. Shahwat Singh)

Vs.

1. Union of India,
Through
Secretary,
Department of Personnel and Training,
Ministry of Personnel, Public Grievances and Pensions
2nd Floor, Lok Nayak Bhavan, New Delhi – 110003.

... Respondent

(By Advocate : Mr. Gyanendra Singh)

: O R D E R :

Mohd. Jamshed, Member (A) :

Facts of the case as stated in this OA are as under:-

The applicant joined the service in December, 1983 as Assistant Director in the Ministry of Urban Development. Between 1988-2011, departmental proceedings were initiated against the applicant and penalties were imposed.

These penalty orders were challenged by the applicant before this Tribunal vide OA No. 2566/2001 and OA No. 2173/2010, respectively. The Tribunal vide orders dated 08.03.2002 and 11.08.2011 quashed the said penalties. Between 1990-1995, the applicant rendered 5 years of service as Under Secretary i.e. Grade I Officer and he was included in the select list of Grade I officers for promotion to Deputy Secretary rank in the select list (USSL-1990). Between 1996-2007, the applicant's case for promotion was not considered as he lacked vigilance clearance and sealed cover proceedings pending against him. On 10.06.2005, the applicant's name was included in the Select List of Grade I of CSS for the year 1990. It is stated that the same was further revised. Later, vide O.M. No. 4/8/2009-CS, I(D) dated 01.04.2010 the applicant was informed that his name was listed at S. No. 1 of the select list of Selection Grade (Deputy Secretary) for 2009, which as per the applicant resulted in sending back of his promotion by 13 years. During this period DPCs were held and even his juniors were promoted.

2. On a representation made by the applicant on 28.06.2011, the department issued order dated 26.11.2012, placing the applicant at the top of select list of Selection Grade (Deputy Secretary) for 2001 at S. No. 0,

above Sh. Jeevan Lal who was at Sr. No. 1. With this revision the applicant was found fit for promotion against the select list of year 2001. The applicant remained aggrieved as according to him, he should have been promoted as Deputy Secretary w.e.f. 1996 instead of 2001 and his other promotions for Director and, thereafter, as Joint Secretary should have been made as per his seniority w.e.f. 1996. The applicant has sought multiple relief(s) vide this OA as under:-

“(a) Quash Applicant’s Promotion order dated 07.06.2013 and well as the order dated 02.08.2013 wrongfully refusing to correct the date of promotion and fixation of pay under the correct rule;

(b) Declare that the Applicant is entitled to be promoted to the post of Director from the date the officer next junior to him was promoted as Director;

(c) Direct the Department to grant promotion to the applicant along with all consequential benefits from the date the officer next junior to him was promoted as ‘Director’.

(d) Direct the constitution of a Review DPC for consideration of Applicant for promotion to the post of ‘Joint Secretary’ for 2011;

(e) Direct the Department to release Applicant’s arrears (including all consequential benefits) for promotion to the post of Director as per FR-22 from the date the officer next junior to him was promoted.

(f) Declare that the Applicant’s case for pay-fixation for ‘Director’ was illegally put under FR-27;

(g) Direct the Department to put Applicant’s case for pay-fixation back under FR-22;

(h) Pass such further order and orders as it may deem fit and facts and circumstances of the case.”

3. The applicant has primarily challenged the two orders dated 07.06.2013 and 02.08.2013. The order dated

07.06.2013 is regarding inclusion of his name in the CSS Senior Selection Grade list and the O.M. dated 02.08.2013 is in response to the representation made by him. Other relief(s) sought are for convening of a review DPC and for promoting him from the date of promotion of his juniors, grant of consequential benefits, pay fixation and payment of arrears.

4. The respondents filed a counter affidavit opposing the OA, stating that the applicant's case was considered against the vacancy years 1996 to 2007 and the DPC found in view of the sealed cover procedure found him fit to his name be included in Deputy Secretary Select List 2009. Later, sealed covers were opened and the applicant was found fit by the DPC for the Select List of 2001, accordingly, his name was included in the Deputy Secretary Select List 2001. Subsequently his further promotion to Senior Selection Grade (Director) was also considered and he was promoted to the post of Director vide order dated 07.06.2013. Learned counsel for the applicant during his arguments, relied upon the Hon'ble Supreme Court Judgment in the case of **Union of India Vs. Mohan Lal Capoor and Ors.** (1973) 2 SCC 836.

5. We heard Mr. Amit Anand Tiwari with Mr. Shahwat Singh, learned counsel for the applicant and Mr. Gyanendra Singh, learned counsel for the respondents, perused the records and relied upon judgments.

6. The applicant has approached the Tribunal by filing two OAs. The first OA No. 4013/2014 is for his promotion from the post of Under Secretary to Deputy Secretary and through this OA No. 2631/2014, he seeks his promotion from Deputy Secretary to Director. Obviously both these OAs are in sequence and the relief sought in the OA No. 4013/2014 is also directly linked with the relief sought in this OA as the basis of both is the date of his promotion to the post of Deputy Secretary which was initially fixed w.e.f. 2009 and subsequently revised to 2001. However, as per the applicant his promotion to the post of Deputy Secretary should have been w.e.f. 1996. This aspect has been considered and dismissed by this Tribunal in the OA No. 4013/2014, vide order dated 18.07.2019. The operative paras of the order read as under:-

“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."

7. The issue of the DPCs for considering the applicant's case during the period 1996-2007 for promotion to the post of Deputy Secretary also been dealt with in the above order. In the present OA, the applicant has challenged his promotion order dated 07.06.2013, which reads as under:-

"Subject: Inclusion of the names of officers of CSS Selection Grade (Deputy Secretary) in the Senior Selection Grade (Director) Select List 2012.

The undersigned is directed to say that on the recommendations of the Review Departmental Promotion Committee (DPC held on 22nd May, 2013, the competent authority has approved inclusion of the names of Shri M.M. Singh, Deputy Secretary and Shri T.H. Franklin, Deputy Secretary in the CSS Senior Selection Grade (Director) select list 2012.

2. *The inclusion of the name of Shri M M Singh in the CSS Senior Selection Grade (Director) Select List is subject to his undergoing and completing the mandatory Level 'F' training under CSS CTP in the next-slot.*

3. *Accordingly, in partial modification of the annexure to this Department's OM No.3/2/2012-CS-I(D) dated 3rd July, 2012 circulating the CSS Select List for Senior Selection Grade (Director) for 2012, the names of the above mentioned two officers are included in the Senior Selection Grade (Director) Select List 2012 as under:*

S.N.	CSL No.	Name of the officer	Placement in the CSS Sr. Selection Grade Select List 2012
1	2193	Shri M.M. Singh	At the top of the Select List at S.N. O above the name of Shri P. Vinayagam (CSL No.4210), whose name appears at S.N.1.
2	4003	Shri T. Henry Franklin	At S.N. 9-A above the name of Shri Shri Surender K.

			<i>Ahulalia CSL No. 4016 at S.N. 10 and below the name of Shri Mohan Lal Verma ((CSL No. 4001 at S.N.9.”</i>
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8. Vide this promotion order it is indicated that the applicant's name was included in the CSS Senior Selection Grade (Director) Select List 2012 and the applicant has been promoted as Director w.e.f. July, 2012. It is also mentioned that the applicant's promotion is subject to his undergoing and completing mandatory Level 'F' training under CSS CTP. The second order challenged by applicant is O.M. No. 4/6/2012-CS.I (D) dated 02.08.2013, which reads as under:-

“OFFICE MEMORANDUM

Subject: Representations of Sh. M. M. Singh, Director, CSS for his promotion as Director against the Director Select List 2009 instead of Director Select List 2012 and fixation of his pay on promotion on the basis of FR22 instead of FR 27.

With reference to two representations dated 17.06.2013 of Sh. M. M. Singh, Director, CSS on the subject mentioned above, it is informed that name of Sh. M. M. Singh was considered for inclusion in Sr. Selection Gr. Select List 2009 onwards by Review DPC held on 22.05.2013 and on the recommendation of the DPC his name was included in the Sr. Selection Grade Select List for the year 2012, The minutes of that meeting are enclosed.

2. With respect to fixation of his pay on promotion as Director on the basis of FR 27, it is intimated that this was done in accordance with the DPC guidelines. A copy of the relevant extract of the DPC guidelines is enclosed. As per these guidelines, the case of Sh. M. M. Singh is a case of superseded officer. Accordingly, his pay would be fixed notionally in the grade of Director from the date i.e.

05.07.2012, his immediate junior in the Sr. Selection Grade (Director) Select List 2012 named Sh. P. Vinayagam was promoted.”

9. The above referred O.M. is in response to the representation submitted by the applicant and it is clearly stated that his pay would be fixed notionally in the grade of Director from the date i.e. 05.07.2012 from which his immediate junior in the Sr. Selection Grade (Director) Select List 2012 named Sh. P. Vinayagam was fixed.

10. Respondents vide their letter No.15/2/2012-CS-I(D) dated 15.07.2013 in response to the information sought by the applicant through RTI have also explained the position as under:-

To

*Sh. M.M. Singh
20/65 Lodi Colony
New Delhi-110003.*

Subject: Application for information under the RTI Act, 2005.

Sir,

Please refer to you RTI application dated 01.07.2013 and in response letter No.15/1/2013-CS.I (APAR) dated 08.07.2013 of CPIO (APAR) of this Department

2. It is informed that the undersigned is dealing with the personnel matters of Deputy Secretary and above grades of CSS, thus only point 2 of your letter is partially pertaining to the undersigned. Accordingly, information regarding point 2 with the undersigned is as under:

Yours name was first considered for inclusion in the CSS Selection Grade (Deputy Secretary) Select List 1996 and 1997. A copy of the minute of that DPC is enclosed. Since at that time you were not clear from vigilance angle,

the recommendations of the DPC in your case was kept in sealed cover. Later on subsequent DPCs for preparation of Deputy Secretary Select Lists for the years 1998 to 2007 (2008 was no panel year for Deputy Secretary grade) adopted sealed cover procedure in your case as you were not clear from vigilance angle for these years. Consequently, your name was included in DSSL 2009.

However, in pursuance of CAT's , Principal Bench, New Delhi Order dated 11.08.2011, the sealed covers for your promotion to the grade of Deputy Secretary for the years 1996, 1997, 1998, 1999, 2000 and 2001 were opened and it was found that you were found fit by the DPC for the Select List year 2001. Accordingly, you name was included in the DSSL 2001. A copy of the recommendation of that DPC in respect of you is enclosed.

After your inclusion in DSSL-2001, your case for inclusion in appropriate Director's Select List and promotion thereon to the Sr. Selection Grade (Director) was placed before Review DPC held on 22.05.2013. The DPC recommended for inclusion of your name in Director Select List 2012. A copy of the minute of that DPC is enclosed.

3. In case you are not satisfied with the information, you may file an appeal to Sh. Utkarsh R. Tiwaari, Director (CS-I) and First Appellate Authority, Deptt. Of Personnel & Training, Lok Nayak Bhavan, New Delhi-110003, Tele:24629411 within 30 days as per RTI Act."

11. From the above mentioned and the records, it is evident that the applicant, a CSS Officer was Under Secretary of US Select List 1990. He was appointed as Deputy Secretary on ad-hoc basis w.e.f. 09.08.1999. Subsequently, he was appointed as Deputy Secretary on ad-hoc basis w.e.f. 25.03.2004. The applicant was first considered for inclusion in the CSS Selection Grade (Deputy Secretary) Select List 1996-1997. However, since he was not clear from vigilance angle, the recommendations of the DPC in his case were kept in sealed cover. Later on, subsequent DPCs for preparation of Deputy Secretary

Select Lists for the years 1998 to 2007 continued to adopt sealed cover procedure in his case in view of pending disciplinary proceedings.

12. In one of the disciplinary proceedings a punishment of reduction in pay by two stages in the time scale of pay for a period of two years was imposed on him vide order dated 18.06.2009. Since a penalty was imposed, the order of regular promotion was to be effective after the currency of the penalty was over on 18.06.2011. Respondents have also stated that the applicant filed an OA no. 2173/2010 before this Tribunal challenging the penalty imposed by the disciplinary authority. The Tribunal vide order dated 11.08.2011 ordered closure of the disciplinary case against the applicant. The case of the applicant was again taken up in a DPC held on 22.05.2013 for review of cases for promotion to the Senior Selection Grade (Director) of the Central Secretariat Service. The DPC, amongst other things, noted that the APARs of the applicant for three years viz. 2005-06, 2006-07 and 2007-08 were not available. The DPC, however, considered the other available APARs and considered his case for promotion.

13. It is thus observed that his name was first considered for inclusion in the CSS Selection Grade (Deputy Secretary) Select List 1996 and 1997. Since at that time he was not

clear from vigilance angle, the recommendations of the DPC in his case was kept in sealed cover. Later on subsequent DPCs for preparation of Deputy Secretary Select Lists for the years 1998 to 2007 adopted sealed cover procedure in his case and as he was not clear from vigilance angle for these years, his name was included in DSSL 2009. However, in pursuance of CAT Principal Bench, New Delhi Order dated 11.08.2011, setting aside this punishment the sealed cover for applicant's promotion for the years 1996, 1997, 1998, 1999, 2000 and 2001 were opened and the DPC found him fit for the Select List year 2001. Accordingly, his name was included in the DSSL 2001.

14. The respondents have also promoted the applicant vide order dated 07.06.2013 as Director w.e.f. 05.07.2012 from the date from which his juniors have been promoted. This has been further clarified in OM of even date indicating that the applicant has been promoted and he has been put at the top of the list at Sl. No. 0 above the name of Sh P. Vinayagam, whose name appears at Sl. No. 1. The applicant has however continued to reiterate the issue of his promotion as Deputy Secretary which according to him should have been from 1996. This aspect has already been duly covered in order in OA No. 4013/2014 quoted above.

15. In view of the above mentioned, we are of the view that the applicant has been rightly promoted as Director vide order dated 07.06.2013 and his seniority has been assigned correctly. The OA is devoid of merit and the same is accordingly dismissed. No order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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