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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.315 of 2003

New Delhi, this the 30th day of December, 2003

HON'BLE MR.KULDIP SINGH, MEMBER (JUDL)
HON'BLE MR.S.A. SINGH, MEMBER (A)

A.K. Barua
G-1275 Chittranjan Park,
New Delhi-110 019.

...Applicant

Applicant in person.

Versus

1. Union of India
Through its Secretary,
Department of Personnel & Training,
North Block,
New Delhi.

2. Union Public Service Commission
Through its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi.

..Respondents

By Advocate: Shri K.R. Sachdeva.

O R D E R (ORAL)

By Hon'ble Mr.Kuldip Singh, Member (Judl)

The applicant who is a member of the Central Secretariat Service has filed this OA assailing the DOPAT Office Memorandum dated 12.10.1998 and also orders dated 27.7.2001 and 12.8.2002 notifying the Select List of Grade-I of the CSS for the years 1987, 1988, 1989, 1990 and 1991 in which the names of large number of former officers of CSS who retired, expired or resigned on dates subsequent to the respective Select List-I years but before the preparation/notification of Select List have been included by partially following the procedure laid down in the OM of 12.10.1998, thereby artificially blocking/withholding clear vacancies of these years and not providing extended panels from the respective zones of consideration in place of such retired officers in

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spite of clear provisions in the OM thereby causing irreparable loss to the officers like the applicants in the service. True copies of the Select Lists are Annexures A-2, A-3 and A-4. Thus the applicant prays for the following reliefs:-

(a) Quash and set aside the Office Memorandum dated 12.10.1998 as being arbitrary, illegal, wednesday reasonable, mala fide as the same confers unfettered discretion on the DPCs without any guidelines as to how and when the discretion conferred is to be exercised; or

if the said OM is held to be legal and valid in the eyes of law, the Hon'ble Tribunal may be pleased to declare that the respondents failed to exercise the discretion or exercised the discretion improperly and arbitrarily.

(b) Quash and set aside the impugned panel(s) of Under Secretary for the year(s) 1987, 1988, 1989, 1990 and 1991 issued by the respondent No.1 vide OM dated 9.5.2000 and 27.7.2001 and 12.8.2002 after declaring the same as arbitrary, unreasonable, in bad faith and violative of Articles 14, 16 and 21 of the Constitution.

(c) Direct the respondents to notify the Select List(s) after reviewing the proceedings of the earlier DPCs, for providing extended panels in place of the officials who had retired, expired or otherwise left



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service after the relevant Select List years and before the date of DPCs/notification of the Select List by the respondent No.1.

2. The respondents who are contesting the OA have taken the preliminary objection that the OA is barred by time since the applicant has asked for quashing of Select Lists for the years 1987, 1988, 1989, 1990 and 1991 issued by respondents vide OM dated 9.5.2000 so the OA has become time barred and it should not be entertained.

3. Applicant has also filed a rejoinder to this objection taken by the respondents and in the rejoinder the applicant merely pleaded that the inclusion in the select list/panel for promotion to the post of Under Secretary Grade-I of CSS is a matter of selection on merit on the basis of classification of ACRs as 'Outstanding', 'Very Good' and 'Good' and because of this it was not possible for the applicant to know before hand whether his name would appear in the Select List of 1991 or whether his non-inclusion in the Select List of 1987, 1988, 1989 and 1990 was due to the application of the OM dated 12.10.1998 or due to supersession and since the applicant's name did not find mention in the select lists of 1987, 1988, 1989 and 1990 and was only due to the application of the OM dated 12.10.1998 and not due to supersession, as the same has become evident only when he found his position in the Select List of 1991 which was as per his seniority position in the common seniority list of Section Officer and that no one had superseded him in the said select lists so the applicant had come to know


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the reasons for his non-inclusion in the earlier panels of 1989 or 1990 being the application of the OM dated 12.10.1998 so he could not move the court earlier by filing an OA. However, he did not make any application for condonation of delay.

4. We have heard the applicant who argued his case in person and Shri K.R. Sachdeva, learned counsel for the respondents.

5. The perusal of the OM dated 12.10.1998 goes to show that it has a provision for including the names of those persons who have retired or otherwise not in service but when the panel for a particular year was considered they were in service. The relevant contents of the OM dated 12.10.1998 are reproduced hereinbelow:-

"3. The matter has been examined in consultation with the Ministry of Law (Department of Legal Affairs). It may be pointed out in this regard that there is no specific bar in the aforesaid Office Memorandum dated April 10, 1989 or any other related instructions of the Department of Personnel and Training for consideration of retired employees, while preparing year-wise panel(s), who were within the zone of consideration in the relevant year(s). According to legal opinion opinion also it would not be in order if eligible employees, who were within the zone of consideration for the relevant year(s) but are not actually in service within the DPC is being held, are not considered while preparing year-wise zone of consideration/panel and, consequently, their juniors are considered (in their places) who would not have been in the zone of consideration if the DPC(s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant years(s). Names of the retired officials may also be included in the panel(s). Such retired officials would, however, have no right for actual promotion. The DPC(s), may, if need be, prepare extended panel(s) following the principles prescribed in the Department of Personnel and Training OM No.22011/8/87-Estt(D) dated April 9, 1996".



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6. So the basic grievance of the applicant is that this OM itself is bad as it should not have provided for consideration of retired employees while preparing yearwise panel who were within the zone of consideration during the relevant years and if at all their names had been included as those retired officials, they would have no right for actual promotion and the DPC may, if need be, should have prepared extended panels following the principles prescribed in the Department of Personnel and Training OM dated 9.4.1996. Thus the grievance of the applicant is that had the department not included the names of retired employees in the year-wise panel then as per his length of service he would have been empanelled in the select list of the year 1989 or if the DPC would have extended the panel as retired persons could not be given active promotion then also under the OM dated 12.10.1998 his name would have been in the extended panel of 1989. But the applicant could not come to know as to why his name had not been empanelled till he was clear that he had been superseded and this was made to clear him only when the panel of 1991 was released when he find his name was intact in the panel as per his seniority position and he has not been superseded. Thus he claims that he could not challenge the panel declared from the years 1987, 1988, 1989, 1990 in time as he was not aware of the same.

7. The applicant further submitted that since he had not come to know when the panel of 1991 was issued so his application is within time and it should be entertained and this is how he had assailed it in the rejoinder.

8. We have considered this aspect of the case and

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have gone through the pleadings and record of the case.

9. The pleadings make it quite clear that the applicant is only aggrieved of the fact that the OM dated 12.10.1998 has not been properly applied as the extended panels were not issued by the DPC. Had the same been issued then he would have been in the panel of the year 1989 so he is even now pleading that his name should be included in the panel of the year 1989. In our view this contention of the applicant that he came to know, only after issuing of the panel of the year 1991 that he had not been superseded, nor his seniority had been ignored and it is only because of the OM dated 12.10.1998 he became aware that a provision was made for considering the names of the retired employees, which had caused him harm, so it is only on that ground the applicant has filed this OA, which is not correct.

10. It also appears that the applicant with that view in his mind has also challenged the OM dated 12.10.1998 as to why it provides for inclusion of the names of the retired employees and he has also alternatively prayed that if it provides for inclusion of the name of the retired employees then it also provides for extending the panel. Since the panel has not been extended so the applicant wants that his name should have been included in the panel 1989 so that he should have got a promotion in the year 1989 itself. Thus he wants ante-dating of his promotion. It is an admitted case of the applicant that the panel for the years 1986, 1987, 1988 dated 9.5.2000 and panel for the year 1989 relates to the period from 1.7.89 to 30.6.90 and those included in 1990 selection list relate to the period from 1.7.90 to 30.6.91 whereas the panel for the year 1991 was declared on 1.8.2000. Thus the applicant who wants the

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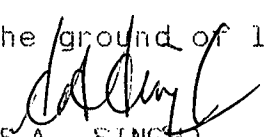
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inclusion of his name in the panel of the year 1989 which was issued on 27.7.2001, should have approached the court within a period of one year as the grievance of the applicant is against issuing the panel of 1989-90 as his name was not included.

11. The applicant also submits that he has been making representation but no answer has been given to him.

12. To our mind giving of repeated representation will not extend the period of limitation and for this purpose we can rely on the judgment of S.S. Rathore Vs. State of M.P., AIR 1990 SC 10 but the basic fact remains that the cause of action for the applicant was only the panel of 27.7.2001 declaring the select list for the year 1989-90 in which the applicant wants his name to be included and since the OA has been filed on 7.2.2003 so the same is highly belated and the same is barred by time.

13. Thus we are of the considered opinion that the OA being barred by time has to be dismissed on the ground of limitation alone. Accordingly the OA is dismissed on the ground of limitation. No costs.


(S.A. SINGH)
MEMBER (A)


(KULDIP SINGH)
MEMBER (J)

Rakesh