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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.No.3033/2003

M.A.No.2728/2003

New Delhi, this the 1st November 2004
New Delhi, this the 1st November 2004

***Hon'ble Shri Justice V. S. Aggarwal, Chairman
Hon'ble Shri S. K. Naik, Member (A)***

R.K.Tandon
C-108 (GF) Shivalik
(Near Malviya Nagar)
New Delhi-17

..Applicant

(Applicant in person)

Versus

Union of India

1. Through Cabinet Secretary Cabinet Secretariat
Rashtrapati Bhavan, New Delhi
2. Secretary, M/o Personnel, Public Grievances & Pensions,
Department of Personnel & Training, North Block
New Delhi
3. Secretary, Department of Expenditure,
M/o Finance, North Block, New Delhi

..Respondents

(By Advocates: Shri N.K.Agarwal and
Shri M.K.Bhardwaj for Shri A.K.Bhardwaj)

ORDER

Shri S. K. Naik:

Shri R. K. Tandon, the applicant in this OA, was a member of the Central Secretariat Service (CSS). He was appointed as Member, Staff Selection Commission (SSC), a post of the level of Joint Secretary, since 30.3.2001, for a period of five years from the date of assumption of the charge of the post or till the age of 62 years or until further orders, whichever was to take place earlier. The tenure as Member SCC was to be on the basis of deputation until his age of superannuation and thereafter he was to be treated as per re-employment terms. While he was serving as Member SSC, the respondents undertook an exercise for empanelment to the grade of Additional Secretary for the year 2000 for officers of CSS and other Services, which was finalized in July 2001. Name of the applicant was the only one selected from amongst the officers belonging to the CSS for

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empanelment as Additional Secretary. At that time, the applicant had only about six months service left for superannuation. It is contended by the applicant, who has himself argued the case before the Tribunal, that his empanelment with the full knowledge that he was left with only six months service must have been made with the implied understanding of allowing him the benefit of promotion by personal upgradation of the post of Member SSC to that of Additional Secretary.

2. The applicant has contended that as per policy, as enunciated vide para 6 of the Central Staffing Scheme, CSS officers of the level of Joint Secretary with three years of service, who would be left with a minimum of two years before retirement, were eligible for consideration for empanelment as Additional Secretary. However, the inclusion of the name of the applicant in the panel of grade of Additional Secretary when he had about six months service left, appears to be based on a conscious decision of the Government to not deny promotion to deserving officers of the level of Joint Secretary, who had put in requisite years of service but had less than two years to superannuate at the time of consideration for empanelment to the grade of Additional Secretary. However, despite repeated representations, the respondents have failed to promote the applicant in situ, which has given rise to this OA.

3. The applicant has strenuously argued at length that since a responsible high level Committee chaired by the Cabinet Secretary had placed him on the panel for the grade of Additional Secretaries with the full knowledge that he was already on deputation as a Member SSC and also that he was left with about six months service for superannuation, it was unjust and unfair on the part of the respondents to have not upgraded the post in the SSC to the level of Additional Secretary and not to have promoted him in situ. He has further contended that while he has been denied the treatment of in situ promotion, the members of other Services had been extended the benefit of upgradation. In this respect, he has cited the case of Shri D.S. Mukhopadhyay, who was appointed as Member of SSC w.e.f. 14.1.1999 and the pay drawn by him in the State Government in the grade of Additional Secretary was protected. Similarly, while the post of Chairman, SSC is of the level of Additional Secretary in the pay scale of Rs.22400-24400/-, Shri K.M. Lal was appointed in the scale of Rs.22400-26000/- and subsequently Shri B.K. Misra was appointed as Chairman, SSC in the rank

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and pay of the Secretary to the Government of India upto the age of his superannuation as a measure personal to him. In furtherance of his argument that similarly placed officers have been extended the benefit of in situ promotion and that he has been singled out, he has cited the case of Shri V. Lakshmi Ratan in the DoP&T for whom the post of Joint Secretary held by him was upgraded to the level of Additional Secretary w.e.f. 1.10.1996. Similarly, the same post of Joint Secretary was upgraded to the level of Special Secretary in the Ministry of Personnel when Shri D.C.Gupta was holding the post as Additional Secretary. While these dispensations were made as measure personal to the officers concerned, his request for similar treatment has been denied. The whole procedure followed in the case of the applicant has, therefore, been arbitrary, discriminatory and violative of the principles of conscience, equality and justice.

4. The respondents have contested the case. Learned counsel for respondents has, at the very outset, raised a preliminary objection that the OA is barred by limitation. He has contended that the representations dated 8.8.2001, 8.10.2001 and 3.12.2001 had been considered by the respondents and decision thereto had been conveyed to the SSC vide letter dated 20.2.2002. The learned counsel, therefore, contends that the contention of the applicant that he came to know about the rejection of his representations vide Commission's letter dated 8.12.2003 has to be rejected. Since the decision of the respondents stood conveyed vide letter dated 20.2.2002, the learned counsel contends that the OA filed by the applicant on 12.12.2003 is clearly barred vide Section 21(1)(a) of the Administrative Tribunals Act, 1985. He has further relied upon the judgment of the Hon'ble Supreme Court in *S. S. Rathore v. State of M.P.* SLJ 1990 (1) SC 98 and has argued that the repeated representations cannot waive the requirement of limitation.

5. We have considered the preliminary objection but find that the respondents have themselves in their reply stated that even though the representations of the applicant had been considered and a decision rejecting the same had already been sent to SSC vide their letter dated 20.2.2003, it has been confirmed by the SSC that the decision of the respondents was not conveyed to the applicant. The respondents have contended that the applicant was informally apprised of the same and being a responsible officer, he is precluded from taking this plea of being unaware of such a decision. We find that the applicant has not claimed that he was not

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aware of the decision but has clearly stated that he had not been formally communicated the decision. Besides an informal information that his case is not being favourably considered cannot be held against the applicant since a representation has to be replied by the respondents in an effective manner, which should deal with the points raised in the representations. The reliance placed by the learned counsel for respondents on *S.S. Rathore's case* (supra), we are afraid, will not be applicable to the case in hand. The limitation has, therefore, to start from the date the applicant came to know about the rejection of his representations, which is 8.12.2003. Thus we have no hesitation in rejecting the preliminary objection of the respondents. Accordingly, MA-2738/2003 filed by the applicant for condonation of delay is allowed.

6. On the merits of the matter, the applicant has reiterated the averments made by him in the OA and has contended that what he is only seeking a parity of treatment, vis-à-vis, other similarly placed officers in the backdrop of his name having been included in the panel for the grade of Additional Secretary through strict selection and evaluation of such qualities as merit, competence, leadership and a flair for participating in the policy-making processes with the full knowledge that he was left with only six months to superannuate. He has contended that it is preposterous on part of the respondents to say that the name of the applicant was included in the list of officers suitable for appointment as Additional Secretary as a special gesture and grace.

7. In response to the stand taken by the respondents that the applicant had proceeded on deputation as a Member of SSC with the full knowledge that it was a post of the level of Joint Secretary and, therefore, cannot claim in situ promotion to the grade of Additional Secretary, the applicant has submitted that he proceeded on deputation during March 2001, hence the question of his consideration in the panel of Additional Secretary was nowhere in sight and, therefore, to take a stand of this nature, to say the least, is hypothetical. It does not behove the respondents, who are supposed to be a model employer, to take shelter behind flimsy grounds to deprive an otherwise well-deserving case of the benefit of promotion.

8. Referring to the contention of the respondents that the inclusion of officers named in the panel for the post of Additional Secretary by itself is no assurance/guarantee of his promotion to the said grade, the applicant has

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contended that during the 50 years history of CSS, there has been no case of denial of promotion before superannuation to any CSS officer empanelled in the grade of Joint Secretary/Additional Secretary and, therefore, only in his case that the respondents have been trying to make such exception, which is discriminatory. As per the latest policy of the respondents themselves, the benefit of personal upgradation is already admissible under the Central Staffing Scheme to officers included in the panel of Joint Secretary grade and having less than two years of service to superannuate. A benefit on similar lines, however, is being denied to the applicant even though he had six months service left for superannuation when he was included in the panel for the grade of Additional Secretary. The applicant has, therefore, argued that his case is fully justified for the grant of in situ promotion by upgrading the post of Member, SSC to the level of Additional Secretary as a measure personal to him, so that he is in a position to avail the consequential benefit, including the benefit of pension, etc.

9. The respondents have contested the case. It has been submitted that the posts of Additional Secretary are filled under the provisions of Central Staffing Scheme and are not meant to be in the nature of avenues for the advancement of the career opportunities of the members of any Service. The applicant having already proceeded on deputation to the post of Member, SSC, which afforded the applicant an opportunity to continue in service beyond the age on which he would have retired, had he continued in Government service, he had consciously taken into account the fact that he would lose the opportunity of appointment to the post of Additional Secretary in the Government service. Further it has been argued that the appointment to the grade of Additional Secretary does not constitute promotion for the members of the CSS and mere inclusion of the name in the panel of appointment to a particular post in the Central Government is by itself no assurance/guarantee that the person will be so appointed to the post.

10. On the point of discrimination alleged by the applicant, the learned counsel appearing on behalf of the respondents has contended that the structure and constitution of All India Services on the one hand and the Group 'A' services on the other, are different and, therefore, not comparable. Besides it is prerogative of the Appointments Committee of the Cabinet (ACC) to consider the case of individual officers for appointment and in the

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cases of S/Shri D.S. Mukhopadhyay, K.M. Lal and B.K. Misra, as stated by the applicant, their cases had been approved by the ACC. The applicant, therefore, cannot take advantage of a conscious decision of the ACC whereas in his case, the ACC has not approved his in situ promotion/upgradation of the post.

11. We have carefully heard the applicant, who has appeared in person, as also the learned counsel for respondents. It is not denied and on the contrary admitted by the respondents that the name of the applicant was indeed considered for empanelment to the post of Additional Secretary for the year 2000, which was finalized in July 2001. It is also not denied that the name of the applicant stands incorporated in the panel for the post of Additional Secretary. At the time of his empanelment, the applicant was left with less than six months service for superannuation. This was within the knowledge of the Committee which considered the empanelment. As has been contended by the applicant, as against the earlier rule of empanelling Joint Secretaries, who would have not less than two years left before retirement, his case was taken up for consideration. His case was consciously taken up for consideration so as not to deny the promotion to deserving officers so that such officers with less than two years service left at the time of consideration continue to give in their best in service and with the limited service at the time of consideration does not act as a disincentive for such officers. As against this contention, we are unable to appreciate the explanation offered by the respondents that the name of the applicant was included in the list of officers for appointment as Additional Secretary as a measure of special gesture and grace. Since the applicant had not requested for any favour or consideration or empanelment and it was the respondents who, on their own, had considered his name and found him suitable for empanelment, it cannot be denied that the very act of empanelment will give rise to a legitimate expectation of being promoted to the post of Additional Secretary.

12. On the ground of discrimination raised by the applicant, the only defence that has been advanced pertains to consideration of each case by the ACC on its own merits. It has not been countered by the respondents that there has ever been a case of denial of promotion after empanelment and further that had the applicant been considered for promotion in situ, the right of anyone else would have been affected. When the post of Member, SSC in

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the past was held by the officers of the level of Additional Secretary and further the post of the Chairman, SSC, which is of the level of Additional Secretary, has been upgraded to the level of Secretary to the Government of India in order to appoint certain officers, even though with the specific approval of the ACC, we are of the view that the same consideration should also have been extended to the applicant specially when during his tenure as a Member, SSC, the post of Chairman, SSC had been upgraded and held by an officer of the rank of Secretary to the Government of India. The reasons advanced by the respondents, to our mind, do not justify depriving the applicant for in situ promotion to the level of Additional Secretary.

13. Under the circumstances, the OA merits consideration and, therefore, it is allowed. We direct the respondents to place his case for in situ promotion before the ACC for its consideration with effect from the date he was included in the panel of Additional Secretary. He would be entitled to the consequential benefits, if approved by the ACC. This exercise may be completed within a period of four months from the date of receipt of a copy of this order.

No costs.

S. K. Naik

(S. K. Naik)
Member (A)

V. S. Aggarwal

(V. S. Aggarwal)
Chairman

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