



W.P.No.17273 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	030823
PRONOUNCED ON	032123

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI
and
THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

W.P.Nos.17273 of 2021
and
W.M.P.No.18297 of 2021

Dayanand Kataria, I.A.S.,

...Petitioner.

Vs.

1.The Union of India

Represented by the Secretary to Government,
Department of Personnel and Training,
North Block, New Delhi – 110 001.

2.The Central Administrative Tribunal,

Represented by its Registrar,
High Court Buildings,
City Civil Court Campus,
Chennai.

...Respondents.

Prayer: Writ Petition is filed under Article 226 of the Constitution of India,
to issue a writ of Certiorarified Mandamus or any other appropriate writ or



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order or direction in the nature of writ or order by calling for the records of the 2nd respondent viz., the Central Administrative Tribunal, Chennai Bench in its OA 1599 of 2018 dated 08.07.2021 upholding the “360 Degree Appraisal System introduced by the 1st respondent in the form of an unofficial note No.nil dated nil and quash the same and declare the “360 Degree Appraisal” system ab initio illegal and void and violative of principles of natural justice and consequently direct the 1st respondent to empanel the petitioner as Additional Secretary to Government of India with effect from 19.07.2018 i.e., the date on which the IAS Batch of 1989 was considered for empanelment, also direct the 1st respondent to empanel the petitioner as Secretary to GOI from the date on which his other batch mates have been empanelled.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.AR.L.Sundaresan
Additional Solicitor General
assisted by Mr.K.Gunasekar
Sr. Standing Panel Counsel

ORDER

(Order of the Court was delivered by V.LAKSHMINARAYANAN,J.)

This writ petition has been filed by an IAS Officer belonging to the 1989 batch of the Tamil Nadu cadre. He was empanelled as Joint Secretary in the Government of India along with his batch mates in 2012. When it came to the empanelment as an Additional Secretary, the Respondent excluded his



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name. Hence the Petitioner made several representations and also sought for information under the Right To Information Act, 2005 as to why his name was excluded in the Panel List.

2. The Petitioner did not receive any reply from the Respondents and hence made enquiries. It has come to his notice on account of a new procedure termed as “360 Degree Appraisal” system introduced by the 1st Respondent his name was excluded in the Panel List for the Post of Additional Secretary. According to him, this appraisal is opaque and arbitrary hence, he filed an O.A.No.1599 of 2018 before the Central Administrative Tribunal at Chennai. In the O.A. he sought for the following relief at page 106 which reads as follows:-

The applicant in the OA has sought for the following reliefs:-

“ Declaring the “360 Degree Appraisal” system ab initio illegal and void and violative of the principles of natural justice and consequently issue directions to the Respondent for empaneling the applicant as Additional Secretary to GOI w.e.f. 19/07/2018 i.e., the date on which the IAS batch of 1989 was considered for empanelment”.

3. The Respondents filed counter defending the 360 Degree Appraisal.

4. After hearing both sides, the Central Administrative Tribunal dismissed the Original Application. Aggrieved by the same, the petitioner has



approached this Court.

WEB COPY 5. According to the Mr.V.Vijaya Shankar, Learned Counsel appearing for the Petitioner, the following points arise for consideration:-

(i). That as per the Office Memorandum in 36/77/94-EO (SM-I) Government of India and the Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training dated 05.01.1996 the Selection for empanelment is a list prepared by the Cabinet Secretary. This list is submitted to the cabinet committee on appointments. According to the 1996 scheme, the Cabinet Secretary is assisted by the Special Committee of Secretaries (SCOS). The empanelment is on the basis of several objective criteria, merit leadership qualities and record of participating in policy making process. Under the new scheme, under the guise of "holistic" approach an expert body has been created who relies namely on Multi Source Feedback (MSF) an expert body consultation, Officers, Seniors. The MSF is stressed out by consulting seniors, peers, juniors, external stakeholders and serving secretaries. He would take us in detail to the guidelines for expert panel for evaluation of Officers for empanlement Additional Secretary/Secretary, which has been issued pursuant to the 360 degree Appraisal Report.



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6. According to him, the Official Memorandum issued on 05.01.1996 holds the field and the impugned guidelines are in derogation of the Office Memorandum. He further points out from Clause Nos.IX and VIII B of the guidelines for the Expert Panel, and argued it is secretive and non-transparent. He would state that, on account of the consultation with Juniors and External Stake-holders, there is a possibility of arbitrariness and it might lead to a situation where the Union of India would empanel persons according to their whims and fancies, excluding Officers who have excellent track record like the writ petitioner. He would further submit that the precedence should be given to the published office memorandum and not to the unpublished guidelines issued by the Union of India. He would further argue that the effect of the guidelines is to efface the Statutory Rules namely the All India Services (Performance and Appraisal Report) Rules of 2007.

7. On these points we heard Mr.AR.L.Sundaresan, the Learned Additional Solicitor General who was assisted by Mr.Gunasekar, Learned Senior Standing Panel Counsel. According to the Learned Solicitor General:-

(i) The guidelines are not used for promotion but only for empanelment.

(ii) That the guidelines serve to collect information and the report of



the expert committee panel is not the only source or basis used for empanelment.

(iii). The guidelines have been made known from 2008 and that is available with every Officer and it is not secretive.

(iv) The guidelines are in addition to the and not in derogation of Office Memorandum.

(v) After the 2016 guidelines were implemented, they were further improved upon in 2018 as per the revised guidelines, a Review Panel had been formed to address any grievance.

(vi) Finally, in this case on hand, the Review Expert Panel also recommended not to empanel the writ petitioner.

8. We have carefully considered the records gone through the impugned order and have taken into consideration the submission of the Learned Counsel on the either side.

9. It has to be noted that a member of the Indian Administrative Services who is not empanelled by the Union of India as an Additional Secretary/Joint Secretary is not affected in his service and does not get any additional benefit. The effect of empanelment is that such an Officer can apply to the post/vacancies which arise in the service of Union of India. Even



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after the applications, it is for the Union of India either to accept or to reject

the offer. It is true that for over 30 years, the Government of India had

followed a procedure by which Cabinet Secretary used to submit proposals to

the Cabinet Committee on Appointments. Prior to the submission of these

proposals, a panel of suitable officers used to draw special committee of

secretaries. It contains all the Officers of the particular the particular year

from one service competence, leadership and a flair for participating in policy

making process. The 1996 Official Memorandum itself states that post at

these levels at the centre are filled according to the requirement of Union of

India, which is paramount consideration. It states empanelment is not to be

considered as basis for the betterment of promotion prospects of any service.

Even as per the 1996 guidelines the consideration is the need of the Central

Government. In other words, even if a member of the Indian Administrative

Service was meritorious/competent exhibit leadership qualities and has flair

for policy making, it was still open to the Central Government not to consider

him, if the empanelment would not be in interest of the Union Government.

Therefore, at best, there is a right to be considered for empanelment if the

candidate possesses the qualities set forth above. Despite possessing all these

qualities, it is still open to the Central Government not to empanel the



Officer. It in its wisdom, its needs would not be met such an Officer.

WEB COPY 10. The argument of the Learned Counsel that the Central Government cannot come up with the impugned guidelines does not appeal to us. In the process of judicial evaluation, the constitution comes first. It is followed by statutory laws, then by rules and finally by Circulars/Office memorandums. Guidelines do not and cannot substitute any aforesaid Laws and Regulations. From 2016, the Central Government has taken a policy decision that prior to empanlement, it wants to do a 'holistic' review of the Officers and cannot merely adopt evaluation through ACR's and APAR's as is done previously. It would be worthwhile to point out that under the new guidelines, the past performance records namely the ACR and APAR are also taken into consideration. Apart from ACR and APAR, the Union of India has developed a policy of getting feedback from several persons with whom the concerned Officer would have engaged or interacted. They are (i). seniors (ii). juniors (ii). his/her peers (iv). external stake-holders and (v). serving secretaries. The information is obtained with a guarantee that anonymity would be maintained. A detailed report together with reasons, as given in Annexure A and Annexure B of the said guidelines have to be filled out. We have gone through the guidelines as well as through the Annexures. The guidelines are



not vague but detailed. It demands the assessment of the Officer on the

following aspects:-

- (i).Decisiveness and quality.
- (ii).Willingness to take responsibility and moral courage
- (iii).Innovative, initiation and risk taking
- (iv).Patient and problem solving.
- (v).Team player, team builder, leadership
- (vi).Integrity and public participation and
- (vii).finally overall suitability.

11. Annexure B is also not vague and considers the performance, and track record, domain expertise and subject knowledge, functional & skill sets acquired by the Officer over his career. Behaviour and competence are analysed, so are personal attributes of the Officer. Finally the annexure deals with value system of the Officer and his integrity. By no stretch of imagination can it be said that these are vague. If an employer wants certain qualities in its employees, especially at the senior level, it cannot be said to be arbitrary. Further more, as submitted by the Learned Additional Solicitor General, the report of the expert committee is not final. The report of the expert committee is an additional input, and not, be all and end all with respect to the empanelment of Officers. The fear expressed by the Learned Counsel for the Petitioner that the power has been drained from the special committee of Secretaries & is vested with the expert panel is also without any



basis. We can usefully refer to the last line of clause 4 (a) of the guidelines which reads as follows:

“The Expert Panel will also examine whether the assessment given in one or two years by a particular superior authority is out of the line with the trend of other ACRs obtained by the Officer from other superior authorities. The Expert Panel will give their own assessments of the gradings of officers for each year, which will be taken into account by the SCOS in suitably re-adjusting overall gradings for the purpose of assigning points.”

12. A read of this clause goes to show that the expert panel will give the assessment and its opinion of the Officers, which will be taken into account by the SCOC in suitably assessing the overall credentials for the performance of assessing points. This shows that in addition to the evaluation of the ACR and APAR, the expert Panel consisting of persons in touch with the administration as well as those from earlier batches, on the basis of feedback would give an objective report. The same is not subjective but based on the objective criterion like including feedbacks taken over telephonic conversations with those, who have interacted with the Officer who is to be empanelled. The filling out of Annexures A & B shows that it cannot be arbitrary exercise but one based on the objective criterion.

13. Insofar as the arguments that precedence should be given to the



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published office memorandum and not to the unpublished guidelines, we are

not convinced with the same. The Learned Additional Solicitor General submitted that the Office Memorandum has not been repealed or substituted but a new method has been evolved in order to find out the suitability in line with the requirements of the Union Government. A careful reading shows that under Office Memorandum 1996, the interest of the Central Government has been given as a paramount consideration. The impugned guidelines merely decide if the Officer complies with those needs. Looking it in another angle, these are the inputs which are given by the expert panel to the special committee of secretaries assist it to reach a conclusion with respect to the proposed list. In fact, the list submitted by the SCOS is not final. It is subject to the review by the Cabinet Secretary and finally, by the Cabinet Committee on Appointments.

14. The fear of the petitioner that the Expert Panel could act in an arbitrary manner has also been resolved. The Union Government has created a review panel of experts. The Review Panel of Experts are a different set of five experts from those who constitute the expert committee. The Multi Source Feedbacks of the review panel are also from 10 different stakeholders than from those who had given their inputs to the expert committee



panel. Therefore, the fear of the petitioner that the expert panel could act in an arbitrary manner is misplaced. The system has been further fine-tuned by inclusion of a provision for a review and also by directing the review panel to come with independent conclusion by consulting 10 different persons, who had not been consulted by the expert panel.

15. The Learned Counsel would further argue that the guidelines issued are contrary to the ACR and APAR Rules and therefore, deserve to be struck down. We are not in agreement to this submission. A perusal of the guidelines shows that ACAR and APAR are considered by the SCOS in addition to the MSF (Multi Source Feedback). Therefore, having an examination ACAR and APAR by itself does not mean it satisfies the needs of the Union Government, which to reiterate is paramount. ACR's and APAR are considered by both the expert panel as well as by the SCOS. The empanelment is not based solely on the recommendations of the expert panel as that the review panel. They are only additional inputs to find out the suitability of the concerned officer. As regards the statement that the guidelines are secretive, we are not persuaded by the same. These are guidelines issued to the Expert Panel and act as a guidance as to how they should go about their work. In any event, the petitioner has been able to lay



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his hands these guidelines and has placed them before the Central Administrative Tribunal (CAT) as well as before this Court. A guideline when produced before this Court cannot be said to be secretive. We are alive to the fact that it is not the domain of the court to interfere with power of the Administration. The power of the Union Government whether it wants to empanel an officer or not is not arbitrary exercise but guided by the 1996 official memorandum and these guidelines. While eligibility may be matter of Judicial Review, suitability certainly is not. In which manner and how the Government identifies those suitable for its needs is not judicially reviewable unless it is arbitrary and violative of the Constitution or Rules. As seen *supra*, we have found that the rules and guidelines has not been arbitrary but yet another source to determine the suitability of the Officer.

16. We still now deal with the citations relied by learned Counsel for the petitioner. He relied upon *State Bank of India and others Vs. Kashi Nath Gaur reported in 1996 8 SCC 762*. In particular paragraph No.15. This case is distinguishable on facts. It dealt with the case where the confidential reports and character rules were prepared by Officers of the same rank, working in the Establishment Department, over the same cadre officers. Therefore, the Supreme Court held confidential and character reports should



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be written by superiors to Officers concerned. Insofar as the members of the IAS are concerned, the ACR's are written as per All India Service (Performance Proposal Reports Rules 2007). The guidelines given by the Supreme Court as how to ACR's must be written have been incorporated in these rules. Therefore, this judgment is not applicable to the facts of the case. The next judgment relied upon by the petitioner is ***Dev Dutt Vs. Union of India reported in 2003 8 SCC 2008***. The Learned Counsel drew our attention to paragraph Nos.36 and 37 and sought to argue that the guidelines to the Expert Panel interfere with the ACR's. As stated above, the Expert Panel includes and take into consideration the ACR's and APAR. In addition, in order to have holistic approach, it follows the Multi Source Feedback for empanelment. If the petitioner has grievance with respect to the ACR's and APAR's, the remedy is in the Rules itself. The Expert Committee has no power, as per the guidelines not to interfere with the ACR and APAR. It is not the "Reviewing Authority" "Accepting Authority" or "Reporting Authority". The ACR and APAR of an officer are dealt with in accordance with the aforesaid Rules. These guidelines do not in any way interfere with them. The Learned Counsel would then refer to the ***State Bank Of Punjab and Ors. reported in 2015 2 SCC 170*** to argue that the Government



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Instructions in violation of the statutory rules are void and cannot give the effect to. We have already found that the Statutory Rules are no way affected.

The Union of India has given guidelines for the expert panel so as to enable it to assist the special committees of secretaries. Reading the office memorandum of the year 1996 harmoniously with the guidelines, we do not find any conflict. Finally, the Learned Counsel referred to Service Commission *Uttranchal Vs. Jagdish Para reported in (2008) 2 SCC 464*. He drew attention to paragraph No.88 wherein he argued that executive orders are subversive to the rules framed under Proviso to Article 309 to the Constitution of India. There are no Rules with respect to the empanelment but only an Office Memorandum of the year 1996. We have already held that the Office Memorandum can be read harmoniously with the guidelines issued to the expert panels. It is not as if the expert panel's recommendation directly go to the Cabinet Committee for Appointments. On the contrary, it submits its report to the special committee of secretaries who in turn prepare a panel and send it to the cabinet secretary. The guidelines can be read harmoniously with the Official Memorandum and we are reading it so. Therefore, none of the authorities cited by the Learned Counsel apply to the facts and circumstances of the case.



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17. We should point out that the High Court of Delhi was presented with a similar situation in *Jagmohan Singh Raju Vs. Union of India and Ors.* By its order dated 23.01.2020, the High Court of Delhi held that the guidelines impugned here cannot be said it to illegal. We have to agree with the Learned Counsel for the Petitioner that the constitutional validity of the guidelines were not directly a subject matter to issue before the High Court of Delhi. However an obiter of Delhi High Court would have to be given due respect by the Central Administrative Tribunal. It is in that light that the Central Administrative Tribunal had held in paragraph No.12 that the MSF guidelines were upheld by the Delhi High Court. We have independently assessed guidelines and do not find these arbitrary or illegal. Consequently, we uphold its validity. The order of the Central Administrative Tribunal in O.A.No.310/5599/2018 is confirmed and its decision in dismissing the original application is upheld. Since an interesting question of Law has been framed and argued we are not inclined to impose costs.

18. This writ petition stands dismissed in the aforesaid terms. Consequently connected writ miscellaneous petition is closed. No Costs.

(V.M.V.,J) (V.L.N.J.)



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21.03.2023

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Index :Yes/No

Speaking/Non speaking order

Neutral Citation Case :Yes/No

nst

To,

1.The Union of India

Represented by the Secretary to Government,

17/19



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Department of Personnel and Training,
North Block, New Delhi – 110 001.

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2.The Central Administrative Tribunal,
Represented by its Registrar,
High Court Buildings,
City Civil Court Campus,
Chennai.

V.M.VELUMANI,J
and
V.LAKSHMINARAYANAN,J
nst



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Pre-Delivery Order in

W.P.No.17273 of 2021

and

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21.03.2023