

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: February 22, 2023

+ W.P.(C) 11413/2019

SHRI M.K. CHAUDHURY

..... Petitioner

Through: Petitioner in person.

Versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Ms. Bharathi Raju, Sr. Panel
Counsel for UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this writ petition is to an order dated May 2, 2019, passed by the Central Administrative Tribunal, Principal Bench, ('Tribunal', for short) in M.A. No. 2464/2016, filed by the petitioner herein, whereby the Tribunal has closed the MA filed by the petitioner for execution of the order passed in the Original Application No.3648/2012 dated September 3, 2014. The Original Application No.3648/2012 was filed by the petitioner challenging the order dated November 25, 2010, through which the petitioner's representation dated September 24, 1999 claiming the benefit of appointment as Deputy Secretary on *in situ* basis w.e.f. August 9, 1999 was rejected.

2. The OA was allowed vide order dated September 3, 2014 whereby the order dated November 25, 2010 was set aside and the Tribunal directed as under:

“3. We have heard the applicant in person and the leaned counsel for the respondents. We find that while rejecting the applicant's representation dated 24.09.2009 the respondents have stated that no officer junior to the applicant had been granted higher pay in the Deputy Secretary's scale w.e.f. 09.08.1999. On his basis, they have rejected the claim of the applicant. In our opinion, the above reason given by the respondents appears to be actually incorrect in the face of the documents made available by the applicant. Thus, on pages 112 to 117 of the paper-book the applicant has produced copies of select list of Deputy Secretary's grade of 2004 and 2005. The applicant is included in the 2004 select list at Serial No.44. Some of the officers, namely, Sh. Ignatius Topmo, Sh. Chuni Lal Kaul, Sh. M. Ramalingam and Sh. Amrik Singh Negi have been included in the select list of Deputy Secretary's for the year 2005. Further, on pages 72 to 93 of the paper-book the applicant has produced copies of Under Secretary's select list for the years 1991, 1992, 1993 and 1994. From these select list, we find that the officers mentioned above are included in these Under Secretary's select list. Following table would depict the position:

S. No.	Name (S/Shri/Ms)	CSL No.	Ministry/Deptt.	
1.	Ignatius Topno	3803	Social Justice & Empowerment	SL 1991 S.No.193
2.	Chuni Lal Kaul	3476	Chemicals & Petrochemicals	SL 1993 S.No.32
3.	M. Ramalingam	3744	ISC	SL 1993 S.No.63
4.	Amrik Singh Negi	3379	Science & Technology	SL 1992 S.No.62

4. In their reply the respondents have admitted that all those who are included in the select list of Under Secretary's of 1991 to 1994 were granted personal upgradation/in-situ promotion to the grade of Deputy Secretary w.e.f. 09.08.1999. Thus, it follows that all these officers mentioned above were allowed upgradation to Deputy Secretary's level from 06.08.1999. The contention of the applicant is that even though these officers were senior to him as Under Secretary, the applicant was senior to them in the Deputy Secretary's Select List. This is because the applicant figured in the Deputy Secretary's select list of 2004 whereas all these officers were placed in Deputy Secretary's select list of 2005. We find merit in this contention of the applicant. In the normal course the promotion to Deputy Secretary's grade should have been made in the order in which the names of the persons were included in the select. Further, those in the select list of 2004, deserved to be promoted before those who were in the select list of subsequent years. Therefore, the applicant also deserved to be promoted in Deputy Secretary's grade before the above mentioned officers. Since these officers had been allowed to draw pay of Deputy Secretary w.e.f. 09.08.1999, there is no reason why the same should be denied to the applicant.

5. We, therefore, allow this O.A. and quash the order of the respondents dated 25.11.2010. We direct that the respondents reconsider the case of the applicant in the light of the observations made above and in case the contention of the applicant is found to be factually correct then he be extended the benefit of Deputy Secretary's grade w.e.f. 09.08.1999. He will also be entitled to refixation of his pay and pension accordingly. Moreover, since the juniors of the applicants were granted in situ promotion/personal upgradation, the applicant will also be entitled to arrears of pay and pension. However, considering the facts and circumstances of the case, we are not inclined to allow

any interest on the arrears. No costs.”

3. From the above, it is noted that the case of the respondents in the reply to the OA was that no officer junior to the petitioner has been granted higher pay in the pay scale of Deputy Secretary w.e.f. August 9, 1999. The Tribunal was of the view that the reason given by the respondents is actually incorrect in the face of the document made available by the petitioner. The petitioner had produced copies of the select list for Deputy Secretary Grade for the year 2004-05 and as a fact, the petitioner was included in the select list of 2004 at Serial No.44.

4. It was also the case of the respondents that the four officers namely; (i) Ignatius Topno, (ii) Chuni Lal Kaul, (iii) M. Ramalingam and (iv) Amrik Singh Negi, who were in the panel of select list of the year 2005 in the grade of Deputy Secretary were included in the select list of Under Secretary in the year 1991-94.

5. The Tribunal noted that, the above said officers were senior to petitioner when they were Under Secretary, but the petitioner became senior to them in the Deputy Secretary select list. This according to Tribunal, was because his name featured in Deputy Secretary select list of 2004 whereas, the above officers were placed in the Deputy Secretary select list of 2005. So, according to the Tribunal, in normal course, promotion for the Deputy Secretary Grade should have been made in the order of names of persons in the Select list.

6. This according to the Tribunal, those in the select list of 2004 deserved to be promoted before those who were in the select list of the

subsequent year and in fact, the petitioner was promoted as Deputy Secretary Grade before the above mentioned officers, and the officers having been allowed to draw the pay of Deputy Secretary w.e.f. August 9, 1999, there is no reason why it should be denied to the petitioner.

7. Suffice to state, the respondents have not challenged the judgment / order dated September 3, 2014 of the Tribunal.

8. Be that as it may, the respondents in the above said MA, filed an affidavit of compliance, wherein in paragraph 3, as noted by the Tribunal, has stated as under:

“3. In compliance of the above order of the Tribunal it has been decided that all CSS officers who have been appointed as Under Secretary consequent upon their inclusion in the Select List of Grade-I (Under Secretary) of CSS for the years 1991, 1992, 1993, 1994 (issued vide DoP&T O.M. No.4/13/2001-CS.I dated 12.8.2002) and were in service on 9.8.99 shall draw their pay and allowances in the pay scale of Rs. 12,000-375-16,500 with effect from 9.8.99 subject to the following:-

xxx xxx xxx”

9. According to the respondents, the benefit of pay and allowances in the pay scale of ₹12,000-375-16,500 w.e.f. August 9, 1999 was available only to such officers who were appointed as Under Secretary consequent upon inclusion of the select list of Grade-I for the years 1991-94.

10. The Tribunal in the impugned order was of the view that as no junior to the petitioner as Under Secretary was extended the benefit of August 9, 1999, he is not entitled to be placed in the scale of Deputy Secretary with effect from that date.

11. The petitioner, who appeared in person would submit that the respondents under the garb of compliance, have in effect reiterated the ground on which the earlier order dated November 25, 2010 was passed which became the subject matter of challenge before the Tribunal. The same is nothing but highhandedness and abuse of power.

12. According to him, it is the case of the respondents that seniority in the grade of Under Secretary shall not have any bearing on the seniority and appointment in selection grade (Deputy Secretary) of CSS. Hence, the plea of the respondents harping on the same ground as taken in the order dated November 25, 2010, which has been quashed by the Tribunal, is totally misconceived.

13. According to him, though the petitioner was junior to the officers named above in the grade of Under Secretary but they became junior to him in the promotional grade Deputy Secretary, and who admittedly have been granted the scale of pay of Deputy Secretary from August 9, 1999. In other words, he was promoted as Deputy Secretary in the select list 2004 as against those officers in the year 2005, who have been granted the scale of Deputy Secretary but denied the same to the petitioner.

14. On the other hand, Ms. Bharathi Raju, learned Senior Panel Counsel appearing for the Union of India would submit that the benefit of drawing the pay in the pay scale of ₹12,000-375-16,500 w.e.f. August 9, 1999 was only given to the Under Secretary who was included in the select list of Grade-I of CSS for the years 1991-94 because some officers junior to him had been already appointed as Deputy Secretary. The criteria adopted for grant of *in situ* basis w.e.f.

August 9, 1999 to the post of Deputy Secretary was one time dispensation and its coverage was not extended subsequently. The select lists of Under Secretary for the year 1991-94 was issued on August 12, 2002 and for the year 1995-96 was issued on April 21, 2004.

15. Concedingly, the petitioner was included in the Under Secretary select list of the year 1996. He retired from service on March 31, 2006. Hence, the four officers, against whom, he is seeking parity by stating that the said officers became junior to him at the Deputy Secretary level has no effect. She justifies the compliance affidavit filed by the respondents before the Tribunal.

16. Having heard the petitioner and the learned counsel for the respondents, we do not find any illegality in the conclusion arrived at by the Tribunal. It is a conceded case of the petitioner that the four officers named above, were in the select list of Under Secretary for the years 1991-94; whereas, the petitioner was in the select list of Under Secretary of the year 1996. The benefit of pay scale of Deputy Secretary was given to the Under Secretary, who was in the select list of 1991-94 and not to the Under Secretary like the petitioner, who was in the select list of 1996. It is inconsequential that the petitioner was in the select list of the Deputy Secretary in the year 2004 as against those four officers, who were in the select list of Deputy Secretary for the year 2005. The eligibility for the pay scale of Deputy Secretary pre-supposes that the Under Secretary is empanelled in the select list of 1991-94 as officers junior to him were granted pay scale of the Deputy Secretary. It is to remove the anomaly the above process was followed.

So it follows, the grant of the scale of the Deputy Secretary Grade w.e.f. August 9, 1999 was because of the seniority position as existed in the Under Secretary Grade more so, on August 9, 1999 and not in the grade of Deputy Secretary, for which the petitioner admittedly was empanelled only in the year 2004, i.e., much after August 9, 1999. In that sense, the respondents are justified in stating that no junior to the petitioner in the grade of Under Secretary has been granted grade pay of Deputy Secretary w.e.f. August 9, 1999.

17. That apart, the direction of the Tribunal in OA was only to reconsider the case of the petitioner in the light of the observations made in the judgment which we have already reproduced above. The respondents, having reconsidered the case of the petitioner, have rightly in paragraph 3 of the compliance affidavit, justified their position that the petitioner is not entitled to the grade of ₹12,000-375-16,500 w.e.f. August 9, 1999.

18. If that being the position, we are of the view that the Tribunal is also justified in closing the M.A. No. 2464/2016 filed by the petitioner seeking the execution of the order dated September 3, 2014.

19. In view of the above, the writ petition is dismissed.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

FEBRUARY 22, 2023/aky