

UNION OF INDIA AND ANR.

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v.

SAMAR SINGH AND ORS.

OCTOBER 8, 1996

[S.C. AGRAWAL AND S.C. SEN, JJ.]

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Service Law—Appointment—Selection for appointment on a particular post—Scope of judicial review—Minutes of Special Committee not containing reasons for non inclusion of name of a candidate—Not a case of non application of mind.

C

Judicial Review—Appointments—Selection for appointment on a particular post—Scope of judicial review—Minutes of Special committee not containing reasons for non inclusion of name of a candidate—Not a case of non application of mind.

D

Respondent 1, a member of the Indian Administrative Service belonging to 1962 batch, was promoted as Additional Secretary. Appointments were made for the posts of Secretaries, but the respondent was not empanelled, hence he was not appointed as Secretary. The respondent filed a petition before the Tribunal challenging his non-inclusion in the panel. The Tribunal allowing the petition declared that the omission of the name of the respondent from the panel prepared for appointment to the post of Secretary to the Government of India without proper consideration of the respondent's case was arbitrary, unsustainable and void and directed the appellants to consider the suitability of the respondent for empanelment and appointment afresh. The Tribunal held that while empanelment was on the basis of strict selection though the reason for non-inclusion in the panel need not be intimated to the officer concerned, the selection proceedings should indicate as to how a senior member of the service did not deserve to be included in the panel and since there was nothing to indicate in the minutes of the Special Committee of Secretaries or in the file relating to the empanelment anywhere that there has been an application of mind to the merits of the respondent and his suitability for being appointed to the post of secretary to the Government or equivalent post, the decision was taken without application of mind and thus arbitrary. This appeal had been filed against the judgment of the Tribunal.

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A The respondent submitted that since his performance had been rated as outstanding and excelled and that after his promotion to the post of Additional secretary, he had earned outstanding entries in the ACRs and excellent commendation from the Ministers concerned throughout, the Tribunal was justified in holding that there was no proper consideration of the case of the respondent by the Special Committee.

B

Allowing the appeal, this Court

C HELD : It is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidate. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the

D Committee or its procedure vitiating the selection, or proved *mala fides* affecting the selection etc. So far as the question of suitability is concerned, the decision entirely rested with the Government. The Government is the sole judge to decide as to who is the most suitable candidate. The principle that administrative orders affecting rights of the citizens should contain reasons therefor cannot be extended to matters of selection and unless the

E rules so require, the Selection Committee/Selection Board is not obliged to record reasons why they are not selecting a particular person and/or why they are selecting a particular person, as the case may be. The Tribunal looked into the minutes of the meeting of the Special Committee of the Secretaries to find out whether the name of the respondent was

F placed before the said Committee for consideration for the purpose of empanelment. The Minutes show that the name of the respondent was amongst the 81 I.A.S. officers of 1962 batch who were considered by the Special Committee. In the said minutes it was recorded that the Committee after screening the CR dossiers of all the officers and keeping in view their record and experience including the conceptual and leadership abilities,

G achievements and potential for general management positions, had recommended 19 officers of 1962 batch of I.A.S. for inclusion in the panel for holding the post of Secretary and 7 officers for holding non-secretarial posts. The name of the respondent was not included in those lists. Merely because the minutes of the committee did not contain the reason for

H non-selection of the respondent does not mean that there has been no

proper consideration of the merits and suitability of the respondent and as a result the selection was vitiated. From the minutes of the Special Committee it was evident that in the matter of empanelment of officers the Special Committee had taken into account the criteria that were laid down for holding such selection and, therefore, it could not be said that the said selection was vitiated on account of non-inclusion of the name of the respondent in the panel. The Central Staffing Scheme record was one of the matters which had to be taken into consideration by the Special Committee while making the selection. Apart from the record there were other matters that had to be considered, namely, merit, competence, leadership and flair for participating in the policy-making process and the need of the Central Government which was the paramount consideration. It could not be held that since the performance of the respondent after his promotion as Additional Secretary had been found to be excellent and outstanding, the non-inclusion of his name from the panel by the Special Committee must lead to the inference that there was no proper consideration of the merit and suitability of the respondent for empanelment by the Special Committee. [259-G-H; 260-A-C; F; 261-E-H; 262-A-F]

Dalpat Abasahed Solunke and Others v. Dr. B.S. Mahajan and Others, [1990] 1 SCC 305; *Dr. Jai Narain Misra v. State of Bihar and Ors.*, [1971] 1 SCC 30 and *Major General I.P.S. Dewan v. Union of India and Others*, [1995] 3 SCC 383, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12855 of 1996.

From the Judgment and Order dated 14.5.96 of the Central Administrative Tribunal, New Delhi in O.A. No. 539 of 1994.

M. Chandra Shekharan, R.B. Misra, Kamalendra Mishra, Anil Katiyar for the Appellants.

M.N. Krishnamani and Ashok Grover, Uma Nath Singh and Manoj K. Singh for the Respondents.

The Judgment of the Court was delivered by

S.C. AGRAWAL, J. Special leave granted.

This appeal is directed against the judgment of the Central Ad-

A ministrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal'). It relates to empanelment and appointment on the post of Secretary to the Government of India or equivalent post. Respondent No. 1 (hereinafter referred to as 'the respondent') is a member of the Indian Administrative Service (I.A.S.) belonging to 1962 batch. In February 1990 he was promoted as Additional Secretary. In 1993 a Special Committee consisting of the Cabinet Secretary, the Principal Secretary to the Prime Minister and the Home Secretary prepared a panel of I.A.S. officers of 1962 batch for appointment as Secretaries to the Government of India or equivalent post. The said panel was considered by the Appointments Committee of the Cabinet (for short 'ACC') of the Government of India and appointments were made on the posts of Secretaries in March 1993. the respondent was not empanelled and hence he was not appointed as Secretary. Feeling aggrieved by the said non-inclusion in the panel, he filed a petition (O.A. No. 539 of 1994) before the Tribunal which has been allowed by the impugned judgment dated May 14, 1996. The Tribunal has declared that the action of the appellants in omitting the name of the respondent from the panel prepared for appointment to the post of Secretary to the Government of India or equivalent post without proper consideration of his case is arbitrary, unsustainable and void and has directed the appellants to consider the suitability of the respondent for empanelment and appointment on the post of Secretary to the Government of India or equivalent post afresh as on the date on which respondents Nos. 2 to 10 herein were considered for empanelment after taking into account Annual Confidential Reports (ACRs) of the respondent for the relevant period and other relevant facts and materials in the light of the guidelines contained in paragraph 14 of the Central Staffing Scheme and, if on such consideration the respondent is found suitable, the Tribunal has directed the appellants to consider his appointment on one such post.

G The Central Staffing Scheme, as contained in the Officer Memorandum dated July 15, 1992 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), prescribes the procedure for selection for appointment of officers to Secretarial posts of and above the rank of Under Secretary to the Government of India and to certain important non-Secretarial posts. Paragraph 14 of the said Scheme relates to the posts of Additional H Secretary/Special Secretary/Secretary and reads as under :

"14. Selection for inclusion on the panel of officers adjudged suitable for appointment to the posts of Additional Secretary or Special Secretary/Secretary to the Government of India and posts equivalent thereto, will be approved by the ACC on the basis of proposals submitted by the Cabinet Secretary. In this task, the Cabinet Secretary may be assisted by a Special Committee of Secretaries for drawing up proposals for the consideration of ACC. As far as possible, panels of suitable officers will be drawn up on an annual basis considering all officers of a particular year of allotment from one service together as a group. Inclusion in such panels will be through the process of strict selection and evaluation of such qualities as merit, competence, leadership and a flair for participating in the policy-making process. Posts at these levels at the Centre filled according to the Central Staffing Scheme are not to be considered as posts for the betterment of promotion prospects of any service. The needs of the Central Government would be the paramount consideration. While due regard would be given to seniority, filling up of any specific post would be based on merit, competence and the specific suitability of the officer for a particular vacancy in the Central Government."

Before the Tribunal the respondent assailed his non-selection on the following grounds :

(i) the Special Committee has not been constituted in accordance with the provisions contained in the Central Staffing Scheme inasmuch as one of the members, namely, Shri A.N. Varma, Principal Secretary to the Prime Minister, being a retired Secretary to the Government of India, could not be legally appointed as members of the Committee;

(ii) the selection made by the Special Committee is vitiated because officers junior to the respondent have been empanelled overlooking the seniority and merit of the respondent; and

(iii) as the respondent had been empanelled and appointed as Additional Secretary the non-inclusion of the respondent in the panel amounts to a colourable exercise of power and was a result of taking into consideration matters which are extraneous and the selection is vitiated by legal *mala fides*.

- A None of these contentions found favour with the Tribunal. The Tribunal held that the Principal Secretary to the Prime Minister appointed by the Government of India is also a Secretary discharging governmental functions and there is nothing in the Central Staffing Scheme to show that a serving Secretary alone can function as a member of the Special Committee. The Tribunal also held that under the Central Staffing Scheme
- B appointment to the post of Additional Secretary/Special Secretary and Secretary to the government of India and equivalent post are filled on deputation basis on consideration of the various factors mentioned in the said Scheme and such appointment is not by way of promotion but by way of appointment after strict selection and evaluation of such qualifications
- C as merit, competence, leadership and flair for participation in the policy making process and that the paramount consideration in making the selection is the need of the Central Government and that it is incorrect to say that the seniority must be the determining factor for empanelment and appointment to the post of Secretary to the Government of India. The
- D Tribunal has further found that though respondent has alleged in his application that the proceedings were vitiated by *mala fides*, it has not been stated anywhere in the application that any one of the members of the Committee of the Special Secretaries or the Cabinet Secretary or the Appointments Committee of the Cabinet has any special reason to be
- E prejudiced against him and that the allegation that some of the officers who had completed the tenure of their deputation were allowed to continue as Additional Secretaries and have been appointed as Secretaries to the Government of India on the basis of the panel does not amount to an allegation of *mala fides* since allowing any officer to continue beyond the
- F period of tenure of deputation has nothing to do with the process of selection and empanelment. The Tribunal has observed that even if the respondent had excellent service record throughout his career and even though he is senior to respondents Nos. 2 to 10, if the Cabinet Secretary with the assistance rendered to him by the Special Committee of the Secretaries did not find the respondent suitable for inclusion in the panel
- G and found respondents Nos. 2 to 10 suitable for such inclusion, it is not possible to infer legal *mala fides* if the case of the respondent had been properly considered. The Tribunal was of the view that since there is no reason to assume that preparation of the panel by the Cabinet Secretary assisted by the Committee of Special Secretaries was not done properly, it
- H could not accede to the prayer of the respondent to call for records of

proceedings and the ACRs of the respondent as also of the officers who have been selected and empanelled and to make a comparative evaluation of merits. The Tribunal, however, perused the selection file and the ACRs of the respondent with a view to see whether the respondent has been duly considered for empanelment in accordance with the guidelines contained in paragraph 14 of the Central Staffing Scheme. On a perusal of the said ACRs the Tribunal has found that after his promotion on the post of Additional Secretary in 1990 the respondent had earned outstanding entries in the ACRs and excellent commendation from the Ministers concerned throughout. The Tribunal has also referred to the Minutes of the meeting of the Special Committee of the Secretaries held on December 22, 1992 for the purpose of drawing up of the panel for holding the post of Secretary and equivalent post and has pointed out that in the said Minutes nothing is seen to be stated about the suitability or non-suitability of the respondent. According to the Tribunal, while empanelment is on the basis of strict selection though the reason for non-inclusion in the panel need not be intimated to the officer concerned, the selection proceedings should indicate as to how a senior member of the service did not deserve to be included in the panel. Since there is nothing to indicate in the Minutes of the Special Committee of Secretaries or in the file relating to the empanelment anywhere that there has been an application of mind to the merits of the respondent and his suitability for being appointed to the post of Secretary to the Government of India or equivalent post, the decision was taken without application of mind and thus arbitrary. The Tribunal, therefore, gave the direction referred to above.

In the matter of judicial review of a selection for appointment on a particular post the law is well-settled by the decisions of this Court. In *Dalpat Abasahed Solunke and Others v. Dr. B.S. Mahajan and Others*, [1990] 1 SCC 305, it has been laid down :

"It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the

A constitution of the Committee or its procedure vitiating the selection, or proved *mala fides* affecting the selection etc."

(pp. 310, 311)

B In *Dr. Jai Narain Misra v. State of Bihar and Ors.*, 1971 1 SCC 30, it was said :

C "So far as the question of suitability is concerned, the decision entirely rested with the Government. In other words, the Government is the sole judge to decide as to who is the most suitable candidate for being appointed as the Director of Agriculture. For discharging that responsibility it was open to the Government to seek the assistance of the Public Service Commission. In our judgment the High Court was not justified in calling for the records of the Public Service Commission and going through the notings made by various officers of the Commission as well as the correspondence that passed between the Commission and the Government. The High Court over looked the fact that the Government sought the assistance of the Commission and not that of the High Court for finding out the most suitable candidate. In this case there was no complaint of *mala fides* either on the part of the Government or the Commission. That being so the interference of the High Court in the matter of selection made by the Government was not called for."

(p. 32)

F In *Major General I.P.S. Dewan v. Union of India and Others*, [1995] 3 SCC 383, it has been held that the principle that administrative orders affecting rights of the citizens should contain reasons therefor cannot be extended to matters of selection and unless the rules so require, the Selection Committee/Selection Board is not obliged to record reasons why they are not selecting a particular person and/or why they are selecting a particular person, as the case may be (at p. 389).

The Tribunal was conscious of the limitations on its power and has observed:

H "Once a competent authority makes a selection for appointment or empanelment considering all those who are eligible in accord-

ance with rules, instructions or guidelines then the Tribunal or High Court will not act as an appellate body and interfere on the ground of insufficiency of the material or in correctness of the decision applying its own yard stick. If the decision making process is not vitiated the resultant decision cannot be interfered with by the Tribunal on the ground that it if were the Tribunal which took the decision it would not have been the same. Even if on a perusal the file relating to the selection on a comparative assessment of the merits of the applicant viz-a-viz respondents 3-11, the Tribunal comes to a conclusion that the applicant was more meritorious than them, the Tribunal cannot interfere with the selection and empanelment."

"If it is seen that the Cabinet Secretary assisted by a Special Committee of Secretaries made a selection considering all the eligible officers in the light of the guidelines contained in the Central Staffing Scheme, then we are of the considered view that interference would not be justified even if a different view on the selection may possibly be taken."

The Tribunal looked into the minutes of the meeting of the Special Committee of the Secretaries held on December 22, 1992 to find out whether the name of the respondent was placed before the said Committee for consideration for the purpose of empanelment. The Minutes show, and this fact is not disputed, that the name of the respondent was amongst the 81 I.A.S. officers of 1962 batch who were considered by the Special Committee. In the said minutes it is recorded that the Committee after screening the CR dossiders of all the officers and keeping in view their record and experience including the conceptual and leadership abilities, achievements and potential for general management positions, had recommended 19 officers of 1962 batch of I.A.S. for inclusion in the panel for holding the post of Secretary and 7 officers for holding non-secretarial posts. The name of the respondent was not included in those lists.

This would show that the Special Committee, keeping in view the record and experience including the conceptual and leadership abilities, achievements and potential for general managements positions, had recommended 19. I.A.S. officers for holding the post of secretaries and 7 I.A.S. officers for holding a non-secretarial post. Merely because the minutes of

- A the Committee do not contain the reason for non-selection of the respondent does not mean that there has been no proper consideration of the merits and suitability of the respondent and as a result the selection is vitiated. From the minutes of the Special Committee it is evident that in the matter of empanelment of officers the Special Committee has taken into account the criteria that are laid down for holding such selection in
- B paragraph 14 of the Central Staffing Scheme and, therefore, it cannot be said that the said selection is vitiated on account of non-inclusion of the name of the respondent in the panel.

- C Shri Ashok Grover, the learned senior counsel appearing for the respondent, has laid emphasis on the remarks in ACRs about appraisal of the performance of the respondent subsequent to his promotion on the post of Additional Secretary to which reference has been made by the Tribunal in the impugned judgment. The learned counsel has submitted that since the performance has been rated as outstanding and excellent,
- D the Tribunal was justified in holding that there is no proper consideration of the case of the respondent by the Special Committee. We are unable to agree. As is evident from paragraph 14 of the Central Staffing Scheme record is one of the matters which has to be taken into consideration by the Special Committee while making the selection. Apart from the record there are other matters that have to be considered, namely, merit,
- E competence, leadership and flair for participating in the policy-making process and the need of the Central Government which is the paramount consideration. We are unable to hold that since the performance of the respondent after his promotion as Additional Secretary had been found to be excellent and outstanding, the non-inclusion of his name from the panel
- F by the special Committee must lead to the inference that there was no proper consideration of the merit and suitability of the respondent for empanelment by the Special Committee.

- G For the reasons aforementioned, the directions given by the Tribunal in the impugned judgment cannot be upheld and have to be set aside. The appeal is, therefore, allowed, the judgment of the Tribunal dated May 14, 1996 is set aside and O.A. No. 539 of 1994 filed by the respondent is dismissed. No order as to costs.