

(2014) 09 DEL CK 0042
In the Delhi High Court
Case No : W.P.(C) 2236/2007

Tarsem Lal

APPELLANT

Vs

UOI

RESPONDENT

Date of Decision : 09-09-2014

Acts Referred:

Citation : (2014) 09 DEL CK 0042

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Dharam Dev, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—The petitioner has preferred the present writ petition to assail the order dated 08.11.2006 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No.1449/2005, whereby the said application was dismissed. The petitioner had approached the Tribunal with the grievance that he had not been placed in the suitability list of Directors for the year 1999, for promotion as a Director by the Central Establishment Board (CEB) - though, according to him, he was entitled to be so empanelled.

2. The facts, in brief, are that the petitioner joined the CSS as an Assistant in the year 1974 and he was promoted to the selection grade of CSS in 1994, which is equivalent to the grade of Deputy Secretary in CSS. Upon completion of five years of service, he became entitled for consideration for inclusion in the CSS Directors Suitability List for the year 1999 for promotion to the post of Director in the pay scale of Rs.14,300- 18,300 in accordance with the provisions of Central Staffing Scheme.

3. The petitioner claims that he had not been placed in the Directors Suitability List published in the year 2003-for the year 1999, on account of his Annual Confidential Reports (ACR) not being placed before the CEB, and on account of the respondents adopting the pick and choose policy. The petitioner claims that

the respondent had adopted a piecemeal method of preparing the suitability list, resulting in the petitioners name being excluded. He also made allegations that he was discriminated on account of his belonging to the Scheduled Caste.

4. The petitioners grievance was that one Sh. S.K. Lohani was placed in the suitability list of 1994 even though he was junior to him (since he was shown at sl. No.37 and the petitioner was shown at sl. No.30), and he was ignored. The respondents contested the petitioners application.

5. The Tribunal took note of the respondents submissions that:

a) Prior to restructuring of the CSS with effect from 03.10.2003, it comprised of four grades, i.e. Assistant Grade, Section Officer Grade, Grade-I (Under Secretary) and Selection Grade (Deputy Secretary). Thus, the selection grade of CSS (the post of Deputy Secretary or equivalent in the Govt. of India) was the highest grade-ceiling for officers of the CSS;

b) To provide promotional avenues to meritorious officers of the CSS, the Central Staffing Scheme evolved a mechanism for appointment at the level of Director and above;

c) The post of Director is not a cadre post of the CSS. The departmental promotion committee procedure is not followed for evaluation of the eligible officers for consideration for the post of Director. The suitability of the officer is assessed as per provisions of the Central Staffing Scheme.

d) That as per the Central Staffing Scheme, officers belonging to the CSS cadre, who have at least five years service in the selection grade (i.e. at the level of Deputy Secretary), are eligible for consideration of their suitability for the post of Director.

e) The suitability of CSS officers for inclusion of their names in the select list for appointment to the post of Director is assessed by the CEB consisting of Secretary (Personnel), as the Chairman, three Secretaries to the Govt. of India as Members, and the Establishment Officer and Additional Secretary to the Govt. of India as Member-Secretary.

f) All officers who have completed five years of service in the selection of grade of CSS, and those who have earned more than 2 ACRs after being assessed by the CEB for inclusion in the Directors suitability list of a particular year are taken up together as a batch for consideration for inclusion in the CSS Directors suitability list. The members of the CEB independently assess the suitability of each officer for inclusion in the Directors suitability list. The assessment in respect of each officer considered for inclusion in the Directors suitability list, separately recorded by the members of the CEB, is consolidated and placed in the meeting of the CEB. On the basis of the assessment made by the Chairman/ Members of the CEB, it makes recommendation strictly on the basis of the criteria/norms laid down in that regard.

g) The recommendations of the CEB require approval of the Minister in the Ministry of Personnel, Public Grievances and Pension. Only thereafter, the names of such offices are included in the Directors suitability list.

h) The administrative ministries/department concerned of the officer concerned, where he is working as a Deputy Secretary - whose name is included in the CSS Directors suitability list, is informed of such enlistment. In case the officer is not acceptable in the ministry/department of being appointed in the post of a Director, his name is circulated in different Ministries/departments for appointment as Director. In other ministries/departments, the appointment of an officer at the level of Director is made on the basis of acceptability by the concerned department, after taking into account the officers qualification, experience, ACR grading, the job requirement of the post in question, amongst other things.

i) The inter se seniority of officers at the level of Deputy Secretary in CSS is not relevant, since the post of Director is not a promotional post.

6. The stand of the respondent qua the petitioner was that his name was considered for inclusion in CSS Directors suitability list for the year 1999 along with other eligible officers, and this process was initiated in January 2013 after the selection grade select list of 1994 was issued in December 2002. Based on the service record and gradings of the petitioner, the CEB did not recommend his inclusion in the CSS Directors suitability list for the year 1999. The allegations of malafide, bias, discrimination or non consideration of ACRs for the relevant years was denied by the respondent.

7. The Tribunal proceeded to consider the submissions and even called for the relevant record. It found that the petitioners ACRs had been duly considered by the CEB. The Tribunal accepted the respondents submission that the post of Director is not a promotional post as it is not a cadre post in the CSS. Appointment to the post of Director is not, in the strict sense, a promotion. The post of Director is an ex cadre post.

8. The Tribunal also took note of the purpose of the Central Staffing Scheme. The Tribunal noted that the recommendations were made by the CEB as per the revised guidelines for the preparation of the CSS Directors suitability list, which had been approved by the ACC on 26.08.1999. The guidelines which were followed, read as follows:

"(a) Only those officers who get at least 4 "Very Good" and one "Good" grading out of the assessment made by the five members of the Board be considered for inclusion in the Suitability List.

(b) If an officer gets 4 "Very Good" and one "Average" grading, his CR dossier will be assessed by two Secretaries to the Government of India, nominated by Secretary (Personnel) on behalf of the CEB. If on reassessment, the officer gets at least "Good" grading from both the Secretaries, he may be considered suitable

for inclusion in the Directors" Suitability List.

(c) If an officer gets 3 "Very Good" and 2 "Good/Average" grading, his CR dossier should be got reassessed by two Secretaries to the Government of India nominated by Secretary (Personnel) on behalf of CEB. If on re-assessment, the officer gets at least one "Very Good" and one "Good" grading, then only he should be considered suitable for inclusion in Directors Suitability List.

(d) The aforementioned criteria have to be uniformly applicable to officers of all categories and no distinction could be made between general category and SC/ST category officers.

(e) The above guidelines will be applicable to all cases referred to the Central Establishment Board in future, irrespective of the year to which the Suitability List may belong".

9. The Tribunal, in the impugned order, noted as follows:

"14. It appears that out of 38 officers in the Selection Grade/Deputy Secretaries Select List on 1994, 36 officers were available for inclusion in Directors Suitability List for 1999. In addition to more officers, who were previously considered but were not found suitable in 1997, were also to be considered along with the officers of the Selection Grade of Select List of 1994.

15. The learned counsel for the respondents has produced before us the complete file pertaining to the preparation of the Directors Suitability List of 1999. The note sheet, the correspondence and the minutes of the two CEB are part of it. From the file it appears that the meeting of the CEB was held on 18.6.2003 and had considered 24 officers whose CR dossiers was assessed by the Members of the CEB. Assessment of CR dossiers of remaining 14 officers was under circulation and consideration of their case was deferred. The consolidated statement showing the merit grading secured by the eligible officers were placed before the CEB, which made its recommendations. A perusal of the meeting note disclosed that the Board had considered the officers on the basis of the assessment made by the Members and as per the norms approved by the ACC that if an officer gets 3 "Very Good" and 2 "Good/Average" grading, his CR dossier would be reassessed by two Secretaries to the Government of India nominated by Secretary (Personnel) on behalf of CEB and on such reassessment if the officer gets at least one "Very Good" and one "Good" grading then only he would be considered for inclusion in the Directors Suitability List. The CEV recommended 17 officers for inclusion in the Directors Suitability List for the year 1999 and recommended three officers for reassessment for inclusion in CSS Directors Suitability List for the year 1999. One officer was not recommended for inclusion in the Suitability List and two officers were not assessed, as their CR dossier were incomplete.

16. The second meeting of CEB was held on 21.8.2003 for consideration of 14 eligible officers for empanelment in the CSS Directors" Suitability List of 1999.

The consolidated statement showing the grading secured by the eligible officers for inclusion in the suitability list was placed before the Committee. The Committee has assessed the suitability on the basis of the norms/criteria prescribed by CEB and approved by the ACC, which is reproduced above. The Board recommended 11 officers for inclusion in the list, recommended one officer for reassessment, one officer was not recommended for inclusion in the list of the year 1994, i.e., the applicant, and one officer was not assessed due to incomplete CR dossiers placed before the Board.

17. The applicant in his OA and the learned counsel for him during the course of argument have vehemently argued that one of the ACRs of the applicant was not considered but on scrutiny of the departmental record placed before us, we do not find any force in this submission. All the ACRs of the applicants have been taken into consideration in accordance with the criteria/norms laid down for recommendation of suitable officers for inclusion in the CSS Directors' Suitability List for 1999. The CR of the applicant from 1990-91 to 2003-04 was produced along with CR dossiers of other officers. The CR of the applicant for the period from 1.4.1999 to 31.3.2000 alone was not available since both the reporting officers and reviewing officer had retired and the period was treated as "no reporting period". It was not the relevant period. If the evaluation/assessment was to be made purely on the basis of the grading given in the CRs, we did not find any impediment in the applicant also being included in the fresh list of the persons recommended. But the assessment was made as per the ACC approved prescribed norms by the five members of the Board. The applicant was graded by them four "Good" and one "Very Good". He was not found suitable to be included in Directors' suitability list of 1999. We do not find any legal infirmity in the procedure adopted by the CEB. We have also perused the consolidated statement showing the grading secured by the eligible officers which was considered by the CEB in its two meetings and do not find that any discrimination had been meted out to the applicant. The applicant's contention that he has been discriminated for giving undue promotion to Shri Lohani does not seem correct. The applicant could not have been ignored simply to include the name of one of the eligible officer in the list. There were good and cogent reasons for holding more than one meeting of the CEB. In fact another meeting would be required to consider the remaining eligible officers for inclusion in the suitability list for 1999."

10. The Tribunal, thus, found no error in the procedure adopted by the CEB for consideration of the petitioner's case for being placed in the suitability list for Directors.

11. The submission of learned counsel for the petitioner, before us, is on the same lines as advanced before the Tribunal. Learned counsel for the petitioner submits that the CEB was not guided by the ACRs, and other juniors to him were enlisted for appointment at the level of Director.

12. As noticed by the Tribunal, the post of Director is not a cadre post in the

CSS. It is an ex-cadre post. Only meritorious officers are given a chance to advance to the post of Director and above. The process of enlistment is neither founded only upon the ACRs, nor on the seniority in the cadre of Deputy Secretary. The CEB, which itself consists of senior officers drawn from different branches of the government assessed the eligible officers of the CSS on the basis of the criteria/norms laid down in that regard.

13. The petitioner has not assailed the criteria/norms adopted by the CEB. The enlistment in the suitability list is not seniority based. The Tribunal had called for and examined the record and found no irregularity in the process adopted by the CEB for the purpose of enlistment in the suitability list for Directors. The petitioner has failed to point out any error in the impugned order passed by the Tribunal.

14. For the foregoing reasons, we find no ground to interfere with the impugned order of the Tribunal. Accordingly, the petition is dismissed.