

(2003) 07 DEL CK 0149

In the Delhi High Court

Case No : CW 4008 of 2003 and CM 6868 of 2003

Union of India (UOI) and Another

APPELLANT

Vs

N. Ramji, IAS

RESPONDENT

Date of Decision : 15-07-2003

Acts Referred:

Citation : (2004) 72 DRJ 780 : (2004) 2 SLJ 488

Hon'ble Judges : Madan B. Lokur, J;D.K. Jain, J

Bench : Division Bench

Advocate : Mukul Rohtagi, Additional Solicitor General and K.R. Sachdeva, for the Appellant; NEMO, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Jain, J.—The challenge in this writ petition by the Union of India is to an order dated 24 February 2003 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ("The Tribunal" for short) in OA No.1458/2001. By the impugned order, the Tribunal has directed the Union of India to produce the relevant record to ascertain as to how the name of the applicant, respondent herein, though placed in the panel, was not included for appointment as Secretary to the Government of India.

2. Shorn of unnecessary details, the material facts relevant for the disposal of this petition are as follows:

An Original Application was filed by the respondent a Senior IAS Officer, in the Tribunal, seeking a direction to the Government to produce records relating to consideration for empanelment of the 1966 batch of the IAS officers and after perusing the same, direct them to hold a review and re-consider him for empanelment and appointment to the post of Secretary. It appears that during the pendency of the Original application a statement was made before the Tribunal on behalf of the Government that the respondent had been empanelled for the said post. Not being satisfied, an application, being Miscellaneous

Application No.1859/02, was filed by the respondent inter alias, seeking a direction to the Government to produce the records pertaining to the appointments made to the post of Secretary to the Government of India by them. A direction was also sought for respondent's appointment to the said post from a date prior to the date of promotion of his immediate junior on the panel.

3. Despite petitioner's resistance, the application was allowed by the Tribunal by a speaking order dated 7 January 2003. While allowing the application, the Tribunal directed the Union of India to produce the relevant records in the case, beginning from the stage from which the respondent had been empanelled to the subsequent stages where others, who were similarly empanelled above him or below him, had been given appointment as Secretary, by observing thus:

"While it is possible to consider the argument raised on behalf of the respondents by the learned counsel that no adverse inference be drawn from the non-selection of the applicant as what has been done is only the proper exercise of the powers vested in the Cabinet Secretary for making recommendations to the Appointments Committee in respect of persons who are already empanelled keeping in mind their respective suitability, we are left with the feeling that there is something more than that meets the eye. It is found that an individual, who has been in service for nearly 36 years and has been holding the responsible post both in the State Government as well as in the Central Government has not filled the bill for holding even the least important among the Secretary level posts of the Central Government despite his empanelment. Therefore, it would be necessary to see as to what could have weighed in the minds of the authorities concerned for denying him the post. We do not, even for a moment, say that any individual has any right for selection to any specific post. However, once an individual has been empanelled to become Secretary after fully going through the selection processes, denying him the same is a bit surprising. The Tribunal would be assisted in determining the issue only when it will be in a position to peruse the records."

4. Instead of challenging the said order at that juncture, a copy of the Office Order dated 7 February 2003, wherein it was stated that the Appointments Committee of the Cabinet had approved the appointment of the respondent as Secretary, North-Eastern Council Secretariat, Shilling along with a copy of a fax message from the Government of West Bengal, indicating unwillingness of the respondent to accept the offer was produced by the petitioner before the Tribunal during the course of hearing on 16 January 2003. However, not being satisfied with the documents produced, by the impugned order, the Tribunal clarified that what was required to be produced by the Union of India was the record where under appointments to the post of Secretary were ordered. It is this order and the order dated 7 January 2003 which are now sought to be impugned in the present writ petition.

5. We have heard Mr. Mukul Rohtagi, learned Additional Solicitor General at some length. It is strenuously urged by Mr.Rohtagi that while issuing the affronted

direction, the Tribunal has proceeded on the wrong premise that empanelment of Secretaries in the Government of India is by way of promotion and an officer has a vested right for appointment to the post, which is not correct. According to the learned counsel a common panel of suitable officers is drawn up as per the procedure laid down in the Office Memorandum, dated 5 January 1996, governing the Central Staffing Scheme, through the process of strict selection and evaluation of such qualities as merit, competence, leadership etc. It is submitted that empanelment of an individual does not per se give him any right for being appointed as the Secretary and it is for the Cabinet Secretary to select an empanelled officer for a particular posting irrespective of the date of his empanelment and/or the batch of initial recruitment. It is, thus, asserted that the Cabinet Secretary having properly exercised the power vested in him under the said office memorandum, the Tribunal has exceeded its jurisdiction in calling for the records.

6. We are unable to persuade ourselves to agree with the learned Additional Solicitor General. We feel that when a challenge in the application was laid to the process of selection, empanelment and their recommendation for appointment to the Appointments Committee and it was specifically alleged that there was "picking and choosing" from the panel for making appointments, the Tribunal was within its jurisdiction to summon the relevant records. Having entertained the Miscellaneous Application by passing a speaking order, which, in the first instance, was not challenged by the Government, it was imperative for the Tribunal to peruse the relevant records to satisfy itself that the impugned action of the Government did not suffer from the vice of arbitrariness, favoritism or mala fide. The powers of the Tribunal being almost akin to the powers of a writ court, power to summon records inheres in the Tribunal. The afore-extracted observations also show that to render complete justice in the matter it became necessary for the Tribunal to look into the relevant records. It is well settled principle of law that justice is not only to be done but manifestly seen to be done. In any event, no privilege in respect of the relevant record having been claimed, the Government was obliged to comply with the directions of the Tribunal, contained in its orders dated 7 January 2003 and 24 February 2003.

7. For all these reasons we do not find any ground to interfere with the impugned orders. The writ petition, being utterly misconceived, is dismissed accordingly.