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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 1834 OF 2001

New Delhi, this the 7th day of August, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K. NAIK, MEMBER (A)

Shri Dinesh Bhatt
S/o late Shri M.N. Bhatt,
R/o Flat No.2,
Ashoka Police Lines,
Kautilya Marg, Chanakya Puri,
New Delhi-21

... Applicant

(By Advocate : Shri Rakesh Tikku)

Versus

1. Union of India
Through Secretary
Ministry of Home Affairs
North Block
New Delhi-1
2. The Secretary
Ministry of Personnel, Public Grievances
and Pensions,
Department of Personnel
and Training,
North Block, New Delhi.
3. Union Public Service Commission
Through its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi-110 011. ... Respondents

(By Advocates: Shri M.M. Sudan and Shri H.K. Gangwani)

ORDER

JUSTICE V.S. AGGARWAL

Under Section 3 of the All India Services Act, 1951, the Central Government is empowered to make rules to regulate the recruitment and conditions of the service of persons appointed to the Indian Police Service. In pursuance of sub-section (1) of Section 3 of the aforesaid Act, the Central Government has framed the Indian Police Service (Recruitment) Rules,

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1954 (for short, "the Recruitment Rules") and the Indian Police Service (Appointment by Promotion) Regulations, 1955 (for short, "the Promotion Regulations"). Under Rule 4 of the Recruitment Rules, a person is recruited to the Indian Police Service by one of the two sources:-

- (a) through competitive examination (i.e. direct recruitment; and
- (b) by promotion of substantive member belonging to the State Police Service.

Regulation 5 of the Promotion Regulations prescribes the mode of preparation of a list of suitable officers. Regulation 5(1) prescribes:-

"Regulation 5
Preparation of a list of suitable officers:

"5(1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Police Service as are held by them to be suitable for promotion to the Service. The number of members of the State Police Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under rule 9 of the recruitment rules. The date and venue of the meeting of the Committee to make the Selection shall be determined by the Commission."

It is in pursuance of the same that the Committee

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under Regulation 5(2) of the Promotion Regulations considers the inclusion in the said list, the case of the members of the State Police Service in the order of seniority. Regulation 5(3) prescribes about the age and if a person of the State Police Service is above the age of 54 years on the first day of April of the year, he is not to be so considered. Regulation 5(5) of the Promotion Regulations reads:-

" 5(5) The List shall be prepared by including the required number of names, first from amongst the officers finally classified as 'Outstanding', then from amongst those similarly classified as 'Very Good', and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in the order of their seniority in the State Police Service:

Provided that the name of any officer so included in the list shall be treated as provisional if the State Government, withholds the integrity certificate in respect of such officer or any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Government.

Explanation I: The proceedings shall be treated as pending only if a chargesheet has actually been issued to the officer or filed in a Court, as the case may be.

Explanation II: The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the Service shall be treated as having come to the notice of the State only if the same have been communicated to the Central Government and the Central Government is satisfied that the details furnished by the State Government have a bearing on the suitability of the officer and investigation thereof is essential."

Besides prescribing the method, it further clarifies

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that the name of any officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such officer.

2. Regulation 7 provides the manner of consultation with the Union Public Service Commission and sub-regulation (4) to Regulation 7 which is relevant for the purpose of the present application is in the following words:-

"7(4) The Select List shall remain in force till the 31st day of December of the year in which the meeting of the selection committee was held with a view to prepare the list under sub-regulation (1) of regulation 5 or upto sixty days from the date of approval of the select list by the Commission under sub-regulation (1) or, as the case may be, finally approved under sub-regulations (2), whichever is later:

Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the select list as "unconditional" to the Commission during the period when the select list was in force, the Commission shall decide the matter within a period of ninety days or before the date of meeting of the next Selection Committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the select list as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government under regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the select list ceased to be in force."

3. Under Regulation 9 of the Promotion Regulations, the appointment to service from the select list has been mentioned. Second proviso to

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Regulation 9 (1) clearly provides that the appointment of an officer whose name has been included or deemed to be included in the select list provisionally under proviso to sub-regulation (5) to Regulation 5 or under proviso to sub-regulation (3) to Regulation 7 shall be made within sixty days after the name is made unconditional by the Commission in terms of the first proviso to sub-regulation (4) to Regulation 7.

4. The Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) administers the provisions contained in the Promotion Regulations and is connected with the application of the same. The Ministry of Home Affairs is concerned with it in the matter of recruitment to the Indian Police Service by promotion from State Police Officers as the cadre controlling authority in respect of the Indian Police Service. The Union Territories Division of the Ministry of Home Affairs discharges the role of the State Government in regard to promotion in case of the Delhi Andaman Nicobar Island Police Service officers as the cadre controlling authority. The substantive functions envisaged in the Indian Police Service Promotion Regulations are performed by the Ministry of Home Affairs.

5. The facts of the case are that the select list for the year 2000 of State Police Service



Officers was prepared for filling up 4 substantive vacancies existing as on 1.1.2000 in the promotion quota of Union Territory segment. The selection committee had met on 14.12.2000. It prepared a list comprising of 4 names in accordance with the provisions of the Promotion Regulations. The applicant (Dinesh Kumar Bhatt) was at Sl.No.1. While conveying the observations on the recommendations of the selection committee as required under Regulation 6 of the Promotion Regulations, the Ministry of Home Affairs functioning as the State Government informed the Union Public Service Commission that a charge-sheet had been served on the applicant on 27.3.2001 and, therefore, the integrity certificate pertaining to the applicant was being withheld. After considering the recommendations of the selection committee and the views of the Joint Cadre Authority received under Regulation 6(A), the recommendations of the selection committee were approved with modification that the name of the applicant would be treated as provisional subject to clearance of the disciplinary proceedings pending against him and also subject to grant of integrity certificate in his favour by the cadre controlling authority. In other words, the provisional inclusion of the name of the applicant was based on the statutory provisions contained in sub-regulation (5) to Regulation 5 of the Promotion Regulations.

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6. By virtue of the present application, the applicant seeks a declaration that the decision and action of the respondents keeping the name of the applicant on the provisional list for making induction into the Indian Police Service is arbitrary and contrary to the rules and regulations. He seeks a direction to put the name of the applicant in the select list without any rider. It is further claimed that Regulation 7(4) of the Regulations 1955 as amended is per se ultra vires. In the alternative, it has been prayed that even if the regulations are held to be intra vires, it may be held that the limit of 60 days regarding the validity of the select list would not be applicable to the cases where the name is kept on the provisional basis.

7. The application as such has been contested. The Union Public Service Commission (respondent No.3) in its reply has not disputed the basic facts. It has been pointed that at the time of selection committee meeting, the Joint Cadre Authority i.e. the Ministry of Home Affairs had granted the integrity certificate in favour of the applicant. His name was unconditionally included in the select list at Sl.No.1 without any stipulation along with three other officers. However, while forwarding the observations on the recommendations of the selection committee, the integrity certificate was withheld and the Union Public Service Commission was asked to take

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appropriate action. This view had been endorsed by the Central Government. The integrity certificate was being withheld in pursuance of the chargesheet being served on the applicant and a decision to institute major penalty proceedings against him was taken.

8. The Union Public Service Commission relies upon the following guide-lines of the Department of Personnel and Training dated 6.7.1998:-

"Any adverse development in respect of an officer included in the zone of consideration which is likely to render him unsuitable for appointment to the Service for the time-being (e.g.) withdrawal of integrity certificate by the State Govt., initiation of regular departmental action/proceedings and/or filing of criminal case in a court of law etc., should be immediately brought to the notice of the Central Government and the Union Public Service Commission by the State Govt./Joint Cadre Authority concerned by means of Speed Post/Fax Message and acknowledgement secured from the authorities to whom the communication is addressed. This is to enable the Commission to invoke the proviso to Regulation 5(5) of the Promotion Regulations for inclusion of the Selected officer concerned as provisional in the Select List subject to outcome of the cases against him on or before the date of giving approval to the Select List by the Commission."

It is in pursuance of these facts that it was decided that the name of the applicant would be treated as provisionally included subject to the clearance of disciplinary proceedings and grant of integrity certificate.

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9. By and large, the same are the facts asserted by the respondents 1 and 2.

10. The learned counsel for the applicant at the outset contended that the name of the applicant had been approved for induction into the Indian Police Service and, therefore, now placing his name in the provisional list for making induction into the Indian Police Service is arbitrary and bad.

11. We have already given resume of facts in brief. Suffice to say in few words that the name of the applicant was at Sl.No.1. It was considered but at that stage, it transpired that the departmental proceedings were being initiated and the article of charge had been served. The integrity certificate was withheld by the Ministry of Home Affairs. The promotion was, therefore, deferred and the provisional list was prepared in this regard.

12. We know from a decision of the Supreme Court in the case of *Union of India and Others v. K.V.Jankiraman and Ors.*, (1991) 4 SCC 109 that promotion cannot be withheld on the ground of pendency of preliminary enquiry or criminal investigation, but the Supreme Court held that when a charge memo in the disciplinary proceedings is issued then it can be said that the departmental proceedings have been initiated. In the present case, the charge memo was served ^{before} ~~when~~ the applicant was actually promoted.

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13. Reference with advantage can be made to a decision of the Supreme Court in the case of **Delhi Development Authority v. H.C.Khurana**, (1993) 3 SCC 196. Herein a charge-sheet was despatched but the same was not served on the ground that Shri H.C.Khurana was on leave for months. The decision to serve the charge-sheet had been taken earlier. The Delhi High Court had allowed the petition but the Supreme Court in face of the abovesaid facts concluded that the case of K.V.Jankiraman (supra) would not apply. The cited case of H.C.Khurana (supra) is confined to the peculiar facts of that case.

14. From the aforesaid, it is obvious that once the charge-sheet had been served, disciplinary proceedings would be deemed to be initiated as in the present case. We have already reproduced above the instructions of the Department of Personnel and Training dated 6.7.1998. Once the charge-sheet had been served, we find nothing illegal if the claim of the applicant was deferred for promotion.

15. In that event, the learned counsel had assailed the vires of the sub-rule (4) to Regulation 7 of the Promotion Regulations contending that as per the said regulations, the select list has to remain in force for a period of 60 days from the date of approval of the same by the Union Public Service

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Commission. According to the learned counsel, the applicant whose name has been kept in the provisional list would suffer because 60 days would expire much earlier.

16. We have not the least hesitation in rejecting the said contention. The period of 60 days has been prescribed with an object to ensure that once the list is prepared and approved, it should be acted upon at the earliest. However, in cases where promotion is provisional or subject to disciplinary proceedings as in the facts of the present case, second proviso to Regulation 9(1) of the Promotion Regulations would come into play. The 60 days' period would start running after the name is cleared by the Commission in terms of sub-regulation (4) to Regulation 7 of the Promotion Regulations. The language of second proviso to Regulation 9(1) is clear and unambiguous.

17. Otherwise also, even if the matter is considered independently of the same, one has to harmoniously construe these provisions. 60 days would run only when ^{the} _{is} the name is cleared particularly when a cloud is cast on the promotion to be made regularly. No rights in this process can be allowed to be defeated. In light of the aforesaid, it is obvious that sub-rule (4) to Regulation 7 cannot be termed to be ultra vires or illegal.



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18. The last submission of the applicant in this regard was that the period of 60 days should not be made applicable in the case of the applicant whose name had been kept on the provisional list. We have already given our findings in this regard. We have not least hesitation in holding that if the applicant is cleared in the departmental proceedings pending against him necessary consequence would follow and sixty days' period would run in case the applicant is exonerated from the aforesaid date when the name is approved by the Union Public Service Commission.

19. With these findings in the preceding paragraphs, the present application is dismissed. No costs.

Naik
(S.K.Naik)
Member (A)

V.S. Aggarwal
(V.S. Aggarwal)
Chairman

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