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Central Administrative Tribunal
Principal Bench

O.A. No. 2232 of 2001

New Delhi, dated this the 3rd May, 2002

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. KULDIP SINGH, MEMBER (J)

Mr. S.A Kamli
S/O Late Mr. Habibullah Kamli
C/O Mr Shahid Kamli
A-11, Nizamuddin (West)
New Delhi-110013.Applicant
(By Advocate : Shri B.T.Kaul)

VERSUS

1. Union of India Through
The Secretary Ministry of Personnel,
Public Grievances and Pension
Department of Personnel & Training
North Block, New Delhi-110001.
2. The Union Public Service Commission
Through the Secretary
Dholpur House, Shahjahan Road,
New Delhi-110011.Respondents
(By Advocate : Shri M.M. Sudan)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns respondents' order dated 29/30.9.2000 (Annexure A-1) and seeks a declaration that he is entitled to be appointed to J&K cadre of IAS from the date ~~of~~ other state civil service officers, whose candidature had been approved by Respondent No.2 alongwith applicant, were appointed, vide Notification dated 18.9.2000 (Annexure A-8) with consequential benefits.

2. Under Section 3(1) All India Services Act which has been enacted under Act 309 of the Constitution, The Central Government is empowered, after consulting the Government of the state concerned (including the State of J&K), to make Rules for the regulation of recruitment, and the conditions

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of service of person appointed to all India Services.

Pursuant to aforesaid Rule 3(1), the Central Government has framed the IAS Recruitment Rules, 1954 and Rule 4 thereof ^{provides} ~~provides~~ for recruitment through 3 sources namely

a) through competitive examination (direct recruitment)

b) promotion of substantive member of state civil service or

c) by selection of officers who hold in a substantive capacity gazetted posts in connection with the affairs of a State and belonging to services other than the State civil services.

3. For our purpose (b) above is relevant, and this is governed by the IAS (Appointment by Promotion) Regulation, 1955, made under Rule 5(1) IAS (Recruitment) Rules, 1954 (Annexure A).

4. Regulation 3 thereof talks of the Constitution of a Committee headed by the Chairman or Member of UPSC to make Selection. Regulation 4 stands deleted, and Regulation 5 talks of the preparation of a list of officers suitable for promotion to the IAS. The proviso to Regulation 5(5) lays down 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 other proceedings, departmental or criminal, are pending against him or

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(23) (14)

anything adverse against him which renders him and suitable for appointment came to the notice of the State Government. Regulations^{6~} lay down that this list, prepared in accordance with Regulation 5 shall be forwarded to the UPSC by the State Government with the observation of the State Government on the Committees' recommendations. Regulation 6(A) requires that State Government to forward a copy of the aforesaid list to the Central Government, who in turn sends its observation on the recommendation of the Committee to UPSC. Regulation 7 requires UPSC to consider the aforesaid list, ^{and} if it considers it necessary to make changes in the list, inform the State Government concerned as well as the Central Government of the changes proposed, and after taking into account the comments if any of the State Government and the Central Government may approve the list finally with such modification if any as in its opinion just and proper. This list as finally approved by UPSC ~~shall~~ ^{and} forms the select list of the members of the State Civil Service. Regulation 9 provides for appointment to the IAS to be made by the Central Government from the select list of those members of the State Civil Service who have expressed their willingness to be appointed members of the service in the order in which their names appear in the select list, during the period the select list remains in force.

5. Pleadings reveal that the 1999 Selection Committee for J & K to consider promotion to IAS (J & K cadre) ^{met} on 6.12.99, in which the case of applicant, whose date of birth is 23.3.42 was also considered.

(24) (15)

The Selection Committee was made aware that certain criminal cases were pending against him, and on an overall relative assessment of the service records, the Selection Committee graded him as Very Good and included his name in the suitability list ^{Subject} ~~subject~~ to his clearance in the cases pending against him.

6. The J & K Government furnished⁷ its observation on the Selection Committee recommendations⁷ on 30.3.2000 and the Central Government furnished its own observation on 16.3.2000. On 30.3.2000 the State Govt. informed UPSC that it had directed to withdraw the prosecution⁷ filed against applicant and also not to initiate any disciplinary proceedings against him. In view of this, ^{the} State Government further stated that applicant's candidature was no longer provisional as no criminal or disciplinary proceedings were pending against him and integrity certificate based on his ACRs had earlier been made available to UPSC.

7. On receipt of the aforesaid letter of J & K Govt. dated 30.3.2000, the UPSC in their letter dated 23.5.2000 (Annexure A4) wrote back to say that as the proposal for making applicant's name unconditional had been received in UPSC office before applicant's retirement on 30.3.2000, and since the age of retirement for All India Services was 60 years, natural justice demanded that applicant should not be denied the benefits of two more years of service. It was further stated that in the recent amendment regarding preparation of year-wise select lists the DoPT had also proposed for consideration of officers who were eligible in the relevant year, but

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had retired at the time of the meeting. It seemed that the intention of the GOI was to give benefit to such officers even after their retirement. Accordingly UPSC requested J&K Government as well as Central Government to furnish their comments urgently on the above proposal of the Commission as required under Rule 7 of the Promotion Regulations.

8. The J&K Govt. appear to have replied on 8.6.2000 and the Central Government on 7.7.2000, upon which the UPSC on their letter dated 31.7.2000 (Annexure A-5) approved the recommendation of the Selection Committee dated 6.12.1999 inter alia declaring applicant's name as unconditional and thereby approved the select list.

9. Meanwhile, as stated above, applicant had retired on superannuation from the State Civil Service on attaining the age of 58 years on 31.3.2000.

10. Upon not receiving any notification inducting him into the IAS, applicant filed WP No.1406/2000 in J&K High Court on 20.8.2000 seeking a direction to Respondent No.1 to issue orders inducting him into IAS. That Writ Petition was disposed of on 28.8.2000 with the following order:

U.K. Jalali and Ms.R.Bhakari, S.Bhat,
Sr. SGSC

The learned counsel for the Respondent Union of India submits that this petition can be disposed of without filing the counter. It is submitted that the case of the Petitioner would be considered and the approval accorded by the Union Public Service Commission would be given full regard. It is submitted that the case

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EP (R)

would be considered in the meeting which is now to be convened. In any case, it is submitted that the case of the Petitioner would be considered before 30th Sept.2000.

In view of the above, this petition is disposed of with a direction that the case of the Petitioner be considered in the manner indicated above.

11. On 13.9.2000 (Annexure A-7 Colly.) Respondent No.1 informed Respondent No.2 that although it was observed that in the 1999 select list for promotion to IAS J&K Cadres as modified and approved by UPSC, applicant's name stood at Sl. No.1, as he had reached the age of 58 years and had ceased to be a member of the State Civil Service after his retirement on 31.3.2000, he was not entitled to promotion to IAS on date, in terms of the provisions in Regulation 9(1) IAS (Appointment by Promotion) Regulation, 1955. In this letter, reference was also made to the J&K High Court ~~order~~ dated 21.8.2000 (supra). The considered views of the UPSC were requested for, on the question of applicant's appointment to the IAS pursuant to the J&K High Court's direction, inter alia, keeping in view the relevant statutory provision.

12. Meanwhile, on 13.9.2000 (Annexure A-8) itself Respondent No.2 wrote to Respondent No.1 to take necessary action to issue the necessary notification in the light of letter dated 31.7.2000 of Respondent No.2 and the J&K High Court's order dated 21.8.2000.

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(7) (18)

13. On 18.9.2000 (Annexure A-8) in

accordance with Regulation 7(3) IAS (Appointment by Promotion) Regulations, 1955 Respondent No.1 notified the 1999 Select List as approved by UPSC which contained six names, including that of applicant at Sl. No.1, and on the same day (Annex.A-9) also notified the appointments on probation of 4 persons out of the aforesaid list of 6 names to the IAS in ~~exercise~~ of the powers conferred on Respondent No.1 by Rule 8(1) IAS (Recruitment) Rules, 1954 read with Regulation 9(1) IAS (Appointment by Promotion) Regulations and IAS (Probation) Rules 1954.

14. Eventually Respondent No.2 in their reply dated 29.9.2000 to Respondent No.1's letter dated 13.9.2000 after reply to the J&K High Court's order dated 21.8.2000 (supra) observed that since the subject matter of appointment of Select List officers to IAS came under the purview of DOP&T,GOI, it requested Respondent No.1 (DOP & T, GOI) to take necessary action as deemed fit to comply with the High Court's directions.

15. Some time thereafter applicant filed Contempt Petition No. 45/2000 in J&K High Court alleging contumacious non-compliance of the High Court order dated 21.8.2000. The High Court in its order dated 4.4.2001 after noticing the impugned order of Respondent No. 1 dated 29/30.9.2000 which ran thus:

"AND NOW THEREFORE in the detailed facts and circumstances of the case it was observed that when the occasion for appointment to the IAS after approval to the select list by the Union Public

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(8) (9)

Service Commission it is essential that the empanelled officer should continue to remain the member of the State Civil Service in order to be eligible to be considered for appointment to the IAS in terms of the statutory provisions contained in Regulation 9(1) of the IAS (Appointment by Promotion) Regulations, 1955, applicable to the case and since Shri Kamli does not fulfil this condition, it has been decided that he cannot be appointed to the IAS J&K Cadre as he is no longer a member of the State Civil Service. Orders accordingly."

rejected applicant's contention and ^{dismissed} ~~dismissed~~ the contempt application.

15. Thereupon applicant filed the present OA.

16. We have heard both sides and perused the matter on record.

17. In our considered opinion, as rightly pointed out by the respondent No. 1, Regulation 9(1) IAS (Appointment by Promotion) Regulations 1955 required applicant to be a Member of the J & K State Civil Service at the time the promotions were notified by the Central Government on 18.9.2000. Applicant having ^{already} ~~allegedly~~ retired on superannuation on 31.3.2000, had ceased to be a Member of the J & K State Civil Service after 31.3.2000, and hence was not entitled to appointment to the IAS in terms of the aforementioned statutory provisions.

18. Coming to the grounds taken by applicant, we find that merely because the select list as modified and approved by Respondent No. 2 was notified by Respondent No. 1 under Regulation 7(3) IAS (Appointment by Promotion) Regulations 1955

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on 18.9.2000 does not necessarily mean that

Respondent No. 1 was also required to appoint applicant to the IAS under Rule 8(1) IAS (Recruitment) Rules read with Regulation 9(1) IAS (Appointment by Promotion) Regulations, where such appointment would be violative of Regulation 19(1).

19. No doubt Respondent in its letter dated 23.5.2000 had suggested to Respondent No. 1 that natural justice demanded that applicant should not be denied the benefit of two years service in IAS, but we find that when the rule position was pointed by Respondent No. to Respondent No. 2, the latter left it to the former to take a decision in this regard and in any case the principles of natural justice cannot be stretched so as to do violence to rules which ^{have} been promulgated under article 309 of the Constitution, and which ^{themselves} ~~is not~~ has not been challenged.

20. On behalf of applicant it has been contended that impugned order dated 29/30.9.2000 repudiates the undertaking given by respondent no. 1 to the J & K High Court, but this contention has not found favour by the J & K High Court itself as is clear from their order dated 4.4.2001 in CP NO. 345/2000.

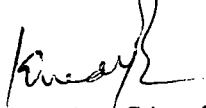
21. It has also been contended by applicant that a State Civil Service Officer was promoted to IAS after superannuation, and similarly a State Police Service Officer was promoted to IPS after superannuation, and hence applicant cannot be discriminated against. Full details of the facts and

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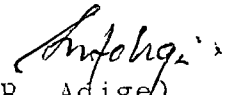
(18) (21)

circumstances leading to those promotions (if at all they were ^{promoted} ~~made~~) are not known to us, but even if what applicant contends is correct, ~~it~~ does not automatically follow that applicant should have been promoted to IAS under Regulation 9(1) IAS (Appointment by Promotion) Regulations Act at a time when he had ceased to be a member of the J & K State Civil Service, as such promotion would clearly be violative of Rule 9(1). No amendment/modification/clarification was shown to us dispensing with the requirement of a person seeking promotion to the IAS under the IAS (Appointment by Promotion) Regulations, from being a member of the State Civil Service, at the time the promotions were notified under Regulation 9(1) IAS (Appointment by Promotion) Regulations.

22. In the result the OA warrants no interference. It is dismissed. No costs.


(Kuldip Singh)
Member(J)

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(S.R. Adige)
Vice-Chairman(A)