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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

...

OA No. 548/97

New Delhi, this the ~~13th~~ day of November, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Shri Hari Om Kuumar Lavania
S/O Shri S.L. Lavania
R/O House No.2
Commissioner Office Compound
Agra, U.P.
(By Advocate: Sh. P.P. Khurana)

.... Applicant

Vs.

1. Union of India through
Secretary
Ministry of Personnel
Public Grievances & Pension
North Block
New Delhi.
2. Union Public Service Commission
Through Secretary
Dholpur House,
Shahjahan Road
New Delhi - 110011.
3. The State Govt. of Uttar Pradesh
Through
The Chief Secretary
State Secretariat
Lucknow (U.P.)
(By Advocate: Sh. V.S.R. Krishna)

.... Respondents

O R D E R

delivered by Hon'ble Shri T.N. Bhat, Member (J)

The applicant in this OA, filed under Section 19 of the Administrative Tribunals Act 1985, had joined the U.P. State Civil Service in the year 1969 and was confirmed in the P.C.S. in 1971. He was promoted to the senior scale in the year 1977, to the special scale in 1984, the next higher scale in 1990 and to the highest scale of P.C.S. in 1996. At the time of the filing of this OA he was posted as Additional Commissioner, Agra Division, Agra in U.P. During the year 1990-91 he was

sent on deputation as Managing Director of the Central Dairy Farm, Aligarh where, according to the applicant, he had to perform an "unpleasant duty" of placing one Sh. Mohan Das Saxena, the then General Manager of the said Dairy Farm under suspension. Since this step on the part of the applicant was not liked by the then Secretary, Department of Animal Husbandry the applicant made a request that he may be transferred from the post of Managing Director which request was acceded to but after a delay of about three months. According to the applicant it was as a result of the above incident that some adverse remarks for the period from 1.4.91 to 1.8.91 were recorded in his ACR but the same were communicated to him only in the year 1994 when he received letters dated 17.2.94 and 16.3.94. The applicant made a representation on 23.4.94, as at Annexure A-4 to the OA.

2. In the meantime the applicant had become eligible for consideration for promotion to IAS along with his batch mates of 1968 batch. The Selection Committee which considered the cases of the PCS officers of 1968 batch, to which the applicant also belonged, met for the first time in the month of March 1993 and recommended a number of officers of that batch who were promoted in the month of March 1994 which included two officers junior to the applicant. The applicant was not empanelled.

3. After the aforesaid selection other Selection Committees met in the months of March 1994 and March 1995 but again the name of the applicant was not recommended while 7 persons junior to the applicant were

recommended and selected. The applicant made several representations in the years 1993, 1995 and 1996 but these did not elicit any response.

4. The applicant's grievance is that all the aforesaid DPCs (Selection Committees) held in the years 1993, 1994 and 1995 took into consideration the adverse remarks contained in the ACRs of the applicant despite the fact that the adverse remarks had been communicated to the applicant only in the year 1994 and his representation against the adverse remarks was pending. Even though the adverse remarks were communicated to the applicant in the month of February and March 1994, there was no time for him to make representation before the DPC met in the month of March 1994. According to the applicant the action of the respondents in taking into account the adverse remarks without the same having been communicated to him and even after he had made representation against the same was illegal. It is further contended by the applicant that while conveying the adverse remarks to the applicant the reporting officer had also mentioned that an enquiry was pending against the applicant which was being conducted by the Commissioner of Agra Division and that in the said enquiry the applicant was exonerated by the Commissioner of all the alleged irregularities. According to the applicant, in view of the result of the aforesaid enquiry it should be deemed that the adverse remarks had been expunged.

5. The applicant has claimed the following reliefs in the OA:-

- i) to direct the respondents to review the minutes of the meetings of the Selection Committees held in March 1993, March 1994, March 1995 and March 1996, after ignoring the adverse remarks given to the applicant for the period 1.4.1990 to 1.8.1990 and in case the applicant is found fit for promotion, in any of the review Committee meetings, direct the respondents to include the name of the applicant in the Select list of the earliest of such review Committee meetings.
- ii) to accord appropriate seniority to the applicant in the Indian Administrative Service.
- iii) to grant all consequential benefits including financial benefits to the applicant.
- iv) to pass such other and further orders as deemed fit and proper in the facts and circumstances of the case to meet the ends of justice.

6. Resp. Nos. 1 & 2, namely, the Union of India through Secretary, Ministry of Personnel, Public Grievance and Pensions and the Union Public Service Commission have filed separate counters. While Resp. No.1 has averred in the counter that it is the concerned State Govt. and the U.P.S.C. which are primarily concerned with the subject matter of this OA, the U.P.S.C. has in the separate counter resisted the claim of the applicant on the ground that the name of the applicant was

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considered by all the Selection Committees held in 1993, 1994 and 1995. As regards the adverse entries in the ACR of the applicant the U.P.S.C. has taken the plea that the name of the applicant was not included in any of the certificates sent by the Government of U.P. regarding officers against whom there were adverse remarks in the ACRs and which Officers were to be considered by the Selection Committee which met on 2.3.93 and 21/22.3.94. It is further averred that after considering the service records of the applicant it was found that he did not get the requisite grading/bench-mark for inclusion in the panel and that the Selection Committee assessed the applicant as 'Good' while those who got the higher grading were included in the panel. As regards the preparation of the select list for 1994-95 for which the Selection Committee met on 21st and 22nd March, 1995 it is averred that the Government of U.P. had intimated to the Selection Committee that the representation against the adverse remarks for the year 1991-92 had been received by the State Government but the same was still pending with them. The Selection Committee considered the applicant and on overall assessment of the service records upto March 1994 assessed the applicant as 'Very Good' and in pursuance thereof the applicant's name was included at Sl. No.3 in the select list of 1994-95 which was, however, made subject to expunction of the adverse remarks for the year 1991-92.

7. We have heard the learned counsel for the parties for final disposal of the OA at the admission stage itself. We have also heard them on MA-1547/98 which has been filed by the applicant seeking directions to the

respondents to include the name of the applicant in the select list of IAS in view of some developments which had taken place during the pendency of this OA. The development referred to is the expunction of the adverse remarks and acceptance of the applicant's representation against the same. The applicant has annexed to this MA a copy of the order issued by the Government of U.P. on 12.8.97 and a perusal of the same reveals that the adverse entries communicated to the applicant by the letter dated 17.2.94 have been expunged and the integrity of the applicant for the aforesaid period has also been verified.

8. On the basis of the aforesaid development the learned counsel for the applicant has during the course of his arguments contended that since the adverse remarks already stand expunged the applicant should be included in the select list of IAS officers for the year 1993 itself as it was only on the basis of the adverse remarks that the applicant had been graded as 'Good' and not as 'Very Good'.

We may state here that the applicant was eventually promoted to the IAS in the year 1997.

9. In reply, the learned counsel for the respondents states that there is no material placed on this file to indicate that the adverse remarks for the period 1.4.91 to 1.8.91 had been taken into account by the Selection Committees which met in 1993, 1994 and 1995. In this regard, the learned counsel for the respondents has drawn our attention towards the averments made by the U.P.S.C. in their counter reply. We notice that although in para 6 and 7 it has been averred that the name of the

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applicant was not included among the officers whose adverse remarks had not been communicated or in respect of whom the adverse remarks had been communicated but no representations had been received or among those officers against whom adverse entries had been communicated and representations had been received. Even assuming that in none of the certificates sent by the Government of U.P. the name of the applicant was included, this would not by itself establish that the adverse entries, which had already been recorded in the ACRs, were not considered by the respective Selection Committees. It is not disputed that the ACRs were before these Selection Committees and they contained the adverse remarks from 1.4.91 to 1.8.91. There is no specific assertion made by the U.P.S.C. that the adverse remarks were not considered. On the contrary, there is every reason to believe that all the entries which were there in the ACRs including the adverse entries must have been considered.

10. Since the adverse entries have been expunged the applicant is entitled to the relief claimed by him.

11. We, accordingly, allow ~~this~~ this OA and dispose it of with the following directions:-

a) Immediate action shall be taken for considering the applicant's case for promotion to IAS on the basis of the recommendations of the Selection Committee which met in the month of March, 1995. While taking this action the respondents shall proceed on the

basis that the adverse remarks have been expunged and thereby the condition put by the Selection Committee stands satisfied.

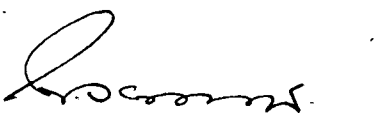
This direction shall be implemented within two months from the date of receipt of the copy of this order by the respondents.

b) In case it is found by the respondents that while considering the applicant's case for promotion the Selection Committees which met in March 1993 and March 1994 had before them the adverse entries in the ACRs of the applicant pertaining to the period 1.4.1991 to 1.8.1991 review selection shall be held by a review Selection Committee to consider the applicant's case for promotion against the vacancies of 1993-94 and 1994-95 on the basis that the aforesaid adverse entries did not exist or stood expunged.

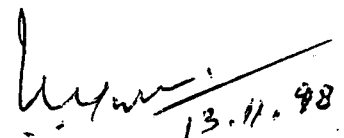
This direction shall, as far as practicable be implemented within four months of the receipt of the copy of this order.

12. MAs 291/98 and 1547/98 also stand disposed of accordingly. No costs.

13. A copy of this order shall also be sent forthwith to the Chief Secretary, State of U.P., Lucknow.


(S.P. BISWAS)
Member (A)

sd


13.11.98
(T.N. BHAT)
Member (J)