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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1023/97

New Delhi this the 6 Day of February 1998

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)
Hon'ble Shri S.P. Biswas, Member (A)

Shri Abdul Bari Nawas,
son of Shri Abdul Sattar Nawab,
working as Speical
Deputy Commissioner G & M Project,
Belgaum,
Karnataka.

Petitioner

(By Advocate: Shri D.K. Garg)

-Versus-

1. Union of India,
through the Secretary,
Ministry of Personnel, Public
Grievances and Pensions,
Department of Personnel and Training,
New Delhi.
2. Union Public Service Commission,
through its Secretary,
Dholpur House,
New Delhi.
3. Selection Committee for Appointment
by Promotion to the Indian
Administrative Service,
represented by its Chairman,
Union Public Service Commission,
Dholpur House,
New Delhi
4. State of Karnataka,
through the Secretary,
Department of Personnel and
Administrative Reforms,
Vidhana Soudha,
Bangalore (Karnataka).
5. Shri K.S. Prabh,
S/o Shri K.S. Achar,
Resident of No. 95, 2nd Main Street,
6th Block, Third Phase,
Bhamashaukari, Third Stage,
Bangalore.

(By Advocates: Shri VSR Krishna for Respondent No. 1 & 3)
By Shri N. Ganpathy, Counsel for Respondent NO. 4,
Shri E.X. Joseph, Sr. Advocate with Shri N. Amresh and
Shri Parveen Khattar, Counsel for Respondent No. 5)

ORDER

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

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The petitioner in this case has filed this O.A. seeking, inter alia, quashing the selection proceedings of the Selection Committee held on 3.2.1997. The remaining reliefs are consequential to this main relief. The petitioner is challenging the said process of selection mainly on the ground that the relevant materials required to be produced before the Selection Committee has not been made available and thereby violated the relevant rules which requires the appropriate authority to place all information before the Selection Committee have been vitiated and the same needs to be set aside, since suppression of materials from the Selection Committee goes to the root of the process of selection.

2. According to the petitioner. he is the senior-most officer in the State Civil Services of Karnataka where he joined on 17.7.1978 as Class I officer. Thereafter, he was promoted to the Karnataka Administrative Service (Senior Scale) on 3.8.1987 and again to the Selection Grade on 30.7.1992. According to him, he is in the zone of consideration in Administrative service since the year 1988.

3. According to the provisions of the Indian Administrative Service (Appointment by Promotion) Regulation 1955, the appointment to the cadre of Indian Administrative Service from State Civil Services is by promotion. The candidates for promotion are selected by a Committee consisting of the Chairman of the Union Public Service

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Commission or where the Chairman is unable to attend, any other Member of the Union Public Service Commission, Chief Secretary to the State Government, Development Commissioner to the State Government, Revenue Commissioner and Secretary to Government, Senior-most Divisional Commissioner in the State and two nominees of the Government of India, not below the rank of Joint Secretary. The Committee ordinarily meet at intervals not exceeding one year and prepare a list of such Members of the State Civil Services as are held by them suitably for promotion to the Service. The zone of consideration is equal to three times the number of persons included in the Select List. The rules further provides that the Select Committee shall classify the eligible officers on their own according to the standards prescribed.

4. During the year 1996-97, two vacancies occurred and the State Government prepared a list of suitable officers under Regulation 5.1 of the said Rules and the same was sent to the Union Public Service Commission along with their Confidential Reports for the past ten years i.e. from 1986-87 to 1995-96.

5. The Selection Committee in its meeting held on 3.2.1997 selected two candidates and additional two candidates as reserved, and according to the petitioner the name of the petitioner was not recommended, not for the reason that the petitioner had less merit rather many of the petitioners placed above him were considered only on the basis of material placed before the Selection Committee by the appropriate Government suppressing many relevant materials which should have been placed before the Select Committee in accordance with the rules.

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6. In the circumstances the petitioner alleges that in spite of the fact that the services of the petitioner was unblemished yet his juniors were recommended for promotion as a result of suppression of material at the instance of the Government which according to him has vitiated the action of the Selection Committee thereby their recommendations becoming arbitrary, discriminatory and violative of Article 14 and 16 of the Constitution of India.

7. Respondent No. 4, namely, the State of Karnataka in their reply stated that all the materials relevant for the purpose of selection were produced before the Selection Committee and the proceedings of the Selection Committee was in accordance with the Rules. The petitioner had alleged that various departmental and judicial proceedings which were pending against some of the candidates whose name was ultimately recommended, had escaped the notice of the Selection Committee as the State Government had suppressed those materials from the consideration of the Selection Committee. Respondent No. 4 in their reply, on the other hand, submitted that no such departmental/judicial proceedings were pending or contemplated against any of the candidates and the Selection Committee was duly kept informed about both the allegations made by the private parties against them. It was also stated that the disciplinary proceedings shall be deemed pending only if chargesheets have been served or chargesheet have been filed in a court of law as laid down in the Notifiction of the Government of India dated 12.11.1991.

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8. Respondent No. 5 had filed a separate reply and thereafter an additional affidavit filed subsequently had stated that there were 5 criminal cases on allegations of mis-appropriation of funds in the nature of LTC, TA bills, Medical reimbursement, TA advance and finally of impersonation and abuse of authority. The said criminal cases were, CC No. 930/95, CC No. 551/96, CC No. 2749/95, CC No. 2750/96 and CC No. 523/91. Further it was stated that the said cases was initiated on the basis of a complaint and in some cases, namely in the 2nd, 3rd and 4th cases non bailable warrants were issued. The petitioner had appeared before JMFC and obtained bail in those cases and finally the same was stated to have been dismissed by JMFC, Davanagere on 13.1.1998.

9. The Counsel for the petitioner submitted that the Respondent No. 4 did not bring the fact of these pending cases to the notice of the Selection Committee even though they were required to do so under the Rules. The Indian Administrative Service (Appointment by Promotion) Regulations, 1955 is relevant in this regard. Sub para (5) of Rule 5 as well as the proviso thereto requires consideration of the entire material of a particular officer including any proceedings that are contemplated or pending against him or anything adverse against him has come to the notice of the State Government. Rule 5.5 along with the proviso is reproduced herebelow:

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" Rule 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 Civil Service.

Provided that the name of any officer so included in the list, shall be treated as provisional, if the State Government, withholdsn 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." (emphasis added).

10. Counsel for the Respondent No. 5 submitted that even though these criminal proceedings were pending, under the law the said judicial proceedings cannot be said to be pending until the concerned criminal court framed charges formally. Since the required sanction from the Government was not taken by the complainant, the said criminal cases were finally discharged, indicating thereby, before any judicial proceedings happened to be pending in the strict sense of the law, happened to be discharged in favour of the petitioner for want of sanction under Section 197 of the Cr. P.C. It was also submitted that since no sanction was taken from the Government, the pendency of such cases was not formally known to the Government and as such they cannot be stated to be material necessarily to be produced before the Selection Committee for the purpose of promotion.

11. In order to substantiate the above said statement, the counsel for the respondents relied upon the decision of Hon'ble Supreme Court in Union of India Vs. K.V. Jankiraman's case and stated that even for the purpose of retaining the result of the Selection Committee, what is required is pendency of the judicial proceedings in the eye of law and the same is said to be pending only when a charge memo is issued. The present criminal cases being initiated

by complainants, till charges are framed after obtaining the necessary sanction, no criminal cases is said to be pending against the petitioner.

12. We are unable to agree with the said submission for the reason that admittedly chargesheets were issued by the Criminal Court and thereafter the petitioner on the basis of the non bailable warrants issued appeared in court and had taken bail and the petitioner continued to be on bail at the time when the Selection Committee held its meeting. In such circumstances that no criminal proceedings are pending for want of formal charges being framed after obtaining the necessary sanction, is not the correct position of law even as it is laid down in the above said Jankiraman's case. We are of the considered view that for all purposes of the case of this nature, criminal proceedings are to be considered as pending after the chargesheet is issued and the petitioner had taken bail on issuance of non bailable warrants.

13. It was also argued that the respondents cannot formally come to know about the pendency of the criminal proceedings until the complainant approached them for obtaining necessary sanction required under Section 197 Cr.P.C, a provision meant to protect every Government servant. The learned counsel for the petitioner had produced before us one of the latest decisions of the Hon'ble Supreme Court stating that under the circumstances of this case, sanction from the appropriate Government is a 'sine qua non'. At any rate, the pending criminal cases are being prosecuted by State against the party and it is too late in the day for the State of Karnataka to say that

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no formal intimation is available with them as to the pendency of the criminal proceedings. We do not find that the said decision is relevant at all for the reason that we do not intend to review the findings of the Select Committee on merit. Rather what we intend to look at is whether the procedure adopted by the Selection Committee has been vitiated by certain extraneous reasons especially due to suppression of material or not. The counsel further relied upon the case of Smt. Nutan Arvind Vs. Union of India reported in (1966) 2 SCC 488 for the same purpose.

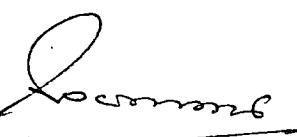
16. The counsel for the official respondents have also submitted that the function of the Select Committee is only to make an overall assessment of the Confidential Reports of the Members and the pendency of the criminal or other judicial proceedings does not affect the merit of the candidates for promotion rather they are material only if the candidates are promoted; only at that time the question whether the same should be implemented during the pendency of those proceedings while the cloud subsists over the heads of those Members, or not, would be relevant. It is not necessary for us to look into these submissions for the reasons that under the rules the respondents were to place all the materials before the Select Committee and by no means could they keep out materials selectively from the purview of the Select Committee. It is for the respondents to decide on the basis of the material whether the candidate is to be recommended for promotion or whether the promotion if available on merit is to be implemented or not.

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17. Without going further into other contentions raised by the applicants or into the replies in this regards, by the respondents, we are of the opinion that it is a fit case wherein the selection held by the Select Committee on 3.2.1997 requires to be set aside, granting liberty to hold fresh selection after the appropriate government presents to the Select Committee all the relevant materials. Suppression of materials from the purview of an independent Select Committee smacks arbitrary exercise of power at the instance of the party which selectively suppresses such materials and contrary to the rules thereby action become in violation of Article 14 and 16 of the Constitution of India.

18. In the circumstances the findings and recommendations of the Select Committee held on 3.2.1997 is hereby set aside and the respondents are given liberty to proceed with the matter by placing the entire material before the Select Committee and the Select Committee shall hold a review selection as on 3.2.1997 on the basis of the material available till that date only. In the circumstances we would expect that the said re-selection procedure should take place within next six weeks after the receipt of a copy of this order. With this, this OA is allowed to the extent stated above. No order as to costs.



(S.P. Biswas)
Member (A)



(Dr. Jose P. Verghese)
Vice Chairman (J)

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