

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

New Delhi: 27.4.98.

O.A. NO. 2020 OF 1992

Lekhraj Sharma (S/O Shri T.R.S. Sharma)
Additional Secretary to Government, J&K
Forest Department, Srinagar
R/O 76-A, IIInd Extension,
Gandhinagar, Jammu-180004

... APPLICANT

VERSUS

1. Union of India through the Secretary,
Ministry of Personnel, P.G. & Pensions,
(Department of Personnel & Trainings)
NEW DELHI.
2. The Chairman, Union Public Service
Commission, Dholpur House, Shahjehan
Road, New Delhi (and Ex-Officio,
President, Selection Committee for
Promotion of J&K SCS(KAS) Officers to
IAS especially during 1985-1986)
3. The Secretary to Govt. of India,
Ministry of Personnel, P.G. & Pensions
(Department of Personnel & Trainings),
New Delhi
4. State of Jammu and Kashmir through the
Chief Secretary, J&K, Civil Secretariat,
Srinagar (J&K)-190001.
5. Shri Surindera Nath(President, Selection
Committee for Promotion of J&K SCS(KAS)
Officers to IAS 1991) C/O Chairman, UPSC
New Delhi (Respondent No. 2 above)
6. Shri V.K. Kapoor, Chief Secretary, J&K,
(Member Selection Committee for
promotion of J&K SCS (KAS) Officers
to IAS in 1991) Civil Secretariat,
Srinagar (J&K)-190001.
7. Shri R.K. Takker, Chief Secretary
Delhi Administration, (Member, Selection
Committee for promotion of J&K SCS(KAS)
Officers to IAS in the year 1985 & 1986)
New Delhi,
8. Shri Babu Jacob (Member Selection
Committee for promotion of J&K SCS(KAS)
Officers to IAS in the year 1985 and 1986)
C/O Secretary to the Government of India,
Ministry of Personnel, PG & Pensions (Resp. No. 3
above) New Delhi.
9. Shri A.P. Singh (Member Selection Committee for
promotion of J&K SCS(KAS) Officers to IAS, 1991)
C/O Respondent No. 3 above)
New Delhi.

10. Shri Ajit Kumar, IAS (Member, Selection Committee for promotion of J&K SCS (KAS) Officer to IAS, 1991)
C/O Chief Secretary, J&K, Srinagar.
11. Miss Sushama Choudhary, IAS, (Member Selection Committee for promotion of J&K SCS- KAS- Officers to IAS, 1991)
C/O Chief Secretary, J&K, Srinagar.
12. Shri J.A.Khan, IAS (Member Selection Committee for promotion of J&K SCS - KAS- Officers to IAS in the year 1985 and 1986)
C/O Chief Secretary, J&K, Srinagar.
13. Shri M.Rehman, IAS (Member Selection Committee for Promotion of J&K SCS -KAS- Officer to IAS, 1985 and 1986)
C/O Chief Secretary, J&K, Srinagar.
14. Shri J.P.Kesar (Member, Selection Committee for promotion of J&K SCS - KAS- Officer to IAS in the year 1985 and 1986)
C/O Chief Secretary, J&K, Srinagar.
15. Sheikh Ghulam Rasool, IAS (Member, Selection Committee for promotion of J&K SCS - KAS - Officers to IAS in the year 1985, 1986 and 1991)
C/O Chief Secretary, J&K, Srinagar.
16. Shri U.Ghosh, IAS, Joint Secretary to the Government of India, Ministry of Personnel, P.G. and Pension, Department of Personnel and Trainings New Delhi.
17. Shri Mohd Amin Khan, Director Food & Supplies, Kashmir C/O Chief Secretary, J&K, Srinagar
18. Sh. B.A. ~~Mish~~ ^{Mish}, Dy Commr. Pulwama, C/O Chief Secretary, J&K
19. Sh.D.N. Trisal, Dy Commr (Central) -do-
20. Shri A.G. Shahbaz, Addl Secretary, Revenue -do-
21. Shri T.K. Raina, the then Addl. Secy. Agri -do-
22. Sh.A.A. Akhoun, Custodian General -do-
23. Shri K.S. Slathia, Special Secretary, PDD -do-
24. Sh.M.S. Qureshi, Chairman J&K Bank -do-
25. Sh.A.A. Bhat, Labour Commissioner -do-
26. Sh. Rajinder Singh, Director Land Records -do-
27. Sh. Brij Mohan, Addl. Secretary Coop. -do-
28. Sh. G.M. Zargar, Dy Commr. Kupwara -do-
29. Sh. Qasir-ud-Din, Addl. Secretary, Home -do-
30. Sh. Kesho Prakash, Secretary J&K PSC -do-
31. Shri B.L. Bhagar, then Jt. Commr. Agr Reforms -do-
32. Sh. G.N. Kanth, Jt Commr. Agr. Reforms, Kmr. -do-
33. Sh. G.M. Thakur, Secretary Social Welfare -do-

- 3/Shri 34. Ghanshyam Sharma, Member, S.S.S. Rect. Board C/O Chief Secy, J&K
 35. Satish Mahajan, Director Sty. & Civil Supply - do-
 36. Nazir Ahmed, Secretary to Govt. C/O Chief Secretary, J&K, Srinagar
 37. P.L. Raina, V.C., J.D.A. Jammu. -do-
 38. M.H.H. Beg, Special Secretary to Govt. -do-
 39. Suresh Kumar, Addl. Secretary to Govt. -do-
 40. A.K. Wani, the then Relief Commissioner -do-
 41. Mohd Khalil, Member, Special Tribunal -do-
 42. R.K. Gupta, Commissioner Enquiries -do-
 43. H.R. Magotra, then Director Handlooms -do-
 44. R.L. Dhar, Member, Special Tribunal -do-
 45. Chaman Lal, Director Local Bodies, Jammu. -do-
 46. M.S. Jamwal, Director Handlooms, Jammu -do-
 47. Abdul Qayum, the then Secretary to Govt. -do-
 48. Umar Jan, the then Director Tourism -do-
 49. Abdul Wahid the then Dy Commissioner, Anantnag -do-
 50. Kulbushan Sharma, Jt. Commr. Agr. Reforms -do-
 51. J.L. Razdan, the then Secretary to Govt. -do-
 52. N.L. Bakshi, Dy Commissioner, Poonch -do-
 53. Qazi Mohd Amin, Secretary Food & Supplies -do-
 54. G.M. Para, Secretary to Government -do-
 55. Ghulam Abbas Shah, Secretary to Govt. Tourism -do-
 56. G.J. Nehvi, Director Tourism -do-
 57. Mrs. Vijay Kotwal, Managing Director SICOP -do-
 58. Mushtaq Ahmed Ganai, Dy Commissioner -do-
 59. B.S. Jaswal, Special Secretary to Govt. PDD -do-
 60. A.R. Parrey, Dy Commissioner, Doda -do-
 61. S. Dalip Singh, Special Secretary Planning -do-
 62. S.R. Kapoor, Additional Secretary, Food & Supply -do-
 63. Abdul Qadir, the then Custodian General -do-
 64. D.P. Verma, Director Food & Supplies, Jammu -do-
 65. G.N. Ahanagar, Additional Secretary, PWD -do-
 66. Syed Ghulam Hassan, the then Chairman, State Subordinate Services Rect. Board -do-
 67. Shri Sain Dass, the then Spl Secretary Revenue -do-

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Shri Lekhraj Shama applicant in person.

Shri V.S.R.Krishna , Advocate for official Respondents.

Shri G.M.Kawosa for Govt. of J & K.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J)

JUDGMENT

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

In this OA filed on/ about 4.8.92, applicant impugns the promotions made to the IAS from the J & K State Civil Service (Kashmir Adm. Service) during the years 1985-86 and 1991, and seeks a direction to Respondents to fill up the resultant vacancies in terms of Regulation 5 IAS(Appointment by Promotion) Regulations, 1955 by making selections from amongst KAS Officers notified in Annexure- I to Govt. orders dated 9.6.81 (Annexure-A26) and in order of seniority on the basis of assessment of all the eligible officers as depicted by their service records by a Selection Committee consisting of impartial Members.

2. The main ground of attack taken by applicant who is a direct recruit of 1968 batch to KAS and entered the selection grade of KAS w.e.f. 19.12.83 and thus became eligible for promotion to IAS in 1985 is that the Selection Committee which made selections of J & K SCS(KAS) Officers for promotion to IAS on 24.4.86 (starting in Dec., 1985 and making recommendations on 24.4.86) and 29.2.91 failed to discharge the duties cast upon them under the provisions of Regulation 5 of IAS(Appointment

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by Promotion) Regulations, 1955 and Rule 2 read with Rule 8 (1) IAS Recruitment Rules, 1954 to the extent of satisfying themselves that the KAS Officers being considered for promotion to the IAS were

- i) actually Members of KAS duly appointed as such;
- ii) borne on the seniority list of KAS;
- iii) confirmed (substantive) in KAS on the 1st Jan. of the year in which the Selection Committee met respectively.
- iv) had completed not less than 8 years continuous service as Dy. Collector, normally holding for the purposes of revenue and general administration charge of a sub-Division of a district or a post of higher responsibility.

3. It is also contended that officers with prima facie proven cases of corruption or who were anti secular, anti-national and had worked against the security of the State were accommodated or at any rate efforts were made to accommodate them in the select list, despite the majority of the members of the Selection Committee(Respondents 6, 7, 10 and 15) having knowledge of the activities of these officers. On the other hand applicant complains that an officer with an excellent record of service like himself was overlooked.

4. Applicant admits in para 7 of the OA

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that he had previously filed CUP No.(s) 528/91 dated 1.5.91 in the Hon'ble Supreme Court who on 10.5.91 allowed the CUP to be withdrawn with liberty given to applicant to move the same before the CAT PB New Delhi. Applicant also himself invites attention to the W.P.No.592/91 filed in J & K High Court challenging the membership in KAS of Respondents No.17 to 20, 22 and some others(Sl.No.36 to 86 of the minutes of the Selection Committee dated 29.3.91) in a writ of quo warranto, as also the J & K High Court's orders dated 27.3.91 on OMP No.646 in W.P.No.1343/86 where under the proposed list of induction into KAS published calling for objections, specifically mentioning that the order in which the officers had been arranged in the list did not constitute their seniority which would be determined separately, the J & K High Court declared that

" The tentative seniority list of the persons figuring at Sl.Nos. 1 to 124 of the KAS shall be deemed to be final for the purpose of consideration/appointment to the IAS.

Applicant states that W.P.No.592/91 has been admitted in J & K High Court and is pending whereas in W.P.No.1343/86 he has been permitted to be intervener and has filed OMP No.907/92 as also LPA No.56/92 for revocation of J & K High Court's order dated 27.3.91.

5. A short reply affidavit has been filed by Department of Personnel, GOI (Respondent No.1). They point out that the grievances of the applicant in

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the main relate^{to}/his interse seniority vis a vis Respondents 17 to 67; the initial recruitment to the KAS; the zone of consideration provided by the State Govt. to the Selection Committee for preperation of the Select List and the validity of the select list prepared by the Selection Committee for promotion to IAS (J & K Cadre). They aver that as per provisions of IAS (Appointment by Promotion) Regulations, 1955 the State Govt. has to forward the zone of consideration comprising eligible State Civil Officers in the order of seniority in that service of a number equal to 3 times the size of the select list. Meeting of the Select Committee is convened and chaired by a Member/Chairman of the UPSC.. Select List prepared by the Selection Committee is subsequently approved by the Commission after obtaining the observations of the State Govt. and the Central Govt. in the matter under the rules. It is stated that the J & K State Govt. is wholly concerned with the induction into KAS; confirmation of officers to the State Civil Service and preperation and forwarding of the zone of consideration to the Selection Committee. The UPSC is primarily concerned with the preparation of the Select List, and the role of the Central Govt. is limited to making appointment to the IAS under Regulation 9 IAS (Appointment by promotion) Regulations, 1955 as and when proposals to that effect are received from the State Govt. in the order in which the names of State Civil Service

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Officers appear in the approved select list.

6. UPSC though impleaded as Respondent has not filed any reply.

7. None of the other respondents have also filed their reply.

8. We have heard applicant who argued his case in person. We have also heard Shri VSR for Respondent No.1 and Shri G.M.Kawosa for the Govt. of J & K. Applicant has also filed written submissions which are taken on record in which a number of rulings have been cited.

9. The first challenge is to the promotions made to the IAS ending 24.4.86. We have already noticed that the OA itself was filed on 4.8.92. This challenge is therefore squarely hit by limitation under section 21 AT Act. Applicant has filed M.A.No.1558/93 in which he has prayed for condonation of delay. In this MA applicant has firstly taken the plea that he had been requesting official respondents to supply him copies of the appointment orders and select list as well as minutes of the Select Committee meetings which they had not supplied till date. When applicant is litigating against ⁿrespondents he cannot plead that their failure to provide him documents is a reason to condone delay. Furthermore if those documents were not supplied to applicant till date, he does not satisfactorily explain how he was in a position to file the

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present OA in August, 1992 because the same difficulties in filing the OA would have faced him in 1992 as in 1986. Hence this ground for condonation fails.

10. Secondly it has been contended that the question whether the CAT's jurisdiction extended to J & K State or not was in some doubt. Reference has been made to the J & K High Court's judgment in W.P.No.480/85 Mohiuddin Khan Vs. UOI decided in 1989 vide 1989 KLJ 584 and W.P.No.83/90 Kuldip Khuda Vs. M.A. Chowdhery. Applicant has not explained the reasons for the delay between 24.4.86 and 1989-90. If indeed there was any doubt about the jurisdiction of CAT in the matter, he could very well have approached the competent legal forum during the interval of time, but there is nothing to indicate that he did so. Furthermore the J & K High Court's order in Mohiuddin Khan's case was received in 1989, but there is nothing to indicate that immediately thereafter, or even between 24.10.86 and 1989 applicant made any move to agitate his grievance before CAT. Hence this ground is insufficient to condone the long delay.

11. The next ground taken is that applicant till 29.5.92 believed that Respondents.

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No.23 to 62 were substantive appointees to KAS, but applicant contends that this is actually not so. Manifestly such a contention cannot be made a ground to condone delay.

12. Thus manifestly applicant has not made out a sufficiently strong case for condonation of delay in his challenge to the 1986 promotions to IAS in terms of Section 21 (3) AT Act and in this connection a 7 Member Bench of the Hon'ble Supreme Court in para 16 of its judgment Chandra Kumar Vs. UOI JT 1997 (3) SC 589 has held " Section 21 specifies strict limitation periods and does not vest the Tribunals under the Act to condone delay."

13. Under the circumstance applicant's challenge to the 1988 promotions to IAS are squarely hit by limitation under sec.21 AT Act.

14. We now come to the challenge to the promotions to the IAS recommended on 29.3.91. On 11.11.96 when we had heard the matter, we had noted that one Shri Mohinder Singh had filed OMP No.641/91 in SSIP No.1343/86 in the J & K High Court challenging the tentative KAS seniority list of the year 1991 which formed the feeder grade for promotions to the IAS under the IAS(Appointment by Promotion) Regulations, 1955. We had also noted that initially finalisation of that tentative KAS seniority list had been stayed by the J & K High Court but subsequently by order dated 27.3.91

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the J & K High Court dated 12.8.93 permitting Shri Mohinder Singh to withdraw SLP No.1343/86 and dismissing the same as withdrawn with liberty given to him to file a fresh petition, if a need so arose.

18. As SLP No.1343/86 itself has been dismissed as withdrawn, and nothing has been shown to us to indicate that the J & K High Court's order dated 27.3.91 in OMP No.646/91 arising out of SLP No.1343/86 was even stayed, modified or set aside and as the Selection Committee in its meeting held on 29.3.91 acted upon the seniority list of Members figuring from Sl.Nos.1 to 124 of the KAS which had been declared by the J & K High Court in its aforesaid order dated 27.3.91 to be final in all respects for the purposes of selection to the IAS (emphasis supplied) we are bound absolutely by that order and it is no longer open to us to entertain applicants' challenge to ^{the} composition of that KAS seniority list, or indeed ^{to} the IAS Select List of 1991 prepared by the Selection Committee after grading applicant only as 'good' whereas those included in that IAS Select List were graded as 'outstanding or 'very good'.

19. In this connection it must be remembered that the Selection Committee was a High Powered Expert Body presided over by a Member of the UPSC, and we as a Tribunal cannot set ourselves ^{up} as an appellate authority over and above that Selection Committee. The scope of judicial review is limited to ensuring that the impugned decision is not illegal, arbitrary,

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(Annexure-A50) the High Court modified its interim order and held inter alia as under:

"Tentative seniority list qua the persons figuring at Sl.No. 1 to 124 of the KAS shall be deemed to be final for the purposes of consideration/appointment to IAS . This decision will be of course subject to the final decision that may be taken in the writ petition.

15. We had perused the minutes of the Selection Committee which prepared the IAS Select List of 1991 and we had found that the J & K Govt. in their letter dated 29.3.91 had forwarded to the UPSC a copy of the J & K High Court's order dated 27.3.91 (supra) together with the KAS seniority list referred to above which formed the basis of the IAS Select List of 1991.

16. Accordingly by our order dated 11.11.96 we had observed that we would not be justified in proceeding with the OA when that writ petition was still subjudice before the J & K High Court and had adjourned the case sine die giving liberty to either side to revive the OA, if so advised after the J & K High Court pronounced its final verdict in OMP No.646/91.

17. Applicant has now filed MA No.2399/97 for revival of the OA. Attached with the MA is a copy of the J & K High Court's order dated 27.3.91 (Supra). Also on record is a subsequent order of

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malafide or based on no materials. The selection Committee had before it the KAS seniority list, declared by the J & K High Court to be final for the purpose of Selection to the IAS, and it graded the officials borne on that list on the basis of their performance in which applicant was graded as 'good' whereas others who were brought onto the IAS Select List were graded as Outstanding/Very Good. While applicant may no doubt feel that he was under assessed compared to his colleagues, prima facie we have no reason to doubt the correctness of the assessment made by the Selection Committee which as noticed above, was a High Powered body of Experts.

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

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)
MEMBER(J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A)

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