



CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.170/00338/2020

ORDER RESERVED ON :15.06.2021

DATE OF ORDER: 06.10.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

(On video conference from Central Administrative Tribunal, Chandigarh Bench, Chandigarh)

HON'BLE MR. MOHD. JAMSHED, MEMBER (A)

(On video conference from Central Administrative Tribunal, Principal Bench, New Delhi)

Sri. H.R. Rajappa

S/o H.N. Ramappa

Aged about 49 years

Working as Private Secretary to the Chief Minister

Chief Minister's Secretariat

3rd Floor, Vidhana Soudha

Bangaluru-560001.

....Applicant

(By Advocate: Sh. P.S. Rajagopal, Sr. Advocate with Sh. Jayanth Dev Kumar and Ms. Pallavi - through video conference)

Versus

1. Union of India Represented by its Secretary to The Department of Personnel and Training, Ministry of Personnel, Public Grievances & Pensions, North Block, Central Secretariat, Sardar Patel Bhavan, Parliament Street, Sansad Marg, New Delhi-110001.
2. State of Karnataka, Represented by its Chief Secretary, Vidhan Soudha, Dr. Ambedkar Veedhi, Bengaluru-560001.
3. Additional Chief Secretary to the State of Karnataka, Department of Personnel and Administrative Reforms (Services) Vidhana SoudhaBengaluru-560001.



4. Union Public Service Commission, Represented by its Secretary Dholpur House, Shahjahan Road New Delhi-110069.
5. The Selection Committee constituted under the The Indian Administrative Service (Appointment by Promotion) Regulations, 1955, Represented by the Chairman of the Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi-110069.

.....Respondents

(By Advocates: Shri N.Amresh for Respondent No.1,
Shri M.V. Ramesh Jois for Respondents No.2&3,
Shri V.N. Holla for Respondents No.4&5
– All through video conference)

ORDER

PER: SURESH KUMAR MONGA, MEMBER (J)

1. Pledged case of the applicant herein is that he joined the services of the State of Karnataka on 05.04.1994 as Assistant Director in the Department of Commerce and Industries which is not a State Civil Service. He came to be promoted as Deputy Director in the Department of Commerce and Industries vide notification dated 28.07.2001. Post of the Deputy Director is a Group 'A' Gazetted post which is considered to be equivalent to the post of Deputy Director for the purposes of selection to Indian Administrative Service and the applicant herein holds the said post in a substantive capacity.
2. It has been averred that the applicant further came to be promoted as Joint Director in the Department of Commerce and Industries on 31.05.2015.
3. The Central Government in its Department of Personnel and Training, after consultation with the Government of Karnataka, issued a



communication dated 10.02.2017 determining three vacancies in the Indian Administrative Service (Karnataka Cadre) to be filled by promotion from the Non-State Civil Service category (hereinafter referred to as Non-SCS). The State Government was directed to initiate the further process in terms of the provisions as contained in the Indian Administrative Service (Appointment by Selection) Regulations, 1997 (hereinafter called as the '1997 Regulations'). Accordingly, the State Government vide U.O. Note dated 06.05.2017, invited the proposals from all the Administrative Departments with regard to the names of suitable Non-SCS officers of outstanding merit and ability who are within the prescribed age limit and eligible for selection to the Indian Administrative Service. The proposals were required to be submitted within a period of one month from the date of receipt of the said U.O. Note.

4. It has further been averred that the Department of Commerce and Industries vide its communication dated 29.05.2017, proposed the names of Sri R. Ramesh and Smt. T.K. Swaroopa to the State Government for consideration.

5. A Screening Committee headed by the Chief Secretary to Government of Karnataka considered the names of Non-SCS officers proposed by various Administrative Departments on 26.12.2017 and recommended the names of 15 officers for preparation of Select List-2016. A communication in this regard was forwarded to Union Public Service Commission on the same very date.

6. The Union Public Service Commission, however, vide its letter dated 03.01.2018, informed the State Government that in exercise of its



powers conferred under Clause (c) of Regulation 5 of the '1997 Regulations', it is not practicable to hold the meeting for selection of Non-SCS officers for appointment to the Indian Administrative Service of Karnataka Cadre for the Select List-2016 on the ground that the meeting of the Selection Committee was required to be held on or before 31.12.2017.

7. The said decision of the Union Public Service Commission was challenged by Dr. A. Lokesh and another before this Tribunal by way of filing an Original Application No. 883-884 of 2017. The said Original Application was allowed on 09.02.2018 and the Union Public Service Commission was directed to process the proposal and to call for the meeting of Selection Committee in order to finalise the selections for the Select List-2016. The order passed by this Tribunal was affirmed by the Hon'ble High Court of Karnataka by way of an order dated 14.09.2018 passed in Writ Petition No. 11077 of 2018. Even the S.L.P (C) No. 30123-124 of 2018 filed by the Union Public Service Commission before the Hon'ble Supreme Court also came to be dismissed on 14.12.2018.

8. It has further been averred that one Dr. Y. Manjunath, Joint Commissioner of Excise preferred an Original Application No. 787 of 2017 making therein a prayer for issuance of a direction to his Administrative Department to forward his name to Department of Personnel and Administrative Reforms and to include his name for consideration for selection to the Indian Administrative Service. The said Original Application was rejected by this Tribunal on 10.10.2018. However, in view of the order passed by the Hon'ble High Court of Karnataka in Writ Petition No. 11077 of 2018, the applicant therein had filed Review Petition No. 75 of



2018 before this Tribunal. In the said Review Petition, it was ordered that time frame for consideration to Indian Administrative Service is still available and, therefore, it will be appropriate for the respondents to consider the case of Dr. Y. Manjunath for appointment to the Indian Administrative Service. Accordingly, the name of Dr. Y. Manjunath came to be proposed vide U.O. Notes dated 25.04.2019 and 29.04.2019. The Screening Committee headed by the Chief Secretary to Government of Karnataka recommended the name of Dr. Y. Manjunath as the 16th name and the State Government vide its communication dated 03.05.2019, forwarded his name to the Union Public Service Commission for consideration for selection to the Indian Administrative Service.

9. The Union Public Service Commission, however, by way of communication dated 07.05.2019, wrote to the State Government that the list submitted by the State Government consists of 16 names which is in excess of the maximum limit prescribed by the '1997 Regulations'. The State Government was, thus, requested to reconsider the names of Non-SCS officers and accordingly, the name of one K.R. Rudrappa came to be dropped from the list and the State Government forwarded the list of 15 candidates by way of letter dated 14.11.2019.

10. It has further been pleaded that the applicant's Administrative Department in continuation of its earlier communication dated 29.05.2017, issued a communication dated 14.11.2019 and proposed his name to the State Government for recommendation to the Union Public Service Commission to consider his candidature for selection to the Indian Administrative Service. One Gurupadaswamy. B.G. vide his letter dated



29.11.2019, requested to withdraw his candidature for being considered for selection since he was promoted as Engineer-in-Chief. Since the shortlisted names would have been 14 as against the permissible limit of 15, a meeting of Screening Committee under the Chairmanship of the Chief Secretary, was convened on 11.12.2019 and based on the recommendations of the Screening Committee the State Government vide its communication dated 16.12.2019, forwarded the applicant's name to Union Public Service Commission.

11. The Union Public Service Commission, on receipt of the names of the shortlisted candidates, including the name of the applicant herein, wrote a letter dated 31.12.2019 to the State Government stating therein that the name of the applicant was submitted by his Administrative Department on 14.11.2019 and, whereas, the last date for receipt of the names of the candidates was 30.06.2017 and, therefore, the applicant's name cannot be considered.

12. The State Government vide its reply dated 17.01.2020, justified the recommendation of the applicant's name. Therefore, the Union Public Service Commission by way of communication dated 10.02.2020, requested the Central Government for an opinion regarding consideration of the applicant's name which was proposed by the Administrative Department after the last date prescribed by the State Government.

13. The Central Government vide its letter dated 13.03.2020, however, requested the Union Public Service Commission to take appropriate decision in this regard.

14. The grievance of the applicant herein is that the Union Public Service Commission, without considering the settled law with regard to



prescription of last date for submission of proposals, has issued a communication dated 22.06.2020 wherein it is stated that the Selection Committee shall consider the names submitted by the State Government excluding the name of the applicant herein (14 out of 15) for preparation of Select List-2016. A prayer has, thus, been made for quashing the said communication dated 22.06.2020 and also for issuance of directions to Union Public Service Commission to consider his name for preparation of Select List-2016.

15. The respondent Union Public Service Commission by way of filing its reply, has opposed the prayer made in the Original Application. It has been submitted that the applicant's name cannot be considered by the Commission as it was recommended by the State Government nearly after 2-1/2 years from the cut-off date. It has been averred that the last date for receipt of recommendations from various Administrative Departments of the State Government in the Department of Personnel and Administrative Reforms (nodal department for forwarding the names of non-SCS officers to Union Public Service Commission) for consideration for selection to Indian Administrative Service for Select List-2016, was 30.06.2017. However, the applicant's name was recommended by his Administrative Department to Department of Personnel and Administrative Reforms, Government of Karnataka on 14.11.2019 i.e. much later than the last date circulated for the purpose.

16. The State of Karnataka has also filed its separate reply stating therein that the State Government follows and abides by the view taken by



the Union Public Service Commission and the matter may be disposed of in the interest of justice and equity.

17. Sh. James Tharakan, Under Secretary to Government of Karnataka, Department of Personnel and Administrative Reforms (Services-1), Bangalore, by way of filing an additional affidavit dated 20.03.2021, has however, further stated that the cut-off date was fixed so as to facilitate the Administrative Departments to submit their proposals and the same is to be taken into consideration as an administrative action only.

18. We have heard learned counsels for the parties at substantial length and have also perused the records as produced by the respondents.

19. The Central Government, while deriving the powers under Section 3 of the All India Services Act, 1951, promulgated the Indian Administrative Service (Recruitment Rules), 1954 (hereinafter called as the '1954 Rules'). As per Rule 8(2) of the said Rules, the mode of recruitment to Indian Administrative Service under the '1997 Regulations' has been prescribed. It has been prescribed therein that the Central Government may, in special circumstances and with the recommendations of the State Government concerned and in consultation with the Union Public Service Commission, from time to time, make recruitment to the service of any person of outstanding ability and merit serving in connection with the affairs of the State and who is not a member of the State Civil Service of that State.

20. According to the provisions of Regulation 3 of the '1997 Regulations', the number of vacancies against which the selection is to be made in any year for appointment of Non-SCS officers to Indian Administrative Service, is determined by the Central Government in



consultation with the State Government concerned. After determination of the number of vacancies, the State Government on receipt of communication from the Central Government, forward the names of Non-SCS officers who are of outstanding merit and ability and who hold the Gazetted post in substantive capacity and have completed not less than eight years of continuous service under the State Government in any post declared equivalent to the post of Deputy Collector under Regulation 4 of the '1997 Regulations'. Regulations 3 & 4 of the '1997 Regulations' are reproduced hereasunder :-

"3. Determination of vacancies to be filled: The Central Government shall, in consultation with the State Government concerned, determine the number of vacancies for which recruitment may be made under these regulations each year. The number of vacancies shall not exceed the number of substantive vacancies, as on the first day of January of the year in which the meeting of the Committee to make the selection is held.

4. State Government to send proposals for consideration of the Committee.--(1) The State Government shall consider the cases of a person not belonging to the State Civil Service but serving in connection with the affairs of the State who,

(i) is of outstanding merit and ability; and

(ii) holds a Gazetted post in a substantive capacity; and

(iii) has completed not less than 8 years of continuous service under the State Government, on the first day of January of the year in which his case is being considered in any post which has been declared equivalent to the post of Deputy Collector in the State Civil Service and propose the person for consideration of the Committee, the number of persons proposed for consideration of the Committee shall not exceed five times the number of vacancies proposed to be filled during the year.

Provided that the State Government shall not consider the case of a person who has attained the age of 54 years on the first day of January of the year in which the decision is taken to propose the names for the consideration of the Committee.

Provided also that the State Government shall not consider the case of a person who having been included in an earlier select list, has not been appointed by the Central Government in accordance with the provisions of Regulation 9 of these regulations."



21. The suitability of the officer whose candidature is proposed by the State Government concerned is assessed by the Selection Committee on the basis of scrutiny of his service record and personal interview. The Union Public Service Commission has also framed certain guidelines for whole of the selection process.

22. The record reveals that an Original Application No. 170/750/2017 was filed before this Tribunal by one Sh. T. Venugopala Reddy for convening a Selection Committee meeting for selection of Non-SCS officers for preparation of Select List-2016 for appointment to the Indian Administrative Service of Karnataka Cadre. The said Original Application was disposed of by way of an order dated 15.12.2017 with a direction to respondents to complete the process of appointment to the Indian Administrative Service against three vacancies determined for Select List-2016 in respect of Non-SCS officers of Karnataka State. Pursuant thereto, the State Government vide letter dated 26.12.2017 has forwarded the proposal to Union Public Service Commission for preparation of Select List-2016. The Union Public Service Commission, however, while noticing various deficiencies in the said proposal, vide its communication dated 27.12.2017 requested the State Government to rectify those deficiencies so that the Selection Committee meeting could be convened as per the '1997 Regulations'.

23. In response thereto, the State Government vide its letter dated 29.12.2017, rectified the deficiencies and requested the Union Public Service Commission to hold the meeting of the Selection Committee. However, the



Union Public Service Commission, finding it impracticable to hold the meeting by end of December, 2017, invoked the provisions of Regulation 5(c) of the '1997 Regulations' and issued a communication in this regard on 03.01.2018.

24. Aggrieved by the said action of the Union Public Service Commission, Dr. A. Loksha and one more candidate filed the Original Application No. 170/883-884/2017 before this Tribunal making therein a prayer for issuance of a direction to hold the Selection Committee meeting for preparation of Select List-2016. The said Original Application was allowed by this Tribunal on 09.02.2018 and a mandate was issued to Union Public Service Commission to process the proposal of the State Government and call for a Selection Committee meeting in order to finalise the Select List-2016 within a period of thirty days. The Union Public Service Commission, feeling dissatisfied with the said order passed by this Tribunal, preferred Writ Petition No. 11077/2018 before the Hon'ble High Court of Karnataka which came to be dismissed on 14.09.2018. Still dissatisfied, the Union Public Service Commission preferred a Special Leave Petition (C) No. 30123-30124/2018 before the Hon'ble Supreme Court which was also dismissed on 14.12.2018 and the order dated 09.02.2018 passed by this Tribunal in Original Application No. 170/883-884/2017 was affirmed.

25. After dismissal of the aforesaid Special Leave Petition, the Union Public Service Commission decided to convene the meeting of the Selection Committee to prepare the Select List-2016.

26. The State Government vide letter dated 22.03.2019, requested the Union Public Service Commission to consider the names of 14 officers out



of 15 Non-SCS officers proposed earlier vide letter dated 26.12.2017 for preparation of the Select List-2016 excluding the name of K.R. Rudrappa against whom disciplinary proceedings were initiated subsequently on 16.02.2019. Accordingly, the meeting of Selection Committee was scheduled for 07.05.2019 to consider the names of 14 officers for preparation of Select List-2016.

27. In the meanwhile, the pending litigation initiated by one Dr. Y. Manjunath in Original Application No. 170/787/2017 came to be concluded on 06.03.2019 and following the directions issued by this Tribunal, the State Government vide its letter dated 03.05.2019, forwarded his name for consideration of the Union Public Service Commission for the Select List-2016.

28. Eventually, K.R. Rudrappa whose name was dropped pursuant to initiation of disciplinary proceedings, also filed an Original Application No. 456/2019 before this Tribunal wherein by way of an interim order dated 29.04.2019, a direction was issued to respondents to consider his candidature as well. Since the number of candidates in the list forwarded by the State Government exceeded 15, therefore, while taking note of Regulation 4 of the '1997 Regulations', the Union Public Service Commission deferred the meeting of Selection Committee which was scheduled for 07.05.2019 and vide letter dated 07.05.2019, requested the State Government to propose the names of Non-SCS officers not exceeding 15 so that the meeting of the Selection Committee is convened to prepare the Select List-2016.

29. Consequent thereto, the State Government vide its letter dated 14.11.2019, forwarded the list of 15 officers proposed to be considered for

preparation of Select List-2016. Names of those 15 officers are reproduced



hereasunder:-

- (1) B.G. Gurupadaswamy
- (2) Dr. K.N. Vijayprakash
- (3) Anil Kumar,
- (4) Dr. Srinivas N
- (5) T.Venugopal Reddy
- (6) P. Kumar
- (7) C.P. Narayana Swamy
- (8) V.Govindraj
- (9) Deepak Doreyawar
- (10) K.N. Gangadhar
- (11) Dr. M.R.Ekanthappa
- (12) J. Gnanendra Kumar
- (13) A. Loksha
- (14) R. Ramesh
- (15) Dr. Y. Manjunath

On the same very day, i.e. 14.11.2019, a communication was initiated by Sh. Gaurav Gupta, IAS, Principal Secretary to Government, Department of Commerce and Industries, stating therein that in continuation to DO letter at reference (dated 29.05.2017), Sh. H.R. Rajappa (applicant herein), Joint Director, Commerce and Industries Department, currently working as Private Secretary to Chief Minister has an outstanding merit and ability for selection to Indian Administrative Service under Non-SCS category and proposed his name for consideration.

30. It is beyond our comprehension that what prompted the Principal Secretary to Government in the Department of Commerce and Industries to initiate such a proposal when the list of 15 candidates had already been forwarded by the State Government to Union Public Service Commission. It appears that the Principal Secretary to Government, Department of Commerce and Industries was totally unmindful of the fact that while issuing U.O. Note dated 06.05.2017, the Department of Personnel and



Administrative Reforms (Nodal Agency) had clearly enumerated that the last date for submission of proposals by the Administrative Departments is one month from the date of receipt of the said U.O. Note. It was further stipulated therein that the incomplete proposals or the proposals received after the due date will not be considered. The record reveals that the last date for receipt of proposals was further extended upto 30.06.2017 by way of a subsequent communication dated 19.06.2017.

31. In view of the unequivocal terms set up in the U.O. notes dated 06.05.2017 and 19.06.2017, in our considered view, no proposal after the said cut-off date, could have been forwarded by the Administrative Department.

32. One more glaring fact which could be noticed from the records produced by the respondents is that Sh. B.G. Gurupadaswamy whose name was included in the list of 15 candidates forwarded on 14.11.2019, did not withdraw his candidature upto the time when the communication dated 14.11.2019 was initiated by the Principal Secretary to Government, Department of Commerce and Industries. Sh. Gurupadaswamy had actually withdrawn his candidature on 29.11.2019 and before that, a list of 15 candidates including his name was before the Union Public Service Commission.

33. After withdrawal of the candidature by Sh. Gurupadaswamy on 29.11.2019, a meeting of the Screening Committee was again held on 11.12.2019. Though the Screening Committee was aware of the fact that a list of 15 candidates has already been forwarded on 14.11.2019 and the last date for submission of proposals by the Administrative Departments was



30.06.2017, but still, the applicant's candidature was considered unmindful of the fact that the Administrative Department did not forward his candidature by the last cut-off date i.e. 30.06.2017.

34. In our considered opinion, such an action cannot be construed to be a bonafide exercise of power and the same cannot stand the scrutiny of Article 14 of the Constitution of India. The action of the Principal Secretary to Government, Department of Commerce and Industries, while initiating the proposal of the applicant's name on 14.11.2019 was illegal right from its inception and, therefore, there was no occasion with the Screening Committee to consider his name in its meeting held on 11.12.2019.

35. A perusal of the proceedings of the meeting of the Screening Committee held on 11.12.2019 reveals that before considering the applicant's name, an opinion from the learned Advocate General was also obtained. The said opinion as reproduced in the minutes of the meeting reveals that even the learned Advocate General had opined that another person's name may be sent from the existing recommendations. Admittedly, the applicant's name was not there in the existing recommendations. Still, his name was considered by the Screening Committee alongwith 23 candidates whose names were available in the existing recommendations. During the course of proceedings of the meeting held on 11.12.2019, what prevailed upon the members of the Screening Committee to consider the applicant's name in addition to the names of the candidates in the existing recommendations is a question which does not find any answer from the records provided by the respondents.



36. The Union Public Service Commission, while noticing the fact that the last cut-off date for submission of proposals by the Administrative Departments was 30.06.2017 and the recommendation with regard to applicant's name after a period of about 2-1/2 years by his Administrative Department, again wrote a letter dated 31.12.2019 and requested the State Government to review the said proposal. However, the State Government vide its letter dated 17.01.2020, reiterated its earlier recommendation with regard to applicant's name stating therein that after due analysis, the Screening Committee has decided to forward the proposal of applicant's name in place of B.G. Gurupadaswamy.

37. It appears from the record that ultimately, the Union Public Service Commission sought an opinion from the Department of Personnel & Training and in turn, the said department opined that the Union Public Service Commission may take an appropriate decision into the matter. Pursuant thereto, the Union Public Service Commission vide letter dated 22.06.2020, conveyed its decision to exclude the applicant's name from the list forwarded by the State Government.

38. We do not see any illegality in the said decision taken by the Union Public Service Commission. It is well established by now in service jurisprudence that every selection process involves number of elements like issuance of notification/advertisement specifying therein the qualifications and criteria, last date for entertaining the applications etc. The most important element in the process is the fixation of the last date for entertaining the applications of the aspiring candidates. This is necessary since it would be the cut-off date for determining the eligibility criteria, be it



experience or qualification as held in **Rekha Chaturvedi vs. University of Rajasthan**, 1993 Supp (3) SCC 168 and **Mills Douglas Michal vs. Union of India**, 1996(2) SCT 607. Those who are desirous of submitting their applications are put on notice that they should submit their applications within the time fixed for the purpose.

39. In view of the principles laid down by the Hon'ble Supreme Court in Rekha Chaturvedi (supra) and Mills Douglas Michal (supra), in our considered view, the applicant's candidature could not have been considered by the Screening Committee on 11.12.2019 and, therefore, no falsity can be found with the decision taken by the Union Public Service Commission excluding the applicant's name from the list forwarded by the State Government.

40. In the conspectus of discussions made hereinabove, the original application sans merit.

41. Accordingly, the Original Application is hereby dismissed.

42. However, there shall be no orders so as to costs.

(MOHD. JAMSHED)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)

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