

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 337/89
XXXXXX.

DATE OF DECISION 20.11.1991

Mr. P. M. Acharya, Petitioner

Party-in-Person Advocate for the Petitioner(s)

Versus

State of Gujarat & Anr. Respondent

Mr. R.J.Oza for Res.No.1, Advocate for the Respondent(s)
Mr. P.M.Raval for Res.No.2

CORAM :

The Hon'ble Mr. P.S. Habeeb Mohammed : Administrative Member

The Hon'ble Mr. R.C. Bhatt : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ans*
2. To be referred to the Reporter or not? *Ans*
3. Whether their Lordship wish to see the fair copy of the Judgement? *Ans*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Ans*

Shri Pradyumnakumar Mansukhlal Acharya,
Sector No.19,
'G' Type, 239
Gandhinagar.
(Party-in-person)

: Applicant

Versus

1. The State of Gujarat,
Notice to be served
through the Chief Secretary
to the Govt. of Gujarat,
G.A.D., Sachivalaya,
Gandhinagar.
2. The Union of India,
Notice to be served through
the Secretary, Deptt. of
Personnel & Training,
New Delhi.

: Respondents.

(Advocate: Mrs. S.D.Talati,
for Mr.R.J.Oza for Res.No.1,
Mr.E.A.Samuel for Mr.P.M.Raval
for Res.No.2)

JUDGMENT

O.A.337/89

Date: 20.11.1991

Per: Hon'ble Mr. R.C.Bhatt

: Judicial Member

1. The applicant, District Development Officer, joined as a direct recruit Deputy Collector in the year 1967 is a permanent member of Gujarat Administrative Service Class I. On creation of Gujarat Administrative Service Class I, he was treated as a member of the said service. He was included in the select list prepared in the year 1979 and was permitted to officiate against IAS cadre post with effect from 25.11.1983. It is alleged by the applicant that as per the rules, he was eligible and entitled to be appointed to IAS on 6.11.1986 when 14 officers out of the 33 officers included in the

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select list and officiating against cadre posts were notified for appointment to IAS. It is alleged by him that, notwithstanding, he having continued to officiate against the cadre post being included in the select list valid and operative on 26.11.1986 and further notwithstanding the State of Gujarat having recommended his case for appointment to IAS, the Union of India did not notify the applicant for the same. Since all the officers appointed on 26.11.1986 were senior to him, he could not have immediate cause of action till his juniors were appointed on 9.3.1987. It is alleged by the applicant that he was again included in the select list that was drawn in December 1986/January, 1987 and he continued to officiate in the IAS cadre post. On 9.3.1987, number of other officers were appointed to IAS and many of them were junior to him. The applicant enquired regarding his non-appointment to IAS and he was told that the State Govt. were enquiring into certain allegation against him and pending the verification of the allegation, the State Govt. had recommended to the Union of India to appoint officers from the select list to fill up all vacancies except one which was kept open for the applicant. The applicant, thereafter, represented to the Chief Secretary to the Government of Gujarat on 6.5.1987. On 25.6.1987, the State of Gujarat issued a memo asking the applicant to clarify his conduct pertaining to not effecting recovery of salary and allowance from one Talati who had committed misappropriation of funds. The applicant clarified the position on the very next day i.e. 26.6.1987 that the alleged mis

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misappropriation by the Talati was during the period 1968 to 1971 and that the Talati was reinstated on 10.9.1974 while the applicant officiated as Deputy D.D.O., Amreli with effect from 28.4.1975. Therefore, the applicant could not be charged for misconduct in that respect. The respondent No.1 vide the order dated 24.8.1987 dropped the departmental inquiry against the applicant on taking into account his clarification dated 26.6.1987. Thereafter, the State of Gujarat moved the Government of India to appoint the applicant to IAS and the Union of India i.e. respondent No.2 vide order dated 18.1.1987 appointed the applicant to IAS.

2. The respondent No.2, Union of India amended the rules concerning fixation of seniority of the promoted officers vide the notification dated 6.11.87 and the said provisions ^{were} further amended also on 18.1.1988 by which the officer of the State Service putting in service upto 12 years would get weightage of four years towards fixation of year of allotment.

3. It is alleged by the applicant that taking into consideration the amended provisions in the rules the Government of India vide the order dated 18.3.1989 fixed the year of allotment of the applicant as 1983. The applicant had moved the Secretary to the Govt. of India, Ministry of Personnel, Public Grievance & Pension vide his representation dated 1st 9.1.1989 that but for unfortunate misunderstanding on the part of respondent No.1, he could have been appointed

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to IAS as per the notification dated 9.3.1987 and in that event he would have been given year of allotment as 1979 which is given to one Shri M.C.Nayak, who was just below the applicant in the select list prepared in the year 1979. It is alleged by the applicant that the initiation of the departmental inquiry and the continuance of the same till August, 1987 inspite of clarification given by him on the very next day of the date of the memo of charges and further not appointing him from August, 1987 till beyond 6.11.87 was because of the lapse and inaction on the part of the respondents. According to the applicant, if he was appointed prior to 6.11.1987, he would have been given the year of allotment as 1979 on the basis of his continuous officiation against cadre post as per the old rules. even It is alleged by the applicant that there was no bona fide action on the part of respondent No.1 to initiate departmental inquiry against a person who had nothing to do with the defalcation committed long before he officiated in the office, under which the alleged defalcation took place. It is alleged by the applicant that on account of the mistake on the part of the respondents: if not malafide, and in further lapse and inaction could not result in injury to the applicant. It is, therefore, alleged by the applicant that he deserves to be treated to have been appointed to IAS on 26.11.86 and he should be granted consequential benefits on the basis of that appointment. It is alleged by him that he officiated against cadre post with effect from 25.11.83 and he ^{is} senior to Shri M.C.Nayak. It is also alleged by him that Annexure-3 is a copy of the notification of the Govt. of India dated 9.3.1987 shows the appointment

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of one Shri V.R.Parmar who was shown immediately senior to the applicant in the select list and Shri M.C.Nayak who was shown ~~100~~ immediately junior to the applicant in the select list. The applicant has also produced at Annexure A/8 a copy of the notification of the Government of India dated 18.11.1987 appointing him to IAS. Annexure A/9 is a copy of the representation of the applicant dated 9.1.1989 and Annexure A/10 is a copy of the order of the Government of Gujarat dated 18.3.1989 fixing the year of allotment. Annexure A/11 is a copy of the order of the Government of Gujarat dated 5.10.1987 fixing the year of allotment of officers junior to the applicant. Annexure A/12 is a copy of the notification dated 6.11.1987 amending the provisions for fixing the seniority of the promoted officers, and Annexure A/13 is a copy of the notification dated 18.1.1988 further amending the provisions of rules regulating the seniority of the promoted officers.

4. It is the case of the applicant that he has been promoted and appointed to ~~officiate~~ against senior time scale IAS cadre post from 25.11.1983 and continued to officiate against IAS cadre post since the said date till his final appointment to IAS on 18.11.1987. It is alleged by him that by an arbitrary stand taken by the respondent No.2, the applicant was not appointed to IAS on 26.11.1986. It is alleged by him that as he was eligible and entitled to appointment to IAS on 26.11.1986, he should be deemed to have been appointed to IAS on the said

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day but as no officers junior to him was appointed to IAS on 26.11.1986, he did not rush to this Tribunal immediately after 26.11.1986 but in March, 1987 he was disappointed to find his name not included in the list of officers appointed to IAS vide the notification dated 9.3.1987. He submitted that the Union of India appointed him to IAS vide notification dated 18.11.1987. It is alleged by the applicant that on 5.10.1987, the Government of India, respondent No.2 accorded the year of allotment to all the officers who were appointed to IAS vide the notification dated 26.11.1986 and 9.3.1987. Shri M.C. Nayak who was immediately junior to the applicant in the select list was given the year of allotment as 1979 and Shri V.R. Parmar who was senior to the applicant in the select list was also given year of allotment as 1979. It is alleged by the applicant that for the baseless departmental inquiry, the applicant would have been appointed to IAS on 9.2.1987 when the rule regulating the seniority of the promoted officers was on the basis of continuous officiation in the IAS cadre post as compared to the juniormost direct recruit IAS officers and officiating in the senior time scale and the applicant would have also ^{been} allotted 1979 as his year of allotment.

5. It is alleged by the applicant that on 6.11.1987, the respondent No.2 amended the rules concerning fixation of seniority of the promoted officers and further amended it vide notification dated 18.1.1988 and as per the new provisions promotee officer irrespective of his continuous officiation in the cadre post gets weightage of 4 years, if he has put in 12 years or less in the State Service and for every completed 3 years

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beyond the period of 12 years of service, the officer gets the weightage of one year subject to maximum weightage of 5 years. All these provisions are applicable after 6.11.1987.

6. It is alleged by the applicant that if the respondent had taken timely action namely having dropped the departmental inquiry proceedings after realising the mistake on 24.8.1987, the applicant would have been appointed to IAS prior to 6.11.1987 but the appointment of the applicant was postponed and the same has taken place after 6.11.1987, not on account of lapse or inaction on his part but due to mistake, lapse and inaction on the part of the respondents. It is alleged by the applicant that he should not suffer for the mistake, lapse and inaction on the part of the respondents and the appointment should relate back to the date when the same could be notified in the normal course i.e. 9.3.1987 when an officers junior to the applicant were appointed to IAS. It is also alleged by him/inspite of the State Govt. moving the Union of India to accord 1979 as year of allotment, the Union of India have not done justice to the applicant and they have accorded 1983 as his year of allotment. As a result the officers who were junior to the applicant have been treated to be senior by 4 years in IAS and they are drawing Rs. 4800 towards salary as against Rs. 4100 drawn by the applicant. It is alleged that those officers will be granted selection grade 4 years earlier to the applicant and they would be promoted to super time scale/earlier than the applicant and all these damages and injuries were due to the arbitrary action on the part of State of Gujarat

and for the non-application of mind on the part of the Union of India. It is, therefore, alleged by the applicant that he deserves to be granted year of allotment which has been given to his juniors.

7. It is also the case of the applicant that the Union of India has framed All India Service (Conditions of Services - Residuary Matters) Rules, 1960 under which the respondent No.2 is competent to redress the hardship by relaxing the rules and regulations which would cause undue hardship in any particular case. It is alleged by the applicant that if he is given 1983 as his year of allotment he would be granted selection grade after 1996 and taking into account his date of birth as being 21.9.1941 he would retire in September, 1999 without being promoted to the Super Time Scale, while if he is given 1979 as the year of allotment, he would have a chance to be promoted to super time scale some time in 1995/96. It is alleged by the applicant that this is nothing but undue hardship and in all fairness the respondents are obliged to exercise the discretion under Rule 3 of All India Services (Conditions of Services - Residuary Matters) Rules, 1960.

7. The applicant has, therefore, prayed that the respondent No.1 be directed to appoint the applicant in IAS along with those notified on 26.11.1986 and assign the suitable year of allotment for having continuously officiated in the cadre post with effect from 25.11.1983 and to grant all consequential benefits flowing from his appointment to IAS. The

applicant, in alternative, prayed that the respondents be directed to appoint the applicant in the IAS along with those notified on 9.3.1987 and assign him a suitable year of allotment for his having continuously officiated in the cadre post with effect from 25.11.1983 and to grant ~~nally~~ consequential benefits flowing from his appointment to IAS or/and grant any other and further relief~~s~~ which is deemed just and proper.

8. The respondent No.1, State of Gujarat has filed reply contending that the applicant was included in the select list prepared in the year 1979 and he was permitted to officiate against IAS cadre post with effect from 25.11.1983 and he was also considered by the Selection Committee on 16/17-12-1986 and his name was included in the select list provisionally and subject to clearance of the departmental inquiry sought to be instituted against him. It is contended that the Selection Committee met in the month of December, 1986 and prepared select list for 29 vacancies, viz. 27 clear vacancies and 2 anticipated vacancies, and at the time of operating the said select list 3 vacancies were kept aside for the ~~officers~~ officers facing the Departmental Inquiry including the applicant. It is submitted by the respondent No.1 that the officers who were junior to the applicant and included in the select list were given appointment to IAS on 9.3.1987 but at that time the applicant had not overcome departmental inquiry and hence he was not given the appointment. It is contended that the applicant was served with show cause notice on 25.6.1987 in respect of charges of negligence and dereliction

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of duty in recovery of the amount and ambezzled by a Talati-cum-Mantri while the applicant was working as Deputy D.D.O., Amreli, that the applicant submitted his ~~x~~ explanation on 26.6.1987 which was accepted by respondent No.1 on 22.7.1987 and the inquiry was closed against the applicant. It is contended that the respondent No.1 requested respondent No.2 on 4.8.1987 to nominate the applicant to IAS and respondent No.2 appointed the applicant to IAS on 18.11.1987.

9. The respondent No.1 has also contended that ~~they~~ had forwarded proposals to Govt. of India recommending that the applicant be given 1979 as year of allotment, in accordance with the Rule 3 (3) (b) of the Indian Administrative Service (Regulation of Seniority) Rule 1954 but the respondent No.2 did not accept the proposals of respondent No.1 and gave 1983 as the year of allotment to the applicant. It is asserted by respondent No.1 that Mr. M.C. Nayak is immediate junior and Mr. V.R. Parmar is immediate senior to the applicant in the select list prepared by the Selection Committee Meeting held on 16th and 17th December, 1986 and both of them have been allotted 1979 as the year of allotment under the provisions of IAS (Regulation of Seniority) Rules, 1954. It is contended ^{that} because of the change in allotting the policy/ year of allotment to the officers the applicant has been given 1983 as the year of allotment.

10. The respondent No.2, Union of India, has filed reply contending that the Selection Committee which met in 1979 for preparation of a list of ~~a~~ suitable Gujarat State Civil Service Officers for appointment to IAS by promotion had prepared a list of 42 officers, as 21 substantive vacancies were anticipated during the course of 11 months from the date of the meeting and the name of the applicant

was included at Sr.No.36 in the list and it was decided to appoint such select list officers who were in position ~~XXXX~~ and whose names figured upto Sr.No.21 in the select list. The name of the applicant was as Sr.No.36 and hence he was not appointed to IAS in notification dated 26.11.1986. It is contended that there is no relationship between the officiating appointment to IAS cadre posts and the select list and their officers appointment to IAS. It is contended that since the name of the applicant was included in the select list at Sr.No.13 ~~was~~ provisionally prepared by the Selection Committee held on 16th and 17th December, 1986 and that was subject to clearance of the departmental inquiry pending against him, the State Government did not recommend his name of IAS. It is contended that appointment of SCS officers was notified on 9.3.1987 but subsequently the State Govt. dropped charges against the applicant and the UPSC agreed to keep the applicant's name in the select list and he was appointed to IAS cadre on 18.11.1987. It is asserted by respondent No.2 that name of the Mr. M.C. Nayak whose name appears below the applicant in the select list of 1979 (Sr.No.14) was appointed to the IAS on 9.3.1987 along with other officers. It is contended that since the seniority of an officer in IAS is determined in accordance with the provisions of the rules in force on the date of his appointment to IAS, it is felt that the seniority of the applicant could be fixed only under Rule 3(3) (iii) of the IAS (Regulation of Seniority) Rules, 1987 which came into force on 6.11.1987 and hence the applicant was assigned 1983 strictly in accordance with the provisions of the rules. It is contended, therefore, there is no question

of undue hardship caused to the applicant so as to require invocation of the powers available with the Central Government under Rule-3 of AIS (Conditions of Service-Residuary Matters) Rules, 1960 for relaxation of the rules. It is contended that therefore, the applicant is not entitled to such a date as date of appointment to the service on which his junior in the select list was appointed because he had not been exonerated ~~on~~ that date and inclusion of his name in the select list was still provisional. It is, therefore, contended that the applicant is not entitled for any relief and the application deserves to be dismissed.

11. At the time of hearing, the applicant has not pressed the relief prayed ~~for~~ by him in para 7(A) of the application but has pressed the relief prayed in para 7(B) of the application. Therefore, now the only point which requires to be decided by us is whether the respondents should be directed to appoint the applicant in IAS alongwith those notified on 9.3.1987 and to assign him a suitable year of allotment for his having continuously officiated in the cadre post with effect from 25.11.1983 and to grant all consequential benefits flowing from his appointment to IAS. It is not in dispute between the parties that the applicant was included in the select list prepared by the Selection Committee which met in the month of December, 1986 and it is also not in dispute that in the said select list officers officiating on IAS cadre post of Gujarat (1.1.1987), applicant's name was at Sr. No. 13 and was continuously officiating in IAS cadre from 25.11.1983 and the name of Shri M.C. Nayak was

shown at Sr.No.14 and he was continuously officiating in IAS cadre from 7.5.1984 followed by Shri N.R.Varsani at Sr.No.15 who was continuously officiating in IAS cadre from 16.7.1984 and Sr.No.16 Shri A.D.Desai who was continuously officiating in IAS cadre from 5.5.1984 as shown in the select list Annexure A/1 produced by the applicant. It is also not in dispute that on 9.3.1987, number of officers were appointed to IAS by the Notification by Govt. of India, Ministry of Personnel P.C. and Pension, New Delhi including some of officers junior to the applicant. The applicant has produced at Annexure A/3 this notification by which in exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954, read with sub-regulation (1) of regulation 9 of the Indian Administrative Service (Appointment by promotion) Regulations, 1955, the President was pleased to appoint the officers named therein as members of the Civil Service of Gujarat to the Indian Administrative Service on probation and to allocate them to the cadre of Gujarat under Sub-rule (1) of Rule 5 of the Indian Administrative Service (Cadre) Rules, 1954. The names of M/s. M.C.Nayak, N.R.Varsani and A.D.Desai who are juniors to the applicant are among the officers appointed to IAS as per this notification but this notification admittedly did not include the name of the applicant though he was senior to the above three officers. The learned advocate for the respondents submitted that at that time the applicant had not overcome departmental inquiry and therefore, he was not given appointment. It is urged by the learned advocate for the respondents that the Selection Committee in its meeting held on 16th and 17th December, 1986

had prepared a select list of 58 SCS officers and in January, 1987 the Government of Gujarat proposed appointment of 25 SCS officers to the IAS from this select list. It is submitted on behalf of the respondents that since the name of the applicant was included in the select list at Sr.No.13 provisionally subject to clearance of departmental inquiry pending against him, the State Govt. did not recommend his name for promotion to IAS and appointment of 25 SCS officers notified on 9.3.1987. It is not in dispute that the respondent No.1 had served show cause notice/memo to the applicant on 25.6.1987 vide Annexure A/5 asking the applicant to clarify his conduct pertaining to not effecting recovery of salary and allowance from one Talati who had committed mis-appropriation of funds. Thus this was the charges of negligence and dereliction of duty against the applicant as per this memo. The applicant on the very next day i.e. 26.6.1987 vide Annexure A/6 clarified the position intimating the respondent No.1 that he officiated as Dy.D.D.O., Amreli with effect from 28.4.1975 and the alleged mis-appropriation by the Talati was during the period 1968 to 1971 which was the period long before the applicant officiated as Dy.D.D.O. and the Talati was ultimately reinstated also on 10.9.74 even before the applicant officiated as Dy.D.D.O., Amreli. The respondent No.1 wide order dated 24.8.1987 Annexure A/7 accepted the explanation of the applicant and closed the chapter of inquiry against him in other words dropped the inquiry against the applicant.

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 12. We directed the respondent No.1 to produce the minutes of the meeting of the Selection Committee constituted under Regulation 3 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955

for preparation of the list of the officers suitable for appointment to the IAS dated 16th and 17th December, 1986 and the respondent No.1 has produced the said file before us. Going through the minutes of this meeting of the Selection Committee, it is found that the name of the applicant is at Sr.No.13 and the names of M/s. M.C.Nayak and A.D.Desai are at Sr.No.14 15 and 16 respectively as per the select list prepared by this Committee for the officers suitable in all respects for promotion to the IAS. It also shows that it was brought to the notice of the Committee that the State Govt. had finally decided to institute disciplinary proceedings against some officers including the applicant and because of this reason the name of the applicant and others against whom the Govt. had finally decided to institute disciplinary proceedings were included in the list provisionally subject to the clearance of the enquiries decided to be instituted against them.

13. The applicant not finding his name in the list of officers to IAS in the Notification Annexure A/3 dated 9.3.1987 and finding the name of officers junior to him also was shocked because according to him in the normal course, he should have been notified for appointment to IAS on 9.3.1987 and so he made representation Annexure A/4 dated 6.5.1987 to the respondent No.1 stating therein that he had been working in the cadre post for/ about four years and he had never received any communication adverse either orally or in writing in his career of 20 years and it was difficult to understand as to how he had not been given his rightful place and requested the respondent No.1

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to take up the matter for early IAS Notification. It was only on 25.6.1987 as observed earlier that the respondent No.1 issued a memo to the applicant to clarify his conduct pertaining to not effecting recovery of salary and allowance from one Talati-cum-Mantri while the applicant was working as Deputy D.D.O., Amreli and as observed above, the applicant immediately on the very next day submitted explanation dated 26.6.1987 Annexure A/6 that all the allegations pertained to the period long before the applicant officiated as Dy.D.D.O., Amreli and therefore, the applicant could not be charged for the alleged misconduct in that respect and ultimately the respondent No.1 dropped the inquiry vide order dated 24.8.1987 vide Annexure A/7 and then the applicant was appointed to the IAS by the President, vide Notification dated 18.11.1987 vide Annexure A/8.

11. The grievance of the applicant is that there was no disciplinary or departmental proceedings against him when Selection Committee met on 16th and 17th December 1986 and there was a clear mistake on the part of the respondent No.1 in informing the Selection Committee about decision of the instruction of disciplinary proceedings against the applicant. He submitted that the Selection Committee was completely misled by wrong information given by the respondent No.1 with the result that his name was included provisionally subject to clearance of inquiry decided to be instituted against him. The learned advocate for the respondents submitted that the applicant's name did not figure in the list dated 9.3.1987 as the State Govt. had not recommended his name for promotion to IAS as the departmental inquiry was pending before him.

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12. So the main question to be answered is what is the date from which it can be said that the disciplinary proceedings is pending against an employee? On this point the applicant relied on the decision in State of Madhya Pradesh Vs. Banising 1990 S.C.C. page 738 in which it is observed as under: -

"Normally, pendency for contemplated initiation of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon his right to be considered. If the departmental inquiry had reached that stage of framing the charges after a prima facie case be made out, the normal procedure followed as mentioned by the Tribunal was sealed cover procedure but if the proceedings had not reached the stage of framing of the charge after prima facie case is established, the consideration for the promotion to a higher or selection grade cannot be withheld merely on the ground of pendency of such disciplinary proceedings. Deffering the consideration in the Selection Committee held on 26.11.1980 on this ground was, therefore, unsupportable"

The other decision relied on by the applicant is Alok Mittal and Ors. Vs. Union of India and Ors. (1991) 15 Administrative Tribunal Cases, New Delhi page 668 in which it was held that if on the date of consideration by the DPC no chargesheet was issued to the applicants though preliminary investigation~~s~~ revealed serious allegations and the case stood referred to the Central Bureau of Investigation and on that basis D.P.C. placing its recommendation in a sealed cover, the action was held invalid and it was further held, the fact that the chargesheet was issued ~~on~~ ^{not} subsequent date was ~~not~~ relevant. There is also another decision cited by the applicant C.O. Arumugam Vs. The State of Tamil Nadu and Ors. 1990 SLR page No. 288.

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It is held in this decision that it is necessary to state that every civil servant has a right to have his case considered for promotion according from histurn and it is a guarantee flowing/articles ~~from~~ ~~articles~~ ~~to~~ 14 and 16 (1) of the Constitution. The consideration for promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principle. The promotion of persons against whom charge has been framed in the disciplinary proceedings or chargesheet has been filed in criminal case may be deferred till the proceedings are concluded. They must however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they should be given the promotion with retrospective effect from the date on which their juniors were promoted.

13. The most recent decision on this point is Union of India and Ors. vs. K.V.Jankiraman and ors J.T. 1991 (3) S.C. 527. The Hon'ble Supreme Court had considered the question as to what is the date from which it can be said that the disciplinary/criminal proceedings are pending against the employee. The Hon'ble Supreme Court had considered the Govt. of India (Department of Personnel and Training) Office Memorandum No.22011/1/79. Estt. (A) dated January 30, 1982 on the subject of promotion of officers and Office Memorandum No.22011/2/86. Estt. (A) dated January 12, 1988 which was made in supersession of all the earlier instructions on the subject included the Office Memorandum dated 30.1.1982. It was observed that there was no difference in the instructions contained in both the

memoranda except that in the latest memorandum in paragraph 4 for a six-monthly review of the pending proceedings against the Govt. servant where the proceedings were still at the stage of investigation etc. It was also observed that this difference of this two Memoranda have no bearing on the question to be answered. The Hon'ble Supreme Court para 16 of the judgment observed as under:

"On the first question, viz. as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/chargesheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases as has been experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure".

This decision helps the applicant because in the instant case it is admitted fact that the show cause notice Annexure A/5 was issued by respondent No.1 to the applicant on 25.6.1987 while the meeting of the Selection Committee was held on 16th and 17th December, 1986.

14. In view of this settled legal position as per the decision referred to above, the name of the applicant at Sr. No.13 included in the select list provisionally subject to clearance of inquiry decided to be instituted against him as mentioned in the minutes of the meeting of the Selection Committee dated 16th and 17th December, 1986 has no basis because it could not be said that on that day the disciplinary proceeding could be said to have commenced against the applicant and therefore denying the applicant his right to the appointment to IAS by promotion in his turn in the select list has caused injustice to him which has to be redressed. No doubt subsequently the respondent No.1 closed the chapter and dropped the inquiry on 22.7.1987 accepting the explanation of the applicant dated 26.6.87 to the show cause notice Annexure A/5 dated 25.6.87 and the applicant was subsequently appointed to the IAS on 18.11.1987 but as observed above, there was absolutely no reasonable ground for respondents to postpone consideration of promotion of applicant to the IAS post when he was in the select list at Sr. No.13 and when he was suitable in all respect for promotion to the IAS and when Officer Mr. M.C. Nayak immediate junior to him in the select list was promoted to IAS vide notification dated 9.3.1987 vide Annexure A/3. The whole approach of respondents in not considering the applicant for

promotion to IAS when his immediate junior was promoted vide Annexure A/3 was bad and arbitrary because it could not be said that the disciplinary proceeding had commenced against the applicant when the Selection Committee met on 16th and 17th December, 1986. We, therefore, hold that the applicant instead of being promoted on 18.11.1987 ought to have been promoted earlier on 9.3.1987 when his immediate junior Mr. M.C. Nayak was promoted to IAS.

15. As the applicant succeeds on this above point, and as he would be entitled to the same benefits which his immediate junior officer Mr. M.C. Nayak in the select list gets, it is not necessary for us to go into the question as to whether the respondents should have exercised powers under Rule 3 of All India Service (Condition of Service- Residuary Matters), Rules, 1960, and Rule 3 (iii) (b) of Indian Administrative Service (Regulation of Seniority) Rules, 1954. It is also not necessary for us for the same reason to deal with the notification of Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training dated 6.11.1987 vide Annexure A/12 regarding Indian Administrative Service (Regulation of Seniority) Rules, 1987 and subsequent Notification dated 18.1.1988 by which the amendment was made in the said rules. The applicant invited our attention to the decision in P. Mahendran v. State of Karnataka AIR 1990 S.C. p. 405 to show that as per this decision of the Hon'ble Supreme Court the rules which are prospective in nature cannot be taken away or impair the right of candidate. As we have held that the applicant ought to have been promoted in IAS on 9.3.1987 when his immediate junior was promoted, it is not necessary for us to probe into question as to whether amended rules would not be

applicable and old rules would be applicable to the applicant regarding his year of allotment. The other decision on the same point in V.P.Sinha vs. State of Gujarat and Ors. decided by Ahmedabad Bench of C.A.T. on 2.2.1990 also need not be considered. In the conspectus of the facts and circumstances, this application is disposed of with the following order and direction:

The respondents are directed to take all steps from due date with regard to the applicant in respect of his appointment by promotion to IAS w.e.f. 9.3.1987 when Mr. M.C. Nayak, Officer next to him i.e. immediate junior to him in the select list came to be appointed to IAS. We, therefore, direct the respondents to issue required orders accordingly including orders of consequential benefits of year of allotment and arrears of salary to the applicant within a period of four months from the receipt of this order by the respondents. Having regard to the facts of this case, we pass no order as to costs.

R.C.Bhatt

(R.C.Bhatt)
Member (J)

20/11/91

P.S.Habeeb Mohammed

(P.S.Habeeb Mohammed)
Member (A)