

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

R.A.NO.: _____ of 1996 in O.A.NO. 162 of 1996

Union of India Review Petitioner/
rep. by Secretary First Respondent in
Government of India O.A.
Department of Personnel
and Training, NEW DELHI.

Versus

S.K.DEB Respondent/
C/o Chief Secretary to Petitioner in O.A.
the Government of West
Bengal, CALCUTTA.

The State of West Bengal Proforma
rep. by the Chief Secre- Respondent/Third
tary to the Government Respondent in O.A.
CALCUTTA 700 001.

REVIEW PETITION

For the reasons stated in the accompanying affidavit it is prayed that this Hon'ble Tribunal may be pleased to review the order dated 03.06.1996 passed in O.A. No.162 of 1996, recall the O.A. and dismiss the O.A. and pass such further order or orders and thus render justice.

Dated at New Delhi this 28th day of July, 1996.

Counsel For the Petitioner/Respondent

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AFFIDAVIT ON BEHALF OF THE PETITIONER

I, R. Vaidyanathan, S/o (late) Shri T.N. Ramachandran, aged about 41 years, working as Desk Officer, Department of Personnel and Training, New Delhi and having temporarily come down to Madras do hereby solemnly affirm and sincerely state as follows:

1. I am the Desk Officer in the Department of Personnel and Training, Government of India, New Delhi and I am acquainted with the facts of the case from official records.

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2. The judgement in the above Original Application was pronounced by this Hon'ble Tribunal on 3.6.1996 and a copy of the order was forwarded by the Counsel for the Applicant in the Original Application and received by this respondent on 21.6.1996.

3. A copy of the O.A. No. 155 of 1996 (Union of India & others) was forwarded by the Applicant's Counsel and received by this Respondent in February, 1996 (Annexure-R-I). This Respondent prepared a short reply to the OA and forwarded the reply to the Senior Central Government Standing Counsel with a brief of the case and with a request to file the reply before the Hon'ble Tribunal (Annexure-R-II). On receipt of a copy of the Interim Order dated 12.3.1996 in O.A. 162 of 1996, as forwarded by Shri R.K. C. Thakur, Counsel for the Applicant, this Respondent addressed the Senior Government Counsel for entering appearance on behalf of Union of India and also faxed a copy of that communication to the Deputy Registrar (Judicial), Central Administration Tribunal, Calcutta Bench on 29.3.1996 (Annexure R-III). The Union Public Service Commission had also received notice of the hearing of the above mentioned case stating the number of O.A. as 155 of 1996 and the Commission addressed the Government of West Bengal to defend the case on behalf of the Commission (Annexure R.4). Thereafter a photocopy of the final order dt. 3/6/96 in

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O.A. 162 of 1996 received by this Respondent from the Counsel for the Applicant on 21.06.1996 and the State Government on 28.06.1996.

4. That in the light of the above submissions it is clear that no notice of hearing or Application bearing O.A. No.162/96 was received by this Petitioner. The Counsel of the Applicant in the Original Application had indicated the number of the O.A. as 155/1996 while forwarding a copy of the OA to this Petitioner and this number was maintained and followed while filing reply by this Petitioner in the communication to the Government Counsel and this resulted in an error in the records of the Registry. The finding of the Hon'ble Tribunal that this Respondent did not enter any appearance nor filed any reply (para 9 of the order dated 3.6.1996) and further that Tribunal were handicapped because the Union Ministry has chosen not to file any reply (para 16 of the final order), are, therefore, found to be made on the erroneous apprehension that this petitioner had not filed a reply to the Original Application which is not the factual position. This Petitioner has filed a reply to the Application communicated by the Counsel for the Applicant (Shri Thakur) as O.A. No.155/96 and not as O.A. No.162/96.

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5. Regulation 9(1) of the IAS (Appointment by Promotion) Regulations, 1955, (hereinafter called "Promotion Regulations) has a specific provision for not appointing Select List State Civil Service Officers against whom disciplinary proceedings are pending. In the case of the Respondent/Applicant, he was included in the 1995 Select List provisionally subject to grant of Integrity Certificate by the State Government in terms of proviso to Regulation 5(5) of the Promotion Regulations. However, with the issue of Charge-Sheet by the State Government to the Respondent/Applicant on 10.11.1995, he is to be further treated as "deemed provisional" in the Select List. This position holds good even if he had been included unconditionally in the Select List, in terms of proviso to Regulation 7(3) of the Promotion Regulations.

6. It is submitted that the genesis behind the provisions for not appointing a Select List Officer against whom Disciplinary Proceedings are pending with a State Government and who accordingly stands included only 'provisionally' or 'deemed provisionally' in the Select List is that the State Civil Service Officer is assessed and graded by Selection Committee on the basis of his ACR's, without reference to the pending/contemplated Disciplinary Action and consequent lack of integrity certificate etc. and accordingly,

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if the officer is found meritorious enough for promotion to the IAS otherwise, his name is included in the Select List provisionally subject to clearance from Disciplinary Proceedings/Grant of Integrity Certificate by the State Government. In case the element of disciplinary proceedings, etc. pending against the officer and such other factors are also taken into account by the Selection Committee, his grading itself shall be affected and result in his non-inclusion in the Select List itself. Further, an officer whose Integrity has not been certified by the State Government cannot even be considered for appointment to the Service by the Central Government. By way of a fair treatment to such State Civil Service officers included provisionally in the Select List, the Promotion Regulations provide for keeping one post reserved for the provisionally included officers throughout the validity period of the select list. The substantive basis on which the regulations were founded as above thus appear to have escaped the attention of the Hon'ble Tribunal, due to non-appearance on behalf of this Respondent. The non-appearance on behalf of this Respondent cannot be termed as willful and this Respondent will be pleased to assist the Tribunal in clarifying the provisions of the Rules/Regulations and address such issues as the Hon'ble Tribunal may consider necessary and appropriate for the proper adjudication of the case. It is further submitted that merit alone is the criteria for induction of a

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State Service Officer in the All India Service and there are no provisions for Provisional Appointment envisaged in the scheme of the Promotion Regulations. In hierachial promotions from lower post to higher post in a single and homogenous organisation, it is always possible to revert promoted officers to the lower post. The concept of provisional promotion is not envisaged in the case of lateral induction of State Service Officers to the All India Services by way of promotion under the scheme of the Promotion Regulations. A person included in the Select List 'provisionally' or 'deemed provisionally' cannot be appointed to the Service unless declared 'unconditional' by the Union Public Service Commission in accordance with the Promotion Regulations. There can be no exceptions to this essential requirement of the Rules. The Central Government does not consider it to be in the public interest to appoint a person to the IAS by promotion from the State Civil Services, unless he is cleared by the State Government of all charges against him, his integrity is certified by the State Government and if included in the Select List provisionally/deemed provisionally, the UPSC declares him as "unconditional" under the Regulations.

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7. The applicant was included at Sl.No.6 of the 1995 Select List 'provisionally' subject to grant of Integrity Certificate by the State Government. This Select List was based on the proceedings of the Selection Committee Meeting held on 23.3.1995 and 24.3.1995 and approved by the UPSC on 31.07.1995. It is required under the Regulations that the State Government certifies the Integrity of all officers in the zone of consideration for the promotions. Officers whose integrity is not certified by the State Government are considered subject to the Grant of such certificate so as not to stall the consideration of others. The natural implication is that if the Integrity is not certified by the State Government, this Respondent is not bound to appoint the officer to the IAS. Based on the inclusion in the Select List, the applicant was duly considered in his turn for appointment to the Service. Due to the fact that the State Government has not certified the integrity of the officer, the applicant was not appointed to the Service. The vacancy against which the Applicant was considered for appointment was however, kept vacant to enable his appointment in the event the State Government certifies his Integrity within the period of validity of the Select List, the List having been prepared for vacancies in the twelve month period from 24.3.1995. The Select List is

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prepared afresh every year for the vacancies in the twelve month period from the date of the meeting. The meeting of the Selection Committee for the preparation of 1996 Select List has been held on 18.03.1996 and the Select List had been approved by the UPSC on 15.05.1996. The vacancy reserved for the Applicant in the 1995 Select List has been considered for preparing the 1996 Select List as the Applicant could not be appointed to the IAS on the basis of the 1995 Select List as the State Government did not issue the mandatory Integrity Certificate of the officer during the period of validity of the 1995 Select List upto the meeting the Selection Committee for framing the 1996 Select List. The Applicant has been considered again for inclusion in the 1996 Select List only 'provisionally' because the State Government has yet again not issued the Integrity Certificate in favour of the Applicant and in addition have initiated disciplinary proceedings against him. Accordingly, he has been included in the 1996 Select List only provisionally at S1.No.7. It may not be possible for the Central Government under the Regulations to appoint the Applicant to the IAS unless the State Government certifies his Integrity and the UPSC declares his candidature/inclusion in the Select List to be "Unconditional". The Applicant (Shri Deb) will be considered for appointment in his turn in the 1996 Select List and will be appointed to the IAS only if he is declared to be included in the Select List 'unconditionally' by the UPSC on the State Government

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certifying his integrity. At this stage, the question of his appointment to the Service is premature. Accordingly, the ex-parte order of the Tribunal dated 03.06.1996 directing that the Applicant should be appointed 'provisionally' to the Indian Administrative Service appears to be erroneous and due to incorrect appreciation of the relevant Rules/Regulations, as there is no provision for making such appointment to the Service and further in the considered opinion of the Central Government, such appointments would not be in the public interest with regard to the requirements of high standards of conduct and performance of the members of the Service, for which it is essentially that the persons recruited to the service are not only without blemish but also seen to be so.

8. It is respectfully submitted that the lack of opportunity to this Respondent to advance arguments in the case on account of the fact that this Respondent could not be represented due to erroneous intimation about the Registration number of the Application by the Counsel for the Applicant, has affected the interests of the Respondent adversely and this Respondent is in a position to and ready to advance arguments on the issues raised in the Application and clarify the Rules position governing the issues.

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9. Therefore, it is prayed that the Hon'ble Tribunal may be pleased to review the order dated 03.06.1996 passed in O.A. No.162/1996 and restore and recall the O.A. for fresh hearing and enable this Respondent to make such further submissions and advance arguments and then pass an order in the interests of equity and justice.

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Dated: 19.7.96
NEW DELHI:

Before me

VERIFICATION

I, R.Vaidyanathan, S/o Late (Shri) T.N.Ramachandran, working as Desk Officer in the Department of Personnel & Training, Government of India verify that the contents of the Review Application are true and correct to my knowledge derived from the official record and that I have not suppressed any material fact therefrom.

Place: New Delhi

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Date: 19.2.91

For and on behalf of

the Applicant