

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. 162 of 1996

Present : Hon'ble Mr. Justice A.K.Chatterjee, Vice-Chairman
Hon'ble Mr. M. S. Mukherjee, Member (A)

SUPRIYA KR DEB

VS

UNION OF INDIA & ORS

For the petitioner : Mr. R.K.C.Thakur, counsel

For the State of W.B. :Mr. R.N.Das, Sr. Counsel
Mr. P.K.Dutta, counsel

For Pvt. Respondent : Mr. G.Biswas, counsel

Heard on : 12.4.96 : Order on : 3.6.96

O R D E R

M.S.Mukherjee, A.M.:

This is an application under section 19 of the Administrative Tribunals Act, 1985, in which the petitioner is aggrieved by the following communications from the Govt. of West Bengal :-

i) Dt. 31.10.95 from Home, P & AR Deptt., Govt. of West Bengal conveying that the petitioner's name has been included by the Selection Committee in the select list for promotion into the IAS provisionally (vide Annexure-A10 -page 48 of the petition)

ii) Dt. 10.11.95 from Home, P & AR Deptt.of Govt. of West Bengal serving on him certain charge-sheet in a DA proceeding vide Annexure-All to the petition.

2. The petitioner had originally joined the West Bengal Civil Service (Executive) (for short WBCS) in 1971 and that during the year 1981-82 he was posted as SDO, Hooghly (Sadar) and simultaneously he was also acting as the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976. During the said period, he had dealt with the urban land ceiling matter in respect of certain Nihar Sarkar, in his quasi-judicial capacity as the Competent Authority under the Urban Land (Ceiling & Regulation)Act.

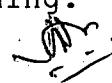
3. In West Bengal, a WBCS officer can be put into the scale No. 19 (Rs. 4500-6000/-) plus special pay of Rs. 500/- p.m. under the Career Advancement Scheme, 1990 subject to certain specified conditions and in that case while still in the WBCS, he can be posted in the rank of Joint Secretary. Alternatively, he can be promoted into IAS and on promotion he can be accommodated in the senior scale of IAS as Joint Secretary, but in that event the scale of pay will be Rs. 3200-5000/- plus special pay of Rs. 500/- p.m. So, a WBCS officer can enjoy higher scale as Joint Secretary through alternative route - either through intra-WBCS promotion under the Career Advancement Scheme, 1990 or through promotion to the IAS.

4. The petitioner's grievance is that under the Career Advancement Scheme of the WBCS, he found many of his juniors superseded him in 1995 and he was ignored. He, therefore, moved the Hon'ble High Court at Calcutta against his supersession and the High Court issued an order on 8.3.95 ex parte vis-a-vis the State Govt. directing that "in the event the respondents consider the case for promotion to the post of Joint Secretary, the case of the petitioner should also be considered without prejudice to the rights and contentions of the parties and which will abide by the result of this writ application ".(vide Annexure-A6 to the petition). Subsequently, on a further move from the petitioner, the Hon'ble High Court modified the order dt. 8.3.95 by a fresh order on 20.3.95 (vide Annexure-A7) and by the modified order, it was directed that the petitioner's case for promotion to the IAS may also be considered by the State Govt., in accordance with law in terms of IAS (Appointment by Promotion) Regulations, 1955 and that this order was passed without prejudice to the rights and contention of the respective parties.

5. The Hon'ble High Court by the aforesaid order dt. 20.3.96 further added that consideration of the petitioner's case for promotion may be made despite the fact that some vigilance enquiry was pending against him. This order of the Hon'ble High Court dated

20.3.95 was further modified by an order dt. 5.6.95 (Annexure-A8) on a move by the petitioner and the new order dt. 5.6.95 noted the petitioner's contention that no DA proceeding or vigilance enquiry as such was pending against him. Therefore, the respondents were directed to pass appropriate orders in the matter of petitioner's promotion to the IAS. However, the Hon'ble High Court of Calcutta while passing the aforesaid orders, could not consider the fact that matters relating to promotion into the IAS or its select list, were no longer within the jurisdiction of the High Court, after the enforcement of the Administrative Tribunals Act, 1985 and the constitution of this Tribunal in 1985. Anyway, since the matter relating to promotion to the IAS is now within the exclusive jurisdiction of only this Tribunal, the petitioner has moved this petition before us.

6. Meanwhile, in terms of the direction of the Hon'ble Calcutta High Court on 8.3.95, the Home, P & AR Deptt. of Govt. of West Bengal by a communication dt. 30.10.95 (Annexure-A10) has conveyed to the petitioner that due to non-availability of integrity clearance in respect of the petitioner he could not be appointed as Joint Secretary under the Career Advancement Scheme, 1990 for WBCS. However, a post has been kept unfilled up. Simultaneously through the impugned letter dt. 31.10.95 (Annexure-A10), the Home, P & AR Deptt. of the State Govt. has also intimated about the petitioner's position regarding his promotion to the IAS. Thereafter, the State Govt. has issued to him a charge-sheet dt. 10.11.95 (Annexure-A11) initiating a disciplinary proceeding against the petitioner in connection with his conduct as the Competent Authority under the Urban Land Ceiling & Regulation Act during the year 1981-82 and specific articles of charges have been added to the said charge-memo. The petitioner has submitted his reply to the charge-sheet on 31.1.96 (Annexure-A12). But the matter is still pending.



7. The petitioner's contention is that the State Govt. has kept him out of select list for promotion to the IAS by illegally withholding the integrity certificate in his favour. His further case is that despite his name being in the select list and despite a post having been kept vacant, persons junior to him in the select list, viz. Shri Narayan Chandra Majumdar (respondent No. 5) has been appointed to the IAS by superseding him. The petitioner has also contended that the impugned DA proceeding and the charge-sheet issued against him are illegal.

8. In filing this petition, the petitioner has prayed for quashing the charge-memo dated 10.11.95 and for issue of a direction on the respondents to promote him to the IAS from the select list of 1995 and place him above respondent No.5. He has also prayed for a direction on the State respondents to issue integrity certificate in his favour accordingly.

9. Although notice has been duly served on all the respondents, respondent No. 1 i.e Secretary, DOPT, Govt. of India and respondent No. 2, i.e. UPSC, have not entered any appearance nor have they filed any reply. The private respondent No. 5 and the remaining State Govt. respondents have filed their replies contesting the petition.

10. After hearing the learned counsel for the petitioner, the State Govt. respondents and the Private respondent, we had directed on 12.4.96 to the State respondents to produce the "State Govt.'s original records showing exactly when the vigilance certificate was withheld and on (what) basis it was withheld." In pursuance of the said direction, the Asst. Secretary to the Govt. of West Bengal, Home, P & AR Deptt. through a communication dt. 26.4.96 has forwarded to our Registry a file bearing No. Vig./1/96 with the remark that it contains the original records in this connection.

11. We have heard the learned counsel for the parties and have gone through the records produced. In view of urgency of the matter, we propose to dispose of the case at the admission stage itself.

12. The petitioner has agitated his grievance regarding promotion to the post of Joint Secretary under the Career Advancement Scheme, 1990 for WBCs. We do not, however, propose to touch on the subject as it is not part of this Tribunal's jurisdiction.

13. This Tribunal does, however, possess jurisdiction to deal with the petitioner's grievance regarding promotion to the IAS. Regarding such promotion the position of the State of West Bengal respondents is reflected in their communication dt. 31.10.95 (Annexure-A10). The petitioner was informed through the said communication that his case for promotion to the IAS had been duly considered by the Selection Committee chaired by the representative of the UPSC and that the said Committee after having taking into consideration of the records had decided to include the petitioner's name provisionally in the list under Regulation 5(5) of IAS (Appointment by Promotion) Regulations, 1955. Thereafter, the petitioner's appointment to the IAS would be regulated by the said Regulations unless his name was made unconditional by the UPSC on recommendation of the State Govt. during the period the select list remains in force and that while making appointment of an officer junior to the petitioner, one post would be kept vacant to accommodate him, if so required.

14. Promotion from State Civil Service to the IAS is regulated under the provisions of IAS (Appointment by Promotion) Regulations, 1955 (IAS Promotion Regulations for short). Under Regulation 9 ibid, appointment to the IAS of the members of the State Civil Service is made by the Central Govt. on the recommendation of the State Govt. in the order in which the names of the members of the State Civil Service in the select list for the time being in force. A "Select List" is a list or panel specifically approved of by the UPSC formally under Regulation 7 of the IAS Promotion Regulations after inter alia considering the list along with the records etc. of the candidates forwarded by the State Govt. in terms of Regulation 6 ibid. Prior to this for

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preparation of the select list, the designated selection committee, which ordinarily meets at an interval not exceeding one year, prepares a list of all the members of the State Civil service in accordance with the eligibility and conditions prescribed at para 5 of the IAS Promotion Regulations. The selection committee classifies the eligible officers in various specified categories on an overall assessment of their service records and under provisions of Regulation 5(5) of IAS Promotion Regulations, the said list is prepared by including the required number of names on the basis of relative assessment and the order of names inter se within each category has to be in the order their seniority in the State Civil Service. However, under proviso to Regulation 5(5) of the said Regulations :

" Name of any officer included in the list shall be treated as provisional , if the State Govt. withholds integrity certificate in respect of such officer or any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Govt. "

15. Such an officer's name, whose integrity clearance certificate given by the State Govt. is not unconditional, is included in the select list provisionally.

16. There is a little dispute, if the petitioner's name figures in the select list even provisionally. Private respondent No. 5 has contended through his reply that the petitioner's name is not in the statutory list at all. We are a little handicapped, because UPSC (which approves of the statutory select list) or the Union Ministry, has chosen not to file any reply.

17. The State Govt. respondents through their reply have not categorically denied that the petitioner's name exists in the select list. However, their communication to the petitioner at Annexure-A10 mentions keeping one vacancy for the petitioner during the period of validity of the select list as integrity certificate is withheld regarding him by the State Govt. Such reservation of

vacancy is provided for under the regulations only when a name has been provisionally included in the select list. This is apparent from the following text of the first proviso to Regulation 9 of IAS Promotion Regulations, which reads as under :

" Provided further the appointment of an officer, whose name has been included in the select list provisionally, under proviso to sub-regulation (5) of Regulation 5, shall be made after his name is made unconditional by the Commission on the recommendation of the State Govt. during the period the select list remains in force. While making appointment of an officer junior to a select list officer, whose name was included provisionally in the select list, one post will have to be kept vacancy for such provisionally included officer."

18. So, the protest of respondent No. 5 notwithstanding that the petitioner's name does not figure in the select list even provisionally, in the absence of any contrary averment by any other party, we take it or rather hold that the petitioner's name is part of the select list provisionally.

19. The petitioner has challenged inclusion of his name provisionally in the select list by contending that withholding of integrity certificate by the State Govt. is irregular. Now proviso to sub-regulation (5) of Regulation 5 of IAS Promotion Regulations specifies the conditions when the State Govt. can normally withhold integrity certificate in respect of an officer. This can be done when either a vigilance or departmental proceeding is pending or any such proceeding is contemplated against the officer. Since the communication at Annexure-A10 has been made by the State Govt. on 31.10.95, it is obvious that the selection committee held its meeting for preparation of the list prior to 31.10.95. But admittedly, the charge-sheet against the petitioner was issued on 10.11.95 i.e. quite after the date of the meeting of the selection committee. A departmental proceeding starts after the issue of the charge-sheet. So, it cannot be anybody's case that any departmental proceeding was pending against the petitioner when the selection committee met and the State Govt. decided to withhold the integrity certificate in favour of the petitioner. There is also no averment



on the part of the State Govt. respondents that any criminal vigilance case was pending on the date of meeting of the selection committee or that any charge-sheet in any criminal case had been issued against the petitioner. We had specifically asked the State Govt. to produce the original records to show exactly when the integrity certificate was withheld and on what basis it was withheld and the State Govt. through a letter has produced before us the original file of the department as already indicated. But in that letter also there is nothing to show that either any vigilance related criminal charge-sheet or departmental proceeding related charge-sheet was issued against the petitioner before 10.11.95. There is also no whisper anywhere in these records of the State Govt. to show that the competent authority had also at least decided to initiate proceeding against the petitioner prior to the date of the meeting of the selection committee to satisfy the condition that any such proceeding had been contemplated at least as on that date.

20. Under the circumstances, we have no alternative but to hold the view that the State Govt. respondents had not been justified in withholding the issue of integrity certificate on the date of the selection committee meeting. If the petitioner's name has been provisionally included in the select list and to the extent such select list has been finalised by the UPSC on the recommendation of the State Govt, the provisional inclusion of the petitioner's name therein is, therefore, bad and unjustified.

21. The petitioner has also challenged the DA proceeding and the charge-sheet issued against him on various grounds. Firstly, Mr. R.K.C.Thakur, the 1d. counsel for the petitioner, contends that the events mentioned in the charge-sheet were in respect of his functions discharged by him in 1981-82 as the competent authority under the Urban Land Ceiling Act which is a quasi-judicial function. The 1d. counsel for the petitioner has contended that an officer's performance and conduct discharged in a quasi-judicial capacity cannot be the subject matter of a disciplinary proceedings and that this cannot constitute as misconduct as any error

committed by him in the quasi-judicial proceedings is open to rectification through appeal/review under the same quasi-judicial scheme.

22. Regarding such contention of Mr. RKC Thakur, the Hon'ble Supreme Court in the case of UOI -vs- K.K.Dhawan as reported in AIR 1993 SC 1478 has held a contrary view to the effect that Govt. can take departmental action against an officer even for his functions as quasi-judicial authority provided certain specific conditions are satisfied.

23. The petitioner has also challenged the said departmental proceeding and the charge-sheet on the ground that the charge-sheet has been issued more than 13 years after the event or facts which are stale. The petitioner has also averred that in connection with the said events, the Home, P & AR Deptt. had earlier on 5.8.86 directed the petitioner to meet certain designated vigilance wing officer on 27.8.86 in connection with the vigilance enquiry regarding the said events. The petitioner claims to have met the said vigilance officer on 29.9.86 and explained the matter. Since then nothing has been heard from the vigilance wing for about 9 years and so the matter could be treated as closed. According to the petitioner, any endeavour to reopen the matter after such a long time through the charge-memo dt. 10.11.95 is bad and motivated.

24. There is no specific denial of these facts in the reply filed by the State Govt. respondents.

25. The 1d. counsel for the petitioner has cited several rulings from the Hon'ble Supreme Court to the effect that charge-sheet issued after long interval deserves to be quashed.

26. We do not, however, propose to go into these or to the relief regarding quashing of the charge-sheet or the departmental proceeding as these pertain to the petitioner's service in the State Civil Service which is outside the jurisdiction of this Tribunal. If advised, the petitioner may approach the State Administrative Tribunal appropriately further in the matter. Our



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observation above may not be treated as our findings on the subject.

27. Yet, the unfortunate fact remains that because of these events, which led to the issue of the charge-sheet dt. 10.11.95, the State Govt. has withheld the integrity certificate as a result of which the petitioner has not yet been appointed to the IAS and he has been superseded by his juniors. Such action of the State Govt. to withhold integrity certificate against the facts of the case is unjustified and it has unduly affected the claims of the petitioner for promotion to IAS.

27A. Our attention has been drawn in this connection to the decision of the Hon'ble Supreme Court in the case of State of Punjab -vs- Chamanlal Goel, 1995(1) SCSLJ 233. In that case, there was delay in initiating disciplinary proceedings for more than 5 years. The delinquent employee (respondent therein) was found responsible for the escape of terrorists from the jail on account of slack administration. Since there was considerable delay in issuing charge-sheet and appointment of enquiry officer, the Hon'ble Supreme Court held that such delay in issuing charge-memo does not warrant the quashing of the charge-sheet. However, the Hon'ble apex court directed also the authorities to consider the case of promotion of the respondent (the charged employee) on condition that the said promotion will be subject to the review after conclusion of the enquiry proceedings and in the light of the findings on the enquiry.

28. In the instant case, there is delay of more than 13 years for the issue of charge-sheet. So, it will be a fit case for the authorities not to withhold promotion of the petitioner to the IAS. But the said promotion should be subject to review depending on the final outcome of the DA proceedings initiated on the basis ~~sof~~ of the charge-sheet dt. 10.11.95, which, it is hoped, will be concluded by the concerned authorities on crash basis very expeditiously without causing any further delay. There is urgency about such provisional promotion to be given to the petitioner, since the present select

list becomes inoperative after the new select is finalised and once the new select list is operational, the petitioner cannot be appointed to the IAS from out of the old select list. private respondent No. 5 has averred through his reply that he has already joined the cadre post of IAS on 8.2.96. Of course, one post has been kept reserved by the State respondents for the petitioner. But in case he is not appointed during the period of currency of the present select list, his interest would be permanently prejudiced in respect of his inter se seniority vis-a-vis his juniors in the current select list,s as under Rule 4(2)(1) of the IAS (Regulation of Seniority) Rules, 1987, inter se seniority amongst the State Civil Service promotee officers sto the IAS is determined on the basis of date of appointment to the service and if the date of appointment of more than one officer is the same, their inter se seniority shall be in the order in which their names are arranged in the select list on the date of appointment to the IAS.

29. In view of the above discussion and in overall consideration of the case, we dispose of this petition with the following orders :

i) We direct that the UPSC and the Central Govt. and the State Govt. respondents treat the petitioner provisionally in the select list for the relevant year, in case the same has not already been done.

ii) After the petitioner's name figures thus provisionally in the select list, respondent No. 4 of the Govt. of West Bengal shall make recommendation to the Central Govt. for appointment of the petitioner to the IAS immediately with the clear stipulation that any such appointment to the IAS shall be subject to review after conclusion of the DA proceeding initiated against the petitioner through the charge-memo dated 10.11.95 (Annexure-All), and that for such appointment he would be provisionally allotted seniority above respondent No. 5 in case respondent No. 5's name is shown as junior to the petitioner in the select list. Respondent No. 4 shall make such recommendation within a fortnight from the date of communication of this order.

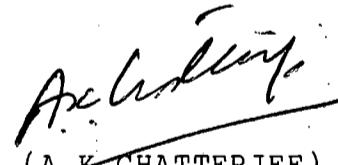
iii) Within one month of such communication from the State Govt., the Central Govt. (respondent No. 1) shall appoint the petitioner to the IAS on condition that such appointment shall be subject to the review after conclusion of the aforesaid DA proceeding and he shall be allotted appropriate seniority in the IAS accordingly.

iv) In the facts and circumstances of the case, for making such appointment, it is not necessary for respondent No. 2 i.e. UPSC to make the inclusion of the name of the petitioner in the select list unconditional with reference to condition of first proviso to Regulation 9 of IAS (Appointment by Promotion) Regulations, 1955.

v) After the conclusion of the DA proceeding against the petitioner, respondent No. 4 shall communicate the latest position to the UPSC and the Central Govt. so that final orders regarding regular promotion of the petitioner to the IAS and his inter se seniority can be issued appropriately.

vi) There will be no order as to costs.


(M.S. MUKHERJEE)
MEMBER(A)
3.6.96


(A.K. CHATTERJEE)
VICE CHAIRMANZ
3.6.96