

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 256 of 2005

Thursday, this the 19th day of July, 2007.

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

Sumana N. Menon,
W/o. Sri M.N. Menon,
Working as Deputy Land Revenue Commissioner,
Public office Building, Thiruvananthapuram,
Reslding at 'Karthika', T.C. No. 40/1066,
Manacaud P.O., Thiruvananthapuram : 695 009 ... Applicant.

(By Advocate Mr. O.V. Radhakrishnan, Sr. with Mr. Antony Mukkath)

v e r s u s

1. State of Kerala represented by Its Chief Secretary, Government Secretariat, Thiruvananthapuram.
2. Selection Committee constituted under Regulation (3) of the Indian Administrative Service (Appointment by Promotion), 1955, Represented by Its Chairman, Shajahan Road, New Delhi.
3. Union Public Service Commission, Represented by Its Chairman, Shajahan Road, New Delhi.
4. Union of India, represented by Its Secretary, Ministry of Personnel & Training, New Delhi. ... Respondents.

[By Advocates Mr. T.P.M. Ibrahim Khan, SCGSC (R2-4) and Mr. R. Prem Shanker, GP (R1)]

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The Issue involved in this case is whether the applicant, whose name appeared in the select list of IAS for the year 1992-93, but whose promotion could not be effected on account of certain departmental proceedings, should,

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on her exoneration from the charges, decided in 2001, be considered for promotion w.e.f. 1992-93.

2. Version of the Applicant:

(a) Applicant was recruited as Deputy Collector and deputed for training vide order dated 15.10.1977. Thereafter, she was appointed as Deputy Collector as per Notification dated 25.10.1982 and she was confirmed with effect from 03.01.1987. The applicant completed eight years of service in the category of Deputy Collector by 5.11.1990 and became eligible and entitled to be considered for appointment by promotion to Indian Administrative Service in accordance with IAS (Appointment by promotion) Regulations, 1955. The selection Committee met on 28.03.1993 and considered the applicant for appointment to IAS for the vacancies of the year 1993. The Committee prepared a Select List of five including the applicant at Serial No.2.

(b) Applicant was served with Annexure A/1 memo of charges dated 26.10.1993. She submitted a detailed written statement. In view of the disciplinary proceedings, 1st respondent withheld Integrity certificate. Applicant filed O.A. No. 1338 of 1993 in which a reply statement was filed on behalf of the State of Kerala admitting that the applicant was included in the Select List prepared at its Meeting held on 28.03.1993. In the reply statement, it has been stated that two of the State Civil Service Officers, just below the applicant in the Select List of the year 1993 were appointed under Rule 9(1) of the IAS (Cadre) Rules, 1954, vide Annexure A/3 order dated 6.7.1993. It has been further stated that since the applicant has not been cleared off in the vigilance enquiry, Integrity certificate in the case of the applicant has not so far been issued. It has also been stated that the request of the applicant for expunging the adverse remarks were then pending and withholding of Integrity certificate in respect of

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the applicant cannot be challenged. The above O.A. was finally heard and dismissed vide Annexure A/4 dated 10.11.1995. In the order, it has been observed that the Government have the power to review the question of integrity and the regulations enables such a course and the decision to withhold the integrity certificate is not arbitrary. It has been further observed that if the applicant is cleared off the charges all the benefits she may have lost can be restored to her.

(c) Applicant was considered for appointment during the pendency of disciplinary proceedings in respect of the vacancies of the subsequent years and was included in the Select List provisionally of the year 1998. She was included in the Select List for the year 1999 and also in the Select List for the year 2000.

(d) The first respondent finalized the disciplinary action by awarding censure as per GO dated 3.2.2001 (Annexure A/8). The applicant submitted a review petition and the Government was pleased to revoke the punishment of Censure and to exonerate her from the charges as per GO dated 10.08.2001 (Annexure A/9). The adverse remarks for the period from 19.09.1991 to 30.04.1992 have been expunged as per Annexure A/10 GO dated 3.10.2003. Thus, once the basis of a proceeding is gone, may be at a later point of time by order of superior authority, any intermediate action taken in the meantime, like the recommendation of the State and by the UPSC and the action taken thereon would fall to the ground. The principle of consequential orders which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders, as held by Hon'ble Supreme Court in **Badri Nath's case**, (2000) 8 SCC 395.

(e) The applicant is entitled to full restitution of her

promotion to IAS based on her inclusion at rank No. 2 in the Select List of the year 1993 and the respondents are duty bound to give effect to the declaration contained in Annexure A/4 order of this Tribunal. The 4th respondent issued notification Annexure A/11 dated 26/28 February, 2003 that the President is pleased to appoint the applicant to Indian Administrative Service.

(f) The applicant having not been appointed to IAS based on her inclusion in the Select List of the year 1993, filed a representation vide Annexure A/12 dated 29.10.2003, which is pending. The inclusion of the name of the applicant for 1993 vacancies was unconditional. When the adverse remarks entered are expunged and the departmental proceedings finally terminated in her favour, the same should be considered as if they had never existed and the respondents are legally obliged to appoint the applicant by promotion to Indian Administrative Service on the basis of her inclusion at serial No. 2 in the Select List of the year 1993 or at least from the date on which her Immediate junior was appointed by promotion to IAS as evidenced by Annexure A/3. The inordinate delay in granting consequential benefits as a result of termination of the departmental proceedings cannot be justified. Therefore, the applicant has filed this O.A. Seeking following main reliefs:

(I) To declare that the legal consequence of termination of departmental proceeding initiated against the applicant in her favour as per Annexure A-9 and expunging of the adverse remarks relating to the period from 19.09.1991 to 30.04.1992 as per Annexure A-10, the applicant is entitled to be promoted to IAS based on her selection and inclusion in the Select List of the year 1993 and to all consequential full service benefits including arrears of pay and allowances;

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(ii) To issue appropriate direction or order, directing the respondents to give effect to the appointment of the applicant to IAS with effect from Annexure A-3 GO dated 06.07.1993, the date on which her juniors were promoted to IAS against cadre posts under Rule 9 of the IAS (Cadre) Rules, 1954, with all consequential service including monetary benefits within a time frame that may be fixed by this Hon'ble Tribunal;

(iii) to issue appropriate direction or order, directing the respondents to review and refix the year of allotment of the applicant based on her appointment to IAS from the Select List of the year 1993 and to grant further consequential service benefits including seniority and further promotions expeditiously.

3. Version of respondent No. 1 : Certificate of Integrity can be withheld even in contemplation of disciplinary proceedings / investigation. In the case of the applicant, it was withheld, as there were serious allegations pending Investigation against her even at the time of drawing the Select List, though vigilance enquiry was ordered later. The applicant cannot claim retrospective promotion w.e.f. 1993 or w.e.f. the date of promotion of her juniors to the I.A.S, as she was appointed to the I.A.S. not from the Select List 1992-93 which was no more in existence at the time of her appointment to that service in February 2003; but from the Select List for the year 2001.

4. Version of respondents No. 2 & 3:

(a) Names of the Officers whose Integrity certificate is withheld by the State Government or disciplinary/criminal proceedings are pending against them or anything adverse against them which renders them unsuitable for appointment to the service comes to the notice of the State Government which require further investigations, are included in the Select Lists provisionally in accordance with the provisions of proviso to

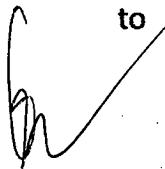


Regulation 5(5) .

(b) Selection Committee Meeting held on 29.03.1993 to prepare the Select List of 1992-93 graded the applicant as 'Very Good' and included in the Select List at Sl. No. 2. However, the inclusion was provisional subject to grant of integrity certificate. The name of a provisionally included officer can be made unconditional only if a proposal with a positive recommendation is received from the State Government during the validity period of the Select List, which used to be till the next Meeting of the Selection Committee.

(c) The name of the applicant was considered for the subsequent Select Lists i.e. 1993-94, 1994-95, 1996-97, 1998, 1999, 2000 and 2001. For the years 1993-94 and 1994-95 the applicant was graded as 'unfit'. No Selection Committee Meeting was held for the year 1995-96. For the subsequent years upto the year 2000, the Selection Committee graded the applicant as 'Very Good' and her name was included in each of these Select Lists provisionally subject to clearance of disciplinary proceedings and grant of integrity certificate. For the Selection Committee Meeting of 2001, she was graded as "Very Good" and was included in the Select List unconditionally at Sl. No. 1 as the State Government had informed that no disciplinary proceedings were pending against her and had also certified her integrity. The applicant was accordingly appointed to the IAS on the basis of her inclusion in the Select List of 2001. During the validity of the Select List, the Commission did not receive any proposal from the State Government for making the name of the applicant as unconditional. Therefore, the applicant could not be appointed to the IAS from the Select List of 1992-93.

(d) The 2nd proviso to Regulation 9(1) the words "or deemed to be included in the Select List provisionally under the proviso to Sub Regulation (5) of Regulation (5)" were inserted vide



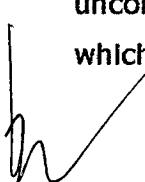
Government of India Notification No. 14015/32/91-AIS(I) dated 18.08.1993 and were not inserted vide Notification No. GSR 732 E dated 31.12.1997 as claimed by the applicant. The Government of India vide their letter No. 14015/29/93-AIS(I) dated 6.12.1993 have also clarified as under:

"... the amendment dated 18.08.1993 has come into force from the date of its publication, which is also 18.08.1993 and the Select Lists in force on that date would be regulated by amended Promotion Regulations. In case an officer whose name has been included in the Select List, in force, is served with a charged sheet or a charge sheet is filed against him in a Court of Law in criminal proceedings, his name in the Select List would be deemed to be provisional as per amended Regulations. The appointment of such officer will be regulated by the 2nd proviso to Regulation 9 (1) of the Promotion Regulations as amended vide Notification No. 14015/32/91-AIS (I) dated 18.8.1993."

(e) The Select List of 1992-93 prepared on 29.03.1993 was valid upto 29.03.1994. It may be seen from the above that the above amendment is also applicable in the instant case. But the name of the applicant was included provisionally in the Select List of 1992-93 subject to grant of the Integrity certificate by the State Government as per the Regulations amended vide vide notification dated 30.03.1989. Applicant's inclusion in the Select List was, therefore, not treated as 'deemed provisional' as claimed by her. Thus the contentions made by the applicant are not based on facts.

5. Version of Respondent No. 4:

(a) The applicant had not been granted the benefit of conferment of I.A.S. primarily on the ground that her name was included provisionally in the Select List and during the validity period of the Select List her inclusion was not made unconditional, therefore, the question of restoring the benefit which had not been granted to her does not arise.



6. The applicant had filed rejoinder to the above replies and reiterated his stand as contained in the O.A.

7. Additional (and II Addl.) reply had been filed by respondent No. 2 &3, and the applicant had filed additional rejoinder in which he had annexed the relevant regulations containing 1989 amendments (Annexure A-13) and also a communication (Annexure A-14) explaining "for the time being in force". By way of another additional rejoinder, the applicant had added Annexure A-15, which is the regulations as it stood amended on 18-08-1993.

8. The Senior Counsel for the applicant stated that the initial inclusion of the name of the applicant in the select list for the year 1992-93 is unconditional and it had to be treated as provisional by virtue of the fact that the applicant had to face certain departmental proceedings. When on account of non issue of integrity certificate the applicant moved the Tribunal in OA No. 1138/93 the Tribunal, vide its order dated 10-11-1993 (Annexure A-4) observed "*if the applicant is cleared of the charges all the benefits she may have lost, can be restored to her.*" Thus, according to the counsel, since the applicant had been thoroughly exonerated, vide Annexure A-9, there should be no impediment in effecting the promotion of the applicant against vacancy for the year 1992-93, as in accordance with the proviso to Regulation No. 9 of the Indian Administrative Services (Appointment by promotion) Regulations 1955, one post should be kept vacant for provisionally included officer. In the instant case, since the applicant had come out of the disciplinary proceedings, duly exonerated, the consequence thereof is, as held by the Apex Court in the case of ***Badrinath v. Govt. of T. N., (2000) 8 SCC 395*** wherein, the Apex Court has held as under:-

"Once the basis of a proceeding is gone, may be at a later point of time by order of a superior authority, any intermediate action taken in the meantime like the recommendation of the State and by the UPSC and the action taken thereon would fall to the ground. This principle of consequential orders which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders. In other words, where an order is passed by an authority and its validity is being reconsidered by a superior authority (like the Governor in this case) and if before the superior authority has given its decision, some further action has been taken on the basis of the initial order of the primary authority, then such further action will fall to the ground the moment the superior authority has set aside the primary order."

9. Again, the counsel submitted that the respondents have rejected the claim of the applicant on the basis of amended Regulations, which in fact cannot be applied to the case of the applicant, as the said Regulations were amended only on 18th August, 1993 while the case of the applicant pertains to the period anterior to it and hence, it is only 1955 Regulations as amended by 1989 amendments (vide Annexure A-13) that would apply. He had relied upon the decision of the Apex Court in the case of **Chairman, Railway Board vs C.R. Rangadhamiah (1997) 6 SCC 623**, wherein it was held that retrospective amendment to the statutory rules, affecting adversely the rights of an employee is not valid.

10. The senior counsel further argued that the respondents have relied upon the administrative Instructions dated 6-12-1993 referred to in the 2nd Addl. Reply filed on behalf of the 2nd and 3rd Respondents. The Administrative Instructions or orders, according to the senior counsel, cannot supplant the Rules framed under any statute. The following are the decisions cited by the senior counsel for the applicant in support of this part of his argument:-

"(a) Union of India v. Majji Jangamayya, (1977) 1 SCC 606

wherein it has been held, An administrative instruction or order is not a statutory rule.

(b) J.R. Raghupathy v. State of A.P., (1988) 4 SCC 364 wherein the observation was as under:-

The question that fell for consideration before this Court was whether the Code consisted of statutory rules or not. The so-called Rules contained in the Code were not framed under any statutory enactment or the Constitution. Wanchoo, C.J. speaking for the court held that under Article 162 the executive power of the State enables the government to issue administrative instructions to its servants how to act in certain circumstances, but that would not make such instructions statutory rules the breach of which is justiciable. It was further held that non-observance of such administrative instructions did not give any right to a person like the appellant to come to court for any relief on the alleged breach of the instructions.

(c) Union of India v. Charanjit S. Gill, (2000) 5 SCC 742 wherein it has been observed by the Apex Court as under:-

All rules and regulations made under the Act are required to be published in the Official Gazette and on such publication shall have the effect as if enacted in the Act. No power is conferred upon the Central Government of issuing notes or issuing orders which could have the effect of the rules made under the Act. Rules and regulations or administrative instructions can neither be supplemented nor substituted under any provision of the Act or the rules and regulations framed thereunder. The administrative instructions issued or the notes attached to the rules which are not referable to any statutory authority cannot be permitted to bring about a result which may take away the rights vested in a person governed by the Act. The Government, however, has the power to fill up the gaps in supplementing the rules by issuing instructions if the rules are silent on the subject provided the instructions issued are not inconsistent with the rules already framed."

11. Counsel for the Respondents argued that there is no right that was lost, which could be pressed into service on the exoneration of the applicant from the charges levelled against her. The Rules are specific that Integrity certificate is required to be furnished by the State Government for effecting the select panel and that could be done only when the panel was in force. In the instant case the select panel being of March, 1993, was effective till March, 1994 and as no Integrity clearance certificate was issued by then, there is no question of the applicant being considered for promotion against the 1993 vacancies. Senior Standing counsel for Respondent No. 2 to 4 reiterated the contents contained in

the 2nd Additional Reply filed on behalf of Respondent No. 2 and 3.

12. Arguments were heard and documents perused. First as to the question whether the applicant's name appearing in the select list is qualified as "unconditional" or "provisional". The senior counsel argued that it was unconditional, while the respondents contend that it was only provisional. The senior counsel further submitted that if provisional, again, it cannot be the one coming under "deemed as conditional" but only to be "treated as provisional". The senior counsel tried to distinguish between "treated as provisional" and "deemed provisional" inviting our attention to the amended Regulations vide Annexure A-15. Therein, while a case falling within the provisions of the proviso under Regulation No. 5 is stated to be "treated as provisional" which was in existence even when the applicant was considered for promotion for the 1993 vacancies, the other category i.e. "deemed provisional" was introduced for the first time by proviso appended to Regulation 7(3) effective from 18th August, 1993 only. The said proviso, vide Annexure A-15 reads as under:-

"Provided that if an officer whose name is included in the Select List is, after such inclusion, issued with a charge sheet or a charge sheet is filed against him in a Court of Law, his name in the Select List shall be deemed to be provisional."

13. Thus, according to the Senior Counsel for the applicant, the case of the applicant has to be dealt only with the regulations that were in vogue as on the date of publication of the select list.

14. Admittedly the name of the applicant figured in the select list of 1993. At that time the charge sheet was not issued. However, the respondents had not afforded the promotion to the applicant for that year. Reason afforded was that

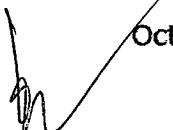
there was a case against the applicant. The charge Memo was issued to the applicant only in October, 1993. This would mean that the non promotion of the applicant was not on the basis of any pending disciplinary proceedings but on contemplation of proceedings. The question, then, is whether this is permissible as per the Regulations then in extant. Regulation No.5(5) with its attendant proviso reads as under:-

"5(5). The list shall be prepared by including the required number of names, first from amongst the officers finally classified as 'Outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names 'Inter-se' within each category shall be in the order of their seniority in the State Civil Service.

Provided that the name of any officer so included in the list, shall be treated as provisional, if the State Government, withholds the 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 Government."

15. The above proviso provides for treating the selection of any officer as provisional in case of the State Government withholds the integrity certificate or any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Government. This is the position as per amendment dated 30-03-1989. This being the regulation in extant, there was no infirmity in not promoting the applicant as per the select list at that particular point of time. In fact, the applicant's attempt to have the integrity certificate issued could not succeed when he took up the matter with the Tribunal in OA 1338/93 referred to earlier.

16. Disciplinary proceedings were pending during subsequent years till October, 2001 when only the proceedings were held to have been dropped.



17. What is the impact on promotion of any individual in whose case promotion was not afforded due to contemplation/pending of any proceedings, but after finalization of the inquiry, the individual is exonerated of all the charges. In so far as the decisions cited by the senior counsel all of them, save the decision in the case of **State of Tamil Nadu vs Badri Nath**, belonged to such services where sealed cover procedure had been in vogue. In so far as the All India Service Rules are concerned, the statutory provisions do not contemplate any sealed cover procedure, but states that provisionally the name could be included in the select list and during the period the list remains in force there is any recommendation by the State Government the appointment of such an officer shall be made. Proviso to Rule 9 of the Rules refers. In other words, what is to be seen in this case is whether clearance by the State Government was given within the currency of the select list. Select list was of 1993 and the very decision to exonerate the applicant took place as late as in 2001, by which time the currency of select list expired, there is no question of considering the case of the applicant for promotion in the year in which the select list was prepared. And, immediately after the decision to revoke the punishment of censure had been given, as the Respondents have considered the case of the applicant and promoted her to the higher post.

18. True, the decision by the Tribunal vide Annexure A-4 order observed that if the applicant is cleared of the charges all the benefits she may have lost, can be restored to her. This meant only any benefit which according to the Rules the applicant was entitled but lost due to the proceedings, that could be restored to her. When rules are clear that it is only when clearance is given during the currency of the select list that the provisionally selected candidate would be considered for promotion, the decision by this Tribunal as stated



above, cannot be stretched to the extent that the applicant should be considered for promotion with retrospective effect from 1993 with all consequential benefits.

19. Counsel for the applicant relied upon the decision in the case of Badrinath (supra) to hammer home the point that the promotion in that case being with retrospective effect, the ratio in that case should be followed. This aspect has also been considered. In Badrinath, the issue was when proceedings were not there at all, whether the respondents were right in imposing the penalty of censure and deny the said Shri Badrinath from being promoted to the grade of STS and the answer was in negative. In the instant case too, had there been a decision by the respondents that the proceedings initiated against the applicant ought not have been so initiated, the result would have been different. What view was taken at the review authority level was not a clear exoneration but one arising out of mercy. The Review Authority observed, "the Government servant allowing her husband in her official matters is committing a misconduct. Again, it is observed in the review order, " it has come out in evidence that orders passed by the review petitioner were so arbitrary and irrational that no reasonable man would pass such orders and ulterior motive could readily be inferred on the review petitioner who passed the orders." In the concluding portion the reviewing authority had decided to revoke the punishment of censure, "considering the fact that 'censure' even though a minor punishment will adversely affect the future prospects of the officer who had a longer period of service and whose service prior to and after this case do not carry adverse remarks." Thus, the reviewing authority had only thought of averting the adverse effects on the future prospects of the applicant. Thus the decision in Badrinath cannot be applied to the facts of

this case.

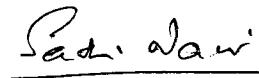
20. In view of the above, the O.A. is devoid of merit and is, therefore, dismissed. But under the circumstances, there shall be no order as to costs.

(Dated, the 19th July, 2007)



DR. K B S RAJAN

JUDICIAL MEMBER



SATHI NAIR

VICE CHAIRMAN

CVR.