

CENTRAL ADMINISTRATIVE TRIBUNA LUCKNOW BENCH LUCKNOW

Original Application No. 63/2008

Lucknow this, the 30th day of June, 2008

**HON'BLE MR. SHANKAR PRASAD MEMBER (A)
HON'BLE MR. M. KANTHAIAH, MEMBER (J)**

Ajai Verma,
Aged about 51 years,
S/o Dr. N. Verma,
R/o B-169, Nirallanagar, Lucknow.

By Advocate: In person.

Applicant.

Versus

1. State of UP through Principal Secretary, Home Secretariat, Lucknow.
2. Union of India though Secretary, Home, Central Secretariat, N Delhi.
3. Chairman, UPSC, Dholpur House, N Delhi.
4. Shree Vikram Singh, DGP, UP 1, Lahari Road Lucknow.

Respondents.

By Advocate: Sri A. K. Chaturvedi/Sri S.K. Tewari for Respondent No. 2.

Order

By Hon'ble Mr. Shankar Prasad Member (A):

By this O.A. the applicant seeks the following relief and interim relief.

“8. In view of the facts mentioned above the applicant prays for the following reliefs—

1. a correct re-appraisal and scrutiny of applicant's case for promotion by the DPC so that he is not superseded on account of malice and bias.
2. an order for leaving a seat vacant for promotion.
3. any and further relief which hon'ble Tribunal deems proper
9. Interim order, if any prayed for A

Pending final decision on the application, the applicant seeks the following interim relief-

1. a stay order on implementation and execution of proceedings of the DPC i.e. withholding of list of select –list of promotion into IPS."
2. The applicant is an officer of the UP police service. He has narrated a series of facts to allege that the DG is biased against him. He accordingly feels that the DPC shall not be fair to him.

It is stated on behalf of respondents that the meeting of Selection Committee took place on 28.12.2007 to prepare the year wise select list for the year 2006, 2007. It was stated on behalf of the State Govt. that the applicant has been considered in each of the years from 2001 to 2005 but he was not ~~found fit~~ ⁱⁿ ⁱⁿ ⁱⁿ ~~selected~~.

3. We have heard the learned counsels.
4. Section 19(1) of the AT ACT provides that a person aggrieved by an order can approach the Tribunal. The explanation to Section 19(1) is as under.

“Explanation- For the purposes of this sub-section, “order” means an order made-

 - (a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation (or society) owned or controlled by the Government; or
 - (b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation (or society referred to in clause (a).”
5. Section 20 (2) (b) read with Section 21 (1) (b) can imply that if a representation is pending for more than 6 months then the aggrieved person can approach the Tribunal.

6. CAT (PB) in G.P. Mathur and Ors. Vs. the State of Rajasthan & Ors. 1988(1) SLJ (CAT) 1 was considering the question as to whether the preparation of Select list in I.A.S. (Appointment by Promotion) regulation provides a cause of action. It held that it does provide a cause of action. 8.

7. The applicants in Ashok Kumar Gupta Vs. G.M. Eastern Rly. 1986 (3) CAT 450 were volunteers to assist ticket-checking staff and were apprehending termination. The Tribunal held:

"10. We, however, are of the opinion that this decision itself, even if it is construed as a threat is not binding, because a decision is always alterable and it is not considered final till it is communicated. Mr. Sen has produced before us a sanction No. C549/21/II-V/T dated 11th February, 1986, which would of to show that the Railway authorities have agreed to continue the sanction for utilization of the applicants. If that is so, then the decision quoted about naturally appears to have been modified. Therefore, much reliance cannot be given upon such statement where the word 'decided' has occurred. If really there is a sanction, there cannot be any decision as apprehended by the applicants. On that point, Mr. Sen has also referred to Craies on "Statute Law" 77th edition (page 87) ^{and} argued that if the words are ambiguous, and if too literal adherence of the words would produce absurdity and in-justice, we must give a benign construction which would uphold the case of the applicant. But, in this case, as we have stated above, the apparent threat seems to have been founded on a "decision" which is not only alterable but appears to have been altered, as has been established on the very admission and production of a document referred to above, by Mr. Sen, indicating continuation of a sanction for the utilization of these applicants.

11. In view of the circumstances stated above, we come to the conclusion that there is not only no immediate cause of grievance, but also that the apprehension about the possible retrenchment is not on firm grounds. Accordingly, the application should be dismissed and we dismiss it. Interim orders issued in this case would stand vacated."

8. (a) ^{read} Regulation 3(1) (a) ~~of the~~ with Regulation 3 (2) of IPS (Appointment by Promotion) Regulation 1955 provides that the Committee to make selection shall consist of Chairman and in his absence Member of UPSC, who shall preside over the meeting, Chief Secretary, Officer ^{not below rank of Secretary in the Home department,} DG cum IG(P), a member of service not below the rank of DIG and a nominee of GOI not below the rank of Joint Secretary.

(b) Regulation 5 provides for preparation of the list by the selection committee having regard to the principles mentioned there in. Regulation 6 provides for forwarding of the list to the commission along with records of officer, reasons recorded for supersession, and observations of State Govt. on the recommendations of the Committee. Rule 6A provides for forwarding of list to Central Government, who shall send their recommendations. The list is considered by the Commission after following ^{the}

the procedure laid down in Regulation 7 (1) (2). The list as finally approved is the select list.

8.9 (a) The Apex Court in R.S. Dass Vs. U.O.I. 1986 Supp. SCC 618 has held: Para -

On Dr
Page 638

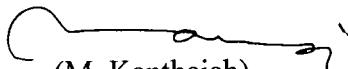
"It is true that where merit is the sole basis of promotion, the power of selection becomes wide and liable to be abused with less difficulty. But that does not justify presumption regarding arbitrary exercise of power. The machinery designed for preparation of Select List under the regulations for promotion to All India Service, ensures objective and impartial selection. The Selection Committee is constituted by high ranking responsible officers presided over by Chairman or a Member of the Union Public Service Commission. There is no reason to hold that they would not act in a fair and impartial manner in making selection. The recommendations of the Selection Committee are scrutinized by the State Government and if it finds any discrimination in the selection it has power to refer the matter to the Commission with its recommendations. The Commission is under a legal obligation to consider the view expressed by the State Government along with the records of officers, before approving the Select List. The Selection Committee and the Commission both include persons having requisite knowledge, experience and expertise to assess the service records and ability to adjudge the suitability of officers. In this view we find no good reasons to hold that in the absence of reasons the selection would be made arbitrarily. Where power is vested in high authority there is a presumption that the same would be exercised in a reasonable manner and if the selection is made on extraneous considerations, in arbitrary manner the courts have ample power to strike down the same and that is an adequate safeguard against the arbitrary exercise of power."

8.9 (b) The Apex Court in UPSC Vs. K. Rajah 2005 SCC (L&S) 738 has held

"The first respondent could not be selected for the reason that he did not get the gradation of "outstanding" for four years in a block of five years that was taken into account for the purpose of evaluating the merits of the candidates. Although for three years the Selection Committee had graded him "outstanding", but for one year the Committee graded him as "very good" in view of the difference of opinion expressed by the reporting officer and the reviewing officer. There is no unfairness or arbitrariness in grading the first respondent as "very good" for one year. It is therefore, not possible to accept the contention that for that year too, which falls within the five-year range, the first respondent ought to have been graded as "outstanding" in conformity with the grading in the ACR. Normally, the Court will not interfere with the evaluation done by the Commission on a consideration of relevant material. However, there are some doubts on the validity of guidelines evolved in this behalf. The procedure of assigning the overall grading as "outstanding", only if an officer was classified as such in the ACRs of four out of five years, seems to dilute the procedure of selection by merit and give primacy to seniority to some extent. For instance, if a junior officer gets three "outstanding" grades and two "very good" gradings, the officers senior to him, though they might not have got "outstanding" even for one year, will be selected by virtue of their seniority. Whether this result that follows from the application of the criterion that is being adopted by the Commission is contrary to the statutory Regulations or whether such criterion would be

violative of Articles 14 and 16, is a matter which might deserve serious consideration. But, in the absence of specific challenge to the rule or the procedural guidelines spelt out in the additional affidavit filed by UPSC and the arguments not having been advanced on this aspect, no definite opinion need be expressed on this aspect. Taking an overall view and having due regard to the limitations inherent in judicial review of selection process by an expert body, the decision taken by UPSC need not be nullified."

10. Coming to the facts of this case, we find that DPC has met on 28.12.2007. The O.A. is filed on 6.2.2008. There is no representation submitted. The select list has still not been finalized. The UPSC is a Constitutional and expert Body. We are accordingly of the view that the O.A. is premature. It is dismissed. It will, however, be open to applicant to file a fresh O.A. after the select list is prepared. We have expressed no opinion on merits. O.A. is dismissed. No costs.


(M. Kanthaiah)
Member (J) 30-06-2008


(Shankar Prasad)
Member (A)