

(AS)

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH  
LUCKNOW

Original Application No. 310 of 1990

Bhagat Singh Verma.....

Applicant.

V E R S U S

Union of India & .....  
Others

Respondents.

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, A.M.

( By Hon'ble Mr. K. Obayya, Member(A) )

The applicant, who joined U.P. State Civil Service(Executive Branch) in the year 1963 after selection as a direct recruit, was considered and included in the select list for the year 1988 for appointment to Indian Administrative Service(I.A.S). There followed a letter dated 10.5.1989 asking for his option to be appointed to I.A.S. which he promptly conveyed the very next day i.e. 11.5.1989; notwithstanding this, no appointment order was issued, and it has been an endless wait since then; Aggrieved he has approached the Tribunal for a direction to the respondents to appoint him to I.A.S. cadre of 1988 batch.

2. The contention of the applicant is that though he was eligible for inclusion in the "select list" drawn up for the earlier years prior to 1988 his name was not considered, because of a "warning" issued to him in 1985. That warning entry however no more subsists, as the U.P. Public Services Tribunal by its order dated 4.12.1989, quashed the "warning - memo", while allowing his claim petition 458/F/IV/88/. The respondents have accepted the verdict of the Tribunal, as no appeal has been preferred by them, as such there remained no hurdle, to appoint the applicant to 1988 batch of I.A.S. with consequential benefits of seniority and other benefits.

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3. The respondents have opposed the case and in the Counter it is pointed out that the applicant has approached this Tribunal earlier in O.A. No 1350 of 1988 and also filed W.P. 1305 of 1988 in the High Court and claim petition no. 458-F-IV-88 in U.P. Public Service Tribunal for similar relief and also against the warning issued to him, as such this petition is not maintainable. It is stated that in compliance with the interim order granted by the U.P. Public Service Tribunal the applicant's case was considered and his name was included in the select list provisionally subject to the condition that he may be reverted incase his claim petition before the U.P. Public Service Tribunal is not allowed. A proposal to this effect was also sent to Govt. Of India<sup>which</sup> informed the U.P. State Government that he could be appointed to I.A.S. only if his name was included unconditionally in select list. However, the State Government has kept a vacancy reserved for the applicant. It is also pointed out that the applicant's case for inclusion in the select list of 1987 in accordance with the direction given in O.A. 1350/88 was considered by the Review Selection Committee which met on 6.6.91. The proceedings of the Selection Committee however, have not been communicated. It is further pointed out that according to Regulation 9(2) of I.A.S. (Appointment by promotion) Regulation 1955, the State Government is required to furnish a certificate to the effect that subsequent to the inclusion of the name of the officer in the select list there has been no deterioration in his work so as to render him unsuitable for appointment to service nor there is any lapse in his conduct or performance of his duties which has come to the notice of the State Government. The State Government could not furnish the above certificate as the conduct of the applicant was under enquiry for certain misdeeds relating to the period 1980-1982 when the applicant was posted as Project Administrator in Jan-Jati Vikas Pradhikaran, Dehradun and also during the year 1984 when he was working as Regional Food Controller at Merrut. The enquiry in the above cases was completed on 20.2.90 and a decision was taken by the State Government to initiate a disciplinary proceeding

against the applicant. Charge Sheet was served on the applicant and an enquiry officer was also appointed. The enquiry is in progress. The disciplinary proceedings has not yet been finalised. The U.P.S.C. and also the Govt. of India were informed of the disciplinary case on 20.2.90. The respondents admit that juniors to the applicant in the list of 1988 were all appointed and also even Select List of the year 1989 has also been cleared.

4. In the Rejoinder it is stated by the applicant that a decision to initiate disciplinary proceedings was taken on 12.10.90 and this can never be held against him as the selections were for the list of 1988 and also the entry of warning which was given to him was set aside by U.P. Public Service Tribunal.

5. The counsel of the parties were heard. The learned counsel for the applicant pointed out that the applicant is denied of his due appointment though he has the decisions of this Tribunal in his favour. As the "warning" issued to him was struck down there is no other hurdle in the way of appointment but the respondents are un-necessarily delaying the matter which amounts to harassment of the applicant.

6. The claim petition filed by the applicant before the U.P. Public Service Tribunal was allowed and vide order dated 4.12.89 "warning" issued to the applicant was quashed. Thereafter the applicant approached the Tribunal in O.A.No. 1350 of 1988 which was considered by a Bench of this Tribunal consisting one of us (Hon.Mr. K. Obayya). The application was allowed and vide order dated 16.1.1991 the respondents were directed to "convene a Review D.P.C. and consider the case of applicant for inclusion in the select list of 1987 for appointment of I.A.S. on merits as per Rules within four months from the date of the receipt of this order". Thereafter it would appear that Review Selection Committee was convened on 6.6.1991 but the proceedings there of have not been notified.

The respondents have not come up with any explanation as to why the matter is held up particularly when a time limit of four months was indicated for completion of formalities to the appointment of the applicant to I.A.S. in the select list of 1987. The counsel for the respondents stated that the delay was due to the fact that the matter had to be taken up with the U.P.S.C. and also Department of Personnel, Government of India.

7. It is noticed that the respondents have not taken a consistent stand in the matter, firstly following the decision of the U.P. Public Service Tribunal, the applicant was included provisionally in the Select List of 1987. Thereafter the matter was referred to Government of India for issue of necessary order, but they were informed, that since the inclusion of the applicant in the Select List is "Provisional" unless the matter is cleared by U.P. Public Service Tribunal further action cannot be taken. The U.P. Public Service Tribunal has subsequently decided the case on 9/12/89, allowing the claim petition with direction to the respondents to consider the case of the applicant ignoring "warning" issues. There being no other adverse factor against the applicant, appointment order should have been issued to him since the "conditionality" of his inclusion in the list no more subsisted. However, that was not done. From the respondents side there is no explanation whatsoever to this. Secondly; though a Review Selection Committee was convened in pursuance of directions of the Tribunal in O.A. No. 1350/88 its decision has not been notified. For the first time the respondents have come up with case that the conduct of the applicant was under enquiry which was completed only on 20.2.90, consequently certificate of fitness of the applicant for appointment to I.A.S. as required under Regulation 9(2) of I.A.S. (Appointment for promotion) — Regulation, 1955 could not be issued. Curiously the respondents have not mentioned any thing about fact finding enquiry that was on, in their counter in earlier cases. In the final analysis, it remains;

transpires that what is standing in the way of applicants appointment is not the "warning" or want of merit or any other adverse factor but the disciplinary proceedings for which a charge-sheet has been issued.

8. The question that arises in these circumstances is whether the applicant be denied appointment after inclusion in the "Select List" because of a charge memo which was issued subsequently. Reference is made to the case of Union of India Vs. Janki Raman (A.I.R., 1991 (s (SC) page 2010). Wherein the Supreme Court held that it is only after issue of charge memo, the disciplinary proceedings is deemed to have started and sealed cover procedure has to be resorted to in such cases; and not in cases where there is only a preliminary enquiry or investigation. The Supreme Court further held that promotion cannot be denied, unless at the relevant time of consideration, charge memo has already been issued and the disciplinary case is pending. Admittedly when the Selection Committee met to consider the select list of 1987 or 1988 there was no charge memo issued to the applicant. May be his conduct was under inquiry or investigation. In this background of law as enunciated by the Supreme Court in the case referred to above, we have no hesitation whatsoever to hold that the applicant was not only entitled to be considered but also to be included in the list on consideration of merit. There was no legal bar operating against such consideration and inclusion. The respondents have obviously erred in not considering the case of the applicant and it would appear even the sealed cover procedure was not adopted even though that was also not warranted.

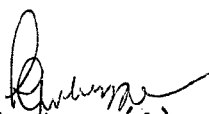
9. The other plea taken up by the respondents is that they could not furnish certificate of fitness of the applicant as required under Regulation 9(2) of I.A.S. (Appointment by Promotion) Regulation. This regulation refers to subsequent deterioration in the work or conduct of a candidate already selected. This is a First Selection Stage and cannot

refers to subsequent deterioration in the work or conduct of a candidate already selected. This is a Post Selection Process, and cannot be made applicable to Pre-Selection conduct. There is no charge or enquiry against the applicant for any misdeed after his inclusion in the list of 1987 or 1988. Therefore it cannot be said that there has been deterioration in his work or conduct during 1989 or thereafter. The charges against the applicant relate to his conduct or misconduct during the period 1980 to 1984, and not to later years. There being no charge or enquiry for Post-Selection conduct of the applicant, the foundation of "Subsequent" misconduct falls with withholding of fitness certificate, therefore is not on valid grounds,

10. The applicant has approached different forums for his cause. Though the decisions of Tribunals are in his favour, for some reasons, or the other, the respondents have withheld his appointment to I.A.S. First it was the "warning" and later it is the "Charge Memo". Which according to the respondents stood in the way of applicant's consideration and appointment, As observed by us, earlier, warning 'ceased' to be of any adverse factor after it was set aside, and so far as the charge memo is concerned, that was issued on 12.10.90, and at the relevant time when the applicant was due for consideration, when his juniors and batchmates were considered for 1987 and 1988 Select List, the applicant was not facing any departmental proceedings, hence the charge memo which is a Post Selection development will not stand in the way of applicant's inclusion in the Select List and appointment to I.A.S. For the reasons discussed above, the application deserves to be allowed, and accordingly it is allowed. The learned counsel for respondents has informed us that the applicant has already been appointed to I.A.S. vide order dated 3.3.92. The appointment order was given in pursuance of our int. order dated 17/10/91. It is to be noted that the applicant has been appointed to I.A.S.

was given in pursuance of our interim order dated 13.12.91. We have seen this order. The applicant has been appointed to I.A.S. on Probation with immediate effect and stands allotted to U.P. State Cadre. The above order has been issued subject the decision of the Tribunal in O.A. 928/88, 109/91 appeal 973-74/85 and also application no. 6-7/91, filed in Supreme Court. These cases were filed by others. We have not been informed as to how these cases are linked to the case of the applicant. Perhaps inter-se seniority is involved in these matters. We do not wish to say any thing regarding these pending cases. The respondents will take such action as is warranted by law. There is also a direction of the Tribunal in O.A. 1350/88 to consider the applicant for 1987 list. On this no final decision has been taken. It is for the applicant to agitate this matter with the respondents if he chooses.

11. So far as the instant case before us is concerned, we allow the application and direct the respondents to treat his promotion as promotion on regular basis from 1988 list, and his seniority be assigned as per his entitlement under law. Parties to bear their costs.

  
Member (A)

  
Vice Chairman

Lucknow, Dated 11<sup>th</sup> December, 1992