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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 576 of 1987
T.A. No.

1987

DATE OF DECISION 15.2.1990

S.A. Engineer Petitioner

Mr. C.U. Singh Advocate for the Petitioner(s)

Versus

Union of India & others Respondent

Mr. V.S. Masurkar Advocate for the Respondent(s)

Mr. G.K. Neelkant

CORAM

The Hon'ble Mr. G. Sreedharan Nair, V.C.

The Hon'ble Mr. Mr. P.S. Chaudhuri, M(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? X
2. To be referred to the Reporter or not? ~~Yes~~ Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? X
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

(G. Sreedharan Nair)
Vice-Chairman

(14) (174)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH, NEW BOMBAY

Registration No.O.A. 576 of 1987

Date of decision 15.2.1990

S.A. Engineer

Applicant

- versus -

The Union of India and others ..

Respondents

CORAM : Hon'ble Shri G.Sreedharan Nair, Vice-Chairman

Hon'ble Shri P.S. Chaudhuri, Member(A)

Counsel for the applicant : Mr. C.U. Singh..

Counsel for respondent no.1 : Mr. V.S. Masurkar

Counsel for respondent no.3 : Mr. G.K. Neelkant.

ORDER

G.Sreedharan Nair, Vice-Chairman :- The grievance of the applicant, a State Civil Service Officer, is against the inaction on the part of the respondents 1 and 3, the Union of India and the State Government respectively, in not appointing him by promotion to the Indian Administrative Service, for short 'the IAS'. It is urged that though his name was included in the Select List for the year 1985 and he was appointed to a cadre post with effect from 11.9.1985, since none was appointed from that list, the applicant could not secure appointment. It is further stated that he was included in the Select List for 1986 as well and was ranked at serial no.9, ^{and then} though vacancies existed and ^{he} continued to hold a cadre post, he was not appointed to the IAS as the third respondent illegally withheld the 'No deterioration in performance Certificate'. It is alleged that the name of the applicant was provisionally placed at serial no.2

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in the 1987 Select List as the third respondent did not issue the integrity certificate. According to the applicant, the non-issue of the 'No deterioration in performance certificate' and the 'Integrity Certificate' were only on account of some alleged lapses on the part of the applicant during the period 1980-1981 when ~~the applicant~~ ^{he} was working as District Supply Officer at Solapur, on the basis of which charges were proposed to be issued. It is pointed out that in view of sub-regulation (2) of regulation 9 of Indian Administrative Service (Appointment by Promotion) Regulations, 1955, referred to hereinafter as 'the Regulations', what is relevant is only no deterioration in the work of the member of the State Civil Service during the period intervening between the inclusion of his name in the Select List and the date of the proposed appointment.

2. The applicant has prayed for a direction to the first and third respondents to appoint him by promotion to the IAS from the year 1985 or the year 1986 or at least the year 1987.

3. Through the Miscellaneous Application No.462 of 1989 filed on 25.5.1989, the applicant has also pointed out that though a memorandum of charges was issued against the applicant by the third respondent in the year 1988, after examining his reply and on investigation of the matter, it was withdrawn and the enquiry was dropped by the order dated 8.6.1989.

4. In the reply filed by the first respondent, it is stated that from the 1985 Select List nobody was promoted from the State Civil Service to the IAS.

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It is admitted that though the name of the applicant was included at serial no.9 in the 1986 Select List, it was in view of withholding of the 'No deterioration in performance Certificate' that he was not appointed. As regards the 1987 Select List, it is admitted that the applicant was found suitable and his name was placed therein provisionally at serial no.2 with the stipulation that his appointment to the IAS would be subject to the enquiry pending or decided to be instituted against him and the grant of 'Integrity Certificate' by the State Government. It is further admitted that though his juniors in the Select List were appointed to the IAS, it was done after keeping a post reserved for the applicant. It is stated that since the applicant has not been exonerated of the charges, he has not been appointed to the IAS.

5. In the reply filed by the third respondent, it is stated that though the 'Integrity Certificate' was issued in respect of the applicant in 1985, at that time the State Government did not know about the lapses on the part of the applicant. It is stated that it was only in April, 1986 that the Commissioner, Pune Division, recommended institution of a departmental enquiry against the applicant and it was on that account that the 'No deterioration in performance Certificate' was not issued in 1986 and the 'Integrity Certificate' was not issued in 1987.

6. Counsel of the applicant submitted that in view of sub-regulation (2) of regulation 9 of the Regulations, what is relevant is only any deterioration

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in the work of the member of the State Civil Service which in the opinion of the State Government is to render him unsuitable for appointment to the IAS, concerning the period intervening between the inclusion of the name in the Select List and the date of the proposed appointment. It was pointed out that the alleged lapses related to the period 1980-1981 and as such the withholding of the 'No deterioration in performance Certificate' was illegal. We are in agreement with the submission in view of the clear provision in sub-regulation (2) of regulation 9 of the Regulations. However, a direction for promotion of the applicant to the IAS on the basis of the 1986 Select List is not necessary at this stage since it is admitted that nobody who was junior in that list was promoted to the IAS.

7. When the Selection Committee met for preparing the Select List for 1987, the applicant was found suitable and he was placed at serial no.2 in the List. But it was done only provisionally in view of the non-issue of the integrity certificate by the State Government. Evidently, it was on account of the report of the Commissioner, Pune, with respect to the alleged lapses on the part of the applicant that the 'Integrity Certificate' was withheld. It is on record that when the applicant submitted his reply to the memorandum of charges, the State Government by the order dated 8.3.1989 ordered that the departmental enquiry against the applicant should be closed as it was found on investigation that the applicant had no direct involvement in the alleged irregularities. We do not

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find any merit in the submission of counsel of the first respondent that as the applicant has not been exonerated of the charges, he cannot claim the issue of the 'Integrity Certificate' and consequential promotion to the IAS. The order dated 8.3.1989 very clearly holds that the applicant has no direct involvement in the alleged irregularities which formed the basis of the memorandum of charges. The enquiry proceedings have been closed as a result of the said order. The result is that there cannot be any further delay in the matter of the issue of the 'Integrity Certificate' and the promotion of the applicant to the IAS. It may be pointed out in this context that though the juniors to the applicant in the 1987 Select List were appointed to the IAS, it was done after keeping a post reserved for the applicant. The first respondent has categorically stated in the reply that appointment of the applicant has not been done only on account of the pendency of the charges. Now, that the departmental enquiry has been closed holding that the applicant has no direct involvement in the alleged irregularities, it behoves the third respondent to issue the 'Integrity Certificate' and 'No deterioration in performance Certificate' as on 1987, that was withheld, ~~and~~ and the first respondent to appoint the applicant to the IAS on the basis of the 1987 Select List. We direct the respondents to do so within a period of two months from the date of receipt of copy of this order. The applicant shall be allowed consequential benefits

[Signature]

[Signature]

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treating him as having been promoted to the IAS from the date on which his immediate junior in the 1987 Select List was so promoted, except the difference in pay during the period when he had not actually worked in the IAS.

8. The application is allowed as above.

P. S. Chaudhuri

(P.S. Chaudhuri)
Member (A)

G. Sreedharan Nair
15-2-1990

(G.Sreedharan Nair)
Vice-Chairman

Judgment dt. 15.2.90
Send to parties
on 26.2.90.

Shankar

Judgment dt. 15.2.90
served on R.Nos. 1 & 3
on 2.3.90.

Shankar
14.3.90