CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATIONS 710 & 711/96

THIS THE 26th DAY OF JUNE, 2001

CORAM

HON'BLE SMT. SHANTA SHASTRY. ... MEMBER (A)
HON'BLE SHRI SHANKER RAJU. ... MEMBER (J)

1. Shri Arvind M. Reddy,
S/o Madhav Reddy,
Aged 54 years, Indian Inhabitant,
Residing at 1 Gajraj Society,
Near Forest Colony,
Korpi, Thane (E)-400 603.
Currently employed as Additional Commissioner
Konkan Division, Mumbai,
Maharashtra State. ... Applicant in
OA 710/96

2. Shri Dalwai Ashraf Husain Khan,
S/o Dalwai Rahaim Khan,
Age 55 years, Indian Inhabitant,
Residing at 14 Bell-Haven,
New Marine Lines, Mumbai-400 020
Currently employed as Joint Secretary
to the Govt. of Maharashtra,
Housing and Special Assistance
Department, Mantralaya,
Mumbai-400 032. ... Applicant in
OA 711/96

By Applicant Miss Swati P. Manchekar

Vs.

1. Union of India, through
Secretary Department of Personnel,
Ministry of Personnel, Public
Grievances & Training, Govt. of India,
New Delhi.

2. The State of Maharashtra,
through Chief Secretary,
Govt. of Maharashtra. ... Respondents

By A.C.G.S.C. Shri V.S.Masurkar.

O R D E R

Hon'ble Smt. Shanta Shastry. ... Member (A)

In these OAs the issue is common and the facts are also identical, except for the dates and serial numbers. The relief sought is also identical. Therefore, we are proceeding to dispose them of by a common order.

2. The facts in these OAs are that the applicants are members of the State Civil Service of Maharashtra. They are eligible for being appointed to the IAS against promotion quota in the year 1985 against the anticipated vacancies in the year 1986. They were considered for selection in a meeting of the UPSC held on 13.2.1985. Both were recommended for appointment to the IAS by the UPSC and they were placed at Sl. No.12 and 13 in the select list. Another officer Shri S.A. Engineer was at Sl. No.11 of the said select list. Further, no appointments could be given against the select list due to inability of the State Government to issue no deterioration certificate in the case of Shri S.A. Engineer, who was placed in the panel above the applicants. According to the regulation 8 of the IAS (Appointment by Promotion) Regulation 1955 appointments to the IAS shall follow the order in which the names of such officers appear in the select list. Further, this list could not be operated because the UPSC met on

19.12.1985 to prepare the subsequent select list in terms of the first proviso to Regulation 7 (4) of the IAS (Appointment by Promotion) Regulation 1955. According to which, no appointment to the service under Regulation 9 shall be made after the meeting of fresh committee to draw up a fresh list under Regulation 5 is held. After the meeting of 19.12.1985 the UPSC approved the select list on 23.1.1986. In this list, the applicants were placed at Sl. NO.10 & 11 while Shri S.A. Engineer was placed at Sl. NO.9 of the list. Officers upto Sl. No.8 of the select list were appointed to the IAS. But the applicants in these OAs as well as Shri Engineer were again not given the appointment. The next meeting of the Commission was held on 15.12.1986 to prepare the next select list. In this list, the applicants were placed at Sl. No.3 and 4 Shri Engineer was placed at Sl. No.2 provisionally subject to the clearance of the enquiries pending against him and grant of integrity certificate by the State Government. Finally, both the applicants were appointed on promotion to the IAS vide notification dated 6.11.1987 after keeping a post reserved for the provisionally included officer namely Shri S.A. Engineer.

3. After the notification was issued, the applicants were assigned 1982 as the year of allotment. According to the applicants they should have been allotted 1981 or even 1980 as the year of allotment

because they were in the select list of 1985. It was because of the delay on the part of the State Government in not sending the proposals to the Government of India that the applicants could not be appointed earlier. There were more than adequate vacancies available to accommodate the applicants. However, their cases were not at all considered for appointment. Further once a select list is approved by the UPSC then the sending of the names of the officers in the select list to the Government of India and the actual issuance of appointment order by the Government of India are mere formalities and the selected officers have a right accrued to them for getting appointed. Although the Central Government has the power not to appoint any person whose name appears in the select list, however, this power is available if it is of the opinion that it is necessary or expedient in public interest and the proviso to Regulation 10 lays down that such a decision not to appoint a person from the select list shall not be taken by the Central Government without consulting the UPSC. In the present case this power is not required to be extended as the State Government merely overlooked or failed to send the proposal for appointment after the integrity certificate of Shri Engineer in the select list was with held. It is further surprising that even after coming into the select list next year, the respondents i.e. the State Government failed to send the proposal to the Central Government again for the same reason that Shri Engineer

could not be issued 'no deterioration certificate' by the State Government. In the meantime Shri Engineer filed OA No. 576/87 and a review application. The OA was decided on 15.2.1990 by directing the respondents to appoint Shri Engineer to the IAS on the basis of 1987 select list. Therefore, Shri Engineer was appointed to the IAS and was assigned 1981 as the year of allotment because he had officiated in a cadre post prior to 1.4.1986. The applicants are aggrieved that though they were also in the same select list as Shri Engineer, they have been assigned 1982 as the year of allotment. This is discriminatory and they should have been given the year of allotment as 1981. They accordingly represented to Government of India and the State government. The State government forwarded their application to consider the request of the applicants sympathetically as it was not the fault of the applicants and their proposal could not be sent to Government of India in time. The Government of India after careful consideration of their representations, rejected the same stating that there is no case for considering the anti dating of the date of appointment of these officers or for revising the year of allotment. The State Government had not sent any proposals for the appointment of the applicants during the period when the select list of 1985 was in force. Under the rules, it is necessary to keep the positions vacant in respect of each officer included in the select list during the period for which the select list remain in force. The applicants, have therefore, impugned the

letter of the Government of India dated 5th January, 1996 and the copy of the order of Government of Mahaarashtra dated 12th March, 1996 informing them about the rejection of their representation. The applicants have further argued that if the State Government was unable to issue 'no deterioration certificate' in respect of Shri Engineer, who was placed higher in the select list than the applicants, the State Government could easily have reserved one post for Shri Engineer and sent the proposals of the applicants. There were adequate number of vacancies available. The State Government failed to do this. It is only after the third time the applicants got into the select list in 1987 the State Government sent the proposals of the applicant and issued the notification of their appointment by keeping one post reserved for Shri Engineer. It is the delay of the State Government which has caused damage to their career by giving them later allotment year and since the State Government had acknowledged and admitted the mistake in not sending their proposals in time, the Central Government should have taken a sympathetic view in the matter.

4. The applicants have also relied on some judgments. One of them is in the case of Saroj Siwatch (Smt) & Others Vs. Union of India & Others (1996 34 ATC 7) decided by the Chandigarh bench of this Tribunal in January, 96. In this case, the State Government after the select list of officers to be promoted to the IAS was available, promoted only 2 persons from the list and

did not operate the remaining select list though vacancies against promotion quota existed. The Tribunal, therefore, set aside the orders and directed to consider appointment of applicants from the select list to the IAS and to make necessary recommendations to the Central Government in that behalf. According to the applicants, their case is similar and therefore, the applicants should have been given the allotment year of 1981 by giving them appointment in 1985 itself. The applicants have further referred to judgment of the Supreme Court in the matter of Asha Kaul (Mrs) & another Vs. State of Jammu & Kashmir & Others. Another case on which the applicants have relied upon is Union Teritory of Chandigarh Vs. Dilbagh Singh & Others (1993 (1) SCC 154). It was held by the Supreme Court in this case that while the applicants may have legitimate expectation for being appointed, they failed to prove their right to be appointed in absence of any rule to that effect. However, such a decision/action must be non arbitrary and bonafide. According to the applicants in their case the select list was approved, yet the State Government failed to send the proposal to the Central Government in time. They had no bonafide reasons and the decision not to send the names of the applicants to the Central Government was arbitrary.

5. The learned counsel for the respondents argued that because 'no deterioration certificate' could not be issued in respect of Shri Engineer, the proposals could

not be sent to the Central Government in respect of the applicants during the first 2 years of selection. The State Government did make a reference in 1986 to the UPSC to appoint the applicants pending 'no deterioration certificate' to be given in the case of Shri Engineer. The UPSC vide their letter dated 29.8.86 made it very clear that unless Shri Engineer was appointed first or his name was deleted after a special review the applicants and others below him in the select list could not be appointed on promotion. Therefore, the State Government took action to get the name of Shri Engineer deleted and finally succeeded in issuing the notification of appointment of the applicants to the IAS in 1987. The State Government had tried its best to do justice to the applicants. Further, Shri Engineer had approached the Central Administrative Tribunal for a decision to appoint him to the IAS. The Tribunal ordered in 1990 to consider his appointment only on the basis of select list of 1987. No retrospective effect was given to his appointment. since the applicants are juniors to Shri engineer they could not be promoted earlier than Shri Engineer and therefore, they were promoted only in 1987 and were granted the year of allotment on the basis of officiating in a cadre post. Thus, the respondents acted in a fair manner. There was no arbitrariness and they had valid reason for not sending the proposals of the applicants in time.

6. The respondents have also taken a plea that the applicants knew in the year 1988 itself that they had been allotted 1982 as the year of allotment. But they have represented very late in the year 1995-96. Thus the application suffers from latches and delay and is not within limitation period i.e. within one year of the date of cause of action. The applicants further submit that the cause of action has arisen in 1996 when they got the reply rejecting their representation and they are, therefore, very much within the limitation period. They have approached this Tribunal within the limitation period.

7. We have given careful consideration to the rival contentions in these two OAs. In order to ascertain the correct position as to why the applicants' proposals were not sent to the Central Government within time, we had directed the respondents to produce the relevant records. Accordingly, the files relating to the selection process for the year 1985, 1986 and 1987 have been made available by the respondents. We have perused the same. We find that there is no denial that both the applicants were included in the select list of 1985. There were adequate number of vacancies and the applicants could have been easily appointed on promotion to the IAS on the basis of that select list. We find that the State Government could forward the proposals only in respect of the first 10 candidates of the select list and could not forward the names of the applicants

because candidates seniors to them in the select list could not be given no deterioration certificate. Also there was some delay in getting the no deterioration certificate in respect of applicant in OA 710/96. Before the State Government could send the proposal the life of the select list was over as the next meeting was held on 19.12.1985. Again the applicants were there in this select list they could not be appointed for the same reason that Shri engineer, who was placed above them in the select list could not be appointed for want of no deterioration certificate. However, we find from the records that the State Government did make an attempt to get the name of Shri Engineer deleted, so as to give appointment to the applicants. This request of the State Government was not agreed to by the UPSC vide their letter dated 29th August, 1986. Before the State Government could move further in the matter and follow the advice of the UPSC the life of select list of 19.12.1985 also got over as the next meeting of the UPSC for fresh selection was held on 19th December, 1986 and thereafter the respondents too necessary action and could give appointments to the applicants after completion of all the formalities. Therefore, there could not be anything arbitrary in this matter. There was no deliberate attempt on the part of the State government to with hold the appointment of the applicants.

8. We have perused the judgment cited by the applicants. In fact the respondents are also relying on the same judgment to some extent. It is a fact that no one has any indefeasible right to be appointed just because he or she is in the select list. It is equally accptable that there has to be a valid reason or bonafide reason for not acting on the aapproved select list. According to us the judgment in the case of Smt. Saroj Siwatch & Others cannot be said to be applicable in the case of applicants because the State Government has not acted in any arbitrary manner, they had valid reason for not forwarding the names of the applicants to the Central Government. Therefore, the judgment is distinguishable. The applicants have argued that their applications are not barred by limitation nor do they suffer from delay and latches. We find that the applicants were well aware of the year of allotment given to them as well as to Shri Engineer. Not only that in 1990 when the Tribunal decided the case of Shri Engineer in OA 576/87 it was evident that the applicants could not have got the appointment before 1987. They waited for a prolonged period to approach this Tribunal. We, therefore, are unable to condone the delay in this matter. In fact in the case of Asha Kaul it has been held by the Supreme Court that since the application suffer from latches and the applicants therein had approached the High Court after a delay of more than 20 months the relief could not be granted. In the present case there is a delay of much longer duration.

Therefore, the applicants cannot be granted the relief they have sought for on this ground. Further according to the Regulation the select list is in operation only till the next fresh select list is drawn up and thereafter also after the period of lapse of the list any direction to the Government to give appointment to the applicants against select list of 1985 would be futile. Hence no interference with the Government's action can be called for at this belated stage.

9. In our considered view the action of the respondents cannot be faulted. They have acted in a fair manner. There is no arbitrariness and therefore, no relief could be granted as prayed. The OAs are, therefore, dismissed accordingly. We do not order any costs.

(SHANKER RAJU)
MEMBER (J)

(SMT. SHANTA SHASTRY)
MEMBER (A)

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