

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH BANGALORE

DATED THIS THE 19TH NOVEMBER 1986

Present: Hon'ble Shri Ch. Ramakrishna Rao,

Member(J)

Hon'ble Shri P. Srinivasan,

Member(A)

APPLICATION NO.1719/86(T)

S.D. Nayak, son of late  
Sri Dhenga Nayak, age 54 years,  
Special Deputy Commissioner,  
for Indm Abolition, Bangalore

Applica t

(Shri Patil Kulkarni, Advocate)  
Vs.

1. The Union of India,  
represented by its Secretary,  
Government of India, Ministry  
of Home Affairs, New Delhi.
2. The State of Karnataka, by  
its Chief Secretary, Vidhana  
Soudha, Bangalore-1.
3. The Selection Committee to  
the Cadre of I.A.S. appoint-  
ment by promotion, represented  
by its Chairman, Union Public  
Service Commission,  
New Delhi.
4. Union Public Service Commission,  
by its Secretary,  
New Delhi.
5. G.G.Purshottam, Dy. Secretary,  
H.U.D., Vidhana Soudha,  
Bangalore.
6. N.N. Kathavi, Director,  
Karnataka Dairy Development  
Corporation, Bangalore.
7. S.A. Patil, Gazetted Assistant  
to the Divisional Commissioner,  
Bangalore Division, Bangalore.
8. M. Maheshan, Spl. Dy. Commissioner,  
Bangalore District,  
Bangalore.

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9. B. Parthasarathy, Dy. Secretary, Home Department, Vishana Seudha, Bangalore.
10. R. Suresh, Dy. Commissioner, Bangalore City Corporation, Bangalore.
11. R.K. Bhatia, Spl. Deputy Commissioner, Raichur.
12. B. Iswara, Secretary, Karnataka State Beggars Relief Committee, Multistoreyed Building, Bangalore-1.
13. V.Govindaraj, Spl. Deputy Commissioner, Gulbarga.
14. A.R. Chandrashasa Gupta, Spl. Dy. Commissioner, Mysore.
15. Narendra Singh, Spl. Deputy Commissioner, Tumkur.
16. Ranganath Kelwadi, Spl. Deputy Commissioner, Belgaum.
17. V.C. Hullur, Spl. Deputy Commissioner, Mandya.
18. Mir Zafar Ali Khan, Special Dy. Commissioner, Dharwad.

Respondents

(Shri M.S. Padmarajaiah, Advocate)

The application has come up for hearing before this Tribunal, to-day, Member (A) made the following:-

#### ORDER

This is a transferred application received from the High Court of Karnataka.

2. The applicant is at present a retired employee of Karnataka Administrative Service (KAS). His grievance is that though he was placed at No.8 on the select list for the purpose of appointment to the IAS by the Selection Committee which met in November, 1977 he was not actually appointed to the IAS till May, 1979, when the said list lapsed, and a new Select List came into force. His second grievance is that the Selection Committee which met in December, 1978 again for

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preparing a select list of KAS officers for appointment to the IAS, he was not selected. He challenges his omission in this select list. His name was included in the select list for appointment to the IAS by the Selection Committee which met in December 1979 and the said select list was approved by the Government of India on 30.1.1980. But he could not be appointed on that basis because he retired on 20.9.1980.

3. Shri Patil Kulkarni, learned counsel for the applicant, complained in the first place that after the applicant was put on the select list by the Selection Committee in November, 1977 and the said list was in force from 20.1.1978, appointments to IAS from that list were made only upto No.5 till May 79, that is for a period of nearly 1½ years though several vacancies had arisen in the meanwhile. The applicant was No.8 in the select list but the State Government had recommended to the Central Government that he be placed at No.6 in the same list. But no reply was given by the Central Government to this recommendation. If all the posts that had fallen vacant upto May 1979 had been filled up, the applicant would have been absorbed in the IAS by that date even at position No.8 in the list, let alone at No.6 as recommended by the State Government. Shri Patil Kulkarni contended that the respondents were not justified in not filling up so many posts in the IAS when such vacancies were available <sup>and</sup> thereby ~~and~~ letting the select list ~~at~~ lapse. According to him, it was in the public interest

that these posts should have been filled up and in the process the applicant would have been given a post in the IAS. As for the select list announced in May, 1979, he contended that there was no justification for the omission of the applicant from that list because at least one person, who according to the applicant <sup>had</sup> ~~had~~ a much poorer record of service than the applicant had been put on the select list. The omission was all the more unjustified because in a latter select list which was approved on 30.1.1980, immediately before the applicant retired, his name was included. Therefore, he contended that the omission of the applicant in the select list announced in May 1979 was totally unjustified. There was no indication that after the applicant was put on the select list in January 1978 there had been any deterioration in his performance which could justify his omission.

4, Shri M.S. Padmarajaiah, learned counsel for the respondents 1,3 and 4 resists the contention of Shri Patil Kulkarni. He relies on the reply furnished on behalf of the State of Karnataka - respondents 2 - and states that merely because the applicant was put on the select list, he was not automatically entitled thereupon to be appointed to the IAS. He also clarified that the State Government was not obliged to recommend filling up of all posts in the IAS cadre as and when they occurred nor was the Government of India obliged to fill up all these posts immediately on their occurrence. It was for the State Government to decide whether a particular vacancy should be filled up immediately or not depending on administrative needs. So far as the omission of the applicant from the select

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list published in May 1979 is concerned, he relies on the reply filed on behalf of the Selection Committee and the Union Public Service Commission (UPSC) where it is stated that the applicant having crossed the age of 52, the UPSC examined his case to see whether there were any special reasons for overlooking his age and putting him on the select list. No such special reasons having been found, he was not put on the select list. Regulation 5(3) of the Indian Administrative Services (Appointment by Promotion) Regulations states that the Selection Committee shall not ordinarily consider the case of a Member of the State Civil Service who had attained the age of 52 years on the first day of January of the year in which the Committee meets. The same regulation also provides that where a member of the State Civil Service figures in an earlier select list, he should be again considered at the next meeting of the Selection Committee for inclusion in the fresh list, even if he had meanwhile crossed the age of 52. However, the High Court of Kerala had taken the view that the case of every eligible officer above the age of 52 should be considered by the Committee to see whether there were any extra-ordinary circumstances wherein a departure from the ordinary rules could be made. Abiding by this direction of the High Court of Kerala, the Committee, which met in December, 1978 considered the cases of eligible officers including the applicant, who had attained the age of 52 on 1.1.1978 before preparing a list of 14 officers considered suitable for promotion to the IAS. It is further stated in that reply filed on behalf of the UPSC that the case of the applicant was considered and in the

opinion of the Committee, he was not considered for continuation in the list for the succeeding year 1979. This according to Shri Padmarajaiah is adequate answer to the contention of Shri Patil Kulkarni.

5. Shri S.V. Narasimhan, learned counsel for the State of Karnataka (respondent-2) relies on the reply filed on behalf of respondent-2.

6. We have considered the matter very carefully. We must first mention that the applicant retired from service in February, 1980 i.e. six years ago and the reason for pursuing this application is the possibility of getting retrospective promotion to IAS from 1979 and continuation in service till the age of 58 years, which was the age of superannuation for IAS officers against 55 years in the case of State Civil Service officers. So far as the challenge to the failure of the respondents to appoint the applicant to the IAS till May, 1979 is concerned, we feel that the reply of the State Government constitutes an adequate answer to this. Being placed on the select list does not amount to an automatic entitlement for promotion. We agree that it is the right of the Government concerned i.e. the State Govt. of Karnataka here, to fill up or not to fill up the vacancies as and when they arise and to make suitable recommendation accordingly to the Government of India after taking into account administrative needs. We also feel that there is no obligation cast on the Govt. of India to appoint people in the select list immediately on the occurrence of vacancies.

It is not doubt unfortunate that appointments to IAS stopped at S.No.5 and did not reach upto the applicant at No.8 till the next list was announced. But that is some thing with which we cannot interfere at this stage. As for the applicant not figuring in the selection list announced in May, 1979, we are fully satisfied with the reply filed on behalf of the UPSC where detailed explanation has been given as to how the case<sup>H</sup> of the applicant was duly considered and the Committee felt that he was not suitable for inclusion in the list. We do not consider it necessary to summon the records of the Selection Committee as desired by the learned counsel for the applicant because the matter has been clarified by the UPSC in their reply leaving no doubt in the matter. That the applicant's name appeared in the select list announced in January, 1980 was again something within the competence of the Selection Committee. That it came to a different conclusion in 1980 from what it did earlier is also a matter within its competence. As it happened after the select list was approved in January 1980 the applicant retired from service within a month. The applicant is not aware what his number in that list was. In any case, the period was too short for making any appointment. We, therefore, find no merit in this application.

Application

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7. In the result, the application is dismissed.  
There will be no order as to costs.

*Ch. Ramakrishna Rao*

(CH. RAMAKRISHNA RAO)  
MEMBER (A)  
19.11.1986

*P. Srinivasan*

(P. SRINIVASAN)  
MEMBER (J)  
19.11.1986