

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 658/91

~~Transferred Application No.~~

DATE OF DECISION: 13.1.95

R.M. Pathan Petitioner

Shri B. Marlapalli with Advocate for the Petitioners
Shri S.P. Saxena

Versus

Union of India & Others
-----Respondent


- 1) Shri V.S. Masurkar Advocate for the Respondent(s) No.1
2) Shri G.K. Neelkanth, Advocate for Respondent No. 2.

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri M.R. Kolhatkar, Member (A)

1. To be referred to the Reporter or not ? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal ?


(B.S. Hegde)
Member (J)

BOMBAY BENCH

R.M. Pathan Applicant
v/s

CORAM :

- APPEARANCE :

- ### JUDGEMENT

DATED: 13.1.95

(Per: Hon'ble Shri B.S. Hegde, M(J)).

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he made representation to the competent authority and the same was considered and decision of the Respondents was communicated to the Applicant on 23-3-1987 against which he made further representations regarding expunction of the adverse remarks and thereafter the Respondents expunged the remarks from his C.R. as on 31-1-1989.

4. Though his eligibility was considered in the year 1985, no one was appointed to the I.A.S. cadre in 1985 from the State Civil Service to the I.A.S. His main contention is that in the year 1986 though 13 vacancies existed, the Respondents have filled up only 8 vacancies and the Applicant stands at serial no. 9 which is found to be incorrect. As per records of the Respondents, he stands at serial no. 12 in the said select list. So far as 1987 select list is concerned, it is stated that the Applicant could not make the required grading; therefore, he could not be considered for selection for the I.A.S. The stand of the Respondents is that no officer junior to the Applicant in the select list of 1986 was promoted during the period each of the said select list was in operation. They further contend that each select list is independent of the other. The Regulation 7(4) of All India Service (Appointment by Promotion) 1955 lays down that no appointment to the Service shall be made under Regulation 9 from the existing Select List after the meeting of the Selection Committee is held to draw a fresh select list, and the essence of holding the Selection Committee meeting annually is that each annual proceedings are independent; that is why as soon as the proceedings of the new Selection Committee are approved by the Union Public Service

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states that though he was included in the select list for the year 1985-86 but he has not been appointed and his juniors have been appointed vide their letter referred to above.

2. The claim of the Applicant is for the appointment to the Indian Administrative Service on the basis of select list of 1985 and he contends that his name was kept in the select list but he was not appointed to cadre of I.A.S. and therefore he approached the Tribunal only on 2-10-1991. It is an admitted fact, that the Applicant was in select list in the year 1985 as well as in 1986. From the 1985 select list, no one came to be appointed to the I.A.S. cadre by the Respondents and from 1986 select list, only 8 officers came to be appointed to the I.A.S. cadre and the Applicant was stated to be at serial no. 12 in the said select list and he could not be appointed to the I.A.S. cadre though vacancies existed and he continued to hold a cadre post, he was not appointed to the cadre of I.A.S. Accordingly, he prayed, that the Respondents be directed to appoint him to the I.A.S. in terms of the Regulations from the year 1986 when he became eligible to be promoted to the cadre of I.A.S. and also direct the Respondents to appoint him from the date his juniors had been appointed.

3. As stated earlier, the Applicant has not challenged any specific order of the Respondents. On perusal of the O.A., we find that the main grievance of the Applicant is that an adverse entry was made against the Applicant in his Confidential Report for the period from 29-10-1985 to 31-3-1986; pursuant to that,

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this O.A. is justified under the circumstances and accordingly, we condone the delay.

6. The second point that arises for consideration is whether his non-inclusion in the select list for the year 1987 is based on adverse entries in his A.C.R. which were expunged after the Selection Committee had taken a decision, is in accordance with the settled procedure and if so what will be the ultimate result. It is true that the adverse entries for a period of 5 months was communicated rather late and on making representation by the Applicant the decision of the Respondents was also communicated in the year 1987 subsequent to the Selection Committee prepared the select list for the year 1987 which met in the year December 1986. When the Selection Committee met for preparing the select list for the year 1986, the Applicant was not found suitable on account of the adverse remark existed against the Applicant. However, the said adverse remarks were expunged by the Respondents in the year 1989. Therefore, the learned counsel for the Applicant contends that the procedure adopted by the Respondents is unjust and not in accordance with the settled procedure which adversely the service career of the Applicant. There is some merit in the contention of the Applicant. In this connection, the learned counsel for the Applicant relied upon the decisions of the Supreme Court in Gurdial Singh Fijji v/s State of Punjab (1979) 2 SCC 368 and also Amar Nath Choudhary v/s State of Bihar & Others (1984) SCC 694.

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Commission, the proceedings of the earlier selection committee become inoperative. Both the Respondents No. 1 and 2 have urged that the O.A. suffers from laches and the Tribunal should not entertain the O.A. on the ground of laches as the Applicant has approached the Tribunal after a lapse of 6 years.

5. The learned counsel for the Applicant submitted that the Applicant was compulsorily made to wait from 11-8-1988 to 5-1-1989 and no posting was given to him and from January 1989 onwards he was under medical treatment for a period of 393 days and for this purpose he produced medical certificate in support of the same. In support of his contention, the learned counsel for the Applicant has relied upon the Supreme Court decision in A. Sagayanathan and Others v/s Divisional Personnel Officer, SBC Division, Southern Railway, Bangalore in Civil Appeal Nos. 4997-5002 of 1990 decided on October 26 1990 - (1992) 21 ATC 126, wherein the Court has held that "whatever may be the reasons which prompted the respondent to promote the juniors in preference to the appellants, the fact is that the appellants had a genuine grievance insofar as they had been superseded by their juniors. This was precisely the dispute which the Tribunal ought to have considered, but unfortunately it did not do so by reason of the delay. Keeping in view the ratio laid down by the Supreme Court and in the facts and circumstances of the case, the plea of delay urged by the Respondents and the explanation furnished by the Applicant, we are satisfied that the delay in filing

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7. In Gurdial Singh's case, the Supreme Court has observed as follows :-

"We may also indicate, since the High Court saw the file and discovered that the appellant was not brought on the Select List because he was 'not found suitable otherwise', that regulation 5 which deals with the preparation of a list of suitable officers provides by clause 7 that 'if in the process of selection, review or revision it is proposed to supersede any member of the State Civil Service, the Committee shall record its reasons for the proposed supersession'. While dealing with an identical provision in clause 5 of Regulation 5 of the same Regulations as they stood then, this Court observed in Union of India v. Mohan Lal Capoor, (1974) 1 SCR 797 that 'rubber-stamp' reasons given for the supersession of each officer to the effect that the record of the officer concerned was not such as to justify his appointment 'at this stage in preference to those selected' do not amount to 'reasons for the proposed supersession' within the meaning of clause 5. 'Reasons', according to Beg J. (with whom Mathew J. concurred) 'are the links between the materials on which certain conclusions are based and the actual conclusions'. The Court accordingly held that the mandatory provisions of Regulation 5(5) were not complied with by the Selection Committee. That an officer was 'not found suitable' is the conclusion and not a reason in support of the decision to supersede him. True, that it is not expected that the Selection Committee should give anything approaching the judgement of a Court, but it must at least state, as briefly as it may, why it came to the conclusion that the officer concerned was found to be not suitable for inclusion in the Select List. In the absence of any such reason, we are unable to agree with the High Court that the Selection Committee had another 'reason' for not bringing the appellant on the Select List."

In the subsequent decision in Amar Nath Choudhary's case, the Court observed that "suspensions, adverse remarks in confidential rolls and frequent transfers from one place to another are ordered or made many a time without justification and without giving a reasonable opportunity to the officer concerned and such actions surely result in the demoralisation of the services. Courts can give very little relief in such cases.

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Therefore, it was suggested that the appropriate Governments should examine whether the present system of maintenance of confidential rolls should be continued, and devise effective means to mitigate the hardship caused to the affected officers." The Court further observed that the facts of this case are distinguishable from the facts involved in the decision of this Court in R.L. Butail v/s Union of India & Ors. 2 (1971) 2 SCR 55 wherein the Appellant's representations regarding adverse entry were not placed before the Committee and a decision adverse to the Appellant was taken by the Committee without reference to the said representation. The Court held that the omission either to place the said representation before the Committee or its non-consideration before the date of the meeting had no effect on the decision of the Committee as the representation had actually been rejected subsequently with the result that the Confidential Report for the year 1964 remained unchanged. The position in the case before us is different. Here the adverse entries in question have in fact been expunged by the State Government subsequently. In the instant case also, as stated earlier, the alleged adverse remarks made against the Applicant was expunged in the year 1989 and when the Selection Committee met in 1986, the adverse remarks passed against the Applicant remained unchanged, thereby the Applicant could not be considered for the cadre of Indian Administrative Service in the said select list on the ground that he could not make the required grading whereas the Respondents state that the Applicant was not on the select list of 1987

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and therefore he cannot claim promotion to the I.A.S. on the ground that his juniors on the gradation list of Dy. Collectors have been appointed to the I.A.S.

8. We have heard the arguments of learned counsel of both the parties and perused the pleadings and also DPC proceedings and ACRs of the Applicant. The only question that arises for consideration is whether the Applicant's name is required to be considered for the post of I.A.S. in the select list for the year 1987. Keeping in view the ratio laid down by the Supreme Court, both in Gurdial Singh Fijji as well as Amar Nath Choudhary's cases applying the same to the facts of this case, we are of the view, that the case of the Applicant requires re-consideration because the adverse remarks remained pending at the time of consideration of the Applicant's name for the select list to be prepared for the year 1987 and since the same was expunged in the year 1989, it is but natural that he should be re-considered in the select list for the year 1987 without taking cognizance of the adverse remarks which were later expunged by the Respondents. In the eye of the law, the alleged adverse remark is non-existent. The Respondents No. 1 and 2 in their reply submit that an officer has right to be considered for promotion but he has no legal right to claim promotion and therefore the Applicant cannot claim promotion simply because he was brought on the select list. Further, they contend that the Applicant is not entitled to make assessment of his own record and substitute ^{it} for the assessment for the Selection Committee. As stated earlier, he has right

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to be considered for promotion but he cannot claim any right that he should be brought on the select list. Again, the learned counsel for the Applicant brought to our attention the decision of this Tribunal in R.N. Wagh v/s Union of India & Ors. in O.A. No. 373/91 decided on 11-8-1992 wherein it was held that "if the person is denied promotion because of adverse entries the same if expunged later on the said person should be entitled for being considered by the Committee from the earlier date."

9. We have given our careful thought to the rival contention. The adverse remarks in respect of the Applicant in his ACRs for the years 1985 and 1986 have been modified/expunged, subsequently; therefore, in our view, his case deserves to be considered by the Review Committee for the year 1987. We further notice that his representation was disposed of in the year 1987 subsequent to the decision of the Selection Committee which met in December 1986.

10. Accordingly, we allow the O.A. and direct the Respondents to consider the case of the Applicant in the year 1987 because in the earlier years 1985 and 1986 though he was in the select list in the year 1986, no one was selected and in 1986 list, he stands lower in rank and only 8 persons have been selected to the cadre of I.A.S.; therefore, he could not be appointed. In the circumstances, he could be considered in the select list of 1987 alongwith those who have been considered in the select list in the year 1987 ignoring the adverse remarks passed against the Applicant and take appropriate decision in accordance with the rules within

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a period of two months from the receipt of this order.

In the circumstances, no order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)

ssp.