

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1035 of 1997.

Dated this Wednesday, the 23<sup>rd</sup> day of January, 2002.

Shri Manohar Gajanan Kale, Applicant.

Mrs. Poonam Mahajan, Advocate for the  
Applicant.

VERSUS

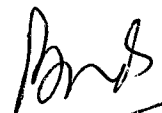
Union of India & 4 Others, Respondents.

Shri P. M. Pradhan Advocate for  
Respondent No. 1.

Shri V. S. Masurkar, Advocate for  
Respondent Nos. 2 to 5.

CORAM : Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman.  
Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other No  
Benches of the Tribunal ?
- (iii) Library. No

  
(B. N. BAHADUR)  
MEMBER (A)

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Shri Manohar Gajanan Kale,  
Flat No. 3,  
Sumedha Shree Co.op. Housing  
Society, Shivdarshan Chowk,  
Parvai, Pune 411 009.

...

Applicant.

(By Advocate - Ms. Poonam Mahajan)

VERSUS

1. The Secretary,  
Union Public Service Commission,  
Dholpur House, Shahajahan Road,  
New Delhi - 110 011.
2. The Secretary,  
Government Of India,  
Ministry of Personnel, Public  
Grievances & Pensions,  
Department of Personnel &  
Training, New Delhi.
3. The Chief Secretary,  
Govt. of Maharashtra,  
General Administration Department,  
Mantralaya, Mumbai - 400 032.
4. Shri P. Subrahmanyam,  
Chief Secretary to Government  
Of Maharashtra,  
Mantralaya, Mumbai - 400 032.
5. Shri Ajit Warty,  
Principal Secretary,  
Revenue & Forsts Department,  
Government of Maharashtra,  
Mumbai - 400 032.

... Respondents.

(By Advocate Shri P. M. Pradhan  
for Respondent No.1 and Shri V. S.  
Masurkar for Respondent Nos. 2 to 5)

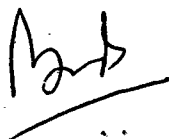
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O R D E R

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case, Shri M. G. Kale, has come up to the Tribunal seeking, in substance, the quashing and setting aside of the decision of the Review Committee Meeting held on 19.05.1997 and seeks a declaration to the effect that the Applicant stands nominated to the I.A.S. from the date of any of his junior were promoted. Consequential financial benefits have also been sought as relief. A prayer is also made for calling and perusal of certain records, as cited at page 87 of the O.A.

2. The facts of the case, as brought forth by the Applicant, are that the Applicant claims he was entitled to be nominated to the I.A.S., according to his seniority, in 1985-86 and he is aggrieved that he was not so nominated. It is contended by him that it was because of his straight forward nature that certain superiors have got prejudiced against him. Details in this regard giving instances are cited by the Applicant in his application, as also details of the work done by him. In fact, the long description given of instances and persons, though carefully gone through, are not being repeated here, except wherever relevant. The Applicant further states that consequent upon his approaching the Maharashtra Administrative Tribunal (M.A.T. for short) and the expunging of certain adverse remarks in his A.C.Rs. was ordered by the Tribunal, the case of the



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Applicant for nomination to the I.A.S. was directed to be considered within six months of the aforesaid order i.e. dated 29.08.1996. The Applicant also states that the order made by M.A.T. was challenged by the State Government in the Hon'ble Supreme Court through S.L.P. which was dismissed. It was for the first time that Applicant came to know through the judgement of M.A.T. that there are certain uncommunicated adverse remarks against him in the year 1980-81. Allegations are made against the officer, who he presumes, had made these remarks since he was his Collector for the aforesaid year.

3. One of the important points made by the Applicant, and argued at length by his Learned Counsel, was that the meeting conducted by the Union Public Service Commission (U.P.S.C.) in New Delhi on 19.05.1997 were conducted and concluded under pressure. It is the contention of the Applicant that only one of the Members tried to resist the pressure but he could not carry his weight in the opposition of others. The officers of the State Government who were members were prejudiced against him, it is contended.

4. Respondent No. 1 in the case, namely - U.P.S.C., has filed a Written Statement of reply. After describing the role of the U.P.S.C. and other facts relating to constitution of the

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Committees and the procedures, the U.P.S.C. states that the Applicant was graded as 'Good' and with this grading his name could not be included in the select lists for want of adequate number of vacancies. It is stated that as per directions of M.A.T., the uncommunicated adverse remarks of 1980-81 as also the adverse remarks for the period from 01.04.1978 to 07.10.1978 were ignored by the Committee and it was felt, that even after this ~~that~~ the assessment had to be continued as 'Good'. It is further stated that the name of Applicant was considered for select lists prepared as on 31.12.1988 and again the Confidential Report of Shri Kale was seen after ignoring all adverse remarks and again the Committee found Shri Kale as only being 'Good'. U.P.S.C. has also described the consideration made for further select list right upto 1994, and stated that the Applicant was not being eligible beyond the year 1994-95. The proceedings of the Selection Committee being conducted and concluded by pressure have been denied by the U.P.S.C. It is stated that one of the Members, Shri Arun Bhatia, verily did not agree with the grading given to the Applicant. The additional time demanded by Mr. Bhatia for examining the Confidential Reports was provided right upto 2.10 p.m. when a dissenting note was prepared by Shri Bhatia. It is stated that the dissenting note was duly considered by the Chairman of the Committee (who was Member of the U.P.S.C.) and in view of full consensus among all other majority Members of the Selection Committee, which made the

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Bhatia

required quorum, the minutes of the Committee originally signed were treated as final. All procedure has been meticulously followed, it is asserted on behalf of U.P.S.C.

5. A reply has also been filed on behalf of Respondent Nos. 3, 4 and 5, namely, the State Government of Maharashtra. It is stated that Respondent No. 2 i.e. Government of India, has already filed a reply and that the State Government would also crave leave to refer and rely upon the said reply.

6. We, therefore, proceed to see the reply filed on behalf of Respondent No. 2. It is stated therein that the main challenge in the O.A. is against the assessment of the service record of the Applicant by the Review Selection Committee and the recommendations of the Selection Committee due to which Applicant's name could not be included in the list of promotion to I.A.S. (Maharashtra Cadre) from the year 1987 onwards. Central Government, it is stated, has concurred with the proceedings and it is the U.P.S.C. which is concerned with the disputes over the relative assessment made by the Selection Committee in terms of rules. Thus, in fact, it is seen that the Central Government leaves the main burden of reply on the U.P.S.C., which as stated above, has filed a very detailed statement of reply.

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7. We have heard the Learned Counsel for the various sides, namely - Smt. Poonam Mahajan for the Applicant, Shri P.M. Pradhan for Respondent No. 1 and Shri V. S. Masurkar for Respondent Nos. 2 to 5. Learned Counsel, Smt. Mahajan, took us over the facts of the case in great detail, and made the point first that uncommunicated adverse remarks were considered by the Committee. She reiterated the point-about malice and prejudice on behalf of many seniors of the applicant, specially, the Members of the Selection Committee from the State. It was stated that in regard to the 1981 Confidential Reports, only half of the adverse part was communicated and the other half kept away from the Applicant. This showed malice. It was also alleged by the Learned Counsel that the Government did not disclose full facts in the S.L.P. filed with them and, in this connection, referred to the records and proceedings of the Hon'ble Supreme Court, a copy of which is filed at page 115. It was alleged that the State Government authorities did not expunge the remarks as per relevant orders.

8. Learned Counsel for Applicant then took us over the aspect of pressure which has been alleged in the O.A. to have ruled at the time of the Review Committee's meeting. She highlighted the role of one of the Members, Shri Arun Bhatia, in trying to make the point that his assertion and the stand taken by him, showed that the allegations made by the Applicant were

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B.S.

true. The notes made by him were referred to. The prejudice on behalf of Government of Maharashtra was re-emphasised. It was argued that the Applicant should have been considered right from the year 1985-86 also, since Shri S. C. Deshmukh, who was is junior, was considered and selected then.

9. Arguing the case on behalf of U.P.S.C., their Learned Counsel, Shri P. M. Pradhan, relied on the Written Statement filed by the U.P.S.C. and reiterated the point that the meeting convened for review had gone into the case on merits properly. He stated that irrelevant arguments were being made. Arguing the case for Government, their Learned Counsel, Shri V. S. Masurkar, stated that the only case that the Applicant had was that the orders of the M.A.T. should be implemented. The State Government was duty bound to do this and has done so. A Review Committee has been constituted and findings of the Committee have not been challenged, as communicated to Applicant vide State Government's letter dated 10.09.1997 (exhibit 'A') through which the letter of the U.P.S.C. in this regard has been enclosed. It was submitted by the Learned Counsel that the Review Committee had gone into the matter as per rules and with prejudice, and that their judgement in the matter could not be questioned in a Tribunal, as per settled law.

10. We have carefully considered the facts and grounds made out in the O.A., the replies of the Respondents and all papers in

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the case. We have also considered the arguments made by the Learned Counsel on behalf of all sides. We have perused the File No. AIS-1358/X No. 145/86 of the General Administration Department of State Government made available to us, as also File No. AIS-1397/153/97/X again of General Administration Department. We have also gone through the (original) C.R. dossier file of the Applicant provided to us.

11. The genesis of the case, as indeed stated by the Applicant, lies in the case decided by the M.A.T. vide its judgement dated 29.08.1996 (Exhibit 'D'). It is stated that the application therein is a Review Application made for reviewing the judgement delivered on 30.06.1993. The Review application has been allowed by the M.A.T. and it is ordered that certain portions of A.C.R. entries, as stated therein, in regard to the period 01.04.1978 to 07.10.1978 be expunged. It is further ordered that the portion of these expunged remarks and the uncommunicated adverse remarks in Applicant's confidential report for 1980-81 shall not be considered while deciding on the petitioner's fitness/suitability for promotion to the I.A.S. Finally, it is ordered that the case of the Petitioner for promotion be reconsidered with retrospective effect from the date of promotion of immediate junior in the cadre of Deputy Collector, and decided within six months. As a result of this, the Review Committee, described above, has been held under the Chairmanship of a Member of the U.P.S.C. The reply on behalf of



the U.P.S.C. i.e. Respondent No. 1, is most detailed amongst the three reply statements made and shall be depended upon mainly. In fact, in the background of the allegations made against the State Government and the simplistic stand taken by the Central Government makes it all the more relevant and useful for us to depend on the U.P.S.C.'s statement.

12. In the first instance, a duly constituted Committee is seen to have considered the case of the Applicant. The Committee was chaired by a Member of the U.P.S.C. and this fact has to be noted in the background of some of the points made on behalf of Applicant. In regard to facts, it is important to note, the details that has been provided in the U.P.S.C. statement and which have been mentioned by us in paras above. It has been clearly stated by the U.P.S.C. that the immediate junior of the Applicant was one Shri A. S. Shaikh and he was included in select list prepared on 03.12.1987. In fact, we find from the complete seniority list of State Civil Service Officers that Shri M.G. Kale, Applicant, is followed by Shri A. S. Shaikh. During arguments, the Learned Counsel for the Applicant, tried to dispute this by producing an extract which is untitled but presumably is from the I.A.S. Civil list. We shall therefore regard the starting of consideration from the year 1987 as correct. This point is especially made in view of the assertion made by Counsel for Applicant that Applicant should have in fact been considered from the year 1985.

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13. The second point that is to be noted from the statement of U.P.S.C. is that it has followed the direction of the M.A.T. and ignored the uncommunicated adverse remarks for 1980-81, as also the adverse remarks for the period between 01.04.1978 to 07.10.1978, "which have now been expunged by the State Government....." Now once it has been clearly stated by the U.P.S.C. that it has ignored these remarks, it cannot lie in the mouth of the Applicant to say that such adverse remarks have also been considered while assessing him in the Review Committee.

14. We have to remind ourselves of the law as settled by the Hon'ble Apex Court in a number of judgements, in that, while viewing cases of promotions/D.P.C. proceedings where allegations are that promotions/selections have been wrongly, with-held, we cannot place ourselves as if we are an Appellate Authority. Nodoubt, our scrutiny has to go into areas which will examine if the decisions contravene rules or are in themselves perverse or suffer from any other irregularity. Now one of the points made in this regard was that the Review meeting was held and concluded under pressure. We have gone through the papers making allegations in this regard, the reply of the U.P.S.C. and other Respondents and the arguments made by the Learned Counsel for the Applicant. Indeed, it is true that one of the Members of the Committee had disagreed very emphatically with the decision taken by the Review Committee. We have gone through the papers and its remarks but cannot ignore noting that the final decision of the Committee has been taken on majority principle and approved by