

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 251/98

Date of Decision : 7.12.2000

B.Y.Wankhede _____ Applicant.

Shri K.R.Yelwe _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents.

Shri V.S.Masurkar _____ Advocate for the
Respondents.

CORAM :

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

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

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library

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(B.S.Jai Parameshwar)
MEMBER (J)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.251/98

Thursday this the 7th day of December,2000.

CORAM : Hon'ble Shri B.S.Jai Parameshwar, Member (J)

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

B.Y.Wankhede,
S.C.S.Officer,
'Konark' Bungalow No. 10,
Kopri Colony,
Thane (East) & Ors.

... Applicant

By Advocate Shri K.R.Yelwe

V/S.

1. Union of India
Through Secretary,
Ministry of Personnel,
Public Grievances and Pensions,
Dept. of Personnel and Training,
New Delhi.

2. The Chairman,
Union Public Service Commission,
Shahajan Road,
New delhi.

3. State of Maharashtra
through Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai.

... Respondents

By Advocate Shri V.S.Masurkar

O R D E R (ORAL)

{Per : Shri B.S.Jai Parameshwar, Member (J)}

Heard Shri K.R.Yelwe, learned counsel for the applicant
and Shri V.S.Masurkar, learned standing counsel for the
respondents.

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2. There are five applicants in this OA. They are all State Civil Service officers aspiring for promotion to IAS Cadre under the IAS (Appointment by Promotion) Regulations, 1955. They submit that by letter dated 11.2.1998 Union of India ^{issued instructions} ~~to the State Government for~~ ^{admitted to} proceedings of ~~consideration\$~~ ^{they} of SCC officers for promotion and the said letter dated 11.2.1998 was challenged on the ground of violation of rights of the applicants for being considered for promotion. The cases were considered in accordance with the old Regulations in the first selection held in the month of 1997 but by implementing the new amended Regulations read with letter dated 11.2.1998 imposed on them ^{they} have not come within the zone of consideration and therefore they submit that the letter dated 11.2.1998 is violative of Article 14 & 16 of the Constitution of India. Hence, they have filed this application for the following reliefs :-

- (a) That this Hon'ble Tribunal be pleased to issue writ of certiorary or writ order or direction in the nature of Certiorary calling for records and proceedings pertaining to the issuance of IAS (Appointment by Promotion) Amended Regulations 1997 (Ex.'A-1') and the Government of India's letter dated 11.2.1998 (Ex.'A-2') and after examining the legality, constitutionality, validity and propriety of the same be pleased to quash and set aside the same;
- (b) That this Hon'ble Tribunal be pleased to issue writ of mandamus or writ order or direction in the nature of manadmus directing the respondents their servants and agents;
- (i) to follow the unamended Regulations of 1955 in the manner as directed and while doing so take into account the number of posts fixed by Notification GSF No.739E dated 31.12.97 (Ex-A-12)

(ii) Not to implement the Indian Administrative Services (Appointment by Promotion) Amended Regulations Act, 1997 (Ex-A-1) and letter dated 11.2.98 (Ex-A-2);

(c) To consider the applicants for promotion to IAS by promotion on the basis of vacancies to be counted as per prayer b(i) above;

(d) To direct the respondents by mandatory order not to recruit and promote any direct IAS officer in the State of Maharashtra till the time the ratio between the direct IAS recruit and promote IAS officer is maintained as per the position of the IAS of cadre strength fifth amendment Regulations 1997);

(e) That this Hon'ble Tribunal may be pleased to direct the Respondent No. 1 to 3 to include the names of the applicants for promotion to IAS (Appointment by Promotion) as there were 18 more vacancies ought to have been included by virtue of application of Supreme Court order dated 24.7.95 read with Notification dated 31.12.97 (Ex-A-12);

(f) That this Hon'ble Tribunal may be pleased to direct the respondents to take suitable steps and all necessary action to ensure the inclusion of the names of the applicants in the select list on proper review of vacancies not counted in the last three years and carry out their promotion to those posts in reasonable period of time i.e. within 4 weeks with all consequential benefits."

3. Respondent No. 1 has filed a reply. It submits that there was no certainty or finality on the number of vacancies. The State Governments have power to give extension of service upto 6 months beyond the date of superannuation to a member of the IAS. As the select list was prepared for anticipated vacancies, many a time the vacancies could not materialise and a State Service Officer included in the Select List could not be sure of his appointment to the Service in his turn in the order of merit in the Select List. This has led to many litigations.

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Hence, considering other problems, the Government felt a need to streamline the procedures for the Selection and appointment of State Civil Service Officers to the respective All India Service by a close scrutiny of all the relevant statutory provisions de novo in such a manner so that the whole process could be smooth and specific right from the determination of vacancies for preparation of the Select List to the ultimate expeditious appointment of the selectees to the IAS immediately after approval by the Commission. The amended regulations were framed taking due care at every stage of process of preparation of the Select List to (i) specify the authority responsible for the phase and (ii) to define the time-limit by which such authority should complete the process, opening the channel for action by the authority immediately next concerned. After consultation, they felt proper to amend Rule 4 (2) of the IAS (Recruitment) Rules, 1954 and as per the amendment, the Central Government has authority & power to determine the number of vacancies for which recruitment to be made to the IAS by direct recruitment and by promotion every year for conveying the same to the UPSC which has to prepare a Select List for recruitment upto the number of vacancies so determined in accordance with the promotion Regulations. Further, the amendment was intended to provide determination of vacancies by the Central Government for preparation of select list for promotion in consultation with the State Governments. The Government has also taken a policy decision in consultation with all the State Governments and the

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UPSC to make recruitment to All India Services on the basis of existing/anticipated vacancies. The right for consideration for appointment to the IAS of any person accrues only in accordance with and subject to the statutory rules and regulations framed by the Central Government in this regard.

4. The Selection Committee for preparation of the Select List every year has been made more categorical in the amended Regulations. The right of consideration for promotion is a legal right and is also subject to the conditions of eligibility and set rules and policy guidelines framed by the Government. The right for consideration for promotion is not an absolute right and cannot operate outside the scope of the normal/statutory rules. The appointment of a State Civil Service Officer to IAS is governed by the provisions contained in the Promotion Regulations framed pursuant to Rule 8 (1) of the IAS (Recruitment) Rules, 1954, framed under the All India Services Act, 1951. They submit that the proposals for amendments to the Rules and Regulations were circulated to all the State Governments and the UPSC and their comments have been considered before finalising the proposals. They submit that the case of appointment of State Civil Service officers to the IAS, an All India Service, is not a case of promotion in the same organisation governed by general service rules. Rule 4(1)(b) of the IAS (Recruitment) Rules, 1954, read with Rule 8 thereof enable the recruitment to the IAS from the officers serving with the State Government. These rules were framed pursuant to the All India Services Act, 1951. The IAS (Appointment by Promotion)

Regulations, 1955 were framed pursuant to sub-rule (1) of Rule 8 of the Recruitment Rules. The recruitment to the Direct recruitment posts are made only on the basis of existing vacancies. For the sake of uniformity and in the interest of effective cadre management and with due regard to the issues narrated in the preliminary submissions above about the certainty of vacancies arising in the States, it was found necessary to switch over to the scheme of recruitment against existing vacancies instead of anticipated vacancies in the matter of promotions to the IAS also. It is submitted that even in terms of the Principal Regulations, a person who was included in the select list of the previous year and who was not appointed to the service cannot be considered for promotion by the next Selection Committee, if he does not fall within the zone of consideration which was based on the number of vacancies anticipated during next year; this position holds good even now. The case of the applicants to arrive at any view is pre-mature and shows a mere apprehension on his part that he may not be considered.

5. Thus they submit that there were 262 direct recruit officers and 96 promotee officers in position in the IAS Maharashtra Cadre as on 31.12.1997. The number of posts that could be filled by direct recruitment and promotion as on 1.1.1998 is 245 and 106 respectively. There are 17 number of incumbents in excess in the direct recruitment quota. The excess in the number of direct recruit officers in position in view of the amendments on date cannot be washed away immediately. The



total number of incumbents from direct recruitment has to be decreased gradually by retirements, deaths and resignations, by reducing the direct recruitment below normal levels to prevent a vacuum at any later stage and phased increase in the recruitment within the promotee quota to reach the maximum levels within five years in consultation with the State Government.

6. They relied upon the decision of the Hon'ble Supreme Court in P.S.Mahal's case (reported in AIR 1994 S.C. 1291). They submit that the case of the applicants will have to be considered for inclusion in the zone of consideration only in accordance with the Rules and Regulations, unless the applicant is able to show that there is any violation of the Constitutional provisions the demand for grant of interim relief for going by the Principal Regulations for making recruitment to IAS is absolutely unjustified. It is not permissible to process the promotion to IAS during 1998 in any manner other than in accordance with the provisions contained in the IAS (Appointment by Promotion) Regulations, 1955, as amended by the Notifications dated 31.12.1997. Any relaxation in this regard will have adverse consequences in the process of preparation of Select Lists. Thus they pray for dismissal of the OA.

7. The State of Maharashtra has filed written statement and in a way it has adopted the statement filed by the Respondent No.

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8. The applicants pray for consideration of their case for promotion to IAS including anticipated vacancies. However, the respondents have amended the rules and taken a decision to appoint only in existing vacancies. The applicants cannot ask for promotion to the IAS against any anticipated vacancies.

9. The learned counsel for the respondents during the course of arguments relied upon the decision of the Hon'ble Supreme Court in the case of Tamil Nadu Administrative Service Officers Association & Anr.etc. vs. Union of India & Ors., (reported in 2000 (1) S.C.SLJ 387. In para 27 & 28 the Hon'ble Supreme Court has observed as follows :-

"27. This, however, does not mean that there is no obligation on the part of the Central Government to consider the requirement of encadring the ex-cadre/temporary posts which are existing in those States in regard to which the complaint is made. It is to be noticed that a large number of posts exclusion of which would make sufficient impact on the quota fixed under Rule 9 of the Recruitment Rules are in existence for periods extending even over two decades. We are also told that many of these posts are statutorily required to be filled up by the members of the IAS, but for reasons not known, these posts are not being made permanent. It is possible that these posts which, on the face of it, are in contravention of the cadre rules, are created by the concerned States for reasons other than the administrative exigencies and it is also possible that the Central Government which has the primary responsibility of making the cadre reviews, has not applied its mind to the real necessity of encadring these posts.

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28. Though *prima facie* we have accepted the explanation given by the Union of India still we find such posts are being continued by the States concerned even till date. We have not found any reason either in the pleadings or in the arguments addressed on behalf of the Union of India why it has not taken any steps to direct the State Governments concerned to abolish these posts if not required to be encadred. Therefore, we find it necessary to direct the Union of India to consider in consultation with the State Government concerned, as required in the Cadre Rules, review the necessity of either to encadring these ex-cadre/temporary posts or not and take such other necessary steps. In the process the Central Government shall bear in mind the existence of these posts for the last so many years and if it is so satisfied and finds it necessary in the interest of justice to encadre these posts, it may do so with retrospective date so that officers promoted consequent to such encadrement would have the benefit of the seniority from such date, bearing, of course, in mind the possible conflict that may arise in fixation of *inter se* seniority and take appropriate decisions in this regard so as to avoid any further disharmony in the service."

10. Considering the principles laid down by the Hon'ble Supreme Court in the above cited case, we feel that the amended regulations and the letter dated 11.2.1998 are perfectly legal and valid. They do not call for interference by this Tribunal. The applicant cannot claim for promotion to the IAS cadre against anticipated vacancies. The respondents themselves have stated that the cases of the applicants will be considered as per their turn in accordance with the Regulations, 1955.

11. In that view of the matter, we feel that the application has no merit and is liable to be dismissed. Accordingly, the OA. is dismissed. No order as to costs.

Shanta S
(SMT. SHANTA SHAstry)

MEMBER (A)

B.S.JAI PARAMESHWAR
7.12.2000
(B.S.JAI PARAMESHWAR)

MEMBER (J)

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