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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXX~~ HYDERABAD

O.A. No. 406 OF 1987

~~XXXXXX~~

DATE OF DECISION

2/2/88

B. Narasaiah

Petitioner

G. Vedantha Rao

Advocate for the Petitioner(s)

Versus

Secretary to Govt. of India, Respondent

Ministry of Home Affairs & 2 others

~~K. Jagannatha Rao~~, Addl. CGSC

Advocate for the Respondent(s)

M.P. Chandramouli, Spl. Counsel for AP Govt.

CORAM :


The Hon'ble Mr. B.N. Jayasimha, Vice Chairman

The Hon'ble Mr. D. Surya Rao, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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M(J)

ORIGINAL APPLICATION NO. 406 / 87

(ORDERS OF THE TRIBUNAL)

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The applicant herein is a Deputy Collector in the Andhra Pradesh Civil Service. He was selected as Deputy Collector in the year 1977 and assigned second rank among the list of 20 direct recruitees. In this application, the applicant details of has given/ various posts held by him and states that through-out his service <sup>he</sup> has been discharging his duties to the best satisfaction of his superiors. The applicant has also given details of various schemes which have been implemented successfully by him. He submits that he has received commendations from various higher officers for his dedicated service. In 1986, he was one of the Deputy Collectors considered for selection to the I.A.S. under the I.A.S. (Appointment by promotion) Regulations, 1955. The applicant states that when select committee is constituted under these Regulations, it has to classify officers as 'outstanding', 'very good', 'good' or 'unfit' based on overall assessment of the

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service record of all the officers concerned. He contends that the service record includes the confidential reports prepared ex-parte behind the back of the applicant and that it is to be treated as <sup>an</sup> innocuous report. The record of service might not have taken into account the performance and achievements of the applicant. He further contends that the select committee appears to have only perused the confidential reports, which in this respect, may be subjected to mechanical consideration in the absence of consideration of achievements or the results or the targets or performance of an officer. He further contends that the Confidential reports of the applicant for the period from 8-7-1984 to 31-3-84, 1-4-84 to 6-9-84, & 7-9-84 to 27-1-85 were not available to the Committee when it met in December, 1986 and that it is evident from the proceedings of the Commissioner of Land Revenue dated 12-5-1987. In the absence of the reports for the relevant period, the applicant states, that it is not known how his merit was assessed. It was the duty of the selection committee to ensure that

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all CRs are available <sup>before the Selection Committee</sup> ~~to them~~ before actually assessing the applicant. In the absence of these basic records, the applicant contends that there was no consideration of his case at all. The other contentions raised by the applicant are that, the Commissioner of Land Revenue, who is <sup>a</sup> ~~supposed to be a~~ member of the Selection Committee did not attend the Select <sup>com</sup> Committee meeting and that ~~it~~ <sup>his</sup> ~~absence~~ vitiates the selection process. In the circumstances, the applicant filed this application praying that this Tribunal may issue appropriate directions declaring that the ~~a~~ non-inclusion of the applicant in the Select List of Officers of Andhra Pradesh for 1986 for promotion to the I.A.S. cadre and inclusion of his juniors in the same select as arbitrary, illegal, malafide, offending Art.14,16, 46 and 21 of the Constitution of India. He <sup>issue of</sup> also prays for/a consequential direction to include the applicant in the 1986 Select List of Officers of Andhra Pradesh State for promotion to the I.A.S. cadre and promote him to I.A.S. cadre with retrospective effect from the date his juniors were promoted with consequential benefits of seniority and such other service benefits.

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In support of his contentions, the applicant has raised the further grounds, viz., classification as 'outstanding', 'very good', 'good' and 'unfit' is elusive and these phrases are not capable of precise definiteness of relative assessment, but they are only subjective to the whims, fancies and vagaries of the Committee. It is also contended that the regulations postulate recording of reasons, in any selection or review or revision when an officer is superceded, <sup>or</sup> ~~and~~ also postulates the reasons to be submitted by the State Government to the Union Public Service Commission when <sup>a</sup> the senior officer is superceded, ~~and~~ <sup>further</sup> ~~that~~ the provisions <sup>in the Rules for</sup> ~~of~~ recording reasons were deleted rendering the remaining provision <sup>relative to</sup> ~~of~~ selection arbitrary, illegal, offending Articles 14, 16 and 21 of the Constitution of India. It is also contended that the Constitution under Articles 46, 15 and 16 postulates protective discrimination to the Scheduled Castes and Scheduled Tribes; that the Supreme Court has taken the view that Articles ~~16(4)~~ 16(4) which postulates a preferential treatment and reservation is not an exception but a part of right

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to equality; that Article 46 of the Constitution directs the State to take special care of weaker sections, particularly, the Scheduled Castes and the Scheduled Tribes.

It is also stated that the State Government issued a Special Ad hoc G.O.Ms.No.770 dated 15-11-1975 under Article 309 of the Constitution, which postulates that even in case of promotion to selection grade posts, the candidates belonging to Scheduled Castes and Scheduled Tribes should be promoted when their turn comes in seniority. Even when a panel of officers is drawn for selection posts based on classification of 'outstanding', 'very good' etc., so far as the Scheduled Castes are concerned, when their turn comes in the seniority for consideration, they should be promoted. The applicant submits that the said G.O. dated 15-11-1975 applies to the selections to the I.A.S. through promotion. In such a case, the applicant contends, that his case ought to have been included in the select list, apart from his excellent record, based on his seniority, in precedence to the ten of his juniors who were included in the list.

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He <sup>has</sup> also drawn the attention to the Government of India's general circular, which reads as follows :-

"Any promotions by selection to posts within Group A (Class I) which carry an ultimate salary of Rs.2250/- per month or less, (which is presently equivalent to Rs.3,500/-) where there is no reservation but the Scheduled Castes/Scheduled Tribes officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn, are to be included in that list provided they are not considered unfit for promotion."

In the light of these directions, the applicant states that he is entitled to be considered for inclusion in the Select List. It is further contended that the provisions under Article 15(4) and 16(4) of the Constitution can be enforced through executive instructions.

The Select Committee had a Constitutional Directive relating to protective discrimination in the matter of Scheduled Caste/Scheduled Tribe officers and the Selection committee has ignored such a directive. Such an action on the part of the Select Committee vitiates the selection process, as it violates the provisions of Articles 56, 15(4), 16(4) and 14 of the Constitution of India.

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2. On behalf of the State Government (R-3), a counter has been filed denying the various contentions raised by the applicant. It is stated that the Select Committee has made selection on the basis of relative assessment of the service records of all the officers concerned. According to Regulations 5(4) and 5(5) of the I.A.S. (Appointment by promotion) Regulations, 1955, It is the overall assessment of record and not the <sup>-ity</sup> personal/profile that is taken into account at the time of selection of officers for inclusion in the select list. It is stated that mere absence of the a member will not vitiate/proceedings. It is further stated that the confidential reports of the applicant covering the period from 8-7-1983 to 27-1-1985 were obtained and placed before the Select Committee. As the selection was made on the basis of overall relative <sup>service</sup> assessment of/records, there was no irregularity in the selection. It is stated that the G.O. Ms. No. 770 dated 15-11-1975 of the State Government referred to by the applicant are applicable for selection of officers to State Services and ~~xxxx~~ not to All India Services.



The Select List in the instant case was prepared according to the IAS (Appointment by Promotion) Regulations, 1955. It is contended that the applicant's record of service for the last five years was the basis for drawal of list, and it does not put the applicant in disadvantage vis-a-vis his juniors, unless his record of service for the last 5 years when compared to the juniors was neither equal nor superior. It is stated that the applicant's contention that his outstanding achievements have not been taken into consideration and that the Committee had considered the Confidential Reports in a mechanical way is only an illusion. The manner in which an officer discharges the duties attached to the post held by him is given utmost importance while recording report on his performance every year. While writing Confidential Reports, assessment is made not with reference to one's posting, but with reference to his performance while discharging the duties and responsibilities attached to the post. It is, therefore, illogical to contend that his performance and achievements have not been taken into account while making relative assessment

by the Select Committee. It is further contended that

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the Selection Committee applied uniform standards in regard to method of assessment in the case of all eligible officers and that there was no discrimination. In regard to applicability of Government of India's instructions on applicability of provisions of reservation available to SC/STs in the present case, it is stated in the counter that the matter will be dealt with by the Government of India in their Counter.

3. On behalf of the respondent no.2, viz., Union Public Service Commission, a separate counter has been filed. No counter has been filed by the Government of India (viz. R-1). The counter filed by the U.P.S.C. states that the Selection Committee prepared the Select List in accordance with Regulations 5(4) and 5(5) of the I.A.S. (Appointment by Promotion) Regulations, 1955 and also keeping in view the directions of the Supreme Court in AIR 1987 SC 593 R.S.Dass Vs. Union of India. It is stated that there is no irregularity in the selection process. In regard to the contention ~~xxxx~~ about absence of Commissioner of Land Revenue, it is stated that according

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to Regulation 3(3) of the IAS (Appointment/ by Promotion) Regulations, 1955, the absence of a member other than the Chairman or Member of the Commission shall not invalidate the proceedings of the Committee, if more than half the members of the Committee had attended the meeting. As such, it is stated that non-participation of the Commissioner of Land Revenue does not vitiate the proceedings. In regard to non-placing of the CRs for certain period of service of the applicant, the counter states that the State Government would meet this contention in their counter. In regard to the CRs, it is further stated that a few months good reports are not the deciding factor. Absence of the ACR for a particular year cannot be a reason for withholding the assessment of a particular officer.

4. We have heard the learned counsel for the applicant, Shri G.Vedantha Rao; Shri K.Nagaraja Rao for the Union Government and the U.P.S.C. and Shri M.P.Chandramouli, Special Counsel for the State of Andhra Pradesh.

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5. The contentions regarding non-participation of Commissioner of Land Revenue in the meeting of the Select Committee, the validity of the IAS (Appointment by Promotion) Regulations, 1955 <sup>and whether the selection Committee proceedings should be reviewed</sup> have been considered by us in our

Judgment in O.A.206/87 wherein we had held as follows :-

"3. In regard to non-participation of the Commissioner of Land Revenue, it is stated in the counter that Regulation 3.2 provides that the Chairman or the Member of the UPSC shall preside at all meetings of the Committee. Regulation 3.3 provides that the absence of a member other than the Chairman or the Member of the UPSC shall not invalidate the proceedings of the Committee, if more than half of the members of the Committee had attended this meeting. The Selection Committee held its meeting on 19-12-1986 and it was attended by the Member, UPSC (President of the Selection Committee) besides three other members including the Jt. Secretary, Deptt. of Personnel and Training, who was a nominated member of the Committee. It is further stated that the over-all record and the not the personality profile was assessed at the time of preparation of the Select List and it is, therefore, not correct to contend that the absence of a Member who has proximate knowledge of the officers vitiates the assessment. When a relative assessment has to be made on the basis of service record, proximate knowledge of any particular member can indeed have no relevance. The Learned Counsel for the applicants, Shri Raghuram did not wish to press this point. We accordingly see no merit in this contention.

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8. In view of the decision rendered in R.S.Dass' case, we find no merit in the argument advanced by Shri Raghuram. The procedure adopted by the Selection Committee has been upheld subject to the clarification given by the Government of India. However, it has to be seen whether the writing of the Annual Confidential Reports in this State conform to the pattern prescribed by the Government of India. In reply to our enquiry, Shri

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Chandramouli states that the pattern referred to in the Judgment of the Supreme Court in R.S.Dass' case in regard to recording classification in the Annual Confidential files of the State Civil Service Officers is not obtaining in Andhra Pradesh. In a similar case, Shri K.Ch.Venkata Reddy Vs.Union of India & Others (T.A.No.849/86 dated 22-5-1987), we had considered this point and directed that in view of the fact that the procedure envisaged is not being followed in Andhra Pradesh, the Selection Committee would have to adopt a procedure by which norms and yard-sticks are laid down and thereafter proceed to make an overall relative assessment of all officers. The observations made by us in that case would apply in this case also and we have, therefore, to direct the Selection Committee to make a fresh assessment in accordance with the direction in that case."

In regard to the procedure to be adopted by the Select Committee while preparing the Select List for promotion to I.A.S. under I.A.S. (Appointment by Promotion) Regulations 1955, we had held in T.A.849/86 (K.Ch.Venkatreddy Vs.Union of India) and later in O.A.58/87 (K.V.Reddy Vs.Union of India) as follows :-

"... It is for the Selection Committee to adopt a uniform standard and ensure that its uniformity is continued year after year. For the reasons discussed by us above,, we consider it necessary to direct the Selection Committee to consider the case of the applicant afresh in the light of the observations made by us above keeping in view the observations made by the Supreme Court extracted above. The Committee has to adopt a procedure which will not result in applying different standards or tests or any discrimination. The Committee will have to consider year-wise confidential reports of each officer and ~~in~~ ~~xx~~ applying

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the same standard, assign a grading (in reports where the reviewing/reporting officer has not himself given a grading), thereafter prepare the select list.

We also direct that non-issuance of inter<sup>gri</sup>giry certificate shall not be taken against the applicant and the integrity shall be judged only on the basis of the entries in the Confidential Reports. We further direct that the Selection Committee shall meet within two months from the date of receipt of this Order and complete the review. The result of such review shall be communicated to the applicant."

Following the above decision, we direct in the present case also that the applicant's case shall ~~as~~ also be reconsidered by the Select<sup>or</sup> Committee keeping in view the directions given by us in the above cases (extracted above), <sup>the</sup> provisions of I.A.S. (Appointment by Promotion) and Regulations, 1955/ the observations of the Supreme Court in AIR 1987 SC 593 (R.S.Dass Vs. Union of India). The Committee shall meet within three months from the date of receipt of this order, consider the case of the applicant as above and communicate the result to the applicant.

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6. In regard to the contention that certain Confidential Reports for certain periods were not placed before the Select Committee, the State Government have categorically stated that the CRs for the said periods have been placed before the Committee. The Committee will no doubt look into this matter when it meets next as per our directions and take them into account while making the assessment.

7. We will now proceed to consider the main contention raised by the applicant in this application, viz., applicability of the Government of India's instructions <sup>in regard to reservation for scheduled castes and scheduled tribes,</sup> ~~(extracted by us in this order)~~ in relation to promotion by selection for the posts carrying an ultimate pay of Rs.2,250/-, under the IAS (Appointment by Promotion) Regulations. The relevant instructions referred to by the applicant contained in the Brochure ~~xxx~~<sup>on</sup> reservation for Scheduled Castes and Scheduled Tribes in Service - 6th Edn. (1982)

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published by the Government of India, Dept. of  
Personnel & Administrative Reforms, Ministry of  
Home Affairs, New Delhi at page no. 213 reads as  
follows :-

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2. In regard to promotions by selection to posts within Group A, which carry an ultimate salary of Rs. 2250 p.m. or less, where there is no reservation but the Scheduled Castes/Scheduled Tribes Officers who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn, are to be included in that list provided they are not considered unfit for promotion vide O.M. No. 1/9/69-Estt. (SCT) dated 26-3-1970 read with O.M. No. 1/10/74-Estt. (SCT) dated 23-12-1974, cases ~~where~~ eligible Scheduled Castes/Scheduled Tribes candidates though available in the seniority list within the number of vacancies for which the select list is drawn, are not selected, should be submitted to the Minister/Minister of State/Deputy Minister concerned as the case may be.

xx "

Shri Vedantha Rao's contention is that the above  
decision is applicable to selection for promotion to

I.A.S. under the Regulations and that the Tribunal

argued that  
can compel implementation thereof. He has ~~relied upon~~

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the directive of the Government of India in <sup>1162</sup> Brochure would equally be applicable to the All India Services also since the post to which the applicant is to be selected carries an ultimate pay-scale of Rs.2250/- and the scale of pay is akin to that scale. There is, therefore, no need for the Union Government to issue a separate order making that circular applicable to All India Services. Non-observance of this Circular by the Selection Committee, therefore, vitiates the selection process insofar as the applicant is concerned. However, even if it is held that the circular will not ipso facto apply to the All India Services, when once a similar category of officers have been extended this protection, non-application of such a protection to the members of the State Civil Service seeking promotion to the All India Services in a similar grade would amount to discrimination and violation of Articles 14 and 16 of the Constitution. He submits that the principle of reservation is applicable to All India Services also at the stage of direct recruitment and contends that such a concession should equally be also applied/in the case of promotion to the <sup>All India Services</sup> ~~same post.~~ ~~xxxx~~

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(8) In support of these contentions, Shri Vedantha Rao

relies on the decisions of the Supreme Court in :

AIR  
(1) 1976 SC 490 (2) AIR 1981 SC 298 (decision at  
p.328) (3) AIR 1985 SC 983 and (4) AIR 1985 SC 1495.

In the State of Kerala vs. N.M. Thomas and Others

( AIR 1976 SC 490 ) the matter under dispute was validity

of the rule under which the Government had granted exemption

for a specified period to any Member or Members belonging to

the Scheduled Castes or Scheduled Tribes already in service,

from passing the tests prescribed under these Rules. On

a review, the Supreme Court held that Rule 13A<sup>the</sup> and two

other orders issued by the Kerala Government are valid and

observed that the classification of employees belonging to

the Scheduled Castes and Scheduled Tribes for allowing them

the extended period of two years for passing the special

test for promotion is just and reasonable and the classification

<sup>has a</sup> having rational nexus to the object of providing equal

opportunity for all citizens in matters relating to

employment or appointment to a public office. Article 16(1)

does not prohibit prescription of reasonable rules for

selection to any employment or appointment to any office.

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In providing any reservation for appointments to posts under Article 16(4), the State has to take into consideration the claim of the Backward Classes consistently with the maintenance of efficiency of administration.

In A.B.S.K. Sangh vs. Union of India and Others (AI R 1981 SC 298) the Sangh had challenged the various measures taken by the Railway Board in regard to reservation in service of the Scheduled Castes and Scheduled Tribes. It was held that the State may classify, based upon substantial differentia groups or class/<sup>-es</sup>and this process does not necessarily spell violation of Articles 14 to 16. The fundamental right of equality of opportunity has to be read as a justified categorisation of Scheduled Castes/ Scheduled Tribes separately for the purpose of adequate representation in the services under the State. The object is constitutional sanction in terms of Article 16(4) and 46.~~specificate~~. The classification is just and reasonable. The Court may, however, have to test whether the means used to reach the end are reasonable and do not outrun the purposes of the classification.

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In B.S.H. Kalyan Parishad vs. Union of India & Othrs.

( AIR 1985 SC 983 ), the Parishad had filed Writ Petitions against <sup>the</sup> Steel Authority of India aggrieved by the letters issued by the Ministry of Steel to the Chairman, Steel Authority of India denying to the Scheduled Castes and Scheduled Tribes the benefit of reservation in the matter of promotion to selection posts within Group-A. The Supreme Court observed that the rule of reservation is also applicable to promotion for selection posts within Group-A which carry an ultimate salary of Rs.2,250/- per month or less but the procedure is slightly different than in the case of other posts. While the rule of reservation applies to promotions by selection to posts within Group-A carrying a salary of Rs.2,250/- per month or less, it is prescribed that only those officers belonging to the Scheduled Castes and Scheduled Tribes will be considered for promotion, who are senior enough to be within the zone of consideration. The select list depending upon the number of vacancies would be drawn up in which would also be included those officers belonging to the Scheduled Castes and Scheduled Tribes who are not considered unfit for promotion. Their

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position in the select list would be that assigned to them by the Departmental Promotion Committee on the basis of the record of service. In other words, their inclusion in the select list would not give them seniority, merely by virtue of their belonging to the Scheduled Castes and Scheduled Tribes over other officers placed above them in the select list by the Departmental Promotion Committee.

In K.C.Vasanth Kumar vs. State of Karnataka

( AIR 1985 SC 1497<sup>95</sup> ), Chinnappa Reddy, J observed as

follows :-

" One of the results of the superior, elitist approach is that the question of reservation is invariably viewed as the conflict between the meritarian principle and the compensatory principle. No, it is not so. The real conflict is between the class of people, who have never been in or who have already moved out of the desert of poverty, illiteracy and backwardness and are entrenched in the oasis of convenient living and those who are still in the desert and want to reach the oasis. Efficiency is very much on the lips of the privileged whenever reservation is mentioned. There is neither statistical basis nor expert evidence to support the assumptions that efficiency will necessarily be impaired if reservation exceeds 50 % if reservation is carried forward or if reservation is extended to promotional posts."

The point urged by the learned counsel for the applicant is that the judgments of the Supreme Court referred to above would support his contention that the

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instructions issued by the Department of Personnel and Administrative Reforms in regard to Group 'A' posts carrying an ultimate salary of Rs.2,250/- per month should also be applied for selections to the Indian Administrative Services from among the persons belonging to the State Civil Services. In other words, a State Civil Service Officer who is a Member of the Scheduled Castes/Scheduled Tribes should be judged only for his fitness and if he is fit, he should be included in the select list and he should not be superseded by an officer belonging to other Caste who may be given a higher grading like 'Outstanding' or 'Very Good'.

9. As already mentioned, no counter has been filed by the Central Government in the matter. The learned Counsel for the Government of India argued that while the Supreme Court has upheld the validity of reservations/relaxed standards, where no such reservation is made, the State cannot be directed to provide for reservation as it has to consider the test of efficiency. He, therefore, argued that the judgments of the Supreme Court cited by the learned Counsel for the applicant do not

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support the view of the learned counsel that the courts can give a direction for making reservation/relaxation of standard to specific posts in the Government. It is a matter for the Government to determine to which posts reservation can be applied having regard to the needs of efficiency etc. when such reservations are made by the Government they are valid and it is not for the Courts to direct that reservation be made to specific posts.

10. We have considered these contentions. It is true that in all the cases referred to above by the learned Counsel, the question for consideration was validity of the orders/rules issued providing reservation/relaxation of standards for the Scheduled Castes/Scheduled Tribes Members. There is however no case where the Supreme Court directed that the principle of reservation be applied to specific posts to which the applicant belonging to the S.C. S.T. laid his claim. Even in BSH Kalyan Parishad Vs. Union of India, the Supreme Court considered the Presidential Order against certain letters issued by the Ministry of Steel ~~to~~ which sought to withdraw the concession given to the Members of the Scheduled Castes / Scheduled Tribes by the Presidential directive. It was not a case where

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the court directed that reservation be made to a particular post. It would, therefore, follow that while any reservation made or relaxed standards are applied to posts in a higher category by a rule/order/or instruction, its validity cannot be questioned. But it will not be open for this Tribunal to give a positive direction to the Government to make such reservation as sought for by the applicant when the Government has not chosen to make such a reservation. It is open to the Government of India to provide for relaxed standards for promotion to All India Services in respect of Scheduled Castes/Scheduled Tribes but in the absence of any such reservation/relaxed standard, it is not for the Tribunal to issue any such direction. The question whether such reservation/relaxed standard is to be given, is a matter of policy to be determined by the State having regard to considerations of efficiency and other relevant factors. We are supported in this view by the observations of the Supreme Court in AIR 1963 SC 649 (M.R.Balaji Vs. State of Mysore) wherein Gajendragadkar J. observed, "it is necessary to emphasise that Article 15(a) like Article 16(4) is an enabling provision, it does not impose an obligation, but merely leaves it to the discretion of the appropriate



Government to take suitable action, if necessary". The legal position was reiterated with greater emphasis in AIR 1968 SC 507 (C.A.Rajendran Vs. Union of India) wherein it was held, "our conclusion therefore is that Article 16(4) does not confer any right on the petitioner and there is no constitutional duty imposed on the Government to make a reservation for Scheduled Castes and Scheduled Tribes, either at the initial stage of recruitment or at the stage of promotion. In other words Article 16(4) is an enabling provision and confers a discretionary power on the State to make a reservation of appointments in favour of backward class of citizens which in its opinion is not adequately represented in the services of the State. It was sought to be contended by Shri Vedantha Rao that after the decision in State of Kerala Vs. <sup>N.M.</sup> M.N.Thomas (AIR <sup>1976 SC</sup> 1970 Kerala 490) the Supreme Court has departed from the earlier decisions and directed that the State is duly bound to take affirmative action for implementing the policy of reservation to Scheduled Castes and Tribes. We are unable to find any such positive direction in Thomas's case. On the other hand there are several expressions in the Judgment that twin considerations of backwardness and efficiency must be satisfied to uphold

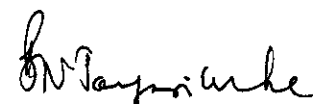
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reservation on the basis of classification.. Further the question whether reservation is to be made would depend on the facts and circumstances of each case, <sup>and</sup> the observations of Krishna Aiyer J. in Thomas's case in this regard are apposite:-

"165. We need not tarry to consider whether Art.16 applies to appointments on promotion. It does. Nor need we worry about administrative calamities if test qualifications are not acquired for a time by some hands. For one thing, these tests are not so telling on efficiency as explained earlier by me. And, after all, we are dealing with clerical posts in the Registration Department where alert quilldriving and a smattering of special knowledge will make for smoother turn-out of duties. And the Government is only postponing, not foregoing, test qualification. As for the bearing of 'tests' on basic efficiency, everything depends on the circumstances of a case and the post."

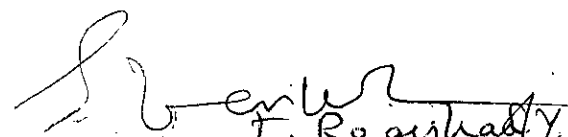
We are, therefore, unable to agree with the contention of the learned Counsel for the applicant that the Circular referred to above would apply to All India Services also.

The application is disposed of accordingly but in the circumstances, there would be no order as to costs.

  
(B.N. JAYASIMHA)  
Vice Chairman

  
(D. SURYA RAO)  
Member (Judl.)

Dated this the 24 day of February, 1988.

  
Deputy Registrar  
C.Judl.

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