

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI Hyderabad

O.A. No. 205 of 1987
T.A. No. 198

DATE OF DECISION

Mr. B. Viswanathan Rao Petitioner

Mr. V. Venkatakrishnan Advocate for the Petitioner(s)

Versus

Presiding Officer, U.P.S.C. & others Respondent

M/s. M. P. Chandramani & C. V. Subba Rao Advocate for the Respondent(s)

CORAM:

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

The Hon'ble Mr. D. Surya Rao, Member (T)

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?

No

BNJ
VCDSR
M(T)

(Judgment of the Bench delivered by Hon'ble Sri B.N.Jayasimha,
Vice Chairman)

The applicant in this Original Application is a Deputy Collector and he is questioning his exclusion in the select list of Officers fit for appointment to the I.A.S. for the year 1986. He seeks a direction to the Respondents to consider and include his name at the appropriate place with consequential benefits.

2. The applicant entered the service of the State of Andhra Pradesh as a Probationary Deputy Tahsildar after selection by the APPSC on 21-11-1963. He was later promoted as Tahsildar and subsequently Deputy Collector from 5-5-1976. His probation was declared on 5-5-1977 and he was also confirmed as Deputy Collector by an order dated 2-12-1986. He became eligible for consideration for inclusion in the select list of officers fit for promotion to the I.A.S. after he completed 8 years of service as Deputy Collector. He came within the zone of consideration in the year 1985 but due to non-issuance of confirmation proceedings due to administrative delay his name was not considered in 1985. He was however

considered by the Selection Committee constituted under I.A.S.(Appointment by promotion) Regulation 1955, when it met sometime in December 1985. The Selection Committee has prepared a select list of officers consisting 24 names and he understands that his name is not included in the list. The State Government had issued orders on 21-2-87 promoting 10 select list officers. Out of them leaving the first two officers, all the 8 officers are juniors to him in the State Civil Service list.

3. The applicant further states that his service has been extremely satisfactory without any penalties or punishments. There was one adverse remarks communicated in the year 1979-80 in which it was stated "he needed goading". This remark was later expunged. In 1982 a memo dated 16-4-1982 containing two charges were issued and after considering his explanation, he was censured by an order dated 13-12-1983. He submitted a review petition alleging that the order of 13-12-1983 had been issued without calling for his explanation. Accepting his contention, the order was cancelled on 7-11-1983 and a charge memo was issued on the same day calling for his explanation. After considering his explanation, but

without giving him a personal hearing which he had asked for,

the State Government issued orders once again censuring him.

It is however a punishment of little or no significance

and cannot be considered as still existing beyond 6 months.

He states that he is no way inferior to the persons who

have been selected.

4. The applicant contends that the Selection Committee

Failed to apply requisite tests in preparing the select

list. Seniority should have given due consideration,

even assuming merit is the criterion. There is an

obligation to disclose reasons for superseding him.

He submits that this Tribunal should call for the records

and peruse them to see whether there was profound

material, while making relative assessment, for super-

seding the applicant. He further states that the Committee

held one sitting in December 1986 but did not prepare

the select list due to administrative reasons. It later

held a sitting in New Delhi and prepared the select list.

At this sitting the Commissioner, Land Revenue did not

participate. The absence of the Commissioner, Land Revenue

vitiated the entire selection process. The Commissioner,

Land Revenue is the administrative head of the Revenue

Department and his participation would have material impact on the selection process.

5. ^{given on 15 day} He states that the Selection Committee did not classify the candidates as required under Regulation 5(4) and 5(5) and included officers irrationally in blocks according to whether they are promotees or probationary Deputy Collectors. It follows that there was lack of application of mind by the Committee. In these circumstances, he questions the select list prepared excluding his name.

6. The counter filed on behalf of the State Government- Respondents 4 and 5, says that Regulation 3(3) provides that the absence of a member other than Chairman or Member of the Union Public Service Commission shall not invalidate the proceedings of the Committee, if more than half the Members of the Committee had attended its meetings. The meeting held on 19-12-1986 was attended by Member, UPSC, and 3 other members including the Joint Secretary, Dept. of Personnel and Training. According to Regulation 5(4), the Selection Committee shall classify the eligible officers as "outstanding", "Very Good", "Good" or "Unfit" as the case may be on an over all relative assessment of their service record. According to Regulation 5(5), the list

shall be prepared by including the requisite number of names, first from amongst the officers finally classified as "Outstanding", then from amongst those similarly classified as "Very Good" and thereafter from amongst those similarly classified as "Good" and the order of names inter-se within each category shall be in the order of their seniority in the State Civil Service.

7. The counter further says that the averment of the applicant that his record of service has been satisfactory and without any penalties is not correct. The applicant himself admits the censure awarded to him for certain lapses committed by him. The personal hearing asked for by him is not required to be given in cases where the lapses are such as would warrant imposition of minor penalties. As it was considered that the lapses noticed were minor in nature, no personal hearing was given. The suitability of an officer for inclusion in the Select list is not based on any specific instance of good or bad record but is based on an overall relative assessment of service records of all eligible officers. Mere seniority will not confer any right on a State Civil Service Officer for inclusion in the Select list. Seniority is relevant for

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purposes of arranging names inter-se within each category of "Outstanding", "Very Good", "Good" in the Select list (Regulation 5(5) of IAS (Appointment by Promotion) Regulations, 1955). Therefore, the contention of the applicant that he is entitled for preferential treatment based on seniority is not correct. The Selection Committee had scrupulously followed the Regulation 5(4) while preparing the select list. The applicant does not spell out what requisite tests are to be followed or applied. He had merely stated that there was no proper material for satisfaction of mind etc., without being specific of what ought to have been followed. There is no basis for the applicant to say that the Censure alone was the basis for not including him in the select list. The allegation that the officers were selected on the basis that they were probationary Deputy Collectors is not correct. Each officer was considered in his turn according to his seniority and given a suitable grading. If the probationary Deputy Collectors secured higher placements in a block, that cannot be a reason for attributing motive to the selection Committee.

8. No counter has been filed on behalf of the Union Govt. (Respondent 3) and the UPSC (Respondent 2).

9. We have heard the learned Counsel for the applicant Shri V.Venkataramaniah and Shri M.P.Chandramouli, Special Counsel for the State Government.

10. In view of Regulation 3(3), ^{which states that} the absence of any member does not vitiate the proceedings of the Committee ~~and the~~ ^{absence of the} contention that the Commissioner, Land Revenue's ~~absence~~ ^A has vitiated the proceedings is not pressed by the learned Counsel for the applicant.

11. In regard to censure awarded to the applicant, Shri Chandramouli stated that it is not correct that the "Censure" alone has been the reason for the exclusion of the applicant from the select list. The committee has considered the record of service of the applicant as a whole while awarding him the grading. We see no force in the contention that the Censure should be altogether ignored by the Committee or that it is erased after six months. Between two officers with otherwise exactly similar reports, one who has been Censured would certainly have to be ranked below the one who has no such remarks. It should be noted that the amended provisions of Regulations have curtailed and restricted the ^{role of} seniority in the process of selection as it ~~as~~ given primacy to merit. When merit

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is the criteria for selection, no officer has legal right for selection to the promotion except that he has right to be considered along with others and his merit is assessed with the same yard-stick/standard as applied to others who are being considered. An adverse remark and Censure or punishment etc., are all relevant factors for being taken into account while making a relative assessment of the officers who are being considered.

12. As regards the contention that the Committee has to follow certain criteria while preparing the select list, we find that the observations made by us in K.Ch.Venkat Reddy vs. Union of India and others (TA 849/1986) and later in K.V.Reddy vs. Union of India and others (OA 58/87) apply. The Counsel for the State Government admitted that the instructions issued by the Government of India in regard to Confidential Reports are not being followed by the State Government.

13. In these circumstances we direct the Selection Committee to consider the case of the applicant in accordance with the directions given in K.V.Reddy vs. Union of India and others. 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 applying the same standard assign a grading (in reports where the reviewing/reporting officer has not himself given a grading), thereafter prepare the select list. The Committee shall do so within a period of three months from the date of receipt of this order. With these directions the application is disposed of. There will be no order as to costs.

B.N.Jayasimha

(B.N.JAYASIMHA)

Vice Chairman

D.Surya Rao

(D.SURYA RAO)

Member (J)

Dated: September 21, 1987.

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