

54

ORIGINAL APPLICATION NOS. 206, 207, 208 and 209 of 1987
(COMMON JUDGMENT OF THE TRIBUNAL DELIVERED BY HON'BLE VC)

...
The applicants in these Original Applications are Deputy Collectors serving in Andhra Pradesh State. They became eligible for consideration for promotion to the Indian Administrative Service according to the Indian Administrative Service (Appt. by Promotion) Regulations, 1955. Their grievance is that they have been superseded by the Selection Committee, while preparing the Select List of officers fit for promotion to the I.A.S. for the year 1986 and their juniors have been preferred. They also contend that their seniors who have comparatively inferior record of service had been selected. They seek that the records relating to the selection be called and perused and a declaration be made that :

(a) the 1986 Andhra Pradesh Cadre Indian Administrative service (Appointment by promotion) Select List and the appointments made pursuant thereto are ab initio void, illegal and inoper and in violation of Articles 14 and 16 of the Constitution and the Indian Administrative Service (Appointment by Promotion) Regulations, 1955;

contd..2

(b) direct the respondents 1 to 4 herein to review the selections by considering afresh all the eligible candidates including the applicant and award the classification strictly in accordance with Regulations 5(4) and 5(5) & duly recording the reasons therefor

(c) direct the respondents to confer on the applicant all consequential and incidental benefits as to salary and emoluments, arrears, seniority and Pensionary benefits if included on such review as directed in (b) above; and pass such other order or direction as this Hon'ble Tribunal may deem fit and proper."

2. The applicants question their non-selection on the following common grounds :-

(1) The Commissioner of Land Revenue, who is the Head of the Revenue Department and a Member of the Selection Committee constituted under the Regulations did not participate in the Meeting. The prescription of the Commissioner of Land Revenue on the Select Committee was a legislative intent to the effect that an Officer in proximate knowledge and capacity to assess the personality profile of the aspiring candidates would more competently assist the Selection process. The absence of the Commissioner of Land Revenue therefore renders the selection process inadequate and void.

contd..3

P.M.

(2) Even though the entire record of service was placed before the Committee, the Selection Committee had considered only the last five years' record, which ~~has~~ confers advantage to one section of the eligible officers, who are juniors to the applicant. The expression used in Regulation 5.4 is "overall relative assessment of their service records," and therefore, the entire record of service should have been considered. If only last five years' record is taken into considerations, the interests of those candidates who were in ~~stationary~~ posts during the last two to three years ~~standaxatxwould~~ earn were affected as they could not ~~standaxatx~~ during that period & results equivalent to those who were in executive line where they could earn outstanding record. If the entire record had been considered, some of the persons who have been selected, would not have been selected.

(3) One Sri C. G.Sreerama Chandramurthy was included in the Select List, even though a Certificate of Integrity was not issued to him as required under the instructions of the Government of India.

(4) Regulation 5.4 and 5.5 call for classification into 'outstanding', 'Very Good', 'Good' and 'unfit' and the process for inclusion pursuant to such classification is also laid down. However, no objective criteria for such classification ~~was~~ is vouch-safed in the ~~Regulation~~ ^{amended}. Thus, recording of reasons for any such classification becomes obligatory as it would disclose how the mind of each member of the Selection Committee is applied to the facts and record of each of the candidate in relation to the others and whether fair, just and equitable classification conclusions were arrived at so as to disclose the veracity of the Selection Process to the process of judicial review. Regarding of reasons for such classification is ^Q ~~sine qua non~~ for a proper recommendation to the U.P.S.C. as required under Regulation 6.

----- These are the common grounds taken in all these applications and we will first deal with these contentions before going into the other points raised in the individual applications.

contd..5

FIRST CONTENTION :

3. In regard to the 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 U.P.S.C. 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 U.P.S.C. 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, U.P.S.C. (President of the Selection Committee) besides three other members including the Joint Secretary, Department of Personnel and Training, who was a nominated member of the Committee. It is further stated that the over-all record and the was 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 ~~and~~ can indeed have no relevance.

The Learned Counsel for the applicants, ~~Shri~~ Raghuram

~~did not~~
~~contends that he does not~~ wish to press this point. We, accordingly, see no merit in this contention.

SECOND CONTENTION:

4. In regard to this contention, viz., that the

selection committee has proceeded with ^{The} assessment

~~only~~ with reference to five years record of ^{The} officers,

the counter filed by Respondent No.4, the State Govt.,

~~contends~~ that the Selection Committee at its meeting

held on 19-12-1986 has considered the suitability

of all the eligible officers based on the overall

assessment of service records. The respondents deny

that only last five years record of service was

taken into account. The further contention that

because of taking only five years record, ~~was~~ one

section of the contenders were placed at an advantage

is, therefore, ~~stated to be~~ incorrect. In the course

contd..7

of arguments, the Counsel for the applicants argued that since the Regulation requires that every officer must have completed 8 years of service, it is essential that the service record of the candidates for a minimum period of 8 years must be considered and preferably, the entire record of work of the officers for the period they worked as Deputy Collectors. Shri Chandra Mouli, Special Counsel for the State of A.P., stated that as already indicated in the Counter, the entire service record is taken into consideration. For any State Service Officer to become eligible for consideration, it is necessary that he should have worked as Deputy Collector for a minimum period of eight years. We consider it would be appropriate and correct that the entire record of service as Deputy Collector is taken into consideration while making the assessment.

contd..8

29

THIRD CONTENTION :

5. In regard to Selection of Sri G.Sreerama-chandra Murthy for whom an integrity certificate has not been issued by the State Government, Shri Raghuram referred to the Government of India Instructions under Regulation 3 of the IAS (Appointment by Promotion)

The said instruction
Regulations, 1955, which reads as follows :-

"1.1. On the basis of the recommendations of the Committee on the Prevention of Corruption, it has been decided that the following certificate should be recorded by the Chief Secretary to the State Government who is the sponsoring authority in respect of all eligible officers whose cases are placed before the Selection Committee for consideration :-

"The State Government certify the integrity of Sri.....with reference to the entries in his annual confidential reports."

1.2. The Selection Committee should also consider the question of suitability of the officers for selection with reference to their integrity and should specifically record in their proceedings that they were satisfied from the remarks in the confidential reports of the officers, selected by them for inclusion in the Select List, that there was nothing against their integrity."

Sri Raghuram says that ~~is~~ ~~as well~~ non-issue of integrity

Certificate vitiates the entire selection process and

no person for whom ~~is~~ ~~an~~ integrity certificate has been issued

62

- page nine -

can be considered by the Selection Committee.

In the Counter filed on behalf of the State Govt . ,

it is stated that under Regulation 7.2, Shri

Sreeramachandra Murthy, who was otherwise found

suitable for inclusion in the list has been provi-

sionally included in the list subject to the obtain-

ing of the integrity certificate as per existing

practice. Shri Chandra Mouli argued that since

the Committee Proceeds on the basis of awarding

grades according to the service records, the inclu-

sion of an officer without an integrity certificate

would not vitiate the entire selection process and

if integrity certificate is ultimately refused, the

selection of Sri Sreeramachandra Murthy only would

be void and nobody else's.

contd..10

112

6. Sri Raghuram referred to Gurdial Singh Fijji v. State of Punjab (1979(1) SLR 804 wherein it was observed as follows :-

" ... The executive decision which is contained in resolutions 1.1 and 1.2 effectuates the purpose of that prescription. Undoubtedly the government in the exercise of its executive authority cannot supersede a statutory rule or regulation by supplementing it. Resolution 1.2 provides that the Selection Committee should consider the question of suitability of officers with reference to their integrity and should specifically record in its proceedings, that it is satisfied ~~by~~ from the remarks in the confidential reports of the officers selected by it for inclusion in the Select List, that there was nothing against their integrity. Resolution 1.1 requires the Chief Secretary of the concerned State Government, who is the sponsoring authority, to record a certificate in respect of all eligible officers, whose cases are placed before the Selection Committee for consideration, that the State Government certifies the integrity of the officers with reference to the entries in their annual confidential reports. These resolutions of the Government of India do not transgress the requirement of the Regulations but are in furtherance thereof. The circumstance that the Chief Secretary has to record a certificate does not confer upon him unguided or unfettered discretion to assess the integrity of the officers by granting or refusing the integrity certificate at his sweet will. The State Government has to certify the integrity of the eligible candidate "with reference to the entries in his annual confidential reports". We are, therefore, quite clear that the Letters Patent Bench of the High Court was in error in striking down resolution 1.1 as being ultra vires of Regulation 5. Both the resolutions 1.1 and 1.2, are in our opinion within the scope of the Regulations and are valid."

These observations of the Supreme Court confirm the validity of the Instructions/1.2 and does not make the selection process illegal, if an officer without an integrity certificate is provisionally included.

Sri Chandramouli argues that issue of a integrity certificate is not mandatory and non-issue cannot vitiate the entire proceedings. Further, the annual confidential reports which also has a column for integrity is placed before the Selection Committee.

In any event, even though such an officer is included in the Select List, his final appointment is subject to the integrity being certificate. We are unable to accept the view of Sri Raghuram that the consideration of an officer without integrity certificate and including him on a provisional basis would render the entire selection process void. We agree with the contentions of the Learned Counsel for the State Government that in the event of an integrity certificate not being given finally, the selections of the concerned officer only would be cancelled, but that does not render the entire relative assessment made in respect of others illegal.

FOURTH CONTENTION :

7. In regard to the fourth contention, viz., there is no objective criteria for classification, these issues have been considered by the Supreme Court

In
in R.S.Das Vs.Union of India (AIR 1987 SC 593)./Para

29 of the above Judgment, the Supreme Court made the following observation :

"29: An ancillary argument was raised to demonstrate discrimination. It was argued that the regulations do not lay down any guidelines for categorisation of officers of the State Service into various categories with the result the Committee even if acting bonafide may apply different standards at different times. The argument was further developed that the Committee members change, and, therefore, the same committee or different Committee is likely to apply its own standard in judging the suitability of officers ~~in its own~~ in different manner in different years which would result into discrimination. This submission is founded on the assumption that the Committee is free to categorise officers at its sweet will but that assumption is misconceived. Under Regulation 5 the Committee has to categorise officers on the basis of their service records into four categories as discussed earlier. The categorisation is objectively made on the material available in the service records of the officers. There is hardly any scope for applying different standards or criteria at different times as the service records, namely, the character roll entries would indicate the category of the officers as adjudged by the authorities recording annual confidential remarks. There is no dispute that in Punjab, under the State Government's

instruction, the authority competent to record annual remarks in the character roll of members of the State Civil Service, has been directed to indicate the category of the officer, e.g. whether the officer is "outstanding", "very good" or "good". The annual confidential remarks as available in the character roll of officers of the State Civil Service, therefore, indicate the category to which a particular officer may belong. We were informed by the Counsel for the Union Government during the hearing of the cases that under instructions issued by the Union Govt. all the State Governments are following similar pattern in categorising members of the State Civil Service in the annual remarks made in their confidential records. This has brought uniformity in the character roll entries. Since category of members of State Civil Service is available in their service record, the Committee has no discretion to disregard the same. The Committee has to categorise the members of the State Service on the basis of entries available in their character roll and thereafter to arrange their names in the proposed list in accordance with the principles laid down in Regulation 5. There is no scope for applying different standard of test in preparing the list, or to practise discrimination. We, therefore, find no merit in the submission that Regulation 3 and 5 are discriminatory and they violate Articles 14 and 16 of the Constitution."

In support of the contention that the procedure adopted by the Selection Committee is in accordance with the Regulation and is in order, the Respondents 1 and 2 (The Select Committee and the U.P.S.C., New Delhi) state in para 9 of their counter a that :

"9. It is further submitted that the Supreme Court of India while upholding the Select for promotion of the Punjab State Civil Service Officers to the Indian Administrative Service for the years 1978, 1979, 1980 and 1983 in the case of Sri R.S. Dass Versus Union of India

contd..14

2.15

vide their judgment dated 11-12-1986 in Civil Appeal Nos. 4370/83 and 4372 of 1983 in March part of AIR 1987 SC-593 - inter-alia observed as under :-

"Regulation 5 minimised the role of seniority in the process of selection and importance and primacy was given to merit. This indeed is a laudable object and helps in having the best for the country. It is also true that if selection is made on ~~max~~ merit alone for promotion to higher service, selection of such an officer though junior in service in preference to his senior does not really amount to supersession. If promotion is made on merit alone, the senior officer per se has no legal right to promotion and if promotion is made on merit, it cannot be said that senior officer has been superseded.

.....The amended Regulations have brought in significant change and now the process of selection as contemplated by Amended Regulations do not require the Selection Committee to record reasons for the supersession of officers of the State Civil Service.....Article 16 ensures equality in matters relating to appointment and promotion to an officer or post under the State. It enjoins State not to practise discrimination in matters relating to appointment and promotion. A member of the State Civil Service eligible for selection for promotion to the IAS has right to be considered alongwith others for selection for promotion. If eligible officers are considered on merit, in an objective manner no Government servant has any legal right to insist for promotion nor any such right is protected by Article 14 and 16 of the Constitution. Article 16 does not insist that reasons should be recorded for non-selection of a members of a State Service.....Having regard to the Legislative history and the purpose and the object which was sought to be achieved by the amendments there could be no mandatory legal obligation on the Committee to record reasons.

.....Principles of natural justice do not require on administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person. In the absence of statutory provision to all administrative authority is under no legal obligation to record reasons in support of its decision. There is no scope for applying principles of natural justice in matters relating to Selection of suitable members of State Service for promotion to a higher service.....If during the process

of selection a senior officer is proposed to be superseded by virtue of not being included in the Select List, and if opportunity is afforded to him to make representation and only thereafter the list is finalised, the process would be cumbersome and time consuming. In this process it will be difficult for the Committee to prepare and finalise the select list within a reasonable period of time and the very purpose of preparing the select list would be defeated. Scheme of the Regulations, therefore clearly warrants exclusion of principle of Audi-alteram-partem. No vested legal right of a member of State Civil Service who after being considered, is not included in the select list, is adversely affected. Non-inclusion in the select list does not take away any right of a member of the State Civil Service that may have accrued to him as a Government servant, therefore, no opportunity is necessary to be afforded to him for making representation against the proposed supersession..... The Selection Committee is constituted by high ranking responsible officers presided over by Chairman or a Member of the Union Public Service Commission. There is no reason to hold that they would not act in fair and impartial manner in making selection. The recommendations of the Selection Committee are scrutinised by the State Government and if it finds any discrimination in the selection it has the power to refer the matter to the Commission with its recommendations. The Commission is under legal obligation to consider the views expressed by the State Government along with the records of officers before approving the select list. The Selection Committee and the Commission both include persons having requisite knowledge, experience and expertise to assess the service records and ability to adjudge the suitability of officers. In this view we find no good reasons to hold that in the absence of reasons the selection would be made arbitrarily."

of respondents

The Counter goes on to state that in view of the submissions in the preceding paragraphs, the applicant is not entitled to any of the reliefs prayed for.

contd..16

Q8. 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 Chandramouli states that the pattern referred to in the Judgment of the Supreme Court in R.S.Dass' case (underlined in para 29 of the Judgment extracted above) 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.U.O.I. & Others (TA.No.844/86 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 freshment in accordance with the direction in that case.

We will now consider the contentions raised in the individual applications.

O.A. NO.207 of 1987 :

9. The applicant in O.A.No.207 of 1987 has a further contention, viz., he was awarded a censure in the year 1984 and that the said 'Censure' was not due to any misappropriation, misbehaviour, misconduct, misguidance, mismanagement, mischief or not for any other matter in discharge of service, but due to the appointment of his major educated unemployed son, as L.I.C. Agent. The applicant contends that the 'Censure' has been the only ground on which he has been superseded. The Counsel for the applicant, Shri Raghuram argued that a 'Censure' is a minor penalty which works itself out and should not be a bar for his promotion. According to Rule 5 of the CCS9(CCA)Rules,1965, Censure should not be a bar from promotion and the fact of imposition of a minor penalty of Censure on a government servant does not itself stand

in the way of the applicant for considering him fit for promotion, as his fitness for promotion has to be judged on the basis of ~~examak~~ merit categorisation, which is again based upon overall assessment of service record. In the counter filed on behalf of the State Government, it is stated that it is not correct to say that the 'Censure' awarded to the applicant alone influenced the Selection Committee in not including him in the Select. The inclusion of an officer in the Select List is based on an overall relative assessment of the record of the service as provided under Regulation 5.4. The gradation given by the Selection Committee is based on an overall relative assessment of the officers concerned and 'Censure' alone cannot be said to have come in the way for inclusion. We have considered these contentions. It is ~~true~~ that a Censure will not be a bar for promotion, but there can/no doubt that 'Censure' awarded would also have to be considered while making an overall relative assessment. We see no force in the contention of the applicant that the Censure should be altogether ignored while assessing his record in comparison

to others. Between two officers possessing exactly similar records, the one who has been awarded with a 'Censure' would necessarily have to rank below the one who has a clean record. We see no merit in this contention of the applicant that the 'Censure' should be ignored altogether, & while making an overall relative assessment.

10. In a supplemental affidavit, ^{of further} ~~the next~~ contention raised by ~~the~~ the applicant in O.A.No.207 of 1987 is that some of the officers who have been included have grave allegations and charges pending against them. By a deliberate and studied inaction on the part of the State Government to proceed with the enquiries in respect of these charges and allegations, they have been enabled to be included in the Select List. The following are ^{the} ~~are~~ allegations made by the applicant in respect of the officers who were ^{the} following considered by the Selection Committee.

contd..20

P.92

"a. Sri D. Janardhan Rao (Sl.no:2)

ACB reported after detailed probe that Government revenue was misappropriated by the Malipatel of Pangal village in Nalgonda district during the tenure of Sri D. Janardhan Rao as Tahsildar and sought disciplinary action to be taken against this Officer also. Collector, Nalgonda has also confirmed the report of the ACB. No tangible action was taken for the last one year as it was coming in the way of Sri Janardhan Rao in the select list and it is understood that it has been shown as a case under enquiry suppressing the real position. The relevant file may be called for and perused by the Hon'ble Tribunal (Government in Revenue Department Memo. No. 2761/W2/84-1, dated 19-4-85 and Land Revenue Commissioner's Ref. D4/2470/85, dated 1-10-85.

(b. Sri B. Rajalingam (Sl.no.3):

On receipt of the report of the Joint Collector, Mdeak, the then Commissioner, Land Revenue had taken a decision to frame charges against Sri Rajalingam for this involvement as Revenue Divisional Officer, Siddipet, in the irregular assignment of Government land to an ineligible person in violation of the rules. No action was taken for the last one year and it might have been shown as a case under enquiry. The relevant files may be called for and perused by the Hon'ble Tribunal.

c. Sri G. Narendranath :

His overall record is not extraordinary so as to supersede his seniors. But for the replaced reports he would not have supersede his seniors. Complaints are pending against him with the Commissioner of Survey and Settlement. For the blunders committed by him as returning officer of Kalahasti.

an Assembly Constituency in the last General Elections, the High Court of Andhra Pradesh passed strictures against him which would disqualify him for being included in the select list of 1986 for I.A.S.

d. S. Sriramachandra Murthy :

There are grave charges relating to loss of Government money amounting to Rs. six lakhs pending against him and these charges were had proved against him in the preliminary enquiry and he was held personally responsible for this loss in the capacity of incharge Joint Collector, Prakasam District. The regular enquiry is being delayed. He was not given integrity certificate by the Commissioner, Land Revenue for 1985 and as well as 1986 Select List and he has been included surprisingly. The relevant file may be called for and perused."

The applicant contends ^{that} ~~in view of the above, that~~ the State Government did not exercise due care and diligence in placing all information before the Selection Committee. By not placing the relevant material and inexplicable delay in enquiry into the grave charges, the State Government brought ^{about} a situation wherein persons of doubtful integrity and competence have been promoted and enabled to supersede the applicant, whose competence, ability and integrity is far beyond those officers. He also alleges that the confidential reports/ for several years in respect of Deputy Collectors who are now included in the List

were not available and the Reporting Officers were addressed by the Commissioner of Land Revenue for old reports. The concerned officers approached the reporting officers and got written up 'made up reports' for the purpose of Select List in the month of November, 1986. The applicant contends that the Confidential Reports ought to have been written by the reporting officers concerned at the relevant time so that the good deeds and misdeeds are fresh in the mind of the reporting officers and he would be able to appropriately comment upon such work carefully and effectively.

If a reporting officer is asked to write the reports much later, he will become amenable to sympathy, sycophancy, praise and so on. In such a case, the reports which are subsequently ^{written} should be compared with the reports prepared at the appropriate time for their veracity. He specifically mentions the details of such reports as shown below :

contd..23

(I) DETAILS OF OFFICERS IN WHOSE CASES THE CONFIDENTIAL REPORTS ~~WERE~~ WERE UNDERSTOOD TO HAVE BEEN WRITTEN UP IN NOVEMBER, 1986 AND APPEAR TO HAVE BEEN WRITTEN UNIFORMLY EXCELLENT/OUTSTANDING FOR ENABLING THEM SUPERSEDE THEIR SENIORS WHOSE REPORTS WERE WRITTEN IN THE RESPECTIVE YEARS IN THE PAST :

1. G.Narendranath : 1977-78, 1978-79, 1981-82, 1982-83, 1983-84, 1984-85 and 1985-87 (7 years)
2. M.Tukkaram : 1981-82, 1982-83, 1983-84 and 1984-85 (4 years)
3. N.K.Narasimha Rao: 1982-83, 1983-84& 1984-85 (3 years)

(II) DETAILS OF OFFICERS WHOSE CONFIDENTIAL REPORTS FOR PERIODS BETWEEN 1976-77 and 1981-82 WERE UNDERSTOOD TO HAVE NOT BEEN WRITTEN IN TIME AND GOT WRITTEN IN SUBSEQUENT YEARS :

1. K.Rama Mohana Rao
2. D. Janardhan Rao
3. B. Rajalingam
4. K. Sundara Rao
5. T. Janardhan Naidu
6. Venkataramana Chary
7. Amjadullah Khan

Sri Raghuram argued that by deliberately delaying disciplinary proceeding against ^{some} these officers, the State Government have favoured these officers so that they can be included in the Select List. Material

contd..2A

1975
22

information before the Selection Committee is, therefore, not being placed properly, with the result that the Selection Committee is assessing only on the basis of the material placed by the State Government. It is the duty of the State Government to place all the relevant materials in respect of all the officers so that the assessment is made on the basis of the material relating to each officer. Shri Chandramouli contended that it is not for the applicant to question the merit or otherwise of these officers and if he wanted to do so, these persons should have been made as Respondents. We have given careful consideration to these allegations made. The applicant has brought out these allegations only in an additional affidavit filed by him. Mere allegations like these cannot either hold up the proceedings of the Selection or vitiate the selection process. However, the allegations are serious enough calling for serious consideration by the State Government and the U.P.S.C. The Indian Administrative Service is the premier service in the Country and the ^{Service} selections to that post would have to ensure that highest standards are maintained. Admittedly, the

78

- page twenty-five

selection committee proceeds on the basis of the material placed before it by the State Government. In view of the serious allegations made, we consider it appropriate to forward to the Chief Secretary of the Government of A.P., who is the Head of the Service, a copy of the additional affidavit. We have no doubt that he will ensure that all relevant material is placed before the Committee and that there would be no withholding of any information in respect of one officer or placing extraneous information in respect of another officer. As the truth or otherwise of the allegations can only be ascertained ^{on} ~~an~~ investigation into those matters, we merely draw the attention of the State Government to the allegations. The Chairman of the Selection Committee, whether he is the Chairman of the UPSC or a Member, will also no doubt give full consideration to ^{apprehensions expressed} ~~these allegations made~~ and take measures for ensuring proper selections. Merely on ~~these~~ allegations, we cannot give any direction to stop the entire selection process.

O.A. NO.208 of 1987 :

11. The applicant in O.A. no.208/87 states that he was awarded a Censure in the year 1983 without calling for his explanation and without following the procedure. Subsequently a representation to the Commissioner of Land Revenue requesting to remove the papers relating to the above punishment from his personal file was made by him. So far the representation made by him against the ~~censure~~ said censure has not been

disposed of till date. Apart from that, such minor remarks of 1983 which actually relate to the period during which he worked as Tahsildar in the year 1975 and which are irrelevant to the present selection were also taken into consideration. In the Counter-affidavit, it is stated that the applicant was placed on his defence before the Tribunal ~~was~~ on his ~~was~~ defense for disciplinary proceedings for certain malpractices of creation of bogus files and issue of fraudulent validation certificates under Sec.50-B of the Andhra Pradesh (TA) Tenancy Act, 1950, along with six other employees of Taluk Office, Miryalguda. The counter goes on to state as follows :-

"The following charge was framed against him by the T.D.R :-

"That he while working as Tahsildar, Miryalguda, from 28-2-74 to 14-3-74 and 12-7-75 to 16-2-76, in abuse of his official position and actuated by corrupt motives and in connivance with Sri Gulam Rasool, U.D.C. (C.O. in TEC.19/81) Sri Rajjab Ali, Head Clerk (C.O. No. TEC.20/81) Sri D.Ram Reddy, Head Clerk (C.O.No.TEC.21/81) Sri M.A.Baquer, Examiner, Tahsil Office, Miryalguda (C.O. in TEC.17/81) issued validation certificates under Sec.50-B of the Tenancy Act in Twenty cases, which were assigned with false Distribution Register

contd.. 20

Numbers, knowing or having reason to believe that there are no bonafides in the applications filed and without verifying the same properly and that thereby he is guilty of misconduct within the meaning of Rule 2(b) of the Rules framed ~~as~~ under the A.P.Civil Services (Disciplinary Proceedings Tribunal) Act, 1960."

The T.D.P. conducted the enquiry and submitted its report holding that though the first limb of the charge namely connivance with his subordinates ~~is~~ in issuing certificates under Sec.50-B fraudulently is not proved, carelessness on the part of the charged officer is established. Therefore, it was decided to impose the minor penalty of 'Censure' on the applicant and accordingly orders were issued in Memo. No. 1730/Y2/78-14, Revenue Department, dated 8-11-1983. Under Proviso to Rule 19(1) of the A.P.Civil Services (CC&A) Rules, 1963, where it is proposed, after an enquiry to impose any of the penalties specified in items (i), (ii), (iii), (v) or (ix) of Rule 8 or Rule 9 of the said rules, it shall not be necessary to give the person charged an opportunity of making a representation against the penalty and the penalty may be imposed on the basis of the evidence adduced during the enquiry. In the case of the applicant, the T.D.P. has conducted the enquiry after framing the charge and made its recommendation. It was therefore not necessary to give an opportunity to represent against the punishment imposed. As he has faced the enquiry by the T.D.P. and submitted his defence he cannot claim that the penalty of 'Censure' was imposed without calling for his explanation and without following the procedure. His appeal against the penalty is under consideration."

Having considered the above contentions, we direct that the appeal submitted by the applicant shall be disposed of wellbefore the selection committee meets again and

contd.. 28

if the appeal is still not disposed of, the ^{censure} same
shall not be taken into account by the Committee.

22. The next contention of the applicant is that the annual confidential reports of the applicant for the period from September, 1980 to March, 1981 was written by the then Chief Rationing Officer and the same were understood to have been missing and in its place, the report written by the Collector, Hyderabad is placed. The Collector, Hyderabad was in no way connected with the post of District Supply Officer, Hyderabad City and he was neither the Controlling Officer nor a Supervising Officer. The personal file written by Sri Venkateswaram, the then Chief Rationing Officer shall be traced and placed on record.

← In the Counter-affidavit filed by the State Govt., it is stated that the Confidential Report for the period from October, 1980 to March, 1981 was not written by the then Chief Rationing Officer and the circumstances under which it was not written are not known. However, the C.R. for the period is countersigned by the Commissioner

contd.. 29

of Civil Supplies. It is the report as finally accepted by the Countersigning authority that is taken into account. It is also stated that there is nothing adverse against the applicant in the Confidential Report written by the Collector and accepted by the countersigning authority and thus mere non-writing of Confidential Report by the Chief Rationing Officer did not result in any particular disadvantage to the applicant as is sought to be made out by him. We have considered these contentions. Even though the Chief Rationing Officer, who is the reporting officer has not written the report, the report written by the Collector, who is intimately connected with Civil Supplies, has been reviewed by the proper authority, viz., Commissioner of Civil Supplies. The applicant was working under the overall control of the Commissioner of Civil Supplies. We, therefore, see no merit in the contention that the report should be ignored.

13. The next contention of the applicant is that the following observation based on frivolous and baseless accusations were placed on his record, even without calling for his explanation.

contd.. 30

"1) He is alleged to have committed serious irregularities by notifying Draft Notifications and Draft Declarations in certain Land Acquisition cases which were attracted by the provisions of Urban Land Ceiling Act while working as Revenue Divisional Officer at Warangal during the year 1970-80, and thereby violated the instructions of the Government of A.Pl, issued in the year 1976.

--The applicant worked as Revenue Divisional Officer at Warangal between September, 1979 and August, 1980 and he got the Draft Notifications and Draft Declarations notified in certain cases in accordance with the instructions of the Government of Andhra Pradesh issued in their Memo. No. 1688/UC.1/77-3, Revenue Dept., dated 30-11-1977 and Memo. No. 465/U.C.I./79-2 Revenue (U.C.I.) Department, dated 7-5-1979 (which superseded their instructions of 1976). The Officer who finds with the applicant in this regard has suppressed the latest instructions of the Government and mislead the officers. In fact accusation must be directed against the officer who holds the applicant guilty in these cases.

In the counter-affidavit filed by the State Government, it is stated as follows in regard to the above contention:

"It is denied that any record was placed before the Selection Committee about the irregularity in connection with the publication of certain Draft Notifications and Draft Declarations in certain land acquisition cases which were attracted by the provisions of Urban Land Ceilings Act, committed by the Applicant during the period he worked as Revenue Divisional Officer, Warangal, as stated by him."

contd.. 31

← The Learned Counsel for the Applicant

submitted that despite the reply given by the Government, he would, with full sense of responsibility and knowing the consequences of doing so, assert that a report as he has alleged was in fact placed before the Selection Committee. Since we are directing the Selection Committee to make a reassessment of the Selection made earlier, we direct that while doing so, the Committee would ignore any such report, if placed before it.

contd.. 39

O.A. 209 of 1987

14. The applicant in O.A.209 contends that while working as Managing Director, Anakalapalli Cooperative Sugars Limited, the applicant drew H.R.A. and Employees Provident fund in an amount of Rs.7,664-01ps., during the period from 6/81 to 4/84. The factory authorities had drawn the amount and paid to the applicant subject to recovery if found inapplicable at a latter date. The applicant further contends that :

"The Commissioner of Land Revenue issued a memo. to the applicant dated 18-5-1985 which was received much latter in May, 1986 by the applicant due to his frequent transfers and the re-direction of the memo. from place to place. The said memo. called for the reasons for the excess drawal of the amount. No charges were framed ~~as~~ nor any enquiry conducted. Meanwhile, the Director of Sugar addressed the applicant through the Managing Director of the Sugar Factor to remit the amount of Rs.7,644.03 as the Commissioner of Land Revenue had issued orders of recovery. The applicant addressed a request dated 6-8-1986 to the Director of Sugar for permission to pay in six instalments and not getting any response thereto remitted the full amount on 23-12-1986 and this was also intimated to the Commissioner of Land Revenue.

"VIII. The applicant learns and believes the same to be true that the Commissioner of Land Revenue while forwarding the names of eligible officers for consideration by the Selection Committee, recorded a note against the applicant's name to the effect that he drew an amount of Rs.7,644.03 towards HRA and PF in excess

contd.. 33

of the amounts due to him while as the Managing Director, Anakapalli Sugars Ltd., and that a memo. dated 28-10-1985 was issued to him... ~~him~~ asking him to explain but that no reply is received."

He contends that in view of the above, the note recorded against the applicant's name is inequitable, based on an unfair construction of facts and unjustly prejudiced the applicant's career without just cause or reason.

← In the counter filed on behalf of the State Government, it is stated in regard to the above contention,

"that the Commissioner of Land Revenue while sending the material in connection with the Select List for the year 1986, stated that the petitioner, while working as Managing Director, Anakapalli Cooperative Sugars Limited has drawn an amount of Rs.3,539.50 towards House Rent Allowance in spite of staying in the Factory Quarters and an amount of Rs.4,104.53; in respect of Employers Contribution to the Provident Fund and that the explanation of the petitioner has been called for but he failed to submit his explanation though he received the Memorandum on 28-3-1986. The Commissioner of Land Revenue further stated that the Cooperative Sub-Registrar and Auditor, Anakapalle Cooperative Sugars Limited, Thummapala, has informed that the petitioner during his tenure as Managing Director, Anakapalle Cooperative Sugars Limited, Thummapala has drawn an amount of Rs.4,542.21 and the Director of Sugars, Hyderabad has been requested to intimate whether any action has been taken by him for the recovery of the amount drawn irregularly by the petitioner while working as Manager Director, Anakapalle Cooperative Sugar Factory Limited.

contd.. 37

The Counter goes on to state as follows :-

" A representation from the petitioner has been received by the Government in January, 1987, intimating that the Director of Sugars has asked him to remit the amount of Rs.7,644.03 towards House Rent Allowance and Employees Provident Fund and he has accordingly remitted the amount. He has explained the circumstances under which the excess amount was drawn and requested the Commissioner of Land Revenue to drop further action in the matter as he has not committed any irregularity in drawing the amount as was drawn by his predecessor also. The Commissioner of Land Revenue is taking action in the matter. No disciplinary proceedings are either initiated or pending with Government."

Having considered the above contentions, we direct that the Respondents should ensure that the Commissioner of Land Revenue dispose of the applicant's representation expeditiously, in any case, before the Selection Committee meets next.

15. In these circumstances, we direct the Selection Committee to consider the cases of the applicants in these applications, (Original Applications Nos.206,207, 208 and 209 of 1987) in accordance with the directions

given by us in K.Ch.Venkat Reddy Vs.Union of India & Ors.

OAS/87

(TA.849/86) and later in (K.V.Reddy Vs.Union of India & Ors.)

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. In all these cases, the applicants questioned the same selection and the proceedings of the selection committee. We direct that the Selection Committee shall review the cases as indicated above within a period of three months from the date of receipt of this order. In regard to other contentions raised by the individual applicants, the Respondents shall take action as directed by us in the individual cases.

16. All these applications, viz., O.As.206/87, 207/87, 208/87 and 209/87 are disposed of. There will be no order as to costs.

B.N.Jayasimha
(B.N.JAYASIMHA)

Vice-Chairman.

D.SURYA
(D.SURYA)
Member (J)

25 SEPT., 1987.