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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD.

O.A.No.178/1989.

Date of the order: 23-5-1990.

Between

Jagannath Singh

... APPLICANT

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1. Govt. of Andhra Pradesh,  
rep. by its Chief Secretary.
2. Govt. of India, rep. by  
its Secretary, Dept. of Personnel  
& A.R., Min. of Home Affairs,  
New Delhi.
3. Union Public Service Commission,  
rep. by its Secretary, New Delhi.

... RESPONDENTS

Appearance:

For the Applicant : Sri V.Rajagopal Reddy, Advocate &  
Sri I.V.S. Rao, Advocate  
For the Respondent No.1 : Sri M.P.Chandra Mouli, SC for  
State Govt.

For the Respondent No.2&3: Sri G.Prameswara Rao, Advocate,  
representing Sri P.Ramakrishna  
Raju, Sr.SC for Central Govt.

CORAM:

The Hon'ble Sri D.Surya Rao, Member (Judicial)

and

The Hon'ble Sri D.K.Chakravorty, Member (Admn.).

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(JUDGMENT OF THE BENCH DELIVERED BY THE HON'BLE  
SRI D.SURYA RAO, MEMBER (JUDICIAL).

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The applicant herein is a Member of the Andhra Pradesh State Civil Service. He filed this application for a direction to the Respondents for regularising his promotion to the I.A.S. with effect from the date his immediate junior was regularly promoted to the I.A.S. cadre with consequential benefits like back-pay, allowances, seniority, etc.

2. The applicant contends that he was included in the select list of officers for selection by promotion to the Indian Administrative Service cadre borne on the State of Andhra Pradesh, on 15-8-87 and that he has been officiating in a senior duty post from 6-10-87 without any interruption. The applicant learnt that the first respondent, in exercise of the powers conferred on him by the I.A.S. (Selection by Promotion) Rules, 1954, had prepared a select-list for the subsequent year (1988). He reliably understands that his name would not be included in the current year's list of select list officers (appointments to be made in 1989). He further contends that several of his juniors appointed to the service in the year 1986 were allotted seniority from 1984. Because of inclusion of such officers junior to the applicant, viz. S/Sri P. Sundar Kumar, K.Venkata-ramanachari, V.Krupanandam, D.Rosayya, G.Rajendra Mohan, I.Venkateswarlu and Dr.Uma Malleswara Rao, he contends that the entire process of selection resorted to by the

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first Respondent is biased. The applicant also contends that inasmuch as juniors to him were placed in the select list for the year 1988 and they were also appointed to the I.A.S., the applicant is also entitled to be given confirmation to the I.A.S. with effect from 16-12-1988, the date on which his immediate junior was appointed. By way of an amendment petition, the applicant sought a further direction that the Tribunal may call for service records of all officers pertaining to the select lists of the years 1986, 1987 and 1988 and determine the legality and the constitutionality of the said select lists and quash the same and to give a direction to the respondents to consider the case of the applicant for appointment to the I.A.S. on regular basis with effect from the date his immediate junior was substantially promoted to the I.A.S.

3. In view of the urgency of the case, the matter had been taken up at the request of the parties even before the Respondents (both the State Government and the Govt. of India) could file their counters. It has been agreed that the matter can be disposed of on the basis of counters filed in connected O.A.Nos. 76/89, 177/89 and 223/89, records produced and arguments advanced. Accordingly, we have heard Sri V.Raja Gopal Reddy and Sri I.V.S.Rao, learned counsel for the applicant; Sri M.P.Chandra Mouli, learned Special Counsel for the State of Andhra Pradesh and Sri G.Parameswara Rao, learned advocate representing Sri P.Ramakrishna Raju, Senior Standing Counsel for the Central Government.

This application could not be disposed of alongwith the connected O.A.s referred to above on 27-4-1989 as the learned counsel for the applicant herein had, after the case was reserved for judgment, filed a letter requesting permission to address further arguments. <sup>and for his arguments heard.</sup> Hence this case was separated from the batch.

4. The main grievance of the applicant as made out in his Application is that he was included in the select-list prepared in December 1986 for appointment by promotion from the category of Deputy Collector to the Indian Administrative Service, that he has been officiating in a senior duty post of I.A.S. from 6-10-87 <sup>be</sup> without any break and that he is not liable to reverted. He contends that having officiated for more than six months in a senior duty post, he cannot be reverted and must be deemed to have been regularised in the I.A.S. cadre. His further contention is that several candidates junior to him in the category of Deputy Collector, have been selected and included in the select-list prepared in December 1987 for filling up vacancies which have arisen in the year 1988. He cited the cases of two of the officers viz. S/Sri Uma Malleshwara Rao and Krupanandam who have not even been in government service as Deputy Collectors in 1976 when the applicant was first appointed. It is contended by Sri Chandramouli, learned special counsel for the State Government that the applicant's inclusion in the select-list by the Committee which met in December 1986, cannot confer on him any right to appointment or regularisation as he was not sufficiently senior enough

in the select list and since sufficient vacancies were not available in view of the lower ranking <sup>which</sup> of the applicant obtained in the select list. It is contended by him that the fact that the applicant was promoted to officiate in a senior duty post cannot confer upon him any right to regularisation. Sri Rajagopal Reddy, the learned counsel for the applicant, has not been able to rebut these contentions. It is not his case that juniors to the applicant in the select-list prepared in December 1986, have been regularised overlooking the applicant. He has also not been able to satisfy us or show any rule which makes it incumbent on the Respondents to regularise an employee of the State Civil Service in the Indian Administrative Service merely because he has officiated in a cadre post for more than six months. The Indian Administrative Service (Appointment by Promotion) Regulations 1965 provide for determination of substantive vacancies anticipated in the course of a period of 12 months commencing from the date of preparation of the list. Thereafter, these vacancies are to be filled in accordance with the classification in order of merit as determined by the selection committee. The fact that the select-list is to comprise of double the number of substantive vacancies cannot confer upon all persons included in the select-list, a right to regular appointment. It is only if those higher ups in the select-list do not become available or if due to casualties or otherwise the number of substantive vacancies increase, <sup>that</sup> these persons lower down in the select-list would come up for consideration.

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In the instant case, as already stated, it is not the case of the applicant that he ranks within the number of substantive vacancies determined for the year 1987. He has, therefore, no right to regular appointment <sup>prepared in 1986</sup> merely because of his inclusion in the select-list.

5. The next contention raised is that ~~there was~~ was a no proper seniority list ~~ever prepared~~ of Deputy Collectors in the State Civil Service that Regulation 5 of the I.A.S. (Selection by Promotion) Regulations, 1955 contemplates a proper seniority list existing and being placed before the selection committee, and that the applicant has filed an R.P. No. 7808/88 before the State Administrative Tribunal for redressing his grievance in regard to the preparation of proper seniority list. It is contended that since there is no proper seniority list, non-inclusion of the applicant in the select-list prepared in December 1987 (for filling up vacancies in 1988 when his junior superseded him) is illegal. It is clear that only an allegation has been made that there is no proper seniority list of Deputy Collectors. It is also clear that the question whether a proper seniority list has been prepared or not is the subject matter of dispute/enquiry before the A.P. State Administrative Tribunal, <sup>which alone is</sup> the competent authority to determine whether such a seniority list is valid or otherwise. The validity of the seniority list of a state service cannot obviously be canvassed before the Central Administrative Tribunal. The applicant himself having approached the competent forum in this regard, cannot assume that the seniority list is invalid and consequently <sup>improper</sup> the select-list prepared for filling up the

vacancies to the I.A.S., by promotion, in 1987 is invalid. It is only if the State Administrative Tribunal determines finally that the seniority list of Deputy Collectors has been wrongly prepared that the applicant could have a cause of action. At present merely on the basis of an allegation it cannot be postulated or held that the seniority list is irregularly prepared and that the selections made pursuant thereto are illegal. This contention is, therefore, rejected.

6. The applicant's counsel next contended that certain individuals viz. Sri B.Sudhakara Rao and Dr.Uma Malleswara Rao should not have been included in the select lists of 1987 and 1988 as they did not complete 8 years of service on the relevant dates when the selection committees met in December 1987 and December 1988. These contentions namely that these two officers ~~do not have~~ have no requisite 8 years standing and, therefore, were ineligible for consideration were never raised in the application and have been raised only by way of argument. Hence the applicant cannot be permitted to raise these contentions by way of arguments. These are questions of fact which have to be duly alleged and be rebutted by way of counter. In any event, when the applicant is assailing the selection of these two officers, it is necessary and incumbent upon him to have made them parties to the application. He has not made either Sri Sudhakara Rao or Dr.Uma Malleswara Rao as parties to the present application. Hence it is not open to him to question their selection without impleading them as necessary parties to the application. This ground raised by the applicant in the course of arguments is, therefore, untenable and cannot be sustained.

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7. A contention was sought to be made on behalf of the applicant that apart from the two vacancies filled in by Sri Sudhakara Rao and Dr.Uma Malleswara Rao, one of which should have been given to him, there are two more substantive vacancies available when the select-list was prepared in the year 1988 for filling up the vacancies in the year 1989. It is contended that two of these vacancies were allowed to lapse and were carried forward to the next year. The applicant's case is that he should have been considered against one of these two vacancies. The question whether who should get the benefit of the lapsed vacancies which were carried forward has been considered by us in O.A. 76/89 and batch. In December 1987, the selection committee met and prepared a panel to fill up 13 vacancies anticipated to arise in the year 1988. During the year, due to demise of one of the cadre officers, the number of vacancies went up to 14. Those ranked 13 and 14 in the select-list viz. Sri K.V. Subba Rao and Sri Ch.Sriramachandra Murthy were not given appointments due to pendency of an investigation by the ACB/disciplinary enquiry. As these investigations/enquiries could not be completed before the end of 1988 the State Government allowed the vacancies to lapse and carried forward these two vacancies to the next year. It is one of these two vacancies which the applicant herein alleges should have been <sup>given</sup> given to him. A similar claim has been made in O.A.No.76/89 by one G.Srinivasa Rao who was ranked at Sl.No.15 i.e. below Sri K.V.Subba Rao and Sri Ch. Sriramachandra Murthy. We have held in the said O.A. and batch at para 13 as follows:

"In regard to the claims of the applicants in O.A.No.76/1989 and O.A.No.177/1989 viz.

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Sri G.Srinivasa Rao and Sri B.Viswanatha Rao in view of our decision in regard to the claims of Sarva Sri K.V.Subba Rao and Ch.Sriramachandra Murthy viz. that they are entitled to have two posts reserved and appointment thereto on exoneration, it would follow that the former who are lower down in the Select-list cannot have any right to appointment till the rights of the latter are determined. As Sri Ch.Sriramachandra Murthy has been exonerated and has been given a declaration that he will be entitled to consideration for appointment from 16-12-1988 the question of Sri B.Viswanatha Rao (Serial No.16 in the select-list) having any right to appointment would not arise. An argument was advanced that Sri Srinivasa Rao would be entitled to appointment if Sri K.V. Subba Rao were not exonerated. This is hypothetical and no decision can be rendered till a final decision is taken by the State Government in regard to the investigation alleged to be in progress against Sri K.V.Subba Rao. It would not be proper to predict what will be final decision of the State Government on the preliminary report of the Anti-Corruption Bureau against Sri K.V.Subba Rao and adjudicate or determine the rights of parties on hypothetical considerations. All that we can say is that at this stage Sri G.Srinivasa Rao has no right to a recommendation or appointment. His application seeking a mandamus that he should be appointed to the IAS by virtue of ranking viz., Serial No.15 in the select-list is premature."

The applicant herein who is below Sri Srinivasa Rao in the select-list prepared in the year 1987 for the year 1988, cannot obviously be in a better position than Sri Srinivasa Rao or Sri Vishwanatha Rao. For the reasons given in O.A. 76/89 and batch, it would follow that the applicant's claim to regular appointment to the I.A.S. in one of the carry forward vacancies cannot be sustained. This contention raised by the applicant is, therefore, rejected.

8. The final argument advanced on behalf of the applicant is that one more vacancy was available which should normally go to a non-State Civil Service Officer in the year 1987, that there was no such officer

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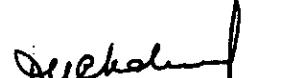
available and that this post which was reserved for non-State Civil Service Officer should have been converted and given to a State Civil Service Officer.

It is argued that if such a ~~conclusion~~ <sup>conversion</sup> took place, the applicant was eligible for regularisation. This contention has never been raised in the application and has been raised for the first time in the course of arguments. These are factual questions which could only be raised and rebutted if a specific averment is made and the respondents are given an opportunity to rebut the same. Since no such contention was raised in the application it is not open to the applicant to raise the same now by way of arguments. This contention is, therefore, also liable to be rejected.

9. For the reasons given by us above, we find no merits in the Application of the Applicant. The O.A. is accordingly dismissed, but in the circumstances, there shall be no order as to costs.



(D. SURYA RAO)  
MEMBER (J)



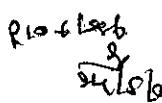
(D.K. CHAKRAVORTY)  
MEMBER (A)

Dated: 23-5-1990

  
for Deputy Registrar (S)

To mhb/

1. The Chief Secretary to Government, Government of Andhra Pradesh Secretariat, Hyderabad.
2. The Secretary, Government of India, Department of Personnel Affairs and Administration Reforms, Ministry of Home Affairs, New Delhi.
3. The Secretary, Union Public Service Commission, New Delhi.
4. One copy to Mr. V. Rajagopal Reddy, Advocate, 3-5-942, Himayatnagar Hyderabad-500029.
5. One copy to Mr. P. Chandra Mouli, Spl. Counsel for the State of A.P. CAT, Hyderabad.
6. One copy to Mr. P. R. K. Raju, Sr. CGSC, CAT, Hyderabad.
7. One spare copy.



CHECKED BY

TYPED BY:

COMPARED BY :

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH:HYD.

HON'BLE MR.B.N.JAYASIMHA: V.C.

HON'BLE MR.D.SURYA RAO: MEMBER: (JUDL) ✓

A N D

HON'BLE MR.J.NARASIMHA MURTHY (M) (J)

A N D D.K. chekharavarty

HON'BLE MR.R.BALASUBRAMANIAN: (M) (A) ✓

DATED: 23-5-90

ORDER/JUDGMENT: ✓

M.A./R.A./C.A./No. in

T.A.No. W.P.No.

O.A.No. 178189

Admitted and Interim directions issued.

Allowed.

Dismissed for default.

Dismissed.

Disposed of with direction.

M.A. ordered.

No order as to costs.

Sent to Xerox on:

Central Administrative Tribunal  
DESPATCH

29 MAY 1990

HYDERABAD BENCH.