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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT : HYDERABAD

O.A.No. 273 of 1989

Date of Order: 25.4.90

Between:

B.Vishwanatha Rao .. Applicant

and

1. Government of Andhra Pradesh represented by the Chief Secretary to Government.
2. Government of India, represented by the Secretary, Department of Personnel and Administrative Reforms, Ministry of Home Affairs, New Delhi.
3. Union Public Service Commission, represented by its Chairman, New Delhi. ..

Respondents

Appearance:

For the Applicant : B. VISHWANATHA Rao, Party-in-person

For the Respondent No.1: Shri D. Pandu Ranga Reddy, Special Counsel for A.P.Govt.

For the Respondents 2 & 3 : Shri E. Madan Mohan Rao, Additional Central Govt. Standing Counsel

CORAM:

The Honourable Shri B.N.Jayasimha, Vice-Chairman.

The Honourable Shri D.Surya Rao, Member(Judicial).

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

1. The applicant is a State Civil Service Officer working under the Government of Andhra Pradesh. He has filed this application against his non-inclusion in the select list for promotion to the I.A.S. prepared for the years 1986, 1987 and 1988.

2. The applicant states that he had filed O.A.205 of 1987 seeking a direction for including <sup>his</sup> name in the select list for 1986 in accordance with regulation 3(1)

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of the Indian Administrative Service (Appointment by Promotion) Regulation 1955. That application was disposed of by this Tribunal on 22-9-1987 to consider the name of the applicant in accordance with those regulations by adopting the procedure which will not result in applying different standards or tests which will result in discrimination. It was also held that the committee will have to consider the yearwise confidential reports of each officer and applying the same standard assign the grading and thereafter prepare the select list. He further states that in the judgement it was observed that the "censure" awarded to the applicant be ~~not altogether/~~ ignored by the committee or that it ~~get~~ get 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. The applicant states that the award of 'censure' by the State Government has since been set aside by the Hon'ble A.P. Administrative Tribunal in R.P.No.1933 of 1987 and the State Government has issued orders expunging the award of censure from the confidential reports as well as the service register.

3. In these circumstances, the applicant prays that his case should be reviewed once again by the selection committee for inclusion in the select list for the year 1986 by ignoring the censure. Though he was included in the select list for the year 1987, his name was not included in the year 1988. The applicant contends that the selection committee has not adopted a proper procedure in grading in awarding the grades in the confidential reports and persons, who were classified as good during the year 1987 have been <sup>given</sup> higher grading subsequently on the basis of one additional Confidential Report.

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4. The applicant also contends that his Confidential Reports were not completed in as much as that the reports from the various officers had not been collected in time and placed before the selection committee for the years 1986, 1987 and 1988. Only recently a report, written by Sri A. Rama-laxman, I.A.S., and Sri Lal Roshan, I.A.S., ~~became available~~ ~~were~~ ~~ever~~. He also contends that the C.Rs. file of the applicant does not contain the C.Rs. written by Sri G.S. Prabhakar, I.P.S., under whom the applicant worked during 1986-87. He also states that item No.4 of the format prescribed for writing of confidential reports indicate the manner in which the officer has discharged his duties during the year i.e. satisfactory or otherwise (specific instances of unsatisfactory work if adversely commented upon to be cited with number and date of order to be passed). He contends that this is a leading question and the reporting officer is apt to write satisfactory.

5. He further states that some of the officers have given him reports grading him as 'excellent' and 'an asset to the department', which are superior to the grading 'outstanding'. He also states that in the select list for the year 1987, persons who have not completed 8 years of service have been included, namely, (1) Shri Uma Malleswara Rao and Sri B. Sudhakar Rao.

6. The Respondent No.1 (State Government) in ~~their~~ <sup>his</sup> counter states that the select committee has prepared the select list of suitable officers in accordance with the set rules following the prescribed administrative norms and procedures and nothing is left to the subjective satisfaction of the Committee. Keeping in view the specific directions of the Central Administrative Tribunal, Hyderabad, the selection committee reviewed the case of the applicant on the basis of

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the overall relative assessment of his record and as per the ~~assignment~~ <sup>grading</sup> given to him, the committee did not recommend the inclusion of his name in the Select List for 1986 as he has been assessed 'unfit'.

7. It is further stated that the applicant while working as Revenue Divisional Officer, Peddapalli, Karimnagar Dist., the then Collector and District Magistrate, Karimnagar, noticed certain lapses on the part of the applicant in land acquisition cases and framed two charges against him. After obtaining the explanation from the applicant, the Collector sent a report to the Commissioner of Land Revenue for necessary action, who in turn referred the matter to Government as he is not competent to take disciplinary action against a Deputy Collector. After examining the matter, the Government awarded the punishment of 'censure' to the applicant by its order dated 3-12-1983. He submitted a review petition to the Government, upon which the Government cancelled the order dated 3-12-1983 and directed that fresh disciplinary proceedings ~~to~~ be initiated for the reasons that the earlier orders were cancelled because no opportunity has been given before inflicting the punishment. After getting his explanation, the orders were issued on 13-8-1986 awarding the punishment of 'censure'. The Judgment dated 9-12-1987 of the A.P. Administrative Tribunal expunging the censure awarded to him was implemented in G.O.Rt. No.645, Revenue (W) Department, dated 30.5.1988. This information was, therefore, not placed before the Review Selection Committee meeting held on 25.2.1988. As the applicant had been graded as 'unfit' by the selection committee for the year 1986 ~~also~~, by the Review Selection Committee, the expunging of the censure, which is a minor punishment, would not have any effect in the applicant being awarded a better grading by the Selection Committee.

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8. In regard to the preparation of the select list for the year 1987, the respondent says that the names of Sri Md.Amjadullah, D.Lakshmaiah, B.Rama Rao and A.P.V. Subbaiah were classified as 'Good' alongwith the applicant and their names were below the name of the applicant in the said select list. The name of the applicant did not figure in the Select List for 1988. The main grievance of the applicant with the addition of just one year confidential report inspite of his inclusion in 1987 Select List and consequential posting in senior time scale post, he should have been given a higher grading is not correct. It is not for the applicant to assign a grading for himself and to state that the grading assigned to the other candidates by an impartial and lawfully constituted committee consisting of high officials is invalid. The Selection Committee awarded the grading 'Good' to the applicant and it is possible that the addition of one year record will alter the position of candidates in the matter of grading.

9. In regard to the contention of the applicant that the Confidential Reports were incomplete, the respondents state that all the available C.Rs. of the applicant were placed before the Selection Committee which met during the years 1986, 1987 and 1988. The C.R. for the period 1.4.1986 to 10.7.1987 written by the then Joint Collector, Adilabad, and countersigned by the then Collector, Sri A.Ramalakshman, was also placed before the Selection Committee meeting. The C.R. for the period from 1.5.1986 to 10.7.1986 written by the Joint Secretary to the Government, Lal <sup>Rosem</sup> ~~Rosem~~, IAS, was not placed before the Selection Committee for 1986, 1987 and as the C.R. was not received by then from the Commission of Land Revenue, Hyderabad. The C.R. is only for a period of 2 months and 10 days. The C.Rs. are not norm.

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written, if the period is less than three months. The C.R. for the period from 19.11.1986 to 4.5.1987 written by Sri N.R.K.Murthy, IPS, during which period the applicant worked as Vice-Principal, Civil Defence and Emergency Relief Training Institute, Hyderabad, was also placed before the Selection Committee. As Sri G.S.Prabhakar, IPS, was placed under suspension with effect from 16-6-1987 while he was working as Principal, Civil Defence & Emergency Relief Training Institute, the C.R. of the applicant for the relevant period could not be written by him.

10. We have heard the Applicant in person and Shri D.Pandu Ranga Reddy, Special Counsel for the State Government, and Shri E.Madan Mohan Rao, Additional Central Government Standing Counsel.

11. The main point urged by the applicant is that even according to the respondents, the censure did form part of the records which were placed before the Selection Committee for the years 1986, 1987 and 1988. It cannot be said that the grading would ~~be~~ have been the same even if the censure was not before the Selection Committee. He also states that he had requested the Commissioner of Land Revenue to inform him whether the C.Rs. were completed for all the years and <sup>Urge</sup> ~~states~~ that the Tribunal may call for the service records of the applicant and satisfy whether all the C.Rs. are available in the service record of the applicant. He also submits that according to the consolidated instructions regarding maintenance and scrutiny of personal files issued by the State Government, it is stated that ~~the~~ <sup>an</sup> officer should not write the C.Rs. of <sup>an</sup> ~~the~~ Officer if he has worked under him for a period of less than two months. He, therefore, says that the C.R. can be written if the period of working is more than two months.

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12. In regard to Sri G.S.Prabhakar, IPS, he was placed under suspension only after he handed over the charge of the post of Principal on 25-4-1987, and there was no bar for his writing the Confidential Report for the period 18.10.1986 to 24.2.1987 and the C.Rs. were due to be sent by 15-4-1987 to the Commissioner of Land Revenue.

13. His further contention is that the case of Sri Uma Malleswara Rao was considered for inclusion in the select list of 1987 in compliance of the orders of the A.P.Admn.Tribunal dated 16-12-1987, whereas in the case of the applicant though the punishment of censure was set aside on 9.2.1987, it was not removed by the respondents till May 1988. There is, thus, a discrimination against him. He asserts that he has received very good reports from Shri K.S.Sarma, IAS, Shri V.Sarma Rao, IAS Ch.Kondaiah, IAS, T.A.Narayana, IAS, and C.Radhakrishna Murthy, IPS.

14. The Special Counsel for the State Government, Sri D.Pandu Ranga Reddy, has placed before us the relevant files/records containing the proceedings of the Selection Committee for the years 1986, 1987 and 1988 as also the proceedings of the Review Committee, which met in 1988. He has also placed before us the file containing the C.Rs. of the applicant. On a perusal of the C.Rs., we do not find that the contention of the applicant that his C.Rs. are incomplete for several years. The only report that is not to be found is for the period he worked under Sri G.S.Prabhakar and the report of Sri Lal <sup>Rao</sup> ~~Rao~~. We, are, therefore, unable to accept the contention of the applicant that he has been adversely affected because of incomplete reports for substantial periods.

15. The next point arising for consideration is whether the Select Committees awarding of the grades to the applicant is invalid because

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- a) at the time the Committee met, the censure was on record in the ACRs of the applicant;
- b) subsequently, the A.P. Admn. Tribunal quashed the order imposing of censure upon the applicant.

We may note here that while disposing of the application of the applicant (O.A.No.205 of 1987) we had observed that censure, though not a bar for promotion, is certainly a factor to be taken into account while awarding grades to the officers who are under consideration by the Selection Committee and between two persons whose nature of service is very similar, a person who has been awarded a censure may certainly give a lower grading. The Committee which met on 25-2-1988 for a review of the case of the applicant had the ACR which also included the penalty of censure imposed on the applicant. Although the learned Standing Counsel for the Central Government and the learned Standing Counsel for the State Government contend that the expunging of the censure which is a minor punishment would not have any effect in the applicant being awarded a higher grading by the Selection Committee, we find it difficult to persuade ourselves to this view. What the committee does is a comparative and relative assessment of the annual Confidential Rolls of the Officers under the zone of consideration and we do not think that it would be appropriate to guess what grade the Committee would have given had the report of penalty of censure was not before them. In the result, we direct that the case of the applicant should be considered afresh once again by the review selection committee and it shall, ~~not~~ adopting the same yardstick as it did earlier, award to the applicant a grading/considering his Confidential Reports ignoring the censure. The case of the applicant will be reviewed for all the three years i.e. 1986, 1987 and 1988. In the event of the

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applicant getting selected, he will be entitled to promotion from the date his junior in the panel was promoted with consequential benefits.

16. The respondents are accordingly directed to refer the case of the applicant to a review Selection Committee and take further action as indicated above. The application is allowed to the extent indicated above. No orders as to costs.

*B.N.Jayashimha*  
(B.N.JAYASIMHA)  
VICE-CHAIRMAN

*A. Dr. A.V. Rao*  
(D.SURYA RAO)  
MEMBER (JUDICIAL)

(Dated: 25<sup>th</sup> April 1990)

*Mr. D. Panduranga Reddy*  
For DEPUTY REGISTRAR (J)

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TO:

1. The Chief Secretary to Government, Government of Andhra Pradesh.
2. The Secretary, Government of India, Department of personnel and administrative reforms, Ministry of Home Affairs, New Delhi.
3. The Chairman, Union public service commission, New Delhi.
4. One copy to Mr. B.Vishwanatha Rao, (Party-in-person) S/o Late Sri B.Sitaram Rao, District Development officer, Kurnool.
5. One copy to Mr.D.Panduranga Reddy, special counsel for A.P.Government, for R-1.
6. One copy to Mr.E.Madan Mohan Rao, Addl.CGSC,CAT,Hyderabad for RR.2 & 3.
7. One spare copy.

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KJ:

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*Javaid*  
*Alvi*

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

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

DATED: 25.4.80.

ORDER/JUDGMENT:

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

T.A. No.

W.P. No.

O.A. No. 273189

Admitted and Interim directions issued.

Allowed. ✓

Dismissed for default.

Dismissed.

Disposed of with direction.

M.A. ordered.

No order as to costs. ✓

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