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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. O.A. No.362/89
T.A.No.

Date of Decision : Sept.1990

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| <u>Sri M. Ramakrishna Sarma</u> | Petitioner. |
| <u>Sri Y. Suryanarayana</u> | Advocate for the |
| | petitioner (s) |
| Versus | |
| <u>Secretary, DPTCS, New Delhi and others</u> | Respondent. |
| <u>Shri E. Madanmohan Rao, Addl. CGSC</u> | Advocate for the |
| | Respondent (s) |

CORAM :

THE HON'BLE MR. D. SURYA RAO, MEMBER (J)

THE HON'BLE MR. R. BALASUBRAMANIAN, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? NO
2. To be referred to the Reporter or not? NO
3. Whether their Lordships wish to see the fair copy of the Judgment? NO
4. Whether it needs to be circulated to other Benches of the Tribunal? NO
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

(HDSR)

(HRBS)

(17)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH : AT HYDERABAD :

D.A.No.362/89.

Date of Judgment: 19.9.1990.

M.Ramakrishna Sarma

...Applicant

Vs.

1. The Union of India represented by its Secretary, Department of Personnel & Training, Central Secretariat, North Block, New Delhi - 110 001.
2. The U.P.S.C. represented by its Secretary, Dholpur House, New Delhi.
3. The Government of Andhra Pradesh represented by its Chief Secretary, Secretariat, Hyderabad.
4. The Government of Andhra Pradesh represented by its Principal Secretary to Government, Revenue Department, Hyderabad.

...Respondents

Counsel for the Applicant : Shri Y.Suryanarayana

Counsel for the Respondents : Shri E.madan Mohan Rao, Addl C.S.
Counted for the Respondents No. 3 and 4: Mr. D. panduranga Reddy, spl. counsel for
State of A.P.

CORAM:

HONOURABLE SHRI D.SURYA RAO : MEMBER (JUDICIAL)

HONOURABLE SHRI R.BALASUBRAMANIAN : MEMBER (ADMINISTRATIVE)

(Judgment of the Bench dictated by Hon'ble
Shri D.Surya Rao, Member (J)).

The applicant herein is a Deputy Collector in the
the Andhra Pradesh State Revenue Services (A.P.State
Civil Services) ^{has D} filed this application for issue of a
direction to the respondents 1 and 2 to consider his
case for inclusion of his name in the select list for
the year 1988 for appointment to Indian Administrative

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Services ^{against} to the State Promotion quota/by reviewing the either the select list or by considering the applicant's name afresh for his inclusion in the 1988 select list. The applicant who was ^a Senior Tahsildar states that his name was included in the panel of Deputy Collectors for the year 1977-78 vide G.O.Ms.No.215, Revenue (W) Department, dated 21-2-1986. He was assigned at Sl.No.16/1, Subsequently the Government of Andhra Pradesh issued orders in G.O.Ms.No.1129, Revenue (W) Department dated 2-12-87 provisionally regularising the services of the applicant with effect from 31-8-1978. This decision of the Government of Andhra Pradesh was taken in consultation with the Commissioner of Land Revenue and it was further stated that if any Officer desirous of making any representation regarding the provisional decision to regularise the services of officers (including applicant) may make representations and the same may reach to the department on or before 11-12-1987. The applicant states that immediately after 11-12-1987 the provisional list should have been finalised, but the Government of Andhra Pradesh did not do so untill 1-8-88. By the G.O.Ms.No.550 Revenue (W) Department, dated 1-8-88 the ^{State} Government issued orders totally altering the dates of regularisation as published in G.O. dt. 2-12-87. The applicant's date of regularisation ^{was this} altered from 31-8-78 to 7-2-79 without

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giving him any opportunity to represent. He further states that the persons from Sl.Nos. 1 to 5 of G.O. Ms.No.1129 dt.2-12-87 who ^{were} ~~was~~ originally juniors to the applicant and regularised on 13-12-87 were altered to earlier dates as 30-10-87, 31-10-87, 17-11-87, 21-11-87 and 23-11-87 respectively. The applicant contends that this caused ^{great} ~~great~~ injustice to him because those who are juniors to him even in the cadres of both Deputy Tahsildar and Tahsildar have been given dates of regularisation earlier to him. ^{he} Further states that there is an irreparable damage to him by way of loss of seniority in the cadre of Deputy Collector. Applicant states that because of the change in the date of regularisation, he ~~lost~~ ^{lost} the opportunity for inclusion in the ~~seniority~~ select list to the Indian Administrative Services for the year 1987. Applicant understands that the change in the date of regularisation was due to the representations made by his juniors. The applicant relies upon the decisions of the ~~rendered~~ Madras Bench of the Tribunal in P.V.Subrahmanyam Vs. Union of India (1987 (3) ATC 598) and another decision rendered in Krishnamoorthy Vs. General Manager, Southern Railway (AIR 1977 SC 1868) and seeks to contend that notional service has to be taken into consideration for fixing seniority and thus the applicant will stand senior to all those Probationary Deputy Collectors whose dates of regularisation was given earlier ~~to~~ to the applicant. He further ~~it~~ states

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that consequent of giving the benefit to certain Probationary Deputy Collectors namely changing the date of regularisation ~~by giving them such dates~~ ~~which is not applicable to him~~ of the applicant from 31-8-78 to 7-2-79, his name was pushed to the end of the eligible candidates and placed at Sl.No.31. It is sought to be contended that revision of the date of regularisation is ^{an} gross violation of the principles of natural justice and denying the legitimate claims ~~of~~ of the applicant for inclusion in the select list to the Indian Administrative Services. It is further contended that despite non-regularisation ^{services} of certain Deputy Directors of Industries (which post is equivalent to that of Deputy Collector) were considered and their names forwarded to the selection committee, such officers ~~were~~ selected by the Selection Committee and included in the I.A.S. Promotion Panel. In ^{the} case of the applicant inspite of the fact ^{of} ~~that~~ provisional regularisation, his name was not forwarded to be considered for select list, 1987 on the ground that confirmation was not done. It is there-
by sought to be contended that ~~there is~~ ^{no} hard and fast rules that were observed in the past by the Selection Committee and that the State Government ^{was}

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choosing their own way in following of the existing rules and provisions. Applicant further states that when attempts were being made to revise the dates of provisional regularisation as contained in G.O.Ms.No.1129, he had filed O.A.776/87 before this Tribunal praying that he should be considered for inclusion in the Select List of 1987 for appointment to the I.A.S. from the State Promotion quota. This Tribunal rejected the application on the ground of ^{the being of} premature as the dates of regularisation in G.O.Ms.No.1129, dated 2-12-87 had not at become final. While dismissing the application, the Tribunal observed that it is open to the applicant to approach the Tribunal for issue of a direction for consideration of their names by Selection Committee in the event of not getting confirmations from the dates mentioned in G.O.Ms.No.1129 dated 2-12-87. It is stated that while the matter stood thus the 4th Respondent issued G.O.Ms. No.550 dated 1-8-88 regularising the services of the applicant with effect from 7-2-79. Thereafter in December, 1988 the selection committee met to consider the cases ~~for appointment for the~~ of the eligible candidates as on that date for the year 1988 (to fill-up the posts which would arise in the year 1989). Applicant states that having been fully qualified and become eligible for consideration as on that date, he was among those candidates forwarded by the 4th respondent for consideration. Further alleges that while considering

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the cases for appointment to IAS for the year 1988 those who are coming in seniority were considered without going into the assessment of over all record and annual confidential reports. The applicant's rank in the category of Deputy Collectors stated as Sl.No.31 was not taken into consideration at all. He contends that the vacancies are said to be 6 only and 12 persons were to be selected for the Selection List for the year 1988. The selection of these 12 officers had to be made on the basis of categorisation i.e. 'out-standing, 'very good', 'good'. The applicant's name was not taken-up for consideration though he was among the qualified and eligible candidates. It is contended that the Committee adopted such a deviated procedure and had not gone into the maritorious record of the applicant and it has also not deleted the names of the officers those having adverse reports in the past. There by the applicant's name not even taken into consideration for assessment. The applicant contends but for this irregular procedure, he would have ^{come up} gone up for ^{in support of} supporting consideration. For this contention, he relies upon the decision rendered by the Supreme Court in R.S.Dass Vs. Union of India (AIR 1987 SC 593) and states that procedure prescribed for making selection were not followed and this was done only to benefit particular persons. ~~showing a partyson act.~~ The applicant asserts contd...7.

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that there is no ^{reason} why he was not come-up for selection as the rule of 'Outstanding' and Merit-cum-Seniority' basing on over-all assessment being followed. ^{He} therefore prays that the Tribunal may summon the ACRs of the officers selected for assessment and make their own assessment whether the applicants record is Meritorious or Outstanding or not. ^{He also} ~~Therefore~~ prays that a direction may be issued that the select list of 1988 may be reviewed or ~~by considering the applicants name~~ ^{that his name may be considered} afresh ^{for} ~~by~~ inclusion in the select list of 1989.

2. On behalf of the respondent No.2 i.e. Union Public Service Commission a counter has been filed stating that the case of the applicant was considered in accordance with the IAS(Appointment by Promotion) Regulations, 1955 based on the information as furnished by the Respondent No.1 i.e. State Government wherein the date of regularisation of the service of the applicant as Deputy Collector shown as 7-2-79. It is stated that as a result there of the applicant has ^{eligible} ~~became~~ ^{for appointment} ~~for consideration~~ only in the year 1989. It is contended that the other averments such as applicant's delayed regularisations are ~~to be answered~~ ^{re} by the State Government. It is further ~~stated~~ that the applicant's name was considered by the Select Committee which met

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on 26-12-88 but the same could not be included in the Select List because of ^{the} statutory limit on the size of the Select List. It is stated that in terms of the sub-regulations (4) and (5) under Regulation 5, there were 12 officers who earned the same grading ^{as} ~~to~~ that of the applicant and they were senior to the applicant in the substantive cadre i.e. A.P. State Civil Service. For these reasons the applicant's name could not be included in the select list for the year 1988. Regarding Sub-regulation (4) under Regulation 5 of the promotion Regulations it is contended that the Select List should be prepared by including the required number of names first amongst the officers finally classified as 'Outstanding', then amongst those classified as 'Very Good' and there after ^{from} amongst those classified as 'Good' and the order of names inter-se within each Category shall be in the order of their seniority in their State Civil Services. In this process, the junior officers of the State Civil Service with higher grading going up in rank while senior officers with lower grading coming down in the Select List or being altogether excluded cannot be ruled out. The officers were selected as per the seniority among the officers similarly graded as more than 12 officers ~~had~~ had

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been assigned the same grading and the committee strictly followed the criteria laid down in Regulation 5(5). Further contended that the applicant cannot substitute his own judgement on his merit and suitability for that of the Selection Committee. It is stated that the service records of the applicant including all other officers were considered and the grading assigned. Further contended that the principles laid down in the case of R.S. Das Vs. Union of India were duly observed, that the allegations of bias and non-consideration of the applicant by the Selection Committee are without any basis. Relying upon the said Supreme Court decision it is further contended that the Promotion Regulations were strictly followed and the service records of all the 33 eligible officers as on the date were assessed by the Members of the Selection Committee, a statutory body and thereafter the gradings were assigned. While denying that there was any deviation from the provisions of the statutory regulations reliance has been placed upon the Supreme Court judgement in Union Public Service Commission Vs. H.L. Dev (AIR 1988 SC 1069) wherein it was held that the Tribunal cannot sit in judgement on the assessment made by the Selection Committee. It is therefore contended that the application is mis-conceived and untenable.

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3. On behalf of the State Govt. a separate counter has been filed giving circumstances under which the applicant was provisionally treated as regularised as Deputy Collector w.e.f., 31.8.1978 alongwith certain others, that the matter was further examined on receipt of objections, that on consideration of these objections it was decided that the applicant could be regularised as Deputy Collector only w.e.f. 7.2.1979 as finalised in G.O. Ms. No.550, Revenue Department dt. 1.8.1988 and that there was no illegality in giving him this date of regularisation. It is therefore contended that the applicant is not eligible for consideration for inclusion in the select list of 1987 (vacancies which are to be filled in the year 1988). ^{to} Reference is given in this counter of the State Govt. ^{to} various cases filed before the A.P. Admn. Tribunal in regard to the date of regularisation of similarly placed employees in the grade of Deputy Collectors. In so far as the selection for filling up vacancies from the State Civil Services to the Indian Admn. Services by promotion which were due to arise in the year 1989 are concerned it is stated that the Selection Committee met on 26.12.1988. The applicant who was eligible for consideration was duly considered by the Selection Committee which after making an overall relative assessment of the records of his service graded him 'Very Good'. The applicant was however not included in the select list for want of sufficient number of vacancies. It is contended that it is not for the applicant to assert that those who occupied first 12 ranks in the select list for 1988 are not as good as ~~that~~ ^{of} him, that the select list is prepared by a selection committee which

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is an expert body statutorily set up for the purpose and it is presided over by the Chairman or a Member of the UPSC. Besides comprising of 3 or 4 senior officers of the State Govt., including the Chief Secretary. The selection committee prepares the select list of suitable officers in accordance with the rules following the prescribed administrative norms and procedure and nothing is left to the subjective satisfaction of the Committee. ^{Reliance is placed upon} ~~The reference is given to~~ the case R.S.Dass Vs. Union of India wherein the Supreme Court had upheld the mode of selection prescribed under the rules and instructions ^{and} ~~It~~ is contended that there is no basis for the applicant to assert that those who occupied in the select list were not as good as himself. For these reasons it is contended that there is no merit in the application.

4. We have heard the learned counsel for the applicant Shri Y. Suryanarayana, Shri E. Madanmohan Rao, Addl. Standing Counsel for Respondents No.1 & 2., and Shri D.Panduranga Reddy, Standing Counsel for for the State of A.P., for respondents No.3 and 4. The applicant has raised various questions in regard to his delayed regularisation as Deputy Collector in the State Civil Service. His contention is that originally ^{he was} ~~sought~~ to be regularised w.e.f., 31.8.1978 which was

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subsequently illegally modified to 7.2.1979 by G.O.Ms. No.550 issued by the State of Andhra Pradesh. This contention cannot be raised or maintained in an application before the Central Admn. Tribunal as the question of regularisation of Deputy Collectors does not come within the purview or jurisdiction of this Tribunal. This Tribunal has no jurisdiction to determine service matters relating to State Govt. officials and if the applicant was aggrieved on the score he should have preferred an application before the A.P. State Administrative Tribunal.


5. The next question is whether the applicant was considered for promotion to the I.A.S., from among the eligible officers of the State Civil Services in 1988. The factual position as contained in the counter of the U.P.S.C., and State Govt. disclose that the No. of vacancies required to be filled up in the year 1989 were 12. For filling up these vacancies the Committee met on 26.12.1988. The Committee considered 33 eligible Dy. Collectors belonging to A.P. Civil Services and prepared a select list of 12 persons. It is clear that the applicant's name figures at S.No.30 among the 33 persons considered. He was also categorised as 'Very Good' by the Committee. It is thus clear that the applicant was duly considered for selection.

6. The next question is whether the applicant was entitled to inclusion in the select list of the first 12 eligible persons. The proceedings of the selection committee disclose that out of 33 persons considered, 21 including the applicant were graded as 'Very Good' and that there were several persons seniors to the applicant who had obtained the same grade. It was

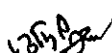
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because he was far junior that he could not find a place in the list of first 12 persons included in the select list. It is contended on behalf of the applicant that on the basis of his service record he ought to have been graded as outstanding and consequently he should have been included in the select list. He prays that the Tribunal may summon all the C.Rs and make its own assessment and come to a conclusion whether the applicant's record is meritorious/outstanding. We are unable to agree with this contention. The procedure prescribed by the Committee to make the selection has been laid down in Regulation 5 of the IAS Regulations (Appointment by Promotion), 1955. The scope of regulation 5(5) has been considered by Supreme Court in R.S. Dass AIR 1987 SC 593 and the said regulation has been upheld. This regulation provides for categorising officers by Committee as outstanding, very good, good. If more than 2 officers are given the same grading they should be arranged in order of inter-se-seniority. Applying this principle in the instant case the applicant who was far junior could not make it to the select list. In so far as the plea of the applicant that he should have been graded as 'outstanding' and that the Tribunal itself should call for records and compare the record of the applicant with others, make its own assessment and come to a conclusion as to whether the record of the applicant is 'outstanding' or 'very good', we are of the opinion that adopting such a procedure would be contrary

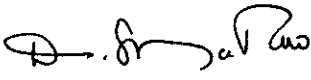



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to the law as laid down by Supreme Court in AIR 1988 SC 1069 (UPSC Vs. Jai Dev). It has been held therein as follows: "How to categorise in the light of relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee". Further it was held that the Tribunal could not have played the role which the Selection Committee had to play. Thus the applicant is asking us to do what has been prohibited by the Supreme Court. We therefore find no merit in this contention.

6. For the reasons given by us in the preceding paragraphs we find no merit in the application. Accordingly the application is dismissed. No order as to costs.



(D. SURYA RAO)
MEMBER (JUDICIAL)

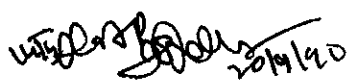

(R. BALASUBRAMANIAN)
MEMBER (ADMINISTRATION)

Dated 19th September, 1990


Deputy Registrar (Judl)

To

1. The Secretary, Union of India, Dept. of Personnel & Training, Central Secretariat, North Block, New Delhi-1
2. The Secretary, U.P.S.C. Dholpur House, New Delhi.
3. The ~~vs~~ Chief Secretary, Govt. of A.P., Secretariat, Hyderabad.
4. The Principal Secretary to Govt. Govt. of A.P., Revenue Department, Hyderabad.
5. One copy to Mr. Y. Suryanarayana, Advocate 40, MIG Housing Board Colony, Mehidipatnam, Hyderabad.
6. One copy to Mr. E. Madanmohan Rao, Addl. CGSC. CAT. Hyd.
7. One  copy to Mr. D. Panduranga Reddy, Spl. Counsel for State of A.P. C.A.T., Hyderabad.
8. One c.c. to Honble Sri. R. Balasubramanian, member (A), CAT, Hyderabad.
9. One Spare Copy


20/9/90