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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH

AT HYDERABAD

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O.A.No. 562/96

Date: 25.7.96

Between:

N.Somasundaram.

Applicant.

and

1. The Government of India rep. by its Secretary, Department of Personnel & Training, Ministry of personnel Grievances and Pensions, New Delhi.
2. The Union Public Service Commission rep by its Secretary, New Delhi.
3. The State of A.P rep. by its Chief Secretary, G.A.D., Secretariat, Hyderabad.
4. The Principal Secretary, Industries Department, Govt. of A.P. Secretariat Buildings, Hyderabad.

Respondents.

Counsel for the Applicant: Shri M.Chandrasekhar Reddy

Counsel for the Respondents: Shri N.R.Devaraj, Sr.CGSC for RR 1 & 2.

Shri IVRK Murthy for RR 3 to 5.

CORAM:

HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN. *hll*

HON'BLE SHRI H.RAJENDRA PRASAD

MEMBER (A) *Q*
25/7

(ORDER AS PER HON'BLE SHRI H. RAJENDRA PRASAD, MEMBER (A))

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The applicant, Shri N. Somasundaram, is an officer in the Industries Department of the State Government, having been initially recruited as Assistant Director in 1991, promoted to Deputy Director in 1987, and to joint Director in 1994. He is aggrieved in this O.A. by the non-inclusion of his name among the short-listed non-State Civil Service Officers to be recommended by the State Government for selection for appointment to the IAS under the IAS (Appointment by Selection) Regulations, 1956, ~~Regulations~~ ("Regulations" hereafter) for 1994-95. The applicant's case is based on the following grounds:

- (i) His case was not considered for inclusion in the recommended list finalised by the State Government for transmission to UPSC., although he fulfilled all the requirements specified in Regulation 3 of the Regulations, and even though he was considered fit in all respects and duly recommended by the Commissioner of Industries and the Principal Secretary, Industries Department, Government of Andhra Pradesh.
- (ii) The interviews preceding the finalisation of Selection recommendations were held by the ~~Selection~~ Committee even before the additional data, called for by the Government and furnished through the Principal Secretary, Industries, could reach the Government. The short-listing was made hurriedly, and in a 'clandestine' manner, thereby unfairly depriving the applicant of an opportunity of facing the selection committee at the interview.
- (iii) A similar interview for the selection of eligible State Forest Service Officers for appointment to Indian Forest Service,

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originally due to be held on 28~~th~~ 3~~rd~~ 1996, was deferred due to the fact that electoral process in connection with the recent general elections had already commenced. And

- iv) His representation addressed to UPSC and submitted on 29th March, 1996, remains unanswered.

2. Respondent No. 2 has not filed any reply to the Original Application. Respondent No.1 in his affidavit points out that he is merely a proforma party to the case, that the matter pertains mainly to Union Public Service Commission and the Government of Andhra Pradesh, and that his connection with the case is only formal and peripheral, concerned as he is with the rules and regulations for promotion of State Civil/Non-Civil Service Officers to the IAS, and again, only in the matter of making appointment of officers in the Select List after it is approved by the UPSC.

3. In their counter-affidavit, the Government of Andhra Pradesh (Respondents 3 and 4) submit their detailed response to all the points stated by the applicant, as under:

4.1. ~~4.1.1~~ The interview² of eligible short-listed officers held on 27--3--1996 was for the year 1995-96 and not for 1994-95 as stated in the O.A.

4.2. (a) According to clause (ii) to sub-regulation(1) in Regulation-3 of the IAS (Appointment by Selection)

Regulations, 1956, only those officers who have not less than 8

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years of continuous service under the State Government in a gazetted post involving duties comparable in importance and responsibility to that of the State Civil Service and holding that post in a substantive capacity as on 1st April, 1995, were eligible to be considered for inclusion in the list of interviewees.

(b) Officers who were in the pay scale of Rs.3,880 — 8,140 — the scale of Deputy Collector — for 8 completed years were considered eligible for inclusion in the list.

(c) The service rendered by the applicant as Assistant Director, between 6-2-81^{and} 25-11-87^{had}, ³⁰ had to be ignored as the pay drawn by him in that appointment (Rs.3,640 — 7,580) was less than that of a Deputy Collector (Rs.3,880 — 8,140). The service of the applicant in the capacity only of Deputy Director (4,400 — 8,700) and Joint Director (5,3980 — 8,980) from 26-11-87 could be taken into consideration in the light of the requirement in the relevant sub-Regulation of the Regulations. And this segment of his service in the Deputy Collector's grade and above, fell short of the requirement of eight years as on 1-4-1995. The applicant's inclusion could not, therefore, be considered or agreed to.

4.2. The averment of the applicant that the interview was conducted and the selections made in a 'clandestine' and hurried manner is untrue. The process had in fact started

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as far back as September, 1995, and thereafter followed a well-established time-pattern at each stage, till the interview of short-listed officers was held on 27-3-1996. This had to be necessarily so because of the receipt of a large number of nominations from various departments, each of which had to be scrutinised carefully to adjudge the basic eligibility of the officers recommended.

4.3. It is not also correct that the selection of State Forest Service due to be held on 28-3-1996 was deferred. The meeting for the purpose had actually been fixed to take place on 29-3-1996, but had to be put-off not on account of the General Elections, as asserted by the applicant, but because of a direction of Andhra Pradesh Administrative Tribunal not to operate the seniority list of State Forest Service Officers which was before the Selection Committee.

4.4. As regards the commencement of Electoral process relating to the General Elections, the views of the State Government are detailed in a report submitted by them to the Chief Election Commissioner of India on 6th April, 1996, in response to a query from the Commission (Annexure-II to the Counter Affidavit). Briefly, these are:

- (1) It is the UPSC, a statutory body, which convenes the Selection Committee and also decides the date (s) of its meeting, and the State Government has no role in it;

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(ii) the date of the meeting of the Selection Committee was fixed by UPSC well before the Election Notification was issued;

(iii) no appointments could be or were made on the basis of the proceedings of the meeting of the Selection Committee. Such appointments can be made only after the Select List prepared by the Committee is approved by the UPSC;

(iv) the preparation of Select List does not in any manner violate the Election Code as no public interest is involved in the process, the preparation of select list by the Committee being purely an administrative function.

4.5. It is true that the final recommendation, together with the required additional data, in respect of the applicant, was received from Respondent No.4, after the select list had been duly finalised and despatched to UPSC. However, this by itself does not alter the basic fact that the applicant was ineligible to be short-listed on account of insufficiency of the length of service prescribed in this regard. It mattered little, therefore, whether or not the proposal was received before or after the finalisation of the select list. In either case, the applicant's name could not possibly have been considered for inclusion in the short-list.

5. In a rejoinder filed on behalf of the applicant, it is argued that, inasmuch as the Government of India had failed to bring forward the contemplated formal amendment

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to the Regulations in time after the Second Amendment Regulations, 1989, was struck down by Hon'ble Supreme Court, the Regulations were themselves non-existent on the date of the meeting of the Selection Committee. Any recommendation made on the basis of a non-existent statute was ipso facto technically illegal and void. The proper course would have been to postpone all further action regarding selections until after a proper amendment had been brought forward to replace the quashed amendment.

5.1. It is also contended that the Regulations specify merely that an officer should have rendered continuous service of eight years in a gazetted post involving duties comparable in importance and responsibility to that of State Civil Service. There is no mention whatsoever of any pay-scale in the Regulations and it was therefore impermissible for the Government to prescribe a scale of Rs.3,880 — 8,140 to establish any comparison or identity to determine the importance and responsibility between various posts.

Inasmuch as there is no State Civil Service in Andhra Pradesh, the decision of the State Government to declare State Revenue Services as State Civil Services is itself incorrect. All services, other than the Revenue service alone, should have been included for this purpose and cases of eligible officers of all departments ought to have been considered for inclusion in the list of eligible officers.

6. The narrow point which needs attention in this case is one relating to the basic eligibility of the applicant and those who were similarly situated. The applicant himself points to the fact that there is no regularly-constituted State Civil Service. That being so, it was necessary that some rational basis had to be found and norms laid to determine in practical terms the level and nature of the requirements of clause (ii) to sub-regulation (1) in Regulation 3 of the Regulations. The decision of the Government to identify the appointment of Deputy Collector as constituting the basic unit of the Civil service structure, is a rational attempt in that direction. In this view of the matter, a reference to the pay-scale of Deputy Collector, is merely a logical extension of ~~the~~ such identification process and a specific means to impart an identifiable parameter to the endeavour. We do not feel that the prescription of an appropriate pay-scale can be faulted on any count. In that view of the matter, the scrutiny of the applicant's candidature by reference to the Deputy Collectors' Pay-scale cannot be termed as inequitable ~~or~~ or impermissible; *it merely imparts specificity to the basic concept.*

7. As regards the applicant's contention that services other than Revenue Service ought to be included for consideration, we do not feel called upon to make any observation, since it is entirely within the province of the State Government's policy-making powers to decide

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such questions. This particular plea of the applicant is not a legal submission to evoke or merit any comment from this Tribunal. It was submitted by Shri N.R.Devraj, learned senior Standing Counsel (Central) that, as far as the Government of India was concerned, no restrictions have been placed in this regard apart from what is contained in the Regulations; nor any preferences indicated, in such matters, and that these questions fall within the ^{policy} discretion of the State Government. At this point our attention was drawn to a basic anomaly in the applicant's argument, by Shri IVRK Murthy, learned standing counsel for the State Government; the very fact that the case of the applicant was not shut-out of consideration, even though he does not belong to the State's Revenue service, is itself a pointer to the fact that the field of consideration is not by any means unfairly confined to Revenue service alone, but officers of all other departments are duly considered, provided they satisfy the primary requisites of eligibility. It was added that the search for eligibility is always fairly broad-based and by no means confined to any particular service. We are in agreement with this and do not feel inclined to dwell on this issue any more.

8. As regards the alleged postponement of selection of State Forest Service Officers for promotion to IFS and the contentions regarding the Election Notification/Code, the position, as explained on behalf of the State Government, is found to be satisfactorily convincing

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and is, therefore, accepted in full.

9. The learned counsel for the applicant, Shri Chandrasekhar Reddy, advanced the argument that the whole exercise of selection, short-list^{ing}, interviewing and recommending Non-Civil Service Officers was carried out in a kind of vacuum since the Second Amendment Regulations, 1989, inserted in 1989 was struck down by Hon'ble Supreme Court in their Judgment dated 28--7--1994 in C.A.No.106/94 (T. SHAM BHAT V. UNION OF INDIA). The respondents have extracted the operative part of the Apex Court's judgment which states:

"Accordingly, we strike down the Second Amendment Regulations making it clear that IAS Selection Regulations, which had been amended by the IAS Second Amendment Regulations stand revived and continue to hold the field as before their amendment....."

It is not known why the formal amendment restoring the original Regulations of 1956, which was contemplated to be introduced, was delayed. Nevertheless, the unambiguous ruling of their Lordships, reproduced above, leaves not an iota of doubt that there ever was, or indeed could be, any vacuum in the Regulations which stood automatically revived in their original unamended form after the 2nd Amendment Regulations were quashed. In this view, it was not imperative, as contended by the applicant, to postpone all action relating to the selection and

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recommendation of eligible officers under the original Regulations. And this is precisely, what the Respondents are seen to have done. We hold that there was no irregularity involved in the process of selection notwithstanding the striking down of the Second Amendment Regulations, 1989.

10. This is solely a case where the applicant has not been short-listed, interviewed or recommended primarily on the ground that he did not fulfil the condition of eligibility in terms of length of service at an appropriate level of responsibility, and not on account of any other disability or deficiency. Such being the basic position, it is to be held that the reliefs claimed by the applicant in this O.A., are not founded on sound reasons or irrefutable logic or law. The application, therefore, fails and is accordingly dismissed as lacking in merit.


No costs.


H. RAJENDRA PRASAD
MEMBER (A)


M.G. CHAUDHARY, J
VICE-CHAIRMAN.

Date: 25.7.96

Dictated to Shorthand Writer,
transcribed by him, corrected
and pronounced in open Court.


Deputy Registrar (J) CC

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O.A. 562/96

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To

1. The Secretary, Govt. of India,
rep. by its Secretary, Dept. of Personnel
and Training, Ministry of Personnel
Grievances and Pensions, New Delhi.
2. The Secretary, U.P.S.C. New Delhi.
3. The Chief Secretary, GAD, Secretariat, Hyderabad.
4. The Principal Secretary, Industries Dept.
Govt. of A.P. Secretariat Buildings, Hyderabad.
5. ~~The Ex-Chairman, Selection Committee constituted for
selection to I.A.S. Secretariat, Hyderabad.~~
6. One copy to Mr. M. Chandrasekhar Reddy, Advocate, CAT. Hyd.
7. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
8. One copy to Mr. I. V. R. K. Murthy, Spl. Counsel for A.P. Govt. CAT. Hyd.
9. One copy to Library, CAT. Hyd.
10. One spare copy.
- 11) copy to all reporters as per standard list of CAT Hyd.
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10/10/96

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23/9/96

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

Dated: 25-7-1996

~~ORDER~~ JUDGMENT

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

in

O.A.No. ~~556/96~~

567/96.

T.A.No.

(W.P.)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for Default:

Ordered/Rejected.

No order as to costs.

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
ब्रेड/DESPATCH
E:3 OCT 1996
HYDERABAD BENCH