

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

O.A. No. 100/93

Date of decision: 18.8.93

J.P. CHANDELIYA

: Applicant.

VERSUS

UNION OF INDIA & ORS : Respondents.

Mr. Ajay Rastogi : Counsel for the applicant.

Mr. S.C. Mittal : Counsel for the respondents.

CORAM:

Hon'ble Mr. B.B. Mahajan, Administrative Member

Hon'ble Mr. Gopal Krishna, Judicial Member

PER HON'BLE MR. B.B. MAHAJAN, ADMINISTRATIVE MEMBER:

Shri J.P. Chandeliya has filed this application U/S 19 of the Administrative Tribunals Act with the prayer that a direction may be issued to the respondents to give appointment to him in the cadre of I.A.S. against the vacancy which became available as on 1.2.93 with all consequential benefits.

2. The applicant is a Member of the Rajasthan Administrative Service. His name was included in the Select List prepared under Regulation 7 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (Regulations, for short) at Serial no. 20. The officers in the Select List upto Serial No. 19 had been appointed to the I.A.S. against the vacancies that arose prior to 1.2.93. Two further vacancies in the State Cadre of IAS became available on 1.2.93. The applicant filed this O.A. on 17.2.93 as his appointment had not been notified on occurrence of those vacancies. A Memo of charges was served on the applicant vide Memo dated 9.2.93 (Annexure A-6). An interim direction was issued by this Tribunal on 16.3.93 that "any appointments made or any meeting of the fresh Selection Committee under Regulation 5 will not prejudice the case of the applicant till further orders."

3. The respondents have stated in their reply that they had initiated the case for filling up of the vacancies arising in the IAS Cadre on 1.2.93. Since a Memo of charges

under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 which pertains to imposition of major penalties, was issued to the applicant on 9.2.93, it became necessary and expedient for the State Government to refer the matter to the Union Public Service Commission and the Government of India in view of Regulations 7(4) and 9(2) of the Regulations, 1955. However, on receipt of the interim order of the Tribunal dated 16.3.93, this could not be done.

4. We have heard the learned counsel for the parties.

5. The learned counsel for the applicant has taken the plea that the case of the applicant is not covered by the third proviso to Regulation 7(4), Regulation 9(2) and Regulation 10 of the Regulations. For facility of reference, these provisions are reproduced below:-

"Proviso 3 to Regulation 7(4):

Provided further that in the event of a grave lapse in the conduct or performance of duties on the part of any member of the State Civil Service included in the Select List, a special review of the Select List may be made at any time at the instance of the State Government and the Commission may, if it so thinks fit, remove the name of such members of the State Civil Service from the Select List.

9(2) -It shall not ordinarily be necessary to consult the Commission before such appointments are made, unless during the period intervening between the inclusion of the name of a member of the State Civil Service in the Select List and the date of the proposed appointment there occurs any deterioration in the work of the member of the State Civil Service or there is any other ground which, in the opinion of the State Government or the Central Government, is such as to render him unsuitable for appointment to the Service.

10. Power of the Central Government not to appoint in certain cases: - Notwithstanding anything contained in these Regulations or the recommendations made by the State Government concerned under Regulation 9(1), the Central Government may not appoint any person whose name appears in the Select List, if it is of opinion that it is necessary or expedient so to do in the public interest."

6. The contention of the learned counsel for the applicant is that firstly, what the regulations envisage is a deterioration in performance or grave lapse in the conduct or performance which occurs after the Select List is prepared, while in this case, the conduct which is subject of the charge-sheet pertains to the prior period vis. 1984. Secondly, the charge-sheet in this case was issued on 9.2.93 while the vacancy arose on 1.2.93 and his appointment should not, therefore, be withheld on the basis of the charge-sheet which was served after the occurrence of the vacancies, and thirdly, that the charge-sheet itself does not disclose any misconduct much less the grave lapse or misconduct as it pertains to the action taken by the applicant in exercise of quasi-judicial powers vested in him under the law and ~~there~~ is no indication of corrupt motive. He has referred, in this connection, to the Judgment of the Hon'ble Supreme Court in Union of India & Another Vs. R.K. Desai, (1993) 2 SCC 49. In that case the allegations were that certain refunds were granted by the respondent to unauthorised persons in disregard to the instructions of the Central Board of Direct Taxes. There was no allegation either express or implied that these actions were actuated by any corrupt motive on account of extraneous considerations. It was held that in these circumstances, merely because such orders of refunds were made, even assuming that they were erroneous or wrong, no disciplinary action could be taken as the respondent was discharging quasi-judicial functions. This plea had been taken by the applicant even before the Commissioner for Departmental Enquiries and he, vide orders dated 17.6.93 (Annexure A-12), has referred the matter back to the Department of Personnel for decision whether the inquiry in these charges can proceed or not.

7. The learned counsel for the respondents has explained that further action for making any recommendation to the

reference to

Central Government or/ the U.P.S.C. under Regulations 7(4) or 9(2) was withheld in view of the interim order of the Tribunal as it was felt that if any reference is made for deletion of the name of the applicant from the Select List or for his non-appointment that may be had to be prejudicial to the applicant and therefore, in contempt of the Tribunal's orders.

8. We have carefully considered the relative contentions of the parties. It is unfortunate that the State Government misunderstood the import of the interim order. The Tribunal had no stage stayed further action that the State Government might have been inclined to take in the matter and the only direction is that any appointments made or any meeting of the fresh Selection Committee will not prejudice the case of the applicant. At the most, it could be interpretated that even if a recommendation is made for the deletion of his name from the Select List or non-appointment it would be subject to the final result of this application and such action will not prejudice his rights. However, the fact remains that the State Government has yet taken no final decision either to make a recommendation to the Central Government under Regulation 9(1) for appointment of the applicant to the IAS on the basis of the inclusion in the Select List or to the U.P.S.C. under third Proviso to Regulation 7(4) or 9(2) or to Central Government under Regulation 10. We are unable to accept the argument of the learned counsel for the applicant that the Government can take no note of the charge-sheet issued to the applicant vide Annexure A-6 because it refers to the conduct prior to the preparation of the Select List. The scope of Regulation 9(2) is quite wide and in it, the State Government can make a recommendation to the Central Government "on any other ground", if it is of the opinion that the applicant has been rendered unsuitable for appointment to the I.A.S. Similar recommendation can also be made under Regulation 10 if the State Government is of the opinion that it is necessary or expedient, in the public interest, not

to make the appointment. The State Government would, no doubt, while taking such a decision, consider whether in the light of the fact that the charge-sheet was issued after occurrence of the vacancy and whether in the light of the Judgment of the Hon'ble Supreme Court in R.K. Desai's case (supra), the charge-sheet can legally proceed and whether the charges are of such a nature as would render the applicant unsuitable for appointment to the I.A.S. The mere issue of the charge-sheet does not, *ipso-facto*, mean that the promotion of an officer whose name has been included in the Select List should necessarily be withheld.

9. The learned counsel for the applicant has referred to the Order of the Tribunal in P.D. Paliwal vs. Union of India and Ors - ATR 1993 (1) CAT 224. In that case, it was held that the action of the State Government in not sending the recommendations in regard to the appointment of the applicant on occurrence of the vacancy or making a reference to the Central Government for a decision under Regulation 10 was without jurisdiction and was not made on any legally sustainable ground. In this case, however, the State Govt. had not made any decision to withhold the recommendation. In that case, the State Government had, on its own, decided not to make a reference to the Central Government. In the present case, the State Government had not made any such decision but was in the process of processing the case but stopped further action in making a recommendation/reference to the Central Government on account of mis-reading of the Tribunal's order. That ruling is thus not applicable to this case. In any case, the operative part of the Judgment in which directions were given to the Central Government to issue orders for appointment of Shri Paliwal to the IAS has been set aside by the Hon'ble Supreme Court in its order on the SLP (Annexure R-7) and it has been left open to the Union Government to take a decision in accordance with the relevant Regulations and in particular Regulation No. 10 of the relevant Regulations and take its own decision in the matter.

10. We have, of course, no jurisdiction to quash the charge-sheet which is served on the applicant as a Member of the State Civil Service nor any relief to that effect has been prayed for. We, therefore, refrain from expressing any opinion on the validity of the charge-sheet.

11. In view of the above, we direct the State Government to consider the case of the applicant expeditiously and make the necessary reference/recommendation either under Regulation 9(1) or Regulation 9(2), 10 or third Proviso to Regulation 7(4) of the Regulations. Such a reference/recommendation shall be made within two months of this order. With these directions, the O.A. stands disposed of and interim order stands vacated.

12. Parties to bear their own costs.

G.Krishna
(GOPAL KRISHNA)
Judicial Member

B.B. MAHAJAN
Administrative Member