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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

OA No.157/1996

Date of order: /0.03.1998

Kuldeep Sharma S/o Shri S.S.Sharma, resident of Opposite Nanda House, New Colony, Jaipur presently posted as Additional Divisional Commissioner, Bikaner

.. Applicant

Versus

1. The Union of India through Secretary to the Government, Ministry of Personnel, Public Grievances and Pensions, Deptt. of Personnel and Training, Central Secretariat, New Delhi
2. The State of Rajasthan through its Chief Secretary, Secretariat, Jaipur.

.. Respondents

Mr. Mahendra Singh, counsel for the applicant

Mr. S.S.Hasan, counsel for respondent No.1

Mr. B.N.Purohit, counsel for respondents No.2

CORAM:

Hon'ble Mr. O.F.Sharma, Administrative Member

Hon'ble Mr. Ratan Prakash, Judicial Member

ORDER

Per Hon'ble Mr. O.F.Sharma, Administrative Member

In this OA the following reliefs were claimed by the applicant:

- i) The proviso to Regulation 7(3), Regulation 7(4), the first proviso to Regulation 7(4) and the second proviso to Regulation 9(1) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 may be declared as ultra vires and unconstitutional and be struck down.
 - ii) The respondents may be directed to consider the
- A. S. Sharma

case of the applicant for appointment to the Indian Administrative Service on the basis of his unconditional inclusion in the select list of the year 1995 against the vacancy arising on 1.7.1995 with all consequential benefits at par with persons appointed to the Indian Administrative Service in 1995 who were below him in the select list.

iii) Alternatively, without prejudice to the above prayers the respondents may be directed to consider whether it will be proper to withhold the applicant's promotion to the Indian Administrative Service having regard to the nature of allegations levelled against the applicant in the charge sheet issued to him and other relevant considerations.

iv) In the alternative and without prejudice to the above prayers, the respondents may be directed to keep one post of Indian Administrative Service vacant, in respect of which selections were made in 1995 and in the event of the applicant being exonerated from the charges framed against him, the respondents may be directed to promote the applicant against such vacant post with all consequential benefits at par with persons below him in the select list who were promoted to the Indian Administrative Service in 1995.

2. After the matter was heard by the Division Bench consisting of the Hon'ble Administrative Member and the Hon'ble Judicial Member, there was a difference of opinion between them with regard to the outcome of the OA and the reliefs to be granted to the applicant. The Hon'ble Administrative Member was of the view that although no relief was admissible to the applicant, the proviso to Regulation 7(3), Regulation 7(4), the first proviso to

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Regulation 7(4) and the second proviso to Regulation 9(1) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 created a situation whereby there was violation of Articles 14 and 16 (1) of the Constitution and, therefore, directed that if the applicant is eventually exonerated of the charges framed against him and if he is otherwise eligible for appointment on the basis of inclusion of his name in the select list drawn up in January, 1995, he shall be granted promotion to the IAS from the date from which an officer next junior to him has been granted promotion. The Hon'ble Judicial Member, however, was of the view that the respondents should be directed to consider the case of the applicant and on the basis of his name being unconditionally placed in the list prepared by the Selection Committee, include his name in the select list of the year 1995 as obtainable on 1.7.1995 when a vacancy arose in the State Cadre of IAS and to issue consequential orders regarding the applicant's promotion to the IAS with all consequential benefits at par with persons junior to him and placed below the applicant in the select list who have been promoted to the IAS in the year 1995. With regard to the relief at item No. (i) above claimed by the applicant, the Hon'ble Judicial Member held that it was not necessary to consider it in view of the peculiar facts of the case.

3. On account of difference of opinion arising as above, the following three questions were framed and referred to the Hon'ble Chairman:

- (i) Whether the applicant is entitled to appointment to the IAS w.e.f. 1.7.1995; the date on which Shri R.P.Nag retired; on account of unconditional inclusion of applicant's name in the 'List' prepared and forwarded by the State Government under the I.A.S. (Appointment by Promotion)

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Regulations, 1955 to the UPSC and the Central Government and also before 9.12.1995 when the chargesheet was issued to him ?

(ii) Whether the applicant is entitled to be appointed to the IAS w.e.f. 1.7.1995 or from a subsequent date when his juniors were appointed to the IAS out of the said select list regardless of whether a chargesheet had been issued to the applicant before the date on which persons junior to the applicant had been appointed to the IAS out of the said select list ?

(iii) Whether provisions of Regulation 7 and Regulation 9 of the I.A.S. (Appointment by Promotion) Regulations, 1955 together create a situation leading to violation of Articles 14 and 16 of the Constitution, inasmuch as though persons junior to the applicant may have been appointed to the IAS yet the applicant may not be appointed to the IAS inspite of his subsequent exoneration from the charges framed against him, on the ground that the select list in which the applicant's name figured; may lapse after a fresh Selection Committee meets ?

4. The Hon'ble Chairman heard the matter as a Third Member and vide his order, which was pronounced on 20th February, 1998, answered the questions framed as follows:

"13. In the light of my aforesaid discussions, my answers to the questions posed are as follows:-

(i). No. The applicant is not entitled to appointment to the IAS w.e.f. 1.7.1995; the date on which Shri R.F.Nag retired, or at any time before 9.12.1995, because by then no junior person was given any appointment.

(ii) No. The applicant was not entitled to be

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appointed to the IAS w.e.f. 1.7.1995 or from a subsequent date when his juniors were appointed to the IAS out of the said Select List, disregarding the charge-sheet issued to the applicant before the date on which persons junior to the applicant had been appointed to the IAS out of the said Select List.

(iii). No. The provisions of regulation 7 and regulation 9 of the IAS (Appointment by Promotion) Regulations, 1955 together or in isolation do not create any situation leading to violation of Articles 14 and 16 of the Constitution on the grounds stated, which appear to be misplaced."

The Hon'ble Chairman further directed that the papers be placed before the Division Bench for further hearing and disposal of the case in accordance with law.

5. Accordingly, the matter was heard by us on 2.3.1998. Shri Mahendra Singh arguing for the applicant stated that the Hon'ble Administrative Member had directed vide para 28 of his order that if the applicant is eventually exonerated of the charges framed against him, and if he is otherwise eligible for appointment on the basis of inclusion of his name in the select list drawn up in January, 1995, he shall be granted promotion to the IAS from the date from which an officer next junior to him has been granted promotion. The reason behind this direction was that the Administrative Member has held that the various provisions of Promotion Regulations of 1955 are violative of Articles 14 and 16(1) of the Constitution to the extent that these provide for a certain discrimination against the applicant (his not being appointed to the IAS even after exoneration from the charges framed against him if the select list has already lapsed). He then drew our attention

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to the observations of the Hon'ble Chairman at page 14 of his order which partly read as under:

"Because the list required to be prepared under regulation 5(1) has to exceed by 25 percent of the anticipated vacancies and because in the next year, a fresh list is to be prepared, the old list would naturally lapse, but the list would survive in regard to the officer for whom one vacancy was kept vacant under second proviso to regulation 9(1). That vacancy would be filled in by the officer who was deemed to be provisionally included in the Select List, if he is ultimately acquitted. If not acquitted, that vacancy may be treated as fresh vacancy during the year he was found guilty and, thus, not entitled to appointment. If interpreted in this manner, the impugned provisions in regulations 7 and 9 would appear to be intra vires and not ultra vires."

He urged that whatever may be the reasoning of the Administrative Member and the Hon'ble Chairman, both have expressed the view that the applicant would be entitled to promotion on his being exonerated from the charges framed against him regardless of whether the select list has lapsed or not. He, therefore, prayed that a direction may now be issued that the applicant may be granted promotion from the date from which a person junior to the applicant has been granted promotion out of the select list of 1995, if the applicant is eventually exonerated of the charges framed against him.

6. Shri B.N.Purohit, learned counsel for respondent No.2, stated during his oral arguments that the answers to all the three questions by the Hon'ble Chairman are in the negative. Whatever may be the reasons contained in the order of the Hon'ble Chairman, it is the final conclusions which

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matter. He, therefore, stated that the applicant was not entitled to any relief claimed by him.

7. We have heard the learned counsel for the parties and have considered the matter carefully.


8. The point which is now being raised by the learned counsel for the applicant after the opinion given by Hon'ble the Chairman as Third Member relates to an alternative relief claimed by him in Para 8(d) of the OA. While arriving at the conclusions given by Hon'ble Administrative Member in a separate order an observation has also been made in para 28 of the order relating to this alternative relief, ^{and} _h Hon'ble the Chairman has also observed about it at page 14 of his order. Yet the alternative relief as sought for by the applicant has not been granted. There is a distinction between the findings arrived at and reasonings given to arrive at the findings. Therefore, the reasons given do not amount to findings. Moreover, three specific questions were referred to by the Division Bench to Hon'ble the Chairman. These have been answered in the negative vide order of the Hon'ble Chairman dated 20.2.1998. While answering the questions, the Hon'ble Chairman has agreed with the findings given by Hon'ble the Administrative Member except those with regard to the vires of Regulation 7 and 9 of the I.A.S. (Appointment by Promotion) Regulations, 1955 (on which differing opinions have been given by Hon'ble the Administrative Member and Hon'ble the Chairman sitting as the Third Member). Accordingly, this OA deserves to be rejected by decision of the majority under Section 26 of the Administrative Tribunals Act, 1985. The plea, therefore, now raised by the learned counsel for the applicant cannot succeed and is disallowed.


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9. Consequently, the majority view is that the applicant is not entitled to appointment to the IAS w.e.f. 1.7.1995, the date on which Shri R.P. Nag retired or at any time before 8.12.1995, for the reason that by then no junior person was given any appointment. Further, the majority view is that the applicant was not entitled to be appointed to the IAS w.e.f. 1.7.1995 or from a subsequent date when his juniors were appointed to the IAS out of the said select list disregarding the chargesheet issued to the applicant had been appointed to the IAS out of the said select list. Accordingly, this OA deserves rejection and is hereby dismissed with no order as to costs.


(Ratan Prakash)
Judicial Member


(O.P. Sharma)
Administrative Member