

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.310/96

Date of order: 6/1/2000

G.L.Verma, IAS, at present working as Revenue Appellate Authority, Jaipur.

...Applicants.

Vs.

1. Union of India through Secretary, Department of Personnel Govt. of India, North Block, New Delhi.
2. Secretary, Union Public Service Commission, Unclpur House, New Delhi.
3. Secretary, Department of Personnel(A-1), Govt of Rajasthan, Secretariat, Jaipur.

...Respondents.

Mr.S.P.Sharma - Counsel for applicant

Mr.S.S.Hasan - Counsel for respondent No.1

Mr.K.N.Shrimal - Counsel for respondent No.2

Mr.U.D.Sharma - Counsel for respondent No.3

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application, applicant makes a prayer to direct the respondents to promote him to IAS for the year 1991-92 on the basis of the recommendations made by the Review Selection Board and in view of the directions given by this Tribunal in O.A No.45/93 on 3.11.93, with all consequential benefits.

2. Facts of this case as stated by the applicant are that the applicant had earlier filed OA No.45/93 challenging the action of respondents in not considering his case for promotion to IAS and this Tribunal vide its order dated 3.11.93 directed the respondents to hold a review meeting of selection committee for considering the case of the applicant in lieu of the meeting held in March 92 after ignoring the adverse entries for the year 1985-86 and 1986-87. It was further directed that in view of the pendency of the criminal proceedings against the applicant if he is included in the select list, such inclusion shall be provisional and the consequences of such provisional inclusion as provided in the Regulations of 1955 will follow. Against this order, the State Govt of Rajasthan filed an SLP which was dismissed by Hon'ble Supreme Court of India vide its judgment dated 21.11.94. It is stated that thereafter the applicant was acquitted of the charges vide order dated 7.1.95 but Review Selection Board when it met in January 95 kept the

applicant's recommendations as provisional. Applicant submitted several representations but with no avail. Hence this O.A was filed for implementation of the directions passed in O.A No.45/93.

3. Reply was filed. In the reply it has been stated that in pursuance of the directions given by this Tribunal in O.A No.45/93 on 3.11.93, a meeting of Review Selection Committee was held on 25.1.95 and the applicant was found suitable. His name was placed in the select list at Sl.No.19-A i.e. above the name of Shri J.P.Chandelia and below the name of Shri P.C.Balai. It has been further stated in the reply that officers from the select list of 1992 included upto Sl.No.19 had been appointed to the IAS but no officer below Sl.No.19 was appointed. It is also stated that promotion quota for the year 1991-92, which was required to be filled up from the said select list, had been completely utilised during the said period. The applicant could not be given appointment by promotion to IAS out of the said select list of 1992 and the respondents have fully complied with the directions given by this Tribunal in O.A No.45/93 on 3.11.93. Therefore, this O.A is devoid of any merit and is liable to be dismissed.

4. Rejoinder to reply filed by respondent No.1 and reply to rejoinder filed by the applicant are also on record.

5. Heard the learned counsel for the parties and also perused the whole record.

6. In the instant case the applicant is aggrieved against his non-appointment to IAS from 1991-92 select list for Rajasthan consequent to the review of select list undertaken by the Review Selection Committee in pursuance to the directions given by this Tribunal on 3.11.93 in O.A No.45/93. By order dated 3.11.93, this Tribunal gave directions to the respondents to reconsider the case of the applicant for inclusion of his name in the select list of 1991-92 for Rajasthan, prepared by the Selection Committee in March 1992, after ignoring the adverse remarks in the ACRs for the years 1985-86 and 1986-87. It was also provided that in view of the pendency of the criminal proceedings against the applicant, if he is included in the select list of 1991-92 as a result of such reconsideration, such inclusion will be provisional and consequential benefits will follow only as provided under the Promotion Regulations. Against the order dated 3.11.93, passed by this Tribunal, SLP was also dismissed vide judgment dated 21.11.94.

7. The Review Selection Committee met on 20.5.95 and recorded

the inclusion of the applicant at Sl.No.19-A of 1991-92 select list - below the name of Shri P.C.Balai and above the name of Shri J.P.Chandelia. Again Selection Committee met on 26.10.93 to prepare subsequent 1993-94 select list which was approved by the Union Public Service Commission on 28.12.93 and the applicant was included at Sl.No.8 provisionally of 1993-94 select list. The Selection Committee again met on 23.1.95 to prepare select list for 1994-95 and the applicant was included provisionally at Sl.No.6 of the select list, subject to clearance of pending inquiry against him. It is also evident from the perusal of record that the name of the applicant was made unconditional by the UPSC by its order dated 15.9.95 in terms of second provision to Regulation (9) of the Promotion Regulations, 1955. Thereafter, the applicant was appointed to the IAS on the recommendations of the State Government vide notification dated 31.12.95.

8. The learned counsel for the applicant has argued that the applicant should have been promoted to the IAS from the 1991-92 select list. It has also been argued that the applicant was acquitted from the criminal charge vide judgment dated 7.1.94. Therefore, in view of the legal position, the applicant was entitled to be given all the consequential benefits.

9. The learned counsel for the applicant also argued that the post reserved for Shri S.S.Bhandari who was at Sl.No.17 of the select list of 1991-92 (the post reserved for him) could not be filled up as he was under suspension. Therefore, the respondents are estopped from saying that there was no vacancy available for the applicant for the year 1991-92.

10. As regards the first contention, i.e. the appointment of Shri G.L.Verma on the basis of inclusion of his name in the Select List of 1991-92, the Govt of India in their letter dated 19.4.95 has made it very clear that the State Govt was required to locate a vacancy in the promotion quota for the relevant period. The Govt of India also made it clear that in case promotion quota in the State Cadre has been completely utilised during the relevant period it would not be possible to create a supernumerary post for the limited purpose of making appointment of Shri G.L.Verma to IAS. It is also evident that no proposal for declaring the name of applicant as unconditional in the select list of 1991-92 was sent to the UPSC. However, the State Govt vide its letter dated 22.11.95 requested the Commission to declare the inclusion of the name of the applicant in the select list of 1993-94 as unconditional



on the ground that the departmental inquiry pending against the applicant was completed and the applicant was fully exonerated vide order dated 24.4.95. The proposal of the State Govt was examined and it was observed that the select list of 1993-94 had already lapsed as per proviso to Regulation 7(4) of the Promotion Regulations, 1955. As per provision of Promotion Regulations, the name of an officer is made unconditional by the Commission on the recommendations of the State Govt and the State Govt did not make a reference to the Commission for declaring the name of the applicant as unconditional in the select list of 1991-92 and in the absence of requisite proposal/recommendations of the State Govt it was not possible for the UPSC to declare the name of the applicant as unconditional for the select list of 1991-92, as this shall be in violation of the rules/regulations. As per terms of Regulation-7(4) of the Promotion Regulations, 1955, the select list of 1991-92 had ceased to be in force with the coming into effect of the subsequent 1993-94 select list and as per terms of Regulation 9(1) of the Promotion Regulations, 1955, the Central Govt had a mandate to make appointments from the select list only on the recommendations of the State Govt concerned in the order in which the names of the officers appear in the select list. Although the committee which met on 23/25.3.92, to prepare a select list of 1991-92 for filling up 23 vacancies but the State Govt did not operate the select list beyond Sl.No.19 and it was not possible to consider the claim of the applicant for appointment to IAS without consequently considering the rights for similar treatment in respect of RAS officers unconditional included at Sl.No.20 to 22 of the select list. However, in terms of statutory provisions, the Commission can consider the unconditional inclusion of the provisionally included officers with reference to a select list only during the period it remains in force. In the instant case, the Review Selection Committee has recorded the inclusion of the applicant at Sl.No.19-A of 1991-92 select list only on provisional basis because of the inquiry pending against him. The applicant having not been unconditionally included in that select list and the select list also having expired with the coming into effect of the subsequent 1993-94 select list and also the 1991-92 select list was not operated by the State Govt against the vacancies in the promotion quota of the State IAS cadre towards it was prepared by the Selection Committee. It is admitted by the respondents that in the select list of 1991-92 Shri

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S.S.Bhandari was placed at Sl.No.18 but the post reserved for him was not filled up as he was under suspension. Since the post was reserved for Shri S.S.Bhandari only, no other officer from the said select list could have been appointed against the said post. Therefore, non-appointment of Shri S.S.Bhandari under these circumstances does not have the effect of creating a vacancy against which the applicant could have been promoted.

11. The learned counsel for the respondents argued that in the rejoinder the applicant took a new plea. Therefore, the plea taken by the applicant should not be taken on record. In support of his contention, he has referred 1995 Supp (3) SCC 549. On the other hand, the learned counsel for the applicant while countering the arguments, has submitted that the plea taken by the applicant in the rejoinder was with reference to reply filed by respondent No.1. Therefore, the plea was not a new plea and respondents also filed a reply to the rejoinder filed by the applicant, which is also on record. Therefore, he submitted that in view of the facts and circumstances of this case, the plea taken in the rejoinder of the applicant was not a new plea. Admittedly, the respondents have filed reply to the rejoinder which is on record. Therefore, in view of the facts and circumstances of this case, we are of the view that there is nothing wrong in taking the rejoinder to reply and reply to rejoinder filed by the parties on record. However, the plea taken by the learned counsel for the respondents is not sustainable in law.

12. In view of the foregoing discussions, we are of the opinion that the applicant is not entitled for promotion to IAS for the year 1991-92, as claimed by him and this O.A is devoid of any merit and liable to be dismissed.

13. We, therefore, dismiss this O.A with no order as to costs.



(N.P.Nawani)

Member (A).



(S.K.Agarwal)

Member (J).