

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

Date of order: 05.01.2005

OA No.445/2003

N.R.Yadav s/o Shri Rawat Ram Yadav, r/o 1-GA-31, Hiran Magri, Sector-5, Udaipur, presently serving as Revenue Appellate Authority, Dungarpur (Rajasthan).

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Personnel, Public Grievances and Pensions, Government of India, Department of Personnel and Training, North Block, New Delhi.
2. Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi.
3. State of Rajasthan through Chief Secretary, Government Secretariat, Jaipur
4. Secretary, Department of Personnel (A-1), Government of Rajasthan, Government Secretariat, Jaipur.

.. Respondents

Mr. R.N.Mathur, counsel for the applicant

Mr. Rakesh Jain, proxy counsel for Mr. Sanjay Pareek, counsel for respondent Nos. 1 and 2.

Mr. U.D.Sharma, counsel for respondent Nos. 3 and 4.

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

ORDER

Per Hon'ble Mr. M.L.Chauhan

The applicant has filed this OA thereby praying for the following reliefs:-

- "a. quash and set aside the impugned orders dated 17.9.2002 (Annexure A/1) and 12.3.2003 (Annexure A/2) passed by the respondents;
- b. the respondents No. 3 and 4 may be directed to reconsider the case of the applicant for issuance of

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'non deterioration certificate' at the earliest and respondents Union of India may be directed to pass orders for appointment by promotion to the IAS in respect of the applicant accordingly;

- c. the adverse entries, if at all exist in the ACRs of the applicant, since not communicated to the applicant so far, may be expunged; and
- d. costs of the incidental to the Original Application may be awarded in favour of the applicant."

2. Briefly stated, the applicant who was one of the senior members of the Rajasthan Administrative Service (RAS for short) was selected for appointment on promotion to the Indian Administrative Service (IAS for short) by the Selection Committee which held its meeting at Jaipur on 23.1.95. Feeling aggrieved on account of denial of promotion to him by the respondents, he filed OA No.509/96 in this Tribunal thereby praying that the respondents be directed to appoint him in IAS from the select list dated 23.1.95. The grievance of the applicant as projected in the earlier OA was that he was entitled to be appointed to the IAS against any one of the fortuitous or unforeseen vacancies either occurring within the period of 12 months commencing from the date of the meeting i.e. 23.1.95 or thereafter as the select list would continue to remain operative till the next meeting is held. His grouse was that inspite of the fact that no meeting of the Selection Committee has been convened after 23.1.95 and 1995 list still holds good for the purpose of appointment, he has been unlawfully and unjustiably denied the benefit of promotion even though the result of the departmental enquiry has gone in his favour. This Tribunal after consideraing the stand taken by the respondents and noticing the relevant provisions of the

Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter called "Promotion Regulations") came to the conclusion that name of the applicant was provisional as a departmental enquiry was pending against him and the applicant could not be appointed to the IAS from 1995 select list till his name was made unconditional by the Commission on the recommendations of the State Government during the period the select list remains in force and in para 21 and 22 made the following observations:-

"21. In conclusion, we find that the applicant is entitled to be appointed on promotion to IAS on the basis of the inclusion though 'provisionally' in the 1995 select list which still survives, against any one of the vacancies which has occurred after 22nd January, 1996, i.e. after the expiry of twelve month commencing from the date of meeting of the Selection Committee, provided the State Government is of the opinion that no deterioration in his work has occurred during the period i.e., intervening between inclusion of his name in the select list and the date of the proposed recommendation to the Commission that the name of the applicant be made 'unconditional'. We would do well to clarify that the applicant shall not be denied promotion by appointment to IAS merely on the plea that the 1995 select list is not operative and that a vacancy occurring after 11.01.1996 cannot be assigned to him. In other respects, the State Government/Central Government shall be at liberty to take their independent decision, uninfluenced by any observations made in the body of this judgment, about the continued quality, integrity, honesty and efficiency of the applicant, in the light of the provisions of Regulations 9(1) and (2) of the Promotion Regulations.

22. The O.A., in the result, is allowed to the extent that the State Government, respondent No.2, shall consider the case of the applicant for making appropriate recommendation to appoint him to IAS, keeping in view the first proviso to sub-regulation (1) and sub-regulation (2) of Regulation 9 of the Promotion Regulations. This exercise shall be completed by the State Government and a final decision taken within a period of three months from the date of the production of a certified copy of this judgement before the Chief Secretary, State of Rajasthan."

In compliance of the order dated 3.6.2002 passed by this Tribunal in OA No.509/96, the State Government considered the case of the applicant taking into consideration the ACR

between the period of his selection in the select list till 17.9.2002 and came to the conclusion that it is not possible to give 'No Deterioration Certificate' in respect of the applicant and the State Government decided to withheld 'No Deterioration Certification' of the applicant vide impugned order dated 17.9.2002 (Ann.A1). Based on this communication, respondent No.1 passed order dated 12th March, 2003 thereby stating that the applicant cannot be appointed to IAS from the 1994-95 select list as the issue of 'No Deterioration certificate' in his case was made a pre condition for his appointment to IAS and the State Government has withheld this certificate as, in their view, the performance of the applicant has gone down. It ^{is} these orders, which are under challenge in this OA on various grounds stated in the OA.

3. The respondent Nos. 3 and 4 (State of Rajasthan) have filed reply. In the reply, it has been stated that subsequent to placement of the applicant in the select list for appointment by promotion to the IAS for 1994-95, there has been a substantial deterioration in his performance as reflected in his ACRs. The applicant rendered himself unfit for promotion to IAS and as such the decision of the State Government to withheld 'No Deterioration Certificate' in respect of the applicant is fully justified. Similarly, the decision of the Central Government not to appoint the applicant to IAS from the said 1994-95 select list on the basis of the said withholding of the 'No- Deterioration Certificate' vide order dated 12.3.2003 is also fully justified and legal. However, no reply has been filed on behalf of the Union of India and the Union Public Service Commission.

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA. It was also stated that one Shri G.L.Verma whose name also find mention in the same select list and who was also selected provisionally as the applicant, has been given promotion from the said select list whereas in the case of the applicant, promotion was wrongly denied by the respondent without any rhyme and reason.

5. We have heard the learned counsel for the parties at length.

5.1 It is not in dispute that name of the applicant, who is a member of RAS was included in the select list for promotion to IAS in the meeting of the Selection Committee held on 23.1.95. The said select list was approved by the UPSC and then sent to the Union Government for approval vide communication dated 22.3.95 (Ann.A3). Name of the applicant was made provisional on account of pendency of departmental enquiry. The applicant has also placed on record, the order of exoneration passed on 16.1.96 (Ann.A6 and A7). Thus, the applicant who was recommended provisionally for appointment to IAS on account of pendency of departmental enquiry, was entitled for promotion during the currency of the select list. Based on these facts, this Tribunal vide its judgment dated 3.6.02 (Ann.A4) was pleased to issue directions to the State Government to consider the case of the applicant for making appropriate recommendations appointing him to IAS keeping in view the first proviso to sub-regulation (1) and (2) of Regulation 9 of the Promotion Regulations. Since the State Government did not issue 'No Deterioration Certificate' in respect of the applicant and on this ground the Union Government passed order dated 12.3.2003 whereby it has been decided that the applicant cannot be appointed to the IAS from

the select list of 1994-95 and resultantly the name of the applicant stand deleted from the select list of 1994-95.

5.2 The sole question which requires our consideration is whether in view of the finding given by this Tribunal vide judgment dated 3.6.2002 in the earlier OA, relevant portion of ^{in Case of the applicant} which has been extracted above, was considered in right perspective as per provisions of Regulation 9 (1) and (2) of the Promotion Regulations. The learned counsel for the applicant while drawing our attention to Regulation 9(1) and (2) and to the impugned orders argued that it was not legally permissible for the State of Rajasthan to take into consideration the ACRs till 17.9.2002 and thus coming to the conclusion that ACRs of the said period are 'just satisfactory' as against the overall grading of 'very good' at the time of inclusion of his name in the select list and refused to issue 'No Deterioration certificate' especially when the UPSC has accepted the proposal of the State Government for making name of the applicant unconditional in the said select list consequent upon his exoneration in the disciplinary proceedings. The learned counsel for the applicant further argued that the Union Government has also committed illegality on the basis of acting on 'No Deterioration certificate' issued by the State of Rajasthan and thereby rejecting his case for appointment to IAS from 1994-95 select list solely on that basis and contrary to the provisions of Regulation 9(2) of the Promotion Regulations. According to the learned counsel for the applicant, in terms of decision rendered by this Tribunal in earlier OA, 'No Deterioration Certificate' can be issued only in the event of grave lapse in the conduct and performance of duties on the part of any officer in the select list and for that purpose a special review of the select list has to be made at any time

at the instance of the State Government by making reference to the Commission and it is only thereafter that the Commission may if so thinks fit remove name of such officer from the select list. The learned counsel for the applicant further argued that in view of Regulation 9(2) if 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 IAS, the relevant intervening period would be between the inclusion of his name of the applicant in the select list i.e. 23.1.95 and the date of proposed appointment which according to the applicant would be any date after 22nd January, 96 when vacancy occurred after the said date according to the judgment rendered by this Tribunal and it cannot be stretched till 17.9.02 as has been done by the State Government in the instant case. In support of his contention, the learned counsel for the applicant further argued that as per ^{2nd} proviso to Regulation 9(1) of the Promotion Regulations, appointment of an officer whose name has been included or deemed to be included in the select list provisionally under proviso to sub-regulation (5) of Regulation 5, under proviso to sub-regulation (3) of Regulation 7 as the case may be, shall be made after the name is made unconditional by the Commission on the recommendation of the State Government during the period the select list remains in force and while making appointment of an officer junior to select list officer whose name has been included or deemed to be included provisionally in the select list a post shall be kept vacant for the provisionally selected officer. Thus, according to the learned counsel for the applicant, right to be appointed to IAS has accrued in favour of the applicant the moment he was exonerated in January, 1996 and it

was under these circumstances, the Tribunal in earlier OA has categorically stated that the applicant shall not be denied promotion by appointment to IAS merely on the plea that 1994-95 select list is not operative and that a vacancy occurring after 22.1.96 cannot be assigned to him. According to the learned counsel for the applicant, the applicant could have been appointed to the IAS as per 1995 select list as vacancies were available with the respondents as some of persons whose names were included in the select list of 1995 were assigned promotion from the earlier date. Thus, according to the applicant for the purpose of issuing 'No Deterioration certificate' it is the ACR up to the year 1996 which can be made basis and not the period till 17.9.2002 as was done by the State Government which recommendation has been wrongly accepted by the Government of India.

5.3 We have given thoughtful consideration to the submissions made by the learned counsel for the applicant. We are of the view that the case of the applicant has not been considered by the respondents in right perspective. Without going into the various contentions raised by the learned counsel for the applicant, we are of the view that the matter can be disposed of on the ground that while passing the impugned orders Ann.Al and A2, the respondents have not kept in view the relevant provisions of Promotion Regulations. It is not in dispute that placement of the applicant was provisional in terms of Regulation 5 of Promotion Regulation as departmental proceedings were pending against him at the relevant time and thus, he could not have been appointed unless his name is made unconditional by the Commission on the recommendation of the State Government under the first proviso of Regulation 9. Once the name of the applicant was made unconditional by the Commission on the recommendation of the

State Government in terms of ~~Second~~ proviso to Regulation 9(1) which fact is not disputed by the respondents, the name of the applicant for appointment to IAS could have been withheld only in the event of grave lapse in the conduct or performance of duties on the part of the officer included in the select list and for that purpose special review of the select list have to be made at any time at the instance of the State Government and the Commission may if so think fit remove the name of such officer from the select list. Admittedly, in the instant case name of the applicant was made unconditional by the Commission on the recommendation of the State Government under ^{2nd} proviso to Regulation 9(1) as the applicant was exonerated in the departmental proceedings. It is also admitted fact that the name of the applicant was removed from the select list without ^{any} having special review and in fact the Commission was never consulted by the respondents which was mandatory in view of third proviso to sub-regulation (4) of Regulation 7 of the Promotion Regulations, which is in the following terms:

"7. Select List.

- (1).....
- (2).....
- (3).....
- (4).....

Provided....

Provided....

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."

5.4 Further, the promotion can also be denied in view of Regulation 9(2) 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 if there occurs any deterioration in the work of the member of

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the State Civil Service or there is any other ground which in the opinion of the State Government or the Central Govern is such as to render him unsuitable for appointment to the IAS and in that eventuality it is necessary to consult the Commission. At this stage it will be useful to quote Regulation 9(2) which is in the following terms:-

"9. Appointment to the service from the select list:

(1)....

(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."

5.5 Thus from the provisions quoted above, it is clear that consultation with Commission is necessary where 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. In other words, it is in other cases except cases where there occurs deterioration in the work of the member of State Civil Service or there is other ground which render the person unsuitable for appointment to IAS, that the Commission need not necessarily be consulted before making such appointment from the select list. Admittedly, the respondents have not followed such procedure despite the fact that this Tribunal in earlier OA has directed the State Government to consider the case of the applicant for making appropriate recommendations to

appoint him to IAS in view of sub-regulation (2) of Regulation 9 of Promotion Regulations. Further, this Tribunal in para 21 relevant portion of which has been reproduced in the earlier part of this order, has categorically held that:-

"....We would do well to clarify that the applicant shall not be denied promotion by appointment to IAS merely on the plea that the 1995 select list is not operative and that a vacancy occurring after 22.1.1996 cannot be assigned to him...."

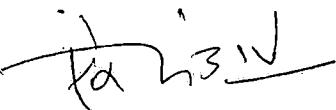
5.6 Thus, we are of the view that in term of direction given by this Tribunal in earlier OA decided on 3.6.02, the applicant has a right to be considered against the vacancy immediately arising after 22nd January, 1996 and his appointment to IAS on the ground that 'No Deterioration certificate' issued by the State of Rajasthan without consultation with the Commission and also to remove the name of the applicant from the select list without holding the special review of the select list is in violation of the procedure as contemplated under Regulation 9(2) read with 3rd proviso to Regulation 7(4) of the Promotion Regulations. We are further of the view that the Central Government also acted illegally while denying appointment to the applicant on the basis of 'No Deterioration certificate' issued by the State Government.

6. Accordingly, the order Ann.A1 and A2 are hereby quashed and set-aside. The respondents are directed to reconsider the case of the applicant by making appropriate recommendation to appointment him to IAS in terms of sub-regulation (2) of Regulation 9 of Promotion Regulations. In case the State Government/Central Government is of the view that there occurs any deterioration in the work of the applicant or there is other ground which in their opinion render the applicant unsuitable to IAS, in that eventuality,

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the matter may be referred to UPSC either to remove the name of the applicant from the select list by holding a special review in the event of grave lapse in conduct and performance of duties on the part of the applicant and/or consult the UPSC if during the period intervening between the inclusion of the name of applicant in the select list and the date of proposed appointment in a vacancy occurring after 22.1.1996 there occurs any deterioration in the work of the applicant or there is any other ground which in the opinion of the State Government or the Central Government render the applicant unsuitable for appointment to the service. It is only thereafter the applicant can be denied promotion to the IAS. This exercise shall be completed by the respondents and final decision shall be taken therein within a period of 3 months from the date of this order.

7. With these observations, the OA shall stand disposed of with no order as to costs.



(A.K.BHANDARI)

Member (A)



(M.L.CHAUHAN)

Member (J)