

CENTRAL ADMINISTRATIVE TRIBUNAL

CHENNAI BENCH

OA/310/01727/2013**Dated 13th day of September, Two Thousand Nineteen****CORAM :** HON'BLE MR. P. MADHAVAN, Member (J)

HON'BLE MR. T. JACOB, Member (A)

S.Senthamarai,
D/o V. Swayamprakasam,
A1/3, Housing Board Quarters,
Mugappair Road, Thirumangalam,
Chennai 600040.

....Applicant

By Advocate M/s. L. Chandrakumar

Vs

1. Union of India rep., by the Secretary,
Department of Personnel & Training (DOPT),
Ministry of Personnel, Public Grievances & Pension,
New Delhi.
2. The Secretary,
Union Public Service Commission, New Delhi.
3. The State of Tamil Nadu rep by its Secretary,
Public Department, Public (SC),
Fort St. George, Chennai 600009.
4. The Principal Secretary,
Commissioner of Revenue Administration,
Chepauk, Chennai 600005.
5. Tmt. S. Jayanthi, IAS,
District Collector, Karur District.
6. Dr. P. Sankar, IAS,
District Collector, Ooty District.
7. Tmt. Latha IAS,

Commissioner, Coimbatore Corporation, Coimbatore.

- 8.Tmt. E. Sundaravalli, IAS,
District Collector, Chennai.
- 9.Thiru. E. Saravanavelraj, IAS,
District Collector, Namakkal District.
- 10.Dr. N. Subbaiyan, IAS,
District Collector, Thanjavur District.
- 11.Thiru. V. Dakshinamoorthy, IAS,
District Collector, Ariyalur District.
- 12.Tmt. S. Malarvizhi, Administrator,
Salem Cooperative Sugar Factory,
Moganoor, Namakkal District.
- 13.Thiru. S. Suresh Kumar,
District Revenue Officer, Tanjavur.
- 14.Tmt. M. Asia Mariam,
District Revenue Officer, Nagapattinam.
- 15.Thiru. R. Kannan,
District Revenue Officer, Chennai 28.
- 16.Thiru. S. Palanisamy,
District Revenue Officer,
Nagercoil. Kanyakumari District.
- 17.Dr. S. Prabakharan,
Senior Divisional Manager,
Tamil Nadu Civil Supplies Corporation, Coimbatore.
- 18.Tmt. M. Lakshmi,
Assistant Commissioner (GA & P),
Chennai Corporation, Chennai 3.
- 19.Tmt. R. Gajalakshmi,
District Revenue Officer, Thiruppur.
- 20.Thiru. K. S. Kandasamy,
Senior Regional Manager,
Tamil Nadu State Marketing Committee, Chennai.

21.Thiru. S. Ganesh,
District Revenue Officer, Erode.

22.Thiru. C. Kathiravan,
General Manager,
Salem District Cooperative Milk Producers' Sangam,
Salem.

23.Tmt. F. Innocent Divya,
Special Officer, Chief Minister's Special Cell,
Chennai 9.Respondents

By Advocates Mr. K. Rajendran (R1).,
Mr. P. Deivendra (R2) Mr. V. Kathirvelu (R.3 & 4)
M/s. V. Vijay Shankar (R13, 17, 20-23)

OR D E R

(Pronounced by Hon'ble Mr. T. Jacob, Member (A)

This OA has been filed by the applicant under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“To call for the records relating to the 1st respondent's notification made in No.14015/21/2010-AIS(I)-B dated 10.02.2012 in so far as the 5th and 6th respondents are concerned and Notification No.14015/21/2012-AIS(I)-B dated 31.12.2012 in so far as 7th to 11th respondents are concerned and to consequently direct the respondents to consider the claim of the applicant for conferment of Indian Administrative Service (IAS) cadre on par with her batchmates as per GOMs No. 173 Public (Special. A.) Department dated 21.02.2011 by convening a Review DPC, by and after expunging the adverse remarks and declaring that all the three ACRs with the rating of “Average” as invalid, null and void being infractive of the Government Order and law and for other consequential benefits both service and monetary thereto and to pass such other further order as this Hon'ble Court deems fit and proper and thus render justice.”

2. The brief facts of the case according to the applicant are as follows:-

The applicant after subjecting herself to merit selection under the Group-I services for the recruitment year 1997-1998 batch was placed first in the merit list among the 16 Deputy Collectors recruited in the said batch. She entered the services on 04.10.2001. She had been overlooked in three consecutive DPCs for conferment of IAS. The said illegality which has been meted out to her has caused jeopardy and slur in her service career without taking note of the order of the Government made in GO.Ms.No.173 Public (Special.A) Department dated 21.02.2011 restoring her seniority as well as the status in the cadre of District Revenue Officer (DRO) as between J. Raghavan and above S. Jayanthi without further recourse to other accrued benefits. She was visited with invalid ACRs (now APARs), the term “invalid” is employed because the applicant was not at

all communicated about the 'Average' entries that were made. Belated communication or rather non communication according to the rules and orders made in GO No.11 P & AR Department dated 05.01.1984 cannot be held against her for consideration of claim for promotion. The applicant had also represented for expunction of the so called unwarranted remarks made in the ACRs for grading her as 'Average' and the same is said to be pending. The promotion panel of the year 2010 for the purpose of conferment of IAS came to be convened and taken up for consideration on 11.12.2011, the date on which the applicant did not suffer any embargo for consideration. For the panel year 2011, the DPC was convened during November 2012 and for the panel year 2012, the DPC was convened on 08.11.2013. The authorities failed to follow the Sealed Cover Procedure and to open the same on or after issuance of GO.Ms. No.173 dated 21.02.2012. The adverse entries of the Average remarks in the ACRs for the years between 14.11.2005 and 05.06.2006 having been communicated with inordinate delay of 96 days by the Reporting Officer on 21.09.2006 and delay of 216 days by the Reviewing Officer on 17.01.2007 with the communication of the same nearly after 500 days .i.e, on 08.01.2008 has to be held specifically invalid as per law as having been served beyond the statutory limitation period of 90 days. The adverse entries and that of the Average remarks in the ACRs for the years between 15.09.2009 and 31.03.2010 having been communicated with inordinate delay by the Reporting Officer and delay of 131 days by the Reviewing Officer on 08.09.2011 with the communication of the same nearly after 204 days ie, on 12.12.2011 has to be held specifically invalid as per law as

having been served beyond the statutory limitation period of 90 days. Being aggrieved by the above, the applicant has filed this OA for restoration of seniority and that of the consequential benefits of conferment of IAS on par with her batch mates by convening a review DPC as contemplated in the Rules and Regulations.

3. Per contra the respondents No.2 & 3 have filed separate reply statement stating that the ACRs of the eligible officers are categorised as 'Outstanding', 'Very Good', 'Good', and 'Unfit' in accordance with the provisions of Regulation 5(4) of the Promotion Regulations. The Selection Committee is not guided merely by the overall grading that may be recorded in the ACRs. It makes its own assessment on the basis of in-depth examination of service records of eligible officers, deliberating on the quality of the officer on the basis of performance as reflected under various columns recorded by the Reporting/Reviewing/Accepting Authority in the ACRs for different years and they finally arrive at the classification to be assigned to each eligible officer in accordance with the provisions contained in the Promotion Regulations. While making an overall assessment, the Selection Committee takes into account orders regarding appreciation for meritorious work done by the officer concerned. Similarly the Selection Committee also keeps in view orders awarding penalties or any adverse remarks communicated to the officer, which even after due consideration of his representation have not been completely expunged. As per the provisions of Regulation 6 and 6-A, the State Government and the Central Government are required to furnish their observations on the

recommendations of the Selection Committee. After taking into consideration the observations of the State Government and the Central Government and the requisite records received from the State Government, the UPSC takes a final decision on the recommendations of the Select Committee with or without modifications in terms of the provisions of Regulation 7. The appointments to IAS are made from the Select List by the Government of India, DoP&T during the validity period of the Select List.

4. The Selection Committee Meeting was held on 27.12.2011 to prepare the Select List of 2009A and 2010 for promotion to IAS of Tamil Nadu cadre. The name of the applicant at Sl.No.4 of the Eligibility List was considered by the Selection Committee for the Select List of 2010 for the 02 vacancies. For this purpose, the service record upto 2009-10 was considered. In the case of the applicant, ACR for 2005-06 and 2009-10 were declared as invalid by the State Government. Therefore, ACRs for 2003-04 and 2004-05 were considered in addition to ACRs for 2006-07 to 2008-09. On an overall relative assessment of her service records the Committee assessed her as 'Unfit' for the Select List as the Committee assessed her as 'Average' for the period of 2004-05. On the basis of this assessment, her name could not be included in the said Select List approved by the UPSC and acted upon by the Government of India, DoPT vide notification dated 10.02.2012.

5. The name of the applicant at Sl.No.02 of the Eligibility List was also considered in the Selection Committee Meeting held on 26.09.2012 to prepare the Select List of 2011 against 05 vacancies for promotion to the IAS of Tamil

Nadu Cadre. For this Select List, the Service Record up to 2010-11 was considered. Since the ACRs for 2005-06, 2009-10 and 2010-11 were declared invalid by the State Government, the ACRs for 2003-04 and 2004-05 were considered in addition to ACRs for 2006-07 to 2008-09. On an overall assessment of her service records, the Committee assessed her as 'Unfit' for the said Select List as the Committee assessed her as 'Average' for the period of 2004-05 and hence her name could not be included in the Select List of 2011. The Select List was approved by the Commission on 17.12.2012 and acted upon by the Government of India, DoP&T vide notification dated 31.12.2012.

6. The name of the applicant at Sl.No.2 of the Eligibility List was also considered in the Selection Committee Meeting held on 08.11.2013 to prepare the Select List 2012 against 11 vacancies for promotion to the IAS of Tamil Nadu Cadre. For this Select List, the Service Record up to 2011-12 was considered. BY this time, the State Government vide letter dated 24.08.2013 decided to declare the ACRs for 2005-06, 2009-10 and 2010-11 as valid. On an overall assessment of the Service Records, the Committee assessed her as 'Unfit' for the said Select List as the Selection Committee assessed her as 'Average' for the period 2009-2010. The Select List was approved by the Commission on 16.12 2013 and acted upon by the Government of India, DoP&T vide notification dated 27.12.2013.

7. The name of the applicant at Sl.No.1 of the Eligibility List was considered by the Selection Committee Meeting held on 09.02.2015 to prepare the Select List of 2013 against 07 vacancies for promotion to the IAS of Tamil Nadu cadre

for which the Service Record up to 2012-13 was considered. By this time, the ACR of the applicant for the years of 2009-10 and 2010-11 were upgraded and accordingly the Committee assessed her as 'Very Good'. On the basis of this assessment, her name was included at Sl.No.1 in the Select List of 2013. The Select List was approved by the Commission on 17.03.2015 and acted upon by the Government of India, DoP&T vide Notification dated 18.03.2015 appointing the selected officers including the applicant to the IAS.

8. The applicant has filed rejoinder to the reply affidavit stating that the procedure followed by the respondents is legally untenable and against the IAS (Appointment by Promotion) Regulations, 1955. The name of the applicant was considered by the Selection Committee at Sl.No.4 of the Eligibility List for Select List of 2010 for two vacancies and the ACR for the years 2005-06 and 2009-2010 were declared as 'invalid' by the State Government and therefore, ACRs for 2003-04 and 2004-05 were considered in addition to ACRs for 2006-07 to 2008-09 and the Committee assessed the applicant as 'Unfit' for the said Select List as the Committee assessed the applicant as 'Average' for the period of 2004-05. In the Guidelines issued by the State Government, there is nothing to declare any ACR invalid. The applicant has also referred to various case law to substantiate her claim that every entry in the ACR, poor, fair, average, good or very good must be communicated to the public servant within a reasonable period. The ACR for the year 2005-06 was written on 21.09.2006 by Reporting Officer and on 07.09.2007 by the Scrutinizing Officer and it was communicated to the applicant on 08.01.2008 ie., after two years and hence the Adverse

Remarks lost its strength fully so as to be ignored altogether. Moreover, Adverse Remarks in the ACR for the period 14.11.2005 to 05.06.2006 was expunged belatedly on 12.04.2014 by order GO(2D)No.123. Further the Committee assessed the ACR as 'Average' for the period 2009-10. The said ACR was written in 2011 and communicated to the applicant on 12.12.2011. When the Selection Committee Meeting was held on 08.11.2013. the Committee was aware that the representation of the applicant was pending with the Government and hence Adverse Remarks should have been ignored. In the Selection Committee Meeting held on 09.02.2015, the applicant was assessed as 'Very Good' and included at Sl.No.1 in the Select List of 2013. This took more than five years for upgrading the ACR for the years 2009-10 and 2010-11.

9. We have heard the learned counsel for the respective parties and perused the pleadings and documents on record.

10. The main grievance of the applicant is that her ACR Gradings have been upgraded for the crucial period after the damage is done in the Select List of 2010, 2011 and 2012. It is the case of the applicant that once the adverse remarks were expunged, her claim for inclusion of her name in the appropriate select list was required to be considered for promotion by holding review selection committee meeting as per settled law on the issue.

11. As per the provisions contained in the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, The Selection Committee presided by the Chairman/Member of the UPSC makes selection of State Civil Service officers for appointment by promotion to the IAS based on the proposal

and records sent by the State Government concerned. As per Regulation 5(1) of the Promotion Regulations, the number of vacancies against which selection is to be made for a particular Select List year for promotion to the IAS of a State cadre is determined by the Government of India in consultation with the State Government. Thereafter the State Government would forward a proposal to the UPSC along with seniority list, eligibility list, integrity certificates, certificates regarding disciplinary/criminal proceedings, certificate regarding communication of adverse remarks, details of penalties imposed on the eligible officers etc., and ACR dossiers of the eligible officers. After perusing the above documents, the UPSC convenes a Selection Committee for preparing the Select List for promotion to the Indian Administrative Service. As per Regulation 5(4) of the Promotion Regulations, the Selection Committee constituted by the UPSC duly classifies the eligible State Civil Service Officers included in the zone of consideration as 'Outstanding', 'Very Good', 'Good' or 'Unfit' as the case may be on an overall relative assessment of their service records. Thereafter, as per Regulation 5(5) of the said Regulations, the Selection Committee prepares a List by including the required number of names first from the officers finally classified as 'Outstanding', thereafter 'Very Good' followed by 'Good' and the order of names within each category is maintained in the order of their respective inter se seniority in the State Civil Service.

12. Provision 4(i) and 4(ii) of the Consolidated Instructions on the system of Personal Files clearly states that

“4(i) ...the Government will take a serious view of non-communication of adverse remarks within a month of the acceptance of those remarks by

the Scrutiny Officer. The responsibility is that of the later officer and he will be held liable for disciplinary action for any delay or omission in the discharge of the important duty.

(ii) Adverse Remarks relating to a period of three years or more prior to the date when the matter is noticed or brought to notice and which were not communicated at all to the officer concerned will be wholly ignored in the context of promotion, confirmation etc., They need not be communicated at all at that later stage (G.O.Ms. No.2787, Public (Ser-A) Dated 12th November, 1969)"

13. The Hon'ble Delhi High Court in the case of Union of India vs Krishna Mohan Dixit in WP(C) No.6013/2010 and connected writ petitions dated 8.10.2010 which were filed against the order of the Tribunal directing ignoring of the ACRs which were below the benchmark and for consideration of the respondent's case for promotion by a review DPC by ignoring the below benchmark gradings, while modifying the directions given by the Tribunal, and after referring to the entire case law on the subject available on that date, held on 08.10.2010 that the below benchmark ACRs have to be communicated and if on representation made by the employee concerned, the same are upgraded commensurate to the benchmark, review DPC has to be constituted. The relevant portions of the judgement are extracted below:-

"8. To summarise, the Hon'ble Supreme Court, in Dev's Dutt's case, gave following directions to deal with the adverse ACRS (below benchmark ACR), relevant for consideration by a DPC to consider the incumbent for further promotion:-

- i) The un-communicated Adverse ACRs (those which are below Benchmark should be communicated to him for enabling him an opportunity of making representation to assail those entries such as

if the entry was "Good" then to get it upgraded to "Very Good" to the Benchmark;

ii) The representation made, if any, should then be considered by the higher authority who would certainly entitled to reject the representation and confirm the "Good" entry (though of course in a fair manner).

iii) The authority to decide representation must be an authority higher than the one who recorded subject entry, so as to avoid the principles of appeal from Ceaser to Ceaser.

iv) If the ACRs is upgraded, the review DPC to be held for considering the case of the incumbent afresh for promotion for the relevant year and in case, the incumbent is found fit then to promote him forthwith with retrospective effect. Even if the person has retired when considered by the review DPC for promotion, he would be entitled to all consequential benefits."

In the instant case, the ACR for the period 2005-06 was written on 21.09.2006 by the Reporting Officer and on 07.09.2007 by the Scrutinizing Officer and it was communicated to the applicant on 08.01.2008 after two years. The adverse remarks in the ACR for the period 14.11.2005 to 05.06.2006 was expunged belatedly on 12.02.2014 by order GO(2D)No.123. The ACR for the period from 15.09.2009 to 31.03.2010 grading of Average has been upgraded to 'Very Good', the Average Remarks for the period from 01.04.2010 to 31.10.2010 were expunged and the grading for the above period was upgraded from 'Good' to 'Very Good'. There is a perceptible improvement in the grading of the applicant for the year 2005 -06 , 2009-10 and 2010-11 and with this development the over all relative assessment may also improve so as to fetch her a place in the earlier select list for promotion to IAS.

14. The selection of SCS officers for promotion to the IAS is governed by IAS(Appointment by Promotion)Regulations, 1955 and in these Regulations there is no provision for holding of Review Selection Committee Meeting to review those Select Lists that have been duly approved by the Union Public Service Commission and acted upon. It is submitted that Review SCMs are convened only on the specific directions from a Court of Law.

15. Rules, regulating the procedure for selection to the IAS cadre by way of promotion are specific and clear. Inter-se Merit is the lone criterion amongst those within the consideration zone. And, ascertainment of merit is by the grading in the ACR for a specific number of years, ie 5 years. For the vacancies of 2010 consideration of ACR would be for the years 2009, 2008, 2007, 2006 and 2005, while for 2011, it is for the years 2010, 2009, 2008, 2007 and 2006. And, for 2012 it is from 2011, 2010, 2009, 2008 and 2007.

16. Obviously, the earlier selection that took place for the above years had considered the grading of the ACR of the applicants as obtained then which was anterior to the expunction of the adverse remarks and upward revision of the grading for various years as reflected above. What is now warranted is that review of Selection for the year 2010 shall be conducted and in so far as the applicant is concerned her grading shall be ascertained, keeping in view the revised grading afforded to her in the wake of her representation and if the applicant comes within the merit, the applicant shall be considered for conferment of IAS and her position in the seniority rescheduled and consequential benefits arising therefrom afforded to the applicant. If for the said

year, 2010 the applicant could not come in within merit, her case shall be considered in the Review Selection for the year 2011 performing the above drill and in case the applicant could not make in that year also, her case shall be considered for the year 2012 by holding a review Selection for that year.

17. In view of the above facts and circumstances of the case and the discussion here in above, the respondents are directed to convene a Review Selection Committee Meeting for the years 2010, 2011 and 2012 for inclusion of her name in an appropriate select list and consider the claim of the applicant for conferment of IAS cadre on par with her batch mates from 2010 Select List onwards with all consequential benefits arising thereof and pass order within a period of three month from the date of receipt of a copy of this order.

18. The OA is disposed of accordingly. No costs.

(T.Jacob)
Member(A)

(P. Madhavan)
Member(J)

.09.2019

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