

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.021/00806/ 2018

Date of CAV:04.10.2018.

Date of Order :08.11.2018.

Between :

V.Ravi Kumar, s/o V.Janakiramayya,
Aged about 49 yrs, presently Joint Inspector
General, (Registration and Stamps),
O/o Inspector General (Registration & Stamps),
Govt. Of Andhra Pradesh,
Edupugallu-512 151.

...Applicant

And

1. Union Public Service Commission, rep.,
By its Secretary, Dholpur House,
Shahjahan Road, New Delhi-110 069.

2. The State of Andhra Pradesh,
Rep., by its Chief Secretary,
Secretariat, Block-I, Velagapudi,
Amaravathi, Guntur District.

3. The State of Andhra Pradesh,
Rep., by its Secretary, GAD (Political),
Block-I, Velagapudi, Amaravathi,
Guntur District.

4. Union of India, rep., by its Secretary,
Dept. Of Personnel & Training, North Block,
Central Secretariat, New Delhi-110 001.

... Respondents

Counsel for the Applicant
Counsel for the Respondents

... Mr.Ravi Chandra Bejjaram,
... Mrs.K.Rajitha, Sr.CGSC
... Mr.CH.Srinivas, SC for State of AP
... Mr.B.N.Sharma, SC for UPSC

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.NAINI JAYASEELAN, MEMBER (ADMN.)**

ORDER

(As per Hon'ble Mrs.Naini Jayaseelan, Member (Admn.))

The applicant herein joined the Group-I service in 1996 as District Registrar and is presently working as Joint Inspector General, Registration and Stamps Department, Govt. of Andhra Pradesh at Vijayawada. He is aggrieved by the action of the 2nd respondent in not forwarding his name to the Selection Committee under Regulation 4 of the of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955.

2. The applicant has stated in his OA that inspite of the fact that the first respondent (i.e., UPSC) has issued guidelines as to what factors are required to be taken into consideration while forwarding the names to the Selection Committee constituted under Regulation 4 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, the said guidelines have not been followed by the 2nd respondent i.e., State of Andhra Pradesh.

3. Selection into the IAS is governed by the All India Services Act 1951, and IAS (Recruitment Rules) 1954. There are three sources of recruitment into the IAS as per the IAS (Recruitment) Rules, 1954. They are –

(i) by direct recruitment

(ii) by promotion of a substantive member of a State Civil Service (SCS);
and

(iii) by selection from amongst those persons who hold gazetted posts in substantive capacity in connection with the affairs of the State, and who are not members of a SCS.

4. Vacancies in the IAS cadre for each particular State are notified by the Central Government and, in the instant case, 03 Non-SCS vacancies from 01.01.2017 to 31.12.2018 meant for the officers of the Non-SCS for appointment to the IAS (AP Cadre) were notified.

5. Regulation 4 of IAS Regulations, 1997, which deals with the manner in which the State Government should send proposals of Non-SCS Officers for consideration of the Committee, reads as follows:

“(1) The State Government shall consider the case of a person not belonging to the State Civil Service but serving in connection with the affairs of the State who

(i) is of the outstanding merit and ability; and

(ii) holds a Gazetted post in a substantive capacity; and

(iii) has completed not less than 8 years of continuous service under the State Government on the first day of January of the year in which his case is being considered in any post which has been declared equivalent to the post of Deputy Collector in the State Civil Service and propose the person for consideration of the Committee. The number of person proposed for consideration of the Committee shall not exceed five times the number of vacancies proposed to be filled during the year.

Provided that the State Government shall not consider the case of a person who has attained the age of 54 years on the first day of January of the year in which the decision is taken to propose the names for the consideration of the Committee.

Provided also that the State Government shall not consider the case of person, who having been included in an earlier select list, has not been appointed by the Central Government in accordance with the provisions of regulation 9 of these regulations.”

6. The applicant's case is that the UPSC has issued guidelines/procedures for categorization of State/Civil/Police/Forest Service officers and preparation of a list of suitable officers by the Selection Committee for promotion to the Indian Administrative Service/Indian Police Service/Indian Forest Service in terms of Regulation 5(4) and 5(5) of the Promotion Regulations. According to the applicant, the guidelines lay down how the Selection Committee will go through the records of the eligible officers and make their assessment after deliberating on the quality of the officer as indicated in the various columns recorded by the Reporting/Reviewing Officer/Accepting Authority in the ACRS for different years.

7. The Selection Committee would take into account orders regarding appreciation for the meritorious work done by the concerned officers and similarly it would also keep in view orders awarding penalties, or any adverse remarks communicated to the officer, which, ever after due consideration of his representation, have not been completely expunged. The Committee will then finally arrive at the classification to be assigned to each officer.

8. The General Administration (Spl.A) Department issued a G.O.No.524, dated 27.08.2011, declared that all the posts covered under the Group-I Service be made equivalent when the officers working in such posts complete 8 years continuous service after reaching the basic pay of Deputy Collector and above and in respect of other posts which are not covered under Group-I Service, the officers who are in the scale of pay of

Deputy Collector and above with 8 years continuous service in that pay scale be considered for the purposes of equivalence.

9. Accordingly, proposals from eligible and qualified officers were called for from various Departments for preparation of the Select List of 2017. In all 43 proposals from various departments were received within the stipulated time. The name of the applicant figured at Serial No.43.

10. It is the contention of the 3rd respondent i.e, the State Government that since the zone of consideration is 1:5, and since the State Government received 43 names, whereas it has to send only 15 names of persons with 'outstanding' merit and ability to the UPSC from Non-SCS, the State Government prescribed the following criteria:

(1) A minimum of 7 Outstanding grading out of 10 ACRs.

(2) (i) 30 marks for the gradings in the ACRs,

Outstanding	-	3.0 marks per year
Very Good	-	2.0 marks per year
Good	-	1.0 mark per year
Satisfactory	-	0 mark per year

(ii) 05 marks for the justification for overall grading in the ACRs:
Attributes in ACR-0.5 per year

(iii) 05 marks for the State level awards:
State Level Awards by CM/Governor/GOI – 0.5 mark per award.”

The State Government constituted a Committee headed by Chief Secretary to Government and the said Committee short listed 15 names out of 43 applications in the meeting held on 26.07.2018. The Committee was of the view that the ACRs must be complete in all respects, in particular where Head of the Department or Secretary to Government is involved as a Reporting Officer or Accepting/ Reviewing Officer, his remarks could be

taken into account and the ACRs, which are not in complete in respect of remarks of less than two officers need not be considered except in cases where the report is given by the HOD or the Secretary to Government concerned. The ACRs, which were written from 2008-09 and in case there are any missing ACRs due to training, long leave etc., it has been decided to take two more ACRs of previous years. The committee strictly followed the criteria laid down and in respect of 43 officers, the marks were awarded in a fair and unbiased manner. The short listing was done in accordance with the criteria laid down by the 3rd respondent i.e., the State Government. Thereafter, the proposal was sent to the UPSC.

11. The applicant's contention is that this Committee should have taken into account, the overall assessment and the posts held by the officers instead of merely relying on the ACRs. Focusing only on ACRs and awarding multiple marks to such ACR gradings and providing 5 marks for the justification of the overall grading in the ACRS is contrary to Regulation (4) of the IAS (Appointment by Selection) Regulations, 1997, which places undue emphasis on the ACR gradings without assessing the merit and ability of the concerned officers.

12. The applicant has given 5 examples of officers viz., Smt.K.Siva Parvati, Municipal Administration Department, Sri N.S.R.C.M.Prasad, Joint Director, Industries, Sri N.Satyanarayana, Municipal Administration Department, Sri Ch.Sridhar, Cooperative Department, and Smt.Prasanthi, Social Welfare Department, who had either charges against them or were working as Private Secretaries to Minister whose names were included in

the proposal send to the UPSC. It is the contention of the applicant that in case the short listing is not objective and fair, it deserves to be set aside.

13. The applicant contends that the name of one Smt.K.Siva Parvati, Municipal Administration Department , was short listed when charges were framed against her based on the report of the DG, Anti-Corruption Bureau (ACB) during the period 2006-2007 and 2007-2008. But subsequently these charges have been dropped vide G.O.Rt.No.430, dated 7.5.2018. Similarly, another example of Sri N.S.R.C.M.Prasad, Joint Director, Industries, has been given in whose case charges were framed vide charge memo dated 10.4.2015. The charges were later dropped on 6.4.2016 and during the period 2014-2016, ACR of the officer has been graded as 'Outstanding'. It is contended that during the pendency of the charges, the Reporting Officer should not assume that his charges would be dropped at a later date and grade the officer as 'Outstanding'. In addition, since he was working as OSD in the office of the Minister, there was no specific job chart, there was no quantifiable performance and responsibility. The applicant has also given the example of one Sri N. Satyanarayana in whose case in spite of charges 'Outstanding' ACRs were given for the period 2007 and 2013. In the case of one Sri Ch.Sridhar, Cooperative Department, who was working as PS to Union Minister and who had no authority to sign any paper to which he could be made accountable, was selected and working as IAS Officer in AP. Also in the case of one Smt.Prasanthi, Social Welfare Department, who worked for more than 20 years in the Head Office only and never worked in field and never executed any program and working in desk job, was given 10/10 'Outstanding'

grades and short listed as per the scheme mentioned by the respondent and got selected and working in Telangana as IAS Officer.

14. In his rejoinder the applicant has stated that the grading “Outstanding” in the ACR, does not reflect the true and correct perspective of the officer without testing the same on the basis of the performance of the functions in respect to the duties assigned to him.

15. It is the contention of the 3rd respondent that the criteria prescribed is objective and fair and the guidelines mentioned by the applicant are the guidelines to be followed by the Selection Committee constituted by the UPSC for promotion to the IAS/IPS/IFS in terms of Regulations 5 (4) and 5 (5) of the Promotion Regulations. These guidelines also prescribe that for making an overall relative assessment, the Selection Committee will not depend solely on the grading recorded by the reporting/reviewing/accepting authority, but will make its independent assessment of the service records of the eligible officers as per the procedure indicated.

16. It is this Selection Committee, which will go through the records of the eligible officers and make their assessment after deliberating on the quality of the officer as indicated in the various columns recorded by the Reporting/Reviewing Officer/Accepting Authority in the ACRs for different years and then finally arrive at the classification to be assigned to each officer.

17. The Selection Committee also has to take into account orders regarding appreciation for the meritorious work done by the concerned officers and also keep in view orders awarding penalties or any adverse

remarks communicated to the officer, which have not been completely expunged.

18. The applicant has relied on the judgments of the Hon'ble Supreme Court in UPSC v. K.Rajaiah & Others (2005 (10) SCC 15) and the Hon'ble High Court of Madras, in W.P.No.17858/2002, dated 11.12.2002. In the case before the Hon'ble Supreme Court it is seen that the respondents had questioned the gradings given by the Selection Committee. The Hon'ble Supreme Court held as under:

“13. Taking an overall view and having due regard to the limitations inherent in judicial review of selection process by an expert body, we are not inclined to nullify the decision taken by UPSC.

14. In the light of the foregoing discussion, we set aside the judgement of the High Court and hold that the Tribunal has rightly dismissed the application filed by the first respondent. The appeals are thus allowed.”

19. In the case before the Hon'ble High Court in W.P.No.17858/2002 in Ka. Jeevanandan, Additional... vs Union of India (UOI), the applicant had assailed the allotment of marks for the interview. The High Court held as under:

“.....It has been held by the Apex Court in the case of Union of India vs. N. Chandrasekharan (1998) 1 SCC 694 (supra), that when the candidates had been made aware of the procedure and had taken part in the selection process, they cannot after finding that they had not been selected, turn around and challenge the procedure “contending that the marks prescribed for interview and confidential reports are disproportionately high and that the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report”. The Tribunal has rightly held that the petitioner was not entitled to challenge the selection process after having taken part in the same and only after the petitioner found that he had not been selected.”

20. We have perused the said judgments cited by the Applicant. Both the judgements cited by the applicant assailed the procedure adopted by the Selection Committee set up by the UPSC and are not applicable in the present case.

21. It is clear that an objective, fair and transparent criteria for short listing of candidates has to be the service records and introducing another element like interview at the stage of short listing would only amount to making the procedure subjective. To short list candidates on the basis of nature of jobs would also lead to an element of arbitrariness since ranking of departments of the Government jobs would introduce another element of subjectivity. It is the service records that comment on the quality of performance of the officer which inter alia also includes the officer's performance vis-a-vis the nature of the job.

22. In view of the above, the OA is dismissed. However, the 3rd respondent is directed to ensure that the name of an officer with a lesser grading than the applicant is not forwarded. No order as to costs.

Sd/-

(NAINI JAYASEELAN)
MEMBER (ADMN.)

Sd/-

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)'

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