

CASE NO.:
Appeal (civil) 782 of 2007

PETITIONER:
Union Public Service Commission

RESPONDENT:
S. Thiagarajan & Ors

DATE OF JUDGMENT: 15/02/2007

BENCH:
S.B. SINHA & Markandey Katju

JUDGMENT:
J U D G M E N T
[Arising out of Special Leave Petition (Civil) No. 7652 of 2006]

MARKANDEY KATJU, J.

Leave granted.

This appeal has been filed against the impugned judgment of the Madras High Court dated 23.12.2005 in Writ Petition No.30223 of 2002.

Heard learned counsel for the parties and perused the record.

The first respondent was recruited as Forest Ranger and was promoted as Assistant Conservator of forest on 12.7.1982 and he was further promoted as Deputy Conservator of Forest on 20.9.1996. He was eligible for inclusion in the select list for promotion to the Indian Forest Service. Since his name was not included in the select list, he made a representation and that representation was rejected. Against this rejection the first respondent filed an O.A. before the Central Administrative Tribunal, which allowed the said application.

The contentions of the first respondent before the said Tribunal were:

- (a) Even though he was fully qualified and eligible for inclusion of his name in the select list for the year 1998, his name was not considered and included in the said year.
- (b) Though there were six vacancies, only two officers were selected.
- (c) As far as the selection of one Mr. K.S. Krishnan is concerned, he had already crossed the age limit of 54 years, yet his name was included in the select list for the year 1998 and no valid reasons have been assigned by the authority concerned for the same.
- (d) The selection committee selected two officers of the State Cadre against whom vigilance enquiry were already pending.

The Tribunal, after careful consideration of the contentions of both the sides, allowed the O.A. in favour of the first respondent, and passed the following order in favour of the first respondent:

"(a) The impugned order dated 24.1.2000 is quashed.

(b) The official respondents are directed to consider the case of the applicant by constituting a review DPC for inclusion in the select list and appointment of IFS. This exercise shall be completed within three months of receipt of a copy of this order by the official respondents."

Against the aforesaid order of the Tribunal dated 17.4.2002, the appellant Union Public Service Commission filed an appeal before the High Court. It was contended by the appellant before the High Court that there were only four vacancies available for consideration by the Selection Committee and not six. Hence it was contended that the Selection Committee which met on 16.9.1998 included only four officers in the select list for 1998 as the available vacancies for Tamil Nadu at that time were only four.

As far as inclusion of Shri K.S. Krishnan for the post of IFS officer for the year 1998 was concerned, even though the said officer had completed 54 years on 3.5.1997, his case was considered by the selection committee as per the second proviso to Sub-Regulation (3) of Regulation 5 of the IFS (Appointment by Promotion) Regulations, 1966.

With regard to the inclusion of 2 officers in the select list, who were facing Vigilance Enquiry, the names of such officers were included in terms of the proviso to Sub-Regulation (4) of Regulation 5 of Indian Forest Service (Appointment by Promotion) Regulations, 1966.

The High court, however, agreed with the view taken by the Tribunal and dismissed the writ petition. Hence this appeal.

In our opinion both the High Court and the Tribunal overlooked the fact that the selection of State Forest Services officers for promotion to the IFS are governed by the IFS (Appointment by Promotion) Regulations, 1966, which are statutory in nature. They did not also take into account the fact that the IFS Promotion Regulations were amended vide notification dated 31.12.1997 effective from 1.1.1998 bringing about certain changes. There was a transition period between April 1997 to December i.e. between the ceasing of the effect of the old Regulations and taking effect of the new Regulations for which specific orders dated 27.2.1998 and 14.9.1998 were issued by the Government of India to safeguard the interest of those officers who would otherwise have been adversely affected because of the said transition.

We find that the appellant conducted the selections strictly in accordance with the statutory regulations and orders issued by the Government of India, and hence there was neither any infirmity nor arbitrariness involved in the selection, nor was the procedure adopted by the Selection

Authority dubious and questionable as held by the High Court.

As regards the question whether there were six vacancies or four, the High Court and the Tribunal did not take into account the fact that the IFS Promotion Regulations and IFS (Fixation of Cadre Strength) Regulations were amended by the notification dated 31.12.1997 which came into effect from 1.1.1998. The Government of India vide letter dated 27.2.1998 laid down the follow up action to be taken in view of the amendment dated 31.12.1997, the relevant part of which is as follows:

"It has been decided that the increase in promotion posts sanctioned under notification No.11033/15/95-AIS(II)-C, dated the 31st December, 1997, in respect of the Indian Forest Service Cadres are to be given effect in a phased manner. The recruitment to the promotion posts when made in each cadre during the year may be limited to the promotion posts as on 31.12.1997 plus one third of the net increase in the promotion posts as on 1.1.1998, ignoring the fractions, if any. Similarly, the recruitment in 1999 will be enhanced by half of the balance increase, ignoring the fractions, if any and the remaining increase will be added to the recruitment in the year 2000. The immediate charge on the increase in the promotion posts in the respective State Cadres will be the persons who stand included in the waitlisted part of Select Lists prepared in 1997 and in force. The waitlisted officers could accordingly be considered for promotion to the IFS against the vacancies made available from 1.1.1998 in the first instance."

The Select List prepared in 1997 was for the year 1996-97 and it was in force till the meeting of the Selection Committee held on 16.9.1998. S/Sh.B. Venkataraman and M. Samuel Moses were the waitlisted officers in the said Select List. These two officers were appointed to the IFS by the Government of India vide notification dated 10.9.1998 in pursuance to the aforesaid letter dated 27.2.1998. Thus two of the six vacancies indicated by the State Government in their letter dated 6.7.1998 were utilized before the meeting of the Selection Committee on 16.9.1998.

The Tribunal, while reaching to the conclusion that the proposal to select six officers had been reduced to four in an arbitrary manner without assigning any reason, placed reliance on the State Government's notes for the Selection Committee indicating that there were six vacancies to be filled up. The State Government's letter dated 2.9.1998 indicating that two of the said six vacancies are to be filled up in terms of Government of India, Ministry of Environment & Forests letter dated 27.2.1998 and only four vacancies would remain vacant thereafter for the year 1998 was not at all taken into account by the Tribunal. This has been confirmed by the Government of India in paras 5 to 8 of the reply filed by them in the writ petition filed before the High Court. As per the amendment dated 31.12.1997 to the IFS (Appointment by Promotion) Regulations, 1966, the size of

the select list is equal to the number of vacancies available. In the instant case, the Selection Committee was informed that there were four vacancies in the promotion quota of Tamil Nadu cadre for the select list of 1998. Therefore, the committee took into account four vacancies and prepared a select list of four officers.

As regards the inclusion of Sh.K.S. Krishnan in the select list of 1998, since the definition of the word 'year' underwent a change after the amendment of the Regulations, there was a transition period between the ceasing of the effect of the old Regulations and the coming into effect of the amended Regulations. Under the pre-amended Regulations, select lists were to be prepared on a financial year basis whereas after the amendment, select lists were to be prepared on a calendar year basis. In view of this, after preparation of the selection list of 1996-97, the next selection list would be for the year 1998. As such, there would not be any select list prepared for the period April, 1997 to December, 1997. In order to safeguard the interest of those officers who would thus be adversely affected by the transition period from April, 1997 to December, 1997 during which no select list would be prepared, the Government of India issued special instructions vide letter dated 14.9.1998.

The said letter of the Government of India dated 14.9.1998 was issued by way of clarification regarding the applicability of Regulation 5(3) of the Promotion Regulations in the context of the amendments dated 31.12.1997 to the IAS/IPS/IFS Promotion Regulations. The relevant part of the said letter is reproduced here:

"It is observed that in terms of the amended Regulations, 1st January, 1998 is the crucial date by which the eligibility criteria for consideration of the State Service Officers for consideration by the Selection Committee are required to be satisfied. In terms of Regulation 5(3), as amended, a State Civil Service Officer who has crossed 54 years between 1st April, 1997 and 31st December, 1997 and hence above 54 years as on the 1st January of the 1998 is not eligible to be considered by the 1998 selection committee, though he would have been eligible to be considered by the 1997-98 selection committee scheduled to meet by March, 1998, had the Regulations not been amended.

The matter has been carefully considered. It is observed that in terms of the second proviso to Regulation 5(3) of the IAS (Appointment by Promotion) Regulations, 1955, those officers who had crossed 54 years of age on the crucial date and who were not considered in the year immediately preceding the year in which the meeting of the Committee is held are entitled to be considered by the committee in addition to the normal zone of consideration placed before the committee. The 1997-98 select list in terms of the Promotion Regulations existed as a legal fiction upto the 31st December, 1997 and it ceased to exist with

the coming into force of the IAS (Appointment by Promotion) Second Amendment Regulations, 1997, w.e.f. 1.1.1998. In all the cases, where the Selection Committee for 1997-98 did not meet during the period from 1.4.1997 to 31.12.1997, it has to be construed that the Selection Committee for immediately preceding year did not meet and those officers crossing the age of 54 years during this year allowed the benefit of consideration by the 1998 Selection Committee as and when it meets in terms of the second proviso to sub-Regulation 3 of Regulation 5 of the amended Regulations."

Shri Krishnan who was confirmed on 19.1.1998 with retrospective effect from 1.6.1996 was entitled to be considered by the Selection Committee in addition to the normal zone of consideration in terms of the second proviso to Regulation 5(3) of the IFS (Appointment by Promotion) Regulations, 1966 as clarified by the Government of India, Department of Personnel & Training vide their letter dated 14.9.1998. This letter was issued by the Government of India especially in the context of the amendment dated 31.12.1997 to the IAS/IPS/IFS (Appointment by Promotion) Regulations in order to safeguard the interests of those officers who would be adversely affected by the transition period from April, 1997 to December, 1997 for which period no select list was to be prepared.

As regards the inclusion of tainted officers in the select list of 1998, in our opinion the High Court and Tribunal did not notice that provisional inclusion of these officers in the select list was done as per the express provision of the Promotion Regulations i.e. Regulation 5(4) which is as follows:

"The list shall be prepared by including the required number of names first from amongst the officers finally classified as 'outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in the order of their seniority in the State Forest Service.

Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

Explanation I: The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a court as the case may be.

Explanation II: The adverse thing which came

to the notice of the State Government rendering his unsuitable for appointment to the service shall be treated as having come to the notice of the State only if the details of the same have been communicated to the Central Government is satisfied that the details furnished by the State Government have a bearing on the suitability of the officers and investigation thereof is essential."

Thus, if an officer against whom disciplinary proceedings are pending is considered by the Selection Committee, his name is included in the select list provisionally, if he is otherwise found suitable for inclusion. He cannot be appointed to the IFS till his inclusion is declared as unconditional and final by the UPSC. In the instant case Shri Shenabagamurthy and T. Srinivasan were included provisionally in the select list of 1998 subject to their clearance in the pending disciplinary cases as such inclusion was in consonance with the Promotion Regulations. Further, the courts below did not appreciate that under the Promotion Regulations, an officer who is included in the zone of consideration has to be considered by the Selection Committee even if disciplinary proceedings are pending against him. The name of such an officer is included provisionally in the select list, if he is otherwise found suitable for inclusion. The courts below therefore erred in hold that the names of such officers should not be considered at all.

Thus the findings of the High Court and Tribunal are without noticing the expression provisions of the statutory Regulations, in accordance with which the Selection Committee prepared the select list. Hence in our opinion there orders are vitiated.

The Selection Committee acted strictly in accordance with the provisions of the Promotion Regulations, which are statutory in nature. The courts below erred in holding that merely because the respondent no.1 was qualified and there was no case pending against him, his name should have been included in the select list. The fact that he was eligible and qualified only entitles him to be considered for selection under the Promotion Regulations, but does not give him any preference over others who have earned better grading than him. Respondent no.1 was duly considered by the Selection Committee at Sl.No.11 and was addressed as 'Good'. However, he was not included in the select list as officers having better grading were available and also due to the statutory limit on the size of the select list.

Apart from the above we are also of the opinion that orders of the High Court and the Tribunal are liable to be set aside on the ground that the necessary parties have not been impleaded. Hence the Original Application before the Tribunal was liable to be dismissed on this ground alone vide Prabodh Verma and others, etc., etc. vs. State of Uttar Pradesh and others, etc. [AIR 1985 SC 167].

For the reasons given above, this appeal is allowed and the impugned order of the High Court as well as of the Tribunal are set aside.

There shall be no order as to costs.

JUDIS