

CASE NO.:
Appeal (civil) 5155 of 2006

PETITIONER:
UNION PUBLIC SERVICE COMMISSION

RESPONDENT:
L.P. TIWARI & ORS.

DATE OF JUDGMENT: 22/11/2006

BENCH:
Dr.AR. Lakshmanan & Altamas Kabir

JUDGMENT:
J U D G M E N T
(Arising out of SLP (c) No.12249/2006)

ALTAMAS KABIR, J.

Leave granted.

Shri L.P. Tiwari, respondent No.1 in the first matter and Shri DP. Dwivedi, respondent No.1 in the second matter, were serving as State Service Forest Officers in the post of Assistant Conservator of Forests in the office of the Divisional Forest Officer, Bhopal, Madhya Pradesh. Both the said officers became eligible to be promoted to the Indian Forest Service under the provisions of the I.F.S. (Appointment by Promotion) Regulations, 1966 (hereinafter referred to as 'the Regulations') Regulation 3 of the said Regulations provides for the appointment of a Selection Committee consisting of the Chairman of the Union Public Service Commission or where the Chairman is unable to attend, any other Member of the Union Public Service Commission along with the following members as far as the State of Madhya Pradesh is concerned:-

- (i) Chief Secretary to the Govt. of M.P;
- (ii) Secretary to the Govt. of M.P. dealing with Forests;
- (iii) Principal Chief Conservator of Forests, Govt. of M.P.;
- (iv) Chief Conservator of Forests, Govt. of M.P. and;
- (v) A nominee of the Govt. of India not below the rank of Joint Secretary to the Govt. of India.

All meetings of the Selection Committee are presided over by the Chairman/Member of the Union Public Service Commission.

In keeping with the Regulations, the Selection Committee classifies eligible State Forest Service Officers coming within the zone of consideration as "outstanding", "very good", "good" or "unfit" on an overall assessment of their service records. Thereafter, as per Regulation 5 (4), the Selection Committee prepares a list by including the required number of names first from amongst officers classified as "outstanding" and then from amongst those classified as "very good", and thereafter from amongst those classified as "good". The names within each category are set in the order of their respective inter se seniority in the said Forest Service. The Annual Confidential Reports of the eligible officers form the basis on which such officers are categorized in the manner indicated above. However, while making an overall assessment, the Selection Committee also takes into account orders and remarks regarding appreciation for meritorious

work done by the concerned officer. Similarly, orders awarding penalties or any adverse remarks communicated to the officer and which have not been expunged are also taken into consideration while grading the officers.

In the instant case, a meeting of the Selection Committee was held on 12th and 13th December, 2002 to prepare the yearwise Select List for the years 2001 and 2002 for promotion to the I.F.S. cadre of Madhya Pradesh in accordance with the aforesaid Regulations. The size of the Select List for the year 2001 was 11 and 9 for the year 2002. As the zone of consideration in each year is taken as three times the number of vacancies available, 33 names were considered for the 11 vacancies for the year 2001 and 27 names were considered for filling up the 9 vacancies for the year 2002. On an overall assessment of his service records, the Selection Committee assessed Shri L.P. Tiwari as being "very good". On such assessment, his name was included at serial no.10 in the Select List of 2001 for promotion to the Indian Forest Service. The respondent Nos. 4 to 8 were assessed as "outstanding" by the Selection Committee and were included at serial nos. 3 to 7 in the Select List.

Aggrieved by his placing at serial no.10 in the Select List, Shri L.P. Tiwari filed O.A.No.118/2004 before the Central Administrative Tribunal, Jabalpur (hereinafter referred to as 'the Tribunal') claiming that he ought to have been assessed as "outstanding" and should have been assigned seniority in the Indian Forest Service Cadre over respondent Nos. 4 to 8.

Although, Shri D.P. Dwivedi's name was also considered and placed at serial no.8 in the Select List for the year 2001 and he was also graded as "very good" by the Selection Committee, his name did not find place in Select List for the year 2001 on account of the statutory limit on the size of the Select List. He was also not considered for promotion to the Select List of 2002 as he had crossed the age of 54 years on 1st January, 2002 which was the date fixed for reckoning the eligibility of officers for inclusion in the Select List of 2002.

Shri Dwivedi also filed Original Application No.16/2003 before the Tribunal challenging the selection/appointment of the State Forest Officers to the I.F.S. cadre for the year 2002. The two aforesaid applications as also the application filed by one M. Ramachandran (O.A.No.69/2003) were taken up for hearing together since the grievances were more or less common, although the prayer in Shri L.P. Tiwari's application was different from the others. While the others prayed for a de novo selection by a Review Departmental Promotion Committee, Shri L.P. Tiwari prayed for a declaration that he ought to have been assessed as "outstanding" in the year 2001 and that he should be assigned seniority in the I.F.S. Cadre over the respondent Nos. 4 to 8 and others. The learned Tribunal adopted a rather unusual procedure in dealing with the applications after going through the Annual Confidential Reports of the applicants in detail. On a comparison of the merits and demerits of the parties as reflected in their Annual Confidential Reports, the Tribunal came to a finding that patent material irregularities had been committed by the Selection Committee for the year 2001 for which the entire selection process for the year 2001 was liable to be reviewed. The respondents were accordingly directed to convene a meeting of the Selection Committee to review the proceedings of the Selection Committee for the year 2001 in the light of the observations made in the Tribunal's order and thereafter to grant all consequential benefits within a period of three months from the date of communication of the order. The Union Public Service Commission filed two separate Writ Petitions in regard to the applications filed by Shri L.P.

Tiwari and Shri D.P. Dwivedi being W.P.No.3718/05 (S) and W.P. No.3719/05 (S). Both the Writ Petitions were taken up for hearing on 9th March, 2006 and ultimately by its judgment dated 14th March, 2006, the High Court upheld the findings of the Tribunal and dismissed both the Writ Applications. The High Court directed the respondents to hold a Review Departmental Promotion Committee in accordance with the Rules within a period of 60 days from the date of receipt of a certified copy of the order and submission of the same to the competent authority by Shri L.P. Tiwari and Shri D.P. Dwivedi. This appeal has been preferred by the Union Public Service Commission against the aforesaid judgment and order of the High Court affirming the order and directions given by the Tribunal.

On behalf of the appellant, it was contended that both the Tribunal as also the High Court had misdirected themselves in directing a Review Departmental Promotion Committee to be held since the entire procedure leading to the preparation of the Select List both for the years 2001 and 2002 was strictly in accordance with the Regulations and there had been no deviation therefrom. It was urged that the Selection Committee had acted strictly in accordance with the parameters laid down by the Regulations. In fact, Mr. Rao, learned senior counsel, took us through each step of the procedure which is adopted by the Selection Committee while grading the eligible candidates in the different categories. Having regard to the provisions in the Regulations that the Annual Confidential Reports of the past five years would be taken into consideration for preparing the Select List, the Tribunal appears to have committed an error in relying on Annual Confidential Reports of even previous years and thereby widening the scope of selection. Such an erroneous approach has led the Tribunal to wrongly conclude that the Selection Committee had erred in grading the eligible officers. It is now more or less well-settled that the evaluation made by an expert committee should not be easily interfered with by the Courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose. Such view was reiterated as late as in 2005 in the case of U.P.S.C. vs. K. Rajaiah & Ors., reported in (2005) 10 SCC 15, wherein the aforesaid Rules for the purpose of promotion to the I.P.S. Cadre was under consideration. Apart from the above, at no stage of the proceedings, either before the Tribunal or the High Court or even before this Court, has any allegation of mala fides been raised against the Selection Committee and the only grievance is that the Selection Committee erred while making assessment of the comparative merits of the respective candidates. While concluding his submissions, Mr. Rao had pointed out that the direction given by the High Court to the appellant to hold a Review Departmental Promotion Committee was also erroneous since the Regulations provided for selection to be made not by a Departmental Promotion Committee but by a Selection Committee constituted as per the Regulations. Although, on behalf of the respondents it has been urged that there was no bar which precluded the Tribunal from looking into the original ACRs of the respective candidates, what we are required to consider is whether it was at all prudent on the part of the Tribunal to have adopted such a procedure which would amount to questioning the subjective satisfaction of the Selection Committee in preparing the Select List.

From the submissions made and the materials on record, we are satisfied that the methodology which has been evolved and included in the Regulations for grading the eligible officers

have been religiously followed by the Selection Committee which did not call for any interference by the Tribunal. The High Court has merely followed the decision of the Tribunal without independently applying its mind to the facts involved. We accordingly allow the appeal and set aside the judgment of the High Court impugned in this appeal as also that of the Tribunal.
There will, however, be no order as to costs.

JUDIS