

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
DR. M.G. DIGHE AND ORS.

DATE OF JUDGMENT 27/08/1991

BENCH:
SAWANT, P.B.
BENCH:
SAWANT, P.B.
KANIA, M.H.

CITATION:
1991 SCR (3) 776 1991 SCC (4) 551
JT 1991 (3) 547 1991 SCALE (2) 446

ACT:

Service Law: Indian Administrative Service (Appointment by promotion) Regulations, 1955-Regulations 5(1), (2) and (3)--Interpretation of--Promotion of members of State Civil Service-Preparation of Select List of suitable officers--Selection Committee meeting on two dates--12-month period under Regulation 5(1) to be counted from the second date when the Committee finalised the list as per Regulation 5(1) read with Regulation 5(2)--For purposes of Regulation 5(3), the date when the Committee first met to be reckoned.

HEADNOTE:

The first respondent and five other members of Madhya Pradesh State Civil Service challenged before the Central Administrative Tribunal the selection of 14 officers of the State Civil Service for promotion to the Indian Administrative Service as illegal on the ground that the State had wrongly calculated the anticipated number of vacancies as 7 by counting the period of 12 months under Regulation 5(1) of the Indian Administrative Service (Appointment by promotion) Regulations, 1955, from December 1, 1988 to November 30, 1989, instead of from March 16, 1989 to March 15, 1990, and if the latter period was considered as the proper period for the purposes of the said Regulation, the vacancies would be 11 and the select list of 22 officers would have to be prepared, for which 66 officers would have to be considered, and the zone of consideration would extend to the 84th officer in the seniority list, since 18 of the 66 officers were ineligible under Regulation 5(3).

On behalf of the State Government it was contended that since the meeting was first held on December 19, 1988 the period of 12 months under the Regulation 5(1) would have to be calculated from December 1, 1988 to November 30, 1989 according to the previous practice of the Government, which was that since the Committee met in the second fortnight of December, the period was to be calculated from the 1st December, 1988.

The Tribunal held that neither the practice adopted by the State Government, nor the interpretation placed by it on Regulation 5(1) was proper, and that the span of 12 months would begin from March 16,

1989 and end on March 15, 1990 and directed that a Select List of 22 officers should be prepared since during the later period, the estimated vacancies were 11, and that a Review Committee should be constituted to consider the cases of the applicants.

Dismissing the appeal preferred by the Union of India, this Court,

HELD: 1.1 The wording of the Regulation 5(1) of the Indian Administrative Service (Appointment by promotion) Regulations, 1955, is very clear. It says "commencing from the date of preparation of the list". [779F]

1.2 In the present case, admittedly the list which was prepared by the Selection Committee on December 19, 1988 was not according to Regulation 5(1) read with Regulation 5(2). Since the Selection Committee had, on the basis of its estimate of seven vacancies on December 19, 1988 considered the cases of only 30 officers when it was required to consider the cases of 42 officers, the Union Public Service Commission had returned its recommendation and asked the Selection Committee to consider the cases of 12 more officers. Hence, the preparation of the Select List was not complete in December, 1988 and the Committee was required to convene a fresh meeting on March 16, 1989, on which date alone it can be said to have prepared the select list as required by Regulation 5(1). Since the select list, as required by- Regulation 5(1) was for the first time prepared on March 16, 1989, the period of 12 month under Regulation 5(1) had to be counted from that date. [779G-H, 780A-B]

1.3 During the period of 12 months from 16th March, 1989 to 15th March, 1990, the estimated vacancies were 11 and, therefore, select list of 22 officers has to be prepared by considering the cases in all of 66 officers and extending the zone to the 84th officer in the seniority list according to the order of seniority (18 officers out of 66 being ineligible). [780C-D]

2. The provision of Regulation 5(3) speaks of the first day of January of the year "in which", the Selection Committee "meets" unlike the language of Regulation 5(1) which speaks of "the date of the preparation of the list". In the present case, the Committee first met on December 19, 1988. Therefore, for the purpose of Regulation 5(3), it is that date which is relevant and if that is so, it is only those members of the State Civil Service who had attained the age of 54 years on January 1, 1988 who would be ineligible. [781C-D]

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3. In the circumstances, for the purposes of the Review Selection Committee to be convened, the zone of consideration will be as if the meeting was held on March 16, 1989. The actual number of vacancies which will have to be considered is 11. [781E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3383 of 1991.

From the Judgment and Order dated 9.11.1990 of the Central Administrative Tribunal, Jabalpur in O.A. No. 129 of 1989.

Altar Ahmed, Additional Solicitor General, Hemant Sharma and C.V.S. Rao for the Appellant.

B.S. Banthia, Piyush Mathur, G. Prakash, T.C. Sharma, S.K. Agnihotri and S.K. Gambhir for the Respondents.

The Judgment of the Court was delivered by

SAWANT, J. What falls for consideration in this appeal is the interpretation of clauses (1), (2) and (3) of Regulation 5 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as the 'Regulations'). The first respondent and five others who were members of the Madhya Pradesh State Civil Service had approached the Central Administrative Tribunal ('Tribunal' for brevity) with a grievance that the selection of officers to the Indian Administrative Service ('IAS') on the basis of recommendation made by the Selection Committee in its meeting held on December 19, 1988 and on March 16, 1989 was illegal.

2. In its meeting on December 19, 1988, the Selection Committee had estimated 7 vacancies in the IAS cadre and was, therefore, required to prepare a select list of 14 members of the State Civil Service for promotion to the IAS, under Regulation 5(1) of the Regulations. While preparing the list, the committee had to consider for inclusion in the said list the cases of members of the State Civil Service (in the order of their seniority) equal to three times the number of officers to be placed on the list. Hence the Committee had to consider the cases of 42 members of the Service. The Committee, however, considered the cases only of 30 officers, graded them and submitted its recommendation to the Union Public Service Commission. The Commission directed the Committee to meet again and grade the remaining 12 officers also. Accordingly, the Committee met again on March

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16, 1989 to complete the select list as directed. As a result of this selection, appointment orders of 14 officers who were included in the select list were issued on 29th/30th March 1989. This was challenged by the applicants before the Tribunal by pointing out that the State had wrongly calculated the number of vacancies as 7 by counting the period of 12 months under Regulation 5(1), from December 1, 1988 to November 30, 1989 instead of from 16th March 1989 to 15th March, 1990. If the latter period was considered as the proper period for the purposes of the said Regulation, the vacancies would be 11 and the select list of 22 officers would have to be prepared. That will extend the zone of consideration in all to 66 officers. Since 18 of the 66 officers were ineligible, the zone of consideration will extend to the 84th officer in the seniority list. On behalf of the State Government, it was contended that since the meeting was first held on 19th December, 1988 the period of 12 months under the said Regulation will have to be calculated from December 1, 1988 to November 30, 1989 according to the previous practice of the State Government, which was that since the Committee meets in the second fortnight of December, the period was to be calculated from the 1st December of that year. We agree with the Tribunal that neither the practice adopted by the State Government nor the interpretation placed by it on Regulation 5(1) is proper. The relevant portion of Regulation 5(1) reads as follows:

"5. Preparation of a list of suitable officers.--
(1) The number of members of the State Civil Service included in the list shall not be more than twice the number of substantive vacancies anticipated in the course of the period of twelve months, commencing from the date of preparation of the list. in the posts available for them

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(Emphasis supplied)

We are not concerned with the rest of the provision of

the said regulation for the purposes of this point. The wording of the regulation is very clear. It says "commencing from the date of the preparation of the list". In the present case, admittedly the list which was prepared by the Selection Committee on 19.12.1988 was not according to Regulation 5(1) read with Regulation 5(2). Regulation 5(2) requires that the cases of members of the State Civil Service which are required to be considered for preparation of the select list have to be in number equal to three times the number of officers to be placed on the select list. As pointed out earlier, the Selection Committee had on the basis of its estimate of vacancies on 19th December, 1988 considered the

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cases of only 30 officers when it was required to consider the cases of 42 officers. It is for this reason that the Union Public Service Commission had returned its recommendation and asked the Selection Committee to consider the cases of 12 more officers. Hence the preparation of the select list was not complete in December 1988 and the Committee was required to convene a fresh meeting on March 16, 1989 on which date alone it can be said to have prepared the select list as required under Regulation 5(1). Since the select list, as required by Regulation 5(1), was for the first time prepared on March 16, 1989, the period of 12 months under Regulation 5(1) had to be counted from that date. The Tribunal had, therefore, rightly held, that the span of 12 months would begin from March 16, 1989 and end on March 15, 1990.

There is further no dispute that during the period of 12 months from 16th March, 1989 to 15th March, 1990, the estimated vacancies were 11 and, therefore, the Tribunal's direction to prepare a select list of 22 officers by considering the cases in all of 66 officers and, therefore, extending the zone to the 84th officer in the seniority list according to the order of seniority (18 officers out of 66 being ineligible), is both proper and valid.

3. A contention was then advanced before us on behalf of the appellant that the select list lapses when a meeting of the Selection Committee to prepare a fresh select list is held. Hence no appointment could be made from the earlier select list on and after the date of the meeting of the next Selection Committee. There is nothing on record as to whether any Selection Committee met after March 16, 1989. In fact, the Tribunal's direction to constitute a Review Committee to consider the cases of the applicants before it and any other officers who were in the consideration zone, has not yet been implemented and the Selection Committee has yet to meet to prepare the list of members of the State Civil Service eligible to be placed in the select list as on March 16, 1989. There is, therefore, no question of the lapse of the list which is yet to be prepared. A meeting of the Selection Committee to prepare the list for future years cannot be held unless the meeting as directed by the Tribunal is first held and the select list finalised.

4. The last contention was that under Regulation 5(3), there is a bar on the Selection Committee taking into consideration the cases of the members of the State Civil Service who have attained the age of 54 years on the first day of January of the year in which it meets. The argument was that some of the officers had attained the age of 54 years

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on 1st January, 1989 and, therefore, would be ineligible for consideration to be placed in the select list. According to

us, this contention is inconsistent with the provisions of Regulation 5(3) of the Regulations. Regulation 5(3) reads as follows:

"5(3) The Committee shall not consider the cases of the members of the State Civil Service who have attained the age of 54 years on the first day of January of the year in which it meets:"

(Emphasis ours)

The provision of Regulation 5(3) is clear. It speaks of the first day of January of the year "in which", the Selection Committee "'meets". It is unlike the language of Regulation 5(1) which, as pointed out earlier, speaks of "the date of the preparation of the list". In the present case, admittedly the Committee first met on 19th December, 1988. Therefore, for the purpose of Regulation 5(3), it is that date which is relevant and if that is so, it is only those members of the State Civil Service who will be ineligible who had attained the age of 54 years on 1st January, 1988. The Tribunal has also clarified this while giving the direction for a Review Selection Committee.

We make it clear that for the purposes of the Review Selection Committee to be convened as directed by the Tribunal the zone of consideration will be as if the meeting was held on March 16, 1989. The actual number of vacancies which will have to be considered has already been indicated in our judgment.

5. In the circumstances of the case, the appeal fails and is dismissed. In view of the fact that these proceedings have been pending for some time we direct that the Review Departmental Promotion Committee/Selection Committee should meet and prepare the select list within two months from the day of the receipt of the writ of this Court.

In the circumstances of the case, there will be no order as to

costs.

N.P.V.

missed.

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Appeal dis-