

PETITIONER:
S.A.ENGINEER ETC.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 18/12/1997

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:
THE 18TH DAY OF DECEMBER, 1997

Present:

Hon'ble Mrs.Justice Sujata V.Manohar
Hon'ble Mr.Justice D.P.Wadhwa

Ms.Devika Bezbarvah, Adv. for Mukul Mudgal, Adv. for the appellants.

V.C. Mahajan, Sr. Adv., (Rajiv Nanda,) Adv. for Mrs.Anil Katiyar, Adv. D.M.Nargolkar, Advs. with him for the Respondents

J U D G M E N T

The following Judgment of the Court was delivered:
With

Civil Appeal No.1093 of 92

D.P. Wadhwa. J.

The appellant who belongs to State Civil Service of the State of Maharashtra, it appears, could not get complete relief from the Central Administrative Tribunal (for short 'the Tribunal'), (New Bombay Bench), New Bombay for his claim to be promoted to the Indian Administrative Service under the Indian Administrative service (Appointment by Promotion) Regulation, 1986. Instead the Tribunal granted him relief to be promoted to Indian Administrative Service under the aforesaid Regulation for the year 1987.

Selection Committee for Maharashtra constituted under Regulation 3 of the Regulations met on December 13, 1984 and prepared a Select List under Regulation for filling up of 8 vacancies during the period of 12 months from the date of the meeting. The name of the appellant was included at Serial No.11 of the Select List. The Select List so prepared is to be forwarded to the Union Public Service Commission (for short 'Commission') by the State Government which finally approves the Select List. Under Regulation 9(1) appointment of members of the State Civil Service to the Indian Administrative Service shall be made by the Central Government on the recommendation of the State Government in the order in which the names of members of the State Civil Service appear in the Select List for the time being in force. The Commission approved the select list. The State Government, however, did not operate the Select List and sent no proposal to the Central Government and as such no

appointment was made from the Select List so prepared to the Indian Administrative Service.

Next Selection Committee for the State of Maharashtra met on December 19, 1995 to prepare Select List towards filling up of 13 vacancies which now existed and those anticipated during the period of 12 months from the date of the meeting. The name of the appellant was included at Serial No.9 of the Select List. The Select List was approved by the Commission on January 23, 1986. State of Maharashtra sent a proposal to the Central Government for appointment of the officers included at Serial Nos. 1 to 8 and 10 and 11 of the Select List with "no deterioration certificate" in their favour. The name of the appellant who was appearing at Serial No.9 of the Select List was excluded by the State Government while forwarding the proposal for appointment of other candidates to the Central Government.

Under Regulation 9(1) the appointment from the Select List is to be made only in the order in which the names of the State civil Service Officers appear on the basis of the recommendation of the State Government. Accordingly, Central Government notified the officers whose names appeared at Serial Nos. 1 to 8 of the Select List for their appointment to the Indian Administrative Service. On account of the fact that without making the appointment of the appellant who was at Serial No. 9, the Central Government did not act on the recommendation made by the State Government for appointment of the State Civil Service Officers whose names appeared at Serial Nos.10 and 11. by communication dated August 29, 1986, the Central Government desired to know the factual position as to why the name of the appellant was not recommended. Central Government wanted to know if there had occurred any deterioration in the performance of the appellant after his name was included in the Select List which, rendered him unsuitable for appointment to the Indian Administrative Service and if that was so the State Government might consult the Commission as provided in Regulation 9(2) of the Regulation. In the Communication it was also mentioned that if any charges of grave lapse in the conduct and performance of duties on the part of the appellant had been established, then the State Government might request the Commission alongwith full facts of the case for holding a special review of special review of the Select List so that the name of the appellant might be removed therefrom as provided in second proviso to Regulation 7(4) of the Regulation. It was pointed out that officers junior to the appellant in the select list could be appointed only after either the appellant was also appointed or his name was deleted from the select List. 4 vacancies including the vacancy against which the appellant was included in the 1986 Select List were carried over to 1987 Select List and the following officers had been included against these 4 vacancies in 1987 Select List.

Sr. No. Name of Officer Date of Appointment

- | | |
|---------------------------|------------|
| 1. P. V. Dikshit | 22.9.1987 |
| 2. S. A. Engineer | 6.11.1987 |
| 3. A. R. Dalwai | 6. 11.1987 |
| 4. A. M. Reddy Hippagekar | 6.11.1987 |

Since the name of the appellant was not forwarded to the Central Government he approached the Tribunal and by judgment dated February 15, 1990 the Tribunal directed the State Government to appoint him to the Indian Administrative Service on the basis of 1987 Select List.

The appellant, it would appear, filed a review petition before the Tribunal praying for a direction that he be promoted on the basis of the Select List of 1986. The

Tribunal rejected this review petition by order dated April 19, 1990. C.A. 1092 OF 1992 is against that order of the Tribunal passed on review petition of the appellant.

Before the tribunal, the State Government justified its action as to why the name of the appellant had not been recommended for appointment and that it had been done on account of pendency of the charges against him. The Tribunal noted that the departmental enquiry had been closed holding that the appellant had no direct involvement in the alleged irregularities and that there was, therefore, no reason as to why the integrity certificate as on 1987 pertaining to the appellant could not have been withheld. It was on this basis that the OA' filed by the appellant before the Tribunal was allowed to that extent. The Tribunal also found that the allegation against the appellant pertained to period prior to 1986. Appellant submitted that on account of the finding of the Tribunal he had lost one year and while he should have been promoted to the Indian Administrative Service in 1986, he was so promoted in the 1987 and that too on the direction of the Tribunal. The appellant also claimed salary as he said worked on the cadre post since 1986. Cadre post means any of the posts specified as such in the regulations made under sub-rule (1) of Rule 4 of the Cadre Rules.

We do not think it is a case where this court should interfere in any of the two orders of the Tribunal. It is not that it was without any reason that the State Government did not issue "no deterioration certificate" in the case of the appellant and did not recommend his name for promotion to the Indian Administrative Service. There were serious allegations against the appellant which were being inquired into though these related to the period 1980 when the appellant was working as District Supply officer, Sholapur. It is not necessary for us to go into those allegations as that chapter is now closed. It is not that any mala fide is alleged against the action of the State Government. We also find that the appellant has not suffered in his seniority in the State of Maharashtra as far as the promotee officers are concerned inasmuch as because of his not getting "no deterioration certificate" officers suffered more as they could not be promoted till the appellant was either promoted or his name deleted from the Select List. Since the appellant was promoted to the Indian Administrative Service in 1987 he could not draw salary as an officer belonging to Indian Administrative Service for the year 1986 though he might have held a cadre post.

We, therefore, do not find any error or infirmity in the orders of the Tribunal for us to interfere. These appeals are, therefore, dismissed. There shall, however, be no order as to costs.