

SH. ASHOK V. DAVID  
v.  
UNION OF INDIA AND ORS.

MAY 10, 1996

[G.B. RAY AND B.L. HANSARIA, JJ.]

*Service Law :*

*Indian Administrative Service (Appointment by Promotion) Regulations, 1955.*

*Seniority—State Administrative Service Officers—Satisfactorily completed probation on 14.7.1976—But confirmed on 1.1.1986 against vacancies of 1962—Officers not considered for promotion to LAS in 1983—But certain officers confirmed against vacancies of years subsequent to 1962 considered—However, officers, subsequently promoted to LAS pursuant to select list of 1987 and given year of allotment accordingly—Held : there was absolutely no cogent reason for the undue delay in confirmation—In the circumstances of the case, the said officers entitled to year of allotment in the LAS as they were selected pursuant to select list prepared in 1983 and not in 1987.*

*Mysore Government Servants (Probation) Rules, 1957 : Rules 5 and 9.*

*Confirmation—Undue delay in issuance of formal order of—After satisfactory completion of probation—Held : improper.*

The appellants were direct recruits to the State Administrative Service and satisfactorily completed the period of probation on 14.7.1976 but were confirmed w.e.f. 1.1.1986 against vacancies which had occurred in the year 1962. Consequently, the appellants were not considered for promotion to the Indian Administrative Service (IAS) as per the select list prepared in 1983 in accordance with the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. Certain Officers confirmed against vacancies occurring in years subsequent to 1962 were considered for promotion. However, the appellants were subsequently promoted to the IAS pursuant to a select list prepared in 1987 and given year of allotment accordingly.

**A** The appellants filed a petition in the Central Administrative Tribunal for being given the same year of allotment as was given to their juniors, which was dismissed. Being aggrieved, the appellants preferred the present appeal.

**B** On behalf of the appellants it was contended that under Rules 5 and 9 of Mysore Government Servants (Probation) Rules, 1957, the appellants, after satisfactory completion of the period of probation, became due for confirmation; and that they could not be made to suffer due to undue delay in their confirmation.

**C** Allowing the appeal, this Court

**D** HELD : 1.1. From a combined reading of Rules 5 and 9 of Mysore Government Servants (Probation) Rules, 1957 it is clear that a probationer cannot be treated to be a confirmed employee merely on satisfactory completion of probation till an order of confirmation was passed. However, there is no doubt that formal confirmation order cannot be unreasonably delayed, as the delay causes injury in those cases where confirmation is a pre-condition for getting better service condition, as was in the instant case. [726-B-D]

**E** 1.2. The appellants had satisfactorily completed the period of probation on 14.7.1976. Despite this formal confirmation of the appellants was ordered from 1.1.1986, against vacancies which had occurred in 1962. There was absolutely no cogent reason for this undue delay in their confirmation. The late confirmation of the appellants can, therefore, be taken as illustration of that "glorious uncertainty" relating to confirmation which is known in service career and is amply borne out by confirmation of a judicial officer as a District Judge after he had retired as a Supreme Court Judge. [726-D-H]

**F** 2. There is no doubt that the appellants had become eligible for consideration as per the select list prepared in 1983. The respondents are directed to give that year of allotment to the appellants which is due to them by treating that their selection for promotion to IAS had taken place, not pursuant to the select list prepared in 1987, but in 1983. [727-A-B]

**G** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8391 of 1996 Etc.

**H** From the Judgment and Order dated 27.10.93 of the Central Ad-

ministrative Tribunal, Bangalore, in A. No. 329 of 1993.

A

C.S. Vaidyanathan and Dr. Rajiv Dhawan, A.K. Ganguli, Raju Ramachandran, S.R. Bhat, N.R. Nath, Ms. Kiran Bhardwaj for the Appellants.

M.L. Bhat, S. Wasim Qadri, Anil Katiyar, Ms. Sangeeta Kumar, S.K. Kulkarni, K.R. Nagaraja, P. Mahale for the Respondents.

B

The Judgment of the Court was delivered by

**HANSARIA, J.** Leave granted.

C

2. The appellants, who were direct recruits to the Karnataka Administrative Service had become due for consideration for promotion to the Indian Administrative Service (IAS) in the year 1982 in accordance with the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. They were, however, not so considered because they did not come within the zone of consideration, as in the seniority list their position was low, and as, to come within zone of consideration the number of persons to be considered can be only twice, they were left out. It is not in dispute that their seniority position was changed to their advantage subsequently. It is also not in dispute that had their position in the seniority list been correctly reflected earlier, they would have been within the zone of consideration. When the Selection committee set in December, 1983.

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3. The appellants' case is that they having been denied consideration in December, 1983 because of their wrong placement in the seniority list, their promotion to the IAS got delayed, with the consequential result that proper year of allotment was not assigned to them. They, therefore, approached the Central Administrative Tribunal with prayer to direct the Union of India to give them the year of allotment as 1979 (instead of 1982), which had been given to the persons who were really junior to the appellants, but had been shown senior earlier, which position came to be altered subsequently. This has been denied. Hence these appeals.

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4. The main contention of Shri Bhat, appearing for the Union of India, was that despite restoration of seniority of the appellants they could not have been within the zone of consideration when the selection committee was set in December, 1983, inasmuch as the appellants came to be confirmed with effect from 1.1.1986; and it is a confirmed hand who

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A becomes eligible for consideration. Though there is no dispute that formal confirmation qua the appellants was effective from 1.1.1986, the case of the appellants as advanced by Shri Ganguli and Shri Vaidyanathan for them, was that under the provisions of Mysore Government Servants (Probation) Rules, 1957, a probationer, after satisfactory completion of the period of probation, becomes due for confirmation; and if for unjustifiable reasons B formal order of confirmation is delayed, the incumbents cannot be made to suffer. The learned counsel appearing for the State of Karnataka, however, contended that a probationer cannot be treated to be a confirmed employee merely on satisfactory completion of probation till an order of confirmation is passed. This follows, according to learned counsel, from a C combined reading of Rules 5 and 9 of the aforesaid Probation Rules. Despite there being force in these contentions of the learned counsel, we entertain no doubt that formal confirmation order cannot be unreasonably delayed, as the delay causes injury in those cases where confirmation is a pre-condition for getting better service condition, as was in this case.

D 5. The facts relating to the two appellants qua their confirmation is that an order was passed on 14th November, 1977 stating that the Government of Karnataka was pleased to declare that the officers had satisfactorily completed the period of probation on 14.7.1976. Despite this formal confirmation was ordered from 1.1.1986. We do not find any cogent reason E for this undue delay inasmuch from the Revised Gradation List of Karnataka Administrative Service Group 'A' (Junior Scale) Officers as on 1.1.1990, a copy of which is at pages 144 to 188 of the paper book in appeal arising out SLP (C) No. 12129 of 1994, it appears from page 167 that the appellants were confirmed against the vacancies which had occurred on F 25.6.1962 and 4.7.1962. There was thus absolutely no cogent reason to confirm them from 1.1.1986 inasmuch as they had satisfactorily completed their probationary period as early as 14.7.1976. It is also worth pointing out that the respondents, whose names found place within the zone of consideration when the selection committee was made in December, 1983, had G come to be confirmed against vacancies which occurred on 5.2.1963 and 31.7.1976. The late confirmation of the appellants can, therefore, be taken as illustration of that "glorious uncertainty" relating to confirmation which is known in service career and is amply borne out by confirmation of a judicial officer as a District Judge after he had retired as a Supreme Court H judge.

6. In the aforesaid premises, we have no doubt that the appellants had become eligible for consideration when the selection committee set in December, 1983 and we, therefore, direct the Union of India to give that year of allotment to the appellants which is due to them by treating that their selection for promotion to IAS had taken place, not pursuant to the select list prepared in 1987, but in 1983. The Union of India would pass necessary order in this regard within a period of two months from today.

7. The appeals are allowed accordingly. In the facts and circumstances of the case, we make no order as to costs.

V.S.S.

Appeals allowed.