

A

UNION OF INDIA AND ORS.

v.

VIPINCHANDRA HIRALAL SHAH

OCTOBER 25, 1996

B

[S.C. AGRAWAL AND G.T. NANAVALI, JJ.]

Service Law.

C *Indian Administrative Service (Appointment by Promotion) Regulations, 1955—Regulation 5—Promotion—To Indian Administrative Service, from State Civil Services—Select list for the promotion, prepared by clubbing vacancies of a number of years—Whether permissible—Held, No.*

D *Promotion—Challenge of—Seeking direction for fresh consideration of the case—Without impleadment of the promoted officers—Held, appointment of officers cannot be upset—Direction can be sought only in a way that it does not disturb the appointment of officers—Civil Procedure Code, 1908—Order I, Rule 9.*

E Respondent, a member of Gujarat Administrative Service, Class I, was not considered for promotion in Select List of 1979. The Selection Committee did not meet during the period 1980 to 1985, and met in December 1986/January 1987 and prepared consolidated Select List for the vacancies of the years 1980 to 1986. Respondent was not considered in this list also.

F

Respondent filed application before Central Administrative Tribunal, assailing the 1986/1987 Select List on the ground that it was not possible to club together the vacancies of the years 1980 to 1986, for the purpose of making selection, and that the Selection Committee should have met every year to prepare a Select List for the vacancies of each year.

G

The officers who were selected in the Select List of year 1986/1987 were not impleaded as parties.

H

The Tribunal allowed the application of the respondent, holding that the action of clubbing the vacancies and thereby enlarging the zone of consideration could have prejudiced the respondent, and therefore, it was

illegal, and directed the appellant to prepare select list from year to year from 1980 to 1986, without clubbing the vacancies in any particular year. Hence this appeal.

Disposing of the appeal, this Court

HELD : 1.1. The requirement prescribed in sub-Regulation (1) of Regulation 5 regarding the Committee meeting at intervals not exceeding one year and preparing a list of such members of the State Civil Service who are suitable for promotion to the Indian Administrative Service was a mandatory requirement which had to be followed, unless there is a good reason for not doing so. The failure on the part of the Selection Committee to meet during a particular year would not dispense with the requirement of preparing the Select List for that year. If for any reason, the Selection Committee is not able to meet during a particular year, the Committee when it meets next, should, while making the Selection, prepare a separate list for each year keeping in view the number of vacancies in that year after considering the State Civil Service Officers who were eligible and fall within the zone of consideration for selection in that year. [756-H, 757-A, 759-E]

Union of India v. Mohan Lal Capoor & Ors., [1974] 1 SCR 797 and *Syed Khalid Razvi & Ors. v. Union of India & Ors.*, [1993] Suppl. 3 SCC 575, referred to.

1.2. In the present case, there was a failure to comply with the mandatory requirement of Regulation 5 of Indian Administrative Service (Appointment by Promotion) Regulations, 1955. The State Civil Services Officers who were selected in the Select List prepared in December, 1986/January 1987, having not been impleaded as parties, their appointment to the Indian Administrative Service, cannot be upset. The respondent can seek direction for consideration of his case afresh for the purpose of inclusion in the Select List, only in a way that it does not disturb the appointment of other State Civil Service Officers who have been appointed to the Service on the basis of the Select List of December 1986/1987.

[759-F-H, 760-A]

Syed Khalid Rizvi & Ors. v. Union of India & Ors., [1993] Suppl. 3 SCC 575, referred to.

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4786 of 1994.

From the Judgment and Order dated 30.11.93 of the Central Administrative Tribunal in Ahmedabad in O.A. No. 646 of 1988.

B K.N. Shukla, Sr. Adv., Hemant Sharma and S.N. Terdol for the Appellants.

H.S. Parihar and Kuldeep S. Parihar for the Respondent.

The Judgment of the Court was delivered by

C S.C. AGRAWAL, J. The short question that falls for consideration in this appeal is whether it is permissible to club vacancies of a number of years while preparing the select list for promotion to the Indian Administrative Service (for short 'Service') from the State Civil Service. By the impugned judgment dated November 30, 1993 the Central Administrative Tribunal, Ahmedabad Bench (hereinafter referred to as 'the Tribunal') has held that such clubbing of vacancies is not permissible and that separate select lists should be prepared by the Selection Committee for each year.

E The Indian Administrative Service (Recruitment) Rules, 1954 make provision for appointment to the Service by promotion from amongst the substantive members of a State Civil Service [Rules 4(1)(b) and 8(1)]. Such promotion to the Service from the State Civil Service is governed by The Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as 'the Regulations'). Regulation 3 makes provision for constitution of a Committee to make the selection. Regulation F 5 prescribes the procedure for making the selection by the Committee and the preparation of a list. The said list prepared by the Committee in accordance with Regulation 5 is required to be forwarded by the State Government to the Union Public Service Commission [Regulation 6] and G the list as approved by the Union Public Service Commission forms the select list for purpose of promotion of the members of the State Civil Service [Regulation 7]. Appointments to the Service are made by the Central Government on the recommendation of the State Government from the said Select List [Regulation 9].

H The respondent was a member of the Gujarat Administrative Service

Class I, having been recruited to the said service in the year 1967. The select list for promotion to the service from the State Civil Service was prepared by the Selection Committee under the Regulations in July 1979. Even though respondent had put in the requisite 8 years' continuous service in the State Civil Service in July 1979, he was not considered by the Selection Committee because he fell outside the zone of consideration. Thereafter no select list was prepared for promotion of State Civil Service officers in Gujarat till December 1986/January 1987. The respondent was not selected in the said selection. He filed a petition (O.A. No. 646 of 1988) before the Tribunal wherein he assailed the select list prepared by the Selection Committee in December 1986/January 1987 on the ground that it was not permissible to club together the vacancies of the years 1980 to 1986 for the purpose of making selection under Regulation 5 of the Regulations and that Selection Committee should have met every year to prepare a select list for the vacancies of each year. The said application submitted by the respondent has been allowed by the Tribunal by the impugned judgment. The Tribunal has held that the action of the appellants in clubbing the vacancies and thereby enlarging the zone of consideration could have prejudiced the respondent and, therefore, it was illegal. The Tribunal has directed the appellant to prepare select list from year to year from 1980 to 1986 and thereafter on the basis of vacancies from year to year without clubbing the vacancies in any particular year and as the part of the exercise to consider the case of the respondent for promotion to the Service and should his name figure in the select list and, should the vacancies permit, to appoint him to the Service and to give him all consequential benefits on the basis of such appointment from the date of the appointment. Feeling aggrieved by the said decision of the Tribunal, the appellant has filed this appeal.

The relevant provisions contained in Regulation 5, as in force in 1980, were as under :-

"Regulation 5.

(1) Each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Civil Service as are held by them to be suitable for promotion to the Service. The number of members of the State Civil Service, included in the list shall not be more than twice the number of

A 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 under Rule 9 of the Recruitment Rules, or 10 per cent of the Senior posts shown against items 1 and 2 of the cadre schedule of each State or group of States, whichever is greater.

B (2) The Committee shall consider for inclusion in the said list, the cases of members of the State Civil Services in the order of a seniority in that service or a number which is equal to five times the number referred in sub-regulation (1).

C Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than five times the maximum permissible size of the Select List and in such a case the Committee shall consider all the eligible officers.

D Provided further that in computing the number of inclusion in the field of consideration, the number of officers referred to in sub-regulation (3) shall be excluded.

E Provided also that the Committee shall not consider the case of a member of a State Civil Service unless, on the first day of January, of the year in which it meets he is substantive in the State Civil Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government.

F Provided also that in respect of any released Emergency Commissioned or short service Commissioned Officers appointed to the State Civil Service, eight years of continuous service as required under the preceding proviso shall be counted from the deemed date of their appointment to that service, subject to the condition that such officers shall be eligible for consideration if they have completed not less than four years of actual continuous service, on the first day of the January of the year in which the committee meets, in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government.

G

H

Explanation. – The powers of the State Government under the third proviso to this sub-regulation shall be exercised in relation to the members of the State Civil Service of a constituent State, by the Government of that State. A

(2A) x x x x x x x x

(3) The Committee shall not consider the cases of the members of the State Civil Service, who have attained the age of 52 years on the first day of January of the year in which it meets. B

Provided that a member of the State Civil Service, whose name appears in the Select List in force immediately before the date of the meeting of the Committee, shall be considered for inclusion in the fresh list, to be prepared by the Committee, even if he has in the meanwhile attained the age of 52 years. C

Provided further that a member of the State Civil Service who has attained the age of 54 years on the first day of January of the year in which the Committee meet shall be considered by the Committee, if he was eligible for consideration on the first day of January of the year or of any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was hold during such preceding year or years. D

(4) x x x x x x x x x x

(5) x x x x x x x x x x E

(6) The list so prepared shall be reviewed and revised every year. F

(7) x x x x x x x x x x

During the period 1980 to 1986 several amendments were made in the Regulations. In clause (1) for the words "10 per cent" the words "5 per cent" were substituted. In clause (2) instead of the words "five times" the words "three times" were substituted. In clause (3) the words "52 years" were substituted by the words "54 years", and the second proviso was inserted. G

H

- A A perusal of Regulation 5 shows that clause (1) required that the Selection Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Civil Service as are held by them to be suitable for promotion to the Service. The said clause also required that the number of the 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. Under clause (2) the Selection Committee was required to consider the cases of members of State Civil Service in the order of a seniority in that service of a number which was equal to five times (subsequently reduced to three times) the number referred in clause (1). Under the third proviso to clause (2) it was prescribed that the Selection Committee shall not consider the case of a member of the State Civil Service unless on the first day of January of the year in which it meets he is substantive in State Civil Service and has completed not less eight years of continuous service (whether officiating or substantive) in the post of Deputy Collector or in other post or posts declared equivalent thereto by the State Government. In respect of released Emergency Commissioned or short service Commissioned officers appointed to the State Civil Service the period of continuous service was four years under the fourth proviso to clause (2). In view of clause (3) cases of members of the State Civil Service who had attained the age of 52 years (subsequently raised to 54 years) on the first day of January of the year in which the Selection Committee meets were not to be considered by the Committee. Under clause (6) the list prepared by the Selection Committee was required to be reviewed and revised every year.
- F If clause (1) is read with the other provisions in Regulation 5 referred to above the inference is inevitable that the requirement in clause (1) of Regulation 5 that the Selection Committee shall meet at intervals not exceeding one year and prepare a list of members of the State Civil Service who are suitable for promotion in the Service was intended to be mandatory in nature because the eligibility of the persons to be considered both in the matter of length of service and age under clauses (2) and (3) is with reference to the first date of January of the year in which the Selection Committee meets and the number of members of the State Civil Service to be considered for selection is also linked with the number of substantive vacancies anticipated in the course of the period of twelve months commencing from the date of preparation of the list. We are, therefore, of the
- H

view that the requirement prescribed in sub-Regulation (1) of Regulation 5 regarding the Committee meeting at intervals not exceeding one year and preparing a list of such members of the State Civil Service who are suitable for promotion to the Service was a mandatory requirement which had to be followed. The earlier decisions of this Court also lend support to this view.

In *Union of India v. Mohan Lal Capoor & Ors.*, [1974] 1 SCR 797, this Court was construing Regulations 4 and 5 of the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations, 1955, as they stood at that time. The provisions in those regulations were similar to those contained in Regulation 5 referred to above. In Regulation 4(1) there was a requirement that the Committee shall meet at intervals not exceeding one year and consider the cases of all substantive members of the State Civil/Police Service who on the first day of January of the year had completed not less than eight years of continuous service. Under Regulation 4(2) it was prescribed that the Committee shall not consider the case of members of the State Civil/Police Service who had attained the age of 52 years on the first day of the January of the year in which the meeting of the Committee is held. Regulation 5(4) prescribed that the list so prepared shall be reviewed and revised every year. Mathew J., in his concurring judgment, has said :-

"The purpose of an annual revision or review is to make an assessment of the merit and suitability of all the then eligible candidates and make a fresh list of the required number of the most suitable candidates from among them. In other words, the purpose of the annual review or revision of the select list is to prepare a list and to include therein the required number of the most suitable persons from among all the then eligible candidates."

[p. 802]

"When Regulation 5(4) says that the list prepared in accordance with Regulation 5(1) shall be reviewed or revised every year, it really means that there must be an assessment of the merit and suitability of all the eligible members every year. The paramount duty cast upon the Committee to draw up a list under Regulation 5(1) of such members of the State Civil/Police Service as satisfy the condition under Regulation 4 and as are the held by the

A Committee to be suitable for promotion to the service would be discharged only if the Committee makes the selection from all the eligible candidates every year."

[p.802]

B Beg, J., as the learned Chief Justice then was, has said :-

The required number has thus to be selected by a comparison of merits of all the eligible candidates of each year."

[p. 818]

C Clause (1) of Regulation 5 of the Regulations differs from clause (1) of Regulation 4 which was considered by this Court in *Mohan Lal Capoor* (supra) in the sense that the word "ordinarily" found in clause (1) of Regulation 5 was not contained in clause (1) of Regulation 4. The insertion of the word "ordinarily" does not in our opinion alter the intendment underlying the provision. It only means that unless there are good reasons for not doing so, the selection Committee shall meet every year for making the selection.

E In *Syed Khalid Rizvi & Ors. v. Union of India & Ors.*, [1993] Supp. 3 SCC 575, this Court was construing the provisions of Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955 which is in *pari materia* with clause (1) of Regulation 5 and contained the word "ordinarily". It was observed :

F ".....since the preparation of the select list is the foundation for promotion and its omission impinges upon the legitimate expectation of promotee officers for consideration of their claim for promotion as IPS officers, the preparation of the select-list must be construed to be mandatory. The Committee should, therefore, meet every year and prepare the select-list and be reviewed and revised from time to time as exigencies demand."

[p. 586]

H "Unless the select-list is made annually and reviewed and revised from time to time, the promotee officers would stand to lose their chances of consideration for promotion which would be a

legitimate expectation. This Court in *Mohan Lal Capoor* case held that the Committee shall prepare every year the select-list and the list must be submitted to the UPSC by the State Government for approval and thereafter appointment shall be made in accordance with the rules. We have, therefore, no hesitation to hold that preparation of the select-list every year is mandatory. It would subserve the object of the Act and the rules and afford an equal opportunity to the promotee officers to reach higher echelons of the service."

[p. 605]

It must, therefore, held that in view of the provisions contained in Regulation 5, unless there is a good reason for not doing so, the Selection Committee is required to meet every year for the purpose of making the selection from amongst State civil Service officers who fulfil the conditions regarding eligibility on the first day of the January of the year in which the Committee meets and fall within the zone of consideration as prescribed in clause (2) of Regulation 5. The failure on the part of the Selection Committee to meet during a particular year would not dispense with the requirement of preparing the Select List for that year. If for any reason the Selection Committee is not able to meet during a particular year, the Committee when it meets next, should, while making the selection, prepare a separate list for each year keeping in view the number of vacancies in that year after considering the State Civil Service officers who were eligible and fall within the zone of consideration for selection in that year.

In the present case, the Selection Committee did not meet during the years 1980 to 1985 and it met in December 1986/January 1987 and a Consolidated Select List was prepared for the vacancies of the years 1980 to 1986. There was thus a failure to comply with the mandatory requirement of Regulation 5 of the Regulations. In *Syed Khalid Rizvi* (supra) select lists had not been prepared for the years 1971, 1975, 1976, 1979 and 1980. During the pendency of the appeal in this Court the State Government was directed to prepare the select list on notional basis for the said years and select lists were then prepared. In the instant case, State Civil Service officers who were selected in the select list prepared in December 1986/January 1987 have not been impleaded as parties and, therefore, their appointment to the Service cannot be upset. In his application before the

- A Tribunal the respondent sought a direction for consideration of his case afresh for the purpose of inclusion in the select list. The respondent can seek such consideration only in a way that it does not disturb the appointment of other State Civil Service officers who have been appointed to the Service on the basis of the Select List of December 1986/January 1987. For that purpose out of the said officers whose appointment is not to be disturbed those who were senior to the respondent in the State Civil Service will have to be adjusted against the vacancies for the years 1980-1986. If, as a result of such adjustment the vacancies of a particular year/years are completely filled, then no further action is to be taken in respect of the vacancies for that/those year/years. If after such adjustment the vacancies of a particular year/years are not completely filled, steps will have to be taken to prepare notional Select List/Lists for the vacancies of that/those year/years separately from amongst State Civil Service officers who are eligible and fall within the zone of consideration for selection in respect of the vacancies of the particular year. If the name of the respondent is included in the notional Select List/Lists so prepared or any particular year/years during the period 1980 to 1986 and is so placed in the order of merit so as to have been entitled to be appointed against a vacancy of that particular year, he can justifiably claim to be appointed to the Service against that vacancy of that year. But that appointment would not affect the appointment of other State Civil Service officers, though junior to the respondent, made on the basis of the Select List of December 1986/January 1987 and the vacancy against which the appointment of the respondent would be made will have to be adjusted against the subsequent vacancies falling within the promotion quota prescribed for State Civil Service officers.

F

Therefore, while upholding the judgment of the Tribunal that the respondent is entitled to seek fresh consideration on the basis that the selection should be made for vacancies occurring in each year separately, but in substitution of the directions given by the Tribunal in that regard, the followings directions are given :-

G

- (1) The number of vacancies falling in the quota prescribed for promotion of State Civil Service officers to the Service shall be determined separately for each year in respect of the period from 1980 to 1986.

H

(2) The State Civil Service officers who have been appointed to the Service on the basis of the impugned Select List of December 1986/January 1987 and were senior to the respondent in the State Civil Service shall be adjusted against the vacancies so determined on year wise basis. A

(3) After such adjustment if all the vacancies in a particular year or years are filled by the officers referred to in paragraph (2), no further action need be taken in respect of those vacancies for the said year/years. B

(4) But, if after such adjustment vacancy/vacancies remain in a particular year/years during the period from 1980 to 1986, notional Selection List/Lists shall be prepared separately for that year/years on a consideration of all eligible officers falling within the zone of consideration determined on the basis of the vacancies of the particular year. C

(5) If the name of the respondent is included in the notional Select List/Lists prepared for any particular year/years during the period 1980 to 1986 and if he is so placed in the order of merit so as to have been entitled to be appointed against a vacancy of that particular year, he be appointed to the Service against that vacancy of that year with all consequential benefits. D E

(6) The vacancy against which the respondent is so appointed would be adjusted against the subsequent vacancies falling in the promotion quota prescribed for the State Civil Service officers.

(7) Such appointment of the respondent would not affect the appointments that have already been made on the basis of the impugned Select List of December 1986/January 1987. F

The appeal is disposed of accordingly. No order as to costs.

K.K.T.

Appeal disposed of. G