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V.C. PERUMAL

v.

THE UNION OF INDIA AND ORS.

JANUARY 20, 1999

B

[MRS. SUJATA V. MANOHAR AND R.C. LAHOTI, JJ.]

*I.P.S. (Appointment by promotion) Regulations, 1955 :*

*Regulations 5, 7 and 9—Scope and applicability of.*

C

*Service law—IPS—Promotion—Preparation of list of suitable officers under Regulation 5—Number of State Police service officers to be included in the list—Preparation of select list by State Government for the year 1977 on 23rd November, 1976—Select Committee required to consider vacancies anticipated for the period November 1976 to November 1977—As per Regulation 5 the Committee considered the number of anticipated vacancies as five and prepared the select list consisting of twice that number i.e. 10 persons—List approved by UPSC—Name of appellant not figuring in the select list—In this list nobody junior to appellant was included—Appellant's contention that four carried over vacancies which remained unfilled out of 1976*

D

*select list should also have been taken into account—Held not maintainable in view of the provisions of Regulations 5 and 7—Held anticipated vacancies were five, and preparation of a select list of ten was in accordance with Regulation 5—Proviso added to regulation 7 in 1989 Held inapplicable—Appellant's name included in the select list of 1978 while his batchmate, who was throughout senior to him, was included in the list of*

E

*1977—Held no prejudice was caused to the appellant by reason of the fact that his name is included for the first time only in the select list of 1978.*

F

*Union of India v. M.G. Dighe & Ors., [1991] 4 SCC 551; Devender Narayan Singh & Ors. v. State of Bihar & Ors., [1996] 11 SCC 342, distinguished.*

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*Union of India v. M.G. Dighe & Ors., [1991] 4 SCC 551; Devender Narayan Singh & Ors. v. State of Bihar & Ors., [1996] 11 SCC 342, distinguished.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4168 of 1994.

From the Judgment and Order dated 30.11.90 of the Central Administrative Tribunal, Madras in O.A. No. 692 of 1988.

H

V.A. Mohta, R. Mohan and R.A. Perumal for the appellant. A

A. Mariarputham, Ms. Aruna Mathur for M/s. Arputham, Aruna & Co., for the State/Respondent.

A.S. Nambiar, Y.P. Mahajan, P. Parmeshwaran, Ms. Niranjana Singh and S.N. Terdol for the Respondent. B

The following Order of the Court was delivered :

The appellant was directly recruited to the post of District Superintendent of Police in the competitive examination conducted by the Tamil Nadu Public Service Commission in the year 1965. He joined service on 5.7.1965. At the relevant time he was officiating as Superintendent of Police which is a post in the Indian Police Service. He was so officiating from 26.6.1975 to 5.5.1978. The substantive post held by him at the material time was of Additional Superintendent of Police which is in the State Police Service. C D

The dispute in the present case relates to the year in which the name of the appellant should have been included in the select list for appointment as Superintendent of Police. The name of the appellant was included, for the first time, in the select list prepared for the year 1978. According to the appellant, he should have been included in the select list which was prepared in the year 1977. E

Under Regulation 5 of the IPS (Appointment by Promotion) Regulations, 1955 it is provided as follows :

*"Regulation 5 : Preparation of a list of Suitable officers. F*

(i) Each Committee shall ordinarily meet at interval not exceeding one year and prepare a list of such members of the State Police Service as are held by them to be suitable for promotion to the service. The number of members of the State Police Service included in the list shall not be G

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 under rule 9 of the Recruitment Rules; H

A OR

10 per cent of the senior posts shown against item 1 and 2 of the cadre schedule of each State of Group of States,

whichever is greater.

B Under Regulation, 5 the Select Committee is required to meet at an interval not exceeding one year. In order to prepare the select list for the year 1977, the Select Committee met on 23rd November, 1976. Regulation 5 provides that the number of candidates to be included in the select list shall not exceed twice the number of substantive vacancies anticipated in the course of the period of 12 months commencing from the date of preparation of the list. In the present case, therefore, for preparing the select list for the year 1977, the Select Committee which met and prepared the list on 23.11.1976, was required to consider vacancies anticipated for the period November, 1976 to November, 1977. The number of candidates on the select list would be twice the anticipated vacancies. Regulation (5) also provides that the number on the select list should be atleast equal to 10% of the posts in the cadre allotted to the State in question. We are not concerned with this second part of Regulation 5 in the present case because of the number under first part of Regulation 5 in the present case exceeding 10% of the posts. However, one may note that the total posts which were available to the State Police for the State of Tamil Nadu were 80. Therefore, atleast a minimum of 8 names were required on the select list.

F In order to ascertain the number of anticipated vacancies for the period November, 1976 to November, 1977 both the sides have relied upon Annexure D to the Special Leave Petition which was also before the Central Administrative Tribunal. As per Annexure D, there were four vacancies which were existing at the time when the select list was prepared. These were carried forward from 1976 as no appointment was made to these four posts from the select list of 14.7.1976. In addition, there were five anticipated vacancies which would arise during the period February, 1977 to November, 1977. There is also a note that no vacancy was created during the year 1977 due to death, dismissal or resignation of any officer. Therefore, as per the details set out in Annexure D, there were four existing vacancies and five anticipated vacancies at the time when the Select Committee met on 23.11.1976. Therefore, as per Regulation 5, the Com-

mittee considered the number of anticipated vacancies as five, and prepared a select list consisting of twice that number, that is to say a select list of 10 persons. This select list of 10 persons was finally approved by the Union Public Service Commission on 21.1.1977. This became the select list for the year 1977. The name of the appellant does not figure in the select list of 10 persons so prepared for the year 1977. It is an accepted position that in this select list of 10 persons, nobody junior to the appellant is included. These are all persons senior to the appellant.

In connection with the existing vacancies, learned counsel for the respondents has drawn our attention to Regulation 7(3) which provides that the list, as finally approved by the Union Public Service Commission, shall form the select list of the members of the State Police Service for appointment to the Indian Police Service. Under Regulation 7(4) the select list shall ordinarily be in force until its review and revision effected under Regulation 5(4) is approved under Sub-Regulation (1), or as the case may be, approved under Sub-Regulation (2). Sub-Regulation (1) of Regulation 7 requires the Union Public Service Commission to consider the selection list prepared by the Select Committee and Sub-Regulation (2) of Regulation 7 enables the Union Public Service Commission, if it considers necessary, to make changes in the list received in the manner set out in that Sub-Regulation. Therefore, under regulation 7(4) the select list will operate until the approval of the new select list by the Union Public Service Commission. In the present case, therefore, when the Committee prepared the new select list on 23.11.1976, the select list for 1976 was in operation and would have continued to operate till the approval of the new select list for 1977 by the Union Public Service Commission which normally takes some time. The Committee, therefore, could not have anticipated that any existing vacancies which were available for being filled from the select list of 1976 would or not be filled by the time the new select list was approved by the Union Public Service Commission.

Learned counsel for the respondent has drawn our attention to an amendment to Regulation 7 which has been made in the year 1989 by adding a proviso for the purpose of eliminating this problem of existing vacancies, and whether they should or should not be taken into account by the Select Committee while preparing a new list. The proviso which has been added in 1989 provides that no appointment to the service under Regulation 9 shall be made after the meeting of the fresh Committee to

- A draw up a fresh list under Regulation 5 is held. This proviso, however, was not in existence at the material time. The Committee, therefore, was justified in not taking into account the existing vacancies for the purposes of Regulation 5. In fact Regulation 5 in terms, makes no reference to any existing unfilled vacancies. It fixes the number of candidates on the select list with reference to anticipated vacancies during the coming year.
- B The contention of the appellant, therefore, that the Commission should have prepared a list of more than 10 persons for the year 1977 does not appear to be justified.

- C The appellant has added the four existing vacancies to the five anticipated vacancies which makes a total of nine. He has, however, excluded from consideration the anticipated vacancy of 30.11.1977, thus reducing the total number to eight. He has contended that a select list of sixteen should, therefore, have been prepared. His contention cannot be accepted in view of the provisions of Regulation 5 and Regulation 7. The anticipated vacancies were five, and preparation of a selection list of ten
- D was in accordance with Regulation 5.

- E Learned counsel for the appellant has drawn our attention to a decision of this Court in *Union of India v. M.G. Dighe & Ors.*, [1991] 4 SCC 551. In that case the Court was concerned with the date from which anticipated vacancies were required to be calculated for the purpose of preparing a select list. In that case a review DPC was required to be convened on account of a faulty list prepared by the original DPC. The Court said that vacancies would have to be determined after reckoning 12 months from the date of the review DPC and not from the date when the original DPC had met. The Court said that the crucial date would remain
- F the date of the meeting of the DPC, but it would be the date of review DPC which would count for that purpose. We fail to see how this judgment helps the appellant in any manner. The second judgment which was relied upon by the appellant is the judgment in the case of *Devender Narayan Singh v. State of Bihar & Ors.*, [1996] 11 SCC 342. In that case, on account
- G of certain errors in preparing the select list for the year 1983, this Court had directed preparation of a fresh list for the year 1983. Consequently a fresh select list was prepared in the year 1985 and was approved by the Union Public Service Commission in the year 1986. This Court said that in view of the earlier directions given by this Court the fresh select list prepared must be deemed to be a select list for year 1983 and hence the
- H year of allotment of the officers promoted in 1987 on the basis of the select

list should be determined on the basis that they were included in the select list of 1983 and not on the basis of the approval of the list in 1986. This decision also turns upon its own special facts and the specific directions given in that case earlier by this Court. This decision also does not assist the appellant in any way. A

In the present case the appellant was included for the first time in the select list of 1978 and on that basis he was promoted in the year 1979. His only grievance appears to be that his batchmate Balakrishnan was included in the select list of 1977 while he himself was included only in the select list of 1978. Balakrishnan was also, in fact, promoted in the year 1979 because out of the select list of ten for 1977, only seven persons were actually promoted. Balakrishnan has been throughout senior to the appellant, although they were in the same batch. Even when both are promoted in 1979, Balakrishnan being senior to the appellant, has been so shown. Undoubtedly because Balakrishnan was in the select list of 1977, while the appellant was included only in the select list of 1978, Balakrishnan would get seniority. But even if the appellant had been in the select list of 1977, Balakrishnan would still have been senior to him. Therefore, there is no prejudice caused to the appellant by reason of the fact that his name is included for the first time only in the select list of 1978. B C D

In the premises the present appeal is dismissed and the order of the Tribunal is upheld. E

T.N.A.

Appeal dismissed.