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P. SIVANANDI

v.

RAJEEV KUMAR & ORS.

(Civil Appeal Nos. 4822-4826 of 2007)

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FEBRUARY 02, 2017

[MADAN B. LOKUR AND PRAFULLA C. PANT, JJ.]

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Service Law – Promotion – Delay in writing of Annual Confidential Report (ACR) by superior officers – Effect of – Select Committee considered appellant for promotion to IPS – ACR of appellant written by his superior officers after some delay – Considering the service record and ACR of appellant, he was promoted to IPS – Tribunal and High Court, however, held the selection of appellant to be vitiated, on finding that the ACR of appellant was written beyond the period prescribed by the State Government, hence, was invalid – Propriety of – Held: The ACR of an officer forms a part of his service record and he cannot be prejudiced merely because his superior officers delayed writing it – In the instant case, the ACR of appellant was written and reviewed by his superiors after a considerable delay obviously cannot put him to any disadvantage – Further, writing and review of ACR was beyond his control – Therefore, High Court was in error in concluding that ACR for period of three and half months could not be considered – Decision of High Court to this extent set aside – Indian Police Service (Appointment by Promotion) Regulations, 1955 – Regn.5.

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Allowing the appeals, the Court

HELD:

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Whether the Annual Confidential Report (ACR) of an officer forms a part of his 'service record' and whether it could be ignored for the purposes of his promotion merely on the ground that it was written after some delay.

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1.1 It was held by Supreme Court in *G Mohanasundaram case** that in terms of the IAS Regulations, the UPSC is obliged to consider the service record of a candidate who is eligible for promotion and it is on the basis of the overall relative assessment

of the service record that an eligible officer may be graded. Consequently, it is quite clear that the entire service record of the eligible candidates is required to be sent to the Select Committee for consideration. For this reason, the ACRs of the appellant for 1992-93 and for the period 01.04.1993 to 15.07.1993 were required to be considered by the Review Select Committee. [Para 15] [901-B-C]

**G. Mohanasundaram v. R. Nanthagopal & Ors. (2014)*
13 SCC 172 : [2014] 9 SCR 920 – referred to.

1.2 Further, one of the principles so laid down is that the prescription of a period for writing an ACR is not mandatory but directory. That being the position, the ACR of the appellant for the period 01.04.1993 to 15.07.1993 could validly have been considered by the Review Select Committee even if it was written after some delay and there was no error in its consideration. [Para 17] [902-D-E]

2.1 The ACR of an officer forms a part of his service record and he cannot be prejudiced merely because his superior officers delayed writing it. The fact that the ACR of the appellant was written and reviewed by his superior authorities after a considerable delay obviously cannot put him to any disadvantage. The writing and review of his ACR was beyond his control and there is no rational basis on which the appellant could be disadvantaged merely because his superior officers were lax in the discharge of their responsibilities. [Paras 1, 19] [898-F; 903-B-C]

2.2 Under these circumstances, the High Court while upholding the view expressed by the Tribunal was in error in concluding that the Review Select Committee could not consider the ACR of appellant for the period 01.04.1993 to 15.07.1993 and to this extent the decision of the High Court set aside. [Para 20] [903-D]

3. There is nothing to suggest that the Review Select Committee with the UPSC did not consider the case of appellant for promotion on merit or that the view of the Review Select Committee was perverse in any manner. That being so it would be improper to interfere with the decision arrived at by the Review

it to say that the appellant Sivanandi was directly recruited on or about 6th May, 1985 as a Deputy Superintendent of Police with the Tamil Nadu Police.

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3. A Select Committee constituted under the Indian Police Service (Appointment by Promotion) Regulations, 1955 considered Sivanandi, amongst others, for promotion in 1994-95 to the Indian Police Service. The Annual Confidential Reports (ACRs) required to be considered for his promotion related to the period from 01.04.1989 to 31.03.1994.

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4. The Select Committee graded Sivanandi as 'Good' when it met on 7th March, 1995. This grading was apparently arrived at on the basis of his service records minus his ACR for 1992-93 which was missing and minus his ACR for a part of the period of 1993-94 that is from 01.04.1993 to 15.07.1993 which had not been written. He was however, considered in the subsequent year 1995-96 and promoted to the IPS with the year of allotment being 1993.

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5. On a challenge having been raised to the selection to the Indian Police Service by some aggrieved officers, an original application was filed before the Central Administrative Tribunal (Tribunal), which set aside the selection for 1994-95. The Tribunal then directed a fresh selection process. The opinion expressed by the Tribunal was accepted by this Court by an order dated 20th February, 2002 in Civil Appeal Nos. 1299-1305 of 1999 etc. (Christopher Nelson v. U.P.S.C. & Ors.).

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6. In view of the above facts, a Review Select Committee constituted under the said Regulations met on 24th March, 1999 and considered the eligible officers including Sivanandi for promotion to the IPS as on the year 1994-95. By this time, the missing ACR of Sivanandi for the year 1992-93 had been located. Additionally, the ACR for the above period 01.04.1993 to 15.07.1993 which could not be placed before the Select Committee in its meeting held on 7th March, 1995 was also available. In fact, it transpires that the ACR for that period of about three and a half months was written by the Reporting Officer on 14.11.1994; it was reviewed by the Reviewing Officer on 19.01.1996; it was accepted by the Accepting Authority on 27.01.1996. These dates explain why the ACR for the period 01.04.1993 to 15.07.1993 could not be placed before the Select Committee when it met on 7th March, 1995.

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7. Be that as it may, in view of the consideration of Sivanandi's ACRs including the ACR for 1992-93 and for the period from 01.04.1993

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A to 15.07.1993 he was graded 'Very Good' and promoted to the IPS with the year of allotment being 1991.

8. Feeling aggrieved by Sivanandi's selection, the private respondents before us approached the Tribunal through a batch of applications being O.A. No. 595-598 of 2005 and O.A. No. 780 of 2005.

B 9. By a common order dated 5th May, 2006 the Tribunal allowed the original applications filed by the private respondents on the finding that the ACR for the period 01.04.1993 to 15.07.1993 was invalid and could not have been considered by the Review Select Committee since it was written beyond the period prescribed by the State Government and therefore Sivanandi's selection was vitiated. Significantly, the Tribunal
C held in Sivanandi's favour that the earlier missing ACR for 1992-93 which was now made available was rightly considered by the Review Select Committee.

D 10. Feeling aggrieved by the limited adverse finding against him by the Tribunal, Sivanandi preferred W.P. Nos. 15791-15795 of 2006 in the Madras High Court challenging the common order of the Tribunal vitiating his selection by excluding from consideration the ACR for the period 01.04.1993 to 15.07.1993.

E 11. One of the submissions made by the Union Public Service Commission (for short 'UPSC') to justify the selection by the Review Select Commission before the High Court was that the ACR for the period 01.04.1993 to 15.07.1993 could validly have been considered by the Review Select Committee. Alternatively, it was submitted that even if it were excluded from consideration, it would make no difference to the overall grading of Sivanandi and that it was the earlier missing ACR
F of 1992-93 that resulted in Sivanandi being graded 'Very Good' as against the earlier grading of 'Good'. As such, the promotion of Sivanandi to the IPS was fully justified in law and also on merit, even after excluding the ACR for the period 01.04.1993 to 15.07.1993.

G 12. Unfortunately, the High Court did not accept Sivanandi's contention or that of the UPSC and upheld the view expressed by the Tribunal. It is under these circumstances that Sivanandi is now before us.

H 13. It is been brought to our notice by learned counsel for Sivanandi that the issue raised in these appeals is no longer *res integra* in view of

the decision of this Court in *G Mohanasundaram v. R. Nanthagopal & Ors.*² A

14. In the aforesaid decision, the provisions of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 were under consideration. The relevant provisions are in *pari materia* with the provisions of the Indian Police Service (Appointment by Promotion) Regulations, 1955. B

15. It was held by this Court that in terms of the IAS Regulations, the UPSC is obliged to consider the service record of a candidate who is eligible for promotion and it is on the basis of the overall relative assessment of the service record that an eligible officer may be graded. Consequently, it is quite clear that the entire service record of the eligible candidates is required to be sent to the Select Committee for consideration. For this reason, the ACRs of Sivanandi for 1992-93 and for the period 01.04.1993 to 15.07.1993 were required to be considered by the Review Select Committee. Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955 reads as follows:- C D

“5. Preparation of list of suitable officers - - - (1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Police Service, as held by them to be suitable for promotion to the Service. The number of members of the State Police Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under Rule 9 of the Recruitment Rules. The date and venue of the meeting of the Committee to make the Selection shall be determined by the Commission: E F

Provided that

(2).....

(2-A).....

(3).....

(3-A).....

(4) The Selection Committee shall classify the eligible officers as G

²(2014) 13 SCC 172

A ‘outstanding’ ‘very good’ ‘Good’ or ‘Unfit’ as the case may be, on an overall relative assessment of their service records.

(5).....

(6).....”

B 16. In the above-cited decision, one of the submissions made by Mohanasundaram in this Court was that the State Government had declared his ACR invalid merely because it had been written beyond the period of nine months. It was submitted that the ACR could not be held invalid in the absence of any limitation prescribed under any rule or guidelines.

C 17. The State of Tamil Nadu sought to rely upon a Government Order (or GO) dated 4th April, 2007 to deny to the candidate the benefit of the ACR written beyond the period of nine months. Although the GO dated 4th April, 2007 was issued after the decision in the impugned judgment and order, the principle laid down by this Court on the interpretation of that GO would be equally applicable and one of the principles so laid down is that the prescription of a period for writing an ACR is not mandatory but directory. That being the position, the ACR of Sivanandi for the period 01.04.1993 to 15.07.1993 could validly have been considered by the Review Select Committee even if it was written after some delay and there was no error in its consideration.

E 18. This is what this Court had to say:

F “**In the guidelines issued by the State Government, there is nothing to declare any annual confidential report invalid. The period of 90 days prescribed therein is not mandatory but directory. The 90 days period is also to be counted from the date of demitting office by the officer who writes the ACR.**

G **In view of the discussion above, we hold that in terms of Regulation 5(4) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 it was incumbent upon the State Government to forward complete service records of all the eligible candidates including the first respondent to UPSC for considering them for promotion to the IAS cadre. Withholding of ACRs of the year 2003-2009 of the first respondent on a wrong presumption that they were invalid, is illegal and fatal in the case of the first respondent towards his appointment to the post of Indian**

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Administrative Service. The aforesaid fact though came to the notice of UPSC which sought clarification from the Government of Tamil Nadu, the State Government misled UPSC which resulted in wrong assessment of service records of the first respondent in violation of Regulation 5(4) read with Regulation 6 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955.”

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19. That apart, the fact that the ACR of Sivanandi was written and reviewed by his superior authorities after a considerable delay obviously cannot put him to any disadvantage. The writing and review of his ACR was beyond his control and we do not see any rational basis on which Sivanandi could be disadvantaged merely because his superior officers were lax in the discharge of their responsibilities.

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20. Under these circumstances, we are of the view that the High Court while upholding the view expressed by the Tribunal was in error in concluding that the Review Select Committee could not consider the ACR of Sivanandi for the period 01.04.1993 to 15.07.1993 and to this extent the decision of the High Court is set aside.

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21. The question that now remains is whether on a consideration of the entire service record Sivanandi was entitled to be promoted to the IPS with the year of allotment as 1991. There is nothing to suggest that the Review Select Committee with the UPSC did not consider the case of Sivanandi for promotion on merit or that the view of the Review Select Committee was perverse in any manner. That being so we do not think it proper to interfere with the decision arrived at by the Review Select Committee with the UPSC on the basis of the service record of Sivanandi more so when it was the submission of the UPSC that what tilted the scales in his favour was his ACR for the period 1992-93 which was earlier missing and which was not taken into consideration on an earlier occasion.

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22. Under these circumstances we uphold the decision taken by the Review Select Committee and allow these appeals by setting aside the order of the High Court. Sivanandi will be entitled to all consequential benefits.

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