

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.07.2017
Pronounced on : 25..07.2017

Coram

THE HON'BLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.17374 of 2009

C.Rajamani ... Petitioner

/versus/

- 1.Union of India
represented by the Secretary to
Govt.of India,
Ministry of Home Affairs,
New Delhi.
 - 2.Union of India,
Represented by the Secretary to
Govt. of India,
Department of Personnel and Training,
Ministry of Personnel,
Public Grievances and Pensions,
North Block, New Delhi 110 001.
 - 3.Union Public Service Commission,
Represented by the Secretary
to the Commission,
Dholpur House, Shajahan Road,
New Delhi.
 - 4.Government of Tamil Nadu,
Represented by the Secretary
to Government,
Public Department, Fort St.George,
Chennai 600 009.
 - 5.The Central Administrative Tribunal,
Chennai Bench, High Court Compound,
Chennai 600 104, represented by
its Registrar.
- .. Respondents

Prayer: Writ Petition filed under Article 226 of
Constitution of India praying for issuance of a Writ of
Certiorari to call for the records of the 5th respondent
relating to Order in O.A.No.237 of 2008, dated 22.07.2009 and
quash the same and allow the said OA.

For Petitioner :Mr.P.V.S.Giridhar for
M/s. P.V.S. Giridhar &
Sai Associates

For Respondents:No Appearance for R1
R2-Mr.T.Madana Gopal Rao
Mr.K.Sridhar for R3
Mr.V.Jayaprakash Narayanan,
Spl.Government Pleader for R4
R5-Tribunal

ORDER

(Order was made by Dr.Justice G.JAYACHANDRAN)

The Petitioner herein joined as Probationary Deputy Collector on 04.11.1989 in the State Civil Service, Government of Tamil Nadu. He was promoted as District Revenue Officer on 21.12.1995. He had been serving for nearly 16 years since his appointed as Deputy Collector in various posts. While so, based on an unanimous petition, The Directorate of Vigilance and Anti-Corruption took up a detailed enquiry in D.E.No.18 of 1999 leading to Departmental Enquiry for alleged demand of Rs.50,000/- for issuance of patta. Charge under Rule 17(b) of Tamil Nadu Civil Services (Disciplinary and Appeal) Rules was framed and Departmental Enquiry was conducted. Later, the charges were dropped by an order dated 27.12.2004. There was an another Directorate of Vigilance and Anti-Corruption enquiry in the year 2001 against the Petitioner for misconduct. The enquiry ended up in penalty of stoppage of increment for six months, without cumulative effect vide, order dated 04.01.2005. Aggrieved by the penalty of stoppage of increment, the Petitioner filed a writ petition in W.P.No.26567 of 2005 and obtained interim stay.

2. The contention of the Petitioner is that, due to conspiracy of some of the disgruntle elements suffered due to certain hard decisions taken on him, while he was serving as DRO and ADM in erstwhile Chengai MGR District, conspiracy has been hatched to prevent him getting into Indian Administrative Service (in short "IAS") cadre. Therefore, he was victimized. The specific contention of the petitioner is that, the enquiry conducted by the Department was not consonant with the procedure established under Law. Even without preliminary enquiry, the Directorate of Vigilance and Anti corruption has ordered detailed enquiry and also recommended, what course of action, the Government should take on its report. Without obtaining sanction from the Government, the case was suo motu registered by the Directorate of Vigilance and Anti Corruption. His premise and his relative premise were searched, without sanction from the Government and First Information Report was registered on 05.08.2002 and sanction for prosecution was obtained on 05.11.2002 three months later.

Since he is fully qualified to be in the zone of consideration for the promotion of the IAS for the years 2002 to 2006, he preferred O.A.No.931 of 2005 before the Hon'ble Central Administrative Tribunal seeking to consider his case for promotion to IAS on merits, without reference to the enquiry pending in D.E.No.61 of 2000.

3. The Tribunal directed the Respondents to consider the case of the Petitioner to be included in the select list for the year 2005 by the Selection Committee, without reference to enquiry pending in D.E.No.61 of 2000 and the punishment of stoppage of increment, as per G.O.(D) No.1, Public (Special A) Department, dated 04.01.2005. Meanwhile, Final Report was filed in CR.No.10/AC/2002/CC-II, dated 05.01.2007 for the alleged offence under Sections 13(2) read with 13(d)(e) of Prevention of Corruption Act, 1988, which was taken on file by the Additional Sessions Court as C.C.No.4 of 2007. Simultaneously, Departmental Enquiry was also initiated under Rule 17(b) of the TamilNadu Civil Service (Discipline and Appeal) Rules, 1955 for violation of the provisions of Rule 7 (1) of the TamilNadu Government Civil Service Conduct Rules, 1973 relating to purchase of immovable properties for a total cost of Rs.1.26 lakhs in the names of his wife, son and daughter without giving prior notice to the prescribed authorities. Though the purchase of property was done from the source of his wife income, the same was informed to the Government more than one occasion. The charge memo was issued only to ensure that the applicant is not considered for promotion to IAS and he was placed under suspension stating the reason that he is likely to hamper with the investigation in the pending D.E.No.61 of 2000.

4. In view of the subsequent development namely, the letter of the Union Public Service Commission(in short "UPSC") dated 22.08.2006 informing the Government that the Selection Committee, which met on 22.12.2005 could not approve the name of the Petitioner/Rajamani, in view of the interim order of the Tribunal passed in O.A.No.931 of 2005, dated 28.04.2006 and the same was dismissed.

5. UPSC with an intention to re-convene the Selection Committee Meeting in compliance to the direction of the Tribunal dated 28.04.2006, requested the State Government to furnish a complete proposal for re-convening the Selection Committee Meeting. In response to the said request of the UPSC, the State Government furnished a complete proposal to the Selection Committee. In the list of candidates, the name of the Petitioner Rajamani/District Revenue Officer was included. On receipt of the proposal, the UPSC has entertained a doubt, whether the candidature of Rajamani/Petitioner herein can be considered, in the light of charge framed for violation of Rule 17(1)(a) of the Tamil Nadu Government Government Servants' Conduct Rules, 1973 relating to purchase of immovable properties, without giving prior notice and the

Criminal case in C.C.No.4 of 2007 pending against the Petitioner under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 and in view of the charge memo issued to him on 04.09.2000 under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, which was not made available, when the order passed by the Tribunal in O.A.No.931 of 2005, dated 28.04.2006. Pursuant to that, the Government has filed Review Application in Rev.A.No.25 of 2007 in O.A.No.931 of 2005 before the Tribunal placing before it the subsequent development and a query raised by the UPSC. After listing out the subsequent development pointed out by the Government, the Tribunal dismissed the Review Application on 28.09.2007 holding that all the grounds made out for the review in the Review Application are all developments, which are taken place after passing of the order of the Tribunal in O.A.No.931 of 2005 dated 28.04.2006. As such, they have no bearing on the order of the Tribunal.

6. In spite of the order of the Tribunal, the name of the petitioner was never considered for selection. Therefore, he has preferred O.A.No.237 of 2008 seeking a direction to the respondents to conduct a Review Selection Committee for considering the case of the Petitioner for inclusion his name in the select list for the years 2002, 2003 and 2004 and for appointment to IAS, after quashing G.O.Ms.No.462, Public (Special A), dated 29.04.2004 and G.O.Ms.No.515, Public (Special-A), dated 20.05.2005 and in O.A.No.236 of 2008, the applicant sought for a direction to the respondents to consider and include of his name in the select list for the years 2005 and 2006 for appointment of IAS, after quashing G.O.Ms.No.177, Public (Special A) Department, dated 06.02.2008.

7. The Tribunal, considering the entire track record of the petitioner and the earlier order passed by it in O.A.No.931 of 2005, has found that during the years 2002 and 2003, the total vacancy were 2 and 4 respectively. As per the procedure, the candidates in the ratio of 1:3 has been taken into consideration. While so, in both the years 2002 and 2003, the petitioner has not fallen within the zone of consideration and his seniority was below the required number of candidates to be taken within zone of consideration. As far as in the year 2004 is concerned, the vacancy was 3 and 9, candidates have to be taken into zone of consideration. The Petitioner was 8th in position and only 3 candidates, who are senior most in ranking were selected, the non inclusion of the Petitioner has no bearing. The contention of the Petitioner that actually there were 5 vacancies and only 3 vacancies were filled up was also negatived by the Tribunal pointing out that for the State Civil Services Officers, only 3 vacancies were earmarked and the remaining 2 vacancies were earmarked for non State Civil Service officers, hence, the applicant contention does not carry merit.

8. The Tribunal found that the name of the Petitioner was forwarded to the UPSC for consideration by including his name in the panel list of the year 2005. But, the UPSC raised certain query and sought for clarification to the order of the Tribunal in O.A.No.931 of 2005, dated 28.04.2006, pursuant to the Review Application was also filed and the Tribunal has passed order in Rev.A.No.25 of 2007, dated 28.09.2007 and left open to the discretion of the UPSC to consider the proposal of the State Government in accordance with appropriate service Rules. The Committee considered the case of the appellant without reference to the Enquiry Proceedings pending in D.E.61 of 2000 and stoppage of increment. However, he was not selected on merit.

9. The appellant was not considered for the subsequent panel, since he has crossed age of 54 years as on 04.06.2005 and therefore, he is not eligible under Rule 5(3) of The Indian Administrative Service (Appointment by Promotion) Regulations, 1955, which reads as under:

"5(3) The committee shall not consider the cases of the members of the State Civil Service who have attained the age of (54) years on the first day of January of the year, in which meets:

(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 and who has not been appointed to the Service only because he was included provisionally in the select list 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 fifty four years:

(Provided further that a member of the State Civil Service who has attained the age of fifty four 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 held during such proceeding year or years)"

10. The Tribunal, after going through the fact of the case, has concluded that till 2005, none of the petitioner's juniors were conferred to IAS cadre. While so, due to the Departmental Proceedings and criminal case pending against him on various points of time, he could not be promoted to IAS cadre. By 2006, he has lost eligibility criteria on attaining age of 54 years. So, both the applications were dismissed by

the Tribunal. The present writ petition is filed against the dismissal of O.A.No.237 of 2008, dated 22.07.2009 contenting that the petitioner was within the zone of consideration for being included in the select list for appointment of IAS in the year 2002 to 2004, but not considered on the pretext that he has not been confirmed in the Civil Service for the year 2004. The number of vacancies though was four(4), it was wrongly calculated as three(3) and only three persons were selected thereby, keeping him out of the zone. The Tribunal has erroneously held that the non-inclusion of the petitioner's name for the year 2002 to 2004 is not illegal, since there were eligible candidates, who were senior to the writ petitioner, is contrary to law and regulations. The promotion to the IAS cadre is not merely on seniority, but on merits, which needs to be assessed by the Selection Committee. When the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 clearly stipulate that promotion is on the basis of the merits and seniority and not merely seniority. The action of the respondents in non-inclusion of the name of the petitioner in the select list for the years 2002 to 2004 is arbitrary, illegal and violative of the constitution.

11. The learned counsel for the petitioner pointing out the provisions of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 submitted that under Regulation 5(2) and 5(5), which read as follows:

"5(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 of a member which is equal to [three] times the number referred in sub-regulation(1):

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

Provided further that in computing the numbers for inclusion in the field of consideration, the number of officers referred to in Sub-regulation (3) shall be excluded:

Provided also that the Committee shall not consider the case of a member of the State Civil Services 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.

[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 no 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.

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.

5(5) The list shall be prepared by including the required number of names, first from amongst the officers finally classified as 'Outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter se within each category shall be in the order of their seniority in the State Civil Service]:

[Provided that the name of any officer so included in the list, shall be treated as provisional if the State Government withholds the integrity certificate in respect of such officer or any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Government]."

12. It is contended by the learned counsel for the petitioner that he was fit to hold the post, since he has certified as Outstanding Officer for more than 10 years, just to deprive him to the promotion to the cadre of IAS. Disciplinary Enquiry was initiated against him and due to pendency of the Disciplinary Enquiry, integrity certificate has been withheld. Precisely, to redress the said grievance O.A.No.931 of 2005 was filed and the Administrative Tribunal has categorically directed the Government to forward his name and include in the select list, without reference to the enquiry proceeding pending in D.E.61 of 2000. As per

Explanation 1 to Regulation 5(5), the proceedings shall be treated as pending only, if charge sheet has actually been issued to the Officer or filed in the Court as the case may be.

13. Per contra, Mr.V.Jayaprakash Narayanan, learned Special Government Pleader appearing for the fourth respondent contended that 28 persons were appointed in the State Civil Service as Probationary Deputy Collector on 04.11.1989 including the Petitioner C.Rajamani. While the services of 21 officers were found satisfactory and their service was confirmed on 06.08.2002. 7 Deputy Collectors' service was not confirmed, pending disciplinary case/allegations. One among 7 Deputy Collectors, whose service was not confirmed, is the writ Petitioner/Rajamani. His name was not enlisted in the zone of consideration for the years 2003, 2004 and 2005, in view of third proviso to Regulation 5(2) of the Indian Administrative Service (Appointment by Promotion) Regulation, 1955. The Directorate of Vigilance and Anti-Corruption has initiated enquiry proceedings under D.E.18 of 1999 (i) for demanding bribe in the matter of patta to Thiru.K.M.Jaleel, Kanathur Reddikuppam, Chengalpattu Taluk, while the Petitioner was a District Revenue Officer, Kancheepuram and (ii) to acquisition of assets disproportionate to his known sources of income. While this case was under enquiry, there were some more allegations against him leading to detailed enquiry regarding 6 allegations with enquiry D.E.No.61/2000/Rev/KM culminated in a finding that out of 6 charges, 2 were found substantiated. Accordingly, Disciplinary Proceedings under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 was initiated on 18.02.2003 and culminated in stoppage of increment for 6 months, without cumulative effect vide, order dated 04.01.2005.

14. The Petitioner herein approached the High Court by filing a writ petition in W.P.No.26567 of 2007 and obtained interim stay of the punishment dated 04.01.2005. In view of the stay granted by the High Court in the said writ petition, the review application preferred by the Petitioner was kept pending as subjudice. The High Court in W.M.P.No.28986 of 2005 dated 14.02.2005 directed to consider and pass orders on the Review Petition pending with the Government. The Government accordingly considered and rejected the review petition vide, order dated 28.07.2008.

15. The Directorate of Vigilance and Anti-Corruption on completion of the enquiry, after obtaining permission of the Government registered a regular case against the petitioner for disproportionate assets. The enquiry led to final report, which substantiated the allegation of disproportionate assets to the tune of Rs.27,81,855.45 is 208% more than the above known source of income. After obtaining sanction from the Government for prosecuting against the petitioner, as per section 19(1)(b) of the Prevention of Corruption Act, 1988,

the charge sheet laid against the petitioner and others and the matter was taken on file by the Special Judge, City Civil Court, Chennai in C.C.No.4 of 2007 for purchasing the immovable property in the name of the family members without information. Also Departmental Proceeding was initiated. Charges were framed against this petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, vide order dated 04.09.2006 and the enquiry officer was appointed to find out the truth of the charges. The enquiry officer found him guilty of the charges. Order of compulsory retirement was passed on 26.06.2009. However, the writ petition filed by Mr.Rajamani, the same was quashed in W.P.No.11869 of 2009 dated 30.09.2009.

16. While the facts being so, when the writ petitioner approached the Tribunal by filing O.A.No.931 of 2005 seeking a direction to consider his name for promotion to IAS on merits, without reference to the enquiry pending in D.E.No.61 of 2000, pursuant to the direction of the Tribunal, his name was included and sent to UPSC for consideration. But, UPSC sought for clarification regarding the events, which was taken place subsequent to the order of the Tribunal in O.A.No.931 of 2005. The Tribunal clarified that the subsequent event need not be taken into account in the review petition filed by the Government of Tamil Nadu. The committee was directed by the Tribunal without reference to the enquiry pending against him in D.E.No.61 of 2000 and punishment of stoppage of increment ordered vide G.O.(D) No.1 Public (Special A) Department dated 04.01.2005. The committee has found him not fit and did not select him for considering the candidate for promotion to the post of IAS.

17. The petitioner herein, who could not complete the probation within stipulate time, but found lacking integrity, was confirmed, much later to his other batchmates. All through his career, he had been facing either disciplinary proceeding or criminal case, which has placed him less meritorious than the other candidates. His plea that he has come within the zone of consideration, is based on seniority and not on merits. Since the petitioner was found unfit all throughout, therefore, the Tribunal has rightly dismissed the writ petition.

18. The Union Public Service Commission/third respondent has filed counter wherein, in para 2.4, it is stated :

While assessing the suitability of the officers for promotion, the Selection Committee, as per the uniform and consistent practice followed in the matter of induction to the All India Services, examines the service records of each of the eligible officers, with special reference to the performance of the officers during the years preceding the years for which the Select List is being prepared, deliberating on the quality of the officer as indicated in the various columns recorded by the reporting/reviewing

officer/accepting authority in the ACRs for different years and then after detailed mutual deliberation and discussion, finally arrives at a classification to be assigned to each officer. While doing so, the Selection Committee also reviews and determines the overall grading recorded in the CRs to ensure that the overall grading in the CRs is not inconsistent with the grading/remarks under various specific parameters or attributes. The Selection Committee takes into account orders regarding appreciation for the meritorious work done by the officers concerned and also keeps in view orders awarding penalties or any adverse remarks duly communicated to the officer which, even after due consideration of his representation are not expunged."

19. Considering the contentions raised by the learned counsel for the petitioner as well as the respondents and in the light of the judgments relied by the respective counsels, it is clear that for including the name of the petitioner in the list for consideration by the Selection Committee, it is merit and not the seniority preferred. How the merit of the person should be assessed, which is clearly stated out under Regulations 5(2) and 5(5) of the Indian Administrative Services (Appointment by Promotion) Regulations, 1955. It is clearly stated that the list shall be prepared by including the required number of names first from among the officers, finally, classified as "Outstanding" then from among similarly classified as "Very Good" and thereafter from amongst those similarly classified as "Good". In this case, though the petitioner claims that he has classified as outstanding, the cases against him does not support his claim. Even otherwise if there was more outstanding candidates, the name of the petitioner in given years need not be taking into consideration.

20. The procedure of recommending the name to the Government of India for the cater of IAS in nutshell is as under

"As per the Regulation 5(1) of the Promotion Regulations, the number of vacancies against which selection is to be made for a particular recruitment year for promotion to the IAS of a State Cadre is determined by the Govt. of India (DOP & T) in consultation with the State Government concerned. Thereafter, the State Government forwards a proposal to the Commission along with the Seniority List, Eligibility List of the State Service Officers, Integrity Certificate, certificates regarding disciplinary/ criminal proceedings, certificate regarding communication of adverse remarks, details of penalties imposed on the eligible officers etc. and complete ACR dossiers of the eligible officers."

21. At no point of time from the records it is clear that the petitioner was found eligible to be enlisted in the zone of consideration.

22. On reading the Regulation, we find for inclusion in the panel select list to the post of IAS broadly, the candidate should satisfy the following requirement:

"(1) Must have completed 5 years of service of Deputy Collector.

(2) For each vacancies 3 candidates should be short listed.

(3) The candidates who possess outstanding grading will exclude the candidates with "very good" and "good" grading. Only if adequate number of candidates with "outstanding" is not available candidates with very good or good will be enlisted."

23. As the petitioner himself admits that inclusion in the panel is not on mere seniority but on merit-cum-seniority, for the panel years 2002 to 2004, the petitioner did not qualify himself to be enlisted. His assumption that for the panel year 2005, he should be in 8th Rank is based on his seniority, but not on merits. Whether he was meritorious than other, who were enlisted in the panel for the year 2005 is matter of record. His name was included in the panel only on the intervention of the Tribunal order in O.A.No.931 of 2005 and not because he possess the require merit. His case is not that less meritorious person were promoted to the rank of IAS. His case is non-inclusion of his name though he ranked 8th and well within the zone of consideration. As the petitioner himself admits for enlisting, merit is the substantial criteria whereas seniority is only incidental. The State has found that required number of meritorious candidates were available to be enlist in panel drawn. Just because the petitioner was 8th in seniority, he as a matter of right cannot seek inclusion of his name in the list for consideration by the selection committee. When he fell short of other eligibility, the subsequent quashing of compulsory retirement order and discharge from criminal case in no way enhance the case of the petitioner, since at the time of enlisting the enquiry/charges both departmental and criminal case were in currency.

24. In the light of the Regulation, in any event, entertaining the plea to constitute review select committee for the year 2005 will be a futile exercise, since apparently only persons more meritorious and senior to the writ petitioner were promoted to IAS cadre for the years 2005 and 2006.

25. In such circumstances, this Court find no error in the judgment passed by the Tribunal in rejecting the application in O.A.No.237 of 2008 filed by the petitioner. Hence, this Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to
Govt.of India, Ministry of Home Affairs,
New Delhi.
- 2.The Secretary to
Govt. of India, Department of Personnel and Training,
Ministry of Personnel, Public Grievances and Pensions,
North Block, New Delhi 110 001.
- 3.The Secretary to the Commission,
Union Public Service Commission,
Dholpur House, Shajahan Road,
New Delhi.
- 4.The Secretary to Government,
Government of Tamil Nadu,
Public Department, Fort St.George,
Chennai 600 009.
- 5.The Registrar,
Central Administrative Tribunal,
Chennai Bench, High Court Compound,
Chennai 600 104.

- + 1 cc to M/s. K. Sridhar, Advocate SR.52829
+ 1 cc to M/s. Giridhar & Sai, Associates, Sr.52374
+ 1 cc to M/s. J. Madanagopal Rao, Advocate SR.52402

W.P.No.17374 of 2009

AK(CO)
EU 10.08.17