

(2005) 03 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 23666 of 2001

Ashok V. David

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 23-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Indian Administrative Service (Appointment and Selection) Regulations, 1997 —
Regulation 5, 5 (2)

Citation : (2005) 5 KarLJ 584

Hon'ble Judges : S.R. Nayak, J; Anand Byrareddy, J

Bench : Division Bench

Advocate : R. Naik, for the Appellant; V.Y. Kumar, Government Advocate for Respondent-1 and N. Devadas, Central Government Standing, for Respondents-2 to 4, for the Respondent

Judgement

S.R. Nayak, J.—In this writ petition, what essentially falls for decision making is whether the direction issued by the Apex Court in its judgment dated 10-5-1996 in Civil Appeal Nos. 8391 and 8393 of 1996 has been correctly complied with by the Union Public Service Commission, the 3rd respondent herein.

2. Few facts which are germane to the decision making may be noted first, and they are as follows.--

The petitioner was appointed to Karnataka Administrative Service (KAS) in 1974 by direct recruitment. On completion of 8 years of service in KAS, he became eligible for consideration and promotion to the Indian Administrative Service (IAS) in terms of the "Indian Administrative Service (Appointment by Promotion) Regulations, 1955" (for short, "Regulations").

3. The petitioner was not considered for promotion to the IAS cadre by promotion at the appropriate time though he ought to have been brought under zone of consideration in the year 1983 itself. That led to litigation between the parties, ultimately, landing before the Apex Court in Civil Appeal Nos. 8391 and

8393 of 1996. The Apex Court finding serious flaws in the selection and promotions to IAS made in the year 1983, allowed the appeal of the petitioner and another, M.G. Halappanavar, by name and issued the following directions:

"8. 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 order 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".

4. The Government of India-2nd respondent herein, in pursuance of the above order of the Apex Court, passed an Order No. F. 14015/40-96-AIS(I), dated 29-1-1997 holding that the two candidates (the appellants in Civil Appeal Nos. 8391 and 8393 of 1996) including the petitioner herein are not entitled to be appointed to IAS in the year 1983. Being aggrieved by the above order of the Government of India, the petitioner filed O.A. No. 302 of 1997 before the Central Administrative Tribunal, Bangalore Bench, Bangalore (for short, the "Tribunal"). The other candidate Sri M.G. Halappanavar, too filed O.A. No. 528 of 1997. In both the applications, the applicants have sought for quashing of the order of the Government of India, dated 29-1-1997 and for mandamus directing the respondents to fix the year of allotment in the IAS to the applicants and give them all consequential benefits. The applications were opposed by the Government of India by filing reply statements. Before the Tribunal, on behalf of the petitioner, it was contended that as per the order of the Supreme Court in C.A. Nos. 8391 and 8393 of 1996, the petitioner must be deemed to have been promoted to IAS in 1983 and on that basis, the year of allotment should have been given to him. The Tribunal have opined that the Supreme Court did not direct that the petitioner should be deemed to have been promoted to IAS in 1983 in its order and that the only direction issued by the Apex Court to the respondents is to include the applicants in the zone of consideration for the purpose of 1983 selection and since in pursuance of the above direction issued by the Apex Court, the respondents have included their names in the zone of consideration and they are not found fit for appointment to IAS on merit, dismissed the applications by its order dated 4-9-1998. The petitioner herein who was one of the applicants before the Tribunal being aggrieved by the said order has preferred this writ petition under Articles 226 and 227 of the Constitution of India.

5. We have heard Sri Madhusudhan R. Naik, learned Counsel for the petitioner, Sri N. Devadas, learned Assistant Solicitor-General of India for respondents 2 to 4 and Sri V.Y. Kumar, learned Government Advocate for the 1st respondent-State.

6. We have perused the order of the Government of India dated 29-1-1997. A perusal of that order, would not leave any doubt in our mind that the direction issued by the Supreme Court is blatantly violated in terms of its contents as well

as spirit. It is the contention of the petitioner all through that his case ought to have been considered in 1983 selection itself by including his name in the zone of consideration. That contention has been upheld by the Apex Court and with regard to that position, there is no dispute between the parties. If that is the position, in the process of complying with the direction issued by the Apex Court in the Civil Appeal Nos. 8391 and 8393 of 1996, the respondents ought to have included the two applicants in the zone of consideration at an appropriate place keeping in mind the provisions of Regulation 5 in the first instance and then critically assessed the relative merits of all the officers coming under zone of consideration by applying the relevant standards/tests/norms laid down by the respondents for selection of the candidates to IAS, and made a select list of six candidates to fill up six vacancies that arose in the year 1983. The fact that the promotion from the State Service to the IAS, is not by way of promotion by applying the method of seniority-cum-suitability or merit, is not in dispute. The selection to IAS, undeniably, is purely on merit and by the method of merit-cum-seniority. The best of the officers, who come under zone of consideration, should be selected for the IAS. This position in law is unimpeachable. But, quite curiously, in the order of the Government of India dated 29-1-1997, the respondents have simply added the two appellants in C.A. Nos. 8391 and 8393 of 1996 as the candidates at Sl. Nos. 11-A and 11-B, that is to say, at the bottom of those officers who were brought under zone of consideration and considered for selection to the IAS, in the year 1983. Having done it, as could be seen in sub-para I) of para 10 of the impugned order, a sweeping statement is made that the petitioner and another are not entitled for appointment to the IAS from the 1983 select list, because, their immediate senior in the select list, namely, Sri T.T. Patil was also not given promotion to IAS. This observation loudly and clearly speaks of the norm applied by the respondents in complying with the order of the Apex Court. From this observation, it is quite clear that the respondents have applied the method of "seniority-cum-suitability" or some times called "seniority-cum-merit" method while considering the case of the petitioner and M.G. Halappanavar. Therefore, it is quite apparent that the method adopted by the respondents while considering the case of the petitioner and M.G. Halappanavar is totally erroneous and opposed to mandatory provisions of Regulation 5.

7. In the course of argument, Sri M.R. Naik contended that certain ineligible persons were brought under zone of consideration in the year 1983 and their cases were also considered. In that regard, Sri M.R. Naik placed before us a table giving relevant particulars of 12 officers from the State Service who came under zone of consideration for the purpose of selection to IAS, in the year 1983. The table reads as follows.--

"Order dated 29-1-1997 of the Review Selection Committee Meeting held on 1-10-1996

(An officer should have put in a minimum of 8 years service as a Class I Officer to become eligible for being considered for selection to the IAS)

Sr. Date of Date of Date of Year of Date of No. in appoint- eligibility eligibility allotment Retire Sl. Name of the ment to For for being in the IAS ment No. Officer Gradation the cadre promotion considered list to the for KAS selection Class I to the IAS (1) (2) (3) (4) (5) (6) (7) (8) 1. T. Ramachandra 689 Retired Not 1979 Feb. 1987 Badhya Before eligible 2. M. Narayan Rao 690 Getting Not 1979 Apr. 1987 the eligible 3. Gururaj - eligibility Not 1979 1991 date eligible 4. A.A. Shetti 398 1-8-1970 17-9-1974 1-1-1983 1979 Mar. 1993 5. C.V. Kalasad 399 1-8-1970 17-9-1974 1-1-1983 1979 Mar. 1989 6. M. Honnagarige- 423 10-5-1971 3-3-1976 1-1-1985 1980 May 1988 gowda 7. S.M. Hegde 424 10-5-1971 3-3-1976 1-1-1985 1981 Mar. 1994 8. K.P. Ramakrishna 426 23-7-1971 3-3-1976 1-1-1985 1981 Apr. 1991 9. K. Keshava Raju 367 1-8-1970 5-6-1972 1-1-1981 1982 July 1994 10. Raghavendra Rao 686 - Retired Not 1982 Nov. 1989 before eligible getting the eligibility date 11. T.T. Patil 400 1-8-1970 17-9-1974 1-1-1983 1982 May 1991 12. H. Shivaramu 401 1-8-1970 10-4-1975 1-1-1984 1980 June 1991 12-A. Ashok V. David 389 15-7-1974 15-7-1974 1-1-1983 1983 Sep. 2007"

8. Sri M.R. Naik would draw our attention to the 3rd proviso to sub-regulation (2) of Regulation 5 and contend that in terms of the 3rd proviso, Messrs T. Ramachandra Badhya, M. Narayan Rao, Gururaj; M. Honnagangegowda, S.M. Hegde, K.P. Ramakrishna, Raghavendra Rao and H. Shivaramu ought not to have been included in the zone of consideration in the year 1983, because, as on 1-1-1983, they had not put in 8 years of continuous qualifying service in the post of Deputy Collector or in any other post or posts which is or are equivalent to that post or posts. It was contended that if those persons were excluded from the zone of consideration, the petitioner would have become the 3rd candidate qualified to be considered and he should have been placed immediately after T.T. Patil in the list, and in that event, as a matter of right, the respondents ought to have been selected and appointed to IAS.

9. Sri M.R. Naik would tell us that these facts noted above form part of the pleadings laid by his client before the Tribunal as well as before the Apex Court. Although Sri Naik would request us to give a quietus for this litigation by finally deciding on the entitlement of the petitioner to IAS, we are not inclined to accede to his request. It is not that the Government of India has applied its mind to the basic facts laid before it and has taken a wrong decision on appraisal of the same. It is a case where the Government of India has not adhered to the mandatory provisions of Regulation 5 and it is also a case where the Government of India has completely lost sight of the relevant facts in the decision making. Therefore, it is appropriate that the Court should command the Government of India to redo the exercise mandated by the judgment of the Apex Court in C.A. Nos. 8391 and 8393 of 1996 strictly in conformity with the provisions of Regulation 5 as well as the pleadings and documents laid by the parties in support of their respective case.

10. However, we make it clear that if after appraisal of the relevant merits of the

candidates who come under zone of consideration after applying the provisions of the 3rd proviso whose Sub-regulation (2) of Regulation 5 and other relevant regulations, if the petitioner is found fit for being selected and appointed to IAS, he should be appointed to IAS against the vacancy which arose in the year 1983. This observation, would take care of the apprehension expressed by Sri Naik in the course of his arguments that if we remand the proceedings, there will be delay in the petitioner getting the relief.

11. In conclusion, we cannot uphold the order of the Tribunal impugned in this writ petition. The writ petition is allowed and the order of the Tribunal is set aside. We allow O.A. No. 302 of 1997. Mandamus shall issue to the respondents to include the name of the petitioner in the zone of consideration at an appropriate place in terms of the provisions of Regulation 5, particularly, the 3rd proviso to Sub-regulation (2) of Regulation 5, and assess the relative merit by applying the standards and/or norms prescribed and applicable. After such exercise, if the petitioner is found fit for selection and appointment to IAS against any one of six vacancies that arose in the year 1983, then, the petitioner should be appointed to IAS and fitted against one of the vacancies and grant appropriate year of allotment. In that event, the petitioner is also entitled to all benefits, pecuniary or otherwise, flowing from his appointment to IAS in the year 1983. The respondents are directed to comply with the above direction as expeditiously as possible at any rate within a period of 3 months from the date of receipt of a copy of this order. No costs.