

(2014) 07 SC CK 0038

In the Supreme Court Of India

Case No : Civil Appeal No. 6614 of 2014 (Arising out of SLP (C) No. 26223 of 2013)

G. Mohanasundaram

APPELLANT

Vs

R. Nanthagopal

RESPONDENT

Date of Decision : 21-07-2014

Acts Referred:

Administrative Service (Appointment by Promotion) Regulations, 1955 — Regulation 5, 5(1), 5(4), 5(5), 6
Tamil Nadu Civil Services (Conduct and Appeal) Rules — Rule 17

Citation : AIR 2015 SC 141 : (2014) 5 AWC 4920 : (2014) 3 ESC 424 : (2014) 8 JT 544 : (2014) LabIC 4237 : (2014) 7 MLJ 761 : (2014) 4 PLJR 56 : (2014) 8 SCALE 626 : (2015) 1 SCC(L&S) 257 : (2014) 6 SCJ 632 : (2014) 3 SCT 623 : (2014) 3 SLJ 97 : (2015) 1 WLN 69

Hon'ble Judges : V. Gopala Gowda, J;Sudhansu Jyoti Mukhopadhaya, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

JUDGMENT

Sudhansu Jyoti Mukhopadhaya, J.—Leave granted.

2. This appeal is directed against the judgment and order dated 8th July, 2013 passed by the Division Bench of the High Court of Judicature at Madras in Writ Petition No. 5508 of 2013. Initially, the Appellant herein challenged the Government notifications dated 10th February, 2012 and 13th April, 2012 whereby 1st Respondent was promoted and appointed to the Indian Administrative Service, before the Central Administrative Tribunal, Madras Bench by filing OA No. 249 of 2012 and the same was allowed by order dated 18th February, 2013. By the impugned judgment the High Court set aside the said order dated 18th February, 2013 passed by the Central Administrative Tribunal.

3. The factual matrix of the case is as follows:

The Appellant and the 1st Respondent are officers of Tamil Nadu State Civil

Services. They were considered for promotion to the Indian Administrative Service (hereinafter referred to as the "IAS") against certain percentage of posts available for members of the State Civil Service.

4. On 1st September, 2009, the State of Tamil Nadu prepared a list of 27 eligible candidates for consideration for appointment against 19 vacancies of IAS for the year 2009. The list was sent to the Secretary, Union Public Service Commission (hereinafter referred to as the "UPSC"). The name of the Appellant was included at serial No. 26 and the name of the 1st Respondent was placed at serial No. 16 of the said list prepared on the basis of seniority list of the State Civil Service. In the seniority list of State Civil Service the Appellant was placed at serial No. 59 and 1st Respondent at serial No. 34.

5. On 4th November, 2009, the State Government issued a charge-sheet against the 1st Respondent Under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules for certain irregularities committed by him while working as Senior Regional Manager, Tamil Nadu State Marketing Corporation Ltd. On 3rd February, 2011, the State Government prepared a list of 10 eligible candidates for appointment to the IAS cadre against the 2009 vacancies. The Appellant was shown at serial No. 9 and 1st Respondent at serial No. 4. The list was forwarded to the UPSC.

6. On 10th March, 2011, the UPSC sought for clarifications and some more information from the State Government. By its letter dated 12th April, 2011, the State Government enclosed the Annual Character Rolls (ACRs) of all the eligible candidates, which according to the State Government were valid. The State Government withheld some of the ACRs of certain candidates including the 1st Respondent on the ground that the ACRs were not valid. The ACRs of the 1st Respondent pertaining to the period 27th July, 1998 to 10th June, 2002 i.e., for 5 years alone, were forwarded to the UPSC and the ACRs of the 1st Respondent for the period from 10th June, 2002 to 31st March, 2009 were withheld by the State.

7. On 7th December, 2011, the State Government forwarded a list of 13 candidates for promotion to the IAS cadre against 2 vacancies for the year 2010. The Appellant was shown at serial No. 8 and the 1st Respondent at serial No. 4. The ACRs of all the candidates including the 1st Respondent for the period 26th May, 2006 to 7th January, 2008 were forwarded.

8. The Selection Committee prepared a Select List of 2009 and 2010 on 27th December, 2011 against the respective vacancies of those years. The Appellant was not selected. According to the Appellant, though his ACRs were far better than the ACRs of other candidates including 1st Respondent, he was not selected.

9. A notification dated 10th February, 2012 was issued by the Government of India and the selected candidates were appointed to the IAS cadre for the vacancies of 2009 and 2010.

10. The Appellant having not selected/promoted filed Original Application No.

249 of 2012 before the Central Administrative Tribunal, Madras Bench challenging the notification 10th February, 2012 passed by the Government of India. When the matter was pending, on 15th March, 2012 the State Government dropped the disciplinary proceedings against the 1st Respondent taking into consideration the enquiry report and reply filed by the 1st Respondent. By an amendment application filed in pending OA, the Appellant challenged the notification of 13th April, 2012, by which 1st Respondent was appointed to the Indian Administrative Service. The UPSC, State Government and 1st Respondent filed their respective replies to which the Appellant filed a rejoinder. According to the UPSC, the selection was made in accordance with the rules and the valid ACRs which were forwarded by the State Government. The State Government in its reply justified its action in sending only the valid ACRs and the 1st Respondent disputed the allegation made against him.

11. The Central Administrative Tribunal, Madras Bench by its judgment and order dated 18th February, 2013 allowed the Original Application filed by the Appellant, quashed the notification dated 10th February, 2012 in so far as not including the name of the Appellant herein and quashed the notification dated 13th April, 2012 by which 1st Respondent was appointed.

12. The High Court at the instance of the 1st Respondent allowed the writ petition and set aside the order passed by the Central Administrative Tribunal, Madras Bench in OA No. 249 of 2012.

13. Learned Counsel for the Appellant submitted that the High Court by the impugned judgment and order dated 8th July, 2013 reversed the well reasoned judgment and order dated 18th February, 2013 of Central Administrative Tribunal, Madras Bench, ignoring the fact that the 1st Respondent was facing major charges and had adverse entry in the ACRs at the time of selection. It was contended that though ACRs for the period from 1st October, 2002 to 31st March, 2009 of 1st Respondent were available they were not forwarded by the State Government to the UPSC. According to him in the matter of promotion and compulsory retirement from service, entire service record of the officer concerned should have been considered.

14. Learned senior Counsel for the Appellant further contended that Respondents acted arbitrarily in not taking into consideration the relevant ACRs of the 1st Respondent on the ground that they were written beyond the time prescribed by the State Government.

15. Learned Counsel for the UPSC contended that at time of holding Selection Committee meeting for the Select List of 2009, the State Government forwarded the ACRs stated to be valid and duly certified. The meeting was then convened for 4th December 2009, however, when the Committee met on 4th December, 2009, it was observed that certain issues relating to the validity of the ACRs of officers in the zone of consideration were required to be resolved by the State Government, and the meeting was, therefore deferred. Subsequently, when the

Select List for 2009 was to be drawn up, the State Government forwarded the ACRs vide its letter dated 10th March, 2010 along with the validity certificate. The meeting was convened on 26th May, 2010 and the Select List of 2009 for 19 vacancies was drawn up. The 1st Respondent was considered at serial No. 17 and his ACRs for the certain period were considered. But since his ACRs for the period 2003-2004 to 2005-2006 were not available, the Committee in accordance with the guidelines considered the ACRs for the period 1999 to 2002.

16. Learned Counsel for UPSC further submitted that on 31st March, 2010, the Government of India determined 7 vacancies for the year 2010. The Select List of 2010 was renamed as 2009A in view of the judgment of the High Court of Punjab and Haryana regarding overlapping Select List for a particular year. The State Government forwarded the ACRs vide letter dated 3rd February, 2011. On the scrutiny of the ACRs, it was found that the ACRs of some of the officers including 1st Respondent which were furnished during the last Selection Committee meeting were not furnished before the present Selection Committee and the ACRs which were not furnished earlier were furnished. The reason for this change was asked from the State Government vide letter dated 10th March, 2011 to which the State Government replied by letter dated 12th April, 2011 that the State Government had considered the ACRs written by the Reporting Officer or Scrutinizing Officer within a period of 9 months as valid for the Select List 2009 which were forwarded to UPSC considering the fact the officers reported upon need not be penalized for no fault of theirs. It was further contended that for the Select List 2009A, the State Government considered that the ACRs written by both the Reporting Officer and Scrutinising Officer within a period of 6 months are valid, barring certain cases for which ACRs written for the periods slightly exceeding six months. The matter was once again taken up by UPSC with the State Government as the revision in the time limit for writing of ACRs with reference to the earlier selection would lead to anomalous situation. The State Government by its letter dated 1st December, 2011 intimated the UPSC that with a view to maintain consistency after obtaining orders of the competent authority it was decided that the ACRs written within 9 months may be considered valid for preparation of Select List of 2009A and the Officers need not be penalized for no fault of theirs. The meeting of the Selection Committee was held on 27th December, 2011. In the Select List of 2009A, 1st Respondent was considered at serial No. 4 and he was assessed for the period 2004 to 2009. However, in view of the ACRs 'not available' for the period 2004 to 2006 and for the year 2008-2009, the Committee considered the ACRs of preceding years 1999 to 2002. In this regard the UPSC has also referred to the Government's guidelines issued from time to time.

17. It was further submitted on behalf of the UPSC that since the rule of the State Government regarding the period of writing of ACRs remained the same to the Select Lists of 2009 and 2009A, the Selection Committee as per the internal guidelines adopted the assessment of previous Selection Committee. Therefore, assessment of ACR of 1st Respondent for the period from 26th May, 2006 to 6th

March, 2007 certified as valid by the State Government for select list of 2009 was adopted by Selection Committee which met to prepare the select list of 2009A. It was also submitted that the State Government is required to place only valid ACRs in the Dossier of officers under the zone of consideration for a particular Select List, as was done in this case.

18. We have considered the rival submissions made on behalf of the parties. After giving our careful consideration to the facts and circumstances of the case, we are of the view that the High Court was not justified in interfering with the well reasoned order passed by the Central Administrative Tribunal.

19. Promotion and appointment of officers of State Civil Service to Indian Administrative Service are governed by Indian Administrative Service (Appointment by Promotion) Regulations, 1955. As per Regulation 5(4) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 it is mandatory for the Selection Committee to make an overall relative assessment of 'service records' of the eligible candidates. The said Regulation reads as follows:

Regulation 5(4)-The Selection Committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit', as the case may be, on an overall relative assessment of their Service records.

20. Under Regulation 5(5), the list shall be prepared first from amongst the officers finally classified as 'Outstanding' and then from amongst those similarly classified as 'Very Good' and so on. The said Regulation reads as follows:

Regulation 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 an officer or any proceedings, departmental or criminal, are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

Provided further that while preparing year-wise select lists for more than one year pursuant to the second proviso to Sub-regulation (1), the officer included provisionally in any of the select list so prepared, shall be considered for inclusion in the select list of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis, such inclusion shall be in addition to the normal size of the select list determined by the Central Government for such year.

As per first proviso to Regulation 5(5) the name of such officer so included in the

Select List against whom departmental proceedings are pending or anything adverse as has come to the notice of the State Government which renders him unsuitable for appointment to the service is provisional.

21. Regulation 6 relates to consultation with UPSC. As per the said Regulation the list prepared in accordance with Regulation 5 is required to be forwarded to the UPSC by the State Government along with records of all members of the State Civil Service included in the list.

22. From the stand taken by the Respondents, it is clear that the State Government did not send all the service records of eligible candidates to UPSC for consideration. Particularly, the relevant service records of 1st Respondent, for the preceding five years prior to selection were not forwarded on the ground that they are not valid.

23. The minutes of the meeting of the Selection Committee dated 27th December, 2011 as recorded at paragraph 5.3 and 5.4 of the proceedings suggests that the service records of all the officers upto the year 2008-2009 were considered and on that basis the 1st Respondent was recommended for promotion. But this is far from truth as apparent from paragraph 5.3, 5.4 and 5.5 of the proceedings as quoted hereunder:

5.3. The Committee examined the service records of the officers whose names are included in the Annexure and who fulfilled the conditions of eligibility for promotion to the IAS. The Committee took into consideration the ACRs of the officers (certified as valid by the State Government vide letter dated 07.12.2011) upto the year 2008-09. On an overall relative assessment of their service records, the Committee assessed them as indicated against their names in the Annexure. While assessing their suitability, the Committee did not take into consideration any adverse remarks in the ACRs of the officers which were not communicated to them.

5.4. The Committee examined the records of the officers whose names are included in Annexure-I and who fulfilled the conditions of eligibility, up to the year 2008-09. On an overall relative assessment of their service records, the Committee assessed them as indicated against their names in Annexure-I. while assessing their suitability, the Committee did not take into consideration any adverse remarks in the ACRs of the officers which were not communicated to them.

5.5. On the basis of the above assessment, the Committee selected the officers whose names are mentioned below as suitable for promotion to the Indian Administrative Service and placed them in the following order:

*The names at S. No. 5 has been included in the list provisionally subject to clearance in the disciplinary proceedings pending against him and grant of integrity certificate by the State Government.

The name of the 1st Respondent was included provisionally subject to clearance

in the disciplinary proceedings pending against him and grant of integrity certificate by the State Government.

24. The Appellant had challenged the action of State Government declaring an ACR invalid in absence of any valid reason. According to the learned Counsel for the Appellant, merely because an ACR has been written beyond the period of 9 months, it cannot be held to be invalid in absence of limitation prescribed under any rule or guideline.

25. On behalf of the State Government reliance has been placed on Government Order dated 4th April, 2007 issued by Personnel and Administrative Reforms (K) Department of State of Tamil Nadu. The Government issued guidelines with respect to writing of the Annual Confidential Report by the said Government Order. The relevant portion of the said order reads as follows:

6. The Government have examined the above issue afresh and in supersession of all the existing instructions the following fresh instructions are issued in respect of writing of confidential reports by the Reporting Officers whenever they are demitting office either on transfer or for other reasons in the middle of the year. The following instructions are to be followed scrupulously.

Whenever the Reporting Officers are to relinquish charge on transfer or for other reasons, they should write the confidential reports in respect of all his subordinate officers and the handling over charge report should accompany a certificate to his higher officer that he had completely written the confidential reports on all his subordinate officers. However, it is not possible to adhere to the above procedure, due to administrative reasons, he may take a reasonable time to write confidential reports but this time limit should not ordinarily exceed 90 days from the date of his demitting office.

26. 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 A.C.R.

27. 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 State Government to forward complete service records of all the eligible candidates including the 1st Respondent to the UPSC for considering them for promotion to IAS cadre. Withholding of ACRs of the year 2003-2009 of the 1st Respondent on a wrong presumption that they were invalid, is illegal and fatal in the case of 1st Respondent towards his appointment to the post of Indian Administrative Service. The aforesaid fact though came to the notice of the UPSC which sought clarification from the Government of Tamil Nadu, the State Government misled the UPSC which resulted in wrong assessment of service records of 1st Respondent in violation of Regulation 5(4) read with Regulation 6 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955.

28. The Central Administrative Tribunal by its judgment dated 18th February, 2013 rightly held that the Selection Committee has not taken into account all relevant facts and records to come to a conclusion that the 1st Respondent is superior to Appellant.

29. The Central Administrative Tribunal also considered the issue of departmental proceedings pending against the 1st Respondent Under Rule 17(b) of the Tamil Nadu Service (Discipline and Appeal) Rules, was noticed by the Selection Committee as apparent from recommendation of the name of 1st Respondent with a star mark shown against the same with a note that in view of the pendency of the departmental proceedings inclusion of the name of 1st Respondent was provisional. In the said departmental proceedings Enquiry Officer after going through the evidence and reply submitted by the 1st Respondent held that the charge No. 2 is proved against the 1st Respondent. In spite of the same, the State Government dropped the charges.

30. The Tribunal noticed that the State Government dropped the charges against the 1st Respondent without giving detailed reasons for such action. Considering the same the Tribunal held that the State Government failed to furnish the valid reasons for dropping charges and for subsequent issuance of integrity certificate to the 1st Respondent. For the said reason the Tribunal held that the action on the part of the State is a case of hasty decision.

31. The High Court failed to appreciate the guidelines dated 4th April, 2007 issued by the State Government with regard to the ACR and wrongly accepted the stand of the Respondents that invalid ACRs were not to be considered. The High Court also exceeded its jurisdiction in discussing the charges framed against the 1st Respondent and in justifying the grounds for dropping the charges, though it was not disclosed by the State Government.

32. For the reasons aforesaid, we set aside the impugned judgment and order dated 8th July, 2013 passed by the High Court in Writ Petition No. 5508 of 2013, upheld the order passed by the Central Administrative Tribunal dated 18th February, 2013 with direction to the Respondent(s) to reconsider the name of the Appellant viz-a-viz 1st Respondent for promotion to the post of Indian Administrative Service against the vacancies for the year 2009A. If necessary, a fresh Selection Committee or a Review Committee shall be constituted and reconvened. The process of selection be completed within three months. The order passed by the Tribunal stands modified to the extent above.

33. The appeal is allowed with the aforesaid observations and directions. No costs.