
(1980) 08 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 195 of 1978

P.C. Pradhan

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 05-08-1980

Acts Referred:

Citation : (1981) JLJ 128

Hon'ble Judges : G.P. Singh, C.J;U.N. Bhachawat, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; K.K. Adhikari for Respondent No. 1 and M.V. Tamaskar, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, C.J.—By this petition under Article 226 of the Constitution the petitioner challenges the order dated 18th July 1978 passed by the Central Government appointing respondents 3 to 20 to the Indian forest Service.

2. The appointment by promotion to the Indian Forest Service is made in accordance with the Indian forest Service (Appointment by Promotion) Regulation, 1966. Regulation 3 of these regulation provides of the constitution of a Selection Committee. Regulation 5 deals with the preparation of a list of suitable officers by the Selection Committee. This regulation requires the Selection Committee to classify the eligible officers in four categories, namely, outstanding, very good, good and unfit, on an overall relative assessment of their service record. The list of suitable officers is prepared by including the required number of names first from the officers classified as "outstanding" then from the officers classified as "very good" and thereafter from those classified as "good". The list so prepared is reviewed and revised every year. The list prepared by the Committee is sent to the Public Service Commission through the State Government. On approval by the Commission, the list of suitable officers prepared by the Selection Committee becomes a select list and it is from this list that appointments to the service are made by the Central Government. There is,

however, a provision that in case of grave lapses in the conduct of performance of duty on the part of any officer included in the select list, a special review of the select list can be made at any time at the instance of the State Government and the Commission can remove the name of such officer from the select list. Regulations 5, 6 and 7, in so far as they are relevant, read as follows:

5. Preparation of a list of suitable officers.--

* * * *

(3-A) 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.

(4) 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 Forest Service.

(5) The list so prepared shall be reviewed and revised every year.

6. Consultation with the Commission--The list prepared in accordance with regulation 5 shall then be forwarded to the Commission by the State Government along with:

- (i) the records of all members of the State Forest Service included in the list;
- (ii) the records of all members of the State Forest Service who are proposed to be superseded by the recommendations made in the list;
- (iii) the reasons as recorded by the Committee for the proposed supersession of any members of the State Forest Service; and
- (iv) the observations of the State Government on the recommendations of the Committee.

7. Select list (1) The Commission shall consider the list prepared by the Committee along with the other documents received from the State Government and unless it considers any change necessary, approve the list.

(2) If the Commission consider it necessary to make any changes in the list received from the State Government, the Commission shall inform the State Government of the changes proposed and after taking into account the comments, if any, of the State Government, may approve the list finally with such modifications, if any, as may, in its opinion, be just and proper.

(3) The list as finally approved by the Commission shall form the Select List of the Members of the State Forest Service.

(4) The Select List shall ordinarily be in force until its review and revision,

effected under sub-regulation (4) of regulation 5, is approved under sub-regulation (1), or as the case may be, finally approved under sub-regulation (2):

Provided that in the event of any new service or services being formed by enlarging the existing State Forest Service or otherwise being approved by the Central Government as the State Forest Service under clause (g) of Rule (2) of the Recruitment Rules, the Select List in force at the time of such approval shall continue to be in force until a new list prepared under regulation 5 in respect of the members of the new State Forest Service, is approved under sub-regulation (i) or as the case may be finally approved under sub-regulation (2):

Provided further that in the event of a grave lapse in the conduct of performance of duties on the part of any member of the State Forest Service included in the Select List, a special review of the Select List may be made at any time at the instance of the State Government and the commission may, if it so thinks fit, remove the name of such member of the State Forest Service from the Select List.

3. The regulations quoted above are as amended by Notification No. 11039/6/76/AIS (1)-C dated 3rd June 1977. Clause (3-A) of Regulation 5 before amendment by this notification provided for selection on merit and suitability in all respects. In case of merit being equal, the seniority was to be taken into account. As earlier seen, Clause (3-A) as now substituted provides for classification of the eligible officers into four categories; "Outstanding", "Very-good", "Good" and "Unfit" on an overall relative assessment of their service record. This is one important change brought about by amendment. Another important change is omission of clause (6) from Regulation 5 which laid down that "if in the process of selection, review or revision it is proposed to supersede any member of the State Forest Service the Committee shall record its reasons for proposed supersession." It is, however, noteworthy that clause (iii) of Regulation 6 which contains the requirement that the list prepared in accordance with Regulation 5 shall be forwarded to the Commission by the State Government along with "the reasons as recorded by the Committee for the proposed supersession of any member of the State Forest Service" has not been amended and remains as before.

4. The petitioner and respondents 3 to 20 belonged to the State Forest Service of Madhya Pradesh. They held the post of Divisional Forest Officers or equivalent posts. The petitioner was senior to the respondents in the State Forest Service. The Selection Committee met in December 1976 for selecting the officers of the State Forest Service for promotion to the Indian Forest Service for the posts available in the year 1977. The name of the petitioner was included by the Committee above the names of respondents in the list of suitable officers. This list was approved by the Commission and became the Select List. The State Government, however, wrote to the Central Government for removing the name of the petitioner from the list under the second proviso to Regulation 7. The Central Government sent a reply to the State Government on 28th December

1977 that as the Selection Committee was again to meet shortly for revision of the list for the year 1978 and as on preparation of the list for the year 1978, the list for the year 1977 would automatically expire, there was no point in referring the matter to the Public Service Commission. The Central Government only appointed one person from the list of 1977 who was senior to the petitioner. The Selection Committee met on 31st December 1977 for preparation of the list for the year 1978. The Select List as approved by the Commission was published in May 1978. The petitioner's name is not included in this list. The names of respondents 3 to 20 are, however, included in the list. By order dated 18th July 1978 which is impugned in this petition the Central Government appointed the respondents to the Indian Forest Service.

5. The first contention raised by the learned counsel for the petitioner is that the Selection Committee did not record reasons for superseding the petitioner. It is submitted by the learned counsel that even though clause (6) of Regulation 5 was omitted by notification dated 3rd June 1977, it was still necessary to record the reasons in case of supersession as Regulation 6 (iii) has not been amended and remains in the same form as before. It may here be mentioned that the petitioner's name was included by the Selection Committee in the category of "Unfit" officers. Apart from showing the petitioner in unfit category, no other reason was recorded for his supersession. We are, however, not inclined to accept the argument of the learned counsel for the petitioner that even after the deletion of clause (6) from Regulation 5 it is necessary for the Selection Committee to record reasons in case of supersession. It was clause (6) of Regulation 5 which made it obligatory on the Committee to record its reasons if in the process of selection, review or revision it was proposed to supersede any member of the State Forest Service. If we hold that in spite of the deletion of clause (6) the Committee is still bound to record reasons for supersession of an officer, that will make the specific deletion of clause (6) wholly nugatory. Clause (iii) of Regulation 6 which requires that the list prepared in accordance with Regulation 5 shall be forwarded to the Commission by the State Government along with "the reasons as recorded by the Committee for the proposed supersession of any member of the State Forest Service" cannot, in the background of specific deletion of clause (6) from Regulation 5, be read to impose upon the Selection Committee a mandatory duty to record reasons in case of supersession. Even after the deletion of clause (6) from Regulation 5 there is no prohibition for the Committee to record reasons in case of supersession and if the Committee records the reasons, the same will have to be sent to the Commission by the State Government under Regulation 6 (iii). The words "the reasons as recorded by the Committee" as they occur in clause (iii) of Regulation 6 mean "the reasons if recorded by the Committee". If the Committee chooses to record reasons in any case the reasons so recorded would be sent to the Commission along with the list prepared by the Committee. But if no reasons are recorded, that would not amount to violation of any mandatory provision and that by itself would not make the list invalid. Learned counsel for the petitioner in

support of his argument, relied upon the cases of *Union of India v. M.L. Capoor* AIR 974 SC 87 and *Union of India (UOI) Vs. H.P. Chothia and Others*, . In Capoor's case the Supreme Court dealt with Regulation 5 (5) of the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations, 1955, and held that the requirement of recording reasons in case it was proposed to supersede any member of the State Civil Service, was obligatory. Regulation 5 (5) of the Indian Administrative Service/Indian Police Service Regulations corresponds to Regulation 5 (6) of the Indian Forest (Appointment by Promotion) Regulations. This case, however, is not an authority for holding that reasons must be recorded by the Committee in case of supersession even after deletion of clause (6) from Regulation 5. In Chothia's case the Supreme Court construed Regulation 5 (2) (b) of the Indian Forests Service (Initial Recruitment) Regulations, 1966, which requires that the list of suitable officers prepared by the Selection Board be referred to the Commission for advice by the Central Government along with "the records of all other eligible officers of the State Forest Service who are not adjudged suitable for inclusion in the list together with the reasons as recorded by the Board for their non-inclusion in the list." The Supreme Court held that it was obligatory for the Selection Board to record reasons in case of supersession. Now the ruling in Chothia's case cannot be applied to the instant case for construing Regulation 6 (iii) of the Promotion Regulation, for the simple reason that in Chothia's case there was no question of deletion by amendment of a specific provision requiring the Selection Board to state reasons in case of supersession. As pointed out by us earlier, we cannot lose sight of the fact that specific requirement contained in clause (6) of Regulation 5 requiring the Selection Committee to record reasons for supersession of an officer was omitted by notification dated 3rd June 1977. If we still hold by construing Regulation 6 (iii) to make the recording of reasons mandatory, it will result in making the amendment by the said notification wholly purposeless and entirely futile. Having regard to the history of the Promotion Regulations, the proper way to construe Regulation 6 (iii) is to hold that it is not obligatory for the Selection Committee to record reasons while superseding an officer. But in case the Committee chooses to record reasons, the same must be sent along with the list to the Commission under Regulation 6 (iii). In our opinion, therefore, the select list cannot be held to be invalid on the ground that the Selection Committee did not record any reasons for superseding the petitioner.

6. The next contention raised by the learned counsel for the petitioner is that uncommunicated adverse record was taken into account by the Selection Committee and relevant material relating thereto was not placed before the Committee which makes the petitioner's non-selection invalid. Before dealing with this contention, it is necessary to mention certain facts. In accordance with certain executive instructions, confidential report of a member of the State Forest Service is first written by four officers, namely, the Collector, the Conservator of Forests, the Commissioner and the Chief Conservator of Forests.

Thereafter it is finally written by the Conservator-in-Chief. In the confidential report for the year 1976-77 the petitioner got good chits from the Collector, the Conservator of Forests and the Commissioner. The Chief Conservator of Forests Shri M.A. Wahid Khan gave an adverse report against the petitioner. This report was accepted by the Conservator-in-Chief on 1st December 1977. In his report the Chief Conservator of Forests wrote as follows:

He wears an aura of meakness and submissiveness and is thus highly deceptive. He has no control over nefarious activities of his subordinates and there is reason to believe that he gets mixed up with them. Recently, very serious cases have come up against him involving financial losses to Government. He is apt to be suspended and charge-sheeted.

It appears that certain complaints were received against the petitioner which were enquired into by Shri Ram Prasad, Deputy Conservator of Forests, who in his report dated 27th September 1977, held against the petitioner. The Chief Conservator of Forests, as mentioned earlier, wrote the adverse confidential report on 30th September 1977. It appears that the Chief Conservator gave the adverse report mainly on the basis of the complaints received against the petitioner which were enquired into by Shri Ram Prasad. It also appears that he recommended suspension of the petitioner to the Government. The Government did not, however, accept the recommendation to suspend the petitioner. The complaints were sent for enquiry to one Shri Dube who was Deputy Chief Conservator of Forests. Shri Dube gave his report on 15th October 1977 in which, speaking generally, he exonerated the petitioner, but suggested some further enquiry for financial lapses. It was at this stage that the Election Committee met on 2nd December 1977. The adverse confidential report of the petitioner was placed before the Committee. This report was till then not communicated to the petitioner. His explanation had not been obtained. Further, the report of Shri Dube dated 15th October 1977 which was in favour of the petitioner, was not placed before the Selection Committee. The Selection Committee in considering the case of the petitioner thus only considered the adverse report entered by the Chief Conservator of Forests, Wahid Khan, as accepted by the Conservator-in-Chief without any explanation which could have been offered by the petitioner in case the report had been communicated to him. The Selection Committee also had not the benefit of considering the favourable report of Shri Dube, Deputy Chief Conservator of Forests, as that report was not placed before it. In the circumstances, serious prejudice to the petitioner cannot be ruled out. We may here mention that as suggested by Shri Dube, a committee consisting of Deputy Chief Conservator of Forests (Accounts), Financial Adviser, Chief Accounts Officer and Internal Audit Officer, was constituted for considering the alleged financial lapses by the petitioner. In its report dated 20th September 1979 the Committee found no serious irregularity in the special audit conducted by it. The adverse confidential report was communicated to the petitioner on 15th January 1978. The petition submitted his representation which was rejected on 5th June 1978, before receipt of the special audit report of the committee

constituted for that purpose. The petitioner was also given a character-roll warning on 3rd April 1979. This was also done before the special audit report was received by the Government. We are informed that the Government has not yet taken any decision on the report of the committee constituted for special audit. Be that as it may, it is clear that the placing of adverse confidential report before the Selection Committee without obtaining the explanation of the petitioner and not placing of the favourable report given by Shri Dube seriously prejudiced the petitioner's case before the Selection Committee. In the circumstances, it cannot be said that the petitioner was fairly dealt with in the matter of his selection. In *Gurdial Singh Fijji Vs. State of Punjab and Others*, the Supreme Court considered the case of non-selection of an officer to the Indian Administrative Service. In that case, the adverse confidential roll was communicated to the officer who had offered his explanation, but the Government did not issue integrity certificate without considering the explanation offered by the officer which resulted in his non-selection. The Supreme Court held the non-selection to be invalid and directed the State Government to consider the explanation offered by the officer and also directed the Selection Committee to reconsider the case of the officer. The position in the instant case is worse. As earlier pointed out by us, the adverse entry in the confidential report was not communicated to the petitioner at all before it was considered by the Selection Committee and the favourable report made by the Deputy Chief Conservator of Forests was withheld. The State Government did not issue the integrity certificate without even communicating the adverse report. In these circumstances, the non-selection of the petitioner cannot be held to be valid. We, however, do not think it proper to quash the select list or to set aside the appointments of the respondents. In our opinion, appropriate directions for reconsideration of the case of the petitioner and amendment of the list, in case the petitioner is selected, will meet the ends of justice.

7. It was also contended that the selection was invalid as Shri Wahid Khan, the Chief Conservator of Forests, who was a member of the Selection Committee, was prejudiced against the petitioner. We are informed that Shri Wahid Khan died during the pendency of this petition. We are already holding the petitioner's non-selection to be invalid on other grounds. In the circumstances, we do not think it necessary to go into this question.

8. The petition is allowed. The petitioner's case for inclusion in the select list of 1978 will be reconsidered by the Selection Committee. The State Government will place before the Selection Committee the petitioner's explanation and the reports of enquiry and special audit in relation to the allegations against the petitioner. If on a reconsideration the Committee finds that the petitioner should be selected and the Committee's recommendation is accepted by the Public Service Commission, the list would be consequently amended. If the revision of the select list in this manner makes the petitioner eligible for appointment in 1978 in place of any of the respondents 3 to 20, the petitioner will be appointed and will get his seniority in accordance with the revised list and consequential

change would be made in respect of the respondents. The petitioner will get costs of this petition. Counsel's fee Rs. 100, if certified. The security amount be refunded to the petitioner.