
(2013) 07 MAD CK 0055

In the Madras High Court

Case No : Writ Petition No. 5508 of 2013 with M.P. No's. 1 to 3 of 2013

R. Nanthagopal

APPELLANT

Vs

G. Mohanasundaram and Others

RESPONDENT

Date of Decision : 08-07-2013

Acts Referred:

Citation : (2013) 6 MLJ 168

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : R. Thyagarajan, S.C. for G. Sankaran, for the Appellant;
Vijayanarayanan, S.C. for R. Parthiban and S.T.S. Moorthy, Government Pleader,
for the Respondent

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—The writ petitioner and the first respondent are the officers belonging to the Tamil Nadu State Civil Service and they

were in the zone of consideration for promotion to the cadre of Indian Administrative Service. While so, since the writ petitioner was promoted

and appointed to the cadre of Indian Administrative Service by the Central Government, by the notifications dated 10.2.2012 and 13.4.2012, but

not himself, the first respondent herein (G. Mohanasundaram), as applicant, filed O.A. No. 249 of 2012, challenging the said notifications. As the

Tribunal favoured the case of the applicant therein, thus setting aside the said notifications, insofar as not including the name of the applicant, the

first respondent therein (R. Nanthagopal) has come forward to file this writ petition. During pendency of the writ petition, the petitioner has filed

M.P. No. 3 of 2013, praying to implead the Tribunal as a party respondent to these proceedings. Since being only a formal party and that no

prejudice is going to visit any party by impleadment of the Tribunal, the same is hereby allowed, bringing on record the Tribunal as the fifth

respondent to these proceedings. Appointment from the State Civil Service to the Indian Administrative Service is governed by the Indian

Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as the Regulations). These Regulations envisage

distinct roles in respect of the State Government, UPSC and the Central Government with specific mandates in the process of preparation of the

select list of State Civil Service Officers for promotion to the Indian Administrative Service, right from the stage of drawing the list of eligible

officers by the State Government to finally making appointments to the service from the select list by the Central Government. While the State

Government has the exclusive role in regard to drawing of the consideration zone of the eligible State Civil Service Officers to be placed before the

Selection Committee in terms of seniority of these officers in the State Civil Service, the UPSC is concerned with the select list prepared and

approved under Regulation 7(3) on the basis of the gradings made by the Selection Committee and with the aid of observations of the State and

Central Governments. The Central Government would make appointments from the select list on the recommendations of the State Government in

the order in which the names of the members of the State Civil Service appear in the select list, being in force, during its validity period.

2. From the materials placed on record, it is seen that as per Regulation 5(5), the Government of India, in consultation with the Government of

Tamil Nadu, determined 19 vacancies of IAS for the year 2009 and accordingly, the State Government sent a proposal to Union Public Service

Commission. Since as per Regulation 5(2), for each one vacancy, three names have to be forwarded to the Union Public Service Commission i.e.

in 1:3 ratio, for consideration by the Selection Committee, the names that were to be sent by the State Government were 57, but as there were

only 27 eligible candidates in the State, the State Government forwarded those 27 names to the Union Public Service Commission for

consideration by the Selection Committee and in the said list, while the name of the first respondent figures at Sl. No. 27, the name of the writ

petitioner was at Sl. No. 17. Though both of them were issued with the Integrity Certificates by the State Government, subsequently, the State

Government withheld the Integrity Certificate of the writ petitioner. But, however, both of them were not selected in that selection.

3. But, subsequently, based on the orders passed by the High Court of Punjab and Haryana in CWP. No. 15798 of 2009 in the matter of Praveen

Kumar v. Union Public Service Commission, dated 1.2.2010, as confirmed by the orders passed by the Honourable Supreme Court in SLP. No.

14002 of 2010 Department of Personnel and Training v. Praveen Kumar and Others, the second respondent issued Office Memorandum dated

25.8.2010 to the effect that the Select List will, henceforth, be styled, coinciding with the year of vacancies and in the case of overlapping Select

Lists, the Government of India have decided that Select Lists already acted upon may not be renamed and the second list may be named adding

"A" to the year of Select Lists. Accordingly, since the earlier Select List of 2009 relates to actual vacancies of the year 2008, the Government of

India, Union Public Service Commission and State Government took steps to prepare the Select List of 2009A and 2010 against the vacancies

which arose during the years 2009 and 2010 respectively.

4. In this way, for preparation of Select List of 2009A, the Government of India, in consultation with the Government of Tamil Nadu, determined

seven vacancies and the State Government forwarded a proposal to Union Public Service Commission by a communication dated 3.2.2011

wherein the name of the first respondent was at Serial No. 9 and the name of the petitioner was at Serial No. 4 respectively, but, however, as a

disciplinary proceeding was pending against the petitioner, his integrity certificate was withheld by the State Government.

5. Since the Selection Committee, on the basis of its own assessment, selected seven officers for promotion to the Indian Administrative Service

from the Select List of 2009-A in its meeting held on 27.12.2011, including the writ petitioner herein as a provisional candidate, subject to

clearance in the disciplinary proceedings pending against him and grant of integrity certificate by the State Government and thereafter, he was

issued with the integrity certificate, vide notification dated 13.4.2012, the writ petitioner was appointed to Indian Administrative Service and since

the first respondent/applicant was not selected, he filed O.A. No. 249 of 2012 before the Tribunal.

6. The challenge made to the selection of the writ petitioner by the first respondent is on the grounds that the Selection Committee has not taken all relevant materials into account since the ACRs of the writ petitioner from 1999 to 2002 alone were sent to the Selection Committee but not the ACRs from 11.6.2002 to 7.1.2008, even though the Selection Committee need to take into consideration the ACRs of the officers for the preceding five years. It is also his case that while the writ petitioner, from 1999 to 2008, has earned the gradings "very good" for four periods and "good" for three periods, he (the applicant/first respondent) got three "outstanding" gradings (29.9.2005 to 31.12.2005, 8.6.2006 to 30.3.2007 and 31.3.2007 to 24.7.2007). According to the first respondent/applicant, the Selection Committee selected candidates for the year 2009 equally grading the first respondent/applicant and the writ petitioner as "good", which should not have been done in view of the fact that the writ petitioner has no "outstanding" entry to his credit during the relevant period of consideration and therefore, the gradings of the Selection Committee, which met on 27.12.2011 is not correct the assessment of relative merits and demerits of the applicant and the writ petitioner.

7. It is also the contention of the applicant/first respondent that the inclusion of the name of the writ petitioner provisionally subject to clearance in the disciplinary proceeding pending against him and grant of integrity certificate by the State Government thereafter is illegal. He has also contended that unreasonably the disciplinary proceedings were dropped by the State Government against the writ petitioner, in spite of the fact that one of the two charges framed against him was held to be proved by the Enquiry Officer.

8. The Tribunal, fully accepted the case of the applicant and has allowed the Original Application filed by him, quashing the impugned Notifications dated 10.2.2012 and 13.4.2012 insofar as they not included the name of the applicant. Aggrieved, the first respondent therein has come forward to file this writ petition.

9. We heard at length the arguments of the learned senior counsel appearing on either side.

10. It is the contention of Mr. Vijayanarayanan, the learned senior counsel appearing for the first respondent/applicant, drawing support from the order of the Tribunal, that even though the first respondent/applicant secured

better gradings than that of the writ petitioner, the Selection

Committee, without any rhyme or reason, has deviated from the gradings offered by the State Government and offered uniform gradings of "good"

to the first respondent and the writ petitioner, ignoring the fact that the first respondent/applicant secured even "outstanding" grading, which is not

the case with the writ petitioner.

11. It is the stand of the UPSC that the Selection Committee can adopt its own methodology of assessment of overall performance of the

candidates within the zone of consideration, other than the gradings recorded by the reporting/reviewing/accepting authority, on independent

assessment of the service records of the eligible officers. On behalf of the writ petitioner, the learned senior counsel would also argue that the

Selection Committee can adopt its own methodology and the gradings offered by the State Government are not binding on the Selection

Committee. In support of his arguments, he would rely on a judgment of the Honourable Apex Court in U.P.S.C. Vs. K. Rajaiah and Others, ,

wherein it has been held as follows:

The power to classify as ""outstanding"", ""very good"", ""good"" and ""unfit"" is vested with the Selection Committee. That is a function incidental to the

selection process. The classification given by the State Government authorities in the ACRs is not binding on the Committee. No doubt, the

Committee is by and large guided by the classification adopted by the State Government but for good reasons, the Selection Committee can

evolve its own classification which may be at variance with the gradation given in the ACRs. ... Such classification is within the prerogative of the

Selection Committee and no reasons need be recorded, though it is desirable that in a case of gradation at variance with that of the State

Government, it would be desirable to record reasons. But having regard to the nature of the function and the power confided to the Selection

Committee under Regulation 5(4), it is not a legal requirement that reasons should be recorded for classifying an officer at variance with the State

Government's decision.

12. In M.V. Thimmaiah and Others Vs. Union Public Service Commission and Others, , the Honourable Apex Court has held as follows:

It was also pointed out that in the case of officers NS and KRN, the Selection

Committee downgraded their reports from ""outstanding"" to ""very good"" yet they were selected. Similar is the case with officer ICLL who has not been selected. Likewise the Selection Committee upgraded assessment for the year 2001 -2002 from ""very good"" to ""outstanding"" yet he could not be selected. Therefore, this is also process of selection and the Selection Committee is constituted by the Commission and headed by member of the Commission, the Court has to trust their assessment unless it is actuated with malice or apparent mistake committed by them. It is not the case of pick and choose, while selection has been made rationally. The selection by expert bodies unless actuated with malice or there is apparent error should not be interfered with.

13. It is the case of the first respondent/applicant that the ACRs of the writ petitioner from 1999 to 2002 alone have been sent to UPSC and the ACRs from 11.6.2002 to 7.1.2008 have not been sent to UPSC and hence the assessment made by the Selection Committee, being not in consideration of the relevant material, need to be interfered with by this Court.

14. This allegation made on the part of the first respondent/applicant has well been meted out by the State Government in its counter affidavit and for better understanding, we extract the relevant paragraphs of the said counter hereunder:

5. I submit that the Central Administrative Tribunal, Madras Bench in its common order dated 5.5.2006 in O.A. Nos. 595-598 & 7801 of 2005 has observed as follows:

Any period in excess of 3 to 6 months should not be countenanced as validly/ legally written ACR.

6. I submit that this Hon"ble Court has outlined the procedure regarding the assessment in the event of non-writing or non availability of Annual Confidential Reports as follows:--

In the event of non-writing of one or more ACRs for any reason during the relevant period, the DPC should consider the ACRs for the year preceding the period in question and in any case, even if these are not available, DPC should take care about the CRs of the lower grade into account to complete the number of CRs required to be considered. If this is also not possible, all the available CRs should be taken into account.

If for any period, the confidential report of an officer is not available for any

reason whatsoever, the DPC should consider the CRs of the year

preceding the period in question to complete the number of CRs required to be considered.

7. I submit that this Hon''ble Court in its order dated 27.10.2006 in W.P. No. 15791 of 2006 has upheld the order of the Central Administrative

Tribunal, Madras Bench. After the order of this Hon''ble Court in the matter, State Government issued instructions vide G.Ms. No. 86, Personnel

and Administrative Reforms (K) Department, dated 4.4.2007 to all concerned that the reporting officer may take a reasonable time to write

Confidential Report but this time limit should not ordinarily exceed 90 days from the date of his demitting office. It is submitted that even though the

government have issued instructions to adhere to the time limit prescribed in writing of Annual Confidential Reports, the same could not be

followed in some cases due to the administrative reasons.

8. I submit that the Annual Confidential Reports which were written within nine months by the reporting and scrutinising officers were treated as

valid. In order to assure valid Annual Confidential Reports for the period of 5 years, apart from the Annual Confidential Reports upto the year

2008-2009, the Annual Confidential Reports for the year 1998 and 1999 were also forwarded to Union Public Service Commission in respect of

the petitioner, as permissible in the Promotion Regulations and in accordance with the above order of this Hon''ble Court.

15. Therefore, excluding the ACRs which cannot be treated as valid, all other ACRs were forwarded to the Union Public Service Commission by

the State Government in the manner dictated by this Court and the Tribunal and we are not able to find any illegality or irregularity in the same.

16. While that being the case and in view of the dictum laid down by the Honourable Apex Court in plethora of cases, including the ones cited

supra, undoubtedly, the Selection Committee, which is a high level expert body, is at liberty to record its own gradings in variance of the gradings

offered by the State Government. In view of the fact that all the relevant material has been placed before the UPSC by the State Government and

the same was also considered by the Selection Committee, the factum of offering different gradings by the Selection Committee from that of the

gradings of the State Government, cannot at all be called in question before this

Court, particularly in the absence of any proof of non-consideration or irrelevant consideration of materials by the Selection Committee, and error apparent on the face of the selection by the Selection Committee. No mala fides or malice can be attributed to the High Level Expert Body like the Selection Committee. Therefore, these contentions urged on the part of the first respondent/applicant merit no consideration.

17. The other plea raised on the part of the first respondent/applicant is that inclusion of the name of the writ petitioner in the list by the Selection

Committee, even though there was a disciplinary proceeding pending against him at the relevant time is illegal.

18. But, we are not able to appreciate this plea raised on the part of the first respondent/applicant given the fact that the provisional inclusion of the

officers, against whom departmental proceedings are pending and whose integrity certificate has been withheld by the State Government is

permitted under Regulation 6.

19. It is not the case of the first respondent/applicant that pendency of the disciplinary proceeding itself has been omitted to be taken into

consideration by the Selection Committee or was not intimated by the State Government to UPSC. The name of the writ petitioner was included in

the select list by the Selection Committee, provisionally, subject to clearance in the disciplinary proceedings pending against him and grant of

integrity certificate by the State Government, as could be seen from the minutes of the Selection Committee Minutes available at Page No. 65 of

the typed set of papers filed along with the writ petition by the petitioner. It is not the case of the first respondent/applicant that even though the

name of the writ petitioner was included provisionally in the select list, the disciplinary proceedings against him continued against him or he was

found guilty of the charges or that he was inflicted with some punishment, so as to say that inclusion of the name of the writ petitioner, pending

allegations, violated the right/chance of the first respondent/applicant to get appointed to IAS. Since in the case on hand, even though some

departmental proceeding was pending against the writ petitioner initially, subsequently, the charges against him were dropped by the disciplinary

authority/State Government, leading to issuance of Integrity Certificate to him. In fact, in the backdrop of the above factual situation that the

charges against the writ petitioner were subsequently dropped by the State Government, he would have been prejudicially affected, had his name not included in the select list, provisionally, on account of pendency of such disciplinary proceedings. Therefore, considering all the pros and cons, we do not find any force in the arguments advanced on the part of the first respondent/applicant in this regard.

20. With regard to the other contention of the first respondent that one of the charges framed against the writ petitioner having been held to be proved by the Enquiry Officer, the State Government is not justified in issuing Integrity Certificate to him, it is to be mentioned here that disciplinary enquiry was conducted against the writ petitioner for the following two charges:

Charge No. 1:

Thiru R. Nantha Gopal, District Revenue Officer/Special Officer, National Cooperative Sugar Mills, Alanganallur, Madurai, while working as senior Regional Manager, Tamil Nadu State Marketing Corporation Limited, Madurai, had caused much delay to forward his inspection report on the petition of Thiru M. Udhayabhaskaran, requesting to transfer the bar and wine shop No. 5500, Usilampatty to the Assistant Commissioner, Excise, Madurai and thus he had violated rule 20(1) of Tamil Nadu Government Servants' Conduct Rules, 1973.

Charge No. 2:

Thiru R. Nantha Gopal, District Revenue Officer/Special Officer, National Cooperative Sugar Mills, Alanganallur, Madurai, while working as senior Regional Manager, Tamil Nadu State Marketing Corporation Limited, Madurai, by slack supervision, made his subordinate officers Thiru M. Vijayaram and Thiru A. Mayakrishnan to demand and accept Rs. 5,000/- as bribe on 25.7.2008 by using his name and thus he had violated rule 20(1) of Tamil Nadu Government Servants' Conduct Rules, 1973.

21. Out of the above charges, the first charge is held to be not proved by the Enquiry Officer himself, while holding the other charge proved. When the matter was taken up by the Disciplinary Authority/State Government, it has deviated from the findings of the Enquiry Officer and observed as follows:

As regards the charge 1, the finding ""not proved"" of the Enquiry Officer may be accepted. But in respect of charge 2, the Enquiry Officer has

concluded that the slack supervision of the delinquent has been the cause for his subordinates to demand and accept a bribe of Rs. 5000 and held

the charge proved. But, there is no evidence to show that his slack supervision is the direct cause for the bribe and that the relationship to the cause

and effect are not properly established and hence the proved minute cannot be accepted. Therefore, it was proposed to drop the charges.

22. Having thus dropped the charges, the State Government has issued Integrity Certificate to the writ petitioner. The power of the Disciplinary

Authority in taking a different view from that of the Enquiry Officer, cannot be denied or questioned. It is this power, which has been exercised by

the Disciplinary Authority/State Government in taking a different view from that of the Enquiry Officer. Further more, it is not the charge that the

writ petitioner has accepted the bribe, but because of his slack supervision, his subordinates have accepted the bribe. Therefore, even this

objection raised on the part of the first respondent/applicant is devoid of merits. But, the Tribunal, without analysing any of the contentions raised

on either side in the manner known to law, has, allowed the Original Application filed by the first respondent/applicant on surmises and conjectures

and ignoring the well established principles of law, which, for the above reasons stated supra, we are not able to appreciate.

Therefore, this writ petition is allowed and the order of the Tribunal is set aside. No costs. M.Ps. 1 and 2 of 2013 are closed.