

(2001) 05 AHC CK 0032
In the Allahabad High Court
Case No : C.M.W.P. No. 2663 of 1998

State of U.P.

APPELLANT

Vs

Indra Singh and others

RESPONDENT

Date of Decision : 11-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Forest Service (Appointment by Promotion) Regulations, 1966 — Regulation 5, 5(1)
Police Service (Appointment by Promotion) Regulations, 1955 — Regulation 5
Uttar Pradesh (Promotion by Selection in Consultation with Public Service Commission Procedure) Rules, 1970 — Rule 9

Citation : (2001) 3 AWC 1839 : (2001) LabIC 4031 : (2001) 2 UPLBEC 1467

Hon'ble Judges : S.R. Singh, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : Ashok Mehta, S.C, for the Appellant; H.R. Mishra, K.M. Mishra, Sudhir Agarwal and A.R. Masoodi, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Singh, J.—These writ petitions under Article 226 of the Constitution of India seek quashing of the Judgment and order dated 10.9.1997 rendered by the Central Administrative Tribunal, Allahabad Bench, Allahabad in three connected Original Applications being Original Application No. 982 of 1996, Original Application No. 927 of 1996 and Original Application No. 1120 of 1996 besides the order dated 24.10.1993 rendered in Review Application No. 96 of 1997 filed by some of the opposite parties in Original Application No. 982 of 1996.

2. The applicants before the Central Administrative Tribunal had challenged the validity of the select list prepared by the authorities for induction of the State Forest Service Officers into the Indian Forest Service and sought quashing of the select list as well as the order dated 7.9.1996 by which some of the officers in the select list were appointed to the Indian Forest Service. The principal ground of challenge to the select list was that the authorities under the Regulations were bound to make selection year-wise on the basis of year-wise vacancies but they

failed to make year-wise selection and illegally clubbed the vacancies of last several years and selected officers for induction into the Indian Forest Service in contravention of the provisions of the Regulations. Applications were opposed, inter alia, on the ground that there were legitimate justification for not holding the selection year-wise and that the applicants were among the 130 State forest officers considered by duly constituted Selection Committee for 33 vacancies in the cadre of Indian Forest Service in accordance with the relevant regulations but they were not found suitable by the Selection Committee for the induction into the Indian Forest Service Cadre.

3. The Tribunal took the view that it was incumbent upon the Selection Committee to prepare separate select list in relation to year-wise vacancies restricting the zone of consideration to candidates eligible in each year of recruitment. The select list prepared after clubbing the vacancies of various years, held the Tribunal, was contrary to the Regulations. The Tribunal accordingly quashed the select list on the short point that this was a combined select list of vacancies which during a period of nearly 12 years and directed the authorities, vide judgment and order dated 10.9.1997, to prepare year-wise select list by holding the review D.P.C. in accordance with law. Some of the officers arrayed as opposite parties in Original Application No. 982 of 1996 filed a Review Application being Review Application No. 96 of 1997 on the limited ground that though the question of grant of seniority retrospectively with reference to the year of selection was the subject-matter of scrutiny in a separate Original Application, being Original Application No. 135 of 1996 which was subjudice before Tribunal, yet it was observed in para 30 of the judgment dated 10.9.1997 that, "..... This is, however, not to suggest that officers who are included in the year-wise select list are to be given promotion retrospectively from the year in which they are selected." These observations in para No. 30 of the judgment dated 10.9.1997, it was argued before the Tribunal in the review petition, would prejudice the decision in Original Application No. 1357 of 1996 in which a relief regarding grant of retrospective seniority has been claimed. The Tribunal disposed of the review application vide its order dated 24.10.1997, thereby directing that the objectionable observation in para 30 of its judgment dated 10.9.1997 would stand deleted.

4. We have had heard Sri Ashok Mehta, Chief Standing Counsel appearing for the State, S/Sri H. R. Mishra and K. M. Mishra appearing for the private petitioners and Sri Sudhir Agarwal for the respondent Nos. 14 and 16 and Sri A. R. Masoodi for the respondent No. 1 In the writ petition filed by the State and given our anxious consideration to the submissions made across the Bar.

5. The questions that call for determination are two-fold : firstly, whether mere failure of the Selection Committee to meet at intervals not exceeding one year and prepare a list of suitable officers of State cadre for promotion to I.F.S. cadre, will vitiate the selection ; and secondly, where the failure of Selection Committee to meet every year, as provided in Regulation 5 of Indian Forest Service

(Appointment by Promotion) Regulations, 1966, is due to valid and justifiable grounds, will the Selection Committee be justified, whenever it meets in future, in clubbing the vacancies of various years for the purpose of preparation of a list of suitable officers for promotion under Regulation 5 of the Regulations?

6. It would appear that due to litigation about inter se seniority of provincial forest officers, the finalisation of the seniority list was delayed. It came to be published finally on 3.1.1996 and the select list impugned before the Tribunal was prepared in September, 1996. The selection for promotion to the cadre of Indian Forest Service is regulated by Regulation 5 of the Indian Forest Service (Appointment by Promotion) Regulations, 1966 read with U. P. (Promotion by Selection in Consultation with Public Service Commission Procedure) Rules, 1970. Regulation 5 of the Indian Forest Service (Appointment by Promotion) Regulations, 1966 in so far it is relevant quoted below :

"5. Preparation of a list of suitable officers.--(1) Each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of members of the State Forest Service, as are held by them to be suitable for promotion to the service. The number of members of the State Forest Service to be included in the list shall be calculated as the number of substantive vacancies anticipated in the course of the period of 12 months, commencing from the date of preparation of the list, in the posts available for them under Rule 9 of the Recruitment Rules plus twenty per cent such number or two, whichever is greater.

(2) The committee shall consider, for inclusion in the said list, the cases of members of the State Forest Service in the order of seniority in that service of a number which is equal to three times the number referred to in sub-regulation (1) :

* * *

7. Regulation 5 (1) of Indian Forest Service (Appointment by Promotion) Regulations, 1966 is in pari materia with the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 and the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. In all these regulations word "ordinarily" has been used with reference to meeting of the Selection Committee "at intervals not exceeding one year". It has been submitted by the Chief Standing Counsel and other counsel appearing for the petitioners that there were justifiable grounds for holding selection after a gap of about 12 years and in such view of the matter, the selection cannot be said to be vitiated merely due to the reason of failure of the Selection Committee to meet at intervals not exceeding one year inasmuch as the word "ordinarily" used in Regulation 5 (1) suggest that the provision is not mandatory. In Regulation 5 (1) of the Indian Forest Service (Appointment by Promotion) Regulation. 1966, the expression used is "shall ordinarily meet at intervals not exceeding one year". Though word "shall" is indicative of mandatory nature of the provision but since it is followed by the word "ordinarily", the provision has been interpreted to mean that failure

to meet annually by itself will not vitiate the select list.

8. In *Syed Khalid Rizvi and others v. Union of India* JT 1992 Sup SC 169, the Supreme Court was considering the scope of Regulation 5 of I.P.S. (Appointment by Promotion) Regulation, 1955-a provision in pari materia with Regulation 5 of the Regulations we are concerned with. In para 3.4 of the report, the Supreme Court weighed up with the consequence of failure to prepare the year-wise select list in the following words :

"We have, therefore, no hesitation to hold that preparation of the select list every year is mandatory. It would subserve the object of the Act and the rules and afford an equal opportunity to the promotee officers to reach higher echelons of the service. The dereliction of the statutory duty must satisfactorily be accounted for by the State Government concerned and this Court takes serious notice of wanton infraction."

9. The principle laid down in *Rizvi's* came to be reiterated in *Ramchandra Dayaram Gawande Vs. Union of India (UOI) and Others*, wherein it was held that "the State Government is enjoined to account for dereliction of the statutory duty satisfactorily to the Court". In Civil Appeal Nos. 3891-3894 of 1993, *H. R. Kasturi Rangan and others v. Union of India and others*, decided on 20.7.1993, however, *Rizvi's* case was explained in these words : "It is clear from the observations which follow that the importance of performing these exercises annually was emphasised and it was pointed out that in the event of any failure, the lapse must be satisfactorily explained by the State Government concerned. This is itself an indication of the purpose for which the performance of that exercise annually was described as mandatory, without saying that its breach invalidates the subsequent action." Failure to prepare a select list annually was not accepted, in *Rizvi's* case, as a ground to invalidate the selection. It is in this manner that the word "mandatory" used in *Rizvi's* case has to be understood.

10. It is thus settled that ordinarily, the State Government must prepare the select list every year but where there are good reasons for not doing so and the Court is satisfied that there were valid reasons for not preparing the select list annually, the failure to prepare select list annually by itself will not invalidate the select list. This, however, does not mean that the Selection Committee has the liberty to enlarge the field of eligibility by clubbing vacancies occurring in different years. In *Union of India (UOI) and Others Vs. Vipinchandra Hiralal Shah*, , the Supreme Court after considering the case of *Union of India v. Mohan Lal Kapoor* (1973) 5 SCC 836, and *Rizvi's* case (supra) has laid down the following proposition :

"Failure on the part of the Selection Committee to meet during a particular year would not dispense with the requirement of preparing the select year for that year. If for any reason the selection committee is not able to meet during a particular year, the committee when it meets next should while making the selection prepare a separate list for each year keeping in view the number of

vacancies in that year after considering the State Civil Service officers who were eligible and fell within the zone of consideration for selection in that year."

11. The decisions aforesaid were considered by a Division Bench of this Court in *State of U.P. and others Vs. Smt. Shakuntala Shukla, S.I., Police*, It was held therein that the vacancies of each year should be taken separately and should not be clubbed together with vacancies occurring in the following years and the field of consideration should be confined to the persons eligible in a particular year. We are of the considered view that the requirement of Regulation 5 of Indian Forest Service (Appointment by Promotion) Regulations, 1966 is that the Selection Committee, should, ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Forest Service as are found suitable for promotion to the Indian Forest Service Cadre but If due to good reasons, the Selection Committee does not meet during a particular year, the committee, whenever it meets next, must prepare the select list for each year taking in view the number of vacancies in that year and consider only such State Forest Service Officers who fall within the zone of consideration for selection in that year. If this procedure is not followed and selection is made after clubbing the vacancies occurring in different years and thereby enlarging the zone of consideration, then it will impinge upon the fundamental right to equality and will also violate the mandatory provisions of Regulation 5 (1) of the Regulations. The Tribunal, in our opinion, has rightly quashed the select list and was justified in directing the authorities to prepare year-wise select list on the basis of year-wise vacancies restricting the zone of consideration of officers of the State Forest Service eligible in particular year of recruitment.

12. In view of the above discussion, we are of the view that the petitions are devoid of merit and are accordingly dismissed. Parties shall bear their own costs.