

Ramanand Prasad Singh and Another

Vs

Union of India and Others

Union Public Service Commission and Another

Vs

Surendra Prasad Sinha and Others

Civil Appeals Nos. 5123-5125 of 1996 With Nos. 5126-28 of 1996

(Sujata V. Manohar JJ)

27.03.1996

JUDGMENT

SUJATA V. MANOHAR, J. -

1. Leave granted.

2. The appellants have challenged the judgment and order of the Central Administrative Tribunal, Patna Bench, Patna dated 28-7-1995 as a result of which the Tribunal has set aside the selections made by the Selection Committee on 30-3-1994 of officers of the Bihar Administrative Service for promotion to the Indian Administrative Service.

3. The Tribunal by its impugned order set aside the entire selection made at the meeting of the Selection Committee on 30-3-1994 on an interpretation of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, holding that only three times the number of anticipated vacancies for the year plus 20% could have been considered as within the zone of consideration before the Selection Committee. The consideration of other officers under Regulation 5(3) was contrary to the said Regulations. It also said that the proceedings of the Selection Committee were vitiated on account of the participation of one Shri S.N. Dubey as a member of the Selection Committee because his brother was within the zone of consideration although the brother has not been selected. And lastly the Tribunal has said that there was non-application of mind by the Selection Committee in considering 264 names on a single day.

4. The Indian Administrative Service (Appointment by Promotion) Regulations, 1955, have been framed by the Central Government in consultation with the State Governments and the Union Public Service Commission under sub-rule (1) of Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954. The relevant regulation which requires consideration is Regulation 5. The material provisions of Regulation 5 are as follows :

"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 such members of the State Civil Service as are held by them to be suitable for promotion to the service.

The number of members of the State Civil 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 of such number or two whichever is greater.

Explanation. - In case of joint cadres a separate select list shall be prepared in respect of each State Civil Service, the size of each select list being determined in the manner indicated above.

(2) The Committee shall consider for inclusion in the said list, the cases of members of the State Civil Services 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).

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Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulation (3) shall be excluded :

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(3) The Committee shall not consider the cases of the members of the State Civil Service who have attained the age of 54 years on the first day of April of the year in which it meets :

Provided that a member of the State Civil Service whose name appears in the select list in force immediately before the date of the meeting of the Committee shall be considered for inclusion in the fresh list, to be prepared by the Committee even if he has in the meanwhile attained the age of 54 years :

Provided further that a member of the State Civil Service who has attained the age of fifty-four years on the first day of April of the year in which the Committee meets shall be considered by the Committee, if he was eligible for consideration on the first day of April of the year or of any of the years immediately preceding the year in which such meeting is held but could not be held as no meeting of the Committee was held during such preceding year or years."

5. Under Regulation 5(1) the number of officers who are to be included in the list of suitable officers prepared by the Selection Committee is specified as the number of substantive vacancies anticipated in the course of the period of 12 months plus 20%. Under Regulation 5(2), the number of officers required to be considered are three times the number which is to be finally included in the list. The number of officers required to be considered under Regulation 5(2) for selection in the list may be referred to as officers within the zone of consideration.

6. Persons above the age of 54 years on the first day of April of the year in which the Selection Committee meets are not eligible for being considered. Therefore, they are not within the zone of consideration. This is set out in the first part of Regulation 5(3). The first proviso to Regulation 5(3), however, states that a member of the State Civil Service whose name appears in the immediately preceding Select List in force shall be considered for inclusion in the fresh list, even if he has, in the meanwhile, attained the age of 54 years. The second proviso to Regulation 5(3) states

that if during any immediate preceding year/years, a person was eligible for consideration but could not be considered because no meeting of the Selection Committee was held that year, such a person will also be considered by the Selection Committee even though he may have, in the meanwhile, attained the age of 54 years. In other words, candidates who would have been within the zone of consideration if the Selection Committee had met during the year but who lost the chance because the Selection Committee did not meet are given a chance to be considered at the first available opportunity even though they may have in the meanwhile attained the age of 54 years.

7. The Tribunal has held that the two provisos to Regulation 5(3) which require the Selection Committee to consider certain candidates who may be above the age of 54 years, has to be interpreted as applying only to the candidates who are within the zone of consideration as defined under Regulation 5(2) but who may have attained the age of 54 years. These candidates, if they fall within the proviso to Regulation 5(3), will have to be considered by the Committee. We have to consider whether this is a correct interpretation of Regulations 5(2) and 5(3).

8. In the present case, the number of anticipated vacancies for which selection was held, were 43. As per Regulation 5(2) the zone of consideration was fixed at 153 (i.e., 43 vacancies plus 20% x 3). In addition to this, officers (a) whose names were on the earlier Selection List in force (one such officer) [first proviso to Regulation 5(3)] and (b) officers who though above the age of 54 were eligible under the second proviso to Regulation 5(3) because there were no selections in the years 1991-92 and 1992-93 (110 such officers) were included. The total number of officers, therefore, considered by the Selection Committee were 153 + 1 + 110, that is to say, 264 officers.

9. According to the Tribunal, the zone of consideration should have been confined to only 153 officers. This interpretation is in the teeth of the express provisions of Regulation 5(2). While Regulation 5(2) provides that the number of officers required to be considered are three times the number of anticipated vacancies plus 20%, the proviso to Regulation 5(2) lays down that in computing the number of officers who should be in the field of consideration under Regulation 5(2), the number of officers referred to in sub-regulation (3) shall be excluded. In other words, in the present case, 153 officers who are to be included in the zone of consideration will be after excluding officers who qualify under Regulation 5(3). Therefore, 153 officers who are to be considered are other than those falling under sub-regulation (3).

10. Sub-regulation (3) of Regulation 5 which confers a right to be considered on certain State Civil Servants who may have attained the age of 54 also does not qualify this right to be considered by adding that such a person shall be considered only if he is within the zone of consideration under Regulation 5(2).

11. Clearly, therefore, the persons who are required to be considered for selection under Regulation 5(3) are in addition to the persons who are required to be considered under Regulation 5(2). In fact, this is how these recruitment regulations have been interpreted over a number of years. The Union Public Service Commission which issues instructions regarding the manner in which list of officers is to be prepared for consideration by the Selection Committee and the documents and information which are required to be submitted to the Union Public Service Commission for selection of such officers clearly sets this out in clause 3(d) of the Instructions :

"3. (d) Officers who are over 54 years as on 1-4-1993 are ordinarily not considered. However, (i) if their names appear in the previous Select List or (ii) if no Selection Committee meeting was held in the previous year(s) when he was eligible, then his

case will be considered by the current Selection Committee meeting. For this purpose his name should figure in the proper place in the Eligibility List and his case will be considered only if his name falls within the required zone of consideration calculated according to vacancies. However, the names of such officers will not be counted in the normal zone and they will be taken as extra to the required number of 3 times the size of the Select List."

12. The zone of selection, therefore, under the Regulations consists of three parts : (1) officers who fall within Regulation 5(2) after excluding all officers falling under (2) and (3); (2) officers above the age of 54 who are "carried forward" from the earlier Selection List in force and (3) officers above the age of 54 who have been deprived of their chance of being considered due to non-holding of meetings of the Selection Committee. All these are to be considered by the Selection Committee. The Tribunal was, therefore, not right in holding that only persons covered by Regulation 5(2) without any exclusion are eligible for being considered by the Selection Committee.

13. The second ground of challenge to the selection is that one S.N. Dubey should not have been a member of the Selection Committee because his brother was one of the 264 candidates being considered for selection. The brother has, in fact, not been selected by the Selection Committee. We fail to see how the selection of all other candidates is vitiated in any manner by this factor.

14. The last contention relates to non-application of mind by the Selection Committee to the task before it because it is contended that the Committee considered 264 candidates in one day in order to prepare a list of 51 candidates. The State of Bihar and the Union Public Service Commission in their affidavits/written statements have clearly set out that the confidential service records of all the candidates in the zone of consideration are scrutinized long prior to the holding of the Selection Committee's meeting. The Committee applies its mind to the service records and makes its own assessment of the service records of the candidates marking them as outstanding, very good, good and so on. The Selection Committee does not necessarily adopt the same grading which is given by the Reporting/Reviewing Officer in respect of each of the candidates. In fact the Selection Committee makes an overall relative assessment of the confidential report dossiers of the officers in the zone of consideration. It thus does not evaluate the confidential report dossier of an individual in isolation. It is after this comparative assessment that the best candidates are put in the Select List. In view of the affidavit so filed, there is no merit in the contention that the Selection Committee did not apply its mind while preparing the list of 51 officers. The Tribunal, therefore, was not right in setting aside the selection made by the Selection Committee at its meeting of 30-3-1994.

15. The appeals are, therefore, allowed. The judgment and order of the Tribunal is set aside and the Select List prepared by the Selection Committee at its meeting held on 30-3-1994 is upheld as a valid Select List prepared in accordance with the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 and in accordance with law. There will be no order as to costs.