

Ashok V. David

Vs

Union of India and Others

Civil Appeals Nos. 8391 With 8393 of 1996

(G. N. Ray, B. L. Hansaria JJ)

10.05.1996

JUDGEMENT

HANSARIA, J.:-

1. Leave granted.

2. The appellants who were direct recruits to the Karnataka Administrative Service had become due for consideration for promotion to the Indian Administrative Service (IAS) in the year 1982 in accordance with the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. They were, however, not so considered because they did not come within the zone of consideration as in the seniority list their position was low, and as, to come within zone of consideration the number of persons to be considered can be only twice, they were left out. It is not in dispute that their seniority position was changed to their advantage subsequently. It is also not in dispute that had their position in the seniority list been correctly reflected earlier, they would have been within the zone of consideration. When the selection committee set in December, 1983.

3. The appellants' case is that they having been denied consideration in December, 1983 because of their wrong placement in the seniority list, their promotion to the IAS got delayed, with the consequential result that proper year of allotment was not assigned to them. They, therefore, approached the Central Administrative Tribunal with prayer to direct the Union of India to give them the order of allotment as 1979 (instead of 1982), which had been given to the persons who were really junior to the appellants, but had been shown senior earlier, which position came to be altered subsequently. This has been denied. Hence these appeals.

4. The main contention of Shri Bhat, appearing for the Union of India, was that despite restoration of seniority of the appellants they could not have been within the zone of consideration when the selection committee was set in December, 1983, inasmuch as the appellants came to be confirmed with effect from 1-1-1986; and it is a confirmed hand who becomes eligible for consideration. Though there is no dispute that formal confirmation qua the appellants was effective from 1-1-1986, the case of the appellants, as advanced by Shri Ganguli and Shri Vaidyanathan for them, was that under provisions of Mysore Government Servants (Probation) Rules, 1957, a probationer, after satisfactory completion of the period of probation, becomes due for confirmation; and if for unjustifiable reasons formal order of confirmation is delayed, the incumbents cannot be made to suffer. The learned counsel appearing for the State of Karnataka, however, contended that a probationer cannot be treated to be a confirmed employee merely on satisfactory completion of

probation till an order of confirmation is passed. This follows according to learned counsel, from a combined reading of Rules 5 and 9 of the aforesaid Probation Rules, Despite there being force in these contentions of the learned counsel, we entertain no doubt that formal confirmation order cannot be unreasonably delayed, as the delay cause injury in those cases where confirmation is a pre-condition for getting better service condition, as was in this case.

5. The facts relating to the two appellants qua their confirmation is that an order was passed on 14th November, 1977 stating that the Government of Karnataka was pleased to declare that the officers has satisfactorily completed the period of probation on 14-7-1976. Despite this formal confirmation was ordered from 1-1-1986. We do not find any cogent reason for this undue delay inasmuch from the Revised Gradation List of Karnataka Administrative Service Group 'A' (Junior Scale) Officers as on 1-1-1990, a copy of which is at pages 144 to 188 of the paper book in appeal arising out of SLP (C) No. 12129 of 1994, it appears from page 167 that the appellants were confirmed against the vacancies which had occurred on 25-6-1962 and 4-7-1962. There was thus absolutely no cogent reason to confirm them from 1-1-1986 inasmuch as they had satisfactorily completed their probationary period as early as 14-7-1976. It is also worth pointing out that the respondents whose names found place within the zone of consideration when the selection committee was made in December, 1983, had come to be confirmed against vacancies which were occurred on 5-2-1963 and 31-7-1976. The late confirmation of the appellants can, therefore, be taken as illustration of that "glorious uncertainty" relating to confirmation which is known in service career and is amply borne out by confirmation of a judicial officer as a District Judge after he had retired as a Supreme Court Judge.

6. In the aforesaid premises, we have no doubt that the appellants had become eligible for consideration when the selection committee set in December, 1983 and we, therefore, direct the Union of India to give that order of allotment to the appellants which is due to them by treating that their selection for promotion to IAS had taken place, not pursuant to the select list prepared in 1987, but in 1983. The Union of India would pass necessary order in this regard within a period of two months from today.

7. The appeals are allowed accordingly. In the facts and circumstances of the case, we make no order as to costs. Appeal allowed.