

Nepal Singh Tanwar Etc.

Vs

Union of India & Ors.

09.12.1997

(CJI A. M. Ahmadi, Sujata V. Manohar JJ)

ORDER

1. In Civil Appeal Nos. 16769-16771/ 96 (arising out of SLP (C) Nos. 8324-26/96)

2. Special leave granted.

3. Heard counsel for the appellant-Nepal Singh Tanwar. The DPC for the year 1991 92 selected 8 candidates for appointment to the All India Services against six vacancies and two anticipated vacancies. The first six persons were appointed against the six vacancies and the seventh was appointed on 16.2.92 against the vacancy which fell a little later and the appellant was appointed on 12.8.92 against yet another vacancy which became available by then. The grievance is that the appellant could not have been appointed as by then the list was exhausted. However, this grievance does not appear to be correct for the reason that under the relevant Regulation 7(4) the select list was to continue until its review and revision effected under Regulation 5(4) is approved under sub regulation (1) or as the case may be, finally approved under Sub-Regulation (2). In the instant case it appears that DPC meeting was called on 26.3.92 for preparing the next list but that meeting was cancelled. The reasons for cancellation have been set out in paragraph 2 of the written statement of Rajan Kumar Gupta. Four reasons have been assigned for postponement of the meeting, namely, (1) that the State of Haryana felt that the authorised cadre of the IAS was too large and needed to be rationalised because even the authorised cadre of the neighbouring State of Punjab which was bigger in size and population than the State of Haryana had an authorised category which was smaller than that of the State of Haryana; (2) As an austerity measure, the Chief Minister of the State of Haryana had indicated on the floor of the Haryana Legislative Assembly in March, 1992 that the IAS cadre strength would be reduced; (3) the Government of India had imposed a cut of 10 percent on senior level posts of IAS in the Centre and (4) The Triennial Cadre Review of IAS was due in 1992 itself. For these four reasons the meeting of the DPC scheduled on 26.3 92 was postponed. As a result of this postponement the select list continued and when the vacancy arose it was filled in by the appointment of the appellant on 12.8.92.

4. The Tribunal has proceeded on the premise that it was mandatory under the rules to prepare the select list within one year and since in the instant case the DPC had failed to prepare the select list, the select list bearing the name of the appellant had lapsed and it was not open to the authorities to appoint the appellant with effect from 12.8.92. In support of this contention, strong reliance was placed on the decision of this Court in Syed Khalid Rizvi & Ors., etc. etc. Vs. Union of India & Ors., etc. (JT 1992 (Suppl.) SC 169), wherein it was held that it was mandatory to meet and prepare a select list for the succeeding year under Regulation 5 and failure to do so will not permit the authorities to appoint from the earlier list treating it to be in operation. As pointed out earlier,

Regulation 7(4) in terms states that until the new list is prepared the previous list will continue. The Union Public Service Commission in its communication dated 13.9.96 has stated in regard to the appointment of the appellant that "so long as the next Selection Committee do not meet, the previous select list continued to be in force." It would, therefore, appear that under Regulation 7(4) read with Regulation 5 unless the select list is prepared for the succeeding year the previous select list continues. In Rizvi's case it is no doubt true that this Court stated that under Regulation 5 preparation of the select list every year is mandatory'. However, this decision was considered in C.A.Nos.3891-94/94 (H.R.Kasturirangan Vs Union of India) and it was clarified by the order dated 28.7.93 that the observations had to be read in the light of the subsequent observation in that very judgment wherein it was stated that dereliction of the statutory duty must be satisfactorily accounted for by the State Government which meant that if the State Government was in a position to satisfactorily account for its failure to prepare a select list as required by Regulation 5 that would be a valid ground for its failure to prepare the select list for the subsequent years. The Regulation uses the expression 'ordinarily' which, means that ordinarily it is the duty of the State Government to prepare the select list unless there are satisfactory reasons to account for its failure to do so. If it is able to show that it failed to prepare the select list on account of certain reasons and if those reasons are found to be satisfactory by the Court its failure to prepare the select list would be excused. In the instant case, although the meeting was scheduled on 26.3.92 it was postponed and a new select list was not prepared as required by Regulation 5 for four reasons which we have set out hereinbefore. We are of the opinion that these four reasons gave a satisfactory explanation for the failure to prepare the select list required by Regulation 5. We are, therefore, satisfied that the appointment of the appellant on 12.8.92 on the premise that the select list continued to be in operation was not violative of Regulation 5 of the Regulations.

5. The Tribunal did not have the benefit of the clarification contained in the order of 28.7.93 in the case of Kasturirangan (supra). That is the reason why it proceeded on the premise that the preparation of the select list under Regulation 5 was mandatory and on the expiry of one year the previous select list lapsed. It did not consider the impact of Regulation 7(4) because of this Court's decision in Rizvi's case which was construed to mean that Regulation 5 was mandatory and had to be complied with at all costs. It has rightly explained in Kasturirangan's case that the word 'ordinarily' in Regulation 5' means that the State Government must prepare the select list every year and ordinarily that should be the practice but if there are good reasons for not doing so and the Court is satisfied that there were valid reasons for not preparing the select list for the subsequent years, Regulation 7(4) would come into operation and the previous list would continue to remain in force. We, therefore, think that the Tribunal was wrong because it interpreted Rizvi's case to mean that Regulation 5 was absolute and mandatory in terms and failure to prepare the list was fatal. That is not the purport of Regulation 5 nor is it the purport of the decision of this Court in Rizvi's case as explained in Kasturirangan's case. That being so, the Tribunal was in error in quashing the appointment of the appellant.

6. In the result, we allow these appeals, set aside the order of the Tribunal insofar as it relates to the appellant Nepal Singh Tanwar and hold that his appointment on 12.8.92 was perfectly in order. There will be no order as to costs. Civil Appeal Nos. 16772-74 & 16775-77/96 (Arising out of SLP (C) Nos. 15824-26/96 and 15234-36/96)

7. Special leave granted.

8. In the view that we have taken hereinbefore these appeals are also allowed and the decision of the Tribunal is set aside with no order as to costs.

9.I.A.Nos.7-9 do not survive and shall stand disposed of.