

SUPREME COURT OF INDIA

Baidyanath Yadav

Vs.

Aditya Narayan Roy

C.A.No.8847 of 2019

(Mohan M. Shantanagoudar and Ajay Rastogi,JJ.,)

19.11.2019

JUDGMENT

Mohan M. Shantanagoudar,J.,

SLP (Civil)No.12370 of 2018

1. Leave granted.
2. These appeals arise against the final judgment and order of the High Court of Patna dated 06.04.2018 passed in Civil Writ Jurisdiction No. 13773 of 2017 allowing the appeal filed by Respondent No. 1 herein, and quashing the appointment of the Appellant in SLP (C) No. 12370 of 2019 (“the Appellant”) to the Indian

3. The brief facts giving rise to these appeals are as follows:

3.1. The instant appeals pertain to the selection to two vacancies in the Indian Administrative Service (“the IAS”) from amongst non-State Civil Service officers (“non-SCS officers”) for the Selection Year 2014. The Appellant, Baidyanath Yadav, Respondent No. 1, Aditya Narayan Roy and Respondent No. 9 in SLP (C) No. 12370 of 2019, Ram Prakash Sahni (“Respondent No. 9”), belonged to the Bihar Agricultural Service. The Department of Agriculture, along with other departments, was invited to recommend the names of two officials to the State Screening Committee for selection of ten persons to be recommended to the Union Public Service Commission (“the UPSC”) for final selection. The Selection Committee of the Department of Agriculture, headed by the Principal Secretary, in its meeting dated 07.08.2014, considered the names of four officials of the department, being the Appellant, Respondent No. 1, Respondent No. 9, and one Ravindra Kumar Verma, and recommended the names of the Appellant and Respondent No. 9. The recommendations were then placed before the minister concerned, who, vide order dated 11.08.2014, directed that Respondent No. 1’s name may be recommended. As a consequence, the Agricultural Department

forwarded three names to the State Screening Committee headed by the Chief Secretary, Bihar, placing Respondent No. 1's name at Serial No. 3. Before the State Screening Committee, in the list of seventeen recommendations received, the Appellant was mentioned at Serial No. 14, Respondent No. 9 at Serial No. 15, and Respondent No. 1 at Serial No. 16. The State Screening Committee, in its meeting dated 22.08.2014, recommended ten names for consideration to the UPSC, including the names of the Appellant and Respondent No. 9, but not Respondent No. 1. From this list, two officers were selected to the IAS by the UPSC, one of whom was the Appellant, the other being an official from another department. This was notified by the Department of Personnel Training vide notification No. 14015/4/2014-AIS(I)-B dated 22.01.2015.

3.2 Respondent No. 1 approached the Central Administrative Tribunal, Patna Bench seeking the quashing of the Appellant's appointment, and directions for the Department of Agriculture to recommend Respondent No. 1's name to the State Screening Committee, for the State Screening Committee to recommend his name to the UPSC, for the UPSC to conduct a fresh assessment for his appointment, and for the order of his appointment to be issued in case of favourable recommendations.

3.3 The Tribunal dismissed Respondent No. 1's application, noting that the departmental minister's order dated 11.08.2014 did not contain any finding to the effect that Respondent No. 1 was the most meritorious candidate, or that gross injustice had occurred due to the non-inclusion of his name in the initial recommendation made by the Department of Agriculture. Thus, there was no illegality or mala fides in Respondent No. 1's name occurring at Serial No. 3 in the list forwarded to the State Screening Committee, contrary to his argument that his name should have occurred at the top since he was the most meritorious. The Tribunal further reasoned that even if Respondent No. 1's name had been at the top in this list, in the list prepared by the State Screening Committee he would still have figured only at Serial No. 14 instead of Serial No. 16, which was irrelevant, since the only pertinent aspect was that his name was considered along with other officials. The Tribunal dismissed Respondent No. 1's application noting that his case was based on conjectures about being selected if his name had been recommended to the UPSC committee, and that directing the State Screening Committee to recommend his name to the UPSC would amount to sitting in judgment over the evaluation of merit by the authorities.

3.4 Respondent No. 1 filed a writ application seeking the setting aside of the above order of the Tribunal, which was allowed by the High Court. The Court reasoned that the State Screening Committee had failed to record and disclose reasons for its decision, which it was bound to do, in light of its absolute power over the trajectory of the career of the aspirants to the IAS, and the mere presence of senior officers on the committee would not by itself guarantee objectivity and fairness in decision-making. Moreover, the Court held that since Respondent No. 1's name was the only

one recommended to the UPSC the previous year, which recommendation had remained in limbo, his name should have figured as the first candidate in the list of recommendations made by the Department of Agriculture. The Court noted that upon examining the manner of consideration of names, it was not satisfied of objectivity, fairness and the lack of consideration of extraneous reasons in the selection process, with efforts to keep Respondent No. 1 out of the process apparent at every stage.

3.5 The High Court set aside the order passed by the Tribunal, directing that the State Screening Committee recommend Respondent No. 1's name to the UPSC within two weeks, and that the UPSC thereafter consider his case objectively. Such consideration would also determine the fate of the Appellant, whose inclusion into the IAS cadre would not create any right in his favour until the decision of the UPSC on Respondent No. 1's name. For the purpose of the consideration of Respondent No. 1's name, the post would be considered to be vacant for the year 2014. After the State Screening Committee made its recommendation, the UPSC would be expected to hold an interview and evaluation of Respondent No. 1 preferably within a period of six weeks. This led the Appellant and the State of Bihar to approach this Court by way of the instant appeals.

4. Heard the Counsel for either side and perused the record.

4.1 Learned Senior Counsel for the Appellant, Mr. Huzefa Ahmadi, argued that the High Court erred in giving weight to the serial order in which the names of the officers were placed before the State Screening Committee; non-disclosure of reasons by a selection committee does not vitiate their decision, unless required by rules or administrative instructions (relying on *National Institute of Mental Health & Neuro Sciences v. Dr. K. Kalyana Raman*¹, and *Union Public Service Commission v. Arun Kumar Sharma*², which was not the case here; there was no direction by the departmental minister to keep Respondent No. 1's name at the top; and the direction for reconsideration of his name alone, rather than of all the recommended candidates, was beyond the jurisdiction of the High Court.

4.2 Learned Counsel for the State of Bihar, Mr. P. S. Patwalia, took us through the Indian Administrative Service (Appointment by Selection) Regulations, 1997 ("the 1997 Regulations"), and submitted that the departmental Selection Committee and the State Screening Committee had undertaken a fair and objective assessment of the service records under the Regulations. He also pointed out that in the absence of any allegation of mala fides or bias, it could not be held that there was any undue influence on the committee members. He ended by referring to the decision of this Court in *Union Public Service Commission v. M. Sathiya Priya*³, emphasising that the High Court could not have reassessed the findings of the committees on merit.

4.3 It was submitted by learned Counsel for Respondent No. 1, Mr. R. Venkataramani, submitted that as per the 1997 Regulations, the officers were to be

recommended by the State Government based on whether they possessed outstanding merit and ability, which was to be assessed based on objectively determinable criteria such as the Annual Confidential Records (“ACRs”) of the officers. Arguing that since all of Respondent No. 1’s ACRs reflected better grading than the Appellant’s, having the grade “Excellent” with respect to every aspect as opposed to P’s “Very Goods”, his non-selection reflected that the selection committees had travelled beyond such ACRs in recommending the Appellant’s name, and had thus acted arbitrarily. He also drew our attention to the minutes of the meeting of the State Screening Committee, which, while considering the recommended names, had noted that Respondent No. 1’s name had not been recommended by the departmental Selection Committee and would hence not be considered. It was argued that this had unfairly prejudiced Respondent No. 1’s prospects, since the addition of his name to the list by the Minister was completely valid, in light of the letter dated 22.05.2014 of the General Administration Department (“GAD”), which specified that the recommendations of the department had to be approved by the concerned minister.

5. At the heart of the dispute before us for consideration lies the scope of judicial review of the process governing the selection of non- SCS officers to the IAS, for which it is important to take stock of the position governing judicial review of selections made by a duly constituted expert body.

5.1 It is by now well-settled that the scope of such review is limited, and the Tribunal or Court cannot re-assess the merit of the individual candidates. As observed by a 2-Judge Bench of this Court in *M.V. Thimmaiah v. UPSC*,:

“21. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion...”

5.2 This view has subsequently been affirmed by this Court in various decisions, including the recent decision of a 2-Judge Bench of this Court in *M. Sathiya Priya* (supra), of which one of us was a member. In this decision, this Court, while setting aside the re-assessment undertaken by the Tribunal and the High Court of the recommendations made by the Selection Committee to the UPSC for appointments to be made to the Indian Police Service by promotion, observed as follows:

“17. The Selection Committee consists of experts in the field. It is presided over by the Chairman or a Member of UPSC and is duly represented by the officers of the Central Government and the State Government who have expertise in the matter. In

our considered opinion, when a High-Level Committee or an expert body has considered the merit of each of the candidates, assessed the grading and considered their cases for promotion, it is not open to CAT and the High Court to sit over the assessment made by the Selection Committee as an appellate authority. The question as to how the categories are assessed in light of the relevant records and as to what norms apply in making the assessment, is exclusively to be determined by the Selection Committee. Since the jurisdiction to make selection as per law is vested in the Selection Committee and as the Selection Committee members have got expertise in the matter, it is not open for the courts generally to interfere in such matters except in cases where the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness. It is not the function of the court to hear the matters before it treating them as appeals over the decisions of the Selection Committee and to scrutinise the relative merit of the candidates. The question as to whether a candidate is fit for a particular post or not has to be decided by the duly constituted expert body i.e. the Selection Committee. The courts have very limited scope of judicial review in such matters.”

(emphasis added)

5.3 It can be concluded from the above that it was not for the High Court to address questions of comparative merit of the candidates, and neither is it appropriate for us to do the same. All we may look into is whether there was any serious violation of statutory rules, or any bias, mala fides or arbitrariness in the entire selection process. To address this question, it is essential to revisit the process prescribed for the selection of non-SCS officers to the IAS.

6. Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954 governs the selection of officers to the IAS by way of promotion or selection. While Rule 8(1) deals with promotion from the State Civil Services, Rule 8(2) deals with selection from amongst officers of outstanding merit and ability serving in connection with the affairs of the State, who are not members of the State Civil Service but hold a gazetted post in a substantive capacity, i.e. non-SCS officers.

6.1 The 1997 Regulations were framed in pursuance of Rule 8(2). As per Regulation 4, the State Government is required to recommend the names of persons as described in Rule 8(2), for consideration of the Committee constituted under Regulation 3 of the IAS (Appointment by Promotion) Regulations, 1955 (“the 1955 Regulations”), comprising members of the UPSC (“the UPSC Committee”). Such persons must also have attained the age of 54 years on the first day of January of the year in which their case is being considered, by which time they must have completed a minimum of eight years of continuous service under the State Government in any post which has been declared equivalent to the post of Deputy Collector in the State Civil Service. Such persons must also not have been selected in an earlier list for appointment to the IAS and subsequently not been appointed by the Central Government in the exercise of its powers under Regulation 9. The number of persons recommended by the State Government may not exceed five

times the number of vacancies proposed to be filled during the year.

6.2 Regulation 5 provides that the UPSC Committee, upon consideration of the names proposed by the State Government, may recommend the names of as many persons as there are vacancies. The suitability of a person for appointment to the IAS cadre is to be determined by scrutiny of service records as well as through a personal interview. After consultation with the State Government, a Select List is to be prepared with the names so selected, and appointments are to be made in the manner prescribed thereafter.

6.3 After the above regulations came into force, guidelines were formulated in 2003 for the selection of persons under Regulation 5, which were circulated vide memorandum No. 4/14/2003-AIS. The guidelines pertain to the assessment of candidates based on their service records and personal interview. In Paragraph B.1 of the guidelines, it is outlined that out of a total of 100 marks to be awarded, equal weightage has to be accorded to the service record, with particular reference to ACRs for the preceding five years, and to the interview. Furthermore, the curriculum vitae of the candidate may be kept in consideration while assessing the overall personality of the candidate during the interview.

6.4 Paragraph B.2 states that on the basis of the assessment of the individual ACRs, the UPSC Committee may assign 10 marks for the “Outstanding” grade, 8 marks for “Very Good”, 6 marks for “Good”, and 4 for “Average”, in the individual years of assessment. While assigning marks to the ACRs of the eligible officers, the broad guidelines for the 1955 Regulations may be followed. It is relevant to note that as per the 1955 Regulations, the Committee must also satisfy itself as to the integrity of the candidates based on the remarks on their confidential reports.

6.5 Paragraph B.3 states that the minimum score necessary for a candidate to be selected is 50% marks in each component. Paragraph B.4 states that a merit list of selected candidates is to be prepared, in the sequence of the scores obtained, further providing that in case of a tie between officers, the older officer is to be placed above in the list. Paragraph C lays down the topics which may be covered by the Committee during the personal interview.

7. In accordance with the above regulations, the Principal Secretary, GAD, Government of Bihar had invited submissions of the name of the most suitable person from each department for the recommendation of non-SCS officers for selection to the IAS, vide letter dated 22.05.2014.

The important conditions required to be fulfilled for a valid recommendation to be made, as laid down in paragraph 3 of the letter, are reproduced below verbatim:

“(b) The recommended officer should necessarily possess excellent qualification as per law and any prime-facie case should not be proved against them.

(c) While clearly entering the service-history of the officers, for it, please attach separate sheet.

(d) While preparing the particulars of their annual Confidential remarks with Reporting, Monitoring and Acceptance, Authority Grading, it be attached on separate sheet. As well, updated full Character Encyclopedia be attached.

(e) A certificate of non-pendency of any matter against the officers before the Departmental charges, Cabinet (Monitoring) Department and Lokayukt Office, be sent, so that, acceptance of the certificate of truthfulness would be appropriated totally.

(f) previous posting particulars of the officers (Including pay-scale) be included.

(h) Original copy of the proceedings of Selection Committee, attested copy with the nomination letter should be enclosed necessarily. On the recommendation of Selection Committee, approval of the Departmental Minister be received necessarily and this fact be clarified in the letter that on the recommendation of selection committee, the approval of Departmental Minister has been received. In case, its clear reference is not mentioned, the recommendation shall not be considerable.”

8. Vide letter dated 23.07.2014, the names of two suitable persons per department were allowed to be submitted. In this scenario, the departmental Selection Committee recommended the names of the Appellant and Respondent No. 9. The recommendations were placed before the minister concerned, who directed that Respondent No. 1's name may be recommended, noting that he had been recommended the previous year, and there was no bar on recommending such a person again if he fulfilled all requisite criteria. Thereafter, the Department of Agriculture forwarded three names to the State Screening Committee, with Respondent No. 1's name at Serial No. 3. As mentioned supra, out of a total of seventeen recommendations received from various departments, the State Screening Committee recommended ten names for consideration to the UPSC, which included the Appellant but not Respondent No. 1. From this list, two officers were selected to the IAS by the UPSC, one of whom was the Appellant.

9. Respondent No. 1's case is premised on the argument that placing his name at the bottom of the list of recommendations made by the departmental Selection Committee even after he was recommended by the concerned minister, and subsequently at Serial No. 16 instead of No. 14 before the State Screening Committee, prejudiced the selection process against him. However, as evident from the regulations and guidelines governing the process of selection of non-SCS officers to the IAS, as well as the letter dated 22.05.2014 calling for recommendations issued by the GAD, there was no relevance to the serial order in which the names of candidates were recommended by either the Department of Agriculture or the State Screening Committee. The order of placement in the list only

acquires relevance at the stage of preparation of the Select List by the UPSC Committee under Regulation 5 read with the relevant guidelines. Thus, there is merit in the submission made on behalf of the Appellant and the State Government that the order of placement of the candidates' names in the lists prepared by the departmental and State committees wrongly weighed with the High Court.

9.1 Additionally, as pointed out by learned Senior Counsel for Respondent No. 1, it appears from the records of the meetings of the State Screening Committee that it did not consider Respondent No. 1's name while assessing the merit of the recommended candidates, on the ground that his name had not been recommended by the departmental Selection Committee. However, the 1997 Regulations read with the relevant guidelines indicate that no fault can be found with this approach. Though the letter of the GAD dated 22.05.2014 stipulated that the departmental minister's approval was necessary for any recommendation by the Selection Committee to be valid, this did not confer any power upon him to recommend a name of his own accord. Thus, the entire procedure of Respondent No. 1's name being added to the list of two officials already recommended by the departmental committee, more so when only two names had been invited by the GAD, must be held to be irregular and in violation of the applicable rules, regulations and guidelines. Moreover, in such a scenario, it cannot be said that there was any malice or bias leading to the non-consideration of Respondent No. 1's name by the State Screening Committee.

9.2 Moreover, we find ourselves in disagreement with the conclusion of the High Court that the decision of the State Screening Committee was arbitrary for non-disclosure of reasons. A catena of decisions of this Court has established that even the principles of natural justice do not require a duly constituted selection committee to disclose the reasons for its decision, as long as no rule or regulation obliges it to do so. In this regard, we may refer to the decision of this Court in *National Institute of Mental Health (supra)*, which has also been subsequently affirmed in several cases, including *Union Public Service Commission v. Arun Kumar Sharma (supra)*. In *National Institute of Mental Health (supra)*, the Court, following the decision in *R.S. Dass v. Union of India*⁵, observed as follows:

“7. ... In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative... Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in *R.S. Dass v. Union of India (Supra) in which Capoor Case [(1973) 2 SCC 836 : 1974 SCC (L&S) 5 : (1974) 1 SCR 797]* was also distinguished.

8. ... we may state at the outset that giving of reasons for decision is different from,

and in principle distinct from, the requirements of procedural fairness. The procedural fairness is the main requirement in the administrative action. The 'fairness' or 'fair procedure' in the administrative action ought to be observed. The Selection Committee cannot be an exception to this principle. It must take a decision reasonably without being guided by extraneous or irrelevant consideration..."

9.3 As there is no such requirement mandating the disclosure of reasons in the relevant rules, regulations and guidelines, there is no doubt in our minds that the procedure adopted by the State Screening Committee cannot be faulted.

10. Having thus found that the State Screening Committee was correct in considering only the two names recommended by the departmental Selection Committee, we now turn our attention to the crucial question of whether Respondent No. 1's name was wrongly excluded by the departmental Selection Committee itself, on account of any bias, malice or arbitrariness.

10.1 In this respect, the High Court observed that though Respondent No. 1 had been recommended as the only candidate from the Department of Agriculture in the previous year, 2013, such recommendation was not acted upon since the meeting for the year in question could not be held in time by the UPSC. It was further observed that the notings revealed that the primary reason why Respondent No. 1's name was not recommended in 2014 was because his name had been recommended earlier. The Court noted that there was no clarity on how the earlier recommendation came in the way of his name being recommended after a fresh exercise was initiated in 2014, which lead the Court to conclude that the non-recommendation of his name at the first instance appeared to be based on extraneous considerations.

10.2 We find ourselves unable to agree with the above conclusion of the High Court. As per the letter dated 30.05.2013 from the GAD to the Department of Agriculture, the previous year's recommendation of Respondent No. 1's name by the latter department had in fact been returned by the GAD for not being in consonance with the expected norms of recommendation. Thus, notwithstanding the fact that it is unclear which notings the High Court relied on to conclude that Respondent No. 1 had not been recommended because of his earlier recommendation, it is evident that the High Court erred in observing that Respondent No. 1's recommendation from the previous year had simply remained in limbo, and that his non-recommendation the next year was therefore suspect. Thus, we are of the view that there is no hint of arbitrariness, mala fide or bias in the recommendation of two other officers, including the Appellant, by the Department of Agriculture in 2014.

11. In any case, we find that the direction issued by the High Court directing the State Screening Committee to recommend Respondent No. 1's name to the UPSC was

completely without jurisdiction. Upon reaching a finding of arbitrariness in the selection process, the Court could at the most have issued a direction to the State Screening Committee to reassess the names of all candidates by giving due consideration to all relevant documents. As already observed above, it was not for the Court to sit in judgment over the merit of the candidates and substitute its reasoning for that of the Screening Committee. Be that as it may, in light of the above discussion, we conclude that there is no case to direct the reconsideration of the seventeen candidates before the Screening Committee, or to interfere with the appointments already made for the Selection Year 2014.

12. The decision of the High Court is therefore set aside, and the instant appeals are allowed.

Judgment Referred.

¹(1992 Supp. 2 SCC 0481

²(2015) 12 SCC 0600

³(2018) 15 SCC 0796

⁴(2008) 2 SCC 0119

⁵(1986) Supp SCC 0617