

I. L. R. Punjab and Haryana

(1967)1

## LETTERS PATENT APPEAL

*Before S. S. Dulat and S. K. Kapur, JJ.*SHAMBHU DAYAL GUPTA,—*Appellant.**versus*THE UNION OF INDIA AND ANOTHER,—*Respondents*

L.P.A. No. 44-D of 1964

March 2, 1966

*Indian Administrative Service (Appointment by Promotion) Regulations (1955)—Regulations 5 and 7—Select list—Name of an officer included therein in supersession of certain other officers senior to him in the State Civil Service—Officers senior to him in the State Civil Service brought on the Select list prepared in the next year—Whether can be made senior to him—Name once brought on the Select list prepared in the next year—Whether cannot be removed except in accordance with the proviso to regulation 7*

*Held*, that sub-regulations (3) and (4) of regulation 5 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, clearly provide that though the Select list prepared for one year would, subject to special review as provided in the proviso to regulation 7, be the Select List for that year, but in the following year and in the subsequent years fresh Select Lists would have to be prepared and the names of the officers arranged in order of seniority in the State Civil Service. Even if the appellant had superseded certain officers senior to him in the State Civil Service at the time of preparation of the Select List for the year 1959, he will have to be placed below such senior officers in the list for subsequent years when they are included in the Select List. There is no finality attached to the supersession once achieved by an officer in the preparation of the Select List for a particular year. The mandate of sub-regulation (3) of regulation 5 is that when officers senior to the officers already existing on the Select List are also brought on the Select List, the said list is to be arranged in order of seniority in the State Civil Service.

*Held*, that if on revision or review as provided in Regulation 5(4), the number of officers on the Select List exceeds the required number, the names of officers below that number will have to be deleted from the list for that year and may be brought back as soon as the exigencies of the situation so permit. It is not correct to suggest that the name of an officer once borne on the Select

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List can never be removed except in the event of a grave lapse on the part of the member in the conduct or performance of duties, as expressed in the proviso to regulation 7. The said proviso deals with only "a special review of the Select List . . . . . ." and when considered in the light of the requirements of regulation 5 must mean a special review other than the review and revision required to be made every year under sub-regulation (4) of regulation 5.

*Letters Patent Appeal under Clause 10 of the Letters Patent from the judgment, dated 8th April, 1964, of the Hon'ble Mr. Justice Shamsher Bahadur, in Civil Writ No. 380-D of 1962.*

S. L. SETHI, ADVOCATE, for the Appellant.

B. B. KISHORE, ADVOCATE, for the Respondents.

#### ORDER

KAPUR, J.—This Letters Patent appeal against the judgment of Shamsher Bahadur, J., dated 8th April, 1964, arises in the following circumstances. The appellant was holding the post of Sub-Divisional Officer, Jaipur, on 10th January, 1959. A Committee constituted under regulation 3 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereafter referred to as the Regulations), in its meeting held on 13th, 14th and 15th January, 1959, recommended the names of seventeen officers of the State Civil Service for inclusion in the Select List, as contemplated by regulation 5 of the Regulations. The name of the appellant was, according to him, placed at No. 9 in the said list. The respondents, on the other hand, maintain in the reply affidavit that the appellant's name was the thirteenth in the said list; but nothing really turns on that controversy. The Select List as proposed by the Committee was approved by the Union Public Service Commission under regulation 7 of the Regulations on 27th February, 1959, and the said List formed the "Select List" of the members of the State Civil Service for appointment to the Indian Administrative Service. As a consequence thereof, the appellant was appointed as an officiating Collector in October, 1959. In the following year, another list was prepared by the said Committee and four officers, namely, Messrs Champalal Kochar, Mathura Nath Pancholy, Hanuman Sahai Rawat and Randhir Singh were placed above the appellant. It is not disputed that the said four officers were senior to the appellant in the State Civil Service. They had, however, not been brought on the Select

List in the year 1959. In the second list, the name of the appellant was brought below the names of the said four officers, apparently on the ground that the four new officers, who had been included, were senior to the appellant in the State Civil Service. The Select List of the year 1960, and in which the appellant's name stood at No. 13, contained names of nineteen officers. This Select List was approved by the Union Public Service Commission on 21st June, 1960. As a result of finalisation of the Select List for the year 1960, the appellant had to be reverted on 27th June, 1960, from the post of officiating Collector and Messrs Kochar and Pancholy, who had been placed above the appellant, were appointed to the cadre posts of Collector. The appellant's representations proved abortive and on 15th January, 1962, the appellant's name was omitted from the Select List altogether. As a matter of fact, in the List prepared by the Selection Committee on 15th January, 1962, only five officers were included, namely, Messrs Randhir Singh Chaudhary, Nand Lal Mathur I, Tej Narain Kak, Ratan Narain Shivpuri and Vijai Singh, whose respective seniorities in the State List were at serial Nos. 54, 55, 56, 58 and 59. All these five officers were senior to the appellant; whose number in the seniority list was 74. It was mentioned that the said five officers had superseded about twenty-five officers and the reasons for supersession were specified. The name of the appellant was, however, not mentioned as one of the officers superseded, obviously because the said five officers were senior to the appellant in the seniority list, as mentioned hereinabove.

Having briefly recited the facts relevant to the controversy, it is necessary to read the provisions of the said Regulations, particularly because the grievance of the appellant before us has been based not on violation of Article 311 of the Constitution, but on the violation of the said Regulations. Regulation 3 prescribes the constitution of a Committee for selecting the officers to be placed on the Select List and regulation 4 lays down the eligibility for promotion. Regulation 5, which has been most seriously pressed in aid on behalf of the appellant, is as under :—

- “5. (1) The Committee shall prepare a list of such members of the State Civil Service as satisfy the condition specified in regulation 4 and as are held by the Committee to be suitable for promotion to the Service.
- (2) The selection for inclusion in such list shall be based on merit and suitability in all respects with the regard to seniority.

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- (3) The names of the officers included in the list shall be arranged in order of seniority in the State Civil Service:

Provided that any junior officer who in the opinion of the Committee is of exceptional merit and suitability may be assigned a place in the list higher than that of officers senior to him.

- (4) The list so prepared shall be reviewed and revised every year.
- (5) If in the process of selection, review or revision it is proposed to supersede any member of the State Civil Service, the Committee shall record its reasons for the proposed supersession."

Regulation 6 requires the Select List prepared by the Committee to be forwarded to the Union Public Service Commission along with the records of the members of the State Civil Service included in the Select List as well as of those, who are proposed to be superseded. The reasons recorded by the Committee for the proposed supersession of any member of the State Civil Service have also to be forwarded to the Union Public Service Commission. Regulation 7 deals with the approval by the Commission and provides that "the list as finally approved by the Commission shall form the Select List of the members of the State Civil Service". Sub-regulation (4) of regulation 7, which, according to the appellant provides the only mode and reason for removal of an officer from the Select List, is as under:—

"The Select List shall ordinarily be in force until it is reviewed or revised in accordance with sub-regulation (4) of regulation 5:

Provided that in the event of a grave lapse in the conduct or performance of duties on the part of any member of the State Civil Service included in the Select List, a special review of the Select List may be made at any time at the instance of the State Government and the Commissioner may, if it thinks fit, remove the name of such member of the State Civil Service from the Select List."

Two grievances have been made by the appellant before us : (1) the appellant having already superseded the four officers, namely, Messrs Champalal Kochar, Mathura Nath Pancholy, Hanuman Sahai Rawat and Randhir Singh in the Select List prepared in the year

1959, could not be brought to the thirteenth position, that is below the position allotted to the said four officers in the Select List in the year 1960, and (2) the proviso to regulation 7 is exhaustive of the reasons and the manner for and in which an officer on the Select List can be removed, with the result that in the absence of any allegation of grave lapse in the conduct or performance of duties by the appellant, his name could not be taken out of the Select List, as was done in the year 1962.

In elaboration of the first contention, it has been argued on behalf of the appellant that in view of the mandatory provisions of regulation 5 of the said Regulations once a Select List is prepared and the name of an officer included therein in supersession of certain other officers senior to him in the State Civil Service, that supersession becomes final so far as the Select List is concerned and in no subsequent years can the superseded officers' names be placed above the names of the officers existing on the Select List in exercise of power under regulation 5(4). Reliance is placed on a copy of the letter, dated 5th October, 1955 from the Ministry of Home Affairs to the Chief Secretaries to the Governments of Parts 'A' and 'B' States (except Jammu and Kashmir and Madhya Pradesh) which is annexure 'D' to the writ petition as supporting the interpretation of the said regulations canvassed before us on behalf of the appellant. I am afraid, I cannot agree with the argument of the appellant. Reading of sub-regulations (3) and (4) of regulation 5 leaves no room for doubt that though the Select List prepared for the year 1959 would, subject to special review as provided in the proviso to regulation 7, be the Select List for that year, but in the year 1960 and in the subsequent years fresh Select Lists would have to be prepared and the names of the officers arranged in order of seniority in the State Civil Service. That seems to flow very clearly from the requirement of sub-regulation (3) of regulation 5. Sub-regulation (4) of regulation 5 in terms requires a fresh list to be prepared every year. Seen in the light of these provisions, it must follow that even if the appellant had superseded certain officers, senior to him in the State Civil Service at the time of preparation of the Select List for the year 1959, he will have to be placed below such senior officers in the list for subsequent years when they are included in the Select List. There is no finality attached to the supersession once achieved by an officer in preparation of the Select List for a particular year. The mandate of sub-regulation (3) of regulation 5 is that when officers senior to the officers already existing on the Select List are also brought on the Select List, the said

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list is to be arranged in order of seniority in the State Civil Service. So far as the letter, dated 5th October, 1955, referred to above is concerned, it appears that the same deals with promotion to the higher selection grade or post and, in no case, can it enter into consideration when construing the statutory regulations, which we have been called upon to construe. Sub-regulation (5) of regulation 5 applies only when it is proposed to supersede any member of the State Civil Service, which is not the case here.

There remains the second contention of the appellant. It is not disputed that no lapse in the conduct or performance of the duties on the part of the appellant has ever been alleged by the respondents. I have already said that the requirements of regulation 5 are (1) to review and revise the Select List every year, and (2) if as a result of review or revision of the Select List officers senior in the State Civil Service to the officers existing on the Select List are also brought on the said list, to arrange the same in order of seniority in the State Civil Service. It also appears that if on such revision or review, the number of officers on the said list exceeds the required number, the names of officers below that number will have to be deleted from the list for that year and may be brought back as soon as the exigencies of the situation so permit. It is not correct to suggest, as has been done on behalf of the appellant, that the name of an officer once borne on the Select List can never be removed except in the event of a grave lapse on the part of the member in the conduct or performance of duties, as expressed in the proviso to regulation 7. The said proviso deals with only "a special review of the Select List....." and when considered in the light of the requirements of regulation 5 must mean a special review other than the review and revision required to be made every year under sub-regulation (4) of regulation 5. From the facts disclosed in the present case, it does not appear that any special review was made in this case. All that appears to have happened is that by reason of five officers senior to the appellant being brought on the Select List prepared in January, 1962, the name of the appellant has been excluded to confine the list to the requisite number.

Perusal of paragraphs 18-19 of the written statement filed by Shri U. S. Menon, Deputy Secretary to the Government of Rajasthan, sheds considerable light on the circumstances in which the name of the appellant was excluded from the Select List prepared in the

year 1962. It is said there, "As regards the exclusion of his name from the Select List this year, it may be stated that Select Committee which met on 15th January, 1962, recommended only six officers for inclusion in the promotion quota which may occur and also for officiating appointment until the matter is examined by the next Selection Committee (A copy of the Selection Committee's minutes, dated 15th January, 1962 appended at Annexure 'C'). Among the six officers included in the Select List, Shri Vijai Singh, who was at serial No. 11 in the Select List prepared in 1960, is the juniormost in the order of seniority in the State Administrative Service. Thus, Shri S. D. Gupta (S. No. 13 in the 1959 Select List) and other officers of the R.A.S., who are junior to Shri Vijai Singh have not been considered by the Selection Committee which met in January, 1962. Shri S. D. Gupta has not, therefore, been superseded by any officer junior to him in the R.A.S. This Select List was approved by the Union Public Service Commission on 3rd August, 1962 .....". My conclusion, therefore, is that since name of the appellant was not excluded as a result of special review of the Select List under the proviso to regulation 7, the exclusion was a natural consequence of review and revision of the Select List in the year 1962 prepared under sub-regulation (4) of regulation 5. There does not appear, therefore, to be any merit in this contention of the appellant as well.

In the result, this appeal fails and is dismissed. Having regard, however, to the circumstances of the case, the parties are left to bear their own costs.

S. S. DULAT, J.—I agree.

B. R. T.

CRIMINAL REVISION

*Before S. K. Kapur, J.*

P. C. GULATI,—*Petitioner*

*versus*

LAJYA RAM KAPUR AND OTHERS,—*Respondents*

Criminal Revision No. 347-D of 1965

April 20, 1966

*Code of Criminal Procedure (Act V of 1898)—Ss. 252 to 256, 271 and 526—  
Case instituted on private complaint transferred from the Court of magistrate*