

Central Administrative Tribunal
Principal Bench

O.A. No. 1573/99

Decided on 24.11.99

Shri Ajay Kumar Singh ... Applicant

(By Advocate: Shri M.C. Dhingra)
with S/Shri Rajinder Pandita & V.K. Malhotra)
Versus

U.O.I. & Ors. ... Respondents

(By Advocate: Shri C.S. Vaidyanathan, Ld. ASG with
Shri V.S.R. Krishna
Shri Vijay Pandita)

CORAM

Hon'ble Mr. S.R. Adige, Vice Charman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying benches of the Tribunal or not? NO


(S.R. ADIGE)
VICE CHAIRMAN (A)

Central Administrative Tribunal
Principal Bench

O.A. No. 1573 of 1999

New Delhi, dated this 24th NOVEMBER 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Shri Ajay Kumar Singh, IPS,
S/o Shri M.B. Singh,
Director General, Home Guards & Civil Defence,
R/o 8, A.R. Complex,
Sector XIII,
R.K. Puram,
New Delhi-110021. ... Applicant

(By Advocate: Shri M.C. Dhingra with
S/Shri Rajinder Pandita & V.K. Malhotra)

Versus

1. Union of India through
the Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Lt. Governor, Delhi
Raj Niwas, Delhi.
3. Govt. of NCT of Delhi
through Chief Secretary,
5, Sham Nath Marg, Delhi.
4. Govt. of NCT of Delhi
through Principal Secretary (Home),
5. Shri Ajay Raj Sharma,
Commissioner of Police,
Police Headquarters,
I.P. Estate, New Delhi.
6. Ministry of Personnel & Public
Grievances and Pensions,
through its Secretary,
North Block,
New Delhi. ... Respondents

(By Advocates: Shri C.S. Vaidyanathan, ^{former} Ld. ASG with
Shri V.S.R. Krishna
Shri Vijay Pandita for R-5

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns Respondents' order dated

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29.6.99 and 30.6.99 (Annexure P-1 Colly.) and seeks a direction to the official Respondents to remove Respondent No.5 from the post of Commissioner of Police, Delhi and to post him (applicant) as Commissioner of Police.

2. Applicant's case is that he is a member of the IPS and belongs to the Joint Cadre of Arunachal Pradesh Goa Mizoram Union Territories (AGMU) having been appointed in 1964. He claims that due to his hard work and devotion to duty he earned various promotions from time to time. He was also posted as Inspector General in A & N Islands during 1985-87. On 1.4.97 while serving as Senior Additional Commissioner of Police (AP&T) he was transferred and posted as Commandant General, Home Guard and Director, Civil Defence, New Delhi which is an ex-cadre post equivalent to the post of Commissioner of Police, Delhi and Shri T.R. Kakkar, IPS (AGMU, 1964) who was holding the post of Commandant General, Home Guards and Director, Civil Defence was transferred and posted as Commissioner of Police, Delhi a cadre post, vide order dated 1.4.97 and continued on that post till April/May, 1998 i.e. for about 13 months. Applicant states that by order dated 27.2.98 while serving as Commandant General, Home Guards & Director Civil Defence, Govt. of NCT of Delhi he was given an in-situ promotion to the grade of Director General of Police

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(Rs.24,050-26,000) with immediate effect. Applicant states that under the IPS (Fixation of Strength) Regulations, 1955 Delhi Administration has been provided with one cadre post of Commissioner of Police, but the Central Government/State Governments while exercising its powers can create ex-cadre posts under Rule 4 of the Cadre Rules. In exercise of such powers under the Cadre Rules, the Government created an ex-cadre post equivalent to the post of Commissioner of Police and the said ex-cadre post was assigned/earmarked as Commandant General Home Guards and Director, Civil Defence. Thus applicant's posting as Commandant General Home Guards and Director, Civil Defence was on an ex-cadre post equivalent to the post of Commissioner of Police, Delhi.

3. It is further stated that till the time Shri Kakkar held the post of Commissioner of Police, Delhi i.e. till April/May, 1998 the retirement age was 58 years and although applicant was entitled and eligible to be posted as Commissioner of Police being the senior most officer in the cadre and working on the ex-cadre post equivalent to the Commissioner of Police, he was ignored on the specious ground that he was left with barely three months to retire at that point of time. While ignoring his right for being posted as Commissioner of Police, Shri V.N. Singh

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(AGMU. 1966) who was admittedly junior to applicant was promoted and posted as Commissioner of Police in April/May, 1998. Applicant asserts that the retirement age having been raised from 58 years after Shri V.N. Singh came to be posted as Commissioner of Police, he could not agitate and vindicate his grievances, but now that the retirement age is 60 years, he still has service till July, 2000.

4. It is further contended that Shri V.N.Singh himself was relieved from the post of Commissioner of Police after having put in 13 months, vide order dated 30.6.99 and the post of Commissioner of Police, Delhi thus having become vacant and available, it should have been offered to him as he was the senior most IPS officer in the AGMU, 1964 cadre and was holding an ex-cadre post equivalent to that of Commissioner of Police, Delhi and was fit and available to occupy that post, but the official Respondents have brought Respondent No.5 to occupy the aforesaid post. He contends that Respondent No.5 was neither entitled nor eligible for being posted as Commissioner of Police, Delhi, he being a 1966 batch officer much junior to applicant, and is merely of Additional Director General of Police rank and belongs to U.P. Cadre. Applicant emphasises that only IPS officers in the rank of Director General of Police can occupy the post of Commissioner of Police and further more no officer outside the AGMU cadre

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could be posted as Commissioner of Police as mandated in Rule 8 and Rule 9 of IPS (Cadre) Rules, 1954.

5. It is contended that under Rule 8(1) it is clear and mandatory that a cadre post is to be filled by a cadre officer alone. No doubt Rule 9 provides exceptions to this Rule if no suitable cadre officer is available to occupy the cadre post, but the proviso to Rule 9(1) further mandates that when a suitable cadre officer becomes available, the person who is not a cadre officer, shall be replaced by a cadre officer. Thus it is argued that any officer from outside the cadre can be imported into the cadre only if no cadre officer is suitable and found fit to occupy the post and in that eventuality the proper procedure to induct the outsider has to be mandatorily followed. It is asserted that in the instant case no such exercise was done and applicant who is holding an ex-cadre post has not been declared unsuitable to hold the post of Commissioner of Police, Delhi. Thus the appointment of Respondent No.5 as Commissioner of Police, Delhi on so called "inter cadre deputation basis" was not only in violation of Rule 8 but also in violation of Rule 9 of the cadre rules in as much as applicant being an AGMU cadre was and is available to be posted as Commissioner of Police, Delhi and there was no reason what-so-ever to bring Respondent No.5 on deputation.

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6. It is further emphasised that official Respondents have, with a view to escape the liability of Rule 9(3) I.P.S. (Cadre) Rules, deliberately not shown the period for which the Respondent No.5 has been posted on the so called "inter cadre deputation basis" as Commissioner of Police, Delhi, because Rule 9(3) mandates that where a cadre post is likely to be filled by a person who is not a cadre officer for a period exceeding six months, the Central Government has to report the full facts to the U.P.S.C. giving reasons for holding that no suitable officer is available for filling up the post and may in the light of the UPSC's advice, give suitable directions to the State Government concerned.

7. It is emphasised that before appointing R-5 on inter cadre deputation basis as Commissioner of Police, Delhi it was incumbent upon official Respondents to first declare that no officer in AGMU Cadre was fit and suitable to hold that post, but this they could not do because applicant an AGMU Cadre officer was already posted on an ex-cadre post equivalent to the post of Commissioner of Police ever since 1997, and when he was fit suitable and available to occupy the post of Commissioner of Police, Delhi, the appointment of Respondent No.5 is not only in gross violation of Rules but also abridged applicant's fundamental rights.

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8. It is further contended that the deputation of Respondent No.5 is also in violation of Rule 6 IPS (Cadre) Rules which lays down certain conditions precedent to be complied with before posting any officer on deputation basis. In this connection attention has been invited to Rule 2 (d) IPS (Cadre) Rules, which defines a State Government concerned in relation to a Joint Cadre to mean the Joint Cadre Authority and from a conjoint reading of Rule 6 and Rule 2 IPS (Cadre) Rules, it is emphasised that an officer can be sent on deputation with the concurrence of the concerned State Government, but in the instant case without consulting the Joint Cadre Authority of AGMU, the Government of NCT, Delhi unauthorisedly issued the appointment letter dated 30.6.99, appointing Respondent No.5 on deputation basis as Commissioner of Police, Delhi. In this connection it is emphasised that a constituent member of the Joint Cadre Authority whose constitution is provided under Rule 3(1) (c) IPS (Appointment by Promotion) Regulations 1955 and which is required to meet as per Rules 3(2) and 3(3) of those Regulations cannot act singly for, and on behalf of, the Joint Cadre Authority, without a meeting of the Authority and furthermore the Government of Delhi has not conveyed its consent for any delegation of powers of the Jt. Cadre Authority to the Central Government.

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§ 9. It is further argued that Respondent No.5 is of the rank of Additional Director General of Police (Rs.22,000-24,000) which is one step below the post of Commissioner of Police, Delhi (Rs.24,050-26,000) and therefore cannot hold the post. It is alleged that to overcome this difficulty official Respondents are considering absorbing Respondent No.5 in AGMU cadre and then promote him to the rank of Director General of Police (Rs.24,050-26,000) so that he continues as Commissioner of Police, Delhi thereby encroaching upon the rights of AGMU cadre officers including the applicant.

10. A counter reply has been filed only on behalf of Respondent No.1 in which the contentions raised in the O.A. has been challenged. It has been emphasised therein that the appointment of Respondent No.5 as Commissioner of Police has to be viewed in the background of the deteriorating law and order situation in Delhi, which required more effective policing and was not politically motivated as alleged by applicant.

11. It is pointed out that applicant has challenged the appointment of Respondent No.5 as Commissioner of Police principally on the following grounds:

- a) Respondent No.5 is not a cadre officer and is hence not eligible to be appointed as Commissioner of Police.

- b). That inter-cadre deputation can be resorted to only when no officer in AGMU Cadre is found fit to hold the post of Commissioner of Police;
- c) That applicant is competent and eligible to hold the post of Commissioner of Police.
- d) That inter-cadre deputation has not been carried out with the concurrence of Joint Cadre Authority of AGMU Cadre.

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12. With regard to ground (a) above, Respondent No.1 points out that admittedly Respondent No.5 is a Member of the IPS which is an All India Service created under Article 312 of the Constitution. All India Service officers have a liability to serve in any part of the country as held by the Hon'ble Supreme Court in Rajiv Yadav's case (1994) 6 SCC 38 and other cases. The term 'Cadre officer' has been defined in Rule 2(a) IPS (Cadre) Rules to mean a member of the IPS, and applicant cannot legally challenge the appointment of Respondent No.5 as Commissioner of Police, Delhi on the ground that he is not a cadre officer, by adding words to the definition, so as to define a cadre officer to mean a member of the IPS belonging to a particular State cadre. In this context attention is invited to several instances where IPS officers not belonging to AGMU cadre have earlier been appointed to the post of Commissioner of Police, Delhi on inter-cadre deputation basis (details at Annexure R-II) and cases where IPS officers have been appointed as Director General of Police in various States from outside cadres on inter-cadre deputation

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basis (details at Annexure R-III). In this connection attention is also invited to Respondents' letter dated 15.1.99 (Annexure R-1) containing the principles for promotion of members of IPS. It is pointed out that IPS officers with 30 years of service become eligible for consideration for appointment to the post of Director General of Police. Respondent No.5 being an officer of 1966 batch completed the requisite years of service in 1996 and is, therefore, eligible for appointment as Commissioner of Police. He has an excellent record of service and was also empanelled to hold Director General level posts in Government of India. In fact his batchmates and officers who are 44 positions junior to him in All India seniority list have been appointed to the rank of Director General in organisations where they were working, as vacancies existed to accommodate them. Respondent No.5 could not be appointed to that rank till his appointment as Commissioner of Police, for want of a vacancy. He was working as Additional Director General, Border Security Force where no post of Director General rank was available, except that of Director General, Border Security Force which was already occupied. It is stated that in view of his excellent track record, a proposal for upgradation to the rank of Director General on personal basis was under active consideration, when it was decided to transfer Shri

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V.N.Singh, IPS (AGMU 1966) the previous Commissioner of Police, Delhi and designate him as Special Director General, Border Security Force who is 17 positions junior to Respondent No.5 in All India ranking, and appoint Respondent No.5 as Commissioner of Police.

13. Adverting to ground (b) and (c) above Respondent No.1 in reply emphasise that there is no question of declaring applicant unfit to hold the post of Commissioner of Police. The question is of selecting the most suitable officer to hold the post. In this context Rules 8 and 9 IPS (Cadre) Rules on which applicant has placed reliance has to be properly understood. The thrust of these Rules is that cadre posts shall be filled by cadre officers i.e. members of IPS and not by non-cadre officers not belonging to IPS i.e. State Police officers. While not denying the applicant's eligibility for consideration for appointment to the post of Commissioner of Police, Respondent No.1 points out that the said post is a selection post within the meaning of Rule 3 (2) (A) IPS (Pay) Rules, 1954 and Respondent No.5 has been selected to that post by the answering respondent. The excellent track record of service of Respondent No.5 is contrasted with the comparative lack lustre record of service of applicant. In this connection it is stated that in 1993-94 while posted as Inspector General of Police,

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Andaman & Nicobar Islands he had to be replaced on the advice of the Lt. Governor, Andaman & Nicobar Islands, before completion of his normal tenure as his performance was found wanting, and he was also superceded at the time of promotion to the grade of Director General of Police in December, 1996 and it was only in a subsequent review in February, 1998 that he was cleared for appointment in Director General of Police scale. It is also pointed out that he has not been empanelled as Director General of Police level at the Centre because of his lack lustre performance. In this context it is also urged that as applicant is already in the rank and pay scale of Director General which is equivalent in rank and status to that of Commissioner of Police, he can have no real cause for grievance, and he cannot lay claim to a particular post viz that of Commissioner of Police, the filling up of which lies within the prerogative of Government.

14. Adverting to ground (d) respondent No.1 in reply admits that the term "State Government concerned" contained in the IPS (Cadre) Rules in relation to the Joint I.P.S. AGMU Cadre, means the Joint Cadre Authority of AGMU cadre of IPS, and submits that the JCA of Joint IPS AGMU Cadre in its meeting held on 3.6.93 (Annexure R-V) delegated the power to decide the cases of inter-cadre deputation to and from AGMU cadre to the Home Ministry which in

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terms of Section 60(a) General Clauses Act 1897 exercises the power of the State Government in respect of Union Territories including the NCT of Delhi. It was in the light of this position that Respondent No.1 had placed before the Central Government the proposal for appointment of Respondent No.5 as Commissioner of Police, Delhi on inter-cadre deputation which was approved by the A.C.C. vide impugned order dated 29.6.99 (Annexure R-IV) and which was in accordance with Rule 6 I.P.S. (Cadre) Rules. In this connection Respondent No.1 in reply denies any proposal to absorb Respondent No.5 permanently in AGMU cadre.

15. Applicant has~~se~~ filed rejoinder in which he has denied Respondents' countention and broadly reiterated his own.

16. We have heard learned counsel for applicant Shri Dhingra and learned counsel for official respondents Shri Vaidyanathan, (former ASG) alongwith Shri V.S.R. Krishna. Shri Vijay Pandita appeared for Respondent No.5 and was also heard. During the course of hearing Shri Dhingra emphasised that applicant's grievance was not so much that Respondent No.5 was junior to him in length of service -- indeed Respondent No.5's predecessor is even junior to Respondent No.5 in length of service, but that official's appointment as Commissioner of

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Police was never challenged by applicant, although as pointed out by official respondents he had time as well as opportunity to do so -- as much as the fact that he had been assigned an ex-cadre post, while Respondent No.5 who did not belong to AGMU cadre had been posted on the prestigious cadre post of Commissioner of Police Delhi.

17. We have perused the materials on record and considered the rival contentions carefully.

18. The IPS (Cadre) Rules, 1954 have been framed in exercise of the powers conferred by Section 3 All India Services Act, 1951. Rule 2 IPS (Cadre) Rules contains definitions. Rule 2(a) defines cadre officer to mean a member of the Indian Police Service (IPS). As Respondent No.5 admittedly is a member of the IPS, it follows that in terms of the above definition he is a cadre officer. Respondents have correctly pointed out that it is neither permissible nor legal to add words to the definition so as to define a cadre officer to mean a member of the IPS belonging to a particular State cadre (emphasis added) as applicant seeks to do. There is nothing in the IPS (Cadre) Rules which defines a cadre officer to mean a member of the IPS belonging to a particular State cadre, and we have to go strictly by the definition contained in the Rules, which as stated above has been framed in exercise of the powers conferred by the All India Services Act. Indeed if

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the Rule making authorities had intended that cadre officers should mean members of the IPS belonging to a particular State cadre, they would no doubt have stated so explicitly. By defining a cadre officer to mean a member of the IPS, the rule making authorities kept in view the liability of IPS officers to serve anywhere in India as members of an All India Service, despite their being distributed in various States on whose cadre they are borne. This view is strengthened by the fact that Rule 6 IPS (Cadre) Rules specifically provides for deputation of cadre officers for services under other State Governments, and indeed Annexure R-III and Annexure R-IV list out the names of those IPS officers not belonging to AGMU cadre who held the post of Commissioner of Police, Delhi earlier and those IPS officers appointed as Directors General of Police in various States on inter-cadre deputation basis. Viewed in this light there is merit in official Respondents' contention that Rules 8 and 9 IPS (Cadre) Rules, on which considerable reliance has been placed by applicant, are concerned with the appointment of State Police officials who do not belong to the IPS, to cadre posts, and hence does not advance applicant's cause.

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19. The post of Commissioner of Police is a selection post under the IPS (Pay) Rules. The fact that applicant was eligible for selection as Commissioner of Police is not in doubt. A perusal of the notings in Respondent No.1's file No.

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14016/26/99-UTS shown to us by respondents makes it clear that it is not that applicant's name was not considered, for appointment as Commissioner of Police. However Respondent No.5 who was also eligible and who happened to be on Central deputation in one of the Central Police Organisation was also considered and was found more suitable for the post owing to his superior record of service as manifested in his ACRs which we have also perused. It is well settled that a Government servant has an enforceable legal right to be considered for appointment/promotion to a particular post if he is qualified and eligible. He has no enforceable legal right to be appointed/promoted to a particular post, and as noticed above, it is not that applicant's name was not considered for appointment as Commissioner of Police. There is nothing in the rules/instructions, which compels respondents, merely because applicant has been empanelled in the grade of Director General of Police and was occupying the equivalent cadre post of Commandant General Home guards & Director Civil Defence to appoint him to the particular cadre post of Commissioner of Police, Delhi, or for them to issue a declaration that no officer in AGMU cadre was fit to hold the cadre post of Commissioner of Police, Delhi, before appointing Respondent No.5 to that post, because as we have already seen the thrust of Rules 8 and 9 IPS (Cadre) Rules is to discourage non-IPS Officers (i.e. State Police officers) from occupying cadre posts.

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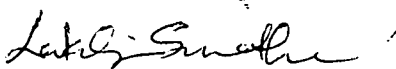
20. The minutes of the meeting of the Joint Cadre Authority for AGMU cadre dated 3.6.93 (Annexure R-V) makes it clear that the Joint Cadre Authority was of the view that proposals for cadre transfer and inter-State deputation may be decided by the Home Ministry. The Chief Secretary, Delhi was a participant in that meeting and was a signatory to its minutes. Hence it cannot be said that the ^{Govt. of N.C.T} ~~Government~~ of Delhi was not a party to the decision to delegate the powers of Joint Cadre Authority to the Home Ministry to take decisions on proposals for cadre transfer and inter-State deputation, or that the powers were never delegated by the Joint Cadre Authority to the Home Ministry.


21. Before concluding we may refer to some rulings relied upon by Shri Dhingra, one ruling is N.Das Vs. State of Orissa 1975 (1) SLR 575 but that ruling is specifically in the context of the Orissa Ministerial Service Rule, 1963 and clearly has no application to the present case which is under the IPS (Cadre) Rules. Another ruling cited is G.C. Kamal Vs. Union of India AISLJ 1988 (3) CAT 577 in which Rules 8 and 9 IPS (Cadre) Rules have been interpreted. That O.A. involved members of the Himachal Pradesh State Police Service, who were not members of the IPS and hence not cadre officers within the meaning of the IPS (Cadre) Rules, being

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interpreted. That O.A. involved members of the Himachal Pradesh State Police Service, who were not members of the IPS and hence not cadre officers within the meaning of the IPS (Cadre) Rules, being posted against cadre posts and cadre officers (Members of the IPS) being posted against excadre posts. This case is thus distinguishable on facts from the present case, and indeed bears out respondents' contention that the thrust of Rules 8 and 9 IPS (Cadre) Rules is that cadre posts shall be filled up by cadre officers i.e. members of the IPS and not by appointment of non-cadre officers not belonging to IPS. Yet another ruling relied upon by Shri Dhingra is V.P. Joshi Vs. Union of India & Others SLR 1995 (7) Page 514 but that ruling is also distinguishable on facts and hence does not avail the applicant.

22. In the result we see no reasons to warrant interference in this O.A. It is dismissed. No costs.


(Mrs. Lakshmi Swaminathan)
Member (J)


(S.R. Adige)
Vice Chairman (A)

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