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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O A No. 1726/99

New Delhi: this the 24 day of February, 2000.

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

HON'BLE MR. KULDIP SINGH, MEMBER (J)

O. S. Grewal IPS (1965 M.T.),  
OSD Manipur Bhawan,  
2, Sardar Patel Marg,  
New Delhi

.... Applicant.

(By Advocate: Shri R.P. Sharma)

Versus

1. Union of India  
through  
Secretary,  
Ministry of Home Affairs,  
Govt. of India,  
New Delhi-1.
2. State of Manipur  
through  
Chief Secretary,  
Govt. of Manipur,  
Imphal.
3. State of Tripura  
through  
Chief Secretary,  
Govt. of Tripura,  
Agartala.
4. Shri L. Jugeshwar Singh,  
Director General of Police,  
Manipur,  
Imphal.
5. Shri K. T. D. Singh,  
Director General of Police,  
Tripura,  
Agartala.

..... Respondents.

(By Advocate: Shri V. S. R. Krishna for R-1.

Shri Nobain Singh for R-2  
Shri B. K. Bhattacharya along  
with Gopal Singh for R-3 and 5.  
Shri V. K. Rao for R-4.)

ORDER

HON'BLE MR. S. R. ADIGE, VC(A)

In this O A filed on 16.8.99 applicant seeks a declaration that his replacement by a junior ineligible officer as Director General of Police (DGP), Manipur, and the posting of another ineligible officer junior to applicant as DGP Tripura is bad in law, besides being unconstitutional and unethical, and seeks a direction

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to respondents to appoint him forthwith as D.G. Police either in Manipur State or in Tripura State.

2. Applicant is an IPS Officer of 1965 batch allocated to the Manipur-Tripura Joint Cadre. As per his own averments, he being seniormost in the Manipur Tripura Joint Cadre, was appointed as DGP Manipur State in February, 1996 and held that post till 27.3.98 when he was transferred to the ex-cadre post of OSD Manipur Bhawan, New Delhi, and he was succeeded by Shri L. Jugeshwar Singh (Respondent No.4), who accordingly to applicant had at that point of time only 29 years of service, and hence did not possess the 30 years of service required for appointment as DGP vide Home Ministry's guidelines dated 15.1.99.

3. Applicant contends that he made several personal representations to the Chief Minister, Manipur and Chief Secretary, Manipur to restore him to the post of DGP, Manipur, but to no avail. He contends that Govt. of Manipur by their fax message dated 10.3.99 (Annexure-A3) communicated to Govt. of Tripura that the Chief Minister, Manipur and Govt. of Manipur had decided that applicant be posted as DGP Tripura on the expiry of the deputation tenure of one Shri B.P. Singh who was to be repatriated in a month's time, and Govt. of Tripura's acceptance was sought, but applicant contends that instead of conveying their acceptance, the Govt. of Tripura promoted Shri K.T.D. Singh as DGP Tripura who had not even completed 26 years' service, and in regard to whom the Govt. of India had asked Govt. of Tripura to demote him from the post of Addl. DGP for not having the prescribed 26 years of service. Applicant states that instead of complying with these directions of Govt. of India,

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the Govt. of Tripura further promoted him as DGP ignoring the applicant.

4. Applicant emphasised that in a recent ruling of Hon'ble Supreme Court in Govt. of Karnataka Vs. C. Dinakar & Ors., and connected case reported in JT 1999 (3) SC 540, Hon'ble Supreme Court has held that the appointment of a junior officer, in preference to the seniormost IPS officer of the State as DGP, is illegal and unconstitutional, and unless the seniormost IPS officer of the State is found unfit on the basis of his record, he cannot be denied appointment to the post of DGP. Applicant states that as soon as he became aware of the aforementioned judgment of the Hon'ble Supreme Court, he submitted separate representations against the posting as DGP of his junior to the Govts. of Tripura and Manipur, and finding no response from both the States, a legal notice was served on the respondents, but till date, however, the grave wrong done to the applicant by both the States, has not been undone, compelling him to file this OA.

5. No reply has been filed on behalf of Respondent No.1 (UDI).

6. A reply has been filed on behalf of Respondent No.2 (State of Manipur), in which it has been stated that the present OA has been filed after the expiry of one year from the date of passing of the impugned order of the Govt. of Manipur dated 21.3.98 (Annexure-A1) transferring applicant as OSD, Manipur Bhawan, New Delhi and appointing Shri L. Jugeshwar Singh (Respondent No.4) as DGP Manipur and as such the present application for reliefs against

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Respondent No.2 and R-4 is barred by limitation under section 21(1)(a) A.T. Act. It is pointed out that there are no statutory rules prescribing any representation/appeal which could be made by applicant in connection with his grievances against the aforesaid order dated 21.3.98, and hence the filing of non-statutory representation dated 29.5.99 (Annexure-A5) to Respondent No.2 cannot make the present application maintainable against Respondent-2 and R-4, as the same is barred by limitation. It is also contended that Shri L.Jugeshwar Singh DGP has already completed 30 years of service as IPS Officer in January, 1999 and has become eligible for promotion as DGP.


7. A reply has also been filed on behalf of Respondent No.3 (State of Tripura) and Respondent No.5 Shri KTD Singh DGP Tripura. In this reply the material submissions are that while the States of Manipur & Tripura have a joint cadre, it is an accepted practice that the officers allotted to the cadre of either State, continue to work in that State alone and rarely switch over to the other State. Although applicant belongs to the Manipur-Tripura cadre, he worked only in Manipur State and has never worked in Tripura State till date. Similarly Shri KTD Singh, Respondent No.5 who also belongs to the Manipur-Tripura cadre, has worked only in Tripura and never worked in Manipur State. It is stated that the post of DGP in the Tripura segment of the Manipur-Tripura cadre was being held by Shri B.P. Singh, IPS 1967 batch. He belonged to West Bengal Cadre and after expiry of his term the post of DGP fell vacant on 17.4.99. In view of the critical phase of insurgency through which the State of Tripura is presently undergoing, the post of DGP could not be kept vacant. Therefore, in view of the emergent situation

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prevailing in the Tripura State, an ex-cadre post of DG Police was created for six months vide Memo dated 18.5.99 (Annexure-R-2) and Shri K.T.D. Singh Respondent No.5 being the seniormost IPS Officer available in the State at that time, had been appointed as Addl.DGP Tripura on his return from central deputation and thereafter was appointed as DG P vide Notification dated 13.4.99 (Annexure-R-1) and he took charge on 17.4.99. It is stated that the guidelines of the Home Ministry stipulating a minimum of 26 years of service for the appointment of Addl.DG P were issued on 15.1.99 but Shri KTD Singh Respondent No.5 was appointed as Addl.DG P at least one year prior to the issuance of the guidelines of the MHA and, therefore, the question of his reversion from the post of Addl.DG P does not arise. It is also contended that these guidelines of MHA stipulating a minimum of 30 years of service for appointment as DG P are applicable to cadre posts alone and not to ex-cadre posts, and that too are only to be regarded as guiding and not mandatory in nature. It is reiterated that Respondent No.5 was appointed as DGP in the ex-cadre post of DGP by keeping the cadre post in abeyance.

8. It is also contended that as per MHA's guidelines a Screening Committee had been constituted in the Tripura State vide notification dated 18.5.99 (Annexure-R-3) for considering filling up of IPS selection grade/super time scale/ above super time scale posts against promotion quota from eligible IPS Officers, but as Shri KTD Singh's appointment order as DG P against the ex-cadre post of DG P was issued on 13.4.99 and he took over charge on 17.4.99 prior to the constitution of the Screening Committee, that Committee could not have considered his case.



9. In this connection, it is emphasised that Shri KTD Singh was considered for the post of DGP by the Tripura Govt. considering that he was the seniormost IPS Officer available in the State at that time and has considerable experience of working in the State and other relevant professional background. It is stated that after his allotment to Tripura, he worked in various capacities such as SDO, District S.P. and SP(SB) for more than 8 years before he moved over to Intelligence Bureau, Govt. of India on deputation. During his tenure in the IB, he handled important and sensitive desks such as counter intelligence and internal security, in addition to working in J & K and Delhi in field assignments and after his return to the State, Shri KTD Singh was appointed as Addl. DGP Tripura with the specific responsibility for intelligence, and objective of meeting the requirements of counter insurgency operations before his appointment as DGP.

10. It has been emphasised that the State of Tripura has been witnessing escalation of extremist violence in the recent past, and therefore an officer with requisite knowledge and familiarity with the ground situation of the State and the personnel of the police force would be the suitable choice to provide effective leadership to the counter insurgency operations. Thus, the State Govt. had no alternative but to appoint Shri KTD Singh as DGP being the seniormost IPS Officer available in the State to fulfil the above requirements.

11. It is stated that the applicant after having come to know about the appointment of Shri KTD Singh as DGP Tripura submitted representation to consider his case, being the seniormost IPS Officer of the joint cadre.

The MHA also requested for the comments of the State Govt. on a prayer submitted by applicant. The comments of the State Govt., as requested by the MHA have been sent to them vide letter dated 13.9.99 (Annexure-R-4).

11. It has been stated that Govt. of Manipur had informed the Govt. of Tripura that they have decided to appoint applicant as DGP Tripura vide Fax message dated 10.3.99 (Annexure-R-5) but the Govt. of Manipura does not have any power to appoint the DGP Tripura, unilaterally by taking a decision on its own.

12. As regards the Hon'ble Supreme Court's judgment in C. Dinakar's case (supra), it is contended that applicant was not ignored for appointment as DGP. In fact, he served as DGP Manipur for more than two years and after a lapse of considerable time, the Manipur Govt. for the reasons best known to them, transferred him to a post in the same cadre, carrying equal pay as OSD Manipur Bhawan, almost a year before the appointment of Shri K.T.D. Singh-Respondent No.5 as DGP Tripura. It is contended that while the judgment of the Hon'ble Supreme Court came in May, 1999, Shri K.T.D. Singh - R-5 was appointed as DGP in April, 1999. Therefore, the interpretation of these orders cannot have any retrospective effect. It is further contended that the subject matter of the said decision is the guidelines of the Karnataka State and since all the States have their own guidelines in this regard, an interpretation given to the guidelines of one State cannot be made applicable to another State which has its own guidelines for promotion and appointment.

13. It is also contended that the guidelines pertaining to the various years of service as a condition precedence to appointment to the post of DIG, IGP, Addl.DGP and DG P are applicable to IPS Cadre posts and cannot be extended to an ex-cadre selection post created by a specific notification issued by the State of Tripura to meet the exigency of the situation of a State. The Officers eligible only have a right to be considered and have no right to appointment. The selection to the ex-cadre post of DG P has been made fairly and upon consideration of the service record as well as the length of service of Respondent No.5 and the courts do not interfere either with the order of appointment or substitute its own opinion for the opinion of the appointing authority and much less in the case when the selection had been made objectively on consideration of the relevant record including the length of service.

14. Respondent No.2 Govt of Manipur have filed a reply affidavit to the counter affidavit filed on behalf of Respondents No.3 and 5. In this reply affidavit, it is stated that the IPS Officers of the Manipur Tripura cadre working in Tripura State had been transferred to the Manipur State and promoted to the next higher IPS cadre post in the Manipur State. It is pointed out that there is no law or rule which restrains the respondents from considering the eligible IPS Officers of the M-T cadre for promotion to the post of DG P Manipur as well as DG P Tripura. Rather, eligible IPS Officers of the M-T cadre have the right to be considered for promotion to the posts of DG P in the M-T cadres. It is emphasised that it is not equitable to keep the IPS cadre post of DG P in Tripura State in abeyance in the interest of a particular



ineligible IPS Officer of M-T Cadre by neglecting the other eligible IPS Officers of M-T cadre for the said post of DGP Tripura. In this connection, it is stated that the MHA guidelines stipulating a minimum of 30 years of service for appointment as DGP are applicable not only to the cadre post of DGP Tripura but also to the ex-cadre post of DGP Tripura in as much as the Hon'ble Supreme Court in Dr. D.C. Wadhwa & Ors. Vs. State of Bihar & Ors. AIR 1987 SC 579 has held that even a Constitutional Authority cannot do indirectly what it is not permitted to do directly, and if there is a constitutional provision prohibiting the constitutional authority from doing an act, such provisions cannot be allowed to be defeated by adopting any such subterfuge which would clearly be a fraud on the constitutional provision. It is emphasised that the guidelines issued by MHA are required to be followed and not to be violated and the satisfaction of the State Govt. of Tripura for appointment of Shri KTD Singh Respondent No.5 to the post of DGP Tripura by neglecting the other eligible IPS Officer of the M-T cadre may not be transparent, just and fair.

15. Applicant has filed rejoinder affidavit, in which he has broadly reiterated the averments made in his OA and has specifically rebutted those contained in the reply of Respondents No.3 and 5.

16. No reply has been filed separately on behalf of Respondent No.4.

17. We have heard learned counsel who appeared on behalf of both sides and have given the matter our careful consideration.

18. At the outset we note that as applicant is a Member of an All India Service (IPS), and his grievance regarding non-appointment as DG Police is admittedly a service matter, the Tribunal has jurisdiction to entertain this OA under section 14(1)(b)(1) AT Act. Furthermore, in terms of Rule 6(1) CAT (Procedure) Rules, the Principal Bench of the Tribunal is competent to hear this OA.

19. Coming to the question of limitation, we note that Respondent No.2 had issued orders dated 21.3.98 (Annexure-A1) transferring applicant from the post of DG Police Manipur to the post of OSD, Manipur Bhawan, New Delhi and appointing Respondent No.4 Shri L.Jugeshwar Singh as DG Police Manipur. Although applicant contends that he had made several personal representations to the Chief Minister and Chief Secretary, Manipur to restore him to the post of DG Police Manipur, only one such representation (non-statutory) dated 29.5.99 (Annexure-A5) is on record and indeed from the letter of the Chief Minister Tripura (copy on record), it would appear that applicant himself was keen to come to Delhi on a central deputation under Govt. of India and it is quite likely that for this reason he accepted the posting as OSD Manipur Bhawan, New Delhi without demur as a prelude to a Central Deputation, At any rate, he has not shown any document indicating that he represented immediately after the issue of order dated 21.3.98 transferring him as OSD Manipur Bhawan, New Delhi and appointing Respondent No.4 Shri L. Jugeshwar Singh as DG Police Manipur in his place. His only representation shown to us is the one dated 29.5.99 made over 14 months after he was transferred to Delhi. Respondent No.2 State of Manipur are therefore correct when they state that the present application for quashing and setting aside

the aforesaid order of Manipur State dated 21.3.98 is hit by limitation under sec.21 (1)(a) AT Act and the filing of the non-statutory representation by applicant on 29.5.99 does not extend the period of limitation.

20. The same, however, cannot be said in respect of the notification dated 13.4.99 of the Govt. of Tripura (Annexure-R1) appointing Respondent No.5 Shri KTD Singh as DG P Tripura or indeed their Memo dated 18.5.99 (Annexure-R-2) creating an ex-cadre post of DG P Tripura for a period of six months w.e.f. 18.4.99 to 17.10.99 by keeping in abeyance the IPS cadre post of DG Police Tripura. Indeed Respondent No.2 Govt. of Manipur in their reply affidavit to the counter affidavit of Respondent No.3 and Respondent No.5 after relying upon the Hon'ble Supreme Court's ruling in Dr.D.C.Wadhwa's case (supra) have correctly stated that even a constitutional authority cannot do indirectly what it is not permitted to do directly, and Govt. of Tripura, therefore, cannot legally appoint an officer with less than the minimum 30 years of service as their DG of Police by keeping the cadre post of DG of police in abeyance and creating an ex-cadre post of DG of Police with the same rank, status and pay and appointing Shri K.T.D Singh Respondent No.5 a 1974 batch Ipc Officer with barely 26 years of service to that post without considering the claims of eligible officers of Manipur-Tripura cadre for appointment to that post. As correctly pointed by the Govt. of Manipur the MHA's guidelines are required to be followed and not violated and the Govt. of Tripura cannot be permitted to take the plea as they have done that those guidelines are applicable to cadre posts alone, and not to excadre posts and that they are only guiding in nature. In this connection we find that MHA in its letter dated 13.5.99 (Annexure-R1 to

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applicant's rejoinder) addressed to the Chief Secretary, Govt. of Tripura had pointed out that an ineligible officer had been appointed as an Addl. DG of police in Tripura State and the State Govt. had been asked to revert those officers who were not eligible to hold the posts of Addl. DG P. etc. in terms of the minimum completed years of service as per guidelines dated 15.1.99. Learned counsel for the Govt. of Tripura during hearing averred that a reply had been sent to this letter explaining the circumstance in which Respondent No.5 had been so appointed and as no further communication had been received from MHA in this regard, it must be deemed that the Govt. of India had accepted the position as explained by the State Govt.

21. However, during hearing learned counsel for UOI Shri VSR Krishna emphasised that Respondent No.1(UOI) stood by the stand taken in its letter dated 13.5.99 that its guidelines dated 15.1.99 prescribing minimum completed years of service for eligibility for consideration for promotional posts had to be strictly adhered to and those not possessing the minimum number of completed years of service for a particular grade should be reverted. Further more it needs to be mentioned here that merely because no further communication was received by the Tripura State Govt. to their reply to MHA's letter dated 13.5.99 cannot necessarily be construed to mean that MHA have accepted the situation which is manifestly violative of their own guidelines dated 15.1.99, and which were issued well before Shri KTD Singh Respondent No.5 was appointed as D.G. Police Tripura.

22. During arguments learned counsel for the Govt. of Tripura asserted that although the States of Manipur and Tripura had ajoint cadre, it was an accepted practice

that an officer allotted to the cadre of either State, continued to work in that State alone and rarely switched over to the other State. This assertion has been directly contradicted by the Govt. of Manipur in their reply affidavit to the counter affidavit of Govt. of Tripura and Respondent No.5 Shri KTD Singh, wherein it has been clearly pointed out that IPS Officers of Manipur-Tripura Joint Cadre working in the States of Manipur and Tripura are inter-transferable and they are promoted to different IPS cadre posts in both States as and when vacancies arise. Indeed the contention of the Govt. of Tripura that IPS Officers allotted to the Manipur-Tripura Joint Cadre in effect work in one State alone throughout their service career and rarely switch over to another State, would negate the very principle of a joint cadre. IPS Officers allotted to Manipur-Tripura joint cadre are not allotted to Manipur State alone or to Tripura State alone, but to the Manipur-Tripura Joint Cadre, and it is the responsibility of the Joint Cadre Authority to post them against vacancies occurring either in Manipur State or in Tripura State, according to their eligibility and in accordance with rules and instructions. This position obtains whether the post is a cadre post or an excadre post, and the Govt. of Tripura cannot get around it by keeping the cadre post of DG Police in abeyance and creating an excadre post with the same designation, pay, status, duties and responsibilities and posting an ineligible IPS Officer against the excadre post. Furthermore we notice that Shri KTD Singh was appointed as DG Police Tripura vide Notification dated 13.4.99 and took charge on 17.4.99 even before the excadre post of DG Police was created for 6 months w.e.f 18.4.99 by keeping the cadre post in abeyance.

vide Govt. of Tripura Notification dated 18.5.99. Nothing has been shown to us to establish that the tenure of that excadre post of DG Police has been extended beyond 17.10.99. Thus the life of that excadre post of D.G. Police Tripura would have expired on 18.10.99 and that being so, even by the Govt. of Tripura's own stand the continuance of Shri KTD Singh Respondent No.5 as DG of Police beyond 18.10.99 would not be legal.

23. Learned counsel for State of Tripura has pleaded special circumstances arising out of the law and order situation said to be prevailing in Tripura State as an argument to justify respondents' actions. It is not the case of Tripura State Govt. that applicant's claims were also considered at the time Shri K.T.D. Singh Respondent No.5 was appointed as D.G. of Police, Tripura. Suffice it to say that the special circumstances said to be prevailing in Tripura State cannot be deemed to be ground sufficient to dispense with the requirement of considering the claims of all eligible officers for appointment as DG of Police Tripura and as noted above this requirement cannot be got around by keeping the cadre post of DG of Police Tripura in abeyance and creating an ex-cadre post of DG of Police with the same name, designation, pay, duties and responsibilities.

24. In this connection, the Hon'ble Supreme Court in C. Dinakar's case (supra) has held that if the selection has been made fairly and upon consideration of service record of the persons eligible for appointment by selection to the post, the Court had no jurisdiction to either interfere with the order or substitute its own opinion for the opinion of the appointing authority, but if the selection was found not to be made objectively upon consideration of the relevant record, and appeared to be made mechanically, the interference


of the court became necessary for the purpose of protecting the rights of the civil servants ensuring the prevalence of the Rule of Law.

25. In the present case, no material has been shown to us to establish that the selection to the post of DG Police Tripura was made objectively, upon consideration of the relevant records of all eligible officers, and indeed in the reply affidavit of Respondent No.3 Govt. of Tripura and Respondent No.5 Shri KJD Singh, there is not even an averment that the case of the applicant, admittedly the seniormost IPS Officer in Manipur Tripura Joint Cadre of IPS was considered for appointment as DG of Police Tripura.

26. In the result, the OA succeeds and is allowed to the extent that Memorandum dated 18.5.99 of Respondent No.3 keeping the cadre post of DG of Police Tripura in abeyance for 6 months w.e.f. 18.4.99 and creating an excadre post of DG of Police Tripura with the same status, pay, duties and responsibilities, and the notification dated 13.4.99 of Respondent No.3 appointing an officer with less than the minimum number of years of completed service prescribed in MHA's guidelines dated 15.1.99 as DG of Police Tripura is quashed and set aside, as the same cannot be sustained in law. Respondents are directed to ensure that the competent authority makes appointment to the post of DG of Police Tripura strictly in accordance with rules, instructions and guidelines issued from time to time after considering the claims of all eligible officers for appointment to that post. These directions should be implemented within two months from the date of receipt of a copy of this order. Till then the existing incumbent will continue to function

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as DG of Police Tripura to avoid dislocation of  
work. No costs.

  
( KUL DIP SINGH )  
MEMBER(J)

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

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