

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

DA No. 638/98

New Delhi: this the 18 day of July, 2001

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

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Virender Prakash,
Dy. Inspector General of Police,
29-31-Mall Road,
New Delhi.

at present posted as DIG,
Arunachal Pradesh

...Applicant.

(By Advocate: Shri G. D. Gupta)

Versus

1. The Union of India,
through the Secretary,
Govt. of India,
Ministry of Home Affairs,
New Delhi.
S/Shri
2. Puran Singh,
Deputy Commandt. General Home
Guards,
Delhi.
3. B. K. Gupta,
Addl. Commissioner of Police,
Crime & Railway, P.HQ.,
R/o D-1/77 Satya Marg,
New Delhi.
4. R. P. Singh,
IGP Chandigarh,
5. N. S. Rana,
Addl. C.P. (Trg.) Delhi
R/o 305 B-Block Som Vihar,
6. J. P. Singh,
DIG,
Mizoram,
Aizawl.
7. V. Rajagopal,
D.D. Intelligence Bureau,
New Delhi.
8. Neeraj Kumar,
DIG/CBI, New Delhi.
9. S. B. Goel,
DIG(NSG), Admn.,
New Delhi.
10. Bhim Sain,,
D.D. Intelligence Bureau,
New Delhi.

11. Ajay Chadha,
Chadha,
DCP, Vigilance,
Police Headquarter,
New Delhi.

12. B.S. Brar,
Addl. CP (CID) Delhi.

13. A.S. Khan,
Director Vigilance,
Railway Board,
New Delhi.

14. Smt. Kanwaljit Deol,
Addl. CP Hrs.
Delhi.

..... Respondents.

(By Advocate: Shri R.P. Agarwal)

ORDER

S.R. Adige, VC(A):

In this OA filed on/about 18.3.98, applicant impugns respondents' OM dated 2.7.87 (Annexure-VII) and dated 15.2.88 (Annexure-IX). He seeks a direction to respondents to treat him as deemed to be an IPS cadre Officer w.e.f. 30.1.81 with consequential benefits.

2. Heard both sides.

3. Applicant was originally appointed to DANI Police Service as Dy. Supdt. of Police in 1972. One of the channels for recruitment to I.P.S. under the I.P.S. (Recruitment) Rules, 1954 framed under Section 3(4) A.I.S. Act is by promotion of substantive members of the State Police Service. Recruitment by promotion is controlled by Rule 9 IPS (Recruitment) Rules pursuant to which the IPS (Appointment by promotion) Regulations, 1955 have been made. These Regulations envisage the preparation of a Select List of recruits of the State Police Service found suitable for promotion to the IPS with UPSC's approval.

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4. It is not denied that applicant was inducted in the Select List for appointment to IPS for the first time in the Select List of 1980 which was approved by UPSC on 30.1.81 and he was appointed to IPS w.e.f. 3.11.81. He started officiating on an IPS cadre post w.e.f. 8.9.81. As such as per Rule 3 (3)(b) IPS (Regulation of Seniority) Rules 1954 the crucial date for the purpose of fixation of his year of allotment in IPS was taken as 8.9.81 and he was assigned 1977 as the year of allotment.

5. Applicant contends that he was at Sl. No. 1 of the Select List dated 30.1.81 and in terms of Rule 9(2) IPS Cadre Rules 1954, he was entitled to officiate on an IPS cadre post w.e.f. 30.1.81 itself. It is his contention that even if the available IPS cadre posts were occupied by Select List officers who had come on to the Select List prior to 30.1.81, as contended by respondents, consequent to applicant's position at Sl. No. 1 in the 1981 Select List, one such IPS cadre post should have been got vacated w.e.f. 30.1.81 to enable applicant to officiate against that post, in which case applicant could have counted his seniority in IPS w.e.f. 30.1.81 and not 8.9.81.

6. Respondents have taken the initial objection that the O.A. is hit by Res Judicata as also by limitation.

7. On the objection of Res Judicata, respondent No. 1 states, ~~itself~~ in reply that Respondent No. 2 Shri Puran Singh had filed T.A. No. 723/85 in which applicant was Respondent No. 2. That T.A. was disposed of by the Tribunal vide order dated 27.10.89 pursuant to which Shri Puran Singh's date of appointment to IPS was antedated from 24.12.82 to 1.9.80 consequent upon his appointment to IPS from 1979 Select List vide Ministry of Home Affairs' Notification dated 15.2.90. Hence applicant's claim against R-2 Shri Puran Singh is hit by

Res Judicata. This assertion of Respondents in their reply has not been denied by applicant in the corresponding para of his rejoinder.

8. On the objection of limitation, it is not denied that applicant's cause of action arose on 30.1.81. As per his own averments in his rejoinder, he made a representation on 7.4.81 and over four years later, he made another one dated 14.5.85. It is also admitted that he filed an O.A. No. 126/85 in this regard in C.A.T., Guwahati Bench. That O.A. came up for hearing on 1.12.93 (Annexure X) on which date, as applicant had meanwhile been transferred to New Delhi, his counsel pleaded before the Bench that applicant had taken back the brief of the case intimating that a petition for transfer of the O.A. from Guwahati to New Delhi would be filed in the Principal Bench, but thereafter no communication had been received from him, and counsel had no instruction from his client. The Bench noted that no communication had been received since May, 1993 about filing of any transfer petition before the Principal Bench. Observing that applicant was probably not interested in pursuing the O.A., the Bench dropped the O.A. giving liberty to applicant to file a fresh application before the appropriate Bench for the grievances raised in the O.A.

9. Well after four years later, applicant has filed the present O.A. on/about 18.3.98.

10. M.A. No. 673/98 have been filed praying for condonation of delay in which it has been contended that in the process of transfer to Delhi ^{applicant} he lost the entire records of the case and M.A. No. 674/98 has been filed seeking exemption from filing certified copy of impugned order dated 2.7.87.

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11. In our considered opinion the ground advanced in M.A. No. 673/98 seeking condonation of delay in filing the present O.A. is wholly unsatisfactory. If indeed applicant lost the records of the case in the process of transfer to Delhi as claimed by him, no materials have been furnished to explain what steps he took to reconstruct the records between 1.12.93 when O.A. No. 126/85 filed by him in C.A.T., Guwahati Bench was dropped, and 18.3.98 when the present O.A. was filed.

12. Under the circumstances, the preliminary objections raised by official respondents are sustained and the O.A. together with the two M.As are dismissed. No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

/GK/

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