

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1812/1996

New Delhi, this 29<sup>th</sup> day of November, 1999

(5)

Hon'ble Shri A.V. Haridasan, Vice-Chairman(J)  
Hon'ble Shri S.P. Biswas, Member(A)

1. R.L. Meena  
DCP/Rashtrapati Bhavan  
New Delhi
2. Akhtar Ali Faroque  
DCP/Anti-riot Cell, DAP Malviya Nagar  
Complex, New Delhi
3. B.S. Bola  
DCP/S.B.II Police Hqrs.  
ITO, New Delhi
4. D.K. Bhat  
Addl. DCP/New Delhi  
Dt. Parliament Street, New Delhi
5. Yamin Hazarika  
DCP/7th Bn DAP, Malviya Nagar  
Hauz Khas, New Delhi
6. Naresh Kumar  
DCP/3rd Bn, DAP  
Kingsway Camp, New Delhi
7. Mahabir Singh  
Addl. DCP/North Dist.  
Civil Lines, New Delhi
8. D.P. Verma  
Addl. DCP/Traffic, Police Hqrs.  
New Delhi

.. Applicants

(By Shri J.R. Dass, Advocate)

Versus

Union of India, through

1. Secretary  
Ministry of Home Affairs  
New Delhi
2. Secretary  
M/Personnel, Public Grievances & Pensions  
North Block, New Delhi
3. Joint Cadre Authority for  
Arunachal Pradesh, Goa, Mizoram & UT Cadre  
(AGMU cadre)  
M/Home Affairs, New Delhi
4. Director (CPS)  
M/Home Affairs, New Delhi

.. Respondents

ORDER

Hon'ble Shri S.P. Biswas

Applicants herein challenge the present system of preparation of segment-wise select list and promotions therefrom in the Indian Police Service (IPS for short)/  
Arunachal, Goa, Mizoram and Union Territory (AGMU for

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short) cadre being wrong, arbitrary and illegal because it results in a junior in one feeder service becoming senior to his erstwhile senior in another feeder service on being promoted to the IPS AGMU cadre. This unhappy turn of events is all due to wrong principles introduced by the respondents through new allocation of IPS officers of AGMU cadre pursuant to implementation of orders dated 18.7.90 (Annexure A-6). Applicants have, therefore, challenged the aforesaid orders in this OA. Consequently, they have prayed for reliefs in terms of the following: (i) till any rule of joint seniority list is framed to take care of the anomalous situation as referred to herein below, Government of India (GoI for short) should not transfer any promotee IPS officer from Goa, Mizoram and Arunachal Pradesh (AP for short) segments to the IPS/AGMU cadre after formation of the joint AGMU cadre and post in Union Territories and no promotee IPS officer of DANIPS to be posted to Mizoram, AP, and Goa; and (ii) respondents be directed to prepare joint select list for all the officers in the feeder service for promotion to the IPS/AGMU cadre.

2. Before we bring out the legal issues involved, it would be only appropriate to mention in brief the background facts that has given rise to the applicants' challenge as aforementioned.

3. Before formation of the joint AGMU in the IPS, the feeder services to the UT cadre were DANI Goa, Daman and Diu and Pondicherry Police Services. After the UTs of AP, Mizoram and Goa were given the status of a State, the erstwhile UT cadre was changed into the joint of AGMU. Earlier, promotion to the UT cadre of IPS was

being done on the basis of a joint seniority list of all the officers of feeder services, i.e. DANIPS, Goa Police Service and Pondicherry Police Service. There was, therefore, no problem in assigning inter-se seniority to the officers promoted to the IPS cadre. Under the said system, no junior could directly or indirectly supersede a senior once they were promoted to the IPS cadre on the basis of the same select list. However, after formation of the joint AGMU cadre, the GoI discontinued the old system of promotion to IPS on the basis of joint seniority list and instead adopted the system of segment-wise preparation of select list and consequential promotion of different constituents of this joint cadre. The Union of India is not preparing select list for promotion to each segment of the joint cadre. For example, one select list was prepared for the state police officers (SPO for short) of Arunachal, another for promotion of the SPO of Mizoram, Goa and DANIPS separately.

4. The basis upon which applicants seek to challenge the new principle contained in the order dated 18.7.90 are as under:

The promotional vacancies in the earlier IPS UT cadre now constituted as IPS/AGMU cadre, have been divided segment-wise through an administrative order by notionally allocating the promotee officers to different segments. This notional allocation has been done without any authority of law or without any rationale behind it and without even giving an opportunity of hearing to the officers likely to be adversely affected.

This administrative order of notional allocation has

taken up the right of senior officers and has resulted in gross discrimination inasmuch as some junior officers in some segments, particularly Goa and AP, have found faster promotions to the IPS cadre and thus became senior to their senior counterparts in DANIPS like the applicants herein. The constitution of the IPS/AGMU cadre is merely a change of nomenclature as the officers of the erstwhile UT cadre continued to constitute the personnel even in the newly formed AGMU cadre and so is the case in the feeder cadres. Vacancies, mode of recruitment thereto and other relevant facts remained unaltered. The joint seniority list of all the feeder grades which had been the basis for promotion to IPS for the last about 30 years has been done away without any force of law and has been replaced by a system of promotion by separate select lists in respect of all the 4 constitutes of the AGMU cadre. In this process, a further discrimination and injustice has been caused to the applicants who are much senior in the SPS or the feeder services. They have become junior to their junior counterparts in segments like Goa and AP. This has happened because of new policy of segment-wise promotion to IPS/AGMU cadre.

5. The applicants would further contend that the interse-seniority of the officers of the IPS cadre are governed by the IPS(Regulation of Seniority) Rules, 1988. This regulation does not contemplate determination of interse-seniority in a situation like the present one where senior officers in the feeder services of one segment are being superseded and made junior to their junior counterparts in the SPS of other segment of the same cadre because of segment-wise

preparation of select list and consequential promotions resulting in making juniors senior to their erstwhile seniors in IPS cadre. (9)

6. In view of the preparation of separate select list for each feeder service, the eligible members are appointed to the joint IPS cadre of AGMU as joint seniority list of officers of all the feeder services is not being maintained. Because of availability of vacancies in one segment, a junior officer in one feeder service gets promoted to the IPS cadre of AGMU earlier than a senior member of another feeder service and ultimately in the IPS and the former becomes senior to the latter. As per the applicants, an illustration given below will show the gross s per the injustice and discrimination being practised in preparing the interse-seniority of the promotee IPS officers in the AGMU cadre:

"Mr. A and Mr. B appeared in the Central Civil Services examination,. Mr. A qualified in DANIPS and Mr. B could not qualify. Two years later, Mr. B qualifies in the SPS of another segment of the same cadre. Because of calculation of segment-wise vacancies and preparation of segment-wise select list, Mr. B gets promotion to the IPS cadre earlier than Mr. A and becomes senior to him"

The above facts given as illustration clearly indicates that the present system followed in preparation of interse-seniority list of the promotee IPS officers in AGMU cadre is illegal and arbitrary and has to be changed. The seniority rules and regulations do not have any provision for deciding the interse-seniority amongst the members of the services who have been appointed on the basis of separate select list. The applicants would contend that this issue was not raised in OA 222/91, earlier filed by them.

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6. As per the applicants, the 5th Central Pay Commission as reported in Chapter 49.16, Volume 1 of its report strongly felt that the promotion to the respective AIS of AGMU cadre should be made on the basis of a joint select list, including suitable officers of all the constitute feeder grades. The Commission has also observed that the policy of the Ministry of Home Affairs of resorting to promotion of officers on notional allocation basis has proved detrimental to the interests of the DANIPS officers as this has enabled the Ministry to arbitrarily earmark the promotion quota vacancies of different constituents of the AGMU cadre which has no relation to the strength of feeder cadre. The relevant portion of 5th PC report is extracted below:

"It has been argued before us that to the detriment of the interests of the UT Civil service and UT Police service, from 1988-89 onwards, the Ministry of Home Affairs have resorted to promotion of officers on notional allocation basis. This has enabled the Ministry to arbitrarily earmark the promotion quota vacancies for different constituents of the AGMUT cadre, which bears no relation to the strength of different feeder cadres. The service associations have demanded switching over to the joint seniority system for such promotions. We feel that the promotions to the respective AIS, AGMUT cadre should be made on the basis of a joint select list drawn batch-wise by including suitable officers of all the constituent feeder cadres"

7. The notional allocation of officers, as shown in the order dated 18.7.90 has resulted in arbitrariness and also violation of Articles 14 and 16 of the Constitution. By this illegal method, juniors are being made senior above the applicants which could not have been possible otherwise. This notional allocation in the case of the existing officers of AGMU cadre could

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not have been done on 18.7.90 as two services of AP and Mizoram were not feeder service to the IPS(UT) cadre as on the date the said officers were promoted to IPS(UT). The inter-transfer from one segment of the joint cadre to other, especially to the UT segment, is not possible as there cannot be a joint seniority list of all the SPS officers of various constituents as the officer of the UT cadre are governed by the CCS Rules whereas the officers of SPS are governed by respective local rules.

8. The officers of the UT segment like the DANIPS officers cannot be compared as equal to the officers of the AP and Mizoram Police Service as the UT segment officers like the DANIPS officers are recruited to the service from the same competitive examination, inwhich the IPS officers are recruited. The other SPS officers are recruited through local arrangement/selection resorted to by them. Decision taken earlier to notification dated 11.12.92 by the Ministry/JCA in respect of notional allocation and cadre review are illegal and irregular as DANIPS and Pondicherry Police remained unrepresented.

9. The formation of the joint cadre can only be prospective and not retrospective. So the posts/vacancies which the officers of the feeder service of the erstwhile UT cadre were holding or were entitled to hold cannot be arbitrarily allocated to Mizoram and AP Police services. This will violative of articles 14 and 16 of the Constitution. The inclusion of Arunachal Pradesh and Mizoram Police services as a feeder service in 1987 one day before the date of DPC was bad and illegal as by that time both AP and Mizoram had become full-fledged states.

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10. Respondents have submitted that as per AIS joint cadre Rules, 1972, joint cadre authority functions as State Governments in respect of the joint cadre. After several discussions, the JCA at its meeting held on 20.6.90 decided allocation of 3 vacancies in promotion quota available as on 28.12.88 and notional allocation of 27 promotee officers available in the then UT cadre as on 28.12.88. The said JCA considered the matter in depth and taking all factors relevant to the proper management of the cadre and career management of the service officers into consideration, held that notional allocation of officers may be made on the basis of the principles as mentioned herein under:

(a) Since the formation of combined joint cadre was notified on 28.12.88, the notional allocation shall be effective only from the said date;

(b) All such officers appointed to IAS/IPS on promotion/selection from the state Civil/Police services should be allocated to the concerned constituent unit to which they belong as a member of state services (all UTs combined together as one constituent unit);

(c) The notional allocation of the officers shall be made in such a manner that the members of the state service of each constituent unit have some chance for appointment to the IAS/IPS in future. In other words, instead of creating a situation of stagnation in the particular constituent unit, it is required that each constituent unit gets some vacancies out of the available vacancies in the promotion quota.

Accordingly, a decision was taken to notionally allocate the promotee officers as informed to concerned state/UT governments vide M/Home Affairs letter No.14013/1/89-UTS dated 18.7.90. Before issuing the above letter, the DoPT was also consulted.

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11. We have heard rival contentions of learned counsel for all the parties. We find that the present OA (1812/96) filed by R.L.Meena and others raises the same issues raised by the same applicants earlier. With exception of Kewal Singh rest of other applicants continue to be the same.

12. The relief prayed for in the present OA as in para 8(a) reads as under:

"Direct respondents to consider the case of only those officers, who were eligible for promotion to the IPS(UT) cadre, prior to the constitution of AGMUT cadre to any vacancy that arises out of retirement of any promotee IPS officer belonging to the erstwhile UT cadre"

Vis-a-vis the aforementioned reliefs, those mentioned in para 8(a) of the earlier OA (222/91) reads as under:

"Direct respondents to revise the allocation of the posts of IPS officers in the AGMU cadre and re-allocate two vacant posts one each allocated to Arunachal Pradesh and Mizoram to the Union Territories Constituent"

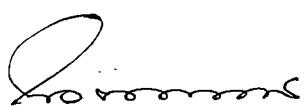
13. Excepting changes in the use of words/phrases, the main relief in both the OAs relate to the same issues on notional allocation of the promotee IPS officers to the erstwhile UT cadre. A few other issues raised by the applicants in this OA have been examined by this Tribunal in paras 9 to 16 in OA No.222/91 decided on 18.4.96. The said OA was dismissed for reasons recorded therein. We do not find any reason to take a different stand in respect of the conclusions arrived at therein on issues raised herein again. Applicants' contentions that the main issue of segment-wise select list and promotions therefrom in the IPS/AGMU cadre and the consequential adverse effects were not raised in the earlier OA (222/91) cannot be countananced in the

background of details above.

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14. It is not in dispute that both the OAs are exclusively based on applicants' challenge to the order No.14018/1/89 dated 18.7.90. If the applicants are aggrieved of the adverse effects of the said order, in terms of preparation of segment-wise select list and promotions therefrom in the IPS/AGMU cadre being illegal, they were at liberty to have the same sorted out at the relevant time. The present application is, therefore, hit by the principles of constructive res judicata.

15. Based on the detailed discussions above, the OA deserves to be dismissed and we do so accordingly. No costs.



(S.P. Biswas).  
Member(A)



(A.V. Haridasan)  
Vice-Chairman(J)

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