

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 1508/1997

New Delhi this the 7th April, 2011

Hon'ble Mr. L.K.Joshi, Vice Chairman (A)
Hon'ble Mrs. Meera Chhibber, Member (J)

R.P.Sharma, I.P.S.,
Superintendent of Police,
Karwar Post, Distt. Uttara Kannada,
Karnataka.

... Applicant

(By Advocate Shri S.K.Das)

VERSUS

1. Union of India
Represented through the
Secretary, Ministry of Home Affairs,
North Block, New Delhi-1
 2. The Secretary,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi-1
 3. State of Karnataka
through
Chief Secretary, Government of Karnataka,
Bangalore.
 4. Shri Alok Mohan, I.P.S.
 5. Shri N.S. Megharikh, I.P.S.
Serial No. 4 and 5, C/o Director General of Police,
Karnataka Bangalore P.O. & Dist- Bangalore
(Karnataka).
- ... Respondents

(By Advocate Shri R.N. Singh)

ORDER

Mr.L.K.Joshi, Vice Chairman (A):

Dr. R P Sharma, an Indian Police Service (IPS) officer of the 1987 batch, the Applicant herein, is aggrieved that on his transfer from Kerala cadre, to which he was originally assigned, to Karnataka cadre, to which he was transferred in 1994 on his own request after

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getting married to Smt. Ambika Devi, an Indian Administrative Service (IAS) officer of Karnataka cadre, he has been placed below the officers junior to him in the all India seniority list of the IPS in the Gradation List of the State of Karnataka by the application of Rule 7 (2) of the IPS (Regulation of Seniority) Rules 1954 (Rule 6(3) of the amended Regulation of 1988). By application of the aforesaid Rule the Applicant was placed below the officers of 1987 batch in Karnataka cadre. The Applicant made a representation dated 1.03.1996 regarding fixation of seniority below the officers junior to him in the all India seniority list. The representation reads thus:

"May I draw kind attention towards Rule 7 of Indian Police Service (Regulation of Seniority) Rules, 1954, where it is stated that:

If an Officer is transferred from one Cadre to another at his request, he shall be assigned a position on the gradation list of the Cadre to which he is transferred, below all the Officers of his category borne on that cadre who have the same year of allotment..

On account of that I have been shown at No. 103 in Civil List of I.P.S. Officers published by D.P.A.R. on 1.1.1995 below Sri N.S.Megharikh, as per Govt. of India's Notification No. (1)-11052/11/94-AIB (II)-A, dated 29.12.1994, while in Inter State Seniority List released by Govt. of India in Notification No. I-22011/53/91-Para.II dated 12.9.91 listed above Sri Alok Mohan and Sri N.S.Megharikh and I had been give No. 28.

The Officers recruited into All India Service of a particular year are given one seniority on the basis of Rule 4 of seniority of the Officers and vis-à-vis any other Officers of the same category.

An Officer can have one seniority and on the basis of our recruitment vis-à-vis other officers of his batch. So, I request to Govt. of India to delete Rules 7 clause 2 of Indian Police Police Service (Regulation of Seniority) Rules, 1954 so it may not be full violation of basic principle of Indian Constitution."

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The representation of the Applicant was rejected by the impugned order dated 11.06.1996. This OA has been filed to challenge the above mentioned order and seeking the following reliefs:

"(a) quashing of the order dated 11/6/1996 passed by the Under-Secretary to the Government of India, Ministry of Home Affairs N.R.Block, New Delhi being number 1-15016/23/96-IPS-1.

(b) to direct the respondent to maintain the original seniority list prepared by Govt. of India on 12-9-1991 for the I.P.S. Cadre of 1987 Batch in respect of the applicant; and

(c) to direct the respondent No. 3/State of Karnataka not to give effect or further effect to the Civil List of I.P.S. officers of Karnataka cadre as on 1-1-1997 of I.P.S. officers of 1987 Batch;

(d) declare Rule 7 (2) of I.P.S. (Regulation of Seniority) Rules, 1954 as un-constitutional;

(e) Any further order/orders as this Hon'ble Tribunal may deem fit and proper."

2. The OA was dismissed by the Tribunal by order dated 21.08.2000. The Applicant approached the Honourable Delhi High Court in WP© number 1729/2001, whereby the petitioner before the High Court, the Applicant herein, was given an opportunity to file Review Application before the Tribunal. The RA was dismissed by the Tribunal. The matter was again carried to the High Court in WP© number 7349/2003. The case was remanded to the Tribunal again by order dated 04.12.2007 to hear the RA on merit. The RA was allowed and the matter has since been re-heard on merits.

3. We have heard the learned counsel for the parties and perused

lipu the record placed before us.

4. Before we consider the issues involved in this case, we are reproducing below the relevant rules applicable in this case. After the selection of the candidates in the competitive examination, the candidates are given the same year of allotment and sent for training to the Academy of Administration at Mussoorie and after that to the Academy for training the probationers of the IPS at Hyderabad. The seniority is thereafter fixed on the basis of Rule 10 of IPS (Probation) Rules, 1954. The Rule is extracted below:

"10. Seniority of probationers.—"(1) The Central Government shall prepare a list of all probationers who are recruited to the Service under sub-rule (1) of Rule 3 and are assigned the same year of allotment. Such list shall be arranged in order of merit, which shall be determined in accordance with the aggregate marks obtained by each probationer--

(a) at the competitive examination;

(b) in respect of his record in the Lal Bahadur Shastri National Academy of Administration and the Sardar Vallabhbhai Patel National Police Academy; and

(c) at the final examination.

Provided that in determining such order of merit no account shall be taken of marks awarded to probationer in any subject in which he has failed to satisfy Director, Sardar Vallabhbhai Patel National Police Academy;

Provided further that if two or more probationers have secured equal number of marks in the aggregate, their order of merit shall be the order of their dates of birth."

(2) The seniority inter se of the probationers who are assigned the same year of allotment, shall be determined in accordance with the list prepared under sub-rule (1).

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The allocation of members of service to various cadres is governed by Section 5 of IPS Cadre Rules, 1954, which reads as under:

"5. Allocation of members to various cadres - (1) The allocation of cadre officer to the various cadres shall be made by the Central Government in consultation with the State Government or State Governments concerned.

(2) The Central Government may, with the concurrence of the State Governments concerned, transfer a cadre officer from one cadre to another cadre."

The seniority of the IPS officers is regulated by the IPS (Regulation of Seniority) Rules, 1954. Rule 4 *ibid* is quoted below:

"4. Inter-se seniority of the officers.—The inter se seniority of the officers who are assigned the same year of allotment shall be in the following order and in each category the inter se seniority shall be determined in the following manner:

(i) Direct recruit officers shall be ranked inter se in the order of merit as determined in accordance with Rule 10 of the Indian Police Service (Probation) Rules, 1954.

(ii) "

Every cadre prepares a list, which is called Gradation List, in which the seniority of officers allotted to a particular state is shown. Rule 6 of the IPS (Regulation of Seniority) Rules, 1954 is extracted below:

"6. Fixation of the seniority of officers transferred to another Cadre.—(1) If a direct recruit officer is transferred from one cadre to another in public interest, his year of allotment shall remain unchanged and his inter se position among the direct recruits having the same year of allotment in the cadre to which he is transferred shall remain the same as determined in accordance with Rule 10 of the Indian Police Service (Probation) Rules, 1954.

(2) If a promotee officer is transferred from one cadre to another in public interest, his year of allotment shall remain unchanged and he shall be ranked inter se with promotee officers having the same year of allotment in the cadre to which he is transferred with reference to the date on the basis of which he was assigned the year of allotment under these rules.

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(3) If an officer is transferred from one cadre to another at his request, he shall be assigned a position in the gradation list of the cadre to which he is transferred below all the officers of his category borne on that cadre who have the same year of allotment:

Provided that in the case of a direct recruit officer transferred from one cadre to another at his request, his seniority in the list prepared under Rule 10 of the Indian Police Service (Probation) Rules, 1954 shall remain unaffected for the purpose of the said list."

The effect of transfer made in public interest or at the request of an officer is governed by Rule 7 of the IPS (Regulation of Seniority) Rules, 1954, which is extracted below:

"7. Fixation of seniority on transfer to another cadre.—(1) If an officer is transferred from one cadre to another in the public interest, his position in the gradation list of the cadre, to which he is transferred shall be determined by the Central Government in accordance with the following principles:

(i)

(ii)

(a) Indian Police Officers.—An Indian Police Officer shall take rank according to his original all-India seniority at the time of initial appointment:

(b)

(c)

(d)

(e)

(2) If an officer is transferred from one cadre to another at his request, he shall be assigned a position on the gradation list of the cadre to which he is transferred below all the officers of his category borne on that cadre who have the same year of allotment."

The above mentioned Rule was amended in 1988. Rule 6 of the amended Rules reads thus:

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"6. (1)"

(2)

(3) If an officer is transferred from one cadre to another at his request, he shall be assigned a position in the gradation list of the cadre to which he is transferred below all the officers of his category borne on that cadre who have the same year of allotment:

Provided that in the case of a direct recruit officer transferred from one cadre to another at his request, his seniority in the list prepared under Rule 10 of the Indian Police Service (Probation) Ruls, 1954 shall remain unaffected for the purpose of the said list."

It is in *pari materia* with the un-amended Rule 7 (2) of 1954 Rules.

5. It was pointed out on the Applicant's behalf that he was at serial number 28 in the seniority list of 1987 batch of the IPS officers. The fourth Respondent Sh. Alok Mohan, IPS was at serial number 36 and the fifth Respondet, Sh. N S Magharikh was at serial number 104 in the aforesaid list. However, the Applicant was shown at serial number 92 in the Gradation List of the IPS officers of Karnataka cadre and the fourth and the fifth Respondents were shown at serial numbers 90 and 91 respectively in the Gradation List. It was argued that it would be most incongruous to have two seniority lists at the State and the Central level, the Applicant being junior to the Respondents 4 and 5 in the Gradation List of the State and senior to them in the Central List.

6. It was further argued that the transfer of the Applicant was in public interest and not contrary to it or not purely in personal interest. It was pointed out that the Department of Personnel and Training (DOP&T) had as far back as 3.04.1986 laid down the policy that husband and wife should be posted at the same station, as far as

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possible. The Office Memorandum number 28034/7/86-Estt(A) dated 3.04.1986, *inter alia*, states thus:

"It is the policy of the Government that as far as possible and within the constraints of administrative feasibility, the husband and wife should be posted at the same station to enable them to lead a normal family life and to ensure the education and welfare of their children. ***It has, therefore, now been decided to lay down a broad statement of policy at least with regard to those employees who are under the purview of the Central Government/ Public Sector Undertakings.*** An attempt has, therefore, been made in the following paragraphs to lay down some guidelines to enable the Cadre Controlling Authorities to consider the requests from spouses for a posting at the same station. The guidelines given below are illustrative and not exhaustive. Government desire that in all other cases the Cadre Controlling Authority should consider such requests with utmost sympathy.

Guidelines

(i) Where the spouses belong to the same All India Service or two of the All India Services, namely, IAS, IPS and Indian Forest Service (Group 'A').- The spouses will be posted to the same Cadre by providing for a Cadre transfer of one spouse to the Cadre of the other spouse subject to their not being posted by this process to their home cadre. Postings within the Cadre will, of course, fall within the purview of the State Government."

The learned counsel for the Applicant submitted that the aforesaid OM was amended from time to time and an OM dated 30.09.2009 gave it a broader policy sweep by stating that:

"In view of the utmost importance attached to the enhancement of women's status in all walks of life and to enable them to lead a normal family life as also to ensure the education and welfare of the children, guidelines were issued by the DOP&T in OM No. 28034/7/86-Estt. (A) dated 3.4.86 and No. 28034/2/97-Estt. dated 12.6.97 for posting of husband and wife, who are in Government service, at the same station. Department had on 23.8.2004 issued

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instructions to Mins./Deptt. To follow the above guidelines in letter and spirit."

7. It was contended that after the marriage of the Applicant to another officer of Karnataka cadre, his cadre was changed in the light of the circular dated 03.04.1986. The argument is that in the light of the policy decision of the Government of India the transfer of the Applicant to Karnataka can not be called to be in personal interest as contrasted to public interest. It was urged that the aforementioned circular was issued by the Government of India after conscious deliberation and the objective behind issuance of that circular was to empower the female officers and to ensure the education and welfare of their children. It was argued that in such view of the matter the seniority of the transferred officer should not be affected as a result of the transfer. Relying on **N K Chauhan V. State of Gujarat**, AIR 1977 SC 251 it was contended that the person who has actually served longer should benefit better in future. Reliance has also been placed on **Reserve Bank of India V. N C Paliwal**, AIR 1976 SC 2345, in which it has been held that:

"It is open to the State to lay down any rule which it thinks appropriate for determining seniority in service and it is not competent to the Court to strike down such rule on the ground that in its opinion another rule would have been better or more appropriate. The only inquiry which the Court can make is whether the rule laid down by the State is arbitrary and irrational so that it results in inequality of opportunity amongst its employees belonging to the same class."

It was argued that by virtue of his placement in the State gradation list he had been rendered junior to those who were junior to him in the all India seniority list. This had affected his prospects of promotion in

State the State Government, contended the learned counsel. Since his

transfer was based on stated public policy of empowerment of women, it could not be considered to be contrary to public interest.

8. The Respondents, *per contra*, have opposed the cause of the Applicant by filing counter affidavit and an additional affidavit. The learned counsel for the Respondents contended at the outset that the various Office Memoranda, such as the OM dated 03.04.1986 and 30.09 2009 were applicable only to the Central Services and not to the All India Services. Second, it was urged that the instructions issued through Office Memoranda could not override the statutory rules. Since there is a specific rule to the effect that on transfer from one cadre to another on personal request, the transferred officer would be placed at the bottom of the State Gradation List among the officers of his batch, no Office Memorandum, least of all the one about posting husband and wife at one place, issued in 1986 could override it. The Applicant, it was contended, was aware of the rule when he sought transfer from Kerala to Karnataka cadre and after being transferred he could not challenge the rule by virtue of which he was placed at the bottom of the State Gradation List of his batch. It was further urged that the policy of the Government of India to post husband and wife at one place would give the benefit of transfer to an employee but it could not be to the detriment of other employees of the State cadre by making them junior to a person who had migrated from another cadre and thus unsettle the settled position of seniority. These instructions and the statutory rules operate in different spheres, contended the learned counsel for the Respondents. The learned counsel urged that the Tribunal should not intervene in policy matters, which were in the Hyd exclusive domain of the executive. Reliance has been placed on **P.U.**

Joshi and others Vs. Accountant General, Ahmedabad and others, (2003) 2 SCC 632 and **Mallikarjuna Rao and others etc. etc. Vs. State of A.P. and others etc. etc.**, AIR 1990 SC 1251.

9. We have given our utmost consideration to rival contentions and perused the record placed before us.

10. We are in agreement with the Respondents that the Office Memoranda adverted to by the Applicant would not apply to the All India Services. These have to be specifically marked to the State Governments with the specific instructions that this would be applicable to the officers of the all India services. A full Bench of this Tribunal in Ernakulum Bench has held in OA number 337/2010, **Tomin J. Thachankary Vs. State of Kerala** that such instructions would not apply to the officers of the AIS unless specifically mentioned and unless these have been sent to the State Governments. There is no endorsement in the Office Memoranda to the State Governments with instructions that this would be made applicable to the members of All India Services. Second, these instructions cannot override the statutory rules. It is now well-established that instructions can supplement the rules but cannot supplant them. We cannot read these instructions in derogation of the statutory rules. Moreover, there is only an intent expressed in these instructions that husband and wife should be posted at the same place so that they can lead normal lives and the education and welfare of the children is also ensured. There is nothing in these instructions regarding the seniority to be fixed on transfer of an officer from one cadre to the other. By transferring the Applicant to Karnataka cadre, the objective of the Government to keep

the the spouses at one place has been achieved. It cannot be, however,

said that the transfer is in public interest. The case of public interest would be, for example, if an IPS officer is transferred from one cadre to the other keeping his expertise in tackling terrorism or out of control law and order situation. When terrorism was at its peak in Punjab, an IPS officer of Assam cadre, namely, Shri KPS Gill, was transferred to Punjab as Director General of Police. Similarly, Shri Riebero, of Maharashtra cadre was also transferred to Punjab. Several such instances can be quoted. These are the instances of transfer in public interest and in such cases the seniority of the transferred officers has been protected. Transfer on the ground of marriage cannot be construed as transfer in public interest because only the interest of the transferred officer and his spouse is served by such transfer. It is a special consideration for the couple, which is more than served by bringing them together in one cadre. The case of N K Chauhan (supra) cited by the Applicant is completely irrelevant in the facts of this case as the issue considered in this case is regarding the dispute between direct recruit and promotee Deputy Collectors. Moreover, in the instant case the transferred officer cannot be said to have served longer in the service than his/her batch mates in the cadre to which he/she has been transferred. Their span of service is the same. Insofar as the N C Paliwal (supra) is concerned it goes against the Applicant's case. We cannot interfere with the rules merely by substituting our judgement against the judgement of the rule makers by considering it to be better option. Moreover, the facts in N.C. Phaliwal (supra) were that challenge was laid to the combined seniority rule framed by the petitioner - RBI, in which combined seniority list for various officials in five different groups of the RBI, where separate seniority lists were maintained, was to be drawn up. This has no relevance to the

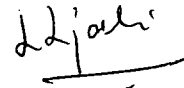
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present case. There is nothing arbitrary in the rule challenged by the Applicant. It is an accepted principle in administration that on transfer from one cadre to the other on personal request, the transferred officer would be placed at the bottom of the seniority list of the officers in the cadre to which the officer has been transferred. It is well settled that the Tribunal should not transgress into matters of policy, which is in the domain of the executive (Mallikarjuna Rao, cited supra and P.U. Joshi, cites supra). We agree that the Applicant sought his transfer in spite of being fully aware of its consequences and he cannot now question the policy.

11. In the light of the above discussion the OA is seen to be bereft of merit and is accordingly dismissed. There will be no orders as to costs.



(Mrs. Meera Chhibber)
Member (J)



(L.K.Joshi)
Vice Chairman (A)

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