

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2312/2000

(V)

New Delhi, this the 14th day of December, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S.Tampi, Member (A)

Jayprakash V.Nayak, IPS
S/o Shri Vasudev Nayak
Deputy Commissioner of Police
City Armed Reserve (Hdqr.)
Bangalore - 560 018.

...Applicant

(By Advocate Shri M.K.Bhardwaj)

V E R S U S

UNION OF INDIA : THROUGH

1. The Secretary
Ministry of Personnel, Public
Grievances & Pensions
Govt. of India
New Delhi.
2. The Secretary, UPSC
Shahjahan Road
New Delhi.
3. The Chief Secretary
State of Karnataka
Govt. of Karnataka
Vidhana Soudha, Bangalore.
4. The Secretary
Ministry of Home Affairs
Govt. of India, New Delhi.
5. Shri S.K.Venugopal
C/o Chief Secretary
State of Karnataka
Govt. of Karnataka
Vidhana Soudha, Bangalore.

...Respondents

(By Advocate Shri R.N.Singh, proxy counsel
for Shri R.V.Sinha and Shri Subhash
Mishra, for respondent No.3)

O R D E R

By Shri Govindan S.Tampi.

Reliefs sought for in this OA filed by Shri Jayaprakash V.Nayak are as below :-

(a) to mandate the respondent to restore seniority to the petitioner with reference to his position i.e. Sl.No.2 in the select list of 1991-92.

(b) to direct the respondents to give the applicant seniority above the respondent no.5 who was at Sl.No.3 in the select list of 1991-92 in which the applicant was at Sl.No.2.

(c) to mandate the respondent to give seniority to the petitioner with reference to the vacancy which occurred on 31-1-1992.

(d) to allow the OA with costs and

(e) to pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case.

2. Heard Shri M.K.Bhardwaj, learned counsel for the applicant, S/Shri R.N.Singh and Subhash Mishra, learned counsel represented the respondents during the oral submissions.

3. The applicant who originally joined Karnataka Police Service (SPS) was considered for promotion by the State Government, in terms of Indian Police Service (appointment by promotion) Regulations, 1955 on 26/27-3-1991, against the anticipatory vacancy, but the select panel drawn up with the name of the applicant at Sl.No.2 and respondent no.5 at Sl.No.3 was sent up to the Govt. of India/UPSC only on 21-2-1992, which was approved on 3-3-1992. This delay occurred as the State Govt. could not furnish in time, the details of the proceedings, initiated against the officer empanelled at Sl.No.1, above the applicant. The list approved was valid only up to the date of next meeting of the Selection Committee, but the applicant could have been promoted as it was against the vacancy, which arose on 31-1-1992 and as

the officer placed at Sl.No.1 was not fit to be promoted. The respondents, however, failed to do so. Applicants OA No.204/92, against his non-promotion was dismissed by the Bangalore Bench of the Tribunal. S.L.P.No. 17442/93 filed by the applicant against the Tribunal's order was disposed of by the Hon'ble Supreme Court on 2-2-1995, noting that the applicant has since been promoted to IPS, with the observation that other grievances could be redressed on the applicant's filing a representation. The representation filed on 25-2-1995, did not evoke any response. Hence this OA. Grounds raised by the applicant are that (i) he has been wrongly denied seniority of 1991-92, (ii) he was correctly entitled to placement above respondent No.5 who had been approved below him in 1991-92, (iii) he should have been appointed to IPS in 1991-92, as the officer placed at Sl.No.1, was under cloud, (iv) the respondents have themselves admitted that injustice had been done to him, to alleviate which he had been appointed to IPS in 1995 and (v) as the issue before the Hon'ble Supreme Court related to his promotion against the vacancy for 1991-92, his promotion should date from that year. The above pleas were forcefully reiterated by Shri M.K.Bhardwaj, learned counsel, during the oral submissions, when he stated that having agreed before the Supreme Court to promote the applicant, the respondents should have promoted him from 1991-92 itself.

4. Strongly rebutting the pleas raised in the OA, the respondents hold that the OA was not maintainable as the applicant had approached the Tribunal more than four years after his seniority was

fixed by letter No.1.15011/2/96-IPS-1 dated 18-3-1996, and that too without exhausting administrative remedies. Besides, seniority was an incidence and not a condition of service and the applicant cannot seek seniority in IPS, before his date of entry into the said service. Further, in the matter of promotion of a State Police Officer, the concerned State Govt. and the UPSC are mainly involved, while the Union, has only a limited role. Respondents generally agree with the facts enumerated in the OA, though they contest the inferences arrived at by the applicant. The applicant was indeed placed at Sl.No.2 in the select list of State Police Service Officers of Karnataka of 1990-91 during the meeting of the Select Committee, held on 26/27-3-1991, for the vacancy which ^{was} _L to arise on 31-1-1992. This select list was approved by the UPSC on 16-3-1992. When the State Govt. was requested to send the proposal for appointment of the selected person to issue the requisite notification on or before 27-3-1992, they informed Union on 24-3-92, that the individual placed at Sl.No.1 in the panel had been placed under suspension and that the applicant, placed at Sl.No.2, be appointed in his place to IPS. In terms of the Regulations 9 (1) and (2) of the Promotion Regulations 1955, deletion of the name of anyone already placed on the panel could be ordered only after consulting the UPSC, which took sometime to complete. Applicant's promotion, therefore, could not be ordered before 28-3-1992, on which date, a fresh Selection Committee had already met. Once the Fresh Selection Committee, met on 28-3-92, the earlier select list of 26/27-3-1991 for 1990-91, empanelling the applicant became inoperative and he could not be

appointed. The applicant was not included in the next panel i.e. for 1991-92. Though he was placed in the select panel for 1992-93, he was not appointed for want of vacancies. This led to the applicant's unsuccessful attempt before the Bangalore Bench of the Tribunal in OA no.204/92, SLP(c) No.17442/93 filed by the applicant against the dismissal was disposed of by the Hon'ble Supreme Court on 2-2-1995, when it was brought to Apex Court's notice that the applicant had already promoted on 23-1-1995, following the increase in promotion quota in IPS in the State by the DOPT's notification dated 29-12-1994. Accordingly the applicant's seniority was fixed on 18-3-1996 with his year of allotment as 1990. Respondent No.5 was the first in the select list of 1991-92 and was accordingly appointed to IPS on 24-11-1992 with the year of allotment as 1988. Applicant's not having been placed in the Select List of 1991-92, but only of 1993-94, he cannot claim seniority over respondent No.5. It would thus be seen that the OA has no merit at all, according to the respondents. Reiterating the above, Shri Singh, learned proxy counsel for the respondents, also points out that as the very issue of non-promotion of the applicant has already been agitated before the Bangalore Bench of the Tribunal in OA 204/92, which was dismissed. The present OA was, therefore, hit by res-judicata. This OA clearly was a case of abuse of process and deserved to be rejected with exemplary costs, argues Shri Singh.

5. According to respondent No.3, the applicant had sought to mislead the Tribunal, as he was not placed in the Select List of 1991-92, but had been empanelled only in the list of 1990-91, which had

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not been operated at all. Therefore, determining his seniority on the basis of the select list of 1990-91, did not arise. While Respondent No.5 was placed in the select list of 1991-92, he was accordingly promoted and the applicant had to wait till he was empanelled in 1993-94 and vacancies arose by increase in the promotion quota. This respondent also refers to the OA No.204/92 filed by the applicant which was dismissed by the Bangalore Bench of the Tribunal. In view of the above, the applicant does not at all have a case and the OA deserves to be dismissed, according to this respondent.

6. We have very carefully deliberated upon the rival contentions in this OA. The point for determination in this OA is whether the applicant is entitled for the benefit of promotion from the State Police Service to IPS from an earlier date i.e. from 1991-92 or not. The applicant claims that as he was placed in the Select Panel for 1991 at Sl.No.2 and as the officer placed at Sl.No.1 could not be promoted on account of pending proceedings against him, he should have been promoted in his place, inspite of the next selection committee having sat and the earlier list having became inoperative before the appointment could be made. On the other hand, Respondents contest the same and state that the applicant has no case. They also raise the preliminary objections that the applicant's not exhausting administrative remedies, delay and laches as well as res-judicata. From the facts and circumstances of the case, we do not think

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that the two objections of non-exhausting of the administrative remedies and delay and laches are very much applicable in this case.

7. It is an admitted fact that the applicant who was a Member of the State Police Service became eligible for consideration for promotion to IPS in terms of 1955 Promotion Regulations, was so considered and was placed at Sl.No.2 in the Select List for the vacancy, which was arise on 31-1-1992. However, this did not take place, as delay was caused by the State Govt. in furnishing the necessary details to the UPSC/Central Govt. with regard to the disqualification of the individual placed at Sl.No.1 along with the recommendation that his name be deleted and the applicant be promoted, by which time next Selection Committee had met. Once the fresh selection committee had met, the earlier panel had become inoperative and the applicant could not be appointed. It is brought out on record that he was not placed in the Select List for the year 1991-92 and though placed on the list for 1992-93 could not be appointed for want of vacancies. Ultimately he was placed in the panel for 1993-94 and was promoted when the promotion quota was enhanced by order dated 29-12-1994. It is more than likely that the delay caused by the State Administration in furnishing the details to the UPSC with regard to the disqualification of the candidate who was placed at Sl.No.1 had led to the denial of promotion to the applicant from the Select Panel of 1990-91. However, this matter has been agitated by the applicant himself in his OA No.204/92 filed before the Bangalore Bench of the Tribunal, which was disposed of on 23-7-93 dismissing his OA. The Bangalore Bench has

dealt at length about the delay caused by the State Administration in this regard, but have at the same time observed that no malafide on the part of the State Govt. has been proved in this regard. They have, therefore, held that the applicant had no case. SLP No. 17442/93 filed by the applicant against the order of the Tribunal has been disposed of by the Supreme Court on 2-2-1995, observing that the main part of the grievance has been redressed by the applicant's promotion on 23-1-1995. The matter is, therefore, settled. Nothing has been brought on records to show that there has either been any promise/undertaking by the respondents that they would accord the applicant, promotion from 1991-92 or there were any directions from the Hon'ble Supreme Court that it should be done. It is clear, therefore, that the applicant's promotion could have taken effect only from the date on which he has infact been promoted i.e. on 23-1-1995. Fixation of his seniority on 18-3-1996 with the year of allotment as 1990 follows suit. This being the case and also as the matter has been already settled by the Co-ordinate Bench of the Tribunal at Bangalore, the applicant cannot have any fresh case. We also note, as has been done by the Bangalore Bench that the delay caused by respondent No.3 come in the way of the applicant's promotion from the Select List of 1990-91. But the same has been held to be valid in terms of Regulations 7 (4) of the Promotion Regulations directing that no appointment can be made from the earlier select panel once the fresh selection meeting had been held. It has also been brought on record that respondent No.5 was placed at Sl.No.1 in the select panel for the year 1991-92

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though in the earlier panel which had became inoperative, he had been placed below the applicant. As such the applicant cannot question the promotion granted to respondent No.5 in 1992 and his higher placement. As correctly argued by the respondents, the question of seniority in the service would arise only after the entry of the individual concerned in the service and the applicant not having been appointed in the service before 1994, he cannot seek seniority from an earlier date.

8. In the above view of the matter, we are totally convinced that the applicant has not made out any case for our interference, on merits, His case, is also hit by res-judicata in view of the decision of the Bangalore Bench of the Tribunal in OA 204/92. OA, therefore, fails and is accordingly dismissed. No costs.

(GOVINDARAJ S.TAMPI)
MEMBER (A)

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)~
VICE-CHAIRMAN (J)

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