

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.1074 of 1989

This 23rd day of March 1994

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

G.R. Gupta,
S/o Late Shri Jot Ram Gupta,
R/o 16, Talkatora Road,
New Delhi.

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Applicant

By advocate: Shri G.D. Gupta

VERSUS

Union of India, through
The Secretary,
Government of India,
Ministry of Home Affairs,
New Delhi.

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Respondents

By Advocate: Shri M.L. Verma

ORDER

(By. Hon'ble Mr. B.K. Singh, M(A))

This O.A. has been filed under Section 19 of the AT Act, 1985 challenging, inter alia, the act of the respondents in not reviewing the selections for IPS as made in 1973 for considering/including the name of the applicant in the said selections and not assigning him consequential revised year of allotment and revised seniority in the list.

The applicant was initially^{appointed}/as Dy. Superintendent of Police on the basis of the results of IAS/Allied Services Examination held in 1962 and was assigned Class 'B' Police Service. On completing eight years of service as DSP on 1st January 1973 the applicant became eligible for consideration by a Departmental Promotion Committee for inclusion in the Select List for promotion to UT cadre of the IPS. The DPC was held in September 1973 for preparation of select list of suitable officers for promotion to the UT cadre of IPS and the applicant was in the zone of

consideration. The said DPC considered the case of 7 officers from amongst 20 DSPs in the list. They are:

1. S/Shri R.R. Prasad
2. P.V. Sinari
3. A. D'Souza
4. U.P. Daimore
5. S.K. Singh
6. G.R. Gupta
7. K. Panchapagesan

As per Regulation 5 of the IPS (Appointment by Promotion) Regulations, 1955, the number of members of the State Police Service to be included in the list was not to be more than twice the number of substantive vacancies anticipated in the course of 12 months commencing from the date of preparation of the list. The total strength of the UT cadre at that time was 49 and as such only four officers were to be included in the select list. Accordingly the DPC recommended the inclusion of the following officers in the select list:

1. S/Shri R.R. Prasad
2. P.V. Sinari
3. A. D'Souza
4. S.K. Singh.

It seems that there were no vacancies in 1974 and as such there was no meeting of the DPC in 1974. The next DPC was held in December, 1975 and since there were only two vacancies available, the first two officers of the previous list containing 4 names, were promoted to IPS. Shri S.K. Singh could not be promoted on the basis of 1973 DPC. His name was reconsidered in the select list for 1975. The DPC of December 1975 included the following 4 names:

1. S/Shri A. D'Souza
2. Balwant Singh
3. S.K. Singh
4. G.R. Gupta

It is worth mentioning here that Shri R.R. Prasad whose name was included in the select list of 1973 was assigned the allotment year of 1970 in the IPS cadre under Rule 3(3)(b) of the IPS (Regulation of Seniority) Rules 1954. He was recruited as DSP in Himachal Pradesh w.e.f. 22.5.58 on probation. The H.P. Administration

extended his probation from time to time till 1965 and in a Writ Petition filed by him (Shri Prasad) before the HP Bench of Hon'ble Delhi High Court, the Court vide its judgment dated 16.7.68 declared the action of the HP Administration in keeping the officer on probation beyond 21.5.61 as void. As a result of the judgment and order of the Court, the case of Shri R.R. Prasad was reviewed by a review DPC in June 1972 and he was selected for appointment to Delhi & H.P. Police Service on its initial constitution. He was accordingly appointed to the said service w.e.f. 22.11.64. As a result of the said appointment the seniority of Shri Prasad was revised and he became senior to some of the officers who were promoted earlier to him. With reference to earlier seniority, Shri Prasad was considered for inclusion in the list for IPS as approved in 1973. He was appointed to the IPS and was allotted 1970 as the year of allotment on the basis of the DPC held in 1973 but on the basis of the judgment mentioned above he was included in the select list of 1967 below Shri S.S. Palta. As none of the officers included in the list prepared by the UPSC on 29.4.67 was appointed to the IPS, the committee considered the case of Shri R.R. Prasad for inclusion in the list prepared by the Committee on 22.12.70. The selection committee found him fit for inclusion in the list prepared by the DPC on 22.12.70 below Shri R.C. Kochar and above Shri C. Dasgupta. As a result of the inclusion of his name in the year 1970 in the select list, his date of appointment to the IPS had been antedated from 7.12.73 to 9.2.71 and he was ultimately allotted 1966 as the year of allotment and was placed below Shri



A.K. Agarwal and above Shri R.K. Sharma in the IPS Gradation List of UT Cadre vide order dated 7.5.1987. A copy of this order is marked as Annexure A-6 of the paper-book.

3. The reliefs prayed are:

(a) to allow this application and issue directions to the respondents that :

(i) selection for IPS made 1973 be reviewed and consequently the applicant should be deemed to be included in the select list of 1973 at Sl. No.4 with all consequential benefits;

(ii) declare the applicant entitled to be assigned revised seniority with all consequential benefits;

(iii) review the selection for IPS as made in 1973 and to consider the name of the applicant in the said selection so that he may be deemed to be included in the select list; and

(iv) allow him the consequential revised year of allotment and revised seniority if selected and/or included in select list as a result of said review selections.

4. A notice was issued to the respondents who filed the reply and contested the grant of reliefs prayed for by the applicant.

5. We heard the learned counsel, Shri G.D. Gupta for the applicant and Shri M.L. Verma for the respondents.

6. The main thrust of the arguments of the learned counsel for the applicant is that since Shri R.R. Prasad got the benefit of allotment of 1966, he should be deemed to be excluded from the select list of 1973 and the applicant who was next senior-most person below Shri S.K. Singh, will automatically come in that list. This contention of the applicant is not correct, firstly because the rules do not permit this. An officer even in the select list continues to be a non-cadre officer till he is promoted to IPS. Only in the exigencies of service they are allowed for 3 months to

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officiate against senior scale post of the IPS Cadre. If the officiating arrangement has to continue beyond three months, the approval of Govt. of India has to be obtained and the Govt. of India has to be furnished with a list of availability of other IPS officers who are available in the cadre though not promoted in the senior scale. In the event of such administrative requirement, a non-cadre officer can be appointed only temporarily to a cadre post for a period not exceeding 3 months to the extent permitted by Rule 9 of the IPS (Cadre) Rules 1954. Even in this case the posting has to be strictly in order of seniority in the select list. It is always open to the Central Govt. under Rule 9 of IPS (Cadre) Rules to give direction for appointment of a cadre officer to a cadre post terminating the officiation of a select list non-cadre officer. These instructions of Govt. of India are available below IPS (Cadre) Rules 1954 at pages 10-11 of the All India Services Manual Part III (sixth edition) corrected upto 31st July 1990. The Ministry of Home Affairs letter No. 6/54/64-AIS(I) dated 26.3.66 also clarifies the position. It lays down that under sub-rule 2 of Rule 9 of IAS/IPS (Cadre) Rules 1954, the cadre rules have to be strictly complied with when a non-cadre officer is appointed to a cadre post for a period exceeding three months. The rule envisages that the approval of Ministry of Home Affairs has to be obtained if the officiating arrangement is to continue beyond three months. Sub-rule (3) of Rule 9 of IAS/IPS (Cadre) Rules 1954 is self-contained and it empowers the Central Government to give direction to the State Govt. at any time to terminate the temporary appointment of a non-cadre officer to a cadre post even without consultation with the concerned State Govt. whether the period is

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less than three months or more than six months. The MHA in consultation with the UPSC is fully competent to terminate any such appointment of a non-cadre officer to a cadre post. According to Rule 8 read with Rule 9 of IAS/IPS (Cadre) Rules 1954, a non-cadre officer has to be replaced by a suitable cadre officer as soon as one becomes available. It has been further clarified that the appointment of a non-cadre officer (select list officer) holding a cadre post is a stop gap arrangement pending availability of a suitable cadre post officer. It does not give any right to the select list officer to continue to hold a cadre post once a suitable cadre officer becomes available. 2.1 (e) of MHA letter mentioned above further lays down:-

"The mere inclusion of the name of a select list officer does not confer any right upon him nor does he become a promoted officer merely by virtue of such inclusion. Appointment of a non-cadre officer (select list officer) to cadre post under rule 9 of the Cadre Rules is a purely temporary arrangement which may be terminated at any time when the Central Govt. or the State Govt. concerned finds that suitable cadre officers have become available. The select list officers cannot be equated with the direct recruits who are members of the Service and are entitled to hold senior post even before completing 4 years of Service."

7. The argument of the learned counsel for the applicant was further rebutted by the learned counsel for the respondents who said that Shri R.R. Prasad carried away the vacancy with him and there was no consequential vacancy left which could have been filled up by another promotee or by the applicant. ^{the promotion quota vacancies do not increased.} since He also quoted the rules and said that mere inclusion in the list does not confer any right on a select list officer and the question of his seniority is only considered when he actually becomes a member of the IPS and not before that. Thus this contention of the learned

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counsel for the applicant has no legs to stand. At the relevant time when the applicant was recruited to Class 'B' Police Service and became a member of Dani Police Service, 75% vacancies of the total authorised cadre were to be filled ^{up} by direct recruitment and 25% by promotion. Of the direct recruitment, 22.5% vacancies were reserved for SC/ST. The cadre strength of State or UT is fixed by Govt. of India in consultation with the State Govt. and it is admitted by both the parties that cadre strength was 49 and at the relevant time when DPC was held in 1973 there were 2 vacancies available and the size of the ^{select} list was ^{to be} double of this and only 4 persons were included in the list of which 2 got promoted and the rest 2 were reconsidered in December 1975 and included in the list as mentioned above. Mr. G.R. Gupta's name was 4th in the select list of 1975. Below Rule 9 of the IP S (Recruitment) Rules 1954 at page 34 MHA Letter No.16/2/66-AIS(III) dated 14.2.66 has been quoted which lays down:

"It is quite clear that there is no quota reserved for appointment by promotion to the IAS/IPS cadres and consequently by the officers in the select list have no legal right to appointment to the cadre. Regulation 9 of the Appointment by Promotion Regulations 1955 provides that the appointment to the IAS/IPS cadre posts shall be made only from the select list for the time being in force. But it is open to the Government not to make any appointment at all even if there are certain vacancies in the cadre. There is therefore no legal right to appointment conferred on the officers on Select List."

8. The contention of the learned counsel for the applicant that if DPC had met in 1974 the case of the applicant could have been considered. The meeting of the DPC is always dependent on the number of vacancies available or anticipated in the next 12 months and the size of the list has to be confined to double the number of the vacancies anticipated in the next 12 months. Though Rule

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5(1) of the IPS (Appointment by Promotion) Regulations 1955 lays down that ordinarily the DPC shall meet every year. But when there are no vacancies ^{in promotion quota} in existence/or anticipated in the next 12 months, there is no need for a meeting of the DPC. Rule 5(6) of the said rules lays down that the list prepared shall be reviewed and revised every year. It further lays down that no appointment to the Service under Regulation 9 shall be made ^{from the old select list} after the meeting of the fresh committee to draw up a fresh list under Regulation 9 has been held. Thus the contention of the learned counsel for the applicant that if a DPC had met when there were no vacancies in 1974 the case of the applicant could have been considered, does not hold good. It is also clear that Mr. D'Souza who was included in the list of 1973 was reconsidered for inclusion in December 1975 list and one more person intervened bringing down the position of the present applicant at Sl. No. 4 and not at Sl. No. 3 and the third man who intervened was Shri Balwant Singh who made it to the list because of his very good or outstanding remarks on the basis of which the officers are classified by the DPC.

9. It is also an admitted fact that the applicant was allowed officiation against a senior post only w.e.f. 10.5.76 (AN) along with Ramashraya Tiwari and P.S. Brar (annexure A-2). This appointment against a senior post was with due approval of the MHA and it was only until further orders. The very fact that 'until further orders' has been used implies that it was a stop gap arrangement and this cannot confer any right on the applicant. He was appointed as a member of IPS w.e.f. 7.5.76 (annexure A-1).

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10. It is an admitted fact that Mrs. Kiran Bedi got her promotion to senior scale post in February 1976 i.e. earlier than the applicant. Instructions issued by the Govt. of India from time to time clearly stipulate that when a direct recruit is promoted earlier than a select list officer the entire batch of the regular recruits will rank senior to the officer promoted from the select list. This has subsequently been modified and it now says that it will be on the basis of the date of notification. Even if the present instructions are taken into consideration, Mrs. Kiran Bedi who was promoted earlier than the applicant, will rank senior to the applicant and so will the entire batch of regular recruits who came with Mrs. Bedi. The allotment year of Mrs. Bedi is 1972 and therefore the applicant cannot be given any year of allotment prior to 1972. Rules also in this regard ^{are} crystal clear. Rules regarding inter se seniority are contained in the IPS (Regulation of Seniority) Rules 1954 and Rule 4 of these rules lays down the principle of inter-se seniority of the officers. Regarding assignment of year of allotment in regard to a promotee officer, the Rule 3(ii) lays down:

"The year of allotment of a promotee officer shall be determined in the following manner:-

(a) For the service rendered by him in the State Police Service upto 12 years in the rank below that of a DSP or equivalent, he shall be given a weightage of 4 years towards fixation of the year of allotment;

(b) he shall also be given weightage of one year for every completed 3 years of service beyond the period of 12 years, referred to in sub-clause (a) subject to a maximum weightage of 5 years in all;

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(c) the weightage shall be calculated w.e.f. the year in which the officer is appointed to the Service.

11. Shri G.R. Gupta was appointed as a Dy. Supdt. of Police on 27.12.64 and this is a fact admitted by both the parties. Thus he completed 12 years only on 27.12.1976 and accordingly Shri Gupta could only be given 4 years weightage and this weightage he has been given and has been assigned the allotment of 1972 below Mrs. Kiran Bedi. The rules as well as instructions of Govt. of India on the subject go against the applicant.

12. The respondents in their reply raised preliminary objection that the application was not maintainable and they quoted the case of K.R. Mudgal vs. R.P. Singh 1987 (1) ATLT 129. This cannot be accepted since the application has already been admitted. As per IPS (Regulation of Seniority) Rules the applicant has rightly been allotted to 1972 as the year of allotment in IPS. Shri Gupta deserved only 4 years weightage and he has been given that weightage since he put in 12 years service when he was appointed to officiate ^{against a} senior post i.e. 10.5.76. It was further pointed out by the learned counsel for the respondents that the name of the applicant appeared at Sl. NO.10 and not at Sl. No.6 as mentioned in the application. This has been corrected in the rejoinder by the applicant. Shri U.P. Daimore appeared at Sl. No.4 of the list of the officers considered for promotion to IPS by the DPC meeting on 14.9.73. Most of the other points which were raised have already been highlighted in the foregoing paragraphs. It was further argued that the applicant, even when the select list of 1975 was prepared, was placed at Sl. No. 4 and not at Sl. No. 3 as claimed by the applicant. Shri Balwant Singh intervened at Sl. No.3. There

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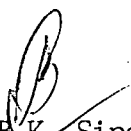
were 9 other officers besides Mr. Daimore ^{were} in the zone of consideration. It is true that above the names of Shri Balwant Singh and Shri S.K. Singh, the name of Shri D'Souza has already figured. Thus the contention of the learned counsel for the applicant are not imaginary and cannot be accepted. There is no guarantee that if there were vacancies in 1974 and the DPC would have met, the applicant could have been at the top or at Sl. No. 4.3. The subsequent event shows that when the committee met in 1975 the applicant was placed at Sl. No. 4 and not at No. 3.

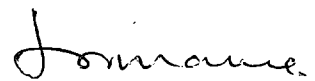
13. Thus to sum up, the applicant was allowed to officiate w.e.f. 10.5.76 and was notified to IPS w.e.f. May 1976. He was appointed as DSP in December 1964 and as per IPS Rules on the subject, an officer having put in 12 years service can be given a weightage of only 4 years and that weightage has already been given to him on the basis of which he got 1972 as the year of allotment. This is perfectly in conformity with Rule 3(3)(ii)(a) of IPS (Regulation of Seniority) Rules, mentioned above.

14. Mrs. Kiran Bedi was promoted earlier than the applicant and her year of allotment as a result of regular recruitment was 1972 and since she had been promoted earlier to the applicant, he cannot be assigned ^{to} any year of allotment earlier to 1972 because he will have to be placed below Mrs. Bedi in regard to inter se seniority. Even if he had been given officiation against a senior post this could have been for a period of 3 months and this also would not have entitled him to any benefit because the instructions of Govt. of India and Rules are clear that if a suitable cadre officer is available, the officiation of a non-cadre

officer against a cadre post would be terminated.

15. Thus in the conspectus of the facts and circumstances of the case, the applicant has failed to make out a case in his favour and accordingly the application is dismissed as devoid of any merit or substance, leaving the parties to bear their own costs


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)

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