

Central Administrative Tribunal
Principal Bench, New Delhi.

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O.A.No. 1587 of 1988

12th day of November, 1993.

Shri J.P. Sharma, Member (Judl.)

Shri B.K. Singh, Member (A)

Shri Pradeep Kumar Lorang,
G-2, G.O.'s Flat,
New Police Lines,
Kingsway Camp,
Delhi-110009.

Applicant

By Advocate Shri G.R. Matta.

Versus

1. Union of India through
the Secy. to the Govt. of India,
Ministry of Home Affairs,
Central Secretariat,
New Delhi.

2. Delhi Admn. through
Secretary (Services),
5, Sham Nath Marg,
Delhi-110054.

3. Union Public Service Commn.,
through Secretary,
Dholpur House,
Shahjahan Road,
New Delhi.

4. Shri Mansur Ali Sayed,
through Secy., M.H.A.,
North Block, New Delhi.

Respondents

By Advocate N.S. Mehta.

O R D E R

Shri J.P. Sharma, Member

The applicant belongs to DANIPS and at the relevant time, he was working as Deputy Commissioner of Police (Security), Rashtrapati Bhavan, New Delhi. His grievance is that recruitment to the Indian Police Service is made according to the

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Indian Police Service (Recruitment) Rules, 1954 by promotion of substantive members of State Police Service as well as by other methods of recruitment, e.g., competitive examination, etc. The number of persons to be recruited under sub-rule(2) of Rule 9 in any State or group shall not, at any time, exceed $33\frac{1}{3}$ per cent of the number of strength of the Cadre. A Select List is prepared in the manner laid down in Regulation No.5 of the Indian Police Service (Appointment by Promotion), Regulation 1955. Thereafter, under Regulation 9, the appointments of persons are made from the Select List. The case of the applicant is that he was in the zone of consideration and the Selection Committee held in December, 1986 enlisted the applicant at serial No.2, while the name of respondent No.4 appeared at serial No.3 of the said list. The applicant was ignored appointment to the I.P.S. Cadre, while respondent No.4, who is junior to the applicant, was allotted to the Union Territory Cadre by the notification dated 22.12.1987. He has also averred that reservation and concession which are in force from time to time in favour of SC and ST in filling up the vacancies in the posts or services under the Central Govt., would also be applicable to the filling up of the vacancies in the U.T. Cadre of the I.P.S. by virtue of the provisions contained in All India Services(Conditions of Service - Residuary Matters) Rules, 1960. The applicant has also referred to Ministry of Home Affairs' O.M.No.1/9/69-Estt.(SCT) dated 26.3.1970,

and DoP&AR O.M. No.1/10/74-Estt.(SCT) dated 23.12.74. His grievance is that he has not been given the benefit of reservation. He has prayed that the notification dated 22.12.1987 so far as it relates to the appointment of respondent No.4, be quashed and respondents 1 to 3 be directed to review the Select List drawn by them in December, 1986 and draw a fresh list after giving the benefit of the O.M. dated 26.3.1970 and 23.12.1974 to him and thereafter, on the basis of the Select List for 1986, promotion be made to the U.T. Cadre of the I.P.S.

2. A notice was issued to the respondents, who contested the application stating that the applicant is not entitled to the relief prayed for. It is further stated that promotion to the I.P.S. Cadre is by way of selection. The applicant is working as D.C.P., Rashtrapati Bhavan only on ad hoc basis and he may be reverted any time when the regularly candidates of I.P.S. Cadre are available. The applicant was considered, along with 11 other State Police Officers of the feeder service for promotion to the Union Territory of I.P.S. by the Selection Committee which met on 22.12.1986. The name of the applicant figured at serial No.4 in the eligibility list and not at serial No.2, as alleged by him. The name of M.A. Sayed, Res.4, appeared at serial No.5. The Selection Committee considered the service record of all the eligible officers and assigned grading to each officer in

accordance with the procedure laid down in Regulation 5(4) of Promotion Regulation. The applicant belongs to the Scheduled Tribe and the fact was communicated to the Selection Committee that the applicant was assigned a lower grading than some of his juniors, including M.A. Sayed and because of the statutory limit imposed on the size of the Select List prescribed in Regulation 5(1) of the Promotion Regulation, not more than four officers could be included in the Select List and, therefore, his name could not be included in the Select List prepared in 1986. He was not superseded, but because of his lower grading by the Selection Committee, he could not secure the same assessment which has been achieved by M.A. Sayed and so, the latter took a march over him. This does not amount to supersession as has been laid down by the Hon'ble Supreme Court in the case of R.S. Das Vs. Union of India, AIR 1987 S.C. 593 and U.P.S.C. Vs. H.L. Dev, A.I.R. 1988 S.C. 1669.

3. It is further contended that the applicant is not a member of the All India Service and, therefore, All India Services (Conditions of Service - Residuary Matters) Rules, 1960, are not applicable to him. The case of the applicant is governed by the I.P.S. (Appointment by Promotion) Regulations, 1955 and, therefore, his case was strictly according to the aforesaid regulations. Regarding the O.Ms. dated 26.3.1970 and 23.12.1974 referred to above, it is contended that these are applicable to Central

Services and not to the All India Services which are governed by the statutory rules and regulations made thereunder. There is no provision in the I.P.S.(Appointment by Promotion) Regulations, 1955 that any preference/concession should be given to the Scheduled Tribe candidates.

4. In view of the above facts, it is stated by the respondents that the applicant has no case and the application be dismissed.

5. We have heard the learned counsel for the parties at length. Firstly, regarding the factual position of the Select List, the respondents have clearly stated in their counter in para.6.12 that the Selection Committee has observed the Promotion Regulations in letter and spirit. As per Regulation 5(4), the Selection Committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good' and 'Unfit', as the case may be, on an overall relative assessment of their service records. Thus, the Select List has been prepared according to the relevant Regulation on the point. The applicant in the rejoinder, could not rebut the averments made by the respondents in their counter. When the Selection Committee has considered on merits all the eligible officers, the applicant can only in a limited manner, challenge the conclusion reached by the Selection Committee. It can only be regarding the constitution of the Selection Committee and may also cover certain cases of mala fide, if alleged against any of its members. He may also challenge

the conclusion arrived at on the basis of arbitrariness or non-observance of rules or promotion regulations. This is not the case here. The applicant has his own thinking regarding his selection. The learned counsel could not establish during the course of the arguments or from the records that the applicant has not been fairly considered by the Selection Committee. Merely because the applicant has not been selected, will not make the conclusion reached by the Selection Committee as unjust or unfair.

6. The learned counsel has also argued that under the provisions of Article 16(4), the applicant is entitled to concession and consideration in appointment because the provisions contemplate reservation not only in the case of posts, but also in the case of appointments. The expression 'appointment' undoubtedly includes promotion. The learned counsel for the applicant has also referred to the judgement of the Hon'ble Supreme Court in the case of Bihar State Harijan Kalyan Parishad Vs. Union of India, Civil Writ Petition No.680/85 decided on 1.3.1985. Reservation is a policy matter and promotion is exclusively governed to the I.P.S. Cadre by Regulations. There are different regulations for appointment by promotion and appointment by competitive examination. A perusal of both these regulations, i.e., I.P.S. (Appointment by Competitive Examination) Regulation, 1955, Rule 9 lays down clearly that reservation of vacancies for SC and ST candidates. The I.P.S. (Appointment by Promotion) Regulation, 1955, specifically omitted this fact and confines appointment only to the Service from the Select List. Thus, the regulation under which the applicant is claiming

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the promotion and which lays down the procedure to be adopted in preparing the Select List, does not provide for reservation of vacancies or adoption of different standard for assessment for the SC/ST candidates. The O.M. referred to by the learned counsel for the applicant does not apply. Regarding the judgement cited by the applicant delivered by the Hon'ble Supreme Court, is not applicable to the present case. In that reported case, the Ministry of Steel and Mines addressed to the Chairman, Steel Authority of India Ltd. (SAIL) which denied to the SC and ST candidates the benefit of reservation in the matter of promotion to selection posts within Group 'A'. There was a similar letter from the S.A.I.L. to the Chief Personnel Manager, Bokaro Steel Plant, Bokaro. The Ministry of Finance, Bureau of Public Enterprises, issued a directive to the Chief Executives of all public sector enterprises on the subject of reservation for SC/ST in appointments in public enterprises. In the case of promotion to Group 'A', there was interpretation of paragraph 9 which deals with concession to employees of SC/ST in promotions by selection method and by which it was held that the rule of reservation is also applicable to promotions for selection to posts within Group 'A'. The case in hand is ^{entirely} ~~almost~~ different. The applicant is a member of DANIPS and got his appointment in that service in the reservation quota. For promotion to the I.P.S. Cadre, he is to be governed by IPS (Cadre)

Rules, 1954 as well as the IPS(Recruitment) Rules, 1954 and the Regulations made thereunder. The applicant has not challenged the Regulations which are in force, i.e., I.P.S.(Appointment by Promotion) Regulation, 1955. These regulations do not provide for reservation. Merely because the DoP&AR or the Ministry of Personnel issued O.M. on the subject of reservation, would ~~not~~ entitle the applicant for the benefit of reservation. Thus, the applicant cannot get any benefit of reservation and the respondents have rightly considered the case of the applicant from that angle.

7. The application is totally devoid of merit and, therefore, is dismissed.


(B.K. Singh)
Member(A)


(J.P. Sharma)
Member(J)
12.11.93

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