

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

OA/21/387/2019

Date of C.A.V.: 24.11.2020

Date of Pronouncement of Order: 26.11.2020



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

P.V. Radhakrishna, S/o. P. Narayana Rao,
Aged about 59 years,
Occ : Superintendent of Police & Regional
Vigilance & Enforcement Officer (Group A),
Muthyalareddipalle, Tirupati,
R/o. Plot No.62, Sanjeev Housing Society,
Thrimurthy Colony, Mahendra Hills,
Secunderabad ó 500 026.

...Applicant

(By Advocate : Sri K.R.K.V. Prasad)

Vs.

1. Union of India rep. by
The Secretary,
Ministry of Home Affairs,
Government of India, North Block,
New Delhi ó 110 011.
2. Union Public Service Commission rep. by
The Secretary, Dholpur House,
Shahjahan Road,
New Delhi ó 110 069.
3. State of Andhra Pradesh rep. by its
Chief Secretary, A.P. Secretariat Buildings,
Amaravati, Guntur District, A.P.

....Respondents

(By Advocate : Sri V. Vinod Kumar, Sr. CGSC
Sri M. Bal Raj, Govt. Pleader for A.P.
Sri B.N. Sharma, SC for UPSC)

ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)



2. The O.A. has been filed in regard to inaction of the respondents in the matter of not considering the applicant for promotion to Indian Police Service against the vacancies of the panel year 2015, after granting notional promotion as Deputy Superintendent of Police w.e.f. 1.11.2006.

3. The brief facts of the case are that the applicant belongs to the Superintendent of Police(non-cadre). He was granted notional promotion as Deputy Superintendent of Police w.e.f. 1.11.2006. The applicant claims that by considering the date on which notional promotion was granted to him as DSP, he would be completing 8 years of service by the November 2014 and therefore should be considered for the Indian Police Service. The applicant submits that there were two vacancies for the year 2015, which were unfilled for which the applicant was not considered. However, respondents commenced the process to fill up the vacancies for the year 2016. While doing so, the name of the applicant has not been forwarded to the competent authority since he has crossed 56 years as on 1.1.2016. The applicant represented to consider his case against the unfilled vacancies of 2015 on the ground that he is eligible, if his services are considered from the date of his notional promotion as DSP. As there was no favourable response, the O.A. has been filed.

4. The contentions of the applicant are that the notional date of promotion as DSP should be considered for promoting him to the cadre of IPS as per the Indian Police Service (Appointment by Promotion) Regulations, 1955. Besides, the applicant has cited the judgement dated 30.12.1985 of the Honøble High Court of Andhra Pradesh in Writ Appeal No.381/1981 to support his conention.



5. The respondents in their reply state that the applicant actually worked in the post of DSP from 29.12.2007. It is also submitted by them that in the eligibility list furnished by DGP (HoPF) for preparation of Select List 2015, the date of continuous officiation in the post of DSP or equivalent has been given as 2.1.2008. In order to be eligible for the IPS cadre, one has to render continuous service in a substantive/ officiating basis for a period of 8 years. Even if the officiating date is taken as 29.12.2007, the applicant would be completing 8 years service only by 29.12.2015 and, therefore, he would be eligible to be considered for IPS cadre as on 1.1.2016. However, by the said date i.e. 1.1.2016, applicant is age barred since he crosses 56 years age and, therefore, his case could not be considered for promotion to IPS cadre.

6. Heard Sri KRKV Prasad, learned counsel for the applicant, Sri V. Vinod Kumar, learned Senior Standing Counsel, Sri M. Bal Raj, learned Govt. Pleader for the State of Andhra Pradesh and Sri M.C. Jacob representing Sri B.N. Sharma, learned Standing Counsel for UPSC, and perused the pleadings on record.

7. Applicant was appointed to the State Police Service as Sub-Inspector of Police on 12.9.1985 and retired in the cadre of Superintendent of Police (non-IPS) on 31.08.2019. It is seen from the career graph of the applicant that after a protracted legal battle, he was granted notional promotion in the DSP cadre w.e.f on 1.11.2006. Therefore, he has represented to the respondents to consider his notional seniority and recommend his name to the competent authority for considering him to the Indian Police Service. The appointment by promotion to the Indian Police Service is governed by Rule 5(2) of Indian Police Service (Appointment by Promotion) Regulations, 1955. The relevant rule is extracted hereunder:



øThe 3rd proviso to Regulation 5(2) to the IPS (Appointment by Promotion) Regulation state as under:

“Provided also that the Committee shall not consider the case of a member of the State Police Service unless, on the first day of January of the year (for which the select list is prepared) he is substantive in the State Police Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in, any other post or posts declared equivalent thereto by the State Government.”

In terms of the above regulations, eight years of continuous service (whether officiating or substantive) in the post of Deputy S.P. is a mandatory condition for an SPS officer to be eligible for consideration for promotion to IPS.”

There are 2 conditions to be satisfied, namely the candidate considered should be a member of the State Police Service in a substantive capacity and the other is that he should render 8 years of continuous service in the DSP cadre. As can be



seen from the above rule the applicant has satisfied the first condition of being a member of the State Police Service in a Substantive capacity. However, when it comes to the second condition, applicant is expected to render 8 years of continuous service in DSP cadre to be eligible to be promoted to the IPS cadre. According to the respondents, the applicant was promoted as DSP on ad hoc basis on 29.12.2007. However, in the eligibility list furnished by DGP (HoPF) for preparation of Select List 2015, the date of his continuous officiation in the post of DSP or equivalent has been given as 2.1.2008. Even if we take his actual date of joining in the DSP cadre as 29.12.2007, he completes 8 years of continuous service by 29.12.2015. As such, he would be eligible to be considered for promotion only on 1.1.2016. However, as on 1.1.2016, applicant crossed the age of 56 years and hence is not eligible as per rules. Action of the respondents is as per rules and hence cannot be found fault with. The Hon'ble Supreme Court has clearly laid down in a catena of judgments that action in respect of matters covered by rules should be regulated by rules, hereunder:

*“The Hon’ble Supreme Court observation in **T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544** held that “Action in respect of matters covered by rules should be regulated by rules”.*

*Again in **Seighal’s case (1992) (1) supp 1 SCC 304** the Hon’ble Supreme Court has stated that “Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.”*

In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held " the court cannot de hors rules"”.



The applicant has relied on the judgment dated 30.12.1985 of the Honøble High Court of Andhra Pradesh in Writ Appeal No.381/1981. In the said judgment, the Honøble High Court has not set any definite principle of law. Moreover, the relief was on specific facts and that the direction was only to consider the case of the applicant. It was also not brought out whether any relief was granted in the case cited. Therefore, it would be difficult to apply the judgment of the Honøble High Court to the instant case. The Tribunal dealt with similar cases in OA No.879/2018 & batch dated 17.3.2020 wherein the judgment of the Honøble High Court was cited and the coordinate Bench, presided by the Honøble Chairman of the Central Administrative Tribunal, has observed at para 14 as under:

“Though the applicants place reliance upon the judgment of the Hon'ble High Court in Writ Appeal No.381/1981 relating to a retired IAS officer, we do not find any definite principle of law. Relief was mostly on specific facts and direction was only to consider his case. It is not even represented that any concrete relief or benefit has ensured on the basis of the said judgment.”

Moreover, applicant has retired on 31.08.2019. As on final date of hearing, applicant in a way is seeking notional promotion after retirement. This could have been examined if a junior of the applicant was promoted by considering notional date of promotion to DSP cadre, as is being pleaded by the applicant. Applicant has not cited any such

case, by way of a rejoinder, to question the respondents in such an eventuality.



Thus, to sum up in the instant case, the relevant rule has been followed by the respondents in not considering the candidature of the applicant to Indian Police Service, which is in consonance with the legal principle laid down by the Honøble Supreme Court in respect of following rules, in the judgments cited supra. Besides, the Coordinate Bench of this Tribunal has also considered the judgment of the Honøble High Court in similar cases and came to a conclusion as cited in the above paragraph.

In view of the above, we do not find merit in the O.A. and hence the same is dismissed. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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