

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**Original Application No.200/04/2019**Jabalpur, this Wednesday, the 11th day of November, 2020**HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER**
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBER

1. Jaideep Prasad, S/o Late Shri Aniruddh Prasad, aged about 49 years, Occupation – Inspector General of Police, Bhopal Zone, Bhopal (M.P.) 462001.
2. Chanchal Shekhar, S/o Shri Chandra Shekhar Prasad, aged about 50 years, Occupation – Inspector General of Police on Deputation to Sashastra Seema Bal (M.H.A.) 414001.
3. Yogesh Deshmukh, S/o Late Shri Punjab Rao Deshmukh, aged about 49 years, Occupation – Inspector General of Police, Special Armed Force, Range – Gwalior (M.P.) 474001.
4. K.P. Venkateshwar Rao, S/o Shri K.S. Prakash Rao, aged about 48 years, Occupation – Inspector General of Police, Balaghat Zone, Balaghat (M.P.) 481001.
5. Meenakshi Sharma, W/o Shri Abhimanyu Sharma, aged about 48 years, Occupation – Inspector General of Police (Administration), PHQ, Bhopal (M.P.) 462001.

-Applicants**(By Advocate – Shri Pankaj Dubey through Video Conferencing)****V e r s u s**

1. State of Madhya Pradesh, through the Principal Secretary, Home (Police) Department, Vallabh Bhawan, Bhopal (M.P.) – 462001.
2. State of Madhya Pradesh, through the Principal Secretary, General Administration Department, Vallabh Bhawan, Bhopal (M.P.) – 462001.

3. Union of India through Ministry of Home Affairs, Raksha Bhawan, New Delhi – 110001
-Respondents

(By Advocate – Shri Divesh Jain for respondents Nos.1 & 2 through Video Conferencing)

(Date of reserving order : 15.10.2020)

ORDER

By Naini Jayaseelan, AM.

The present Original Application has been filed by five applicants belonging to the IPS 1995 (RR) batch of Madhya Pradesh cadre aggrieved by the order dated 19.02.2018 (Annexure A-7), whereby the representation of the applicants for grant of selection grade w.e.f. 01.01.2008 has been rejected. MA No.200/08/2019 for prosecuting the case jointly was allowed vide order dated 04.01.2019. The applicants, therefore, have been permitted to pursue the matter jointly.

2. The applicants, in the present Original Application, have sought for the following reliefs:

“8.(i) This Hon’ble Tribunal may kindly be pleased to quash the impugned order dated 19.02.2018 contained in Annexure A-7.

(ii) This Hon’ble Tribunal may kindly be pleased to command the respondents to grant Selection Grade to the applicants with effect from 01.01.2008 with arrears and interest & accordingly respondents may be directed to modify the present orders of grant of selection grade.

(iii) Any other order/orders, which this Hon’ble Tribunal deems proper be also granted.



(iv) Cost of the application may also kindly be awarded.”

3. The applicants were appointed on the basis of the Civil Services exam of 1994 conducted by the UPSC. They contend that the grant of selection grade is governed by MHA's circular dated 15.01.1999 No.45020/11/97-IPS-IT (Annexure A-1). It is their contention that they have all completed 13 years of service and have become eligible for promotion to the selection grade as on 01.01.2008. The applicants have also submitted that in other states viz; Maharashtra, Tamil Nadu, Andhra Pradesh, Gujarat, Jammu and Kashmir etc., selection grade to the IPS officers of the same batch (1995) has been given w.e.f. 01.01.2008 when their batch mates completed 13 years of service. The applicants have also filed an order dated 05.02.2010 (Annexure A-2) relating to grant of selection grade to the junior IPS officers of Madhya Pradesh cadre, i.e. of 1997 batch, who were also given selection grade w.e.f. 01.01.2010, i.e. the same date on which selection grade has been granted to the four applicants in the present O.A. One applicant was granted selection grade w.e.f. 25.06.2009 (Annexure A-6). The applicants contend that this has not only caused monetary loss but has also led to a cascading effect on their future promotions/salary.



4. Learned counsel for applicants has stated that the grant of selection grade is governed by the guidelines contained in the circular dated 15.01.1999 No.45020/11/97-IPS-IT (Annexure A-1). The said circular lays down the procedure for promotion to the selection grade, which reads as under:



“III. PROMOTION TO THE SELECTION GRADE.

*A Committee consisting of the Chief Secretary, The Secretary-in-charge of the Police Department and the Director General and Inspector General of Police (Addl. Director General of Police where there is no cadre post of DG) may screen the cases of those officers in the Junior Administrative Grade, who have completed 13 years of service, for promotion to the Selection Grade as per the provisions of the IPS (Pay) Rules, 1954. On the basis of merit with due regard to seniority, Selection grade will be available from or after 1st January of the relevant year **subject to the availability of vacancies in the said grade.**”*

5. Respondents Nos.1 and 2 have filed their reply, whereas no reply has been filed by Respondent No.3 namely; Ministry of Home Affairs, Union of India. Vide proceedings dated 09.08.2019 before the Deputy Registrar, it has been recorded as under:

“Notice issued to respondents on 14.01.2019. Since period of more than 30 days have elapsed after issuance of notice, therefore, service is deemed complete qua respondent no.3.

6. During the hearing, the counsel for the applicants reiterated the issues in their OA and stated that since there is no incidence of misconduct or any disciplinary case pending against the applicants, they are entitled to selection grade on completion of 13 years of service and they should have been rightly granted selection grade w.e.f. 01.01.2008. The counsel for applicants however admits that selection grade will be applicable from or after 01st January of the relevant year subject to availability of vacancies in the said grade. The counsel for applicants in his OA has stated that the reason for not granting the selection grade was the delay in finalization of cadre review.



7. Learned counsel for the applicants has stated that the delay is entirely attributable to the cadre review, which is governed by the Indian Police Service (Cadre) Rules, 1954. The relevant Rule 4 of the said rules reads as under:

“4. Strength of Cadres.-- 4(1) The strength and composition of each of the cadres constituted under rule 3 shall be determined by regulations made by the Central Government in consultation with the State Governments in this behalf and until such regulations are made, shall be as in force immediately before the commencement of these rules.

4(2) The Central Government shall, at the interval of every five years, re-examine the strength and composition of each such cadre in consultation with the State Government or the State Governments concerned and may make such alterations therein as it deems fit:

Provided that nothing in this sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any other time:

Provided further that State Government concerned may add for a period not exceeding two years [and with the approval of the Central Government for a further period not exceeding two years,] to a State or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts.”



7.1 It is the contention of counsel for the applicants that the exercise of cadre review which was to be conducted in 2008 was delayed and hence the applicants have suffered on account of this delay.

8. Learned counsel for the applicants, in support of his contention during the hearing, has cited the following cases:

(i) **Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others**, (1978) 1 SCC 405.

(ii) **Union of India and another vs. Hemraj Singh Chauhan and others**, (2010) 4 SCC 290.

(iii) **Md. Zamil Ahmed vs. State of Bihar and others**, (2016) 12 SCC 342.

8.1 In the matter of **Hemraj Singh Chauhan** (supra), the Hon'ble Apex Court in Para 42 of the judgment has held that, *“the statutory duty which is cast on the State Government and the Central Government to undertake*

cadre review exercise every five years is ordinarily mandatory subject to exceptions which may be justified in the facts of a given case. Lethargy, inaction, an absence of a sense of responsibility cannot fall within the category of just exceptions.”

8.2 Learned counsel for the applicant has also placed reliance on a decision of Hon’ble Apex Court in the matters of **Md. Zamil Ahmed** (supra), wherein it has been held as under.



“15. The State was, therefore, not entitled to take advantage of their own mistake if they felt it to be so. The position would have been different if he appellant had committed some kind of fraud or manipulation or suppression of material fact for securing the appointment. As mentioned above such was not the case of the State.

8.3 Learned counsel for the applicants has further placed reliance on a decision of Hon’ble Apex Court in the matter of **Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others**, (1978) 1 SCC 405. The relevant Para 8 of the judgment reads as under:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Commr. Of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16”

9. Learned counsel for the respondents has stated that it is an admitted fact that the grant of selection grade is governed by the guidelines contained in the circular dated 15.01.1999 No.45020/11/97-IPS-IT (Annexure A-1). However, creation of posts was delayed due to the delay in conducting the cadre review. In-fact, applicant No.5 has been granted selection grade after notification for cadre review and subsequent creation of posts was issued on 30.06.2009, i.e. as and when vacancies were available.



10. Learned counsel for the respondents during the hearing has cited the judgments in the case of **Hardev Singh vs. U.O.I. & Anr.**, Civil Appeal No.3973 of 2010, decided on 14.09.2011. In the said case, the appellant had filed an appeal under Section 30 of the Armed Forces Tribunal Act, 2007 being aggrieved by an order of the Armed Forces Tribunal in wrongly denying him promotion to the rank of Lieutenant General. The relevant paragraphs 18 & 19 of the judgment read as under:

“18. It cannot be disputed that no employee has a right to get promotion; so the appellant had no right to get promotion to the rank Lieutenant General but he had a right to be considered for promotion to the rank of Lieutenant General and if as per the prevailing policy, he was eligible to be promoted to the said rank, he ought to have been considered. In the instant case, there is no dispute to the fact that the appellant’s case was duly considered by the SSB for his promotion to the rank of Lieutenant General.

19. The main grievance ventilated in the appeal is with regard to change of promotion policy. The case of the appellant is to the effect that after

starting the selection process, the respondents could not have changed the policy.....”

10.1 In the above cited case, the Apex Court has also cited the order in case of **Balco Employees’ Union (Regd). vs Union of India and Others (2002) 2 SCC 333**, wherein it has been held that “a Court cannot strike down a policy decision taken by the Government merely because it feels that another policy would have been fairer or wiser or more scientific or logical. It is not within the domain of the court to weigh the pros and cons of the policy or to test the degree of its beneficial or equitable disposition” The Apex Court did not find any substance in the Appeal and the Appeal was dismissed.

11. We have heard both the counsels and perused the pleadings and the documents annexed therewith.

12. It is an undisputed fact that the grant of selection grade is governed by the circular dated 15.01.1999 (Annexure A-1). No justification has been provided in the reply statement that the delay can be justified within the manner of ‘ordinarily’ in the facts of this case. Since the conduct of the cadre review is the joint responsibility of State Government as well as the Central Government, the respondents-State Government was mandated to send a proposal to the Cadre Controlling Authority, i.e. MHA, who further in



consultation with Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions, would have to fix the cadre strength of the IPS under the Indian Police Service (Cadre) Rules, 1954. The State Government has not offered any plausible reason for the delayed exercise of its statutory functioning, whereas it has been held by the Hon'ble Apex Court in the case of **Hemraj Singh Chauhan** (supra) that the word 'ordinarily' must be given in its ordinarily meaning.



13. We also find that the facts and circumstances of the case cited by counsel for the Respondents in **Hardev Singh** (supra) are entirely different. In the present OA there is not an iota or hint of change of policy, which could or would not have affected any officer adversely. The policy guidelines contained in the circular are undisputed by both the counsels. It is also pertinent to point out that Rule 4(2) of Indian Police Service (Cadre) Rules, 1954 states that the Central Government shall, at the interval of every five years, re-examine the strength and composition of each such cadre in consultation with the State Governments concerned. Therefore, a statutory duty has been cast upon both the State Government and Central Government. Needless to add the State Government was duty bound to send the proposal

for cadre review to the Central Government well before the cadre review was due.

14. We also feel that the present case is fully covered by the judgment in **Hemraj Singh Chauhan** (supra). Therefore, the Original Application succeeds.

15. Accordingly, the impugned order dated 19.02.2018 (Annexure A-7) is quashed and set aside and the respondents Nos.1 and 2 are directed to consider the grant of selection grade to the applicants on completion of 13 years of service, i.e. 01.01.2008 with all consequential benefits. No order as to costs.

(Naini Jayaseelan)
Administrative Member
am/-

(Ramesh Singh Thakur)
Judicial Member

