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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.357/86

Date of decision: 15.1.93

Shri Rajendra Chaturvedi Applicant

Vs.

Union of India through
Secretary,
Ministry of Home Affairs & Respondents
ors.

CORAM: THE HON'BLE SHRI JUSTICE RAM PAL SINGH, VICE-CHAIRMAN(J)
THE HON'BLE SHRI P.C.JAIN, MEMBER(A)

1. Whether to be referred to the reporter? Yes.
2. Whether reporters of local Newspapers may be allowed to see the Judgement? Yes.
3. Whether to be circulated to other Benches of the Tribunal? No.

Chaturvedi
(P.C.JAIN)
MEMBER(A)
15.1.93

Ram L (6)
(RAM PAL SINGH)
VICE CHAIRMAN(J)
15.1.93

(25)

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OA No.357/86

Date of decision: - January 15, 1993

Shri Rajendra Chaturvedi ... Applicant
versus

Union of India through
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Ministry of Home Affairs & ors... Respondents

CORAM:- THE HON'BLE MR.JUSTICE RAM PAL SINGH, VICE-CHAIRMAN(J)
THE HON'BLE MR.P.C.JAIN, MEMBER(A)

For the Applicant ... Applicant in person.

For the Respondents ... None

JUDGEMENT

(DELIVERED BY HON'BLE SHRI P.C.JAIN, MEMBER(A))

The applicant is a direct recruit Indian Police Service officer of 1970 batch borne on the Madhya Pradesh cadre. He filed this OA under Section 19 of the Administrative Tribunals Act, 1985 in the matter of fixation of seniority and preparation of select list in the Indian Police Service of the Madhya Pradesh cadre. The applicant also challenges the proposed selections made by the Departmental Promotion Committee constituted in April-May, 1986 for making promotions from the senior scale to the rank of Deputy Inspector General of Police in the Madhya Pradesh cadre of the Indian Police Service. However, no relief as such is prayed for in the matter of fixation of seniority and preparation of the select list for purposes of promotion of State Police Officers to the senior scale of the Indian Police Service. The reliefs

prayed for by the applicant are as below:-

- (i) The respondents be restrained from making any promotions of officers junior to the applicant and respondents 8 to 11 in contravention of rules and regulations referred to in the OA; and
- (ii) Quash any appointment following the recommendations of the Departmental Promotion Committee held in April-May, 1986 whereby the applicant and respondents 8 to 11 have been superseded by officers appointed in 1970 or thereafter.

As an interim relief, the applicant prayed for that pending final decision on the OA, any appointments made/to be made superseding the applicant or respondents 8 to 11 on the recommendations of the Departmental Promotion Committee or otherwise be stayed during the pendency of the present petition. However, the interim relief prayed for as above was declined by the Tribunal vide its order dated 12.6.86.

2. Respondent No.1, namely Union of India has contested the OA by filing its reply. Similarly respondent Nos.2& 3, namely Chief Secretary to the Government of Madhya Pradesh and Director General of Police, Bhopal respectively, have also contested the OA by filing their separate reply. Respondents 4 to 11 were set ex parte and none of them except Respondent No.7 has filed any reply. The applicant did not file any rejoinder.

3. We have perused the material on record and also heard the applicant, who argued his case in person. None appeared for the respondents at the

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time of oral hearing.

4. Briefly stated, the case of the applicant is that respondent Nos.4 to 7 are all promotee officers from the State Police Service who have been promoted to the Madhya Pradesh cadre of the Indian Police Service and that they have been assigned allotment year to the Indian Police Service cadre of Madhya Pradesh in violation of the rules inasmuch as Explanation 1 to Rule 3(3)(b) of the Indian Police Service(Regulation of Seniority) Rules,1955 has been ignored while fixing their seniority in the Indian Police Service of Madhya Pradesh. For this purpose, he has assailed Government of India, Ministry of Home Affairs letter No.I-15011/6/80-TPS dated 13.10.81 filed as Annexure-I to the OA. Sub Rule(3) ibid, in so far as it relates to the matter at issue, is extracted as below:-

"(3) The year of allotment of an officer appointed to the Service after the commencement of these rules shall be-

(a) where the officer is appointed to the Service on the results of a competitive examination, the year following the year in which such examination was held;

(b) where the officer is appointed to the Service by promotion in accordance with rule 9 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the Service in accordance with rule 7 of those Rules who officiated continuously in a senior post from a date earlier than the date of commencement of

such officiation by the former:

Provided that the year of allotment of an officer appointed to the Service in accordance with rule 9 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officers recruited to the Service, in accordance with rule 7 of those Rules, so started officiating shall be determined ad hoc by the Central Government in consultation with the State Governments concerned;

Explanation 1- In respect of an officer appointed to the Service by promotion in accordance with sub-rule(1) of rule 9 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purposes of determination of his seniority, count only from the date of the inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post whichever is later;

Provided that where the name of State Police Service Officer was included in the Select List in force immediately before the reorganisation of a State and is also included in the first Select List prepared subsequent to the date of such reorganisation, the name of such officer shall be deemed to have been continuously in the Select List with effect from the date of inclusion in the first mentioned Select List."

Recruitment under Rule 7 is direct recruitment and recruitment under Rule 9 is by promotion. In accordance with the above provisions, the year of allotment of a State Police Officer promoted to the Indian Police Service shall be below the junior-most direct recruit, who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the promotee

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officer but the period of continuous officiation by the promotee officer in a senior post for this purpose shall count only from the date of inclusion of his name in the select list, or from the date of his officiating appointment to such senior post whichever is later. The applicant's contention is that Explanation 1, as extracted above, has been ignored by the Union of India while determining the year of allotment to respondents 4 to 7. This contention of the applicant is misconceived. The Union of India in its reply has given the following material dates:-

Sl. No.	Name of officer	Date of inclusion in Select List	Date of continuous officiation	Date of appointment to the IPS in senior post
1.2.		3.	4.	5.
1.	Sh.R.L.Verma (Respondent No.4)	17.4.74	23.8.74	26.9.74
2.	Sh.V.K.Agnihotri (Respondent No.6)	-do-	31.8.74	15.11.74
3.	Sh.B.L.Taran (Respondent No.5)	-do-	4.3.75	24.2.77
4.	Sh.B.B.S.Chauhan (Respondent No.7)	-do-	24.3.75	20.12.77

As the dates of continuous officiation of all the above respondents were later than the date of inclusion of their names in the Select List, the date of continuous officiation has been taken to be the crucial date for determination of their seniority in the IPS. It is further stated in the reply of the Union of India that according to the information furnished by the Government of Madhya Pradesh,

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Shri Ashok Chaturvedi(RR:1970) is the junior-most direct recruit of the State cadre who started officiating in a senior post from 22.2.1974, i.e. a date earlier than the commencement of such officiation by the above respondents, therefore, all these respondents were assigned 1970 as year of allotment in the IPS and they were placed below the applicant in the IPS Gradation List of Madhya Pradesh cadre. The above contention of the Union of India has not been rebutted by the applicant by filing any rejoinder. The above data clearly shows that Explanation 1 to Rule 3(3)(b) has not been ignored while fixing the seniority of Respondents 4 to 7, as has been contended by the applicant.

5. The applicant has also placed reliance in this regard on the D.O.letter dated 2.5.75, a copy of which has been filed with the OA and is available at page 29 of the paperbook. This is a letter from the Joint Secretary(P), Ministry of Home Affairs, Government of India addressed to the Secretary to the Government of Madhya Pradesh, Home Department, Bhopal with reference to D.O.letter dated 5.4.75 regarding appointment to Indian Police Service from the Select List. In this letter, it is stated that under Regulation 7(4) of IPS(Appointment by Promotion) Regulation 1955, an existing select list shall ordinarily be in force until a fresh

select list is finally approved by the Union Public Service Commission. Under this regulation the select list prepared on 18.12.73 should be current till the 1974 select list is finally approved by the Union Public Service Commission. But in the light of the judgement of the Supreme Court in the case of M.L.Kapoor Vs.Union of India and others, the select list prepared on 18.12.73 has become invalid as reasons for supersession where they have occurred have not been recorded by the select committee while preparing that list. It is futher stated therein that no further appointments can therefore, be made on the basis of that list and in the circumstances, the promotion quota of IPS of Madhya Pradesh can only be filled on the basis of the select list prepared by the committee on 12.12.74 when it is finally approved by the Union Public Service Commission. Though there is no averment of the applicant in the OA yet he stated at the Bar that Respondents 4 to 7 came on the select list which was prepared on 18.12.73 though the select list was approved by the Union Public Service Commission on 17.4.74. It is accordingly sought to be contended by the applicant that as the select list on the basis of Respondents 4 to 7 were assigned seniority in the IPS cadre of Madhya Pradesh was cancelled by the Union of India, the appointment of these respondents to the IPS cadre itself is

null and void and they cannot be considered for further promotion to the post of Deputy Inspector General of Police or equivalent. Respondents 1 to 3 have denied this contention. It is stated, particularly in the reply of respondents 2&3 that the select list of 1973 was neither cancelled nor rescinded either by the Supreme Court or by the Union of India nor there is any provision for such cancellation. The letter dated 2.5.75 of the Government of India does not convey that the select list of 1973-74 was cancelled by the Government of India. The applicant has also not placed any other material on record to show that the above select list was cancelled. In any case, the select list prepared in December, 1973 and approved by the Union Public Service Commission in April 1974 cannot be assailed in this OA which was filed in 1986, being barred by limitation in accordance with the provisions of Section 21 of the Administrative Tribunals Act, 1985. Similarly, the letter dated 13.10.81 of the Government of India by which respondents 4 to 7 were allotted the year of allotment in the TPS cadre of Madhya Pradesh cannot be assailed in this OA as it is also barred by limitation. The cause of action to the applicant, if any, in this regard arose prior to three years of the Administrative Tribunals Act, 1985 coming into force with effect from 1.11.85 and in such

a matter, the Tribunal has no jurisdiction as held in a number of cases e.g. (i) V.K.Mehra Vs. Secretary, Ministry of Information & Broadcasting, New Delhi (ATR 1986 (1) CAT 203; (ii) Sukumar Dey Vs. Union of India (1987) 3 ATC 427 (CAT) (Cal); (iii) V.S.Raghavan Vs. Secretary, Ministry of Defence (1987) 3 ATC 602 (CAT) (Madras). Here, it may be mentioned that the applicant in his OA has stated that the matter of seniority was raised by Shri B.Dubey & ors in Writ Petition No.758/83 which was filed in the High Court of Delhi and which was subsequently transferred to the Tribunal. This Writ Petition was registered as TA 893/85. At the time of oral hearing of this case, we checked up the position of TA 893/85 and after checking up from the Registry, we were informed that the same was dismissed in default on 15.1.92. Accordingly, there is no valid order before us which may have upset the year of allotment allotted to respondents 4 to 7.

6. The real issue agitated by the applicant in this OA is thus his alleged supersession along with respondents 8 to 11 in the matter of promotion from senior scale of the IPS to the rank of Deputy Inspector General of Police and equivalent by the Departmental Promotion Committee which is said to have met in April-May, 1986. Admittedly, the applicant is senior to respondents 4 to 7. It is also not in dispute that the criteria of promotion

to the above post is by selection and in such a situation it is legally possible that a senior may not be selected while his junior may be selected on the comparative assessment of the two. Further, a Government servant has right to be considered for promotion; he has no right for being promoted as such if he is otherwise not found fit for promotion in accordance with the relevant rules/criteria. Respondents 2 & 3 have stated in their reply that the applicant was considered for promotion to the post of DIG by the Screening Committee duly constituted as per guidelines laid down by the Government of India, Ministry of Home Affairs in their letter No.J-16011/9/84-IPS dated 1.1.86, but as several departmental enquiries were pending against him, the Screening Committee after taking a decision in the case kept its recommendations in a sealed cover as per instructions given in the aforesaid guidelines. It is further stated that after the pending departmental enquiries are decided, the recommendations will be opened and action taken as per rules. Reply of respondents 2&3 also shows that officers of the 1969 & 1970 batches of the IPS cadre of Madhya Pradesh were considered together and respondents 4 to 11 had been promoted to the rank of DIG on various dates after they were found fit by the Screening Committee, but it cannot be stated whether the applicant has been superseded

as the decision in his case had been kept in a sealed cover. Apart from three departmental enquiries and several complaints which were stated to be pending at the time of screening for promotion, two more departmental enquiries are said to have been initiated against the applicant. A Full Bench of the Central Administrative Tribunal in the case of K.Ch.Venkata Reddy Vs.Union of India,(1987) 3 ATC 174 had held that sealed cover procedure could be resorted to by the DPC if at that time a disciplinary proceeding in which a memorandum of chargesheet had been issued was pending on that date. This view has been upheld by the Supreme Court in the case of Union of India Vs.K.V.Jankiraman, 1991(2) SCALE 423. In view of this, the action of the Screening Committee in keeping its recommendations sealed cover in in the case of the applicant in the matter of promotion to the rank of DJG and equivalent cannot be faulted and the challenge of the applicant to his non-promotion to the rank of DJG and equivalent, in the circumstances of this case, is not legally valid.

7. In the light of the foregoing discussion, we see no merit in this OA and the same is accordingly dismissed, leaving the parties to bear their own costs.

15/1/93
(P.C.JAIN)
MEMBER(A)

15/1/93
(RAM PAL SINGH)
VICE-CHAIRMAN(J)