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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 787/86

DECIDED ON : 16.10.1992

Vinod Krishna Kaul

... Applicant

Vs.

Union of India & Others

... Respondents

CORAM

THE HON'BLE MR. T. S. OBEROI, MEMBER (J)

THE HON'BLE MR. 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 judgment ? *Yes*
3. Whether to be circulated to other Benches ? *No*

(*P.C.*)
(P. C. Jain)
Member (A)

(T. S. Oberoi)
Member (J)

(6)

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Applicant in person

Shri M. L. Verma, Counsel for respondents
Nos. 1, 2, 3, 6 & 7.

None for Respondents 4 and 5.

J U D G M E N T

Hon'ble Shri P. C. Jain, Member (A) :

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was an Indian Police Service Officer and was posted as Director (Training) Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, is aggrieved that he has been discriminated against in the matter of promotion of respondent No. 4 (Shri H. B. Johri, IPS) to the post of Director, Special Service Bureau, Cabinet Secretariat, New Delhi on the higher pay of Rs.3,000/- per month w.e.f. 3.2.1986, and again on promotion of respondent No.5 (Shri R. Balakrishnan, IPS) to the post of Additional Director, Research and Analysis Wing (for short R & A W), Cabinet Secretariat, New Delhi w.e.f. 11.2.1986. He has prayed for the following reliefs :-

"(1) After calling for the records, to issue a direction in the nature of certiorari, quashing the appointments of Respondents 4 and 5 to their respective posts;

(2) To issue a direction in the nature of certiorari quashing the purported Research and Analysis Wing (Recruitment, Cadre and Service)

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Rules, 1975 (which are shrouded in secrecy) to the extent of their repugnancy to the All India Services Act, 1951, and rules framed thereunder;

(3) To issue a direction in the nature of Mandamus that the applicant be considered and appointed against one of the posts occupied by Respondents 4 and 5, the appointment to be effective from the date Respondent 5 assumed charge of the post of Director, Special Service Bureau, Cabinet Secretariat, New Delhi (i.e. with effect from 3 February 1986);

(4) To issue a direction in the nature of Mandamus to Respondents 1 to 3, directing them to appoint the applicant to a post at the level of Director-General of Police from deemed date 3 February 1986 with all consequential benefits;

(5) To issue any other order or direction which the Hon'ble Tribunal may deem fit including Ad-interim order that State Respondents shall not change the status-quo to applicant's prejudice; and

(6) To award exemplary costs in favour of the applicant who has suffered grave, serious and irreparable harm and humiliation due to loss of status and perquisites of office. (It is submitted that the reliefs sought above are consequential to one another)."

2. Respondents Nos. 1, 2, 3, 6 and 7 have contested the O.A. by filing their return. Respondent No.4 has also filed a separate reply. A rejoinder has been filed by the applicant to these replies. We have carefully considered the material on record and also heard the applicant who presented his case in person as also the learned counsel who presented the case for respondents 1, 2, 3, 6 and 7. None appeared at the time of oral hearing for respondents 4 and 5.

3. Briefly stated, the case of the applicant is that the applicant as well as respondents 4 and 5 are IPS Officers of the 1956 batch directly recruited to the Service but the applicant is senior to both respondents 4 and 5, and as such he claims to be similarly placed with respondents 4 and 5. His contention is that he was denied equality of opportunity guaranteed by Article 16 of the Constitution inasmuch as his case for promotion to the higher post

to which respondents 4 and 5 were promoted, was not considered at all and that the selections and appointments of respondents 4 and 5 were made "arbitrarily, capriciously, in an illegal and mala fide manner, shrouded and surrounded by purported secret rules and hush-hush procedures, unknown and undisclosed to the applicant." His claim for consideration for promotion is primarily based on his allegedly being senior in the 1956 batch on the basis of all India seniority and his claim about his service record which is said to be without blemish or adverse remarks, apart from the fact that he was awarded the President's Police Medal for Meritorious Service in 1974 and awarded the President's Police Medal for Distinguished Service in 1983. It is his further contention that any further classification or sub-classification in the IPS Cadre for purposes of selection/appointment to posts in certain organisations is arbitrary and violative of Article 14 of the Constitution. It is also stated that his representations dated 12.2.1986, 14.2.1986, 20.2.1986, 12.3.1986, 31.3.1986, 23.4.1986, 4.6.1986, 16.7.1986 and 20.8.1986 yielded no response.

4. The official respondents have rebutted the contentions of the applicant both on the point of discrimination as well as on mala fides. It is their case that the applicant and respondents 4 and 5 are not equally placed as they belong to different State cadres of the IPS, and that each State cadre of the IPS is an independent service unit of the IPS with a separate seniority. Promotions are said to be made within each State cadre and the right to be considered for promotion is limited to the post within the State cadre. It is further stated that the posts to which respondents 4 and 5 were appointed are outside the State cadres of the IPS and the posts to which respondents 4 and 5 were appointed on promotion belong to an altogether different Service governed by separate set of rules and that they are permanently seconded to the respective

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organisations, namely, the Directorate General of Security and the R & A W. It is stated that no IPS Officer can claim as a matter of right that he shall be considered for any of the said posts. They have denied that there is any all India seniority of all IPS Officers belonging to all State cadres.

5. After carefully perusing the material on record and giving our careful consideration to the rival contentions of the parties, we find that the case of the applicant is misconceived. The Indian Police Service (Cadre) Rules, 1954 stipulate that 'cadre post' means any of the posts specified under item 1 of each Cadre in the Schedule to the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955. Rule 3 of these Rules stipulates that there shall be constituted for each State or group of States an Indian Police Service Cadre. The Government of India, Ministry of Home Affairs in their letter No. 14/51/65-AIS(III) dated 21.2.1966 held that a cadre post as defined in the Rules means only the post specified under item 1 of the cadre strength of each State. The Indian Police Service (Fixation of Cadre Strength) Regulations, 1955 which were framed in pursuance of sub-rule (1) of Rule 4 of the Indian Police Service (Cadre) Rules, 1954 specify the posts borne on, and the strength and composition of the cadre of the Indian Police Service of the various States in the schedule to these Regulations. The applicant belongs to the Rajasthan cadre of the IPS and the post to which respondents 4 and 5 were appointed are not included in the aforesaid cadre. The applicant is entitled for consideration for appointment/promotion only to a post which is included in this cadre. The posts to which respondents 4 and 5 were appointed do not belong to his cadre but are said to be governed by separate statutory rules for a separate Service. The official respondents have categorically stated that respondents 4 and 5 though recruited as IPS Officers were permanently seconded to the Services in which the posts to which they were appointed

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are included. As such, it has to be held that the applicant cannot be stated to be similarly placed with respondents 4 and 5.

6. The applicant has also alleged that the action of the respondents in appointing/promoting respondents 4 and 5 to the posts in the Directorate General of Security and in the R & A W is in violation of the All India Services Act, 1951. This Act mentions the All India Services^u and the Services to which respondents 4 and 5 were permanently seconded are not included in the list of All India Services under the aforesaid Act. We do not find any violation of the provisions of this Act in the case before us.

7. In support of his allegation of mala fide, the applicant has stated that "The self-proclaimed closeness/relationship between the Respondent 4 (Shri H. B. Johri) and Shri G. C. Saxena (Respondent 6) further imbues^e the matter with bias and partisanship." This allegation has been denied both by respondent No.4 in his counter affidavit as well as in the main counter on behalf of respondents 1, 2, 3, 5^e and 7. In the absence of any other particulars, it is not possible to uphold the contention of the applicant that respondent No.4 was favoured in the matter of his appointment on promotion to the post of Director/Special Services Bureau, Cabinet Secretariat, New Delhi.

8. The respondents in their reply have stated that the Directorate General of Security and the R & A W "are extremely sensitive, highly specialised organisations set up by the Government of India to deal with security matters of national importance. To meet the security requirements of these organisations, the rules/regulations/guidelines, etc., regarding the functioning, services, etc., are of classified nature and hence are not public documents." It is further stated that the "posts held by respondents Nos. 4 and 5 are very important and highly sensitive in character. In fact

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almost all the posts in organisations like the Directorate General of Security and R & A W are sensitive posts. For the aforesaid posts, only persons with requisite experience, expertise and suitability are selected for appointment. Therefore, seniority of any person in any service or cadre is irrelevant." It is also stated that the applicant came on deputation to the Centre as Director in the Bureau of Police Research and Development in the pay scale of Rs.2500-2750 w.e.f. 18.9.1985 which is under the administrative control of the Ministry of Home Affairs whereas respondents 4 and 5 are on deputation in the Cabinet Secretariat which is a separate department. Both these respondents came on deputation on 11.3.1974 and 3.8.1971 respectively and have been permanently seconded to these organisations after taking an undertaking from them that they will forego promotion benefits in their State cadres and with the stipulation that they cannot be normally repatriated to their parent cadres. It is also stated that the terms of their permanent secondment specifically provide inter alia that they will not be sponsored for any other post outside the organisation unless the Government of India themselves so desire in public interest. Respondents 4 and 5 are stated to have got long experience in the same sensitive and highly specialised department which the applicant is said not to possess as he was never posted to the said departments. It is further stated that the posts occupied by respondents 4 and 5 belong to distinct Services created for the two sensitive and highly specialised organisations of the Directorate General of Security and the R & A W with their own rules/regulations/guidelines etc. which are privileged and that these are not all India Services and, therefore, the provisions of the All India Services Act/Rules do not apply to them and consequently All India seniority has no relevance. It is again stated that the posts occupied by respondents 4 and 5 are ex-cadre posts and are not exclusively tenable by IPS Officers. Respondent

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No. 4 is said to have long experience of more than 12 years of working in the organisation in different capacities, both at the headquarters and in the field and he is said to be the seniormost permanently seconded officer to the Directorate General of Security. He is said to have been holding a post in the scale of Rs.2500-2750 since May, 1982 and looking after the work of the post of Director, SSB, since August, 1985. As regards respondent No.5, it is stated that had he not proceeded ^{on} on special assignment, he would have been promoted as Joint Director in the scale of Rs.2500-2750 in 1983. While the IB is a department under the Ministry of Home Affairs, the R & A W is under the Cabinet Secretariat and the functions of the two departments are distinct and separate. ^{At} ~~At~~ the initial stages some IB officers are said to have been inducted and absorbed in the R & A W, but subsequently there is no regular induction of IB officers as such. It is also stated that the tenure rules/guidelines of IPS Officers provide for inter-change of 'hard core' officers of IB with permanently seconded officers of the R & A W, but the applicant was not an officer in the IB when the promotion of respondents 4 and 5 took place, and not even thereafter. He is said to have never been declared as a 'hard core' officer of the IB under the aforesaid tenure rules/guidelines. All these averments show that the posts to which respondents 4 and 5 were appointed on promotion were included in a different cadre of a different Service than the cadre in the Service to which the applicant belongs. Accordingly, the applicant cannot be said to be similarly placed with respondents 4 and 5, and cannot claim even consideration as a matter of right for appointment to the posts to which respondents 4 and 5 were appointed.

9. The applicant ^{laid} ~~made~~ great emphasis on the legality of the contention of the respondents that the relevant rules/instructions/

guidelines under which appointments of respondents 4 and 5 to the posts in question were made, are classified privileged documents. He had^{also} moved M.P. No. 2121/92 for production of certain documents. As it was found to be highly vague inasmuch as it did not enlist the various documents with their relevant particulars to enable us to issue any direction for production of the same, the applicant did not press the same when this M.P. was considered on 27.7.1992. Moreover, the contention of the official respondents that respondents 4 and 5 have been appointed to posts which belong to different Services than the Service cadre to which the applicant belongs, has not been effectively rebutted by the applicant by making a positive averment that no such separate Service has been constituted or that such a separate Service is an all India Service in accordance with the provisions of the All India Services Act, 1951. In view of this also, we ^{do not} consider it imperative to direct the official respondents to make available to us for our perusal the relevant service rules/instructions/guidelines. Had we decided to give such a direction, the question of privilege, if claimed by the official respondents, would also have been considered. Thus, there was no occasion for us to go into the question of privilege.

10. In view of what is stated by us above, it is not necessary to go into some of the other contentions which do not remain relevant for the issue before us, such as rules framed under the All India Services Act have to be framed in consultation with the States, etc.

11. In the light of the foregoing discussion, we are of the considered view that no interference is called for in the appointment of respondents No. 4 and 5 which has been

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challenged by the applicant in this O.A. and that the applicant is not entitled to the reliefs prayed for. The O.A. is accordingly dismissed with no orders as to costs.

Clean 16/10/92
(P. C. Jain)
Member (A)

16.10.92
(T. S. Oberoi)
Member (J)

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