

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1512/90

199

T.A. No.

DATE OF DECISION 04.01.1991

Shri Joseph Ponnolly & Others	Petitioner
Ms. Lily Thomas	Advocate for the Petitioner(s)
Versus	
U.O.I. through Min. of Personnel.	Respondent
Public Grievances & Pension & Others	Advocate for the Respondent(s)
Shri P.H. Ramchandani	

## CORAM

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN (J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *ND*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

## JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,  
Vice Chairman (J))

The applicants who are working as Inspectors in the C.B.I. filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- (i) To declare that promotion of the existing cadre Inspectors (non-deputationists) in CBI is the valid mode of filling all the vacancies in the post of Deputy Superintendent of Police in the CBI;
- (ii) to strike down the restraint put on promotion by quota to departmental Inspectors (30%) as illegal and unauthorised;

(iii) to strike down the provisions for deputation/transfer and direct recruitment as laid down in the SPE (Executive staff) Recruitment Rules, 1963, to fill the vacancies in the post of Dy.SP in the CBI as illegal and unconstitutional;

(iv) to direct the respondents to consider all eligible cadre Inspectors of the CBI including the applicants for every promotion vacancy in the CBI without application of the quota rule;

(v) to pass an order prohibiting respondent Nos. 1 to 3 from appointing respondent Nos. 4 to 26 or any other person to the post of Dy.SP in the CBI on deputation/transfer and in case orders of appointment/promotion are issued, not to give effect or implement the said orders;

(vi) to pass an order restraining respondent Nos. 4 to 26 and other persons from joining CBI service on deputation/transfer in the post of Dy.SP in case appointment orders to this effect are received by them;

(vii) to pass an order restraining respondent Nos. 1 and 2 from absorbing the deputationists in the CBI cadre; and

(viii) to promote the applicants and their colleagues on the basis of seniority-cum-merit to all the available vacancies in the post of Dy.SP in the CBI.

2. Respondent No.1 is the Secretary, Ministry of Personnel, Public Grievances and Pension, Respondent No.2 is the Director of the CBI and Respondent No.3 is the Union Public Service Commission. Respondent Nos. 4 to 26 are working as Inspectors in the CBI.

3. At the outset, it may be stated that the Government of India set up the Central Bureau of Investigation in 1963 by a Government Resolution. The CBI has got six divisions, namely, Investigation and Anti Corruption, Division (Delhi Special Police Establishment), Technical Division, Crime Records and Statistics Division, Research Division, Legal & General Division and Administrative Division.

4. The Special Police Establishment (Executive Staff) Recruitment Rules, 1963, provided that 15% of the posts of Dy.SPs were to be filled up by promotion and the remaining by transfer or deputation. Inspectors of Police in SPE with three years service in the grade were eligible for promotion. Suitable officers of the State or Central Government Department were eligible for deputation. In the notes appended to the Rules, it is provided as under:-

"1. These posts will be treated as tenure posts when held by deputation by officers of the state or central Govt. departments.

2. Deputationist will not be eligible for promotion in the quota shown against entry (b) col. 10. Such deputationist may however be appointed against the deputation quota to higher posts, if they are otherwise suitable and if vacancies are available with deputation quota shown against entry (b) in col. 10."

5. The aforesaid Rules were amended in 1972 whereby it was provided that promotion will be to the extent of 30%, failing which by transfer on deputation, failing both, by direct recruitment; transfer/deputation will be to the extent of 50% failing which by direct recruitment; and direct recruitment will be to the extent of 20% in consultation with the U.P.S.C. Inspectors of Police in the C.B.I. with 5 years service in the grade rendered after appointment there-to on regular basis were eligible for promotion. Suitable officers of the State or Central Departments who are holding equivalent post or who, though holding posts in the next lower grade, are officers approved for promotion to equivalent posts, are eligible for appointment by transfer/deputation. Deputationist Inspectors in C.B.I. who have put in at least 5 years service in the rank in the State/C.B.I., out of which at least 3 years is in the C.B.I. are eligible for appointment by deputation.

6. The Rules were again amended in 1987, according to which, the method of recruitment was provided as under:-

"(i) 30% by promotion, failing which by transfer on deputation (provision for direct recruitment was omitted).

(ii) 50% by transfer on deputation/transfer (provision for direct recruitment was omitted).

(iii) 20% by direct recruitment through the Civil Services Examination conducted by the Union Public Service Commission".

7. The grades from which promotion/deputation/transfer is to be made were as follows:-

"Promotion

Inspector of Police in the CBI with 5 years regular service in the grade.

Transfer on deputation/transfer

Officers under Central/State Police Organisations

- (a) (i) holding analogous posts on a regular basis; or
- (ii) Inspectors of Police with 5 years regular service in the grade or equivalent; and
- (b) possessing experience in investigation of criminal cases.

Note:-

- (1) Deputation Inspectors of Police in the CBI with 5 years service as Inspector, including service as Inspector in the Parent organisation shall also be eligible for appointment as Deputy Superintendent of Police but their appointment shall be adjusted against the deputation quota.
- (2) The departmental officers in the feeder category who are in the direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly, deputationists shall not be eligible for consideration for appointment by promotion.....

The Rules also provide that the UPSC shall be consulted while selecting an officer for appointment transfer on deputation/transfer and making direct recruitment".

8. The case of the applicants is that their right to be promoted to the rank of Dy. Superintendent of Police in the CBI is being illegally thwarted by the provision for deputation and direct recruitment in the impugned rules. All of them were appointed in the CBI as directly recruited Sub Inspectors of Police after going through competitive examination and interview held on All India level and <sup>they</sup> underwent academic and professional training in the CBI. In due course they were promoted to the rank of Inspectors of Police. The applicants have stated that about 150 of the Inspectors are now eligible for promotion as Dy.SP in the CBI. Out of them, 20 have completed over 12 years of service as Inspectors, 40 over 10 years of service and 80 over 8 years of service.

8  
9. As there are adequate number of Inspectors now available for promotion, the applicants have called in question the provision for deputation for filling up the vacancies in the post of Dy.SPs.

10. The applicants have stated that for the past 10 years, there had been no direct recruitment. They apprehend that the respondents would resort to this mode of recruitment to fill up the accumulated vacancies. They have termed it as mala fide.

11. The respondents have stated in their counter-affidavit that the Recruitment Rules which have been challenged before us had been in force for about three decades and that the challenge to the same at this stage will be barred by limitation. They have also contended that the application is not maintainable on the ground that the applicants have not exhausted the remedies available to them under the relevant rules. On the merits, they have stated that it is for the Government to consider as to how a particular service is to be manned. The percentages of the recruitment under the three different modes have been reviewed from time to time, as is clear from the amendment to the Rules in 1972 and 1987. They have stated that 59 posts of Dy.SPs out of the sanctioned strength of 180 are lying vacant as on 1.8.1990. Out of the remaining 121 posts, 97 are held by promotees, one by direct recruit, 8 by deputationists who have been absorbed and 15 by deputationists. According to them, the factual percentage of promotees holding the posts as on 1.8.1990 is 53.88 of the sanctioned strength.

12. The respondents have further stated that in order to ease the stagnation of the Departmental Inspectors, the department has proposed to the Government for diversion of some vacancies under the deputation/direct recruitment quota for promotion of

*a*

Departmental Inspectors. This proposal which was pending with the Government has been cleared after the present application had been filed. The Govt. has approved the diversion of 19 vacancies from the deputation/direct recruitment quota for being filled by promotion by Departmental Inspectors. The Government/U.P.S.C. has further advised that six more vacancies could be filled by promotion if the deputationists earlier recommended do not join. On receipt of clearance by the UPSC/Government, a DPC was held for filling up 19 vacancies as also 3 regular promotion quota vacancies which had become available in the meantime. On the recommendations of the DPC, orders for the promotion of departmental officers have since been issued. When all officers join their respective places of posting, the number of departmental Dy. Superintendents of Police in position will go upto 118, increasing their representation to 65.55% of the sanctioned strength. As some of the candidates earlier recommended by the UPSC are not likely to join as deputationist Dy. Superintendent of Police, this will enable the department to fill up 6 more vacancies by promotion of departmental officers raising the number of promotees to 124 thus giving the promotees a percentage of 68.88 as against the 30% promotion quota to which they are actually entitled under the Rules.

13. The respondents have defended the provision for deputation by stating that it is aimed at building up cadre of investigating officers drawn from the various regions of the country. CBI, which is an All India Organisation, will thus have officers possessing knowledge of the local language and custom.

14. We have carefully gone through the records of the case and have considered the rival contentions. A Constitution Bench of the Supreme Court in Bishan Sarup Gupta Vs. Union of India,

O

1974 SCC(L&S) 506 at 518 has made certain pertinent observations in regard to the right of the Government to frame Recruitment Rules in a manner which would subserve the public interest. It was observed as under:-

"When considering this point, it must be clearly understood that this Court is not concerned with Government's policy in recruiting officers to any service. Government runs the service and it is presumed that it knows what is best in the public interest. Government knows the calibre of candidates available and it is for the Government to determine how a particular service is to be manned - whether by direct recruits or by promotees or by both and, if by both, what should be the ratio between the two sources having regard to the age factor, experience and other exigencies of service. Commissions and Committees appointed by the Government may indeed give useful advice but ultimately it is for the Government to decide for itself".

15. In the instant case, the Government have framed Recruitment Rules to man the post of Dy. Superintendents of Police from three sources and have made statutory rules in this regard. The Rules have been amended over the years in the light of the experience gained by them. There is no material on record to indicate that the respondents have proceeded in the matter in a manner otherwise than in public interest. What would subserve public interest is entirely for the Government to decide. The applicants could come up with a grievance only if there is arbitrariness in the Rules or the respondents proceed in the matter with mala fides or extraneous considerations. To our mind, the Rules which provide for percentages for promotion, deputation and direct recruitment cannot be said to be arbitrary or unjust. There is also nothing on record to indicate <sup>or</sup> mala fides or ulterior considerations on the part of the respondents.

16. During the arguments, the learned counsel for the applicants referred to the doctrine of inalienability of instrumentalities and contended that provision of deputation of State

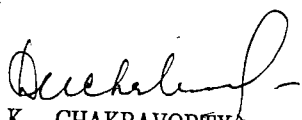
Q

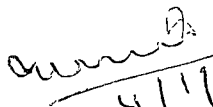
Government officers to a Central Force like the CBI is contrary to the constitutional provisions and to the doctrine of inalienability of instrumentalities. The learned counsel for the respondents stated that the doctrine of inalienability of instrumentalities has not been incorporated in our Constitution and that the Rules have been made by the Central Government for posts in connection with the affairs of the Union. Accordingly, there is no bar to deputation of State Government officers to the CBI..

17. We are inclined to agree with the contention of the learned counsel of the respondents. The learned counsel of the applicants stated that her contention based on the doctrine of inalienability of instrumentalities is not supported by any decision of the Supreme Court. To our mind, the doctrine relied upon by her may be relevant for interpreting the Constitution of the United States of America and not the Indian Constitution.

18. After carefully considering the matter, we are of the opinion that the applicants are not entitled to any of the reliefs sought in the application. The application is, therefore, dismissed.

The parties will bear their own costs.

  
(D.K. CHAKRAVORTY)  
ADMINISTRATIVE MEMBER  
4-1-1991

  
4/1/91  
(P.K. KARTHA)  
VICE CHAIRMAN(J)