

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE**

ORIGINAL APPLICATION NO.170/45/2020

ORDER RESERVED ON 19.03.2021

DATE OF ORDER: 23.04.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

Smt. Madura Veena M.L.

W/o. Veerabhadrapa S

Aged about 45 years

Working as Superintendent of Police

State Intelligence

Nrupatunga Road

Bangalore – 560 001.

.....Applicant

(By Advocate Shri M.S.Bhagwat)

Vs.

1. Union of India

Represented by its Secretary

Ministry of Home Affairs, (MHA)

North Block, New Delhi – 110 001.

2. Union Public Service Commission

Represented by its Secretary

Dholpur House, Shahjahan Road

Delhi – 110 069.

3. The State of Karnataka

Represented by its Chief Secretary

VidhanaSoudha, Bangalore – 560 001.

4. The State of Karnataka

Represented by its Principal Secretary

Department of Personnel Administration and Reforms

VidhanaSoudha, Bangalore – 560 001.

5. The State of Karnataka

Represented by its Principal Secretary

Department of Home

VidhanaSoudha, Bangalore – 560 001.

...Respondents

(By Advocates Shri M.V.Rao for R1, Shri M.Rajakumar for R2 & Shri M.V. Ramesh Jois for R3, 4 & 5)

ORDER

PER: RAKESH KUMAR GUPTA, MEMBER (A)

1. The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“Issue writ of Mandamus directing the respondents to promote the applicant to the cadre of Indian Police Service with retrospective date from the date her juniors are promoted to the said post, that is, 21.07.2017 (Annexure – A2) under the provisions of Indian Police Service (Appointment by Promotion) Regulations, 1955, in the interest of justice and equity.”

2. The applicant, in her pleadings, has averred as follows:

- a. The applicant was initially appointed as Deputy Superintendent of Police in the State of Karnataka on 03.02.2006. Subsequently, she was promoted to the cadre of Superintendent of Police (Non-IPS) in August 2012.
- b. While the applicant was working as Superintendent of Police, Anti-Human Trafficking Unit, CID, Bangalore during the year 2016, she received credible information about human trafficking and the applicant being the in-charge of Human Trafficking Unit conducted a raid in Royal Arcade and Harsha Hotel, Bangalore. In respect of such raid, one

Sri Bhuddha Dev Das, Security Officer gave a complaint to the 5th respondent alleging that the applicant has illegally raided the hotel. In this regard a departmental enquiry was initiated under Rule 6 and 8 of Karnataka State Police (Disciplinary Proceedings) Rules 1965/89 on 04.03.2017.

- c. The State Government initiated the process of promotion of State Police Officers to the cadre of Indian Police Service. Accordingly, the Selection Committee was constituted under Regulation 3 of Indian Police Service (Appointment by Promotion) Regulations, 1955, to prepare the select list of 2015 on 04.07.2017. It is reliably learnt that the selection committee has cleared the name of the applicant for promotion to the cadre of Indian Police Service subject to clearance in the disciplinary proceedings pending against her and grant of integrity certificate by the State Government.
- d. The 2nd respondent (UPSC) wrote a letter to the Union of India (1st respondent) stating that it has approved the recommendation of the selection committee as contained in the minutes of the meeting held on 04.07.2017. The Union of India, based on the recommendations of the selection committee issued a notification on 21.07.2017 appointing 26 officers to the cadre of Indian Police Service. A copy of the notification dated 21.07.2017 is marked as Annexure-A2. The name of the applicant finds place at S1.No.10 in the Select List 2015. The name of the applicant is included provisionally with a rider that she shall produce

the integrity certificate issued by the State Government. Pursuant to the notification dated 21.07.2017, the State Government republished the said list on 29.07.2017 under Regulation 9(1) of Indian Police Service (Appointment by Promotion) Regulations 1955, wherein the name of the applicant did not find place since the integrity certificate is withheld by the State Government. A copy of the Notification dated 29.07.2017 is enclosed as Annexure-A3. The juniors of the applicant were promoted to the post of Indian Police Service. But the applicant's promotion to the said cadre is withheld in view of pendency of disciplinary proceedings and non-issuance of integrity certificate.

- e. The applicant further submits that the State Government proceeded with the departmental enquiry and one Dr.A.S.N.Murty, IPS, Additional Director General of Police was appointed as enquiry officer on 21.09.2017. After conducting enquiry, the enquiry officer submitted his report on 05.09.2018 holding that charges levelled against the applicant are not proved. The enquiry report has been accepted by the 5th respondent Government and vide order dated 07.11.2018, the applicant has been exonerated in the enquiry. The order of exoneration was forwarded to the applicant on 04.12.2018(Annexure-A5).
- f. The applicant submits that despite exoneration in the enquiry, the respondents have not taken any steps to promote her to the post of IPS. The applicant is entitled for retrospective promotion from the date her juniors are promoted to the said cadre. The selection committee meeting

held on 04.07.2017 cleared the name of the applicant subject to pendency of disciplinary proceedings and also issuance of integrity certificate by the State Government. The State Government has withheld the integrity certificate even after conclusion of departmental enquiry in favour of the applicant.

- g. The applicant is entitled for just and fair treatment in the matter of promotion to the post of Indian Police Service. Failure to consider the case of the applicant for promotion violates Article 14 and 16 of the Constitution. The applicant has been discriminated in the matter of promotion. The Hon'ble Supreme Court has time and again held that the right to be considered for promotion is a fundamental right which the Constitution of India provides to every government servant. The applicant has been denied promotion to the cadre of Indian Police Service unjustifiably although the pending enquiry has resulted in exoneration of the applicant.
- h. The State Government had withheld the integrity certificate of the applicant in view of the pendency of the departmental enquiry. Despite closure of the departmental enquiry on 07.11.2018, the certificate which was withheld has not been issued to the applicant. The State Government has also contributed to the delay in considering the case of the applicant for promotion to the post of Indian Police Service. The applicant is humiliated and virtually has to work under her juniors for no fault on her part. Therefore, appropriate direction may be issued to

the respondents to consider the case of the applicant for promotion to the post of Indian Police Service from an anterior date.

3. The respondents No.3 to 5, in their reply statement, have averred as follows:

a. The applicant fully knowing the facts and rules & regulations for promotion to IPS cadre, has filed this application which is devoid of any merits and hence, the application is liable to be rejected as misconceived.

b. Rule 9 of the Indian Police Service (Recruitment Rules) 1954 provides for the promotion of State Police Service officers holding substantive posts to IPS as per the Indian Police Service (Appointment by Promotion) Regulations 1955 depending on the availability of vacancies as on 1st Jan of the respective year and other service conditions. The relevant portion of the Rules 9(1) and 9(2) read as follows:

9(1) The Central Government may, on the recommendation of the State Government concerned and in consultation with the Commission, recruit to the Service persons by promotion from amongst the (substantive) members of a State Police Service in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make

9(2) The number of persons recruited under rule 8 in any state or group of states shall not at any time exceed 33 1/3 percent of the number of senior posts under the State Government, central deputation reserve, State deputation reserve and the training reserve in relation to that State or to the group of States, in the Schedule to the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955;

c. Accordingly, the name of applicant along with other 25 state police service officers was sent to UPSC for preparation of select list of the year

2015 for considering their promotion to IPS of Karnataka cadre. The selection committee meeting was held on 04.07.2017 for preparation of the select list. UPSC has on 19.07.2017 approved the select list for the year 2015 prepared by the selection committee. This select list for the year 2015 was notified by the Ministry of Home Affairs, Government of India on 21.07.2017 (Annexure-2 of the application), wherein the name of the applicant was provisionally included in the list subject to clearance in the disciplinary proceedings pending against her and grant of integrity certificate by the State Government. This fact is known to the applicant and same has been stated in paras 1(iv), 4 & 5 of the application. It is true that the respondent State Government had initiated the disciplinary proceedings against certain officials of the Police Department including the applicant under the Karnataka State Police (Disciplinary Proceedings) Rules, 1965 for the reasons stated in the preamble to the G.O. dated: 07.11.2018 produced at Annexure A-4 of the application.

- d. It is also true that the State Government, after having considered the enquiry report, has issued order exonerating the applicant including some other officers of the charges levelled against them vide G.O dated: 07.11.2018 produced at Annexure A-4 of the application.
- e. It is submitted that, according to the sub-regulation (4) of regulation 7 of the Indian Police Service (Appointment by Promotion) Regulations 1955 the select list will only remain in force till 31st day of December of the year in which the meeting of the selection committee was held with a

view to prepare the list, produced at Annexure-R1. Further submitted that regulation 9 provides that the appointment to the IAS/IPS cadre posts shall be made only from the select list for the time being in force. The portion of the Regulation 7(4) and Regulation 9 reads as follows:

7(4) The Select List shall remain in force till the 31st day of December of the year in which the meeting of the Selection Committee was held with a view to prepare the list under sub-regulation (1) of regulation 5 or up to sixty days from the date of approval of the select list by the Commission under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2) whichever is later.

9. Appointments to the Service from the Select List:

9(1) Appointment of a member of the State Police Service, who has expressed his willingness to be appointed to the Service, shall be made by the Central Government in the order in which the names of the members of the State Police Service appear in the Select List for the time being in force during the period when the Select List remains in force:

Provided that in a Joint Cadre, the appointment of members of the State Police Service shall, subject to any agreement regarding filling up of the vacancies in the Joint Cadre by promotion of a member of the State Police Service serving in connection with the affairs of any such State, be made in the order in which the names of the members of the State Police Service occur in the relevant parts of the Select List for the time being in force.

Provided further that the appointment of an officer, whose name has been included or deemed to be included in the Select List provisionally under the proviso to sub-regulation (5) of regulation 5 or under the proviso to sub-regulation (3) of Regulation 7, as the case may be, shall be made within sixty days after the name is made unconditional by the Commission in terms of the first proviso to sub-regulation (4) of regulation 7.

f. It is submitted that, the order at Annexure-A4, exonerating the applicant of the charges levelled against her was issued only on 07.11.2018 when

the select list had ceased to be in forceas per 7(4) of the Indian Police Service (Appointment by Promotion) Regulations 1955.

g. It is submitted that the applicant is fully aware of these facts and developments. However, the applicant has intentionally suppressed these facts and filed the present petition to get the benefit of retrospective promotion bypassing the established procedures.

h. The Ministry of Home Affairs has subsequently, vide its letter dated 12.02.2018, has also determined the vacancies for the select list for the years of 2016 and 2017. While determining the vacancies for the select list of 2016, unfilled vacancies for the select list 2015 have been carried forward for the Select List-2016. The MHA has also determined the vacancies for the select list-2018 vide its letter dated 04.07.2019. The Ministry of Home Affairs has determined that there are 11 unfilled vacancies of Select List-2015 and these have been carried forward to the Select List-2016. Hence at this point of time the unfilled vacancies of the Select List-2015 cannot be considered in terms of the existing Rules and Regulations.

4. The respondent No.2 (UPSC) in their reply statement, through learned counsel for the respondents Shri M.Rajakumar has averred as follows:

a. The Union Public Service Commission discharge their functions and duties assigned to them under Article 320 of the Constitution. Further, by virtue of the provisions in the All-India Services Act, 1951, separate

Recruitment Rules have been framed for the IAS/IPS/IFS. In pursuance of these Rules, the IPS (Appointment by Promotion) Regulations, 1955 (Promotion Regulations, in short) have been framed. In accordance with the provisions of the said Regulations, the Selection Committee, presided over by the Chairman/Member of the Union Public Service Commission makes selection of State Police Service (SPS in short) officers for promotion to the Indian Police Service (IPS, in short).

- b. As per Regulation 5(1) of the Promotion Regulations, the number of vacancies against which selection is to be made for a particular Select List year for promotion to the IPS of a State Cadre is determined by the Government of India (Ministry of Home Affairs) in consultation with the State Government concerned. Thereafter, the State Government forwards a proposal to the Commission along with the Seniority List, Eligibility List (three times the number of vacancies) of the State Police Service Officers, Integrity Certificates, certificates regarding disciplinary/criminal proceedings, certificate regarding communication of adverse remarks, details of penalties imposed on the eligible officers etc. and complete ACR dossiers of the eligible officers.
- c. The above documents are placed before the Selection Committee when they meet for selection for the Select List year. In accordance with the provisions of Regulation 5(4) of the Promotion Regulations, the aforesaid Committee duly classifies the eligible State Police Service officers included in the zone of consideration as 'Outstanding', 'Very

Good', 'Good' or 'unfit', as the case may be, on an overall relative assessment or their service records. Thereafter, as per the provisions of Regulation 5(5) of the said Regulations, the Selection Committee prepares a list by including the required number of names first from amongst the officers finally classified as 'Outstanding', then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names within each category is maintained in the order of their respective inter-se seniority in the State Police Service. The name of an officer so included in the list shall be treated as "provisional" if the State Government withholds the integrity certificate in respect of him/her or any proceedings, departmental or criminal are pending against him/her.

The relevant part of Regulation 5(4) and 5(5) is extracted below:

"5(4) The Selection Committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit', as the case may be, on an overall relative assessment of their Service records."

5(5) The list shall be prepared by including the required number of names, first from amongst the officers finally classified as 'Outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in the order of their seniority in the State Police Service.

Provided that the name of an officer so included in the list, shall be treated as provisional, if the State Government, withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal, are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

d. While assessing the suitability of the officers for promotion, the Selection Committee, as per the uniform and consistent practice followed in the matter of induction to All India Services, examines the service records of each of the eligible officers, with special reference to the performance of the officers during the last five years preceding the year for which the Select List is being prepared, deliberating on the quality of the officer as indicated in the various columns recorded by the reporting/reviewing officer and accepting authority in the ACRs for different years and then after detailed mutual deliberation and discussion, finally arrives at a classification to be assigned to each officer. In this process, the Selection Committee is not merely guided by the overall grading, if any, that may be recorded in the ACRs but makes its own objective assessment on the basis of entries in the ACRs. The Selection Committee also takes into account orders regarding appreciation for the meritorious work done by the officers concerned and also keeps in view orders awarding penalties or any adverse remarks duly communicated to the officer which even after due consideration of his representation are not expunged.

e. Further, the Union Public Service Commission, after taking into consideration, the records received from the State Government under Regulation 6 and observations of the Central Government received under Regulation 6(A) of the Promotion Regulations, takes a final decision on the recommendations of the Selection Committee in accordance with the

provisions of Regulation 7 of the aforesaid Regulations. The appointments to the IPS are made from the Select List by the Government of India, Ministry of Home Affairs (MHA) during the validity period of the Select List.

- f. The above procedure is being uniformly followed for all the States/Cadres in the matter of induction to the All-India Services.
- g. The applicant has contended in the OA that as per the Notification dated 21.07.2017 issued by the Govt. Of India, MHA, her name was included in the Select List of 2015 for promotion to the IPS of Karnataka Cadre “provisionally” subject to clearance in the disciplinary proceedings pending against her and grant of integrity certificate by the State Government. Subsequently, she has been exonerated in the disciplinary proceedings, vide order dated 07.11.2018 issued by the State Government.
- h. The State Government had submitted the proposal, vide letter dated 18.05.2017, to the Commission for preparation of Select List of 2015 for promotion of SPS officers to the IPS of Karnataka Cadre against 36 vacancies determined by the Govt. Of India, Ministry of Home Affairs. It was intimated by the State Government with the proposal that the disciplinary proceedings initiated against the applicant i.e., Smt. MadhuraVeena M.L., vide Order dated 04.03.2017, was pending. The

State Government also withheld the integrity certificate in respect of the applicant.

- i. Accordingly, Selection Committee Meeting was held on 04.07.2017 for preparation of the Select List of 2015 for promotion to IPS of Karnataka Cadre. The name of the applicant was duly considered and included at S1.No.10 in the Select List “provisionally” subject to clearance in the disciplinary proceedings pending against her and grant of integrity certificate by the State Government. It is mentioned that only 26 officers were eligible for consideration for the Select List of 2015 and all were included in the Select List. Out of 26 officers, names of 03 officers (including the applicant) were included in the Select List provisionally.
- j. The recommendations of the Selection Committee were approved by the Commission, vide letter dated 19.07.2017, and acted upon by the Govt. of India, MHA, vide Notification dated 21.07.2017. The officers included unconditionally in the Select List were appointed to the IPS of Karnataka Cadre, vide Notification dated 21.07.2017 issued by the Govt. of India, MHA.
- k. Out of 03 officers included provisionally in the Select List, the State Govt., vide letter dated 13.10.2017, submitted the proposal for declaration of provisionally included name of Shri Devaraju K.G. in the Select List as ‘Unconditional’. The Commission approved the proposal,

vide letter dated 26.10.2017, and he was appointed to the IPS, vide Notification dated 01.11.2017 issued by the Govt. of India, MHA.

1. Thereafter, the State Government, vide letter dated 29.12.2017, submitted the proposal for declaration of provisional inclusion of name of Dr.Jagdish K.V. in the Select List as 'Unconditional'. The Commission approved the proposal vide letter dated 04.01.2018, and he was appointed to the IPS vide Notification dated 10.01.2018 issued by the Govt. of India, MHA.

m. In respect of the applicant, no such proposal for declaration of her provisional inclusion in the Select List as "Unconditional" was submitted by the State Government to the Commission during the validity period of the Select List of 2015 which was in force till 31.12.2017.

n. For appointment to IPS in respect of officers included provisionally in the Select List his/her provisional inclusion in the Select List is required to be declared as Unconditional by the Commission after the proposal to that effect is submitted by the State Government to the Commission within the validity period of the Select List, in terms of Regulation 7(4) of the Promotion Regulations which is extracted below:

"7(4) The Select List shall remain in force till 31st day of December of the year in which the meeting of the selection committee was held with a view to prepare the list under sub-regulation (1) of regulation 5 or upto sixty days from the date of approval of the select list by the Commission under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2), whichever is later:

Provided also that where the select list is prepared for more than one year pursuant to the second proviso to sub-regulation (1) of regulation 5, the select lists shall remain in force till the 31st day of December of the year in which the meeting was held to prepare such lists or upto sixty days from the date of approval of the select lists by the Commission under this regulation, whichever is later.

Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the Select List as "unconditional", to the Commission during the period when the select list was in force, (the Commission shall decide the matter within a period of forty five days) or before the date of meeting of the next selection committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the Select List as unconditional and final, the appointment of the Concerned officer shall be considered by the Central Government under regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the Select List ceased to be in force.

o. In this case, the Selection Committee Meeting was held on 04.07.2017 and the Select List was approved by the Commission, vide letter dated 19.07.2017. Therefore, the Select List of 2015 was in force till 31st December, 2017. No proposal for declaration of provisional inclusion of the name of the applicant in the Select List of 2015 as 'unconditional' was submitted by the State Government to the Commission during the validity period of the Select List i.e., up to 31.12.2017. Submission or consideration of such proposal after 31.12.2017 (when the validity of the Select List is over) will not be in consonance with the provisions of the Promotion Regulations which are statutory in nature.

p. It is submitted that unfilled vacancies for the year 2015 for promotion to IPS of Karnataka Cadre have since been carried forward and included in the vacancies determined by the Govt. Of India, MHA for preparation of

Select List of 2016 which are 17. However, proposal for convening of Selection Committee Meeting for preparation of Select List for the year 2016 onwards is yet to be submitted by the State Government to the Commission.

- q. In view of the above submission, the contention of the applicant for promotion to the IPS of Karnataka Cadre from the Select List of 2015 which was in force till 31st December 2017 is not tenable.
5. Heard learned counsels for the parties.
6. Shri M.S.Bhagwat, learned counsel for the applicant has, during the course of arguments, filed a list of citations of various court cases which, according to him, provided for retrospective appointment of an officer who has been included provisionally in the select list after the officers were exonerated from the charges framed against him/her. The following court cases have been cited by him during the course of arguments:
- i. *Ramesh Chandra Roongta vs. Union of India* and another passed by Central Administrative Tribunal, Jodhpur Bench reported in (1995) 30 *Administrative Tribunals Cases* 458.
 - ii. *M.M. Mehta vs. Union of India* and others passed Central Administrative Tribunal, Ahmedabad Bench.
 - iii. *K.R.Rajan vs. The State of Kerala and another* passed by Central Administrative Tribunal, Ernakulam Bench reported in (OA) Original Appl./507/2007.
 - iv. *Union Public Service Commission vs. M. SathiyaPriya and others* reported in (2018) 15 SCC 796.

v. *Ashok V. David M.G.Halappanavar vs. Union of India and others* reported in (1996) 9 SCC 67.

7. All these court cases cited by him were perused carefully.
8. In the case of *Ramesh Chandra Roongta vs. Union of India and another* in OA.No.164/1994 decided on 29.09.1994 by the Jodhpur Bench of this Tribunal, it was observed that Shri Roongta was officiating against an IAS cadre post since 31.12.1991. The Central Government issued notification dated 12.05.1993 appointing Shri Roongta to the IAS with immediate effect i.e., from the date of issuance of the notification dated 12.05.1993. He had challenged this part of the notification to the extent that it should not be with immediate effect, but it should be retrospective as he was officiating against an IAS cadre post since 31.12.1991. A careful perusal of the select list indicates that not only the State Government but the UPSC had also recommended that the inclusion of the name of Shri Roongta in the select list prepared be treated as unconditional and final. The facts in this particular case have no relevance with the facts of the present case. Moreover, at that point of time, the regulations prescribed that the select list prepared in 1991 remained in force until its review and revision effected under sub-regulation (4) of Regulation 5 read with sub-regulation (1) of sub-regulation (2). However, under the present regulations, which are now in force, Regulation 7(4) prescribes that the select list will be in force till 31st day of December of the year in which the meeting of the selection committee was held or upto sixty days from the date of approval of the select list by the Commission as

the case may be, whichever is later. This amendment in the Regulations had been carried out by the GOI in 1997 vide G.S.R 733 E of 1997 dated 31.12.1997. This is well after the date of this cited judgment by the Jodhpur Bench of this Tribunal. Hence, this cited case is clearly not relevant/applicable in the present case.

9. In the case of *M.M. Mehta vs. Union of India & Others*, the Ahmedabad Bench of this Tribunal had ruled that M.M. Mehta had been given integrity certificate only after 30.05.2000 when he had already retired from the State Civil Services and as such under Regulation 9(1) of the Promotion Regulations, he was not eligible for consideration for appointment to the IAS cadre. The OA was therefore rejected by the Ahmedabad Bench of this Tribunal. Hence, the facts of this case are entirely different from the present case and cannot be considered as relevant to the present case.

10. In *K.R.Rajan vs. The State of Kerala & Another* in OA.No.507/2007, the Ernakulam Bench of this Tribunal had held that the Shri K.R.Rajan's name was included in the select list subject to issuance of integrity certificate by the State Government for the years 1997, 1998, 1999 & 2000. In the year 2001, the Government of Kerala issued integrity certificate on 22.06.2001 whereas the period of validity of select list expired on 03.07.2001. The UPSC had rejected the inclusion of his name in the select list as unconditional, on the grounds that the integrity certificate was not forwarded by the State Government within the stipulated time. Hence, the facts of this case are

entirely different from the present case and cannot be considered being relevant to the present case.

11. In *UPSC vs. M.Sathiya Priya & Others*, the issue under consideration before the Hon'ble Apex Court was completely different. It dealt with the question whether judicial authorities have the authority to assess the performance of the 1st respondent afresh. The Honourable Supreme Court had observed that the CAT and the High Courts have virtually assessed the performance of the first respondent afresh, mainly taking into account the ACRs for the period from 01.04.2003 to 31.03.2008, directing 1st respondent's appointment to IPS. The Hon'ble Supreme Court ruled that the recommendations of the Selection Committee cannot be challenged except on the ground of malafide and serious violation of the statutory rules. The Courts cannot sit as an appellate authority or an umpire to examine the recommendations of the Selection Committee like a Court of Appeal. This discretion has been given to the Selection Committee only, and the Courts rarely sit as a court of appeal to examine the selection of a candidate, nor is it the business of the court to examine each candidate and record its opinion. Moreover, the Hon'ble Supreme Court, had further examined the provisions under Regulations 7(4) and had observed that the proviso to Regulation 5(5) specifically provides for inclusion of officers in the select list against whom departmental/criminal proceedings are pending, their inclusion in the select list remains provisional, subject to clearance of departmental/criminal proceedings. However, their appointments to IPS can be made only after their names are made unconditional in the select list, in accordance with the second

proviso to Regulation 7(4) of the Regulations which clearly states that this can be done only till the time that the select list remains in force. Hence, the issues considered by the Hon'ble Supreme Court in this case were entirely different from the issues being raised in the present case. The Supreme Court had also noted and upheld the provisions under Regulation 7(4).

12. A careful examination of the case in *Ashok V. David vs. Union of India & others* decided by the Hon'ble Supreme Court, indicates that it dealt with the issue of declaration by the Government of Karnataka that the officers had satisfactorily completed the period of probation on 14.07.1976, although the formal confirmation was ordered from 1.1.1986. The Court had found that there was thus absolutely no cogent reason to confirm them from 1.1.1986 inasmuch as they had satisfactorily completed their probationary period as early as 14.07.1976. Hence, this case is also not relevant to the present case in hand.

13. From the above discussions, it is apparent that the various Court cases cited by the learned counsel for the applicant, in no way, support his contention that the applicant should be appointed to IPS retrospectively once the departmental enquiry against her has been closed on 07.11.2018, well after the period when the select list has ceased to be in force on 31.12.2017.

14. A careful examination of the provisions under regulations relating to the IPS (Appointment by Promotion) Regulations, 1955 indicate that the Regulation 7(4) clearly prescribes that the select list prepared by the Selection Committee under Regulations 5 shall remain in force till 31st day of December of the year

or up to sixty days from the date of approval of the select list by the Commission whichever is later. These Regulations are statutory in nature.

15. In this particular case, the applicant figured at Sl.No.10 in the select list prepared by the Committee wherein it is clearly mentioned that she had been included in the list provisionally subject to clearance of disciplinary proceedings against her and grant of integrity certificate by the State Government. Apart from the applicant, two more persons at Sl.No.21 (Jagadish K.V.) and Sl.No.26 (Devaraju K.G.) had also been included in the list provisionally, subject to their clearance in the disciplinary proceedings pending against them, and grant of integrity certificate by the State Government. This process of grant of integrity certificate by the State Government has to be done during the period when the select list is in force. As per the First proviso under Regulation 7(4), the State has to forward the proposal to declare a provisionally included officer in the Select List as "unconditional", to the Commission during the period when the select list is in force. The Commission is then supposed to decide the matter within a period of 45 days or before the date of meeting of the next selection committee, whichever is earlier, and if the Commission declares the inclusion of the provisionally included officer in the Select List as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government under Regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the Select List ceased to be in force.

16. It is clear that in case of officers under Sl.Nos. 21 & 26, the State Government had issued the Integrity Certificate and submitted the proposal for declaration of the names of the persons to be made unconditional, while the select list was still in force. In the case of Shri Devaraju K.G., this was done by the State Government vide letter dated 13.10.2017. The Commission approved the proposal vide letter dated 26.10.2017 and he was appointed to the IPS vide Notification dated 01.11.2017 while the select list was still in force i.e., till 31.12.2017. Similarly, in the case of Dr. Jagadish K.V., the State Government vide letter dated 29.12.2017 had submitted the proposal for declaration of provisional inclusion of his name in the Select List as Unconditional, while the Select List was still in force. The Commission approved the proposal vide letter dated 04.01.2018 and he was appointed to the IPS vide Notification dated 10.01.2018 issued by the Govt. of India, MHA. This was well within the prescribed limit of 45 days under Regulation 7 of the IPS promotion regulations.

17. However, in the case of the applicant, as is clear from the records, the order of exoneration by the State Government in the departmental enquiry, was completed only on 07.11.2018 which is about eleven months after the expiry of the select list. The State Government, did not issue the integrity certificate during the time while the select list was in force i.e. 31.12.2017.

18. A careful examination of the regulations prescribed for promotions to the Indian Police Service indicate that the provisions prescribed under these regulations for promotions of the State Police Service Officers to the IPS cadre, are quite

distinct from the rules governing promotions given to officers within the same cadre of the State Government/Central Government. The promotions within the same cadre/service are governed by the DPC guidelines issued by the State Government/Central Government whereas the inductions/promotions to the All-India Services are governed by these statutory Promotion Regulations. Although the term used in the regulations is 'promotion', the process is more in the nature of induction into a different cadre/service. The applicants are appointed afresh in the IPS cadre of the State by the Government of India, whereas they had functioned previously as member of the State Police Cadre after their initial appointment by the State Government. There is no concept of bench mark for assessment as "Fit" or "Unfit" in these Promotion Regulations. Further in case of officers against whom disciplinary/criminal proceedings are pending, their inclusion in the select list remains provisional as per these Promotion Regulations, and it needs to be declared as "Unconditional" while the Select List is in force. The concept of "Sealed Cover Procedure" prescribed in the DPC guidelines for regular promotions within the same cadre, is not provided for in these Promotion Regulations.

19. As per the pleadings of the respondents, the unfilled vacancies of the year 2015 which include the available vacancy on account of non-appointment of the applicant, have been carried forward to the select list year 2016, after the expiry of the select list of 2015. The State Government has not yet sent the proposal for induction of the State Police Officers/IPS for the select list of 2016, 2017 & 2018. Considering the fact that the applicant was eligible and had been

provisionally included in the select list of 2015, the applicant may well be eligible for consideration for the select list of subsequent years of 2016, 2017 & 2018. She is, however, not eligible for retrospective appointment for the select list year 2015, since this is not provided for in the Promotion Regulations once the select list of 2015 has ceased to be in force.

20. Keeping the above in view, there is no merit or force in the pleadings made by the applicant and the OA being devoid of any merit is liable to be dismissed.

21. Accordingly, the OA is dismissed. However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER(ADMN)

(SURESH KUMAR MONGA)
MEMBER(JUDL)

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