

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH,

ALLAHABAD.

O.A. NO. 747/92

Hari Raj Singh Fogat ..... Applicant.

Vs.

Union of India & others. ..... Respondents.

Hon'ble Mr. K. Obayya, A.M.

Hon'ble Mr. Maharaj Din, J.M.

(By Hon'ble Mr. K. Obayya, A.M.)

The applicant on selection to U.P. State Police Service was appointed as Deputy Superintendent of Police in 1971. In due course he was promoted to the post of Commandant Armed Training Course, Sitapur and thereafter continued to work on senior scale posts of Indian Police Service (I.P.S.) such as Additional Superintendent of Police, Superintendent of Police, S.S.P. Commandant etc. while posted at different places in U.P. State. On becoming eligible for consideration for inclusion in the selection list for promotion to I.P.S., he was considered and included in the select lists for the years 1983 and 1984. However, he could not be promoted during these years as his position in the Select List was low vis-à-vis the vacancies available.

2. The grievance of the applicant is that his name was included in the select list of 1985 and in normal course the notification of his promotion by U.P.S.C. would have come in 1986 but that did not happen as there was stay order issued by the High Court, but for ~~the~~ stay order he would have been appointed w.e.f. December, 1986 when there was vacancy available for promotion in his turn. The delay in formal notification and issue of appointment should not be held against him as the said delay can not be attributed for any lapse on his part.

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3. Shri Sudhir Agarwal, learned counsel making submissions on behalf of the applicant, pointed out that the applicant was denied of promotion on the due date, since the issue of notification was withheld by U.P.S.C. because of stay order issued by the High Court, and for no other reason, in these circumstances the notification which was ultimately issued 6/2/1989 should be deemed to be effective from back date since the select list of 1985 pertains to the period upto December 1986.

4. His further submission was that appointment to I.P.S. as provided under rule 4 of the recruitment rules 1954 lays down two main sources of recruitment namely direct recruitment and by promotion. As there was no ban in the intervening period 1986 for direct recruitment many direct recruits were appointed to the service, thus the promotion quota was filled up by the direct recruitment and the direct recruits so appointed became senior to the select list officers of 1985 list because of delayed appointment which was made only 1989 and not on the due dates which should have been on or prior to December, 1986. As a consequence thereof the applicant's seniority, year of allotment, promotion prospects were affected. The learned counsel referred to the case of Mahadeo Kalekar Versus State Bank of Hyderabad (J.T.1990 (3) S.C. 454) in which the Supreme Court held that promotions withheld due to stay order of the court should be given with the retrospective effect from the date or dates when the vacancies were available, even if on notional basis. <sup>on the basis of</sup> Supreme Court decision in Union of India Versus Mohan Lal Kapoor, the select list Officers of 1968 who were appointed subsequently after 1968 some even in 1976 were given retrospective of seniority deeming their appointment to I.P.S. with effect from 11.1.1968.

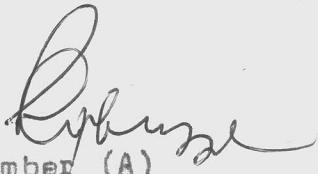
5. Learned counsel for the applicant stated that in T.A. NO. 105/92 'Ravindra Deo Tripathi Vs. Union of India & others' decided by the Tribunal on 19.7.1992 in which an identical matter of retrospective appointment of Select-List-Officers of 1985 was involved, ~~and~~ the Bench while considering the matter allowed the application and directed as follows :-

" The applicant could have got appointment to I.P.S. earlier which shall be given notionally with consequential benefits. It may involve certain officers who are not party to this case and we direct the respondents that the case of the applicant alongwith others, including the period during the interim order and those who are appointed from the due date will be considered by the respondents within two months of the receipt of the copy of this judgment and taking into consideration the seniority position and including the period during which there was interim order and appointment may be given to the applicant notionally from due date obviously taking into consideration the other persons also in the panel and position of other persons who were appointed from this select list."

6. We have given our serious consideration to the averments made and the submissions of the learned counsel for the applicant. It would appear that the select lists for promotion to I.P.S. in U.P. State have been under ~~the~~ challenge in the courts of law and also this Tribunal. These matters related

to interse seniority, non consideration of the candidates for promotion and seniority etc. So far as the controversy in the instant case before us is concerned, the principle of entitlement of appointment retrospectively from the dates when the vacancies were available which were delayed because of operation of stay order passed by <sup>has been upheld in many decisions of the Tribunal &</sup> the High Court, In view of the settled position, we are of the view that the applicant is entitled for fixation of seniority, year of allotment and other service benefits deeming his appointment from back date when vacancy was available to him for his appointment in his turn in 1985 Select List, and accordingly we direct the respondents to consider the case of his appointment to I.P.S. and fix his seniority on notional basis from the due date. The applicant will also be entitled to other consequential service benefits like seniority fixation of pay and promotion to higher posts in accordance with law. The application is allowed as above. No order as to costs.

  
Member (J)

  
Member (A)

Dated: 27 August, 1992, Allahabad.