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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH : JODHPUR

Date of order : 04.06.2001

O.A. No. 337/98

1. Govind Narain Purohit son of late Shri Sukhraj Purohit aged around 43 years, resident of House No. 14/182, Niti Nagar, Malviya Nagar, Jaipur, presently posted as Additional Superintendent of Police (HQ.), Government of Rajasthan, Jaipur City, Jaipur.
2. G.L. Sharma son of Shri B.L. Sharma, aged around 42 years, resident of A/490 A, Malviya Nagar, Jaipur, presently posted as Additional Superintendent of Police (Crime), Department of Police, Government of Rajasthan, Jaipur.

... Applicants.

v e r s u s



1. Union of India through Secretary, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training, Government of India, New Delhi.
2. Secretary, Ministry of Home Affairs, Government of India, North Block New Delhi.
3. Union Public Service Commission through Secretary, Dholpur House Shahjahan Road, New Delhi.
4. The State of Rajasthan through Secretary, Department of Personnel Government of Rajasthan, Secretariat, Jaipur.

.... Respondents

Mr. N.K. Khandelwal, Advocate, Brief holder for Mr. M.S. Singhvi, Counsel for the applicants.

Mr. Vinit Mathur, Counsel for the respondents Nos. 1 and 2.

Mr. Kamal Dave, Counsel for the respondent No. 4.

None is present for the respondent No. 3.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

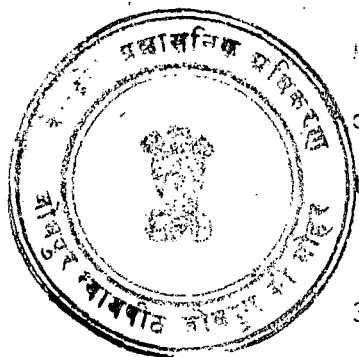
(Per Hon'ble Mr. Justice B.S. Raikote)

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This application is received by this Tribunal being transferred from Jaipur Bench by Hon'ble the Chairman vide order dated 4.12.98. In Jaipur Bench, this application was numbered as 206/98, and after transferring to this Bench, it has been renumbered as OA 337/98.

2. The applicants have challenged the order dated 19.02.1998 (Annexure A/1) to the extent it provides that available vacancies shall be splitted and shall be filled in in the span of 3 years, i.e., 1998, 1999 and 2000. The applicants also have prayed for a direction to the respondents that all those vacancies shall be filled in the year 1998 itself against the promotion quota as on 1.1.1998. For that purpose, the applicants sought that the respondents may be directed to prepare a fresh list on the basis of zone of consideration for promotion to IPS by taking that all 17 vacancies <sup>becoming</sup> as  $\frac{1}{2}$  available in IPS cadre of State of Rajasthan, against the promotion quota. They also prayed that the respondents may be directed to consider the case of the applicants for such promotion.

3. The applicants, Govind Narain Purohit and G.L. Sharma, contended that the Government of India in exercise of its powers conferred by sub-rule 4(2) of the Indian Police Service (Cadre) Rules, 1954 (IPS cadre Rules, for short), has issued a Notification dated 31.12.97 (Annexure A/3) by which the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955 (IPS Cadre Strength Regulations, for short), has been amended as Seventh Amendment Regulations, and these regulations were directed to come into force with effect from 01.01.1998. Under the heading "Rajasthan", the posts to be filled by promotion under Rule 7 of the Indian Police Service (Recruitment) Rules, 1954 (IPS Recruitment Rule, for short), not exceeding 33 1/3% of items 1, 2, 3 and 4 has been fixed at 50, and by direct recruitment, the same has been fixed at 117, by making total authorised strength at 167 posts. The applicants further contended that as against 50 vacancies, only 33 officers have been promoted to IPS cadre under the



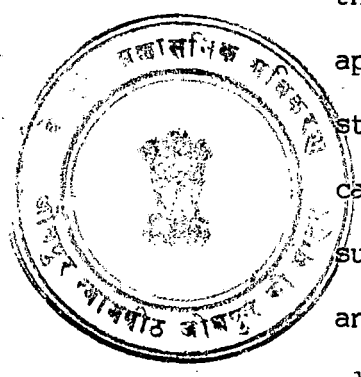
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promotion quota in the Civil list as on 1.1.98, and as such, there remain 17 clear vacancies (50 - 33 = 17) available as on 1.1.1998, to be filled in by promotion against the promotion quota. But the respondents have appointed only 11 officers as against 17 vacancies, as such there would be another 6 vacancies available to be filled up by promotion on the basis of the vacancies as on 1.1.98. But the Ministry of Home Affairs, Government of India, vide its order dated 19.02.98 (Annexure A/1) has directed splitting 8 posts of promotion quota of Rajasthan Police Service in the select lists of 1998, 1999 and 2000, i.e., for a period of 3 years, by indicating that the number of vacancies to be filled in for the select list of 1998 shall be 2, for the select list of 1999, such vacancies shall be 3, and likewise for the select list of 2000, the balance 3 posts shall be taken into account. The Government of India also further directed that the select lists from the year 1998 onwards, shall have to be initiated in accordance with the Seventh Amended Regulations, which came into effect on 1.1.98. But this regulations of the Government of India dated 1.1.98 is illegal and contrary to the IPS Cadre Strength Regulations. They further contended that framing of Cadre Strength Regulations is a legislative process under sub-rule (1) of the Rule 4 of the Indian Police Service (Cadre) Rules, 1954 (IPS Cadre Rules, for short) and therefore, such 7th amendment regulations cannot be allowed or modified by the Government of India in its discretionary power, and as such, the notification dated 19.02.98 vide Annexure A/1 is ultra vires of the IPS Cadre Rules and IPS Cadre Strength Regulations. Accordingly, the order Annexure A/1 is liable to be set aside with a consequential direction to fill up all these 8 posts as available for promotion quota of Rajasthan Police Service, instead of taking only 2 posts as available as on 1.1.98, and spreading over other 6 posts in the years 1999 and 2000 respectively. The applicants have contended that they are the appointees of the year 1979, and the name of the applicant No.1 is found at sl. No. 31 and the name of the applicant No. 2 is found at sl. No. 33 in the seniority list of the Selection grade RPS officers, and they are eligible for being promoted to IPS cadre, in accordance with IPS Cadre Rules and IPS Cadre Strength



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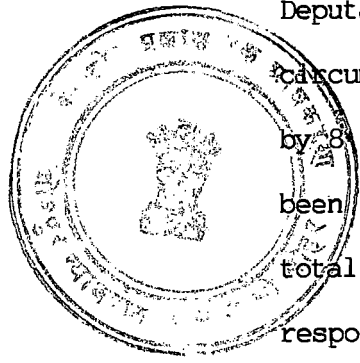
Regulations, since the applicants possess the required experience and qualifications as stipulated in those Regulations. If those 8 vacancies are taken as available vacancies as on 1.1.98 for the purpose of promotion to IPS cadre, the applicants would fall within the zone of consideration, and they are entitled to be promoted to IPS cadre. The applicants were denied such promotion only because of the impugned order vide Annexure A/1 dated 19.02.98, spreading over those vacancies for a period of three years, i.e. in the year 1998, 1999 and 2000. Since Annexure A/1 is liable to be set aside, the applicants are entitled for a direction to consider the case of their promotion, taking all the 8 vacancies as available as on 1.1.1998. Accordingly, the applicants are entitled to the reliefs, as prayed for.



4. The respondent No. 2 (the Secretary, Ministry of Home Affairs) and the respondent No. 4 (State of Rajasthan), have denied the case of the applicants, by filing separate reply statements. The respondent No. 2 has stated that the applicants have no vested right for appointment to IPS cadre and their right for consideration for promotion is a legal right subject to the conditions of eligibility under the promotion regulations, and also the policy guidelines framed by the Government of India. They have also stated that, earlier the Central Government has been reviewing the cadre strength in IPS under Rule 4(2) of IPS Cadre Rules at the intervals of every three years, but as per amendment of 4(2) of the IPS Cadre Rules vide Notification dated 10.03.95, the cadre strength is being reviewed ~~every~~ every after 5 years in consultation with the State Government concerned. On the basis of the Tiennial Review of 1991, the revised cadre schedule for Rajasthan IPS cadre was notified by the Department of personnel and Training vide their Notification dated 03.10.91. As per amended Rule 4 (2) of the IPS Cadre Rules, the next cadre review became due in the end of 1996, and the process in that regard was started in the year 1996 itself, and after completion of all the process, the revised cadre schedule has been notified by the Department of Personnel and Training vide Notification dated 19.09.97, by which the cadre strength of promotion quota of IPS cadre of

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Rajasthan was enhanced from 37 to 42. On the basis of this notification dated 10.09.97, 5 enhanced vacancies were to be taken into consideration for preparation of the 1998 Select List, as they were substantive vacancies as on 1.1.1998. Later, vide Notification dated 31.12.97, the cadre strength of promotion quota of IPS cadre of Rajasthan, was enhanced from 42 to 50. The said Notification dated 31.12.97 was issued in pursuance of the rationale followed in the judgement of Hon'ble the Supreme Court in K.K. Swami's case (an IFS case), and also a policy decision has been taken in respect of all the 3 All India Services to the effect that the elements of 'State Deputation Reserve' and 'Training Reserve' may be taken into consideration for computing the promotion quota. Accordingly, the said Notification dated 31.12.97 was issued, amending the IPS Cadre Strength Regulations, by providing promotional quota at 33 1/3% of the total posts shown in the cadre schedule, by including Central Deputation Reserve, State Deputation Reserve and Training Reserve posts.. It is only in these circumstances, promotion quota of IPS Cadre of Rajasthan has been enhanced by 8 posts, i.e., from 42 to 50 posts, and the direct recruitment quota has been reduced by corresponding number of posts, i.e., from 125 to 117. The total authorised cadre strength has, however, remained unchanged. The respondent No. 2 also stated that all the enhanced posts in promotion quota, as a matter of policy, cannot be transferred to the promotion quota overnight, as direct recruit officers already recruited in the posts were holding the posts in question. Thus, the Government, as a matter of policy uniformly applicable to all the State Cadres, decided to evolve a phased programme of recruitment to achieve the increased promotion quota in 3 years. The respondent No. 2 further stated that the Government of India, Department of Personnel and Training, vide their letter dated 11.02.98, issued guidelines regarding utilisation of the enhanced promotion posts in a phased manner in all the All India Service cadres. It was decided that recruitment to the promotion quota when made in each cadre during the year 1998 might be limited to the promotion quota as on 31.12.1997 plus one-third of the net increase in the maximum promotion quota as on 1.1.98,



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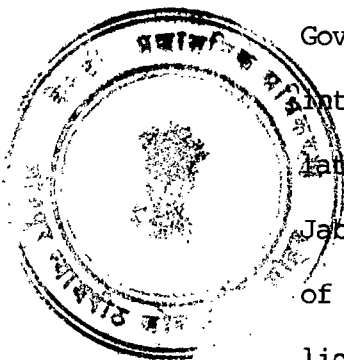
ignoring the fractions, if any. Similarly, the recruitment in 1999 would be enhanced by 1/3rd of the net increase, and the balance of the net increases will be added to the recruitment in the year 2000. The increase in the cadre was also provided to include the wait-listed officers of the Select Lists prepared in the years 1996 and 1997, as they were in force. Therefore, the wait-listed officers could be considered for appointment to the IPS cadre against the vacancies made available from 1.1.1998 in the first instance, and accordingly, vide Ministry's letter dated 19.02.98, it has been decided to release 2 vacancies to be filled in 1998 and 3 vacancies each during the years 1999 and 2000 respectively, in respect of IPS cadre of Rajasthan. It is stated that the said letter dated 19.02.98 issued by the Ministry vide Annexure A/1 is not illegal or arbitrary or unjust. The respondent No. 2 further stated that the said enhanced 8 posts in the promotional quota would be achieved only by reducing 8 posts in the direct recruitment quota, and ultimately, the cadre strength remains the same. Hence, the said enhanced 8 posts can be achieved only by transferring the posts from direct recruitment quota, on retirement etc. of direct recruit officers. In those circumstances, it was not practicable to release the enhanced promotion posts in one stroke in any of the cadres. Therefore, the said letter dated 19.02.98 issued by the Home Ministry is quite legal and in accordance with the law and consistent with the policy of the Government. These enhanced posts could not be said to be in existence as on 1.1.98, and they were to be filled up in a phased manner, in the circumstances narrated above. The respondents No. 2 further stated in the reply that the mode of implementation of the policy envisaged by the statutory rules, is the matter of prerogative of the Government of India, and the applicant's right of consideration for promotion is subject to certain statutory rules and regulations framed by the Government of India, and as such the letter dt. 19.2.98 / Home Ministry, is not



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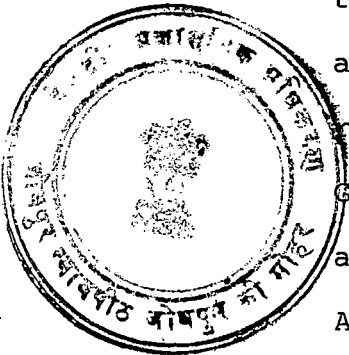
violative of any provisions of the All India Service Rules and Regulations. Therefore, the respondent No.2 submitted that the reliefs as prayed for by the applicants for setting aside the letter dated 19.02.98 (Annexure A/1) issued by the Home Ministry, is unsustainable, and the applicants are not entitled to any reliefs. Accordingly, the respondent No. 2 sought for dismissal of the application.

5. The respondent No. 4, the State of Rajasthan, by filing separate reply statement, has reiterated the same contentions as urged by the respondent No. 2 in his reply. The respondent No. 4 stated that the Cadre Controlling Authority is the Ministry of Home Affairs, Government of India, New Delhi, and that the strength and composition of the cadre is determined by the regulations made by the Central Government in consultation with the State Government. The cadre review is also undertaken by the Central Government in consultation with the State Government earlier at the interval of every 3 years and at the interval of every 5 years after the later amendment. The respondent No. 4 also stated that the decision of the Jabalpur Bench of Central Administrative Tribunal in K.K. Goswami vs. Union of India and Ors. has been upheld by Hon'ble the Supreme Court, and in the light of the ratio of the decision of the Apex Court, the cadre strength of the promotional quota of IPS has been increased from 42 to 50 posts, and according to the guidelines issued by the Central Government, the enhanced vacant posts were to be filled up by spreading over the period for 3 to 5 years against retirement etc. in the direct recruitment quota. Accordingly, the Cadre Controlling Authority (Ministry of Home Affairs) distributed the said vacancies for being filled up during the succeeding 3 years by earmarking 2 vacancies for the year 1998, 3 vacancies for the year 1999, and 3 vacancies for the year 2000, vide letter dated 19.02.98 (Annexure A/1). The respondent No. 4 further stated that the Ministry of Home Affairs, vide its letter 31.03.98 (Annexure R-4/1), desired the State Government to fill up 11 vacancies in the year 1998 as mentioned in the said letter. From the said letter dated 31.03.98, it is seen that 2 vacancies



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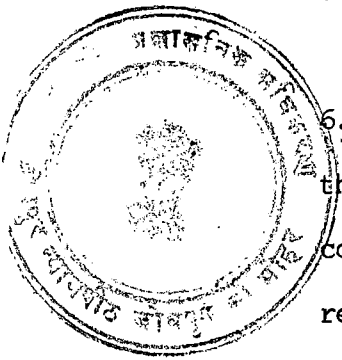
pertain to the year 1996-1997 and 9 vacancies pertain to the year 1998 and the said 9 vacancies included 2 vacancies allocated for the year 1999 vide letter dated 19.02.98. Therefore, the State Government were to initiate process for filling up of 11 vacancies, and accordingly, the State Government has initiated the process for filling up of 11 posts in IPS cadre of Rajasthan State by promotion, which is perfectly justified and legal. Therefore, the respondent No. 4 also stated that there is proper justification for not filling 6 vacancies as they were not available for being filled up in the year 1998. As already stated above, three vacancies each out of the said six vacancies have been allocated for being filled up during the years 1999 and 2000. The respondent No. 4 also stated that the question of filling up a particular number of posts and when such posts are to be filled up, falls within the administrative decision of the State Government, and on the basis of the policy decision taken in the matter. In these circumstances, the decision not to fill the remaining 6 vacant posts at present, is perfectly justified. It is further stated that none of the regulations and the rules referred to above, makes a mandate to the State Government to fill all the posts included in the State Cadre. In the absence of any specific provision in the statutory rules, Ministry of Home Affairs as a Cadre Controlling Authority, is correct in issuing executive instructions to the State Government regarding filling up of the posts etc. and accordingly, the letter dated 19.02.98 issued by the Ministry of Home Affairs, is perfectly valid and legal, and the same does not come into conflict with the statutory provisions. The respondent No. 4 further contended that the 5th Amendment Regulations, 1997 notified vide Notification dated 19.09.97 and the subsequent Notification dated 31.12.97 vide Annexure A/3 have been issued in consultation with the State Government, and there is no provision in the said Act that even though executive instructions to be issued by the Cadre Controlling Authority must be issued in consultation with the State Government concerned. Therefore, the said letter dated 19.02.98 has been issued by the Cadre Controlling Authority, is quite legal and proper, and shall be the order.



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issued impliedly with the consultation of the State Government. Thus, the letter dated 19.02.98 (annexure A/1) does not contravene the Section 3 of All India Services Act, 1951, or any other statutory rule. The respondent No. 4 also stated that for the purpose of zone of consideration, as per the provisions of the IPS (Appointment by Promotion) Regulations, 1955, 3 times of the number of posts is required to be taken, and the names of such persons, who fall within that three times, would be considered for promotion by including their names in the zone of consideration, and the officers who were beyond the said zone of consideration, cannot be considered by the Selection Committee. In substance, the contention of the respondent No.4 is that since the applicants could not come within the zone of consideration, they would not be entitled for any relief, as claimed by them in the application. Accordingly, the respondent No. 4 sought for dismissal of this application.



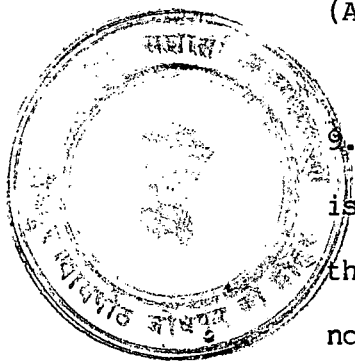
6. By filing rejoinder, the applicant denied the contentions urged by the respondents No. 2 and 4 in their reply statements. Applicants contended in the rejoinder that it is not within the competence of the respondent No. 2 to spread over the vacancies in 3 years on account of non-availability of posts for the purpose of promotion against promotional quota, and the same is not correct and legal. They also stated that as per factual position as on 1.1.98, the 8 vacancies were to be taken as available as on 1.1.98 by transferring the same from the direct recruitment quota, and they were available for being filled up by promotion as on 1.1.98. Therefore, the contentions made on behalf of the respondents No. 2 and 4 that on account of practical problems, transferring 8 posts from direct recruitment quota to promotion quota as on 1.1.98 would not be possible because of non-availability of 8 vacant posts in direct recruitment quota, are misconceived and incorrect. They have also stated that it is not within the competence of the State Government or the Central Government to hold a D.P.C. for lesser number of vacancies than the one, which are available. As on 1.1.98, the posts created by the 7th Amendment of Cadre

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Regulations shall be taken as available on 1.1.98. Therefore, the respondents shall fill up by promotions those posts, and if those 8 posts are taken into consideration, the applicants would fall within the zone of consideration. Therefore, the impugned letter dated 19.02.98 vide Annexure A/1, spreading over those 8 vacancies for a period of three years is illegal. They have reiterated the same stand taken in the application, and contended that they are entitled to the reliefs, as prayed for in the application.

7. Heard the learned counsel for the parties.

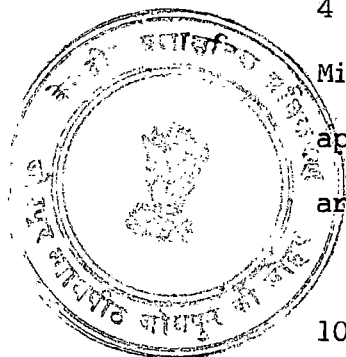
8. From the pleadings and the arguments addressed by the respective parties at the Bar, we have to consider whether the letter dated 19.02.98 (Annexure A/1) is sustainable under the law or not.



9. It is admitted that the promotional quota of IPS cadre of Rajasthan is increased from 37 to 42 vide Notification dated 19.09.97, by enhancing the quota by 5 posts. It is also not in dispute that vide subsequent notification dated 31.12.97, Indian Police Service (Fixation of Cadre Strength) 7th Amendment Regulations were introduced with effect from 1.1.98, and by these regulations, the promotional quota of IPS of Rajasthan was increased from 42 to 50. The further contention of the respondents that it was increased from 42 to 50 by taking into account the vacancies meant for 'Deputation Reserve' and 'Training Reserve' etc. as per the judgement of Hon'ble the Supreme Court in K.K. Swamy's case, pertaining to the IFS cadre. It is also stated that a policy decision was taken to spread over the enhanced 8 posts for a period of 3 years, and accordingly, letter Annexure A/1 dated 19.02.98 was issued, and this letter is perfectly valid in accordance with law. From the reply statements of both the respondents No. 2 and 4, it is clear that as per the policy decision taken by the Ministry of Home Affairs, which is the Cadre Controlling Authority, it was decided to fill up the enhanced 8 posts in a phased manner. They have contended that

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by including the posts meant of 'Deputation Reserve' and 'Training Reserve'. The quota of promotional posts of IPS were enhanced from 42 to 50. These 8 posts were created in promotional cadre by reducing 8 posts in the direct recruitment quota. Since all the posts in the direct recruitment were being occupied by the direct recruits, and unless the vacancies on those posts were created either by superannuation or by resignation etc., those 8 posts would not be available to be filled up as on 1.1.98. Therefore, a policy decision was taken by the Government of India to fill up those posts in a phased manner by earmarking 2 posts in the year 1998, and 3 posts each in the years 1999 and 2000 respectively. They have also stated that the Government of India evolved this policy of spreading over those respective vacant posts in three years on all India basis, regarding all the 3 cadres of All India Services. In these backgrounds, both the respondents No. 2 and 4 have justified the letter dated 19.02.98 vide Annexure A/1 issued by the Ministry of Home Affairs. But according to the contentions of the applicants, this letter dated 19.02.98 of the Government of India is arbitrary, illegal and contrary to the rules and regulations.



10. The learned counsel for the respondent No. 2 brought to our notice the judgement of Central Administrative Tribunal, Ernakulam Bench, dated 20.6.2000, passed in O.A. No. 448/99 (K.P. Ittan vs. State of Kerala & Ors.). From the reading of the entire judgement, we find that the validity of the letter dated 11.2.98 vide Annexure A/13 and the letter dated 19.02.98 vide Annexure A/14 filed in that case, were similar to the one issued in this case vide Annexure A/1 dated 19.02.98. The Ernakulam Bench of the C.A.T., on consideration of the entire material, have upheld those letters Annexures A/13 dated 11.02.98 and A/14 dated 19.02.98 filed in that case as valid and legal. We think it appropriate to extract the relevant paragraphs 31 to 35 as under:-

"31. We have also given our anxious consideration to the factors which weighed with the Central Government for issuing A-13 circular letter dated 11.2.98 giving direction to spread the recruitment against the enhanced promotion quota vacancies over those years. They were (i) There was no increase in the authorised strength and the increase in

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promotion quota posts was by a corresponding reduction in the Direct Recruitment quota posts which were held by Regular Recruit/Direct Recruits. If the recruitment against the additional posts were not done in a phased manner over a period of 3 to 5 years against the posts vacated by incumbent direct recruit officers due to retirement, resignation, death, etc. the same would lead to an unwieldy cadre composition in excess of the authorised cadre strength of the State (ii) The recruitment against a large number of additional posts at a stretch in the same year would enable officers with lesser merit to enter the IPS not in tune with the object of the Promotion Regulation. We are of the view that these considerations cannot be brushed aside lightly. If the recruitment against the additional promotional quota posts were not spread over some years, the result could be as apprehended by the Central Government.

32. Another aspect included in A-13 circular dated 11.2.1998 was that the immediate charge on the increase in promotion quota posts in the respective State Cadres would be the persons who were in the select lists prepared in 1997 subject to the same being current. According to the second respondent this was provided so that the rights and privileges of the officials included in the select lists for the anticipated vacancies from 1.1.98 to 28.2.98 did not get abridged. Learned counsel for the applicant would argue with considerable vehemence, referring to number of judgments of the Hon'ble Supreme Court, that one does not acquire any right for appointment just because one is included in a select list and the filling up of the additional posts should be as per A-7 Amendment regulation. We find both from unamended and amended provisions of the IPS (Appointment by Promotion) Regulations that they protect the interests of the State Police Service Officers included in a select list e.g. first proviso under the unamended Regulation 5(3) and first proviso under the amended Regulation 5(3). It cannot be disputed that it is natural that a State Police Service Officer who is included in the Select list can develop a legitimate expectation of being appointed in the posts/service on occurrence of a vacancy. Of course legitimate expectation is not a distinct enforceable right but at the same if the second respondent-Central Government-takes a policy decision giving due weight to this legitimate expectation without sacrificing the larger public interest, the same cannot be faulted especially when they had been following such a policy all along. Moreover, there is nothing in A-7 Amendment Regulations which states that the select list current on 31.12.97 will lapse on that day.

33. Hon'ble Supreme Court in Food Corporation of India Vs. M/s Kamdhenu Cattle Feed Industries (JT 1992 (6) S.C. 259) held as follows on the Doctrine of 'legitimate expectation':

7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law. A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fair play in action.' Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting decision so made would be exposed to challenge on that

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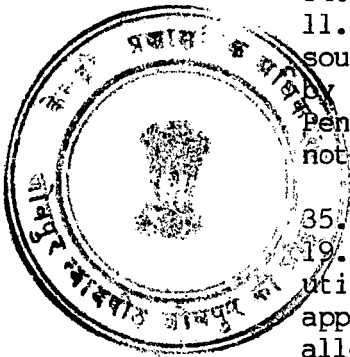
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ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bonafide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.

The above would indicate that State could take decisions keeping the legitimate expectation of the affected parties but keeping the larger public interest in view.

34. Keeping all the above in view, on examination A-13 letter dated 11.2.98 we do not find any reason to set aside and quash the same as sought for by the applicant. We also find that A-13 letter is issued by Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training and the said Ministry is not impleaded as a respondent.



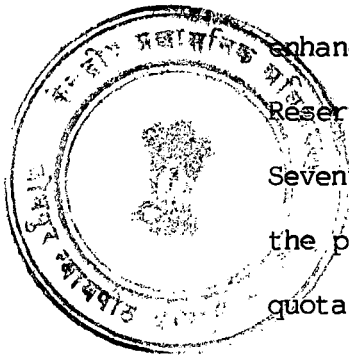
35. As a follow up of A-13 general circular, A-14 letter dated 19.2.98 was issued to Government of Kerala specifically authorising to utilise two posts from the increased posts in promotion quota for appointment of waitlisted officers in the 1996-97 select list and allotting the balance 4 posts of promotion quota for utilising one each in 1998 and 99 and two in 2000 select lists respectively. The respondents 5 and 6 were included in the select list 1996-97 against 20% anticipated vacancies in accordance with the rules. The said list was valid till 31.8.98. Denying them appointment merely for the reason that the amendment Regulations A-7 was effective from 1.1.98 would have been arbitrary. We have already rejected the prayer for quashing A-13 letter dated 11.2.98 issued by the Govt. of India. A-13 was specifically dealing with Indian Administrative Service. However, the Rules and Regulations of the three All India Services viz. Indian Administrative Service, Indian Police Service and Indian Forest Service are pari materia. Therefore, when the relief sought for quashing A-14 had been rejected for the same reasons the relief sought for quashing A-14 letter dated 19.2.98 is also liable to be rejected. We also do not consider that the action of the respondents has in any way affected the consideration of the applicant by the selection committee for 1998 for appointment to IPS by promotion. The applicant has only a right to be considered for promotion which is a term of service but mere chances of promotion are not conditions of service. He cannot claim that he should be appointed. What the applicant by his plea is trying to demand is that the Central Govt. release all the increased posts against promotion quota which occurred due to amendment to the Cadre Regulations w.e.f. 1.1.98 i.e. Six may be filled from 1.1.98 itself. When statutorily the Central Govt. is vested with powers to decide the number of posts to be filled up in a particular year and if in exercise of the said power, Central Govt. decides to reduce the number of posts

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for promotion in a year for valid reasons we do not consider that the same affects the applicant's right in any way. Viewed on the basis of the doctrine of legitimate expectation laid down by the Hon'ble Supreme Court in the Food Corporation of India (supra) the decision taken by A-14 letter dated 19.02.98 cannot also be faulted specially when the fact of the matter is that the applicant and the respondents 5 and 6 were all considered together for the preparation of the select list for 1996-97 and applicant was not included in A-2 select list for 1996-97 and respondents 4 and 6 were included in A-2 select list. Further, the assessed vacancies for 1996-97 select list was 7 and only 7 posts were filled up even by issue of A-14 letter. In the particular facts and circumstances of this O.A. we are of the view that the case laws cited by the learned counsel for the applicant has no applicability. In view of the foregoing we reject the relief sought for quashing A-14 letter dated 19.02.98."

11. Having considered the matter by ourselves, we find that we are in agreement with the reasons and the conclusions arrived at by the Ernakulam Bench, as recorded above. By following the same reasons, we find that the impugned letter dated 19.02.98 (Annexure A/1) issued by the Ministry of Home Affairs does not call for our interference. The case of the Government of India that 8 posts in the promotional quota of IPS in Rajasthan were enhanced by taking into account the 'Deputation Reserve' and 'Training Reserve' etc. vide Indian Police Service (Fixation of Cadre Strength) Seventh Amendment Regulations. They have also stated that these 8 posts of the promotional quota were created by reducing 8 posts in direct recruitment quota, and those 8 posts were already occupied by the officers appointed on the basis of direct recruitment and they were not immediately available for being filled up by the persons belonging to promotional quota and in these circumstances, in a phased manner, those vacancies were directed to be filled up in three years, i.e., 2 posts in the year 1998 and three each in the years 1999 and 2000 respectively. In our considered opinion, this executive instruction vide Annexure A/1 dated 19.02.1998, spreading over the posts in the manner stated above, is perfectly valid. The Government of India, as an employer, has the power to create the posts, it has also the power to determine how those posts are to be filled up. If the Ministry of Home Affairs, the Cadre Controlling Authority, decided to fill up the vacancies in a phased manner, as indicated in the impugned order at Annexure A/1, the same cannot be faulted. Hon'ble the Supreme Court while upholding the IPS (Fixation of Cadre Strength) Seventh Amendment Regulations, has held in JT 2000 (5) SC 86 [Tamil Nadu Administrative



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Service Officers Association & Anr. etc. vs. Union of India & Ors.], as under :-

"31. We think this is a matter of policy which will be uniformly applicable after the amendments. Further, vacancies which are not filled up in one year will automatically get carried forward to the next year if they become actual vacancies by then. Therefore, the challenge of the petitioners that this amendment is arbitrary and violative of Article 14 of the Constitution, cannot be accepted."

From the above judgement of Hon'ble the Supreme Court, it is clear that a matter of policy taken by the Government of India cannot be challenged as violative of Article 14 of the Constitution for the safe course.

12. On the basis of the paper news, that the appeal No. 1071/2000 filed by one of the applicants, Govind Narain Purohit, in Rajasthan Civil Services Appellate Tribunal, Jaipur, contending that the vacancies shall be considered yearwise, has been rejected by the said Tribunal, we directed the learned counsel appearing for the applicant No.1, Govind Narain Purohit, to produce the said judgement/order for our perusal. Accordingly, the learned counsel has produced the same for our reference. From going through the order, we find that the <sup>contention</sup> of the applicant No.1 that his case should have been considered in the year the post <sup>had</sup> fallen vacant for the purpose of promotion to IPS, was rejected by the said Tribunal vide its judgement and order dated 17.01.2001, by holding that the applicant has not proved his allegations made in the application regarding the vacancies created from time to time. It also took note of the fact that the applicant No.1 was promoted in the senior scale against the vacancies of 1988-89, and there was no clear cut pleading as to which year the selection to the senior scale should be referred to. The Appellate Tribunal also observed that in absence of the total facts with regard to the availability of vacancies yearwise in the selection scale and supertime scale, it was not possible for them to calculate and find out as to which promotion year, the appellant should have been allotted as regards selection scale. Accordingly, the appeal No. 1071/2000 filed by him before the said Tribunal, was dismissed. Though the said judgement/order was not relevant for the purpose of deciding the issue



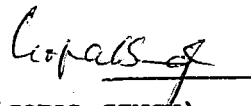
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involved in this case, since we have called for the same, we have also perused and noticed as above.



13. For the above reasons, we do not find any merit in the application. Accordingly, we pass the order as under:-

"The O.A. is dismissed. But in the circumstances, without costs."

  
((GOPAL SINGH)  
Adm. Member

  
(JUSTICE B.S. RAIKOTE)  
Vice Chairman

cvr.