

15

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**JODHPUR BENCH; JODHPUR**

Original Application. No. 64/2009

Date of decision: 29.10.2012.

CORAM:

HON'BLE DR. K.B.S.RAJAN, MEMBER (J) &

HON'BLE MR. B.K.SINHA, MEMBER (A)

Kripa Shankar Gaur S/o Lila Ramji Gaur, aged about 56 years, presently posted as Additional Superintendent of Police, CID (CB), Jodhpur R/o III, 75, High Court, Jodhpur.

....Applicant

Versus

1. The Union of India through the Principal Secretary, Department of Home Affairs, South Block, New Delhi – 110 001.

2. The Secretary, Department of Personnel & Training, Union of India, New Delhi.

3. The Chairman, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.

4. The State of Rajasthan through the Secretary, home Department, Government of Rajasthan, Jaipur.

5. The Secretary, Department of Personnel, Government of Rajasthan, Jaipur.

6. Prem Prakash Tak, presently posted as Superintendent of Police (A.C.B.), Kota.

..... Respondents

Mr. Manoj Bhandari, for applicant.

Mr. Niranjan Mathur proxy for Mr. Kuldeep Mathur for respondent No.1.



138

Mr. Mahendra Prajapat proxy for Mr. Ravi Bhansali, for respondent No.3.

Mr. Kamal Dave for respondents No. 4 and 5.

None present for respondents No. 2 and 6.

### ORDER

[Per B.K.Sinha, Administrative Member]

This O.A. is directed against the Notification dated 16.2.2009 (A/1) whereby promotions have been conferred to some of the members of Rajasthan Police Service to the Indian Police Service ("IPS" for short) on probation and allocating them IPS under the IPS (Cadre) Rules, 1954 against the vacancies of the year 2007-08 praying for the following reliefs :-

*(i) By an appropriate order or direction the order dated 16.2.2009 (A10) granting promotion to the Respondent No.6 may kindly be declared illegal and be quashed and set aside and the respondents be directed to hold review DPC to consider and grant promotion to the applicant in the cadre of Indian Police Service on the post of Superintendent of Police against the vacancies for the year 2005-06 with all consequential benefits.*

*(ii) By an appropriate order or direction the order be quashed and set aside and the respondents be directed to hold review DPC for the years 2003-04, 2004-05 and 2005-06 and consider the case of the applicant along with others on the basis of merit and if the applicant is suitable, then he may be conferred the promotion on merit basis in accordance with rules with all consequential benefits from the date he became entitled and eligible to be conferred promotion on merit basis against the vacancy for the years 2003-04, 2004-05 and 2005-06 respectively.*

*(iii) In the alternative, without prejudice to above, it is prayed that the order dated 24.2.007 Annexure A6) may kindly be declared illegal to the extent that the promotion have not been taken into account merit of each and every incumbent who was in the zone of consideration in the years 2003-04, 2004-05 and 2005-06 respectively and hold review DPC to consider each and every incumbent on the basis of merit and seniority-cum-merit in the ratio of 50:50 in accordance with rules and confer promotion accordingly.*



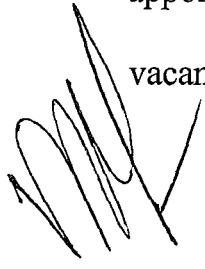
*(iv) Any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of he applicant.*

The case of the applicant in brief is as under:

2. The applicant was appointed to Rajasthan Police Service (RPS for short) in the year 1979 against direct recruitment quota, promoted to senior scale during 1990 vide order dated 24.9.1990 [A2]. Since he was superseded in the selection grade in the year 1997-98, he preferred a writ petition before the Hon'ble Rajasthan High Court, which was decided in his favour on 19.2.2007 [A3] with a direction to the respondents to confer selection grade to the applicant within three months. Even though the review DPC considered his case for the year 1997-98 for the post of Additional Superintendent of Police, his case was not considered for the subsequent years 98-99 and 99-2000 and it was only in 2001 he was conferred selection grade of Rajasthan Police Service and order issued on 26.11.2005 [A4]. It is the case of the applicant that the respondents did not consider his case in tune with the directions of the Hon'ble Rajasthan High Court. The applicant has averred that criteria for promotion to the IPS from RPS cadre is 100% by promotion on the basis of merit and seniority cum merit in the proportion of 50:50. Applicant's name stands at Sl.No.30 in the selection scale of RPS as per the seniority list dated 23.12.2006 as on 1.4.2005. As per Rule 9 of the RPS Rules and provisions contained in the Recruitment Rules 1954 and Regulations of 1955, the appointing authority has to determine the vacancies on Ist April, every year and the actual number of vacancies occurring during the financial year are to be filled up by holding a

/ 40

DPC as per the procedure clarified by the DoPT notification dated 10.4.1989. Para 3.2 of the said instruction is that *“the requirement of convening annual meeting of the DPC should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question. Normally a DPC should be convened every year on fixed date and it has also been decided that the vacancies shall be filled in accordance with the Recruitment Rules in force on the date of the vacancies.”* The Applicant became entitled to be considered for the vacancies for the year 2003-04. He submits that his service record is better than those persons who were promoted in the year 2007 against the vacancies for the year 2003-04, 2004-05 and 2005-06. The vacancy position for the year 2003-04 was 11, 2004-05 was 4 and 2005-06 was 7. Respondents convened DPC on 31.12.2006 to fill up 22 vacancies and 21 promotions were made and one post was kept vacant for VK Bangad who was in the zone of consideration for the vacancies of the year 2003-04 on account of disciplinary enquiry pending against him. This vacancy was even carried forward to 2007. However, after this, the name of V.K.Bangad was carried forward to five financial years 2004 to 2008, contrary to instructions of DoPT. Hence, the applicant who was in the zone of consideration and on the basis of seniority is entitled to be granted promotion as against the vacancies for the year 2005-06. However one Ratan Lal was promoted against 2005-06 vacancy as he was senior to the applicant. On account of dropping of Vinod Kumar Bangad, that vacancy was filled up by appointing Prem Prakash Tak (R6) during 2007-08 which is wrong because the vacancy relates to 2003-04 and Prem Prakash Tak was not eligible during the



1/2

year 2003-04. Applicant made representation to the respondents on 21.7.2008[A8]. However no reply was ever given to him; rather the respondents issued promotion order dated 17.2.2009 promoting an officer junior to the applicant over his head. The applicant has averred that the respondents have, without following the rules and regulations, violated the rules for promotion from RPS to IPS under IPS (Cadre) Rules, 1954 and the instructions issued by the DoPT for holding DPC. He has further stated that the name of Vinod Kumar Bangad should have been deleted from the Select List for the year 2005-06 itself without carrying forward to three years consecutively. Hence, the respondents are bound to review the entire promotion from the year 2003-04.

***Case of the respondents:***

3. The official respondents and party respondents have filed separate written statements and opposed the claim of the applicant. The written statement of R.1 states that not complying with the orders of Hon'ble Rajasthan High Court by not considering the case of the applicant conferring him the selection grade for the years 1998-1999 and 1999-2000 falls exclusively under the purview of the State Government. The appointment to the officers from State Police Service to Indian Police Service is made on the recommendation of the UPSC unconditionally. The inclusion of the name of Vinod Kumar Bangad in the select list of 2004 to 2007 was provisional and the UPSC did not make it unconditional within expiry of its time limit leading to his non-appointment to IPS in terms of 2<sup>nd</sup> proviso of Regulation 9(1) of the IPS (Appointment by Promotion) Regulations, 1955. However, the preparation and



12

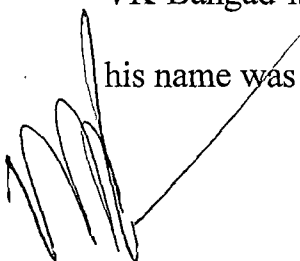
finalization of a Select List for promotion from State Police Service to Indian Police Service primarily concerns with the Union Public Service Commission and State Government. Even though name of the applicant was in the zone of consideration for 2004-2006, his name could not be included in either of the Select Lists due to statutory limit to its size as well as availability of officers senior to him having higher/same grading. Admittedly VK Bangad was senior to the applicant in the Rajasthan State Service and his right to consideration cannot be questioned by the applicant. The select lists from 2003 to 2008 have been prepared taking into account the situation as available for each of the Select List. As per the direction in OA 205/2008 of CAT, Jaipur Bench one vacancy reserved in the Rajasthan Cadre of IPS till the outcome of departmental enquiry against VK Bangad where as the applicant herein is seeking a claim against the post which was kept reserved for VK Bangad during the validity period of 2003-2007 which cannot be allowed. Select list of 2008 has been prepared separately taking into account the eligibility conditions as on 1.1.2008 and all the vacancies including that about which the applicant has been claiming have been filled up through the notification dated 16.2.2009. The respondents have referred to Regulation 7(4) of IPS (Appointment by Promotion) Regulations, 1955 and stated that the validity period of Select List of 2004, 2005 and 2006 expired on 23.3.2007.

4. The 2<sup>nd</sup> respondent in its written statement submits that the role of 2<sup>nd</sup> respondent is confined to framing of IPS (Appointment by Promotion) Regulations, 1955 and amendments therein, if required. Since none of the



provisions of the Regulation has been challenged the cause of action lies against the Union Public Service Commission and Ministry of Home Affairs.

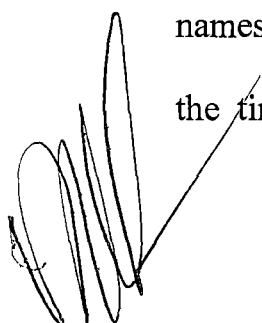
5. The 3<sup>rd</sup> respondent in its written statement states that the applicant was considered by the Selection Committee for the Select List of 2004 against 11 vacancies. However, the respondents filled 10 vacancies as one vacancy was not filled on account of the disciplinary enquiry pending against Vinod Kumar Bangad. This vacancy was carried forward from 2004 to 2007 and released during 2008. The seniority of Rajasthan Police Service Officers had undergone a series of litigations on the issue of benefits of reservation to the SC/ST in the matter of promotion. The Selection Committee which met on 31.12.2006 prepared the year-wise Select Lists from 2003 to 2006 for the vacancies as determined by the Central Government (R1) as 2003-Nil, 2004-11, 2004-05 and 2006-07. No. Select List was prepared during 2003. For the years 2004 to 2006 Select List prepared and approved by the Commission and appointed notified vide MHA notification dated 24.1.2007. Next Selection Committee was held on 31.10.2007 and list prepared for 9 vacancies. This was approved by the Commission and appointments notified vide MHA notification dated 1.1.2008. Selection Committee for the year 2008 was held on 27.6.2008 against 6 vacancies which was approved by the Commission and notification issued by MHA vide notification dated 16.2.2009. The State Government while sending the proposal to the Commission for preparation of Select List of 2003 to 2006, 2007 and 2008 intimated that disciplinary proceedings against VK Bangad is pending and his integrity certificate was also withheld. Hence his name was considered by the Committee under provisions of Regulation 5(4)



and 5(5). Up to the year 2007 VK Bangad was considered in all the selections provisionally and found fit. However, in the selection of 2008 he was assessed as "Good" and the selection committee did not recommend his name for inclusion in the Select List of 2008. The Hon'ble Apex Court has upheld the consideration of officers by the Selection Committee against whom disciplinary/criminal proceedings are pending and their provisional inclusion in the Select Lists vide Civil Appeal No.782 of 2007 UPC Vs. S.Thiagarajan.

The applicant was not in the zone of consideration for the Select List of 2008 being over-aged having crossed the age of 54 years on the crucial date of 1st of January, 2008 and consideration of his juniors cannot be called as supersession.

6. The respondents 4&5 filed their reply statement. They have stated that previously applicant approached the Hon'ble High Court by way of WP No.267/98 which was decided on 19.2.2007 directing the respondents to reconsider the case of applicant for promotion in the RPS selection scale in the year 1997-98 and in case found suitable grant the consequential benefits. In view of the direction review DPC was held and the applicant was not found eligible for promotion. A final seniority list was issue on 30.12.2006 in which applicant figures at Sl.No.44 after having invited objections from all concerned. As per Rule 9(1) of Regulation 1955 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. The Respondents 4&5 have followed the contentions raised by the official respondents in their written statements.

7. The applicant filed a detailed rejoinder and reiterated his contentions in the original application.

***Facts- in- issue:***

8. On having gone through the pleadings and documents produced by the parties and having heard the learned counsels appearing, the following facts in issue arise for consideration:

- i. ***Whether the Government of Rajasthan did not comply with the orders of the Hon'ble Rajasthan High Court by not considering the case of the applicant and conferring him from selection scale/grade for the years 1998-1999 and 1999-2000?***
- ii. ***Whether not holding meetings of the Select Committee annually has in any way adversely affected the prospects of the applicant for his promotion to the IPS ?***
- iii. ***Whether the name of Vinod Kumar Bangad, who was selected in the select list for the year 2004, 2005, 2006, and 2007 during pendency of the Disciplinary proceedings against him should have only be retained in the select list for three years i.e. 2004, 2005 and 2006, and his name should have been dropped from the select list of 2007, thereby having the way for the applicant to step in?***
- iv. ***Whether the resultant vacancy arising from V.K. Bangar being excluded from the select list in 2008 arose from which date i.e. the date of 2004 when V.K. Bangar included in the select list and 2008 when he was dropped from the select list.***
- v. ***Whether the respondent No.5, Prem Prakash Tak was wrongly included in the select list ahead of the applicant, Kripa Shankar Gaur?***

***Whether the Government of Rajasthan did not comply with the orders of the Hon'ble Rajasthan High Court by not considering the case of the applicant and conferring him from selection scale/grade for the years 1998-1999 and 1999-2000?***

9. In respect of the first issue, it is set on record the procedure involved in promotion to the Indian Police Service. The State Police Service is the feeder cadre under the Indian Police Service (Appointment by Promotion) Regulation, 1955. Under Section 3 of the above regulation, a Committee is constituted comprising the Chief Secretary, Officer not below the rank Secretary to the Government In-charge and Home Department and Director General and Inspector General of Police, where the post of Director General or Inspector General does not exist in such case a number of Indian Police Service not below the rank of Deputy Inspector General of Police.

10. The work of the job of preparation of a list of suitable officers is done under Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulation, 1955 [hereinafter referred to as the Regulation"]. This rule, inter alia, provides that the Committee is ordinarily to meet every year and prepare a list of such members of the State Police Services as are held by them to be suitable for promotion to the Service. The number of members of the State Police Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year. However, no meeting of the Committee is to be held where there are no substantive vacancies available for the member of the State Police Services or where the Central Government, in consultation with the State Government, decides that no recruitment is to be made during the year to the substantive vacancies as existing on the first day of that year to the posts available for the

members of the State Police Services; or where, the UPSC either decides on the basis of the proposals made by the Central Government or the State Government that it is not practicable to hold the meeting of the Committee to prepare a select list. After having considered the facts the Committee is to consider for inclusion in the said list the cases of the State Police Service, in order of seniority in that service which is equal to three times the number as mentioned under Sub Rule 1 of the Regulations. However, with the exception of States where the number of eligible officers are less than the maximum permissible size of the select list and where the officers has completed not less than 8 years of continuous service in the post of Deputy Superintendent of Police or any other equivalent posts under Sub Clause 3 of the Regulations such Officers who have attained the age of 54 years on the first day of January of the year in which the meeting is being held, are not to be considered. For the sake of convenience Sub Regulations 3, 4 and 5 are being reproduced below :-

***“(3) The Committees shall not consider the cases of the Members of the State Police Service who have attained the age of [54 years] on the [the first day of January] of the year in which it meets.***

***(3-A) The Committee shall not consider the case of such member of the State Police Service who had been included in an earlier Select List and –***

***(a) Had expressed his unwillingness for appointment to the Service under Regulation 9 :***

***Provided that he shall be considered for inclusion in the Select List, if before the commencement of the year, he applies in writing, to the State Government expressing his willingness to be considered for appointment to the Service;***

/ 202

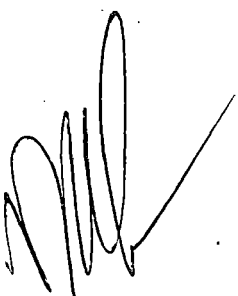
***(b) was not appointed to the Service by the Central Government Regulation 9 (a).***

***(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) The list shall be prepared by including the required number of names, first from among the officers finally classified as 'outstanding' them from among 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 any officer so included in the list shall be treated as provisional if the State Government, withholds the integrity certificate in respect of such officer if any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Government.***

11. Under Rule 6 of the Regulations a consultation with the Union Public Service Commission (hereinafter referred to as, "the UPSC"), has been made mandatory and the record for all members of the State Police Service included in the list, the reasons for proposed supersession and all members of the State Police Service if any and observations of the State Government are forwarded to the UPSC, who shall consider the list prepared. The Rule 6 and 7 of the Regulation of 1955, provides as under:-



75

***“6. Consultation with the Commission.- The list prepared in accordance with Regulation 5 shall then be forwarded to the Commission by the State Government along with –***

***(i) the records of all members of State Police Service included in the list;***

***(ii) the reasons as recorded by the Committee for the proposed supersession of any member of the State Police Service; and***

***(iii) the observation of the State Government on the recommendations of the Committee.”***

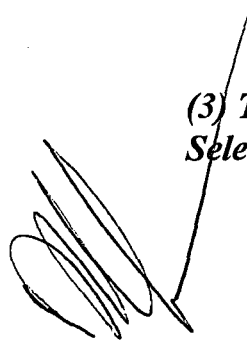
***7. Select List.- (1) The Commission shall consider the list prepared by the Committee along with -***

***(a) the documents received from the State Government under Regulation 6:***

***(b) the observations of the Central Government and unless it considers any change necessary approve the list.***

***(2) If the Commission considers it necessary to make any changes in the list received from the State Government, the Commission shall inform the State Government and the Central Government of the changes proposed and after taking into account the comment, if any, of the State Government and the Central Government, may approve the list finally with such modification, if any, as any, in its opinion, be just and proper.***

***(3) The list as finally approved by the Commission shall form the Select List of the members of the State Police Service.***



***(4) The Select List shall remain in force till the 31<sup>st</sup> day of December, of the year in which the meeting of the Selection Committee was held with a view to prepare the list.”***

12. It is to be noted that the list approved by the UPSC of the members of the State Police Service becomes the select list and increments in force till the 31<sup>st</sup> December of the year in which the meeting of the selection committee was held. Under Rule 8 of the Regulations the Statement has been made competent to temporarily appointed members of the select list or even officers outside the list against temporary effected in the Indian Police Service (IPS) cadre where it is not likely to last for more than three months or where there is no suitable cadre officer available for filling the vacancy. The Rule 9 of the Regulations for substantive appointments requires the appointment to the service to be made till the order of names as they appear in the select list in the time being in force. For the sake of clarity, the Rule 9 and 9-A of the Regulations are reproduced below :-

***“9. Appointment to the Service from Select List –***

***(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.***

***“9(A) Power of Central Government not to appoint in certain cases.- Notwithstanding anything contained in these Regulations, the Central Government may not appoint any person whose name appears in the***

15

***Select List, if it is of opinion that it is necessary or expedient so to do in the public interest :***

***Provided that no such decision shall be taken by the Central Government without consulting the Union Public Service Commission."***

13. Admittedly, the applicant had moved the Hon'ble High Court of Judicature for Rajasthan at Jaipur Bench wherein his main grievance was that he was eligible for promotion against the year 1997-98 on regular basis as well as temporary basis. He was again superseded vide order dated 20.09.1997 probably on account of consideration of enhanced punishment order dated 29.7.1991 whereby penalty of censure has been enhanced to withholding of three annual grade increments without cumulative effect in respect of charge sheet dated 17.7.1987 and penalty of censure dated 14.9.1992 in respect of charge sheet dated 3.1.1989. He has also stated in the writ petition that his case was not fairly considered as the respondents were under an obligation to consider the record of 7 years from 1991 to 1996-97 and the said enhanced penalty dated 29.7.1991 will relate back to the punishment order dated 6.1.1988 of censure passed by the disciplinary authority, which is beyond the period of 7 years, which could not have been considered. Otherwise also, penalty of censure vide order dated 14.9.1992 in respect of charge sheet dated 3.1.1989 alone is not sufficient to supersede him on the basis of seniority-cum-merit.

14. The Hon'ble High Court in consideration of the fact directed in para 12

as under :-

79

***“12. Resultantly, the writ petition is allowed. The punishment order dated 14.9.1992 is set aside. The respondents are directed to treat the penalty order dated 29.7.1991 as of 6.1.1988 and further not to consider the same while reconsidering the case of the petitioner for selection scale of RPS. The respondents are directed to reconsider the case of petitioner for promotion in RPS selection scale for the year 1997-98 without considering the aforesaid penalties as stated above. In case the petitioner is found suitable for promotion in RPS Selection Scale against the year 1997-98 then he be granted all consequential benefits except arrears of salary, which would be fixed notionally. The aforesaid exercise be completed within a period of three months.”***

15. The applicant has alleged in paragraph 4.4 of his OA that although the Departmental Promotion Committee (DPC) convened by the State Government considered the case of the applicant against the vacancies for the year 1997-98 to confer him selection grade in the cadre of Rajasthan Police Service as Additional Superintendent of Police but his case was not considered for subsequent years i.e. for the years 1998-99 and 1999-2000 and it was only in 2001 he was conferred the selection scale/grade of Rajasthan Police Service. He has also enclosed a copy of the order dated 26<sup>th</sup> November, 2005 as Annex.A/4 along with his OA wherein, the applicant figures at Sl. No. 3 below Ratan Lal (SC) who is at Sl. No. 1 on the basis of seniority-cum-merit and B. R. Nimawat (General) who is at Sl. No. 2 on the same basis. The applicant is in the list on the basis of merit while one Vipul Chaturvedi is again in the list below the applicant on the basis of merit in the year 2000-2001.

16. A joint counter-affidavit has been filed on behalf of respondents No. 4 and 5 who have strongly rebutted the aforementioned contentions of the applicant. The respondents No. 4 and 5 have stated that as per the directives of the Hon'ble High Court, a Review D.P.C. for Rajasthan Police Service

73

selection grade relating to the year 1997-98 was convened but, the applicant was not found eligible for promotion. His candidature had been considered against the merit quota as against the seniority quota and the incumbents who were senior to the applicant were promoted. The respondents have further submitted that as per the orders of the Hon'ble High Court the penalty order was to be ignored. The review DPC for the year 1997-98 had been convened which considered the case of the applicant within the purview of the orders of the High Court. After having considered the objections regarding the provisional seniority list published on 13.12.2006 as on 1.4.2005 of super-time selection and senior scale RPS officers, a final seniority list was declared on 30.12.2006 wherein, the name of the applicant was placed at seniority position No. 44. Thus, they contend that there has been no deviation from the orders of the High Court. On the basis of the documents adduced, it is abundantly emerges that the orders of the Hon'ble High Court have been given effect to and both the criteria of seniority and that of merit have been considered and inclusions have been made as per the extent instructions.

***Issue No. 2 – Whether not holding meetings of the Select Committee annually has in any way adversely affect the prospects of the applicant for his promotion to the IPS?***

17. In so far as this issue is concerned, it has been provided that the meeting of the select committee shall be ordinarily held every year. It has not been made mandatory and there are exceptions to held the meeting, viz. there are no vacancies on the first of January of that year or the Central Government decides otherwise in consultation with the State Government or UPSC that it is not practicable to hold such meeting, therefore, holding of a meeting cannot be



/54

claimed as a matter of right and the same is governed by the attenuating circumstances as per the provisions contained in the Regulation. In this regard, the UPSC has a major and oversized role as compared to the other respondent-authority i.e. Union of India through Ministry of Home Affairs. The UPSC has vehemently opposed the contention of the applicant intimating that there were practical difficulties on account of which the meeting of the Committee for selection of State Police Service Officers to IPS could not be held. The respondents No. 3 and 4 have submitted that the seniority of Rajasthan Police Service Officers had undergone a series of litigations on the issue of benefits of reservation to SC/ST in the matter of promotion. The select lists of 1999 to 2002 were prepared by the selection committee which met on 9.10.2003 on the basis of the seniority list of RPS Officers notified by the State Government on 24.4.1997. The said select lists of 1999 to 2002 were quashed by the Jaipur Bench of this Tribunal vide order dated 27.5.2004 passed in OA No. 523/2003 – Mehatab Singh's case wherein, it was directed to redraw the select lists for the years 1999 to 202 on the basis of the seniority list prepared on 19.7.2000. The said order was challenged in Writ Petition No. 3754/2004 –T.C.Damodar and Ors. before the High Court at Jaipur and the High Court vide its order dated 7.7.2004 modified the Tribunal's order and stayed the reversion of the IPS Officers already promoted on 10.07.2004 while ordering to prepare select lists up to 2004. Thereafter, a review selection committee was held on 8.7.2004 but it could only prepare the select lists of 1999 to 2001 as the zone of consideration for the year 2002 onwards was not complete. Further, the State Government were requested to seek clarification from the High Court to convene selection committee meeting from 2003 onwards, the State

75

Government vide letter dated 10.03.2006 intimated that there is no stay on the latest seniority list notified on 19.12.2005 and hence, the selection committee meeting could be convened. As such a selection meeting was held on 31.12.2006 to prepare the year-wise select lists of 2003 to 2006 which was accordingly prepared for the vacancies as determined by the Central Government, Ministry of Home Affairs, as, in 2003 – Nil, in 2004 11, in 2005 04 and in 2006 07.

18. For the year 2003, no select list was prepared. The selection committee prepared the select list for the years 2004 – 2006 which were subsequently approved by the UPSC vide their letter dated 23.01.2007 and appointments were notified vide Notification dated 24.01.2007.

19. The next selection committee for preparation of the select list of 2007 was held on 31.10.2007. The select list was prepared for 9 vacancies which was approved by the Commission vide their letter dated 17.12.2007 and the appointments were notified vide Ministry of Home Affairs Notification dated 1.1.2008.

20. In consideration of the above facts, it is an admitted fact that the promotion of the officers from the State Police Service cadre to the Indian Police Service Cadre in the past, have been embroiled in controversies leading to litigation.

21. In view of the aforementioned explanation submitted by the UPSC, which is further supported by the respondents No. 4 and 5 that applicant was placed at serial Nos. 27 and 8 in the eligibility lists of 2004 and 2006

756

respectively. The meeting of the selection committee was held on 31.12.2006 and the candidature of the applicant was considered for the years 2004 and 2006, wherein, the Committee classified the applicant as 'very good' but, due to statutory limit of select list, the name of the applicant was not included in the select list of that years.

***Issue No. 3 – Whether the name of Vinod Kumar Bangad, who was selected in the select list for the year 2004, 2005, 2006 and 2007 during pendency of the disciplinary proceedings against him should have only be retained in the select list for three years i.e. 2004, 2005 and 2006, and his name should have been dropped from the select list of 2007, thereby having the way for the applicant to step in?***

22. In so far as the Issue No. 3 is concerned it remains uncontroverted that in service the respondents No. V.K. Bangad was senior to the applicant in terms of grant of selection grade to the officers of that category. The respondent No. 3 has submitted in this regard para 10 to 13 as under:-

***“10. For the year 2003 no select list was prepared. The selection committee prepared the select list for the years 2004 to 2006 which were subsequently approved by the Commission vide their letter dated 23.01.2007 and the appointments were notified vide Ministry of Home Affairs Notification dated 24.01.2007.***

***11. The next selection committee for preparation of the select list of 2007 was held on 31.10.2007. The select list was prepared for 09 vacancies. The select list was approved by the Commission vide their letter dated 17.12.2007 and the appointments were notified vide Ministry of Home Affairs Notification dated 01.01.2008.***

***12. The selection committee for preparation of the select list of 2008 was held on 27.06.2008. The selection committee prepared the select list of 2008 against 06 vacancies and the said select list was approved vide Commission's letter dated 6.2.2009 and the***



5

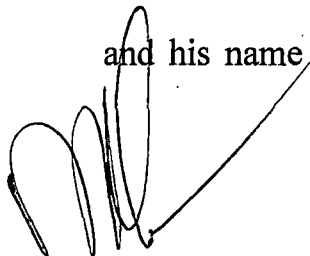
*appointments were notified vide Ministry of Home Affairs Notification dated 16.02.2009.*

*It is submitted that the State Government while sending the proposal to the Commission for preparation of the select lists of 2003 to 2006, 2007 and 2008 intimated the Commission on each occasion that disciplinary proceedings instituted against V.K. Bangad were pending and his integrity certificate was also withheld. Accordingly the selection committee considered V.K. Bangad in terms of provisions of Reg. 5 (4) and 5 (5) as reproduced in para 6.4 above and on the basis of overall relative assessment of his service records included V.K. Bangad in the respective select lists."*

23. This has also been supported by the respondents No. 4 and 5 who similarly stated that the name of VK Bangad was at Sl. No. 1 in the eligibility list of the year 2007. The meeting of the selection committee dated 31.10.2007 convened for preparing the select list of the year 2007 name of VK Bangad was provisionally included in the select list.

24. That in reply to contents of para No. 4.12 of the Original Application it is respectfully submitted that the selection committee meeting for the year 2007 was held on 31.10.2007.

25. That in reply to contents of para 4.13 of the Original Application it has been submitted that one vacancy (due to non promotion of VK Bangad against vacancies of the year 2007) carried forward to year 2008. Selection Committee meeting for the year 2008 was held on 27.06.2008. Name of VK Bangar was at serial no. 1 of the eligibility list. Committee classified VK Bangad as 'Good' and his name was not included in the select list. Notification of the officers



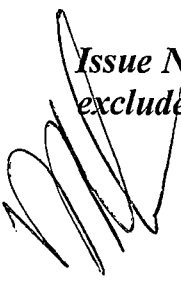
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whose names were included in the select list of the year 2008 for their appointment in the IPS was issued on 16.02.2009.

26. This position has been further supported by the State Government in their counter reply. The selection committee meeting was held on 31.12.2006. Committee prepared select list of the years 2004, 2005 and 2006 for filling up 11, 04 & 07 vacancies respectively. Out of these 22 vacancies, 21 were filled-up and one vacancy was carried forward as name of one RPS Officer namely VK Bangad (S.No. 2 in the eligibility list of the year 2004) was included in the select list provisionally subject to clearance in the disciplinary proceedings pending against him expunction of adverse remarks and grant of integrity certificate. Name of Bangad was also provisionally included in the select list of year 2005 and 2006 in the list in addition to the normal size of select list in pursuance to 2<sup>nd</sup> proviso to regulation 5 (5) of 'Regulations of 1955'.

27. In this regard, the position of rules has already been stated in proviso to rule 5 (5). It is, therefore, quite clear that the inclusion of the name of VK Bangad in the select list was in consideration of his ability and merit as decided by the Committee. His exclusion from the list has also been taken place when his performance dipped below the prescribed level in the year 2006-07. In consideration of the above facts we are unable to find anything against the rules in making this provision.

*Issue No. 4 - Whether the resultant vacancy arising from V.K. Bangad being excluded from the select list in 2008 arose from which date i.e. the date of*



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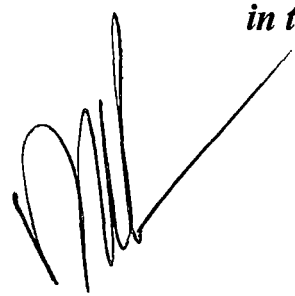
**2004 when V.K. Bangad included in the select list and 2008 when he was dropped from the select list.**

28. In so far as this issue is concerned it is to be considered that VK Bangad was in the select list as per the provision from the year 2004-2005 and he vacated the same in the year 2007-08. During this period the vacancy had been filled though not unconditionally. Nevertheless it was under occupation, as and when it was vacated, the same cannot be said to be assumed a retrospective effect because it was already occupied. The mere fact that the occupant in the question VK Bangad ultimately had to be excluded from the list does not imply that he was there. His slot in the list was occupied in the year 2004 – 05 and the same continued till the date of his exclusion in 2007-08. Hence, we find no merit in this contention of the applicant.

29. In so far as this issue is concerned, it is to be recalled that categorization of an officer is made strictly on the basis of merit in terms of the provisions of Rule 5 (4) and 5 (5) of the IPS (Appointment By Promotion) Regulations, 1955 which states as follows :

***“(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) The list shall be prepared by including the required number of names, first from among the officers finally classified as ‘outstanding’ them from among 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.***



60

*Provided that the name of any officer so included in the list shall be treated as provisional if the State Government, withholds the integrity certificate in respect of such officer if any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Government."*

30. It is an admitted fact that the applicant was not in the zone of the consideration for the select list of 2008 being over-aged i.e. 54 years before the crucial date, of 1<sup>st</sup> January, 2008, therefore, he becomes ineligible and goes out as per the promotion guidelines. In his place the name of the private respondents No. 6 Prem Prakash Tak was included. The applicant cannot take the plea that he has been superseded on this account. Once he goes out of the Select List he does not have a locus standi to challenge the person who is displaced or takes place after the due process of selection.

*What relief, if any, can be granted to the applicant ?*

31. As all the points have been decided against the applicant, the OA is liable to be dismissed. It is accordingly ordered.



[B.K.Sinha]

Administrative Member



[Dr.K.B.S.Rajan]

Judicial Member