

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.14/10

Monday this the 15th day of March 2010

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

K.B.Balachandran,
S/o.K.Bhaskaran,
Superintendent of Police,
NIR Cell, Police Headquarters, Trivandrum.
Residing at Devaragam, TC-IV/103 (3),
Cheshire Home Lane, Kuvuvan Konam,
Kowdiar PO, Trivandrum.

...Applicant

(By Advocate Mr.P.V.Mohanan)

V e r s u s

1. Union of India represented by Secretary,
Ministry of Home Affairs, New Delhi.
2. Union Public Service Commission
represented by Secretary, Shajahan Road,
New Delhi.
3. The Selection Committee for Selection to Indian
Police Service represented by the Chairman,
Union Public Service Commission,
Shajahan Road, New Delhi.
4. State of Kerala represented by Chief Secretary,
Government Secretariat, Trivandrum.

...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC [R1],
Mr.Thomas Mathew Nellimoottil [R2&3] & Mr.N.Thankachan,GP [R4])

This application having been heard on 15th March 2010 the Tribunal on the same day delivered the following :-

O R D E R

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is a non-IPS State Police Service Officer. His date of birth

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is 30.11.1954. He attained the age of 54 years on 30.11.2008 and he is due for retirement on superannuation from State Police Service on 31.3.2010. Though he was eligible for selection to IPS (Kerala) cadre for the years 2002, 2003 and 2004, yet he was not considered because of his lower position in the seniority list and though he was considered for the years 2005, 2006, 2007 and 2008 yet he was not selected. Now the selection for the 5 vacancies reported by the State Government for the year 2009 is likely to take place shortly. The State Government has already forwarded the list of eligible candidates but the name of the applicant was not included as he was disqualified under Rule 5(3) of IPS (Appointment by Promotion) Regulation 1955, according to which, "the Committee shall not consider the cases of the Members of the State Police Service who have attained the age of 54 years on the first day of January of the year for which the select list is prepared". The applicant has challenged the aforesaid rule in this OA and sought a declaration that it is illegal, unreasonable, violative of Article 14 of the Constitution of India and is thus unenforceable. He has also sought a direction to the respondents to include his name in the field of choice for consideration for selection to IPS (Kerala) cadre on promotion quota for the vacancies which arose as on 1.1.2009 and to select him to IPS (Kerala) depending on the seniority in the cadre of Deputy Superintendent of Police.

2. In this regard, the applicant has relied upon the order of the Bangalore Bench of this Tribunal in OA 262/07 and connected cases decided on 13.11.2009. The applicants in those OAs were senior officers belonging to the Karnataka Administrative Service. They were aggrieved by the age restriction prescribed in clause 5(3) of the Indian Administrative Services (Appointment by



Promotion) Regulation 1955, enacted in pursuance of Sub Rule (1) of Rule 8 of Indian Administrative Services (Recruitment Rules), 1954. They have challenged the constitutional validity of the said provision and prayed that the said provision be quashed and set aside. Bangalore Bench of this Tribunal has considered the case extensively and held that fixing 54 years as the upper age limit for promotion of State Civil Officers to IAS was clearly illegal as it would amount to an attempt to treat unequals, namely, officers of different state civil services, as equals. The operative part of the said order is as under :-

"47. By amending the Promotion Regulations 1955 in 1967 and again in 1979 by the introduction of clause 5(3) the Government has subjected the officers of State Civil Service to a micro classification and the said classification has failed to satisfy the latter part of "the twin of intelligible differentia and the differentia having a rational nexus to the object sought to be achieved." Clause 5(3) of the IAS (Appointment by Promotion) Regulations, 1955 (as amended from time to time) is therefore quashed and set aside.

48. The Hon'ble High Court of Karnataka in Writ Petition No.14101/2007 (S-CAT) dated 19th September, 2007, (which was filed against the order of this Tribunal dated 3.9.2007), rejecting the prayer for an interim order, has ordered that :-

(3).....All proceedings taken during the pendency of the OA before the Tribunal will naturally be subject to the final decision of the Tribunal. Hence the petitioner need not have any apprehension in that regard."

Based on the above decision, the following interim relief was granted in OA 416/2007 by an order of this Tribunal dated 23.12.2008. "All the proceedings taken during the pendency of the OAs before this Tribunal and whatever the selections taken by the authorities will be subject to the final decision of this Tribunal." The Hon'ble High Court's order regarding the interim relief is in a writ petition filed by the 3rd applicant in OA 262/2007. OA 262/2007 first came up before this Tribunal on 27.7.2007. Therefore, all the proceedings regarding promotion from KAS to IAS, initiated and finalised by the respondents after 27.7.2007 are hereby set aside and the said selections are ordered to be reviewed as per law.

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Further, as per the reply filed by the official respondents, applicants 2&3 in OA 262/2007 and the applicant in OA 447/2007 were in the eligibility list for the assessment year 2005 but they were not selected as they were far below in the seniority list (at Sl.Nos.12,14&17 respectively) and there were only 6 vacancies for the year 2005. These officers and applicant No.1 in OA 262/2007 who was junior to the applicant in OA 447/2007 by 2 places had become ineligible for consideration during the assessment years from 2006 as they had already crossed the age of 54 years as on 1.1.2006. The applicants in OA 262/2007 have challenged the eligibility list of KAS officers for consideration for promotion to the IAS as on 1.1.2007 (Annexure A-4 in OA 262/2007) and have prayed that the same may be quashed and set aside. We grant the prayer. In OA 262/2007 there is also a prayer to quash and set aside the letter dated 16.3.2007 (Annexure A-6 to the OA) which is the reply given to the applicant No.3 by the 3rd respondent in the OA. Annexure A-6 in OA 262/2007 is quashed and set aside and the respondents are directed to grant the prayer of the applicant to include his name in the consideration zone for promotion to IAS against the vacancies available as on 1.1.2007.

49. The applicant in OA 447/2007 has also prayed for quashing the list of eligible officers for selection to IAS as on 1.1.2006 for the reason that the applicant's name was not included in the list of six officers given at Annexure A-2 of the OA. On verification of the minutes of the selection committee for the assessment year of 2006 produced by respondent No.3, we find that there was only one vacancy for the year 2006 and only 3 officers were included in the eligibility list. Thus, firstly, Annexure A-2 to the OA is not the actual list of officers prepared by respondent No.3 who are eligible to be considered for selection to IAS for the vacancies of 2006. Secondly, the applicant is far too junior to even the junior most officer (at Sl.No.3) who was included in the eligibility list viz., K.Satyamurthy and thus the applicant had no chance of being included in the eligibility list for the year 2006. Further, if the applicant was aggrieved about the eligibility list as on 1.1.2006, he should have approached this Tribunal within the limitation period and not as late as on 28.11.2007 (and that too without any application for condonation of delay). For the above reasons, the prayer to quash Annexure A-2 in OA 447/2007 does not survive and we order so.

50. Regarding the additional prayer in OA 88/2008, we have already stated in paragraph 28.1 of this order that the prayer for a direction to consider the applicant against the additional vacancies that became available from 30.12.2008 does not survive as the applicant has not challenged Regulation 5(1) of Promotion Regulations, 1955. We hold accordingly.

51. The OAs are disposed of as above. In the circumstances of



the case the parties shall bear their own costs.”

3. Counsel for the applicant in this case has submitted that Rule 5(3) of IAS (Appointment by Promotion) Regulations, 1955 is in pari-materia with Rule 5(3) of IPS (Appointment by Promotion) Regulations, 1955 and, therefore, the decision of the Karnataka Bench will apply equally in this case also.

4. The 4th respondent, State Government of Kerala, in its reply has submitted that their responsibility to include the names of the eligible candidates in the zone of consideration is based on their seniority. Accordingly, the applicant's name was included in the zone of consideration in all the years he was found eligible for consideration to Indian Police Service. However, the selection of a candidate based on his service records and ACR gradings and appointment to Indian Police Service are the matters coming within the purview of Union Public Service Commission and Ministry of Home Affairs. As regards the consideration of the applicant for promotion to Indian Police Service for the year 2009, they have submitted that he is not eligible to be considered in the zone of consideration in view of the fact that he has crossed the age limit of 54 years as prescribed in Rule 5(3) of the Regulations.

5. The 2nd and 3rd respondents, namely, the Union Public Service Commission and the Selection Committee for selection to Indian Police Service, in their reply have submitted that the State Police Service Officers are considered for promotion to the IPS in the order of their seniority in the State Police Service based on the IPS (Appointment by Promotion) Regulations, 1955 as amended from time to time. The name of the applicant was not included in



the eligibility list furnished by the State Government for the Selection Committee Meetings of 2002, 2003 and 2004. There is no provision in the Regulations for suo-moto review of Select Lists already approved by the Commission and acted upon by the Government of India. The applicant who was granted promotion to the post of Dy.SP with retrospective effect, did not make any prayer before a Court of law to consider his case for the years 2002, 2003 and 2004 on revision of his seniority. Therefore, after a lapse of almost six years the contention of the applicant that he has been discriminated in the matter is devoid of any merit. They have further submitted that the formulation of the regulations regarding promotion and amendments thereon comes under the exclusive purview of the Government of India and as per the provisions of IPS (Appointment by Promotion) Regulations 1955, as amended from time to time, the applicant is not eligible for consideration for the vacancies for the year 2009 as he had crossed the age of 54 years as on 1.1.2009. Shri Thomas Mathew Nellimottil appearing on behalf of those respondents have also submitted that the applicant's reliance on the order of the Bangalore Bench of this Tribunal in OA 262/07 and connected cases decided on 13.11.2009 cannot be a basis for deciding the issue involved in this case as the said order has already been stayed by the High Court of Karnataka High Court in WPC No.39137/09 and connected cases vide order dated 11.2.2010. He has, therefore, submitted that the UPSC can proceed with the selection to IPS (Kerala) cadre on promotion quota for the vacancies which arose on 1.1.2009 and select the eligible candidates.

6. Shri.Sunil Jacob Jose,SCGSC appearing on behalf of the 1st respondent



has also endorsed the submissions made on behalf of the State Government and the UPSC.

7. We have heard Shri.P.V.Mohanan for the applicant, Shri.Sunil Jacob Jose,SCGSC for the 1st respondent, Shri.Thomas Mathew Nellimoottil for the 2nd and 3rd respondents and Shri.N.Thankachan,GP for the 4th respondent. The main prayer of the applicant in this OA is to declare that Rule 5(3) of IPS (Appointment by Promotion) Regulations 1955 to the effect that the Committee shall not consider the cases of the Members of the State Police Service who have attained the age of 54 years on the first day of January of the year for which the select list is prepared. is illegal, unreasonable, violative of Article 14 of the Constitution of India and it is thus unenforceable. There is no dispute that the said regulation is in pari-materia with Rule 5(3) of IAS (Appointment by Promotion) Regulations, 1955. The Bangalore Bench of this Tribunal has considered the constitutionality of the aforesaid provision very extensively and held that the action of the respondents in fixing 54 years as the upper age limit for promotion of State Civil Officers to IAS was clearly illegal. The said order has been passed after conscious consideration of the issue and it is accompanied by reasons. We, therefore, do not find any reason to deviate from those findings. In this regard we are guided by the decision of the Apex Court in **S.I.Rooplal and another v. Lt. Governor through Chief Secretary, Delhi and others** (2007 AIR SCW 19) and **Government of Andhra Pradesh and others v. A.P.Jaiswal and others** (AIR 2001 SC 499).

8. The operative part of the judgment in **S.I.Rooplal**(supra) reads as under :-

"12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a coordinate Bench of the tribunal has



overruled, in effect, an earlier judgment of another coordinate Bench of the same tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the tribunal was of the opinion that the earlier view taken by the coordinate Bench of the same tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law from the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bounded by the enunciation of law made by the superior courts. A coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. This Court in the case of *Tribhuvandas Purshottamdas Thakar v. Ratilal Motilal Patel*, [1968] 1 SCR 455 while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same court observed thus:

"The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in *Pinjare Karimbhai's* case and of Macleod, C.J., in *Haridas's* case did not lay down the correct Law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by Courts of coordinate authority or of superior authority. Gajendragadkar, C.J. observed in *Lala Shri Bhagwan and Anr, v. Shri Ram Chand and Anr.*

"It is hardly necessary to emphasis that considerations of judicial propriety and decorum require that if a learned single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a single Judge, need to be re-considered, he should not embark upon that enquiry sitting as a single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety."

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9. The operative part of the judgment in **A.P.Jaiswal** (supra) reads as under :-

"22. The tribunal as per its earlier order in R.P.910/77 came to the specific conclusion that the temporary appointments of the Andhra Officers made before 1.11.1956 could not have been a part of stop-gap or fortuitous arrangement. It also held to so treat these appointments would be discriminatory merely because the State Government did not obtain the approval of the Public Service Commission for these appointments prior to 1.11.1956. Therefore, the tribunal in that case was of the final opinion that those temporary Andhra Officers who by 1.11.1956 satisfied all the requirements of the rules regarding completion of probation should be treated not as a stop-gap and fortuitous arrangement. The tribunal also held that it was satisfied that it would be perfectly in accordance with the principles laid down at the Chief Secretaries Conference to count for seniority the temporary services rendered by such officers. It was also the opinion that such regularisation was in no way contrary to the States Reorganisation Act and that such regularisation was necessary in the interest of equity and justice. In regard to the question of equation of posts involved, it held that the decision of the Central Government did not require any interference, but to a limited extent, the said tribunal held that as and when the gradation list was finalised, if it was discovered that the Telangana Officers were entitled to be considered for appointment to any vacancy which had occurred before 1.11.1956, the State Government should revise the retrospective regularisation orders of such Andhra Officers so as to make room for the Telangana officers who may have a claim to be appointed to such vacancies on the basis of their seniority in the common gradation list. In our opinion, by this finding the earlier Bench of the tribunal specifically held that the regularisation of the temporary services of qualified Andhra Officers with retrospective effect was legally valid. It, however, left open the question of fixing the seniority of Andhra Engineers vis-a-vis Telangana Engineers taking into consideration the fact whether Telangana Engineers had any claim to be appointed to any vacancy prior to 1.11.1956 based on the ranking obtained by them in the common gradation list.

23. The tribunal by the impugned order took a totally divergent view as to the validity of such retrospective regularisation. It held that the power under Rules 10, 23(a) and 30 of the Madras Rules which governed the situation at the relevant point of time did not provide for retrospective regularisation. It held that these rules which confer power are coupled with duty to act reasonably. Based on the above conclusion, this Bench of the tribunal held: Without these essential ingredients existing, the theory of power of retrospective regularisation of services will sabotage the scheme of the rules and also concept of seniority and also violating the articles 14 and 16 of the Constitution. It

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also held the Government guilty of delay in preparation of gradation list. These findings of the subsequent Bench of the tribunal in the impugned judgment were rendered proceeding on a basis that the earlier finding of the tribunal was only provisional. We have already noticed that there is no room for coming to such conclusion and that the finding of the earlier Bench of the tribunal was a conclusive finding and what was said to be provisional in that judgment was only the question of applying the effects of the said retrospective regularisation while considering the allotment of seniority in the gradation list to be prepared. In other words, with reference to such Telangana Engineers who had not acquired any right to hold any particular post prior to 1.11.1956, they will be placed below the Andhra Engineers who got an earlier date of entry into service because of the retrospective regularisation. Therefore, in our opinion, the subsequent Bench of the tribunal could not have reopened the main question of retrospective regularisation by the impugned judgment.

24. Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the courts have evolved the rule of precedents, principle of stare decisis etc. These rules and principles are based on public policy and if these are not followed by courts then there will be chaos in the administration of justice, which we see in plenty in this case."

10. As regards the contention of the counsel for the 1st respondent as well as counsel for the 2nd & 3rd respondents that the order of the Bangalore Bench of this Tribunal has been stayed by the Karnataka High Court, the Apex Court has considered the impact of stay of an order in M/s.Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association, Madras reported in (AIR 1992 SC 1439). The relevant part of the said judgment was as under :-

"10.While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order

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has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending."

11. Accordingly, this OA is allowed. Consequently, Rule 5(3) of IPS (Appointment by Promotion) Regulation 1955 is quashed and set aside. The respondents are directed to include the name of the applicant in the field of choice for consideration for selection to IPS (Kerala) cadre on promotion quota for the vacancies which arose as on 1.1.2009 and to select him to IPS (Kerala) depending on seniority in the cadre of Dy.SP. There shall be no order as to costs.

(Dated this the 15th day of March 2010)


K.NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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