

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 151 of 1996.

Tuesday this the 7th October, 1997.

CORAM:

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

M. Bhagyanathan Nadar,
Additional Assistant Inspector of
General of Police, Police Headquarters,
Thiruvananthapuram.

.. Applicant

(By Advocate Shri N.Nandakumara Menon)

Vs.

1. Union of India represented by its
Secretary, Ministry of Home Affairs,
Government of India, New Delhi.

2. State of Kerala, represented by the
Chief Secretary, Secretariat,
Thiruvananthapuram.

.. Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC (For R-1)
By Advocate Shri C.A. Joy, G.P. (for R-2)

The application having been heard on 7th October, 1997,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant was considered by the Select Committee
for selection to the Indian Police Service (IPS for short)
which met on 18.12.87 and was selected and placed at
Serial No.7 in the list. The list was approved by the
Union Public Service Commission (UPSC for short) on 12.2.88.
The persons at Sl.No.1 and 2 in the Select list were
appointed to the IPS in March 1988 and granted a year of
allotment of 1982. The applicant was appointed to the
Indian Police Service only on 13.10.88 by A-2 notification.

By the time the A-2 notification was issued the rules regarding seniority had changed and the amended seniority rules of IPS, A-4, had come into force on 20.7.88. Applicant was, therefore, granted a year of allotment of 1984 under the amended rules A-4. The grievance of the applicant is that if he had been appointed to the IPS without delay he would have been governed by the unamended seniority rules and his year of allotment would have been 1982 like the two other persons in the select list already appointed in March 1988.

2. Applicant approached this Tribunal in O.A. 1944/93 which was disposed of by the Tribunal with a direction to the Government of India to consider the representation of the applicant. A-7 order was passed as a consequence rejecting the claim of the applicant. Applicant, thereupon approached this Tribunal in O.A. 900/94 which was disposed of by A-8 with a direction to the Government of India to consider the representation of the applicant. A-10 order was passed as a consequence rejecting the claim of the applicant. Applicant challenges A-10 and also A-2, which is the order appointing him to IPS, to the extent that his date of appointment is shown as 13.10.88.

3. The first respondent (Government of India) has submitted that the recommendation from the State Government for the appointment of the applicant to the IPS was received only on 16.9.88, by which time the new seniority rules had come into force and his seniority was also fixed under the amended rules. 1st respondent also submits that there is no provision in the rule for retrospective appointment to the IPS and that mere inclusion of the name of the applicant in the Select List does not confer any right for appointment to the IPS.

4. The second respondent, (State Government) has submitted that the applicant was appointed against a vacancy

which arose on 31.5.88. Applicant was appointed under Rule 9 of the Cadre Rules on 10.6.88 and thereafter, proposals were sent to the Government of India for his appointment to the IPS. 2nd respondent also submits that none of the juniors to the applicant in the Select list was appointed overlooking his seniority and applicant can have no real grievance regarding his seniority.

5. An identical issue was considered by the Tribunal in O.A. 177/96. The Tribunal held that,

"It is clear from the facts set out above that as on 25.3.88 there was a Select List which had been approved in February 1988 and from which two persons had been that day appointed to IPS.It was also admitted at the Bar by the learned counsel for second respondent that the applicant was ultimately appointed against the vacancy which arose on 31.8.87.

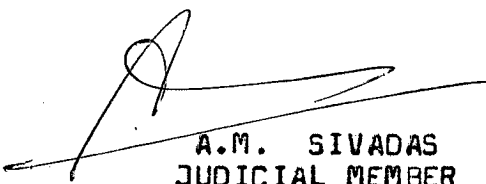
The second respondent (State Government) however, recommended the appointment of the applicant only in September 1988, six months after the date on which the applicant could have been recommended for appointment to the IPS. In the normal course this delay might not have resulted in any serious adverse consequence, but in this case, during the period when the recommendation of the applicant had been delayed the amended seniority rules came into force and thereby, the year of allotment of the applicant was pushed down by two years.....There is no whisper of any reason why the recommendation with respect to the applicant was held up for six months..... If the recommendation had been sent in due time in March 1988 or even in May 1988, the applicant could have been appointed well before the amended rules of seniority came into force..... This is clearly a case where because of the arbitrary delay caused by the second respondent which is not justified in any circumstances, the appointment of the applicant to the IPS was delayed to a point where the seniority rules by which he was governed were radically changed and the year of allotment given to him as a consequence was pushed down by two years, through no fault on the part of the applicant.....The denial of the year of allotment of 1982 to the applicant therefore, is a case of gross discrimination and cannot be sustained.

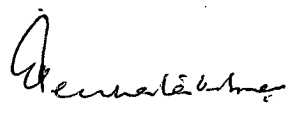
6. The Tribunal also considered a decision of the Supreme Court in Union of India Vs. S.S. Uppel & another (JT 1996 (1)SC 258) and found that the decision in that case would not apply in the fact circumstances found in O.A. 177/96. In the case before us also the applicant was to be appointed against the vacancy which arose on 31.5.88. The recommendation for his appointment was sent only on 6.9.88 and the delay of 3 months and six days for which no reasons have been given by the second respondent, cannot be justified. There was ample time of 57 days from the date of the vacancy to the date on which the amended rules came into force for the 2nd respondent to take action and send the recommendation. The 2nd respondent could very well have sent the recommendation well in time for the applicant to have the benefit of unamended rules. The applicant is, therefore, entitled to the seniority available to him under the unamended rules. We are, therefore, unable to sustain the impugned order A-2, to the extent that it fixes the date of appointment as on 13.10.88, and the impugned order A-10.

7. We accordingly declare that the applicant is entitled to have his seniority fixed in terms of the unamended IPS (Regulation of Seniority) Rules 1954. The applicant would also be entitled to all consequential benefits including the re-fixation of his year of allotment and promotions based on the revised year of allotment. Applicant has since retired ^{and} he will also be entitled to re-fixation of retiral benefits and arrears consequent on such re-fixation of retiral benefits.

8. Application is allowed as aforesaid. No costs.

Dated the 7th October, 1997.


A.M. SIVADAS
JUDICIAL MEMBER


P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

LIST OF ANNEXURES

1. Annexure A-2 : Notification dt. 13-10-88 issued by the Government of India, M/o Home Affairs No.I-14013/4/88-IPS-I.(Signed by Under Secretary)
2. Annexure A-4 : Notification dt.27-7-88 No.14014/40/88-AIS(I) issued by the Union Govt.(Signed by the Joint Secretary, M/o Personnel, Public Grievances & Pensions.
3. Annexure A-7 : Communication sent by the Chief Secretary to Govt. of Kerala to the applicant dt.19-2-94 No.3262/Spl./A3/94/GAD.
4. Annexure A-8 : Judgment in O.A. No.900/94 dt.18-7-95 passed by the C.A.T., Ernakulam Bench.
5. Annexure A-10: Order No.15016/35/94-IPS-1 dt.20-11-95 issued by the Under Secretary to Govt. of India Home Affairs.

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