

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.175/93

Thursday, this the 6th day of July, 1995.

CORAM:

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR P SURYAPRAKASAM, JUDICIAL MEMBER

M Abdul Hameed, IPS,
Superintendent of Police,
Economic Offences, Vyttila,
Cochin-19.

- Applicant

By Advocate Mr K Ramakumar

Vs

1. State of Kerala represented by
Chief Secretary,
Trivandrum.
2. Secretary to the Government of Kerala,
Home Department, Secretariat,
Trivandrum.
3. Director General of Police,
Police Headquarters,
Vazhuthacaud,
Trivandrum-10.
4. Government of India represented by
the Secretary,
Ministry of Home Affairs,
New Delhi.
5. Chairman,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
6. C Ramachandran, IPS,
Commandant, Kerala Armed Police I
Battalion, Ramavarmapuram,
Trichur.
7. A Thankappan Pillai, IPS,
Superintendent of Police,
Southern Range, Vigilance Department,
Trivandrum.
8. G Babu Raj, IPS,
Superintendent of Police,
Pathanamthitta.

- Respondents

9. M Nandanan, IPS,
Superintendent of Police,
C.B.C.I.D.
Palakkad.

10. Jacob P Thomas,
Superintendent of Police,
C.B.C.I.D.
Ernakulam.

- Respondents

By Advocate Mr D Sreekumar, GP (for R.1 to 3)

By Advocate Mr S Radhakrishnan, Additional Central Government
Standing Counsel (for R.4&5)

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

When this application came up for admission on 3.2.93, the Tribunal ordered that the application be admitted only in so far as prayers C, D and E are concerned and that prayers A and B are not admitted for want of jurisdiction. Subsequently, on 7.11.94 the Tribunal permitted an amendment to the Original Application by which additional prayers F and G were added. We here consider only the prayers C to G. This restriction implies that we do not go into a consideration of the question of whether the date of commencement of applicant's service as Deputy Superintendent of Police (Dy.SP) starts on a date prior to 7.8.76. It also implies that the impugned order A16 is not quashed. For purposes of the discussion here, we consider that applicant was promoted as Dy.SP on 7.8.76 (p8 of the amended O.A. and p164 of the Paper Book) in accordance with A6 orders dated 5.8.76.

2. Applicant was promoted as Superintendent of Police (S.P) (non-cadre) on 12.4.86 (p160 of Paper Book) by A7 orders dated 2.4.86. Applicant was considered for selection for the Indian Police Service (IPS) in 1989-90. He was 6th in the field (A23) for consideration and was 8th in the ranking given by the Selection Committee. Only 7 persons were placed on the select list prepared

by the Selection Committee which met on 9.3.90. The list was approved by the Union Public Service Commission(UPSC) on 16.5.90. From this select list, 5 were appointed against 5 vacancies. Applicant did not find a place in the select list of 1989-90. Applicant was included in the select list on 11.3.91 which was approved on 13.5.91 by the UPSC. By A8 orders dated 13.11.91, the Government of India appointed applicant to the IPS, under Rule 9 of the IPS(Recruitment)Rules, 1954 read with Regulation 9(1) of the IPS(Appointment by Promotion) Regulation, 1955. The grievance of the applicant is that he should have been appointed to the IPS on 12.2.91 but was not. There is a further claim that he is entitled to an earlier year of allotment.

3. The applicant bases his claim on three grounds. The first ground is as follows: Had applicant been deemed to have become Dy.SP on 31.8.64, he would have found a place at Sl.No.1 in the Field of Choice A23 and consequently been placed at Rank 4(instead of 8) in the Select List for 1989-90. This would mean that applicant would have found a place among the officers appointed to IPS by the Government of India in their notification dated 15.10.90.

4. This contention cannot be examined by us because, as stated in para 1 above, we are not considering the question of whether applicant is entitled to count his service as Dy.SP from 31.8.64 and the contention is based on the premise that applicant is deemed to have become Dy.SP on 31.8.64.

5. The second ground advanced by applicant is as follows: Even on the basis that applicant became Dy.SP in 1976, he completed 8 years of service in 1984 and was eligible to be considered for appointment to IPS. Had he been considered from 1984 onwards, he

would have been appointed to IPS much before 13.11.91. Respondent No.1 has correctly pointed out that it is not enough to complete 8 years continuous service as Dy.SP to find a place in the field of choice. Under Regulation 5(2) of the IPS(Appointment by Promotion) Regulation, 1955 the Selection Committee shall consider only the cases of State Police Officers of a number equal to three times the number to be placed on the select list as prescribed by Regulation 5(1). Applicant has come into this zone of consideration only in 1989-90. This contention of the applicant therefore fails.

6. The third ground is as follows: One Paul Leslie, who is at Sl.No.3 in the field of choice A23 and 6th in the select list for 1989-90 filed OA-491/89. The Tribunal directed that Paul Leslie should be promoted "with effect from the date of promotion of respondent-5"(A24). Respondent-5 had been placed in the select list for 1987 and promoted in October 1988. The result of this direction of the Tribunal was that Paul Leslie went out of the 1989-90 select list to an earlier year. Applicant contends that this would raise his rank in the 1989-90 select list from 8 to 7. Since the select list contained 7 names, he would therefore become included in the select list as the last name. Applicant further contends that the number of vacancies to be considered increased from 5 to 7 since one Jacob P Thomas, who was at Sl.No.4 in the field of choice(A23) and 7th in the select list filed OA-138/91 against alleged delay in holding a triennial review of the cadre strength. The Triennial Review Committee met on 25.4.91 and the Government of India issued a notification on 27.6.91 under which the cadre strength was raised by 2. The notification was published on 13.7.91 and Government of India contended that the increased cadre strength became effective on 13.7.91. The applicant in OA-138/91 contended that the last fixation of cadre strength was on 12.2.88 and so the next cadre revision should be on 12.2.91,

since Rule 4(2) of the IPS(Cadre)Rules, 1954 states that:

"The Central Government shall, at intervals of every three years, re-examine the strength and composition of each such cadre...and make such alteration therein as it deems fit."

The Tribunal directed(A25):

"We declare that the notification...dated 27.6.91...shall be deemed to have come into force with effect from 12.2.91."

Applicant contends that since the cadre strength had been increased by 2 on 12.2.91, the vacancies increased as a consequence from 5 to 7, and since he was 7th in the select list after the exit of Paul Leslie from the 1989-90 select list, he should be appointed to the IPS in one of the vacancies on 12.2.91.

7. Respondent-4 contends that when Paul Leslie was moved from the 1990 select list to the 1987 select list, one vacancy had to be removed from 1989-90 to the earlier year, leaving only 4 vacancies instead of 5 for 1989-90 and the size of the select list would correspondingly go down from 7 to 6. Thus the applicant whose rank would have improved from 8 to 7 would still be out of the select list. As regards the increase of cadre strength on 12.2.91, respondent-4 states that an SLP has been filed(numbered as SLP(C)No.432/93) against the orders of the Tribunal in OA-138/91. The SLP is still pending. That apart, even if two vacancies are to arise on 12.2.91 as a result of the Tribunal's order in OA-138/91, they would go to persons ranked 5th and 6th in the select list who were awaiting posting and no vacancy would be available to the applicant.

8. Applicant, in his rejoinder, contends that though an SLP has been filed against the decision of the Tribunal in OA-138/91,

there is no stay order. If the select list size is considered to have been reduced to 6 by the exit of Paul Leslie, then the number of persons who should have been considered would also go down from 21 to 18 and therefore the entire selection which considered 21 persons would become irregular. To avoid this, applicant contends that even after the exit of Paul Leslie from the 1989-90 list, the number of vacancies should be retained as 5, in which case the select list being of 7 persons and he being the 7th in rank, he will be included in the select list.

9. Respondent-1 has also stated that there is no provision in the rules to review or revise the select list once it is prepared and acted upon. The applicant contends that the Tribunal can direct such revision to protect the rights of the applicant, as could be seen from the orders of the Tribunal in OAs-491/89, 138/91 and 524/93.

10. In the absence of a stay of the orders of the Tribunal in OA-138/91, we consider that the cadre strength stood revised on 12.2.91 and as a consequence 2 vacancies arose on 12.2.91. But would one of these be available to the applicant? To answer this, we have to determine what is the effect of the orders of the Tribunal in OA-491/89. It may be noticed that there was no direction in that order to include Paul Leslie, the applicant therein, in the 1987 select list. The direction was "to promote the applicant to the Kerala Cadre of IPS, with effect from the date of promotion of respondent-5, Shri KT Michael..." For all practical purposes, therefore, the name of Paul Leslie should be deemed to continue in the 1989-90 select list, but he is declared to be appointed to the IPS notionally in 1988. Therefore the size of the select list in 1989-90 would continue to be 7 and the number of persons to be considered would continue to be 21 and consequently, no irregularity would be found in the 1989-90 list. Indeed, if one

were to accept the contention that the vacancies in 1989-90 went down to 4 after Paul Leslie was appointed in 1988 and the select list size went down to 6 and since only 18 persons should have been considered and 21 were considered, the selection is irregular, then, by the same reasoning, it could be asserted that the number of vacancies in 1987-88 was increased by one (the vacancy taken from 1989-90 and filled by Paul Leslie), the number of persons to be considered for selection should go up by 3 and since only lesser number were considered in that year, that selection also would become irregular. It could also be argued on the same lines that since the number of vacancies in 1989-90 has gone up to 7 as a result of the direction of the Tribunal in OA-138/91, there should have been a select list of size 9, the number of persons to be considered should have been 27 and since only 21 were considered the selection of 1989-90 would also become irregular and applicant can get no relief on the basis of the 1989-90 selection. The selection of Paul Leslie in 1989-90 would also then go. This would lead to a situation where the Tribunal's direction in OA-491/89 could not be implemented at all. The only way out of this fallacious circular reasoning is to continue to consider that Paul Leslie was selected through the select list of 1989-90, appoint him to a vacancy covered in that 1989-90 list but give him a notional date of appointment in 1988. This would leave the selections done in 1987-88 and 1989-90 intact; there would be 7 vacancies considered in the 1989-90 select list and all the 7 persons placed in the select list would be appointed, the only change being that Paul Leslie would be given a notional date of appointment in 1988. Thus the select list for a year would not be revised even with a change in the number of vacancies; if there are enough persons in the select list, they can be appointed against the additional vacancies but if there are not enough persons in the select list then the vacancies that cannot

be filled up for want of persons in the select list will have to be carried over to the next selection. In this view, the applicant would not be in the select list at all for 1989-90 and therefore his being appointed to the IPS on an earlier date would not arise. It must also be noticed that inclusion of a person in the select list does not confer any right to automatic appointment. (Syed Khalid Rizvi & others etc. V. Union of India & others, 1993 Supp(1)SCC 575, para 23; Shankarsan Dash V. Union of India, 1991 SCC(L&S) 800, para 9). The contention of the applicant in this regard therefore fails.

11. The applicant, in his additional prayers in the amended OA, prays that Rule 3(3)(ii) of the IPS(Regulation of Seniority)Rules, 1988 be declared unconstitutional and that he should be given full weightage commensurate with his length of service in a senior post, and his year of allotment fixed accordingly. He contends that since at the time of appointment to the IPS he was already drawing pay in the senior time scale of pay, on entry into the IPS his pay should be fixed in the Junior Administrative Grade. Rule 6(3) of the IPS(Recruitment)Rules, 1954 states that the initial appointment of promotees from the State Police Service shall be in the Senior Time Scale of pay. Applicant contends that the Rule does not state what should be the pay of a person who is already drawing the Senior Time Scale of pay when he is inducted into the IPS and so, by virtue of Rule 2 of All India Services(Conditions of Service - Residuary Matters)Rules, 1960, the rules, regulations and orders applicable to State Civil Services, Class-I would apply and in that case, he is entitled to the Junior Administrative Grade of pay.

12. In our view, this contention is misconceived. Rule 6(3) of the IPS(Recruitment)Rules, 1954 treats the promotees from State Police Service as a single class. Promotees who are appointed to

the IPS have at the time of their appointment, differing lengths of total service, differing length of service in Dy.SP or equivalent grade, differing length of service in the SP or equivalent grade and consequently, different levels of pay. The IPS is an All India Service and promotees entering the service in different States are placed at par in the IPS. The conditions of service in State Police Services of different States are different and norms of promotion to Senior Scale in the State Police Service in the different States would also vary. It would not therefore be correct to give a particular weightage to service in the Senior Scale in the State Service while fixing the pay scale of the promotee in the IPS. It may also be noticed that for eligibility for being considered for promotion, Regulation 5(2) of the IPS(Appointment by Promotion)Regulation prescribes 8 years continuous service(whether officiating or substantive) in the post of Dy.SP or equivalent posts. There is no distinction made or higher weightage given to service in Senior Scale posts. When such is the case for recruitment, a claim that weightage be given for service in Senior Scale posts for purposes of fixing the year of allotment cannot be countenanced. Just because the promotees are treated as a single class, it cannot be said that the category of "Senior Scale Promotees" is not covered by Rule 6(3) of the IPS(Recruitment)Rules, 1954 and consequently Rule 2 of the All India Services(Conditions of Service - Residuary Matters)Rules, 1960 is not attracted. The contention of the applicant in this regard fails.

13. The applicant contends that Rule 3(3)(ii) of the IPS(Regulation of Seniority)Rules, 1988 is unconstitutional. This Rule states:

"3. Assignment of year of allotment.

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(3) The year of allotment of an officer appointed to the service after the commencement of these rules shall be as follows:

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(ii) The year of allotment of a promotee officer shall be determined in the following manner:

(a) For the service rendered by him in the State Police Service upto twelve years, in the rank not below that of a Deputy Suerintendent of Police or equivalent, he shall be given a weightage of four years towards fixation of the year of allotment;

(b) He shall also be given a weightage of one year for every completed three years of service beyond the period of twelve years, referred to in sub clause(a), subject to a maximum weightage of five years. In this calculation, fractions are to be ignored;

(c) The weightage mentioned in sub-clause(b), shall be calculated with effect from the year in which the officer is appointed to the Service:

Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that Select List or appointed to the service on the basis of an earlier Select List."

Applicant states that by giving the same weightage of 4 years for officers with 12 years of service, part of which is in senior posts like SP, and junior officers with only 8 years of service, the Rule is discriminatory and thus violative of Articles 14, 16 and 21 of the Constitution. He further contends that Emergency Commissioned Officers recruited to IPS under Rule 7A of the IPS(Recruitment)Rules, 1954 were allowed to count their entire service for seniority, and to deny this to promotees from State Police Service is discriminatory.

14. Respondent-1 states that the promotees from the State Police Service are drawn from the Principal Police Service of the State and other services declared by the State Government as equivalent

thereto. As stated by us in para 12 above, while drawing officers from different States into a common All India Service, the finer distinctions within the State Service cannot be taken into consideration for giving weightage in seniority. The conditions of service, the services declared equivalent to the Principal Police Service, the period taken to reach Senior Scale, all vary from State to State. Under such circumstances, it is not discriminatory to treat all State Service of or above the grade of Dy.SP uniformly for purposes of weightage. Such service is treated uniformly for purposes of determining eligibility for consideration for appointment to IPS as pointed out in para 12 above. To have slabs initially of 8 to 12 years followed by slabs of 3 years thereafter for giving a weightage, or of limiting the total weightage to 5 years cannot be said to be discriminatory as the entire State Service is treated uniformly for purposes of giving weightage. There is no basis on which applicant can claim weightage for State Service in the Senior Scale as a legal right while fixing seniority in an All India Service.

15. The Emergency Commissioned Officers(ECO) are a different class altogether and giving them a different treatment in the matter of counting past service cannot be termed discriminatory from the Constitutional standpoint. This view is supported by the Supreme Court in Ravi Paul and Ors V. Union of India and Ors, (1995) 29 ATC 558, in which the entitlement of ECOs to count Army Service for seniority was discussed. The Supreme Court States:

"2. In the wake of the Chinese aggression in 1962, in order to meet the shortage of Commissioned Officers in the Indian Army, the Government of India started a special scheme to select officers through Service Selection Board and granting them Commission in the Indian Army. Such Commissioned Officers were called Emergency Commissioned Officers(ECOs).

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"7....in order to attract ECOs/SSCOs from the Army to the BSF it was offered that their service in the Army would be counted for the purpose of seniority in the BSF. Similar benefit with regard to counting of Army service for seniority was also given to ECOs/SSCOs who were appointed in other civil services under the Emergency Service Commissioned Officers (Recruitment and Vacancies) Rules, 1967. The said Rules ceased to have application on 24.6.1974 and the facility of recruitment of the ECOs/SSCOs against vacancies in civil services was discontinued.

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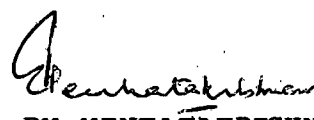
24. It has also been urged by the learned counsel for the petitioners (in Writ Petition No.146 of 1992) that ECOs who were absorbed/appointed to the BSF during the period of 1967-71 have been given the benefit of counting their past service in the Army for the purpose of seniority and that there is no reason why similar benefit should not have been extended to SSCOs, like the petitioners, who were absorbed/appointed to the BSF during the period 1974-78 and that the denial of such benefit to the petitioners results in arbitrary and invidious discrimination and denial of the right to equality guaranteed under the Constitution. We are unable to agree. The ECOs who were absorbed/appointed to the BSF during the period 1967-71 had joined the Army during the emergency in the wake of the Chinese Aggression. By joining the Army when the country needed their services they had made a sacrifice. Keeping in view the sacrifice made by them, the Government of India evolved a policy whereunder they were given certain benefit of their Army service for counting their seniority on re-employment in public services after their release from the Army...The ECOs who were absorbed/appointed in the BSF during the period 1967-71 and the SSCOs who were absorbed/appointed in the BSF during the period 1974-78 are officers belonging to two different categories and they cannot be regarded as persons similarly situated."

The year of allotment of ECOs was fixed under Rule 3(3)(c) and (d) of the IPS(Regulation of Seniority) Rules, 1954. The 1954 Rules have since been repealed and replaced by the 1988 Rules. It is to be noted that the 1988 Rules does not make any provision for ECOs. Therefore as on date, the contention of the applicant that ECOs are given a different treatment in fixing their year of allotment is not correct. We are unable to accept the contention that not giving promotees from State Police Service a benefit that was extended to ECOs under the 1954 Rules is discriminatory and unconstitutional.

16. All the contentions of the applicant fail and the application is dismissed.. Parties will bear their costs.

Dated, the 6th July, 1995.


P SURYAPRAKASAM
JUDICIAL MEMBER


PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

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LIST OF ANNEXURES

- Annexure VI: True copy of the order GO (Rt) 1867/76/Home dated 5.8.1976 of the 1st respondent.
- Annexure VII: True copy of the order GO (Rt) 1074/86/Home dated 2.4.1986 of the 1st respondent.
- Annexure VIII: True copy of the Order No.14013/14/91-IPS-1 dated 13.11.1991 of the 4th respondent.
- Annexure XVI : True copy of the Order GO (Rt) No.5522/92/Home dated Trivandrum 11.11.1992 of the Home Department of State of Kerala.
- Annexure XXIII: True copy of the list of officers in the Field of choice for IPS with granding of the year 1989-90
- Annexure XXIV : True copy of the Judgement dated 31.12.1990 in OA No.491/89 of this Hon'ble Tribunal.
- Annexure XXV : True copy of the Judgement dated 19.3.92 in OA-138/91 of this Hon'ble Tribunal.