

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
TxXXXNo.

175/91

199

DATE OF DECISION 5.6.91

K.Balakrishnan

Applicant (s)

M/s.Sukumaran & Usha

Advocate for the Applicant (s)

Versus

Union of India represented Respondent (s)

by the Secretary to
Government of India,

Ministry of Home Affairs, New Delhi-1 and another

Advocate for the Respondent (s),

Mr.N.N.Sugunapalan,SCGSC(for R-1)

CORAM: Mr P.V.Mohan, Govt. Pleader(For R2)

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 24.1.1991 filed under Section 19 of the Administrative Tribunals Act the applicant a member of the Kerala Cadre of the Indian Police Service has prayed that he should be declared to be entitled to retrospective promotion to the I.P.S cadre with effect from the date of promotion of the three officers placed above him in the 1988 select list and that the respondents be directed to give him all monetary benefits flowing from such retrospective promotion. He has also prayed that the respondents be directed to grant him 1985 as the year of allotment in the I.P.S. The brief facts of the case are as follows.

2. Having entered service as Sub Inspector of Police in 1963 and promoted later as Circle Inspector in 1971 and Deputy Superintendent of Police in 1977, he was promoted as Superintendent of Police in 1988 and was included in the select list which was prepared

on 7.12.88 for being promoted to the I.P.S. According to him he was No.4 in the select list. But his name was included subject to his being cleared in the vigilance enquiry pending against him. According to him the three officers ranking above him in the select list were appointed to the I.P.S cadre posts under Rule 9 of the I.P.S Cadre Rules, but in spite of vacancies in the cadre post, the applicant was not so appointed. He moved the Tribunal in O.A. 727/89 questioning the conditional inclusion of his name in the select list of 1988. By the judgment dated 21.2.1990 in O.A. 727/89, to which both of us were a party, it was declared that the applicant's inclusion in the select list of 1988 ^{is to be} ~~was~~ deemed to be unconditional and he should be considered for promotion to the IPS with retrospective effect from the date on or before the date on which the person immediately below him in the select list was promoted to the IPS. Since there was no person below him in the select list of 1988, a clarification was sought from the Tribunal and by our order dated 21.2.1990 it was clarified that the applicant has to be considered for appointment to the IPS to which he was entitled according to his position in the 1988 select list. The applicant's contention is that he should thus be entitled to be appointed to a cadre post under Rule 9 of the Cadre Rules with effect from the date on which those placed above him ^{were} ~~are~~ promoted as vacancies were available at the time of such promotion and he was denied such promotion on the erroneous ground of his conditional inclusion in the select list. He claims that instead of being given promotion to a cadre post with effect from 4.4.90 he should be given promotion with effect from 29.9.89 when those above him in the select list were promoted. He also claims the year of allotment as 1985 at par with such officers placed immediately above him instead of 1986 as given to him.

3. In the counter affidavit the respondents have conceded that the applicant's name was included as No.4 in the select list prepared in 1988 and the inclusion was provisional subject to ^{his being cleared in} the enquiry pending against him. They have also conceded that at the time of coming into force of the select list and 31.7.89 five vacancies in the IPS cadre of

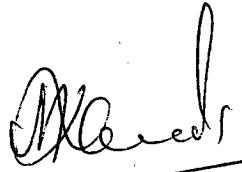
Kerala materialised. Accordingly the three officers above him in the select list were given temporary appointment to the I.P.S cadre posts under Rule 9 of the I.P.S(Cadre)Rules vide Annexure-A order dated 14.8.89. Later they were appointed to the I.P.S vide the notification dated 29.9.89. They have also conceded that the Tribunal in O.A 727/89 directed the respondents to initiate action to appoint the applicant and another officer to the I.P.S on the basis of inclusion of their names in the select list of 1988 as if the inclusion of the applicant's name was unconditional. Pursuant to the direction of the Tribunal the respondents promoted the applicant to a cadre post under Rule 9 of the I.P.S(Cadre)Rules vide the order dated 4.4.90 and later appointed him to the I.P.S vide the notification dated 26.4.1990. They have explained how the three officers above him in the select list got 1985 as the year of allotment by virtue of their earlier officiation in the cadre posts, while the applicant was given 1986 as the year of allotment, since there was no direction of the Tribunal to promote the applicant to the I.P.S retrospectively with effect from the date of occurrence of the vacancy. This is also not substantiated by any rules. They have, however, indicated that the applicant was promoted to the I.P.S with effect from 26.4.90 even though there was a vacancy with effect from 31.5.89. They have clarified that none of the juniors of the applicant in the 1988 select list has been appointed to the I.P.S and that there has always been a time lag between the date of occurrence of the vacancy and date of appointment to the I.P.S.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The respondents have given the following dates of occurrence of vacancy and dates of appointment to the I.P.S in respect of the applicant and the three officers senior to him in the 1988 select list:-

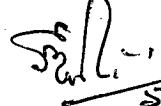
Sl.No.	Name of Officer	Date of occurrence of vacancy	Date of appointment to I.P.S.
1.	Shri N.I.David	11.9.88	29.9.89
2.	Shri Babu Cyriac	31.12.88	29.9.89
3.	Shri R.Viswanatha Pillai	30.4.89	29.9.89
4.	Shri Balakrishnan(applicant)	31.5.89	26.4.90 "

From the above it is clear that if the condition of clearance from the vigilance enquiry had not been there, the applicant's case ^{also} could have been taken up for consideration along with the three officers for inclusion in the select list. At the most he could have been appointed to the I.P.S along with the other three officers with effect from 29.9.89 which is the common date of appointment to I.P.S of these officers. In any case the applicant could not be promoted to the I.P.S with effect from the date of occurrence of vacancy i.e. 31.5.89 when those immediately above him were so promoted on 29.9.89. In the circumstances the maximum that could be given to the applicant is to antedate his promotion to the I.P.S from 26.4.90 to 29.9.89.

5. In the facts and circumstances we allow the application with the direction that the applicant should be deemed to have been promoted to the I.P.S with effect from 29.9.89. He should be so promoted with all consequential benefits of seniority including year of allotment and arrears of pay etc. from such a date of promotion to the I.P.S. There will be no order as to costs.


A.V. Haridasan
Judicial Member

26/9/


S.P. Mukerji
Vice Chairman

5.6.91

n.j.j