

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 177 of 1996.

Monday this the 1st day of September, 1997.

CORAM:

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

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

C. Madhavan,
Retired Superintendent of Police,
Vigilance Department, Northern
Range, Calicut. residing at:
Rejja, B.G. Road, Mankavu, Calicut. Applicant

(By Advocate Shri M.R. Rajendran Nair)

Vs.

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

2. State of Kerala represented by
Chief Secretary to Government,
Secretariat, Trivandrum. 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 1st September, 1997, the Tribunal on the same day delivered the following:

ORDER

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

Applicant while working as a Superintendent of Police 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 Sl.No.3 in the list. The list was approved by the Union Public Service Commission (UPSC for short) on 12.2.88. It is not in dispute that there was a vacancy which arose on 31.8.87. The persons at Sl.No.1&2 in the Select List were appointed to the IPS in March 1988 against vacancies which arose on 30.4.87 and one vacancy out of two vacancies which arose on 31.8.87. The position, therefore,

is that in March 1988 there was one of the two vacancies which arose on 31.8.87 still unfilled, the first two persons in the Select List which was then in force had already been appointed against the earlier vacancies and the applicant was the next person in the Select List to be appointed to the vacancy which was then in existence and which had arisen on 31.8.87.

2. However, the applicant was appointed to the IPS only in October, 1988. By that time, the amended seniority rules for the IPS had come into force on 27.7.88. Because of this, the seniority of the applicant was fixed under the amended rules and the year of allotment fixed was as 1984 in A-1 order appointing him to the IPS. The grievance of the applicant is that if his appointment to the IPS had been done in time, immediately after the first two persons in the Select List had been appointed, then he would have been governed by the unamended seniority rules and his year of allotment would have been 1982, like the two persons in the Select List already appointed. The applicant approached this Tribunal in O.A. 805/92 challenging the year of allotment given to him as 1984 and the Tribunal held:

"After hearing the counsel on both sides and in the light of the facts already brought to our notice by the applicant, we are unable to sustain the views taken by the respondents in the impugned orders. We are of the view that the respondents have not considered the claim of the applicant for getting the date of allotment to IPS Cadre as claimed in this O.A. The first respondent shall consider the matter and pass orders fixing the correct year of allotment of the applicant taking into consideration above observations and the statements in the representation."

3. The 1st respondent thereupon passed the order A-7 dated 9.5.94 (forwarded to applicant by A-8) in which we find a cryptic order stating that in pursuance of the judgement in O.A. 805/92 the representation of the applicant was considered in the light of comments furnished by the State Government and it has not been found possible to accede to his request for assigning a higher seniority under the old seniority rules. This was challenged by the applicant in O.A. 1044/94. The Tribunal noticed that the seniors in the Select List had been promoted with effect from 25.3.88 and their year of allotment had been fixed as 1982 in accordance with the 1954 rules of seniority. Since at that time a representation was pending with the State Government the Tribunal disposed of the application directing the second respondent therein to pass appropriate orders on the representation. A-11 dated 29.11.95 was passed as a consequence. It states:

".....There is no provision in the Indian Police Service (Appointment by Promotion) Rules, 1955 to make appointment retrospectively. Moreover, when a new Select List is prepared no appointment can be made from previous Select List....."

Applicant has challenged this order and prays that the order be quashed and that he be declared entitled to have his year of allotment refixed taking into consideration his period of continuous officiation in the IPS Cadre Post from 1986 onwards with consequential benefits. The applicant has since retired from service.

4. The 1st 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 in September 1988 after the new Seniority Rules had come

into force and that he was appointed to the IPS with effect from 13.10.1988 and his seniority fixed under the amended rules which were in force on that date. Counsel for 1st respondent also submits that there is no provision in the Rules for retrospective appointment to IPS and that there is no right to appointment by virtue of inclusion in the Select List.

5. The second respondent (State Government) has submitted that during 1987 there were vacancies in the promotion quota of the IPS and Shri M.C. Geevarghese and Shri T. Raghavan Nair Sl.No. 3 & 4 in the 1986 Select List were given temporary appointment under Rule 9 of the Cadre Rules against Cadre Posts by order dated 8.5.1987. Proposals for their appointment to the IPS were forwarded to the Government of India on 9.12.87. In the meantime the Selection Committee for 1988 had met on 18.12.1987. Therefore, the two persons mentioned above were not appointed to the IPS but they were considered again by the next Selection Committee. They were included at Sl.No.1 & 2 in the new Select List and the applicant was included at Sl.No.3. The question of appointing Shri M.C. Geevarghese and Shri T. Raghavan Nair, was again taken up with the Government of India on 19.3.88 and they were appointed to the IPS on 25.3.88. The appointment of the applicant to the IPS was not taken up then because he was given temporary appointment against the cadre post only on 16.5.1988.

6. 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. As mentioned above, the list of vacancies had already been noticed by the Tribunal in O.A. 805/92 and the first two persons in the Select List would have been

appointed against the vacancies which arose on 30.4.87 and one of the two vacancies which arose on 31.8.87. There was the second vacancy which arose on 31.8.87 available for the next person on the Select List who was the applicant. 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 statement of second respondent in the reply that appointment of the applicant to the IPS was not taken up along with Sl.No.1 & 2 on the ground that he had not yet been given a temporary appointment, cannot be accepted since there is no rule which requires that a person be first given a temporary appointment to a cadre post before he can be considered for appointment to the IPS. It is, therefore, clear that even on 19.3.88 when Sl.Nos. 1 and 2 in the Select List were recommended for appointment to the IPS there was nothing standing in the way of the applicant being so recommended for appointment to the IPS against a vacancy which was then in existence, in accordance with his position in the Select List which was then in force.

7. 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. Though the second respondent has filed a lengthy reply running to 12 pages there is no whisper of any

reason why the recommendation with respect to the applicant was held up for six months. As noticed above, the statement made by the second respondent that the case of the applicant could not be taken up because he was given a temporary appointment only on 16.5.88 cannot be accepted since there is no such provision in the rules. Even if the statement of the 2nd Res. is to be taken into consideration as the reason for the delay, there is nothing standing in the way of the second respondent recommending the case of applicant on 16.5.88 and there is no explanation for the delay from 16.5.88 to September 1988 when the recommendation was finally sent. 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 ~~kick~~ came into force. There was only a gap of 6 days between recommendation and appointment in the case of Sl.1 and 2 in the Select List, and by the same yardstick, if the recommendation in respect of the applicant had been sent even as late as 16.5.88, he could have been appointed to the IPS on 22.5.88 well before the amended seniority rules 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 clear picture is that two persons in the Select List were given the year of allotment of 1982 and the next person in the same select list was given the year of allotment of 1984, even though the vacancies against which they were appointed were already existing well before the Select List in question was approved. The denial of the year of allotment

of 1982 to the applicant therefore, is a case of gross discrimination and cannot be sustained.

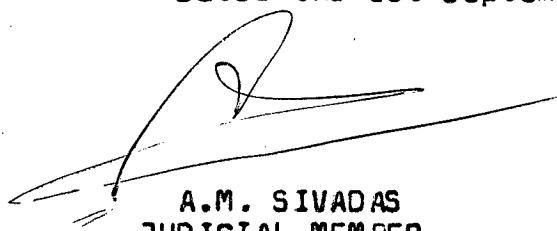
8. Learned counsel for 1st respondent also cited a decision in Union of India Vs. S.S. Uppal & another (JT 1996 (1) SC 258) to support the contention that the applicant has to be governed only by the amended seniority rules. We find that in that case the respondent was placed in the select panel for appointment to the Indian Administrative Service and a vacancy arose on 1st February 1989. The respondent therein was appointed on 15.2.89 but in the meanwhile the provisions of the Indian Administrative Service (Regulation of Seniority) Rules, 1987 were amended on 3.2.1989. The delay after the vacancy arose was only 15 days. The Supreme Court stated that it cannot be said that there was unusual delay in appointing him to IAS by which he could be said to have been prejudiced. The facts in this case are totally different and we find that there was a large, totally unjustified and unexplained delay on the part of the State Government which caused considerable prejudice to the applicant. According to the instructions issued by the Government of India dated 3.5.84, the State Government should send proposals for making appointment to IPS on the basis of the Select List immediately on occurrence of vacancies in the promotion posts. Despite these instructions a delay of six months was allowed to occur which resulted in a loss of two years in seniority of the applicant.

9. In the light of the discussion above, we are unable to sustain the impugned order A-1 to the extent it fixes the year of allotment of the applicant as 1984, and the impugned orders A-7, A-8 and A-11. We declare that the applicant is entitled to have his seniority fixed in terms of the unamended

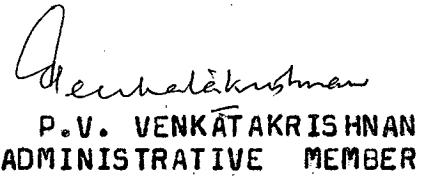
Indian Police Service (Regulation of Seniority) Rules 1954, by giving retrospective appointment to the applicant with effect from the date on which his immediate senior was appointed viz., 25.3.88. Applicant would be entitled to all consequential benefits including refixation of year of allotment and promotion based on the revised year of allotment.

10. Application is allowed as aforesaid. No costs.

Dated the 1st September, 1997.



A.M. SIVADAS
JUDICIAL MEMBER



P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

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