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CENTRAL ADMINISTRATIVE TRIBUNAL: LUCKNOW BENCH:

LUCKNOW

Lucknow this the 11th day of December 1997.
Original Application No.104 of 1989(L).

HON. MR. V.K. SETH, A.M.

HON. MR. D.C.VERMA, J.M.

R.K. TRIVEDI S/o late Sri M.L. Trivedi
R/o B-2035, Indira Nagar, Lucknow.

..Applicant

Versus

1. Union of India-through-
Secretary to Govt., Ministry of Home Affairs,
Government of India, New Delhi.
2. The Union Public Service Commission,
New Delhi -through-its Chairman.
3. The State of Uttar Pradesh-through-
Secretary to Govt., (Home(Police)Department,
U.P. Civil Secretariate, Lucknow.
4. Director General of Police, Uttar Pradesh,
Lucknow.

..Respondents

For applicant: Sri T.N. Saxcena, Adv.

For Respondents

Union of India: Dr. D. Chandra, Adv.

State of U.P.: Sri Anoop Kumar, Adv.

O R D E R

V.K. SETH, MEMBER(A)

Vide this O.A. the applicant has prayed that he be held entitled for regular promotion to the I.P.S. Cadre on the basis of Select List for the years 1983 & 1984 against the vacancies existing before December 1985 and accordingly direct the respondents to promote him with seniority and other consequential benefits. Some other reliefs were also prayed for in the O.A. but were subsequently dropped

as not pressed during the course of hearing of the matter.

2. Respondents have contested the claim of the applicant and pleadings have been exchanged between the two sides, which have been carefully perused by us. We have also taken note of the submissions of the rival contentions of the learned counsel.

3. Material facts of the case are under:

The applicant belongs to 1962 batch of the State Police Service. According to the averments in the O.A., for selecting State Police Officers for promotion to the I.P.S. Cadre meetings of the Selection committee were held in 1981 and 1982 and Officers in the Select List of 1982 were given promotion to I.P.S. in 1983. The applicant's name was not included in the Select List of 1982. As, according to him, his performance had remained outstanding and excellent, he enquired and came to know that an adverse remark was recorded in his A.C.R. of the year 1978-79. He, therefore, represented and was informed that no vigilance enquiry was pending against him and regret was expressed for the remarks made in the A.C.R.

4. As per averments in the supplementary affidavit of the State of U.P., respondents no.3 i.e. the State Government through a radiogram dated 8.11.83 informed the U.P.S.C. that there were 9 existing vacancies and one anticipated and also sent a proposal to the Government of India to appoint six candidates of the last Select List. Simultaneously informing that if the said appointments are made, there will be three existing and one anticipated vacancy. Six candidates of the last Select List were appointed. In view of the 4 vacancies projected a
was
Select List of 12 persons/prepared on 22.12.83 by the Selection Committee. According to the applicant he

figured at serial no.4(though according to the respondents at serial no.3) and, therefore, within the vacancies intimated to the U.P.S.C. The Select List was approved by the U.P.S.C. on 29.3.84 and the State Government on 11.6.84 wrote to the D.G.(Police) for sending proposal for the appointment of Select List Officers. However, no proposal was received before the preparation of the Select List of 1984 and, therefore, no appointments were made from the Select List of 1983. Again on 27.8.84 the State Government sent a proposal to the U.P.S.C. informing of four existing vacancies and three anticipated vacancies. The meeting of the Selection Committee, which was held on 12.12.84, therefore, prepared a Select List of 14 Officers & the applicant's name figured at serial no.4. This list was approved by the U.P.S.C. on 29.4.85 and intimation about the same was sent by the Government of India to the State Government through its letter of 17.6.85. The then Director General(Police), U.P. sent the proposal for appointments to the I.P.S. from this list on 21.1.86 i.e. after the preparation of the ^{Select List of} 1985 in the month of December 1985. In view of the provisions of I.P.S.(Appointment by Promotion) Regulation, no appointment could be made from this Select List of 1984 as well. As far as the Select List of 1985 is concerned, a proposal was sent to the U.P.S.C. informing about 8 existing & 9 anticipated vacancies. This Select List was prepared but did not include the name of the applicant. However, before this Select List of 27.12.85 could be finalised and promotion orders issued a writ petition No.1549/85 in re Bharat Singh and Another versus State of U.P. and another was filed in the Hon'ble High Court of Judicature at Allahabad and interim order was passed by the High Court staying further promotion from that list. This writ petition was transferred to the Supreme Court to be decided along with other writ petitions. On 4.11.85 the Hon'ble Supreme Court decided the matter and stay order was vacated. Thereafter the State

Government approached the U.P.S.C. for approval of the Select List of 27.12.85. Finally appointment orders of 29 persons from this were issued on 15.12.89. One Pratap Singh challenged the appointment of certain persons out of this list. The O.A. in re Pratap Singh vs. Union of India & 20 Others bearing no.337/90 was decided by Allahabad Bench on 17.8.90. These facts have been culled out from the judgment in the said O.A.

5. The applicant has alleged violation of provisions of Article 14 & 16 of the constitution of India on the grounds of arbitrariness and discrimination. He has also alleged violation of provisions of Regulation 7(3), 8(1) and 9 of the I.P.S.(Appointment by Promotion) Regulation in not giving him regular promotion to I.P.S. in vacancies existing before December 1985. Contravention has also been alleged of Regulation 5(1) and 5(6) on account of giving effect to Select List of 1985 without reviewing and revising the earlier lists. The applicant has further argued that adverse remarks for the year 1984-85 should not have been taken into account as the same were not communicated and were represented against. He has also referred to his representation of 14.12.83 regarding non-inclusion of his name in the Select List of 1981 & 1982 and the representation dated 18.11.85 against the adverse remarks of 1984-85. The applicant also claims that he has been continuously officiating as S.P.(Police) in senior scale of I.P.S. as per provisions of Rule 9 of the I.P.S. Rules 1954 and Regulation 8(2) of I.P.S.(Appointment by Promotion) Regulation, 1955 since 10th of March 1977 i.e. for more than 12 years.

6. In their counter affidavit the State Government have admitted that the applicant's name was included in the Select List of 1983 & 1984. As regards the applicant's contention of his officiating promotion, they have, however, argued that he was promoted in a purely temporary and ad hoc capacity.

I.P.S. because of Hon'ble High Court's stay order dated 16.1.86. It is also contended that when the period of the Select List is over and the name of Officer is not on the next Select List, he is liable to be reverted to his substantive post.

7. Various case laws have been cited by both the sides and in the supplementary affidavit of the State of U.P., filed by the respondent no.3, an objection has been raised that the O.A. was liable to be rejected for non-joinder of parties as the applicant has not impleaded persons, who were appointed to the I.P.S. from the Select List of 1985.

8. The relief, as claimed by the applicant, now lies in a narrow compass. In short, his claim is that since his name in the Select List of 1983 figured within the number of vacancies intimated, he is entitled to ^{appointment to} I.P.S. on the basis of the Select List of 1983.

9. We may first take up the preliminary objection now raised by the respondents regarding non-joinder of necessary parties. We do not find any merit in this contention of the respondents as the applicant has since retired in August 1996 and any relief, which may be granted to him, is not likely to have any adverse consequences on those who continue to be in service.

10. Coming now to the merit of the claim of the applicant, we note that the ratio deci dendi of the judgment of this Tribunal in O.A.No.337 of 1990 itself lends support to the claim of the applicant. After a detailed discussion of the provisions of the Regulations and the judgment of the apex court in the case of Union of India & Others versus M.L. Kapoor it was held that the Select List has to be framed on the basis of yearwise vacancies and not on

the basis of vacancies of several years clubbed together. Following this ratio the respondents were directed to convene a meeting of the Selection Committee and to take appropriate action for preparation of Select List on the basis of yearwise vacancies. This judgment of the Tribunal was rendered on 17.8.90. Subsequently on 20.11.92 a three Judge Bench/ of the Hon'ble Supreme Court in the case of Syed Khalid Rizvi & Others versus Union of India & other connected cases reported in 1993 Supplement-3 S.C.C. 575 has discussed the earlier judgments of the apex court in the following cases:

(1) Union of India & Others versus M.L. Kapoor, (1973) 2 SCC 836.

(2) A.N. Sehgal versus Raja Ram Sheoran, 1992 Supp.(1) SCC 304.

The relevant observations of Their Lordships as contained in paras 9 & 34 are reproduced below:

(P-9) " The appointment to the cadre posts should be made by the Central Government in the order in the list on the recommendation of the State Government. The word "may" in Regulation 5 indicates that the Committee ordinarily meets at intervals not exceeding one year. Though the word "may" indicates that it is not mandatory to meet at regular intervals, since the preparation of the select-list is the foundation for promotion and its omission impinges upon the legitimate expectation of promotee officers for consideration of their claim for /promotion as IPS officers, the preparation of the select-list must be construed to be mandatory. The committee should, therefore, meet every year and prepare the select-list and be reviewed and revised from time to time as exigencies demand. No officer whose name has been entered in the list has a vested right to remain in the list till date of appointment. The list would be liable to shuffle and the name may be excluded from the list on the comparative assessment of merit, ability and suitability based on the anticipated or expected availability of the vacancies within quota etc. The junior may supersede the senior and may be ranked top."

(p-34) " This Court in Mohan Lal Kappor case held that the Committee shall prepare every year the select-list and the list must be submitted to the UPSC by the State Government for approval and thereafter appointment shall be made in accordance with the rules. We have, therefore, no hesitation to hold that preparation of the select-list every year is mandatory. It would subserve the object of the Act and the rules and afford an equal opportunity

to the promotee officers to reach higher echelons of the service. The dereliction of the statutory duty must satisfactorily be accounted for by the the State Government concerned and this Court takes serious note of wanton infraction."

11. In the present case as already mentioned(supra), the applicant's name figured at Sl.no. Sl.no.3 in 1983 list when there were four vacancies. It is nobody's contention that these vacancies cease to exist on account of any or any other reason reduction in posts. The facts are clearly otherwise and despite the decision by the government to operate the said Select-List appointment orders could not be issued on account of failure on its part or the part of the D.G.(Police) to take timely action until it was, too late and the preparation of the next panel made it impermissible as per provisions of the Regulations to make appointments from the previous panel.

12. In the present case separate panels for 1983 and 1984 vacancies were prepared but the same could not be utilised for filling of the vacancies of the respective years, which apparently got merged in the vacancies of 1985, the panel for which could not be operated due to subsequent developments culminating in the filing of a writ petition.

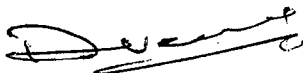
13. As the apex court has already laid down that compliance of the provisions of the Regulation makes it mandatory to prepare yearwise Select-List, a corollary of this dictum is that the vacancies arising in the respective years should also be filled on the basis of the corresponding Select-List, which was apparently not done in the present case.

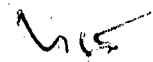
14. Viewed in this perspective we do not

consider it necessary to go into details of other contentions of the applicant & the respondents. The aforesaid ground alone imparts strength to the case of the applicant.

15. Considering the conspectus of the case and the foregoing discussions, we find merit in the claim of the applicant. The respondents are, therefore, hereby directed to treat the applicant as appointed to the I.P.S. on the basis of the 1983 Select-List. He shall also be entitled to consequential notional benefits of seniority and consideration for /further promotions as also fixation of pension on that basis. However, keeping in view the aspect of the limitation, the actual benefits of arrears of the difference in pay shall be restricted to one year before the filing of the present O.A. Full arrears in respect of difference in pension shall, however, be admissible. These orders shall be complied with within a period of six months.

16. The O.A. is allowed in the above terms with no order as to costs.


MEMBER(J)


MEMBER(A)

Dated: Lucknow: December 11, 1997.

Narendra/-