

**Central Administrative Tribunal
Lucknow Bench**

MP No.755/2006
Diary No.958/2006

OA. 119/09

Lucknow this the 18th day of March, 2009.

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Dr. (Mrs.) Veena Chhotray, Member (A)

1. Gopal Nath Goswami, S/o late R.N. Goswami, aged about 50 years, R/o 5.1238, Viram Khand, Gomti Nagar, Lucknow.
2. Vijay Yadav, S/o late Jai Ram Yadav, aged about 49 years, R/o Village Batthi, Sakaldiha, Distt. Chandauli, U.P.

-Applicants

(By Advocate Shri Akhilesh Kalra)

-Versus-

1. Union of India through Secretary, Ministry of Home Affairs, Civil Secretariat, New Delhi.
2. Union Public Service Commission, Dholpur House, New Delhi through its Secretary.
3. Chief Secretary, Govt. of UP, Lucknow.
4. Principal Secretary (Home), Govt. of UP, Lucknow.
5. Director General of Police, UP, Lucknow.
6. Vinod Kumar Dohre, presently posted as Deputy Commandant, 15 Battalion, PAC, Agra.
7. Krishna Mohan, presently posted as Supdt. of Police, Jalaun.

(By Advocates Shri S.P. Singh (R-1), Shri Pankaj Avasthi for Shri A.K. Chaturvedi (R-2&5) and Shri A.R. Masoodi (R-6&7))

O R D E R

Mr. Shanker Raju, Member (J):

This OA is being adjudicated in respect of applicant No.2, Vijay Yadav. Through this OA applicant has impugned respondents order dated 10.2.2006, whereby one Vinod Kumar Dohre and Krishna Mohan have been placed in the select list.

Setting aside of the select list and quashing of the condition imposed in respect of applicant at serial No.10-A of the list is the claim propagated.

2. A brief factual matrix transpires that applicant Vijay Yadav was selected for the post of Deputy Superintendent of Police in State Police Service by U.P. Public Service Commission, Allahabad and was posted as Additional Superintendent of Police. However, on 26.11.2002 on bifurcation of State of UP the applicant was proposed to be allocated to Uttranchal though the applicant does not belong to hill cadre. A Writ Petition NO.52494/2002 was filed before the High Court of Allahabad, challenging the proposal of allocation of Uttranchal State. However, the Writ Petition was dismissed on 11.12.2003 against which SLP No.24221-24243/2003 were filed before the Apex Court, wherein the Apex Court passed an interim order on 19.12.2003 whereby the allocation and transfer of the applicants from the State of UP to Uttranchal was stayed till further orders. However, the final allocation of the applicants was done by the DoP&T by an order dated 30.10.2006. Appointment by Promotion from State Police Service to Indian Police Service is governed by the Indian Police Service (Appointment by Promotion) Regulations, 1955 and accordingly a select list was prepared of the year 2005, where notification dated 10.2.2006 shows that subject to the final outcome of the SLP applicant was empanelled at serial No.10A*** with an endorsement that the name of applicant was included in the list in addition to the normal size of the select list as he has obtained stay from the Apex Court and his actual appointment shall depend upon the outcome of these cases and vigilance

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clearance at the relevant time. It is further endorsed in the order that recommendation of the selection committee in respect of applicant who has been included in the list of 2005 shall be subject to the final outcome of the cases pending before the Apex Court and the inclusion of the names of the officers at serial Nos. 12 and 13 in the select list shall also be affected by the outcome of the aforementioned cases pending before the Apex Court. It is made clear that the officers at serial Nos. 12 and 13 shall be shifted to make way for serial No. 9A and 10 A and after the applicant is appointed to UP cadre of IPS in future on the basis of the outcome of the cases pending before the Apex Court though initially applicant has challenged the condition yet with the changed circumstances when he has been allocated to UP cadre and SLP has been withdrawn as dismissed, a supplementary affidavit shows that non issue of the appointment order on promotion to applicant in IPS cadre was only on the ground that the final allocation was not determined. It is stated that as the applicant was considered by the Central Government for final allocation to the State of UP and order has been subsequently passed the SLP was dismissed only on account of consideration of applicant for final allocation. Applicant, who has been allocated to State of UP w.e.f. 9.11.2000 got his SLP withdrawn and as no departmental enquiry or vigilance enquiry is pending he claims his appointment on promotion. However, representation of applicant in whose context Govt. of UP by a letter dated 20.11.2006 had recommended his case for further processing his claim for promotion, it was acknowledged that he was not facing at present any disciplinary proceedings or vigilance enquiry, yet the Ministry

of Home Affairs by an order dated 19.3.2007 after taking cognizance held that the request of applicant for promotion on appointment cannot be acceded to, as the select list already finalized requires revision so that name of applicant is to be included at serial No.11 of the select list within the normal size and officers at serial No.11, 12 and 13 were to be shifted below by one place, removing Shri Krishna Mohan out of the select list for which there is no statutory provision in the IPS (Appointment by Promotion) Regulations which empowers Government of India or the UPSC to suo moto review or revise a select list.

3. Applicant's counsel states that the respondents cannot approbate and reprobate simultaneously, as there is provision in the IPS Promotion Rules 1955 to include conditionally name of any officer duly selected in the select list, which is prepared post selection. As the applicant's appointment has been kept pending and the fate of other officers was dependent upon the outcome of the Apex Court decision which in fact a genesis of allocation of applicant, which when ultimately acceded to by the Central Government by allocating applicant from November 2000 in State of UP the only impediment and condition being fulfilled the assertion of the respondents, the promise and the conscious decision taken at the highest level should have to be respected by invoking the principle of estoppel. It is stated that if MHA and UPSC have no right to amend or review the select list the decision to include the names Vinod Kumar Dohre and Krishna Mohan is illegal as they cannot include a condition in the select list.

4. Learned counsel would also contend that in the past UPSC and MHA have promoted many officers on 7.6.2005 and the name

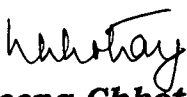
of Sugriv Giri was included unconditionally in the select list of 2001 approved on 6.2.2004.

5. On the other hand, respondents took the plea of non-challenge to the order dated 19.3.2007 and stated that for want of rule applicant cannot now be included in the select list.

6. We have carefully considered the rival contentions of the parties and perused the material on record. Right to be considered, for promotion, on fair and equitable basis, as per the rules, is a Fundamental Right guaranteed to a government servant. This cannot be deprived on flimsy and untenable grounds. No doubt, for State Police officers induction into IPS is governed by the set of rules but the select list as per Rule 7 is prepared by the Commission and as per Rule 3 any person whose name is included to issue with a charge-sheet the select list has to be deemed to be provisional. However, in the present case the select list was prepared by the respondents and in the wake of State from being allocated and the matter sub judice before the Apex Court though name of the applicant was included in the select list, yet it has been subjected to final outcome of the Writ Petition. A Writ Petition, which is the basis of this decision but the matter and cause of action involved, which is allocation of the applicant, as the applicant has already allocated to State of UP the Writ Petition was withdrawn. As such, while the applicant has reserved his right to be considered for appointment and having fulfilled the condition as the SLP was dismissed the respondents have to respect and abide their own decision by considering the claim of applicant for promotion by way of appointment to IPS and as the promotion on appointment of others has been subjected to the outcome and the

shifting of the officers has also been envisaged, decision by the Govt. cannot resile from its stand. If the rules do not stipulate, as contended by them, to review the list it also do not stipulate imposition of any condition, they cannot blow hot and cold in the same breath, having reserved the right of applicant in the wake of Fundamental Right he has a right to be now considered for appointment though this right may be subjected to vigilance clearance as envisaged under the Rules. We also find invidious discrimination meted out to the applicant as under similar circumstances^u applicant No.1 Shri Goswami on being allocated State and despite being conditionally empanelled in the select list was appointed by way of promotion to the IPS, whereas the same is not done in the case of the applicant without any reasonable justification.

7. Accordingly, this OA is allowed to the extent that respondents are now directed to consider appointing the applicant to IPS on the basis of his having empanelled in the select list of 2005 from the due date with all consequences in law, but it may be subject to all formalities envisaged under the Rules. The methodology so adopted shall conform to their order dated 10.2.2006. These directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.


(Dr. Veena Chhotray)
Member (A)


(Shanker Raju)
Member (J)

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