

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Tr. Application No.112/86.

Shri S.T.Raman,
Deputy Commandant General,
Home Guards,
Government of Maharashtra,
3rd Floor, Old Secretariat
Annexe, M.G.Road,
Bombay.400 001.

... Applicant

V/s.

1. The State of Maharashtra,
2. The Chief Secretary to the Government of Maharashtra, Mantralaya, Bombay.400 032.
3. The Secretary (Law and Order) Home Department, Government of Maharashtra, Mantralaya, Bombay.400 032.
4. The Union of India, Ministry of Home Affairs, New Delhi.
5. S.K.Verma, Commissioner Intelligence C.I.D. Bombay.

... Respondents.

Coram: Hon'ble Vice-Chairman, B.C.Gadgil,
Hon'ble Member(A), J.G.Rajadhyaksha.

Appearances:-

Mr.R.A.Dada and
K.Y.Mandlik for applicant,
Mr.M.I.Sethna for
Respondents.

JUDGMENT:-

(Per B.C.Gadgil, Vice-Chairman)

Dated: 28th January, 1987

The applicant had filed Writ Petition No.75 of 1986 in the High Court of Bombay and the said Writ Petition was transferred to this Tribunal. Accordingly, it is now numbered as Transferred Application No.112/86.

2. The applicant who belongs to the Indian Police Service is challenging the Government's decision

whereunder he was not selected and promoted to hold the post of Special Inspector General of Police.

3. There are certain facts over which there cannot be much dispute. On the basis of a Competitive Examination held in 1957, the applicant was selected to the Indian Police Service; his year of allotment in such service was 1957. In the All India Seniority, he was placed at Sl. No.46, while Respondent No.5 who is also a member of the Indian Police Service was placed at Sl.No.55 both of them have been allotted to the State of Maharashtra, and in the State Cadre seniority list the applicant stands at Sl.No.58 and the Respondent No.5 is at Sl.No.59. In due course, the applicant was promoted as Superintendent of Police in 1963, and was confirmed in the Senior Time Scale in 1968. In 1974, he was promoted to the Selection Grade of Superintendent of Police. The next promotional post is that of Deputy Inspector General of Police. In 1977, Respondent No.5 was promoted to that post. However, the applicant was not so promoted. The applicant's case is that this was done as some enquiry was going on against him and that after the termination of that enquiry he was held to be at no fault and he was promoted as Deputy Inspector General of Police on 19.3.1981. The Respondents contend that the promotion was not withheld on account of any enquiry, as such, but he could not be given such promotion in 1975 and 1977 as he was not found fit. However, that aspect is really not material in this litigation. On 3rd January, 1983, Respondent No.5 was promoted as D.I.G. Level.I. The applicant was also promoted to this post of D.I.G. Level.I w.e.f. 8.6.1983, though the order

has been passed on 28.2.1985.

4. In June, 1985, it was necessary for the Government to consider the Police Personnel for the next selection post of Special Inspector General of Police. The Government of India has formulated some guidelines. These guidelines are at Annexure 'E' to the Petition (vide pages 31 to 35 of the compilation). Under these guidelines, the question of selection of the members of the Indian Police Service is considered by a screening committee; this is popularly known as Establishment Board in Maharashtra. So far as the post of Special Inspector General of Police is concerned, the guidelines prescribe that, an Officer who has put in 8 years of service in the Grade of Deputy Inspector General or Additional Inspector General would fall within the zone of consideration. It is not in dispute that the State of Maharashtra placed name of the applicant before the Establishment Board in June, 1985 for consideration for selection to the post of Special Inspector General of Police. Respondents Nos. 1 to 3, have however, contended in paragraph 3(a) of the reply that the said Establishment Board did not consider the case of the applicant. Respondent No.5 was selected at that time. In October, 1985 there was another occasion for filling the post of Special Inspector General of Police. The Respondents contended that in October, 1985 the State of Maharashtra again placed the name of the applicant before the Establishment Board for consideration. However, at that time on consideration of the case of the applicant, the Establishment Board

did not find the applicant suitable for that post. Thus the applicant was not considered at all for the selection in June, 1985 and was rejected after consideration in October, 1985. These two actions of the Respondents are being challenged before us.

5. A number of contentions have been raised by the applicant in this application. Rule 3(2A) of the Indian Police Service (Pay) Rules, 1954 provides as to how selection to such posts should be done. It says that the selection would be on the basis of merit with due regard to seniority. There is a proviso to this rule that no member shall be eligible to have the Selection Grade unless he has entered 14th year of service on the basis of year of allotment assigned to him. The applicant contends that the guidelines mentioned above are void, inasmuch as the Government, without altering the rules, have prescribed an additional eligibility clause that an Officer must put in 8 years of service either as Deputy Inspector General of Police or as Additional Inspector General of Police (i.e. D.I.G. Level.I) before he can be considered for promotion as Special Inspector General of Police. It was next contended that 3 other Officers namely Shri Chaturvedi, Shri Kasbekar and Shri S.P.C.Joshi, have been promoted as Special Inspectors General of Police even before they had completed the 8 years service mentioned in the guidelines. The argument is that this would show that the guidelines are not mandatory and that there cannot be any discrimination by which the guidelines are applied to one Officer, while they are not so applied to others. There is also a mention of Rule.4 of the

Indian Police Service (Regulation of Seniority) Rules, 1954 which provides that the seniority originally granted to an Officer cannot be changed even if his junior is promoted earlier. On merits, it was contended that the applicant is quite fit to be selected for the post and that he has been wrongly refused such selection. It was argued that certain posts of Deputy Inspector General of Police Level. I have been upgraded and the persons selected for the posts of Special Inspectors General have been asked to do the work of such upgraded posts. It was, therefore, urged that the applicant who was selected to hold the post of Deputy Inspector General Level. I from 1983 should have been found fit for being selected for the post of Special Inspector General. These are the main grounds on which the applicant relies. During the pendency of this application, the applicant has also filed an Amendment Application (Miscellaneous Petition No.75/86). That application was allowed. We would refer to this amendment later during discussion of the rival contentions.

6. The applicant has prayed that the promotion of Respondent No.5 be quashed and that the Respondents Nos. 1 to 3 be directed to promote the applicant to the rank of Special Inspector General of Police. A prayer was also made that the above mentioned guidelines may be quashed and set aside as being inconsistent with the statutory rules regarding selection to the post of Special Inspector General of Police. By amendment, the applicant has claimed additional relief that the decision of the Establishment Board in October, 1985 that applicant was found un-suitable for the post be quashed.

7. Respondents Nos.1 to 3 have filed reply to the unamended application. It was admitted that in June, 1985 the name of the applicant was placed before the Establishment Board for consideration, but it was also further stated that the said Board did not consider the case of the applicant at that time. It was then alleged that in October, 1985 the Establishment Board considered the name of the applicant and found him un-suitable. There is no specific reply, as regards the other contentions namely that the guidelines are void or that the three officers Chaturvedi, Kasbekar and S.P.C.Joshi were considered by the Establishment Board for the posts of Special Inspectors General though they had not completed 8 years of service as mentioned in the guidelines. By the amendment it was pleaded, amongst other things, that the Establishment Board was bound to consider the case of the applicant in June, 1985. The Respondents Nos.1 to 3 have not filed any reply to this amendment. We may also observe that Respondents Nos. 4 and 5 have not filed any reply.

8. It was contended by Shri Dada that the guidelines would be administrative instructions, which provide an additional qualification for considering selection of officers to certain superior posts. According to the additional qualification so provided there is the requirement of 8 years of service in the Grade of D.I.G.II/D.I.G.I (Additional Inspector General of Police). The Learned Advocate for the applicant relied upon the decision of the Supreme Court in the case of State of Haryana V/s. Shamser Jang reported in A.I.R. 1972 S.C. 1546. The relevant head note reads as follows:

"Where the administrative instructions

issued by the Government add to the qualifications already prescribed by rules relating to promotion framed under Art.309, the instructions would undoubtedly affect the promotion of concerned officials and they would thus relate to their conditions of service. The Government is not competent to alter by means of administrative instructions the conditions of service prescribed by these rules."

It was contended by Shri Dada that the Rule.3(2A) of Indian Police Service(Pay) Rules, 1954 provides nothing more than merit together with seniority and that, therefore, an additional requirement of 8 years of service by an administrative order would be bad.

Mr.Sethna submitted that administrative instructions can be issued by way of supplementary and complementary instructions for carrying out the selection process.

Shri Sethna urged that a guideline of 8 years of service in a particular cadre would be incidental for the purpose of considering the seniority as contemplated by Rule 3(2A). Shri Dada did not challenge the legal position that the administration can issue instructions which would be supplementary and complementary to the Recruitment Rules. However, he urged that the additional requirement of 8 years of service in a particular post or cadre would not be a supplementary or complementary provision. According to him all persons who have entered the 14th year of service as mentioned in the proviso to Rule.3(2A) are eligible for consideration and an additional provision for the above mentioned service of 8 years would be an additional eligibility clause which the Government cannot prescribe by administrative instructions. His

another contention is that these guidelines are issued by confidential memorandum and that as laid down by the Bombay High Court in the case of Rambhau V/s. State of Maharashtra reported in 1985 Labour and Industrial Cases 1086, a confidential Circular can neither be rule nor can it be supplementary to the rule. In our opinion, all these submissions as regards the validity or otherwise of the guidelines need not detain us in this particular case. The reasons are as follows:

9. We have already observed that the Respondents Nos. 1 to 3 admit that the name of the applicant was sent to the Establishment Board for consideration in June, 1985. They further state that in spite of that, the applicant was not considered by the Board. The applicant has pleaded that the three other officers namely Chaturvedi, Kasbekar and S.P.C.Joshi had not completed 8 years of service and even then they were considered for the said posts. This averment is not challenged by any of the Respondents. Similarly, no reason has been given by the Respondents as to why these three officers had been considered by the Establishment Board, even though they had not completed 8 years of service in the requisite grade. Thus, here is a case where Respondents Nos. 1 to 3 took a decision to send the name of the applicant for consideration by the Establishment Board for selection to the post of Special Inspector General of Police. None of the Respondents have explained or put before the Tribunal the circumstances which prevented the Establishment Board from considering the applicant for the said post. This gathers more weight, particularly when three other Officers who had not completed 8 years of

service in the requisite grade had been considered by the Establishment Board. It is also material to note that the Respondents Nos. 1 to 3 have chosen to remain silent in their reply as to why this had been done, while Respondent No.4 has not at all filed any reply to the main application. Shri Dada is, therefore, right when he contends that in the peculiar facts and circumstances mentioned above a discriminatory and arbitrary treatment was meted out to the applicant when he was not considered by the Establishment Board in June, 1985. It is true that Mr. Sethna submitted that there must be some reasons and that too valid reasons for the above position. However, in the absence of any such reasons before us, we must hold that the Respondent's action was discriminatory and arbitrary vis a vis the applicant. In this background, it would be necessary to issue certain directions against the Respondents that the applicant's case should be considered as in June, 1985 for the post of Special Inspector General of Police. Shri Dada rightly urged that such consideration by the Establishment Board must be made without giving any importance^{to the position} that the applicant had not completed 8 years of service in the requisite post at that time. Similarly, the fact that the applicant was not found fit in the selection process of October, 1985 cannot also be taken into account by the Establishment Board. Respondent No.5 is a party to the application. The High Court has directed that subsequent promotions would be subject to the result of the application and that the persons so promoted during the pendency of the application should be informed accordingly, so that

such promotees, if they so chose, could get themselves added as parties. Hence the Respondents will have to make consequential amendments to the promotion of Respondent No.5 and other subsequent promotions in case the applicant is selected to hold the post of Special Inspector General of Police in the selection process of June, 1985.

10. Before closing, we may add that Mr.Dada relied upon the decision of the Supreme Court in the case of State of Gujarat V/s. S.Tripathy reported in 1986(2) S.C. 373. In that case an I.A.S. Officer was refused promotion. He made a grievance in that respect. However, during the pendency of the litigation, he resigned from service. The Supreme Court found that the applicant's (Tripathy's) case was not properly considered for promotion. The Supreme Court, however, instead of directing the Government to consider afresh the claim of the party, gave a declaration that Tripathy should have been given the necessary grade with effect from a particular date and that all monetary benefits arising therefrom should be paid to him. Shri Dada submitted that the applicant's record is clean and that he deserves to be selected. He wanted us to select the applicant to the post of Special Inspector General of Police and then to pass appropriate orders. In our opinion, the above mentioned decision of the Supreme Court was given on the basis of the peculiar facts of the case and the eloquent fact was that Tripathy had already resigned from service. As against this decision, there is an earlier decision of the Supreme Court in the case of *State of Mysore v/s. C.R. Sheshadri* reported in 1974 S.C. 460. The general principle as

regards the powers of the Courts in such matters is laid down by the Supreme Court and the relevant head note reads as follows:

"The power to promote an officer belongs to the Executive and the judicial power may control or review Government action but cannot extend to acting as if it were the Executive. The Court may issue directions, but leave it to the Executive to carry it out. The judiciary cannot promote or demote officials but may demolish a bad order of Government or order reconsideration on correct principles".

It cannot be forgotten that the selection to hold a particular post is primarily the responsibility of the Government and the decision has to be taken after taking into account all the relevant material. Hence all that can be done in this case is to issue a direction that the case of the applicant be considered, if it has not already been considered.

11. Thus the application partly succeeds. The Respondents Nos. 1 to 4 are directed to consider the case of the applicant as in June, 1985, for his selection to the post of Special Inspector General of Police. While considering it, no importance shall be given to the fact that the applicant had not completed 8 years service in the requisite grade as mentioned in the guidelines, or that he was found unfit in October, 1985. In case the applicant does get selected after due consideration of the position in June, 1985, it is needless to say that,

if necessary appropriate orders in respect of all other persons who have been promoted in June and October, 1985 and also during the pendency of the application will have to be modified. Parties to bear their own costs of this application.

B.C.Gadgil

(B.C.GADGIL)
VICE - CHAIRMAN

J.S.
(J.S.) RAJADHYAKSHA)
MEMBER(A).

Received copy
of judgment
of Mr.
(Anilicant)
28/12