

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.:

753/2000

T. S. Bhat, IPS

(by Advocate Shri G.K. Masaud)

VERSUS

Union of India & Ors.

(By Advocate Shri V.S. Masurkar - For Respondents 1-4

(By Advocate Shri K.K. Rai - For Private Respondents
(Shri Dalbir Singh - In person.

CORAM : Hon'ble Shri Justice S.R.Singh - Vice Chairman
Hon'ble Shri S.K.Agrawal - Member (A)

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library ? ✓


(S.R.Singh)
Vice Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Tuesday the 26th day of August, 2003

Coram: Hon'ble Shri Justice S.R.Singh - Vice Chairman
Hon'ble Shri S.K.Agrawal - Member (A)

O.A. 753 of 2000

T.S.Bhal,
I.P.S.,
Assistant Inspector General of
Police,
O/o Director General of Police,
M.S. Old Council Hall,
Saheed Bhagatsingh Marg,
Mumbai.
R/o 11, 'Gomti' Government Quarters,
Worli Seaface, Worli, Mumbai.

(By Advocate Shri G.K.Masand) - Applicant

Versus

1. Union of India
through the Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
 2. Union Public Service Commission,
Dholpur House, Shah Jehan Road,
New Delhi.
 3. Director General of Police,
Maharastra Police Headquarters,
Old Council Hall, Saheed Bhagatsingh Marg,
Mumbai.
 4. State of Maharastra
through the Secretary,
General Administration Department,
Mantralaya, Mumbai.
 5. Shri S.M.Sayad
 6. Shri S.P.Gupta
 7. Shri R.R.Mangaonkar
 8. Shri V.B.Lokhande
 9. Shri V.B.Boke
 10. Shri T.K.Chavan
 11. Shri S.S.Barve
 12. Shri Bipin Bihari
 13. Shri S.N.Pandey
 14. Shri D.Kanakratnam
 15. Shri Dalbir Singh
 16. Shri H.N.Nagrale
- (Respondents 5 to 7 belong to 1984
Batch & Respondents 8 to 16 belong to
1987 Batch of IPS and belong to
Maharastra Cadre through Respondent no.4)
(By Advocate Shri V.S.Masurkar) - For Respondents 1 to 4
(By Advocate Shri K.K.Rai) - For Pvt.Respondents
(Shri Dalbir Singh) - In person.
- GKJ

ORDER

By Hon'ble Shri Justice S.R.Singh, Vice Chairman -

The applicant who was inducted to the Indian Police Service, (IPS for short) by promotion, vide Ministry of Home Affairs notification No.I-14013/5/91-IPS-I dated 8.3.1991, is aggrieved by his placement in the seniority list notified vide Ministry of Home Affairs letter No.I-15016/10/93-IPS-I dated 26.5.1994.

2. The applicant has prayed, vide relief clause (e), for issuance of a direction to the respondents to assign him a position in the seniority list above respondents 5 to 14 based on the prayer clauses (b) or (c) or (d). Relief clauses (a) (b), (c) and (d) read as under:-

(a) That this Hon'ble Tribunal will be pleased to hold and declare that Applicant is governed by the Seniority Rules, 1954 which were in existence prior to 27.7.1988 when the said rules were amended in as much as Rule 3(3) of the amended rules specifically provide that the rules would be prospectively applied.

(b) That this Hon'ble Tribunal will be pleased to hold and declare that Applicant is entitled to count his seniority in the Indian Police Service from 1983 in as much as officers of 1983 batch of IPS (direct recruits) were promoted to senior scale (Superintendent of Police) in 1988 i.e. the same year when Applicant was also made to shoulder the responsibilities of the cadre post of Superintendent of Police from the same year 1988 even though he was promoted to the non cadre post of Superintendent of Police with effect from 26.8.1985.

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(c) In the event of this Hon'ble Tribunal declining to grant prayer (b), this Hon'ble Tribunal will be pleased to hold and declare that applicant is entitled to be assigned seniority position in the Indian Police Service w.e.f. 1985 on the basis that after completion of 8 years service in the Maharashtra Police Service in June 1988 Applicant was entitled to be considered for induction to Indian Police Service immediately after 1.1.1989 especially when vacancies were available for accomodating the Applicant but the Respondents had delayed the holding of the meeting of the Screening Committee.

(d) In the alternative to prayer clause (c) this Hon'ble Tribunal will be pleased to hold and declare that once the Applicant has been cleared by the Screening Committee, in its meeting held on 22.2.1990, Applicant is entitled to count his seniority from the year 1986 notwithstanding the fact that notification was issued on 8.3.1991 inducting the applicant to the Indian Police Service in as much as the delay in issuing the notification was on account of administrative part and not due to any fault of the Applicant."

3. The applicant was originally a member of Maharashtra Police Service to which he was inducted as a direct recruit Deputy Superintendent of Police on 1.6.1980 and confirmed on 31.12.1988.

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The seniority of the applicant in IPS has been determined in accordance with the provisions of the Indian Police Service (Regulation of Seniority) Rules, 1988. The case of the applicant is that his seniority in the IPS should be determined in accordance with the provisions contained in the Indian Police Service (Regulation of Seniority) Rules, 1954 {since been repealed by IPS (Regulation of Seniority) Rules, 1988} and that is what he has prayed for in relief clause (a) extracted above.

4. We have heard Shri G.K.Masand, learned counsel for the applicant, Shri V.S.Masurkar, learned standing counsel for respondents 1 to 4 and Shri K.K.Rai, learned counsel for private respondents other than Respondent no.15 (Shri Dalbir Singh) who argued in person.

5. The submissions made for the applicant on the merits of the case are two fold : First, that his year of allotment should be determined in accordance with rule 3 of the IPS (Regulation of Seniority) Rules, 1954, after taking into reckoning the service rendered by him on a non-cadre post of Superintendent of Police from 6th September, 1985 to 27th May, 1988 and on a cadre post from 30th May, 1988 onwards; Second, even if it be held that the IPS (Regulation of Seniority) Rules, 1988 would govern the determination of applicant's year of allotment and seniority, the direct recruit I.P.S. Officers, albeit assigned the same year of seniority i.e. 1987 as the applicant but appointed subsequent to

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08.03.1991, have been illegally placed above the applicant in the seniority list dated 26.05.1994. On the question of delay and laches in approaching the Tribunal, which issue was raised by the respondents as a preliminary issue, the Learned Counsel for the applicant has submitted that the Original Application was admitted after notice to the respondents and, therefore, the Tribunal would be deemed to have condoned the delay in filing the O.A. The respondent No. 15 and the Learned Counsel representing the rest of the respondents have, on merits of the case, submitted that the applicant having been inducted to the service on 08.03.1991 i.e. after the enforcement of the I.P.S. (Regulation of Seniority) Rules, 1988, would be governed by the provisions of these Rules and his year of allotment and inter se seniority have been rightly determined in accordance with the provisions of the said Rules and on question of delay, they have submitted that there being no specific order on delay condonation petition, the question can be raised even after admission of the O.A. for the question of limitation is a question of jurisdiction.

6. The cause of action in the instant case arose with the publication of the notification dated 26.5.1994 (Exhibit -A-1) but the Original Application in hand came to be filed on 29.9.1990. Though there is no prayer for quashing the impugned seniority list issued vide Notification dated 26.5.1994 but the real grievance of the applicant is against the said seniority

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list and in substance the applicant seeks revision of the seniority list by placing him at the appropriate place. Obviously the application has been filed beyond time. The applicant has, however, filed Miscellaneous Petition No.834 of 2000 seeking condonation of delay. It appears that aggrieved against his placement in the seniority list dated 26.5.1994, the applicant preferred a representation dated 9.6.1995 addressed to the Secretary, government of India, Ministry of Home Affairs (Exhibit - B) and a reminder dated 15.12.1995 (Exhibit -C). Consequently, the applicant could have approached the Tribunal after expiry of a period of six months from the date of presentation of the aforesaid representation dated 9.6.1995 as stipulated under Section 21 of the Administrative Tribunals Act, 1985. However, the case of the applicant is that being an officer belonging to the Indian Police Service and holding a sensitive position, he reasonably felt that justice would be done to him by the respondents themselves and he would not have to knock the doors of Law Courts. It is also asserted that a batchmate of the applicant preferred OA 240 of 1992 involving seniority issue of another batchmate wherein the applicant was also one of the respondents. The said OA came to be decided on 26.3.1990. In the meantime the applicant preferred fresh reminders dated 7.3.1996 and 13.11.1998 with the hope that justice would be done to him. But since his grievance was not redressed by the respondents, he was constrained to approach the Tribunal for redressal of his grievance.

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7. Sub-section (3) of Section 21, enables the Tribunal to admit an application " notwithstanding anything contained in sub-section (1) or sub-section (2), after a period of one year specified in Clause (a) or Clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period." The satisfaction in our opinion should be recorded in writing. Since there is no specific order condoning the delay, the question of limitation can be gone into at the stage of final hearing even though the OA had been admitted.

8. Since there is no specific order passed on the 'delay condonation application', the Tribunal would not be deemed to have condoned the delay. The Tribunal in fact is forbidden under sub-section (1) of Section 21 to 'Admit' an application unless it finds that "the application is made within one year from the date on which the final order has been made or in case where an appeal or representation is made and a period of six months has expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months." The applicant could have approached the Tribunal within one year from the date of expiry of a period of six months from the date of presentation of the representation. The question of limitation being a question of jurisdiction can be raised even after the original Application has been admitted without expressly condoning the delay.

9. In our opinion the explanation for condonation of delay as given in the Miscellaneous Petition No.834 of 2000 is far from satisfactory. However, in view of the fact that the application has been admitted and the parties have been heard on merit, we are not persuaded to dismiss the OA on the ground of limitation only.

10. The next question that calls for determination is whether the applicant would be governed for the purpose of determination of year of allotment and inter se seniority by the provisions of the I.P.S. (Regulation of Seniority) Rules, 1954, or by those of the I.P.S. (Regulation of Seniority) Rules, 1988. The applicant was inducted to the Service vide order dated 08.03.1991. The I.P.S. (Regulation of Seniority) Rules, 1988, were notified in the Gazette of India in July, 1988. It may be pertinently observed that the Learned Counsel for the applicant has very fairly stated at the bar that in case it was held that the I.P.S. (Regulation of Seniority) Rules, 1988, would govern the determination of applicant's year of allotment and his inter se seniority vis-a-vis direct recruit I.P.S. Officers, he would have no case. Explicit and unambiguous language i.e. which rules 3 and 4 of the I.P.S. (Regulation Of Seniority) Rules, 1988, have been formulated leaves no room for doubt that determination of the year of allotment and inter se seniority of the applicant would be governed by Rules 3 and 4 of the I.P.S. (Regulation Of Seniority) Rules, 1988, which are quoted below for ready reference:



"3. Assignment of year of allotment- (1) Every officer shall be assigned a year of allotment in accordance with the provisions hereinafter contained in these rules.

(2) The year of allotment of an officer in Service at the commencement of these rules shall be the same as has been assigned to him or may be assigned to him by ~~the~~ Central Government in accordance with ~~the~~ rules, orders and instructions in force immediately before the commencement of these rules.

(3) The year of allotment of an officer appointed to the service after the commencement of these rules shall be as follows:

(i) The year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held:

Provided that if a direct recruit officer, other than an exempted probationer within the meaning of Cl.(ee) of Rule 2 of the Indian Police Service (Probation) Rules, 1954, who is permitted to join probationary training under Sub-rule (1) of Rule 5 of the Indian Police Service (Probation) Rules, 1954 with the direct recruit officers of subsequent year of allotment, then he shall be assigned that subsequent year as the year of allotment.

4. Inter-se seniority of the officers - The inter-se seniority of the officers who are assigned the same year of allotment shall be in the following order and in each category the inter se seniority shall be determined in the following manner:-

- (i) Direct recruit officers shall be ranked inter-se in the order of merit as determined in accordance with Rule 10 of the Indian Police Service (Probation) Rules, 1954.
- (ii) Promotee officers shall be ranked inter-se in the order of their dates of appointment to the service."

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11. The language employed in rule 3 (2) extracted above makes it abundantly clear that an officer in service "at the commencement of these rules" would continue to have the year of allotment assigned to him or the year of allotment that "may be assigned to him by the Central Government in accordance with the rules, orders and instructions in force immediately before the commencement of these rules". The year of allotment of an officer who entered the service after the commencement of these rules is to be determined in the manner indicated in sub-rule (3) of Rule 3 of 1988 Rules. The applicant was appointed to the service by promotion vide order dated 08.03.1991 and accordingly after giving weightage of four years for the service rendered by him as Dy. Superintendent of Police as provided in sub-rule (3)(ii)(a) of Rule 3, he was assigned 1987 as the year of allotment. Mere fact that the applicant was promoted as Superintendent of Police w.e.f. 26th August, 1985 and had been working in a cadre post of Superintendent of Police from 27th May, 1988 would not make him a member of Service until he was inducted to the service vide order dated 8.3.1991. We are of the considered view that no exception can be taken to the year of allotment assigned to the applicant vide order dated 26.5.1994 for that is well in accordance with law. The provisions of Indian Police Service (Regulation of Seniority) Rules, 1954 have no application to the applicant who was appointed to the Service after the commencement of the Indian Police Service (Regulation of Seniority) Rules, 1988. As a member of State Police Service,

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the applicant may have had a legitimate expectation of being promoted to IPS Cadre after acquisition of eligibility qualification under the then existing rules but that by itself is not enough to entitle~~s~~ him to be governed by the IPS (Regulation of Seniority) Rules, 1954 in force at the time of his entry into State Police Service unless appointed to the IPS under those Rules. Power of rule-making authority to change the rules of seniority is not in dispute. It is, therefore, necessary to traverse on the question whether and to what extent the applicant was entitled to reap the benefit of the service rendered by him on non-cadre and cadre post of Superintendent of Police before his induction to the IPS Cadre. Under the Indian Police Service (Regulation of Seniority) Rules, 1988, he was entitled to the weightage of four years rendered by him as Deputy Superintendent of Police and that has been given to him.

12. Now coming to the next question pertaining to the applicant's seniority vis-a-vis direct recruits having the same year of allotment, suffice it to say that direct recruits of any year of allotment would en-bloc stand senior to promotee officers who are assigned that particular year of allotment. This is evident from Rule 4 of the Indian Police Service (Regulation of Seniority) Rules, 1988 which provides the "order" in which the direct recruit officers and promotee officers assigned the same year of allotment are to be placed besides the "manner" of determination of inter-se seniority in each category. The direct

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recruit officers are placed in Clause (i) while promotee officers in Clause (ii) of Rule 4 and that is the "order" of inter-se seniority in which the direct recruit officers and promotee officers assigned the same year of allotment shall be arranged. Accordingly, the direct recruit officers appointed in 1987, albeit subsequent to the appointment of the applicant, have rightly been ranked higher in the seniority list.

13. The view we are taking finds reinforcement from what has been expounded by the Hon'ble Supreme Court in Union of India Vs. S.S.Uppal and another, AIR 1996 SC 2340. The respondent therein was inducted in the Indian Administrative Service cadre by promotion w.e.f. 15.2.1989. His year of allotment was determined as 1985 after taking into consideration revised weightage formula visualised under the amended rules which came into force on 3.2.1989. The claim of S.S.Uppal was that the unamended rules of 1987 were applicable to his case and he was entitled to four year weightage from the date he started working in the pay scale equivalent to the senior scale of IAS and from that reckoning he was entitled to be assigned 1978 as the year of allotment since he was working in the pay scale equivalent to senior IAS with effect from 2.7.1982. The claim was accepted by the Tribunal. The Hon'ble Supreme Court set aside the judgment of the Tribunal and held -

"17.....Uppal was actually inducted into the service on 15th February, 1989. The rules which were in force on that day for determination of seniority will clearly

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apply to his case. It is true that Uppal's name was included in a panel drawn up some-time in August, 1988. But mere inclusion of his name in the panel did not confer upon him any right to automatic appointment to the IAS. Nor can it be said that he was to be treated as to have been appointed from the date when a suitable post fell vacant. It has been stated in the affidavit filed before the Tribunal by shri Hari Singh, Under Secretary to the Government of India that although a vacancy had arisen on 1st February, 1989, the proposal for appointment of Uppal to IAS was received from the State Government only on 14th February, 1989. The seniority of an officer appointed into the IAS is determined according to the seniority rules applicable on the date of appointment to the IAS. Weightage in seniority cannot be given retrospective effect unless it was specifically provided in the rule in force at the material time. In the case of Shankarasan DASH Vs. Union of India, (1991) 2 JT (SC) 380: (1991 AIR SCW 1583), it was pointed out by this Court that the existence of vacancies did not give any legal right to a selected candidate.

18. We are of the view, in the facts of the case and also having regard to the relevant rules, it cannot be said that seniority of Uppal will have to be decided in accordance with the seniority rules which were in force before the amendments were made on 3rd February, 1989. The appeal is, therefore, allowed. The judgment and order of the Central Administrative Tribunal, Jabalpur dated 12th January, 1995 is set aside. Each party will pay and bear its own costs."

14. The decision aforesated takes care of another contention of the applicant's learned counsel that since the applicant was empanelled by the Selection Committee on 22.2.1990, he should be assigned at least 1986 as his year of allotment by giving four years weightage permissible under the amended rules.

15. As regards delay in preparation of Select List, suffice it to say that there has been no delay on the part of the Central Government and the delay on the part of the State Government has been satisfactorily explained in Para 8 of the reply statement filed on behalf of the State Government. Selection Committee for

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the year 1987 met on 4.12.1987 and the officers selected in the meeting were appointed in 1988. Proposal for convening the meeting of the next Selection Committee was sent to the UPSC by the State Government vide letter dated 3.6.1989. However, the UPSC informed the State Government that since the meeting of the Selection Committee will be held in 1989 in terms of Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulation, 1955, all the eligible officers of State Police Service would be considered in that meeting. Accordingly a fresh proposal of all such officers was sent to UPSC afresh which was considered in the meeting held on 22.2.1990. Even according to the applicant he became eligible for induction into the Indian Police Service on 1.1.1989 and he was considered and included in the Select List of 1989-90 at serial no.8 by the Selection Committee in its meeting held on 22.2.1990. The list however came to be approved by the UPSC on 24.9.1990 and thereafter the State Government forwarded the necessary proposal to the Central Government under Regulation 9 (1) of the Indian Police Service (Appointment by Promotion) Regulations 1955 vide letter No.IPS0588/4676-POL-9 dated 18.2.1991. The proposal was received in the Home Ministry on 21.2.1991 and in the concerned Division on 22.2.1991 and after examination of the proposal all the eight officers including the applicant were appointed to Indian Police Service vide Ministry of Home Affairs Notification no.1-14013/5/91-IPS-I dated 8.3.1991.

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16. In Ram Chandra Dayaram Gawande Vs. Union of India, (1996) 10 SCC 420 the Hon'ble Supreme Court has held that delay in the preparation of Select List if explained ~~and~~ could not be made a ground to claim seniority from an anterior date than the date of entry into service and as held in Syed Khalid Rizvi Vs. Union of India, (1993 Supp (3) SCC 575) unless the promotee officer is appointed to the service in accordance with rules he does not become a member of the service. In such circumstances of the case it cannot be said that the rules had been broken down and collapsed so as to entitle the applicant to claim legitimacy of appointment to the cadre post of Superintendent of Police as regular appointment.

17. It has been then contended that albeit S/Shri S.M.Sayad, S.P.Gupta, R.R.Mangaonkar and V.B.Lokhande were earlier superseded by the applicant on 26.8.1985 at the time of promotion to the post of Superintendent of Police and yet these officers have been placed above the applicant in the seniority list of IPS officers. This contention too has no merits. S/Shir S.M.Sayad, S.P.Gupta and R.R.Mangaonkar were included in the Select List of 1987 and appointed to the IPS vide Ministry of Home Affairs Notification No.I.14013/10/88-IPS.I dated 22.9.1988 and were, therefore, rightly assigned 1984 as their year of allotment. The Notification dated 22.9.1988 is not in question herein. So far as Shri V.B.Lokhande is concerned, he was appointed vide self same Notification dated 18.3.1991 by which the applicnat has been

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appointed but Shri V.B.Lokhande has been placed above the applicant in the seniority list because he was placed above the applicant in the Select List of 1989 - 90. The applicant was placed at Serial No.8 while Shri Lokhande was placed at serial no.4 in the Select List. The Tribunal cannot sit in appeal over the assessment made by the Selection Committee as per Nutan Arvind Vs. Union of India & others, (1996) 2 SCC 488, and Dalpat Abasahib Solunke Vs. B.S.Mahajan, AIR 1990 SC 434. The Select List, it may be observed, is arranged in the order of merit. The Judgment of the Tribunal in OA 240 of 1992 setting aside the selections of S/Shri T.A.Chavan and V.N.Bokey may have its own course and if their selection has been set aside as alleged in Para 7 of the OA, the applicant's grievance of being placed below them no longer survives. No other point was pressed in service by the Learned counsel appearing for the applicant.

18. In view of the above discussion and conclusions, the OA fails and is dismissed, however, without any order as to costs.


(S.K.Agrawal)
Member (A)


(S.R.Singh)
Vice Chairman

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