

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.:

OA 586/2000

Suresh A. Katkar

(By Advocate Shri S. Ramamurthy)

VERSUS

Union of India & or.

(By Advocate Shri V.S. Masurkar)

CORAM : Hon'ble Shri A.S. Sanghvi - Member (J)
Hon'ble Shri Shankar Prasad - Member (A)

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


(Shankar Prasad)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this the 8th day of August 2003

Coram: Hon'ble Mr.A.S.Sanghavi - Member (A)
 Hon'ble Mr.Shankar Prasad - Member (J)

O.A.586 OF 2000

Suresh A.Kakkar,
Superintendent of Police (IPS),
Central Bureau Investigation,
Office at Tanna House,
12-A, Nathalal Parekh Marg,
Colaba, Mumbai.
R/o B-26, Hyderabad Estate,
Napean Sea Road,
Mumbai.

(By Advocate Shri S.Ramamurthy) - Applicant

Versus

1. Union of India
through the Secretary,
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi - 110 011.
2. State of Maharashtra,
through the Chief Secretary,
Government of Maharashtra,
Mantralaya,
Mumbai.
3. Additional Chief Secretary (Home),
Government of Maharashtra,
Mantralaya, Mumbai.
(By Shri V.S.Masurkar) - Respondents

O R D E R

By Hon'ble Mr.Shankar Prasad, Member (A) -

Aggrieved by inaction of respondents in not considering his representation dated 20.7.1999 for assigning the correct year of seniority subsequent to his appointment to Indian Police Service by promotion, the applicant has preferred the present OA.

2. The case of the applicant in brief is that he was appointed as a Deputy Superintendent of Police in State Police Service on 1.5.1979. He was confirmed on 13.4.1989 with *Sn*

retrospective effect of 31.12.1987. He was eligible for being considered for appointment as Indian Police Service officer by promotion after completing eight years of service. No meeting of selection committee took place for 1988 and 1989. The meeting took place in 1990 and the vacancies of earlier year were clubbed. The Selection Committee met in 1990 and he was appointed vide orders dated 15.4.1991. He was assigned the seniority of 1987 vide orders dated 26.5.1994. Aggrieved by this assignment of seniority he had preferred representation, the non-decision of which has given rise to the present OA.

It has been stated therein that the Selection Committee meeting did not take place in 1988 and 1989. He was appointed against the vacancy of 1985 and 1986. Even after the meeting of the Selection Committee, almost a year was taken in notifying the appointment. If the notification had been issued in 1990, he would have been assigned seniority from an earlier date. The Apex Court in the case of Syed Khalid Rizvi Vs. Union of India, (1994) 26 ATC 192 has held that preparation of selection list every year is mandatory. The Ernakulam Bench of Central Administrative Tribunal in the case of Jacob P.Thomas Vs. Union of India and others, (1993) 24 ATC 196 has held that notification for cadre review should be issued on third anniversary of previous notification and delayed notification is effective from the third anniversary of earlier notification. The seniority of Shri R.N.Wagh, a similarly situated IPS officer was reviewed in *Shri*

terms of orders of Tribunal in OA 373/1990. The rules of seniority made applicable by amending notification dated 27.7.1988 cannot apply to his case. These rules shall be applicable only to State Police Service officers who are appointed to State Police Service after 27.7.1988. The applicant accordingly asked for 1984 or in any case 1985 as year of allotment.

3. Respondents - Union of India, State Government and Union Public Service Commission have filed separate replies.

4. The Union of India in their reply have stated that they are yet to receive the representation through State Government. The applicant has submitted the representation after six years and the same is barred by delay and laches.

The applicant was considered along with others for inclusion in Select List of 1989-90 in its meeting held on 22.2.1990. Applicant's name was included at serial no.4 of the Select List of ten persons. UPSC approved the list on 24.9.1990. The State of Maharashtra sent the proposal on 18.2.1991 and the notification appointing the applicant and others was issued on 8.3.1991. He was allotted seniority as per IPS (Regulation of Seniority) Rules, 1988. *Sh*

As per rule 9 (1) of the IPS (Appointment by Promotion) Regulations, 1955, at that point of time, UPSC could have convened the meeting only on the recommendations of the State Government. No request for State Government was received for 1988 and 1989.

It has further been stated that cadre review may lead to increase or decrease of cadre strength. It is not mandatory to carry out the cadre review every three years.

5. UPSC have contended in their reply that the word "ordinary" appearing in Regulation 5 (1) at the relevant point of time has been interpreted by the Apex Court in the cases of H.R.Kasturi Rangan & others Vs. Union of India & others, 1998 (1) Scale 11 and Nepal Singh Tanwar Vs. Union of India & others, 1998 (1) Scale 7, to hold that it is not mandatory to have the meeting each year provided the same is explained. In any case the language of second proviso to Regulation 5 (3) leads to the conclusion that the Select List may not be prepared each year.

The State Government while forwarding the proposal for holding the Selection Committee meeting on 29.1.1990 stated that the proposal for preparing the Select List of 1988 could not be submitted for administrative reasons. The Government of Maharashtra may be making further submissions in this regard. *h*

6. The State Government have raised preliminary objections that the applicant is seeking relief since 1988 and the OA is filed on 10.8.2000 and hence the application suffers from delay and laches. The applicant has also not joined the senior officers who would become junior, as per private respondents and hence the application deserves to be dismissed for non-joinder of parties.

The case of State Government on merit is as follows -

The Selection Committee meeting for the year 1987 was held on 4.12.1987 and the officers on the said Select List were appointed to IPS in September, 1988. Thereafter the proposal for convening the Selection Committee meeting for the year 1988 was sent to the respondent no.4 by respondent no.2 vide letter dated 3.6.1989. However, the UPSC informed the State Government that since the meeting of the Selection Committee will be held during 1989 in terms of Regulation 5 of the IPS (Appointment by Promotion) Regulations, 1955 the Select Committee is required to consider the case of all the State Police Service officers who are eligible on 1.1.1989 for promotion to IPS. Accordingly, the proposal of the State Police Service officers of the State who are considered eligible for inclusion in the Select List for promotion to the IPS as on 1.1.1989 was forwarded to UPSC afresh and accordingly a meeting of the Selection Committee for the year, 1988-89 was held on 22.2.1990. It will be thus clear that A

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non-convening of the Selection Committee for the year 1988 was due to the administrative reasons only.

The contention of the applicant that he be appointed to IPS for the vacancies of 1988 and accordingly give the weightage is not correct. The applicant's claim that, had the meeting been held in 1988 and had the applicant been considered in that year, he would have been promoted in the year 1988, is hypothetical. Besides the applicant was confirmed in the State Police Service by order dated 13.4.1989 and could not have been considered in 1988.

They also have relied on the decision of Kasturirangan's and Tanwar's case (supra).

7. The applicant has filed rejoinder on 26.4.2001. The applicant has stated that at the time of submitting his representation he was on deputation to Central Bureau of Investigation and had submitted his representation to D.I.G., CBI, who had forwarded the same to D.G.(P). The State Government may not have forwarded the representation to Union Government. The cause of action has arisen on account of not holding the meeting of Select Committee in 1988 and 1989 which has resulted in the assignment of wrong year of allotment. The applicant is entitled to count the services from the date he should have been normally promoted for the purpose of seniority as held by Apex Court in I.K. Rajoria's case. *L*

The Apex Court has held in the case of S.Ramanathan that holding of cadre review is a statutory duty and non-holding of the same entitles the aggrieved party to seek appropriate relief including promotion from an earlier date.

The very proposal of holding the Selection Committee meeting for the year 1988 was sent on 3.6.1989 for which no explanation is forthcoming. This proposal was turned down by the UPSC which informed that persons becoming eligible on 1.1.1989 for the vacancies of 1989 be considered. Even after the proposal of UPSC on 24.9.1990 there was delay of five months.

The Tribunal in OA 373 of 1991 was considering the application of one Shri R.N. Wagh who had challenged this notification dated 18.3.1991, on the ground that he was by-passed on account of remarks for 1985-86, 1986-87 which were subsequently turned down. This Tribunal directed for holding of a review selection committee from 1987 on a subsequent year.

8. The said Shri R.N.Wagh was subsequently promoted to the Indian Police Service w.e.f. 22.9.1988 i.e. the date from which Shri S.K.Mittal the junior of the applicant in 1987 Select List was appointed to the IPS. He was subsequently allotted the seniority of 1984. The said Shri Wagh filed a representation to Union Government stating therein that as the vacancy was the year of 1987, his seniority should have been decided in accordance ^{of} *h*

with the IPS (Regulation of Seniority) Rules, 1955 and not by IPS (Regulation of Seniority) Rules, 1988 which came into force with effect from 24.7.1988. The Government of India rejected the contention. The said Shri R.N.Wagh thereafter filed OA 584/82 contending therein that he should have been governed by the earlier Regulation of Seniority Rules and not as per the year 1988 rules. While considering the said matter, Rule 3 (2) of Regulation of Seniority Rules, 1988 came up for interpretation and following the decision of Apex Court in Union of India Vs. S.S.Uppal & others, AIR 1996 SCW 848 = JT 1996 (1) SC 258 held that seniority of the applicant has to be governed by Regulation of Seniority Rules as on the date of appointment by promotion to IPS and not by year of vacancy. The judgment dated 21.7.2003 in OA 584 of 2002 refers.

9. We have heard the learned lawyers on behalf of both the parties and have gone through the relevant records. We have also perused the Home Department's File No. IPS-0588/476 regarding preparation of Select List for 1988. It appears that after the induction of officers of Select List of 1987 on 22.9.1988 the DGP forwarded a proposal for preparation of Select List vide its letter dated 21.12.1988. It was indicated therein that one post has been kept reserved for one Shri S.B.Sawarkar who has been provisionally included in the Select List for 1987 and that there are five more vacancies. A proposal was forwarded vide Government of Maharashtra's letter dated 3.6.1989 to the UPSC and *Sh*

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UPSC vide its letter dated 28.6.1989 asked the State Government to prepare the Select List with reference to 1.1.1989 as the programme for meeting of Selection Committee had already been circulated. As a matter of fact the UPSC in its letter dated 12.5.1989 had drawn attention to the fact that Selection Committee meeting for most of the States in the previous year could only be held in December, 1988 which upset the programme of the Commission. They also circulated a fixed programme for holding meetings for selection to IAS/IPS and IFS indicating therein that in case of Maharashtra information be sent by September and the meeting of Select Committee will be held in November. A complete proposal in this regard was sent only on 29.1.1990 indicating therein that there are eight vacancies. The meeting of the Committee took place on 22.2.1990 and panel of 10 officers including Shri R.N.Wagh was prepared. The State Government submitted the proposal on 4.9.1990 indicating therein that inadvertently the pendency of departmental enquiry against Shri S.B.Sarwarkar was not pointed out. The UPSC vide its letter dated 24.9.1990 forwarded its recommendations to the Union Government. The Union Government vide its letter dated 1.11.1990 approved the Select List subject to the conditions mentioned therein.

The officers of the Select List were thereafter asked to furnish the necessary declarations for termination of lien in Maharashtra State Police Service in the event of confirmation in the IPS and a second declaration regarding only one spouse

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living. It is only thereafter that a comprehensive proposal for appointment of these officers was sent to Union Government vide letter dated 19.2.1991 and thereafter the State Government issued notification of 8.3.1991 in which the name of the applicant appeared at serial no.3.

10. The applicant has ^{come} ~~made~~ ^{will} out a case that there should ^{not} have been clubbing of vacancies and vacancies of each year should have been treated separately. The applicant had completed eight years' service in 1987 and thereafter if the Select Committee meeting had taken place in time and if he ^{was} ~~is~~ selected and if his appointment was notified in time, his seniority would have been governed by the earlier Regulation of Seniority Rules and not the 1988 Rules. In any case since he was appointed against the vacancy coming from yester years, the Regulation of Seniority Rules as on that date should apply and therefore he should be allotted seniority of 1984 or latest 1985.

11. It appears from DG (P's) proposal that 18 officers of State Police Service and one officer of Armed Police Service had completed more than eight years' service as on 1.1.1988. One of them and the officer of Armed Police was over 54 years of age and hence ineligible. Of the remaining seventeen officers, eleven officers were not confirmed. Of these six were already in the ^h

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Select List of 1987, the three had been passed over in the Select List of earlier years on three or more occasions and two were passed over in 1987.

The State Government while forwarding the said proposal stated that only four officers were eligible. It has further been stated in this letter of 3.6.1989 that on account of some administrative difficulties, proposals for holding Select Committee for preparing the Select List for the year 1988 could not be sent as per the time schedule prescribed by Ministry of Home Affairs. It was further indicated that one post for 1987 has been kept reserved for a Select List officer against whom a departmental enquiry is pending. The State Government have also decided to expunge certain adverse remarks in case of S.A.Khopade and R.N.Wagh and they may have to be considered for inclusion in Select List of 1987. While marking a copy of this communication the DG (P) was also advised to send the proposals for 1989.

12. UPSC vide its letter dated 28.6.1989 informed that as the meeting is being held during 1989 the Select Committee shall also have to consider cases of officers who have become eligible as on 1.1.1989. Officers who were found unfit in 1987, have to be considered again if otherwise eligible. Case of officers on the Select List has to be considered again as per Regulation 5 (6) of the Promotion Regulations. *Sr*

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13. The State Government thereafter sent the proposal dated 29.1.1990. Eight vacancies including one that arose in 1989 due to death of an officer were reported. A list of seven more officers was forwarded in addition to the four already sent. Subsequently the Annual Confidential Reports in respect of six more officers i.e. the officer in the Select List of 1987 but not promoted and the five who had been superseded in 1987, were sent for consideration.

The Selection Committee considered all the seventeen officers and prepared a panel of ten officers. Eight persons were finally appointed.

14. The IPS (Appointment by Promotion) Regulations regulates the appointment by promotion. As per Regulation 3, the Selection Committee consists of Chairman, UPSC or a Member of UPSC who chairs the meeting Chief Secretary, Home Secretary, DG (P) and other officers. As per Regulation 5 the vacancies have to be first assessed then the zone of consideration is accordingly determined and officers falling in the zone of consideration had to be assessed. In addition to these other officers covered by Regulation 5 (3) have also to be considered. These officers must fulfil the conditions namely of having been confirmed in the State Police Service, having completed eight years of due date and not being above 54 years on due date. Officers falling in *A*

the zone of consideration who had been included in earlier Select List but had expressed his unwillingness shall not be included. The Selection Committee then classifies the officers and outstanding officers will be followed by officers qualified as 'Very Good' and 'Good'. As per Regulation 6 the State Government forwards the said list along with the records to the UPSC along with a copy to the Central Government. The Central Government sent their observation to the Commission. As per Regulation 7, the Commission thereafter taking all these into account and consulting the Union/State Governments if any, prepares the final list. This final list is the Select List. This Select List remains in force till it is reviewed. It is from this Select List that appointments to the service are made.

15. The Regulations framed under All India Service Act are in the nature of law. These Regulations have been amended from time to time and accordingly the appointment of a particular year is governed by the Regulations in force on that date.

16. The first contention raised by the applicant is that he ought to have been considered against vacancies of 1988 and he is aggrieved by non-holding of the meeting of Selection Committee in that year. We find from the records that the applicant was confirmed only in May, 1989 retrospectively w.e.f. 31.12.1987. Thus if the Selection Committee had met in 1988 he could not have been considered as he was not substantive in the State Police Service. He could have been considered only by a review DPC, if so ordered against the vacancy in 1988. *A*

17. As has been indicated above, the meeting of the Selection Committee to prepare the Select List is chaired by Chairman/Member of the UPSC. Considering that there are three All India Services and a number of States in the Union, UPSC normally circulates a programme for convening the meeting of the Selection Committee. A number of exercise like availability of ACRs, obtaining of integrity certificates, confirmation of officers, if any, have to be done before convening the meeting of the Select Committee. It appears from the records in OA 584 of 2002 filed by Shri R.N.Wagh, that officers from the Select List of 1987 have been appointed to IPS only on 22.9.1988. It appears that because of this, the proposal for preparation of Select Committee for 1988 was initiated by DG (P) only in December, 1988 and then the proposal was sent to Government of India in June, 1989. The State Government has itself indicated in the said letter that owing to administrative problems the proposal could not be sent in accordance with the time schedule prescribed. As the proposal was sent in 1989, the UPSC indicated that officers who have become eligible in 1989 should also be considered. It thus appears that the vacancies as on 1.1.1988 and vacancies falling due during the Calendar year 1988 which together count for vacancies as on 1.1.1989 were taken into account for the preparation of Select List.

The law on the subject of bunching of vacancies is settled by a decision of the Apex Court. *Dr*

The decision in Syed Khalid Rizvi (supra), has been explained in Kasturi Rangan's case (supra) and N.S.Tanwar's case (supra) to state that if the State Government have given a justification for not holding a Select Committee meeting every year then the same can be accepted. The State Government have offered certain explanations for not holding the Selection Committee in 1988 which appears to be in order.

18. Even if for arguments sake it is accepted that separate Select List ought to have been prepared in 1988 and 1989, the only difference it would make is that the list of selected officers and their inter-se seniority would undergo a change. This would be on account of zone of consideration and the relative grading of officers on two occasions.

19. We also note that a Select Committee meeting for 1988 has not taken place and the Selection Committee meeting for 1989 took place in 1990 and appointments were made in 1991. The crucial question is as to whether the Regulation of Seniority will be governed by Rules of 1954 or by the amended Rules of 1988. This question came up for consideration in OA 584/02 and the Tribunal following the decision in S.S.Uppal's case (supra) came to the conclusion that the applicant will be governed by the revised rules. The applicant in this case will accordingly be governed by the revised rules. *Su*

20. The applicant has also argued that the exercise with 1.1.1989 has the reference date as taken a unduly long time and that in case the same had been completed in time, he would have been entitled to an earlier seniority. We find in the instant case that the UPSC had scheduled the meeting of the Selection Committee in September, 1989 but somehow the meeting took place only in February, 1990. After the receipt of the Select list, the appointments were finally made in March, 1991. It is a hypothetical question and, therefore, no relief can be granted on this count.

21. We also find that the order allotting seniority was issued in 1994 and the applicant had filed representation in 1999 i.e. after a long lapse of five years. This Tribunal in OA 1/2003 (G.C.Chavnekar Vs. Ministry of Home Affairs) was considering the question as to whether delay in submission of such representation stands in the way of consideration of the matter. Having regard to the Apex Court's decisions in the case L.Chandra Kumar Vs. Union of India & others, 1997 (2) SLR 1 = AIR 1997 SC 1125 and S.S.Rathore Vs. State of Madhya Pradesh, AIR 1990 SC 10, AIR 1973 SC 1178, Secretary to Government of India & others Vs. S.M.Gaikwad, 1995 (6) SLR (SC) 812 and Calcutta Municipal Corporation Vs. P.K.Saraf, 1999 (1)SC 30, the Tribunal dismissed the OA for filing the representation after three years. The representation in the instant case has also been filed after five years. The same principle will apply to

this case.

22. It was argued on behalf of State Government that the OA is bad for non-joinder of Direct Recruits and other persons appointed vide this order. This Tribunal in OA 1083 (A.R.Bapat Vs. Union of India) was concerned with quashing of an order dated 11.1.1994 through which, year of allotment and seniority of 50 promoted officers was fixed. It was mainly on the ground of ante-dating of his confirmation. The Tribunal in Para 11 of the order held as follows -

11.....It is not the case of the applicant that any junior to the applicant has been inducted to IFS earlier to him and thus superseding him. In these circumstances, quashing of the order as prayed for will mean passing adverse order against those included in the order dated 11.1.1994. The applicant has not made any of them as party respondents. In our opinion, the officers included in the list as per order are necessary parties. No adverse order can be passed against them without giving them opportunity of hearing before any adverse order is passed against them altering their seniority of induction to IFS. Therefore, the present OA. As per the amended reliefs suffers for fatal infirmity of non-joinder of the necessary parties. In this connection, we refer to the judgment of the Hon'ble Supreme Court in the case of Dal Chand Vs. State of U.P., AIR 1985 sc 162. The OA, therefore, deserves to be dismissed on this account alone."

The Tribunal in Para 12 also held that Direct Recruits of these periods are necessary party. The OA suffers from non-joinder of these persons also. *Sh*

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The High Court vide its order dated 17.4.2001 in Writ Petition No.317 of 2001 set aside the order of the Tribunal having held as follows on the matter of non-joinder of parties.

"In such circumstances, as far as the question of non-joinder is concerned, in our view the proper course would be that the respondents put up a notice in the concerned office/offices regarding the revival of the Original Application as and when it is taken up before the Tribunal so that employees who are desirous of intervening should be permitted to be joined and that would take care of their case also being considered if at all they are likely to be effected prejudicially by alloweing of the OA filed by the petitioner."

Special Leave Petitions 13538 - 39 was filed in the Apex Court. The Apex Court held as follows -

"The respondent had filed an application for re-determination of the year of allotment. The Respondent no.1 on being promoted from the State Forest Service to the Indian Forest Service in the State of Maharastra had been allotted 1980. His grievance is that he ought to have been allotted the year of allotment 1970. The application filed before the Tribunal was rejected on the ground of delay and laches in approaching the Tribunal. On a Writ Petition being filed by the Respondent, the High Court has set aside the order of the Tribunal and remitted the matter to the Tribunal for Tribunal to do well in serving the notice on the Secretary, Government of Maharastra, Forest Department which notice, Secretary, shall circulate amongst all the direct recruits. Those of them apply before the Tribunal would be impleaded and heard as parties before the Tribunal. So far as the present petitioner Alinda Chandra is concerned, he may be permitted to be added as

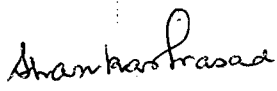
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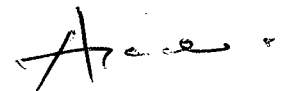
party respondent and put forth his grievance before the Tribunal. The Tribunal would hear all these direct recruits who are impleaded before finally disposing of the application filed by the direct recruits. This SLP is disposed of in the above terms."

These principles will apply to the present case also. The O.A. is affected by non-joinder of necessary party.

23. Under the circumstances the OA is devoid of merit and is also hit by delay and non-joinder of parties. It is accordingly dismissed. There will be no order as to costs.


(Shankar Prasad)
Member (A)

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(A.S. Sanghvi)
Member (J)