

Duplicate for
Tiger

(20)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.NOS. 38/91 and O.A.345/91

Announced, this the 25th day of July 1996

CORAM: HON'BLE SHRI B.S.HEGDE, MEMBER(J)
HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

- I. Ramrao Kishanrao Ghadge,
Deputy Commissioner of
Police, Zone-I,
O/O the Commissioner of Police,
Sadhu Wasvani Road,
Pune - 411 001.

.. Applicant in
O.A.38/91

By Advocate Mr. M.D.Lonkar

versus

1. Secretary,
Ministry of Home Affairs,
Govt. of India, North Block,
New Delhi.
2. Shri S.Ramamoorthi,
Additional Chief Secretary,
Home Department,
Govt. of Maharashtra,
Mantralaya,
Mumbai - 400 032.
3. Shri A.M.Patnaik,
Deputy Commissioner of Police
Bombay City,
Mumbai.

.. Respondents in
O.A. 38/91

Respondents No.1 & 2
By counsel Shri M.I.Sethna.

None for Respondent No.3

- II Shri Meharban Kanoji Rathod,
Commandant, SRPF Gr.III
SRPF Camp, Jalna, Dist.Jalna.

.. Applicant in
O.A. 345/91

By Advocate Shri M.D.Lonkar

-versus-

1. The Secretary to the Govt.
of India,
Ministry of Home Affairs,
New Delhi - 110 001.
2. The Addl.Chief Secretary,
Govt. of Maharashtra,
Home Department, Mantralaya,
Mumbai - 400 032.
3. The Director General of Police,
Maharashtra State,
Shahid Bhagat Singh Marg,
Mumbai - 400 039.

4. Shri P.T.Lohar,
Additional Commissioner of Police,
Thane City, Thane.
5. Shri K.B.Gokulchandran,
Deputy Director,
S.I.B.Nagpur.
6. Shri R.P.Khilnani,
Deputy Commissioner of Police,
(H.Q.) Nashik City.
7. Shri P.N.Dixit,
Dy.Director I.B.
New Delhi
C/o.Director I.B.,New Delhi.
8. Shri S.P.S.Yadav,
Dy.Commissioner of Police(HQ)
Bombay City.
9. Shri K.S.Dhinde,
Superintendent of Police-Rly.,
Mumbai.
10. Shri C.Prabhakar,
Superintendent of Police,
Thane(Rural)
Thane Dist.

... Respondents in
O.A. 345/91

Shri Karkera alongwith Shri P.M.
Pra-dhan for Respondent No.1

Shri Suresh Kumar for Shri M.I.
Sethna for State of Maharashtra.

O R D E R

(Per M.R.Kolhatkar, Member(A))

As these two cases have similar facts and raise an identical issue, they are being disposed of by common judgment. For the purpose of illustration facts in O.A. 345/91 are referred to. Where necessary, the other case is distinguished.

2. In O.A. 345/91 the applicant has impugned the rejection of his representation regarding his seniority in IPS cadre of the State of Maharashtra by letter dt. 12-12-1990 vide Annexure A-6 page 42. By communication dt.16-1-89 from the Govt. of India, Ministry of Home Affairs at page 24 in para 4, the Govt. of India intimated that the ten promotee IPS officers including the applicants were assigned the

year of allotment shown against them. The applicant figures at Sr.No.4 in the list and the year of allotment was shown as 1977. Shri P.T.Lohar in respect of whom the grievance arises is also allotted 1977 as the year of ^{allotment for} seniority. In para 5 of the letter the gradation list of IPS Officers of the Maharashtra cadre is shown in which P.T. Lohar is shown at Sr.No.5 just below M.S.Maheshgauri whereas M.K.Rathod is shown at Sr.No.12 just below G.Prabhakar. The claim of the applicant is to show his name immediately below that of M.S.Maheshgauri. The contention of the applicant is that both he and P.T.Lohar belonged to 1971 batch of the directly recruited Dy.SP's of Maharashtra and the applicant was at Sr.No.2/merit list and P.T.Lohar was at Sr.No.5 of the merit list/ and thus junior. The meeting of selection committee for drawal of the select list of State Police Service Officers for promotion to the posts of IPS was held on 8-12-1980 and both the applicant and P.T.Lohar were included in the select list. The date of appointment of the applicant to the IPS is 19-10-1981 and that of P.T.Lohar is 1-5-1982 i.e. to say, subsequent to that of the applicant. The applicant was confirmed in the IPS on 19-10-1982 and P.T.Lohar was confirmed on 1-5-1983. In spite of the above circumstances being in his favour viz. he being senior in the merit list of Dy.SP's he having been appointed to the IPS earlier and he having been confirmed in the IPS earlier, still in the gradation list, P.T.Lohar is shown as senior to him which according to the applicant is illegal. According to the applicant the letter dt.16-1-89 states that the date of inclusion of name in the select list or the date of continuous officiation in senior post, whichever is late shall be the crucial date for determination of seniority in the IPS. In the case of both the applicant and P.T.Lohar the date

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from which the officer is continuously in the select list is common viz. 11-3-1981 but in the case of the applicant the date of continuous officiation in senior post is shown as 20-9-81 whereas in the case of P.T.Lohar the date of continuous officiation in senior post is 1-2-1981 and on this basis P.T.Lohar has been shown as senior to the applicant because evidently an officer continuously officiating from 1-2-81 would take precedence over an officer continuously officiating from 20-9-81.

According to the applicant, however, there is an error in taking the date of continuous officiation in the senior post as 20-9-81. The correct date, according to the applicant, should be 23-9-1980 from which date the applicant started officiating in the post of DCP Port Zone. According to the applicant, as per Govt. notification dt. 29-1-1981 the applicant was shown as transferred from the cadre post of DCP Port Zone to non-cadre post of DCP Zone VI. The applicant contends that this was only a paper transfer and he continuously worked as DCP Port Zone from 23-9-80 to 27-7-81. The applicant proceeded on leave on 28-7-81 to 31-8-81. On 1-9-81 he took charge of DCP Zone VI and he was appointed to IPS on 19-10-81. According to the applicant the DCP Zone VI, Bombay is also a cadre post. Therefore, from 23-9-80 till his appointment to the IPS on 19-10-1981 the applicant was continuously working in a cadre post. Therefore the applicant having worked continuously in the cadre post from 23-9-80 his continuous officiation ought to have been counted from 23-9-80 which is the date earlier than 1-2-81 from which date P.T.Lohar started continuously officiating in a cadre post.

3. On this point, respondent No.2 & 3 viz.

Govt. of Maharashtra have clarified that the contention of the applicant that the post of DCP Zone VI was a cadre post at the time he held it is not correct.

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The respondents 2 and 3 contend that it is true that the applicant, inspite of his transfer on 29-1-1981, continued to work on the post of Deputy Commissioner of Police, Port Zone till 27-7-1981 and proceeded on earned leave for 33 days w.e.f. 28-7-1981 and on expiry of leave he was posted as Dy. Commissioner of Police, Zone VI w.e.f. 1-9-1981. The post of D.C.P. Zone VI was created w.e.f. 1-5-1981 and was a non-cadre post at the time the applicant held it. This post was encadred w.e.f. 8-2-1984. The applicant was promoted to IPS w.e.f. 19-10-1981. Therefore the continuously contention of the applicant that he worked in the cadre posts first as Deputy Commissioner of Police, Port Zone and then as Deputy Commissioner of Police, Zone VI till his appointment to the IPS is not correct. So far as P.T. Lohar is concerned, he was promoted as Superintendent of Police (non-cadre) with effect from 9-9-1980 and posted as DCP, Zone-V a non-cadre post. This post was encadred w.e.f. 1-2-1981. He was promoted to the IPS w.e.f. 1-5-1982 as he was included in the select list unconditionally. Thus P.T. Lohar was holding the cadre post of DCP since 1-2-1981 which was an earlier date than that of the applicant. The respondents have also clarified the circumstances under which the applicant was transferred from a cadre post of DCP Port Zone to a non cadre post of DCP Zone VI. At the meeting of the Selection Committee for promotion of SPS officers to IPS held on 8-12-1980 applicant's name was included in the select list provisionally in view of the fact that departmental proceedings were pending against him. The State Govt. therefore, thought that it would not be proper to continue the applicant on a cadre post of Deputy Commissioner of Police, Port Zone and therefore he was transferred in January, 1981 from the cadre post of DCP, Port Zone to a non-cadre post of DCP Zone VI.

4. On this point, the applicant has questioned the formula applied by the Central Govt. for fixation of seniority viz. seniority to be determined from the date of inclusion of name in the select list or the date of continuous officiation in senior post whichever is later. For this purpose he relied on IPS(Regulation of Seniority)Rules,1988 which appears at page 68 of the O.A. Rule 4 deals with interse seniority of the officers. The same reads as below :

"The interse 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.

Provided that if the date of appointment of more than one officer is the same, their inter-se seniority shall be in the order in which their names are arranged in the select list on the date of appointment to the service."

According to the applicant the respondents have applied a wrong formula for fixation of seniority because according to rules promotee officers have to be ranked inter-se in order of appointment into the service. Since date of appointment of the applicant is earlier than that of P.T.Lohar the applicant has to rank senior to P.T.Lohar.

5. Since the case related to 1980-81 we asked the counsel for the applicant how he was relying on IPS(Regulation of Seniority)Rules,1988 which did not have a retrospective application. The counsel for the respondents pointed out that the correct rules which applied were The Indian Police Service(Regulation of Seniority)Rules,1954. The relevant rule is Rule 3.3. As the main issue of promotee officers involved is of interse seniority the provisions relating to this aspect and explanation 1 and 2 to the Rule 3.3 are reproduced below:

"3.(3)...

(a)....

(b)....

Provided that the year of allotment of an officer appointed to the Service in accordance with rule 9 of the Recruitment Rules who started officiating continuously in a senior post from a cadre earlier than the date on which any of the officers recruited to the Service, in accordance with rule 7 of those Rules, so started officiating shall be determined ad hoc by the Central Government in consultation with the State Governments concerned.

Explanation 1: In respect of an officer appointed to the Service by promotion in accordance with sub-rule(1) of rule 9 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purposes of determination of his seniority; count only from the date of the inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post whichever is later :

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Provided that where the name of a State Police Service Officer was included in the Select List in force immediately before the reorganisation of a State and is also included in the first Select List prepared subsequent to the date of such reorganisation, the name of such officer shall be deemed to have been continuously in the Select List with effect from the date of inclusion in the first mentioned Select List.

Explanation 2 : An officer shall be deemed to have officiated continuously in a senior post from a certain date if during the period from that date to the date of his confirmation in the senior grade he continues to hold without any break or reversion a senior post otherwise than as a purely temporary or local arrangement. "

6. From Explanation-1 it is clear that the Govt. of India had applied the correct formula for determination of seniority. Explanation-2 states that an officer shall be deemed to have officiated continuously in a senior post only if he holds it without any break or reversion. The facts as reported by the State Govt. are that the applicant held the cadre post from 23-9-80 but he did not do so continuously or without any break. He proceeded on leave from 28-7-81 and on his return from leave he held a non cadre post till he was posted to the IPS cadre; therefore, by application of the correct rules, it would appear that there is no illegality in the order granting seniority to the applicant so far as this aspect is concerned.

7. The applicant would, however, contend that State Govt. itself had supported his case before the Govt. of India and in this connection he refers to the letter dt. 19-9-1990 from Under Secretary, Home Department, Govt. of Maharashtra to the Secretary,

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Ministry of Home Affairs, Govt. of India, at page 40.

In our view merely because the State Govt. in course of correspondence purported to support the case, which support was not actually warranted, by correct reading of the rules, the applicant cannot get any relief.

8. The applicant next contends that he would have continued to hold the cadre post of DCP Port Zone but for his orders of transfer and, in fact, the State Govt. has no power to transfer an officer from a cadre post to a non cadre post. For this purpose the applicant draws support from the decision of this Tribunal in T.A.451/86 decided on 7-4-92 V.G.Bajaj vs. U.O.I. & Ors. That was a case in which the applicant was promoted vide order dt. 30-1-1975 as officiating Superintendent of Police at Nanded but that order was kept in abeyance. Again vide order dt. 6-3-1975 the applicant was promoted to officiate as Superintendent of Police, Bhir which post he actually held for some time. Because of illness of his wife he had sought his posting in and around Amraoti to look after the medical treatment of his ailing wife and the applicant was posted as Commandant, S.R.P.F. Group IX, Amraoti which was a newly created post and hence non-cadre post and the applicant worked in that post from 22-9-1975 to 12-1-1977. The stand on the respondents there was that the post of Commandant SRPF was not a cadre post and did not count for purposes of continuous officiation. The Tribunal held that the applicant had no hand in his posting at Amraoti and he was not apprised of the fact that the post was a non cadre post. The Tribunal relied on the case of State of Maharashtra vs. Jagannath Achyut Karandikar for the proposition that no one can suffer because of the error and lapses on the part of the Govt. In our view the ratio of Bajaj case does not apply to the facts in the instant case because we are concerned here not

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with the cadre rules but with the seniority rules. Rule 3(3)(b) deals with interse seniority of direct recruits and promotee officers but Explanation 1 and 2 to Rule 3(3) with which we are concerned deals with seniority interse promotees. Moreover, the facts in this case are also quite distinguishable inasmuch as the applicant in the instant case was included in the select list on a provisional basis and it was because of this provisional nature that Govt. transferred him to a non cadre post and there is no authority for ^{that} holding the Govt. has no power to transfer an officer included in select list on a provisional post to a non cadre post. The counsel for the applicant relied on the case of M.V.Krishna Rao and others vs. U.O.I. & Ors., AIR 1994 SC 1223. That was again a case relating to Rule 9 of the IPS cadre rules and the proposition laid down was that when the promotees were posted in cadre posts and the posting was not by way of local arrangement or temporary arrangement, promotees cannot be deprived of benefit of continuous officiation in cadre posts. It would be seen that M.V.Krishna Rao's case related to the position of promotee recruits vis-a-vis direct recruits which has therefore no applicability to the present case.

9. The applicant then relies on the case of Syed Khalid Rizvi and Ors. vs. U.O.I. & Ors., (1994) 26 ATC 192. That was a case not relating to interse seniority of promotees but it related to the year of promotion. In any case the proposition laid down in that case does not help the applicant. It was held in that case that when promotees are temporarily appointed to cadre post in Central Service on ad-hoc or local arrangement basis under Regulation 8 of promotion Regulations read with Rule 9 of Cadre Rules seniority of such promotees is to be reckoned from the date of their inclusion in the select list or from the

date of their continuous officiation in the cadre post whichever is later on approval of their appointment by Central Govt. The period of their continuous officiation prior to such date would be treated as fortuitous and not countable and hence year of allotment cannot be assigned from the date of the initial appointment. It would be seen that this decision infact upholds the formula applied and does not help the applicant.

10. We are hence of the view that the seniority of the applicant vis-a-vis the seniority of P.T.Lohar was correctly fixed by the respondents and there is no scope for interference with the order fixing the seniority. The O.A. is therefore dismissed with no order as to costs.

O.A. 38/91

11. In this case the applicant compares his case with that of Shri A.P.Dhere. He is aggrieved by the fact that A.P.Dhere was allotted 1978 as year of allotment whereas the applicant was allotted 1979 as year of allotment. Applicant contends that he was working in the senior post w.e.f. 1-2-1981 before he was appointed on 27-6-1983 in the IPS. Respondents point out that there is, however, no officiation in a cadre post to the credit of the officer before his appointment to the IPS. A.P.Dhere with whom the applicant compares his case was having continuous officiation in senior post w.e.f. 16-2-1982 whereas the applicant was working in the post of Superintendent of Police(Railways) which is a non cadre post. On the basis of explanation 1 to Rule 3(3)(b) of The Indian Police Service(Regulation of Seniority)Rules, 1954, therefore, the applicant was given 1979 as year of allotment with reference to A.M.Patnaik, direct recruit who was the juniormost direct recruit officer who

started officiating from 1-4-83. On the other hand the year of allotment of Shri Dhere was fixed with reference to the case of Shri A.L.Verma a direct recruit of 1978 batch who began to officiate in the senior cadre post from 23-8-82. Thus the fact that both S/Shri Dhere and Ghadge were included in the select list on the same day i.e. 18-2-83 and both of them were appointed to the IPS on the same day i.e. 27-6-83 were not relevant and the higher seniority i.e. the earlier year of allotment in respect of Shri Dhere and the lower seniority i.e. the later year of allotment in respect of the applicant were strictly as per the rules.

12. So far as the case law is concerned the counsel for the applicant relies on the case law as in the case of Rathod which we have already referred to and considered as in-applicable.

13. We are, therefore, of the view that the seniority of the applicant having been determined strictly according to rules there is no infirmity in the year allotted for purpose of seniority. The O.A. has no merit and is, therefore liable to be dismissed. ^{as dismissed} There will be no order as to costs.

~~(M.R.KOLHATKAR)~~
Member(A)

(B.S.HEGDE)
Member(J)

M

Sup
22/00/98
Dismissed
S/C
on 21-4-97
R