

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 240/92.

Date of Decision: 26-03-98

Madhav Gunajirao Sanap,

Applicant.

Shri G. K. Masand,

Advocate for
Applicant.

Versus

Union Of India & Others,

Respondent(s)

**Shri S.S. Karkera for Shri P.M. Pradhan,
Counsel for Respondent No. 1.**

Shri M.I. Sethna for Respondent No.2.

Advocate for
Respondent(s)

Shri V.S. Masurkar for Respondent No. 3.

None for Respondent Nos. 4, 5 and 6.

CORAM:

Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri. M.R. Kolhatkar, Member (A).

(1) To be referred to the Reporter or not? 74

(2) Whether it needs to be circulated to other Benches of the Tribunal? W

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 240/92.

Dated this Thursday the 26th day of March, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Madhav Gunajirao Sanap,
R/o - SP's Bungalow,
Sadar Bazar, Near Sainik School,
Satara, Maharashtra.

Working as -
Superintendent of Police,
Dist. Satara,
Maharashtra.

... Applicant

(By Advocate Shri G. K. Masand)

VERSUS

1. Union Of India through
The Secretary,
Government of India,
Ministry of Home Affairs,
South Block,
New Delhi - 110 001.
2. The Chairman,
Union Public Service Commission,
Sahajan Road, New Delhi.
3. State of Maharashtra through
the Chief Secretary to the
Government of Maharashtra,
Home Department,
Mantralaya,
Bombay - 400 032.
4. Shri T. S. Bhal,
Superintendent of Police,
Amaravati, Dist. Amaravati.
5. Shri T.A. Chavan (Shete),
Superintendent of Police,
Buldhana, Dist. Buldhana.
6. Shri V. N. Bokey,
Dy. Commissioner of Police,
Zone-I, Pune.

... Respondents.

(By Advocate Shri S.S. Karkera for
Shri P.M. Pradhan for Respondent No. 1,
Shri M.I. Sethna alongwith Shri V.S.
Masurkar for Respondent Nos. 2 & 3 respectively.
None for respondent Nos. 4, 5 & 6).

O R D E R
(Per: R.G. Vaidyanatha, Vice Chairman)

1. This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents 1 to 3 have filed their reply. The private respondents, who are 4 to 6, have not filed any reply, except respondent 6 sending a letter to the Tribunal stating that he has been permitted as per rules and the department will defend his case. We have heard the learned counsel appearing for the applicant and Respondents 1 to 3.


2. The case of the applicant in brief is as follows:

Applicant passed in the combined services examination held in 1979 by Public Service Commission. It is a composite examination for selection to different posts like Deputy Superintendent of Police, Deputy Collector, Accounts Officer etc. Depending upon the choice of the applicant and the rank obtained by him he would be allotted to particular cadre. It appears at that time 10% weightage for rural candidates was given and the applicant was a rural candidate. He was given that weightage and on the basis of the weightage he got higher rank and he was appointed as Deputy Superintendent of Police, which service he joined on 16-05-1980. Subsequently there was a challenge by somebody about the legality of 10% weightage for rural candidates. That Rule was quashed by the High Court and confirmed by the Supreme Court. As a result of that litigation the Public



Service Commission revised the panel of selection to different cadres and applicant could not be continued in the Police Service and his services came to be terminated. ~~The~~ applicant challenged the same by filing a Writ Petition in the Bombay High Court in Writ Petition No.1681/83. The High Court allowed that Petition by order dated 13.2.87 and directed the Government of Maharashtra that the de-reserved vacancy for S.I. should be given to the applicant. Accordingly the applicant was given that post and subsequently he has been given retrospective promotion from the date his junior had been promoted.

3. It is the applicant's case that T.S. Bhal, was junior to the applicant as per the merit list. As for as Respondents 5 and 6 are concerned, it is admitted that they ~~were~~ were seniors to the applicant in the merit list but it is pleaded that they did not join the Police Service on the date the applicant joined the service. ~~It is~~ stated that Respondent 5 T.A. Chavan (Shete) joined the Police Service as Deputy Superintendent of Police on 6-12-1982 and Respondent No.6 V.N. Bokey, joined the service as Deputy Superintendent of Police on 29.4.83. The question of selection of applicant and other officers ^{was} by promotion to I.P.S. cadre/to be considered by the Selection Committee or D.P.C. in a meeting held on 22.2.90. In that meeting Respondent 4 to 6 were selected for promotion to I.P.S. cadre. Applicant was not selected. It is alleged that Respondent 4 being junior to the applicant could not have been considered for promotion

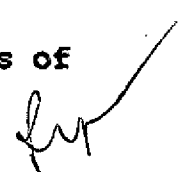


in that Selection / D.P.C. Further it is stated that since Respondent 5 to 6 had joined the Police Service in 1982 and 1983 respectively and had not completed 8 years continuous service in police department as on the date of the Selection / D.P.C. meeting held in February 1990 and therefore they were not eligible to be considered for I.P.S. cadre in that meeting. It is therefore stated that the impugned notification dated 8-3-1991 under which the Respondents 4 to 6 ~~were~~ appointed to I.P.S. cadre is liable to be quashed and the D.P.C. should be directed to consider the case of the applicant for promotion for the vacancy for relevant years 1989-1990 as per Rules.

4. Though separate written statements are filed by Respondents 1 to 3, the defence appears to be common.

It is stated that the Tribunal has no jurisdiction to consider the grievance of the applicant about the seniority over Respondent 4 which is done by the Government of Maharashtra in consultation with the Public Service Commission and it is purely a State matter which has to be decided by the Maharashtra State Administrative Tribunal (M.A.T.) and not by the Central Administrative Tribunal (C.A.T.). Then it is also stated that this claim of the applicant claiming seniority over Respondent 4 is barred by limitation.

5. As for as the applicant's grievance against Respondents 5 and 6 is concerned, it is admitted that Respondent 5 had joined the ~~police~~ service in 1982 and Respondent 6 in 1983, but however, they were given deemed date of appointment to the cadre from 1980 and therefore they must be deemed to be in service from 1980 and they would have completed 8 years of



service prior to the D.P.C. meeting held in February, 1990. It is also stated that having regard to the ^{and} gradation given to the applicant/having regard to the number of vacancies available in February 1990, the applicant could not be promoted to the I.P.S. Cadre. It is also stated that the application is bad for non-joinder of necessary parties, since the M.P.S.C. is not made a party respondent. It is, therefore, stated that the applicant is not entitled to any of the reliefs.

6. At the time of arguments it is now admitted that the applicant has since been promoted to the I.P.S. cadre by order dated 31.12.92 during the pendency of this case. Therefore, the question of quashing the order ^{to} of appointment of Respondents 4 to 6 nor/accommodate the applicant does not arise at all, but the only question to be considered is whether the applicant is entitled to seniority over Respondent 4 to 6. We have heard at length the arguments addressed by Mr. G.K. Masand, learned counsel for the applicant and Mr. M.I. Sethna, Mr. V.S. Masurkar, and Mr. S.S. Karkera for Mr. P.M. Pradhan, learned counsel, on behalf of Respondents 1 to 3.

7. In the light of the arguments addressed before us, the points that fall for determination are -

- (i) Whether the applicant's claim of seniority over Respondent No. 4, T. S. Bhal, in the cadre of Deputy Superintendent of Police, is maintainable in this Tribunal ?

- (ii) Whether the applicant's claim of seniority over Respondent No. 4, T. S. Bhal, in the light of Deputy Superintendent of Police, is barred by limitation ?
- (iii) Whether the applicant is senior to Respondent No. 4, T. S. Bhal, as alleged.
- (iv) Whether the applicant is entitled to seniority over Respondent No. 5, T. A. Chavan and Respondent No. 6, N. V. Bokey, as alleged ?
- (v) Whether the applicant is entitled to promotion to the I.P.S. cadre for the vacancies of the year 1989 or 1990?
- (vi) What order ?

Point No. 1 :-

8. There is serious dispute between the applicant and Respondent No. 4 regarding seniority in the cadre of Deputy Superintendent of Police in the Maharashtra Cadre. It is not and cannot be disputed that this Tribunal has no jurisdiction to decide the seniority of the officers working in a State Cadre. Such disputes pertaining to seniority in State Cadre are to be agitated before the Administrative Tribunal for a particular state. As far as Maharashtra is concerned, there is Maharashtra Administrative Tribunal, which can consider the dispute between the members of the particular State cadre.

9. Now the applicant says that having regard to the position in the merit list, he should be held senior to Respondent No. 4, T. S. Bhal, in the State cadre of Dy. S.P. In our view, this Tribunal cannot decide the seniority of the applicant and the Respondent No. 4 in the State Cadre for want of jurisdiction. It may be in a particular case, this Tribunal may incidentally consider the question of seniority of a State Cadre which has a direct bearing on the All India Cadre. But here, it is not a case of mere considering the case incidentally, but we have to record a positive finding that in the State Cadre the applicant should be placed above T.S. Bhal, which we cannot do, since we have no jurisdiction to decide the dispute of seniority between the members of a State Cadre. The decision of the Full Bench in the case of T. Sham Bhat and Another V/s. Union Of India & Others [1994-96 C.A.T. Full Bench Judgements 213] has no direct bearing on the point under consideration. Therefore, we hold that this Tribunal has no jurisdiction and therefore, the present applicant making a grievance about seniority over T.S. Bhal, in the Maharashtra State Cadre of Deputy Superintendent of Police, is not maintainable. Point No. 1 is answered accordingly.

10. Point No. 2 :- The Learned Counsel for the respondents contended that the seniority of the applicant and Respondent No. 4 were determined long back in 1987 and therefore, the present application filed in 1992 is barred by limitation. But, the learned Counsel for the applicant contends that the applicant had given a representation in 1988 about the question of seniority

and since there was no reply, he filed the present O.A. in 1992.

In the order dated 07.09.1987, which is at page 26 of the paper book of the O.A., it is clearly mentioned that the applicant should be placed ~~below~~ T.S. Bhal. It may be that the applicant was not satisfied with the seniority position and gave a representation dated 30.08.1988, which is at page 31 of the paper book. Even if the applicant gave a representation and no orders have been passed by the respondents, the applicant cannot sit idle. He has to file an O.A. within one year from the date of cause of action, namely - 07.09.1987, when the applicant's seniority was fixed below T. S. Bhal, or atleast six months after giving representation dated 30.08.1988, as provided under Section 21 of the Administrative Tribunals Act, 1985. The applicant cannot wait indefinitely till the order is passed by the Competent Authority. The applicant should file an application ~~within one year~~ from the date of the impugned order or within six months after giving a representation. In the present case, the application is not filed within one year from the ~~impugned~~ order dated 07.09.1987 or atleast within six months after his representation dated 30.08.1988. In either way, the applicant's so far as claim of seniority over T.S. Bhal is concerned, is barred by limitation. Point No. 2 is answered accordingly.

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11. Point No. 3 :- In view of our findings in Point Nos. 1 and 2, strictly speaking, Point No. 3 does not survive for consideration. However, since we have heard arguments of both the sides on merits, we are giving our reasons briefly on Point No. 3.

According to applicant, his place in the merit list was 14, whereas the position of T.S. Bhal in the merit list was 32 and therefore, it was argued by Mr. G. K. Masand, the Learned Counsel for the applicant, that the applicant is always senior to Mr. T. S. Bhal and therefore, showing him below T.S. Bhal in the seniority list is liable to be struck down.

It may be re-called that after the rural weightage marks were taken away, the applicant's services came to be terminated. He filed a Writ Petition No. 1681 of 1983 in the High Court, which came to be allowed as per order dated 13.02.1987. Copy of the order is at page 20 of the Paper Book. The High Court has pointed out that the applicant's serial number in the merit list is 14 for the post of Deputy Collectors, but his serial number in the merit list will be No. 3 so far as the post of Deputy Superintendent of Police is concerned. Though there were five posts of Deputy Superintendents of Police, in the particular order of selection, there were only two posts meant for general category. The applicant belonged to General Category and his ranking position was No. 3 but there were only two General vacancies and therefore, the applicant being in position

of No. 3, could not be appointed to the post of Deputy Superintendent of Police and he had to be appointed only for the post of Deputy Collector. This is what the High Court observed in para 3, which reads as follows :-

"Thus, the evident position is that the Petitioner will have to be appointed in the post of Deputy Collector but not in that of the Deputy Superintendent of Police."

Then the High Court noticed a subsequent development which was favourable to the applicant. It was noticed that among the five posts of Deputy Superintendent of Police, the last post, namely the fifth post was reserved for scheduled tribe candidate. Mr. B.N. Raut had been appointed to that reserved post but he did not join the post, therefore, the post reserved for S/T candidate was lying vacant. Then the Government passed an order dereserving that post. Then the High Court observed as follows in para 4 :-

"In the circumstances, it is only fair and in the interest of all concerned, the said vacancy should be made available to the petitioner "

Therefore, the applicant had no chance of getting the post of Deputy Superintendent of Police in view of his ranking position as there were only two General vacancies but in view of the subsequent development of the post reserved for Scheduled Tribe candidate becoming dereserved the applicant was allotted to that particular post which was the fifth post in the roster.

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In the Government Order dated 07.09.1987, we find the names of five candidates selected as Deputy Superintendent of Police, in which Shri T.S. Bhat is shown at Sl. No. 4 and Shri B. N. Raut, at Sl. No. 5. As per the High Court Order, the applicant comes in the place of B. N. Raut, which is the fifth post, therefore, his post is below Shri T.S. Bhat, and hence, he cannot claim seniority over Shri T.S. Bhat.

However, we may notice that the reserved candidates are given place as per the roster. T.S. Bhat was given the fourth post out of five vacancies, since he belonged to nomadic tribe. The fifth post was given to a Scheduled Caste candidate, which is dereserved and now given to the applicant. Therefore, the applicant, who having been ^{specially} given the fifth post which became dereserved as per the judgement of the High Court, cannot claim seniority over T.S. Bhat, who is in the fourth post out of five posts. If the dereservation was not there, the applicant could not have been appointed as Deputy Superintendent of Police and he would have been appointed as a Deputy Collector, and in these circumstances the applicant's claim of seniority over Respondent No. 4, T.S. Bhat, is not maintainable and the official respondents have rightly fixed the applicant below T.S. Bhat. Point No. 3 is answered accordingly.

12. Point No. 4 :- Now the serious dispute in this O.A. is the claim of applicant as against Respondent No. 5 and 6 on the question of seniority.

The applicant's rank was No. 14 whereas the rank of Respondent Nos. 5 and 6 was 8 and 9 respectively. Therefore, admittedly, the applicant is junior to Respondent Nos. 5 and 6 in the merit list and therefore, normally he cannot claim seniority over Respondent No. 5 and 6 in the cadre of Deputy Superintendent of Police.

But the argument of the Learned Counsel for the applicant is, though Respondent No. 5 and 6 are seniors to the applicant, as per the merit list, respondent nos. 5 and 6 were not eligible to be considered for I.P.S. Cadre in 1990, since they had not completed 8 years of continuous service in the police department as Deputy Superintendent of Police. His argument, therefore, is that, the applicant had completed 8 years of service in 1990 but the Respondent Nos. 5 and 6 had not completed 8 years of service on that day and therefore, they could not have been considered for I.P.S. Cadre in 1990 and if their names are excluded, the applicant is entitled to be considered for promotion to I.P.S. Cadre in 1990 itself.

13. Few facts are necessary to understand the points argued by the Learned Counsel for the applicant.

We have already noticed that the applicant and Respondent Nos. 4 to 6 appeared for 1990 combined Service Examination conducted by the M.P.S.C. and obtained ranks. The applicant joined service as a Deputy Superintendent of Police on 16.05.1980. Respondent Nos. 5 and 6 had joined accounts service in the first instance but after the seniority list was

revised after removing the rural weightage marks as per the judgement of the High Court and Supreme Court, a fresh list was prepared under which Respondent Nos. 5 and 6 got a chance to be appointed as Deputy Superintendent of Police, though they had already been appointed as Accounts Officers. In view of this revised list, respondent no. 5, T.A. Chavan, joined service as Deputy Superintendent of Police on 06.12.1982 and Respondent No. 6, V. N. Bokey, joined service as Deputy Superintendent of Police on 19.04.1983. The Selection Committee meeting for considering the candidates to I.P.S. cadre by promotion was held on 22.02.1990. Both, Respondent No. 5 and 6 had not completed 8 years of service as Deputy Superintendent of Police prior to 22.02.1990 but the applicant had joined the service on 16.05.1980 and had completed more than 8 years as Deputy Superintendent of Police.

14. We are concerned with Indian Police Service (Appointment by promotion) Regulations, 1955 which governs the parties. We are concerned with Rule 5 which provides the constitution of the Committee and preparation of list by the Committee, etc. We are concerned with the third proviso of Rule 5 which reads as follows :-

"Provided also that the Committee shall not consider the case of a member of the State Police Service unless on the first day of January of the year in which it meets he is substantive in the State Police Service and

has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Government."

The above proviso clearly provides that one must have completed not less than 8 years of continuous service in the post of Deputy Superintendent of Police or any other equivalent post. In the present case, admittedly Respondent No. 5 and 6 were working in the Finance Department and joined the Police Department only in 1982 and 1983 respectively and had not completed 8 years continuous service in the police department. It may be that the Government has issued an order by giving deemed date of appointment to Respondent No. 5 with effect from 01.06.1980 and to Respondent No. 6 with effect from 28.07.1980. It may be that the deemed date of appointment may give some benefits to Respondent Nos. 5 and 6 regarding fixation of pay, retirement benefits, earning of increments, etc. but this deemed date of appointment cannot give actual service as a Deputy Superintendent of Police or equivalent post within the meaning of the third proviso to Rule 5 mentioned above.

15. The object of the rule is that, for promotion to I.P.S. Cadre, the concerned officer must have minimum 8 years service in the feeder post, namely the post of Deputy Superintendent of Police. The object is that, such a person who has put in 8 years service can shoulder higher responsibility when he is promoted to I.P.S. Cadre. This period of 8 years in

the Police Department as Deputy Superintendent of Police or equivalent post, is necessary to assess his ability, merit, suitability, efficiency, etc. for considering him for promotion to the I.P.S. cadre. If we give the benefit of deemed services, how can these qualities be assessed. Therefore, in our view, the actual service as a Dy.S.P. for 8 years or equivalent post is absolutely necessary, as the minimum eligibility criteria for being considered for promotion of I.P.S. cadre and the question of deemed appointment from an earlier date will not give the required eligibility criteria. We are fortified in our view by two decisions of different Benches of this Tribunal, which are reported in (1993) 23 ATC 746 in the case of K. Ramachandra Panicker V/s. Chief Secretary to Government of Kerala & Others, decided by the Ernakulam Bench and a case reported in (1994) 28 ATC 606 [Dawood Khan V/s, Union Of India & Others] decided by the Madras Bench of the Tribunal, wherein on an identical point it was held that notional seniority from an earlier date in the feeder post will not be sufficient to make out the minimum requirement of 8 years of actual service in the post of Dy.S.P. for promotion to I.P.S. Cadre. We are in respectful agreement with the views of the two Benches which supports our view.

For the above reasons, we hold that Respondent Nos. 5 and 6 did not have the minimum eligibility criteria, namely - 8 years service as Dy.S.P. and therefore, they were not eligible to be considered for promotion to I.P.S. Cadre in the

D.P.C. Meeting held on 22.02.1990. There cannot be any dispute that the applicant did ~~not~~ fulfill the eligibility criteria of minimum 8 years in the post of Dy.S.P., since he joined his service in 1980 and the D.P.C. was held in 1990. Therefore, the applicant had a right to be considered in the D.P.C. Meeting held in 1990 and Respondent Nos. 5 and 6 had no right and no eligibility to be considered for promotion to the I.P.S. Cadre in the D.P.C. Meeting held on 22.01.1990. Point No. 4 is answered accordingly.

16. Point No. 5 :- In view of our findings on Point No. 4, respondent nos. 5 and 6 could not have been considered for promotion to I.P.S. Cadre in 1990. Infact, the applicant was considered for promotion to I.P.S. Cadre in the D.P.C. Meeting held on 22.02.1990. The Government has issued notification dated 08.03.1991 under which 8 Dy.S.Ps. including Respondent No. 4 to 6 have been appointed on promotion to I.P.S. Cadre. The applicant wants this notification to be quashed so far as it pertains to Respondent Nos. 4 to 6. We have already rejected the claim of the applicant so far as Respondent No. 4, T.S. Bhal is concerned. Now the question is, whether this notification should be quashed regarding Respondent Nos. 5 and 6? In our view, it may not be necessary in view of the subsequent development. When the applicant filed this O.A., he was still in the ~~old~~ cadre and he had not been promoted to the I.P.S. Cadre, whereas Respondent Nos. 4 to 6 had been appointed to I.P.S. Cadre as per notification dated 8th March, 1991.

Therefore, the applicant was obliged to file this O.A. to quash this notification. But it is now brought to our notice that the applicant has since been promoted to I.P.S. Cadre by a notification dated 31.01.1992. Though Respondent Nos. 5 and 6 were not eligible to be considered in 1990, since they had not completed 8 years service as Dy.S.P., but subsequently they have completed that 8 years service, that means, Respondent No. 5 completed 8 years service in 02/1990 and Respondent No. 6 completed 8 years service in 04/1991. Therefore, as on the date of the present O.A., both respondent Nos. 5 and 6 had completed 8 years and they were ~~eligible to be~~ considered for promotion to I.P.S. Cadre. Now therefore, there is no necessity to quash the notification in order to give promotion to the applicant retrospectively from 22.02.1990. Since both the applicant and Respondent nos. 5 and 6 have been promoted to the I.P.S. Cadre, there is no necessity to quash the notification dated 08.03.1991. In view of the subsequent development, the only short point for consideration is, whether the applicant should be given retrospective promotion to I.P.S. Cadre from 08.03.1991 when his juniors came to be promoted to I.P.S. Cadre.

17. Shri M.I. Sethna, the Learned Counsel for Respondent No. 2, contended that having regard to the number of vacancies available on 22.02.1990 and the grading given to the applicant on the basis of service record, the applicant is not entitled to be considered for promotion to I.P.S. Cadre on

22.02.1990 and therefore, there is no necessity to give any direction in that behalf. The Learned Counsel has made available the original D.P.C. proceedings of the meeting held on 22.02.1990. It is also brought to our notice that as per the Indian Police Service (Appointment by promotion) Regulations, 1955, promotion depends upon the grading given by the D.P.C. to the various candidates, in particular, Rule 5(4) provides that the Selection Committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit', as the case may be, on an overall relative assessment of their service records and then, Rule 5 (5) provides that the candidates who are given grading as 'Outstanding' must be selected first, followed by the candidate having the grading as 'Very Good' and then candidates having the grading as 'Good'.

Even if Respondent Nos. 5 and 6 are excluded from consideration on 22.02.1990 on the ground that they did not have actual service of 8 years in the feeder cadre, still it is doubtful whether the applicant could be appointed to the post having regard to the grading he got and the total number of vacancies that was available. If the applicant cannot be considered in that year and the applicant is again considered in the subsequent years alongwith respondent nos. 5 and 6 after they become eligible, even then it is doubtful whether the applicant can get seniority above

Respondent Nos. 5 and 6 in view of their respective gradings given by the Selection Committee. The applicant is given grading as 'Good', whereas the respondent nos. 5 and 6 are given grading as 'Very Good'. However, this is a matter which a Expert Committee like the Selection Committee, which has to consider and therefore, we do not want to express any final opinion on this point. We only give directions as to what the Selection Committee has to do in this behalf.

18. A review D.P.C./Selection Committee meeting shall be held to consider all the candidates who were in the zone of consideration before the previous meeting held on 22.02.1990, except respondent No. 5, T. A. Chavan and Respondent No. 6, V.N. Bokey, since they have to be excluded from consideration as being not eligible for consideration due to want of 8 years of continuous service. By excluding the names of T.A. Chavan and V.N. Bokey, the review D.P.C. shall consider the name of the applicant and other candidates who were in the zone of consideration on that day and then find out whether the applicant can be promoted for the vacancies of the year 1989 and 1990, having regard to the number of vacancies available as on 22.02.1990 and the grading given to the applicant. If taking all these facts into consideration, the Selection Committee comes to the conclusion that the applicant is entitled to be promoted in the review D.P.C., then the applicant should be given seniority

over respondent nos. 5 and 6 from the date they were promoted, namely 08.03.1991. If, on the basis of review D.P.C., as directed in this order, the applicant is not entitled to be selected for promotion to I.P.S. Cadre in view of the number of vacancies and ~~()~~ in view of his grading and other relevant facts, then the ~~Committee~~ can pass appropriate orders rejecting the claim of the applicant. We expect the D.P.C./Selection Committee to do this exercise within a period of four months from the date of receipt of this order.

For the above reasons, our findings on Point No. 5 is that the applicant's case deserves to be considered by a Review D.P.C. for promotion to the I.P.S. Cadre in the vacancies of 1989 and 1990, subject to guidelines given in this order.

19. Point No. 6 :- In the light of the findings given above on points 1 to 5, the application has to succeed in part. One more argument on behalf of the respondents is that the application is bad for non-joinder of necessary parties, since M.P.S.C. is not ~~made~~ a party as far as the claim of the applicant for seniority over Respondent No. 4, T.S. Bhal is concerned. We need not express any opinion on this point since we have rejected the claim of the applicant in this respect both on merits and also on the point of limitation and jurisdiction.

As far as the applicant's claim against respondent Nos. 5 and 6 is concerned, the question of limitation does not arise. The applicant is aggrieved by the notification dated 08.03.1991 under which Respondent Nos. 5 and 6 were promoted to I.P.S. Cadre. The present application was filed in February 1992, well within one year from the date of cause of action, namely 08.03.1991, hence the application is well within time so far as the claim against respondent nos. 5 and 6 are concerned.

20. In the result, the application is allowed partly as follows :-

- (i) The claim of the applicant with regard to seniority over Respondent No. 4, T.S. Bhal, is concerned, is hereby rejected.
- (ii) The applicant is entitled to claim seniority over Respondent No. 5, T.A. Chavan and Respondent No. 6, V. N. Bokey, provided the applicant is found suitable for promotion to the I.P.S. Cadre by the Review D.P.C. to be held as per the guidelines given in this order in para 18. If the review D.P.C. holds that the applicant is entitled to promotion as on 22.02.1990, then the applicant is entitled to seniority over Respondent Nos. 5 and 6 from the date they came to be promoted to the I.P.S. Cadre, namely with effect from 08.03.1991.

- (iii) If as a result of review D.P.C. the applicant is not found suitable for promotion as on 22.02.1990 having regard to the number of vacancies available, then and having regard to his grading, etc. then there is no necessity to disturb the seniority given in the impugned order dated 08.03.1991.
- (iv) The review D.P.C. should complete this exercise within a period of four months from the date of receipt of this order.
- (v) In the circumstances of the case, there will be no order as to costs.

M R Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

R. G. Vaidyanatha
26.3.98
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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(3)