

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 367/92/199

Date of Decision: 13th SEPT. 96

Sunil Moreswar Vaidya

Petitioner/s

Mr. S.R. Atre

Advocate for the
Petitioner/s

V/s.

U.O.I & 2 ors.

Respondent/s

Mr. M I Sethna (R 2 & 3)

Mr. V S Masurkar (R 1)

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B.S. Hegde, Member(J)

Hon'ble Shri P.P. Srivastava, Member(A)

- (1) To be referred to the Reporter or not ? *
- (2) Whether it needs to be circulated to other Benches of the Tribunal ? *


MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GUE STAN' BUILDING NO.6
PRESCOT ROAD, MUMBAI-1

O.A. No. 367/92

DATED: THIS 13th DAY OF SEPTEMBER, 1996

Coram: Hon. Shri B.S. Hegde, Member(J)
Hon. Shri P.P. Srivastava, Member(A)

Sunil Moreshwar Vaidya
C/o. Adv. Mr. S.R. Atre
CAT, Prescott Road, Mumbai

(By Adv. Mr. S.R. Atre) ..Applicant

V/s.

1. The Union of India
through the Secretary
Ministry of Home Affairs
South Block, New Delhi

(By Adv. Mr. V.S. Masurkar,
Central Govt. Standing Counsel)

2. The Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai

3. The Addl. Chief Secretary
Govt. of Maharashtra,
Home Department, Mantralaya,
Mumbai

(By Adv. Mr. M.I. Sethna,
Central Govt. Senior Standing
Counsel)

..Respondents

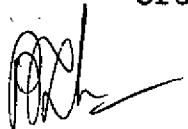
ORDER
(Per: P.P. Srivastava, Member(A))

The Applicant is a released Emergency
Commissioned officer and after due selection he was
appointed as Deputy Superintendent of Police on
16.8.1976, Exhibit E. The applicant later on was

[Signature]

nominated to the I.P.S. and was allocated Maharashtra cadre by the order dated 4.6.85, Exhibit K. In view of the Defence Services the applicant was given deemed date of appointment in the cadre of Deputy Superintendent of Police as 1.4.1968. The Applicant thereafter requested the Administration vide his letter dated 23.4.85 that in view of his deemed date of appointment as Deputy Superintendent of Police on 1.4.1968 he should be given the deemed date of promotion as Superintendent of Police on 25.5.1976, as the Deputy Superintendent of Police of 1969 batch Direct recruits were promoted as Superintendent of Police on that date. The deemed date of promotion has been granted to the applicant vide Annexure M as 17-01-1979. However, the applicant further represented that he may be granted the year of allotment as 1973 in the I.P.S. vide his representation dated 30.10.1990 as there is a change in his service condition. The request of the applicant was turned down by the respondents vide their letter dated 22.8.91, Exhibit T, on the ground that there is no provision in the I.P.S. Regulation 1955 for review of the year of allotment. The applicant has preferred this O.A. and has challenged the order at Exhibit T dated 22.8.1991.

2. Ld. Counsel for the applicant has argued that the ground taken by the Respondent in the impugned order viz., that there is no provision for review of




year of allotment is no longer valid as by a number of judgments the Tribunal including that of this Bench this question has been considered and ~~in many~~ other cases the Administration has been ordered to review the case for proper placement rejecting the dispassionate grounds.

3. Mr. Masurkar, Ld. Counsel for Respondent No.1, Union of India has argued that the cadre of I.P.S. is fixed and the ratio between the Direct Recruits and Promotee Officers is also fixed and any change in that cadre would result into anomalous situation in the ratio of promotees Vs. Direct Recruits and the strength of the cadre will have to be changed in case if some new entrants are taken into the cadre. In view of this the Rules do not provide for any review of the year of allotment which has already been granted in the earlier cadre.


The Ld. Counsel further argued that the applicant was appointed in the year 1976 as Deputy Superintendent of Police and since he could not have been considered for IPS before completing 8 years of service, the applicant was considered by the Selection Committee on 15.12.1984 when he completed 8 years of service and was included in the select list after approval by the UPSC on 13.2.1985.

4. Ld. Counsel for the State i.e., Respondents Nos. 2 and 3 have submitted that the case of the applicant is required to be dealt with in terms of



Indian Police Service (Appointment by Promotion) Regulation 1955, Regulation No.5. According to this Regulation No.5 the applicant can only be considered if he has completed 8 years of continuous service. The applicant was appointed to officiate as Dy.S.P. on 6.9.1976 in one of the posts reserved for Released Emergency Commissioned Officers/Short Service Regular Commissioned Officers. On completion of probation he was confirmed as Deputy Superintendent of Police on 6.12.1978. He was promoted to the non-cadre post of S.P. on 16.6.1983. The State Government requested the Government of India ^{to} consider the case of the applicant for placing before the Selection Committee for assessing his fitness and suitability for inclusion in the list of promotees to the IPS for the year 1979. However, this request of the State Government was not acceded by the Union of India and the case was rejected by their order dated 22.8.91 which is under challenge in this O.A.

5. We have considered the record and heard the arguments of all the Counsel. It is a fact that the applicant's service conditions have changed as a result of his being given the deemed date of appointment by virtue of his military service and the applicant has a valid reason for representing his case to the authority for considering his case for year of allotment on the basis of his changed service conditions. However, we do not see any justification



in the request of the applicant for granting 1973 as the year of allotment in the IPS. However, as has been rightly brought out by the State Government in their affidavit the applicant became due for consideration to IPS on 6.12.1978 and he would be, therefore, entitled to be considered for placement for the year 1979, a meeting of which was held on 3.11.1979.

6. The Ld. Counsel for the Applicant has brought to our notice the case of RAJENDRA A. SONAWANE Vs. UNION OF INDIA & 2 ORS., in O.A. No. 28/92 decided on 4.8.1994 wherein a similar question was considered. The question concerning there being no provision in the Indian Police Service (Appointment by Provision) Regulations for reviewing the select list once it is approved and is acted upon and there is no provision for retrospective appointment to the service has been specifically considered. After considering the issue this Bench of the Tribunal has held as under in para 5:

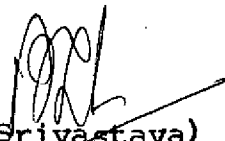
"5. The matter is no longer res-integra and we find that no objection can be raised at this stage on the basis that the cadre strength of IPS cadre would be affected. The applicant would clearly be entitled to reconsideration of his entitlement when he should have been considered when his junior Shri Vaidya was considered in the years 1984, 1985 and 1986 and if the applicant is found suitable to give him




appropriate placement as per rules. We direct appropriate review selection committee be held within four months from the date of communication of this order with a view to ascertain the applicant's entitlement as stated above. "

7. This being the position of law as enumerated in our judgment, we have no hesitation in directing the respondents that the case of the applicant should be considered for inclusion in the list of I.P.S. cadre from the year 1979^{onwards} and ~~1981~~ ¹⁹⁸¹ he may be given appropriate placement, if found suitable as per rules. We further direct that the Review Selection Committee be held within a period of four months from the date of communication of this order for considering the entitlement of the applicant as stated above.

8. With the above direction the O.A. is disposed of. There will be no order as to costs.


(P.P. Srivastava)
Member (A)


(B.S. Hegde)
Member (J)

Corrected
ndi order dated
26.11.96
PPS

5

Dated: 26.11.96 (5)

Mr. S. R. Atrre for the applicant.
Mr. Suresh Kumar for Mr. M. I. Sethi for
the respondents.

Learned Counsel for the parties
draws our attention to Para 7 of the
order dated 13.9.96, wherein it has
been mentioned that "the case of the
applicant should be considered for
inclusion in the list of I-P.S. Cadre
from the year 1979 onwards." Both the
Counsel stated that instead of "1979",
the year should be "1981". Accordingly,
the year "1979" be deleted and
substitute the word "1981" in its place.

The corrected copies be given
to the parties.

m.j.

(P. P. Srivastava)
MLA

(B. S. Hegde)
MLA

Order/Judgement despatched
to Applicant/Respondent(s)
on 29/12/96

10/12/96

23) (14-2-1997)

m.p. No. 91/97

m.p. No. 91/97
for extension of
time, filed on
14.2.97

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112

Shri B. Ranganathan for
Shri S.R. Afire, counsel for the
applicant.

Shri M.I. Sethna along-
with Shri Guresh Kumar for
the Respondents.

m.p. No. 91/97 filed by
the Respondents is for
extension of time ^{by two months} for implementing
the order of the Tribunal.

m.p. No. 91/97 is
allowed.

Extension of time
granted up to 31/3/97
for implementing the
order of the Tribunal.

✓ 2/0

m.p. No. 91/97
stands disposed of.

copy of the order
be given to the parties.

(P.P. Srivastava)
MLA

(B.S. Hegde)
MLA

as

dd. 14/2/97
Order/Judgement despatched
to Applicant/Respondent(s)
on 21/2/97

26/2/97

Vakalatnama filed
by Shri M. Tripathi & Co.
for affected party in
P.O. in no. 367/92

2
213

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

R.P.NO.28/97 in OA.NO.367/92

Dated this the 21st day of July 1997

CORAM: Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri P.P.Srivastava, Member (A)

Sunil Moreshwar Vaidya

... Applicant

V/S.

Union of India & Ors.

... Respondents

Tribunal's Order


This is a Review Petition in OA.NO.367/92 judgement in which case delivered on 13.9.1996. The Review petitioners were not parties in the OA. The main ground of the review petitioners is that they will be adversely affected by the judgement of the Tribunal in OA.NO.367/92 by which the applicant in that OA. Shri Vaidya has been granted some relief. The case of the review petitioners is that if the judgement is implemented in favour of the applicant in the OA., the seniority of the review petitioners will be adversely affected.


2. The applicant in the OA. was a released Emergency Commissioned Officer and the issue involved was a ground of seniority as a result of the orders of the State Government granting certain benefits of seniority to the released Emergency Commissioned Officers.



.. 2/-

The review petitioners in this case are not released emergency commissioned officers and therefore this is not a case where the review petitioners could claim relief. The case of the review petitioner does not touch the issue involved in the OAst and the decision rendered therein, but the thrust of the review petitioners is if the decision in the OAst is implemented, the applicant will get the seniority above the review petitioners. We do not think that this is a sufficient ground for the review of the decision because nothing has been brought out in the review petition which will affect the judgement which we have already given in the OAst. The review petitioners have not brought out any error apparent on the face of the record except saying that they were not party although they are likely to be adversely affected. We do not consider that the issue ^{brought out} involved in the ^{review petition} OAst warrant any review of the judgement. In view of this, we do not see any merit in the review petition and the same is dismissed in limine.


(P.P. SRIVASTAVA)
MEMBER (A)


(B.S. HEGDE)
MEMBER (J)

mrj.

order/Judgement despatched
to Applicant/Respondent (s)
on 24.7.97

29/6/97