

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 142/94.

Date of Decision : 14/10/98

P. V. Joshi, Petitioner.

In Person Advocate for the
Petitioner.

VERSUS

Union Of India & Another Respondents.

Shri M. I. Sethna alongwith Advocate for the
Shri V. D. Vadhavkar. Respondents.

CORAM :

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

Hon'ble Shri D. S. Baweja, Member (A).

- (i) To be referred to the Reporter or not ? *no*
- (ii) Whether it needs to be circulated to
other Benches of the Tribunal ? *no*

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

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, 'GULESTAN', BUILDING No.6
PRESCOT ROAD, MUMBAI-400001

O.A. No. 142 of 1994 (O.A. 142/94)

DATED : THIS 16th DAY OF OCTOBER, 1998

CORAM : Hon. Shri Justice R.G. Vaidyanatha, V.C.
Hon. Shri D.S.Baweja, Member(A)

P.V. Joshi, IPS
18/10 Anand Nagar Park
Paud Road, Pune 411029

..Applicant

V/s.

1. Union of India
through Secretary
Union Home Ministry
Dept. of Personnel,
Pension & Public Grievances,
North Block,
Central Secretariat
New Delhi

2. State of Maharashtra
through Chief Secretary
to the Govt. of Maharashtra
G.A.D. 5th floor
(By Shri Chandrachud
Additional Solicitor General
with Mr. M.I. Sethna, Senior
Advocate along with Mr. V.D.
Vadhavkar, Counsel)

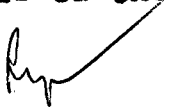
..Respondents

O R D E R

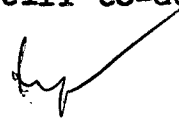
(Per: R.G. Vaidyanatha, Vice Chairman)

1. This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard the applicant, who argued the case in person and Mr. D.Y. Chandrachud, the learned Additional Solicitor General for Union of India and Mr. M.I.Sethna along with Mr. V.D. Vadhavkar, counsel for both the respondents.

2. The applicant's case in brief is as follows:
The applicant is an I.P.S. Officer of 1976 batch and allotted to State of Maharashtra. According to the applicant, the IPS officers are appointed and controlled by the Central Government by virtue of Article 312 of the



Constitution of India and by the provision of the All India Services Act, 1951, except the limited power of promoting IPS Officers to senior time scale, the State Government has no further power of promoting any IPS officer to higher ranks. The applicant has been superseded by his junior for the post of DIG of Police. All the IPS Officers of State of Maharashtra who are seniors to the applicant have accepted the orders issued by the State Government and thereby they have become officers of State Service of Maharashtra and therefore they cannot hold the post of All India Service cadre. The State Government has also created certain additional cadre posts which is illegal. All those ~~senior~~ officers who have accepted the promotions given by the State Government cannot be superior to the applicant and therefore they have no right to write C.Rs. of the Applicant. The applicant is made to work under a police officer who cannot be in the IPS since they have accepted promotion orders ^{issued} ~~by~~ the State Government. On these allegations the applicant has approached this Tribunal praying for a direction that the Central Government should delete all the IPS Officers who have accepted appointments or accepted promotions from the State Government from the gradation list of IPS Officers, or a direction to the Union of India to promote the applicant and to give him resultant seniority excluding all the IPS officers of the State ^{who are} ~~have~~ deemed to have been absorbed in the State Public Service, that the Union of India should consider the applicant's eligibility for promotion by a departmental committee consisting of All India Service Officers who have never accepted appointments by a State Government and for quashing the C.Rs. of the applicant from 1978 till to-day

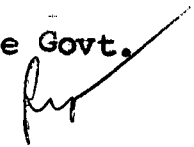


on the ground that they are illegal documents prepared by officers who had no competence.

3. The respondents have filed reply asserting that the application is not maintainable and the grounds alleged in the application are no legal grounds at all. It is stated that the application is misconceived, all the allegations in the application are ^{denied} challenged. It is stated that the IPS Officers have been promoted as per rules framed under section 3 of 1951 Act. The promotions made by the State Government to IPS cadre of officers is perfectly according to law. It is stated that all the appointments and promotions are made as per the rules framed by the Central Government, that the applicant is not entitled for any relief prayed and it is prayed that the application be dismissed with costs.

4. The point for consideration is whether the applicant is entitled to all or any reliefs prayed for in para 8 of the application. We have already seen the main thrust of the applicant's case is that the State Government has no administrative control over the IPS Officers and it has no right to promote them. Both the applicant and the learned counsel appearing for the respondents adopted their arguments which they submitted in the other O.A. filed by the applicant i.e., O.A. No. 590 of 1993.

5. To-day we are pronouncing judgement in O.A. No. 590 of 1993 also. We have held in that case that the State Government has full administrative powers over the IPS Officers except to the extent some powers are retained by the Central Government under different rules. For instance under the disciplinary rules, the state Govt.



is given power to ~~suspend~~ an IPS Officer and to initiate disciplinary action and to impose minor penalties. But the Central Government has reserved the right of imposing major penalties like removal from service, dismissal or compulsory retirement. In the recruitment rules the Central Government has reserved right of initial recruitment/appointment to the IPS cadre. Nowhere in any of the rules the Central Government has retained the right of making further promotions in the IPS cadre after the initial recruitment. In our judgement pronounced to-day in O.A.No.590/93 we have considered the contention of both the parties and the relevant rules and held that the State Government has powers of promoting the I.P.S. officers to different cadres and have administrative control over IPS officers. We adopt the same reasoning in the present case also. In the present case the first prayer in the O.A. is that of the IPS officers who have accepted promotions issued by the State Government should be deemed to have been absorbed in the State Public Service and they no longer continue as IPS Officers. In our view this prayer on the fact of it is misconceived, falacious and absurd. If once it is held that the State Government has right to promote IPS Officers as we have held in O.A590/93 the first prayer that IPS Officers in the State have committed a sin ^{by} when accepting the promotion ^{orders} issued by the State Government has no legs to stand. By a stroke of pen the applicant wants to set at ~~at~~ knot the prevalent practice over a period of 50 years in all the states all over India. We can take judicial notice that all over India and in all the states right from 1950 till now, for the last 50 years, the State Governments are effecting promotions of IPS officers

and have other administrative control like writing ACRs, effect^{ing} transfers, initiate disciplinary enquiry etc. There are number of decisions of the Tribunals, High Courts and Supreme Court regarding promotion of IPS officers and ~~no body~~ has ever questioned the authority of the State Government to make promotions to IPS Officers or promotions in other All India Services like IAS or IPS.

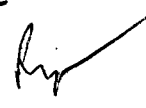
6. For the reasons mentioned in the O.A. 590/93 we hold that the first prayer cannot be granted and is liable to be rejected. The second prayer is that the applicant should be promoted to higher grades in IPS since he is the only IPS officer left in Maharashtra state, since all his senior officers are to be excluded from IPS cadre as per prayer No.1. Since we have rejected the prayer No.1, the second prayer made by the applicant has to be rejected as misconceived. The third prayer is that the applicant's case for promotion to be considered by a D.P.C. excluding the Maharashtra Cadre of IPS Officers who have become part of State Public Service as per prayer No.1. In our view, for the reasons already given ^{regarding} prayer No.1, ~~as~~ the applicant cannot be granted and as a consequence even the third prayer cannot be granted, as the third prayer flows directly from the first prayer.

7. As far as the applicant's case for promotion is concerned, we may place it on record that that the applicant challenged his supersession and promotion of his juniors as DIG by filing O.A. No. 1195/92. After



hearing both sides by a considered order the O.A. was dismissed on 6.4.93. The applicant challenged the same before the Supreme Court by filing a SLP. It is now ~~brought~~ to our notice that the SLP filed in the Supreme Court ~~has~~ also been dismissed recently for default.

8. After ~~having~~ lost his case for promotion on merits in O.A.No. 1195/92 by order dated 6.4.93, two months later in June 1993 the applicant filed O.A.590/93 contending that his supersession by the State Government is illegal since State Government has no powers to promote IPS officers. During the pendency of O.A.No. 590/93 the applicant has filed the present O.A. ^{arguing} ~~asserting~~ that he is the only IPS officer available in the State of Maharashtra since all IPS officers senior to him have accepted promotions given by the State Government and they have no right to participate in any DPC to consider the case of the applicant for promotion etc. In our view the applicant having failed in his first attempt in challenging the supersession cannot be ~~permitted~~ by filing successive O.As. by taking different grounds ^{every} ~~at any~~ time. Principles of construction ~~of~~ resjudicata analogous to S. 11 of the Code of Civil Procedure gets attracted. A party cannot go on changing ^{his} ~~its~~ fronts and changing grounds from time to time. When a party comes to court he has to take all grounds permissible in law to get a particular relief. Having lost the case, he cannot file a fresh case asking for relief of promotion on a different ground. It is impermissible in law. Therefore the applicant's prayer for promotion is liable to be rejected.



9. The next prayer in the application is that all the CRs of the applicant written in the last 20 years from 1978 till to-day by the senior IPS officers should be quashed since they are no longer superior IPS officers for the reasons mentioned above. We have already rejected the applicant's contention that the senior officers in Maharashtra have ceased to be IPS officers. In view of the answer to prayer one above this prayer for quashing the ACRs cannot be ^{granted.} ~~permitted.~~


10. The next and the last relief prayed for is that the Central Government should be directed to establish an independent authority to over-see proper implementation of All India Service Rules in the State of Maharashtra. This is purely a policy matter and it is for the Central Government to decide as to what action is to be taken. The Courts and Tribunals cannot interfere with ^a the matter of policy. Further the relief asked for is ^a not something pertaining to the service condition of the applicant. This Tribunal has no jurisdiction to entertain or decide public interest litigation. A party with a service dispute can approach this Tribunal. The applicant's grievance in this case is about not getting promotion and supersession. We have already held that he has filed previous O.A. challenging the supersession and it has been rejected by a considered order passed by this Tribunal. In the present O.A. he has taken some more grounds which we have already rejected. Therefore constitution of an independent

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authority to over see the All India Service Rules is not a matter pertaining to the applicant alone but it is a matter which concerns all the All India Service officers working in Maharashtra. None of them are made parties to this application. Further the relief is in the nature of public interest litigation. Further it is a policy matter. Even on merits we do not find any ground is made out for such a direction. When the rules itself provides as to how the Central Government should act upto a certain level and beyond a certain level, and how the State Government can act after initial appointment etc., The rules are clear and no doubt about it. Hence even on merits no case is made out for granting such a relief. Hence even the last relief mentioned above cannot be granted.

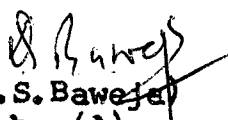
11. M.P.No. 242/95 is filed by the applicant to direct the Respondents to strictly conform to Rule 4(2) of IPS Cadre Rules 1954, to direct the respondents that officers accepting illegal posts created under Rule 4(2) should ~~not~~ not have any control over the applicant.

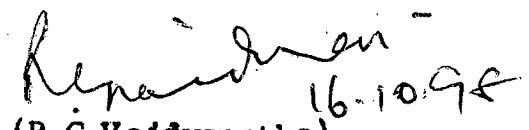
12. Applicant's grievance is that the State Government has created certain posts and continuing them beyond one year contrary to rules. In reply the respondents have taken a position that the prayer in the M.P. No. 242/95 has nothing to do with the prayer in the O.A. They have also stated some ex-cadre posts are created as per rules.



13. After hearing both the sides and perusing material on record we do not find any illegal appointment or illegal posts. Further the prayer in the M.P. has no bearing on the prayer in the O.A. Hence M.P.No.242/95 is liable to be dismissed.

14. In the result the O.A. is dismissed with costs. M.P.No. 242/95 also dismissed. In the circumstances we direct the applicant to pay cost of Rs.500/- each for Respondents Nos. 1 and 2. The costs may be paid directly to the respective Governments or to be deposited in the office of the Tribunal within two months from to-day.


(D.S. Bawejkar)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman
16-10-95