

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1007/94

Date of Decision: 28.11.92

S.B.Sawarkar

Applicant.

Shri M.M.Sudame,

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri L.G.Deshpande for R-3.

Advocate for
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? *Yes*

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *No*


(P.P.SRIVASTAVA)
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI,
CAMP AT NAGPUR.

ORIGINAL APPLICATION NO. 1007/1994.

28th, this the Fifty day of November 1997.

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

S.B.Sawarkar,
Superintendent of Police,
Buldhana,
Maharashtra State.

... Applicant.

(By Advocate Shri M.M.Sudame)

V/s.

1. The Union of India,
Through the Secretary to the
Govt. of India, Ministry of
Home Affairs,
South Block,
New Delhi.
2. The Chairman,
Union Public Service Commission,
Shahajahan Road,
New Delhi.
3. The State of Maharashtra
through the Chief Secretary
to the Government of Maharashtra,
Home Department, Mantralaya,
Bombay - 400 032.

... Respondents.

(By Advocate Shri L.G.Deshpande
for R-3 and none for R-1 & 2).

O R D E R

(Per Shri P.P.Srivastava, Member(A))

The applicant was recruited by the Maharashtra Public Service Commission (M.P.S.C.) as Deputy Superintendent of Police as a direct recruit in 1978. He was promoted as Superintendent of Police in 1984 according to the Regulations of IPS (Appointment by Promotion) Regulation, 1955, he became eligible for consideration to the IPS on 1.1.1987 after completion

of 8 years of service. The applicant was considered for selection in December, 1987 although the applicant was provisionally selected by the Selection Committee, but he could not be promoted as he was facing a departmental enquiry and also a prosecution initiated by a private person. It is seen from the records that the applicant was later on exonerated both in the criminal case, as well as, in the departmental inquiry as brought out by the applicant in the Maharashtra Government's Order dt. 30.1.1992 (Placed at Annexure IV page 20 of the paper book). The applicant was thereafter, again considered for promotion to IPS in 1992 DFC and the applicant was selected and appointed to IPS on 31.12.1990.

2. The applicant, thereafter represented that in view of the fact that the departmental proceedings against the applicant having been dropped and that he has been acquitted in the criminal case filed by a private party, the applicant should be given the date of promotion on the basis of his selection in December, 1987 and he should be considered as promoted from 22.9.1988 when his juniors were promoted. The only plea that the respondents have taken in this case is in rules for giving position in that there is no provision ~~in~~ the select list which was prepared on 4.12.1987 after the next date of meeting which was held on 20.2.1990 for the year 1988-89 in terms of the sub-rule 4 of the Rule 7 of the IPS

...3.



(Appointment by Promotion) Regulations, 1955.

Therefore, in view of the position of the Rules, the applicant is not entitled to be promoted on the basis of his provisional selection in 1987. The counsel for the applicant submits that the issue has been decided by this Tribunal by its decision in A.K.Banerjee V/s. Union of India & Ors.. (O.A. No.709/92) wherein the question concerning review of the decision already taken in the case of selection for IPS was the issue involved. Another decision cited by the counsel for the applicant is Rameshchandra Roongta V/s. Union of India (1995) 30 ATC 458 wherein the similar issue was considered in the case of I.A.S. Rules and it has been held in para 17 as under :

"14. We have considered the citations submitted by the applicant. We are of the view that sub-regulation (4) of Regulation 7 read with Regulation 9 and the proviso read with Regulation 5 leads us to conclude that the Select List shall ordinarily be in force until its review and revision, effected under sub-regulation (4) of Regulation 5, is approved under sub-regulation(1), or as the case may be approved finally under sub-regulation (2). However, in exceptional circumstances where the justice and equity needs it shall also remain in force for the purpose of judging the rights of those persons whose names find placed provisionally in the Select List. If a person whose name finds place provisionally on account of contemplated enquiry or departmental proceedings is fully exonerated and if no case is made out for taking any action then he cannot be punished at all. The applicant in the instant case finds placed at serial No.3 in the Select List. 14 persons were selected as per Select List Annexure A-3 dt. 16.12.1991. Thus the persons whose names find placed from 4 to 14 are juniors to the applicant in the Select List and a note has been given that the names of the applicant and some others have been included



in the list provisionally subject to clearance of enquiries pending or decided to be instituted against them by the State Government. It is an admitted position that the enquiry against the applicant has not proceeded. On the contrary, the State Government found that it is not advisable to proceed with the enquiry and orders were passed for withdrawal of enquiry. Thus, it is a case where the applicant is fully exonerated and as such he should not be punished for no fault of his.

17. The next limb of the arguments of Mr. Bhargava regarding Regulation 9 has already been discussed while discussing the proviso of Regulations 7 and 5. However, we would like to make it clear that there is a provision under Regulation that after the preparation of the Select List in the event of a grave lapse in the conduct of performance of duties on the part of any member of the State Civil Service included in the Select List, a special review of the Select List may be made at any time at the instance of the State Government and the Commission may, if it so thinks fit, remove the name of such members of the State Civil Service from the Select List. This proviso of Regulation 7 goes to show that the State Government has a power to do so for the deletion of the name of the applicant. However, in the instant case, the State Government has found that the applicant is a Good officer, withdrew the charge-sheet issued against him and no recommendation had been made to the Commission that the name of the applicant should be deleted from the Select List under the proviso of sub-regulation (4) of Regulation 7. This further goes to show that nothing was found against the applicant and his work has been found satisfactory. The State Government is supporting the case of the applicant. Not only the State Government, but the UPSC vide Annexure A-9 dt. 15.3.1993 has also recommended that the inclusion of the name of the applicant Shri R.C. Roongta in the Select List prepared on the 22.3.1991 be treated as unconditional and final. This communication of UPSC accepting the view of the State Government is of a binding nature as far as the Central Government is concerned. Apart from that there is one more point also in favour of the applicant. The applicant is an officer who has been exonerated fully and whose

....5.



case has been recommended by the State Government to the UPSC for appointment in the IAS cadre. In these circumstances, unless there is anything wrong against the applicant, the Central Government cannot arbitrarily reject the recommendation merely on the technical ground that the Select List prepared in 1991 has lapsed. The Select List shall ordinarily be in force until its review and revision and therefore, it may continue in some contingencies like the present one. As far as the applicant is concerned, he has been included provisionally in the Select List of 1991 and under the proviso of Regulation 9 one post will have to be kept vacant for such a provisionally included officer while making appointment of an officer junior to him."

3. In view of the above Judgment, we are of the opinion that the plea taken by the respondents that the select list of 1987 has lapsed is not available to the respondents. The applicant will be entitled to be promoted according to his provisional position in the Select List held on 4.9.1987 wherein he was placed on panel provisionally for being inducted to IPS. On the basis of that the applicant would be deemed to be treated as selected to IPS from the date his juniors were posted in IPS, which according to the applicant is 22.9.1988.

4. In the result, the Government's Order dt.3.5.1994 denying the applicant's request for ante-dating his appointment to the IPS to 22.9.1988 on the basis of provisional inclusion of his name in the Select List of 1987 is quashed. The applicant will be entitled for ante-dating his appointment to IPS to 22.9.1988. The applicant will also be entitled to all consequential benefits as a result of this, including monetary



benefits. The applicant should be paid all the consequential benefits within a period of six months from the date of receipt of this order. There will be no order as to costs.



(P.P.SRIVASTAVA)
MEMBER(A)



(B.S.HEGDE)
MEMBER(J).

B.