

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 414
T.A. No.

1987

DATE OF DECISION 13-1-88

Navneet Rajan Kesar Petitioner

Party-in-Person Advocate for the Petitioner(s)

Versus

Chief Secretary, C. of A.P. Respondent

Shri K. Jagannatha Rao Advocate for the Respondent(s)

Shri P. Chandra Menon

CORAM :

The Hon'ble Mr. B. N. JAYSIMHA, Vice Chairman.

The Hon'ble Mr. D. Surya Rao, MEMBER (JUD.)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000

B.N.J.
C.B.N.J.
V.C.

D.S.R.
C.D.S.R.
M.G.T.

ORIGINAL APPLICATION NO.414/87
(ORDERS OF THE TRIBUNAL)

The applicant herein is a direct^{ly} recruited

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OA 214/87

C AV on 10/12/87.

Part of the Order as dictated in Court
put ^{10/12} below for perusal & completion

HVC

Resubmitted after making
additions/deletions as ordered.

✓
21/12/87
RSH

HVC

✓
21/12/87
Member no. 1/84

✓
21/12/87
R(J)

St of the
Post-for judgment.

21/12/87

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ORIGINAL APPLICATION NO.414/87

(ORDERS OF THE TRIBUNAL)

The applicant herein is a directly recruited Indian Police Service Officer allotted to Andhra Pradesh Cadre. He was appointed to the I.P.S. on 20-8-1980 in December, 1980 and allotted to A.P. State Cadre in October, 1981. On 22-3-1984, he passed the prescribed Departmental Examination, that is, the A.P. Police Manual. The applicant states that consequently, he is entitled to be promoted to the Senior Scale of I.P.S. under Rule 6(a) of the I.P.S. (Recruitment) Rules, 1954, with effect from 22-3-1984. He was confirmed in I.P.S. on 16-9-1984 and completed four years of service in IPS on 19-9-1984, and ought to have promoted to the Senior Scale on completion of four years service. On 23-12-1984 and 24-12-1984, two of his juniors who were promoted to Senior Scale immediately on completion of four years service. Some other officers who are junior to the applicant were also promoted to Senior Scale on 29-12-84 and 26-3-85.

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He was informed on 21-7-1986 by the Director-General and Inspector General of Police, Andhra Pradesh that his representation to the Government of Andhra Pradesh regarding his promotion to Senior Scale was rejected.

He made two representations to the Government of India on 19-10-1986 and 20-1-1987, but no reply has been received as yet. The applicant questions his non-promotion to Senior Scale in this application on various grounds, the chief ground being that under Rule 6(a) of the IPS (Recruitment) Rules, 1954, read with Rule 7 of the IPS (Pay) Rules, 1954, his promotion, if otherwise fit, cannot be withheld solely on the ground that he has not passed the language test.

It is open to the State Government to withhold increments under Rule 6 of the Pay Rules, for not passing a Departmental Examination till he passes the examination, but not to withhold his promotion. In fact, Rule 6 of the IPS (Pay) Rules lay down that even withholding of increments for non-passing of Departmental Examination shall have no cumulative effect. In the circumstances, the

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question of withholding promotion to Senior Scale does not arise. The applicant relies on the instructions issued in Deptt. of Personnel & Administrative Reforms letter dated 8-7-1975 which says that ^{when} the increment of a Member of Service which was withheld under sub-rule (1) of Rule 6 of the Rules for failure to pass the examination, his pay shall be restricted to Rs.350/-. It ~~can~~ was however, be done in the Senior Scale also. The question is whether the applicant can be denied promotion to the senior scale for his non-passing the language test.

2. Separate counters have been filed by the State of Andhra Pradesh and the Union Government. In the counter filed on behalf of the State of Andhra Pradesh, the details of the the departmental tests passed by the applicant are given as indicated below & :-

A.P. Police Manual	..	22-3-84
I Class Language Test in Lower Standard (Telugu)	..	9-10-84
I Class Language Test in Higher Standard (Telugu)	..	25-3-85
Second Language Test in Higher Standard (Hindi)	..	23-3-83

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It was stated that as seen from the dates furnished above, the applicant's contention that he passed the Departmental Examination on 22-3-84 is not correct and he has only passed a part of the examination i.e. A.P. Police Manual on 22-3-1984. He completed passing of the Departmental Examination including language tests on 25-3-1985 only. While referring to para no. 23 of the I.P.S. Manual Part-II (A.P.), it is stated in the counter that a junior IPS officer has to pass a departmental examination in the Police Department conducted by the A.P.P.S.C. on such dates & at such stations as may be fixed by the Body. Para 24 of the IPS Manual clearly indicates that the Member of the Service has to pass language tests in Telugu and Hindi. The Counter goes on to state that the contention of the applicant that the departmental tests do not include language tests is not correct. It is stated that as the applicant had completely passed the Departmental examination conducted by the A.P.P.S.C. on 25-3-1985, he was promoted to senior scale of IPS with effect from 26-3-1985. It is also stated that all

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the IPS officers allotted to A.P. Cadre are being promoted to Senior Scale only after they completely pass both the departmental examinations and language tests. Hence, the request of the applicant that he should be promoted to senior scale of IPS with effect from 22-3-1984, that is, the date of passing the test in A.P. Police Manual cannot be accepted as he had completely passed the departmental examinations and language tests only on 25-3-1985. Hence, it is stated in the counter that no injustice was done to the applicant. It is also stated in the counter that the above rule is followed uniformly in cases of all IPS officers allotted to A.P. cadre and the officer was not discriminated.

3. A counter has also been filed on behalf of the Union Government. No comments have, however, been made in regard to the interpretation of the departmental examination sought to be made by the applicant with reference to the respective Rules.

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4. We have heard the applicant in person, Shri M.P.Chandramouli, Special Counsel for the State of A.P. and Shri G.Parameswara Rao on behalf of Shri K.Jagannadha Rao, Standing Counsel for the Central Government. It is necessary to extract Rule 6 of the IPS (Pay)Rules, 1954 :-

"6. **Withholding of increments.**--(a) The State Government may withhold for such time as it may direct an increment due to any direct recruit or to any officer recruited in accordance with Rule 7-A of the Indian Police Service (Recruitment) Rules, 1954, who has failed to pass the departmental examination or examinations within such time as the State Government may by general or special order, prescribed, but the withholding of such increments shall have no cumulative effect.

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Government of India's decisions.

2.1. The increment of a member of the Service was withheld under sub-rule (1) for failure to pass the departmental examination and his pay restricted at Rs.350. He was, however, promoted to officiate in the senior post of Superintendent of Police in view of his seniority. The question arose as to how his pay should be regulated in the senior post.

2.2 Under Rule 8, the member is entitled to draw pay in the junior time-scale has been restricted at Rs.350, it was decided that he should be remunerated at Rs.600 with effect from the date he took over as Superintendent of Police and his future increments regulated with reference to his pay in the junior time-scale."

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Rule 7 of the IPS (Pay)Rules, 1954 reads as follows :-

"7. **Grant of Advance increments.**-- Notwithstanding anything in Rule 13 of the Indian Police Service (Probation)Rules, 1954, the State Government shall sanction the second and third increments due to a direct recruit or to any ~~other~~ officer recruited in accordance with Rule 7-A of the Indian Police Service (Recruitment)Rules, 1954 as soon as he passes the prescribed departmental examination or examinations irrespective of the length of service, after which he shall be entitled to draw pay at the rate corresponding to his position in the time-scale:

Provided that the third increment under this rule shall be granted retrospectively from the date of passing the prescribed departmental examination or the last of the prescribed departmental examination as the case may be, successful completion of the period of Probation and Confirmation:

Provided also that a direct recruit or any officer recruited in accordance with Rule 7-A of the Indian Police Service (Recruitment)Rules, 1954 who has been exempted from appearing in the whole or any part of the departmental examination or examinations for the reasons that he had already passed such examination or examinations or part thereof before he became a member of the service, shall, for the purpose of this rule, be deemed to have passed the departmental examination or examinations or part thereof, as the case may be, from the date of the earliest such examination, examinations or part thereof, in which he would have appeared, but for the exemption after he became a member of the service."

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From these two Rules, it would be seen that while there is an incentive by grant of advance increments to an IPS Officer for passing the departmental examination, the penalty for non-passing the departmental examination is only withholding of increments. However, such withholding of increments shall not have cumulative effect. It does not bar promotion of the applicant to the senior scale and withholding of increment will also apply in the senior scale till he passes the examination. ^{by} Read all the provisions as a whole, we are of the view that the applicant is entitled for his promotion to the senior time-scale after completion of four years service subject to the conditions mentioned in the Rules and non-passing of the Language Test cannot be a ground for denying the applicant his promotion. It is admitted in the counter filed on behalf of the State Government ^{that} the promotion of the applicant to the senior time scale was withheld only on the ground of his non-passing the Language Test. We have

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also considered the relevant provisions in the Indian Police Service Manual-II, Andhra Pradesh in regard to passing of the departmental examinations vis-a-vis promotion to senior time scale. Rules 23 and 24 of Chapter III of the I.P.S. Manual-Part II, Andhra Pradesh read as follows :-

"23. A junior IPS officer has to pass a departmental examination in the Police Departmental Orders conducted in January, and July every year by the Andhra Pradesh Public Service Commission, on such dates and at such stations as may be fixed by the Body.

LANGUAGE TESTS

24. He should also pass Language Tests as indicated below :-

If his mother tongue is Telugu, in Telugu and Hindi by the Higher Standard; and

If his mother tongue is a language other than Telugu, in Telugu by the Higher Standard and Hindi by the Lower Standard."

Para 46 of the Police Service Manual Part-II (A.P.) as quoted in the counter of State Government reads as follows :-

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Rule 7 of the IPS (Pay)Rules, 1954 reads as follows :-

"7. **Grant of Advance increments.**-- Notwithstanding anything in Rule 13 of the Indian Police Service (Probation)Rules, 1954, the State Government shall sanction the second and third increments due to a direct recruit or to any ~~other~~ officer recruited in accordance with Rule 7-A of the Indian Police Service (Recruitment)Rules, 1954 as soon as he passes the prescribed departmental examination or examinations irrespective of the length of service, after which he shall be entitled to draw pay at the rate corresponding to his position in the time-scale:

Provided that the third increment under this rule shall be granted retrospectively from the date of passing the prescribed departmental examination or the last of the prescribed departmental examination as the case may be, successful completion of the period of Probation and Confirmation:

Provided also that a direct recruit or any officer recruited in accordance with Rule 7-A of the Indian Police Service (Recruitment)Rules, 1954 who has been exempted from appearing in the whole or any part of the departmental examination or examinations for the reasons that he had already passed such examination or examinations or part thereof before he became a member of the service, shall, for the purpose of this rule, be deemed to have passed the departmental examination or examinations or part thereof, as the case may be, from the date of the earliest such examination, examinations or part thereof, in which he would have appeared, but for the exemption after he became a member of the service."

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4. We have heard the applicant in person, Shri M.P.Chandramouli, Special Counsel for the State of A.P. and Shri G.Parameswara Rao on behalf of Shri K.Jagannadha Rao, Standing Counsel for the Central Government. It is necessary to extract Rule 6 of the IPS (Pay)Rules, 1954 :-

"6. Withholding of increments.--(a) The State Government may withhold for such time as it may direct an increment due to any direct recruit or to any officer recruited in accordance with Rule 7-A of the Indian Police Service (Recruitment) Rules, 1954, who has failed to pass the departmental examination or examinations within such time as the State Government may by general or special order, prescribed, but the withholding of such increments shall have no cumulative effect.

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Government of India's decisions.

2.1. The increment of a member of the Service was withheld under sub-rule (1) for failure to pass the departmental examination and his pay restricted at Rs.350. He was, however, promoted to officiate in the senior post of Superintendent of Police in view of his seniority. The question arose as to how his pay should be regulated in the senior post.

2.2 Under Rule 8, the member is entitled to draw pay in the junior time-scale has been restricted at Rs.350, it was decided that he should be remunerated at Rs.600 with effect from the date he took over as Superintendent of Police and his future increments regulated with reference to his pay in the junior time-scale."

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"The Government have ordered that as far as possible, 4 years of service may be considered for the promotion of directly recruited Indian Police Service Officers to the Senior scale, subject to other conditions such as the availability of vacancies, individual merits, the speed with which they acquire knowledge of departmental rules regulations and their experience as Sub-Divisional Officers etc."

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Para 46 of the Police Service Manual Part-II (A.P),

after being amended by the State Government vide G.O.

Ms. No. 541, GA (SC.C.) Deptt., dated 13th November, 1987

reads as follows :-

"46. A Member of the Service shall be appointed to the Senior Scale on his completion of four years of service subject to the provisions of sub-rule (2) of rule 6(A) of the Indian Police Service (Recruitment) Rules, 1954, as indicated in Indian Police Service (Pay) Third Amendment Rules, 1987 and subject to passing of Departmental Tests including Language Tests."

By the same G.O. dated 13-11-1987, para 23 of the Manual is also amended to read as follows :-

"23. A junior scale Indian Police Service Officer has to pass departmental examination in the Police Departmental Orders conducted in March and September every year by the Andhra Pradesh Public Service Commission and also language tests as indicated in paragraph 24 below, on such dates and at such stations as may be fixed by the Body."

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At this stage, it is necessary for us to consider the case of the applicant with reference to IPS (Pay) Rules and IPS (Recruitment) Rules since it is evident that the amendment to the Indian Police Manual Part II (Andhra Pradesh) was made only on 13th November 1987. It would be seen from the facts that the applicant's promotion was withheld prior to the issue of the amendment to the IPS Manual Part II (A.P.). The amendments made to the Manual, therefore, cannot be applied to the applicant. The language test was included as one of the departmental tests only by way of amendment issued on 13.11.1987. Non-passing of the language test by the applicant under Rule 24 of Chapter III of the I.P.S. Manual Part II within four years was not a bar to the promotion to the Senior Scale as under Rule 23 as it stood prior to the amendment of 1987 passing of the test conducted by the A.P. P.S.C. in a departmental examination was the only requirement. This test was passed by the applicant on 22.3.1984 viz; within four years.

5. In the circumstances, we allow the application with the direction that the Government shall consider the applicant for promotion to the Senior Scale

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on completion of four years' service in the Junior Scale subject to the conditions prescribed in the Rules such as availability of vacancies, individual merits etc., without insisting on passing of the language test. There will be no order as to costs.

B.N.Jayashimha

(B. N. Jayashimha)

Vice Chairman

D.Surya Rao

(D. Surya Rao)

Member (J)

Dated 13th day of January 1988

RSR*

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D.S.R

S. Venkateswaran
Deputy Registrar (J)
19/1/88