

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.127/90.

Date of Judgment 14-6-91

Mohd. Khasim

.. Applicant

Vs.

1. Union of India,
represented by its
Secretary,
Ministry of Personnel, PPP,
New Delhi.
 2. Union Public Service Commission,
represented by its
Chairman,
Shri H.K.L.Kapoor, I.A.S., (Retd),
Dholpur House,
New Delhi-11.
 3. Govt. of Andhra Pradesh,
represented by its
Chief Secretary,
Shri G.R.Nair, I.A.S.,
Secretariat Buildings,
Hyderabad-500022.
 4. Shri C.V.Narasaiah,
Addl. Supdt. of Police,
C.B., C.I.D.,
Hyderabad.
 5. Shri P.S.Rama Mohan Rao, I.P.S.,
Chairman & Managing Director,
Hyderabad Allwyn Ltd.,
Sanathnagar,
Hyderabad.
 6. Shri C.R.Naidu,
Principal,
Police Recruitess' School,
Amberpet,
Hyderabad.
- .. Respondents

Counsel for the Applicant : Shri I.V.S.Rao

Counsel for the Respondents : Shri E.Madan Mohan Rao,
Addl. CGSC for R1 & R2
Shri D.Panduranga Reddy,
SC for A.P. Govt., (R3)
Shri N.Rammohan Rao for R4
Shri R.Narasimha Reddy for R6

RAM:

Hon'ble Shri J.Narasimha Murthy : Member(Judl)

Hon'ble Shri R.Balasubramanian : Member(Admn)

{ Judgment as per Hon'ble Shri R.Balasubramanian,
Member(Admn) }

This application has been filed by Shri Mohd. Khasim under section 19 of the Administrative Tribunals Act, 1985 against the Union of India, represented by its Secretary, Ministry of Personnel, PPP, New Delhi and 5 others. Respondents 4 and 6 are private respondents.

2. The applicant who joined the Police Department of Andhra Pradesh as ASI was promoted as Dy. Supdt. of Police Category 3 in the year 1975. He was accorded 19.6.75 as the date of seniority in Category III of Dy. Supdt. of Police. He was later transferred from the post of Dy. Supdt. of Police Category II w.e.f. 1.3.82. His probation was terminated and he was reverted to his earlier cadre. The applicant filed W.P.No.1398 of 1984 in the High Court of Andhra Pradesh and in pursuance of the judgment delivered in the case, the Govt. of Andhra Pradesh issued GORT No.3245 Home(Police) Department dated 6.10.89. According to this G.O. he is declared to have satisfactorily completed his probation w.e.f. 27.1.87 in relaxation of Rule 7(e) of A.P. Police Service Rules. The seniority list of SPS_A (State Police Service) was published by the Govt. of Andhra Pradesh vide G.O.Ms.No.303 dated 1.6.89. The applicant was placed at Serial No.103. The applicant was due for consideration for promotion to the I.P.S. cadre. However, his name was not considered

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and instead R4 and R6 got selected to the I.P.S. The applicant alleges that his name was removed from the eligible zone of consideration to bring the 4th respondent within the zone of consideration to eventually select him. He alleges malafides on the part of the respondents and that caste consideration played a dominant role in the inclusion of the names of R4 and R6 at his cost by keeping him out of the eligibility list. He has prayed that the select list of 1989 prepared by the Selection Committee in its proceedings dated 5.1.90 be quashed and that a direction for re-drawal of the select list for 1989 be given to the respondents.

3. The application is opposed by the Union Public Service Commission, Respondents 4 and 6 and also the Andhra Pradesh Government.

4. In its reply the Union Public Service Commission states that the name of the petitioner was not considered because he was not confirmed in the service.

5. In his reply, R4 wants that the applicant should be proceeded against for bringing in baseless charges of casteism. It is stated that he was directly recruited as Dy. Supdt. of Police in Category 2 and was appointed on 22.1.77 itself, whereas the applicant completed his probation ^{basely} ~~only~~ on 27.1.87. He points out that the applicant is not eligible to be considered according to rules.

6. In the reply filed by R6 it is contended that the applicant was not eligible for consideration since he was not confirmed on the day the D.P.C. had its sitting.

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7. In its reply the State Government (R3) states that the applicant was not eligible for consideration because he had not been confirmed in the category of Dy. Supdt. of Police Category IV. It is also contended that since he had completed the probation only on 27.1.87 he can be confirmed only 3 years thereafter according to Rule 7(e). According to them he could not be confirmed before 27.1.90 and therefore he was not eligible to be included in the list for consideration. They have also denied charges of casteism.

8. We have examined the case and heard the learned counsels for the applicant as also for the Union Government, the State Government and Shri Ram Mohan Rao appearing for R4. The respondents rely on the proviso to sub-regulation (2) of regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955 (hereinafter called regulation). The relevant proviso states:

"Provided further that the Committee shall not consider the case of a member of the State Police unless, on the first day of January (subsequently modified to first day of April) 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 a post of Deputy Superintendent of Police or any other post included in the State Police Service which is declared by the State Government, with the prior concurrence of the Central Government, as equivalent in status and responsibility to that of a Deputy Superintendent of Police."

9. According to this proviso one essential pre-condition required is confirmation in the State Police Service.

In the reply the State Government (R3) has stated that he has not ^{yet} been confirmed in the category of Dy. Supdt. of Police Category IV. Respondent No.3 agrees that by virtue

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of the applicant figuring at Serial No.3 in the seniority list of State Police Service Officers placed before the Selection Committee for the year 1989/ ^{he otherwise merits consideration.} But, ~~however~~, since he was not confirmed in the grade of Dy. Supdt. of Police Category I, he was not eligible for consideration in terms of the regulation. Hence R4 who figured at Serial No.19 in the list was ^{included in the list eligibility list and} considered by the Committee.

10. The applicant has filed a rejoinder. In that rejoinder he contends that since he was declared to have satisfactorily completed his probation on 27.1.87 in relaxation of Rule 7(e) of the Andhra Pradesh Police Service Rules it should be construed that a further 3 years service was not required for confirmation. In support, he has furnished a copy of Memo No.323/SC.C/90-5 dated 28.7.90 from the Secretary to Government, General Administration (SC.C) Department addressed to the Director-General & Inspector-General of Police, Hyderabad. In this memo it had been stated that he does not have to wait for a period of 3 years beyond 27.1.77 for his confirmation. The Secretary to Government had urged the Director-General of Police to take further action to confirm the officer in Category I of Dy. Supdt. of Police and also suitably modify the parawise remarks of the State Government in this O.A. The subject of confirmation in the State Police Service is beyond the jurisdiction of this Tribunal. If confirmation is inescapable for consideration for promotion to the I.P.S., it is for the applicant to take up the question of confirmation before the appropriate forum.

But the applicant has, however, contended in the rejoinder to the reply filed by the State Government that individual confirmation order has not been issued to any of the persons who were considered by the Selection Committee. It is stated that the 3rd respondent never confirmed the services of any officer in the zone of consideration at any time and that there is no individual confirmation order issued by the 3rd respondent to the officers who were considered by the D.P.C. for selection to I.P.S. He contends that the integrated seniority list communicated through G.O.Ms.No.303 dated 1.6.89 should be taken as the one prepared in the order of confirmation of services. We find from the G.O.Ms.No.303 dated 1.6.89 that the Government had thereby notified the interse seniority of Dy. Superintendents of Police Category II, both promotees and direct recruits, as on 1.1.82 and corrected upto 31.10.87. In this list the applicant is shown at Serial No.103 whereas Respondents 4 and 6 are shown at Serials 125 and 118 respectively. In addition, he had also cited the case of Shri C.Ratna Reddy who was promoted to I.P.S. He has furnished a copy of letter No.876/G3/89 dated 2.8.89 from the Director-General & Inspector-General of Police, Andhra Pradesh, Hyderabad addressed to the Principal Secretary to Government, Home Department, Andhra Pradesh, Hyderabad. In that letter it had been suggested that Shri C.Ratna Reddy was to be confirmed as Dy. Supdt. of Police Category II w.e.f. 1.7.85 and that though he had been appointed to I.P.S. w.e.f. 19.6.89 his pay fixation in I.P.S. was held up for want of his confirmation in the rank of Dy. Supdt. of

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Police Category II. This case pertains to an earlier selection.

11. The main issue now is whether those considered for selection to the I.P.S. had already been confirmed at the time of selection. If the allegation of the applicant that in his case alone confirmation was insisted upon as a pre-condition for consideration to selection to I.P.S. is true, then the question of discrimination arises apart from violation of the regulation.

12. The learned counsel for the applicant has produced a copy of letter No.L.Dis.No.475/G3/91 dated 11.4.91 from the Director-General & Inspector-General of Police, Andhra Pradesh Hyderabad to Shri A.V.Narayana (one of the officers in the zone of 18 considered). This is in reply to the representations made by Shri A.V.Narayana on 23.3.91 and 9.4.91. In this letter the Director-General & Inspector-General of Police states that no specific orders confirming him (Shri A.V.Narayana) in the post of Dy. Supdt. of Police Category II have been issued. He also quotes clause (ii) of sub-rule(c) of Rule 7 of the Special Rules as under:

"If any such person has satisfactorily completed the prescribed period of probation and has been declared as approved probationer, he shall be deemed to have become a full member of the service on and from the date on which he has satisfactorily completed the period of probation."

13. The learned counsel for R3 had produced the State Government file. From the seniority list of the State Police Service Officers eligible for inclusion in the select list for promotion to I.P.S. as on 1.4.89, it is seen that ALL the 18 officers considered by the Selection Committee

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(including R4) have been confirmed in SPS (State Police Service) Dy. Supdt. of Police Category II on various dates ranging from 21.3.72 to 16.2.77. Shri C.Ratna Reddy mentioned in para 10 had also been confirmed w.e.f. 15.9.74. In this list, against the name of the applicant appearing at Serial No.6, there is a remark in pencil "Not yet confirmed".

14. We thus find that the allegation of the applicant that in his case alone the pre-condition of confirmation in Dy. Supdt. of Police Category II is not sustainable. As stated earlier, the ^{question} plea of confirmation of the applicant in Dy. Supdt. of Police Category II is not for this Tribunal to adjudicate. We, therefore, do not see any illegality in the selection as of now and therefore dismiss the application with no order as to costs.

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(J.Narasimha Murthy)
Member(Judl).

R. Balasubramanian

(R.Balasubramanian)
Member(Admn).

Dated 14th Feb June 91 *for* Deputy Registrar(J)

- To
1. The Secretary, Union of India,
Ministry of Personnel, PPP, New Delhi.
 2. Chairman, Shri H.K.L.Kapoor, I.A.S.(Retd.)
U.P.S.C. Dholpur House, New Delhi-1
 3. *A. c.w. copy to Mr. I.V.S. Rao, pl. No. 15, Anand Nagar, Hyderabad*
 - 3B. One copy to Mr. D.Panduranga Reddy, SC for A.P.Govt.(R.3)
 4. One copy to Mr.N.Rammohan Rao, Advocate for R.4. CAT.Hyd.
 5. One copy to Mr.R.Narasimha Reddy, Advocate for R.6. CAT.Hyd.
 6. One copy to Hon'ble Mr.J.Narasimha Murty, Member(J)CAT.Hyd.