

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.911/90.

Date of Judgement : 5.8.94.

A.R.Muralidhar, IPS

.. Applicant

Vs.

1. Union of India,
Rep. by its Secretary,
Min. of Home Affairs,
Central Secretariat,
North Block,
New Delhi-110001.
2. Union of India,
Rep. by its Secretary,
Min. of Personnel & Trg.,
Central Secretariat,
North Block,
New Delhi-110001.
3. Govt. of Andhra Pradesh,
Rep. by its Chief Secretary,
Secretariat,
Hyderabad-500022.
4. Sri A.Hanumantha Reddy, IPS,
DIG of Police, CB.CID.,
O/o the IG of Police,
Crimes, Lakdi-ka-pul,
Hyderabad.
5. Sri K.Krishna Murthy, IPS,
DIG of Police, Training,
O/o the DG of Police,
Hyderabad.
6. Sri P.Venkaiah, IPS,
DIG of Police,
Anantapur Range,
Anantapur-A.P.
7. Sri M.V.Krishna Rao, IPS,
DIG of Police,
Visakhapatnam Range,
Visakhapatnam-A.P.
8. Sri K.S.Vyas, IPS,
DIG of Police, Administration,
O/o the DG of Police,
Hyderabad.
9. Sri V.K.Ahluwalia, IPS,
DIG of Police, S.S.F.,
Ministers Colony,
Opposite to Green Lands,
Begumpet,
Hyderabad-500016.
10. Sri I.J.Nagia, IPS,
DIG of Police,
Warangal Range,
Warangal-A.P.
11. Sri K.Narasimha, IPS,
DIG of Police, CB.CID.,
O/o the IG of Police, Crimes,
Lakdi-ka-pul, Hyderabad. .. Respondents

Counsel for the Applicant :: Shri Y. Suryanarayana

Counsel for the Respondents: : Shri N.V. Ramana, Addl. CGSC
Shri D. Panduranga Reddy,
Standing Counsel for A.P. (for R3)
Shri M. Panduranga Rao (for R8)

C O R A M

Hon'ble Shri A.V. Haridasan : Member(J)

Hon'ble Shri A.B. Gorthi : Member(A)

J u d g e m e n t

{ As per Hon'ble Shri A.B. Gorthi : Member(A) }

The Applicant, while serving with the A.P. State Police, was selected for Indian Police Service (I.P.S. for short) on 9.1.1978 and was appointed to I.P.S. on 13.11.79. His claim in this application is that his 'year of allotment' should be 1973 and not 1974 as was determined by the Respondents.

2. The following officials were included in the select list dt. 9.1.1978 in the order as shown below and they were appointed to I.P.S. on the date shown against each:-

- | | |
|---------------------------------------|----------|
| 1. Sri D.V. Subba Reddy. | 19.12.78 |
| 2. " M. Guruswamy. | 20.9.79 |
| 3. " P. Venkaiah. | 13.11.79 |
| 4. " A.R. Muralidhar (the Applicant). | -do- |
| 5. " K. Narasimha. | -do- |
| 6. " A. Hanumantha Reddy. | -do- |
| 7. " K. Krishna Murthy. | -do- |

3. The year of allotment of the abovementioned officers was determined by the Respondents on the basis of the dates of their entry into I.P.S. The period of their continuous officiation in senior scale posts was disregarded as their appointment to cadre/ex-cadre posts was not approved by the Central Government. Consequently they were all given 1975 as their year of allotment.

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"Let us now examine the facts of the case in the light of the above rules. Though the promotees were posted to cadre posts even prior to the date of their inclusion in the select list, they do not claim to count it for the purpose of determining their year of allotment. By virtue of the Explanation (1) to Rule 3 of Seniority Rules, they are entitled to count the lesser period alone, which in their case happens to be their continuous officiation from the date of their inclusion in the select list. This is the effect of the Explanation (1) to Rule 3(3) of Seniority Rules. But, say the appellants-direct recruits, the posting and continuance of the promotees in the cadre posts even subsequent to their inclusion in the select list is illegal, being contrary to Rules and hence, it cannot be counted for any purpose whatsoever. The four grounds urged by them in this behalf have been set out hereinafore. With a view to clear the ground, we may say at once the Tribunal has not recorded any finding nor is any material placed before us to show that on January 9, 1978 any cadre officers were available and that in spite of the same the said promotees were posted to cadre posts. There is also no finding..... though it is not strictly relevant for the present purpose to the effect that when the said promotees were posted in a cadre post (first continuous officiating posting) any cadre officers were available but were ignored. Similarly, Sri Nariman's contention that by virtue of Explanation (2) to Rule 3(3) of Seniority Rules, the promotees' service prior to their appointment to I.P.S. cannot be counted for the purpose of determining the year of allotment is equally unsustainable. No finding is recorded by the Tribunal nor any material placed before us to show that the posting of the

Following observations:-

5. The above decision of the Tribunal was challenged by the Respondents before the Supreme Court, but the Civil Appeal (No.2177 of 1988) was dismissed with the following observations:-
4. All the aforesaid 7 officials approached the Tribunal (O.A.No.395/86) claiming the year of allotment on the basis of their continuous officiation in senior scale posts. The Tribunal held firstly that the decision of the Central Government declining to approve the periods of continuous officiation of the Applicants (In O.A.No.395/86) in cadre posts prior to their regular appointment to I.P.S. on the ground of over-utilisation of the deputation reserve was contrary to the dictum of the Supreme Court in Harjeet Singh and Tiwari's case and hence had to be quashed. Secondly, on the question of assignment of the year of allotment, it was left to be determined by the State and the Central Governments in accordance with rules, keeping in view the correct dates of continuous officiation.

promotees in cadre posts, particularly after January 9, 1978 was by way of a local arrangement or temporary. We cannot also agree with Sri Nariman that for continuance of these promotees beyond three months or six months, as the case may be, prior concurrence of the Central Government was obligatory. The proviso to sub-rule (2) - which alone speaks of prior concurrence - does not apply to select-list officers, unless the officer 'not next in order' in such list is appointed. It is not suggested that such was the case in the matter of posting of any of the promotees concerned herein. The other requirement of Rule 9 of Cadre Rules, viz., the obligation of the State Government to report forthwith the said fact to the Central Government together with the reasons for such appointment - provided by sub-rule (2) - has been complied with. Indeed, the case of the promotees is that though the State Government promptly intimated the Central Government of their posting in cadre posts, the Central Government took an inordinately long time to respond and that they wrote back only on January 5, 1985 disapproving the said posting - not on ground of violation of Rule 9 of Cadre Rules but on the ground of over-utilisation of deputation reserve. The said disapproval is also the subject matter of challenge in the Original Application filed by the promotees in the Tribunal. The Tribunal has gone into this aspect elaborately and has held that the alleged over-utilisation of deputation reserve cannot constitute a relevant ground for depriving the promotees of their service subsequent to January 9, 1978 for the purpose of Explanation (1) to Rule 3(3) of Seniority Rules. No arguments have been addressed before us seeking to dispute the said finding.

In this view of the matter, we do not think it necessary to refer to the decisions cited by counsel before us. All of them are referred to and discussed elaborately in the judgement of the Tribunal. The two later judgements, viz., Syed Khalid Rizvi & Ors. Vs. Union of India & Ors. (1993 Suppl.(3) S.C.C. 575) and H.R.Kasturi Rangan Vs. Union of India & Ors. (C.A.3891-95/93 dated 28.7.1993) refer to and reiterate the principles enunciated in the earlier judgements of this Court and the view taken by us herein accords with the ratio of the said judgements. For the above reasons, the appeal fails and is accordingly dismissed. No costs."

6. The Central Government, in the meantime, in compliance with the judgement of the Tribunal in O.A.No.395/86 and in consultation with the State Government, came to the conclusion that the date of continuous officiation in cadre post relevant for the purpose of fixing the year of allotment of each official included in the select list dt. 9.1.1978 was as under:-

- | | |
|--------------------------------------|----------|
| 1. Sri D.V. Subba Reddy. | 1.10.77 |
| 2. " P.Venkaiah. | 22.6.78 |
| 3. " A.R.Muralidhar (the Applicant). | 24.4.79 |
| 4. " K.Narasimha. | 13.11.79 |
| 5. " A.Hanumantha Reddy. | 1.10.77 |
| 6. " K.Krishna Murthy. | 1.10.77 |

7. Keeping in view the crucial dates of continuous officiation in cadre posts, the Respondents determined the year of allotment of S/Shri D.V.Subba Reddy, P.Venkaiya, A.Hanumantha Reddy and K.Krishna Murthy as 1973 whereas S/Shri A.R.Muralidhar (the Applicant) and K.Narasimha were assigned 1974 as their year of allotment. The said decision of the Central Government as conveyed in their order dt. 8.6.89 is challenged by Shri A.R.Muralidhar (the Applicant) in this O.A.

8. Assignment of year of allotment is governed by the I.P.S. (Regulation of Seniority) Rules, 1954 (hereinafter referred to as Seniority Rules). Rule 3 which is relevant is reproduced below:-

"Rule 3 : Assignment of Year of Allotment:

- (1) Every officer shall be assigned a year of allotment in accordance with the provisions hereinafter contained in this rule.
- (2) (Not relevant)
- (3) The year of allotment of an officer appointed to the service after the commencement of these rules shall be
 - (a) Where the officer is appointed to the service on the results of a competitive examination the year following the year in which such examination was held;
 - (b) Where the officer is appointed to the service by promotion in accordance with rule 9 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the service in accordance with rule 7 of those Rules who officiated continuously in a senior post from earlier than the date of commencement of such officiation by the former;

/a date

Provided that the year of allotment of an officer appointed to the service in accordance with rule 9 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officers recruited to the services, in accordance with rule 7 of those Rules so started officiating shall be determined adhoc by the Central Government in consultation with the State Governments concerned:

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*Explanation 1 - In respect of an officer appointed to the service by promotion in accordance with sub-rule(1) of rule 9 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purposes of determination of his seniority; count only from the date of inclusion of his name in the Select List, or from the date of his officiating appointment to such to such senior post whichever is later;

**Provided that where the name of a State Police Service Officer was included in the Select List in force immediately before the reorganisation of a State and is also included in the first Select List prepared subsequent to the date of such reorganisation, the name of such officer shall be deemed to have been continuously in the Select List with effect from the date of inclusion in the first mentioned Select List.

*Explanation 1 introduced for second proviso existing explanations renumbered and amended vide MHA Notification No.27/47/64-AIS(III)N dt. 17th April, 1967.

**Added with effect from 1.1.86 vide MHA Notification No.39/30/68-AIS(III)B dt. 18.3.68.

Explanation 2 - An officer shall be deemed to have officiated continuously in a senior post from a certain date if during the period from the date to the date of his confirmation in the senior grade he continues to hold without any break or reversion a senior post otherwise than as a purely temporary or local arrangement.

Explanation 3 - An officer shall be treated as having officiated in a senior post during any period in respect of which the State Government concerned certified that he would have so officiated but for his absence on leave or training.

***Explanation 4 - An officer appointed to the service in accordance with sub-rule (1) of the rule 9 of the Recruitment Rules (that is, a promotee from the State Police Service) shall be treated as having officiated in a senior post during any period of appointment to a non-cadre post if the State Government has certified within three months of his appointment to the non-cadre post that he would have so officiated but for his appointment for a period not exceeding one year, and with the approval of the Central Government, for a further period not exceeding two years, to a non-cadre post under a State Government or the Central Government in a time-scale identical to the time-scale of a senior post.

"Provided that the number of officers in respect of whom the certificate shall be current at one time shall not exceed one-half of the maximum size of the Select List permissible under sub-regulation (1) of regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955, and follow the order in which the names of such officers appear in the Select List:

***Inserted vide MHA Notification No.39/25/68-AIS(III) dt. 10.3.70.

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Provided, further that such certificate shall be given only if, for every senior officer in the Select List appointed to a non-cadre post in respect of which the certificate is given, there is one junior Select List officer officiating in a senior post under rule 9 of the Indian Police Service (Cadre) Rules, 1954;

Provided also that the number of officers in respect of whom the certificate is given, shall not exceed the number of posts by which the number of cadre officers holding non-cadre posts under the control of the State Government falls short of the deputation reserve sanctioned under the Schedule of the Indian Police Service (Fixation of Cadre Strength) Regulation, 1955."

(c) and (d) : (Not relevant)

The Rule thus clearly postulates that in the case of a promotee, such as the Applicant, the year of allotment shall be the same as that of the junior-most officer directly recruited to I.P.S. who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former. Further, in respect of a promotee, the period of his continuous officiation in a senior post shall, for the purpose of determination of his seniority count only from the date of inclusion of his name in the Select List or from the date of his officiating appointment to such senior post, whichever is later.

9. There is now no dispute that the Applicant held an ex-cadre post from 1.10.1977 to 28.4.1979 and a cadre post from 28.4.1979 to 12.11.1979. Thus, though the Applicant's name was included in the Select List dt. 9.1.1978, the Respondents took into consideration the date of his continuous officiation in a cadre post w.e.f. 28.4.1979 as the crucial date for fixing his year of allotment, because the said date was later than the date of Select List. This was done in terms of Rule 3(3)(b) Explanation of the Seniority Rules. The grievance of the Applicant, however, is that he was unfairly denied the opportunity to officiate in a cadre post from the date of his inclusion

in the Select List or from an earlier date, whereas those juniors to him, namely, S/Shri A.Hanumantha Reddy (R4) and K.Krishna Murthy (R5) were both placed in cadre posts w.e.f. 1.10.77. Explanation 4 to Rule 3(3)(b) of the Seniority Rules caters for such a contingency by providing, inter alia, that a promotee officer would be deemed to have officiated in a senior post even during the period of his appointment in a non-cadre post, if the State Government certified that the promotee would have so officiated but for his posting to a non-cadre post. It may often so happen, as seems to have happened in this case, that due to exigencies of service, a senior is placed in a non-cadre post even when a junior is already officiating in a cadre post. In such a contingency there is no reason why the senior should suffer for no fault of his. Accordingly, the State Government, having examined the case of the Applicant and some others who were similarly situated, gave a certificate in terms of Explanation 4. This would be evident from the following passage in the judgement in O.A.No.395/86 pertaining to the Applicant before us.

"In regard to the allegations that the 4th applicant officiated in a cadre post only from 28.4.1979 to 12.11.1979 and that from 9.1.1978 to 27.4.1979 he officiated in an ex-cadre post, the counter says that the allegations are incorrect and are contrary to the proposal made by the State Government. The State Government in their letter dt. 10.7.1980, while sending the list of State Police Service Officers, who officiated in IPS cadre posts during the period from 30.9.1977 to 31.3.1979, issued the required certificate as contemplated under Explanation-4, of Rule 3(3)(b) of the IPS (Regulations of Seniority) Rules, 1954 for the period of his continuous officiation from 1.10.1977 to 28.4.1979. Hence the said period is deemed to be the period of his officiation in cadre posts and the period from 9.1.1978 to 13.11.1979 should be taken as the period of continuous officiation in cadre posts."

10. There is nothing on record before us to show that the certificate by the State Government was in any way erroneous or that it had to be rejected. Moreover, we are of the considered view that the A.P.State Government's

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decision to render the certificate is not only in accordance with Explanation 4 to Rule 3(3)(b) of the Seniority Rules but also in the interests of justice. Failure to give such a certificate would have resulted in the seniors losing their seniority for no fault of theirs.

11. It was urged by the learned counsel for the Respondents that the Applicant, having served in a non-cadre post at the relevant time without protest, cannot now claim that he was unfairly denied appointment to a cadre post. Such an argument cannot be accepted for two reasons: Firstly, in a disciplined force like the Police, an official should not be made to suffer on account of his acceptance of and compliance with an order, which is PER SE lawful. To hold otherwise would be to encourage indiscipline. Secondly, as on 1.10.1977, when the Applicant was posted to a non-cadre post and his juniors were posted to cadre posts, none of them was selected to I.P.S. They came to be selected only on 9.1.1978. In any case, the State Government having rendered the certificate in terms of Explanation 4 to Rule 3(3)(b) of the Seniority Rules, the Applicant cannot now be denied the benefit of the same. Consequently the Applicant shall be deemed to have officiated continuously in a cadre post from the date of his selection on 9.1.1978. Thus, the period from 9.1.1978 to 28.4.1979 shall also count for the purpose of fixation of year of allotment. Accordingly, the Applicant will be entitled to 1973 as the year of allotment.

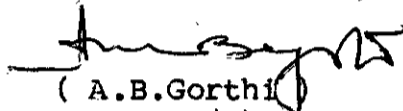
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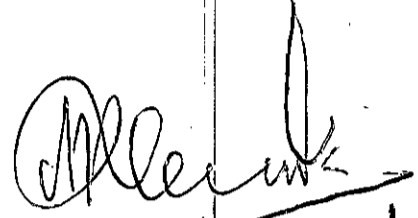
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12. In the result, we allow the application and direct the Respondents to revise the year of allotment of the Applicant, as observed by us hereinbefore. This may be done within four months of the date of communication of this order.

13. No order as to costs.


(A.B.Gorthi)
Member(A).


(A.V.Haridasan)
Member(J).

Dated: 5 August, 1994.


Deputy Registrar(Judl.)

br.

Copy to:-

1. Secretary, Ministry of Home Affairs, Union of India, Central Secretariat, North Block, New Delhi-001.
2. Secretary, Ministry of Personnel & Training, Union of India, Central Secretariat, North Block, New Delhi-001.
3. Chief Secretary, Govt. of Andhra Pradesh, Secretariat, Hyd-02
4. One copy to Sri. Y.Suryanarayana, advocate, CAT, Hyd.
5. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
6. One copy to Sri. D.Panduranga Reddy, Spl. counsel for A.P.(R-3)
7. One copy to Sri. M.Panduranga Rao, advocate(R-8), CAT, Hyd.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR.A.V.HARIDASAN: MEMBER(J) ✓

AND

THE HON'BLE MR.A.B.GORTHI : MEMBER(A) ✓

Dated: 5/8/94 ✓

ORDER/JUDGMENT. ✓

M.A./R.P./C.P.NO.

O.A.NO.

in

911/90 ✓

T.A.NO.

(W.P.NO.)

Admitted and Interim Directions
Issued.

Allowed. ✓

Disposed of with directions.

Dismissed.

Dismissed as Withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs. ✓

Central Administrative Tribunal
HYDERABAD BENCH

18/8/94
DESPATCH

TAPPAL SECTION