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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. No. 312/92.

Dt. of Decision : 21-9-1994.

Mr. G. Ramachandra Reddy

.. Applicant.

Vs

1. The Secretary,
Ministry of Home Affairs,
New Delhi.
2. The Chief Secretary,
Govt. of Andhra Pradesh,
G.A.D.(SC-C) Dept.,
Secretariat, Hyderabad.
3. The Secretary,
Union Public Service Commission,
Dholpur House, New Delhi.
4. Sri M. Alagar
5. Sri S.K. Jayachandra
6. Sri M. Babu Rao

.. Respondents.

Counsel for the Applicant : Mr. G. Ramachandra Reddy
(Party-in-person)

Counsel for the Respondents : Mr. N.R.Devaraj, Sr.CGSC.(R-1)
Mr. D.Panduranga Reddy, Spl.counsel
for A.P. (R-2)
Mr. M.Alagar (Party-in-person)(R-4)
Mr. S.K.Jayachandra (Party-in-person,
(R-5)

CORAM:

THE HON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

J U D G E M E N T

(As per Mr. Justice V. Neeladri Rao, Vice-Chairman)

The applicant was appointed as Deputy Superintendent of Police in Andhra Pradesh State on 1-1-1966 on being selected by way of direct recruitment for the said post. He officiated as Addl. Supdt. of Police at Visakhapatnam, Tirupathi, and in CID Hyderabad from 11-6-77 to 24-8-82. He worked as Supdt. of Police, CBI from 25-8-82 to 9-6-86. His name was included in the select list of IPS on 28-12-82. He was promoted to IPS on 17-10-84. As per notification No. 1-15011/1/85-IPS dated 26-7-86 the year of allotment assigned to the applicant was 1979. When the applicant filed O.A. No. 421/1988 praying for the following reliefs:

"to quash the orders communicated to the applicant through the 2nd Respondent (Govt. of A.P.) in Memorandum No. 1259/SE/C/85-15 dt. 11-8-86 and to declare the applicant as having been included in the select list of 1980 for the appointment to Indian Police Service and consequently direct the respondents 1 to 3 (viz. The Secretary, Min. of Home Affairs, Govt. of India; the State Government and U.P.S.C.) to allot 1975 as the year of allotment under Rule 3(3)(b) of the I.P.S. (Regulation of Seniority) Rules, 1954 and to grant him all consequential benefits arising therefrom."

When there was ^{divergence of} ~~divergent~~ opinion between the Judicial Member and the Administrative Member of the Bench which heard O.A. 214/88, the matter was referred to Mr. Justice Kamaleshwar Nath, Vice-Chairman, Hyderabad Bench. As per judgement therein, the Respondents were directed to assign the year of allotment by taking 28-12-82, the date on which the list of promotee IPS Officers from A.P. State in which the name of the applicant was also

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included, was prepared. Accordingly the Government of India in its order No.1-15016/34/86-IPS-I dt.21-1-92 assigned 1978 as the year of allotment to the applicant. While disposing of the O.A. No.214/88, Mr. Justice Kamaleshwar Nath observed as under:

"In this connection it may be mentioned that the petitioner does not seek relief of quashing the clubbing of posts of A.S.P. Grade I with Addl.S.P. I do not think simply because the post of Addl.SP carried higher responsibilities and duties than the post of ASP Gr.I the two cannot be designated as senior posts. I would therefore agree with the counsel for respondents that the view expressed by the Administrative Member that officiation in the post of ASP Gr.I would constitute officiation in a senior post for the purpose of Rule 3(3)(b) of Seniority Rules. (Page 11 of the judgment in OA 214/88)."

Then the applicant filed this O.A. praying for:

- i) quashing the order No.11052/5/79-AIS-II-A dated 1-9-1979, Ministry of Home Affairs, New Delhi,
- ii) striking down Explanation I of Rule 3(3)(b) of I.P.S. Regulation of Seniority Rules 1954;
- iii) quashing the I.P.S. (Fixation of Cadre Strength) (3rd Amendment) Regulations 1979, against item 5 in so far as it restricts deputation reserve to Direct Recruits in contravention to Rule 2(g) of I.P.S. (Regulations of Seniority) Rules, 1954; and
- iv) to direct the respondents herein to allot 1977 as the year of allotment to the applicant in I.P.S. and a place above Mr. Alagar in the inter-se seniority.

Thus, in effect the applicant is claiming that he should be assigned 1977 as the year of allotment. As per Notification ~~xxxx~~ No.11052/5/79-AIS-II-A dated 19-10-79 (dt.1-9-79 as referred in the O.A., is a typographical mistake)(for short notification dated 19-10-79+, the senior posts of IPS of Andhra Pradesh were raised by 13 by including 13 posts of additional Supdt. of Police/ ASP Gr.I. It is stated that out of those 13, three

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are of the post of A.S.P. Grade-I. The contention for the applicant is that the post of ASP Gr.I is below the post of Addl.S.P. as held by A.P.High Court in Writ Petition No.6648/79 and hence the said notification dated 19-10-79 to the extent of including three posts of ASP Gr.I as senior posts is violative of Articles 14 and 16 of the Constitution. It is next urged ~~for~~ the applicant, who argued in person, that Explanation I to Rule 3(3)(b) of I.P.S.(Regulation of Seniority) Rules, 1954 (for short Seniority Rules) to the extent to which the officiating service prior to the date of inclusion in the select list is ~~excluded~~ is prejudicial to the promotee IPS officers and it is also violative of Articles 14 and 16 of the Constitution. The third contention of the applicant is that by relevant date, the quota for the promotees was 35 out of 106 and as the promotee IPS officers were less than 35, and as the direct recruits could be promoted to the senior scale only when vacancies are available for them and as there were no vacancies for direct recruits in the senior scale, Respondents 4 to 6 should not have been given promotion to the senior scale and hence the applicant should be held as senior to Respondents 4 to 6.

2. The first and foremost contention for the Respondents is that this O.A. is barred by resjudicata for the year of allotment ^{to be} assigned to the applicant was decided in O.A. 214/88, and it is not open to the applicant to claim a year of allotment earlier to the year of allotment that was assigned in pursuance of the order

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of this Tribunal in O.A. 214/88. It is next urged for the respondents that it is for the Central Government in consultation with the concerned State Government to determine with regard to the composition of the IPS cadre of the State and it is a policy matter for the Government to determine as to which post is to be treated as senior post. Thus it is neither for the applicant nor any other officer to contend as to which post is to be treated as a senior post of IPS in Andhra Pradesh State or in any other State. Rule 3(3)(b) of IPS (Regulation of Seniority) Rules, 1954 was held to be constitutional by the Supreme Court in AIR 1978 SC 754 (A.P.Saksena Vs. UOI) and the contention ~~contra~~ is not tenable, urged the learned counsel for the respondents. There is maximum limit in regard to the number of posts of the promotee IPS officers and when there is no maximum limit for the direct recruit IPS officers, the promotion ~~pm~~ of direct recruit IPS officers to senior scale cannot be challenged even when the number of promotee IPS officers was less than the maximum prescribed for them, i.e. 33 1/3rd per cent.

3. It is stated for the applicant that he had not claimed the relief praying for quashing the notification dated 19-10-79 and the striking down of Rule 3(3)(b) of the Seniority Rules in O.A. 214/88 and as he is seeking the above reliefs through this O.A., it cannot be stated that this O.A. is barred by resjudicata.

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4. It is evident from the relief portion in O.A. 214/88 that the applicant prayed ~~for~~ that 1975 should be assigned as year of allotment to ^{him} the applicant while in this O.A. he is praying that 1977 should be assigned to him as the year of allotment. The reliefs sought for quashing the notification dated 19-10-79 and the striking down of Rule 3(3)(b) of the Seniority Rules are for the purpose of claiming 1977 as the year of allotment. Thus the question of consideration both in OA 214/88 and this O.A. is as to which year had to be assigned to the applicant as the year of allotment. As already observed, 1978 was assigned as the year of allotment to the applicant in pursuance of the judgment in ~~the~~ O.A. 214/88 the same had become final. Hence the respondents are right in contending that if the applicant was aggrieved by the order in O.A. 214/88 his remedy is only by way of appeal if there are no grounds for review. As such ~~it is~~ it is not open to the applicant to again re-agitate before this Bench in regard to the year of allotment. The principle of resjudicata is based on public policy. The party cannot be permitted to agitate again and again in regard to ~~the~~ a matter which was already settled. As such this O.A. is liable to be dismissed on the basis of resjudicata.

5. But as the applicant advanced arguments in regard to other points in this O.A., we advert to the same in disposing of this O.A.

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6. Rule 4(1) of the I.P.S. (Cadre) Rules, 1954 lays down that the strength ~~an~~ and composition of each of the cadre constituted under Rule 3 shall be as determined by regulations made by the Central Government in consultation with the State Governments in that behalf. And Rule 4(2) states that ~~there is~~ the Central Government shall, at intervals of every three years, re-examine the strength and composition of each such cadre in consultation with the State Governments concerned. Thus the above rule refers to not only the strength but also the composition. The I.P.S. (Fixation of Cadre Strength) Regulations, 1955 for each state discloses the composition of the cadre as (i) senior posts, (ii) Central Deputation Reserve, (iii) Deputation reserve, (iv) leave reserve, (v) junior posts and (vi) training reserve. Thus, if the reserves are excluded, it refers to only senior posts and junior posts. The ~~list of~~ posts included in the senior posts include the posts of Director General of Police, Inspector General of Police, Deputy Inspector General of Police, Superintendent of Police and also Additional Superintendents of Police/A.S.Ps. Grade-I. It may be noted that the promotion of State Police Officers to IPS is to senior scale, while the direct recruit IPS officers are initially appointed as junior scale officers. Thus, while fixing the maximum for the promotee IPS officers, the total number of senior posts and the central deputation reserve alone are taken into consideration as per the rule 8 of IPS (Recruitment) Rules, 1954. A question arises as to whether it is not open to the Central Government to treat a particular cadre post as a junior post ^{or} a senior post. As

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already observed, all the senior posts are not of equal ^{grade} ~~cadre~~. The post of Director General of Police is superior to the post of Superintendent of Police and yet in Cadre Strength Regulations both those posts are treated as senior posts. Thus, ~~we feel that~~ senior posts as referred to in Cadre Strength Regulations are not of the same grade but they are of different grades. It is true that it was held in Writ Petition No.6648/79 by A.P.High Court that the post of ASP Gr.I is of the grade less than that of Addl.Supdt. of Police. But when posts of different grades are treated as Senior Posts for Cadre Strength Regulations, can it be stated that the inclusion of some of the posts of ASP Gr.I also ⁱⁿ ~~to~~ the list of senior posts for Cadre Strength Regulations is violative of Articles 14 and 16 of the Constitution? Of course it is different if the senior posts as referred to in IPS Cadre Strength Regulations comprise of only one grade and then the question arises as to whether the post included is equivalent to that grade. But when the posts included in the list of senior posts for the Cadre Strength Regulations consisting of various grades, of which some are higher than the other, then the inclusion of some posts lower to the posts referred to in that list of senior posts, cannot be held as violative of Articles 14 and 16 of the Constitution. If the Government feel that a particular post has to be ^{examined by} ~~held as~~ senior officer ^{then} it is open to the Government to identify such posts as senior posts and it does not depend upon designation of the post.

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In fact, at one time, the posts of Addl. Supdt. of Police in some of the districts of A.P. State were not even treated as cadre posts, and hence they were manned by State Police Officers and not by the IPS officers. Thus, the mere designation of the post cannot be held to be a decisive factor in order to determine as to whether a particular post has to be treated as a senior post or junior post. Further the increase in the number of senior posts will be advantageous to the promotee officers, for there will be increase in the maximum limit of the promotee IPS officers whereby there will be more posts for them in the IPS, for the percentage prescribed in the category of IPS officers is on the basis of the number of senior posts plus the central deputation reserve. There will not be any corresponding increase in regard to the number of posts for direct recruits if a junior post is included in the list of senior posts and on the other hand there will be decrease in the number of posts available for direct recruits when there is no change in the total cadre. Anyhow no material is placed for the applicant to show that there was no justification for treating three ASP Gr. I posts in A.P. State as senior posts for Cadre Strength Regulations. As such the contention for the applicant that the notification dated 19-10-79 to the extent of including three posts of ASP Gr-I in the list of senior posts is violative of Articles 14 and 16 of the Constitution, has to be negatived.

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7. In the above view there is no need to consider for the disposal of this O.A. the following observation of the Supreme Court in AIR 1974 SC 555 (E.P. Royappa Vs. State of Tamil Nadu) relied upon by the applicant:

"But where it appears to be court that the declaration of equivalence is made without application of mind to the nature and responsibilities of the functions and duties attached to a post or extraneous or irrelevant factors are taken into account in determining the equivalence or the nature and responsibilities of the functions and duties of the two posts are so dissimilar that no reasonable man can possibly say that they are equivalent in status and responsibility or the declaration of equivalence is malafide..... the court can and certainly would set at naught the declaration of equivalence and afford protection to the civil servant."

"The pay attached to a post is not material. It is the nature of responsibilities, functions and duties which are material to determine the equivalence of the posts."

8. Explanation I to Rule 3(3)(b) of I.P.S. (Regulation of Seniority) Rules, 1954 at the relevant time ~~as~~ as under:

"In respect of an officer appointed to the service by promotion in accordance with sub-rule (1) of the Rule 9 of the Recruitment Rules, 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 the inclusion of his name in the select list or from the date of his officiating appointment to such senior post which is later."

It is manifest from the above, that the period of continuous officiation of the promotee IPS officers in a senior post shall for the purpose of determination of seniority count only from the date of inclusion of his name in the select list if he was already officiating in a senior post by the date of his inclusion of his name in the select list and if the

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said officiation is after inclusion in the select list but before the date of his appointment on promotion to IPS, then the period from the date of his officiation counts for seniority. Thus the period of officiation prior to the date of inclusion in the select list does not count for seniority. What the applicant contended is that ~~xxxxxx~~the period of officiation ~~xxxx~~ before the date of inclusion ~~xx~~ had to be counted for the purpose of seniority, for otherwise it will be discriminatory as against the promotees. When the constitutional validity of Rule 3(3)(b) of Seniority Rules in regard to IPS officers had come up for consideration before the Supreme Court it was observed in AIR 1968 SC 754 (A.P.Saksena Vs.UOI) as under:

"The petitioner next contends that R.3(3)(b) of the Regulation of Seniority Rules makes unjust discrimination between a promotee and a direct recruit in the matter of ~~xxxxxx~~ seniority by arbitrarily assigning a lower year of allotment to a promotee and is violative of Articles 14 and 16 of the Constitution. This contention is devoid of merit. The seniority of direct recruits inter se and promotees inter se is fixed by Rule 4. The object of R.3(3)(b) is to fix the seniority of the promotees in relation to direct recruits. The promotees obtain promotion after long service in the State Civil Services. From the point of view of the promotee, his seniority ~~xxxx~~ should be counted from the date of his ~~xx~~ joining the ~~xxxx~~ State Civil Service. From the point of view of the direct recruit, the seniority of the promotee should be counted from the date of his appointment to the Indian Administrative Service. Rule 3(3)(b) attempts to strike a just balance between the conflicting claims. It gives the promotee the year of allotment of the junior-most direct recruit officiating continuously in a senior post earlier than the date of commencement of such officiation by the promotee. If no direct recruit was officiating continuously in a senior post on an earlier date the seniority of the promotee is determined ad hoc. In our opinion, the rule is not arbitrary or discriminatory and is not violative of Articles 14 and 16 of the Constitution." (para 21)

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Thus the plea that it is a case of unjust discrimination, was negatived by the Supreme Court. It is a case of striking the balance in between the extreme pleas of the direct recruits and promotees for fixation of seniority. The year of allotment for direct recruit is the year following the year in which he appeared for the competitive examination . As per the extant rules, the year of allotment for the promotee is the year of allotment of the junior most direct recruit who officiated continuously on a senior post from a date earlier than the date of commencement of such officiation by the promotee officer. As already observed the direct recruits are initially posted to junior scale posts while the promotees are initially appointed to the senior scale posts. Thus it is a case where a promotee IPS officer of a particular year is given an year of allotment of direct recruits who joined the cadre, number of years earlier to the promotees and thus the inter-se seniority of the promotees of a particular year is fixed with the direct recruits of the earlier year but not with the direct recruits of the same year. As it is a case of initial recruitment of direct recruits to junior posts while the initial recruitment of promotees is to senior posts, it is held by the Supreme Court that Rule 3(3)(b) was formulated by way of striking a balance between the extreme claims of the direct recruits and the promotees.

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9. It is also stated for the respondents that there will be an anomaly if the officiating service before the date of inclusion in the select list is also counted for seniority. But the applicant relied upon the judgment of the Allahabad Bench of the Tribunal in O.A.No.417/87 wherein it was held that even the officiating service in the senior post prior to the date of inclusion in the select list counts for the purpose of seniority. But the Supreme Court held in (1994)SCC(L&S)84 (Syed Khalid Rizvi Vs. UOI) that the period of officiation prior to inclusion in select list does not count for seniority. Hence the plea of applicant even in regard to this point has to be rejected.

10. Rule 9(2) of the IPS (Recruitment) Rules, 1954 envisages that the number of persons recruited by promotion to IPS shall not at any time exceed $33 \frac{1}{3}$ rd per cent of the number of those posts as shown against items 1 and 2 of the cadre in relation to that State as per scheduled to the IPS (Fixation of Cadre Strength) Regulations, 1955. As the above provision states that the quota for promotees should not exceed $33 \frac{1}{3}$ rd per cent it had to be held that it is the maximum limit for the promotees, and if at any particular time the direct recruits holding those posts exceed $66 \frac{2}{3}$ rd %, the same cannot be held as contrary to the recruitment rules. It is common knowledge that while steps are taken for direct recruitment to IAS and IPS officers every year, some difficulties were being experienced in taking steps every year for selection of the State Police Officers for promotion to IPS.

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One of those difficulties appears to be in regard to the ~~the~~ finalisation of the seniority list for the State officers who are eligible for promotion. Be that as it may, even when ~~the~~ State ^{takes} ~~is taking~~ steps for filling up 33 1/3rd per cent of the number of senior posts and the central reserve, in view of the delay in finalisation of the selection of the promotee IPS officers, it may be possible that direct recruits who are eligible to hold senior posts may be asked to man them ~~and~~ even in vacancies which are available for promotees for want of promotees. Anyhow as no maximum limit is prescribed for direct recruits, in regard to the senior posts and the central reserve put together, the promotion of direct recruits to the senior posts in excess of 66 2/3rd per cent of the relevant number of posts cannot be held as violative of the Recruitment Rules. It may also be noticed that after promotion to a senior post, a direct recruit might be sent on deputation and in the resultant vacancy another direct recruit may be promoted if he is eligible and found suitable for such promotion. In such a case, ^{also,} the total number of direct recruits promoted to senior posts might exceed 66 2/3rd per cent of the senior posts and the central reserve put together. Anyhow as already observed the promotion of direct recruits exceeding 66 2/3rd per cent of the senior posts and central reserve put together, is not inconsistent with the rules, ^{and} as such the contention of the applicant that the promotion of Respondents 4 to 6 to senior posts, as it is in excess of 66 2/3rd % (even if it is ^{true}) is not tenable.

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11. The applicant has not advanced arguments in regard to relief No.((3) i.e. restricting deputation reserve to direct recruits. Even otherwise it has no bearing in regard to assignment of year of allotment. As such there is no need to dilate upon this point.

12. Thus, it is not only a case where O.A.has to be dismissed on being barred by resjudicata, but it is also a case where this O.A. does not merit consideration on the basis of various points raised.

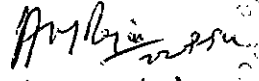
13. Accordingly the O.A. is dismissed. No costs.


(R.Rangarajan)
Member/Admn.


(V.Neeladri Rao)
Vice-Chairman

Dated: the 21st day of September, 1994.

~~XXXXXXXXXXXXXXXXXXXX~~


Dy. Registrar(J)CC

To

1. The Secretary, Ministry of Home Affairs, New Delhi.
2. The Chief Secretary, Govt.of A.P. GAD(SC-C) Dept., Secretariat, Hyderabad.
3. The Secretary, Union Public Service Commission, Dholpur House, New Delhi.
4. One copy to Mr.G.Ramachandra Reddy, Party-in-person, Asst.Inspector General of Police(Admn) O/o Director General of Police, Hyderabad.
5. One copy to Mr.N.R.Devraj, Sr.CGSC. CAT.Hyd.
6. One copy to Mr.D.Panduranga Reddy, Spl.Counsel for A.P.Govt., CAT. Hyd.
7. One copy to Mr.Alagar, Commissioner of Police, Vijayawada, Vijayawada, A.P.
8. One copy to Mr. S.K.Jayachandra, Principal, Police Training College, Anantapur.
9. One copy to Library, CAT.Hyd.
10. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR. K. RANGARAJAN : M(ADMIN)

DATE: 21-9 - 1994

~~ORDER~~/JUDGMENT

M.A.No./R.A/C.A.No.

in

O.A.No.

312/92

(T.A.No.

(W.P.NO

)

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions.

Dismissed

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected

No order as to costs.

NO SPARE COPY

22/9/94

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