

(61)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD.

O.A. NO. 555/92

DATE OF JUDGMENT: 19-4-95

BETWEEN:

M. Lakshminarayana

: Applicant

and

1. Union of India, rep. by  
The Secretary to Govt.  
Min. of Home Affairs  
New Delhi
2. State of AP, rep. by  
The Chief Secretary to Govt. (GA)  
Sec. C. Dept. Sectt.  
Hyderabad
3. Union Public Service Commission  
rep. by the Secretary  
Dholpur House  
New Delhi

: Respondents

COUNSEL FOR THE APPLICANT: SHRI G. Raghuram & VV Prabhakar Rao  
Advocates

COUNSEL FOR THE RESPONDENTS: SHRI NV Ramana (R-1); ~~G. Panduranga~~  
Sd/-Addl. CGSC & 3 ~~redd (R2-2)~~

Mr. D.V. Radha Krishna Murthy

CORAM:

HON'BLE SHRI JUSTICE V. NEELADRI RAO, VICE CHAIRMAN

HON'BLE SHRI R. RANGARAJAN, MEMBER (ADMN.)

CONTD....

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OA 555/92

J U D G E M E N T

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

The applicant entered service as Deputy Superintendent of Police (D.S.P.) in Category-3 (as Assistant Commandant) in the State of Andhra Pradesh on direct recruitment on 9-6-1963. He was promoted as D.S.P. Category-2 on 10-1-75. He was confirmed in the said category in 1980. His name was included in the select list of I.P.S. Officers from the State of A.P. in 1982, and he was appointed as an IPS officer on 28-12-83.

2. Rule 3(b) of A.P. Police Service Rules (for short Rules) envisages that the seniority of D.S.P. Category-2 appointed from the post of D.S.P. Category-3 shall be fixed in that category giving them credit for their entire service in the post of D.S.P. Category-3. Validity of the said rule was challenged in Writ Petition No. 3935/72 before the A.P. High Court by some of the direct recruits to DSP Category-2. The said Writ Petition was dismissed on 22-1-74. Being aggrieved they preferred Writ Appeal No. 585/74 which was allowed by striking down Rule 3(b) of the Rules. Civil Appeal No. 523/76 on the file of the Supreme Court was filed against the above judgement in the Writ Appeal. The Apex Court reversed the judgement of the A.P. High Court in the Writ Appeal and confirmed the judgement of the learned single judge in the Writ Petition.

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By order dated 23-7-81, (vide AIR 1981 SC 1591\*).

Thereupon the A.P. State Government revised the integrated seniority list of D.S.Ps. who were recruited directly and those who were promoted from Category-3, on 28-4-1982. In the said seniority list the name of the applicant was shown at Sl.No.9. As per the said revised seniority list the applicant and others who have come into the category of DSP Category-2 on promotion from Category-3 gained places.

3. Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955 (for short Promotion Regulations) contemplates consideration for inclusion in the select list for filling up the posts available for members of the State Police Service, <sup>under</sup> ~~under~~ Rule 9 of I.P.S. (Recruitment) Rules (for short Recruitment Rules). Regulation 5(2) of the Promotion Regulations stipulates that three times the members referred to in Regulation 5(1) have to be considered for inclusion in the said list.

4. The A.P. State Government by letters dated 19-4-91 and 9-7-91 recommended for convening review selection committee for consideration of cases of M/s K.Jagannatha Rao and B.Kasinath for inclusion in the select list of 1977, and M/s S.M.Haq and V.Bhaskara Reddy for inclusion in the select list of 1978 as they also joined as DSP Category-3 and were promoted as DSP Category-2 and in view of Rule 3(b) of the Rules they are entitled to count total service in Category-3 for fixation of seniority in Category-2 and they gained places when the Supreme Court upheld the validity of the Rule 3(b).

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5. The applicant claims that his case should have also been recommended for consideration for select list of 1977. This O.A. was filed praying <sup>(e)</sup> for direction to the respondents to convene the special selection committee for reviewing the cases of the applicant for inclusion in the selectlist of 1977 and <sup>(b)</sup> to revise his year of allotment to 1978 as was being done in the case of M/s M.Ratan, P.V.V.Satya-narayana, G.Ramachandra Reddy, V.Ramachandraiah and K.Anandaiah, with all consequential benefits.

It may be noted that the applicant is claiming relief <sup>(b)</sup> (B) without prejudice to the Relief (A) <sup>(e)</sup> claimed in this O.A. Thus the second relief is <sup>not</sup> consequential to the first relief, and the two reliefs are independent of each other.

6. We <sup>now</sup> advert to the first relief claimed. For being eligible for consideration as per extant rules for inclusion in the select list for filling up the posts available to State Police Officers under Rule 9 of the IPS Recruitment Rules, the State Police Officer should complete eight years of regular service in the category of D.S.P. and he should have been confirmed by 1st January of the year for which the select ~~list~~ list has to be prepared. As the applicant joined service as DSP in the year 1963, he satisfied the first condition ~~that he~~ <sup>he</sup> completed <sup>ing</sup> 8 years of service by

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It is manifest from the above that promotees from Category-3 to Category-2 DSP shall be placed on probation for a total period of one year within a continuous period of two and half years. The promotee to Category-2 from Category-3 has to pass the test prescribed under Rule 7(a) if he has not already passed, <sup>held</sup> at or before the 5th half yearly examination ~~and~~ after his appointment as DSP Category-2.

8. The applicant appeared for the requisite test ~~only~~ at the 5th half yearly examination held after he was promoted to Category-2 and he passed in the said examination. It is urged for the applicant that the further satisfactory service of three years as contemplated under Rule 7(e) includes the period of probation envisaged under Rule 6, but the learned counsel for the State Government submitted that the further satisfactory service is in addition to the period of probation.

9. Rule 7(e) states that the satisfactory service of three years is 'besides' the period of probation prescribed under Rule 6. 'Besides' is defined as 'in addition to', 'more over' or 'otherwise', 'else' in the Concise Oxford Dictionary, New Seventh Edition. Thus the satisfactory service of three years is in addition to the period of probation prescribed under Rule 6, urged the learned counsel for the respondents. But the learned counsel for the applicant urged that 'besides' also means 'by the side of' and hence the period of probation ~~falls~~ forms part of the satisfactory service of three years referred to in Rule 7(e).

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10. We feel that the contention of the Respondents has to be accepted. The dictionary meaning of 'besides' is 'in addition to'. Hence the satisfactory service of three years is in addition to the period of probation. If 'besides' is also to be read as 'by the side of' then it has to be stated that there is ambiguity in the word 'besides' referred to in Rule 7(e) and then it is necessary to consider as to which meaning has to be given. It may be noted that the phrase 'satisfactory service of three years' is qualified by the word 'further'. The word 'further' signifies that it is in addition to the service referred to therein. Unless the service during probation is declared as satisfactory, probation will not be declared. Hence it has to be held that the further three years satisfactory service is in addition to satisfactory service during the period of probation. Thus the use of the word 'further' also signifies that the three years of service is in addition to period of probation.

11. It may be further noted that Rule 7(c)(ii) refers to confirmation of a direct recruit. The relevant portion of rule 7(c)(ii) reads as under:

<u>RULE 7:</u>	Tests: (a)	xx	xx	xx
	(b)	xx	xx	xx

(c) Notwithstanding anything in the General Rules but subject to the exceptions specified in sub-rule (d) -

(i) No person appointed by direct recruitment shall be declared an approved probationer unless and until he has passed the examination in all the subjects at or before the fifth half-yearly examination held after his appointment as specified in sub-rule (a);

(ii) if any such person has satisfactorily completed the prescribed period of probation and has been declared an 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.

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1-1-77, the year for which the applicant is claiming that his case should be considered. But while it is stated for the applicant that he should have been confirmed in 1976 on passing the departmental test as prescribed under Rule 7 of the Rules and on completion of probation as stipulated under Rule 6 of the Rules, it is stated for the respondents that the applicant was confirmed in Category-2 in 1980 only, and hence he was not eligible for consideration for inclusion in the select list of 1977 or of any year prior to 1981.

7. It is necessary to read Rules 6(a) and Rule 7(b) and (e) of the Rules to appreciate the relevant contentions ~~xx~~ for the applicant and the respondents.

RULE-6: PROBATION:- (a) Every person recruited by transfer or promotion to a category in the service shall be on probation for a total period of one year on duty within a continuous period of two and half years.

RULE-7: TESTS (a)    xx        xx        xx

(b) Deputy Superintendent of Police, Category-2 appointed from the post of Deputy Superintendent of Police, Category-3 shall, if he has not already passed, pass the tests prescribed in sub-rule (a) above, at or before the fifth half-yearly examination held after his appointment as Deputy Superintendent of Police, Category-2.

(c)            xx                    xx                    xx

(d)            xx                    xx                    xx

(e) No person appointed as Deputy Superintendent of Police, Category-2, from the post of Deputy Superintendent of Police, Category-3, shall be declared an approved probationer in Category-2, unless and until he has passed the examination in all the subjects at or before the fifth half-yearly examination held after his appointment as specified in sub-rule (b). Such a person shall render a further satisfactory service of three years before he is confirmed as Deputy Superintendent of Police, Category-2, besides the period of probation prescribed in Rule 6.

12. It may be noted that the period of probation of direct recruit is two years within a continuous period of three years. It is evident from Rule 7(c) that the direct recruit becomes full member on conclusion of the prescribed period of probation and on being declared as an approved probationer. He can be declared as approved probationer on passing the requisite tests as prescribed under Rule 7 (a) of rules at or before the 5th half-yearly examination held after his appointment. Thus both the direct recruits and the promotees to Category-2 DSP have to pass the test prescribed under Rule 7(2) (a) at or before the 5th half-yearly examination held after his appointment. Neither the direct recruit nor the promotee to that category can be declared as an approved probationer unless he passes the said test. Of course while the period of probation for promotee is only one year within a continuous period of two and half years, it is two years within a continuous period of three years for a direct recruit. The direct recruit becomes a full member on being declared as an approved probationer, while confirmation of promotee is on completion of three years of satisfactory service (one will become full member on confirmation). Such a condition was not stipulated for the direct recruit. Thus when the further period of satisfactory service was not stipulated in regard to direct recruits it means that the period of satisfactory service referred to in regard to a promotee ~~has to be held~~ has to be held as in addition to the period of probation, for the word 'further' before the satisfactory service period of three years before he

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? is confirmed as DSP Category-2, indicates that the said period of probation. satisfactory service of 3 years is in addition to the/ Even in recommending the cases of Shri K. Jagannadha Rao and others the A.P. State Government referred to the confirmation on completion of three years of service after the said officers are declared as approved probationers. We accede to the contention for the respondents that the period of satisfactory service of three years is in addition to the period of probation.

13. As already observed the applicant was promoted to the category-2 on 10-1-75. He passed the test prescribed under Rule 7(c) (a) in 1977. On passing the said test he was declared as approved probationer in 1977. As he completed three years satisfactory service after being declared as approved probationer, his confirmation was in 1980. As such he was not eligible for inclusion in the select list prior to 1981. His name was included in the select list of 1982 and he was appointed as an IPS officer on promotion in 1983.

14. Hence the question arises as to whether a direction has to be given to the respondents to convene review selection committee for consideration of the case of the applicant for inclusion in the 1981 select list for IPS from A.P. State.

15. In page 11 of the counter affidavit filed on behalf of the Respondent-2 viz. A.P. State Govt., it is stated that no select list was prepared or approved for the years 1980 and 1981. Hence the question of recommending the case of the applicant for inclusion in 1981 select list does not arise.

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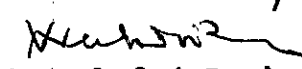
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16. As the Apex Court upheld the validity of the Rule 3(b) of the Rules even in 1981 and when the applicant was included in the select list of 1982 he had not chosen to approach the High Court or the Tribunal till he filed this O.A. on 8-7-92. In view of the delay in approaching this Tribunal we feel that the only direction that can be given is to consider the case of the applicant for inclusion in the select list of IPS officers of A.P. State for 1981 if the High Court or this Tribunal already directed the respondents to convene a review selection committee for consideration for inclusion in the select list of 1981 for ~~IPS~~<sup>IPS</sup> officers from A.P. State.

17. No arguments were advanced <sup>about</sup> ~~in regard to~~ the second relief in regard to alteration of the year of allotment. Hence it has to be stated that the O.A. in regard to the second relief is not pressed.

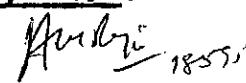
18. In the result this O.A. is dismissed in regard to the second relief. The Respondents have to consider the case of the applicant for inclusion in the select list of 1981 for IPS officers from A.P. State if any direction was given by the Court or Tribunal for consideration for inclusion in the select list of 1981 for IPS officers from A.P. State.

19. The O.A. is ordered accordingly. No costs. /

 (R. Rangarajan) Member/Admn.	 (V. Neeladri Rao) Vice-Chairman
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Dated: the 19<sup>th</sup> day of April, 1995.

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Dy. Registrar (Judl)