

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 1156 of 2004

this the ~~22nd~~ day of November 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member


1. Ashok Kumar Jain, IPS, S/o. Shri Nanhelal Jain,
DIG (Welfare & Accounts), Police Head Quarter,
Jehangirabad, Bhopal (MP).
2. M.P. Dwivedi, IPS, S/o. Shri B.N. Dwivedi,
Aged about 49 years, Dy. Inspector General of
Police, Chhattarpur Range, Chhattarpur (MP).
3. A.K. Soni, IPS, S/o. Shri K.L. Soni,
Aged about 53 years, DIG (Intelligence & Security),
Police Head Quarter, Jehangirabad,
Bhopal (MP).
4. I.S. Chouhan, IPS, S/o. Shri V.S. Chouhan,
Aged about 54 years, DIG (SAF), Western Range,
Indore (MP). Applicants

(By Advocate – Shri Manoj Sharma)

V e r s u s

1. Union of India, through Secretary,
Ministry of Home, North Block,
New Delhi.
2. State of M.P., through Secretary
(Home), Mantralay, Vallabh Bhavan,
Bhopal.
3. Shri D.S. Sengar, IPS, Deputy Inspector
General, Chief Minister's Secretariat,
Mantralay, Vallabh Bhavan, Bhopal. Respondents.

(By Advocate – Shri S.K. Mishra for official respondents and Shri M.K.
Verma for private respondents)



ORDER

By Madan Mohan, Judicial Member –

By filing this Original Application the applicants have claimed the following main reliefs :

“ii) quash the impugned gradation list for the purpose of correction and placement of respondent No. 3 below the applicants with appropriate direction to respondents to carry out the said correction forthwith,

(ii)(a) quash the impugned order dated 23.12.2004 (Annexure A/1-A) to the extent necessary for the purposes of the instant list.”

2. The brief facts of the case are that the applicants are members of the Indian Police Service, born on Madhya Pradesh cadre. The private respondent No. 3 initially joined in the State Police Service of State of Madhya Pradesh. The applicants were appointed to the State Police Service as Deputy Superintendent of Police in the year 1978 while the private respondent No. 3 was appointed in the year 1979. The applicants as well as the private respondent No. 3 were allotted 1987 batch. In exercise of the powers conferred by Sub-Section (1) of All India Services Act, 1951, the rules of Indian Police Service (Regulation of Seniority) Rules, 1988 (hereinafter to be referred as the rules of 1988) have been made by the Central Government in consultation with the State Governments concerned. Rule 6 of the Rules of 1988 deals with fixation of seniority of officers transferred to another cadre. Sub-rule 3 thereof stipulates that if an officer is transferred from one cadre to another, at his request, he shall be assigned a position in the gradation list of the cadre to which he is transferred below the officers of his cadre who have the same year of allotment. By virtue of Section 67(2) of the Madhya Pradesh Re-organization Act, 2000 (hereinafter to be referred as Act of 2000) on or from the appointed day in place of the Indian Police Service cadre for the erstwhile State of Madhya Pradesh there shall be two separate cadres for the newly created States of Madhya Pradesh and Chhattisgarh. In pursuance to this cadre bifurcation, the officers of the Indian Police



Service have also been allocated to these two cadres. Vide notification dated 2.4.2002, apparently upon request and representation fo the private respondent, the Central Government granted cadre transfer to private respondent No. 3 from Indian Police Service cadre of Chhattisgarh to Indian Police Service Cadre of Madhya Pradesh. In terms of the provisions contained in the Act of 2000, All India Services Act and the Rules of 1988, respondent No. 3 belonging to the 1987 Batch, is required to be placed at the bottom of the officers of 1987 batch, however, by the impugned gradation list, the respondent No. 3 has been shown at serial No. 88, above the applicants who are at serial Nos. 89 to 92. Against the place of respondent No. 3, specific mention by introduction of an asterisk has been made stating that the issue pertaining to inter se seniority of respondent No. 3 has not yet been determined. However, by virtue of the operation of the Act and the rules, respondent No. 3 ought to have found a place at the bottom of the 1987 batch even in the extreme event his seniority is yet to be determined. The applicants have been agitating their grievance even prior to the publication of the gradation list, as the issue is most certain to affect the prospects of the applicants as well as their service conditions vis-à-vis to be effectively considered for promotion to higher posts. They filed representations followed by the reminder Annexure A-4. The promotion to the next higher post of Inspector General of Police is likely to be initiated in January, 2005. The entire issue of inter se seniority is yet to be determined and yet placement of respondent No. 3 above the applicants' bodes ill for the applicant's vis-à-vis their right to be considered and effectively promoted to the next higher post. The Government of India vide impugned order dated 23.12.2004 (Annexure A-1/A) has exercised its powers of relaxation under Rule 3 of the All India Service (Condition of Service-Residuary matter) Rules, 1960. The impugned exercise of relaxation of the rule severely prejudice the applicants affecting their service conditions, hence, the same is called in question. Hence, this Original Application is filed.



3. Heard the learned counsel for the parties and carefully perused the pleadings and records.

4. It is argued on behalf of the applicant that they had joined the State Police Service in the year 1978, while the private respondent No. 3 had joined the State Police Service in the year 1979. All the officers were allotted the IPS Batch of 1987. On the request and representation of the private respondent No. 3 the Central Government had granted cadre transfer to the private respondent No. 3 from IPS cadre of Chhattisgarh to IPS cadre of Madhya Pradesh vide notification dated 2.4.2002 (Annexure A-3). The private respondents No. 3 was legally required to be placed at the bottom of the officers of 1987 batch. However, by the impugned gradation list the respondent No. 3 has been shown at serial No. 88 i.e. above the applicants who are shown at serial Nos. 89 to 92. The inter se seniority of the respondents has not yet been determined. He further argued that vide order dated 23.12.2004 Annexure A-1/A the Government of India has exercised its powers of relaxation under rule 3 of All India Service (Conditions of Service Residuary matter) Rules, 1960. The impugned exercise of the relaxation of the rules severely affects the applicants. The applicants had submitted several representations followed by reminders but these are unheard and promotions to the next higher posts are to be considered very shortly. The applicants shall be adversely affected by the aforesaid action of the respondents which are apparently against the rules and law and alleged relaxation should not have been exercised in favour of the respondent No. 3 by the Government of India which is against the principles of natural justice and law. Hence, the OA deserves to be allowed.

5. In reply the learned counsel for the respondents argued that the rule 3 of the All India Service (Conditions of Service Residuary matter) Rules, 1960 gives powers to the Central Government to relax the rules and regulations in certain cases. Hence the order passed by the Government of



India dated 23.12.2004 is perfectly within the competence and jurisdiction of the Government of India. The aforesaid order is not passed against the rules or any provision. It is passed after considering the facts and circumstances of the matter in question. He further argued that the private respondent No. 3 has submitted his representation before the committee praying and requesting him to allow the Madhya Pradesh cadre of IPS. His representation was examined by the committee and recommendations were made. The Government of India has accepted his representation and transferred the private respondent No. 3 from IPS cadre of Chhattisgarh, to the IPS cadre of Madhya Pradesh vide notification dated 2.4.2002. Hence, no irregularity or illegality is committed by the respondents in passing the impugned orders. The OA deserves to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records, we find that the Rule 3 of the All India Service (Condition of Service – Residuary Matters) Rules, 1960 states as under :

“3 Power to relax rules and regulations in certain case – Where the Central Government is satisfied that the operation of –

(i) any rules made or deemed to have been made under the All India Services Act, 1951 (61 of 1951), or

(ii) any regulation made under any such rule regulating the conditions of service of persons appointed to an All India Service causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that rule, or regulations, as the case may be, to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.”

The provisions of Clause 71 of Madhya Pradesh Re-organization Act, 2000 states as under :

“71. The Central Government may, by order establish one or more Advisory Committee for the purpose of assisting it in regard to –

(a) the discharge of any of its functions under this Part, and,



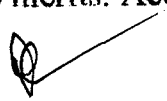
(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this Part and the proper consideration of any representations made by such persons”.

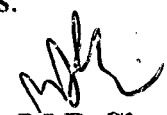
We have also perused the order Annexure A-1/A dated 23.12.2004 which the order passed by the Government of India, Ministry of Home Affairs, New Delhi. In this order it is mentioned that the private respondents No. 3 and Dr. S. Wasi Naqvi, IPS represented the Central Government for transfer. The recommendations of the committee were accepted by the Government and the above mentioned two officers were transferred from IPS cadre of Chhattisgarh to IPS cadre of Madhya Pradesh under Rule 5(2) of the IPS (Cadre) Rules, 1954 vide notification dated 2nd April, 2002. It was also mentioned in the order as under :

“6. Now therefore keeping in view the facts and circumstances of the case, the Government has decided to relax the operation of Rule 6(3) of the IPS (Regulation of Seniority) Rules, 1988 by utilizing the powers of the Central Government under Rule 3 of the All Indian Service (Conditions of Service-Residuary Matters) Rules, 1960 in order to deal with their cases in just and equitable manner and remove undue hardship likely to be caused to these officers in case their seniority is fixed under Rule 6(3) of the Indian Police Service (Regulation of Seniority Rules), 1988. The seniority of these two IPS officers Viz. Shri D.S. Sengar, IPS (SPS:1987) and Dr. S. Wasi Naqvi, IPS (RR:1990) shall not be changed due to their transfer back to their IPS cadre of Madhya Pradesh vide notification No. I-21023/48/2000-IPS-IV(Pt.) dated 2nd April, 2002.”

It is undisputed fact the Government of India has inherent powers to relax the rules in certain matters and this power is exercised by the Government of India by passing the aforesaid order dated 23.12.2004 (Annexure A-1/A). Hence, it cannot be said to be passed against the rules and powers of the Government of India.

7. Considering all the facts and circumstances of the case, we are of the considered view that this Original Application is liable to be dismissed as having no merits. Accordingly, the same is dismissed. No costs.


(Madan Mohan)
Judicial Member
“SA”


(M.P. Singh)
Vice Chairman