

96

14/12/2012

O A No. 383/2011.

Mr. R.K. Mathur, Senior advocate assisted by
Mr. Aditya Mathur, Counsel for applicant.

Mr. Mukesh Agarwal, Counsel for respondent No. 1.

Mr. V.D. Sharma, Counsel for respondent Nos. 2 & 3.

Heard.

O.A. is disposed of by a
separate order on the separate-
sheets for the reasons recorded
therein.

Anil Kumar

[Anil Kumar]
Member (A)

K.S. Rathore

[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 14th day of December, 2012

Original Application No.383/2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Sunil Mathur
s/o late Dr. M.P.Mathur,
aged about 58 years
r/o S-245, Mahavir Nagar,
Behind Sanghi Farm,
Tonk Road, at present working as
Inspector General of Police (Personnel)
State of Rajasthan, Jaipur

... Applicant

(By Advocate: Shri R.K.Mathur, Senior Advocate assisted by Shri
Aditya Mathur)

Versus

1. Union of India
through the Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. The State of Rajasthan
through the Chief Secretary,
Jaipur
3. The Principal Secretary,
Department of Personnel (A-1),
Government of Rajasthan,
Jaipur

... Respondents

(By Advocate : Shri Mukesh Agarwal for resp. No.1 and Shri V.D.Sharma, for resp. Nos. 2 and 3)

ORDER (ORAL)

Brief facts of the case are that the applicant was appointed w.e.f. 6.6.1977 as Deputy Superintendent of Police after duly selected by the Rajasthan Public Service Commission. He was awarded Indian Police Medal for meritorious service in the year 1996 and also awarded President's Police Medal in the year 2006 for distinguished services.

2. Since the applicant attained eligibility for getting promotion to the cadre of Indian Police Service (IPS), vide notification dated 24.8.1998, the applicant along with other 9 persons working in Rajasthan Police Service were promoted/appointed to the IPS on probation and allotted Rajasthan cadre under sub-rule (1) of Rule 5 of the Indian Police Service (Cadre) Rules, 1954. The notification dated 24.8.1998 was followed by communication issued by the Govt. of India, Ministry of Home Affairs for fixation of seniority/year of allotment of promoted IPS officers of Rajasthan cadre in which name of the applicant was placed at Sl.No.3. Vide order dated 27th April, 2000, Ministry of Home Affairs denotified 28 IPS officers promoted from Rajasthan Police Service at different years and name of the applicant was also denotified. A review select list was notified in



which applicant's name figure at Sl.No.19. Thereafter vide communication dated 20.12.2001, the applicant was assigned fresh seniority/year of allotment as a result of Review Select List. The year of allotment in respect of applicant was assigned as 1992 and order was communicated vide letter dated 20.12.2011 (Ann.A/6) by erroneously computing the year of service rendered in the State Police Service.

3. Feeling aggrieved and dis-satisfied with the year of allotment vide communication dated 20.12.2011, the applicant filed representation to rectify the completed years of service in the State Police Service and accordingly be allotted the seniority in IPS cadre. The representation was forwarded by the Department of Personnel, Government of Rajasthan to the Secretary, Ministry of Home Affairs, Government of India on 3.8.2007. The said representation of the applicant was rejected by the Government of India vide order dated 1.10.2007 (Ann.A/10). Having not satisfied with the rejection order dated 1.10.2007, the applicant filed further representation dated 30.5.2011 and the same was also rejected without assigning any specific reason for rejection. Therefore, the applicant invoked jurisdiction of this Tribunal by way of filing the present OA challenging the illegal action of the respondents in assigning the year of allotment as 1992 instead of 1991 while promoting to the



IPS cadre on the ground that the respondents have violated provisions of IPS (Appointment by Promotion) Regulations, 1955 and IPS (Regulation of Seniority) Rules, 1988 by not giving weightage of 21 years as per Rule 3(3)(ii) of the Rules of 1988.

4. Further challenged rejection of representation of the applicant on the ground that the respondents have committed serious illegality by not adhering to the relevant rule 3(3)(ii) of the Rules of 1988. The applicant was selected by the Rajasthan Public Service Commission as a member of Rajasthan Police Service and joined the post w.e.f. 6.6.1977. He was appointed as IPS w.e.f. 12.9.2000 and the year of select list on the basis of which the applicant was appointed/promoted to IPS cadre is 1998, as such, the applicant was entitled to get weightage of 21 years of service, but without proper scrutiny of record and applying the relevant rule, weightage of only 20 years has been given to the applicant. In view of this legal as well as factual aspect, the order impugned dated 1.10.2007 deserves to be quashed and set-aside.

5. Further submitted that the respondents have seriously erred in not taking into consideration the fact that earlier the select committee appointed the State Police Service Officers to IPS Rajasthan Cadre vide notification dated 24.8.1998 but on



account of pending litigation, the notification through which the officers so promoted were denotified and subsequently the notification dated 12.9.2000 was issued after convening the meeting of Review Select Committee. It is submitted that there was no impediment for the respondents on the basis of provisions contained in Rule 3(3) (ii) of the Rules of 1988 to extend the weightage of 21 years consequent thereto the year of allotment of IPS cadre to the applicant would be the year 1991. Therefore, due to the illegal action of the respondents, the applicant has been deprived of one year seniority which affects his entire service career, post promotion to IPS cadre materially.

6. The learned counsel appearing for the applicant submitted that the respondents have committed serious illegality by referring a totally irrelevant factor that year-wise select list was prepared for more than one year in a combined meeting. The reference given on behalf of respondent No.1 in the communication dated 1.10.2007 and 27.6.2011 in relation to the term where 'in which' has to be read as 'for which' is not sustainable and the clarification referred therein is wholly violative of Article 14 of the Constitution of India. The case of the applicant for extending weightage of 21 years is not based on simple interpretation of rules, nothing is required to be added and no external aid for interpretation of such rule is required. It is



also stated that the order dated 20.12.2001 came to be issued in consequence to the notification dated September, 2000 which revealed that such notification is a fresh notification and it has been referred that 'the President is pleased to appoint the following members to the Rajasthan Police Service to the Indian Police Service on probation and to allot them to the cadre of Rajasthan, under sub-rule (1) of rule 5 of the Indian Police Service (Cadre) Rules, 1954'. It has also been significantly referred that the appointment will take effect from the date of issue of the notification. Hence, by all canons of law the notification of September, 2000 is a fresh notification and it cannot be referred as renewal of earlier notification dated 24.8.1998, as such, the applicant becomes entitled to year of allotment after calculation of service of 22 years which makes him entitled to get the year of allotment 1991.

7. It is further submitted that the order dated 20.12.2001 is illegal and arbitrary and in violation of the principles of natural justice and prayed that the order dated 27.6.2011 be declared to be illegal as the same is non-speaking and no reason has been rendered for non-consideration of the request of the applicant and further the impugned order dated 20.12.2011 qua the applicant may kindly be declared as illegal and



unconstitutional and the same may be quashed and set-aside. Further prayed that the respondents be directed to allot the IPS cadre to the applicant as the year 1991 instead of 1992 with all consequential benefits as per his entitlement to get promotion to IPS in the year 1991 instead of 1992.

8. In support of his submissions, the learned counsel appearing for the applicant placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of Indian Administrative Service (S.C.S.) Association, U.P. and Others vs. Union of India and Others reported in 1993 Supp (1) SCC 730 and more particularly, para-7 which is reproduced as under:-

"7.No statute shall be construed so as to have retrospective operation unless its language is such as plainly to require such a construction. The Legislature, as its policy, given effect to the statute or statutory rule from a specified time or from the date of its publication in the State Gazette. It is equally settled law that Court would issue no mandamus to the Legislature to make law much less retrospectively. It is the settled canons of construction that every word, phrase or sentence in the statute and all the provisions read together shall be given full force and effect and no provision shall be rendered surplusage or nugatory. It is equally settled law that the mere fact that the result of a statute may be unjust, does not entitle the court to refuse to give effect to it. However, if two reasonable interpretations are possible, the court would adopt that construction which is just, reasonable or sensible. Courts cannot substitute the words or phrases or supply casus omissus. The court could in an appropriate case iron out the creases to



remove ambiguity to give full force and effect to the legislative intention. But the intention must be gathered by putting up fair construction of all the provisions reading together. This endeavour would be to avoid absurdity or unintended unjust results by applying the doctrine of purposive construction."

9. On the contrary, the learned counsel appearing on behalf of Union of India and the State of Rajasthan have denied the submissions made on behalf of the applicant and during the course of arguments raised preliminary objection regarding maintainability of this OA on the ground of limitation. They submitted that not only on limitation but also the OA does not stand on merit. The year of allotment has rightly been given in accordance with the provisions of law which requires no interference by this Tribunal. Further, the applicant has admitted this fact that pursuant to interim order dated 3.3.2000 of Hon'ble High Court of Rajasthan in DB Civil Contempt Petition No.379/1999 in DB Civil Writ Petition No.4918/97, R.K.Sood vs. Arun Kumar and others, the notification dated 24.8.1998 was rescinded along with other notification of Govt. of India dated 27.4.2000. Vide notification dated 27.4.2000, 28 IPS officers promoted from Rajasthan Police Service at different years were denotified and the applicant was one of them. The Review Selection Committee meeting was convened on 25th and 26th July, 2000 and vide notification dated 12.9.2000, the Review



Select List was notified and the name of the applicant appeared at Sl.No.19. After issue of Review Select list, the Ministry of Home Affairs has sought advice from the Department of Personnel and Training on the question of determination of seniority of officers promoted on the basis of select lists notionally drawn up for earlier years on the directions of CAT/High courts as regards promote IPS officers of Rajasthan cadre. The matter was considered by the DOP&T and the Ministry of advised as under:-

"The matter has been under consideration in consultation with the Department of Legal Affairs (Ministry of Law and Justice). In terms of their advice tendered to us, the seniority of the officers has to be drawn up with reference to the YEAR FOR WHICH the Select Lists had been prepared in terms of the Court directions."

10. It is also stated that the applicant was holding the rank of Dy.SP or equivalent from 6.6.1977 and hence completed 20 years of service rendered in the same till 31st day of December of the year immediately before the year for which the SCM was held i.e. 31.12.1997 to prepare the select list on the basis of which the applicant was appointed to the IPS. It is further stated that the DOP&T, Government of India is the nodal authority for framing, interpretation and interpolation of various rules and regulations governing all the All India Service, including the rules and regulations for appointment to the All India Services through



different streams as well as fixation of seniority. The Ministry of Home Affairs is the cadre controlling authority in respect of only one service of the All India Services i.e. the Indian Police Service and involved only in the process of implementation of the rules and regulations framed by the DOP&T in respect of IPS and the present OA filed by the applicant being devoid of merit deserves to be dismissed.

11. We have heard the rival submissions of the respective parties and carefully perused the material available on record. We have also given thoughtful consideration to the judgment referred by the respective parties. So far as the question of limitation is concerned, we have given our thoughtful consideration to the submissions advanced on behalf of the respondents. It is not disputed that the earlier representation filed by the applicant was rejected vide order dated 1.10.2007. Being not satisfied with rejection of the earlier representation, the applicant further filed representation for reconsideration of the case, as the respondents have not correctly applied the notification and rules in question and the subsequent representation of the applicant was also rejected by the respondents vide order dated 27th June, 2011 against which the present OA has been filed. The Division Bench of the CAT-



Principal Bench in OA No.412/2005 vide order dated 7.3.2012 observed that if the representation is non-statutory, the period of limitation as prescribed under Section 21 of the Act of 1985 and terminus a quo therefor would not be attracted and in operative para held as under:-

"In view of the discussion made above, rejecting the technical objection raised by the respondents, as mentioned above, and in view of the fact that the law point has already been determined in favour of the applicants by the Full Bench, we allow these Original Applications. The seniority of the applicants would be worked out in consideration of the rules that prevailed earlier to amendment notification dated 20/29.01.1994 brought retrospectively from 1988, adversely affecting the applicant, and which has since already been quashed by the Full Bench of this Tribunal vide order dated 18.03.2010. Let the seniority now be worked out as per unamended provisions of the rules, as expeditiously as possible and preferably within a period of six weeks from receipt of this order. In the peculiar facts and circumstances of the case, the costs of the litigation are made easy."

12. The ratio decided by the CAT-Principal Bench (supra) in the facts and circumstances of the present case, not only squarely covers the ground of limitation but also the merit of the case. Since the subsequent representation was rejected by the respondents vide order dated 27.6.2011, the OA cannot said to be time barred and looking to the facts and circumstances, in



our considered view, the matter requires consideration on merit also. Therefore, we are not inclined to reject this OA only on the ground of delay and laches.

13. We have thoroughly considered the submissions advanced on behalf of the respective parties on merit. It is not disputed that the applicant joined the Rajasthan Police Service w.e.f. 6.6.1977, he was appointed to the IPS from 12.9.2000 and the year of select list on the basis of which the applicant was appointed/promoted to the IPS cadre is 1998, as such, the applicant should have been entitled to get weightage of 21 years of service and after giving weightage of 21 years of service, the year of allotment should be 1991 instead of 1992. Upon careful perusal of the notification dated 24.8.1998 issued by the Govt. of India, Ministry of Home Affairs in exercise of the powers conferred by sub-rule (1) of Rule 9 of the Indian Police Service (Recruitment) Rules 1954 read with sub-regulation (1) of regulation 9 of the Indian Police Service (Appointment by Promotion) Regulations, 1955, it is also evident that 10 persons were appointed to IPS including the applicant in which name of the applicant find place at Sl.No.4 in the notification.



14. Respective parties have referred relevant paras of Rule 3(3)(ii) of IPS (Regulation of Seniority) Rules, 1988, applicable after and before 30.8.2005, which are reproduced as under:-

Rule 3(3)(ii) applicable before 30/08/2005

3(3)(ii) The year of allotment of a promotee officer shall be determined with reference to the year in which the meeting of the Committee to make selection, to prepare the Select List on the basis of which he was appointed to the service, was held and with regard to the continuous service rendered by him in the State Police Service not below the rank of a Deputy Superintendent of Police or equivalent upto the 31st day of December of the year immediately before the year in which the meeting of the Committee to make selection was held to prepare the select list on the basis of which he was appointed to the Service, in the following manner:-

- (a) For the service rendered by him upto twenty one years, he shall be given a weightage of one year for every completed three years of service, subject to a maximum of four years;
- (b) He shall also be given weightage of one year for every completed two years of service beyond the period of twenty one years, referred to in sub-clause (a), subject to maximum of three years.

Explanation:- For the purpose of calculation of weightage under this clause, fractions, if any, are to be ignored.

Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or

appointed to the service on the basis of an earlier select list.

Rule 3(3)(ii) after amendment on 30/08/2005

3(3)(ii) The year of allotment of a promote officer shall be determined with reference to the year for which the meeting of the committee to make selection, to prepare the Select List on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him in the State Police Service not below the rank of Deputy Police Superintendent of Police or equivalent upto the 31st day of December of the year immediately before the year for which the meeting of the Committee to make selection was held to prepare the select list on the basis of which he was appointed to the Service, in the following manner:-

- (a) For the service rendered by him upto twenty one years, he shall be given a weightage of one year for every completed three years of service, subject to a minimum of four years;
- (c) He shall also be given a weightage of one year for every completed two years of service beyond the period of twenty one years, referred to in sub-clause (a), subject to a maximum of three years.

Explanation:- For the purpose of calculation of weightage under this clause, fractions, if any, are to be ignored.

Provided that he shall not be assigned a year of allotment earlier than the year of allotment to an officer senior to him in that select list or appointed to the service on the basis of an earlier select list."




15. By perusal of above rule, it is amply clear that the respondents have based their decision for disposal of the representation made by the applicant on the basis of rule 3(3)(ii) of IPS (Regulation of Seniority) Rules, which came to be amended on 30.8.2005 whereby the word 'year in which' has been substituted to 'year for which'. Admittedly, the applicant was appointed in the year 2000 to the IPS cadre hence for all practical purposes, the rules existing in the year 2000 were applicable and the word 'year for which' cannot be made applicable retrospectively as the amendment was made on 30.8.2005 and it is specifically mentioned in the notification that 'They shall come into force on the date of their publication in the Official Gazette', in view of the ratio decided by the Principal Bench in OA No.412/2005 vide order dated 7.3.2012.

16. Thus, in view of the discussions made above, we are fully satisfied with the submissions made on behalf of the applicant that the communications dated 1.10.2007 and 27.6.2011 are contrary to the spirit of rules existing in the year 2000 and subsequent amendment made on 30.8.2005 is not applicable to the facts and circumstances of the present case. Therefore, communications dated 1.10.2001 and 27.6.2011 being contrary to the spirit of the law existed at that point of time deserves to be



quashed and set-aside and the same are hereby quashed and set-aside. Further, the impugned order dated 20.12.2001 qua the applicant is also liable to be quashed and the same is hereby quashed and set-aside, so far it relates to the applicant. The respondents are directed to allot the year 1991 to the applicant instead of 1992 in the IPS and accordingly revise the orders passed in this behalf. The applicant will be entitled to all consequential benefits for which he is entitled after allotment of the year 1991 in the IPS.

17. The OA stands allowed in the above terms with no order as to costs.


(ANIL KUMAR)
Admv. Member


(JUSTICE K.S.RATHORE)
Judl. Member

R/