

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. No.1972/2016

Reserved on : 02.03.2017
Pronounced on: 25.05.2017

**HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN
HON'BLE MR. K. N. SHRIVASTAVA, MEMBER (A)**

S. B. S. Tyagi S/o late B. N. Singh,
R/o G-12, Type-V, NPL,
Kingsway Camp, Delhi
Working as Addl. Commissioner (Security). ... Applicant

(By Advocate: Mr. Vikas Singh, Senior Advocate assisted by Mr.
Ravi Kishore and Mr. Anuj Sharma)

Versus

1. Chairman,
Union Public Service Commission,
Shahjahan Road, New Delhi.
2. Secretary,
Ministry of Home Affairs,
North Block, New Delhi. ... Respondents

(By Advocates: Mr. R. V. Sinha for respondent No.1; Mr. Yogesh
Mahur for Mr. Gyanendra Singh for respondent No.2)

ORDER

Hon'ble Mr. Justice Permod Kohli, Chairman:

The applicant in the present case along with one Mr. P. C. Hota appeared in the Civil Services (Main) Examination held in the year 1982. Both of them on qualifying the Examination were allocated Delhi, Andaman & Nicobar Island Police Service (DANIPS). The

applicant joined on 14.06.1984. He was subsequently appointed to Junior Administrative Grade (JAG) Grade-II on 28.06.1996 and thereafter JAG Grade-I on 04.07.2001. P. C. Hota who also qualified the said Examination was also issued appointment letter on 23.05.1984, the same date the applicant was issued appointment letter. However, P. C. Hota joined service almost 11 months later than the applicant, i.e., on 01.04.1985. On account of joining the service in different years, their confirmation dates were also notified as 14.06.1986 for the applicant and 01.04.1987 for P. C. Hota.

2. A seniority list was notified on 01.08.1984. The applicant's name figured at serial number 18 of the said list, whereas P. C. Hota's name did not figure since he had joined in the year 1985. The applicant, P. C. Hota and some other officers of DANIPS were inducted into IPS in the year 2006. Ministry of Home Affairs, respondent No.2, issued order dated 25.11.2008 allocating year of allotment to the applicant, P. C. Hota and other appointees of the select list of 2006 to the Indian Police Service. As all these officers were inducted into IPS from DANIPS, after allocation of year of allotment the consequential seniority was also notified vide the aforesaid order. Mr. P. C. Hota figured at serial number 3 with the year of allotment as 2000, whereas the applicant was placed at serial

number 7 with the same year of allotment, i.e., 2000. A note was appended in the said order, which reads as under:

“The year of allotment of Shri S.B.S. Tyagi has been restricted to 2000 with reference to one assigned to his senior officer (Select List-2006) i.e. Shri P. C. Hota under the proviso to Rule 3 (3) (ii) of the IPS (Regulation of Seniority) Rules, 1988.”

3. The year of allotment is assigned on the basis of service rendered by the officers in terms of rule 3 (3) (ii) (a) & (b) of the Indian Police Service (Regulation of Seniority) Rules, 1988 insofar as promote officers are concerned. Said rule reads as under:

“3. Assignment of year of allotment. – (1) Every officer shall be assigned a year of allotment in accordance with the provisions hereinafter contained in these rules.

xxx xxx xxx

(3) The year of allotment of an officer appointed to the service after the commencement of these rules shall be as follows:-

xxx xxx xxx

(ii) The year of allotment of a promotee 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 a Deputy 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:
- (b) 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 assigned to an officer senior to him in that select list or appointed to the service on the basis of an earlier select list."

4. In terms of the aforesaid rule, weightage of one year is to be given for every completed three years of service where an official has rendered service up to 21 years, subject to maximum four years. For any service rendered beyond 21 years, further weightage of one year for every completed two years of service beyond 21 years is to be given, subject to maximum of three years. On the basis of service rendered, the applicant was entitled to weightage of seven years with the year of allotment 1999 in terms of the aforesaid rule. In the order dated 25.11.2008, the applicant was, however, assigned the year of allotment as 2000 with weightage of seven years. Since Mr. P. C. Hota had rendered less service on account of late joining, he was assigned the year of allotment as 2000 with six years' weightage. Proviso to explanation below sub-rule (3) of rule 3 of the aforesaid

Rules restrict the assigning of the year of allotment to an officer earlier than the year of allotment assigned to an officer senior to him in that seniority list or appointed to the service on the basis of an earlier select list. Since Mr. Hota was appointed on the basis of the same select list and he was assigned the year of allotment as 2000 with weightage of six years, the year of allotment to the applicant was also assigned as 2000 though he had weightage of seven years to his credit. Thus, instead of 1999 the applicant was assigned the year of allotment as 2000.

5. The applicant made representations to MHA on 09.11.2012, 02.04.2013, 03.03.2014 and 21.08.2015 to rectify the anomaly. The applicant claimed assignment of the year of allotment to him as 1999 with seven years' weightage and his placement above Mr. P. C. Hota. Respondent No.2, i.e., MHA, issued an order dated 06.08.2014 and the seniority list was revised whereby Mr. Hota's seniority was changed from 152 to 160A and the seniority of the applicant was changed from 156 to 152 in place of P. C. Hota. This order also mentioned that a notice was served upon Mr. P. C. Hota informing him about the proposed amendment in the seniority list and opportunity was given to him to furnish his representation. Mr. Hota submitted his representation dated 13.06.2014 which was duly considered. Referring to office memorandum No.9/23/71-Estt.(D)

dated 06.06.1978, it was found that there was no merit in the representation of Mr. Hota, whereas the claim of the applicant was found justified. Despite this order having been passed, the seniority position and the year of allotment was not altered. Respondent No.2 (MHA), vide order dated 05.09.2014 requested UPSC (respondent No.1) to revise the select list of 2006 in view of the order passed by MHA for change of seniority. Respondent No.1, however, vide its letter dated 14.10.2014 informed the respondent No.2 that there is no enabling provision in the Indian Police Service (Appointment by Promotion) Regulations, 1955 (hereinafter to be referred as the Promotion Regulations) for review of the select list once it has been approved by the Commission and acted upon by the Government of India, and thus the Commission would not be able to accede to the request of MHA (respondent No.1). Respondent No.2, however, vide letter dated 10.03.2015 again requested the respondent No.1 for the change of seniority list. Even request through this letter was also declined by respondent No.1 vide its letter dated 09.04.2015. It is under these circumstances that the present OA has been filed by the applicant seeking following reliefs:

- “(i) Quash and set aside order Dt. 14.10.2014 and Dt. 9.4.2015 passed by Respondent No.1, turning down revision of seniority of the applicant as per proposal of Respondent No.2.
- (ii) to direct the Respondent No.1 to review the select list of 2006 in light of changed seniority

position as per order Dt. 6.8.2014/5.9.2014 of Respondent No.2, and grant year of allotment to the applicant as 1999 instead of 2000.

- (iii) to allow the OA with cost.
- (iv) pass any further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

6. Separate replies have been filed by UPSC (respondent No.1) and MHA (respondent No.2). Reply filed by respondent No.1 reiterates the powers of UPSC as a constitutional body under Articles 315 to 323 Part XIV (Services under the Union and the States) Chapter-II of the Constitution, and its functions, duties and obligations under Article 320 of the Constitution. Further referring to All India Services Act, 1951 and the Promotion Regulations of 1955, it is stated that under the scheme of the Promotion Regulations the role of UPSC is limited to convening of selection committee meetings and the approval of the select list prepared by the selection committee in consultation with the Government of India and the State Government. It is further stated that under regulation 5(1) of the Promotion Regulations, the number of vacancies against which selection is made for a particular select list, the year for promotion to the IPS of a State Cadre is determined by the Government of India (Ministry of Home Affairs) in consultation with the State Government concerned. The State Government forwards the proposal to the Commission along with the seniority list, eligibility

list (up to maximum of three times the number of vacancies) of the State Service officers, integrity certificates, certificates regarding disciplinary/criminal proceedings, certificates regarding communication of adverse remarks, details of penalties imposed on the eligible officers, etc, and the complete ACR dossiers of such officers. It is further stated that on receipt of the documents from the State Government, the Commission examines the same and after getting the deficiencies resolved, same are placed before the selection committee. The process is governed by regulation 5(4) of the aforesaid Regulations. The committee classifies the eligible State Police Service officers included in the zone of consideration as 'Outstanding', 'Very Good', 'Good' and 'Unfit', as the case may be, on an overall relevant assessment of their service records, and in terms of regulation 5(5) the selection committee prepares a select list by including the required number of names, first out of the officials classified as 'Outstanding', then from amongst those classified as 'Very Good', and thereafter from amongst those classified as 'Good', and the order of names within each category is maintained in the order of their respective *inter se* seniority in the State Police Service. After indicating the selection process, it is stated that the selection committee meeting to prepare the select lists of 2006 and 2007 was held on 19.10.2007 on the basis of seniority list furnished by the State Government (MHA in the instant case) to the Commission. It is

further stated that after overall assessment of their service records, P. C. Hota and S.B.S. Tyagi (applicant herein) were assessed as 'Very Good' and placed at serial numbers 3 and 5 respectively in the select list of 2006. The select list was notified and acted upon by the Government of India on 28.08.2008. UPSC admitted the receipt of letter dated 05.09.2014 from MHA regarding the representation of the applicant and placement of the applicant over and above P. C. Hota in DANIPS in the seniority list. Reference is also made to office memorandum dated 06.06.1978, which is the basis for grant of relief to the applicant. Respondent No.1 has, however, maintained that the request of respondent No.2, MHA, vide its two letters dated 05.09.2014 and 10.03.2015 could not acceded to in absence of any enabling provision to modify the select list.

7. Insofar as the reply filed by respondent No.2 is concerned, the claim of the applicant has been fully supported by the said respondent.

8. The applicant has filed rejoinder in response to the counter-affidavit filed by respondent No.1, UPSC. Apart from reiterating the averments made in the OA, the applicant has further projected that in response to an RTI application, UPSC in its reply dated 11.08.2016 admitted the fact that it has reviewed the select lists as per directions of courts. Reference is also made to annual report of

UPSC for the years 2013-14 and 2014-15 wherein the factum of convening 11 and 12 review selection committee meetings respectively pursuant to CAT/High Court/Supreme Court directions has been acknowledged. The applicant has placed on record the RTI queries. Relevant extracts thereof are reproduced hereunder:

S.No.	Information sought by the applicant	Reply of the Commission
1.	Whether there is provision for review of the Select List for promotion to the IPS Cadre from the State Police Cadre?	There is no enabling provision in the Promotion Regulations of IPS Cadre(Appointment by Promotion), 1955, to review of the Select lists once approved by the Commission and acted upon by Government of India.
2.	If yes, the details of the provision.	---
3.	If No, whether UPSC has ever reviewed/revised the Select list and under what provision of law	UPSC have reviewed the Select lists as per the directions of Hon'ble Courts.
4.	If the Select List for promotion to IPS cadre has been reviewed/revised as per Court/CAT orders/directions, please supply me the list of such orders/directions with following details: I. Title of the Case II. Case No. III. Deciding judicial authority i.e. Supreme Court/High Court/	This information is also not available in compiled form.

	CAT IV. Ate of decision	
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64th Annual Report 2013-14:

“8. During the year 2013-14, the Commission also convened 11 Review Selection Committee Meetings in pursuance of CAT/High Court/Supreme Court directions. During these Review Meetings, 13 Select Lists for earlier years were also reviewed. In all, 99 Select Lists have been prepared/reviewed in the Selection Committee Meetings and Review Selection Committee Meetings held during the year 2013-14 as summarized in Table-2 and shown in appendix-32.”

65th Annual Report 2014-15:

“7.during 2014-15 in which 81 Select Lists were prepared. In addition, pursuant to the directions of the Hon’ble Supreme Court/High Court/CAT, 12 Review SCMs were held, wherein 15 Select Lists were reviewed. Thus, during 2014-15, a total of 96 Select Lists have been prepared/reviewed. Details in this regard are given in Table-2 and shown at Annendix-20.”

9. Mr. R. V. Sinha, learned counsel appearing for respondent No.1, UPSC, has raised two preliminary objections – (i) regarding limitation, and (ii) maintainability of the OA against the impugned letters which are only departmental communications. His contention is that the applicant is seeking setting aside of letters dated 14.10.2014 and 09.04.2015 and interference in the select list of 2006. This OA was filed on 31.05.2016 and the relief of review of the select list of 2006 is barred by limitation and so is the position with regard to the impugned orders.

10. On the question of limitation, Mr. Sinha has urged that the cause of action accrued to the applicant on 28.08.2008 when the select list was acted upon and notified by the Government, and subsequently when the seniority list was notified on 25.11.2008. In support of his contention he has referred to – order and judgment dated 07.03.2011 passed by the Apex Court in CC No.3709/2011 titled *D. C. S. Negi v Union of India; S. S. Rathore v State of Madhya Pradesh* [(1989) 4 SCC 582]; *Union of India v M. K. Sarkar* [(2010) 2 SCC 59]; *Sansar Chand v Union of India* [2015 (SCC Online) CAT 308]; *Bharat Nath Saroj v Union of India* [2015 (SCC Online) CAT 3556]; and *State of Uttaranchal v Shivcharan Bhandari* [(2013) 12 SCC 179].

11. Refuting the submissions of the counsel for respondent No.1, Mr. Vikas Singh, learned Senior Advocate, appearing on behalf of the applicant has referred to the list of dates and events wherein it is mentioned that the first representation was made on 27.01.2009 and subsequent representations were made on 09.11.2012, 02.04.2013 and 03.03.2014. Apart from this, he has referred to the order dated 06.08.2014 passed by the respondent No.2, MHA, granting relief to the applicant. It is also contended that even when the order dated 06.08.2014 was passed, no seniority list was published.

12. It is true that stale claims cannot be adjudicated upon by the Tribunal. It is also equally true that continued representations do not broaden limitation. In the judgments referred to by Mr. Sinha it has been held by various Courts that stale claims cannot be adjudicated upon in exercise of the power of judicial review. In the present case representations were made by the applicant in respect to the order dated 25.11.2008 whereby the year of allotment was wrongly assigned to the applicant. The first representation was made on 27.01.2009 itself which was followed by representations in the years 2012, 2013 and 2014. All these representations remained undecided. Respondent No.2, MHA, on consideration of the representations, granted relief to the applicant vide order dated 06.08.2014 and revised the seniority without the intervention of the Tribunal or Court and altered the seniority to the advantage of the applicant. It is settled law that limitation only takes away the remedy and not the right. The respondent No.2 having acknowledged the right of the applicant issued the order granting him the benefit of seniority on 06.08.2014. Respondent No.2 also approached the respondent No.1 for amendment of the select list, though it was not required at all. Respondent No.1, UPSC, however, declined the request, as detailed hereinabove. Present OA has not been filed challenging the order dated 25.11.2008 or 28.08.2008 as alleged by UPSC, respondent No.1. Those orders have already been rectified by

the respondents. This OA has been filed only for preservation of the right of the applicant as has been consolidated by the respondent No.2 vide order dated 06.08.2014, when it is sought to be disturbed by the respondent No.1, UPSC. Under such circumstances, limitation cannot be pressed against the applicant where his right has already been acknowledged and settled by the respondent No.2.

13. The second contention of Mr. Sinha is that the impugned communications dated 14.10.2014 and 09.04.2015 are only internal communications and thus cannot be challenged in exercise of writ jurisdiction. Vide the aforesaid communications even UPSC has not refuted the claim of the applicant nor interfered in the order dated 06.08.2014. It only expressed its so called inability to implement this order in its own record by modifying the select list. Such an action is otherwise inconsequential.

14. We have also noticed that UPSC has not disputed the claim of the applicant on its merits, even though vide the impugned communications UPSC informed MHA that the request for amendment of the select list cannot be accepted in absence of any enabling provision in the Promotion Regulations. However, in the counter-affidavit filed in para 9 UPSC has made following averments:

“9. That taking into consideration the submission regarding factual position and rule position made in the preceding paragraphs and also taking into consideration the reply filed by other respondents, the

Hon'ble Tribunal may be pleased to pass specific Orders as it may deem appropriate in the instant OA."

UPSC has simply requested this Tribunal to issue appropriate directions without contesting the claim of the applicant.

15. The applicant has heavily relied upon the office memorandum dated 06.06.1978. This memorandum deals with the issue of delay in joining after selection. Relevant extract of this memorandum reads as under:

- “(i) In the offers of appointment issued by different Ministries/Departments, it should be clearly indicated that the offer would lapse if the candidates did not join within a specified period not exceeding two or three months.
- (ii) If, however, within the period stipulated, a request is received from the candidates for extension of time, it may be considered by the Ministries/Departments and if they are satisfied, an extension for a limited period may be granted but the total period granted including the extension during which the offer of appointment will be kept open, should not exceed a period of nine months. The candidates who join within the above period of nine months will have their seniority fixed under the seniority rules applicable to the service/post concerned to which they are appointed, without any depression of seniority.
- (iii) If, even after the extension(s) if any granted by the Ministry/Departments, a candidate does not join within the stipulated time (which shall not exceed a period of nine months), the order of appointment should lapse.
- (iv) An offer of appointment which has lapsed, should not ordinarily be revived later, except in exceptional circumstances and on grounds of

public interest. The Commission should in all cases be consulted before such offers are revived.

- (v) In a case where after the lapsing of the offer, the offer is revived in consultation with the Union Public Service Commission as mentioned in sub-para (iv) above, the seniority of the candidates concerned would be fixed below those who have already joined the posts concerned within the prescribed period of nine months; and if the candidate joins before the candidates of the next selection/examination join, he should be placed below all others of his batch...."

16. This office memorandum is holding the field and its application has not been disputed. It is the admitted case of parties in the present OA that P. C. Hota did not join within nine months. He joined after ten months and thus the issue being raised by the applicant was duly considered in the light of the existing norms, particularly memorandum dated 06.06.1978 and the MHA accordingly acknowledging the rights and claim of the applicant to have his seniority fixed over and above P. C. Hota, passed order dated 06.08.2014 fixing the seniority of the applicant at serial number 152 in place of P. C. Hota, and Hota's seniority at serial number 160A. This order was issued after affording an opportunity of being heard to P. C. Hota. Even though no serious objection has been raised during the course of arguments about the non-joinder, but the fact remains that P. C. Hota has not been impleaded as a party in this OA, though at the same time from the order dated 06.08.2014, we find that P. C. Hota was given a notice and also opportunity to make

representation. His representation was duly considered and consequently seniority of the applicant *qua* P. C. Hota was re-fixed. P. C. Hota has not challenged this order in any proceedings. The order stands even as on date. Neither Mr. Hota nor the MHA has any objection to the said order. The MHA, however, approached the UPSC for alteration in the select list of 2006 for the effective implementation of the seniority position as notified vide the order dated 6.08.2014. UPSC has declined to do so. Thus except UPSC, nobody else is aggrieved of the aforesaid order, nor even P. C. Hota. In the present case, non-joinder of P. C. Hota would not affect the present proceedings, he having been fully afforded opportunity of being heard by the MHA. We also notice that fixation of seniority is the prerogative of the employer and only consultation may be required in some cases with UPSC, as in the present case. UPSC has also not objected to the order dated 06.08.2014 or merits thereof. It only expressed its inability to make necessary consequential alterations in the select list of 2006 in absence of any enabling provision in the Promotion Regulations. Section 21 of the General Clauses Act, 1897 clearly provides that power to issue includes power to add to, amend, vary or rescind. This Section confers power not only upon the statutory authorities but even in the administrative authorities, which itself is an enabling provision, of course, subject to the rights of parties. In the present case, the right of the applicant has

already been accepted and notified by respondent No.2 by altering his seniority after opportunity of being heard to the affected person. It is the sole prerogative of the MHA to fix seniority and not of the UPSC. UPSC was only required to implement the order by consequential amendment in the select list.

17. Under the above scenario, we are of the considered view that the action of the UPSC and the impugned orders dated 14.10.2014 and 09.04.2015 are not sustainable in law. UPSC could not have declined the request of MHA for alteration in the select list of 2006 on the basis of the order dated 06.08.2014 passed by MHA.

18. In view of the admitted factual aspect, this OA is allowed. Impugned orders dated 14.10.2014 and 09.04.2015 are hereby quashed. As a consequence, UPSC, i.e., respondent No.1, is directed to make necessary rectification in the select list of 2006 to ensure implementation of the order dated 06.08.2014.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/