

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.2193/2014

Order reserved on 13th January 2016

Order pronounced on 3rd February 2016

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Prabhakar, age 54 years
Group A Post, DCP
s/o late Mr. Ram Chandra Prasad
r/o W1/1, Police Colony, Andrews Ganj
New Delhi-49

..Applicant

(Mrs. Jyoti Singh, Senior Advocate (Mr. Padma Kumar S and
Ms. Tinu Bajwa, Advocates with her)

Versus

1. Union of India through its Secretary
Ministry of Home Affairs
Govt. of India, North Block
New Delhi
2. Secretary
Ministry of Personnel, Public
Grievances and Pensions (DOPT)
Govt. of India
3. Secretary
Union Public Service Commission
Shahjahan Road, New Delhi

..Respondents

(Mr. Rajeev Kumar, Advocate)

O R D E R

Mr. A.K. Bhardwaj:

The applicant joined Dadra and Nagar Haveli Police Service (DANIPS) in the year 1985. He was substantively appointed to selection grade (Grade-I of DANIPS), Junior Administrative Grade-II of DANIPS and Junior Administrative Grade-I of DANIPS w.e.f. 01.05.1994, 04.04.2002

and 01.01.2004 respectively. The name of one Mr. H.P.S. Virk was included in the select list for U.P. segment prepared by the Union Public Service Commission (UPSC) in 2001 for promotion to the IPS. When the process of selection was underway, 12 officers, including S/Shri Naresh Kumar, K.C. Dwivedi, D.L. Kashyap and H.P.S. Virk, filed O.A. No.245/2001 before this Tribunal praying for delinking the promotion of DANIPS officers to IPS and to create separate channel of promotion within DANIPS. In the said O.A., the Tribunal passed an interim Order dated 25.05.2001 directing the respondents to refrain from insisting upon an undertaking from the applicants and to consider their candidatures for promotion to the IPS. In terms of the final Order passed in the said O.A., a direction was issued that the applicants would submit their representations to the respondents, which would be disposed of by way of a reasoned and speaking order. The interim Order already passed was made operative till disposal of the representations. In implementation of the Order passed by the Tribunal, the applicants made a representation to the Government, which was disposed of in terms of the order dated 02.12.2002 with the view that if the applicants were willing to be considered for appointment to the IPS, they should furnish their declaration within 10 days of issue of the communication, failing which it would be presumed that they are not interested in being considered for appointment to IPS. S/Shri Naresh Kumar, K.C. Dwivedi, D.L. Kashyap and H.P.S. Virk challenged the order dated 02.12.2002 by filing O.A. Nos.3270/2002 and 3271/2002 before this Tribunal. In the said O.As., the Tribunal passed an interim Order restraining the respondents from taking any adverse action against the applicants. In view of the interim Order passed on 25.05.2001 in O.A.

No.245/2001 and the fact that the name of Mr. Naresh Kumar had been included in the select list of 2000, while notifying the vacancies for the preparation of select list for the year 2001, the respondents decided to keep one post vacant and further another vacancy of IPS (AGMU) was kept vacant for the reason that Mr. Virk had been included in the select list of 2001. In sum and substance, the respondents decided to keep two vacancies of IPS (AGMU) cadre reserved from 2000-2001 onwards. In any case, on 08.05.2008 Mr. Virk brought to the fore his stand that he was willing to join IPS on the basis of inclusion of his name in the select list of 2001 and furnished the requisite declaration in this regard. The Ministry vide its letter dated 18.06.2008 replied to him that since the validity of select list expired on 07.05.2002, his request could not be considered. Finally, Mr. Virk took voluntary retirement from service w.e.f. 31.05.2010. In the meantime, the applicant made several representations to Ministry of Home Affairs to release the vacancies kept reserved for Mr. H.P.S. Virk and start the process for filling up the same unsuccessfully. Finally, he filed the present O.A. praying therein:-

“(a) Direct the respondents to release the one vacancy kept reserved for HPS Virk with effect from 01.01.2003.

(b) Direct the respondents to convene a meeting of Special Committee after the issuance of amended vacancy Notification and thereafter implement the recommendations of SCM.

(c) Pass such other order(s) which this Hon’ble Tribunal deems fit and proper in the facts and circumstances of the case.”

2. The salient grounds espoused by the applicant to buttress his stand are:

- i) There was no interim Order passed in O.A. No.3270/2002 to keep one vacancy of IPS in AGMU cadre, thus respondents are wholly justified in keeping the post vacant since 2001.
- ii) When the representation made by Mr. Virk for giving him promotion on the basis of inclusion of his name in the select list of 2000 was rejected on 18.06.2008, the vacancy kept unfilled on account of his name being there in the select list should have been filled up.
- iii) Mr. Virk had taken voluntary retirement from service on 31.05.2010 without availing promotion, thus there is no justification not to fill up the vacancy in AGMU Cadre of IPS kept unfilled since 2001 by treating the same as vacancy of 2008.

3. In the counter reply filed on behalf of the respondents, they have espoused that two vacancies were kept reserved for Mr. Naresh Kumar and Mr. H.P.S. Virk, who had been included in the select list for the year 2000-2001 for want of direction of Tribunal in O.A. Nos.3270/2002 and 3271/2002.

4. Rejoining the submissions, learned senior counsel for applicant made a reference to the Noting of Special Secretary (IS) dated 03.08.2012 wherein it could be ruled that the vacancy kept reserved for Mr. Virk should have been released in the year 2008.

5. We heard the learned counsels for the parties and perused the record.

6. As can be seen from the stand taken by the respondents themselves in their reply, the claim of Mr. Virk for induction to IPS on the basis of the inclusion in the select list expired on 07.05.2002, thus there could be

no justification for keeping the post vacant thereafter. Paragraph 9 of the reply filed by the respondents reads thus:-

“9. That Sh. H.P.S. Virk vide his communication dated on 8.5.2008 informed that he is willing to join IPS on the basis of his name in the Select List of 2001. He had furnished the requisite declaration in this regard. The respondent Ministry vide letter dated 18.6.2008 had replied to Shri H.P.S. Virk that since the validity of Select List stands expired on 7.5.2002 and there was no court order in his favour directing the respondent Ministry to consider his undertaking and appoint him to the IPS, his request cannot be considered. That rejection of Shri Virk’s request by the respondent Ministry cannot be construed as closing of his case as long as the court case continued till 2010. Otherwise, reservation of a post was made for want of directions of Hon’ble CAT and not due to a representation Sh. Virk. According to law also in the matter of seniority, the issues cannot be raised after lapse of considerable period. In this case, the issue is to change the Select List of 2008 in the year 2012 as requested by the applicant, it is also a settled law that old settled seniority lists cannot be unsettled after lapse of 3-4 years.”

7. As can be seen from the aforementioned, the representation made by Mr. Virk on 08.05.2008 for his induction to IPS on the basis of inclusion of his name in the select list of 2001 was nixed on the ground that the validity of the select panel was expired on 07.05.2002. Besides also in the Note of the Special Secretary (IS) it had been viewed thus:-

“From para-2 at p.26/n, it is clear that the vacancy which was kept reserved for Shri H.P.S. Virk should have been released as in 2008. The notification dated 30.03.2011 can be amended and a revised notification can be issued indicating availability of one vacancy in 2008. UPSC can be requested to hold a review SCM in pursuance of the revised notification and the fixation of seniority may be decided after the receipt of recommendation of review SCM.”

8. We could peruse the record of O.A. No.3270/2002. The prayer made in the said Original Application is for creation of higher rank upto the level of DIG/Addl. CP to Director General of Police in the DANILDDDNHPS itself. For easy reference, the prayer is reproduced hereinbelow:-

“I. Set aside order no.14040/2/2001-UTS.I GOI, MHA, New Delhi dated 2.12.2002 passed by Mr. K.K. Kalra, Under Secretary, GOI, MHA, New Delhi.

II. To create posts in higher ranks upto the level from DIG/Addl. CP to Director General of Police in the DANILDDDNHPS, by suitable amending the DANILDDDNHPS Rules.

III. To remove anomalies in the IPS (Recruitment) Rules, 1954, more particularly Rules, 2 (g) (i), IPS (Appointment by Promotion) Regulations, 1955, more particularly Regulations, 2 (j) (i), 5 (2) third proviso and IPS (Regulations of Seniority) Rules, 1988, more particularly Rules 3 i.e. GSR 737 (E), dated 31st December, 1997 published in the Gazette of India Extra, Part II, 3 (i), dated 31st December, 1997 () 1st January, 1998.

IV. TO ensure that Deputy Superintendent of Police/Assistant Commissioner of Police, Grade II and I, are not clubbed with Junior Administrative Grade Deputy Commissioners of police rank in the DANILDDDNHPS for being considered for promotion to IPS.

V. To ensure that there is no loss of monetary benefits such as increments, reduction in rank and rank badges of the Applicants on their joining the IPS.

VI. To ensure that only officers of the same/equivalent rank from the feeder State Police Services of the IPS-AGMUT Cadre are considered for promotion to IPS.

VII. Direct the respondents to furnish information as requested in para 5 & 6 of their representation dated 10th April, 2002 which has not been supplied by the respondents in their reply.”

9. Though in the Original Application an interim Order was passed by the Tribunal, but once in the year 2008 the respondents themselves had taken a stand that Mr. Virk could not have been given promotion on the basis of inclusion of his name in the select list of the year 2001 and the vacancy kept unfilled on account of inclusion of his name was released, they should have filled up the same accordingly. Finally, O.A. No.3270/2002 was disposed of as infructuous in terms of Order dated 26.08.2011. The Order reads thus:-

“Counsel for applicant states that the applicant has already promoted to IPS and has even retired and, therefore, the present OA has become infructuous. Disposed of as such.”

10. It is not the case of the respondents that the vacancy kept unfilled on account of the name of Mr. Virk being there in the select list for IPS prepared for the year 2001 was ever filled up by promoting some of the seniors of the applicant during the subsequent years or even when the vacancy could be treated available in the year 2008, the applicant could not have been considered against the same. Since it is the stand of the respondents themselves that the validity of the select panel, in which the Mr. Virk was included, expired in March 2002, we need not to analyze the position mentioned in rules/instructions/guidelines in this regard.

11. In the facts and circumstances of the case, particularly the stand taken by the respondents in paragraph 9 of the reply as well as Note of the Special Secretary (IS) (ibid), we dispose of the Original Application with direction to the respondents to fill up the vacancy of IPS (AGMU) Cadre in promotion quota kept reserved on account of inclusion of Mr. Virk being in the select list of 2001 by treating the same as vacancy of the year 2008 by carrying out the necessary exercise in this regard, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this Order. No costs.

(Shekhar Agarwal)
Member (A)

(A.K. Bhardwaj)
Member (J)

/sunil/