

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2242/2012

This the 18th day of April, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mrs. P. Gopinath, Member (A)**

Madhu Sudan Bari S/o Narayan Bari,
Addl. S.P. Lohardaga,
Jharkhand.

... Applicant

(By Advocate: Mr. Abhishek Garg)

Versus

1. Union of India through Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Union Public Service Commission through
its Secretary, Dholpur House,
Shahjahan Road, New Delhi.
3. Government of Jharkhand through its
Chief Secretary, Secretariat, Ranchi,
Jharkhand.
4. Nirmal Kumar Mishra
5. Nagendra Choudhary
6. Amerjit Balihar
7. Awadh Bihari Ram
8. Prashant Kumar Karan
9. Amarnath Mishra
10. Vipul Shukla
11. Niranjan Prasad
12. Madan Mohan Lal

13. Manoj Kumar Singh

14. Chandra Shekhar Prasad

Respondents 4 to 14 C/o Chief Secretary,
Government of Jharkhand,
Secretariat, Ranchi, Jharkhand.

... Respondents

(By Advocates: Mr. Rajeev Kumar and Mr. Jayesh Gaurav)

ORDER

Justice Permod Kohli, Chairman :

The applicant appeared for State Civil Service examination conducted by the Bihar Public Service Commission in the year 1989. He was treated as a general category candidate and could not find place in the select list. He approached the Hon'ble High Court of Patna by filing a writ petition praying for treating him as ST category candidate. This writ petition was allowed and under the directions of the Hon'ble High Court, the applicant came to be appointed as Dy. SP on 01.06.1992 with retrospective effect.

2. On re-organization of the State of Bihar, a separate State of Jharkhand was created on 15.11.2000. The applicant appeared in the departmental examination conducted by the State Government of Bihar for confirmation on the post of Dy. SP on 15.06.2002. The result of the departmental examination was not declared. In the meantime, the applicant was allocated the Jharkhand cadre of the State Police Service. He joined as Dy. SP in the State of Jharkhand on 17.05.2003.

The result of the departmental examination was declared in December, 2004 and the applicant was confirmed on the post of Dy. SP on 02.12.2004 in the State of Jharkhand. It is alleged that several State Police Service officers were promoted to the Indian Police Service during the years 2006 and 2008. However, the details of the year-wise vacancies available are not made known. The applicant claims that he was eligible for promotion to IPS. He was promoted to the post of Sr. Dy. SP on 04.10.2008 w.e.f. 20.07.2007. It is stated that he was earlier denied such promotion having been treated as a general category candidate. It is further the case of the applicant that as on 01.01.2009, there were 11 vacancies for IPS induction from the Jharkhand State cadre. The applicant was not considered. It is alleged that even in the year 2009 several persons were promoted to IPS without considering the applicant. Some names of promotees are also mentioned in para 4.13. On 22.12.2009 the applicant was considered for promotion on the post of Addl. SP. However, the select list was not approved by the then Chief Minister, and later the select panel was cancelled.

3. The applicant has referred to the judgment of the Hon'ble High Court of Punjab & Haryana in CWP No.15798/2009 decided on 01.02.2010 in case titled *Praveen Kumar v UPSC & others*. In the said judgment, the Hon'ble High Court while interpreting regulation 5(3) of the Indian Police Service (Appointment by Promotion)

Regulations, 1955 (hereinafter to be referred as the Regulations of 1955) held that the date for eligibility should be considered as the 1st of January of the relevant year. The said judgment has attained finality. It is stated that the applicant was required to be considered against the vacancies of the year 2008 as on 01.01.2009, but he has not been accorded consideration. It is, however, admitted that the applicant attained the age of 54 years being born on 18.10.1954. The applicant also made some representations.

4. Earlier the applicant filed OA No.381/2012 in this Tribunal for his consideration for promotion to IPS against the 11 vacancies allegedly existing as on 01.01.2009. The respondents in their counter-affidavit revealed that two vacancies from the 2009 select list had been filled up vide notification dated 10.02.2012. The applicant has accordingly filed present OA seeking following reliefs:

- “(a) call the entire record of the promotion of the State Police Officers in IPS pertaining to 11 vacancies which were existing as on 1.1.2009 including the eligibility list of 33 of the officers of Jharkhand Police Service which was prepared by the respondent No.3 under regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955;
- “(b) issue appropriate direction for quashing the eligibility list of 33 of the officers of Jharkhand Police Service which was prepared by the respondent No.3 under regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955;

- (c) issue appropriate direction for quashing the Notification No.1-14011/21/2011-IPS-I dated 10.2.2012 issued by the Government of India, Ministry of Home Affairs in exercise of 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, whereby 11 persons i.e. respondents 4 to 14 were promoted from Jharkhand Police Service in India Police Service and were appointed in Indian Police Service w.e.f. the date of issue of the aforesaid Notification;
- (d) issue appropriate direction directing the respondents No.1, 2 and 3 to include the name of the applicant in the eligibility list and consider the applicant for his promotion from Jharkhand Police Service to Indian Police Service against the vacancies which were existing as on 1.1.2009;
- (e) pass any other order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

5. The State of Jharkhand, i.e., respondent No.3, and the respondent No.1, Union of India, have filed their separate counter-affidavits. In the counter-affidavit filed on behalf of the State of Jharkhand, controverting the averment made in the OA, it is stated that the applicant was never treated as a general category candidate. It is stated that he was always treated as an ST candidate. It is further stated that the applicant qualified the departmental examination only on 02.12.2004. Regarding non-consideration of the applicant, it is stated that he having attained the age of 54 years, was not eligible for promotion to IPS. It is further stated that no junior to the applicant

was promoted/inducted into IPS from the Jharkhand cadre in the year 2009. It is further the stand of the State of Jharkhand that officers senior to the applicant were considered against the available vacancies till 2008, and from 2009 onwards the applicant could not be considered, he having attained the age of 54 years as on 18.10.2008.

6. The matter was heard by this Tribunal on 24.09.2014. The Tribunal noticed the contention of the applicant that he was within the zone of consideration for induction into IPS against the vacancy year 2008 as he was below 54 years of age, and he could also be considered against the vacancies of 2009. Noticing that the respondents had not given the break-up of the year-wise vacancies nor had brought the facts about the names who were included in the list, the counsel for the respondent was allowed time to seek instructions on the above issues. In view of the aforesaid order, respondent No.3 has filed a supplementary affidavit dated 06.01.2015. In this supplementary affidavit, it is stated that the date of birth of the applicant is 18.10.1954, and according to regulation 5(3) of the 1955 Regulations, the applicant is not eligible for appointment to the IPS for the year 2009 onwards. The respondent has also given the break-up of the vacancies and the persons considered. From the chart given in the supplementary affidavit, it appears that in the year 2008 there were four vacancies in the promotional quota. Twelve persons were in the zone of consideration whose names have been

given. Four persons were appointed on the basis of their seniority and merit as determined by the selection committee. The applicant being below in the seniority in the year 2008 was not within the zone of consideration. It is further revealed that no vacancy in the promotional quota was available during the year 2009. During 2010 again, two vacancies were available and six persons were considered against the said two vacancies. Further eleven vacancies were taken into consideration for the year 2010 after the judgment of the Hon'ble Supreme Court in *DOP&T v Praveen Kumar & others*. In the year 2011 there were six vacancies against which three times of the number of candidates were considered. It is also stated in the affidavit that up to the year 2010, all persons within the zone of consideration were senior to the applicant. The applicant was not eligible from 2009 onwards having attained the age of 54 years.

7. The Union of India in its separate affidavit have given details of the mode and method of recruitment/induction into IPS from the State Police Service. Referring to the Regulations of 1955, it is stated that the State Government being the sole custodian of service records of the State Police Service officers, is required to furnish a proposal for convening the meeting of the selection committee/review committee, along with a list of eligible State Police Service officers and their service records, integrity certificates etc. direct to the Union Public Service Commission for consideration of

eligible State Police Service officers for their inclusion in the select list for appointment by promotion to the IPS. It is stated that the Commission scrutinizes the proposal and fixes meeting of the selection/review committee. The Central Government nominates its nominees on the committee as and when the Commission fixes the meeting. The list prepared by the committee is finally approved by the Commission and forms the select list, and finally under regulation 9(1) of the Regulations of 1955, the selectees are appointed by the Central Government on the recommendation of the State Government in the order in which their names appear in the select list. It is stated that the Central Government has very limited role in induction of the State Police Service officers into IPS.

8. From the record it is apparent that the applicant never came within the zone of consideration up to the year 2010. It is wrongly stated that in the year 2008 there were eleven vacancies. As a matter of fact, there were total eleven vacancies – seven meant for direct recruitment quota, and only four were for promotion from the State cadre. On the basis of seniority, eligible persons were considered for induction into IPS in the year 2008. The applicant was not in the zone of consideration. The applicant having attained the age of 54 years as on 18.10.2008, was not eligible for consideration thereafter.

9. The applicant has, however, referred to a letter dated 31.03.2011 (Annexure-C) from the Ministry of Home Affairs, Government of India to the State of Jharkhand and the UPSC. In this letter, reference is made to promotional quota of Jharkhand cadre of IPS as on 01.01.2011, which was indicated to be 41. The letter further mentions that 28 officers were in position on due date and out of 13 vacancies, two appointments had been made vide notification dated 10.03.2011 from the select list of 2009. It is further stated that out of the eleven vacancies that had come into effect for preparation of select list of the year 2010, eight vacancies had arisen due to enhancement of promotion quota from 33 to 41, whereas three vacancies had arisen due to retirement of three promotee officers on superannuation. Based upon this letter, it is argued that there were vacancies for the year 2009.

10. From the record we find that the reference to select list of 2009 is being misconstrued by the applicant. As detailed by the respondents in the counter-affidavit and the supplementary affidavit, there was no vacancy in the year 2009. As a matter of fact, in respect to the vacancies of 2008, select list was prepared in the year 2009 and the reference in the letter dated 31.03.2011 referred to hereinabove is in respect to the vacancies for the year 2008 for which select list was prepared in the year 2009. On the basis of this letter, the applicant cannot claim any right of consideration. Learned counsel for the

applicant has also referred to another document (Annexure-A with the rejoinder filed on 02.09.2013). Though the nature of this document is not known, but it seems to be an extract of the vacancies in the authorised cadre strength of IPS as on 01.01.2009. At serial number 10, against the State of Jharkhand, total 11 vacancies were shown, out of which four are in the promotional quota, which establishes the averments made in the counter-affidavit of the State of Jharkhand that only four vacancies were available for the vacancy year 2008 as on 01.01.2009 belonging to the promotional quota. The next document relied upon is at page 137 (Annexure-B). Against the State of Jharkhand, at serial numbers 11, 12, 13, 17 and 24, there are five posts of SPs. These posts are said to be created in the years 2000, 2007 and 2008. However, from the subsequent notification dated 30.03.2010 (Annexure-C with the rejoinder) we find that these posts were encastered into the IPS cadre vide this notification w.e.f. 30.03.2010. Referring to this document, it is contended that these four posts were also available in the year 2009. The contention of the applicant is contrary to the notification itself. Vide this notification, the Regulations of 1955 were amended with the following conditions:

- “(i) These regulations may be called the Indian Police Service (Fixation of Cadre Strength) Fifth Amendment Regulations, 2010.
- “(ii) They shall come into force on the date of their publication in the Official Gazette.”

From the above stipulation, it is evident that these posts were encadred only from the date of publication of this notification, i.e., 30.03.2010. These posts could not have been brought on the promotional quota of IPS earlier to that. This notification is not under challenge.

11. In view of the totality of the circumstances, we find that there is no merit in this OA. Same is hereby dismissed.

(Mrs. P. Gopinath)
Member (A)

(Justice Permod Kohli)
Chairman

/as/