

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No. 791/2012

Date of C.A.V. : 12.10.2017

Date of Order : 08.03.2018

Between :

Dr. Ch. Shyam Prasada Rao, IPS
Aged about 53 years
Superintendent of Police (Admn)
Guntur Dist. A.P.

... Applicant

And

1. Union of India,
Rep. by its Secretary,
Ministry of Home Affairs, New Delhi.
2. The Government of Andhra Pradesh,
Rep. by the Chief Secretary,
Secretariat, Hyderabad.
3. The Govt. of Andhra Pradesh,
Rep. by its Secretary to Govt. (Political),
Secretariat, Hyderabad.
4. The Secretary, Dept. of Home,
Govt. of Andhra Pradesh,
Secretariat, Hyderabad.
5. Union Public Service Commission,
Rep. by its Chairman,
Dholpur House, Shahjahan Road,
New Delhi – 110 069.
6. T. Ravi Kumar Murthy, IPS,
Superintendent of Police, Rajahmundry, A.P.
7. V. Siva Kumar, IPS,
Superintendent of Police,

SIB, Intelligence, Hyderabad, A.P.

8. K.Koteswar Rao, IPS,
O/o DGP, Hyderabad, A.P.

9. V.B.Kamalasan Reddy, IPS,
O/o DGP, Hyderabad, A.P.

10. S.Chandrasekhar Reddy, IPS,
Superintendent of Police,
Kurnool Dist., A.P.

11. L.K.V.Ranga Rao, IPS,
O/o DGP, Hyderabad, A.P.

12. A.R.Srinivas, IPS,
Joint Director,
Anti Corruption Bureau,
Hyderabad, A.P.

13. P.Venkatrami Reddy, IPS,
Principal PTC,
Anantapur Dist. A.P.

14. P.Viswa Prasad, IPS,
O/o DGP, Hyderabad, A.P.

15. M.Ramesh, IPS,
Superintendent of Police,
Eluru, West Godavari Dist.

16. G.Pala Raju, IPS,
Group Commandant,
Greyhounds, O/o DGP,
Hyderabad, A.P.

... Respondents

Counsel for the Applicant	...	Mr.K.Sudhakar Reddy, Advocate
Counsel for the Respondents	...	Mr.V.Vinod Kumar, Sr.CGSC
		Mr.E.Peddanna, S.C. for A.P.
		Mr.B.N.Sharma, S.C. for UPSC
		Mr.L.Prabhakar Reddy, for R-7 & 9
		Mr.K.Rama Subba Rao, for R-8

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... **Member (Judl.)**
Hon'ble Mrs.Minnie Mathew ... **Member (Admn.)**

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

The applicant who is an Indian Police Service Officer filed the OA seeking the following reliefs :

“Call for the records pertaining to the Selection Committee Meeting held on 09.11.2009 and 19.12.2011 for Indian Police Service (Appointment by Promotion) for the year 2009 and set aside the impugned notification of appointment to IPS – 2009-A issued vide proceedings No.1-14011/13/2011-IPS.I (II) dt.19.12.2011 as clearly illegal, arbitrary, void abinitio and in clear violation Reg.5 of the IPS (Appointment by Promotion) Regulations 1995 and also in clear violation of applicant's fundamental rights guaranteed under Article 14 and 16 of the Constitution of India and consequently direct the respondents to consider the applicant who was graded as 'Good' by the Selection Committee held on 09.11.2009 for the year 2009 against cadre review vacancies with all consequential benefits such as seniority, etc.”

2. Briefly stated the case of the applicant is as follows :

The respondents held Selection Committee Meeting on 09.11.2009 for filling up the vacancies for the year 2010 and issued select list for the year 2010 and another select list called 2009-A for notification for appointment to IPS was issued in proceedings dated 19.12.2011. In 2009-A select list total 11 officers were appointed from Andhra Pradesh Police Service to the Indian Police Service under Regulation 9 of the IPS (Appointment by Promotion) Regulations, 1955.

3. The respondents already issued notification for filling up all the four vacancies for the year 2009 by holding the Selection Committee Meeting on 09.11.2009 and a notification dated 15.03.2010 appointing four officers was also issued. According to the applicant Regulation No.5 of IPS (Appointment by Promotion) Regulations, 1955 permits only one SCM and one select list for a particular year and there is no provision for the respondents to hold second SCM and to prepare second select list. Therefore, it is submitted by the applicant that question of holding second Selection Committee Meeting for the second time and issuing the impugned select list as 2009-A by considering juniors who were not considered as on 01.01.2009 as ineligible because their probation was not declared in State cadre as on 01.01.2009 and issuing select list as 2009-A for the vacancies of the year 2009 in the Selection Committee Meeting held on 27.10.2011 and issuing notification of appointment dated 19.12.2011 is illegal, arbitrary, void ab initio and in violation of the Regulation 5 of the IPS (Appointment by Promotion) Regulations, 1955.

4. While the applicant was working as Deputy Superintendent of Police, his name was included in the select list under IPS (Appointment by Promotion) Regulations, 1955 in respect of four vacancies for the year 2009. State Government sent proposals to UPSC with 12 officers those who were in the zone of consideration, but the UPSC approved the names of 10 officers only as eligible since as on 01.01.2009 officers at Sl.Nos. 11 and 12 are not eligible, as their probation was not declared on the said date. Finally Selection Committee

Meeting was held on 09.11.2009 and the Committee after examining the service records of the officers in the light of the conditions of eligibility appointed four officers to the IPS cadre through the notification dated 15.03.2010. In the review by the Selection Committee the applicant obtained 'Good' some candidates were found to be 'Unfit' and four candidates who graded as 'Very Good' were appointed by notification dated 15.03.2010.

5. It is submitted by the applicant that the Government of India issued notification dated 24.03.2009 in exercise of powers conferred under sub section (1) of section 3 of All India Services Act, 1951 read with sub rules (1) and (2) of Rule 4 of Indian Police Service (Cadre) Rules, 1954 the Central Government in consultation with the Government of A.P. amended the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955 which are called as Indian Police Service (Fixation of Cadre Strength) Second Amendment Regulations, 2009 and the authorized strength of Andhra Pradesh IPS Cadre was increased from 209 to 226. After the said cadre review, 11 vacancies arose for consideration for the year 2009.

6. The respondents held Selection Committee Meeting on 27.10.2011 for filling up the vacancies for the year 2010 and issued select list for the year 2010 and also another select list called as 2009-A vide impugned notification dated 19.12.2011 for appointment to IPS. The Selection Committee which met

on 27.10.2011 for filling up the vacancies for the year 2010 and issued two select lists, one for 2009-A (11 vacancies) and another for 2010 (15 vacancies). But the applicant being the senior most was included as 15th candidate in 2010 select list which made him junior to 25 officers.

7. It is further submitted by the applicant that R-6 Sri T.Ravi Kumar Murthy, batch mate of the applicant was given 'Good' as overall grading by the 2009 Selection Committee, but the Selection Committee for 2009-A graded him as 'Very Good' evaluating the same ACRs, whereas the applicant who was graded as 'Good' along with Sri T.Ravi Kumar Murthy for the select list of 2009 but was not given the grading of 'Very Good' on par with Sri T.Ravi Kumar Murthy.

8. The grievance of the applicant is that as per IPS (Appointment by Promotion) Regulations, 1955, the vacancies of particular year cannot be clubbed with another year and year-wise select list must be prepared and the cutoff date for eligibility criteria for consideration is 1st January for the year for which the select list is prepared.

9. According to the applicant clubbing the vacancies of 2009-A and 2010 for consideration in the Selection Committee Meeting held on 27.10.2011 is illegal and arbitrary, resulted in denial of promotion to the applicant in clear violation of

Regulation 5 of IPS (Appointment by Promotion) Regulations, 1955 and also in violation of the applicant's fundamental rights guaranteed under Article 14 and 16 of the Constitution. Therefore, he filed the present OA.

10. Respondents 1 and 5 filed two separate reply statements and respondents 2 and 3 filed another reply statement.

In the reply statement of the 1st respondent it is submitted that there were 2 and 4 vacancies for the year 2008 and 2009 respectively. The name of the applicant was in the zone of consideration for the select list of 2008 and 2009 at Sl.Nos.2 and 1 respectively. However, the applicant was not included in any of the select lists due to assignment of lower gradings by the Selection Committee and also on account of the statutory limit on its size.

11. Nextly it is submitted that another meeting was convened by the UPSC on 27.10.2011 and the select list for the years 2009-A and 2010 were prepared which was notified by the Ministry vide its notification dated 09.12.2011. There were 11 and 15 vacancies for the years 2009-A and 2010 respectively and the name of the applicant appeared in the zone of consideration of both the years at Sl.No.1. However, the name of the applicant could not be included in the select list of 2009-A due to statutory limit on its size as well as availability of the officers in the zone of consideration having a grading higher than that of the applicant. However, the name of the applicant was included in the select list of 2010 at

Sl.No.15 due to assignment of lower gradings by the Selection Committee. It is further submitted that after the judgement in case of Sri Praveen Kumar (CWP No.15798/2010) by the High Court of Punjab & Haryana which was confirmed by the Hon'ble Supreme Court by its order dated 31.05.2010 in SLP.No.14002/2010, the Department of Personnel & Training conveyed its certain decisions to all the cadre controlling authorities of All India Service by the OM dated 25.08.2010. The decisions under the OM are as follows :

“(a) The said order would be implemented w.e.f. 1st February 2010 i.e. date of the High Court order.

(b) Whenever meetings of the Selection Committee in respect of any All India Service have not been held or meetings have been held but minutes of the meeting have not been approved by the Commission, the same will be held in accordance with the interpretation of Regulations given by the Hon'ble High Court and confirmed by Hon'ble Supreme Court.

(c) Where meetings have already been held and minutes have been approved the same will not be opened unless and until there is a specific direction from a Court of Law.

(d) The eligibility of State Service officers in cases of Review Selection Committee meeting would be reckoned on the basis of Regulations / interpretation prevailing in that year unless otherwise directed by a Court of Law.

(e) Select List will henceforth be styled coinciding with the year of vacancies. In case there are two overlapping Select Lists for a particular year the same will be distinguished by styling the Select List of that year (correspondent to the year in which vacancies have arisen) and the other select list will be named by adding 'A' to that year.”

12. Therefore, it is contended by the 1st respondent that the crucial date of eligibility of the officers of the State Police Service appointed to the Indian Police Service by promotion through the select list 2009 was 01.01.2009, but the vacancies which were filled through this select list arose during the year 2008 i.e.

between 01.01.2009 to 31.12.2009. The next select list which was to be prepared was for the vacancies which arose during the year 2009 i.e. between 01.01.2009 to 31.12.2009, but as per the orders of the Hon'ble High Court of Punjab & Haryana in Praveen Kumar's case the crucial date of eligibility of the officers was to be determined on 01.01.2009 and was to be christened as select list 2009. But as the select list 2009 was already in existence therefore the coinciding select list was rechristened as 2009-A. Therefore, the situation for preparing the select list 2009 and 2009-A arose due to the implementation of the orders of the Hon'ble High Court of Punjab & Haryana.

13. As the vacancies in promotion quota arose after the issue of notification dated 24.03.2009 came into existence in the year 2009, these vacancies were filled from the select list 2009-A by convening a fresh Selection Committee Meeting on 27.10.2011. The applicant's name was included in the zone of consideration for the select list 2009-A also but could not be included in the select list due to assignment of lower gradings by the Selection Committee and statutory limit on its size.

14. Apart from reiterating the contentions urged by the 1st respondent, the 5th respondent – UPSC contended as follows :

In accordance with the provisions of Regulation 5 (4) of the Promotion Regulations the Committee duly classifies the eligible State Police Service officers

included in the zone of consideration as 'Outstanding', 'Very Good', 'Good' or 'Unfit' as the case may be on an overall relative assessment of their service records. Thereafter as per the provisions of Regulation 5 (5) of the Regulations, the Selection Committee prepares a list by including the required number of names first from the officers finally classified as 'Outstanding', then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly 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.

15. The Selection Committee Meeting to prepare the year-wise select lists for the years 2008 and 2009 was held on 09.11.2009. There were 02 and 04 vacancies for the select lists of 2008 and 2009 respectively. The name of the applicant was considered for both the select lists. On overall relative assessment, the applicant was graded as 'Good' for both the years. Due to statutory limit on the size of the select list and availability of officers with better gradings, he could not be included in the select lists 2008 and 2009.

16. The Selection Committee Meeting to prepare the year-wise select lists of 2009-A and 2010 for promotion of State Police Service Officers to the IPS of Andhra Pradesh Cadre was held on 27.10.2011. There were 11 and 15 vacancies for the select lists of 2009-A and 2010 respectively. The name of the applicant was considered for the select list 2009-A. On overall relative assessment, the

applicant was graded as 'Good'. Due to statutory limit on size of the select list and availability of officers with better grading, he could not be included in the select list 2009-A. He was again considered for the select list of 2010. On overall relative assessment, he was graded as 'Good'. On the basis of this, he was included at Sl.No.15 of the select list 2010.

17. Nextly it is submitted that prior to the judgement dated 01.02.2010 of Hon'ble High Court of Punjab & Haryana, the select list year and the vacancy year were different. The substantive vacancy as on 1st day of January of the year in which the meeting was held, was taken into account as per Regulation 5 (1) of Promotion Regulations. After the above judgement, the Department of Personnel & Training has decided that the select list will henceforth be styled coinciding with the year of vacancy. The Selection Committee Meeting which was held on 09.11.2009 which prepared the select list 2009, took into consideration the vacancies as on the 1st day of January, 2009 i.e. the vacancies which arose between 01.01.2008 to 31.12.2008. The subsequent Selection Committee Meeting which was held on 27.10.2011 which prepared the select list 2009-A took into consideration the vacancies which arose during the year 2009. Therefore, the select list 2009 and 2009-A were prepared not for the same year of vacancies but for different years, i.e. for the vacancies which arose in the years 2008 and 2009 respectively. As the meeting for the select list 2009 was already held before the orders of Hon'ble High Court of Punjab & Haryana, another select list which was named 2009-A was prepared for the vacancies of the year 2009. This was in

accordance with the DOPTs decision in compliance with the judgement of Hon'ble High Court of Punjab & Haryana and conveyed vide OM dated 25.08.2010.

18. Nextly it is submitted that there were 15 vacancies for the select list 2010. 14 officers who were junior to the applicant were graded as 'Very Good'. On overall assessment, the applicant was graded as 'Good'. Based on this grading, the name of the applicant was included in the select list 2010 at Sl.No.15 as the gradings of other 14 officers were 'Very Good', although they were junior to the applicant. This is in accordance with Regulation 5(5) of the Promotion Regulations.

19. As regards Sri T.Ravi Kumar Murthy it is submitted that the applicant and Sri T.Ravi Kumar Murthy were graded as 'Good' for the year 2007-08. For the select list of 2009-A, the Selection Committee assessed the officers based on the service records up to the year 2008-09. On overall assessment Sri T.Ravi Kumar Murthy was graded as 'Very Good' while the applicant was graded as 'Good'. As the overall assessment is done based on the available service records of preceding five years, the overall assessment and gradings of an officer may vary for different select lists. Therefore, it is submitted by the 5th respondent that the contention of the applicant that his grading should be on par with Sri T.Ravi Kumar Murthy is devoid of any merit.

20. Setting forth the very same contentions of respondents 1 and 5, the respondents 2 and 3 in addition contended as follows :

When the applicant was considered for the select lists of 2008 and 2009 for which the Selection Committee Meeting was held on 09.11.2009, upon his non-selection/non-appointment to the IPS, he filed OA.998/2009 before this Tribunal seeking a review of selections, his promotion to the IPS and for releasing all the benefits. This Tribunal by its order dated 29.07.2010 dismissed the OA.998/2009 as devoid of merits. The applicant preferred Writ Petition No.24454/2010 before the Hon'ble High Court of Andhra Pradesh challenging the order dated 29.07.2010 passed in the OA by this Tribunal and the said Writ Petition is still pending. Therefore, according to these respondents the present OA for identical relief is not maintainable.

21. Contending as above all the respondents sought to dismiss the OA.

22. We have heard Mr.K.Sudhakar Reddy, learned counsel for the applicant, Mr.V.Vinod Kumar, learned Senior Central Government Standing Counsel, Mr.E.Peddana, learned standing counsel for the State of Andhra Pradesh and Mr.M.C.Jacob for Mr.B.N.Sharma, learned standing counsel for UPSC .

23. The crucial contention of the applicant is that Regulation 5 of the IPS (Appointment by Promotion) Regulations, 1955 permits only one Selection Committee Meeting and one select list for a particular year and as such there is no provision empowering the respondents to hold second Selection Committee Meeting and to prepare second select list for the same year. According to the applicant in the instant case, after considering the vacancies of the year 2009 a second select list called 2009-A was prepared by considering the juniors who were not considered as on 01.01.2009. Therefore, issuing second select list in 2009-A for the vacancies of the year 2009 for consideration in the Selection Committee Meeting held on 27.10.2011 is illegal, arbitrary and void ab initio.

24. In the case of Sri Praveen Kumar in CWP.No.15798/2009, the Hon'ble High Court of Punjab & Haryana passed an order stating that the eligibility of age of an officer is required to be considered with reference to the 1st January of the year for which the select list is prepared and holding that a plain reading of the expression year Regulation 2 (1) shows that a year would mean the period commencing on January 1st and ending on December 31st of the same year. Therefore, according to the said decision the meeting of the Selection Committee may be held in a subsequent year but the eligibility of the officers in so far as their age is concerned would remain intact and it has to be judged with reference to the year for which the select list is prepared. Against the said decision, the Department of Personnel & Training filed SLP No.14002/2010 before the Hon'ble Supreme Court challenging the order of Hon'ble High Court of Punjab & Haryana

in CWP No.15798/2009. The SLP was dismissed by the Apex Court by its order dated 31.05.2010. After the dismissal of the SLP, the Department of Personnel & Training conveyed its decision to all the cadre controlling authorities of the All India Services through OM dated 25.08.2010. According to which “the select list will henceforth be styled coinciding with the year of vacancies. In case there are two overlapping select lists for a particular year the same will be distinguished by styling the select list of that year (corresponding to the year in which vacancies have arisen) and the other select list will be named by adding 'A' to that year.

25. The version of the respondents is that the select list of 2009-A is prepared to fill up the vacancies existing for the year 2009 i.e. from 01.01.2009 to 31.12.2009. They state that as the vacancies in promotion quota arose after the issuance of notification dated 24.03.2009 came into existence in the year 2009, these vacancies will be filled from the select list 2009-A by convening a fresh SCM on 27.10.2011. In this context it is required to be noticed from the contentions put forth by the respondents that the applicant's name was included in the zone of consideration for the select list 2009 also, but could not be included in the select list, due to statutory limit on its size. The Selection Committee Meeting for consideration of the select list for the year 2008 and 2009 was held on 09.11.2009 in respect of 02 and 04 vacancies for the select lists 2008 and 2009 respectively, but the applicant was graded as 'Good' for both the years and in view of the fact that the other officers have obtained better gradings, the applicant could not be included in the select lists of 2008 and 2009. In the same manner for

the select list of 2009-A the applicant was not considered because of lower grading and he was considered for the select list of 2010 stood at Sl.No.15 on comparative merit and having acquired the grading 'Good'.

26. Therefore we absolutely see no force in the contention of the applicant that the Committee separately considered two select lists for the same vacancy year. The respondents made it clear in their reply statements that the Selection Committee Meeting held on 09.11.2009 which prepared the select list of 2009, took into consideration of the vacancies as on 1st day of January, 2009 i.e. the vacancies which arose between 1st January, 2008 to 31st December, 2008. The subsequent Selection Committee Meeting held on 27.10.2011 which prepared the select list 2009-A took into consideration the vacancies which arose during the year 2009. Therefore, the select list 2009 and 2009-A were prepared not for the same year of vacancies but for different years i.e. for the vacancies which arose in 2008 and 2009 respectively. The respondents explained that as the meeting for the select list 2009 was already held before the orders of the Hon'ble High Court of Punjab & Haryana, another select list was named 2009-A which was prepared for the vacancies of the year 2009. This according to the respondents was in accordance with the DOP&Ts decision in compliance with the order passed by the Hon'ble High Court of Punjab & Haryana and conveyed vide OM dated 25.08.2010.

27. Another important aspect which is required to be addressed in the present OA is as to whether the relief prayed for by the applicant in the present OA is barred by constructive resjudicata.

28. One J.Muralidhar, an officer in the D.S.P. Cadre filed OA.1360/2011 against 14 respondents. The applicant was made 9th respondent in the said OA. In the said OA also Mr.J.Muralidhar – applicant therein challenged the appointment by promotions for the vacancy years 2009-A and 2010 which culminated in the appointment of Respondents 5 to 14 to IPS vide proceedings dated 19.12.2011. In the said OA the applicant therein set-forth certain allegations against the candidature of the 9th respondent i.e. the applicant in the present OA. The said OA was ultimately dismissed by the Tribunal.

29. The applicant himself filed OA.998/2009 challenging the appointments of the respondents 5 to 10 to IPS vide notification dated 15.03.2010 and G.O.Rt.No.1324, dated 17.03.2010 and sought to review the selections made for filling up the IPS vacancies 2007-2008 and 2008-2009. The said OA was also dismissed by the Tribunal as devoid of merits.

30. The contentions which the applicant urged in the present OA were available to him when he was made one of the respondents in the first

OA.1360/2011 and also in the second OA.998/2009 which was filed by him. He ought to have raised the same contentions in the aforementioned two OAs, but he did not raise. As he did not raise those grounds in the said OA, he cannot now raise the very same grounds in the present OA since his claim is barred by principle of constructive resjudicata.

31. Reliance has been placed by the learned counsel for the applicant on ***(2010) 4 SCC 290 Union of India and another Vs. Hemraj Singh Chauhan and others.*** In the case before the Hon'ble Supreme Court the cadre review which ought to have been done in 2003 was actually done in 2005. The delay was mainly due to inaction on the part of the State Government. In the meanwhile the respondents crossed the upper age limit of 54 years and became ineligible for consideration for promotion. Their contention before the Administrative Tribunal was that cadre review should be given effect retrospectively from 2003 and consider their promotion accordingly. This contention was rejected by the Tribunal. However, Hon'ble High Court held that the cadre review done in 2005 should be deemed to have been done in 2003 and the respondents be considered for promotion accordingly.

32. Affirming the directions of the High Court, the Supreme Court in exercise of its power under Article 142 of the Constitution held as follows :

“47. Therefore, this Court accepts the arguments of the learned counsel for the appellants that Rule 4 (2) cannot be construed to have any retrospective operation and it will operate prospectively. But in the facts and circumstances of the case, the Court can especially having regard to its power under Article 142 of the Constitution, give suitable directions in order to mitigate the hardship and denial of legitimate rights of the employees.

48. The Court is satisfied that in this case, for the delayed exercise of statutory function the Government has not offered any plausible explanation. The respondents cannot be made in any way responsible for the delay. In such a situation, as in the instant case, the directions given by the High Court cannot be said to be unreasonable. In any event, this Court reiterates those very directions in exercise of its power under Article 142 of the Constitution of India subject to the only rider that in normal cases the provision of Rule 4(2) of the said Cadre Rules cannot be construed retrospectively.”

33. In the instant case the respondents did not deviate from the rules which were made applicable subsequent to the judgement of the Hon'ble High Court of Punjab & Haryana in Praveen Kumar's case. Further the Hon'ble Supreme Court rendered the judgement in exercise of its extraordinary powers under Article 142 of Constitution of India and specifically held that in the normal cases the provisions of Rule 4(2) of the Cadre Rules cannot be construed retrospectively. In any event the judgement relied upon by the learned counsel for the applicant is not applicable to the present case, since the case of the applicant for promotion to IPS in our view was properly considered at appropriate time.

34. For the foregoing reasons, we absolutely see no merit in the OA and accordingly dismiss the same without any order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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