

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00351/2010

Jabalpur, this Wednesday, the 23rd day of January, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

V.N. Pachouri, S/o Late V.S. Pachouri,
Date of Birth 25.8.1952
DIG RAPTC Indore
R/o D-7 Radio Colony
Behind Collector's House
Indore 452018

-Applicant

(By Advocate –**Shri Manoj Sharma**)

V e r s u s

1. Union of India
Through its Secretary
Ministry of Home
New Delhi 110001

2. Union Public Service Commission
Through its Secretary
Dhaulpur House
Shahjahan Rd
New Delhi 110001

3. State of Madhya Pradesh
Through Principal Secretary
Ministry of Home Department
Of Police Vallabh Bhawan
Bhopal (M.P.) 462001

- Respondents

(By Advocate –**Shri S.P. singh for UPSC, Shri J.P. Shukla proxy counsel for Shri Vijay S. Pandey for State of M.P. & Shri D.S. Baghel for UOI**)

(*Date of reserving the order:-27.08.2018*)

O R D E R
By Ramesh Singh Thakur, JM:-

The applicant is challenging the action of the respondents whereby the applicant has been denied induction in Indian Police Service (I.P.S.) from the date of his entitlement. The applicant is aggrieved by the communication dated 24.01.2009 (Annexure A/1) and 20.04.2009 (Annexure A-10) whereby he has been denied induction in I.P.S. against select list of 1991-92 and 1993-94.

2. The applicant in this Original Application has sought of the following reliefs:-

“8(i) To Summon the entire relevant record for its kind perusal from the possession of the respondent and quash the order dt.24.02.2009 and corrigendum dated 20th April 2009 (Annexure A-10) to the extent applicant has been placed in I.P.S. from 1991 only (order of allotment); whereas applicant should have been inducted in IPS from 1991-92 onwards.

8(ii) Consequently command the respondents to review the action and consider the case of the applicant in the review selection committee meeting for the year 1991-92 and 1993-94.

8(iii) Upon holding that action of review SCM is arbitrary illegal in not properly considering the applicant for inclusion in the select list of 1991-92 and 1993-94, command the respondents to reconsider the case of the applicant for promotion as against those years afresh and on applicant’s selection he be included in the IPS as against the select list of 1991-92/1993-94 with all consequential benefits.

8(iv) Direct the respondents to change the year of allotment/seniority of the applicant accordingly.

8(v) In the event applicant gets selected in IPS from 1991-92, 1992-93 and 1993-94, his year of allotment be accordingly modified with further direction to consider his case for the post of Deputy Inspector General and Inspector General from the date of his proper placement and over and above private respondent herein with all consequential benefits.

8(vi) Any other relief(s), direction(s), instruction(s), which this Hon'ble Tribunal deem fit and proper looking to the above facts and circumstances of the case be also awarded in favour of applicant in the best interest of justice.”

3. The facts of the case are that the applicant working as Deputy Inspector General, R.A.R.T.C. Indore. The applicant was initially appointed as Deputy Superintendent of Police by State Government pursuant to his selection by State Public Service Commission. The applicant was a meritorious candidate as he stood at Serial No.2 in the merit order. In the said selection, initially applicant's seniority was correctly shown above certain officers but subsequently his seniority position was downgraded below certain officers who should have been junior to him. At this stage, the applicant filed O.A. No.3420/1993 before the then existing Madhya Pradesh State Administrative Tribunal (S.A.T). The said Tribunal subsequently stood abolished and all pending matter was transferred to the Hon'ble High Court. The said Original Application on transfer was registered as W.P. No.8531/2003. The matter was finally heard and decided by the

Hon'ble High Court by order dated 14.07.2004 (Annexure A/2).

By this judgment the Hon'ble High Court allowed the petition and official respondents were directed to recast the seniority of the petitioner over and above respondent No.3 to 7 therein. The applicant preferred representation for fixing the correct seniority over and above private respondents. The respondents passed an order dated 03.05.2005 (Annexure A/3) whereby the seniority list is altered/amended and applicants seniority is fixed between serial No.11 and 12 i.e. between Shri R.N. Shrivastava and R.C. Shrivastava. The applicant preferred representation dated 18.04.2005 requested that he be inducted in the I.P.S. and should be given year of allotment over and above Shri R.C. Shrivastava will all consequential benefits. However the respondents did not undertake the aforesaid exercise of considering the applicant qua Shri R.C. Shrivastava.

4. Vide order dated 19.09.1990 (Annexure A/4) an adverse confidential report was communicated to the applicant. After exhausting the in house departmental remedies, the applicant has filed Original Application challenging the same before the SAT. During the pendency of the O.A. the respondents have passed two orders on 12.07.1991 (Annexure A-5) and 19.06.1994 (Annexure A/6). By these two orders, all paragraphs of adverse CRs were

expunged. Since these adverse CRs were in existence since 1994, the selection committee meeting (SCM) which took place did not select the applicant because of downgraded position of the said ACRs. In view of the order of the Hon'ble High Court in Writ Petition No.8531/2003 with effect the expunction of A.C.Rs., aforesaid, the department was under a legal obligation to convene a review SCM and consider the case of the applicant for his induction in IPS from his juniors. The private respondents therein were inducted in IPS on various dates in the year 1991-92. The relevant portion of seniority list which shows their date of induction in IPS at Serial No.151 (Annexure A/7) which clearly shows that applicant was senior to them and there existed two A.C.Rs which stood expunged subsequently. The applicant preferred representation for holding a review SMC to consider his case for induction in IPS. The same was rejected by a cryptic order dated 13.09.2005 (Annexure A-8).

5. The applicant being aggrieved with the action of the respondents filed O.A. No.1044/2005 before this Tribunal which by order dated 30.10.2007 directed the respondents to convene review DPC for the DPCs held between 1992 and 1996 forthwith to decide whether the applicant was fit for induction into IPS at par with the private respondents within a period two months. On non

compliance of the order of this Tribunal, applicant filed execution application registered as M.A.615/2008 whereby respondents were directed to implement the order of the Tribunal. On compliance of the order of this Tribunal, the respondents passed the impugned order dated 24.02.2009 wherein it has been stated that the selection committee considered the case of the applicant for inclusion in the select list of 1991-92 and noted that the size of the select list in the said order was 06 and the applicant's name finds place at Serial No.7 in the eligibility list. In the review committee meeting did not find the applicant as suitable on overall assessment of his service record. The same finding is given for the year 1993-94. However, for the year 1994-1995 the select list was redrawn by including applicant's induction at Serial No.5A below with name of Shri S.N. Nayak Sl. No.5 and above Shri D.R. Kori Serial No.5. The UPSC approved the recommendation of review selection committee and accordingly the applicant was declared as entitled to appointment to I.P.S. from the select list of 1994-95 instead of 1996-97 and fixation of his seniority/order of allotment in IPS on that basis. Consequently, the applicant shall be deemed to have been appointed as IPS w.e.f. 26.02.1996 on the basis of his inclusion in the 1994-95 select list. Accordingly the name of the applicant figured at Serial No.1-A in Ministry's notification dated

26.02.1996. Consequently, the applicant granted 1991 as his year of allotment by placing him before the name of Smt. Pragya Rich RR-91 and above Shri D.R. Kori S.P.S. 91 in the gradation list of I.P.S. The applicant is aggrieved by his non-inclusion in the select list by the review committee for the year 1991-92 and 1993-94. Vide corrigendum dated 20.04.2009 (Annexure A/10) it is mentioned that the applicant is entitled to 1991 as his year of allotment and his name shall be placed below the name of Shri Yogesh Mudgil and above Shri D.R. Kori in the gradation list of IPS Officers of cadre of Madhya Pradesh. Thereafter the applicant has been further promoted as Deputy Inspector General vide order dated 10.2.2010 and joined the promotional post.

6. The applicant's case is that the respondents have committed an error in fact and law in not properly considering the case of the applicant for induction in IPS from the date of his juniors have been promoted and belatedly considered him for the same. If the applicant would have been considered in a proper, transparent, bonafide and justiciable manner in the Selection Committee Meetings for the years 1991-92, 1992-93 and 1993-94, the applicant would have been included as I.P.S. in the said selection years. There is a complete arbitrariness on the part of the department whereby applicant has been deprived from his proper

placement as I.P.S. from 1991-92 and onwards. The applicant preferred a representation dated 30.07.2007 (Annexure A-11) making a request that since adverse portion of C.Rs stood expunged, rest of the portion is outstanding and is required to be classified/categorized as 'outstanding'. The applicant preferred another representation dated 28.02.2009 (Annexure A-12) wherein it has been requested that he be promoted in IPS and DIG from appropriate date in accordance with law.

7. The respondent No.1 has submitted his reply wherein it has been stated in the preliminary submissions that the appointment from the State Police Service to the Indian Police Service is solely governed by and made under the Indian Policy Service (Appointment by Promotion) Regulations, 1955, as amended from the time to time. The Promotion Regulations envisage distinct rules in respect of the State Government, the Union Public Service Commission and the Central Government with specific mandates in the process of preparation of the Select List of State Police Service Officers for promotion to the India Police Service right from the stage of drawing up of the list of eligible officers by the State Government to finally making appointments to the service from the select list by the Central Government. The State Government has the exclusive role in regard to drawing up of the

list of eligible State Police Service Officers coming in the zone of consideration to be placed before the selection Committee in terms of seniority of these officers in the State Police Service, the UPSC is wholly concerned with reference to the select list prepared and approved under Regulation 7(3) on the basis of the grading made by the Selection Committee and with the aid of observations of the State and the Central Government. The Central Government on the other hand is the authority concerned in making appointments from the select list on the recommendations of the State Government in the order in which the names of the members of the State Police Service appear in the select list being in force during its validity period.

8. It has been further submitted by the replying respondents that the State Government being the sole custodian of service records of State Police 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 their subsequent appointment by promotion to the Indian Police Service. The Commission scrutinizes the said proposal/records and

fixes the meeting of the Selection Committee/Review Committee. The Central Government nominates its nominee on the Selection Committee as and when the Commission fixes the meeting. The list prepared by the Selection Committee/Review Committee is finally approved by the UPSC and forms the Select List. Finally and specifically in terms of the Regulation 9(1) of IPS (Appointment by Promotion) Regulations, 1955, as they stand applicable to present case, appointment to the IPS of such members of the State Police Service who are included unconditionally in the Select list approved by the UPSC is made by the Central Government on the recommendations of the State Government in the order in which their names appear in the Select List for the time being in force during the period when the select list remains in force. So the part played by the Union of India in the process of preparation and finalization of the Select list is specifically defined. So the subject matter of the present Original Application is primarily concerns with the State Government and the UPSC.

9. The replying respondents have further submitted that the meeting of the Selection Committee was held on 21.12.1988 for preparation of the Select List of 1988 for appointment to Indian Police Service by promotion from Madhya Pradesh Police Service. The number of vacancies was determined to be 5. The name of the

applicant figured at serial No.26 in the zone of consideration. However, his name could not be included in the Select List due to availability of officers having a grading higher to him as well as statutory limit on the size of the select list. It has been further submitted that the applicant is that the name of the applicant was also considered for the years 1990-91, 1991-92, 1993-94 and 1994-95. However, his name could not be included in the select list of any of these years due to availability of officers having a higher grading as well as statutory limit on the size of the Select Lists for the respective years. No meetings of the Selection Committee were convened by the UPSC in the years 1989-90 and 1992-93. The applicant was finally appointed to I.P.S. by promotion from the select list of 1996-97, for which a meeting of the Selection Committee was held on 21.03.1997. It has been further submitted by the replying respondents that the applicant had filed O.A. No.1044/2005 before this Tribunal and in compliance of order dated 30.10.2007 a review selection committee meeting was convened by the UPSC on 15.12.2008 for consideration of the name of the applicant for appointment to IPS by promotion from the select lists of the years 1990-92, 1993-94, 1994-95 and 1995-96. After assessing the officer, the committee did not recommend inclusion of his name in the select lists for the years 1991-92 and

1992-93. The committee recommended inclusion of the name of the applicant in the Select List of 1994-95 at Serial No.5A. The recommendations of the Review Selection Committee were approved by the UPSC on 05.02.2009. So the applicant thus became entitled to be appointed to IPS from the select list of 1994-95 instead of the select list of 1996-97 and consequent revision of his seniority / year of allotment in IPS. The Ministry of Home Affairs in the Government of India thus passed a speaking order and fixed the year 1991 as the year of allotment of the applicant.

10. The respondent No.2 (UPSC) has filed the separate reply wherein it has been submitted that as per Indian Police Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as 'Promotion Regulation') the number of vacancies against which selection is made for a particular recruitment year for promotion to the IPS of a State Cadre is determined by the Government of India (Min. of Home Affairs) in consultation with the State Government concerned. Thereafter, the State Government forwards a proposal to the commission along with the seniority list, eligibility list (upto 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 complete ACR dossiers of the eligible officers. The documents received from the State Government after they are examined by the Commission for completeness and deficiencies resolved, are placed before the Selection Committee when they meet for selection for the recruitment year. In accordance with the provisions of Promotion Regulation 5(4) the aforesaid committee duly classified 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 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 '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. As per the provisions of Regulation 6 and 6-A, the State Govt. and the Central Govt. are required to furnish their observations on the recommendations of the Selection Committee. After taking into consideration the observations of the State Government and the Central Government and the requisite records received from the State Government, the Commission takes a final decision on the recommendations of the Selection Committee with

or without modifications in terms of the provisions of Regulation 7.

The appointments to the IPS are made from the Select List by the Government of India, MHA.

11. It is further submitted that the Review Committee held on 15.12.2008 on an overall assessment of his service records upto year 1990-91 assessed the applicant as ‘Good’ for the year 1991-92.

On the basis of this grading the committee recommended no change in the Select List as no officer junior to him with all the overall grading “Good” was included in the Select List of 1991-92.

The committee next took up his case for inclusion in the Select List of 1993-94. On an overall relative assessment of his service records upto the year 1992-93, the Committee assessed the applicant as

“Very Good” and on the basis of this grading, the committee recommended no change in the Select List as no officer junior to him with the overall grading “Very Good” was included in the Select List of 1993-94.

Thereafter, the Committee considered his case for inclusion in the Select List of 1994-95. The committee, on an overall relative assessment of his service records upto the year 1993-94, assessed the applicant as “Very Good”. On the basis of

this grading, the Committee recommended that his name may be included at S.No.5A below the name of Shri S.N. Naik (S.No.5) and above the name of Shri D.R. Kori (S.No.6) in the select list of

1994-95. Subsequently, on the basis of these recommendations, the appointment of the applicant in the IPS was revised vide the Govt. of India, MHA notification dated 24.02.2009 read with corrigendum dated 20.04.2009.

12. The separate reply has been filed by respondent No.3 wherein it has been submitted that initially the applicant had agitated the matter relating to his seniority and also had challenged certain adverse ACRs. The ACRs were expunged. The seniority of the applicant thereafter was fixed in between R.N. Shrivastava and R.C. Shrivastava. In compliance of order passed by this Tribunal, his case was taken up. The only difference in seniority was that earlier the name of applicant was under R.C. Shrivastava and post re-fixation of seniority his name appeared above R.C. Shrivastava. Earlier also the applicant was considered and was not found fit. However, in compliance of order a review DPC was convened and the candidature of applicant was taken up and he was reconsidered from the year 1991-92 to 1995-96. Individual assessment of each year was undertaken by the review DPC. The select list for the year 1991-92 was taken up and on the basis of information furnished by the State Government the name of the applicant figured at Sr. No.7 in the eligibility list and the review committee on overall relative assessment of service records up to 1991 assessed the applicant as

“Good” on the basis of the aforesaid grading there was no change in the select list as no officer junior to the applicant with overall grading “Good” was included in the select list of the year 1991-92. Similarly for the year 1993-94 the case of the applicant was taken up the maximum number of State Police Service Officer that could be included in the select list was 6 (six). The State Government furnished information whereby the name of the applicant was to figure at Sr. No.7 of the select list of the year 1993-94. The review committee on overall relative assessment of the applicant up to year 1992-93 assessed the applicant as “Very Good” and on basis of this grading as no officer junior to him with over all grading “Very Good” was included in the select list of 1993-94, hence there was no question of any change in the result. The review committee for the year 1994-95 there were 7 vacancies. The name of the applicant as per the information furnished by the State Government was to figure at Sr. No.6, the review committee on over all relative assessment assessed the applicant as “Very Good” and on the basis of this grading recommended the applicant to be included at Sr. No.5A below the name of Shri S.N. Nayak and above the name of Shri D.R. Kori. As such the committee has found the applicant fit to be appointed as IPS in the year 1994-95. It has been submitted by the respondent that the review DPC has assessed the case of

applicant without being influenced by anything and an impartial approach was adopted and thereafter, the applicant has rightly found his name in the select list of 1994-95.

13. We have heard the learned counsel for the both the parties and have gone through the documents attached with the pleadings.

14. From the pleadings the appointment of the applicant as Deputy Superintendent of Police by State Government pursuant to his selection by State Public Service Commission, there is no dispute. The grievance of the applicant is that the applicant had filed O.A. No.1044/2005 for expunction of ACRs, whereby some adverse entries were there. Due to such adverse entries, the applicant did not find any place in the IPS cadre in the year 91-92. The submission of the applicant is that as this Tribunal has expunged the adverse entries in the ACR and it was incumbent on the respondents that the fresh assessment in the ACR should have been done. It is specifically submitted by the applicant that the ACRs in which the adverse entries were there should have been reassessed. On the other side the respondent-department has replied to the fact that the consequent upon the order of this Tribunal Review DPC was done for 1991 to 1996 in the induction of applicant at par with the private respondents. It has come in the

reply of the respondents that the selection committee has considered the case of the applicant for induction in the select list in 1991-92 and noted that the size of the select list in the said order was 06 and the applicant names find place at Serial No.7 in the eligible list. Similarly, the finding of the review committee has further given for the year 1993-94. For the year 1994-95, the select list redrawn by including the applicant's name at Sr. No.5A below the name of Shri S.N. Nayak and above the name of Shri D.R.Kori. Resultantly the UPSC has approved the recommendation of the Selection committee and accordingly the applicant was declared as entitled for appointment to IPS cadre in the select list for 1994-95 instead of 1996-97 and fixation of his seniority and allotment of IPS cadre on that basis. Consequently, the applicant shall be deemed to have been appointed as IPS w.e.f. 26.02.1996 on the basis of his inclusion in the 1994-95 select list.

15. As per the submission made by the applicant that after expunction of the adverse remarks, there should have been reassessment of ACR, there is no direction from the Tribunal to reassess the ACR. Normally in such cases after expunction of the ACR, it is deemed to be non-existence. So the submission made by the applicant for reassessment of the ACR is not tenable.

16. The replying respondents have clearly submitted in their reply that the UPSC scrutinizes the said proposal/records and fixes the meeting of the Selection Committee/Review Committee. The Central Government nominates its nominee on the Selection Committee as and when the Commission fixes the meeting. The list prepared by the Selection Committee/Review Committee is finally approved by the UPSC and forms the Select List in terms of the Regulation 9(1) of IPS (Appointment by Promotion) Regulations, 1955, as they stand applicable to present case. It has been specifically submitted by the replying respondents that the Central Government on the recommendations of the State Government in the order in which their names appear in the select list for the time being in force during the period when the select list remains in force. It has been further submitted that the selection committee was held on 21.12.1988 for five vacancies the name of applicant figured at Serial No.26 in the zone of consideration. However, his name could not be included in the Select List due to availability of officers having a grading higher to him as well as statutory limit on the size of the select list. The name of the applicant was also considered for the years 1990-91, 1991-92, 1993-94 and 1994-95. However, his name could not be included in the select list of any of these years due to availability of officers having a higher grading

as well as statutory limit on the size of the Select Lists for the respective years. The applicant was finally appointed to I.P.S. by promotion from the select list of 1996-97, for which a meeting of the Selection Committee was held on 21.03.1997 and further in compliance of order dated 30.10.2007 a review selection committee meeting was convened by the UPSC on 15.12.2008 for consideration of the name of the applicant for appointment to IPS by promotion from the select lists of the years 1991-92, 1993-94, 1994-95 and 1995-96. After assessing the officer, the committee did not recommend inclusion of his name in the select lists for the years 1991-92 and 1992-93 and ultimately recommended the name of the applicant in the Select List of 1994-95 at Serial No.5A.

17. It has come in the reply of the UPSC that the State Government forwards a proposal to the commission along with the seniority list, eligibility list (upto maximum of three times the number of vacancies) of the State Service Officers, Integrity certificates, certificates regarding disciplinary/criminal proceedings, certified regarding communication of adverse remarks, details of penalties imposed on the eligible officers etc. and complete ACR dossiers of the eligible officers. So, the documents received from the State Government after they are examined by the Commission for completeness and deficiencies

resolved, are placed before the Selection Committee. Further, in accordance with the provisions of Promotion Regulation 5(4) the aforesaid committee duly classified 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.

Further as per the provisions of Regulation 6 and 6-A, the State Government and the Central Government are required to furnish their observations on the recommendations of the Selection Committee. After taking into consideration the observations of the State Government and the Central Government and the requisite records received from the State Government, the Commission takes a final decision on the recommendations of the Selection Committee with or without modifications in terms of the provisions of Regulation 7.

18. The UPSC has specifically submitted in their reply that review committee was held on 15.12.2008. On an overall assessment of his service records upto year 1990-91 assessed the applicant as 'Good' for the year 1991-92. On the basis of this grading the committee recommended no change in the Select List as no officer junior to him with all the overall grading "Good" was included in the Select List of 1991-92. The committee next took up

his case for inclusion in the Select List of 1993-94. On an overall relative assessment of his service records upto the year 1992-93, the Committee assessed the applicant as “Very Good” and on the basis of this grading, the committee recommended no change in the Select List as no officer junior to him with the overall grading “Very Good” was included in the Select List of 1993-94. Thereafter, the Committee considered his case for inclusion in the Select List of 1994-95. The committee, on an overall relative assessment of his service records upto the year 1993-94, assessed the applicant as “Very Good”. On the basis of this grading, the Committee recommended that his name may be included at S.No.5A. So, it is clear from the reply filed by the UPSC that it is the independent scrutiny made by the Commission as per Rule 5(4) of the Promotion Regulation and the UPSC on the basis of seniority list, integrity certificate, certificates regarding disciplinary/criminal proceedings, certificate regarding communication of adverse remarks, details of penalties imposed on the eligible officers etc. and complete ACR assessed the applicant and on an overall relative assessment of their service record, the applicant has been considered in the review committee and ultimately was found fit for appointment in the year 1994-95.

19. The respondents have also relied upon the judgment passed by Hon'ble Apex Court in the matter of ***Union Public Service Commission vs. L.P. Tiwari and Others*** passed in Appeal (Civil) No.5155/2006 to the fact that the evaluation made by an expert committee should not be easily interfered with by the Courts.

20. In view of the above, we are of the opinion that there is no illegality in the impugned order passed by the respondents.

21. Resultantly, this Original Application is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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