

NAVNEET RAJAN WASAN

v.

UNION OF INDIA & ORS.

MARCH 12, 1996

[B.P. JEEVAN REDDY AND M.K. MUKHERJEE]

Service Law :

Indian Police Service (Cadre) Rules, 1954 : Rule 9—Indian Police Service (Regulation of Seniority) Rules, 1954 : Rules 3(3)(b) and 4/, Indian Police Service (Appointment by Promotion) Regulation 1965—Police Officer belonging to Indian Police Service—Promotor—Not granted—Direction from Tribunal—Officer promoted to senior scale—On challenge, Tribunal relying on a memo, set aside the promotion order—Held Tribunal was not justified in not considering Rule 9 of Indian Police Service (Cadre) Rules on which the claim was principally based—Order of Tribunal set aside—Case remanded to Tribunal.

The appellant, an officer of the Indian Police Service (IPS) having not been given promotion even after completion of 4 years of service on the ground that he had not passed the language test, approached the Tribunal. The Tribunal while allowing his application directed the government to consider his case for promotion. The appeal filed by the Government before this Court was dismissed. The Government issue show-cause notices to 9 promotee officers, including respondent Nos. 4 to 6, whose seniority was to be affected while implementing the Tribunal's order. After considering the representations of the officers, the Government issued order allowing senior time-scale to the appellant and placed him above the respondents. Respondents No. 4 to 6 challenged the promotion order of the appellant before the Tribunal. The Tribunal allowed their application and set aside the promotion of the appellant. Hence the present appeal by the appellant.

The contention of the appellant was that contention he raised before the Tribunal relying on Rule 9 of the Indian Police Service (Cadre) Rules, 1954 which was of crucial relevance for determining the issue involved was not at all considered. It was further submitted that no satisfactory or reliable material was placed on behalf of the three respondents so as to

entitle the Tribunal to conclude that after inclusion in the seniority list they officiated in cadre post.

Allowing the appeal, this Court

HELD : 1. The grievance of the appellant that Rule 9 of the Indian Police Service (Cadre) Rules 1954 which was of crucial relevance for determining the issue involved was not considered by the Tribunal, is well founded and genuine. It is found that appellant's contest to the claim of the three respondents was principally based on Rule 9 of the Indian Police Service (Cadre) Rules. In spite of this the Tribunal did not advert to the contentions raised by the appellant. [264-A-C]

2. The Tribunal negated the contention of the appellant that the respondents did not officiate in the cadre post on the basis of a memo issued by the State Government. The memo was not a formal order supported by a proper affidavit but was only a written instructions given by the client to his lawyer. The Tribunal was not at all justified in entertaining and basing its findings on a document which was not legally permissible nor properly brought on record. Besides, the communication doesnot support the conclusion drawn by the Tribunal that three concerned respondents officiated in "senior 'cadre' post". [264-D, F-G]

3. The Tribunal did not approach the questions raised before it from a proper perspective nor did it take into consideration the plea raised by the appellant. Therefore, the impugned orders of the Tribunal are set aside and the applications are remanded to the Tribunal for proper disposal in accordance with law and in the light of the present judgment as expeditiously as possible. [264-H; 265-A-B]

CIVIL APPELLATE JURISDICTION : Civil appeal Nos. 4226-27 of 1996.

From the Judgment and Order dated 29.6.93 of the Central Administrative Tribunal, Hyderabad in Original Applications. Nos. 823 and 919 of 1992.

A.S. Nambiar, Ms. Binu Tamta and P. Parmeswaran for the Union of India.

L. Nageswara Rao, S. Uday Kumar Sagar, K.R. Kumar, C.

Balasubramanian, J.P. Misra, Y. Prabhakara Rao for the Respondent Nos. 4 & 5.

The Judgment of the Court was delivered by

M.K. MUKHERJEE, J. Leave granted. Head the learned counsel for the parties.

These two appeals have been heard together as they arise out of a common judgment rendered by the Central Administrative Tribunal, Hyderabad ('Tribunal' for short) disposing of two original applications (O.A. Nos. 823 of 1992 and 919 of 1992). Facts relevant for disposal of these appeals are as under :

Shri N.R. Wasan, the appellant herein, was appointed to the Indian Police Service (IPS) on September 20, 1980 on the basis of Civil Service Examination, 1979 and was allotted to the Andhra Pradesh Cadre. In spite of his completion of 4 years of service on September 19, 1984, he was however not promoted to the senior scale on the ground that he had not passed the language test. Aggrieved by his delayed promotion he filed an application before the Tribunal vide O.A No. 414 of 1987 seeking redressal of his grievances. His application was allowed by the Tribunal by its order dated January 13, 1988 with a direction to the Government of India to consider him for promotion to the senior scale on completion of 4 years of service in the junior scale subject to the conditions prescribed in the Rules, without insisting on passing of the language test. Assailing the above order of the Tribunal the State of Andhra Pradesh filed a special leave petition in this Court which was dismissed on February 18, 1991. Thereafter the Government of India decided to implement the direction of the Tribunal but as its implementation was to affect the seniority of nine promotee officers including the respondents No. 4, 5 and 6 herein, (R4, R5 and R6 for short), in that, their year of allotment was to be changed from 1979 to 1980 they were asked to show cause against the proposed revision of the Gradation List. After considering the representations submitted by those officers the Government of India issued, in accordance with Rule 4 of the Indian Police Service (Regulation of Seniority) Rules, 1954, an Order on June 18, 1992 whereby it allowed senior time scale to the appellant with effect from September 20, 1984 and amended the Gradation List of IPS officer of Andhra Pradesh so as to place him above those three respondents.

Assailing the above Order R4 and R5 filed a joint application (O.A. No. 823 of 1992) and R6 filed a separate application (O.A.No. 919 of 1992) before the Tribunal. In their applications they averred that all of them were included in the Select list of 1983 prepared in accordance with the Indian Police Service (Appointment by Promotion Regulation, 1955 and that after such inclusion they were promoted to officiate in senior time scales of IPS Officers with effect from February 23, 1984, February 29, 1984 and March 6, 1984 respectively till they were appointed in substantive vacancies in the post of IPS Officers in the month of October, 1984, Resultantly, they contended, in view of Rule 3(3)(b) of the Indian Police Service (Regulation of Seniority) Rules, 1954, (as it stood at the relevant time) their seniority was to be reckoned with reference to the dates from which they officiated in the senior posts and not the dates of their actual absorption in the substantive vacancies of IPS Officers. When so reckoned, their year of allotment would be 1979 as originally assigned, and hence the Gradation List did not warrant modification notwithstanding the appellant's appointment in the senior post with effect from September 20, 1984.

In contesting the applications the appellant submitted that under Rule 9 of the Indian Police Service (Cadre) Rules, 1954 a cadre post in a State may be filled by a person who is not a cadre officer only if the State Government or its delegatee is satisfied that the vacancy is not likely to last for more than three months or that there is no suitable cadre officer available for filling the vacancy. According to the appellant the concerned authorities could not have obtained satisfaction that no suitable cadre officer was available for filling the vacancy as he (the appellant) was available and that it was not the case of the authorities that he was not suitable. The appellant's next contention was that even if the initial officiating promotion of the above the respondents was assumed to be legal and valid its continuance beyond a period of three months was illegal due to non compliance of sub-rule (2) thereof, which requires the State Government to report such extension to the Central Government. The appellant also denied knowledge of the three respondents' claim that their promotional officiation was in cadre post. The stand of the Union of India, the respondent No. 1 (R1) in the applications, however, on this point was specific as it asserted that in fixing the inter se seniority by the impugned order dated June 18, 1992, the dates of appointments of the three respondents in the substantive vacancies in the IPS posts were only taken into consideration as their officiation after inclusion in the Select List, was *not*

in cadre posts.

By the impugned judgment the Tribunal allowed the applications of the three respondents and set aside the Order dated June 18, 1992 issued by R1. In so doing, the Tribunal placed strong reliance on Rule 3(3)(b) of the Indian Police Service (Regulation of Seniority) Rule, 1954 (as it stood at the relevant time), which provides for the mode of assignment of year of allotment, and recorded the following findings :

"It has to be noted that prior to amendment in 1987 the year of actual appointment of promotee to the IPS was not relevant for determining the year of allotment, if such promotee police officer was in continuous officiation prior to date of appointment to IPS. The impugned order discloses that the date of actual appointment of the applicant to the IPS was taken into consideration for determining the year of allotment of the applicants, even though they were in continuous officiation of senior posts prior to their appointments to IPS.

But in the counter filed R-1 it was stated that the dates of appointment of the applicants were taken into consideration as their officiation was not in the cadre posts. *The assumption on the part of R1 that the applicants officiated in Ex cadre senior posts is not correct in view of the memo dated 26.6.1993 of the secretary to Andhra Pradesh State Government in General Administration.* Hence, there is no need to consider for disposal of these OAS as to whether the date of the inclusion in the select list or the date from which the promotee in officiation in senior Ex-cadre posts whichever is later cannot be taken for determining the year of allotment prior to amendment of Rule-3 in 1987.

It is thus evident that 29.2.1984 and 20.3.1984 the dates from which these two applicants respectively officiated in senior posts continuously till the date of their appointments have to be taken into consideration for assigning the year of allotment and on that basis 1979 was originally assigned and hence it does not warrant modification even though R-4, Sri Wasan was in continuous officiation of senior post from 20.9.1984."

(emphasis supplied)

In impugning the above finding, the appellant, who himself argued his case, submitted that the contention he raised before the Tribunal relying on Rule 9 of the Indian Police Service (Cadre) Rules, 1954 which, according to him, was of crucial relevance for determining the issues involved, was not at all considered by it. Besides, he asserted, no satisfactory or reliable material was placed on behalf of the three respondents so as to entitle the Tribunal to conclude - as it did - that after inclusion in the Select List they officiated in cadre posts.

So far as the first grievance of the appellant is concerned it must be said that it is well founded and genuine. On perusal of the counter affidavits that he filed before the Tribunal we find that his contest to the claim of the three applicants-respondents was principally based on Rule 9 of the Indian Police Service (Cadre) Rule, 1954. In spite thereof, surprisingly however, the Tribunal did not even advert to the contentions raised by the appellant, much less meet the same.

As regards the other contention of the appellant that those three respondents did not officiate in cadre post after inclusion in the Select List - which was also supported by the respondent No. 1 - it has already been noticed (in the earlier quoted passage) that the Tribunal negated the same relying solely upon a memo dated June 26, 1993 issued by the Andhra Pradesh State Government. As on perusal of the records we did not find any such memo, we enquired of the learned counsel for the three applicants-respondents about its issuance/existence. The learned counsel handed over a copy thereof to us and on perusal of the same, we were surprised to find that it was only a communication addressed to the special counsel who appeared for the State of Andhra Pradesh before the Tribunal. In other words, it was not a formal order which was issued by the State of Andhra Pradesh and filed before the Tribunal supported by a proper affidavit, but was only the written instructions given by a client to his lawyer. We are, therefore, constrained to say that the Tribunal was not at all justified in entertaining the same, far less, basing its decision thereupon. This apart, the communication, for what it is worth, does not support the conclusion drawn by the Tribunal that the three concerned respondents officiated in "senior 'cadre' post" for it only says that they officiated in 'senior post'.

For the foregoing discussion we must hold that the Tribunal did not

approach the questions raised before it from a proper perspective nor did it take into consideration the plea raised by the appellant; and, on the contrary based its finding on a document which was not legally admissible nor properly brought on record. We, therefore, set aside the impugned orders and remand the applications to the tribunal for proper disposal in accordance with law and in the light of the observations made hereinbefore. Since, we are told, the three concerned respondents are on the verge of retirement we respondent the Tribunal to dispose of the applications as expeditiously as possible. There will be no order as to costs.

Appeal allowed.