

(1983) 04 MAD CK 0047
In the Madras High Court
Case No : Writ Appeal No. 611 of 1982

D. Narayanaswamy

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-04-1983

Acts Referred:

All India Services (Conditions of Service Residuary Matters) Rules, 1960 — Rule 3, 3
Madras Police Service Special (Regulation of Seniority) Rules — Rule 7A(1), 9
Police Service (Appointment by Promotion) Regulations, 1955 — Regulation 2, 5
Police Service (Cadre) Rules, 1954 — Rule 7, 9, 9(1)
Police Service (Fixation of Cadre Strength) Regulations, 1955 — Regulation 3, 4, 4(1), 5, 5(1)
Police Service (Regulation of Seniority) Rules, 1954 — Rule 2, 3, 3(3), 4

Citation : (1983) 04 MAD CK 0047

Hon'ble Judges : Ramanujam, J;Fakkir Mohammed, J

Bench : Division Bench

Advocate : D. Shanthakumar, for the Appellant; R. Thiagarajan, Sr. Central Government Standing Counsel and J. Kanakaraj, for Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujam, J.—This writ appeal is directed against the judgment dated 19th August 1982 of Padmanabhan J., in Writ Petition No. 1765 of 1981 filed by the Appellant.

2. The circumstances under which the Petitioner came to this Court by way of the said writ petition are as follows: The Appellant herein was originally appointed on 16th February 1948 in the Madras Special Armed Police as an Assistant Commandant. Though the post of Assistant Commandant was a Gazetted post, there were no statutory service rules governing the same. On 23rd December 1959, the Government issued statutory service rules governing the Madras Armed Police Service and it came into force on 10th September 1958. On 3rd March 1966, the State Government issued G.O. Ms. No. 622 by which the posts

of Additional Superintendents of Police and Deputy Superintendents of Police were constituted into one service and brought under the Madras Police Service Special Rules. On 25th August 1969, the State Government issued G.O. Ms. No. 2120 declaring the former Madras Armed Police Service as equivalent to the Madras Police Service, and the post of Assistant Commandant in the former Madras Armed Police Service was also declared equivalent to the post of Deputy Superintendent of Police, Category I in the Madras Police Service, the principal Police service of the State for the purpose of Regulation 4 of the Indian Police Service (Appointment by Promotion) Regulations, 1955. The Appellant was thereafter appointed as a Deputy Superintendent of Police, Category I, with effect from 13th November 1969. He was promoted as temporary Superintendent of Police with effect from 18th January 1971. His name was included in the Select List for the first time in the Indian Police Service on 5th May 1973. Even before his name was included in the Select List for the Indian Police Service on 5th March 1973, he was officiating in a cadre post from 15th September 1971. As a result of his selection to the Indian Police Service, he was appointed to that service on 17th September 1975. Thereafter, by an order dated 26th February 1981, the validity of which has been Impugned in the writ petition, the Appellant's year of allotment was fixed as 1968. Aggrieved by the fixation of 1968 as the year of allotment, the Appellant has questioned the said order dated 20th February, 1981 in the writ petition on various grounds.

3. The first ground is, if the State Government had declared the former Madras Armed Police Service as equivalent to the Madras Police Service, his name would have found a place in the Select List even in the year 1967 itself in which case the year of allotment of the Petitioner would have been 1965 itself when a Junior who was in the Madras Police Service got selected in that year. Even otherwise, the delay of the State Government in declaring the Madras Armed Police Service as equivalent to the Madras Police Service long earlier which would have enabled the Appellant to compete for selection to the Indian Police Service along with the others who are in the regular police service has resulted in a prejudice to the Appellant, and therefore, in the circumstances, the Central Government should have exercised the power of relaxation contained in Rule 3 of All India Services (Conditions of Service Residuary Matters) Rules 1960 and should have fixed the year of allotment as 1965.

4. The second ground is that even assuming that the Petitioner cannot be assigned 1965 as the year of allotment, he should have been allotted 1966 as the year of allotment as he was considered eligible on 1st January 1970 for inclusion in the list for selection to the Indian Police Service Cadre.

5. The third ground is that since the Appellant even before the actual selection has been officiating in the cadre of post from January, 1971, his year of allotment should have been fixed taking into account such officiation as per Rule 3(3)(b) of the Indian Police Service (Regulation of Seniority) Rules, 1954.

6. Thus, the Petitioner/Appellant's main grievance is that his year of allotment

has not properly been fixed and in his case the year of allotment should be fixed as 1965 or at least 1966 instead of 1968

7. In the counter-affidavit of the first Respondent, the Union of India, it has been stated as follows: According to Sub-regulation (1) of Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955, the Selection Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Police Service as are held by them suitable for promotion to the service. The words ordinarily in this context means that it is not mandatory on the part of the Select Committee to meet at intervals not exceeding one year. It is true, the Petitioner was appointed to hold a cadre post on 18th January 1971 and he continued to hold the office till he was appointed in the Indian Police Service on 22nd October 1975. The seniority of promoted I.P.S Officers is fixed in accordance with Rule 3(3)(b) of the Indian Police Service (Regulation of Seniority) Rules, 1954 read with explanations 1 to 4 thereto. In the case of the Petitioner, the provisions of Explanations to Rule 3(b) were held to be relevant, and therefore, since the Petitioner was included in the Select List for the first time on 5th May 1973, any officiation rendered by him in a cadre post prior to this date cannot be taken into account for purposes of fixation of his seniority under the said Rule 3(3)(b), and any period of service rendered prior to the inclusion of his name in the Select List cannot count towards the fixation of his seniority in the Indian Police Service. Since K. Kumaraswamy a regular recruit of Tamil Nadu Cadre of 1968 year of allotment was the junior most direct recruit officer of Tamil Nadu Cadre who had started officiating in a senior post from a date earlier than 5th May 1973. the Petitioner Appellant herein was allotted to 1968 year of allotment as per the Home Ministry's letter dated 26th February 1981. Since the State Government declared the post of Assistant Commandant to be equivalent to Deputy Superintendent of Police only On 25th August 1969, the Petitioner was not eligible for consideration for inclusion of his name in the Select List before that date. The Petitioner cannot complain of the failure to convene the Selection Committee Meeting during 1970-1972 since the convening of the Selection Committee Meeting every year is not mandatory and the officiation rendered by the Petitioner from 18th January 1971 cannot be of any avail to him since his name was included in the Select. List only on 5th May 1973 and any officiation during a period earlier to that date may not help the Petitioner in the fixation of seniority in the Indian Police Service. Under Rule 3 of the Indian Police Service (Regulation of Seniority) Rules, 1954, a promoted officer is entitled to count his period of officiation in cadre post only from the date of inclusion of his name in the Select List. The Petitioner is not entitled to have any period prior to 5th May 1973 reckoned for purpose of assignment of year of allotment, and the impugned order allotting the Appellant 1968, as the year of allotment does not suffer from any infirmity, legal or otherwise. The Petitioner cannot also complain of the non-convening of the Selection Committee, between 1970 and 1972. The Petitioner is also not entitled to have relaxation of any rule under Rule 3 of All India Service (Condition of Service and Residuary Matters) Rules, 1960.

thus, the stand taken by the first Respondent is that continuous officiation rendered in the cadre post after inclusion in the Select List is a decisive factor for determining the seniority and assigning the year of allotment. The order of the first Respondent in reckoning the Petitioner's officiation in a cadre post only from 5th May 1973 is valid and is in accordance with the provisions of the Indian Police Service (Regulation (of Seniority) Rules, 1954. The Petitioner/Appellant has no right to compel the convening of the Select Committee. Any period of officiation prior to inclusion in the Select List is of no avail in the matter of fixation of year and for the assignment of the year of allotment. The convening of the Selection Committee Meeting once every year is not mandatory, and even if the Selection Committee did not meet during the year 1970-1972 in contravention of the statutory rules, still the Petitioner cannot assume that he would have been selected in any of these years. If the Selection Committee in fact had actually met, the date when he was found fit for consideration, for selection to the Indian Police Service cannot in any event be considered as the last date for selection by the Selection Committee.

8. The second Respondent has filed its counter which is to the following effect. The Petitioner Appellant herein, held the post of Assistant Commandant, Special Armed Police Units at Red Hills and Palni from 3rd August 1948 to 9th September 1958. He was regularly appointed as Assistant Commandant in the Madras Special Police from 10th September 1958. He was transferred as Deputy Superintendent of Police Category I with effect from 13th November 1969. He was promoted as temporary Superintendent of Police with effect from 18th January 1971 and he was included in the Indian Police Service Select List which was approved on 5th May 1973. Successful completion of probation with effect from 22nd April 1978 has been recommended by the Director-General. He was transferred to the Principal Police Service (Deputy Superintendent of Police) Category I only with effect from 13th November 1969. He became eligible for inclusion in the Indian Police Service Select List only on 1st January 1970. The State Government issued a notification dated 25th August 1969 under Regulation 2(i)(j) of the Indian Police Service (Appointment by Promotion) Regulation 1954, declaring the post of Assistant Commandant, Madras Armed Police as equivalent to the post of Deputy Superintendent of Police and the notification was not have retrospective effect. Though he was found eligible for inclusion in the list on 1st January 1970, he could not claim that date to be the date of selection to the Indian Police Service. It is not mandatory for the Selection Committee to meet every year, and the word ordinarily occurring in Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulation 1954 has considerable significance and it shows that the provisions cannot be mandatory. Even otherwise, the Selection Committee felt that there was no need for holding the meetings in 1970, 1971 and 1972. The date of inclusion of the Appellant in the Select List, i.e. 5th May 1973 bring later than the date of officiating in the senior post (18th January 1971) his year of allotment has been rightly fixed as 1968 with reference to the date of inclusion in the selection post. Since the Petitioner

was included in the Select List only on 5th May 1973, his officiation in the post of Superintendent of Police prior to that date cannot be taken into account for fixing the year of allotment under Rule 3(3)(b) of the Indian Police Service (Regulation of Seniority) Regulations. Therefore, the assigning of 1968 as the year of allotment is in accordance with the existing provision in the Indian Police Service (Regulation of Seniority) Rules. As regards the Appellant's claim for relaxation or relief under Rule 3 of the All India Services (Conditions of Service Residuary Matters) Rules, the second Respondent states that the said relief cannot be got as a matter of right and that it is a matter for the Government to decide whether a particular case requires any relief under the said Rule 3. Thus, the stand taken by Respondents 1 and 2 is that in any event, the Appellant has not made out a case for relaxation under that Rule.

9. For appreciating the rival contentions of the parties, it is necessary to scan through the necessary statutory rules. Recruitment to the Indian Police Service is governed by the Indian Police Service (Recruitment) Rules, 1954. Rule 4 deals with the method of recruitment it is as follows:

4. (1) Recruitment to the service, after the Commencement of these rules, shall be by the following methods, namely:

(a) by a competitive examination,

(aa) by selection of persons from among the Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces of the Union who were commissioned on or after the 1st November, 1962 but before the 10th January, 1968, or who had joined any pre commission training before the latter date, but who are commissioned on or after that date and who are released in the manner specified in Sub-rule-(1) of Rule 7-A.

(b) by promotion of substantive members of a State Police Service.

Rule 9 which deals with recruitment by promotion reads as follows-

9(1) The Central Government may, on the recommendation of the State Government concerned and in consultation with the Commission, recruit to the Service persons by promotion from amongst the substantive members of a State Police Service in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time make.

(2) The number of persons recruited, under Sub-rule (1) in any State or group of State shall not, at any time exceed 25 per cent of the number of those posts as are shown against items 1 and 2 of the cadre in relation to that State or to the group of States in the schedule to the I.P.S. (Fixation of Cadre Strength) Regulations, 1955.

Then we have the Indian Police Service (Appointment by Promotion) Regulations, 1955 (hereinafter called the Promotion Regulations) promulgated by the Central

Government in consultation with the State Governments and the Union Public Service Commission. Regulation 3 deals with the constitution of the committee to make selection. Separate committee has to be constituted for each of the States consisting of such members of the Committee as prescribed in Regulation 3. Regulation 4 deals with conditions of eligibility for promotion. The Committee has to meet at intervals ordinarily not exceeding one year and consider the cases of all substantive members of the State Police Service who on the first day of January of that year had completed not less than eight years of continuous service (whether officiating or substantive) in a post of Deputy Superintendent of Police. Explanation I to Regulation 4 provides that in computing the period of qualifying service of eight years, any service rendered in any post essentially involving police duties in one or more non-police departments shall be taken into consideration, if such post is declared by the State Government, with the prior concurrence of Central Government as equivalent to that of a Deputy Superintendent of Police. Regulation 5 deals with the preparation of a list of suitable officers. The Committee shall prepare a list of such members of the State Police Service as satisfy the condition specified in Regulation 4 and as are held by the Committee to be suitable for promotion to the service. The number of members of the State Police Service included in the list shall not be more than twice the number of substantive vacancies anticipated in the course of the period of twelve months commencing from the date of the preparation of the list. Regulation 5(3) states that the names of the officers included in the list shall be arranged in order of seniority in the State Police Service. Sub Regulation 4 of Regulation 5 states that the list so prepared shall be reviewed and revised every year. Sub-regulation 5 of Regulation 5 states that if in the process of selection review of revision, it is proposed to supersede any member of the State Police Service, the Committee shall record its reasons for the proposed supersession. The State Government shall then forward the list so prepared to the Union Public Service Commission along with all the records. Regulation 7 states that the commission shall consider the list prepared by the committee along with the other documents received from the State Government, and, unless it considers any change necessary, approve the list. The list as finally approved by the Commission shall form the select list of the members of the State Police Service under sub-regulation (3) of Regulation 7. Such a list shall ordinarily be in force until its review and revision, effected under Sub-regulation (4) of Regulation 5, is approved under Sub-regulation (1) or, as the case may be, finally approved under Sub-regulation (2). Regulation 8 provides that appointment of members of the State Police Service from the select list to the posts borne on the state Cadre or the joint cadre of a group of States, as the case may be, shall be made in accordance with the provisions of Rule 9 of the Cadre Rules.

10. Then we have the Indian Police Service (Cadre) Rules, 1954 which deal with the constitution of cadres for each State or group of States. The strength and composition of each of the cadres has to be determined by the Central Government in consultation with the State Governments. The cadre strength

shall be subject to review at intervals of every three years. Cadre post has been defined as any of the posts specified under item 1 of each cadre in the schedule to the Indian Police Service (Fixation of Cadre Strength) Regulation, 1955. Rule 9 provides for temporary appointment of non-cadre officers to cadre post in certain circumstances.

11. Then we have the Indian Police Service (Regulation of Seniority) Rules, 1954 hereinafter referred to as the Seniority Rules. Rule 2(g) of the said rules defines a senior post as meaning a post included and specified under item 1 of the cadre of each State in the Schedule to the Indian Police Service (Fixation of Cadre strength) Regulations, 1955 and includes a post included in the number of posts specified in items 2 and 5 in the said cadre. The Indian Police Service (Cadre) Rules, 1954 provides that every officer shall be assigned a year of allotment in accordance with the provisions therein. Rule 3(3) of the Seniority Rules provides:

The year of allotment of an officer appointed to the Service after the commencement of these rules, shall be

(a) Where the officer is appointed to the service on the results of a competitive examination the year following the year in which such examination was held;

(b) Where the officer is appointed to the Service by promotion in accordance with Rule 9 of the Recruitment Rules, the year of allotment of the junior most among the officers recruited to the Service in accordance with Rule 7 of those rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former;

Provided that the year of allotment of an officer appointed to the Service in accordance with Rule 9 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officers recruited to the Service, in accordance with Rule 7 of those Rules, so started officiating shall be determined ad hoc by the Central Government in consultation with the State Governments concerned;

Explanation 1: In respect of an officer appointed to the State Service by promotion in accordance with Sub-rule (1) of Rule 9 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purpose, of determination of his seniority; count only from the date of the inclusion of his name in the Select List or from the date of his officiating appointment to such senior post whichever is later....

It is in the light of the above statutory rules the three grounds urged by the Appellant have to be considered.

12. As regards the second ground set out above, Padmanabhan J., has held that the Appellant became qualified for inclusion in the Select List only on 25th August 1969 when the Government passed a notification under Regulation 2(j) of the Promotion Regulations by G.O. Ms. No. 2120, declaring that the former Madras Armed Police Service in which the Appellant was serving as equivalent to

the Madras Police Service, the principal police service of the State, and the post of Assistant Commandant in the Madras Armed Police Service was also declared as equivalent to the post of Deputy Superintendent of Police, category 1 in the Madras Police Service for the purpose of Regulation 4 of the Promotion Regulations. The learned Counsel for the Appellant would contend that even so it must be taken that he has become qualified for inclusion in the Select List as on that date and the Government is in error in treating him as having become fit for inclusion only in January, 1970. But it is seen that the Selection Committee felt that unless there is prior concurrence of the Central Government as regards equation of posts the Appellant cannot be taken to have become fit for inclusion in the Select List. Therefore the State Government had to again address the Government of India for their concurrence in G.O. Ms. No. 2120 and the Government of India gave their concurrence only on 15th November 1969. Thereafter the State Government issued a fresh G.O. Ms. No. 2963, dated 22nd November 1969, equating the post. Therefore it should be taken that the equating of the post. Therefore it should be taken that the equation of posts has been done validly only by G.O. Ms. No. 2963, dated 22nd November 1969. According to the Appellant even on that basis the Selection Committee should have met immediately after 22nd November 1969 and considered the claims of the Appellant in which case he would have been found fit for inclusion in the 1969 list itself and the failure of the Selection Committee in not considering his claims in the year 1969 would not take away the right of the Appellant to be included in the list for the year 1969 and consequently to be allotted 1965 as the year of allotment. The learned Counsel also contends that the failure of the Selection Committee to meet in the years 1970, 1971 and 1972 has resulted in the Appellant's claims being considered only in the year 1973 and the failure on the part of the Selection Committee to meet cannot prejudice his claims. It is the case of the Appellant that the meeting of the Selection Committee every year is a must and the disobedience of such a mandatory provision has to be taken as a factor in favour of the Appellant. Though before the learned single Judge the Appellant contended that the equation of posts is unnecessary and even without such an equation his services in the Armed Police should be taken to be as equivalent to the regular police service and, therefore, his claims should have been considered even earlier to 1969, that contention was not accepted by Padmanabhan, J., and the said submission was not repeated before us. Even otherwise, we feel that unless there is equation of posts by a notification as contemplated by Rule 2(j) the Appellant's claims cannot be considered. Thus the Appellant could be considered for inclusion in the select list only after 22nd November 1969. It is no doubt true that the Selection Committee did not meet after the said notification equating the posts and they met only in the year 1973. It was urged before the learned single Judge that it is mandatory on the part of the Selection Committee to meet once in a year and they have failed to perform their mandatory duty and as a result of which the Appellant has suffered a prejudice. Regulation 4(1) of the Promotion Regulation contemplates that the Committee should meet once in a year. But having regard to the use of the word

ordinarily in that Regulation Padmanabhan, J., has felt that the Regulation is only directory in nature and not mandatory. We are of the view that it is unnecessary for us to go into the question as to whether Regulation 4(1) is directory or mandatory as we are of the view that even construing Regulation 4(1) as mandatory the Appellant cannot treat himself as having been selected by the Committee. Mere fitness for inclusion cannot be equated as actual inclusion. It may be that after 22nd November 1969 his claims for inclusion have to be considered by the Committee. But it cannot be assumed that if the Committee had met in the years 1970, 1971 and 1972 the Appellant would have been selected by the committee for inclusion in the select list. As pointed out in *State of Mysore v. C.R. Seshadri etc.* (1974) S.L.J. 209 the limits of judicial review are forbidden from going beyond directing the executive to reconsider and doing it on its own venturing into an area of surmise and speculation in regard to the possibilities of escalation in service. Therefore there was only a possibility of the Appellant being selected and included in the select list. Till the actual selection takes place by the selection committee it is not possible to say that the Appellant would have been selected if the Committee had met in any of the three years, 1970, 1971 and 1972. In this case the actual selection took place in the year 1973 and the Appellant's present attempt is to treat him as having been selected in the year 1969. Since the possibility of selection cannot be equated to the actual selection, we are of the view that the first contention advanced by the Appellant that he should be taken to have been selected in the year 1969 as that the year of allotment can be fixed as 1965 cannot be legally sustained.

13. The third contention of the Appellant practically involves the scope of Rule 3(3) of the Seniority Rules. According to the Appellant though he was actually selected in the year 1973 he has served in officiating capacity in a cadre post from 1970 and taking that officiation the year of allotment should be fixed as 1965. According to him Rule 3(3)(b) without explanation 1 supports his stand. The learned Counsel for the Appellant however would concede that if Rule 3(3)(b) is construed in the light of explanation 1 the year of allotment fixed in this case is quite in accordance with the said Seniority Rules. We do not see how Rule 3(3)(b) could be considered without reference to explanation 1 as suggested by the learned Counsel for the Appellant. Rule 3 uses the expression officiated continuously in a senior post and what is officiation in a senior post has been more or less explained in explanation 1. Therefore Rule 3(3)(b) has to be read only in the light of the explanation. As already stated, the learned Counsel for the Appellant concedes that if the explanation to Rule 3(3)(b) is interpreted in the light of explanation 1 then the fixation of the year of allotment in this case is correct. But according to him Rule 3(3)(b) has to be considered independently of the explanation. But as already stated, we are not in a position to construe Rule 3(3)(b) without the aid of explanation 1. Thus the second contention based on his earlier officiation in a cadre post has also to be rejected, as we uphold the stand taken by the Respondent that it is only the officiation in a cadre post after the actual selection but before the appointment to the Indian Police Service that

could be considered for fixing the year of allotment and not any period of officiation in a cadre post before the actual date of selection.

14. Coming to the first contention, it is no doubt true, the Petitioner has been officiating in a cadre post from January 1971, and his case was not taken up for consideration for inclusion in the select list in the years 1970, 1971 and 1972 as the Selection Committee did not meet. According to the Appellant's learned Counsel these are matters which could be taken into account by the Respondents while fixing the year of allotment and if Rule 3(3)(b) technically stands in the way, the Respondents in relaxation of the Rule 3(3) should have fixed the year of selection as 1969 or at least 1970 when he began officiating in a cadre post, in exercise of the power of relaxation provided for in Rule 3 of the All India Services (Conditions of Service-Residuary Matters) Rules, 1960 which is as follows:

3. Power to relax rules and regulations in certain cases Where the Central Government is satisfied that the operation of-

(i) any rule made or deemed to have been made under the All India Services Act, 1951 (61 of 1951) or

(ii) any regulation made under any such rule

regulating the conditions of service of persons appointed to an All India Service causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that rule or regulation, as the case may be, to such extent and subject to such exceptions and conditions, as it may consider necessary for dealing with the case in a just and equitable manner.

But it is well established that relaxation is not a matter of right and it is for the Respondents in their discretion either to grant relaxation or withhold the same having regard to the facts and circumstances of each case has been held by the Supreme Court in *State of Mysore v. C. R. Seshadri* etc. In that case the Supreme Court had observed that in our constitutional schemes a three-fold division exists and the power to promote an officer belongs to the Executive and the judicial power may control or review Government action but cannot extend to acting as if it were the executive and that though the Court may issue directions leaving it to the executive to carry it out judiciary cannot promote or demote officials, Therefore the third contention also has to be rejected.

15. In the result the writ appeal fails and is dismissed. There will, however, be no order as to costs.

16. The learned Counsel for the Appellant makes an oral application for leave to Supreme Court against the judgment just now pronounced. Though the case involves an interpretation of certain statutory rules, it does not involve a substantial question of law of general importance which needs to be decided by the Supreme Court. We therefore feel that this is not a fit case for grant of leave to appeal to Supreme Court. Hence the oral request is rejected.