

(2003) 06 KAR CK 0074
In the Karnataka High Court
Case No : Writ Petition No. 40210 of 1999 etc.

G.B. Chebbi and Others

APPELLANT

Vs

Syed Ulfath Hussain and Others

RESPONDENT

Date of Decision : 27-06-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16 (1)
Indian Police Service (Appointment by Promotion) Regulations, 1955 — Regulation 7 (4)

Citation : (2003) ILR (Kar) 3367 : (2003) 3 KCCR 2409

Hon'ble Judges : Kumar Rajaratnam, J;Ajit J. Gunjal, J

Bench : Division Bench

Advocate : Madhusudan R. Naik, Kalpana Masur and B.B. Bajentri and Madhumita Bagchi, ACGSC, for the Appellant; Addl. CGSC for R1, R2, R3, R4 and R6, B.B. Bajentri, for R6; R.K. Masur, for C/R1; Madhusudan R. Naik, for R5 and N. Basavarajaiah, HCGP for R3 and R4, for the Respondent

Judgement

Kumar Rajaratnam, J.—Writ Petitions Nos. 40210 and 40279 of 1999 have been filed by the petitioners challenging the order of the Central Administrative Tribunal, Bangalore (for short, the Tribunal) dated 9.9.1999 in O.A. No. 188/1998 in so far as the Tribunal has set aside the appointment of the petitioners to the cadre of Indian Police Service.

Writ Petition No. 40849/99 has been filed by the unsuccessful candidate challenging the order of the Tribunal for not quashing the proceedings of the Selection Committee.

Writ Petition No. 43782/99 has been filed by the Central Government challenging the order of the Tribunal in so far as the Tribunal quashed the appointment of the successful candidates.

2. The learned Tribunal in our view, passed an order which was self contradictory. That is perhaps, why all the parties to the proceedings before the Tribunal have challenged the order of the Tribunal.

3. Since all the Writ Petitions before us arise out of a common order, a common order is rendered by this Court.

4. For the sake of convenience, the parties are arrayed as they are arrayed in the original proceedings before the Tribunal.

5. The applicant before the Tribunal filed the OA No. 188/98 questioned the selection of respondents Nos. 5 and 6 to the IPS by the Selection Committee at a meeting held on 4/2/1997 and the consequent appointment of respondents 5 and 6 by Notification dated 2nd and 3rd of March, 1998.

6. The facts briefly are --

The Selection Committee for the selection of State Police Officers to the IPS Cadre met on 4/2/1997. It considered six Officers including the applicant and included respondents 5 and 6 in the waiting list. The waiting list was prepared on 4/2/1997 strictly in accordance with the provisions of the IPS (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as the old Regulations). But the appointments were made only on 2nd and 3rd of March, 1998. By that time, the IPC (Appointment by Promotion) Amendment Regulations 1997 (hereinafter referred to as the new Regulations) came into force on 1.1.1998.

7. The applicant who was unsuccessful candidate, challenged the selection of respondents 5 and 6 on the ground that his record was better than that of respondent Nos. 5 and 6 and that he was senior in the State Service and therefore, his case should have been considered in preference to respondent Nos. 5 and 6. Another ground urged before the Tribunal was that when the selection was made in March, 1998, the new Regulations had come into force and the list prepared under the old Regulations had ceased to operate. It was further submitted before the Tribunal by the applicant that the vacancies against which respondents 5 and 6 were appointed arose only on 1.1.1998 and by that time the new Regulations had come into force and a new list has to be prepared under the new Regulations.

8. The Tribunal after examining the confidential records of the applicant and respondents 5 and 6, gave a categorical finding that the records of Respondents 5 and 6 were more suitable and that the Selection Committee had rightly assessed the credentials of respondents 5 and 6 as being more suitable for appointment than that of the applicant. The Tribunal further held that it was not open for the Courts to sit in appeal over the decisions rendered by the Selection Committee in selecting respondents 5 and 6. The Tribunal having held so however, quashed the appointment orders of respondents 5 and 6 only on the ground that the selection should have been done under the new Regulations. The operative portion of the Tribunal's order at para 26 reads as follows: -

"For the above reasons, this application is allowed in part. The prayer of the applicant for quashing the proceedings of the selection committee is rejected. However, the impugned order of appointments Annexures A4 and A5 - appointing

respondents 5 and 6 are quashed. The respondents shall take steps to fill the vacancies which arose on and after 1.1.1998 in accordance with the amended provisions of the Regulations. This shall be done within 4 months from the date of receipt of copy of this order".

(emphasis by the Court)

As stated earlier, this operative portion of the Tribunal's order is under challenge before us by all the parties.

9. Before we advert to the legal position, it would not be out of place to state that a lot of water is flown since the appointment was made in March 1998. The appointment of R5 and R6 was made in the year 1998 and they have subsequently been promoted to higher posts. Equally, the applicant has also been conferred with the IPS Cadre and we reliably learn that he has also been promoted in his own right to a higher post.

10. The Tribunal took pains to peruse the ACRs of the applicant as well as R5 and R6 and at para 9 of its order came to the conclusion that the Selection Committee has made an assessment of respondents 5 and 6 as "very good" and the assessment of the applicant as merely "good" on the basis of the ACRs. It is not the job of the Courts to sit in appeal and to find out whether the assessment made by the Selection Committee is proper or not. All that the Tribunal can do at best is to find out whether there was any arbitrariness which stares on the face of the record. Otherwise Courts should not interfere in the objective assessment by the Selection Committee. In that view of the matter, the Tribunal was justified in holding that the inclusion of respondents 5 and 6 in the panel cannot be faulted since their records were eminently better than that of the applicant as borne out from records.

11. The learned Counsel for the applicant submitted that he is senior to respondents 5 and 6 and that he has been superseded in the selection without any valid basis and submitted that the selection is arbitrary. The Supreme Court in the case of R.S. Dass Ors. Vs. Union of India (UOI) and Others, has held that when a senior has been excluded from selection it would be open to the Court to determine whether his exclusion was arbitrary or not but it is not for Court to make a rowing enquiry.

12. Mr. Masur, learned Counsel for the applicant submitted that although the applicant was graded as only "good" and the respondents 5 and 6 were graded as "very good" by the Selection Committee, it could be seen from the ACRs for the years 1990-91, 1991-92, 1992-93, 1993-94, 1994-95 and 1995-96 that the applicant was graded as outstanding and very good. By this, it was submitted that the applicant had a better background than that of respondents 5 and 6. It was further submitted by Mr. Masur that the vacancies against which respondents 5 and 6 were appointed, arose only on 1.1.1998 and by that date, i.e. 1.1.1998, the new Regulations had come into force and the waiting list which had been prepared on 4/2/97 could not have been operated upon. It was urged by the

Counsel for the applicant that the list was drawn on 4.2.97 by the Selection Committee against nil vacancies and that list lapsed on 31.12.97. Under the new Regulations, on 1.1.98, a select list has to be prepared only in respect of the vacancies which are existing on the first date of January, 1998 and such a list will have to be prepared only under the new Regulations.

13. Learned Counsel for the Union of India, Mrs. Madhumita Baagchi submitted that the procedure followed was strictly in accordance with the old Regulations and the select list is valid till the preparation of the subsequent list. It was further submitted that the selection process had commenced under the old Regulations although the appointments were made after 1.1.1998. To overcome such exigencies, a Circular was issued on 11.2.98 (at Annexure --H to the petition No. 43782/99). According to the Circular, the wait list Officers will be considered for appointment all over India against IAS and IPS vacancies as on 1.1.1998 on the basis of the old Regulations. Many persons all over the Country were considered for appointment for IAS and IPS Posts against vacancies made available on 1.1.1998. The learned Counsel further submitted that the Tribunal held that there was no infirmity in the selection process as the Committee has followed the prescribed mode of assessment and it cannot be said that the applicant has been superseded without any reason. Respondents 5 and 6 were graded as "very good" and their names were included in the 1996-97 select list and the applicant's name could not be included in the select list after due consideration due to low grading assigned to him by the Selection Committee.

14. It is settled law that judicial review regarding selection of a candidate by a Committee cannot be gone into minutely as if it is an appeal. In the case of State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, the Supreme Court pronounced that it is not necessary for the Selection Committee to give reasons for its decision. All that is required is that the procedure adopted by the Selection Committee should be fair and must inspire confidence in the public. Notwithstanding this, the Tribunal has examined the ACRs of the claimant and respondents 5 and 6 and has come to the conclusion that the service records of respondents 5 and 6 were very good and the service records of the claimant was merely good. Therefore, there can be no question of sitting in appeal over the decision of the Selection Committee and the judicial review entertained by the Tribunal established that the selection of respondents 5 and 6 was fair, transparent and was not vitiated by any extraneous considerations and was in public interest.

15. Having held that the selection was fair and transparent the only ground on which the Tribunal has set aside the appointment of respondents 5 and 6 was that the selection ought to have been done under the new Regulations and not under the old Regulations.

16. It is not in dispute that if the selection process was in accordance with the old Regulations and that the selection of respondents 5 and 6 would stand the test of the procedure contemplated under the old Regulations. Under the old

Regulations, the Committee was required to include the list of such number of persons to the substantive vacancies anticipated in the course of period of the next 12 months. The committee was required to include only that number of persons on the first date of January of that year in which the meeting is held.

17. Under the new Regulations, the Selection Committee is expected to take into consideration only those vacancies which exist on the first day of January of that year and prepare a panel accordingly. The vacancies that are anticipated to arise after the first of January are not required to be taken into consideration. There was no provision under the new Regulations for preparing a wait list in respect of vacancies which arise fortuitously. There were other slight changes in the procedure such as the prohibition against a meeting taking place in a year if no vacancy exist on the first of January of that year.

18. The Tribunal held that since the new Regulations came into force on 1.1.1998, the appointments are ought to be made under the procedure contemplated under the new Regulations. The Tribunal further held that the vacancies against which R5 and R6 were appointed, arose on 1.1.98 by which date the amendments came into force it had to follow the new Regulations for the purpose of selection. According to the Tribunal the committee had to take into consideration the vacancies that arose as on first of January, 1998 and it is the committee which had to prepare a fresh panel in respect of vacancies against which the respondents were appointed. The Tribunal further held that the panel prepared under the old Regulations prior to the amendment would be in force only up to 31.12.97. Any vacancy arising on 1.1.98 can only be filled up under the new Regulations. In that view of the matter, the Tribunal upheld the selection of respondents 5 and 6 but however, set aside the appointment of respondents 5 and 6. The Tribunal further directed the authorities to fill the vacancies which arise on or after 1.1.98 in accordance with the amended Regulations.

19. The Tribunal would have been justified in taking this straight jacket and technical stand if the process had not commenced while old Regulations were in force. The new Regulations will not apply to a panel validly prepared under the old Regulations. The new Regulations could not have nullified the panel which had already been prepared and which was still in operation as per the old Regulations. In fact, Regulations 7(4) of the old Regulations stipulates that the select list shall be in force until it is revised and till the Selection Committee draws up a fresh list, and as no meeting of the committee has taken place with respect to the appointment of respondents 5 and 6 under the old Regulations, it cannot be said that the list prepared under the old Regulations had become inoperative.

20. Reference was also made to a letter dated 11.2.98 sent by the Government of India with respect of fixation of cadre strength to IAS Officers. The letter indicated that even with respect to IAS cadre, the wait list prepared under the old Regulations be made use of, for appointment of IAS Officers available as on 1.1.98. If during the interregnum period a wait list is to be prepared under the

new Regulations, it would be mind-boggling to think that all those who were selected in the wait list as per old Regulations and appointed after the new Regulations would lose their right of appointment all over India in IAS and IPS Cadre as the old Regulations applied to both IAS and IPS posts. The harmonious and homogeneous construction of the interregnum period would be to hold that those who were selected in the wait list and appointed after the new Regulations came into force would have to be treated as valid and in accordance with law.

21. It is not in dispute that the right of the applicant and that of respondents 5 and 6 to be put in the wait list arose strictly in accordance with the old Regulations and the applicant cannot have any grievance since his case was also considered by the selection committee under the old Regulations. That is a fact that cannot be ignored by this Court.

22. It cannot be contended that by any stretch of imagination, a selection process that validly commenced under the old Regulations can be set at naught merely because the appointments takes place after the new Regulations comes into force. Unless, of course, it was the intendment of the Regulations that it has to operate retrospectively.

23. We have carefully examined the new Regulations. We do not find that the new Regulations which came into force on 1.1.1998 would have retrospective effect. In the absence of any such intention, we must necessarily hold that the Regulations are prospective and not retrospective.

24. The Supreme Court in *Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others*, pronounced that where the vacancies fell prior to the amended Rules, it would be governed by the old Rules and not by the new Rules. In "*A.A. Calton Vs. Director of Education and Another*", the Supreme Court held that no retrospective effect can be given to a statutory Rule to take away the existing right unless that Rule by express words or necessary implication holds that it shall be retrospective.

25. In *P. Mahendran and others Vs. State of Karnataka and others*, the Supreme Court has pronounced that in the absence of any express provision of necessary intendment, Rule cannot be given retrospective effect. A similar view was taken in "*P. GANESHWAR RAO AND ORS. v. STATE OF ANDHRA PRADESH AND ORS.* AIR 1988 SC 2088.

26. By virtue of Section 6 of the General Clauses Act, the right of respondents 5 and 6 whose names were included in the list prepared by the Selection Committee on 4.2.97 against few vacancies that occurred on 1.1.98 is thereby saved.

27. The Supreme Court in *K. Ravindranath Pai and another Vs. State of Karnataka and another*, in a slightly different context has set out the legal position as to whether the Legislation or a Statutory Rule can operate retrospectively. The Supreme Court held that the Legislature is undoubtedly

competent to legislate with retrospective effect but such rules with retrospective effect should not result in discrimination or any violation of Constitutional right. In the said case, the Supreme Court has set out the legal position as follows:-

"12. With respect, the Tribunal has not appreciated this legal position. It is now well settled that even though the Legislature has power to retrospectively amend a statute, it should not be done in manner which would violate fundamental rights under Articles 14 read with 16(1). On the day on which the Karnataka Act came into force, the graduates and non-graduates Engineers belonged to a common cadre of Junior Engineers and were drawing same pay scales. There could be no discrimination between graduate incumbents and non-graduate incumbents of a common cadre in so far as common pay scale was concerned, as held by the High Court. If that is so the Act by its retrospective sweep could not destroy the fundamental rights of all those incumbents of a common cadre to be treated alike for all other available service benefits flowing from the common cadre.

13. In this connection, we may usefully refer to a decision of Constitution Bench of this Court in the case of State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, , Chinnappa Reddy, J speaking for the Court has made following pertinent observations-

"The legislation is pure and simple, self-deceptive, if we may use such a expression with reference to a legislature made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do's and don'ts of the Constitution neither prospective nor retrospective laws can be made so as to contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, twenty years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. We are concerned with today's right and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. This would be most arbitrary, unreasonable and a negation of history. It was pointed out of a Constitution Bench of this Court in B.S. Yadav and Others Vs. State of Haryana and Others, , Chandrachud, CJ, speaking for the Court, "Since the Governor exercises the legislative power under the proviso to Article 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But the date from which the rules are made to operate must be shown to bear either from the face of rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case". Today's equals cannot be made unequal by saying that they were unequal twenty years ago and we will restore

that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations and constitutional consequences cannot be tempered with that way. A law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being made retrospective. Past virtue (constitutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws".

14. It is equally well settled that even a statutory rule which can have retrospective effect should not result in discrimination or any violation of constitutional right. In the case of K. Narayanan and others Vs. State of Karnataka and others, , R.M. Sahai, J speaking for this Court has made the following observation in this connection -

"Rules operate prospectively. Retrospectively is exception. Even where the statute permits framing of rule with retrospective effect the exercise of power must not operate discriminately or in violation of any constitutional right so as to affect vested right. The rule making authority should not be permitted normally to act in the past. The impugned rule made in 1985 permitting appointment by transfer and making it operative from 1976 subject to availability of vacancy in effect results in appointing a Junior Engineer in 1986 with effect from 1976. Retrospectivity of the rules is a camouflage for appointment of junior Engineers from a back date. The rule operates viciously against all those Assistant Engineers who were appointed between 1976 to 1985".

28. Even assuming for a moment that there was no vacancy prior to 31.12.97 the wait list prepared under the old Regulations should not be given a go by merely because the formal appointment was made after 1.1.98. This is precisely why the Union of India issued a Circular to the effect that this wait list prepared prior to 1998 shall have the force of law even if the formal appointments are made after 1.1.98. This Circular was never challenged by the applicant.

29. As stated earlier, the applicant himself was considered at the time the wait list was prepared under the old Regulations and was not selected as the records of respondents 5 and 6 were better and this finding was further confirmed by the Tribunal. It is also a fact of life that the applicant himself has been subsequently conferred with the IPS Cadre under the new Regulations.

30. Learned Counsel for the applicant relied on a judgment of the Tribunal (Ernakulam Bench) reported in K.C. JACKOB AND ANR. v. UNION OF INDIA AND ORS. (1998) 38 ATC 187 and submitted that the vacancies arose only on 1.1.1998 and therefore, the list will have to be considered under the new Regulations.

31. We are unable to persuade ourselves to accept this proposition. If this proposition was to be accepted, all the wait list prepared in accordance with the old Regulations and strictly in accordance with the old Regulations, would become a nullity merely because the appointment was made after 1.1.1998.

32. It cannot be forgotten at the cost of repetition that the applicant himself was a beneficiary under the old Regulations and was considered but since the confidential records of respondents Nos. 5 and 6 were better, they were put in the wait list and ultimately the appointments were made in March 1998.

33. The applicant has also been subsequently brought into the IPS Cadre in his own right and therefore, the applicant cannot have any real grievance in the selection and appointment of respondents 5 and 6.

34. We accordingly hold that the process of selection was strictly in accordance with the Regulations that were in force at the relevant time,

35. Accordingly, we set aside the impugned order of the Tribunal quashing the appointment of respondents Nos. 5 and 6 to the IPS Cadre. Consequently, the Writ Petitions Nos. 40210/99, 40279/99 filed by respondents Nos. 5 and 6 and WP 43782/99 tiled by the Central Government are allowed and the Writ Petition No. 40849/99 filed by the applicant is dismissed. No order as to costs.