

(2010) 10 KL CK 0168

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 21451 of 2010 (S)

P. Prabha

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

All India Services Act, 1951 — Section 3(1)
Police Service (Appointment by Promotion) Regulations, 1955 — Regulation 5, 5(1),
5(4), 4(1)
Police Service (Cadre) Rules, 1954 — Regulation 4(2)

Citation : (2010) 10 KL CK 0168

Hon'ble Judges : K. Surendra Mohan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : O.V. Radhakrishnan, for the Appellant; Thomas Mathew Nellimoottil, SC UPSC, for the Respondent

Final Decision : Dismissed

Judgement

K. Surendra Mohan, J.—The petitioner has filed this writ petition challenging an order dated 18/5/2010 of the Central Administrative Tribunal, Ernakulam Bench, in O.A. 56/2009. As per the impugned order, the Central Administrative Tribunal ("CAT" for short) has dismissed the Original Application filed by the petitioner seeking a direction to include his name in the select list for the year 2007, for selection and appointment by promotion to the Indian Police Service ("IPS" for short) and for consequential reliefs.

2. The petitioner is a retired Superintendent of Police (non- cadre). He retired on attaining superannuation at the age of 55 years on 31/12/2008 as the Superintendent of Police (non-cadre), Office of the Commissioner of Excise, Vikas Bhavan, Thiruvananthapuram. His initial entry into service was as a Sub Inspector of Police on 15/7/1976. Later on, he was promoted successively as a Circle Inspector of Police, Deputy Superintendent of Police and finally as a Superintendent of Police (non-cadre). According to the petitioner, as per the grading prepared by the State Government, of persons eligible for appointment

by promotion to the Indian Police Service, he was categorised as "outstanding". However, he was not selected for the only reason that there was no vacancy available for him to be promoted. The petitioner was also below the zone of consideration for such promotion, in accordance with Regulation 5(1) of the Indian Police Services (Appointment by Promotion) Regulations, 1955.

3. The select list for the year 2007, of State Police Officers eligible for promotion to the IPS cadre was prepared by the office of the second respondent on 23/6/2008. The said select list was approved by the second respondent and published by notification dated 28/8/2008. However, the name of the petitioner was not included in the notified list. Therefore, he filed representations before respondents 1 and 2 for conduct of the quinquennial review of the cadre strength available to the State of Kerala as per Rule 4(1) of the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955. It is the case of the petitioner that the authorities are dutybound to review the cadre strength in consultation with the State Government every five years. According to the petitioner, though he was included in the select list for the years 2005 and 2006, he was not appointed to the IPS cadre, for want of vacancies. If the cadre strength had been reviewed every five years as mandated by law, he could have been appointed to one of the vacancies that would have arisen on such review, in his case. Though the petitioner had submitted various representations setting out his grievances, there was no prompt action thereon by the authorities. Consequently, the petitioner retired from service. He complains that he has been denied the promotion that was legitimately due to him, as a result of the inaction on the part of the authorities. In the above circumstances he approached the Central Administrative Tribunal by filing the Original Application that has been dismissed by the order that is under challenge in this writ petition.

4. According to the petitioner, Clause (1) of Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations mandates that the selection committee shall meet every year and prepare a list of members of the State Police Services who are suitable for promotion to the cadre of the Indian Police Service. Relying on the dictum in the decision of the Apex Court in Union of India (UOI) and Others Vs. Vipinchandra Hiralal Shah, , it is contended that the purport of the regulations is to cast a mandatory duty on the selection committee to meet every year for the purpose of making the selection from amongst the State Police Officers who satisfy the eligibility conditions on the first day of January of the year in which the committee meets and fall within the zone of consideration as prescribed by Clause (2) of Regulation 5. It is therefore contended that the omission on the part of the Selection Committee to perform its mandatory duty has caused serious detriment to the rights of the petitioner to be promoted to the IPS cadre. If a cadre review had been conducted before the petitioner was considered for selection in the year 2007, there would have been sufficient vacancies to promote him also, is his contention. Therefore, he seeks the issue of appropriate directions for conducting such a cadre review with effect from the year 2007, to consider him for selection to the IPS cadre and to grant

him the promotion that was denied to him in the manner stated above. Such promotion would entitle the petitioner to continue in service until he attains superannuation in accordance with the terms of service of the IPS cadre.

5. Adv. T.P.M. Ibrahim Khan, Assistant Solicitor General resists the contentions of the petitioner. According to him, in respect of the Kerala cadre of IPS, the last cadre review was conducted as per a notification issued in the year 2001. In accordance with Regulation 4(2) of the IPS Cadre Rules 1954 the next cadre review, should ordinarily have been conducted in the year 2006. Though the Government of Kerala had been requested to conduct such a cadre review as per communication dated 14/10/2005 followed up by a number of reminders, there was no response. Finally, it was only as per a letter dated 7/5/2007 that the details sought for were furnished. After considering the details so furnished, two more posts were sanctioned to the State of Kerala on a review of the cadre strength. However, no appointments to the said posts could be made because of the slackness on the part of the State Government. Therefore, it is contended that there was no delay on the part of the first respondent in the matter.

6. The learned Govt. Pleader on the other hand submits that the power to conduct review of cadre and fixation of the number of posts available for being filled up from the State Police Services comes within the powers of the Government of India, Ministry of Home Affairs, New Delhi. Therefore, the State Government has no role in the said process. It is further submitted that as per letter dated 13/11/2007 of the Government of India, three vacancies were available for being filled up by Officers of the State Police Services in the IPS cadre during the year 2006. The selection committee that was constituted for preparing a select list for promotion of Officers of the State Police Services to the IPS cadre had met on 23/6/2008. The zone of consideration for appointment to the said vacancies as determined by the Government of India was five and the petitioner was serial No: 7 below the said zone of consideration. In the above circumstances, his name was not included in the select list for such appointment for want of vacancies. It is further contended that the select list for the year 2007 prepared by the selection committee was approved by the second respondent and was also notified by the Government of India. Thereafter, the select lists for 2008 and 2009 have also been prepared and therefore there is no question of reviewing the matter and unsettling the said selections at this length of time.

7. Shri. O.V. Radhakrishnan, senior counsel, submitted on behalf of the appellant that it was mandatory for the respondents to have conducted a cadre review every five years in compliance with the mandate of Regulation 5(1) of the IPS (Appointment by Promotion Regulations). It is contended that there are absolutely no reasons put forward to justify the inaction on the part of the authorities. Though the petitioner was included in the panel for selection and appointment to the IPS cadre for the year 2006, he was not selected or appointed for want of vacancies. In the year 2007, 17 State Police Officers

including the petitioner were included in the select list but, the petitioner could not be appointed for want of vacancies. He was ranked as serial No: 9. Though he had challenged the promotion for the year 2007 in O.A.327/2008, the same was ultimately dismissed and now is pending before this Court in a writ petition. In exercise of the powers conferred by Sub-section 1 of Section 3 of the All India Service Act, 1951 the cadre strength of the Kerala Cadre ought to have been reviewed every five years. There is no dispute that the last cadre review with respect to Kerala was completed in the year 2001. Therefore, the next cadre review had to be completed either during 2006 or 2007. If cadre review had been completed as mandated by the rules, there would have been more vacancies and the petitioner would have certainly got an appointment to the IPS cadre by promotion. It is contended that the conduct of the selection without completing the cadre review resulted in the exclusion of the petitioner. According to the counsel there is no dispute that two additional vacancies have been added by the respondents after the year 2007. Therefore, the said posts should have been granted with effect from 1/1/2007. In such an event, the petitioner is entitled to be considered for appointment and promotion to one of the said additional posts. Therefore he seeks a direction for the above purpose.

8. Apart from the above, it is contended that as per Regulation 4(2) of the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955, ordinarily the Central Government has the duty to re-examine the strength and composition of each cadre in consultation with the State Government concerned and to make alterations thereto. Since the word "ordinarily" has been interpreted to be mandatory by the Apex Court, it is contended that the respondents had a mandatory duty to conduct such a cadre review. In view of the fact that there was a breach of the said mandatory duty the selection for the year 2007 is required to be reviewed and a fresh selection conducted. Petitioner also claims notional promotion with effect from the date of such selection and for the issue of necessary directions for the grant of all consequential benefits.

9. We have heard the counsel for the contesting parties at length. We have been taken through the records of the case in detail. We have also given anxious consideration to the rival contentions advanced before us.

10. As already noticed above, the petitioner has retired from the State Police Service at the age of 55 years on attaining superannuation, on 31/12/2008. As per Regulation 5(4) of the Regulations the petitioner is entitled to be considered for selection and promotion to the IPS cadre until he attains the age of 54 years. Therefore, the entitlement of the petitioner for such consideration was available only up to the selection for the year 2007. Though the petitioner was considered for such selection during the years 2006 and 2007, he was not appointed for want of vacancies. The petitioner very well knew that the selection for the year 2007 was the last selection for which he was entitled to be considered. Therefore, he should have challenged the said selection sufficiently early before the Central Administrative Tribunal or this Court on the ground that the same

was being conducted without first conducting a cadre review as mandated by the Rules. However, instead of doing so he participated in the process of selection without any demur. It was only after his retirement from service that he has approached the Central Administrative Tribunal by filing the Original Application in which the impugned order Ext.P7 has been passed. It is true that he had sent representations setting out his grievances. But, he did not take any effective action to safeguard his interests thereafter. The consequence is that, selections for the subsequent years have also taken place and various other persons including the party respondents in this case have been selected. The petitioner has also retired from service. Though the petitioner is said to have challenged the selection for the year 2007 by filing an Original Application before the CAT, the same is also stated to have been dismissed. The petitioner appears to have filed a writ petition against the said order which is submitted to be still pending.

11. As already noticed, the petitioner's grievance is that, had the cadre review been conducted in 2006, there would have been two more posts available, in which case he would have got selection to the IPS cadre. However, there is nothing on record to indicate that the additional two vacancies found available in the cadre review of 2009 were available in 2006. In other words, unless it is established by evidence that the said additional vacancies had arisen between the years 2001 and 2006, the petitioner cannot stake a claim for selection and appointment to one of the said vacancies. Therefore, we do not find any justification to hold that the additional two posts sanctioned in 2009 would have been available in 2006 for the selection of the petitioner. Admittedly, the petitioner participated in the selection for the years 2006 and 2007, and on account of his relative position lower down in the rank list, he was not selected. We, therefore, do not think that the petitioner has any right to pray for the grant of retrospective effect to the cadre review of 2009, from 2006 and to insist that his eligibility for promotion to the IPS cadre be considered afresh.

For the foregoing reasons, we find no merit in the challenge against the order of the CAT. Consequently the writ petition is dismissed. No costs.