
(2021) 11 CAT CK 0012

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00574 Of 2021

Ramachandran T

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 08-11-2021

Acts Referred:

Constitution Of India, 1949 — Article 16

Indian Police Service (Appointment By Regulations), 1955 — Regulation 5, 5(1), 5(2)

Citation : (2021) 11 CAT CK 0012

Hon'ble Judges : P. Madhavan, Member J; K.V. Eapen, Member (A)

Bench : Division Bench

Advocate : P.V. Mohanan, K.S. Shaiju, Imam Gregorious Karat, Thomas Mathew Nellimoottil

Final Decision : Allowed

Judgement

K V Eapen, Member A

1. The applicant who is an officer of the Kerala Police was promoted to the cadre of Deputy Superintendent of Police on 28.11.2007. He was confirmed in the cadre of Deputy Superintendent of Police with effect from 01.05.2015 and was promoted as Superintendent of Police (Non-IPS cadre) on 30.03.2016. He retired on superannuation from the State Police Service on 31.05.2019 on attaining the age of 56 years. The Government of India had determined 7 vacancies for the Select List of 2017 in the Indian Police Service (Kerala Cadre) for promotion quota from the State Police Service. The Selection Committee Meeting for the year 2017 was held on 07.08.2020 by the Union Public Service Commission (UPSC). The applicant was considered as Sl.No.13 in the zone of consideration by the Selection Committee and was thus not included in the Select List of 2017. He submits that the Government of India, Ministry of Home Affairs, then determined 11 vacancies for preparation of the Select List of 2018. The Selection Committee Meeting for preparation of the Select List of 2018 was held on 24.06.2021. The applicant submits that he was Sl.No.3 in the zone of consideration. The Selection

Committee graded him as 'Very Good'. The UPSC approved the Select List of 2018 and it was published by Notification of the Ministry of Home Affairs, vide Annexure A-1, on 30.09.2021. The applicant submits that he appears at Rank No.2 in the Select List 2018. He was however indicated in the Select List as 'retired'. Subsequently, by another Notification dated 30.09.2021 9 members of the Kerala Police Service were appointed to the Indian Police Service on probation, a copy of which is produced at Annexure A-2. The applicant did not appear in this list, presumably due to the fact that he had retired from State Police Service on 31.05.2019. Aggrieved by this he filed O.A.No.180/520/2021 before this Tribunal and the same is pending consideration before this Tribunal.

2. The applicant however states that no reason has been given for not including his name in the final appointment list of 2018. He had submitted in the O.A.No.180/520/2021 that once the procedure of selection of the eligible candidates are completed by the Selection Committee and the Select List is notified, appointment should be automatic. He submitted therein that no power of authority is given to the 1 st respondent therein under the IPS (Appointment by Promotion) Regulations 1955 to exclude the name of any selected candidate appearing in the Select List or to review or re-assess the eligibility of the finally selected, approved and notified candidates. He has, thus, prayed for correction of the mistake and issuance of a fresh notification under the IPS (Appointment by Promotion) Regulations 1955 by giving him appointment by promotion to IPS Kerala Cadre based on his position in the Select List 2018.

3. As stated, the OA 180/520/2021 is still under consideration of this Tribunal. Meanwhile, in this O.A, the applicant is agitating about the Select List for 2019. He submits that 8 substantive vacancies have arisen as on 01.01.2019 for selection/appointment to IPS (Kerala) Cadre on the promotion quota for the year 2019. The DGP and State Police Chief had forwarded the name of the applicant for consideration for selection for the year 2019 as per the letter dated 25.09.2020 at Annexure A-3 to the Chief Secretary, Kerala. The applicant is at Sl.No.3 in this list. The applicant submits that there is a fair chance of inclusion of his name at Sl.No.1 in the Select List of 2019 by the Selection Committee. However, going by the experience of 2018, it is submitted by him even if he is placed in the Select List, 2019, he may not be appointed to the Indian Police Service on the analogy that he retired from the State Police Service on 31.05.2019. Hence he is praying for a direction that the retirement from the State Police Service shall not disentitle him for being considered for selection and appointment for the year 2019 quota for promotion if otherwise eligible.

4. It is submitted that there was a delay on the part of the respondents in convening the Selection Committee Meetings for the years 2017 and 2018 as well as now for 2019. It is submitted that it is only in pursuance of the directions given by this Tribunal in O.A.No.180/213/2020 dated 09.07.2020 that the Selection Committee Meeting was held for the year 2017 on 07.08.2020 and for the year 2018 on 24.06.2021. He submits that the Regulation 5(2) of the IPS

(Appointment by Promotion) Regulations, 1955 makes it clear that the Committee shall consider for inclusion to the said list, the cases of members of the State Police Service in the order of a seniority in that service of a number which is equal to three times the number referred in sub-regulation (1). It is also made clear in a proviso to Regulation 5(2) that the Committee shall not consider the case of a member of the State Police Service unless, on the first day of January of the year for which the select list is prepared he is substantive in the State Police Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Government. He submits that he therefore fulfils the eligibility condition as on the first day of January 2019 and he is eligible for consideration and for selection and appointment to the Indian Police Service for the year 2019, notwithstanding, his retirement from the State Service on 31.05.2019, on attaining the age of 56 years.

5. It is further submitted that this Tribunal had declared in O.A.No.744/2013 dated 14.10.2013 that the settled law is that the retired State Police Officers, if they have not attained the age of superannuation in the Central Government, are entitled to be considered for promotion to the Indian Police Service, if they are otherwise eligible. The Tribunal had also held that the delay in holding the meeting of the Selection Committee and in notifying the Select List and appointment to the Indian Police Service cannot nullify the eligibility of the applicants to the Indian Police Service on the ground of retirement on account of lower age of superannuation in the State Police Service, if they have not attained the age of superannuation in the Central Government. It is also submitted that the Regulation 5(1) of the Indian Police Service (Appointment by Promotion) Regulations, 1955 stipulates that the Selection Committee shall ordinarily meet every year. The Apex Court in 1993 (Supp.) 3 SCC-755 declared that Regulation 5 is mandatory. The Apex Court in Vipin Chandra Harilal's case (1996 [6] SCC 721) had declared that it must therefore be held that, in view of the provisions contained in Regulation 5, unless there is a good reason for not doing so, the Selection Committee is required to meet every year for the purpose of making the selection from amongst State Civil Service Officers who fulfils the conditions regarding eligibility on the first day of the January of the year in which the Committee meets and fall within the zone of consideration as prescribed in Clause (2) of Regulation 5.

6. It is submitted by the applicant that the meeting of the Selection Committee for appointment for the year 2019 should have therefore been held on or before 31.12.2019 and that the delay in convening the Selection Committee defeats the right under Article 16 of the Constitution of India. He, thus, asks for relief to direct that his retirement from the State Police Service on 31.05.2019 on attaining the age of 56 years will not preclude his name from being considered by the Selection Committee/third respondent for selection and appointment to Indian Police Service (Kerala) Cadre on promotion quota against the vacancies

determined for the year 2019, if he is otherwise eligible and to direct the Selection Committee/third respondent to select him for appointment to Indian Police Service Cadre for the year 2019 and consequential appointment to IPS Cadre, if selected.

7. We have been dealing with very similar cases filed by officials of the State Police Service in this Tribunal where we have passed orders that their retirement from the State Police Service should not preclude their consideration for selection and appointment by the respondents to the Indian Police Service provided that they otherwise fulfil the required eligibility conditions, and have no other issues that preclude their consideration for promotion. This Tribunal has issued a number of orders in this regard, which have apparently resulted in the selection of retired officials to the All India Service like the IPS. We have noted in this connection the entries in the remarks column made against Sl.No.1, 3, 4 and 5 in the Annexure A-1 Notification containing the names of the State Police Officers identified for filling up vacancies in the Kerala Cadre of the Indian Police Service as part of Select List 2018. As indicated therein, their entry in the Select List has been done by orders in O.As No.180/488/2018, O.A.No.180/473/2018 and O.A.No.180/547/2019.

8. It thus appears to us that the name of the applicant seems to have not been considered for the Select List of 2018 by the Selection Committee mainly since he had not approached this Tribunal in time for orders to ensure that the fact of his retirement would not go against his consideration for promotion to the Indian Police Service against the Select List of 2018 unlike the other officers of the State Police Service. Hence he did not have the appropriate orders in his favour from this Tribunal for consideration by the Selection Committee. However, as stated earlier the matter is still under adjudication in O.A.No.180/520/2021 and we are not expressing any opinion in this regard at this stage. Meanwhile, we find that the applicant has now made a reasonable case on the basis of the earlier precedents as well as the rules for a direction to all the respondents (Government of Kerala/Government of India, Ministry of Home Affairs/Selection Committee, Union Public Service Commission) to consider his name for selection and appointment to the Indian Police Service (Kerala) Cadre on promotion quota against the vacancies for the year 2019, if he is otherwise eligible and if he is fulfilling the norms for such selection notwithstanding his retirement from State Police Service on 31.05.2019. In other words, his retirement from the State Police Service shall not preclude consideration of his name by the respondents for the appointment by promotion in the 2019 State Quota into the Indian Police Service as per the IPS (Appointment by Promotion) Regulations, 1955. Further, the fact of his non inclusion in the Select List 2018 which is under adjudication in O.A.180/520/2021 by this Tribunal should also not preclude his consideration for the Select List 2019 and appointment in the IPS from the State Promotion Quota.

9. The O.A is accordingly allowed at the admission stage itself with the above directions. There shall be no order as to costs.