
(2001) 06 KL CK 0048
In the High Court Of Kerala
Case No : O.P. No. 30737 of 2000

Ranganathan

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-06-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32, 323(A), 323(B)
Police Service (Appointment by Promotion) Regulations, 1955 — Regulation 5(2)

Citation : (2001) 91 FLR 548 : (2001) 3 ILR (Ker) 89

Hon'ble Judges : K.S. Radhakrishnan, J;G. Sasidharan, J

Bench : Division Bench

Advocate : Rajesh Vijayan and Sadhana, for the Appellant; K. Ramakumar, S.C.G.S.C and P.M. Paulose, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—We are distressed to note that the Central administrative Tribunal, Ernakulam Bench is labouring under a misapprehension that they are bound by the Full Bench decision of the Tribunal rather than a decision rendered by learned Single Judge of this Court. We may extract the operative portion of the order of the Tribunal which is as follows:

"Learned counsel of the appellant argued that the Kerala High Court has in Gopinath v. State 1998 (2) KLT 181 (OP 19644/96) held that notional service can be taken into account for computing the qualifying service for consideration for promotion to the Indian Police Service. However, the ruling of the Full Bench later in point of time and rendered after a survey of the case law on the point including the decision of the Kerala High Court in Gopinath v. State, we are bound to follow that ruling."

(underling supplied)

We are sorry to note that the members of the Tribunal have not correctly appreciated the power of a Constitutional Court sitting under Arts. 226 & 227 of

the Constitution of India within its territorial jurisdiction the Tribunal situates. Before we reiterate the legal position let us examine the facts of this case.

2. Petitioner herein retired as the Superintendent of Police on 31.5.1996. He approached the Tribunal aggrieved by the rejection of his claim for inclusion in the select list for the year 1993-94 prepared for promotion to Indian Police Service. He submitted that he was notionally promoted as Dy.S.P. with effect from 26.3.1983 and therefore had completed eight years of continuous service in the post of Dy. S.P. on 26.3.1991 and consequently he was eligible for consideration for inclusion in the select list of 1990-1991. According to him, even if the period of his notional promotion was not considered even then he was eligible for inclusion in the select list of 1993-94 as he had completed eight years of continuous service on 1.4.1994 i.e., his date of actual appointment as Dy. S.P. being 21.2.1986. With regard to his first contention it was pointed out by the respondents before the Tribunal that even though he was notionally promoted as Dy S.P. on 26.3.1983 and as such he had completed 8 years of continuous service in the post of Dy. S.P. on 26.3.1991 the said notional service cannot be considered for appointment to the post of Indian Police Service. Reference was made to the R.5(2) of the Indian Police Service (Appointment by Promotion) Regulations, 1955. It was further pointed out before the Tribunal that the Full Bench of the Tribunal, Mumbai in O.A. 532/97 has considered the question whether for the purpose of third proviso to Regulation 5(2) of the IPS (Appointment by Promotion) Regulations, 1955 the service of Dy. S.P. be taken into consideration. Full Bench took the view that the period of notional promotion or deemed promotion cannot be taken into consideration for the purpose of eligibility for being inducted into IPS under R.5(2).

3. With regard to second contention raised by the petitioner that he had completed eight years of continuous service on 1.4.1994 is eligible for consideration for inclusion in the select list of 1993-94 it was pointed by the respondents before the Tribunal that in terms of the statutory provisions of the IPS (Appointment by Promotion) Regulations, 1955, as applicable at the relevant point of time the select list of 1993-94 was prepared by taking into consideration the eligibility conditions as on 1.4.1993. It was pointed out that the petitioner was actually promoted as Dy.S.P. with effect from 31.2.1986 and thus he has completed eight years of continuous service in the post of Dy. S.P. on 22.2.1994. Consequently he was not eligible for consideration on the crucial date i.e, 1.4.1993 for preparation of the 1993-94 select list.

4. The Tribunal accepted the stand of the department and held that the applicant did not have the actual service as on 1.4.1993, i.e., the date relevant for inclusion in the select list of the year 1994 as he did not have eight years of actual service in the State Police Service in the grade of Deputy Superintendent of Police. With regard to the contention whether notional service could be taken into consideration for the purpose of third proviso to R.5(2) of the Indian Police Service(Appointment by Promotion) Regulations, 1955 the Tribunal relied upon

the Full Bench decision of the Central Administrative Tribuna, Mumbai Bench in O.A. 532/97 and held that since petitioner had only notional service the same cannot be computed for appointment by promotion to the Indian Police Service. Aggrieved by the same this Writ Petition was filed. When the matter came up for hearing we heard counsel on either side at length.

5. The complaint of the petitioner is that his name ought to have been included in the select list prepared for appointment and promotion to the Indian Police Service for the year 1991. The selection committee of the year 1989-90 for preparing the select list of the year 1991 was convened on 9.3.1990 and prepared a select list of 7 officers. The list was approved by the Union Public Service Commission on 16.5.1990. Petitioner has never challenged the select list all these years. That list is being challenged for the first time in the year 2000. On that short ground the first contention of the petitioner has to be rejected. With regard to the second contention that his name ought to have been considered for the select list prepared for the year 1994 we notice that the election committee met on 3.3.1995 and prepared list of 7 officers. Select list was approved by the Union Public Service Commission on 5.4.1995. Petitioner had not taken any steps to challenge those lists in time. In turn he approached this Court after two years by filing O.P 12565/97. he withdrew the O.P. on 14.2.2000 seeking liberty to approach appropriate forum for redressal of his grievance. Petitioner had already retired from service on 31.5.16. Under the above mentioned reasons we are of the view that the claim raised by the petitioner cannot be entertained at this distance of time. We reject the claim of the petitioner on the above mentioned reasons and endorse the view that the application is to be dismissed.

6. We are however, unhappy in the manner in which the Tribunal has dealt with the question of applicability of the decision of this Court in *Gopinath v.State* 1998 (2) KLT 181 According to the Tribunal, they are not bound by the ruling of this court and are bound by the ruling of the Full Bench of the Tribunal being later in point of time and rendered after a survey of the case law on the point including the decision of the Kerala High in *Gopinath v.State*. We are of the view Tribunal has completely misunderstood the legal position. The Apex Court in *L. Chandra Kumar Vs. Union of India and others*, , has elaborately considered the powers and jurisdiction of the Tribunals under Art. 323-A and 323-B and also the powers of the High Court under Arts. 226 and 227 of the Constitution of India. Apex Court held that clause 2(d) of Art. 323-A and clause 3(d) of Art. 323-B to the extent they exclude the jurisdiction of the High Court and the Supreme Court under Arts. 226, 227 and 32 of the Constitution, are unconstitutional. Apex Court held as follows:

"The jurisdiction conferred upon the High Court under Arts. 226/227 and open the Supreme Court under Art. 32 of the Constitution is a part of inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers

conferred by Arts. 226/227 and 32 of Constitution. The Tribunals created under Art. 323-A and Art. 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules.

All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the area of law for which they have been constituted."

Apex Court however, held as follows:

"We have already emphasised the necessity for ensuring that the High Court are able to exercise judicial superintendence over the decisions of the Tribunals under Art. 227 of the Constitution. In R.K. Jain case, after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunal on question of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no followup action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the aforesaid contentions, we hold that all decisions of Tribunals, whether created pursuant to Art. 323-A or Art. 323-B of the Constitution, will be subject to the High Court's writ jurisdiction under Arts. 226/227 of the Constitution, before a Division Bench of this High Court within whose territorial jurisdiction the particular Tribunal falls."

The above legal position was subsequently re-emphasised by the Supreme Court in *Sudhadkar Prasad v. Govt. of A.P.* (2001) 1 SCC 516 as follows:

"The Constitution Bench further held that if the power of the Supreme Court under Art. 32 of Constitution described time and again as the "heart and soul" of the Constitution, can be additionally conferred upon any other court, there is no reason why the same situation would not subsist in respect of the jurisdiction conferred upon the High Court under Art. 226 of the Constitution. So long as the jurisdiction of the High Court under Arts. 226/227 and that of the Supreme Court under Art. 32 is retained, there is no reason why the power to test the validity of the legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals or Tribunals under Arts. 323-A and 323-B. The basic structure theory of the Constitution prohibits the jurisdiction of the High Courts under Art. 226 in respect of the power of judicial review being wholly excluded but the same can certainly be additionally conferred on courts and Tribunals. The Constitution Bench specifically overruled the plea that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned because that would defeat the very purpose of constituting the Tribunals. To allay the fears sought to be projected before the Constitution Bench, this Court held that the decisions of the Tribunal will be subject to the jurisdiction of the High Courts under Arts. 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls as this would serve a dual purpose:(i) the

power of High Courts under Arts. 226/227 of the Constitution to judicially review the legislative action would be saved, and (ii) it will be ensured that frivolous claims were filtered through the process of adjudication in the Tribunal, and additionally the High Court will have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter". =====In the above mentioned case the Apex Court also held as follows:

"The Administrative Tribunals as established under Art. 323-A and the Administrative Tribunals Act, 1985 are an alternative institutional mechanism or authority, designed to be not less effective than the High Court, consistently with the amended constitutional scheme but at the same time not to negate judicial review jurisdiction of constitutional Courts. Transfer of jurisdiction in specified matters from the High Court to the Administrative Tribunal equates the Tribunal with the High Court insofar as the exercise of judicial authority over the specified matters is concerned. That, however, does not assign the administrative Tribunals as status equivalent to that of the High Court nor does that mean that for the purpose of judicial review or judicial superintendence they cannot be subordinate to the High Court. It has to be remembered that what has been conferred on the administrative Tribunal is not only jurisdiction of the High Court but also of the subordinate courts as to specified matters. The High Court are creatures of the Constitution and their Judges hold constitutional office having been appointed under the Constitution. The Tribunals are creatures of statute and their members are statutorily appointed and hold statutory office".

The above mentioned reasonings of the Apex Court positively would show that the Tribunal is bound by the decisions of the High Court exercising powers under Arts. 226 and 227 of the Constitution of India, whether it is rendered by a Single Judge or by a Division Bench.

7. We may in this connection also refer to the decision of the Apex Court in *State of Orissa v. Bhagaban Sarangi*, (1995) 1 SCC 399 wherein the Supreme Court held that the Tribunal shall not side-track the decision of High Court. Apex Court held that it is not correct for the Tribunal to have stated that they are not prepared to accept the judgment of the Orissa High Court in *Kunja Behari Rath v. State of Orissa*, O.J.C. No. 668 of 1969. We make it clear that the Tribunal in this case is nonetheless a Tribunal and it is bound by the decision by the decision of the High Court of the State. It is incorrect to side-track or bypass the decision of the High Court.

8. The reasonings of the Tribunal that they are not bound by the decision of the learned Single Judge in *Gopinath v. State* 1998 (2) KLT 181 but they are bound by the later ruling of the Full Bench of the Tribunal, Mumbai Bench is a wrong understanding of the law. In this connection we may also hasten to add even the decision of the Full Bench of the Mumbai Tribunal relied on by the Tribunal for holding that notional service cannot be taken into consideration for appointment and promotion to the post of Indian Police Service was later reversed by the Division Bench of the Bombay High Court in *Write Petition No. 154/2000*.

9. We may caution that the Tribunal would understand the limits of their jurisdiction and understand the legal position vis-a-vis a Constitutional Court and avoid such reasoning in future. The decision of this Court whether it is by a Single Judge or Division Bench are binding precedents as far as Tribunals are concerned and the Tribunal would do well to follow those judicial porcedents. Tribunal would not even if there is conflict between the decision of this Court whether it is by a single Judge or a Larger Bench with that of the Full Bench of the Tribunal, Tribunal is bound to follow the principle laid down by this Court, Full Bench of the Tribunal cannot sit in judgment over decision of this Court. The reasoning of the Tribunal that the ruling of Full Bench of the Tribunal is later in point of time, they are bound by the decision of the Full Bench of the Tribunal is a wrong understanding of law. We express our strong resentment on the said reasoning.

We have already indicated that the petitioner has not however established his case on merits and hence we dismiss the O.P.