

(2000) 12 SC CK 0069

In the Supreme Court Of India

Case No : C.A. No. 2560 of 1999 and C.A. No's. 2561-65/99 and 2566 of 1999
and W.P. (C) No. 366/98

S. Ramanathan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-12-2000

Acts Referred:

All India Services Act, 1951 — Section 19, 3(1)
Constitution of India, 1950 — Article 136, 32
Police Service (Cadre) Rules, 1954 — Rule 3, 4
Police Service (Recruitment) Rules, 1954 — Rule 9

Citation : (2001) 88 FLR 734 : (2001) 1 JT 268 : (2000) 8 SCALE 102 : (2001) SCC(L&S) 340 : (2000) 5 SCR 450 Supp : (2001) 1 UPLBEC 613

Hon'ble Judges : G. B. Pattanaik, J;B.N. Agrawal, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

G.B. Pattanaik, J.—In these appeals as well as the writ petition, filed under Article 32 of the Constitution of India, a common question of law arises for consideration. The appellants are State Police Service Officers, who have been promoted to the Indian Police Service. The sole grievance of theirs in these matters is that inaction on the part of the Competent Authority to have triennial review, whether entitles the appellants to have a mandamus from the Court to have a review, in accordance with law and the consequential directions for reconsideration of the appellants for promotion to the post of Indian Police Service from an anterior date. The Tribunal in the impugned judgment, though came to the conclusion that there has not been a triennial review for re-determination of the cadre strength, in accordance with the statutory provisions, but refused to issue mandamus, on a finding that no prejudice thereby has been caused to the appellants, and as such the appellants are not entitled to the issuance of mandamus from the Court.

2. The Central Government, in consultation with the State Governments as well

as the Union Public Service Commission, made the Regulation in exercise of powers under Sub-rule (1) of Rule 9 of the Indian Police Service (Recruitment) Rules, 1954 [hereinafter referred to as 'the Recruitment Rules'] and a set of Regulations called the Indian Police Service (Appointment by Promotion) Regulations, 1955 [hereinafter referred to as 'the Promotion Regulations']. The Central Government also in exercise of powers conferred under Sub-section (1) of Section 3 of the All India Services Act, 1951 [hereinafter called 'the Act'] in consultation with the State Governments, framed a set of Rules called the Indian Police Service (Cadre) Rules, 1954 [hereinafter referred to as 'the Cadre Rules']. Rule 4 of the Cadre Rules, defines the strength of the cadre to mean:

Rule 4. Strength of Cadres.: (1) The strength and composition of each of the cadres constituted under Rule 3 shall be as determined by regulations made by the Central Government in consultation with the State Governments in this behalf and until such regulations are made shall be as in force immediately before the commencement of these Rules.

(2) The Central Government shall, at intervals of every three years, re-examine the strength and composition of each such cadre in consultation with the State Government or the State Governments concerned and may make such alterations therein as it deems fit;

Provided that nothing in this sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any other time:

Provided further that the State Government concerned may add for a period not exceeding one year and with the approval of the Central Government for a further period not exceeding two years, to a State or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts.

Sub-rule (2) of Rule 4, as aforesaid makes it obligatory on the part of the Central Government to re-determine the strength and composition of each cadre at intervals of every three years. Notwithstanding the aforesaid provisions, contained in Sub-rule (2), the proviso to said sub-rule empowers the Central Government to alter the strength and composition of any cadre at any other time. The aforesaid Cadre Rules, more particularly, Sub-rule (2) thereof was amended on 10th of March, 1995 and by such amendment, in place of the expression 'at the intervals of every three years', the expression 'ordinarily at the interval of every five years' was substituted. We are however concerned in the case in hand with pre-amended provisions. Under the Promotion Regulation, when select lists are prepared, the substantive vacancies anticipated in course of the period of 12 months commencing from the date of preparation of the lists are taken into account. The cadre strength determined under the Cadre Rules, plays an important role inasmuch as the number of members of the State Police Service, included in the list will not be more than twice the number of substantive vacancies anticipated in the course of period of 12 months, as

provided under Regulation 5 of the Promotion Regulation. The procedure for preparation of the list has been succinctly indicated in the aforesaid Promotion Regulation. This being the statutory provisions, the question for consideration is whether infraction on the part of the appropriate authority, in the matter of discharge of its obligation in relation to the determination of cadre, entitles an employee to obtain a mandamus from the Court, requiring the appropriate authority to discharge their obligation in accordance with law and consequently to re-determine the case of these appellants in respect of those vacancies which were found to be available by the competent authority itself. It transpires from the records of these appeals that the Central Administrative Tribunal, Madras Bench disposed of two applications O.A. No. 1082/91 and O.A. No. 1125/ 91, and came to the conclusion that the triennial review required under Rule 4(2) of the Cadre Rules had been carried out in March, 1979 and the next review was due in March, 1982 but in fact the Cadre Strength had been reviewed in the year 1984 and by such review, seven more posts have been added to the promotion quota in the State of Tamil Nadu. The Tribunal, therefore, directed the appropriate authority to reconsider the case of promotion of the officers of the said Cadre on the basis of the increased cadre strength for the inclusion of their names in the select list for the year 1984. Against the aforesaid judgment of the Central Administrative Tribunal, the Union of India had approached this Court, which however was dismissed after hearing the parties by order dated 13.11.1997 and though, no reasons had been ascribed, but the said order appears to be a decision on merits, affirming the conclusion of the Tribunal.

3. It is contended by Shri P.P. Rao, the learned senior Counsel for the appellants and Shri P.N. Mishra, learned senior Counsel, appearing for the writ petitioners that the next triennial review was due in the year 1987 but this exercise was initiated by Notification in the year 1989 and finally, the cadre strength was reviewed in the year 1991 with a finding that there has been an increase in the cadre strength. In view of such increase in the cadre strength, the chances of promotion of the appellants to the post of Indian Police Service from an earlier point of time, stood accelerated and, therefore, they approached the Tribunal for appropriate directions. The Tribunal, however, following the judgment of this Court in the case of R.R.S. Chouhan and Others Vs. Union of India (UOI) and Others, , and on an analysis of the factual position, being of the opinion that no prejudice has been caused, refused to issue any mandamus and hence these appeals. It may be stated that not only the decision of the Central Administrative Tribunal, Madras was assailed in this Court by filing special leave petition, which stood dismissed, as already stated, but also the Central Administrative Tribunal, Ernakulam Bench, Cuttack Bench and Gauhati Bench took identical decisions, which not being assailed, reached finality. The effect is that four different Benches of the Central Administrative Tribunal have issued directions to the Central Government as well as to the concerned State Governments to hold triennial review and reconsider the case of promotion of the said Cadre of Police Service Officers and such decisions have been implemented without any murmur.

4. Mr. Rao and Mr. Mishra, the learned senior Counsel, appearing for the appellants contended with vehemence that when statutory Rules and regulations provide for something to be done in the matter of review of cadre strength within a specified period, law enjoins on such authorities to enforce the concerned provisions and to review the cadre strength and failure on their part to review the cadre strength, entitles the appellants to have a mandamus from the Court for such appropriate decisions and directions in the matter of consideration of the case of the appellants on the basis of the changed cadre strength. Mr. Rao also further submitted that the language used in Rule 4(2), leaves no room for doubt that it was incumbent on the Central Government to have a cadre review every three years, which was in force till 1995 and the substitution of the said words by the expression will not give the authority with an unlimited power not to take up the question of triennial review and such a view cannot be accepted by any Court. According to Mr. Rao, the expression 'ordinarily' would also mean within a reasonable period and in the case in hand, in fact there has been no explanation at all, coming from the Union of India as to why the triennial review could not be held in due time in the year 1987.

5. Dr. Rajeev Dhawan, the learned senior Counsel, appearing for the respondents-direct recruits, learned Additional Solicitor General Mr. Mukul Rohtagi, appearing for the Union of India and Mr. A. Mariarputham, Mrs. Aruna Mathur and Mr. Anurag Mathur, appearing for the State of Tamil Nadu, on the other hand contended that there has been no definite prayer before the Tribunal seeking a mandamus for having a triennial review in accordance with the relevant provisions of the Cadre Rules and that being the position, the appellants will not be permitted to raise the matter after so many years, which would have the effect of unsettling the settled questions. It was also contended that the appellants having failed in their attempt to get the select list altered, have now come forward through a subterfuge and the discretionary jurisdiction of the Court should not be invoked for that purpose. Mr. Rohtagi, the learned Additional Solicitor General, though candidly stated before us that the appropriate authority should have done the triennial review for fixation of the cadre strength within the time stipulated in the Cadre Rules, but vehemently objected for any such direction being issued for reconsideration of the case of the appellants, more so when the appellants have not approached the Tribunal diligently. According to the learned Additional Solicitor General the Tribunal has rightly considered the question of prejudice and has denied the relief sought for. The learned Additional Solicitor General also urged that the situation which should have been made available in 1987 on the basis of the cadre strength, cannot be brought back by a direction for reconsideration and in that view of the matter, neither the equity demands such a direction nor it would be appropriate for this Court to unsettle the settled service position. But to our query, as to how the orders of different Tribunals on identical situations could be carried out without any demur, the learned Additional Solicitor General was not in a position to give any reply. It also transpires from the available records that the Union of India, nowhere has even

indicated as to how it would be unworkable if a direction is issued by this Court for reconsideration of the case of promotion to the IPS Cadre on the basis of the additional vacancies which have been found to be available. It would, therefore be not appropriate for this Court to deny the relief to the appellants on the ground of apprehended administrative chaos, if the appellants are otherwise entitled to the same. It is no doubt true that while exercising the discretionary jurisdiction, Courts examine the question of administrative chaos or unsettling the settled position, but in the absence of any materials on record, the Court should not be justified in accepting the apprehension of any administrative chaos or unsettling the settled position, on the mere oral submission of the learned Additional Solicitor General, with-out any materials in support of the same. On examining the records of the case, we do not find an iota of material, indicating the so-called administrative chaos, likely to occur in the event of any direction is issued for reconsideration of the case of promotion on the basis of the alteration of the cadre strength and, therefore, we have no hesitation in rejecting the said submission of the learned Additional Solicitor General.

6. The question, therefore arises for consideration is as to what is the effect of Rule 4(2) of the Cadre Rules as it stood prior to its amendment in the year 1995 and if there has been an infraction in the matter of compliance of the said Rule, what direction could be given to the appropriate authority? The Cadre Rules are statutory in nature, having been framed by Central Government in exercise of powers under Sub-section (1) of Section 3 of the All India Services Act, 1951. The language of Sub-rule (2) of Rule 4, as it stood prior to its amendment is rather peremptory in nature and thus it requires that the Central Government has to reexamine the strength and composition of each cadre in consultation with the State Government concerned and make such alteration therein as it deems fit. It is no doubt true that an infraction of the aforesaid provisions does not confer a vested right with an employee for requiring the Court to issue any mandamus. But it cannot be denied that if there has been an infraction of the provisions and no explanation is forthcoming from the Central Government, indicating the circumstances under which the exercise could not be undertaken, the aggrieved party may well approach a Court and a Court in its turn would be well within its jurisdiction to issue appropriate directions, depending upon the circumstances of the case. When certain power has been conferred upon the Central Government for examining the cadre strength, necessarily the same is coupled with a duty to comply with the requirements of the law and any infraction on that score cannot be whittled down on the hypothesis that no vested right of any employee is being jeopardised. The learned Additional Solicitor General is not in a position to refute the fact that in the event, the cadre strength, which has in fact increased in the year 1991 is taken into account, then in the matter of determination on the question of promotion, some additional advantage could be available to the employees in the erstwhile State Cadre, who have been considered for promotion to the Indian Police Service. That apart when Rules and Regulations provide for certain things to be done at a certain

period, the same should normally be observed and if there has been a failure, the Court should compel the performance of that duty. In the case of Syed Khalid Rizvi and Others and Ramesh Prasad Singh and Others Vs. Union of India (UOI) and Others, , a three Judge Bench of this Court had examined the provisions of the IPS (Regulations of Seniority) Rules, 1994 and other provisions of the Recruitment Rules, Cadre Rules and Appointment by Promotion Regulation and it was observed:

The leeway and liberty given to the State Government under Regulation 8 of Promotion Regulations read with Rule 9 of the Cadre Rules is only to cope up with administrative exigencies but it became a breeding ground to distort the operation of the Rules which should scrupulously be eschewed and avoided.

The Court examined in the aforesaid case the question whether the failure to prepare the select list would give rise to an inference that Rules have been collapsed and the State Government's local arrangement shall be given legitimacy as regular appointments. After giving anxious consideration to the end resultants, the Court had found it hard to accept the same. The Court observed that the State Government and the Central Government should strictly comply with the provisions in making Recruitment by promotion from the State Service to the All India Services and if laxity has to be given legitimacy and deemed relaxation is extended, it would not only upset the smooth working of the Rules but also undo the prescribed ratio between promotee officers and direct recruits. It is in that context, the Court ultimately issued certain directions to be complied with by the Central Government, after taking objections from the promotees who were included in the notional list for different years. The aforesaid decision, no doubt is in relation to the placement of an employee in the select list and has no direct application to the case in hand, but the observations made with regard to performance of duties of a statutory authority should equally apply to the case in hand. The impugned judgment of the Tribunal proceeds on the assumption that the decision of this Court in R.R.S. Chouhan and Ors. v. Union of India and Ors. (supra), which was a decision in relation to an officer of the Indian Forest Service governs the field. In that case, the Court was examining the question whether an officer even if was continuously officiating on a senior post, can avail of the benefit of the said officiation in view of the fact that in the subsequent select list, the names of those officers have not been included. The aforesaid decision is of no assistance to us in the present case where the question for consideration is, when the competent authority fails to discharge its obligation, conferred under the statute, could the Court compel the authority for such performance and if so, what would be the mode of relief to be given, depending upon the facts and circumstances of each case. In the case of AIR 1989 1688 (SC) , on which, Dr. Dhawan had placed reliance, the Court was considering the question of up gradation of posts and the seniority and promotion to those posts on the basis of length of continuous service. The Court in fact had observed that the incumbents have not to suffer for the lapse on the part of the Government in delay in amending the Schedule to the Rules. We fail to understand, as to how this

decision will be of any assistance to us in arriving at an appropriate conclusion on the question involved. Dr. Dhawan, had strongly relied upon the decision of this Court in R.S. Mittal Vs. Union of India (UOI), , whereunder this Court having come to the conclusion that the Central Government's approach was wholly unjustified, yet refused to grant the relief to the applicant in the peculiar facts of the case. But the relief, which has been sought for in the present appeals, namely a direction to the Union Government to reconsider the question of promotion to the Indian Police Service on the basis of their own fixation of cadre strength, which they did in the year 1991, though it was supposed to have been done in the year 1987. The general principles, as indicated in the Mittal's case, will have no application, particularly when the Union Government is totally silent in the matter of indicating the effect of such a direction. The decision of this Court in Tamil Nadu Administrative Service Officers Association and Another Vs. Union of India and Others, , was also brought to our notice, in support of the contention that mere delay in undertaking the review will not ipso facto entitle an employee to get a writ of mandamus from the Court. But in that case, Court was considering the infraction of Rule 4 of the IAS Cadre Rules and undoubtedly, there has been delay in undertaking such review and consequential delay in preparation of select list but that delay was found to have been sufficiently explained by the Union Government and that, therefore, the Court said that the question of fixation of seniority of the promotees with retrospective effect cannot be granted. In the case in hand, in the absence of any explanation for not conducting the triennial review within the specified period of three years, the aforesaid decision will have no application. The decision of this Court in Ramesh Chand Sharma Vs. Udham Singh Kamal and Others, , was also pressed into service in support of the contention that the appellants had approached the Tribunal beyond limitation, provided u/s 19 and, therefore are not entitled to invoke the jurisdiction of this Court under Article 136, even if there has been an infraction of the statutory obligation, which lay on the authority to have the triennial review. We are not persuaded to accept this submission inasmuch as the appellants approached the Tribunal, the moment the competent authority re-determined the cadre strength the year 1991, and, therefore, it cannot be said that there has been laches on the part of the appellants to approach the Administrative Tribunal. One other decision, which may be noticed at this stage is the case of Devendra Narayan Singh and others Vs. State of Bihar and others, , to which one of us, Pattanaik, J was a party. In that case, the appropriate authority had committed error in not preparing the select list for a particular year and pursuant to a direction of this Court the employee's name was included in the select list of a later year and ultimately this Court observed that the select list in question must be held to be of the relevant year, wherein on account of error committed by the appropriate authority the name could not be included. This indicates that the Court has been insisting performance of duty upon the authority under the statute quite meticulously and on the admitted position that the process of determining the cadre strength was initiated in the year 1989 and it was finalised in the year 1991, there is no rhyme and reason why the

respondents will not be directed to reconsider the question on the basis of the altered strength of the cadre, as if it was so altered in the year 1989 when the process of determination of cadre strength was initiated. We, accordingly set aside the impugned orders of the Tribunal and direct the Union Government as well as the State Government to reconsider the question of promotion of the State Cadre Officers to the Indian Police Service on the basis of the re-determined strength of the cadre, treating the same to be in the year 1989 and if on such a reconsideration relief would be available to any of the appellants for promotion to the IPS on the basis of the quota available to them in the cadre, the same may be given to them. This exercise may be done within a period of six months from the date of receipt of this order.

7. These appeals and the writ petition are disposed of accordingly.