

(2011) 06 KAR CK 0037

In the Karnataka High Court

Case No : Writ Petition No. 16440 of 2011

Sri Shankar Mahadev Bidri IPS (RR 78)

APPELLANT

Vs

Union Public Service Commission and Others

RESPONDENT

Date of Decision : 08-06-2011

Acts Referred:

Indian Police Service (Pay) Rules, 1954 — Rule 3, 3 (1), 3 (2)
Karnataka Police Act, 1963 — Section 3 (1)

Citation : (2011) 4 KCCR 2810

Hon'ble Judges : K.L. Manjunath, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : Ravivarma Kumar for J. Prashanth and Kamaraju, for the Appellant; Dinesh Kumar, for R1, Phalakshaiah, CGSC for R2 and 5, Ashok Haranahalli, General, a/w Sheela Krishna, AGA for R3 and Udhaya Holla for N.S. Prasad, for R4, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The Petitioner herein has assailed the legality and correctness of the order passed by the Central Administrative Tribunal, Bangalore, in Original Application No. 35/2011 dt. 21st April 2011, which application was filed by the 4th Respondent Dr. D.V. Guru Prasad. The Petitioner is an IPS Officer of 1978 batch. He joined the Police service on 16.7.1978. He has put in service of 32 years 6 months. He has worked in different places and he has been awarded with several medals in appreciation of the services rendered by him 4th Respondent-Dr. D.V. Guru Prasad is also a senior IPS Officer of 1976 batch.

2. The controversy that has arisen In this case is in regard to the filling up the post of Head of the Police Force of Karnataka (H.O.P.F.). The cause of action has arisen on account of Dr. Ajaykumar Singh, the former DGP who has retired on attaining the age of superannuation on 31.1.2011. The Petitioner herein who has put In 30 years of service addressed a letter to the Chief Secretary, Government

of Karnataka on 21.12.2010 stating that after retirement of Dr. Ajaikumar Singh, who are all the eligible Police officers for inclusion In the list to be sent to the Union Public Service Commission for preparation of a panel of 3 Police Officers fit to be appointed as DGP and HOPF based on the guidelines issued by the Hon. Supreme Court in Prakash Singh case and in the light of the guide fines Issued by the UPSC. Again he addressed one more letter on 12.1.2011 to consider him as one of the officers who falls within me zone of consideration In view of his merit, Thereafter he addressed one more letter on 15.1.2011 to consider his earlier request and representation in accordance with law. In the meanwhile, the Union Public Service Commission on 20.1.2011 addressed a fetter to the Chief Secretary, Govt, of Karnataka to send the list of officers of the rank of ADGP and above who have completed 30 years of service as the p&r the guidelines dt. 15.1.1999. The letter dt. 20.1.11 was questioned by the 4th Respondent-D.V. Guru Prasad by approaching the Central Administrative Tribunal on the ground the opinion of the UPSC to send the names of ail the officers who have put in 30 years of service to prepare the panel of 3 eligible candidates for selection of OGP and HOPF is bad in law and further requested to direct the UPSC to follow IPS Pay Rules strictly and fill up the post of DGP (HOPF) by sending the Panel of names as per the Guide lines issued by Supreme Court in Prakash Singh's case and in the light of the judgment of Andhra Pradesh High Court dt. 22.11.2010 and the High Court of Judicature, Madras dt. 8.10.2010 before 31.1.2011 to enable the Respondents State to fill up the post of Director General of Police/ H.O.P.F.

3. In the application filed by the 4th Respondent, Petitioner was not a party. The Tribunal after hearing the 4* Respondent and the Respondents before It by its order dt. 21.4.2011 allowed the application of the 4th Respondent and directed the State of Karnataka to forward the names of all eligible officers In the rank of Director General of Police in the cadre of HAG + scale of Rs. 75,000/- (Increment at 3%) - Rs. 80,000/- as on date with all service records to the UPSC with necessary requisition for preparing a panel as directed by the Hon''ble Supreme Court In Prakash Singh's case. The Tribunal also directed the UPSC to prepare a panel as directed by the Hon''ble Supreme Court and forward the same to the State of Kamataka immediately so as to reach the State of Karnataka before 25.5.2011 postively and with a further direction to the State of Karnataka to make the selection from amongst the officers in the panel forwarded by the 1st Respondent-U.P.S.C. and make appointment to the post of DG and IGP (HOPF) on or before 1.6.2011. This order has been challenged In this petition.

4. The main grievance of the Petitioner before us Is that the order of CAT In directing the State Government to forward the names of the officers who are In the rank of Director General of Police in the cadre of HAG + scale of Rs. 75,000 (with Increment of 3%) - Rs. 80,000/- is bad in law and such direction Is contrary to the guidelines issued not only by the Hon''ble Supreme Court in Prakash Singh's case, hut also the guidelines issued by the Union of India in the year 1999 and further contrary to the guidelines issued by the UPSC for the

selection of Director General of Police DG and IGP (HOPF).

5. We have heard Sri, Ravlvarma Kumar, the learned senior counsel for the Petitioner, Mr. Dinesh Kumar for the 1st Respondent UPSC, Mr. Phalakshalah for the Respondent-2 and 5 and Mr. Udhaya Holla, learned senior counsel who represents Mr. N.S. Prasad for the 4th Respondent.

6. According to the learned senior counsel for the Petitioner, the Hon''ble Supreme Court In Prakash Singh's case has issued guidelines fn the matter of appointment to the higher post of Police Department in all the States and the guidelines Issued by the Hon''ble Supreme Court In Prakash Singh and Others Vs. Union of India (UOI) and Ors,) is to be followed in strict terms and cannot be violated either by the State or by the UPSC. According to him in paragraph 29 of the judgment the Hon''ble Supreme Court has ruled as hereunder:

29. The preparation of a model Police Act by the Central Government and enactment of new Police Acts by the State Governments providing therein for me composition of the State Security Commission are things, we can only hope for the present. Similarly, we can only express our hope that ail State Governments would rise to the occasion and enact a new Police Act wholly Insulating the police from any pressure whatsoever thereby placing in position an Important measure for securing the rights of the citizens under the Constitution for the rule of law, treating everyone equal and being partisan to none, which will also help in securing an efficient and better criminal justice delivery system. It is not possible or proper to leave this matter only with an expression of this hope and to await developments further. It is essential to lay down guidelines to be operative till the new legislation is enacted by me State Governments.

and again In para-31 guidelines have been formulated by the Supreme Court for selection of DGP which reads as hereunder;

31.

Selection and minimum tenure of DPG.

(2) The Director of Police of the State shall be selected by the State Government from amongst the three seniormost officers of the Department who have been empanelled for promotion to the rank by the Union Public Service Commission the basis of their length of service, very, good, record and range of experience for heading Police Force, (emphasis) And ones he has been selected for the job, he should have a minimum tenure of at least two years Irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting In consultation with the State Security Commission consequent upon any action taken against him under the AH India Services (Discipline and Appeal) Rules or following his conviction In a court of law In s criminal offence or In a case of corruption, or if he is otherwise Incapacitated from discharging his duties.

7. Relying upon this passage, Sri Ravi Varma Kumar taking us through the

guidelines Issued by the Union of India In the year 1999 which is produced as Annexure-R2 submits that each state has to follow the guidelines issued by the union of India dt. 15.1.1999 since thereafter no fresh guidelines are Issued by the Union of India. According to him, the zone of consideration of officer for promotion to the various grades would be as hereunder;

Zone of consideration

The zone of consideration of officers for promotion to various grades, would be as follows, depending upon the availability of posts:

1. For promotion to the Grade of DIG Officers who have completed 14 years of service
2. For promotion to the Grade of IGP Officers who have put in 18 years of Service
3. For promotion to the Grade of Additional DGP Officers who have put in as years of service
4. For promotion to the Grade of DGP Officers who have put in 30 years of service,

Method of selection

I) Selections hold be based on merit with due regard to seniority as proved in Sub-rule 2A of Rule (3) of the Indian Police Service (Pay) Rules, 1954.

II) Suitability of officers to hold posts of and above the selection Grade be adjudged by evaluating their character roll record as a whole and general assessment of their work.

8. Relying upon the guidelines issued by the Union of India In the year 1999 as per Annexure-R2 to the petition, he contends that for the promotion to the grade of DGP officers who have put in 30 years of service are to be considered and therefore the state is required Co send the names of all the officers who (sic) put in 30 years of service. As, the Petitioner would fall within the zone of consideration the State has no other option than to include the name of not only the Petitioner but also such of those officers who have put in service of 30 years and that from among the list sent by the State to UPSC as per the guidelines issued by the Hon"ble supreme Court three officers are to be empanelled and the same has to be sent back to the State ts flit the post of Director General of Police/ H.O.P.F. Therefore, the learned senior counsel for the Petitioner contends that the Central Administrative Tribunal has passed the order without considering die zone of consideration stipulated by the guidelines of 1999 issued by the Union of India. He further submits that pursuant to the direction Issued by die Hon"ble Supreme Court, the UPSC has also framed the guidelines which are In terms of the guidelines of 1999 issued by the Union of India and the model guidelines framed by the UPSC is yet to be approved by the Hon"ble Supreme Court and the same is pending consideration. Therefore, he contends that the CAT ought not to have over ruled the letter of UPSC in directing the State of Karnataka to

send the names of all the officers who have put In service of 30 years. In the circumstances he requests the court to allow the petition and set aside the order of the Tribunal.

9. Per contra the learned Advocate General as well as Sri. udhaya Holla, learned senior counsel appearing for the 4th Respondent contend that the arguments advanced by the learned senior counsel appearing for the Petitioner holds no water because though Supreme Court has issued a guideline how the post of Director General of Police has to be filled up, in the year 1999 as per Annexure-R.2, Union of India has also clarified the method of selection, According to them In Annexure-R2, the method of selection is also issued which reads as hereunder:

Method of selection

(iii) Selections hold be based on merit with due regard to seniority as provided in Sub-rule 2A of Rule (3) of the Indian Police Service (Pay) Rules,

iv) Suitability of officers to hold posts of and above the selection Grade be adjudged by evaluating their character roil record as a whole and general assessment of their work.

10. Relying upon this portion, they contend that subsequent to the Issuance of the guidelines in the year 1999, the pay rules of the Indian Police Service (Pay) Rules 1954 has been got amended as per the notification dt. 27th September 2008 and as per the amended Rules, the post of Director General of Police in the Apex scale shall be filled by selection from amongst officers holding the post of Director General of Police in the said cadre in HAG + Scale of 75,500/- (Annual increment at 3%) - 80,000/-. Therefore they contend that as per the pay Rules only person who was in the post of Director General of Police in the HAG + Scale of 75,500 - 80,000/- alone is eligible under the consideration zone to consider an officer to fill up the post of Director General of Police (HOPF).

11. Relying upon the amended pay Rules they contend that the arguments advanced by the learned senior counsel for the Petitioner has to be negated. They further contend that the UPSC has framed the guidelines which are yet to be approved by the Hon"ble Supreme Court in Petitioner"s case, It is also their case that the UPSC has framed guidelines to prepare the short listing candidates to fill up the post of DGP based on 1999 guidelines without considering the amended pay Rules of 2008. According to them, if there was an occasion for UPSC to consider the amended Pay Rules 2008, UPSC could not have included the officers who have put in service of 30 years unless they fall within the scale of pay of Rs. 75,500 to 80,000/- in HAG Scale. They further contend though the Petitioner is a good officer with clean records and has put in service of 30 years would not fall within the consideration zone to fill up the post of Director General of Police since his pay scale is In the grade of ADGP In the scale of Rs. 67,000/- to 79,000/-, Therefore, they contend that the Petitioner does not fail within the zone of consideration. They further submit that a similar question had arisen In the Stats of Tamil Nadu which had corns before High Court of Judicature, Madras

in W.P. No. 6917/10. A Division Bench of the High Court of Judicature of Madras by Its order dt. 08.10.2010 has clearly held that UPSC has to send the list of eligible officers In the rank of Director General of Police In the cadre of HAG + Scale of 75,000/- and (increment at 3%) Rs. 80,000/-. According to them, the judgment of me Madras High Court has been followed by the UPSC and UPSC has short listed the eligible candidates to fill up the Post of Director General of Police and HOPF of Tamil Nadu. They further contend when once UPSC has followed me directions issued by the High Court of Judicature at Madras, UPSC ought not to have addressed a letter on 20.1.2011 as per Annexure-R2 in directing the Chief Secretary of the State of Karnataka to send the list of all the officers who have completed 30 years of service. Therefore, they submit that it is not open for the Petitioner to contend that still he comes within the zone of consideration. They further submit that In the year 1999 guidelines the Union of India categorically stated the method of selection, which says that selections shall be based on merits with due regard to seniority as provided In Sub-rule 2A of Rule (3) of the Indian Police Service (Pay Rules 1954). Relying upon the same they contend that when the Union of India in the year 1999 Itself has stipulated how the post of DGP has to be filled up following Sub-rule 2A of Rule (3). Since the said above Rules has been amended in 2008 which says how the post of DGP (HDPF) has to be filled as per Note-2 to amended Rule 3, The stats has no other option than to send the names of the officers who are in the cadre of DGP and drawing the salary of 75,500 to 80,000/-, Therefore the case of the Petitioner cannot be considered under any circumstance as he Is neither In the cadre of DGP nor m the pay scale of HAG+Scale 75000/- - 80000/-. They further contend when the Petitioner Is not questioning the method of selection as per the guidelines Issued by the Union of India as per Annexure-R2 dt 15.1.99 and when the Pay Rules were further amended In 2008 is not questioned by the Petitioner as the pay rule is the sole criteria to consider the candidates/Police officer to fill up the post of DGP (HOPF) whan the Petitioner does not fit into the zone of consideration, now it cannot be stated by him that 30 years of service alone is the criteria to fill up the post of PGP (HOPF). In the circumstances they request the court to dismiss the petition.

12. In the light of the submissions made by the Learned Counsel for the Respondents-3 and 4, we questioned the learned Counsel for the UPSC whether UPSC has followed the directions issued by the Hon''ble High Court of Judicature at Madras with regard to the filling up of post of DGP/H.O.P.F. on that basis.

13. Mr. Dinesh Kumar fairly submits that the judgment of the Madras High Court has been followed by the UPSC and UPSC has considered only the officers who are drawing scale of pay of Rs. 75,300/- to Rs. 80,000/- and not 30 years of service put in by the Police officer. It is also not In dispute that the fetter addressed by the UPSC to the Chief Secretary of the Stats of Karnata dt. 20.1.2011 is after compliance of the direction issued by the High Court of Judicature at Madras. If that Is so, we are not in a position to understand how UPSC can take two different stand while filling up the post of Director General of

Police (HOPF) In the State of Tamil Nadu and in the State of Karnataka as there cannot be two yard sticks.

14. In that view of the matter, we are of the view that since UPSC Is acquiesced by carrying out the directions Issued by the High Court of Judicature, Madras, they cannot take different stands for different States. Therefore the short listing of candidates on the UPSC shall be uniformly followed for an the States In view of the directions of the Hon''ble Supreme Court in Prakash Singh's case.

15. Mr. Phalakshaiah, learned Central Govt. Standing Counsel, representing the Union of India submits that In view of the amendment to Pay Rules in the year 2008, selection to the post of DGP (HOPF) shall be based on the eligibility criteria fixed under the Pay Rules 2008.

16. Mr. Ravi Varma Kumar, learned Counsel for the Petitioner submits that the pay Rules 2008 cannot substitute guidelines of the Hon, Supreme Court in Prakash Singh's case. Therefore, he contends that whatever the guidelines Issued by the Hon. Supreme Court in Prakash Singh's case shall be followed by the UPSC and by ail the State Govt, while filling up of the post of Director General of Police (HOPF). According to him the pay rules cannot be contrary to the guidelines and therefore he requests the court to over rule the arguments advanced by the learned Advocate General, learned senior counsel Mr. Udhaya Holla, Mr. Dinesh Kumar, learned Counsel for the UPSC and Mr. Phalakshaiah, learned Central Govt Standing Counsel.

17. Having heard the counsel for the parties, the only point to be considered by us in this petition is:

Whether the Petitioner who has put in 30 years of service with meritorious records would fit into the zone of consideration for short listing the names of Police officers to fill up the post of the Director General of Police (HOPF) of Karnataka.

18. The following points are not in dispute In this petition:

The length of service put In by the Petitioner, his meritorious record and the length of service put In by the 4th Respondent and his records are not in dispute. It Is also not in dispute that 4th Respondent is an IPS Officer of 1976 batch and he Is In the cadre of Director General of Police since 31.1.2009 and Is drawing the salary in the pay scale of HAG + 75,500 (Annual Increment at 3%) - 80,000/-. The Hon''ble Supreme Court in Prakash Singh's case has issued the guidelines In the matter of filling up of the post of DGP. We have already extracted paragraph-29 and 31 of the judgment of the Apex court. Therefore we are of the view that there is no necessity for us to reiterate the same. It is clear that the Govt, of Karnataka has to send the list of ail the officers who are eligible to be filled up for the post of Director General of Police and Govt. is required to send their service records to the UPSC to enable the UPSC to prepare short listing of the candidates and based on the same UPSC Is required to short list 3

meritorious and eligible candidates to fill up the post in question. The Hon'ble Supreme Court has not stated in Prakash Singh's case that all the officers who have put in service of 30 years shall fall within the zone of consideration, But as per the guidelines issued by the Union of India in the year 1999 as per Annexure-R2 it is stated that all officers who have put in service of 30 years of service would fall within the zone of consideration. But the same guidelines also lay down the method of selection. The method of selection as per the guidelines would be based on the merits with due regard to seniority as provided in Sub-rule 2A and Rule (3) of Indian Police Service (Pay Rules of 1954), This fact is not disputed by the learned Counsel who is appearing for the Petitioner.

19. The learned Senior Counsel for the Petitioner vehemently canvassed that the Petitioner before us would fall within the consideration zone as per the guidelines of 1999 which is at Annexure-R2. We do not find any merit in the said contention as the learned Counsel cannot contend that the pay Rules cannot substitute the guidelines issued by the Hon'ble Supreme Court in Prakash Singh's case. In the guidelines of 1999, the method of selection would be based on merits with due regard to seniority as provided under the Pay Rules. Pay Rules of 1954 is amended in 2008. We have to consider the amended Pay Rules of Indian Police Service. Amended Rule 3, Sub-rule (1) reads as hereunder;

(1) Pay Bands and Grade Pays - The pay bands and grade pays admissible to a member of the Service and the dates with effect from which the said pay bands and grade pays shall be deemed to have come into force, shall be as follows:

A. Junior Scale;

Pay Band - 3; Rs. 15600-39100 plus Grade Pay Rs. 5400;

B. Senior Scale-

(I) Senior Time Scale; Pay Band - 3 15600-39100 plus grade pay Rs. 6600

(II) Junior Administrative Grade-Pay Band - 3; Rs. 15600-39100 plus Grade Pay 7600

(III) Selection Grade; Pay Band - 4 : Rs. 37400-67000; plus Grade Pay Rs. 8700;

C. Super Time Scale:

(I) Deputy Inspector General of Police : Pay Band - 4; Rs. 37400-67000; plus Grade Pay Rs. 8900;

(II) Inspector General of Police; Pay Band - 4 : Rs. 37400-67000, plus Grade Pay Rs. 10000;

D. Above Super Time Scale-

(I) Additional Director General of Police - Pay Band - 4; Rs. 37400-67000; plus Grade Pay Rs. 12000

(II) HAG + Rs. 75,500 (annual increment at 3%)-80000; Grade Pay nil

(III) Apex Scale; Rs. 80000 (fixed) Grade Pay; nil (by upgradation of one existing post of Director General of Police as head of Police force in the each State cadre);

(with effect from the date of issue of notification of the Indian Police Service (Pay) Amendment Rules, 2008);

Note 1 : Appointment of a member of the Service to the Senior Time Scale and above shall be regulated as per the provisions on the Guidelines regarding promotion to various grades in the Indian Police Service.

Provided that a member of the Service shall be eligible for appointment to the Senior Time Scale on his completion of four years of service, subject to the provisions of Sub-rule 2 of Rule 6A of the Indian Police Service (Recruitment) Rules, 1954, to the Junior Administrative Grade on completion of nine years of service, to the Selection Grade on completion of thirteen years of service, to the Deputy Inspector General Super Time Scale on completion of fourteen years of service and to the Inspector General Super Time on completion of eighteen years of service.

Provided further that a member of the service shall be appointed to the Junior Administrative Grade only after he has completed phase III mandatory Mid Career Training as specified by the Central Government.

Note 2 : The post of Director General of Police in the apex scale shall be filled by selection from amongst the officers holding the post of Director General of Police in the State cadre In the HAG - scale of Rs. 75500- (annual increment @ 3%)-80000,

20. On perusal of Note-2 to Rule 3 of the amended Pay Rules of Indian Police Service, it is clear that the post of Director General of Police In the Apex scale shall be filled by selection from amongst officers holding the post of Director General of Police in the said cadre in the HAG + scale of Rs. 75,500 (annual increment at 3%) - 80,000/-. Admittedly me Petitioner Is working as Additional Director General of Police, in the pay scale of Rs. 67,000/- to 79,000/-. He is not in the cadre of DGP and in the Pay scale of HAG + Scale of 75,500 - 80,000. It is also not In dispute when the similar question came up before me Judicature of High Court, Madras, It had an occasion to deal with the same. The Madras High Court has also directed how UPSC has to consider the officers for short listing and a specific direction was Issued by the Madras High Court to UPSC that an officer who would fail in the scale of pay of HAG + scale of 75,500/- (Annual increment of 3%) 80,000/- was alone be considered to fin up the post of Director General of Police and the direction of the Madras High Court has been strictly followed by the UPSC.

21. In light of what has been Held above, we are unable to accept the arguments advanced by Mr. Ravi Varma Kumar that the amended pay Rules of India Police

Service Rules 2008 cannot take away the guidelines issued by the Hon''ble Supreme Court. The Apex Court has only issued a guideline in Prakash Singh's case, as to how the candidates are to be considered to fill the post of Director General of Police. There was no occasion for their Lordships to look into the scale of pay and different categories in the Police ranking, But the guidelines of 1999 issued by the Union of India as per Annexure-R2 is clear how an officer has to be considered. When the guidelines of 1999 clearly says that only the officers who fall within the specific pay scale are to be considered for next Cadre and If the said pay scale has been further amended and If the Petitioner do not fit into that scale of pay even though he has put in service of 30 years, we are of the opinion that he cannot fall within the zone of consideration, We would have considered the arguments of the learned Counsel for the Petitioner provided the method of selection had not been notified In the guidelines of 1999 or In the amended Pay Rules. These rules are made by the Union of India in exercise of the powers conferred by Sub-section (1) of Section 3 of the All India Service Act 1951, After rule are framed by exercising the powers vested under an enactment it has statutory force and therefore we cannot say that pay rules cannot take away the guidelines issued by the Hon''ble Supreme Court, if the Hon''ble Supreme Court had issued a guideline to the effect that all officers who have put in service of 30 years shall be considered then the matter would have been different. In such circumstances, It was for the parties to seek clarification before the Supreme Court in regard to the manner the post has to be filled up. But such an occasion has not arisen In this case. Therefore, we do not find any error or illegality with the direction Issued by the Central Administrative Tribunal In directing the UPSC to consider the officers who fall within the scale of pay of HAG + Scale 75,500 (Annual Increment at 3%) - 80,000/-. Since the Petitioner do not fall within the said category, we are unable to consider the case of the Petitioner.

22. Accordingly, the petition Is dismissed.