
(2017) 11 BOM CK 0008
In the Bombay High Court
Case No : 2203 of 2013

Union of India

APPELLANT

Vs

Amar Vijay Jadhav & Ors.

RESPONDENT

Date of Decision : 28-11-2017

Acts Referred:

[3998](#) Constitution of India, [3998-226](#) Article 226 -
Power of High Courts to Issue certain writs

[1770](#) Indian Police Service (Cadre) Rules, 1954, [1770 — Rule 4](#) Rule 4(2), [1770-Rule 4](#) Rule 4(1)

Citation : (2017) 11 BOM CK 0008

Hon'ble Judges : V.K. Tahilramani, M.S.Karnik

Bench : DIVISON BENCH

Advocate : Vinod Joshi, R.R. Shetty, P.H. Kantharia, Deepali Patankar

Judgement

1. The petitioner - Union of India by this petition filed under Article 226 of the Constitution of India challenges the judgment and order dated 25/8/2011 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereinafter referred to as "the Tribunal" for short) in O.A.No.853 of 2010.

2. The respondent Nos.1 to 3 filed O.A. before the Tribunal being aggrieved by the highly belated action on the part of the petitioner in carrying out a cadre review in respect of Indian Police Service (hereinafter referred to as "IPS" for short), Maharashtra Cadre.

3. Learned Counsel for the petitioner - Union of India assailing the order of the Tribunal submits that the process of cadre review is a cumbersome exercise, starting with a preliminary meeting between the Ministry of Home Affairs and the State Government to finalize the view on the proposal furnished by the concerned State Government. The proposal/brief is sent to the Cabinet Secretariat to get the convenience of the Cabinet Secretariat. He pointed out the various stages the proposal goes through before formal notification is issued. This process takes considerable period of time. Learned Counsel invited our

attention to the affidavit in reply filed by the respondent No.5 - State of Maharashtra wherein it is stated that the previous cadre review of IPS (Maharashtra Cadre) was approved by the Central Government by Notification dated 5/11/2003. As per the statutory rule, the next cadre review was due in the year 2008 within a period of 5 years from 5/11/2003. The Central Government by letter dated 12/10/2007 requested the respondent No.5 ? the State Government to forward a proposal for cadre review to the Central Government. Several reminders were sent by the petitioner to the State Government to forward the proposal. It is only by a letter dated 6/10/2009 that the proposal was submitted to the Ministry of Home Affairs of respondent No.1. Thereafter, a meeting was convened on 26/10/2009 which was attended by the Principal Secretary (Special), Home Department on behalf of the State of Maharashtra. The issue of revised proposal was discussed. On 11/1/2010, the revised proposal was accepted by the Central Government. Thereafter, the Notification dated 30/3/2010 came to be issued by the Ministry of Personnel, Public Grievances & Pensions published the Indian Police Service (Fixation of Cadre Strength) Seventh Amendment Regulations, 2010. There was no intentional delay in issuing the Notification belatedly so the learned Counsel would submit.

4. Learned Counsel for the petitioner was at pains to point out that insofar as the petitioner ? Union of India is concerned, they had by a letter dated 12/10/2007 requested the State Government to forward a proposal for cadre review to the Central Government. This communication was followed by reminders dated 17/1/2008, 20/6/2008, 19/9/2008, 27/11/2008, 11/12/2008, 27/3/2009, 26/6/2009, 20/8/2009 and 25/9/2009. He also pointed out that the Cabinet Secretariat also made a request to this effect vide their D.O. letter dated 1/12/2008. After so many reminders, upon receipt of the proposal from the State Government only on 6/10/2009, a meeting was immediately scheduled on 26/10/2009. The State of Maharashtra, Ministry of Home Affairs requested for postponement of the meeting in view of the on going Winter Session and accordingly the meeting came to be held on 15/1/2010. The Notification for cadre review was issued on 30/3/2010 and in the submission of the learned Counsel for the petitioner there is absolutely no delay on their part in carrying out cadre review.

5. Learned Counsel for the petitioner relied upon the decision of the Apex Court in the case of Union of India vs. Hemraj Singh Chauhan, 2010 (4) SCC 290. In his submission, Rule 4 of the Cadre Rules provide that the Central Government shall ordinarily at the interval of every five years, reexamine the strength and composition of each such cadre in consultation with the State Government. In his submission, the word "ordinarily" means it does not promote a cast iron rule, it is flexible. According to him, it excludes something which is extraordinary or special. He further pointed out that the Apex Court accepted the arguments of the appellant/Union of India therein that Rule 4(2) cannot be construed to have any retrospective operation and it will operate prospectively. In his submission the petitioner has taken all possible steps to carry out cadre review and it is on

account of receipt of the belated proposal from State Government that the exercise could not be done within the stipulated five years. According to him, by not undertaking the exercise within the stipulated time frame, it cannot be said that there was any failure on the part of the petitioner in carrying out timely exercise of cadre review.

6. Learned Counsel for the respondent No.5 ? State of Maharashtra placing reliance on the affidavit filed on their behalf before the Tribunal contended that though as per the statutory rules, the next cadre review was due in the year 2008, a proposal was received from the office of the Director General of Police only on 11/12/2008 and it is after the incident of 26/11/2008 that it became necessary to review the strength and composition of police force. Learned Counsel pointed out various dates on which the proposal was forwarded and how the same was processed and in his submission, the review which was to take place in the year 2008, has taken place in the year 2010. There was no intentional delay in doing so. It was submitted that the cadre review had to be considered in the light of the incident of 26/11/2008.

7. Learned Counsel for the respondent Nos. 1 to 3 submits that the respondent Nos.1 to 3 were directly recruited in the Maharashtra Police Service in the year 1992. At the time of filing of the O.A., they were working as Deputy Commissioner of Police / Superintendent of Police with effect from the year 2003. The respondent Nos.1 to 3 contended that as a result of non conducting of cadre review on time, as envisaged by the provisions of Indian Police Service (Cadre) Rules, 1954 (hereinafter referred to as "Cadre Rules") for short), great prejudice is caused to the respondent Nos.1 to 3 in the matter of their promotion. The last cadre review was conducted in the year 2003 and was notified on 5/11/2003. In the submission of the respondent Nos.1 to 3, the next cadre review should have been conducted well in time, within five years and should have been notified in November, 2008. It is the contention of the learned Counsel for the respondent Nos.1 to 3 that contrary to the provisions of the Rules, the petitioner and the respondent No.5 have conducted belated cadre review at their will and have notified the amended position on 30/3/2010 enhancing the cadre posts from 236 to 302. Learned Counsel for the respondent Nos.1 to 3 relied upon the provisions of Rule 4(1) and 4(2) of the Cadre Rules.

8. Learned Counsel for the respondent Nos.1 to 3 further submits that considerable prejudice would be caused to them as the delayed action on the part of the petitioners would directly affect their seniority in IPS. According to him, the nonissuance of notification for cadre review within time in violation of the Cadre Rules is pushing back their seniority in the IPS from 2004 to 2005.

9. Considered the submissions advanced by learned Counsel for the parties. It is not in dispute that the cadre review of IPS (Maharashtra Cadre) was due in November, 2008 and that the State Government was, vide letter dated 12/10/2007, requested to forward a proposal for cadre review to the Central Government. After several reminders, the State of Maharashtra forwarded the

proposal only on 6/10/2009. Notification dated 30/3/2010 was issued by the petitioner reviewing the strength and composition of the Maharashtra Cadre of IPS. The learned Tribunal for the reasons recorded in the impugned order was pleased to allow the O.A. The Tribunal has thereby directed the respondent No.5 to consider the question of promotion of respondent Nos.1 to 3 to IPS on the basis of redetermined strength of the cadre, treating the same to be in the year 2008, and, if on such a reconsideration, relief would be available to any of the respondent Nos.1 to 3 for promotion to IPS on the basis of quota available to them in the cadre, the same may be given with effect from 1/1/2009 with notional consequential benefits of pay fixation, seniority, etc.

10. Rule 4(1) and 4(2) of the Cadre Rules reads thus : " 4. Strength of Cadres :4(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.

4(2) The Central Government shall, ordinarily at intervals of every 5 years, reexamine 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." In the submission of the learned Counsel for the petitioner, Rule 4 provides that the cadre review has to be ordinarily at intervals of every 5 years. In his submission if there is good justification for not carrying out the cadre review till this period, the word "ordinarily" cannot be regarded as mandatory. We find that the legitimate expectation of the respondent Nos.1 to 3 for being considered for promotion has been defeated on account of the delay in cadre review by the acts of the Government and if not the Central Government, certainly unreasonable inaction on the part of the State of Maharashtra. This belated action stood in the way of the respondent Nos.1 to 3's chances of promotion for being fairly considered when it is due for such consideration and this unjustifiable delay has made them ineligible for such consideration.

11. We may quote para 44 and 49 of the decision of the Apex Court in the case of Union of India v/s. Hemraj Singh Chauhan (supra), which reads thus : " 44. Concurring with the aforesaid interpretative exercise, we hold that the statutory duty which is cast on the State Government and the Central government to undertake the cadre review exercise every five years in ordinarily mandatory subject to exceptions which may be justified in the facts of a given case. Surely, lethargy, inaction, an absence of a sense of responsibility cannot fall within category of just exceptions.

49. Therefore, this Court accepts the arguments of the learned Counsel for the Appellants that Rule 4 (2) cannot be construed to have any retrospective operation and it will operate prospectively. But in the facts and circumstances of the case, the court can, especially having regard to its power under Article 142 of

the Constitution, give suitable directions in order to mitigate the hardship and denial of legitimate rights of the employees. The Court is satisfied that in this case for the delayed exercise of statutory function the Government has not offered any plausible explanation. The Respondents cannot be made in any way responsible for the delay. In such a situation, as in the instant case, the directions given by the High Court cannot be said to be unreasonable. In any event this Court reiterates those very directions in exercise of its power under Article 142 of the Constitution of India subject to the only rider that in normal cases the provision of Rule 4 (2) of the said Cadre rules cannot be construed retrospectively."

12. No doubt, the Apex Court has accepted the arguments of the learned Counsel for the appellants that Rule 4 (2) cannot be construed to have any retrospective operation and it will operate prospectively. In this regard we may also usefully refer to para 47 and 48 of the decision of the Apex Court in *Union of India v/s. Hemraj Singh Chauhan* (supra), which reads thus :47. It was urged before this Court that the insertion of the word "ordinarily" will make a difference. Repelling the said contention, this Court held that the word "ordinarily" does not alter the underlying intendment of the provision. This Court made it clear that unless there is a very good reason for not doing so, the Selection Committee shall meet every year for making the selection. In doing so, the Court relied on its previous decision in *Syed Khalid Rizvi V. Union of India* ? 1993 Supp. (3) SCC 575. In that case the Court was considering Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955 which also contained the word "ordinarily". In that context the word "ordinarily" has been construed as : "..... since preparation of the select list is the foundation for promotion and its omission impinges upon the legitimate expectation of promotee officers for consideration of their claim for promotion as IPS officers, the preparation of the select list must be construed to be mandatory. The committee should, therefore, meet every year and prepare the select list and be reviewed and revised from time to time as exigencies demand." 48. The same logic applies in the case of cadre review exercise also."

13. We find that though the cadre review should have been completed on or before November, 2008, in the present case there was a failure on the part of the authorities in carrying out timely exercise of cadre review. The reason given by the State of Maharashtra about the incident of 26/11/2008 is clearly untenable as having regard to the statutory rules, the cadre review should have been completed before 5/11/2008. The Apex Court has clearly held that the statutory duty which is cast on the State Government and the Central government to undertake the cadre review exercise every five years is ordinarily mandatory subject to exceptions which may be justified in the facts of a given case. Their Lordships have further observed that the lethargy, inaction, an absence of a sense of responsibility cannot fall within category of just exceptions. In the facts of the present case, we find that the legitimate expectation of the respondent Nos.1 to 3 for being considered for promotion as a result of a delayed cadre

review has been defeated by the acts of the authorities and if not the Central Government, certainly unreasonable inaction on the part of the State of Maharashtra.

14. In our opinion, the delayed exercise at least on the part of the State Government cannot be justified within the meaning of "ordinarily" in the facts of this case. In our opinion, the Tribunal was, therefore, justified in coming to the conclusion that there was failure on the part of the petitioner and respondent No.5 in conducting timely exercise of cadre review. We, therefore, do not see any reason to interfere with the well reasoned order passed by the Tribunal in the exercise of our jurisdiction under Article 226 of the Constitution of India.

15. The present petition being devoid of any merits, is accordingly dismissed with no order as to costs.