

(1996) 09 SC CK 0139
In the Supreme Court Of India
Case No : Civil Appeal No. 12089 of 1996

Union of India

APPELLANT

Vs

Mohan Singh Rathore and another

RESPONDENT

Date of Decision : 02-09-1996

Acts Referred:

Police Service (Appointment by Promotion) Regulations, 1955 — Regulation 7(3), 9

Citation : (1996) 8 AD 10 : AIR 1997 SC 2328 : (1997) AIRSCW 2214 : (1996) 7 SCALE 177 : (1996) 10 SCC 469 : (1997) SCC(L&S) 113 : (1996) 5 SCR 419 Supp : (1997) 1 SLJ 231

Hon'ble Judges : K. Ramaswamy, J;G.B. Pattanaik, J

Bench : Division Bench

Advocate : Altaf Ahmad, Addl. Solicitor General, Hemant Sharma, P. Parmeshwaran, for the Appellant; Sushil Kumar Jain, A.P. Dhamija, M.K. Singh, Kusum Sharma and K.S. Bhati, for the Respondent

Final Decision : Disposed Of

Judgement

1. Leave granted.
2. We have heard learned counsel on both sides.
3. The respondent was appointed in the Rajasthan State Police Service. He was put in the select list on December 28, 1987. The Union Public Service Commission had approved it on February 2, 1988. He was due to retire on May 31, 1988 on attaining superannuation. His name along with eight other candidates, was included for allotment from the State quota to the Indian Police Service. The requirements of the Indian Police Service (Appointment by Promotion) Regulations, 1955 (for short, the "Promotion Regulation") envisage that the Union Public Service Commission, under Regulation 7, shall consider the list prepared by the Committee along with other documents received from the State Government and, unless it considers any change necessary, it shall approve the list. Sub-regulation (4) is relevant in this case which provides that the select list shall ordinarily be in force until its review and revision effected

under Sub-regulation (4) or (5) is approved under Sub-regulation (1) or, as the case may be, is finally approved under Sub-regulation (2). As per Regulation 7(3), the list as finally approved by the UPSC shall form the select list. Proviso thereto indicates thus :

Provided further that in the event of grave lapse in the conduct or performance of duties on the part of any member of the State Police Service included in the Select List, a special review of the select list may be made at a time at the instance of the State Government and the Commission may, if it so thinks fit, remove the name of such member of the State Police Service from the Select List.

4. Regulation 9 of the Promotion Regulations, deals with appointment of State Police Service officers to Indian Police Service. Sub-regulation (2) thereof reads as under :

It shall not ordinarily be necessary to consult the Commission before such appointments are made, unless during the period intervening between the inclusion of the name of a member of the State Police Service in the Select List and the date of the proposed appointment there occurs any deterioration in the work of the member of the State Police Service or there is any other ground which, in the opinion of the State Government or the Central Government, is such as to render him unsuitable for appointment to the service.

5. While making recommendation, the State Government is required to furnish in this regard the "no deterioration certificate" of the selected candidates as per the letter No. 11/4/73-AIS(1) dated May 22, 1973 of the Union of India, Administrative Reforms of the Department of Personnel which has been made part of the Promotion Regulations as decision No. 9 which reads as under :

Having regard to the provision contained in the proviso to the Sub-regulation (4) of Regulation 7 of IAS (Appointment by Promotion) Regulations, 1955, the State Government/Joint Cadre Authority, while making recommendations or the appointment of a member of State Civil Service to Indian Administrative Service, may forward a certificate on the following lines :

The State Government/the Joint Cadre Authority certifies that subsequent to the inclusion of the name of Shri...in the Select List, there has been no deterioration in his work as to render him unsuitable for appointment to the Indian Administrative Service nor has any lapse in his conduct or performance of duties in his part come to the notice of the State Government/the Joint Cadre Authority.

6. This requirement is mandatory for the reason that before appointment of the persons to the Indian Police Service, under the Promotion Regulations, the Union Government should receive the certificate from the concerned State Government or the Union Territory that there has been no deterioration in the service of the incumbent in the interregnums as it is mandatory to know the continued quality, integrity, honesty and efficiency of the concerned officer. The State Government had not sent any "no deterioration certification" in relation to the respondent

before the appointment notification dated October 4, 1988 in relation to others, came to be issued. Since it did not contain the name of the respondent, he could not be appointed. When he filed O.A. No. 793/92 in the Central Administrative Tribunal, Jaipur Bench, by order dated August 7, 1995 the Tribunal directed the appellant to appoint the respondent on par with his juniors. It is seen that the Tribunal does not appear to have had any knowledge of the operation of the provisions of Promotion Regulations. It treated them on par with general principles of service jurisprudence and directed, without referring to any of relevant rules, the appellant-Government to appoint him. Therefore, on principle of law the order of the Tribunal is obviously illegal. It is accordingly set aside.

7. However, the question is: what would be the relief that could be granted to the respondent. It is seen that the State Government did not forward the "no deterioration certificate" in relation to the respondent and after the retirement of the respondent the State Government had written a letter to the Union of India on February 21, 1989 stating therein that the respondent was entitled for appointment as he was "well deserving" candidate. Nothing had prevented the State Government to send the "no deterioration certificate" of the respondent along with certificates in relation to other candidates when he was due to retire. It is seen that they forwarded the select list on April 11, 1988 to the Government of India and the respondent was due to retire on May 31, 1988. When such was the incumbency nothing would have prevented the State Government from forwarding the letter. Consequently, the respondent had to lose the chance for being appointed to the IPS Cadre though he was found suitable and approved by the UPSC. Under these circumstances, we think that appropriate direction would be that the Union of India may include his name in the appointment notification dated October 4, 1988 as a select list candidate and give him the order of appointment letter. Consequently, the respondent would be entitled to all the retiral benefits on that basis.

8. The appeal is accordingly disposed of. No costs.