

(2002) 03 SC CK 0011

In the Supreme Court Of India

Case No : Civil Appeal 9926 of 1996

Union of India (UOI)

APPELLANT

Vs

R.S. Chopra and Others

RESPONDENT

Date of Decision : 20-03-2002

Acts Referred:

Police Service (Pay) Rules, 1954 — Rule 9

Citation : (2002) 6 ALT 29 : (2002) 94 FLR 385 : (2002) 1 JT 435 Supp

Hon'ble Judges : S. N. Phukan, J;B. N. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal by Union of India is directed against the order dated 9.8.1995 passed by the Central Administrative Tribunal, Bangalore Bench, Bangalore.

2. In the State of Karnataka sanctioned strength for the post in the cadre of director general of police of the Indian police service in the pay scale of Rs. 7600-8000 was only one. In terms of Sub-rule (7) of Rule 9 of the Indian Police Service (Pay) Rules, 1954 (for short 'the Rules') the state government could create one ex-cadre post in addition to the regular post of the director general of police. In other words the state government could have created one cadre post in the cadre of director general of police in addition to one regular post in the cadre. As against the above legal position the State of Karnataka created five posts of ex cadre and five officers were promoted including the respondent No. 1 herein who was appointed as the director general of police and posted as commandant general, home guards and ex-officio director and director of fire-force, Bangalore with effect from 31.10.1991. The respondent No. 1 was not given the pay according to the scale of the post, namely, Rs. 7600-8000. After his retirement on superannuation on 31.12.1993, respondent No. 1, filed the original application before the Central Administrative Tribunal, Bangalore Bench, Bangalore praying for regularisation and for getting the benefit of the higher pay of the post of DGP for the period he had worked in that capacity. The tribunal

directed the Government of India to take a decision with regard to grant of approval to the creation of the extra post or posts for regularising of the appointment of respondent No. 1 herein within six months. Being aggrieved by the said order of the tribunal, the Union of India has filed this appeal.

3. We have heard Mr. Altaf Ahmad, learned additional solicitor general and Mr. Sanjay R. Hegde, learned counsel for the State of Karnataka.

4. Respondent No. 1 was served but he is unrepresented before us.

5. Mr. Altaf Ahmad, learned additional solicitor general has drawn our attention to the Sub-rule (7) of Rule 9 of the rules, which is extracted below:

"9. (7) At no time the number of members of the service appointed to hold posts, other than cadre posts specified in Schedule III and referred to in Sub-rule (1) and Sub-rule (4), which carry a pay scale of Rs. 7300-7600 or Rs. 7600-8000 per month, as the case may be, and which reckoned against the state deputation reserve, shall, except with the prior approval of the central government, exceed the number of cadre posts in the pay scale of Rs. 7300-7600 or Rs. 7600-8000 per month, as the case may be, in a state cadre, or as the case may be is joint cadre."

6. On a plain reading of the abovesaid rule it is clear that no ex-cadre post can be created beyond the strength of cadre post. Admittedly, in the case in hand there was only one cadre post in the cadre of the director general of police and the state government could have created only one ex-cadre post. Therefore, we find force in the contention of Mr. Altaf Ahmad, learned additional solicitor general that creation of more than one ex cadre post by the state government was contrary to the sub rule (7) of Rule 9 of the rules. As the respondent No. 1 was appointed to a post which in the eye of law did not exist, we hold that he cannot claim the pay scale of the Director General of Police. Consequently, the impugned judgment is set aside and the appeal is allowed. No costs.