
(2000) 03 AP CK 0065

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22174 of 1998

Union Public Service Commission, New Delhi

APPELLANT

Vs

D. Vijay Kumar and others

RESPONDENT

Date of Decision : 31-03-2000

Acts Referred:

Police Service (Appointment by Promotion) Regulations, 1955 — Regulation 5(4)

Citation : (2000) 3 ALD 220 : (2000) 3 ALT 9

Hon'ble Judges : S. Ananda Reddy, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : Mr. B. Adinarayana Rao, SC for CG, for the Appellant; Mr. Nooty Ram Mohana Rao and Government Pleader for Services-II, for the Respondent

Judgement

Motilal B. Naik, J

1. Union Public Service Commission, represented by its Secretary, Dholpur House, New Delhi is the petitioner in this writ petition. Aggrieved by the order passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad in OA No. 1443 of 1997 dated 22-4-1998, the present writ petition is filed seeking a writ of certiorari calling for the records relating to the order dated 22-4-1998 passed in OA No. 1443 of 1997 and to quash the same.

2. Before we proceed to decide the issues raised in this writ petition, the genesis of the grievances of the first respondent as set out before the Central Administrative Tribunal, Hyderabad Bench in OA No. 1443 of 1997, is narrated as under:

The first respondent was an Emergency Commissioned Officer in the Army. After his release from the Army, he joined the Andhra Pradesh State Police Service as Deputy Superintendent of Police on 16-4-1977. He was assigned the seniority in the Deputy Superintendent of Police, Category-II with effect from 31-12-1964. He complained to the Central Administrative Tribunal, Hyderabad Bench in OA No.1443 of 1997 that his seniority in the Deputy Superintendent of Police,

Category-11 was finalised belatedly and when he was about to be considered for inclusion in the select list of IPS of 1991 Batch, some of his juniors who were aspiring for inclusion in the select list had approached the A.P. Administrative Tribunal in OAs. 3636 to 3638 of 1991. While so, since his case was not considered for inclusion in the select list for 1982 onwards, he was constrained to move the Central Administrative Tribunal in OA No.277 of 1991. The said OA was decided on 6-11-1992 with the following directions:

"Following the order dated 10-8-1992 in OA 628 of 1991 and suitably modifying, we direct the respondents to place the case of Sri Vijay Kumar also before the same review committee before which the cases of applicants in OA 628 of 1992 i.e.. S/Shri K.L. Reddy and A.R. Vaman Rao are placed fore review of the case of Sri Vijay Kumar for the years 1982 to 1990-91 and place the findings in a sealed cover. Further action will be subject to-

(a) the outcome in OAs. 3636 to 3638 of 1991 pending before the APAT as pointed out by the Chief Secretary of A.P. in his letter dated 10-3-1992;

(b) the applicant's eligibility for consideration in the light of the order dated 17-3-1991 passed by the APAT and extracted above."

3. Before the Central Administrative Tribunal, in his OA No.1443 of 1997, the first respondent stated that in pursuance of the directions of the Central Administrative Tribunal dated 19-6-1997 in OA No.1140 of 1994, the third respondent opened the sealed cover and the first respondent was informed that he was included in the select list of 1991 at Sl. No.1. However, the first respondent complained to the Tribunal that the third respondent did not inform him as to whether his case was considered for inclusion in the select list for the years 1982 to 1989-90. It is in this background, the first respondent brought to the notice of the Tribunal that his juniors, namely, Sri Padma Rao, Sri M. Rajagopal, Sri S. Subbarayudu and Sri V. Tirupathi Reddy approached the High Court of Andhra Pradesh by filing Writ Petition No.752 of 1983, which was later transferred to the Central Administrative Tribunal and was renumbered as TA No.49I of 1986. The said TA came to be disposed of by the Tribunal on 12-11-1987 with the following directions:

"Thus it is clear that the State Government had not placed any valid duly published seniority list before the Selection Committee. Whether list is placed is an ad hoc unpublished list. A selection made on the basis of such a list cannot be valid. We accordingly direct that the select list for the years 1983 and 1985 to the IPS (meeting held in December, 1982 and December 1984) should be reviewed on the basis of a valid seniority list prepared by the State Government in accordance with law. The review shall be completed by the Selection Committee within six months from the date of receipt of this order."

4. Accordingly, the first respondent stated before the Central Administrative Tribunal that the third respondent prepared the seniority list of Deputy Superintendent of Police category-II and in the said list, his name is shown at Sl.

No. 12 above Sri P. V. V. Satyanarayana and below Sri K.L. Reddy. The first respondent further complained to the Tribunal that as per the direction of the Tribunal in TA No.496 of 1986, the third respondent should have reviewed the select list for the years 1983 and 1985 only but when the third respondent noticed the illegality that the select list of 1983 was also prepared without any approved final seniority list among the Deputy Superintendent of Police, Category-II Officers, he voluntarily placed the proposals before the Review Committee recommending the select list of 1983 also. According to the first respondent, the third respondent had not recommended his case to the DPC, with the result, his case was not considered for the years 1982, 1983 and 1984. Thus, the first respondent brought to the notice of the Central Administrative Tribunal that had his case been considered by the DPC, he would have been included in the select list of 1983 immediately below Sri K.L. Reddy and above Sri P.V.V. Satyanarayana and could have been appointed to IPS on 17-10-1984. The first respondent, therefore, submitted that non-consideration of his case for inclusion in the select list of 1983 is illegal and arbitrary.

5. Apart from bringing to the notice of the Tribunal about the procedural irregularities committed by the third respondent, the first respondent also brought to the notice of the Tribunal the other facts relating to his holding the post of Commandant at the relevant point of time and the said post of Commandant being equal to the rank of SP, which post can be manned by Cadre and non-Cadre officers also. According to the first respondent, as he was carrying higher responsibility, in view of the ratio laid down by the Supreme Court in Shiv Kumar Sharma v. Union of India, Civil Appeal No. 10396 of 1995, he is entitled for higher gradation than the gradation given in his ACRs. The first respondent further complained that the proposal laid by the third respondent before the select committee was on account of misunderstanding of the said proposal by the select review committee and the committee considered his case only for the select list of 1991. He further pleaded that had the select committee been appraised of the actual position that he was senior to Sri P.V.V. Satyanarayana in the State Police Service, he would have been included in the same list above the said Satyanarayana.

6. It is in this background, the first respondent presented OA No. 1443 of 1997 before the Central Administrative Tribunal, Hyderabad Bench to declare the action of the respondents in not considering his case properly for inclusion in the list of 1982, 1983 and 1984 by the Select Review done on 16th/17th February, 1993 and on 6th June, 1994, as illegal, arbitrary and sought a further direction to the respondents to consider his case for inclusion in the select list, if included in any of the said select lists from which his juniors were appointed to the IPS from the said select list to place him above his junior Sri P.V.V. Satyanarayana with all consequential benefits, such as year of allotment as 1978, promotions to the rank of DIG, IGP with effect from the date when his junior was promoted.

7. The writ petitioner who is the first respondent in the said OA filed a detailed

counter analysing the All India Services Act, 1951 and the Indian Police Service (Appointment by Promotion) Regulations, 1955 detailing constitution of the DPC etc. In the counter, the writ petitioner pleaded before the Central Administrative Tribunal that the case of the first respondent was thoroughly considered by the DPC for the select list of 1982 to 1991 and that during the years 1982 to 1989-90 the first respondent was graded as "good" and that no officer who was graded "good" was included in the panel and that during those years, only-officers who were graded "very good" and "outstanding" were considered for inclusion in the panel. It is further indicated in the counter by the writ petitioner before the Tribunal that on 22-5-1997 the first respondent submitted a representation stating that OAs. 3636 to 3638 of 1991 and OA No.1672 of 1992 were dismissed as withdrawn and requested to open the sealed cover and that the Tribunal on 19-6-1997 directed the third respondent to open the sealed cover containing the findings of the selection committee in respect of the first respondent and to announce the result in consultation with it. In pursuance of its direction, the third respondent opened the sealed cover and sent their observations on the recommendations of the Review Selection Committee vide their letter dated 24-7-1977 and the observations of the second respondent and the recommendations of the Review Selection Committee which met on 15th and 16th February, 1993 were placed before the writ petitioner for consideration and the approval of the writ petitioner was conveyed to the Central Government and the State Government on 12-8-1997, and that subsequently on the basis of the inclusion of the name of the first respondent in the select list of 1991, he was appointed to the IPS with effect from 28-1-1992 vide Government of India's Notification dated 26th September, 1997. It was also pleaded by the writ petitioner in the counter before the Tribunal below that though the DPC meeting held on 4th and 5th July, 1994 the Review Selection lit for 1982, 1983 and 1984 relating to the seniority of the first respondent was not finalised and the matter regarding finalisation of inter sc seniority of the Deputy Superintendent of Police, Category-11 Officers was pending before the A.P. Administrative Tribunal and the third respondent had to maintain the seniority list of State Police Officers and prepare the eligibility list for consideration of the Selection Committee. It is further indicated in the counter that in view of the gradings earned by the first respondent during the meeting of the DPC held on 15th and 16th February, 1993, his name could not have been included in the select list for the years 1982, 1983 and 1984 as during those years, he was only graded as "good". It is further pleaded that the contention of the first respondent that he was eligible for higher categorisation in view of the decision of the Supreme Court in S.K. Sharma v. Union of India, Civil Appeal No.10396 of 1995, is not correct as the selections of the State Police Officers for promotion to the IPS are to be made in accordance with the Indian Police Service (Appointment by Promotion) Regulations, 1955 which have been framed under Rule 9(1) of the IPS Recruitment Rules, 1954 and that there is no provision in the Promotion Regulations forgiving extra weightage to those who were officiating in the higher posts. It is also submitted by the writ petitioner before the Tribunal that the

decision of the Supreme Court in Civil Appeal No.10396 of 1995 is not a decision having universal application under Article 141 of the Constitution of India and prayed for dismissal of the OA No. 1443 of 1997 filed by the first respondent.

8. The Central Administrative Tribunal, Hyderabad Bench, Hyderabad, on a consideration of the rival contentions and following the formula evolved by the Full Bench of the Central Administrative Tribunal in S.S. Sambhus and others v. The Union of India, OA Nos.306 to 308 of 1990 dated 29-10-1991, as affirmed by the Supreme Court in Civil Appeal No.10396 of 1995 dated 21-1-1997, by its order dated 22-4-1998 directed the writ petitioner herein who is the first respondent in the said OA to reconsider the case of the first respondent herein in the light of the judgment of the Full Bench of the Central Administrative Tribunal, Hyderabad Bench in S.S. Sambhus case (supra), as approved by the Supreme Court so that a proper assessment of the service of the first respondent can be made by the writ petitioner herein. This order of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad is assailed before us in this writ petition.

9. Sri B. Adinarayana Rao, learned senior Central Government Standing Counsel appearing on behalf of the writ petitioner took us to various provisions relating to the Selections to IPS cadre from the lower categories and the procedure to be followed by the Select Committee for recommending the cases of such of those officers who are entitled to be enlisted in the IPS category. Learned Counsel contended that the Tribunal below, placing reliance on a Full Bench decision of the Central Administrative Tribunal, Hyderabad Bench in S.S. Sambhus's case (supra), has erroneously directed the writ petitioner to reconsider the case of the first respondent and make proper assessment of his service. Learned Counsel further submitted that the finding of the Tribunal below in the impugned order that the Supreme Court in Civil Appeal No.10396 of 1995 has affirmed the Full Bench decision of the Tribunal in S.S. Sambhus's case (supra), is incorrect inasmuch as the decision of the Supreme Court in Civil, Appeal No.10396 of 1995 cannot be read as to having general application and it is only confined to the facts of that case. Learned Counsel submitted that if the impugned order of the Tribunal below is implemented, it will upset the seniority of many an officer. Counsel, therefore, submitted that the impugned order of the Tribunal below cannot be sustained and it is liable to be quashed.

10. On behalf of the first respondent. Sri Nuty Rama Mohana Rao, learned Counsel, submitted that the Supreme Court while approving the formula evolved by the Full Bench of the Central Administrative Tribunal. "Hyderabad Bench, Hyderabad in S.S. Sambhus's case (supra), has taken note of the earlier view taken by the Supreme Court in Prem Shankar Gupta v. Union of India and another, SLP (Civil) Nos.5259-60 of 1991 and that the law laid down by the Supreme Court in Civil Appeal No.10396 of 1995 dated 21-1-1997 has universal application and is binding under Article 141 of the Constitution of India. According to the learned Counsel, the first respondent at the relevant point of time, has worked as Additional Commandant from 6-10-1980 and as

Commandant from 12-5-1983 and that these posts are higher than the post of Deputy Superintendent Police and that therefore, the DPC should have given higher categorisation to the first respondent in view of the Full Bench decision of the Central Administrative Tribunal, Hyderabad Bench in S.S. Sambhus's case (supra), as approved by the Supreme Court in Civil Appeal No.10396 of 1995. According to the Counsel for the first respondent, in terms of the formula evolved by the Full Bench of the Central Administrative Tribunal in S.S. Sambhus's case (supra), the first respondent is entitled to be graded as "very good" instead of "good" in view of the fact of his holding the higher posts during the relevant point of time and if the gradation of "very good" is assigned to him he could have been appointed to IPS on 17-10-1984 and he would have been placed immediately below Sri K.L Reddy and above Sri P.V.V. Satyanarayana. Counsel, therefore, submitted that on a consideration of the facts and in the light of the Full Bench decision of the Central Administrative Tribunal in S.S. Sambhus's case (supra), as approved by the Supreme Court in Civil Appeal No.10396 of 1995, the Tribunal below was justified in directing the writ petitioner to reconsider the case of the first respondent so that a proper assessment of the service rendered by him could be made and no interference is called for in the well considered order of the Tribunal below.

11. The point for consideration is whether the Central Administrative Tribunal, Hyderabad Bench, Hyderabad was justified in directing the writ petitioner, through the impugned order dated 22-4-1998 in OA No. 1443 of 1997, to reconsider the case of the first respondent and make proper assessment of his service in terms of the formula evolved by the Full Bench decision of the Central Administrative Tribunal, Hyderabad Bench in S.S. Sambhus's case (supra)?

12. As seen from the submissions made by both the learned Counsel appearing on behalf of the writ petitioner and the first respondent and in the light of the counters and other materials placed before us, it is not disputed that the first respondent was working as Additional Commandant from 6-10-1980 and as Commandant from 12-5-1983 and that these posts are higher than the post of Deputy Superintendent of Police. It is further revealed from the counter filed on behalf of the writ petitioner before the Tribunal below that the case of the first respondent was considered by the DPC for the Select List of 1982 to 1991 and that during the years 1982 to 1989-90, the first respondent was graded "good" and that no officer who was graded "good" was included in the panel and only the officers who were graded as "very good" and "outstanding" were included in the panel. It is also noticed by us that while assigning gradation to the first respondent, the Select Committee failed to take into account that at the relevant point of time the first respondent was holding the posts of Additional Commandant and Commandant which posts were higher than the Deputy Superintendent of Police.

13. The Full Bench of the Central Administrative Tribunal, Hyderabad Bench in S.S. Sambhus and others v. Union of India and others OA Nos.306-308 of 1990

dated 29-10-1991, was considering the question of comparative assessment and extra weightage to be given for working in higher posts on ad hoc basis. In that case, the Full Bench of the CAT, to meet the ends of justice in the circumstances of the case, felt that the period during which an applicant shouldered the higher responsibility of the higher Class-1 post of ASW/SW, his gradation as SA should be treated as one level higher than the grading awarded to him as ASW as per the ACRs. for that period. The Tribunal further clarified that if the ACR of an employee as ASW reflects "good", it should be taken as "very good" and if it is "very good", then it should be treated as "outstanding". In this manner, such persons are placed on equal footing for the purpose of assessment of comparative merits. This formula evolved by the Full Bench of the Central Administrative Tribunal, Hyderabad Bench fell for consideration before the Supreme Court in Prem Shankar Gupta and another v. Union of India and another, SLP (Civil) No.5259-60 of 1991 with SLP (C) Nos.12559-61 of 1993 dated 17-11-1994. While considering the said formula, the Supreme Court held thus:

"We are satisfied that the formula evolved by the Full Bench of the Central Administrative Tribunal is the proper and just one having regard to the facts and circumstances of the case and the practicalities of the situation. We do not think that any interference is called for with the said formula."

In SLP (C) Nos.5259-60 of 1991, the Supreme Court further observed thus:

"In these cases it is true the question which was decided by the Full Bench of the Central Administrative Tribunal was not specifically raised before the Tribunal. But the fact remains that the two petitioners herein were working in the higher grade since 1983 and 1984 whereas respondents who have been selected regularly, ignoring the petitioners, were working in the lower post. Having regard to the practice followed by the DPC it must be presumed that in this case too, the DPC considered the ACRs. of the petitioners in the higher category and ACRs. of the respondents in the lower category. In the circumstances it is but just and proper that there should be a reconsideration of the case of the petitioners as well as of the respondents by the DPC for promotion to higher post in accordance with the formula devised by the Full Bench of the Central Administrative Tribunal referred to in SLP (C) Nos.12559-61 of 1992. These special leave petitions are accordingly allowed in part in the above terms."

From a reading of the above decision of the Supreme Court, we cannot say that the Supreme Court has not approved the formula evolved by the Full Bench of the Central Administrative Tribunal, Hyderabad Bench in S.S. Sambhus "s case (supra). That apart, the decision of the Supreme Court in Shiv Kumar Sharma and another v. Union of India and others, Civil Appeal No.10396 of 1995 dated 21-1-1997, makes it abundantly clear that the formula evolved by the Full Bench of the Central Administrative Tribunal in S.S. Sambhus"s case (supra), has been accepted with approval. The Supreme Court in Shiv Kumar Sharma"s case (supra), while referring to its earlier decision in Prem Shankar Gupta and another

v. Union of India, SLP (C) Nos.5259-60 of 1991 with SLP (C) No. 14447 of 1992 and allied matters, observed thus:

""We do not propose to express any opinion on the merit of the matter, but we see no difficulty in accepting the submission of Counsel that the UPSC should be directed to reconsider their cases in the light of the judgment of the Full Bench of the Central Administrative Tribunal approved by this Court so that a proper assessment can be made by the UPSC."

Thus, holding so, the Supreme Court allowed the appeal and directed the UPSC to reconsider the cases of the petitioner therein in the light of the Full Bench Decision of the Central Administrative Tribunal, Hyderabad as approved by the Supreme Court.

14. We have no doubt in our minds to say that the Supreme Court in Prem Kumar Sharma's case (supra), has approved the formula evolved by the Full Bench of the Central Administrative Tribunal, Hyderabad Bench in S.S. Sambhus's case (supra). We hold that the decision of the Supreme Court in Shiv Kumar Sharma's case, Civil Appeal No.10396 of 1995 dated 21-1-1997, has general application and is binding under Article 141 of the Constitution of India. In view of the above discussion, it is difficult for us to appreciate the contentions raised on behalf of the writ petitioner that the law laid down by the Supreme Court in the above two cases are confined only to the facts of those cases and has no general application. We also reject the other submission advanced on behalf of the writ petitioner that if the formula evolved in S.S. Sambhus's case (supra), is given effect to, it will nullify the Regulation 5(4) of the Indian Police Service (Appointment by Promotion) Regulations, 1955 which lays down the procedure for assessment of the relative merits of officers considered for promotion.

15. Having regard to our above discussion and in the light of the pronouncements of the Supreme Court in the two decisions (supra), we are inclined to hold that the Tribunal below is justified in directing the writ petitioner, through the impugned order dated 22-4-1998 in OA No. 1443 of 1997, to reconsider the case of the first respondent and make proper assessment of his service in terms of the formula evolved by the Full Bench decision of the Tribunal in S.S. Sambhus's case (supra).

16. For the above reasons, we see no merits in the writ petition and we accordingly dismiss the same.