

(2000) 03 KL CK 0068
In the High Court Of Kerala
Case No : O.P. No. 19185 of 1999

Yousuf Kunju

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-03-2000

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14

Citation : (2000) 1 KLJ 664

Hon'ble Judges : K.S. Radhakrishnan, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : K. Sudhakaran, Vakkom N. Vijayan and R.K. Venu Nayar, for the Appellant; K. Ramakumar (SCGSC), P.V.Mohanand and C.T.Ravikumar (Govt. Pleader), for the Respondent

Final Decision : Dismissed

Judgement

Radhakrishnan, J.—Petitioner was the applicant in O.A. No. 1585 of 1997 before the Central Administrative Tribunal, Ernakulam Bench, hereinafter called the "Tribunal". Tribunal rejected the prayer of the petitioner to declare that respondents 5 to 8 are not entitled to seniority and rank over the petitioner for the purpose of selection and appointment to Indian Police Service. A combined provisional seniority list of officers of the three wings (General Executive, AP Bn and AR) who had completed 8 years of service and the rank of Dy. Superintendent of Police/Assistant CMTs as on 31-3-1997 was published. Petitioner figured as Sl. No. 15 and date of assumption of charge as Dy.SP/equal post was notified as 14-9-1984 in the list. Sixth respondent figured as Sl. No. 59 and the date of assumption of charge as Dy.Sp/equal post i.e., Assistant Commandant was notified as 27-7-1988. Objections were called for against the list. Sixth respondent and others filed, their objections. Sixth respondent in his objection filed on 8-10-1997 stated that he was promoted as Assistant Commandant, equivalent post of Deputy Superintendent of Police, with effect from 8-3-1983 and that he had completed the probation on 24-9-1987 and that

he was confirmed as Assistant Commandant with effect from 24-9-1987 and his service as Assistant Commandant was regularised with effect from 8-3-1983 vide order G.O.(Rt) No. 454/93/Home dated 27-1-1993. He therefore wanted fixation of his seniority in the list from the date of regularisation of service as Assistant Commandant from 8-3-1983.

2. Sixth respondent and one S.Gopinath who were included in the select list of Reserve Inspector of Police (C.I.) in 1976 were appointed in November, 1976. Their appointments were later regularised. By proceeding No. 929/92 dated 12-10-1992, sixth respondent and Gopinath were declared to have satisfactorily completed their probation in the cadre of Reserve Inspector of Police with effect from 10-12-1978. By G.O.(Rt.) No. 453/93/Home dated 27-1-1993, sixth respondent and Gopinath were regularised as Assistant Commandant with effect from 8-3-1983 in which sixth respondent's rank was 7 and that of Gopinath was 8. For selection to Indian Police Service for the year 1995-96 sixth respondent was not considered. However Gopinath, who was regularised along with sixth respondent with effect 8-3-1983 was selected to Indian Police Service for the year 1995-96. In the case of Gopinath, in fact, an objection was raised at that time that his name should not be sent up for consideration of IPS since he did not have eight years of regular service as Assistant Commandant. Gopinath then filed O.P. No. 19644 of 1996 for a direction to the authorities to include his name also for selection to the Indian Police Service treating his service in the cadre of Assistant Commandant from 8-3-1983 as qualifying service. Reference was also made to the case of one M.T. Philip who had filed O.P. No. 14317 of 1996 before this court claiming the benefit of notional date of promotion as Assistant Commandant, which was allowed. This court accordingly accepted the prayer of Gopinath also in the light of the above mentioned judgment and passed an interim order on 20-12-1996 directing the authorities to consider the name of Gopinath also for selection to Indian Police Service treating his service in the cadre of Assistant Commandant with effect from 8-3-1983 as regular qualified service. Claim of Gopinath was accordingly considered for selection to IPS and was selected. Writ Petition filed by Gopinath was ultimately allowed by this court on 31-3-1998.

3. As already pointed out, objections raised against Ext.PI by the petitioner, sixth respondent, one Janardhanan Nair and H. Bonnet Motha etc. were considered by the Government. The main objection was with regard to counting of notional service of officers for placement in the combined seniority list for appointment to Indian Police Service. Rejecting the objections, Government stated in their letter No. 70895/A2/97/Home dated 10-11-1997 as follows:

Government have examined your contentions in detail. Seniority of officers in different wings such as AP/AR/General Executive, etc. is at present maintained separately. The Hon. High Court in their order dated 30-10-1996 in O.P. No. 14317 of 1996 filed by Sri. M.T.Philip has declared that the petitioner was entitled to get the benefit of the promotion as Assistant Commandant with effect

from 6-10-1976 and Deputy Commandant with effect, from 18-10-81 for purpose of consideration of appointment to IPS. Thus in the case of Sri. Philip the notional service from the above date was taken into account for placing him before the IPS selection committee. Government have since reexamined the matter as a general issue. Notional promotion is allowed to an officer to rectify a wrong or an injustice done to him. His seniority in the particular grade is determined with reference to the date of such notional appointment to that particular grade. This notional service also counted as duty even for probation in that post. Further promotions are allowed based on the date of notional appointment. It is the seniority under the State rule which is relevant for placement of officers before the IPS Selection Committee and different yardstick cannot be adopted for this purpose. Notional service will have to be treated as continuous service for purposes of seniority, fixation of pay and promotion as otherwise it will result in serious injustice to the officer. Thus the position is that the State Police Officer have to be placed before the IPS Selection Committee in accordance with their seniority position as maintained in the State service irrespective of whether the service is notional or not. In the circumstances the request contained in the representation is untenable and is rejected.

4. The representation of the petitioner was considered by the government and petitioner was served with an order dated 25-11-1997. The Government in the order stated that the question as to whether notional service could be taken into consideration for selection to IPS was considered by the Government as a general issue and it was decided to count notional service also for reckoning seniority for placement for IPS. The principle laid down by this court in O.P. No. 14317 of 1996 was also referred to. Accordingly the name of the petitioner, sixth respondent and certain others were sent to the Union of India for consideration for selection to the Indian Police Service.

5. Petitioner, aggrieved by the above mentioned order, approached the Tribunal challenging the list prepared by the State Government and wanted to maintain the provisional seniority list of State Police Officers for consideration of IPS. The Government and the contesting respondents took up the stand that Tribunal has no jurisdiction to decide the inter-se seniority of State Police Service Officers. It was stated in accordance with the list forwarded, Selection Committee considered and finalised the select list for IPS for the year 1996-97 and the same was finally approved by the Union Public Service Commission. Sixth respondent was placed second in the select list and the petitioner did not find a place in the list. Tribunal considered all the facts and circumstances of the case and rejected the application submitted by the petitioner.

6. Senior counsel appearing for the petitioner, Sri. K. Sudhakaran, contended that the promotion to the cadre of Indian Police Service and the denial of promotion by the selection committee are matters coming within the jurisdiction of the Central Administrative Tribunal, and that the Tribunal committed an error in not considering the case of the petitioner. Counsel also challenged the list sent

by the State Government to the Union of India for consideration for IPS. According to him notional promotion given to contesting respondents, especially sixth respondent, was against law. Counsel referred to the decision of the Supreme Court in K. Madhavan and Another Vs. Union of India (UOI) and Others, and contended that notional appointment or promotion to a post should be given only sparingly and on sound reasoning and foundation. Counsel also made reference to the decision of the Apex Court in S.K. Saha v. Prem Prakash Agarwal, (1994) 1 SCC 432 and contended that notional seniority from a retrospective date would affect the interests of those who have already entered service and therefore the same is illegal.

7. Counsel appearing for the sixth respondent, Shri P.V. Mohanan, and learned Government Pleader submitted that the State Government was justified in taking a general decision in the light of the judgment of this court in O.P. No. 14317 of 1996 and O.P. No. 19644 of 1996. The appointment to the Indian Police Service is regulated by IPS (Appointment by Promotion) Regulations. According to Regulations, officers are to be placed before the IPS selection committee in the order of their seniority. Eligible Officers are to be considered by the committee in accordance with seniority position as maintained in the State service. As per the Regulations, selection committee has to meet every year and prepare a seniority list of persons as against the vacancies arising in the promotion quota. Regulation 5(2) reads as follows:

The committee shall consider for inclusion in the said list, the cases of members of the State Police Service in the order of seniority in that service of a number which is equal to three times the number referred to in sub-regulation (1).

Regulation 5(4) and (5) deal with classification which read as follows:

(4) The Selection Committee shall classify the eligible officers as "outstanding", "very good", "Good" or "unfit" as the case may be on an overall relative assessment of their service records.

(5) The list shall be prepared by including the required number of names, first from amongst the officers finally classified as "Outstanding" then from amongst those similarly classified as "Very good", and thereafter from amongst those similarly classified as "Good" and the order of names inters within each category shall be in the order of their seniority in the State Police Service.

Provided that the name of any officer so included in the list shall be treated as provisional, if the State Government withholds the integrity certificate in respect of such officer Or any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Government.

State Government, as we have already pointed out, sent a seniority list of eligible officers as on 1-4-1996 to the Selection Committee of IPS In which petitioner was Sl. No. 16 and sixth respondent was Sl. No. 2. A combined seniority list of State Police Service Officers is maintained as per Rule 27 of the

Kerala State and Subordinate Service Rules. The State Government finalized the seniority list after considering the objections filed by the petitioner and contesting respondents and resolved vide proceedings dated 10-11-1997 and 25-11-1997 to reckon the notional service as qualifying service for consideration for IPS. It was resolved to uniformly apply this principle to all future cases as well. Following the above mentioned principle, the State Government prepared the list for selection to IPS. The Tribunal repelled the challenge against the list sent by the State Government on the ground that it has no jurisdiction to consider the validity or otherwise of the list prepared by the State Government. We are of the view that the Tribunal is right in its conclusion that it has no jurisdiction under Sec. 14 of the Administrative Tribunals Act, 1985 to go into the validity or otherwise of the select list prepared for State Police Officers.

8. We notice that the State Government is taking a consistent stand in the light of the judgment of this court in O.P. No. 14317 of 1996, and 19644 of 1996. Government of Kerala, it may be noted, vide Ext.R6(f) dated 27-1-1993 had regularized the service of the sixth respondent as Assistant Commandant with effect from 8-3-1983 and that his probation was declared to be satisfactorily completed from the above mentioned date. We have already pointed out, on the basis of seniority list sent by the State Government the Union of India constituted a selection committee as per Indian Police Service (Appointment by Promotion) Regulations, 1955, and on an overall relative assessment and service records, classified the officers as "Outstanding", "Very Good", "Good" and "Unfit".

9. When the matter came up for hearing, we called for the records relating to assessment made by the Selection Committee. We find from the list that sixth respondent was arrayed as second in the list, and petitioner did not figure in the list at all. The list was published by the Union of India in exercise of its powers under sub-regulation (3) of Regulation 7 of IPS (Appointment by Promotion) Regulations, 1955. The list was already approved by the Union Public Service Commission on 22-12-1997. The President of India then issued a notification dated 8-2-1998 in exercise of the powers conferred under sub-regulation (1) of Regulation 9 of the IPS (Appointment by Promotion) Regulations, 1955 appointing the sixth respondent and others to the Indian Police Service. We do not find any challenge against those proceedings before the Tribunal or before this Court. We may also add the decisions cited by counsel for the petitioner are not applicable to the facts of this case since the sixth respondent's service as Assistant Commandant was already regularized with effect from 8-3-1983 and his probation was satisfactorily declared. Under the above mentioned circumstances, we do not find any reason to interfere with the order passed by the Tribunal. Writ Petition lacks merits and the same is dismissed.