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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 1610 OF 2012

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Judgment Delivered on 25.4.2012

ZAKAT FOUNDATION OF INDIA

... PETITIONER

Through :

Mr. N.K. Kaul, Sr. Advocate
with Mr. Ambar Qamaruddin,
Advocate. .

VERSUS

UNION OF INDIA & ORS

... RESPONDENTS

Through:

Mr. A.S. Chandhiok, ASG with
Mr. Saqib, Advocate for UOI
Mr. Naresh Kaushik, Advocate
with Ms. Aditi Gupta, Advocate
for UPSC.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, ACTING CHIEF JUSTICE:

1. The petitioner is a registered Trust and it is involved in the various charitable deeds and works. It has filed this public interest petition challenging the decision of the Government of India introducing the provision of Limited Competitive Examination (LCE) for recruitment of a

limited number of IPS Officers from amongst the existing police officials working under various State Governments. This is in addition to the direct recruitment method already in vogue. The contention of the petitioner is that this is arbitrary and unconstitutional and instead the Government should increase the intake of IPS through normal course of Civil Services Examination conducted by the Union Public Service Commission (UPSC). The main ground of challenge is that Ministry of Home Affairs and PMO have arbitrarily went ahead with the aforesaid method of recruitment even when it was severely criticized and it also received adverse comments not only from various States but even from UPSC as well as Ministry of Law, Govt. of India. It is thus argued that the aforesaid method of recruitment to IPS is without application of mind and is not conducive for the administrative health of the police department. The petitioner has stated in detail as to how the matter was processed and highlighted various kinds of reservations and apprehension expressed by the UPSC, Ministry of Law etc.

2. In order to appreciate the aforesaid contentions, we summoned the original record and have perused the same.

3. We find that proposal was mooted by the Ministry of Home Affairs for a Limited Competitive Examination to recruit IPS officers to meet the

immediate shortage of personnel. It was pointed out that as on 1.1.2010, there was 4013 posts in the direct recruitment quota of the IPS Cadre of which 3383 were in place, leaving a vacancy of 630. Since cadre review has also taken place, as a consequence thereof the total authorized strength was expected to go up from 4013 to 4730 leading to additional shortage of 717 officers. Taking into account the additions on account of cadre review, the total number of vacancies in the IPS cadre, as per the note was about 1350. This underlined the urgency to find the solution to the problem. The note also indicated that there was shortage of 268 IPS officers in the CPOs such as IB, CBI, CRPF, BSF etc.

4. Shortage of IPS officers has been a major cause of concern for the Home Ministry. With the country facing internal security threats, this shortage has been felt more acutely in recent times. A Committee was constituted to go into this problem and suggest solution. This Committee known as one man Kamal Kumar Committee considered all the aspects and recommended that besides enhancing the intake through the Civil Service Examination the option of a Limited Competitive Examination for intake into the IPS to the extent of about 70 officers for a period of 7 years be resorted to. For this purpose, the Committee suggested amendment in India

Police Service (Recruitment) Rules, 1954 for filling up of vacancies to the post of IPS through the LCE. The Scheme of LCE as proposed initially envisaged that:

- (i) an all India level competitive examination will be conducted by the UPSC for which officers recruited as Dy. SPs in the State Police Services and Asstt. Commandants in the Central paramilitary Forces, having a minimum of 5 years experience and below the age of 35 will be eligible to appear.
- (ii) In lieu of the experience gained by these officers in their parent services, they will be given weightage in the matter of fixation of seniority in the IPS to the tune of minimum of 1 years and an additional 1 year for every completed four years of service.
- (iii) Officers allotted the same years in this recruitment will be given inter-se seniority in order of their merit in the selection and the allotted years, these officers will be placed between RR and SPS promoted officers.
- (iv) 80 posts will be filled up per year from 2010 to 2016 as per above process (while the annual number planned is 70, keeping in view the possible attrition, the number of 80 is being proposed).

Various issues connected with the LCE were also considered by the Committee. These included:-

- (a) Question of protecting the interest of candidates from SCs & STs categories who may be placed at a disadvantage with reference to the age limited.

- (b) LCE would in effect imply equivalent shortage of officers being shifted to other States/cadres.
- (c) Issue of inter-se seniority of the selected officers with reference to IPS and SPS categories.
- (d) The issue of morale.
- (e) The concern of Secretary, Personnel that the pool of candidates is expected to be around 1500 which was low for the purpose of LCE specially considering that in the Civil Service Examination, the total annual intake of all services is 1000 officers from amongst about 4 lakh candidates.

The committee suggested solution to the aforesaid issue as well. Insofar as low pool of candidates as pointed out by the Secretary, Personnel, it was explained that the eligibility pool consist of trained and experienced officers which would ensure the quality of selected officers. Therefore, the limited number of eligible candidates should not be a matter of concern. The Committee in its detailed report pointed out following main advantages of induction through LCE:

- (i) The inductees would have already had previous background and experience in policing and police organizations and their integration will be smooth.
- (ii) Since they have already undergone training in their previous service, the induction training for them can be condensed to a period of 3-4 months.
- (iii) The period of practical training will also be very short.

- (iv) Further, the tenure of posting as Sub-Divisional Police Officer before assuming charge of SP-level posts can be considerably shortened for those who have already held such charges in their previous service. For the officers who happen to get allotted to their own States, these requirement can be dispensed with altogether. For those allotted to States other than where they have served earlier, a period of 6 months would suffice. Officers from CPOs will anyway have to undergo this posting for full 2 years.
- (v) Existing vacancies at the level of SP can, thus, be filled up fast.

Summary of Recommendation is contained in Chapter -10 and para 10.3 thereof suggested the recruitment plan to meet acute shortage and the portion which is relevant for our purpose is as under:-

“10.3 Recruitment Plan

(6) In the process of recruitment of a large number of IPS officers to meet the acute shortages, any compromise with the quality of recruitment or training of new inductees has to be avoided. A balance should also be struck between (i) the need to fill up the vacancies with urgency, and (ii) the consideration of avoiding problems of cadre management and career progression of officers, in future.

(7) A combination of the following three sources of recruitment would be preferable, to meet the shortages:

- (i) Maximal augmentation of IPS seats in the annual Civil Services Examination, for the entire period of 2009-2020,
- (ii) Limited Competitive Examination for directly-recruited DySPs of States and their equivalent in CPOs, with a minimum of 5 years of service and below 45 years of age, and

(iii) Appointment of professionals from specialized fields, such as IT, Communications, Finance and HR Management, on contract basis, for fixed periods or on deputation from other organizations, to release IPS officers for the jobs needing police professionals.

(8) The intake through the Civil Services Examination will need to be limited to 130 in a year, in the interest of quality of training as also to avoid problems of cadre management in future.”

5. The IPS being an All-India Service has a constitutional origin (part XIV, Article 312) and is governed by the All India Services Act, 1951. Clause 3(1) of this law stipulates that the Central Government may after consultation with the governments of the States and by notification in the official gazette, make rules for the regulation of recruitment and the conditions of the service of persons appointed. Article 320 93) of the Constitution requires the UPSC to be consulted on all matters relating to methods of recruitment to civil services and for civil positions. The suggestion/proposal of the Committee were accordingly sent to the DoPT, State/Union Territories, UPSC and Ministry of Law for comments. The record shows that the matter was deliberated from time to time. As pointed out by the petitioner, no doubt, UPSC expressed certain reservations in the beginning. The UPSC termed the proposal unviable and impractical. On March, 15,2010, UPSC Secretary Alok Rawat, replying to a letter from the

MHA said, “in the context of recruitment of officers in the Indian Police Service through limited competitive examination, the commission is of the view that the proposed LCE may not be a viable and practical proposition.” The UPSC among various reasons cited for its objection to the LCE said the commission was equipped to recruit an equal number of officers through its civil services examination and there was no need for a separate recruitment process. “There appears to be no reason why the additional requirements for IPS cannot be made up through the same examination over the same period of time by increasing the vacancies for the IPS by say 70 every year,” it said. It also warned the MHA of a dent to the morale of State Police Service officer beyond the age of 35, who would not be able to take a shot at the LCE. The Commission also cited the shortage of officers at all the paramilitary forces as another reason to desist from going ahead with the LCE. Above all, it added that the proposal had the potential to open a Pandora’s box leading to more such demands for mid career entry into the other two all India services with similar negative consequences as listed above. The State Governments, backed by their home departments, also wrote to the centre informing it of their opposition to the said recruitment method for the IPS. The Tamil Nadu government in a letter to the Secretary, Ministry of Personnel, public grievance and pension dated June 7, 2010 said, “This government is of the

view that there is no need for a separate recruitment or lateral induction and the present system of recruitment does not require any modification.” The West Bengal Government write to the government of India on August 28, 2010, “the State Government is not in favour of introduction of the scheme of Limited Competitive Examination for induction in to the IPS.” So did the governments of Bihar, Nagaland, Tripura, Karnataka, Kerala, Chhattisgarh, Madhya Pradesh, Goa, Meghalaya and Arunachal Pradesh. The All India IPS Association too made representations to the Home Minister. Even the Law Ministry that the MHA consulted was cautious in its advice. “Here it may be pertinent to mention that consultation with the governments of the states, including the State of Jammu and Kashmir, it is the condition precedent for making rules of recruitment and the conditions of service of persons appointed to an all India service. In the instant matter, it may be seen from para 6 of the referring note at p20-21/N that the consultations have not been done with all the State Governments. Out of the State Governments consulted, some have opposed, some sought certain clarifications and others have agreed to the proposed insertions. Further Article 320 (3) of the Constitution requires the UPSC to be consulted on all matters relating to methods of recruitment to civil services and for civil posts. The UPSC in the instant matter suggested to substantially increase the annual intake through

civil services examination instead of resorting to the proposed LCE,” it said in a letter to the MHA on May 31,2011.

6. The file further discloses that the matter was discussed with UPSC and improvements were made taking care of many of the concerns of UPSC. File further discloses that on various issues raised by the UPSC, Ministry of Home Affairs gave its views. Meeting between the officers of MHA and UPSC was held on 12.10.2011. Thereafter, the Secretary, UPSC addressed communication dated 14.11.2011 pointing out that proposal of MHA had been examined and certain further points were listed in this communication for further consideration by the Government before the Scheme of LCE is finalized and the rules for taking the examination is finalized. Those points raised by the UPSC were further examined and taken care of. In fact, thereafter, it is the UPSC itself which prepared draft rules for conduct of LCE which were forwarded to the MHA for having notified. These were forwarded to the MHA by the UPSC on 29.12.2011. This communication indicates that draft rules had been prepared “on consonance with the decision taken in the meeting held in the office of the Union Home Secretary on 2.12.2011. Request was made that these draft rules be perused and returned to the UPSC for final decision on the same by the Commission. This was

followed by letter dated 13.12.2011 whereby draft application form for the conduct of LCE was also forwarded with the request to approve the same.

7. Ultimately, vide letter dated 1.3.2012, the UPSC gave its final approval. This letter reads as under:

“I am directed to refer to MHA’s O.Ms No. 1-11016/4/2009-IPS.I dated 22nd and 28th February, 2012 on the subject noted above and to forward herewith two copies each of the rules, for the Limited Competitive Examination for recruitment in the Indian Police Service, 2012 in Hindi and English, duly approved by the Commission, for notification in the Gazette of India Extraordinary on 3rd March, 2012.

2. The Limited Competitive Examination for recruitment in the India Police Service, 2012 will be held by the Commissioner from 20-22nd May, 2012.

3. An unabridged version of the Notice of Limited Competitive Examination for recruitment in the Indian Police Service, 2012 Notice will be published in the leading daily Newspapers in the country simultaneously with the publication of the detailed notice and making available of the on-line application form, on 3rd March, 2012 in the Commission’s website. Following by it, the detailed Notice for the said Examination will also be published by the Commissioner in the Employment News/Rozgar Samachar in their issues dated 10th March, 2012.

4. It is requested that the Govt. of India Press may be instructed to supply 500 copies (five hundreds copies only) of the Gazette Notification direct to the Commission as early as possible, but not later than 30th April, 2012.”

8. Thus, finally, the UPSC has given its nod for introduction of LCE. It has even framed the rules for holding such a competitive examination and has even fixed the dates for examination. Therefore, petitioner is not right in alleging that the UPSC has objections to the conduct of LCE. The only position which is brought on record by the petitioner is half truth namely initial reservations which were in the form of certain comments and concerns to be addressed as a method of recruitment to IPS resorted to. As pointed out above, ultimately consensus has arrived. The record further shows that there is an approval of DoPT which is contained in letter dated 15.2.2012 and 22.2.2012. Likewise, the PMO has also examined the matter and given its approval. Even the Ministry of law has ultimately satisfied itself on the introduction and justification of the LCE as one of the short duration methods for holding the LCE.

9. The aforesaid sequence of events would demonstrate that before adopting this methodology of LCE as one of the methods of recruitment, not only a Committee was constituted, the recommendations of the Committee were deliberated in depth by all concerned departments. Final product in the form of approval to the system as well as rules which are notified takes into

concerns of other departments and their nod to this methodology of recruitment.

10. This Court cannot comment as to whether the system introduced now is impeccable or there could be better alternatives. The facts taken note above, do suggest that the UPSC had initially suggested that it could recruit the same number of candidates (70 per year) through its regular Civil Services Examination by increasing its IPS vacancies and, therefore, there was no need for LCE method. No doubt, there were also the reservations on the ground that shortages of officers was there at all the para military forces and the proposal in question may open a Pandora's box leading too much more such demands for mid career entry into the other two all India services with similar negative consequences. The petitioners also expressed their apprehension that it would reduce the chance of minorities which are already underrepresented in All India Service. At the same time, the view of the Ministry was that there was an emergent need to deploy trained personnel within a short period which could be recruited through LCE. As per the government, it lacks the infrastructure to train a batch of 200 IPS recruits and, therefore, the initial suggestion of UPSC was not viable. Be as it may, as

stated above, the matter was ultimately discussed at all levels and the UPSC, Ministry of Law etc have fallen in line.

11. The decision taken cannot be nullified by the Court or rendered invalidated merely on the ground that it is not very wise decision and there were better alternatives.

12. The manner in which posts are to be filled up including the methodology and the modalities thereof is the prerogative of the employer. Once a policy decision is taken based on expert advice and all the aspects are thrashed out, it cannot be treated as without application of mind or arbitrary. Such functions are best left for the executive and Courts should not interfere with the same.

13. The same position has been reiterated by the Apex Courts in catena of judgments. The Supreme Court in the case of ***Union of India and others Vs. S.L. Dutta and Anr.*** AIR 1991 SC 363 held as under:-

“In our opinion, the High Court was in error in making the impugned order. As has been laid down more than once by this Court, the Court should rarely interfere where the question of validity of a particular policy is in question and all the more so where considerable material in the fixing of policy are of a highly technical or scientific nature. A consideration of a policy followed in the Indian Air Force regarding the promotional chances of officers in the Navigation

Stream of the Flying Branch in the Air Force qua the other branches would necessarily involve scrutiny of the desirability of such a change which would require considerable knowledge of modern aircraft, scientific and technical equipment available in such aircraft to guide in navigating the same, tactics to be followed by the Indian Air Force and so on. These are matters regarding which judges and the lawyers of Courts can hardly be expected to have much knowledge by reason of their training and experience. In the present case there is no question of arbitrary departure from the policy duly adopted because before the decision not to promote respondent No. 1 was taken, the policy had already been changed. The question is, therefore, whether this change can be said to be arbitrary or mala fide. As we have already pointed out, we are not in a position to hold that this change of policy was not warranted by the circumstances prevailing.”

14. Likewise, emphasizing on the policy of judicial restraint, the Apex Court in the case of *State of Andhra Pradesh and Anr. Vs. V. Sadanandam and Ors.* AIR 1989 SC 2060 observed as under:-

“We are now only left with the reasoning of the Tribunal that there is no justification for the continuance of the old Rule and for personnel belonging to other zones being transferred on promotion to offices in other zones. In drawing such conclusions, the Tribunal has travelled beyond the limits of its jurisdiction. We need only point out that the mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the Executive. It is not for judicial bodies to sit in judgment over the wisdom of the Executive

in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the Executive. As already stated, the question of filling up of posts by persons belonging to other local categories or zones is a matter of administrative necessity and exigency. When the Rules provide for such transfers being effected and when the transfers are not assailed on the ground of arbitrariness or discrimination, the policy of transfer adopted by the Government cannot be struck down by Tribunals or Court of Law.”

14. We, thus do not find any merit in this petition which is accordingly dismissed.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

APRIL 25, 2012
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