

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.01.2017

Delivered on: 10.02.2017

Coram

The Honourable **Mr.Justice K.K.SASIDHARAN**

**and**

The Honourable **Mr.Justice V.PARTHIBAN**

**W.P.No.9104 of 2016**  
**and M.P.No. 1 of 2014**

Union of India,  
rep. by its Secretary to Government,  
Ministry of Home Affairs,  
North Block,  
New Delhi-110 001.

.. Petitioner

versus

1. S.Manoharan, IPS

2. The State of Tamil Nadu,  
rep. by its Secretary to Home Department,  
Secretariat,  
Chennai-600 009.

3. The Director General of Police,  
Mylapore,  
Chennai-600 004.

4. The Registrar,  
Central Administrative Tribunal,  
City Civil Court Building,  
Chennai-600 104.

.. Respondents

Prayer: These Writ Petitions are filed under Article 227 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the fourth respondent Tribunal passed in O.A.No.461 of 2012 dated 15.3.2013 and quash the same.

For Petitioners : Mr. V.Balsubramanian

For Respondents: Mr.Vijay Narayan, SC for  
Mr.R.Parthiban for R1  
Mr.A.N.Thambidurai, Spl GP  
for R2 and R3

### **ORDER**

V.PARTHIBAN, J.

This Writ Petition has been filed against the order of the Central Administrative Tribunal (in short, 'the Tribunal'), Madras Bench, dated 15.3.2013 passed in O.A.No.461 of 2012, disposing of the Original Application filed by the first respondent herein.

2. Aggrieved by the order passed by the Tribunal, the Union of India, has preferred the present Writ Petition.

3. For the sake of clarity, the parties are described as applicant, namely, the first respondent herein and the

respondent, namely, Union of India, the writ petitioner herein.

4. The facts which gave rise to the filing of the Original Application and the present Writ Petition, are stated hereunder:

5. The applicant approached the Tribunal in O.A.No.461 of 2012 seeking the following relief:

“To set aside the order of the first respondent in file No.1-15011/1/2009-IPS-I dated 28.1.2009 insofar as it allots to the applicant the year of allotment as 2001.

“To direct the first respondent to grant the year of allotment as 1991 in the Indian Police Service by implementing the order of the Government of Tamil Nadu in G.O.Ms.No.,98, Home (Pol.2) Department dated 7.2.2002, taking into account the deemed date of appointment of the applicant as Deputy Superintendent of Police (Category-I) in the State Police Service from 7.11.1984.”

6. The applicant was originally appointed as Assistant Commandant in the Border Security Service Force (BSF) in Group-A Service of the Government of India on 17.9.1984. He was promoted as Deputy Commandant on 22.9.1989 and joined

on 04.01.1990 as National Security Guard (NSG) on deputation. While working in NSG, the applicant was selected by the Government of India as Task Force Commander to look after the VVIP security duty in Tamil Nadu and took charge of the said post on 13.6.1991 and continued till 1993. Thereafter, he was deputed to the State Government service on request from the State Government of Tamil Nadu and joined as Additional Superintendent of Police on 2.8.1993. Thereafter, the applicant was absorbed permanently in the Tamil Nadu Government Police Service as Additional Superintendent of Police (Category-I) vide G.O.Ms.No.475 Home (POL-2), Department dated 19.3.1996. His seniority came to be fixed in the cadre of Deputy Superintendent of Police, subsequently. Thereafter, the applicant's seniority was fixed in the panel Additional Superintendent of Police fit for promotion to the Superintendent of Police for the year 2000-2001 vide G.O.Ms.No.1072 Home (POL 1-A) Department dated 27.09.2000.

7. Since the applicant's original appointment being that of Assistant Commandant in BSF in 1984 which was equal to the rank of Deputy Superintendent of Police in the State Police

Service, he submitted a representation for consideration of his claim for fixation of his seniority from the date of his original appointment as Assistant Commandant. In response to his representation, after obtaining clarification from the competent authority, the State Government vide G.O.Ms.No.98 Home (POL-2) Department, dated 7.2.2002 passed orders to the effect that the applicant was deemed to have been appointed in the rank of Deputy Superintendent of Police (Category-I) in the State Police Service with effect from 7.11.1984. Thereafter, by memo dated 6.3.2002, the applicant was informed that he being considered for inclusion in the Indian Police Service (IPS) Select List for the year 2001-2002. By this, the applicant once again aggrieved by the fact that the persons who were appointed subsequent to the applicant's deemed date of appointment as Deputy Superintendent of Police, had already been promoted as IPS and they were given year of allotment as 1991. The applicant once again represented for consideration of his claim for appointment by promotion to IPS cadre ahead of his juniors who came to be appointed in 1995.

8. While the matters stood thus, for no valid reason, despite a memo dated 6.3.2002, the applicant was not considered for

appointment to the IPS for the year 2001-2002, however, included in the select list for the year 2005 by proceedings dated 28.1.2009 and was granted IPS promotion with year of allotment as 2001. Since his appointment to the IPS had been delayed and having been denied promotion at the appropriate time, the applicant was constrained to approach the learned Tribunal, seeking the aforesaid relief.

9. Before the learned Tribunal, the applicant contended that once the Government had passed the order dated 7.2.2002 to the effect that the applicant was deemed to have been appointed in the rank of Deputy Superintendent of Police (Category-I) in the State Police Service with effect from 7.11.1984, he ought to have been considered for further promotion to the higher grades and to the IPS cadre at the appropriate time, however, his juniors who were appointed subsequent to him as Deputy Superintendents of Police were considered and appointed. The applicant being one of the most meritorious Police Officers in the rank of Deputy Superintendent of Police, ought to have been considered by taking into consideration his service rendered from 1984 in the rank of

Deputy Superintendent of Police.

10. Per contra, the respondent contended that as per Regulation 3 of the IPS (Appointment and Promotion) Regulations 1955, a Selection Committee was convened by the Union Public Service Commission on 13.12.2007 for the preparation of year-wise select lists of different years from 2005 to 2007 for appointments to the IPS by promotion from the Tamil Nadu Police Service. Six names were considered and the applicant's name was placed in the select list of 2005 at Sl.No.1 and recommended for inclusion which was approved by the Union Public Service Commission. Thereafter, he came to be promoted to the IPS cadre with the year of allotment as 2001 by giving four years weightage. According to the respondent, the applicant was holding the post of Deputy Superintendent of Police or above in the State Police Service only as on 19.3.1996 and as such, he completed a total 8 years of service as on 31.12.2004 and only thereafter, his name was considered and appointed to the IPS by promotion and after his such appointment, he was granted weightage of four years in terms of Rule 3 (3)(ii) of the IPS (Regulation of Seniority) Rules 1988. According to the

respondent, though he was serving in the Border Security Force with effect from 7.11.1984, he was actually inducted in Tamil Nadu Police Service on 19.3.1996 and therefore, he cannot equate himself to the persons who were appointed as Deputy Superintendents of Police in the year 1985 and were given 1991 as the year of allotment. If he is given the year of allotment of the year 1991, he would be superseding atleast 75 IPS officers of the Tamil Nadu cadre, belonging to the years 1992 to 2001.

11. After taking note of rival submissions of the parties, the learned Tribunal disposed of the Original Application vide order dated 15.3.2013 with the directions in para 15 which is extracted below:

"For the reasons stated above, the application is disposed of in the following terms:

a. The order of the first respondent in File No.I-15011-1-2009-IPS-I, dated 28.01.2009 insofar as the applicant is given the year of allotment as 2001 is set aside.

b. There will be a consequential direction to the respondents to revise the year of allotment as 1998 with all benefits arising therefrom.

c. There will be no order as to costs."

12. The learned Tribunal in its order has also extracted below in para 8, the direction given by the Union of India, the petitioner herein to the State Government.

"8. .... Based on the representation given by the applicant for inclusion of his name in the 2001 select list for promotion to the IPS, the first respondent through his letter dated 05.10.2001 directed the State Government to forward proposals to the UPSC by clearly indicating the deemed date of appointment of the applicant in the State Police Service. In the said letter, the first respondent has specifically observed that the benefit of seniority/deemed appointment does not exist in the BSF even though, the said benefit exist in the other cadre such as emergency commissioned officers/short service commissioned officers and directed the State Government to take a decision in accordance with law. While giving such direction, the first respondent also observed as follows:

"3. In the instant case, it is observed that Shri S.Manoharan has been permanently absorbed in the State Police Service w.e.f. 19.3.1996 and assigned seniority in the SPS in accordance with

the rules in the State Government. In case he has been given deemed appointment/deemed seniority in the Dy.SP grade in the State Police Service on his permanent absorption in the post of Addl.SP in the SPS, he would be entitled to be considered for promotion to IPS on the basis of his deemed/notional appointment in SPS on the ratio of the judgment dt.31.07.2000 of the Hon'ble High Court of Judicature at Bombay in Writ Petition No.1154/2000 filed by Dr.S.R.Kapse Vs. State of Maharashtra and others. While making proposals to the UPSC, the date of deemed appointment of the officer in SPS is required to be clearly indicated by the State Government for this purpose.

4. It is requested that the matter may be examined and processed by the Government further in the light of the factual position explained above."

13. Thereafter, as per the direction of the Union of India, the petitioner herein, the State Government passed order dated 7.2.2002 vide G.O.Ms.No.98 Home Department, appointing the applicant in the rank of Deputy Superintendent of Police

(Category-I) in the State Police Service with effect from 7.11.1984. The learned Tribunal also extracted the communication dated 6.3.2002 stating that the applicant's name was being considered for inclusion in the IPS select list for the year 2001-2002. This communication was purported to be issued by the Director General of Police, the 3<sup>rd</sup> respondent in the O.A. However, as stated supra, for reasons unknown, the applicant's name was not included in the Select List for the year 2001-2002. It appears pursuant to the applicant's representation against his non-inclusion in the Select List for the said year, finally, his name was included in the select list of the year 2005. In the circumstances, the Tribunal was of the opinion that if not for the year 1995, the applicant ought to have been included in the select list for the year 2001-2002 as there was no proper explanation forthcoming as to why his name was not included in the select list for the same year. Thereafter, the matter was dragged till 2005 and finally, the applicant's name was considered only in 2005. The Tribunal also was of the view that since there was some delay on the part of the applicant in approaching the legal forum, he was not entitled to the larger relief claimed by him for consideration of his claim for

appointment by promotion to the IPS cadre in 1995. In fact, the learned Tribunal has observed that even though the applicant has got valid reasons to fix the year of allotment as 1991, he cannot be granted the same relief for the reason that he has not chosen to agitate the matter at the earliest point of time and the applicant has chosen to give representation only from 2000 and 2001 onwards.

14. The learned Tribunal after appreciating the Rule position and the factual matrix of the case, has come to the conclusion that the applicant ought to have been considered to the post IPS for the year 2002 and by such consideration, there would not be any prejudice to any of the other officers who were appointed to the IPS on promotion during the period 1998 and 2002 in view of the fact that by very action of the State Government appointing the applicant as DSP from 1984, he cannot be denied proper fixation of year of allotment and seniority which can be granted atleast from 1998 if not earlier. In such view of the matter, the learned Tribunal allowed the claim of the applicant with the direction as stated supra.

15. As regards the fixation of seniority was concerned, the learned Tribunal has given reasons as to the manner in which the seniority needed to be fixed. In fact, the learned Tribunal has given lengthy reasons as to how no prejudice would be caused to any of the Officers who were appointed to the IPS by promotion during the relevant point of time. The reasons as found in the order in paragraphs 13 and 14, are extracted herein below:

" 13. Even though, the applicant's name was included in the panel of DSP fit for promotion to Addl.Suptd.of Police for the year 1995-96 and his name was placed in Sl.No.1, the persons whose names are included subsequently in the panel of DSP fit for promotion as Addl.Supt.of Police for the year 19978-98 were promoted to IPS prior to the point of time than the applicant. Hence, the name of the applicant can be considered atleast for inclusion of his name for the year 2002 select list and consequent revision of the year of allotment as 1998. If the above logic is followed, the next question to be decided by us is as to in which place the name of the applicant should be arrayed while revising the year of allotment. As referred to above, though several persons whose names found in the panel of DSPs fit for

promotion as Addl.Supt.of Police for the years 1996-97 and 1997-98 are juniors than the applicant his name cannot be placed over and above them. However, by notionally holding that the applicant's name to be included in the select list of the year 2002, while revising the year of allotment as 1998, the applicant has to be placed over and above one Mr.M.T.Ganesa Murthy, who is junior to the applicant and whose year of allotment was given as 1998.

" 14. As regards the other contention that several officers would be affected if the applicant's year of allotment is revised, we are unable to accept the said contention. Similar contention was raised in the case of Mr.John Nicholson as referred to supra which was rejected by considering the fact that the individual therein was notionally appointed at the earlier point of time as in the case on hand. That apart, as regards the seniority between the officers amongst the State Police Cadre is concerned, the name of the applicant would find a place only over and above his juniors. Even though, some of the officers who are juniors than the applicant are given the year of allotment prior to 1998, we are not inclined to give the said benefit to the applicant due to the delay on his

part in approaching the authorities concerned or by approaching this Tribunal. The officers belonging to RR Cadre viz., directly recruited IPS Officers are concerned, they form a separate stream and all of them have joined duty as Supt.of Police very much later than the applicant, who has already served in the said capacity from the year 2000 onwards. Hence, the said objection is not sustainable in law."

16. The above reasons would unequivocally demonstrate that the final directions given by the learned Tribunal bolstered by sound reasoning and consideration.

17. As against the said above order of the Tribunal, the present writ petition has been filed.

18. The learned counsel appearing for the petitioner, namely, Union of India, the first respondent in the Original Application, would reiterate his submissions made before the learned Tribunal.

19. On the other hand, Shri Vijay Narayan, learned senior counsel appearing for the first respondent herein, namely, the applicant before the Tribunal, would contend that the directions passed by the learned Tribunal were based on proper and fair application of all the points in issue and same does not call for any interference.

20. Regarding the issue of unsettling the seniority in the cadre of IPS by granting retrospective promotion to the applicant to the IPS Cadre from 2005 to 2001 and year of allotment from 2001 to 1998, which was strenuously stressed by the learned counsel for the Union of India, the learned senior counsel appearing for the first respondent cited three decisions, viz.,

i) **"K.Khadhavan & another versus Union of India" reported in AIR 1987 SC 2291**

ii) **"Sub Inspector Rooplal versus Lt.Governor reported in AIR 2000 SC 594;**

iii) **"Union of India versus Mr.John Nicholson IPC reported in W.P.No.1305 of 2010 (Mad)".**

21. As regards the last decision is concerned, the same has been relied upon by the learned Tribunal itself in its order which has been extracted above, therefore, the same need not be adverted to.

22. As regards other two decisions, the Hon'ble Supreme Court has laid down as to how seniority has to be fixed when a deputationist was absorbed. It has held that exclusion of service rendered by deputationist in equivalent cadre in the parent department for the purpose of fixation of seniority is violative of Articles 14 and 16 of the Constitution of India, meaning that service rendered in the parent department is to be taken into consideration for the purpose of fixing seniority.

23. As far as the case on hand is concerned, the learned Tribunal, in fact, has restricted the claim granted to the applicant though it observed that there was some justification in the claim of the applicant for being considered for promotion to the IPS cadre in 1995 itself with the year of allotment being 1991. Such being the case, no officer can have any quarrel with the fixation of seniority of the applicant as consequence of

change of year of allotment from 2001 to 1998. The fact would remain that all the officers during the relevant point of time, would have been admittedly, juniors to the applicant, had the competent authority considered the claim of the applicant at the appropriate time. Therefore, in all fours, the directions given by the Tribunal do not warrant any interference and we do not find anything wrong about the fairness or legal validity of the directions given by the Tribunal in the circumstances of the case.

For the foregoing reasons, the Writ Petition fails and it is dismissed as devoid of merits. No costs. Consequently, connected MP is closed.

suk

(K.K.S.,J.) (V.P.N.,J.)  
10-02-2017

Index: Yes/No  
Internet: Yes/No

1. The Secretary to Home Department,  
The State of Tamil Nadu,  
Secretariat,  
Chennai-600 009.

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Mylapore,  
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