

CASE NO.:
Appeal (civil) 3335 of 2002

PETITIONER:
STATE OF WEST BENGAL AND ORS.

RESPONDENT:
MANAS KUMAR CHAKRABARTI AND ORS.

DATE OF JUDGMENT: 13/12/2002

BENCH:
DORAISWAMY RAJU & B.N. SRIKRISHNA

JUDGMENT:
JUDGMENT

2002 Supp(5) SCR 72

The Judgment of the Court was delivered by

SRI KRISHNA, J. By this appeal the State of West Bengal and its authorities impugn the judgment of the High Court at Calcutta which quashed an order of the State Government dated 23rd May, 2001 appointing the 2nd respondent as Director General and Inspector General of Police.

The salient facts necessary for deciding this appeal arise as follows:-

There are four posts of Director General of Police (DGP) in the State of West Bengal and they are: (a) Director General & Inspector General of Police (DG & IGP), (b) Director General & Commandant General of Home Guards (DGCGHG), (c) Director (Training) and (d) Director (Intelligence). All the four posts of DGP are in the grade and pay scale of Rs. 24050-650 Rs. 26000. The first respondent (Manas Kumar Chakraborty) and the second respondent (Dinesh Chandra Vajpai) are officers of the IPS cadre of the 1966 batch. In the initial merit list, the name of the First respondent appeared at serial no. 2 and that of the second respondent at serial no.6.

On 28th December, 2000, while the second respondent was working as Addl. DGP, he was selected and empanelled for appointment as DGP. One K.P. Bandyopadhyay and one R.C. Sharma, both of the 1966 batch, had been empanelled earlier and were awaiting vacancy for appointment in the grade of DGP. All three at that stage were in the grade and pay-scale of Additional Director General of Police (ADGP). On 28th February, 2001 two existing DGPs retired by taking voluntary retirement. The said two officers were D. Banerjee, who was then holding the post of Director (Intelligence) and S.K. Ghosh, who was then holding the post of Director General & Commandant General (Home Guards). Out of the three Addl. DGPs in the panel, the first two officers K.P. Bandyopadhyay and R.C. Sharma were promoted to the DGP grade and appointed as Director (Training) and Director (Intelligence), respectively. The first respondent Manas Kumar Chakraborty, who was then holding the post of Director (Training), was shifted to the post of Director General & Commandant General.

As on 28th February, 2001 the four posts of DGPs were held by the following incumbents:

1. D.K. Sanyal, DG & IGP
2. Manas kumar Chakraborty, DG & CGHG
3. K.P. Bandyopadhyay, Director (Training)
4. R.C. Sharma, Director (Intelligence)

D.K. Sanyal retired from the post DG & IGP on 30th April, 2001. In view of the ensuing elections in the State of West Bengal, which were scheduled to be held on 10.5.2001, the State Government sought extension of his tenure, but the extension sought for was not allowed by the Central Government. R.C. Sharma, Director (Intelligence) held charge as DG & IGP from 30.4.2001 until appointment of a new incumbent to the said post.

On 23rd May, 2001, the second respondent Dinesh Chandra Vajpai, who was then No. 1 in the Select List, was considered along with other 3 existing DGPs for suitability to be appointed to the post of DG & IGP and he was promoted and appointed by a composite order to officiate in the post DG & IGP. By a subsequent Government order dated 10th July, 2001, his appointment was regularized by deleting the word "Officiate". The Secretary, Home Department (Police) had considered the suitability of three officers in the DGP rank and respondent No.2, who was first in the panel, to find out the suitability of the incumbent for the post of DG & IGP. Upon comparative assessment of merit, the Secretary, Home Department (Police) recommended that the second respondent be appointed. This recommendation was endorsed by the Chief Secretary, who, in his turn, forwarded the file to the Chief Minister with his endorsement that the second respondent be appointed as DG & IGP in the vacant post. On 23rd May, 2001, after considering the recommendations the Chief Minister approved the name of the second respondent for appointment as DG & IGP. The second respondent was, therefore, appointed by the order dated 23rd May, 2001, to officiate in the post of DG & IGP. The appointment later was regularized by the Government order dated 10th July, 2001 by deleting the expression "officiate."

The first respondent who was holding the post of DG & CGHG challenged the appointment of the second respondent as DG & IGP by his Original Application No. 673 of 2001 before the Central Administrative Tribunal (Tribunal) mainly on two grounds. First, that the second respondent could not be appointed to the post of DG & IGP directly as only incumbents holding the post of DGPs as on 23rd May, 2001 were eligible for being considered for appointment to the post of DG & IGP in view of the law laid down by this Court in *Government of Karnataka v. C. Dinakar and Ors.*, [1999] 5 SCC 161. It was the contention of the first respondent that the post of DG & IGP was of a higher status and rank and appointment thereto must necessarily be treated as a promotional post, its feeder category being the cadre of DGP. The second ground on which the appointment of the second respondent was objected to was that there was no "credible mechanism" for the purpose of comparative assessment of merit and selection to the post of Chief of Police as contemplated by the Judgment of this Court in *Vineet Narain and Ors. v. Union of India and Ors.*, [1998] 1 SCC 226. The Tribunal by an elaborate judgment rejected both the contentions urged by the first respondent and dismissed his petition. Being aggrieved thereby, the first respondent moved the High Court by a writ petition. By the Judgment dated 18th March, 2002 the High Court took the view that the appointment of the second respondent to the vacant post of DG & IGP was illegal. Although the two learned Judges comprising the Division Bench delivered two separate judgments, both were *ad idem* on the issue of quashing the appointment of the second respondent to the vacant post of DG & IGP, but differed on the consequential relief to be granted. One of the learned Judges (Alok Kumar Basu, J.) directed that the State Government should take fresh test for selection and appointment to the vacant post of DG & IGP from amongst the persons holding the substantive post of DG through a "credible mechanism" as envisaged in the case of *Vineet Narayan* supra within three months and that in the interregnum the appointment should be made on *ad-hoc* basis having due regard to the question of seniority. The other learned Judge (A. Kabir, J.) directed that though the composite order appointing the second respondent as DG & IGP was quashed, the promotion granted to the second respondent by the order of 23rd May, 2001 was not being interfered with and he was eligible for holding the post of DG & IGP along with other officers holding substantive rank of DGP. He also directed that the post of the DG & IGP which fell vacant on account of the order should be filled up pursuant to the directions contained in the

judgment of the other learned Judge.

Learned Counsel for the appellant contended that both the premises on which the judgment of the High Court rests are erroneous and proceed on a misappreciation of both the law and the facts. It is urged that there is neither any rule, nor guideline, nor practice, by which the appointment to the post of DG & IGP in the State of West Bengal is treated as a promotional post from the feeder category of DGPs. Pursuant to the judgment in Vineet Narayan supra the Central Government addressed a letter dated 15th January, 1999 to the Chief Secretaries to all States formulating the General Principles of promotion, formation of DPCs and their functioning etc. applicable to officers of the Indian Police Services in Sr. Scale, Jr. Administrative Grade, Selection Grade, Super-time Scale and Above Super-time Scale posts. These guidelines were issued in the matter of appointment and promotion to various grades in the Indian Police Services in all the State cadres in the country. All the States were informed that it would be advisable to adhere to the revised guidelines and follow and impose stricter standards of selection as envisaged in the revised guidelines. In the revised guidelines, the zone of consideration of officers for promotion to various grades is indicated. As far as promotion to the grade of DGP is concerned, the guidelines provide that officer who had put in 30 years of service are to be considered. There are detailed guidelines with regard to the preparation of selection panel, period of validity of the panel and General Principles for promotion applicable to all posts. The appellant contends that the appointment to the post of DG & IGP could be done from amongst the persons who are eligible to be appointed to the post of DGP and there is neither practice nor rule which requires that the post of DG & IGP should be held only by a person who already held the substantive post of DGP. No rule was pointed out which requires that only an officer holding the substantive post of DGP can be posted as DG & IGP. On the other hand, the material on record suggests that even in the past there was no such practice of appointing only the senior most eligible officer from among DGPs as DG & IGP, as contended by the first respondent. The cases of S.C. Choudhary, the then Commissioner of Police appointed to the post of DG & IGP and V.K. Basu, appointed from the post of Police Commissioner to the post of DG & IGP, have been highlighted. There is no acceptable material from which it could be concluded that there was any inviolable rule that the post of DG & IGP was and has to be filled up only by appointing an officer already substantively holding the rank of DGP.

The High Court was impressed by the contention of the first respondent that the post of DG & IGP is a post of superior status and rank and, therefore, appointment thereto would necessarily be a promotion. Read the judgment in Dinakar (Supra), the High Court assumed that the judgment lays down a principle of law viz, that no person not holding the substantive rank of DGP can be posted as DG & IGP.

At the outset, it is necessary to examine if this is an inexorable principle of law laid down in the judgment of this Court in Dinakar supra.

In Dinakar Supra also there were four posts of Director General of Police. The High Court found, as a matter of fact, as later reiterated by this Court, that at least two of the posts, COD (Training), and Chairman and Managing Director of Police Housing Corporation was considered to be amenable to the supervisory jurisdiction of DG & IGP. Only the posts of DGP & CGHG and Director of Civil Defence & Fire Service were not subject to the supervisory jurisdiction of the DG & IGP. The High Court had found that the 4th respondent therein was not a Director General at any point of time prior to 6th March, 1997 and that the Chief Minister was misled to believe that on that date the 4th respondent was still on deputation with the Government of India and holding the rank of DGP. As to whether a person not holding the substantive rank of DGP could be posted as DG & IGP, the question appears to have been admitted, either as a matter of rule of practice, that in Karnataka cadre an officer not holding the substantive post was ineligible to the post as DG & IGP. This is clear from the

observation of the High Court, (quoted in paragraph 9 of the judgment of this Court) "if respondent No.4 was not a Director General prior to 6th March, 1997, then there was no material before respondent No.2 to consider him for appointment by selection to the post of DG & IGP because admittedly only a person substantively holding the cadre of DG of Police could be considered for appointment to the post of DG & IGP" (emphasis supplied). Further, the High Court observes, "the action of the respondents apparently appears to be unconstitutional as admittedly respondent No.4 being not a Director General of Police on 3rd March, 1997 was not eligible to be considered for such appointment by selection " emphasis supplied. Thus, it appears that the High Court was given to understand that, at least in the State of Karnataka, an officer could not be appointed as DG & IGP unless he held the substantive rank of DGP. These facts seem to have been admitted as seen by the expression "admittedly" used at several places by the High Court and finally the conclusion of this Court, "we are of the view that on the admitted facts as found by the High Court, no case is made out for interference" emphasis supplied.

A fair reading of Dinakar (Supra), in our view, suggests that there was no dispute between the parties on the issue that only an officer holding the substantive post in the cadre of DGP was eligible to be considered for the post of DG & IGP. In view of this fact being admitted, or not being disputed, no question arose before the High Court of deciding whether even an Addl. DGP empanelled for DGP cadre could be posted as DG & IGP. Consequently, there was no occasion for this court too to express its views thereupon.

The appellant's contention that the judgment in Dinakar does not lay down, as a general proposition of law of universal application, that only an officer in the substantive cadre of DGP could be appointed as DG & IGP, appears to be justified and must be upheld. We are of the view that Dinakar (Supra) does not lay down as a matter of law that an officer not in the cadre of DGP is ineligible for being posted as DG & IGP. In fact, as we read the judgment in Dinakar, this Court has merely affirmed and reiterated the observations of the Karnataka High Court which in turn were based on the facts admitted. The Central Administrative Tribunal correctly appreciated the facts of Dinakar but the High Court fell into error in thinking that Dinakar had laid down any inexorable proposition of law that an officer not in the cadre of DGP was ineligible to be appointed on the post of DG & IGP in all States.

As far as the facts of the present case go, it is the case of the appellant, which has been accepted by the Tribunal, that there is neither any rule, nor requirement, that eligibility to hold the post of DG & IGP could be limited only to an officer already substantively in the cadre of DG & IGP. We are, therefore, in agreement with the view expressed by the Central Administrative Tribunal and unable to accept the correctness of the view of the High Court which has been challenged before us.

The next question which requires consideration is whether the post of DG & IGP was a promotional post as contended by the first respondent and accepted by the High Court. Factually, there is no material to suggest this. On the contrary, the material on record suggests that while in Karnataka two posts of DGP were amenable to the supervisory jurisdiction of the DG & IGP, there is no supervisory jurisdiction vested in the DG & IGP in the State of West Bengal over the other DGPs. All the posts of DGP carry the same scale of pay, status and are borne in the same cadre and grade, namely, that of DGP, only.

Learned Senior Counsel, Shri Rao for the first respondent, however, contended that DG & IGP is the Police Chief of the State and is, therefore, superior to other DGPs in terms of legal and administrative duties and responsibilities, prestige, powers, status, honour and so on. Hence, he urged that mere posting of an officer to the post DG & IGP amounts to promotion. If there is no rule with regard to it, the promotional post must

go only on the basis of seniority. The learned Senior Counsel also referred to All India Services Manual, [Sixth Edition-Part III] in which there is only one post of Director General and Inspector General of Police and the other posts are only of Inspector General of Police. He, therefore, contended that the post of DG & IGP is the highest post of Police Chief and posting thereupon amounts to promotion. The manual appears to be as of 31 July, 1990. The nomenclature given in the manual relied upon by Respondent No. I appears to have been substantially changed. While in the manual one post was referred to a Director General of Police, presently there appear to be four posts of Director General of Police, both in West Bengal and in Karnataka. The reliance of the manual, therefore, does not advance any further, the case of the respondent.

The learned Senior Counsel for the first respondent then contended that if a person moves to a post of greater prestige, duties and responsibilities, honour or status, as compared to the previous post held, then that movement, even if lateral, would amount to promotion even if both the posts carry the same scale of pay. Learned counsel relied upon the case of Dr. Meera Massey and Ors. v. Dr. S.R. Mehrotra and Ors., [1998] 3 SCC 88 and Vice-Chancellor, L.N. Mithila University v. Dayanand Jha, [1986] 3 SCC 7 to support the contention urged. Even if the contention is accepted, the fact remains that second respondent was promoted by the composite order dated 23rd May, 2001 to the substantive rank of DGP and simultaneously posted as DG & IGP. We see no illegality in this. Secondly, there is no dispute that the post of DG & IGP is a selection post like the other DGPs. The post of DG & IGP being a post of very sensitive nature can only be filled by an incumbent in whom the State Government must necessarily have the highest confidence. We are, therefore, unable to accept the contention of the respondent that deployment of an incumbent in such a post can go only by seniority. Merit in the nature of past record, the credibility and confidence which one is able to command with the Government of the State must play a predominant role in selection of an incumbent to such a post. In the opinion of the Appointing Authority, the second respondent was the most suitable one. It is not open to the courts to sit in appeal over the view taken by the Appointing Authority in such a case or substitute its own view for that of the duly constituted Authority. The Administrative Tribunal, as a matter of comparison of merit, inclined to hold that the second respondent was by far the better and more meritorious candidate. The High Court has skirted this question and declined to decide this issue. Since we are of the view that there was no legal ineligibility in second respondent to hold the post of DG & IGP, we must necessarily accept the comparative assessment of merit by the first appellant-State of West Bengal and give credence to its own choice, of a suitable incumbent for being posted, as such.

In the State of West Bengal the guidelines of the Central Government dated 15.1.1999 were being followed in the appointment of Senior Officers to the police services. The principle followed was one of merit-cum-seniority. The previous appointments show that several officers who were appointed from the select panel were not in the substantive rank of DGP before being appointed to the post of DG & IGP. For example, S.K. Ghosh was appointed to the post of DG & CD on 30th October, 2000 from the panel directly, even though the first respondent was then senior in the grade of DGP having been appointed on 1.12.1997 and holding the post of Director (Training). K.P. Bandopadhyaya, R.C. Sharma and D.C. Vajpai appear to have been appointed following the same norms and the same guidelines. These are the facts of which the first respondent was quite aware even before he challenged the appointment of the second respondent. Interestingly, as on the date of the appointment to the post of DGP, none of the aforesaid officers was in the rank or grade of DGP, but all were appointed from the panel having been selected for promotion to the post of DGP.

After Dinakar's Judgment dated 14.5.1999, the State of Karnataka had introduced a new set of guidelines by an order dated 5.7.1999. By para 4 of this new order, all officers in the grade of Director General of Police,

including the officers in the grade of Additional Director General of Police, were made eligible to be promoted to the grade of DGP. In fact, this Government order supports the appellant's contention that prior thereto the practice or norm in Karnataka State was that only an officer already in the grade or rank of DGP could be appointed as DG & IGP. The material on record shows that even these new guidelines issued by the State of Karnataka were challenged, but insofar as the legality of guidelines was concerned, the challenge before the Central Administrative Tribunal failed.

It is urged for the appellant that the High Court fell into error in thinking that the circular dated 15.1.1999 does not apply to the selection of DG & IGP. There seems to be an assumption that DG & IGP is a post outside the cadre, grade and rank of DGP. We have not been shown any rule that this was so; nor is any other material placed on record to support this conclusion.

The High Court has also taken the view that the second respondent did not fall within the zone of consideration. This again is erroneous and based on the wrong assumption that the selection for the post of DG & IGP could be made only from amongst officers holding the cadre and rank of DG & IGP. This assumption was based on an erroneous reading of Dinakar's judgment supra.

It is next urged on behalf of the appellant that the High Court fell into error in assuming that a "credible mechanism" had not been established for selection of officers to superior posts.

The respondent placed heavy reliance on the judgment of this Court in Vineet Narayan (Supra) and the observations made in paragraph 60 of the said judgment. In the first place, Vineet Narayan was a case in which the question was whether the jurisdiction of the Central Bureau of Investigation could be amended or curtailed by executive instructions issued by what was called "Single Directive." With regard to officers at the decision making level, the executive circular prohibited the CBI from investigation unless clearance was taken from the Central Government. While quashing the said circular as wholly opposed to the provisions of Delhi Special Police Establishment Act, as also the rule of law in general, this Court laid down detailed guidelines as to how the CBI, Central Vigilance Commission, Enforcement Directorate and Prosecution Agencies attached thereto should function. Incidentally, it also noticed that the situation of rampant executive interference in the matter of police functioning in the States. With a view to ensure that the police agencies were not subjected to executive and political interference, the observations were made in paragraph 60 that every State should set up a "credible mechanism" for selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also of all police officers of the rank of Superintendent of Police and above. We do not think that the judgment in Vineet Narayan requires that the mechanism which was put in place by this Court in that case should necessarily be reproduced in other States. While there is no doubt that selection to the post of DG & IGP or similar sensitive post must be done through a "credible mechanism", we are unable to accept the contention of the respondent that the process of selection by which the second respondent was selected was not credible in any manner. The process of selection based on suitability was set in motion by the Home Secretary, and further seems to have been effectively considered by Chief Secretary and the Chief Minister (who was also the Home Minister) and all three authorities had opined that the second respondent was more suited for the post of DG & IGP. Nothing has been shown to us that there was any bias or deficiency in the process by which the second respondent was selected for the post of DG & IGP. The only grievance which appears to have been ventilated by the first respondent throughout is that the second respondent was ineligible to be posted as DG & IGP. This grievance, in our view, has no substance.

Though a half-hearted attempt appears to have been made before the Tribunal

to project that the first respondent had greater merits, we do not think that the attempt succeeded. The Tribunal did not accept the said stand of the first respondent. So far as the High Court is concerned, the High Court has totally side-stepped the issue of the comparative merits of the officers. We, therefore, find it difficult to accept the submission of the learned counsel for the respondent that there was a lack of 'credible mechanism' to determine the suitability to hold the post of DG & IGP in West Bengal.

In the result, we hold that the High Court erred on both counts. First, it erred in taking the view that there is an inexorable proposition of law that only an incumbent in the post of DGP was eligible to the post of DG & IGP. There is no such requirement either under the rules/guidelines or practice followed in the State of West Bengal Secondly, the High Court also erred in assuming that the mechanism by which the second respondent was selected for holding the post of DG & IGP was not credible. We do not think that the mechanism by which the selection was made by the appellant was in any manner not credible.

For the aforesaid reasons, we allow the appeal and set aside the judgment of the High Court. We affirm the order made by the Tribunal upholding validity of the appointment of the second respondent as DG & IGP and dismissing the application filed by the first respondent before it.

In the facts and circumstances of the case there shall be no order as to costs.