

PETITIONER:
RAMCHANDRA DAYARAM GAWANDE

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 10/05/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIAK (J)

CITATION:
JT 1996 (6) 361 1996 SCALE (5)293

ACT:

HEADNOTE:

JUDGMENT:
THE 10TH DAY OF MAY, 1996

Present:
Hon'ble Mr.Justice K.Ramaswamy
Hon'ble Mr.Justice G.B.Pattanaik
K.Madhava Reddy, Sr.Adv. A.M.Khanwilkar, Adv. with him
for the Appellant
V.N. Ganpule, Sr.Adv. R.N. Keshwani and D.M. Nargolkar,
Advs. with him for the Respondents.

O R D E R

The following Order of the Court was delivered:
Ramchandra Dayaram Gawande
V.
Union of India & Ors.

O R D E R

Leave granted.

We have heard learned counsel on both sides.

The appellant appointed to a substantive post in State Police Service was promoted as a Superintendent of Police in senior time scale on May 11, 1976. He was brought on select list for the year 1977. He was given seniority in the All India Police Service from promotee quota w.e.f. April 30, 1978. Since he was brought on the select list on the said date under Rule 3(3)(b) of the IPS (Regulation of Seniority) Rules, 1954 (for short, the 'Rules;'), the appellant claimed the year of allotment, i.e., 1972 under IPS (Regulation of Seniority) Rules, 1954, which was rejected' by the Tribunal in the impugned order dated August 18, 1995 in OA No.557/90.

Notice was issued confining to the question as to what would be the consequence of failure to convene a meeting for selection of the candidates and preparation of the annual seniority list.

It is stated in the counter af affidavit that on November 23, 1976 in a meeting, Selection Committee considered the claims of a total number of 30 State Police Officers and ultimately found 9 officers to be brought on the select list. Notification was issued by the Government

of India on June 17, 1977 to appoint 8 officers from the select list of 1976 under Rule 5(1) of the IPS (Cadre) Rules, 1954. By notification dated August 27, 1977, the list of officers for the selection was to be considered but it could not be considered on account of the strike in the State and the meeting was postponed. Ultimately, a meeting came to be held on February 15, 1978 and the names of 5 persons were listed in the select list of whom the appellant was 5th in the order of merit. The appellant came to be given the seniority from April 30, 1978 when the vacancy from promotee quota has arisen.

Shri K. Madhava Reddy, learned senior counsel for the appellant, contended that in view of the decision of this Court in Syed Khalid Rizvi & Ors. vs. Union of India & Ors. [1993 Supp.(3) SCC 576], it is mandatory on the part of the State to prepare every year the select list of Deputy Superintendent of Police to fill up vacancies which have arisen in the year to tile quota and to promote them to the IPS cadre under Rule 9 of the IPS (Appointment by Promotion) Rules, 1954 which was held to be mandatory. It is incumbent upon the State Government to conduct a meeting and select the officers and allot the year of allotment to fulfil the legitimate expectation of the right to consider for promotion. Though explanation has been sought to be given by the Government for failure to hold the meeting, it must be considered that the appellant had lost the chances for promotion and the year of allotment since the appellant has been continuously officiating from the year 1976 and that, therefore, the year of allotment of 1973 is not valid in law. We find no force in the contention.

The effect of the inter-play of IPS (Recruitment Rules), 1954, IPS (Cadre) Rules, 1954, IPS (Appointment by Promotion) Regulations, 1954 and IPS. (Regulation of Seniority) Rules, 1954 was considered thread-bare in Rizvi's case by a Bench of 3 Judges to which one of us (K.Ramaswamy, J.) was a member. Recruitment to the Indian Police Service is from two sources, namely, direct recruitment and by promotion from the members of State Police Service holding substantive posts. No employee has a right to promotion but has right to be considered for promotion according to Rules. Chances of promotion are not conditions of service but every incumbent of a substantive post in lower cadre has a legitimate expectation for promotion and to be considered for promotion in accordance with the Rules. Unless the officer of a State Police Service is-brought on the select list and appointed to a cadre post in accordance with rules, he does not acquire right to assignment of the year of allotment. Eligibility for consideration have been prescribed in IPS (Recruitment by Promotion) Rules. Candidate that fulfills the qualifications requires to be considered for appointment by promotion as per Rule 9 thereof. preparation of the select list in accordance with the Appointment by Promotion Regulations is a pre-condition which requires to be prepared every year. It was held to be a mandatory duty. It subserves the object of the Rules and afford an equal opportunity to promotee officers to reach higher echelons of the service. It would inculcate dedicated service assiduously discharging the duties with integrity, honesty, exhibiting ability, straight forwardness with missionary zeal of self-confidence. The failure to prepare the list and accord chances of promotion would inhibit efficacy in service - and generate dishonesty and manipulation. Preparation of annual list and appointment to service gives, apart from equal opportunity to augment efficacy in service, provides equal chances of promotion to

the officers of State Police Service to provide harmony among direct recruits and promotees and make them accountable to proper implementation of law and order. The regulations require preparation of select list annually and revision of the list and review thereof from time to time as adumbrated in the regulations. It was, therefore, held in Rizvi's case that preparation of the select list every year is mandatory. The State Government is enjoined to account for dereliction of the statutory duty satisfactorily to the Court.

Regulation 3 of IPS (Appointment by Promotion) Regulations enjoins the State Government to constitute a committee consisting of all the officers enumerated therein to select the promotees. Under Regulation 5(1), a committee may ordinarily meet at intervals not exceeding one year prepare a list of the members of the State Police Service as are found to be suitable for promotion to the Indian Police Service. The manner and methodology of the preparation has been enumerated in the Regulations, the details of which are not material for the purpose of this case. Regulation 6 mandates the State Government to forward the select list to the UPSC for approval along with the records and remarks of the members and also send their observations on the recommendations of the committee to the UPSC. Regulation 7 requires UPSC to consider the service record and it is empowered to change the order of the merit. As seen under the Appointment by promotion Regulations, the list should be prepared in the order of merit as envisaged therein. The UPSC, while considering the order of merit, is empowered to revise the order and recommend to the Government of India for appointment, after obtaining the comments on the proposed changes from the State Government and consideration thereof. The modified seniority lists recommended by the UPSC shall become final list. The Union of India shall appoint the promotee officers in the order of merit to the vacancies arisen for their quota from the list approved by the UPSC. Under Rule 9 of the Recruitment Rules, the Central Government shall make the appointment in the order in which the names of the members of the Police, Service appeared in the select list, The select list requires to be changed from time to time by review and revision and that, therefore, the candidate put in the select list does not acquire any substantive right to appointment until approval of the list by the UPSC and appointment by the Central Government. The inclusion of a person's name in the select list in any order, therefore, does not give that person a vested right to have his name in the select list continued in the succeeding years. The object of preparing select list every year and revision and review from time to time itself would indicate that the inclusion of the name in the select lists creates only inchoit until he gets his appointment in accordance with the rules.

In para 8 of the judgment in Rizvi's case, this Court pointed out that the select committee should consider the eligibility and suitability of the members of the State Police Service on the basis of merit, ability and suitability. Seniority will be considered only where merit and suitability are approximately equal and it should be prepared the list of such suitable officers in the order of merit in each category such as outstanding, very good, good etc. and would send the select list to the State Government. The State Government with its comments should forward the same to the UPSC for approval. It would, thus, be seen that mere giving promotion to a State Police Officer and posting him to a cadre post does not cloth him with a right to be

appointed with effect from the year in which he was temporarily promoted and posted to cadre post. Inclusion in the selection list and appointment in accordance with the rules are conditions precedent. An officer including in the merit list and continuously officiated in the cadre post, gets his seniority when the vacancies have arisen in proportion to the percentage prescribed to the promotee officers from the date he was put in the select list and appointed in accordance with the rules or continuously officiated in the cadre post after putting in the select list without break. The year of allotment shall be next below the junior-most direct recruit selected by the direct recruitment continuously officiated in a cadre post. In Paragraph 15, this Court considered the seniority rules and held as under:

"Rule 3(1) of Seniority Rules adumbrated that every officer shall be assigned the year of allotment in accordance with Seniority Rules. Rule 3(3), which is relevant to this case, declares that the year of allotment of an officer appointed to the Service after the seniority rules came into an officer appointed to the Service after the seniority rules came into force, shall be as follows: the year of allotment of a direct recruit officer shall be the year following..the year in which competitive examination was held; (proviso omitted) (ii) officer appointed to the Indian Police Service by promotion in accordance with Rule 9 of the recruitment Rules, the year of allotment of the junior-most among the officers recruited to the Service in accordance with Rule 7 of these Rules (direct recruit) who officiated continuously in a senior post from a date earlier than the date of the commencement of such officiation by the former. Provided that the year of allotment of an officer appointed to the Service in accordance with Rule 9 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officers recruited to the Service in accordance with Rule 7 of those Rules, so started officiating shall be determined ad hoc by the Central Government in consultation with the State Government concerned."

Similarly, the Promotion Rules and Recruitment Rules were considered in paragraph 16 and stated the law as under:

"It could, thus, be seen that an officer appointed to the Indian Police Service by promotion from State Services to the Central Services in accordance with Rule 9 of the Recruitment Rules read with

Promotion Regulation 9, his year of allotment is that of the junior-most among the direct recruit officers who officiated continuously in a senior post from a date earlier than the date of the commencement of such officiation by the former. The continuous officiation of the promotee officers appointed under Rule 9 of the Recruitment Rules earlier than the date on which direct recruit officers started officiation should be determined and hoc by the Central Government. By operation of Explanation 1 the period of continuous officiation of the promotee officer in the senior post for the purpose of determining his seniority should count only from the date of his inclusion in the select-list or from the date of his continuous officiation in such senior post whichever is later. As a consequence, though the promotee officer continues to officiate earlier to his being brought into the select-list, he gets his seniority on his appointment to the senior post from the date on which he was brought into select-list, only from the date of appointment, or continuous officiation without break whichever is later."

It would, therefore, be clear that the Committee prepare the select list in the order of merit and forward the same to the State Government. It is the duty of the State Government to send the said list with its comments to the UPSC who in turn finalises the select list and prepares the list in the order of merit. In case, it revises the order of merit as per law it forms the final list. Appointment of the promotee officer to the Indian Police Service by the Central Government are mandatory requirements to claim seniority in the Indian Police Service and the year of allotment. The Government have properly explained the circumstances in which the Committee could not meet to consider the claims for selection of the candidates. Preparation of the list in the order of merit approved by UPSC and appointment to the post in accordance with the rules was follow thereafter.

In this case, it is not in dispute that a Committee was constituted and was to hold the meeting in December but since the strike of the State Government employees was continuing, the meeting was cancelled. Ultimately, the Committee met in February, 1978 and selected the candidates who are found to be eligible and put then in the select list. It is explained in the counter affidavit filed by the respondents that direct recruits of the year 1976 were given the year of allotment of 1977 and that, therefore, the appellant cannot get any day earlier than the direct recruits of the year 1973. The placement of the direct recruits also has been mentioned in the counter affidavit. Under these circumstances, the year of allotment of the appellant of 1973 is not vitiated by any error of law warranting interference:

The appeals are accordingly dismissed. No costs.

JUDIS