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M.V. KRISHNA RAO AND ORS. ETC. ETC.

v.

UNION OF INDIA AND ORS. ETC. ETC.

JANUARY 27, 1994

B [J.S. VERMA, B.P. JEEVAN REDDY AND FAIZAN UDDIN, JJ.]

Service Law: I.P.S.(Cadre) Rules/I.P.S.(Regulation of Seniority) Rules, 1954:

C *Rule 9/Rule 3(3) Explanation 1—Direct recruits and promotees—Seniority—Year of allotment—Inclusion in Select list as per Promotion Regulations—Continuous service rendered in cadre post from that date—Taking into consideration for the purposes of determining year of allotment—Validity of.*

D The appellants were direct recruits to the Indian Police Service and Respondents 5-11 were promotees from State Police Service. The promotees were included in the select list prepared in accordance with the I.P.S. Promotion Regulations and even before their inclusion they were already officiating in the cadre posts. Taking their dates of appointment to I.P.S. the Government of India assigned the year of allotment for purposes of seniority. The promotees approached the Central Administrative Tribunal claiming that since they officiated in the cadre post they were entitled to count their service from the date of continuous officiation, and consequently they would get the year 1973 as their year of allotment. The Tribunal allowed their claim. Aggrieved by the Tribunal's judgment, the appellant-direct recruits preferred the present appeals.

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G The appellants contended that the posting of the promotees in cadre posts even prior to their inclusion in the select list and before their appointment to I.P.S. was contrary to rules; that the continuation of the respondents in cadre posts beyond three months of their posting was in clear violation of Rule 9 of the I.P.S. (Cadre) Rules, especially when there was no prior concurrence of the Central Government; and that the posting of the promotees in cadre posts was also illegal inasmuch as cadre officers was available and, therefore, the service rendered by the promotees on the basis of temporary local arrangement made before their appointment to H the cadre could not be counted.

The respondents contended that the promotees were not seeking to count their service rendered in the cadre post prior to their inclusion in the select post, but only the continuous officiating service rendered in cadre posts on and after their inclusion in the select list; and that none of the appellant-direct recruits was eligible to hold the post when the promotees were posted in the cadre posts; and, therefore, they had no *locus standi* to contest the claim of the promotees.

Dismissing the appeals, this Court

HELD: 1.1. Though the promotees were posted to cadre posts even prior to the date of their inclusion in the select list, they do not claim to count it for the purpose of determining their year of allotment. By virtue of the Explanation (1) to Rule 3 of the I.P.S. (Regulation of Seniority) Rules, 1954 they are entitled to count the lesser period alone, which in their case happens to be their continuous officiation from the date of their inclusion in the select list. This is the effect of Explanation (1) to Rule 3(3) of the said Rules. [408-F]

1.2. The Tribunal has not recorded any finding nor is any material placed before this Court to show that on January 9, 1978 cadre officers were available and that inspite of the same the said promotees were posted to cadre posts. So also there is nothing on record to show that the posting of the promotees in cadre posts was by way of local or temporary arrangement. [409-B]

1.3. Though the State Government promptly intimated the Central Government of the posting of the promotees in cadre posts, the Central Government took an inordinately long time to respond and they wrote back only on January 5, 1985 disapproving the said posting not on ground of violation of Rule 9 of the I.P.S. Cadre Rules but on the ground of over-utilisation of deputation reserve. The Tribunal rightly gave a finding that it cannot constitute a relevant ground for depriving the promotees of their service subsequent to January 9, 1978 for the purpose of Explanation (1) to Rule 3(3) of Seniority Rules, and the same is not disputed. [409-E-G]

Syed Khalid Rizvi and Others v. Union of India and Others, [1993] Suppl. 3 S.C.C. 575 & H.R. Kasturi Rangan v. Union of India & Ors., (C.A. 3891-95/93 dated 28.7.1993), referred to.

A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2177 of 1988.

From the Judgment and Order dated 11.2.1988 of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad. in O.A. No. 395 of 1986.

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Civil Appeal Nos. 399, 398, 396 and 397 of 1994.

C From the Judgment and Order dated 11.1.1991, 6.10.1989 & 19.9.1991 of the Central Administrative Tribunal Hyderabad Bench, Hyderabad in O.A. Nos. 191/88, 370/87, 213/88 & 173 of 1990.

D R.F. Nariman, A. Raghuvir, M. Chandrasekharan, K. Madhava Raddy, P.P. Rao, Ms. V.S. Rekha, K.R. Nagaraja, A.V.V. Nair, B. Rajeshwar Rao, Vimal Dave, Ms. R. Chhabra, Sudarsh Menon, T.V.S.N. Chari, Ms. Promila Choudhary, Nikhil Naggar, P. Parmesaran, K.K. Manglam, and K.K. Gupta for the appearing Parties.

The Judgment of the Court was delivered by

E B.P. JEEVAN REDDY, J. CIVIL APPEAL NO. 2177 OF 1988

F 1. The appellants are direct recruits to Indian Police Service (I.P.S.), while the respondents 5 to 11 are promotees. In this appeal, directed against the judgment of the Central Administrative Tribunal, Hyderabad, the dispute pertains to the proper year of allotment to be assigned to respondents 5 to 11. The Original Application in the Central Administrative Tribunal was filed by the said respondents. The appellants as well as respondents 12 to 14 in this appeal were impleaded as respondents 5 to 11. Respondents 12 to 14 in this appeal are also direct recruits. Since they did not join the appellants in filing this appeal, they have been impleaded as respondents. For the sake of convenience, we shall refer to the appellants as direct recruits and to respondents 5 to 11 as promotees.

H 2. The promotees were substantive members of the Andhra Pradesh State Police Service. They were included in the select list prepared under and in accordance with the I.P.S. Promotion Regulations on 9th January, 1978. Even before the said date, all of them (except Sri K. Narsimha) were

posted in cadre posts. They continued to officiate in such cadre posts even after January 9, 1978, till they were appointed to the I.P.S. Respondent No. 5 was appointed to I.P.S. on December 19, 1978, Respondent No. 6 on September 20, 1979 and the remaining on November 13, 1979. If their dates of appointment to I.P.S. is taken as the basis, Respondent No. 5 would be entitled to be assigned 1974 as his year of allotment while the other respondents would get 1975 - and this is what the Government of India did. The promotee- respondents' case, however, is that inasmuch as they have officiated continuously in a cadre post, they were entitled to count their service atleast from January 9, 1978 (the date of their inclusion in the selection list) for the purpose of determining their year of allotment and that if so counted, they will get the year 1973 as their year of allotment. The Central Administrative Tribunal has upheld this claim of the Respondents 5 to 11.

3. The four appellants and respondents 12 to 14 (direct recruits) have been assigned 1974 as their year of allotment. This is not in question. Since they were likely to be affected by the grant of relief claimed by the promotees, they were impleaded as respondents in the Original Application before the Central Administrative Tribunal. These direct recruits contested the promotees' claim before the Tribunal, so did the Government of India.

4. The main question in this appeal is whether the continuous officiating service rendered by the promotees in the cadre posts on and from January 9, 1978 is liable to be taken into consideration for the purposes of determining their year of allotment? As indicated hereinabove, if this service is counted they will be entitled to be assigned 1973 as their year of allotment. Otherwise not.

Mr. R.F. Nariman, learned counsel for the appellants (direct recruits) urged the following contentions:

(1) the posting of the promotees in cadre posts even before their inclusion in the select list and before their appointment to I.P.S. is contrary to rules and, therefore, of no effect.

(2) the continuation of the said respondents in cadre posts beyond three months of their posting - at any rate, after the expiry of three months from January 9, 1978 - is in clear violation of Rule 9 of the I.P.S. (Cadre)

A Rules. Moreover, they could not be continued in the cadre post beyond six months unless the central government accorded *prior* concurrence thereto. Admittedly, no such prior concurrence was obtained. As a matter of fact, the Government of India disapproved the said posting. If so, there can be no question of counting such service for any purpose whatsoever.

B (3) the posting of the promotees in the cadre posts was also illegal inasmuch as on that date cadre officers were available. Ignoring the cadre officers, the said promotees were posted to cadre posts in violation of the Rules. For these reasons also, the said service cannot be counted.

C (4) by virtue of Explanation (2) to Rule 3 of the I.P.S. (Seniority) Rules, the service rendered in the cadre post prior to their appointment to I.P.S. cannot be counted or taken into consideration for the reason that it was by way of temporary local arrangement.

D 5. Sri P.P. Rao, learned counsel appearing for the promotees contested the validity and correctness of the contentions urged by the appellants and submitted that the promotee-respondents are not seeking to count their service rendered in the cadre posts prior to their inclusion in the select list; they are only seeking to count the continuous officiating service rendered by them in the cadre posts on and after their inclusion in the select list. In such a case there is no question of violation of any rules. The learned counsel pointed out that it is not found by the Tribunal that when any of these promotees was posted in cadre post, a cadre officer was available. Counsel submitted that though the State Government addressed the Central Government for granting approval of their posting, the Central Government rejected the same only on 5th January, 1985. Soon thereafter, the promotees submitted a memorandum to the President of India and finding no response thereto, they approached the Tribunal in the year 1986. Counsel further pointed out that when the promotee-respondents were posted in cadre posts, none of the direct recruits concerned herein was eligible to hold those posts and, therefore, they have no *locus standi* to contest the claim of the promotees.

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H 6. A few relevant rules need be noticed for a proper appreciation of the controversy. Rule 3 of the I.P.S. (Regulation of Seniority) Rules, 1954 prescribes the manner in which the year of allotment should be assigned to a member of the I.P.S. Rule 3, insofar as it is relevant, reads thus:

"3. Assignment of Year of Allotment - (1) Every officer shall be assigned a year of allotment in accordance with the provisions hereinafter contained in this rule. A

(2) [omitted as unnecessary]

(3) The year of allotment of an officer appointed to the Service B after the commencement of these rules shall be-

(a) where the officer is appointed to the Service on the results of a competitive examination the year following the year in which such examination was held; C

(b) where the officer is appointed to the 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 who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former; D

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 cadre 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. E

Explanation I. - In respect of an officer appointed to the Service by promotion in accordance with sub-rule (1) of rule 9 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purposes of determination of his seniority; count only from the date of the inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post whichever is later. F G

Explanation 2. - An officer shall be deemed to have officiated continuously in a senior post from a certain date if during the period from that date to the date of his confirmation in the senior grade he continues to hold without any break or reversion a senior post otherwise than as a purely temporary or local arrangement." H

A (Rest of the rule omitted as unnecessary)

7. The purport of the Rule is: (i) in the case of a direct recruit, the year of allotment shall be the year following the year in which the relevant competitive examination was held; (ii) In the case of a promotee, his year of allotment shall be the year of allotment assigned to the junior-most among the direct recruits who officiated continuously in a senior post from a date earlier than the date of commencement of officiation by such promotee; (iii) In the case of a promotee, the period of his continuous officiation in a senior post shall count from the date of inclusion of his name in the Select List *or* from the date of his continuous officiating appointment, whichever is later. Explanation (2) seeks to exclude the period of temporary posting made by way of local arrangement from the purview of continuous officiating service.

8. The next rule to be noticed is Rule 9 of the I.P.S. (Cadre) Rules. Since this rule is of crucial relevance to this case, it would be appropriate to set out the Rule in its entirety, as it obtained at the relevant time:

"9. Temporary appointment of non-cadre officers to cadre posts.
- (1) A cadre post in a State may be filled by a person who is not a cadre officer if the State Government "or any of its Heads of Department to whom the State Government may delegate its powers of making appointment to cadre posts"; is satisfied-

(a) that the vacancy is not likely to last for more than three months; or

(b) that there is no suitable cadre officer available for filling the vacancy:

Provided that where a cadre post is filled by a non-select list officer, or a select list officer who is not next in order in the select list, under this sub-rule, the State Government shall forthwith report the fact to the Central Government together with the reasons therefor.

H (2) Where in any State, a person other than a cadre officer is appointed to a cadre post for a period exceeding three months the State Government shall forthwith report the fact to the Central

Government together with the reasons for making the appointment. A

Provided that a non-select list officer, or a select list officer who is not next in order in the select list shall be appointed to a cadre post only with the prior concurrence of the Central Government. B

(3) On receipt of a report under sub-rule (2) or otherwise the Central Government may direct that the State Government shall terminate the appointment of such person and appoint thereto a cadre officer and where any direction is so issued, the State Government shall accordingly give effect thereto. C

(4) When a cadre post is likely to be filled by a person who is not a cadre officer for a period exceeding six months, the Central Government shall report the full facts to the Union Public Service Commission with the reasons for holding that no suitable officer is available for filling the post and may in the light of the advice given by the Union Public Service Commission give suitable directions to the State Government concerned." D

9. A reading of Rule 9 indicates that it speaks of two categories of officers, viz., (a) officers included in the Select List but not appointed to the I.P.S. and (b) non-cadre non-select-list officers (those who are neither included in the select list nor appointed to I.P.S.). Sub-rule (1) says that where a vacancy is not likely to last for more than three months or where there is no suitable cadre officer available for filling the vacancy, the State Government may fill a cadre post by a person who is not a cadre officer. The proviso, however, says that where a cadre post is filled by a non-select list officer or a select list officer who is not next in order in the said list, the State Government shall forthwith report the fact to the Central Government together with reasons for such posting. Sub-rule (2) says that where a person other than a cadre officer is appointed to a cadre post for a period exceeding three months the State Government shall forthwith report that fact to the Central Government together with the reasons for making the appointment. The proviso to this sub-rule says that no non-select list officer or a select list officer who is not next in the order in the said list shall be appointed to a cadre post except with the prior concurrence of the Central Government. Having regard to the context in which this proviso occurs, its G

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A operation appears to be confined to sub-rule (2) alone, *i.e.*, continuation of a non-cadre officer in a cadre post beyond three months. (It is, however, not necessary for our purposes to express any definite opinion on this aspect.) Sub-rule (3) empowers the Central Government to direct the State Government, on receipt of a report under sub-rule (2) or otherwise, to terminate the appointment of such a person and to appoint a cadre officer thereto. Such direction is binding upon the State Government. Sub-rule (4) creates an obligation upon the Central Government to consult the Union Public Service Commission where a cadre post is likely to be filled by a non-cadre officer for a period exceeding six months. The sub-rule further says that the Central Government shall issue suitable directions in the light of the advice given by the U.P.S.C. This Rule, it is evident, is conceived as a check upon the propensity of the State Government to prefer their own State officers in the matter of posting in cadre posts thereby seeking to confer upon them undue benefits at the cost of other officers.

D 10. We may next refer to Rule 9 of I.P.S. (Recruitment) Rule. The Recruitment Rules speak of the several sources from which appointment is made to the I.P.S. Rule 9 deals with recruitment by promotion. It says that the quota of the promotees shall not exceed 1/3 of the number of posts shown against item 1 and 2 of the cadre in relation to that State in the Schedule to the I.P.S. (Fixation of Cadre Strength) Regulations, 1955.

E 11. Let us now examine the facts of the case in the light of the above rules. Though the promotees were posted to cadre posts even prior to the date of their inclusion in the select list, they do not claim to count it for the purpose of determining their year of allotment. By virtue of the F Explanation (1) to Rule 3 of the Seniority Rules, they are entitled to count the lesser period alone, which in their case the lesser period alone, which in their case happens to be their continuous officiation from the date of their inclusion in the select list. This is the effect of the Explanation (1) to Rule 3(3) of Seniority Rules. But, say the appellants-direct recruits, the posting and continuance of the promotees in the cadre posts even subsequent to their inclusion in the select list is illegal, being contrary to Rules and hence, it cannot be counted for any purpose whatsoever. The four grounds urged by them in this behalf have been set out hereinbefore. With a view to clear the ground, we may say at one that the Tribunal has not recorded any finding nor is any material placed before us to show that on G January 9, 1978 any cadre officers were available and that inspite of the

same the said promotees were posted to cadre posts. There is also no finding.....though it is not strictly relevant for the present purpose..... to the effect that when the said promotees were posted in a cadre post (first continuous officiating posting) any cadre officers were available but were ignored. Similarly, Sri Nariman's contention that by virtue of Explanation (2) to Rule 3(3) of Seniority Rules, the promotees' service prior to their appointment to I.P.S cannot be counted for the purpose of determining the year of allotment is equally unsustainable. No finding is recorded by the Tribunal - nor any material placed before us to show - that the posting of the promotees in cadre posts, particularly after January 9, 1978, was by way of a local arrangement or temporary. We cannot also agree with Sri Nariman that for continuance of these promotees beyond three months or six months, as the case may be, prior concurrence of the Central Government was obligatory. The proviso to sub-rule (2) - which alone speaks of prior concurrence - does not apply to select-list officers, unless the officer 'not next in order' in such list is appointed. It is not suggested that such was the case in the matter of posting of any of the promotees concerned herein. The other requirement of Rule 9 of Cadre Rules, *viz.*, the obligation of the State Government to report forthwith the said fact to the Central Government together with the reasons for such appointment - provided by sub-rule (2) - has been complied with. Indeed, the case of the promotees is that though the State Government promptly intimated the Central Government of their posting in cadre posts, the Central Government took an inordinately long time to respond and that wrote back only on January 5, 1985 disapproving the said posting - not on ground of violation of Rule 9 of Cadre Rules but on the ground of over-utilisation of deputation reserve. The said disapproval is also the subject matter of challenge in the Original Application filed by the promotees in the Tribunal. The Tribunal has gone into this aspect elaborately and has held that the alleged over-utilisation of deputation reserve cannot constitute a relevant ground for depriving the promotees of their service subsequent to January 9, 1978 for the purpose of Explanation (1) to Rule 3(3) of Seniority Rules. No arguments have been addressed before us seeking to dispute the said finding.

12. In this view of the matter, we do not think it necessary to refer to the decisions cited by counsel before us. All of them are referred to and discussed elaborately in the judgment of the Tribunal. The two later judgment, *viz.*, *Syed Khalid Rizvi and Others v. Union of India and Others*, [1993] Suppl. 3 S.C.C. 575 and *H.R. Kasturi Rangan v. Union of India &*

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A *Ors.*, C.A. 3891-95/93 dated 28.7.1993, refer to and reiterate the principles enunciated in the earlier judgments of this Court and the view taken by us herein accords with the ratio of the said judgments. For the above reasons, the appeal fails and is accordingly dismissed. No costs.

Civil Appeal No 399 of 1994. S.L.P. (C) No. 14045 of 1991

B 13. Leave granted.

No separate arguments are addressed in this matter. In the judgment under appeal, the Tribunal directed the Central Government to assign the year of allotment to the applicants before it with reference to their continuous officiation.

C The two original applicants (Respondents 4 and 5 in this appeal) were included in the select list on March 20, 1979 and they were posted in a cadre post subsequent to the said date. Applying Explanation (1) to Rule 3(3), the Tribunal directed that they shall be given the benefit of continuous officiation in the cadre post, and that the Central

D Government shall determine the year of allotment and their seniority on that basis. Since the said direction is consistent with the view taken by us in Civil Appeal No. 2177 of 1988, this appeal is dismissed. No costs.

Civil Appeal No 398 of 1994. S.L.P. (C) No. 4861 of 1991

E 14. Leave granted.

No separate arguments were addressed in this appeal. It appears that the original applicant, Sri D. Narayana Rao (Respondent No. 27 in this appeal) was included in the select list approved on November 4, 1981. He

F was appointed to officiate in a cadre post on February 6, 1982 and he continued to officiate as such till December 23, 1982 when he was appointed to the service. The Tribunal negatived his claim to count his officiating service between July 19, 1979 and August 19, 1980 for the purpose of determining his year of allotment. There is no appeal by the applicant. The Tribunal has directed that the applicant (Respondent No. 27 in this appeal) is entitled to reckon seniority in the senior scale of the I.P.S. from January 6, 1982 under Rule 3(3)(b) of the Seniority Rules and that he is also entitled to be assigned 1977 as the year of allotment. It is not submitted before us that on the reasoning of the Tribunal, the said respondent (original applicant) is not entitled to 1977 as his year of allotment.

The appeal is accordingly dismissed. No costs. A

Civil Appeal No 396 of 1994. S.L.P. (C) No. 9636 of 1992

15. Leave granted.

In the original application before the Tribunal from which this appeal arises, there were three applicants who are impleaded as Respondents 1 to 3 in this appeal. The Tribunal has found that inasmuch as the original applicants were included in the select list of 1982, their seniority can be counted only from the date of such inclusion. So far as the assignment of year of allotment to the applicants is concerned, the Tribunal has directed that the matter is governed by the majority judgment pronounced by it on September 5, 1991 in Original Application No. 214 of 1988 *G. Ramachandra Reddy v. Union of India & Ors.*, Following the said majority judgment, the Tribunal directed the Union of India to fix the year of allotment of the said applicants taking December 28, 1982 as the dates of their continuous officiation in senior posts in accordance with the Rule. It is obvious that the said direction must be understood and acted upon in accordance with the principle enunciated in paras 14 to 16 of the judgment in *Syed Khalid Rizvi* and in this judgment (in Civil Appeal No. 2177 of 1988).

The appeal is accordingly dismissed. No costs. E

Civil Appeal No 397 of 1994. S.L.P. (C) No. 9637 of 1992

16. Leave granted.

In this case too, the Tribunal has directed the Union of India to determine the year of allotment to which the original applicants (impleaded as Respondents 1 and 2 in this appeal) are entitled to. The said two respondents (original applicants) were included in the select list on November 4, 1981. The first applicant, Sri K. Rushiya Rao was posted on August 21, 1981 in a cadre post in which he continued to officiate till he was appointed to I.P.S. on October 17, 1984. So far as the other applicant, Sri R.C. Venkateshwarlu is concerned, he was posted in a cadre post only on June 9, 1983 wherein he continued to officiate till his appointment to I.P.S. on October 17, 1984. So far as K. Rushiya Rao is concerned, the Tribunal has directed that November 4, 1981 should be taken as the relevant date for the purpose of determining his year of allotment. In the

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A case of *R.C. Venkateshwarlu*, however, it was of the opinion that a strict application of Explanation (I) to Rule 3(3) would result in grave injustice to the said respondent for the several reasons stated by it and, therefore, it recommended that a relaxation may be granted to him so as to enable him to treat November 4, 1981 as the relevant date for determining his year of allotment. We have not been persuaded to hold that the directions made by the Tribunal are in any manner contrary to law.

The appeal is accordingly dismissed. No costs.

G.N.

Appeals dismissed.