

State of Rajasthan and ors. Vs. Shiv Kumar Sharma and ors.

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Court : Rajasthan

Decided On : Nov-29-2000

Reported in : 2001(1)WLC266; 2001(2)WLN328

Judge : Arun Madan and; K.S. Rahtore, JJ.

Acts : Indian Police Service (Appointment by Promotion) Regulations, 1955 - Regulations 5, 7 and 9(1)

Appeal No. : D.B. Civil Writ Petition (Def.) No. 2627 of 2000

Appellant : State of Rajasthan and ors.

Respondent : Shiv Kumar Sharma and ors.

Advocate for Def. : Rajendra Soni and; Sanjay Pareek, Advs.

Advocate for Pet/Ap. : R.N. Mathur, Additional Advocate General

Judgement :

ORDER

Madam J.

1. The defect is waived. In view of the urgency of the matter as expressed by the learned counsel for the parties, the matter has been taken up for final hearing today. Undisputedly, respondent No.1 Shiv Kumar Sharma who is member of Rajasthan Police Service (for short 'RPS' retired on 31.3.1999 on attaining the age

of superannuation of 58 years. Though, his candidature was considered by the Selection Committee for preparation of the Select List for promotion to the cadre of IPS Officers for the year 1991-92 but since his name could not be included in the select list due to statutory limits as regards the size of the select list, however his name did figure at Sr. No.1 of the select list against the vacancies of the year 1993-94 at Sr. No. 3 of the said list. Since the respondent had retired on attaining the age of superannuation of 58 years as aforesaid, his name could not be recommended by the State Govt. to the Central Govt. for appointment to the IPS cadre as per the select list for the year 1993-94 though his name was recommended for inclusion on the recommendations of the Selection Committee.

(2). However, we sought clarification from the learned counsel appearing for the State as well as the Central Government to which we have been informed that though the respondent's name was recommended for inclusion in the select list and it was done accordingly but since a formal notification for appointment could not be issued for the reason that the respondent had retired on attaining the age of superannuation from the State Police Service therefore, his name could not be included in the notification. In the State Police Service the age of superannuation is 58 years whereas in the Indian Police Service the age of superannuation is 60 years. Regulation 9(1) of the IPS (Appointment by Promotion) Regulations, 1955 stipulates, thus:-

'Appointment of members of the State Police Service to the Service shall be made by the Central Government on the recommendations of the State Government in the order in which the names of members of the State Police Service appear In the Select List for the time being in force.'

(3). On the query being raised by the Bench to the learned counsel for the State and the Central Govt., we were informed that since the Review D.P.C. Committee was constituted only for the year 1993-94 for considering the candidature of the candidates who were due to be promoted from the RPS cadre to IPS cadre against the vacancies of 1991 and onwards upto 1997, we have been informed that the meeting of the Review Committee was convened only on 23.7.2000 whereby due approval was accorded to candidates who were included in the

select list on the recommendations of the Selection Committee including the present applicant-respondent No.1 pursuant to its recommendations made on 6.9.2000, Hence there is no dispute that though the recommendation was made by the Review DPC in favour of respondent No. 1 but he could not be appointed to I.P.S. since he had retired earlier from R.P.S. on attaining superannuation at the age of 58 years, despite his inclusion in the select list.

(4). Regulation 5 stipulates preparation of select list of suitable officers while, regulation 7 stipulates consideration of the select list by the UPSC which too had given its approval and consent to the select list in which the respondent's name had already been included on the basis of recommendations made by the Selection Committee as well as the Review Committee. We are informed by the learned counsel for the State that necessary exercise as regards the compliance of the aforesaid regulations was done in the instant case by not only including in the select list but also appointing all those eligible candidates to I.P.S. whose names did figure in the said list.

(5). Be that as it may, the only difficulty which the learned counsel for the State as well as the Central Government have expressed is that the respondent's name though was recommended earlier for inclusion in the select list and consultation process was also completed with UPSC as per the requirement of the rules and approval was also obtained from UPSC yet, he could not be considered for promotion to IPS since on the relevant date i.e. 6.9.2000 he ceased to be a member of the State Police Service. We cannot be oblivious of the fact that if pursuant to the recommendations of the Selection Committee the respondent whose name had already been included in the select list for IPS as on 6.9.2000, if the Review Committee had been convened earlier for carrying out the necessary exercise against the vacancies of the year 1993-94 in which the respondent was placed at Sr. No. 3 both in order of merit and seniority he was definitely within the zone of consideration for appointment to IPS cadre but since the Review Committee could not be convened earlier for the reasons which have not been stated before the learned Tribunal, the respondent could not get the benefit of promotion to IPS cadre.

(6). The learned Tribunal in its impugned order dt. 22.11.2000 has observed thus:-

'There is no dispute that the select list was prepared/approved on 6.9.2000. Though as per the date of birth of the applicant, he has retired, on superannuation from the State Police Service on 30.10.1998. In case the applicant was not to be offered appointment to the post of IPS, consideration of his case by the Selection Committee would be infructuous. But as a matter of fact, the applicant was due for consideration for appointment to IPS during the year 1991-92, 1992-93 and 1993-94. However, for reasons best known to the respondents, his case was not considered at the appropriate time and now when his case is considered and placed at the select list, he is being denied appointment to the IPS on the ground that he had retired on superannuation from State Police Service. We consider this approach on the part of the respondents arbitrary and illogical. It has also been pointed out that superannuation age for the IPS is 60 years and applicant has not completed 60 years of age even now, his case in our view should have been taken up for appointment to the IPS though he had retired on attaining the age of 58 years as per the superannuation age prevalent in the State Government.

In the light of above discussion, we are of the view that the applicant deserves consideration for promotion to the IPS as per the select list 993-94 notwithstanding the fact that he had retired on superannuation from State Police Service on 30.11.1998. Accordingly we pass the order as under: -

The OA is allowed. The applicant would be entitled for promotion to the IPS on the basis of select list for the year 1993-94 from the date his junior has been promoted as such with all consequential benefits. The period from the date of superannuation from State Police Service to the appointment as IPS would be treated as 'Dies-Non' for the purpose of retiral benefits. The Central Government is accordingly directed to issue appointment orders in favour of the applicant, and appoint him to the IPS, by 5.00 PM of 24.11.2000. No cost.'

(7). We have been informed that on the basis of the application moved by the State of Rajasthan before the learned Tribunal in OA No. 435/2000 the learned CAT, Jaipur Bench vide its order dt. 24.11.2000 had extended time for compliance of the order by four days. By another order dt. 28.11.2000, the learned Tribunal

extended the time for compliance till 5.00 PM of 29.11.2000 which would lapse today itself.

(8). Mr. R.N. Mathur, learned Additional Advocate General placed reliance upon the order passed by the State of Rajasthan (Department of Personnel) dt. 21.5.1997 in favour of one Mohan Singh Rathore who was appointed under Rule 9 of the IPS (Cadre) Rules, 1954 in the Senior Scale of IPS on the post of Supdt. of Police, CID (SB). The order was passed in favour of Mohan Singh Rathore on the basis of order dt. 7.8.1995 passed in OA No. 600/89 directing the Central Govt. to appoint Mohan Singh Rathore to IPS cadre w.e.f. the date when it was due so as to enable Mohan Singh Rathore to get the monthly benefits consequent upon his promotion to IPS. The Central Govt. had preferred SLP in Supreme Court against the order of the Tribunal and the Hon'ble Supreme Court vide its order dt. 2.9.1996 while setting aside the order of the Tribunal directed the Union of India to include his name in notification dt. 4.10.1998 and give the order of appointment with all retiral benefits. Subsequently, on query being sought from the Central Govt. by the State Government for the period in question, the Central Govt. directed that he shall be entitled to all consequential benefits for revision in pension and gratuity and this was also approved by His Excellency the Governor of the State for the period in question.

(9). Keeping in view the observation of the Central Administrative Tribunal in its order dt. 22.11.2000, we find that the finding arrived by the Tribunal are perfectly just and in accordance with the Regulations and, hence deserves to be affirmed.

(10). As a result of above discussion, the writ petition is dismissed. The impugned order of the learned Tribunal dated 22.11.2000 is upheld.

(11). It is stated by the learned counsel for the petitioners that due to paucity of time, it is not possible to issue a formal notification in compliance of the aforesaid directions today. The petitioners are directed to immediately issue notification for compliance of the aforesaid directions by tomorrow i.e. 30.11.2000 and possibly by 1.00 P.M. upon being promoted to IPS Cadre, respondent No. 1- applicant Shiv Kumar Sharma shall be entitled to all consequential benefits such as pay revision, pension, gratuity and all other benefits which may be admissible to him in

accordance with the Rules/Regulations.

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