

Supreme Court of India

Union Of India vs Rahul Rasgotra on 1 February, 1994

Equivalent citations: 1995 AIR 2237, 1994 SCR (1) 508

Author: J S Verma

Bench: Verma, Jagdish Saran (J)

PETITIONER:

UNION OF INDIA

Vs.

RESPONDENT:

RAHUL RASGOTRA

DATE OF JUDGMENT 01/02/1994

BENCH:

VERMA, JAGDISH SARAN (J)

BENCH:

VERMA, JAGDISH SARAN (J)

SINGH N.P. (J)

VENKATACHALA N. (J)

CITATION:

1995 AIR 2237

1994 SCR (1) 508

1994 SCC (2) 600

JT 1994 (1) 441

1994 SCALE (1) 336

ACT:

HEADNOTE:

JUDGMENT:

The judgment of the Court was delivered by VERMA, J.--Rahul Rasgotra, Respondent 1 in Civil appeal No.5414 of 1992 was selected for the Indian Police Service in the combined Civil Service Examination held in the year 1988, while Desh Raj Singh, Respondent I in Civil Appeal No, 3844 of 1993 was selected for the Indian Police Service in the combined Civil Services Examination held in the year 1989. Rahul Rasgotra was, therefore, a probationer in the IPS belonging to the 1989 batch, while Desh Raj Singh was an IPS probationer of the 1990 batch. Rahul Rasgotra was granted exemption from joining training with other probationers of the 1989 batch of IPS since he wanted to appear in the next examination held in the year 1989 in an attempt to improve his prospects by getting selected for a better service. However, he did not succeed and he joined the training in August 1990 as an exempted probationer of the 1989 batch along with probationers of the 1990 batch. Desh Raj Singh had also sought permission to appear in the. next examination but he later withdrew his request and joined the training along with the probationers of the 1990 batch. Rahul

Rasgotra was ranked 168 in the 1989 batch and according to his rank the cadre allocation made to him on December 28, 1989 was in the joint cadre of the States of Manipur and Tripura. There is no dispute that according to his rank in the 1989 batch, the cadre allocated to him is appropriate. The claim of Rahul Rasgotra is that the cadre allocation to him should be made treating him as a probationer along with the 1990 batch and not 1989 batch since as an exempted probationer of the 1989 batch he had joined the training along with probationers of the 1990 batch; and on this basis, he would get allocation to the cadre of a State better than Manipur and Tripura. However, he does not indicate the manner in which he can be mixed with probationers of the 1990 batch or be given a rank with them. Desh Raj Singh was allotted the Orissa cadre as a probationer of the 1990 batch, but he claimed allotment to his home State of Uttar Pradesh. He too is aggrieved by the allotment of Orissa cadre to him. Both of them filed applications before the Central Administrative Tribunal challenging the cadre allotment. Their claim has been allowed by the Tribunal. Hence these appeals by special leave are filed by the Union of India.

2. We may now refer to some relevant provisions. The Indian Police Service (Cadre) Rules, 1954 provide for constitution of cadres, allocation of members of various cadres and certain ancillary matters. Rule 2(a) defines 'cadre officer' to mean a member of the Indian Police Service. Rule 3 provides that there shall be constituted for each State or group of States an Indian Police Service Cadre. Rule 4 deals with the strength and composition of each of the cadres constituted under Rule 3. Rule 5 which is material reads as under :

"5. Allocation of members to various cadres.- (1) The allocation of cadre officer to the various cadres shall be made by the Central Government in consultation with the State Government or State Governments concerned. (2) The Central Government may, with the concurrence of the State Governments concerned, transfer a cadre officer from one cadre to another cadre."

Sub-rule (1) of Rule 5, in terms, requires the Central Government to make allocation of cadre officers to the various cadres in consultation with the State Government or State Governments concerned. Sub-rule (2) of Rule 5 provides for transfer of a cadre officer from one cadre to another by the Central Government with the concurrence of the State Governments concerned.

3. The main argument in these appeals by Shri P.P. Rao, learned counsel for Respondent I is that the cadre allocation can be made by the Central Government in accordance with sub-rule (1) of Rule 5 only of a 'cadre officer' as defined in Rule 2(a) which means a member of the Indian Police Service; and, therefore, it can be made of an officer only when he has become a member of the Indian Police Service by appointment to the Service which happens when the officer concerned joins the training on his appointment and not earlier. The argument is that on selection as a result of the competitive examination and allotment of a particular Service to the successful candidate, he does not become a member of the Service which happens only when he is appointed to the Service by joining the training. On this basis, it was contended, that Rahul Rasgotra having joined the training in August 1990, the cadre allocation made in his case in December 1989 after being exempted from joining the training along with other officers of the 1989 batch, was made when he was not a 'cadre officer' which he became only in August 1990 on joining the training with officers of the 1990 batch. It was

submitted, that the cadre allocation of Rahul Rasgotra in December 1989 being made prior to his joining the training in August 1990, the power under Rule 5(1) was then not available and a fresh cadre allocation has to be made in his case on the basis of facts existing in August 1990 along with the officers of the 1990 batch who had joined the training at the same time. The submission is, that on this basis he expects allocation to a better cadre to which he is entitled on consideration for cadre allocation along with officers of the 1990 batch.

4. We find no merit in the contention of Shri P.P. Rao, learned counsel for Respondent 1.

5. The Indian Police Service (Recruitment) Rules, 1954 define 'direct recruit' in Rule 2(aa) to mean a person appointed to the Service after recruitment under clause (a) of sub-rule (1) of Rule 4. Rule 4 deals with method of recruitment to the Service and clause (a) of sub-rule (1) therein provides the method of a competitive examination. Rule 4(2) requires determination of number of persons to be recruited by each method of recruitment on each occasion as may be required to fill the vacancies during any period of recruitment. Rule 6 provides for appointments to the Service by the Central Government according to the prescribed methods. Rule 7 deals with recruitment by competitive examination. Respondent I in both these appeals were so appointed.

6. The Indian Police Service (Appointment by Competitive Examination) Regulations, 1955 have been framed in pursuance of Rule 7 of the Indian Police Service (Recruitment) Rules, 1954, wherein Regulation 7 provides for preparation of the list of successful candidates arranged in order of merit of the candidates as a result of the competitive examination.

7. The Indian Police Service (Probation) Rules, 1954, in Rule 2(e), define 'probationer' to mean a person appointed to the Service on probation and include an exempted probationer when he is appointed to the Service on probation. Rule 2(ee) defines 'exempted probationer' to mean a person 'who, on being allocated to the Service,' has expressed his intention to appear at the next examination and has been permitted to abstain from probationary training in order to so appear. Obviously, allocation to the Service is complete in the case of an 'exempted probationer' also. It is in this sense that Rahul Rasgotra was an exempted probationer of the 1989 batch. Rule 3 relates to period of probation. Rule 5 deals with training of the probationers. Rule 10 therein relates to seniority of probationers and reads as under :

"10. Seniority of Probationer.- (1) The Central Government shall prepare a list in two parts of all probationers who are appointed to the Service on the results of the same competitive examination. The first part shall consist of the probationers other than the exempted probationers and the second part shall consist of the exempted probationers who were selected at the same competitive examination. The probationers included in the first part shall be placed en bloc above the exempted probationers included in the second part. The list shall be arranged in the order of merit which shall be determined in accordance with the aggregate of marks obtained by each probationer or exempted probationer, as the case may be-

(a) at the competitive examination;

(b) in respect of his record in the Lal Bahadur Shastri National Academy of Administration and the Sardar Vallabhbhai Patel National Police Academy; and

(c) at the final examination:

Provided that if two or more probationers have secured equal number of marks in the aggregate, their order of merit shall be the order of their dates of birth.

(2)The seniority inter se of the probationers, who are assigned the same year of allotment, shall be determined in accordance with the list prepared under sub-rule (1)." (emphasis supplied)

8.The Indian Police Service (Regulation of Seniority) Rules, 1988 are also material. Rules 3 and 4, insofar as they are material, read as under:

"3. Assignment of year of allotment.- (1) Every officer shall be assigned a year of allotment in accordance with the provisions hereinafter contained in these rules.

(2)The year of allotment of an officer in Service at the commencement of these rules shall be the same as has been assigned to him or may be assigned to him by the Central Government in accordance with the rules, orders and instructions in force immediately before the commencement of these rules.

(3)The year of allotment of an officer appointed to the service after the commencement of these rules shall be as follows-

(i)The year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held :

Provided that in the case of exempted probationers, as defined in clause (ee) of Rule 2 of the IPS (Probation) Rules, 1954, and direct recruit officers, who are permitted to join probationary training under sub-rule (1) of Rule 5 of the IPS (Probation) Rules, 1954, with the direct recruit officers of a subsequent year of allotment, they shall be assigned that subsequent year as the year of allotment.

* * *

4.Inter se seniority of the officers.- The inter se seniority of the officers who are assigned the same year of allotment shall be in the following order and in each category the inter se seniority shall be determined in the following manner-

(i)Direct recruit officers shall be ranked inter se in the order of merit as determined in accordance with Rule 10 of the Indian Police Service (Probation) Rules, 1954;

* * * These are the relevant provisions in the present context.

9. It may also be mentioned that an explanation was added at the end of sub-rule (1) of Rule 5 of the Indian Police Service (Cadre) Rules, 1954 by a Government of India Notification published in the Gazette of India on January 13, 1993 which is deemed to have come into force on January 1, 1988. It reads as under :

"Explanation : For the purposes of this sub- rule, 'cadre officer' includes a person allotted to the Indian Police Service on the basis of a competitive examination held under sub-rule (1) of Rule 7 of the Indian Police Service (Recruitment) Rules, 1954 read with the Indian Police Service (Appointment by Competitive Examination) Regulations, 1955 and granted extension of time to join the service."

It does appear that this retrospective amendment by insertion of the explanation in sub-rule (1) of Rule 5 is clarificatory in nature and was made as a result of the view taken by the Central Administrative Tribunal in such matters. With this explanation, there can be no doubt that an exempted probationer like Rahul Rasgotra would be a 'cadre officer' for the purpose of the Indian Police Service (Cadre) Rules, 1954 for exercise of the power of cadre allocation to him in accordance with Rule 5 even before he joins the training. The question is : Whether this was the position even without the explanation to sub-rule (1) of Rule 5? We have no doubt that this was so.

10. The various steps leading to the selection and appointment of a candidate to an All India Service like the Indian Police Service as a result of a combined competitive examination and allocation of the State Cadre to him are these, namely, (i) competitive examination; (ii) selection in the competition and determination of his order of merit; (iii) allocation of the particular All India Service to him based on his position in the order of merit; and (iv) allocation of the State Cadre to him. It is, therefore, obvious that allocation of the State Cadre is made after the stage for allotting the particular All India Service like the Indian Police Service has been made, to the selected candidate. The object and purpose of cadre allocation to the selected candidate who has been allocated to a particular Service is merely to indicate the State Cadre to which he would belong in the service and it is not necessary for this purpose for him to actually join the training. The number of total vacancies in the service and those available in the State Cadres for a particular batch being known and so also the total number of candidates selected at the competitive examination with their comparative position in order of merit, nothing more is needed to perform the exercise of cadre allocation at that stage and no useful purpose is served by postponing that exercise to a later date. There is thus no reason why the cadre allocation is required to be deferred till a candidate has joined the training after being allotted the particular Service like the Indian Police Service on the basis of his comparative position in merit among the selected candidates. The only question, therefore, is : Whether the Indian Police Service (Cadre) Rules, 1954 forbid performance of this exercise before the officer has actually joined the training after being allotted to the Indian Police Service?

11. 'Exempted probationer' in Rule 2(ee) of the Indian Police Service (Probation) Rules, 1954 is defined to mean a person who, on being 'allocated' to the Service, has been permitted to abstain from probationary training in order to appear at the next examination. It is, therefore, clear that allocation of the Indian Police Service to him has already been made and but for the exemption granted to him, he would be required to join the probationary training. In other words, for all

practical purposes, he is treated as probationer of the Indian Police Service and it is for this reason that he seeks and is granted the exemption permitting him to abstain from probationary training for the time being. This incident of granting exemption is itself indicative of the fact that for all practical purposes, he is treated as a member of the Indian Police Service and is granted exemption from commencing his probationary training. There is thus no reason why for the purpose of cadre allocation, he cannot be treated as a probationer and, therefore, a member of the Indian Police Service. Rule 10 of the Indian Police Service (Probation) Rules, 1954 dealing with seniority of probationers also gives the same indication. Rule 10 requires one common list, even though in two parts, of all probationers who are appointed to the Service on the results of the same competitive examination of which the first part consists of probationers other than exempted probationers and the second part consists of exempted probationers who were selected at the same competitive examination; and those in the first part are placed en bloc above the exempted probationers included in the second part. Thus, the exempted probationers are also treated as probationers selected at the same competitive examination and are included in the common list of probationers of the same batch with the only difference of a possible loss of seniority in the same batch to a probationer lower in order of merit in the competitive examination in case the probationer who ranked lower in the examination result is in the first part of the list. This being the only difference as a consequence of the late joining of training of an exempted probationer, it is clear that the Indian Police Service (Probation) Rules, 1954 read as a whole treat the exempted probationer also as a probationer of the same batch for all practical purposes and, therefore, as a member of the Indian Police Service of the same batch as any other probationer of that batch who is not an exempted probationer. The meaning of 'cadre officer' in Rule 5(1) of the Indian Police Service (Cadre) Rules, 1954 has, therefore, to be understood to mean a member of the Indian Police Service in this manner, or in other words a probationer so understood.

12. This view is also in accord with the practical consequence thereof. If the submission of Shri P.P. Rao were to be accepted, there is no provision in the relevant rules to work out the same. The officers selected at the same competitive examination and, therefore, being probationers of the same batch, are placed in one combined list for the purpose of seniority prepared in accordance with Rule 10 of the Indian Police Service (Probation) Rules, 1954, while those of the next year's competitive examination belong to the subsequent batch and are in a separate seniority list prepared under Rule 10. Even though the exempted probationers commence their training with probationers of the next batch, the rules do not provide for inter se ranking of the exempted probationers of the previous batch along with the probationers of the next batch or for cadre allocation of exempted probationers against vacancies for the next batch meant for the next years' probationers. If the submission of Shri P.P. Rao be correct, there has to be some mode prescribed in the rules for that purpose also. The absence of any such provision in the rules is a clear indication that the exempted probationers are to be treated as probationers of the same batch along with all those selected at the same competitive examination and this has to be for all purposes including their cadre allocation which has reference to the available vacancies meant for officers selected at the same competitive examination and, I therefore, to the corresponding cadre allocation for the entire batch of the same year, there being no method for intermixing of any probationer including the exempted probationer of two different batches for the purpose of cadre allocation. For a harmonious construction of all the relevant provisions, the meaning of 'cadre officer' in Rule 5(1) of the Indian Police Service (Cadre) Rules,

1954 must be so understood and construed and this also promotes the object and purpose of cadre allocation to be made thereunder. The explanation added in sub-rule (1) of Rule 5 retrospectively from January 1, 1988 is obviously to clarify this position which is implicit in the provisions even without the aid of this explanation.

13. On the above view, the claim made by Rahul Rasgotra, Respondent I in Civil Appeal No. 5414 of 1993 is untenable. The claim of Desh Raj Singh, Respondent I in Civil Appeal No. 3844 of 1993 is even more tenuous in view of the fact that he was not even an 'exempted probationer' since he withdrew his request for permission to appear at the next examination. The view taken by the Tribunal that the retrospective amendment of Rule 5(1) by insertion of the Explanation therein w.e.f. January 1, 1988 is inapplicable to the application of Desh Raj Singh, which was pending before the Tribunal at the time the amendment was made, is untenable in view of the construction we have made of the provisions and our view that the Explanation is merely clarificatory of the existing position.

14. Before parting with this case, we are constrained to place on record our deep distress at the manner in which the cases on behalf of the Government are generally conducted even in this Court and also when the Government comes to this Court to overcome the consequence of an adverse order made against it. We do so with a feeling almost of despair since our constant lament orally and, at times, even in writing has so far evinced no appropriate response for improvement. On a similar occasion, this Court in *Union of India v. A. Radhakrishnan*, observed thus : (SCC p. 209, para

1) "This matter brings to the fore once again the ineptitude with which litigation is conducted quite often on behalf of the Government of India and State Governments even when important issues having lasting and wide repercussions are involved. The point in this case relates to the validity of a policy of the railway administration and is likely to affect the staff pattern in several units. In spite of this fact, to support validity of the impugned policy the required materials were not produced in the High Court and to overcome the adverse decision several opportunities given by us to produce the entire relevant record were not availed. The learned Additional Solicitor General informed us after several adjournments that better performance is not possible. We, therefore, concluded the hearing and proceed to decide on the available materials. It is indeed fortunate for the appellants that our conclusion is in their favour.....

There is no improvement in the situation. An argument was advanced on behalf of the respondents that the cadre allocation to Respondent 1 was made prior to allotment of the Service to him on account of which it was invalid. Material documents to negative the same must be in possession of the Government of India but they were not produced before the Tribunal or even before us, in spite of opportunity given by us. The learned Additional Solicitor General expressed his utter helplessness in the matter and informed us that his efforts to obtain and produce those documents from the authorities concerned had failed. This shows the apathy of the persons responsible for the conduct of the case on behalf of the Government of India. We are not sure whether such lapses of the persons responsible for conduct 1 1991 Supp (2) SCC 208: 1992 SCC (L&S) 145 : (1992) 19 ATC 308: (1991) 3 SCR 895 of the case on behalf of the Government are deliberate or inadvertent but they are certainly

culpable which need to be investigated by the authorities concerned to identify the delinquents and punish them in public interest. It is time that the derelicts are also held accountable and liable for the loss of public money due to their lapses. The stage is now reached for taking drastic steps to arrest further decadence and to implement the avowed promises held out for improvement of the working of the system. Governments being the largest litigants, radical improvement is needed in the functioning of their machinery by reducing frivolous litigation and ensuring proper conduct of the necessary litigation. Unless the desirable steps in this behalf are taken in the right earnest, any number of seminars and conferences to devise means for reducing the backlog in courts is an exercise in futility and the resolutions made therein, are empty slogans. We reiterate this with the fond hope that the authorities concerned would wake up to the true malaise and work to make the programme of improving its machinery, a reality.

15. Consequently, both these appeals are allowed. The impugned orders made by the Tribunal in both cases are set aside resulting in dismissal of the applications filed before the Tribunal by Rahul Rasgotra and Desh Raj Singh. No costs.