

Union of India

Vs

M. V. V. S. Murthy

Civil Appeal No. 2954 of 1987

(S. Ranganathan, Ranganathan JJ)

12.11.1987

JUDGMENT

RANGANATH MISRA, J. –

1. After hearing the matter on November 6, 1987 we had allowed the appeal and directed reasons to follow. We proceed to state the reasons.

2. The Union of India has carried this appeal against the decision of the Central Administrative Tribunal at Patna. The respondent took the Civil Services Examination conducted by the Union Public Service Commission in the year 1983 held on the basis of notification dated December 18, 1982. The Civil Services Examination is a combined one for several services including Indian Foreign Service, Indian Administrative Service and Indian Police Service. He in his application form against column 22 which required information about services/posts in order of preference mentioned his preference for Indian Administrative Service only. The results of the examination were published on March 25, 1984, on the basis of written examination; final results following viva voce test were published on May 25, 1984, and the respondent was placed in the 280th position in the final merit list. There is no dispute that on the basis of the position secured by him, he was not entitled to be recruited into the Indian Administrative Service - the service of his choice. On May 29, 1984, he informed the Public Service Commission as also the Ministry of Home Affairs that he was not aware as to the implications of indicating the preferences for various services and stated :

[T]his mistake on my part may please be condoned and the following order of preference may kindly be accepted :

- (1) Indian Administrative Service,
- (2) Indian Police Service,
- (3) Indian Customs & Central Excise Service, Group A,
- (4) Indian Income Tax Service, Group A,
- (5) Indian Railway Traffic Service, Group A.

The respondent was intimated on August 14, 1984, by the Central Government that he was being considered for appointment to the Indian Police Service - a Central Service Group A - subject to the availability of vacancies in those services, taking into account his ranking in the merit list and preference for services. He was advised to proceed for the Foundational Course training at

Mussoorie in case he was willing to be considered for appointment, as indicated. The respondent did not join the training course but sat for the Civil Services examination of 1984 but was not successful for the Indian Administrative Service or the Indian Police Service. In February 1985, the respondent received an offer of appointment on the basis of the 1983 examination to the Central Information Service, Group A. Thereupon he represented his claim and maintained that he was entitled for appointment to the Indian Police Service in consideration of the fact that the last person offered such service had ranked 291 in the merit list of 1983. The respondent was communicated an order of April 14, 1986, rejecting his request. The Central Administrative Tribunal was moved for quashing of the order and for a direction to the Central Government to give the respondent appointment to the Indian Police Service cadre.

3. The Tribunal examined the claim with reference to the rules, the form of application and its contents as also the practice obtaining in the matter of making appointments to the services and held that the Central Government had the duty and obligation to consider the claim of the respondent for appointment to the Indian Police Service even if he had not indicated his option and the ground of undue hardship had to be considered by the Central Government. Reliance was also placed on the decision of the Andhra Pradesh High Court in a somewhat similarly placed situation and the Tribunal directed the Central Government to consider the claim of the respondent for appointment to the Indian Police Service. This direction on special leave is assailed in this appeal.

4. We have heard learned Additional Solicitor General for the appellant and Mr. Ramamurthy for the respondent. There is no dispute that it is open to a candidate to compete for one or more services/posts by specifying his order of preference when taking the Central Civil Services examination. Column 22 of the application form makes provision for communicating of such preference. It is not in dispute that at the relevant time the order of preference could be altered within 30 days of the result of the written part of the examination and a request for alteration in the order of preference in the manner indicated above could be considered by the Ministry of Home Affairs if the request was received before the finalisation of the results of the Services and the appropriate Ministry was satisfied that undue hardship would be caused otherwise. The procedure has been changed subsequently but that is not material for this appeal.

5. Indisputably the respondent confined his preference only to the Indian Administrative Service. The note appearing below column 22 in the application form reads thus :

In respect of the services/posts not covered by the entries above, it will be assumed that you have an equal preference for those services/posts. You will, therefore, be considered for any of those services if your cannot be allotted to the services of your preference.

The real meaning of this note appears to us to be that if preferences given by the candidate are not available to be accommodated on the basis of the results of the candidate's preference in the selection examination, instead of being rejected he would be available to be considered for the other service. As already pointed out, the Civil Services examination is a combined examination for several services and when a vacancy is not available within the field of the candidate's choice, it is open to the Central Government to consider the candidate for other services. The effect of this note is not that preferences given by a candidate securing a place lower to the respondent would not be entitled to his preference because he has been placed below the respondent in ranking. If ranking alone is to be the test, preferences would have no meaning. On the other hand, the procedure that preferences are acceptable with reference to the position in the final list till vacancies in the services

preferred are exhausted is the most logical one and meets the requirements of the scheme. Merely because the respondent was placed at the 280th place in the merit list and some one else placed at No. 291 was being offered the Indian Police Service in keeping with his preference, would not give the respondent any cause of action. In course of hearing of this matter, we had called upon the Central Government to provide the details of vacancies in the Indian Police Service and the information as to whether any candidate who had not opted for Indian Police Service had been offered such service. An affidavit has been filed to indicate that there were 74 general vacancies, 14 vacancies reserved for Scheduled Caste candidates and 8 vacancies for Scheduled Tribe candidates in the Indian Police Service in 1983 and not a single candidate who had not opted for Police Service had been given such service. That being the position the respondent who had not opted for the Police Service, should really have no grievance to make. Rules 2 and 17 of the Civil Services Examination Rules, 1983 which are relevant in the matter of allocation of services are also against the respondent and support the stand of the Central Government.

6. The other point which was argued before the Tribunal and reiterated before us by Mr. Ramamurthy in support of respondent's stand is non-consideration of the plea of undue hardship. The Tribunal's judgment did not clearly indicate what exactly was the hardship. He stated that non-provision of a service to the liking of the respondent was the hardship. That type of hardship was obviously not contemplated because in every case of rejection of the preference, hardship would thus be resulting. The respondent, in these circumstances, was not entitled to be inducted into the Indian Police Service and the offer made by the appellant to him of a post in the Central Information Service Group A in these circumstances cannot be considered to be a wrong one. There has been delay in respondent's accepting the offer and joining the training but learned Additional Solicitor General has assured us that in case the respondent agrees to join the service within a fortnight from today, the delay would be condoned and the service would be regularised without any detriment to the respondent.

7. The appeal is allowed, the order of the Tribunal is set aside subject to what has been stated. Parties are directed to bear their own costs.

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