

SUPREME COURT OF INDIA

Syed Abdul Alam

Vs.

The Government of Andhra Pradesh

(K. Ramaswamy J.)

15.04.1996

ORDER

Leave granted.

Heard learned counsel on both sides. These appeals by special leave arise from the order of the Andhra Pradesh Administrative Tribunal made on December 19, 1995 in O.A. No.5733 of 1995 and O.A. No.505 of 1995 and also from order dated December 28, 1995 in O.A. No.7111 of 1995. The facts which are not in dispute are that the Andhra Pradesh State Police Subordinate Service Rules operate for recruitment of the subordinate staff of the police department. Rule 2[b] thereof contemplates selection on the basis of merit and ability and seniority will be considered only where merit and ability is approximately equal. In implementation thereof, it would appear that the Director General of Police and the subordinates seem to have conducted written tests of Head Constables to be promoted in 30% quota reserved for them, for promotion as Sub- Inspectors. Candidates including some of the appellants came to appear in the examination and they appear to have passed the test. The Rules prescribed that they were required to be sent for training and on their passing the training they would be appointed on regular basis. In the meanwhile, the respondents have issued order in G.O Ms. No.585 dated October 17, 1991 amending the Polices Standing Orders prescribing seniority-cum-fitness as the criteria for promotion of Head Constables as Sub-Inspectors without corresponding amendment to the statutory rules. That came to be challenged in the Tribunal. The Tribunal while quashing the same, issued the directions as under: "1. Substitution of PSO 107 by G.O.Ms. No.585, Home dated 7.10.1991 is held to be invalid.

2. The list of Head Constables prepared in the year 1990 in various parts of the State in anticipation of G.O. Ms. No.585 for sending them for training is held to be illegal and will not be operated any further. This will not affect the persons, who have already successfully completed the tests after training by the end of April, 1994.

3. The list of Head Constables prepared in 1992 for sending them to training in the various parts of the State is held to be illegal and will not be operated upon.

4. Only those Head Constables who have passed the initial test contemplated by 2 [c] by the respective zonal officers viz., Deputy Inspector Generals in accordance with the provisions of 2 [c] except the requirements of a common question paper for all the Head Constables in the State, to be treated as qualified for being sent for training and to the extent of vacancies for them, should be sent for training for regular appointments after training according to rule 11 [c] and 15.

5. Inclusion in any lists other than the one mentioned in para 4 will not confer any right like preference for being appointed or continued as OSSIs otherwise than in accordance with law or as mentioned in this Judgment.

6. No Head Constable working as OSSIs will be replaced by another temporarily appointed Head Constable as OSSIs. For effecting reversion of OSSIs for want of vacancies due to regular candidates being appointed or other valid grounds, the version of OSSIs will be in reverse order of seniority of Head Constables [in District-wise seniority] among those who were already working as OSSIs by the date of the interim order viz., 9.2.1993 which is adopted by the Director General of Police in his Memo dated 25.2.1993. The Government will immediately take steps for making regular appointments to the post of Sub- Inspector of Police in accordance with the rules both by direct recruitment and by promotion. This should be initiated within three months from the date of receipt of this order."

It would appear that some of the candidates who had approached the High Court and seem to have obtained directions to if follow the principle of "last come first go" for the purpose of reversion. In the light of the directions issued by the Tribunal, which were allowed to become final, necessarily the respondents had to follow the above directions. Paragraph 4 clearly indicates that such of the candidates who have been qualified by passing the written examinations as per Rule 2 [c] in the respective zones, were required to be treated as qualified for training and after passing the training they were required to be regularized for appointment according to Rule 11 [c] and Rule 15 of the said Rules. It would also appear that the Government in the meanwhile, had amended the Rules in G.O.Ms. No.787 dated November 16, 1994 giving retrospective effect to the Rules. In clause II of the amended Rules it sought to regular Rule 2 [b] as under: "Promotion to all non-gazetted posts in

this service shall be made in accordance with the seniority- cum-fitness, provided they pass the tests, undergo training and fulfil all other conditions prescribed in the rules and on the instructions of the Andhra Pradesh Police Manual.

Note: The aforesaid provision shall not be applied to a case where:

a] The promotion of a member has been withheld as a penalty; or b] In such of the cases, where a member is given a special promotion in recognition of a conspicuous merit and ability".

In these cases, we are not concerned with these contingencies. We are concerned with reversion of the appellant from the posts of temporary OSSIs. In view of the fact that direction No.4 was allowed to become final, necessarily direction No.6 has to be complied with before making any recruitment as contemplated in second part of direction No 6. It would be open to the Government to follow the direction issued thereunder and when any reversion is to be made, they should necessarily follow the principle laid down therein. If any direction issued by the High Court is required to be clarified with, the respondents are free to approach the High Court and seek necessary clarification which would be done consistent with the law. The appeals are accordingly allowed. No costs.