

SUPREME COURT OF INDIA

Lt.CDR.M.Ramesh

Vs.

Union of India

T.C.No.11 of 2017

(Madan B.Lokur,J., Kurain Joseph and Deepak Gupta,JJ.,)

17.04.2018

JUDGMENT

Deepak Gupta,J.,

1. By this judgment we shall decide whether the decision taken by the Union of India not to make appointments to the Indian Police Service (for short ‘the IPS’) pursuant to the Limited Competitive Examination (for short ‘the LCE5) which took place from 20.05.2012 to 22.05.2012, is legal and valid.

2. The facts in brief are that keeping in view the shortage of police officials in the Indian Police Service, the Ministry of Home Affairs, Union of India set up a Committee headed by Shri Kamal Kumar, I.P.S. (Retd.) to make suggestions on various aspects including filling up the vacancies. The Committee, in its report, recommended that in addition to the normal modes of recruitment i. e. direct recruitment to the IPS through the annual Civil Services Examination and promotion from the State Police Services, a third method of Limited Competitive Examination should be introduced. The directly recruited Deputy Superintendents of Police in the State Police Service and their equivalents in the Central Police Services with a minimum of 5 years of service were eligible for this exam subject to a maximum age limit of 45 years. It was also recommended that not more than 65 officers should be recruited in a given year through the LCE and the recruitment through this channel may have to be staggered over a period of 7 years. The Government partially accepted the report and by amendment in sub-rule (1) of Rule 4 of the Indian Police Service (Recruitment) Rules, 1954 introduced a method of recruitment through LCE. Officers of the State Police Service, Central Police Organisation and Army officers fulfilling the eligibility conditions were entitled to appear in the LCE. It would be pertinent to mention that the LCE was placed at point (b) below (a) direct recruit through competitive examination and above (c) promotion of the members of the State Police Services. Rule 8, as amended, provided that the LCE would be held at such intervals as the Central Government, may in consultation with the Union Public Service Commission (for short ‘the UPSC’) from time to time, determine. At this stage, it would be pertinent to mention that in terms of the IPS rules, the seniority of IPS officers is determined as per the year of allotment and Rule 3 of the Indian Police Service

(Regulation of Seniority) Rules, 1988 provides that the year of allotment of a direct recruit shall be the year following the year in which the competitive examination was held. It is not disputed that for the purposes of assigning the year of allotment the persons selected through the LCE would be covered by the same rule like the direct recruit. Consequently, amongst the officers having the same year appointment, the inter se seniority would be determined as follows:

1. Direct recruits
2. LCE appointees
3. Promoted State Police Service officers

3. The relevant portion of Indian Police Service (Recruitment) Amended Rules, 2011 reads as follows:-

“ 1.

2. In the Indian Police Service (Recruitment) Rules, 1954 (hereinafter referred to as the principal rules), in rule 4 in sub-rule(1), for clause (b), the following clauses shall be substituted, namely:-

“(b) by limited competitive examination;
(c) by promotion of members of a State Police Service.”

3. In the Principal rules, after rule 7, the following rule shall be inserted, namely:-
“8. Recruitment by limited competitive examination -

(1) The limited competitive examination for recruitment to the service shall be held at such intervals as the Central Government may, in consultation with the Commission, from time to time determine.

(2) The examination shall be conducted by the Commission in accordance with such regulations as the Central Government may from time to time make in consultation with the Commission and the State Government.

(3) ”

4. Pursuant to the aforesaid amendment to the Rules, the UPSC published an advertisement on 10.03.2012 inviting applications for filling up posts in the IPS through LCE as per the amended rules. Thereafter, written tests and interviews were conducted but till date the results of the same have not been declared.

5. The amendments to the rules were challenged in a number of petitions. One petition was filed in the Delhi High Court being WP (C) No. 1610 of 2012 titled Zakat Foundation of India v. Union of India & Ors. This petition appears to have been filed in the public interest

and the contention of the petitioner was that the provisions providing for the LCE were arbitrary and unconstitutional and the Government should increase the intake of the IPS through normal direct recruitment through the UPSC. This petition was rejected mainly on the ground that introduction of a new method of recruitment through the LCE was a policy decision in which the Court could not interfere. It had been argued before the Delhi High Court that many State Governments had not been consulted; that the UPSC and other bodies had expressed their reservations and therefore, the amendment was illegal. The Delhi High Court observed that it cannot comment whether the system introduced by this amendment is the best or there could be better alternatives. It noted that the UPSC had initially opposed the amendment. It had also noted the reservation of the Central Police Organisation and the States that this would result in shortage of police officers, and Paramilitary Forces in the State. However, the Court held that it cannot nullify or invalidate the decision of the Government only on the ground that it was not a very wise decision and there were better alternatives.

6. It would also be pertinent to mention that the amended rules were challenged before this Court in Writ Petition (Civil) No. 326 of 2012 but the same was dismissed by this Court on 27.08.2012 on the ground that the petitioners could not show how they were adversely affected by the amendment to the rules.

7. Some police officers of the Assam Police Service filed Original Application being O.A.No.112 of 2012 in the Central Administrative Tribunal (for short 'the CAT'), Guwahati Bench challenging the amendment introducing the LCE mainly on the grounds that no consultations had been held with the States; that the amendment was arbitrary and unreasonable and the main challenge was with regard to the maximum age being fixed at 35 years whereas the recommendation of the Kamal Kumar Committee was 45 years. The CAT vide its order dated 14.09.2012 quashed the amended Rules of 2011 as being illegal, having been made without consulting the State Governments representing the Assam-Meghalaya Joint Cadre Authority and also on the ground that the promotional avenues of the State police officers stood abridged by the amended rules and therefore, the rules were violative of Articles 14 and 16 of the Constitution of India. This decision of the CAT was challenged by the Union of India before the Gauhati High Court in Writ Petition (Civil) No.4880 of 2012. Some persons, who had appeared in the LCE also filed a writ petition being Writ Petition (Civil) No. 5337 of 2012 challenging the judgment of the CAT. The Gauhati High Court allowed the writ petitions and set aside the order of the CAT and held the amended rules to be valid.

8. It would be pertinent to mention that neither the judgment of the Delhi High Court in Zakat Foundation nor the judgment of the Gauhati High Court has been challenged and has thus attained finality. However, the matter does not end here. Various petitions were filed in different High Courts. It would also not be out of place to mention that certain members of the armed forces engaged on Short Service Commission were not given permission to appear in the examination or interview on the ground that they could not leave the armed forces before completing their tenure of service. They also filed writ petitions praying that they should be permitted to appear in the examination and interview. Therefore, the Union of

India filed Transfer Petition (Civil) Nos. 272-287 of 2015 and Transfer Petition (Civil) No.1555 of 2017 praying for transfer of 17 cases pending in different High Courts in the country. Notice was issued for transfer of 17 cases and proceedings before the High Courts were stayed. However, 3 cases were not sent by the High Courts on the ground that either they have been already disposed of or they had no concern with this litigation. Therefore, 14 transfer petitions have been listed before this Court for hearing. It may be mentioned that as far as Transferred Case (Civil) No. 50 of 2017 is concerned, the matter has already been disposed of by the Delhi High Court and, therefore, it has become infructuous.

9. Before this Court, it took a long time to serve the respondents and on 12.12.2017, when the matter was taken up for hearing the following order was passed:

“Mr. Tushar Mehta, learned Additional Solicitor General, seeks some more time for the Ministry of Home Affairs to take a final call on the stand to be taken on the issues raised in these cases. We direct the Ministry of Home Affairs to finalize its stand positively within two weeks from today.

Post these cases on 08.01.2018. We make it clear that depending on the decision taken by the Ministry of Home Affairs it will be open to the U.P.S.C. to proceed with the process, making it subject to the result of these Transferred Cases.”

10. On 08.01.2018, the Union of India sought time to file an affidavit. By this affidavit, filed on 12.01.2018 and affirmed by Shri S.K. Rastogi, Deputy Secretary, Ministry of Home Affairs, the Court was informed that after considering all aspects referred to in the affidavit, the Union of India had taken a decision to scrap the LCE held in the year 2012. The candidates who had appeared in the LCE have opposed this decision of the Union of India and at this stage, we have heard arguments only on the issue whether the decision of the Central Government to cancel the selection process is legal or not.

11. In support of its decision to scrap the LCE, the Union of India has submitted that the main purpose of holding the LCE was to fill up a large number of vacancies. According to the stand of the Union of India, when the Kamal Kumar Committee was set up, about 30% posts in the IPS were vacant. The year-wise tabulation of the same is as under:

Year	Authorised Strength	In position	Vacancy	%
01.01.2012	3277	2536	741	22.61
01.01.2013	3277	2574	703	21.45
01.01.2014	3275	2617	658	20.09
01.01.2015	3293	2685	608	18.46
01.01.2016	3327	2744	583	17.52
01.01.2017	3356	2802	554	16.50
01.01.2018	3423	2887*	536*	15.65

12. It has been argued by Ms. Vibha Datta Makhija, learned senior counsel appearing for the Union of India that the percentage of vacancies has gone down. It has also been contended that the candidates who underwent the examination in the year 2012 would be placed immediately below the direct recruit IPS officers of the same year and that subsequent recruitments have been done both by direct recruitment and by promotion and this may result in a lot of litigation with regard to seniority. It is also contended that it was contemplated that the officers recruited through the process of the LCE would be about 35 years of age but now with the passage of time even if the result is declared, many of them may be more than 40 years of age which will hamper their functioning in the Indian Police Service. The main contention of the Union of India is that the petitioners have no legal right to be appointed and mere selection does not give them such a right.

13. Mr. Dushyant Dave, learned senior counsel, appearing for the persons who have appeared in the LCE, contended that even if there is no vested legal right, the said applicants have a legitimate expectation to be appointed. He concedes that in certain circumstances the Government can cancel a selection process but this cancellation can only be done when there is an overriding public interest. His submission is that the affidavit in question does not show any such overriding interest. Mr. R. Venkatramani, learned senior counsel appearing for some of the LCE candidates submitted that the Government must be fair and just and the affidavit fails to disclose what is the public interest or the higher purpose served by scrapping the examination. He further submits that the reasons given by the Government in its affidavit do not satisfy the test of overriding public interest or higher purpose and, as such, the decision of the Government to scrap the examination should not be accepted by this Court and the UPSC should be directed to declare the result and the Union of India be directed to make appointments pursuant to the result.

14. The first issue that arises is whether the petitioners have any vested right to claim that the result must be declared and if the petitioners are selected, they should be appointed. This Court in *Jai Singh Dalal v. State of Haryana*¹ held that merely because the Government had sent a requisition to the UPSC to select the candidates for appointments, did not create any vested right in the candidate called for the interview to be appointed. It was also held that the authority which has the power to specify the method of recruitment must be deemed to have the power to revise and substitute the same. The Court, however, also laid down that at best the Government may be required to justify its action on the touchstone of Article 14 of the Constitution. This view has been followed in a large number of cases. In *Vijay Kumar Mishra v. High Court of Judicature at Patna*², this Court held that there is a distinction between selection and appointment. It was held that a person, who is successful in the selection process, does not acquire any right to be appointed automatically. Such a person has no indefeasible right of appointment.

15. It is, thus, well settled that merely because a person has been selected, does not give that person an indefeasible right of claiming appointment. As far as the present cases are concerned, results have not been declared and even the selection process is not complete. As such, there is no manner of doubt that the petitioners have no enforceable right to claim that the result should be declared or that they should be appointed if found meritorious.

16. Having held so, we must also note that the law is well settled that even though the candidates may not have a vested right of appointment and the State is not under any duty or obligation to fill up the vacancies, the State has to act fairly and it cannot act in an arbitrary manner. The decision, not to fill up the vacancies pursuant to the selection process, must be taken bona fide and for justifiable and appropriate reasons. In this regard, we may make reference to the case of *Shankarsan Dash v. Union of India*³.

17. On behalf of the candidates, who have appeared in the examination, a feeble attempt was made to invoke the principle of promissory estoppel. In our view, the said principle is not at all applicable to the present case. It is well settled law that the principle of promissory estoppel can only be invoked by a person who has changed his position to his detriment on the basis of the promise held out to him. This is not the position in the present cases. All the candidates are serving in the State Police or the Central Police Organisation or in the Army. Their position has not been adversely affected by the selection process and therefore, the principle of promissory estoppel is not applicable.

18. The main attack against the decision of the Government is on the ground that the candidates had a legitimate expectation that pursuant to the written test and interview, their result would be declared and if found successful, they would be appointed. It is a well settled law that even if there is no vested right, the principle of legitimate expectation can be invoked. Legitimate expectation arises when the citizens expect that they will be benefitted under some policy or decision, announced by the State. At the same time, the law is well settled that the Legislature and the Executive can change any policy for good reasons. These good reasons must be such which are not arbitrary, which are not mala fide and the decision has been taken in the public interest. If the decision to change the policy is arbitrary or capricious then it may be struck down.

19. Applying the aforesaid principle, we may test whether the action of the Government in deciding to scrap the recruitment process by the LCE is an arbitrary decision or not. The reasons given by the Government in support of its decision are as follows:

1. percentage of vacancies has gone down;
2. the selection process has been delayed by many years which will mean that the persons selected will be at least 5 years older than as expected;
3. that many petitions are still pending and the matter has not been finally decided, which could lead to further delay; and
4. it is apprehended that there would be a surfeit of litigation between candidates, if any, appointed through LCE and those who are recruited by direct recruitment or promotion during the years 2012 to 2018.

20. Both Mr. Dave and Mr. Venkatramani have attacked each ground invoked by the Union individually but we are of the view that it is the combined effect of all the grounds which will

have to be taken into consideration. There is no manner of doubt that it was expected that the result would be declared in the year 2013 and the officers would be sent for training in the same year. We are in the year 2018 and some of the matters which have been transferred to this Court are still to be heard. It was urged that the dispute stands decided by the Gauhati High Court and the Delhi High Court. It may be true that these two Courts have upheld the validity of the rules and the Union of India did not challenge the decisions in these two cases, but we cannot lose sight of the fact that there are various other petitions pending and neither this Court nor the other High Courts are bound by the decision rendered by the Gauhati High Court or the Delhi High Court. These cases will have to be decided, if we are not to accept the stand of the Central Government. This could delay the matter even further.

21. The officers, who may have been selected in the year 2013 at the upper age limit of 35 years or 36 years would now be 5 years older. No doubt, they are members of the State Police Service or the Central Police Organisation, but their induction or recruitment in the IPS is delayed by more than 5 years. When the Government laid down a policy that upper age limit was 35 years, it must have had some reason for fixing the upper age limit. That purpose is now defeated.

22. We cannot be oblivious to the fact that if the Union is compelled to make the appointments, this will lead to a plethora of litigation where the persons recruited to the IPS between 2013 and 2018 will claim seniority over the persons, who appear in the LCE. We are not going into the merits of the issue but, we can easily visualise the huge amount of litigation which will in all probability ensue, where members of the IPS would be litigating against each other. Such litigation would not be in public good and will achieve no higher purpose. In fact, such litigation may also affect the morale of the officers in the IPS.

23. The Union has also taken up a plea that though the fall in vacancies, when taken numerically, may not be much but when taken on percentage basis, there is a fairly large fall in the vacancies. At the time when the Kamal Kumar Committee was set up and till its report, 30% of the posts in the IPS were lying vacant. When the rules were introduced, 22.61% posts were vacant. As on 01.01.2018, 15.65% posts are vacant and, therefore, definitely there is a fall in the percentage of vacancies. It was urged that even now there are large number of vacancies and, therefore, the decision of the Government is irrational. We cannot accept this submission. One cannot lose sight of the fact that the induction through LCE is mainly limited to persons belonging to the State Police Services and the Central Police Organisation. Any such induction would lead to a consequential shortage in these organisations. The gain, if any, in the IPS, would be set off by a consequent shortage in the State Police Services and the Central Police Organisation.

24. When we examine the decision taken by the Central Government in a holistic manner, we have no doubt that the decision to scrap the LCE recruitment has been taken in the larger public interest. The decision is definitely not mala fide. It is not actuated by extraneous reasons. It cannot be said that the decision is arbitrary.

25. In view of the foregoing reasons, the decision of the Government to scrap the process of recruitment to the IPS through the LCE cannot be termed to be arbitrary, discriminatory or capricious. The decision is a reasonable one in the facts and circumstances of the case.

26. In view of the above, all the transferred cases have been rendered infructuous and are disposed of accordingly. Applications for clarification/direction as well as intervention are rejected. Pending application(s), if any, also stand(s) disposed of.

Judgment Referred.

¹(1993) Supp.2 SCC 0600

²(2016) 9 SCC 0313

³(1991) 3 SCC 0047