

K. RAJAI AH

v.

STATE OF ANDHRA PRADESH AND ORS.

AUGUST 19, 1987

B [RANGANATH MISRA AND MURARI MOHON DUTT, JJ.]

Andhra Pradesh Police Subordinate Service Rules—Rule 15(c)—Effect of—In the matter of seniority claim in respect of appointment of a Reserve Sub-Inspector of Police as Sub-Inspector of Police (Civil)—Whether by transfer under Rule 15 (c) or as a direct recruit.

C On December 30, 1968, the appellant, then an under-graduate, was appointed to the post of Reserve Sub-Inspector of Police. During his service in that post, he passed the B.A. Examination in April, 1971, whereafter he applied for the post of Sub-Inspector of Police (Civil) pursuant to an advertisement in the newspaper. He was selected and
D appointed to the post of Sub-Inspector on December 14, 1976, on probation for two years along with thirty seven others, and was confirmed in the post on November 29, 1978.

The appellant made a representation to the Government that the period of his service as Reserve Sub-Inspector of Police should be taken
E into account in computing his seniority in the new post of Sub-Inspector of Police (Civil). The Government by its order dated June 11, 1982, took the view that the entire period of service of the appellant as Reserve Sub-Inspector of Police should be counted under Rule 15(c) of the Andhra Pradesh Police Subordinate Service Rules, and directed
F *inter alia* that the appellant would be accorded seniority from the date of his first appointment to the post of Reserve Sub-Inspector of Police, that is, from December 30, 1968, and further that the order would not become a precedent for others.

Aggrieved by the above-said Government order, a number of Sub-Inspectors of Police (Civil) moved the Andhra Pradesh Administrative Tribunal under paragraph 7 of the Andhra Pradesh Administrative Tribunal Order, 1975, challenging the validity of the said Government Order. The Tribunal passed an order, striking down the Government order in question and directing (i) that the appellant would be accorded seniority from the date when he joined the post of the Sub-Inspector, of Police (Civil), treating him as a direct recruit, and (ii) that
H the promotional benefits given to the appellant would be regulated on

and from the date he joined the said post of Sub-Inspector of Police (Civil). The appellant appealed to this Court by special leave against the order of the Tribunal above-said.

Dismissing the appeal, the Court,

HELD: The principal question that was involved in the case was whether the appellant was appointed to the post of Sub-Inspector of Police (Civil) as a direct recruit or was recruited in that post by transfer or was simply transferred to that post from the post of Reserve Sub-Inspector of Police following his selection as a direct recruit. [1014B-C]

The Tribunal took the view that the appointment of the appellant to the post of Sub-Inspector of Police (Civil) was not by way of transfer under Rule 15(c), nor was it by way of recruitment by transfer; it was pointed out by the Tribunal, and rightly, that Annexure—I read with Rule 2(a) of the Andhra Pradesh Police Subordinate Service Rules provided for two modes of appointment, viz., (1) by promotion, and (2) by direct recruitment or recruitment by transfer from any other service. [1014F-H]

The Sub-Inspectors of Police (Civil) and the Reserve Sub-Inspectors of Police both belonged to the Andhra Pradesh Police Subordinate Service. Recruitment by transfer could only be made from “any other service”. As both the said posts were under the same service, the question of recruitment in the post of Sub-Inspector of Police (Civil) by transfer from the post of Reserve Sub-Inspector of Police did not arise. Therefore, the only question left before the Court was whether the appellant’s appointment was by way of direct recruitment or it was really a case of transfer from the post of Reserve Sub-Inspector of Police to that of Sub-Inspector of Police (Civil). [1014H, 1015A-C]

The appellant had applied for the post of Sub-Inspector of Police (Civil) pursuant to an advertisement in the newspapers, issued by the Police Department, inviting applications for appointment to the said post by direct recruitment. The appellant had to undergo the entire procedure (like, preliminary interview, written test, final interview, production of certificates, etc) for selection of direct recruits. Also, he was appointed on probation and after the satisfactory completion of his probationary period, he was confirmed in the post of Sub-Inspector of Police (Civil). In view of the manner in which the appellant was appointed to the post of Sub-Inspector of Police (Civil), it was difficult

- A to accept any contention that the appellant was transferred to that post. When a Government servant is transferred from one post to another, the question of his selection after a written test and a *viva voce* test does not arise. If the appellant had been transferred *simpliciter*, he would not have been directed to appear at the written test and interview for selection along with other candidates who had applied for the post of
- B Sub-Inspector of Police (Civil) pursuant to the advertisement in the newspaper. The Court was, therefore, unable to accept the contention that the appellant's was a case of transfer and not of direct recruitment. It was true that the Government had the power to transfer under Rule 15(c) of the Andhra Pradesh Subordinate Police Service Rules, but such a transfer could be made only in public interest, and there was no
- C question of any public interest so far as the appellant was concerned. The Government had directed in its order that order would not be treated as a precedent; there was no necessity for this direction if the appellant's appointment to the post of Sub-Inspector of Police (Civil) was by way of transfer in exercise of power under Rule 15(c). The Government order impugned had not been made by the Government out
- D of its own but on the representation of the appellant. [1015D-H, 1016A-B]

- The appellant contended that he did not submit any resignation from the post of Reserve Sub-Inspector of Police and that he was allowed to draw last pay as Reserve Sub-Inspector even on his appointment as the Sub-Inspector of Police (Civil), but merely because of
- E the presence of these circumstances, it would not justify a finding that the appellant had been transferred, having regard to the manner in which he came to be appointed to the post of Sub-Inspector of Police (Civil). [1016F-G]

- The Tribunal was perfectly justified in holding that the appellant
- F was directly recruited to the post of Sub-Inspector of Police (Civil) and that his seniority should be computed from the date of such appointment. This judgment, however, would not affect the present position of the appellant and the emoluments being paid to him. [1017B-D]

- CIVIL APPELLATE JURISDICTION: Civil Appeal No.
- G 10539 of 1983.

From the Judgment and Order dated 22.8.1983 of the A.P. Administrative Tribunal at Hyderabad in Representation Petition. Nos. 965, 1899 and 1950 of 1982.

- H A. Subba Rao for the Appellant.

P.P. Rao, K. Ram Kumar, Vimal Dave, C. Markendeya and Gururaja Rao for the Respondents. A

The following Judgment of the Court was delivered:

This appeal by special leave is directed against the order of the Andhra Pradesh Administrative Tribunal, Hyderabad, holding that the appellant was appointed to the post of Sub-Inspector of Police (Civil) as a direct recruit and directing that he shall be accorded seniority from the date when he joined the post on such appointment. B

On December 30, 1968, the appellant, who was then an undergraduate, was appointed to the post of Reserve Sub-Inspector of Police. During his service in that post, he passed the B.A. Examination of the Osmania University in April 1971. Pursuant to an advertisement in the local newspaper inviting applications for the posts of Sub-Inspector of Police (Civil), the appellant applied for the post and appeared in the written test and *viva voce* test. He was selected and appointed to the post on December 14, 1976 on probation for two years along with thirtyseven others. After the completion of his probationary period, he was confirmed in the post on November 29, 1978. C D

It appears that the Inspector General of Police did not accede to the request of the appellant to take into account the period of his service as Reserve Sub-Inspector of Police in computing his seniority in the new post of Sub-Inspector of Police (Civil). Thereafter, the appellant made a representation to the Government. The Government in its order being GOMS No. 344 dated June 11, 1982, took the view that the entire period of service of the appellant as Reserve Sub-Inspector of Police should be counted under Rule 15(c) of the Andhra Pradesh Police Subordinate Service Rules and directed that the appellant would be accorded seniority from the date of his first appointment to the post of Reserve Sub-Inspector of Police, that is, from December 30, 1968, placing him below Shri Khaja Mohiuddin and above Shri S.K. Ahmed in the list of Sub-Inspectors of Police (Civil). It was further directed that "this order shall, however, not become a precedent for others." E F G

Being aggrieved by the said Government order, a number of Sub-Inspectors of Police (Civil) filed three sets of applications to the Andhra Pradesh Administrative Tribunal under paragraph 7 of the Andhra Pradesh Administrative Tribunal order, 1975 challenging the validity of the said Government order and praying for setting aside of H

- A the same. The Tribunal by the impugned order struck down the said Government order and directed that the appellant would be accorded seniority from the date when he joined the post of Sub-Inspector of Police (Civil) treating him as a direct recruit. Further, it was directed that the promotional benefits given to the appellant would be regulated on and from the date he joined the said post of Sub-Inspector of
- B Police (Civil). Hence this appeal by special leave.

C The principal question that is involved in this appeal is whether the appellant was appointed to the post of Sub-Inspector of Police (Civil) as a direct recruit or was recruited in that post by transfer or was simply transferred to that post from the post of Reserve Sub-Inspector of Police following his selection as a direct recruit.

D In the impugned Government order, the Government took the view that the appellant was transferred from the post of Reserve Sub-Inspector of Police to that of Sub-Inspector of Police (Civil) under Rule 15(c) of the Andhra Pradesh Police Subordinate Service Rules. Rule 15(c) is as follows:-

E “Rule 15(c). The transfer of a person from one class or category of the service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for purposes of seniority and the seniority of a person so transferred shall be determined with reference to the date of his first appointment to the class or category from which he was transferred. Where any difficulty or doubt arises in applying this sub-rule, seniority shall be determined by the appointing authority.”

F The Tribunal has taken the view that appointment of the appellant to the post of Sub-Inspector of Police (Civil) was not by way of transfer under Rule 15(c), nor was it by way of recruitment by transfer. It has been pointed out by the Tribunal, and that rightly, that Annexure-I read with Rule 2(a) of Andhra Pradesh Police Subordinate Service Rules provides for two modes of appointment which are:-

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- (1) by promotion, and
 - (2) by direct recruitment or recruitment by transfer from any other service.

H It is not disputed that Sub-Inspectors of Police (Civil) and

Reserve Sub-Inspectors of Police both belong to Andhra Pradesh Police Subordinate Service. Recruitment by transfer can only be made from "any other service." As both the posts of Sub-Inspectors of Police (Civil) and Reserve Sub-Inspectors of Police are under the same Service, the question of recruitment in the post of Sub-Inspector of Police (Civil) by transfer from the post or Reserve Sub-Inspector of Police does not arise. Mr. Subba Rao, learned Counsel appearing on behalf of the appellant, has not made any attempt to substantiate that the appellant's appointment to the post of Sub-Inspector of Police (Civil) was by way of recruitment by transfer. We are, therefore, left with the question whether the appellant's appointment was by way of direct recruitment or it was really a case of transfer of the appellant from the post of Reserve Sub-Inspector of Police to that of Sub-Inspector of Police (Civil). While it is strenuously urged on behalf of the appellant that he was transferred from the post of Reserve Sub-Inspector of Police to the post of Sub-Inspector of Police (Civil) under Rule 15(c) of the Andhra Pradesh Police Subordinate Service Rules, it is submitted by Mr. P.P. Rao, learned Counsel appearing on behalf of the respondents, that the appellant was directly recruited to the post of Sub-Inspector of Police (Civil).

It has been already noticed that the appellant applied for the post of Sub-Inspector of Police (Civil) pursuant to an advertisement in the newspapers issued by the Police department inviting applications for appointment to the said post by direct recruitment in the pay scale of Rs. 150-300. The minimum academic qualification required for the post was graduation. The vacancies to be filled up were 149 in number. The appellant succeeded in the preliminary interview and he was directed to appear at the written test. Thereafter, he was also called upon to appear at the final interview before the Selection Board on February 25, 1976 and was asked to bring with him original certificates, evidence of his date of birth, school/college conduct certificate, no objection certificate in original, if he was a Government Servant, etc. In other words, the appellant had to undergo the entire procedure prescribed for selection of direct recruits. It has also been noticed earlier that the appellant was appointed on probation for two years and after the satisfactory completion of his probationary period, he was confirmed in the post of Sub-Inspector of Police (Civil). In view of the manner in which the appellant was appointed to the post of Sub-Inspector of Police (Civil), it is difficult to accept any contention that the appellant was transferred to that post. When a Government servant is transferred from one post to another, the question of his selection after a written and a *viva voce* test does not at all arise. If the

A appellant had been transferred simpliciter, the appellant would not have been directed to appear at the written test and the interview for the purpose of selection along with other candidates, who also applied for the posts of Sub-Inspector of Police (Civil) pursuant to the said advertisement in the local newspaper. It is not disputed that the said advertisement was published for filling up the posts of Sub-
B Inspectors of Police (Civil) by direct recruitment. We are, therefore, unable to accept the contention made on behalf of the appellant that it was a case of transfer and not of direct recruitment.

It is true that the Government has power to transfer under Rule 15(c) of the Andhra Pradesh Subordinate Police Service Rules. The
C question, however, is whether the Government intended to transfer the appellant from the post of Reserve Sub-Inspector of Police to that of Sub-Inspector of Police (Civil). It has been rightly pointed out that such transfer can be made only in the public interest, but there was no question of any public interest so far as the appellant was concerned. Indeed, in the impugned Government order, it was directed that the
D same would not be treated as a precedent. If the appellant's appointment to the post of Sub-Inspector of Police (Civil) was by way of transfer in exercise of the power under Rule 15(c), there was no necessity for a direction that the order would not be treated as a precedent for others. The impugned order was not made by the Government out of its own, but on the representation of the appellant which was made
E after the appellant's request to take into account his period of service at the Reserve Sub-Inspector of Police in computing his seniority in the post of Sub-Inspector of Police (Civil) was turned down by the Inspector General of Police.

In support of the case for transfer, the appellant has strongly
F relied upon two facts, namely, (1) that he did not submit any resignation from the post of Reserve Sub-Inspector of Police; and (2) that he was allowed to draw last pay as Reserve Sub-Inspector of Police even on his appointment as the Sub-Inspector of Police (Civil). These two facts have also been relied upon by the Government in the impugned order. These two circumstances are no doubt the criteria of a transfer,
G but merely because of the presence of these circumstances, it will not justify a finding that the appellant was transferred, as contended by him, having regard to the manner in which the appellant was appointed to the post of Sub-Inspector of Police (Civil). Although a Government servant can be transferred from one post to another, but when he chooses to get himself recruited to that another post after
H subjecting himself to all requirements and formalities of direct recruit-

ment along with other independent candidates and is confirmed after satisfactory completion of the probationary period, his appointment as a direct recruit cannot be substituted by an order of transfer to the prejudice of the other direct recruits in the matter of computation of seniority. It may be that the appellant had not resigned from the post of Reserve Sub-Inspector of Police, and that the Government allowed him the last pay drawn as Reserve Sub-Inspector of Police on his appointment as Sub-Inspector of Police (Civil), that would not, in our opinion, wipe out the appointment of the appellant as a direct recruit. The Tribunal, in our view, is perfectly justified in holding that the appellant was directly recruited to the post of Sub-Inspector of Police (Civil), and that his seniority should be computed from the date of such appointment.

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For the reasons aforesaid, the appeal is dismissed. There will, however, be no order as to costs.

We, however, make it clear that this judgment will not affect the present position of the appellant and the emoluments which are being paid to him.

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S.L.

Appeal dismissed.