

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA No.2289/2002
MA No.1048/2007
with
OA No.219/2008**

24

New Delhi, this the 20th day of August, 2008

**HON'BLE MR. JUSTICE V.K.BALI, CHAIRMAN
HON'BLE MR. L.K.JOSHI, VICE CHAIRMAN (A)**

O.A. No.2289/2002

1. Shri Harmit Singh,
Assistant Commissioner of Police (Palam),
F-1, P.S. Sarojini Nagar,
New Delhi.
2. Shri T.S. Bhalla,
Assistant Commissioner of Police (Traffic),
2, Jai Singh Road,
P.S. Parliament Street,
New Delhi.
3. Shri Shyam Singh,
Assistant Commissioner of Police (Seelampur),
B-44, Friends Colony West,
New Delhi-110065.
4. Shri O.P. Yadav,
Assistant Commissioner of Police (Greater Kailash),
20/62, Lodhi Road,
New Delhi-110 003.
5. Shri R.S. Dahiya,
Assistant Commissioner of Police (Crime),
B-1/40, Ist Floor,
Malviya Nagar, New Delhi-110017.
6. Shri Ram Narain,
Assistant Commissioner of Police,
Quarter No. A-19, New Police Lines,
Kingsway Camp, Delhi-110009.
7. Shri S.K. Pant,
Assistant Commissioner of Police (Licensing),
H-265, Sector VIII,
R.K. Puram, New Delhi.
8. Shri Amarjit Singh,
Assistant Commissioner of Police (Vigilance),
5-B, BU Block,
Shalimar Bagh, Delhi
9. Shri Ved Prakash Gupta,
Assistant Commissioner of Police,
A-87, Derawala Nagar,
G.T. Road, New Delhi-110 009.
10. Shri Jai Pal Singh,
Assistant Commissioner of Police,
A-222, Suraj Mal Vihar,
Delhi-110092.
11. Shri O.P. Tiwari,
Assistant Commissioner of Police (Licensing),

22/8/08

6/688, Lodhi Colony,
New Delhi-110 003.

... Applicants

(By Advocate: Shri Ashwani Bhardwaj)

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Versus

1. The Union of India,
Through Secretary,
Ministry of Home Affairs,
New Delhi.
2. The Commissioner of Police,
Police Head Quarters,
New Delhi-110 002.
3. Shri Prabhakar,
Assistant Commissioner of Police,
W-7/1, Police Colony,
Andrews Ganj, Delhi.
4. Shri B.K. Mishra,
Assistant Commissioner of Police,
C-79, Teachers Colony,
Suraj Mal Vihar,
Delhi-110 092.
5. Shri Raj Kumar Jha,
S/o Late Shri Kapileshwar Jha,
R/o B-3, Type IV,
New Police Lines, Kingsway Camp,
Delhi-110 009.
6. Shri Rupinder Kumar,
S/o Shri H.R. Swan,
R/o G-12, Type V,
New Police Lines, Kingsway Camp,
Delhi-110 009.
7. Shri Vimal Anand Gupta,
S/o Shri S.S. Gupta,
R/o D-8, Type IV,
Behind Police Station Rajouri Garden,
New Delhi.
8. Shri Moti Ram Gothwal,
S/o Shri S.R. Gothwal,
R/o B-4 Type IV,
Police Lines, Kingsway Camp,
Delhi-110 009.
9. Shri Om Prakash Mishra,
S/o Shri R.B. Mishra,
R/o Flat No.02, Type IV Quarters,
D.C.P./South Office Complex,
Hauz Khas, New Delhi.
10. Shri Brijesh Kumar Singh,
S/o Shri R.K. Singh,
R/o W-4/1, Police Colony,
Andrews Ganj, New Delhi
11. Shri K.K. Vyas,
S/o Shri K.K. Vyas,
R/o Govt. Quarter No. 1,
ACP (Punjabi Bagh) Office Premises,
Punjabi Bagh, New Delhi

H.K.

12. Shri Suvasis Chaudhary,
Assistant Commissioner of Police,
28/1, P.S. Tughlaq Road,
New Delhi
13. Shri Braja Kishore Singh,
Assistant Commissioner of Police,
(Operation/ Vasant Vihar),
South West Distt.,
New Delhi
14. Shri Brahm Singh,
S/o Late Shri Bhagwan Sahai,
R/o E-9, Type IV,
New Police Lines, Kingsway Camp,
New Delhi
15. Shri Rajiv Ranjan,
Assistant Commissioner of Police,
IV/E-15, New Police Lines,
Kingsway Camp, Delhi
16. Shri Ravinder Kumar Pandey,
Assistant Commissioner of Police (Security),
Rashtrapati Bhawan,
New Delhi
17. Shri Rajbir Singh Chauhan,
Assistant Commissioner of Police,
Chanakyapuri Sub-Division,
New Delhi
18. Shri R.A. Sanjeev,
Assistant Commissioner of Police,
Special Branch,
Police Head Quarter,
New Delhi
19. Shri Rajesh Kumar,
Assistant Commissioner of Police (Security),
Rashtrapati Bhawan,
New Delhi

...Respondents

(By Advocate: Shri R.N. Singh for official respondents
Shri Reetesh Singh for respondents 16 to 18)

O.A. 219/2008

Shri R.K. Joshi,
S/o Shri S.N. Joshi,
R/o 21/109, Lodhi Road,
New Delhi-110003

....Applicant

(Appeared in person)

versus

1. The Union of India,
Through Secretary,
Ministry of Home Affairs,
New Delhi.
2. The Commissioner of Police,
Police Head Quarters,
New Delhi-110 002.
3. Shri R.A. Sanjeev,
S/o Shri R.S. Lal,
R/o 823, Laxmi Bai Nagar,

22/11/2008

New Delhi.

(2)

4. Shri R.K. Pandey,
S/o Shri R.N. Pandey,
R/o B-440, Mira Bagh,
New Delhi.

....Respondents

(By Advocate: Shri Shri R.N. Singh for official respondents
Shri Reetesh Singh for respondents 3 and 4)

ORDER

Mr. L.K. Joshi, Vice Chairman(A):

We are disposing of OAs number 2289/2002 and 219/2006 by this common order as the facts and the points of law involved are common to both.

2. The perennial contention about seniority between the officer promoted from feeder cadre and the officers recruited directly through a competitive examination is the common thread binding the two Original Applications. The Applicants in both the OAs are retired officers of the rank of Assistant Commissioner of Police (ACP) of the Delhi-Andaman-Nicobar Island Police Service (DANIPS). The relief claimed is grant of selection grade to the Applicants as Grade I ACPs from the date of completion of eight years of service as ACP Grade II and grant of consequential benefits such as promotion to Junior Administrative Grade (JAG).

3. The issue regarding seniority has been agitated by the promotee ACPs and direct recruit ACPs in several cases in the past up to the Honourable Supreme Court and presently the matter concerning seniority is before the Honourable Delhi High Court in some writ petitions emanating from the orders passed by this Tribunal in OAs on the matter of seniority. The immediate provocation for the Applicants to come before us has been provided by the decision of the Respondents to grant selection grade on ad hoc basis to some promotee ACPs, who are junior to the Applicants.

4. In order to appreciate the intricacies of the issues involved, we have to first consider the DANIPS Rules, 1971, by which the service has been constituted and which provides for modes of recruitment and promotion. The relevant Rules are extracted below:

"2. (c) "Duty Post" means any post specified in the Scheduled and includes a temporary post carrying the same designation as any of the posts of which is identical to that attached to Grade-II of the service and any other temporary post declared as duty post by the Central Government.

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(d) "Member of the Service" means a person appointed in a substantive capacity to either grade of the service and includes a person appointed on probation to Grade-II of the service."

"3.(2) The service shall have two grades, namely:

- (i) Grade-I (Selection Grade), and
- (ii) Grade-II"

"(5) METHOD OF RECRUITMENT :

(I) Save as provided in rule 17, appointment to the service shall be made by the following methods, namely, :-

(a) (8) 50 percent of the substantive vacancies which occur from time to time in the authorized permanent strength of the service shall be filled by direct recruitment in the manner specified in Part-IV of these rules; and

... ..

(b) The remaining such substantive vacancies shall be filled by selection in the manner specified in Part-V of these rules from amongst officers who are substantively borne on the cadre of Inspectors of Police employed in the Union.

Provided that nothing in this rule shall preclude the Central Government from holding a vacancy in the service in abeyance, or filling it on an officiating basis in accordance with the provisions of Part-VIII of those rules."

"13. CONSTITUTION OF SELECTION COMMITTEE

Recruitment under Clause (b) of sub-rule (1) of rule 5 shall be made on the recommendation of a Selection Committee (hereinafter referred to as the Committee) considering of:-

(i) the Chairman or a Member of the Commission - [UPSC] Chairman.

MEMBERS

(ii) an officer in the Ministry of Home Affairs not below the rank of Joint Secretary to the Government of India;

(iii) the Chief Secretary, Delhi Administration

(iv) Administration of the Union Territory of Andaman and Nicobar Islands or the Chief Secretary of the Andaman and Nicobar Administration or any officer in the Ministry of Home Affairs nominated by that Ministry,

(v) the Commissioner of Police, Delhi."

"15. (4) The list thus, finally approved shall be in force till a fresh list is prepared for the purpose in accordance with these rules. All persons except those under the Himachal Pradesh Administration who immediately before the commencement of those rules were borne on the list approved by the Central Government under sub-rule (4) of rule 15 of the Delhi Himachal Pradesh and Andaman and Nicobar Islands Police Service Rules, 1965, shall be deemed to have been included in the same order in a list approved under sub-rule (4) of this rule."

"24. SELECTION FOR OFFICIATING APPOINTMENT :

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If at any time the Central Government is of the opinion that the number of officers available in the list referred to in Sub-rule (4) of rule 15 for appointments to duty posts is not adequate having regard to the vacancies in such posts, it may direct the committee to consider the case of officers who have officiated for a period of not less than three years in any of the cadres mentioned in clause (b) of sub-rule (1) of rule 5 selection for inclusion in the list shall be based on merit and suitability in all respects for officiating appointments to duty posts with due regard to seniority. The provisions of sub-rules (3) and (4) of rule 14 and rule 15 shall apply mutatis mutandis in the preparation of the selection list under this rule.

25. OFFICIATION APPOINTMENT TO DUTY POSTS OF THE SERVICE:

(1) If a member of the Service is not available for holding a duty post, the post may be filled on an officiating basis:-

(a) by the appointment of an officer included in the list referred to in sub-rule (4) of rule 15; or

(b) if no such officer is available, by the appointment of an officer included in the list prepared under rule 24.

(2) Notwithstanding anything contained in these rules, if the exigencies of public service so require, a duty post for which a member of the service is not available may be filled on an officiating basis by the appointment with prior consultation with the commission of an officer belonging to a State Police Service on deputation for such period or periods ordinarily not exceeding three years as the Central Government may consider necessary.

(3) Notwithstanding anything contained in these rules, where appointment to a duty post is to be made purely as a local arrangement for a period of not exceeding six months, such appointment may be made by the administrator from persons who are included in the list prepared under sub-rule (4) of rule 15, or rule 24 or who are eligible for inclusion in such a list.

(4) Any appointment made under sub-rule (3) shall be reported by the Administrator to the Central Government forthwith."

"29. SENIORITY:

The Central Government shall prepare a list of members of the service arranged in order of seniority as determined in the manner specified below:-

(i) Members of the Service appointed at the initial Constitution under rule 17 shall be ranked inter se in the order of their relative seniority in the Delhi, Himachal Pradesh Andaman and Nicobar Islands Police Service;

Provided that if the seniority of any such officer had not been specifically determined before the commencement of these rules, it shall be as determined by the Central Government.

(ii) Seniority of person appointed to the service under clauses (a) and (b) of sub-rule (1) of rule 5 after the initial constitution under rule 17, shall be determined as follows:-

(a) Persons recruited on the results of the competitive examination in any year shall be ranked inter-se in the order of the merit in which they are placed at the competitive examination on the results of which they are recruited, those recruited on the

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basis of an earlier (sic) examination being ranked senior to those recruited on the basis of later examination.

(b) The seniority inter-se persons recruited by selection shall be determined on the basis of the order in which their names are arranged in the list prepared under rule 14, those recruited on the basis of an earlier selection being ranked senior to those recruited on the basis of a later selection.

(c) The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion under rule 5."

"31. APPOINTMENTS TO SELECTION GRADE :

(1) Appointment of members of the Service to the Selection Grade shall be made in consultation with the commission on the basis of (seniority subject to fitness). Persons appointed to the Service under rule 17 who were appointed to the Selection Grade of the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Police Service shall be deemed to have been appointed to the Selection Grade of the Delhi and Andaman and Nicobar Islands Police Service.

(2) An officer with the minimum of 8 years' service in grade II shall be eligible for being considered for appointment to the selection grade:

Provided that service in a duty post or an equivalent post or in a State Police Service or in Grade-II of the Delhi and Himachal Pradesh Police Service of Delhi, Himachal Pradesh and Andaman and Nicobar Islands Police Service shall count towards the "Eight-years" period.

Provided further that where a person is considered for such appointment all persons senior to him in Grade II shall also be considered irrespective of the fact whether or not they fulfil the requirement as to the minimum of "8 years" service."

5. There are eleven Applicants in OA number 2289/2002. They had officiated on the posts of ACP for 15 to 17 years up to 2002, when this OA was filed. Their appointments were made through the UPSC under Rule 24 and 25 (1) of the DANIPS Rules 1971 (ibid). They were appointed against clear vacancies, without a break for several years. However, when a seniority list of ACPs was prepared in 1989, the Applicants' names did not appear in the seniority list. Some of the promotee ACPs approached this Tribunal in OA number 300/1989, **Harish Chander Bhatia and others Vs. Union of India and others**, decided on 31.03.1992. Challenge in the above mentioned OA was to the inaction of the respondents in not giving them seniority in the grade of ACP, keeping them as ACP Grade II on officiating basis only and thereby denying them entitlements for further career progression. Shri Harish Chander Bhatia was promoted to the rank of ACP in DANIPS on 6.11.1972 under Rule 25 (1) (a) of DANIPS Rules, 1971 and held that post till he retired on 31.10.1989. The Tribunal held thus:

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"In the facts circumstances of the case the application is partly allowed. The respondents are directed to deem the applicants as having been placed on probation from the date they completed six months' service in terms of Rule 24 (3) and to confer on them the benefits, as applicable to the appointee from the select list prepared under Rule 15 (4) after they completed the probation period. The applicants shall also be entitled to consideration for higher posts; if they are eligible under the Rules. For that purpose, if review DPC is to be held in respect of the applicants, the same shall be convened and in case they are found fit they will be deemed to be promoted from the date the officer junior to the applicants was promoted with consequential benefits by way of refixation of pay and payment of differential in pay and allowance, as per entitlement, as above and as actually drawn."

6. The respondents in OA number 300/1989 preferred an appeal to the Honourable Supreme Court against the order dated 31.03.1992 of the Tribunal.

The Apex Court held as below:

"11. According to us, the just and proper order to be passed would be to direct the appellants to treat the dates of officiating appointments of the respondents as the dates of their regular appointments and then to place them in the seniority list as required by Rule 29 i.e. to interpose a direct recruit in between two promotees as per their respective inter se seniorities; and we direct accordingly. The seniority would, therefore, be refixed of all concerned, not as per length of service alone as ordered by the Tribunal, but as indicated by us.

12. Before closing, it is required to be stated that we have not appreciated the stand taken by the appellants. This is for the reason that employers like the appellants, who are required to be model employers, should not take a stand which is unfair. They have to treat both the wings of the Service fairly, as both are equally important insofar as they are concerned. The need for making this observation has been felt because what we find is that despite an incumbent like Respondent 1 having served for more than a decade following his appointment, the stand taken is that he should be taken to have become a member of the Service from 1984 and not from 1972, being oblivious of the fact that for more than 12 years he had discharged the functions of the higher post to the satisfaction of all concerned. Denial of such long period of service for the purpose of seniority is an unjustified and arbitrary act which a model employer has to eschew."

The directly recruited officers had also preferred an appeal before the Honourable Supreme Court against the order of the Tribunal, which was disposed of along with the promotees' appeal in the same judgement.

7. The respondents in OA no.300/89 and appellants before the Honourable Supreme Court, gave relief only to the promotees who were before the Supreme Court by an order dated 2.08.1995 and not to other similarly situated ACPs. Aggrieved by this, 51 promotee ACPs filed an OA no.384/96 before this Tribunal for grant of same relief to all promotee ACPs as was granted to Sh. Harish Chander Bhatia and others by the Supreme Court. The applicants in this OA also claimed the consequential benefit of promotion to grade-I. During the proceedings, directly recruited ACPs were also impleaded in this OA, in which

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they contended in their reply that fixation of seniority of Shri H.C.Bhatia and others was not in accordance with the directions of the Supreme Court in its judgment dated 8.12.1994 (ibid). Another OA no.1739/96 was also filed by one promotee ACP and was heard with OA no.384/96. The Tribunal gave the following directions by order dated 7.01.1999:

"16. Respondents have correctly pointed out that there are two aspects of the Hon'ble Supreme Court's direction both of which are equally important. Firstly there is the direction to treat the dates of the officiating appointments of Shri Bhatia and others as the dates of their regular appointments and the second direction is that after treating the dates of their officiating appointments as the dates of their regular appointments one direct recruit has to be interposed in between the two promotees as per their inter se seniority. Such an interposition will necessarily entail revision of the seniority list, as the respondents have done in implementation of the Hon'ble supreme Court's direction in Bhatia's case and Shri Vikas Singh's assertion that the Hon'ble supreme Court's decision did not envisage any revision in the seniority list cannot be accepted. However, it is extremely important to mention here that while revising the seniority list both directions of the Hon'ble Supreme Court noted above have to be kept squarely in view, because the judgments of the Apex Court has to be implemented in totality as per operative portion extracted above. Furthermore while doing so, this has to be done within the frame work of the quota-rota Rule as well as the other provisions of DANIPS Rules.

17. Keeping in view the above parameters, these two OAs are disposed of with a direction to respondents to scrutinize the claims for refixation of seniority in respect of each of the applicants in the two OAs before us within 3 months from the date of receipt of a copy of this order, by means of reasoned order in each case, and subject to their claims falling within the parameters discussed in para 16 above refix their seniority in the same manner as was done in the case of Shri Bhatia & others, with consequential benefits. No costs."

8. Some direct recruit DANIPS officers had filed an OA no.797/96 impugning the action of the authorities in implementation of the Honourable Supreme Court's judgement in Shri Harish Chander Bhatia's case. This OA was dismissed by the Tribunal and the applicants in this OA preferred SLP before the Honourable Supreme Court, which was sent to Honourable Delhi High Court for appropriate disposal.

9. Against the order of the Tribunal in OA no.384/96 and 1739/96, the directly recruited ACPs through Sh. Prabhakar filed a writ petition no.2012 of 1999 before Honourable Delhi High Court. The writ petition was disposed of with the following directions:

"Viewed thus, all pending matters on the subject matter between parties are being disposed of by providing as under:-

Aggrieved direct recruits (parties to this lis) may file objections/representation against tentative seniority list prepared by Union Respondents within two weeks from this order taking all pleas available to them in law including requirement of Rules 14

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& 29. Union Respondents and all its concerned functionaries shall thereafter examine and consider their plea taking in regard all relevant factors including Supreme Court directions dated 8.12.94 and relevant rules 14 & 29 and pass appropriate orders for finalization of the seniority list in the category of ACP on or before 31.1.2002. This list, however, shall not be acted upon for two weeks after its finalization."

10. Following the directions of the Honourable High Court, the Respondents issued a seniority list on 14.05.2002 (Annex A-1 in OA no.2289/2002). The seniority list was challenged both by promotee as well as by directly recruited officers in OAs number 1418/2002, 1435/2002 and 1611/2002. The Tribunal gave the following directions in its order dated 26.02.2003 in the above mentioned OAs:

"24. For the reasons given above, we allow the present application and direct:-

- (a) the seniority list prepared by the respondent is quashed;
- (b) the seniority of direct recruits and promotees has to be fixed as per the decision of the Supreme Court in the case of Harish Chander Bhatia (supra), namely a direct recruit has to be interposed in between two promotees;
- (c) so far as the promotees are concerned, their inter se seniority has to be determined in terms of sub-rule (2) to Rule 14 and Rule 29 of the Rules for those who were inducted before the amendment was effected on 6.9.1991; and
- (d) those who were inducted after the amendment effected on 6.9.1991 would be governed by the amended Rules. It is directed that this exercise be completed preferably within a period of six months in accordance with law."

11. The order dated 26.02.2003 was challenged by the promotee officers by WP (C) No. 5973/2003 and by the Respondents by WP (C) No.598/2004. These writ petitions are pending adjudication before the Delhi High Court.

12. OA No.2289/2002 was also filed to challenge the seniority list of 14.05.2002. In view of the writ petitions, mentioned in paragraph 11 above, the matter was adjourned *sine die*, on 24.03.2004 with liberty to either party to seek revival of the OA after dispute referred to above had been finally settled.

13. On 24.10.2005, the Honourable Delhi High Court passed the following order in the WP (C) 598/2004:

"It is clearly established from the impugned judgement, which is under challenge in this petition that there was no dispute with regard to seniority in respect of and up to the person at Sl. No.270 of the seniority list published on 14.5.2002, which is at page No.108 of the paper book.

Since there is no dispute with regard to the seniority position up to the person at Sl. No.270 of the said list published in 2002,

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process and consideration for promotion to the next post for the persons placed in between No.1 to 270 could be initiated and processed by the respondents in accordance with law."

14. On 14.06.2007, MHA, the first Respondent in both the OAs before us, issued an order promoting sixty officers of DANIPS **on ad hoc basis**, to look after the work of Additional DCP, described by the Respondents as 'look after charge', for a period of six months, or till the posts are filled up, whichever is earlier. This list included names of officers below serial number 270 in the seniority list 14.05.02, up to which Honourable Delhi High Court had allowed consideration for upgradation by its order dated 24.10.2005 (supra). These officers were junior to the Applicants in the cases before us.

15. Meanwhile, on 27.01.2005 also the Respondents had passed an order giving "look after charge" of the post of Additional Deputy Commissioner of Police to some officers. This was challenged in OA No.229/2005 seeking quashing of the above mentioned order and also direction to the Respondents to confer upon them (the Applicants in OA No.229/2005) "look after charge" of the post of Additional Deputy Commissioner of Police. The Tribunal did not find any merit in the OA, which was dismissed by order dated 1.02.2005 on the ground that the private Respondents had only been given "look after charge" of the post of Additional Deputy Commissioner of Police and the same would not confer any right of seniority or promotion on regular basis. This was challenged in W.P. (C) Nos.4625-26/2005 which was decided on 10.09.2005 by the Honourable Delhi High Court with the following directions :

"Learned counsel for the petitioners seeks direction with regard to the orders to be passed by the respondent during the interregnum period and submitted that in order to tide over the difficulty faced by the respondent-Union of India and the respondent-NCTD, orders are being passed giving "look after charge"/current duty charge of a higher post on the basis of the seniority list which stands quashed by the learned Tribunal. In our considered opinion, no such order "giving look after charge" could be passed by the respondent on the basis of a seniority list which stands quashed and there being no interim order passed protecting the validity of the said seniority list by this Court. No reliance can be placed on the said seniority list by any of the parties even for giving "look after charges" once the said seniority list has been quashed. We, however, direct that if in case any "look after charge" is to be given in future by the respondents, the same be made as per the criteria laid down by the Supreme Court in the case of Harish Chander Bhatia (supra).

The Writ Petition stands disposed of with the above directions and observations."

Aditya

The Respondents prepared a revised seniority list in compliance with the directions dated 10.09.2005 of the Honourable Delhi High Court and it was sent to the UPSC by letter dated 13.10.2005 for comments and approval. The Respondents filed an additional affidavit in W.P. (C) No.598/2004 before the Honourable Delhi High Court on 21.10.2005 informing the High Court about these developments.

16. In OA No.219/2008, the reply dated 27.01.2006 of the UPSC to MHA's letter dated 9.11.2005 seeking Commission's comments/approval on the revised seniority list of DANIPS officers prepared by them in compliance with the directions of the Honourable Delhi High Court in WP (C) No.4625-26/2005 has been enclosed at pages 311-313 of the paper book. Reference has been made to the observations of the DoP&T regarding the aforementioned seniority list.

These observations, as quoted in the UPSC's letter, are reproduced below :

"It would be seen that the above principle is not consistent with the advice tendered by DOP&T earlier in the linked file for framing of seniority list. This will also disturb the existing seniority status already assigned to the DRs and promotees appointed on substantive basis ab initio. This manner of refixing seniority also contradicts 'B' of page 7/n.

As already pointed out in our earlier notes in the linked file referred to, rotation of vacancies at 1:1 between promotes and DRs can be done only to the extent of quota of vacancies earmarked. Such rotation cannot be done exceeding the prescribed quota of vacancies earmarked for a year. The proposed formula of MHA to bring in DRs of later years in matching number with the excessive number of officiating promotees in a year implies exceeding the quota of vacancies which is not envisaged in the rota quota principle. As Rule 29 of DANIPS Rules quotes rota quota principle for determining seniority between promotees and DRs, the proposed method of MHA is contrary to the Rules. And the Court has directed to prepare seniority list based on these Rules.

The general policy instructions on seniority (including rota quota principles) are embodied in MHA (now DOP&T) instructions dated 22.12.1959, as amended from time to time. Vide instructions dated 7.2.1986, the concept of antedating seniority was done away with from 1.3.1986. The MHA should have taken follow up action to amend the DANIPS Rules, 1971 suitably to bring them in line with the provisions of this O.M. In any case, on the general policy instructions side, the rota quota principle was modified to include the concept of bunching of excess promotees or DRs at the end of the seniority list of a year. Therefore, the proposal of MHA to assign antedated seniority to DRs upto 1991 is contrary to general policy instructions dated 7th February, 1986.

More importantly, the exercise of preparing revised seniority list has originally emanated from the Supreme Court's judgment dated 8th December, 1994. It was never the intention of the Supreme Court to confer unintended benefits to DRs by way of assigning them antedated seniority. The Supreme Court's intention in this judgment was to protect the longer duration of officiating service of promotees as regular and to grant consequential benefit of seniority.

Adjudicated

(5)

From the foregoing, it would be clear that the proposed formula of revising seniority list is neither in keeping with the contents of the DANIPS Rules nor with the spirit of the Supreme Court's judgment. It is, therefore, felt that MHA should adhere to the principles and methods indicated in our earlier notes recorded in the linked file for preparing the revised seniority list."

The UPSC, after quoting the advice of DoP&T has observed that "The Commission after having carefully considered the matter finds that they have nothing more to add than what has been opined by the Department of Personnel and Training."

17. Some of the Applicants made a representation on 18.04.2007 to the Respondents for grant of Selection Grade to them. The representation was rejected by letter dated 15.05.2007 with the following observation :

"2. As the ad hoc promotion can be given only to officers in service, you are ineligible for the same having already retired on attaining the age of superannuation. However, you would be duly considered for promotion alongwith consequential benefits, if any, as and when regular DPC is convened on finalization of the seniority list of the DANIPS officers."

This letter has been impugned in OA No.219/2008, as the Applicant in this OA was also one of the officers who had made the representation dated 18.04.2007. The Applicants in OA No.2289/2002 also appeared before the Tribunal for revival of the case which had been adjourned sine die by order dated 24.03.2004 because of the pendency of W.P. (C) No. 598/2004 regarding seniority before the Honourable Delhi High Court. This is how we are seized of the matter in both the OAs.

18. The Applicant appearing in person in OA 219/2008 has contended that there are three conditions precedent for grant of Selection Grade to DANIPS officers under Rule 31 of DANIPS Rules, 1971, which are :

- (i) Eight years' service rendered in Grade-II;
- (ii) Service in duty post also to be counted; and
- (iii) Senior shall be considered for grant of Selection Grade if juniors promoted, even if eight years' service in Grade-II has not been completed.

19. He would further contend that under Rule 2 (C) the duty post includes a temporary post also. The aforesaid Rule has been quoted in paragraph 4 above. It is contended that the Applicant has been officiating since 10.02.1987 and as per Rules, he was eligible for grant of Selection Grade with effect from

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10.02.1995. It is argued that by order dated 14.06.2007, juniors to the Applicant had been given Selection Grade provisionally on ad hoc basis. The Applicant should also be given the same grade provisionally. It is contended that in the order dated 14.06.2007 the date of birth of the officers given Selection Grade has been mentioned instead of mentioning their date of appointment. This, it is argued, is only to camouflage their date of appointment, which would reveal that they are junior to the Applicant. It is also argued that the third and fourth Respondents have been granted Selection Grade from 1.04.1997. The Applicant could be given Selection Grade, if not from the date of his eligibility after completing eight years' service in Grade-II, from at least the date when juniors were given the Selection Grade. It is contended that the third and fourth Respondents were junior to the Applicant as they were appointed on 1.04.1990 and 1.04.1989, after amendment of Rule 29 of DANIPS Rules, 1971, which deals with seniority. Reference has been made to paragraph 2 of the MHA's letter dated 13.10.2005 (page 288-291 of the paper book in OA 219/2008) referred to in paragraph 15 of this order.

20. The learned counsel for the Applicants in OA 2289/2002 stated at the outset that as the dispute about the seniority list is pending before the Honourable Delhi High Court, the Applicants are here only about grant of Selection Grade to them, which has been given by order dated 14.06.2007 to their erstwhile juniors. He would contend that the Honourable Delhi High Court in its order dated 24.10.2005 adverted to in paragraph 13 above had directed that persons up to serial number 270 in the seniority list of 14.05.2002 could be considered for promotion to the next post. The first Applicant in OA 2289/2002 (Shri Harmit Singh) is at serial number 308 and the Applicant in OA 219/2008 (Shri R.K. Joshi) is at serial number 382. By order dated 14.06.2007, Shri Shanti Swarup Manan at serial number 390 and Shri Rajendra Prasad Meena at serial number 643 have been given the Selection Grade and the Applicants have thus been discriminated against.

21. The learned counsel for the official Respondents has, per contra, contended that promotion given to the officers by order dated 14.06.2007 is only on ad hoc basis. It is contended that a large number of posts in the Junior Administrative Grade-II and Selection Grade of the service have been lying vacant and the absence of officers at this level is adversely affecting the administration of police in Delhi and the Union Territories, part of DANIPS. The

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Respondents had also taken note of the fact that there was discontentment and demoralization among the officers, particularly the promotee officers because of delay in granting promotions. Taking into account these facts and also the fact that the Delhi High Court had allowed the Respondents to operate the seniority list dated 14.05.2002 partially, the Government of NCT of Delhi has given "look after charge" on the basis of the said seniority list, by deciding to consider all eligible officers in service as per that list for ad hoc promotion to the next higher grade. These orders are subject to the pending Writ Petitions before the Honourable Delhi High Court. Since the Applicants have retired from service on superannuation, they cannot be given ad hoc promotion, which is only to meet the exigencies of administration. The Respondents had assured the Applicants that their cases for promotion along with consequential benefits, if any, would be considered as and when regular DPC is convened on finalization of the seniority list. The learned counsel for the official Respondents has also stated that the Honourable Delhi High Court has been informed of this development by filing an additional affidavit in W.P.(C) No.598/2004, which is placed at pages 155-166.

22. It has been contended by the learned counsel for the private Respondents that the Applicants were not even Members of Service in 1985 as per Rule 2 (d) *ibid*. It is also contended that in the seniority list of 14.05.2002 the Applicant in OA 219/2008 is at serial number 382 and his date of appointment has been shown as 10.02.1987. Attention has been drawn to paragraph 4 of the order dated 14.05.2002, by which the seniority list has been circulated in which, *inter alia*, it is mentioned that "Ministry of Home Affairs.....decided to re-fix the seniority of those officers who were appointed on officiating basis to the DANIPS under Rule 25 (1) and (2) of the Delhi and Andaman & Nicobar Islands Police Service Rules, 1971....." It is contended that Shri R.K. Joshi, Applicant in OA 219/2008 has not been appointed under Rule 25 (1) and (2) of the DANIPS Rules, 1971.

23. We have heard the rival contentions and perused the record placed before us most carefully.

24. On consideration of the issue involved, it seems that the limited relief asked for in the OAs before us relates to grant of Selection Grade to the Applicants on the ground that persons junior to them in seniority list of 14.05.2002 have been granted Selection Grade on ad hoc basis or "look after

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charge" basis. This issue is closely intertwined with the larger issue of seniority, which is pending before the Honourable Delhi High Court. In its order dated 24.10.2005 (supra), the Delhi High Court had only permitted consideration of the officers up to serial number 270 in the seniority list of 14.05.2002 for promotion because there was no controversy regarding their seniority. This was based on the observation of the Tribunal in order dated 26.02.2003 in OA No.1418/2002 (ibid) in which it was observed in paragraph 5 that "According to the said seniority list, there was no dispute upto the person at Sl.No.270 of the present list under challenge." The list under challenge in this OA was the seniority list dated 14.05.2002. Thereafter by its judgement and order dated 10.09.2005 (ibid), the Honourable Delhi High Court had considered the matter regarding "look after charge" and had observed, as quoted in the preceding paragraph, that no reliance can be placed on the seniority list of 14.05.2002, which stands quashed and no interim order has been passed protecting the validity of the said seniority list. Therefore, directions were given that in future if any "look after charge" is to be given by the Respondents, the same should be in accordance with the criteria laid down by the Honourable Supreme Court in the case of Harish Chander Bhatia (cited supra). Thereafter, the Respondents had prepared a revised seniority list which had been sent for consideration to DoP&T and the UPSC. We have already quoted the views of DoP&T, as contained in the letter dated 27.01.2005 of the UPSC addressed to the first Respondent. The revised seniority list has not found favour either with DoP&T or with the UPSC. However, the Respondents have already brought the fact of the revised seniority list to the notice of the Honourable Delhi High Court by filing an additional affidavit before it on 21.10.2005. The promotions which have been made on ad hoc basis or "look after charge" basis have been made as per the seniority list dated 14.05.2002, which has been quashed already and about which the observations of the Honourable Delhi High Court have been quoted in the preceding paragraph.

25. From the above narration, it becomes clear that the issue of grant of Selection Grade can not be delinked from the issue of seniority. The issue has already been considered in W.P. (C) No.4625-26/2005 (paragraph 15 above) and directions have been given to the Respondents that any order about "look after charge" has to be based on the criteria laid down by the Honourable Supreme Court in Harish Chander Bhatia (supra).

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26. In view of the observations of the Honourable Delhi High Court in W.P. (C) No.598/2004 in the order dated 24.10.2005 and in order dated 10.09.2005 in W.P. (C) No.4625-26/2005, we cannot take any view on the issue even regarding the grant of Selection Grade to the Applicants. The OAs are not maintainable and are, therefore, dismissed. The Applicants may seek remedy in appropriate forum. No costs.

(L.K. Joshi)
Vice Chairman (A)

(V.K. Bali)
Chairman

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