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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1611/2002

New Delhi this the 26th day of February, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI GOVINDAN S.TAMPI, MEMBER (A)

Shri R.K.Mittal
S/o Late Shri S.L.Mittal,
R/o BW-3A, Shalimar Bagh,
Delhi-110052. Applicant

(By Shri R.M. Sinha, Advocate)

vs.

1. Union of India
through Secretary,
Ministry of Home Affairs,
Central Secretariat,
North Block, New Delhi.
2. Shri M.L. Karawal,
Officers Flat G-6
Type-V, New Police Lines,
Delhi
New Delhi.
3. Shri V. Ranganathan,
Flat No. 7, Type V
DCP Office Complex,
Hauz Khas,
New Delhi.
4. Shri Balbir Singh (SC),
E-3, New Police Lines,
Delhi.
5. Shri Ashok Chand
1, Jai Singh Road,
New Delhi.
6. Shri A.K. Ojha,
LF-15, Tansen Marg,
Bengali Market,
New Delhi.
7. Shri V.V. Choudhary,
6/8, Lucknow Road,
New Delhi.
8. Shri A.K. Singh
W-1/2, Andrews Ganj,
New Delhi.

9. Shri Rajinder Singh Ghuman,
Flat No.7, Type V
DCP South Distt. Office Complex,
Hauz Khas,
New Delhi.
10. Shri P.C. Hota,
L-1, Police Colony,
Vasant Vihar,
New Delhi.
11. Shri A.A. Siddiqui,
2/3, Court Lane,
Civil Lines,
Delhi
12. Shri S.B.S. Tyagi,
Type - IV, Flat No. E-13,
New Police Lines,
Delhi
13. Shri P.S. Bhushan,
Type V, Flat No. G-7,
New Police Lines,
Delhi.
14. Shri D.S. Norawat,
251, MIG Flats,
Rajouri Garden,
Delhi
15. Shri Amarjeet Singh Cheema,
6/8, Lancers Road,
Delhi
16. Shri Ranvir Singh
A-125, Pandara Road,
New Delhi.
17. Shri Arun K. Kampani,
Flat No. 493, Type IV,
R.K. Puram,
New Delhi.
18. Shri Alok Kumar
Flat No. 8, Type V
DCP South Distt. Office Complex
New Delhi
19. Shri Ajay Kumar,
Flat No. 1, Type IV
DCP South Distt. Office Complex,
New Delhi
20. Shri Ram Kumar (SC)
C/o Commissioner of Police,
Police Head Qtrs, ITO
New Delhi.

21. Shri Hari Mohan Meena
20-LF, Tansen Marg,
New Delhi
22. Shri Prabhakar
W-7/1, Police Complex
Andrews Ganj
New Delhi
23. Shri Binay K. Mishra,
C-74, Teacher Colony
Surajmal Vihar,
Delhi.
24. Shri Vimal Anand Gupta,
Flat No.8, Type IV
Rajouri Garden,
New Delhi
25. Shri Bhairon Singh Gujar,
Flat No.8, Type IV
Rajouri Garden, New Delhi.
26. Shri Rupinder Kumar (SC)
G-12, Type V
New Police Lines,
Delhi
27. Shri Moti Ram,
Type IV, E-4,
New Police Lines,
Delhi.
28. Shri Ram Niwas Meena (ST)
C/o Commissioner of Police,
Police Head Qtrs., ITO
New Delhi.
29. Shri K.K. Vyas,
Flat No.1
ACP Punjabi Bagh,
Delhi
30. Shri Harmit Singh (SC)
F-1, PS Sarojini Nagar,
Delhi
31. Shri Durga Prasad (SC)
2/7, Court Lane,
Delhi.
32. Shri Om Prakash Misra
Qtr. No.2., Type IV
DCP/South Office Complex,
Hauz Khas
New Delhi.
33. Shri Raj Kumar Jha,
B-3, Type - IV
New Police Lines,
Delhi.

34. Shri Suvashis Chowdhary
28/1, PS Tuglak Road,
New Delhi

35. Shri Brajesh Kumar Singh
A-211, Pandara Road,
New Delhi

36. Shri Brahm Singh
E-9, Type - IV
New Police Lines
Delhi

..... Respondents

(By Shri N.S.Mehta, Advocate)

O R D E R

Justice V.S. Aggarwal:-

Shri R.K.Mittal, applicant, had been confirmed as Inspector on 6.7.1993 in Delhi Police. He was appointed on a duty post of Delhi, Andaman & Nicobar Islands Police Service (for short, "the Service") vide order dated 17.12.1981 under sub rule (3) to Rule 25 of the Delhi, Andaman and Nicobar Islands Police Service Rules, 1971 (for short, "the Rules") on emergent and ad hoc basis from the date he assumed charge of his office. The charge was taken over on 18.12.1981. A subsequent order was issued on 4.10.1983 whereby the provision of sub-rule (3) to Rule 25 of the Rules was relaxed in consultation with the Union Public Service Commission and the appointment of the applicant to the Duty Post was extended till 31.12.1983 or till the post was filled on regular basis.

2. The Departmental Promotion Committee met and prepared a panel for filling up the substantive

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posts of Grade-II of the Service for the years 1985, 1986 and 1987. The name of the applicant was not shown in the panel because his position in the panel was kept in sealed cover because of the departmental enquiry which was pending against him. Vide order dated 3.4.1996, the applicant was appointed to Grade-II of the Service against the substantive appointment with effect from 3.2.1987. The inter se seniority list of Grade-II of the Service against substantive posts was published in the years 1986, 1988 and 1994. The applicant had been shown above Shri Dalip Chand at Sl.No.65. This Tribunal, in the case of **Shri Harish Chander Bhatia & Ors. v. Union of India & Ors.** in OA No.300/1989 decided on 31.3.1992 had gone into the controversy of the seniority. The matter was taken up to the the Supreme Court and a direction was given to the Union of India to treat the officiating appointment of Grade-II officers as the date of their regular appointment and then to place them in the seniority list. The said benefit was extended to other group of Grade-II officers of the Service working on officiating basis.

3. Certain direct recruits had agitated against the said benefit and preferred a writ petition in the Delhi High Court. The Delhi High Court had directed that the seniority should be refixed. Objections were called and the applicant

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had submitted the objections. The seniority list had been finalised on 14.5.2002. The applicant had been shown at Sl.No.344. He claims a direction that he should have been placed above the said position i.e. from the date he was initially appointed without a break. By virtue of the present application, the applicant claims his ad hoc/ officiating appointment date to be 18.12.1981/4.10.1983 and it should be treated as regular appointment and he should be given seniority from the said date.

4. Application has been contested by respondents 1 & 2. It has been pointed that Shri Harish Chander Bhatia and others were appointed to the Service on officiating basis under sub-rule (1) to Rule 25 of the Rules. Assertions of the applicant that he is entitled to the seniority from the date he was appointed on ad hoc basis has been controverted. According to the respondents, the applicant is a promotee officer who had never been appointed on officiating basis to the Service under sub-rule (1) to Rule 25 of the Rules. He was appointed to a Duty Post of the Service on emergent and ad hoc basis for a period not exceeding six months from the date he had assumed charge of his office. He continued to hold the said post till his regular promotion to the Service with effect from 3.2.1987 and, therefore, he is not entitled to



count his ad hoc appointment in a duty post of the service for fixation of his seniority in terms of the decision of the Supreme Court in the case of Harish Chander Bhatia (supra).

5. Respondent No.3 has also filed a separate reply. Respondent No.3 contends that the applicant does not belong to the regular cadre of the Service. He belongs to the Motor Transport cadre. He joined the Service as MT Chargeman (Inspector) in the year 1969. He was made Assistant Commissioner of Police (MT) in the year 1981 on ad hoc basis and regularised in the year 1987. The applicant was promoted as Deputy Commissioner of Police (MT) which post he is occupying because of the fact that he belongs to a separate cadre in the Delhi Police. He had accelerated promotion because he belongs to the cadre of Motor Transport. He is not entitled to the seniority amongst the general cadre of the Service. Otherwise also similar pleas as offered by the Union of India have been taken.

6. When the matter was listed for hearing, there was no appearance on behalf of the private respondents.

7. On 17.12.1981, in exercise of the powers conferred under Rule 25(3) of the Rules, the Administrator, Delhi had appointed the applicant



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and some other persons on emergent and ad hoc basis for a period not exceeding six months against Duty Posts of the Service. The said order reads:-

"In exercise of the powers conferred under rule 25(3) of the DANI Police Service Rules, 1971, the Administrator, Delhi, is pleased to appoint the following officers belonging to Cadre of Inspectors of Delhi Police against duty posts of DANI Police Service on an emergent and ad-hoc basis for a period not exceeding six months from the date of assumption of charge by them or till further orders, whichever is earlier:-

<u>Sl. No.</u>	<u>Name of the Officers</u>
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1. Shri Sadhu Ram D-1/174
2. Shri Maman Singh D-1/142
3. Shri Parkash Singh D-1/200
4. Shri Rishi Kumar Mittal D-1/104
5. Shri Ascharaj Lal D-1/233
6. Shri Gulshan Kumar D-1/164

The appointment of the above mentioned officers to duty posts shall not entitle the officers concerned to claim any right for regular appointment of seniority or for appointment to this or any other equivalent post under the Administration on this basis."

Subsequently, on 4.10.1983, exercising powers under Rule 36 read with sub rule (3) to Rule 25 of the Rules, another order was issued in consultation with the Union Public Service Commission appointing the applicant and others on ad hoc basis to the Duty Posts till such time they are confirmed/appointed on regular basis. The said order reads:-

"In relaxation of Rule 25(3) of Delhi And Andaman and Nicobar Islands Police Service Rules, 1971 and under rule 36 thereof and in consultation with the Union Public Service Commission, the appointment of the under mentioned officers on ad hoc basis to the 'duty posts' of Delhi and

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Andaman and Nicobar Islands Police Service in the Delhi Administration is continued till 31st Dec.1983 or till these posts are filled on a regular basis, whichever is earlier."

8. The learned counsel for the applicant besides referring to the relevant rules, strongly relied upon the decision of this Tribunal in the case of Harish Chander Bhatia (supra) rendered on 31.3.1992. This Tribunal was considering a case where a person appointed under sub-rule(3) to Rule 25 of the Rules was allowed to continue beyond a period of six months. In such an eventuality, this Tribunal concluded that he would be entitled to the seniority and other benefits as officers who were placed on the select list under sub-rule (3) to Rule 25 of the Rules. The relevant extract of the same reads:-

"In such a situation the respondents can obtain officers belonging to the State Police Service in consultation with the UPSC on deputation for such period or periods "ordinarily not exceeding three years". The rules also make a specific provision to the fact that "notwithstanding any thing contained in these rules where appointment to a duty post is to be made purely as a local arrangement for a period not exceeding six months such appointment may be made by the Administrator for 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." The applicants belong to the category for whom a select list is prepared under rule 24. They can be appointed ACPs in terms of the Rules only when appointment to a 'duty post' is to be made purely as a local arrangement for a period not exceeding six months."

Thereupon the conclusions were drawn:-

"Their appointments to the 'duty

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posts' thus are made in accordance with the Rules and since they have continued as ACPs for periods far exceeding six months their appointments cannot be deemed 'as purely local arrangements'. They held appointments against the duty post in the same manner as the officers placed on the select list prepared in terms of Rule 15(4). The objective of the officiating promotion is delineated in Rule 25(3) itself. Once an appointment from the list prepared in terms of Rule 15(4) exceeds period of six months, it loses the attributes of a 'local officiating arrangement'. The rules also do not visualise any posts other than 'duty posts' which even include temporary posts. In that view of the matter, since the applicants held duty posts they cannot be distinguished from those who are placed on the select list vide Rule 15(4) of the DANI Police Service Rules, 1971. While the learned counsel for the applicants prayed for striking the Rules 24 and 25 we are not persuaded to accept the prayer, as the Rules 24 and 25 are framed to meet certain specified contingencies for keeping the administration moving. The area of the administration cannot be circumscribed by denying them the right to adopt the method of officiating appointment to meet local requirements of short-term, as laid down in the rules. On the other hand, the respondents cannot also be allowed to make use of the provisions in Rules 245 and 25 to keep eligible officers duly selected after applying them the same rigorous stand as to those whose names are placed in the select list in terms of Rule 15(4) for years continuously, without giving them the benefit of seniority and promotions which would have been their entitlement once they were regularised. We are, therefore, of the view that in cases where the officiating appointments are made and are continued beyond 6 months from among the officers who are placed on the select list in terms of Rule 24 they shall be entitled to regular appointment as ACPs Grade II in the DANI Police Service with all attending benefits e.g. seniority etc. in the same manner, as those officers who had been placed in the select prepared under Rule 15(4)."

This matter had been challenged by the Union of India before the Supreme Court in Civil Appeal

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No. 2481 of 1993. The Supreme Court by and large approved the said findings of this Tribunal holding:-

"Shri Tulsi, however, contends that rule 25 visualises officiating appointment and not permanent; and that appointment is required to be made when a member of the Service is not available. Though this is so, but the facts of the present case would show that though the appointments were stated to be officiating these continued for a very long period, which in the case of respondent No.1 was of about 12 years as he came to be appointed under rule 25 on 6.11.72 and was fixed permanently in the slot meant for promotees on 28.7.84. An officiating appointment for over a decade cannot be treated as fleeting appointment with no service benefits to be given. Any other view would very seriously prejudice such a service holder who, even after having rendered service equal to those of permanent appointees for a long period, and that too for proper functioning of the Service, would be denied the benefit of the same for no cogent reasons. Any other view is bound to have a demoralising effect in the Service as a whole. As the appointments under rule 25 are also to duty posts, which may form part of the strength of Service because what has been stated in rule 4 (3), we are of the view that justice of the case and the need to preserve the efficient functioning of the Service would require to treat the appointments of the respondents as permanent, despite their having been first appointment on officiating basis."

It is on the strength of these findings that it was urged that the applicant should be allowed to count his seniority as per his prayer which we have referred to above.

9. On the other hand, the respondents' counsel has urged that the order dated 4.10.1983

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had been passed whereby rigours of sub-rule (3) to Rule 25 of the Rules had been relaxed and, therefore, for all practical purposes, the applicant must be taken to be appointed purely as local arrangement.

10. To appreciate the said contention, we take liberty in referring to the relevant rules on the subject. As per Rule 4 of the Rules, the permanent strength of the Service is to include the posts specified in the Schedule. The Administrator has the power to create duty posts. Rule 14 provides the conditions for eligibility and reads as under:-

"14. CONDITIONS OF ELIGIBILITY AND PROCEDURE FOR SELECTION.

- (1) The Committee shall consider from time to time the cases of officers eligible under clause (b) of sub-rule (1) of rule 5, who have served in the respective cadre or posts, as the case may be, for not less than two years and prepare a list of officers recommended for appointment after taking into account the actual vacancies at the time of selection and those likely to occur during a year. The selection for inclusion in the list shall be based on merit and suitability in all respects for appointment to the service with due regard to seniority.
- (2) The seniority of the officers eligible for consideration by the Committee under sub-rule (1) shall be determined by the Central Government with due regard to the dates of their appointments on a regular basis to the respective cadre or posts, the pay scales of the posts etc;

Provided that the persons belonging to

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the same parent service or Department shall be ranked inter-se in order of their relative seniority in the parent Service or Department, as the case may be:

(3) The names of persons included in the list shall be arranged in order of merit.

*Amended vide Notification No. 14012/7/78 dated 14.12.78

(4) The list so prepared shall be forwarded by the Committee to the Central Government."

11. Before the list is prepared under Rule 14 of the Rules, consultation of Union Public Service Commission has also been provided under Rule 15 of the Rules. Under sub-rule (2) to Rule 15, the Union Public Service Commission can make any change in the list received from the Central Government and it has to be finally approved by the Central Government under sub-rule (3) to Rule 15. Rule 16 further provides that appointment to the Service shall be made in order of merit in the list referred to in sub-rule (4) of Rule 15 of the Rules with due regard to the proportion specified in Rule 5. Needless to state that under sub-rule (4) to Rule 15, the list finally approved shall be in force until a fresh list is prepared for the purpose.

12. Rules 24 and 25 of the Rules deal with selection to be made for officiating appointments

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and officiating appointment to Duty Posts. They are as under:-

"24. SELECTION FOR OFFICIATING APPOINTMENT

If at any time the Central Government is of the opinion that the number of officers available in the list referred to duty posts 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 cases 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 and prepare a separate list of officers selected. The 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. OFFICIATING 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 exceed three years as the Central Government may consider necessary.

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(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."

Rule 24 deals with selection to be made for officiating appointments while Rule 25 refers certain conditions when a member of the Service is not available for holding a Duty Post, then the appointment can be made under sub-rule (4) of Rule 15 of the Rules to short term appointment by way of local arrangement not exceeding six months. Such appointments can be made from persons who are included in the list prepared under sub-rule (4) to Rule 15.

13. The learned counsel for the applicant had relied upon a decision of the Supreme Court in the case of **Chandra Prakash & Ors. v. State of U.P. & Anr.**, JT 2002(3) SC 492 in support of his argument to count his total length of service while the respondents' learned counsel referred to the decision in the case of **Swapan Kumar Pal and Ors. v. Samitabhar Chakraborty and Ors.**, (2001) 5 SCC 581. We need not involve ourselves into the said vexed question for determining the seniority for

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the simple reason that the relevant rules have already been incorporated by the Supreme Court in the case of Harish Chander Bhatia (supra). Once the Supreme Court has incorporated the relevant rules, in that event, the parties would be governed by the said decision. It becomes irrelevant, therefore, to consider afresh the aforesaid precedent or any other precedent that would occur.

14. Some attempt had been made during the course of the submissions to urge that in the order issued on 4.10.1983, the applicant had been appointed on ad hoc basis to the Duty Post and it is not a local arrangement contemplated under sub-rule (3) to Rule 25 of the Rules. We have no hesitation in rejecting the said contention. This is for the reason that the form of the order is not material. It is the substance that prevails. The first order had been passed on 17.12.1981 under sub-rule (3) to Rule 25 with respect to the applicant and few others appointing them for a period six months only. The subsequent order had been so passed continuing the said arrangement. It is true that under the Rules different expressions like "Duty Post", "the Local Arrangement" under sub-rule (3) to Rule 25 are used. There are certain expressions which are meaningful for a short term if a person is appointed for a period

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not exceeding six months. In exigencies of the work, local arrangement can be made.

15. What is the position herein? By way of local arrangement, by using the expression "emergent and ad hoc basis", an order was made under sub-rule (3) to Rule 25 of the Rules on 17.12.1981. The order was allowed to continue even after the expiry of six months because admittedly the applicant continued to work as such. It was only after almost two years of the said order that another order of 4.10.1983 already reproduced above was passed relaxing the rigour of sub-rule (3) to Rule 25. It was mentioned that the appointees would continue till 31.12.1993 or till the posts are filled on regular basis. In other words, the order continued for almost six years.

16. Once it is so that the order is allowed to continue for six years, the decision in the case of Harish Chander Bhatia (s) would come into play with all its rigours. This is for the reason that it was categorically held that the respondents cannot be allowed to make use of the provisions of Rules 24 and 25 to keep the eligible officers duly selected after applying them the same rigorous standard as to whose names are placed in the select list in terms of Rule 15(4) of the Rules for years continuously. It would be unfair thus to deny such

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long service for the purpose of seniority to them. To that extent, the applicant indeed has a rightful claim.

17. This is, however, not the end of the matter. The Supreme Court in the case of Harish Chander Bhatia (supra) had further directed.

"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."

This is a direction of the Supreme Court. Therefore, while determining the seniority, the Central Government has no option but to fix the seniority not as per length of service but by interposing a direct recruit in between two promotees.

18. Simultaneously, we make it clear that sub-rule (2) to Rule 14 of the Rules provides that the seniority of the officers eligible for consideration by the Committee under sub-rule (1) shall be determined by the Central Government but proviso to sub-rule (2) has to be kept in view that

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the persons belonging to the same parent service or department shall be ranked inter-se in order of their relative seniority in the parent Service or department as the case may be. Similarly, Rule 29 of the Rules also cannot be ignored. The seniority as the case may be has to be drawn accordingly.

19. Accordingly, the present application is disposed of with the following directions:

- (a) impugned seniority list is quashed;
- (b) the seniority list should be re-drawn strictly in accordance with the decision in the case of Harish Chander Bhatia (supra) referred to in paragraph so far as the direct recruits are concerned; and
- (c) persons belonging to the same parent service or department shall be ranked inter-se in order of their relative seniority in the parent service or department as the case may be in terms of sub-rule (2) to Rule 14 and Rule 29 of the Rules.

No costs.

(Govindan S. Tampli)
Member (A)

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(V.S. Aggarwal)

Chairman