

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.37/2002

New Delhi this the 25th day of August, 2003.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMN)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Suraj Paul,
R/o House No.7,
Hope Apartments,
Sector-15,
Gurgaon-122001.

-Applicant

(By Advocate Shri L.R. Khatana)

-Versus-

1. Union of India through
Secretary, Ministry of Home Affairs,
North Block, New Delhi-110001.

(By Advocate Shri M.M. Sudan)

2. Secretary,
Union Public Service Commission,
Government of India,
Dholpur House,
Shahjahan Road,
New Delhi-110001.

(By Advocate Sh. M.K. Bhardwaj, proxy for Sh. A.K.
Bhardwaj, Advocate)

3. Chief Secretary,
Government of Haryana,
Chandigarh.

-Respondents

(By Senior Counsel Sh. T.N. Mishra with Sh. Sunder
Khatri, Advocate)

1. To be referred to the Reporters or not? Yes ✓

2. To be circulated to other Benches of the
Tribunal or not? Yes ✓

S. Raju
(Shanker Raju)
Member (J)



CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.37/2002

New Delhi this the 25th day of August, 2003.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Suraj Paul,
R/o House No.7,
Hope Apartments,
Sector-15,
Gurgaon-122001.

-Applicant

(By Advocate Shri L.R. Khatana)

-Versus-

1. Union of India through
Secretary, Ministry of Home Affairs,
North Block, New Delhi-110001.

(By Advocate Shri M.M. Sudan)

2. Secretary,
Union Public Service Commission,
Government of India,
Dholpur House,
Shahjahan Road,
New Delhi-110001.

(By Advocate Sh. M.K. Bhardwaj, proxy for Sh. A.K.
Bhardwaj, Advocate)

3. Chief Secretary,
Government of Haryana,
Chandigarh.

-Respondents

(By Senior Counsel Sh. T.N. Mishra with Sh. Sunder
Khatri, Advocate)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant in this OA has prayed for the following
reliefs:

"A. That the respondents be directed
to produce all the relevant original
records relating to the Selection
Committee meeting held on 6.3.1992
and the Integrity Certificate issues
by the Respondent No.3 to the
applicant during the years 1997, 1998
and 1999.

B. That the provisions of Regulation
7 of the Indian Police Service
(Appointment by Promotion)

(28)

Regulations, 1955, to the extent the same provide that no appointment to the service under regulation shall be made after the meeting of fresh Committee to draw up a fresh list under regulation 5 is held, be declared arbitrary, inequitable, illegal, unreasonable and discriminatory and therefore, violative of Articles 14 and 16 of the Constitution of India. Alternatively, the provisions of the said Regulations be interpreted in a manner consistent with the relevant provisions of the Constitution of India, particularly its Articles 14 and 16 so that the vested right of the applicant is protected.

C. That the Respondents be directed to issue integrity certificate and make the selection of the applicant vide Select List dated 6.3.1992 as unconditional and un-provisional and appoint him to the IPS with effect from 6.3.1992 or with effect from any other date on which the person(s) junior to him in the said Select List have been appointed and pay all consequential benefits to the applicant.

D. All the cost of this O.A.

E. That the Hon'ble Tribunal may pass such other or further direction or orders as may deem fit and proper in the facts and circumstances of the case.

2. The relevant brief facts leading to filing of the present OA are that applicant, an officer of Haryana Police Service promoted as Deputy Superintendent on 16.9.1981 and further Superintendent of Police on 16.11.1989 was served with a chargesheet by the State of Haryana on 31.12.1991. The candidature of applicant by virtue of Indian Police Service (Appointment by Promotion) Regulations, 1955 (for short, Regulations) was considered by the duly constituted Selection Committee in its meeting held on 6.3.1992. The said inclusion was provisional. The next meeting of the Selection Committee was held on 30.3.1993. However, name of applicant remained provisional

26

during the validity period of Select List of 1991-1992. The name of applicant could not be made unconditional by the Union Public Service Commission (UPSC) during the validity period of Select List of 1991-1992.

3. Another chargesheet was issued to applicant on 3.10.1994, which culminated into punishment of compulsory retirement from service by an order dated 8.7.2002.

4. On 5.9.1997 another chargesheet was issued to applicant while he was working as Additional Superintendent of Police, Karnal, which culminated into a punishment of reduction in rank, reverting him as Deputy Superintendent from Superintendent of Police. At the time when name of applicant was placed at serial No.1 of the Select List the integrity certificate of applicant has been withheld.

5. As the disciplinary proceedings initiated on 31.12.1991 have been inordinately delayed applicant filed CWP-7498/1992 in the High Court of Punjab and Haryana at Chandigarh. By an order dated 17.11.1992 directions have been issued to respondents to complete the enquiry before 31.12.1992. As the enquiry could not be completed applicant filed OA-130/HR/1993 before the Chandigarh Bench of the Tribunal seeking promotion to IPS. OA was dismissed as pre-mature with liberty.

6. CWP-5431/1995 filed before the High Court of Punjab and Haryana culminated into directions to the respondents to complete the enquiry within six months.

27

7. Lastly, by an order dated 4.11.1999 chargesheet issued has been dropped and the applicant was exonerated.

8. Applicant preferred a representation to the State Government to issue integrity certificate and declare selection in the Select List dated 6.3.1992 as unconditional and appoint him to IPS on exoneration in the departmental enquiry. Finding no response, OA-216/2000 filed before the Chandigarh Bench was withdrawn on 8.11.2000 with liberty to file a fresh one on the same cause of action.

9. By an order dated 22.8.2001 integrity of applicant was certified and was considered by the Selection Committee held on 22.8.2001.

10. By an order dated 4.10.2001 State of Haryana expunged the adverse remarks recorded in applicant's ACR for the period 22.10.1991 to 23.1.1992.

11. By an order dated 22.3.2000 the request of applicant for appointment on promotion to IPS from the Select List of 1991-1992 has been rejected as the Select List was no longer in force and also on the ground that the integrity certificate has not been furnished by the State Government. This in nut shell are the relevant facts.

12. Before proceeding to deal with the controversy it is necessary to highlight the relevant Regulations in issue relating to induction of a State Police Officer by way of appointment on promotion to IPS.

28

13. Regulation 5 of Regulations provides for preparation of list of suitable officers by a duly constituted Committee of members of the State Police Service. The relevant provisions 5(5) is reproduced as under:

"5(5) The List shall be prepared by including the required number of names, first from amongst the officers finally classified as 'Outstanding', then from amongst those similarly classified as 'Very Good', and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in the order of their seniority in the State Police Service:

Provided that the name of any officer so included in the list shall be treated as provisional if the State Government, withholds the integrity certificate in respect of such officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

Provided further that while preparing yearwise select lists for more than one year pursuant to the 2nd proviso to sub regulation (1), the officer included provisionally in any of the Select List so prepared shall be considered for inclusion in the Select List of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis such inclusion shall be in addition to the normal size of the select list determined by the Central Government for such year.

Explanation I: The proceedings shall be treated as pending only if a chargesheet has actually been issued to the officer or filed in a Court, as the case may be.



Explanation II: The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the Service shall be treated as having come to the notice of the State only if the same have been communicated to the Central Government and the Central Government is satisfied that the details furnished by the State Government have a bearing on the suitability of the officer and investigation thereof is essential."

14. Regulation 7 provides consideration of list prepared by the Committee by the Commission. The relevant provisions, i.e., 7 (3) and 7 (4) are reproduced as under:

19. "7(3) The list as finally approved by the commission shall form the Select List of the members of the State Police Service.

Provided that if an officer whose name is included in the Select List is, after such inclusion, issued with a charge sheet or a charge is filed against him a Court of Law, his name in the Select List shall be deemed to be provisional.

7(4) The Select List shall remain in force till the 31st day of December of the year in which the meeting of the selection committee was held with a view to prepare the list under sub-regulation (1) of regulation 5 or upto sixty days from the date of approval of the select list by the Commission under sub-regulation (1) or, as the case may be, finally approved under sub-regulations (2), whichever is later:

Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the select list as "unconditional" to the Commission during the period when the select list was in force, the Commission shall decide the matter within a period of ninety days or before the date of meeting of the next Selection Committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the select list as unconditional and final, the

35

appointment of the concerned officer shall be considered by the Central Government under regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the select list ceased to be in force."

Provide further that in the event of any new service or services being formed by enlarging the existing State Police Service or otherwise being approved by the Central Government as the State Police Service under clause (j) of sub regulation (1) of regulation 2, the Select List in force at the time of such approval shall continue to be in force until a new list prepared under regulation 5 in respect of the members of the new State Police Service, is approved under sub-regulation (1) or, as the case may, finally approved under sub-regulation (2)."

15. Regulation 9, which deals with appointment to the service from the Select List and is reproduced as under:

"9(1) Appointment of a member of the State Police Service, who has expressed his willingness to be appointed to be appointed to the service shall be made by the Central Government in the order in which the names of the members of the State Police Service appear in the Select List for the time being in force during the period when the Select List remains in force:

Provided that the appointment of members of the State Police Service shall be made in accordance with the agreement arrived at under clause (b) of sub-rule (3) of rule 8 of the Recruitment Rules in the order in which the names of the members of the State Police Service occur in the relevant parts of the Select List for the time being in force.

Provided further that the appointment of an officer, whose name has been included or deemed to be included in the Select List provisionally under proviso to sub-regulation (5) of

31

regulation 5 or under the proviso to sub-regulation (3) of regulation 7 as the case may be shall make within sixty days after the name is made unconditional by the Commission in terms of the first proviso to sub-regulation (4) of regulation 7.

Provided also that in case a Select List officer has expressed his unwillingness for appointment to the service, he shall have no claim for appointment to the service from that select list unless he informs the Central Government through the State Government before the expiry of the validity of the Select List revoking his earlier expression of unwillingness for appointment to the service.

16. Learned counsel for applicant Sh. L.R. Khatana contends that the aforesaid Regulations do not envisage any provision akin to the sealed cover procedure. According to him a Select List where a State Police Officer has been provisionally included remains in force till the time a disciplinary proceeding is concluded and at that point of time it is incumbent upon the authorities to make the selection as unconditional and to release the integrity certificate. Relying upon the decision of the Division Bench of the High Court of Judicature for Rajasthan at Jaipur Bench in CWP No.371/2000, G.L. Verma v. Union of India and Others decided on 4.9.2002, it is contended that if a harmonious construction is put to interpret provisions contained in Regulations 7 (4) and 5 (5) in cases of provisional inclusion of officers in the Select List it has a life till release of the integrity certificate or culmination of disciplinary proceedings.

17. Sh. Khatana contends that Regulation 7 (4) of the Regulations which provides no appointment to the service under Regulation 9 after meeting of fresh Committee

(32)

to draw up a fresh list under Regulation 5 is wholly arbitrary, illegal, unreasonable and discriminatory which divests away the vested right of applicant for appointment to IPS when his juniors are appointed. As the aforesaid provisions do not provide for sealed cover procedure the same cannot stand scrutiny of law.

18. Sh. Khatana further contends that for the years 1997, 1998 and 1999 integrity certificates have been issued by the State Government whereas withholding the same for the year 1992 is arbitrary. If promotion is withheld due to pending enquiry proceedings, dropping of the same would relate back to the date of chargesheet and applicant would be entitled to promotion w.e.f 6.3.1992 with all consequential benefits.

19. Heavily relying upon the decision of the Apex Court in Delhi Jal Board v. Mahinder Singh, (2000) 7 SCC 210, it is contended that on a sealed cover procedure and on exoneration from the charges alleged in the disciplinary proceedings the exoneration operates retrospectively and relates back to the date of framing of the charge and subsequent proceedings would not have any effect over accord of benefits in view of the sealed cover procedure. This, according to applicant, applies to him as well. Subsequent chargesheet issued after the Select List would not in any manner affect the consequences of exoneration in the chargesheet for which applicant was provisionally selected.

33

20. It is stated that junior of applicant Sh. Sohan Lal was promoted and appointed in IPS on 2.5.1993. As such, applicant is also entitled to all the consequential benefits.

21. Learned counsel by referring to the decision of the Apex Court in Union of India v. Mohan Singh Rathore, 1996 (10) SCC 469 contends that similar directions have been issued for inclusion of the name of petitioner retrospectively in the Select List for appointment to IPS.

22. Shri Khatana relying upon the decision of the Punjab & Haryana High Court in Chamanlal Lakhanpal v. Union Public Service Commission and others, 1999 (1) SLR 670 contended that even after retirement consideration has been ordered for promotion to IAS.

23. Further reliance has been placed on a decision of the Apex Court in Om Prakash Gupta v. Ranbir B. Goyal, (2002) 2 SCC 256 to contend that Court is empowered to take note of subsequent events and mould the reliefs according to the conditions being satisfied.

24. Shri Khatana further relied upon the decision of the Apex Court in Bank of India v. Degala Suryanarayana, AIR 1999 SC 2407 to contend that as no disciplinary proceedings were pending when employee was considered by the Promotion Committee, sealed cover procedure could not have been resorted to.

(34)

25. Referring to the decision of the Apex Court in Union of India v. Chajju Ram, (26c03) 5 SCC 568, it is stated that a decision of an authority is what has been decided and not what can be logically deduced therefrom. It is also equally well settled that a little difference in facts or additional facts may lead to a different conclusion.

26. In nut shell, the contention put-forth by applicant is that Regulation 7 (4) of the Regulations is ultra vires and has been interpreted by the High Court on harmonious construction which is to be applied in the present case. As applicant was exonerated in the enquiry which was pending while the Select List was prepared in the year 1992 and was inducted provisionally, the Select List operates till December, 1999 when applicant was exonerated and his case would have to be considered for appointment on promotion to IPS without any consideration of subsequent events on the doctrine of 'relation back' which is in consonance with the decision of the High Court and Apex Court's decision in Mahinder Singh's case (supra).

27. Sh. M.M. Sudan, learned counsel appearing for respondent No.1, i.e., Ministry of Home Affairs, contended that Regulation 9 (1) of the Regulations is applicable to a case of appointment of a member of State Police Service who expresses his willingness to be appointed to Service shall be made by the Central Government on the recommendations of the State Government. As such, part played by the Union of India is minimal, the matter is primarily concerned with the State Government and UPSC. However, on merits he contends that name of

(32)

applicant remained provisional till the validity period of Select List of 1991-1992 and as could not be made unconditional by UPSC during the validity period, he could not be appointed to the IPS. However, by resorting to Regulation 9 (a), it is stated that Central Government even after appointment is at its discretion not to appoint any person whose name appears in the Select List if it is opined that it is necessary or expedient to do so in public interest. In that event Central Government has to consult the UPSC.

28. Respondent No.1, i.e., UPSC represented through Sh. M.K. Bhardwaj, learned counsel proxy for Sh. A.K. Bhardwaj, learned counsel, vehemently opposed the contentions and stated that while applicant was assessed as 'Good' by the Committee and was included at serial No.1 in the Select List, the State Government due to pending disciplinary proceedings against applicant has not certified integrity of applicant. Accordingly, Selection Committee included his name in the Select List provisionally subject to clearance of the departmental enquiries and grant of integrity certificate. As the Select List as per Regulation 9 (1) ibid remains in force till the next meeting of the Selection Committee and as no proposal had come-forth from the State Government to treat applicant's inclusion as unconditional during the validity period applicant's case cannot be considered.

29. Learned Senior Counsel Sh. T.N. Mishra alongwith Sh. Sunder Khatri, learned counsel, appeared for respondent No.3, i.e., State of Haryana and contended that as applicant had been issued two chargesheets before his

(36)

exoneration, his request cannot be acceded to at this stage. By referring to Regulation 7 (3) it is contended that if an officer whose name is included in the Select List as finally approved by the Commission after issuance of a chargesheet in a disciplinary proceeding his name is to be deemed to be provisional. Moreover, by referring to Regulation 7 (4) it is stated that Select List shall be in force until its review and revision under Regulation 5 (4) and no appointment to the service shall be made after the meeting of the fresh Committee to draw up a fresh list under Regulation 5 is held. In this view of the matter what has been stated is that the Select List of 1992 no longer in force after the period envisaged under Regulation 7 (4) and as applicant was reduced in rank and was also compulsorily retired, there is no question of releasing the integrity certificate by the State Government, which is a condition precedent for declaring him unconditional and appointment to the service. Drawing our attention to OM dated 6.10.1998 and para (iv) the cases where during the validity period of original list no disciplinary proceeding has been initiated against an officer also on the date of review Selection Committee but on a subsequent disciplinary proceeding initiated before actual appointment in that event where the officer is deemed provisional before actual appointment, if the disciplinary proceedings are initiated the same would not be given effect to for appointment unless the disciplinary proceedings are culminated into clean exoneration. Accordingly, it is stated that Regulation 7 (3) of the Regulations debars appointment to the service.

37

30. By referring to Regulation 9 it is also stated that the case of an officer who is considered deemed provisional under sub regulation (5) of Regulation 5 or to sub regulation (3) of Regulation 7 shall have to be made after the name is made unconditional but this has to be done during the period Select List remains in force. On this count alone contentions of applicant cannot be countenanced.

31. Learned Senior Counsel refers to the decision of the Apex Court in Union of India v. R.S. Sharma, (2000) 4 SCC 394 to contend that in a case where before actual promotion a government servant faces disciplinary proceedings promotion cannot be accorded. It is stated that the decision in R.S. Sharma's case (supra) is by a larger Bench whereas the decision in Mahinder Singh's case (supra) is per incuriam of it and cannot be relied upon.

32. Further relying upon the decision of the Apex Court in Dr. H. Mukherjee v. Union of India & Others, 1994 Supp. (1) SCC 250 it is stated that denial of appointment after recommendation of UPSC due to a disciplinary proceeding cannot be found fault with.

33. Lastly, it is stated that applicant who is now compulsorily retired unless gets back in service the OA has been rendered infructuous.

34. We have carefully considered the rival contentions of the parties and perused the material on record.

(38)

35. It is not disputed that applicant has been chargesheeted in a disciplinary proceeding before the Committee had considered his case for inclusion in the Select List under Regulation 5. However, in view of proviso to Regulation 5 (5) name of applicant was included as provisional on account of pending proceedings. Aforesaid list is to be forwarded by the State Government to the Commission which shall consider the list prepared by the Committee. As per Regulation 7 (3) the finally approved Select List by the Commission is to be given effect to for appointment under Regulation 9. In the present case though applicant was declared provisional and placed at serial No.1 of the Select List during the validity period of Select List of 1991-1992 State Government has not proposed inclusion of applicant's name unconditionally in the Select List. The contention put-forth by learned Senior Counsel that Regulation 7 (3) is in fact a procedure akin to sealed cover and would debar appointment of an officer in the Select List approved by the Commission if he is served with a chargesheet after inclusion in the Select list, cannot be countenanced. The Select List referred to and deeming the officer's inclusion as provisional would apply to the chargesheet issued after approval of the List by the Commission during its currency, i.e., till it remains in force until its review and revision. Regulation 7 (4) of the Regulations which provides that no appointment is to be made even in case of a provisional inclusion after review or revision of the Select List and also after a meeting of fresh Committee takes place to draw up a fresh list. No doubt, sealed cover procedure has not been envisaged or incorporated in

(3)

the Regulations. This has necessitated the Government in view of directions issued by several Courts to review cases of appointment and inclusion in the Select List of State Police officials as well as those seeking appointment by promotion to IAS to frame guidelines. The guidelines are nothing but a substitute to the sealed cover procedure. However, the question for our determination is as to how long the life of the Select List subsists or whether it remains in force till its revision or review on a fresh selection? The aforesaid has been answered by the High Court of Judicature for Rajasthan at Jaipur Bench in G.L. Verma's case (supra). The petitioner therein had approached the Jaipur Bench of this Tribunal seeking promotion to IAS from State Service w.e.f. 1992. Though the petitioner therein was assessed 'Good' and despite expunction of adverse remarks and acquittal from the criminal case his request was turned down. A defence was taken resorting to Regulation 7 (4) by the respondents. Deliberating on the issue and on harmonious construction to the provisions of Regulation 7 (4) and 5 (5) of the Regulations it was held that the Select List prepared under Regulation 5 (5) has a life till its review and revision irrespective of the provisions of Regulation 7 (4). The review and revision has to be made in cases where an officer has been provisionally included in the Select List in terms of proviso to sub Regulation (5) and release of the integrity certificate or when the disciplinary proceedings culminates into exoneration of imputed charges. In this view of the matter as nothing has been carried forward to the higher forum or has been modified or reversed the same is binding and we follow the same.

36. In our considered view, in absence of any procedure of placing the case of an officer in sealed cover, inclusion of an officer despite pendency of the disciplinary proceedings provisionally in the Select List would require revision and review on culmination of the proceedings and at that point of time the State Government concerned has to release the integrity certificate by applying the doctrine of 'relation back' on exoneration of an officer from the charges in a disciplinary proceeding which was made the basis of provisional inclusion of the officer in the State List.

37. In so far as DOP&T instructions dated 6.10.1998 are concerned, in view of the fact that officers who have been provisionally included pending disciplinary proceedings and their consideration for appointment is decided only when the name is made unconditional in the Select List in view of the directions of the Court to consider name of such officers in a review Selection Committee retrospectively. One of the exigencies which has been reflected is that when a disciplinary enquiry pending against an officer concerned as on the date of meeting of original Selection Committee continues beyond the period of validity of the original Select List, the decision taken by the Government is that in case of the officer has been fully exonerated in the disciplinary proceedings which had continued beyond the period of validity of the original Select List on the basis of grading accorded to the Officer by Selection Committee if found fit for inclusion in the Select List his name is to be included unconditionally with grand of consequential benefits, against the next available vacancy in the promotion quota with consideration for

41

seniority. The aforesaid, in all fours, covers the case of applicant. For a proceeding of 1991 applicant sought exoneration as respondents had dropped the same on 4.11.1999. The contention put-forth by respondents taking resort to clause (d) which provides that in cases where no disciplinary proceedings were pending against an officer during the validity period of original Select List nor in case on the date of meeting of the review Selection Committee, subsequent initiation of disciplinary proceedings before actual appointment the case would be treated as deemed provisional and applicant would be considered on the basis of outcome of the disciplinary proceedings would not apply in the present case. The decision of the Apex Court in Mahinder Singh's case where petitioner whose case was placed under sealed cover was exonerated in the departmental enquiry but during this interregnum he was made subject to another proceedings the Apex Court has held as follows:

"5. The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the disciplinary inquiry exonerating the officer would have to be give effect to as they obviously relate back to the date on which the charges are framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any disciplinary inquiry. The sealed cover procedure was envisaged under the rules to give benefit of any assessment made by the Departmental Promotion Committee in favour of such an officer, if he had been found fit

52

for promotion and if he was later exonerated in the disciplinary inquiry which was pending at the time when DPC met. The mere fact that by the time of disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental enquiry was started by the Department, would not, in our view, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection. There is, therefore, no question of referring the matter to a larger Bench."

38. If one has regard to the above the decision of the Apex Court in Degala Suryanarayana's case (supra) has been distinguished and considered. In so far as contention of learned Senior Counsel as to applicability of R.S. Sharma's case (supra) is concerned, the provisions of clause (vii) of DOP&T OM dated 12.1.1998 as amended on 31.7.1991 was in issue. Therein applicant who was subjected to a CBI investigation in absence of any formal sanction the directions have been issued to open the sealed cover. During this period a sanction was accorded and in that view of the matter before his actual appointment the conditions in para (vii) were found applicable. As such, he was not accorded promotion. The aforesaid case is distinguishable as here are two proceedings. The proceedings on which applicant was considered provisional in the Select List culminated in complete exoneration. Accordingly on this the effect would have related back to the date on which the charges are framed and it has to be deemed that the officer has not been subjected to any disciplinary enquiry. The doctrine of 'relation back' theory would apply and subsequent events would not affect the promotion of applicant. We also find that a request

43

has been made to refer the matter to a Larger Bench, which was not acceded to. We, therefore, hold that case of applicant is covered by the decision of the Apex Court in Mahinder Singh's case (supra), as on exoneration of applicant dated 4.11.1999 applicant has nothing adverse against him to be treated as provisional and accordingly is entitled to be treated as unconditional and the release of integrity certificate.

39. In so far as subsequent proceedings are concerned, law shall take its own course.

40. In the result, for the reasons recorded above, it is not necessary to declare the provisions of Regulation 7 (4) of the Regulations as ultra vires. The harmonious interpretation on harmonious construction by the High Court of Rajasthan would apply mutatis mutandis to the present case. We direct the respondents to issue integrity certificate to applicant and treat his selection in the Select List dated 6.3.1992 as unconditional and further direction to appoint him to IPS with effect from the date his junior has been appointed. In that event he would be entitled to all consequential benefits. The aforesaid exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

'San.'

V.K. Majotra

(V.K. Majotra)
Member (A)