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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2312/99

New Delhi this the 15th day of May, 2001.

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

R.L. Meena, I.P.S.,
D.C.P. Traffic (Northern Range),
Court Road, Civil Lines,
Delhi-110 054.

...Applicant

(By Advocate Shri Davesh Singh)

-Versus-

1. Union of India through the
Secretary, Ministry of Home Affairs,
North Block, New Delhi.
2. Govt. of N.C.T. of Delhi,
through Chief Secretary,
5, Sham Nath Marg, Delhi.
3. Department of Personnel & Training,
through its Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
4. Union Public Service Commission,
through its Chairman,
Shahjahan Road,
New Delhi.

...Respondents

(By Advocates Shri V.S.R. Krishna and Sh. A.K. Bhardwaj)

ORDER

By Mr. Shanker Raju, Member (J):

The applicant in the present case, working as a Deputy Commissioner of Police in Delhi Police, has assailed an order dated 14.10.98, whereby his request for antedating his confirmation and accord of consequential benefits has been rejected by the respondents. The applicant by way of this OA has sought a direction to accord him regular appointment in IPS in Senior Scale w.e.f. October, 1992 with consequential relief of grant of seniority and to count his service on the cadre post towards his eligibility for promotion to the next higher grade. He has also prayed for his entitlement for weightage of one year for each year

service during which he remained on the select list prepared by the DPC and officiated on the post of Additional Deputy Commissioner of Police, including the cadre post of Deputy Commissioner of Police, Rashtrapati Bhawan. The applicant has further assailed the vires of any such rule or provision which has deprived the applicant of his grant of regular appointment in the senior scale and consequential benefits.

2. To resolve the controversy in the present case, it is necessary to know the brief history of the case. The applicant was appointed in Delhi Police in the year 1977 after being selected through the UPSC in Civil Services Examination of the year 1975. The applicant had joined as Assistant Commissioner of Police in Group 'B' DANIPS. As per the rules he became entitled for consideration for IPS cadre in 1986 but as no DPC was held from 1988 to 1990 he was ultimately brought on the select list of IPS cadre by a selection committee comprising of the Member of the UPSC in January, 1996. The applicant on 19.10.91 was deputed on a regular cadre post of Rastrapati Bhawan and uninterruptedly worked on that post till July, 1997 although from July, 1997 to March, 1998 the applicant held an ex cadre post of DCP, Special Task Force. The applicant was appointed to IPS cadre on probation w.ef. 12.3.98. He was allotted to IPS in the year 1991 but he has been denied the long officiation on a cadre post. The applicant contended that due to non-holding of DPC his career prospects had been adversely affected. According to him ever since his inclusion in the select list in 1991 he had been uninterruptedly holding a cadre post as DCP and by referring to Rule 3 (2) of IPS (Probation) Rules, 1954 it

has been contended that on completion of one year on the cadre post of DCP, Rastrapati Bhawan he is legally entitled for confirmation w.e.f. October, 1992. By referring to an order passed by the Apex Court in Harish Chander Bathla & Others it is contended that denial of long period of service for the purpose of seniority is unjustified and arbitrary. The applicant has also placed reliance on several ratios laid down by the Apex Court regarding counting of uninterrupted service towards reckoning seniority in the cadre including the ratio laid down by a Constitution Bench in Rudra Kumar Sain & Ors. v. Union of India & Ors., JT 2000 (9) SC 299 to contend that once he is appointed with the approval and consultation of the competent authority and continues for a fairly long time such appointment cannot be termed as ad hoc, fortuitous or stop gap arrangement and the seniority should be determined on the basis of continuous length of service in the cadre. The applicant contended that he made a representation which was disposed of, without assigning any reason and without application of mind. His grievance is that Rule 3 (2) of the IPS (Regulation of Seniority) Rules, 1988, as amended on 31.12.1997 does not envisage, inter alia, reckoning of continuous officiation on a cadre post for the purpose of according seniority and year of allotment in the IPS cadre. The applicant further contended that the period rendered by him on a cadre post of Deputy Commissioner of Police in IPS cadre has been wrongly treated as being rendered as Deputy S.P. or equivalent and on this basis the year of allotment has been allotted to him wrongly. According to him the case of the applicant is covered under Rule 3 of the All India Services (Residuary Matters) Rules, 1960 where he is entitled for a deemed relaxation in the requirements of the

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rules and regulations for accord of his seniority and appointment to IPS cadre w.e.f. 1992 and further accord of year of allotment from the date his colleagues have been accorded the same, as the applicant had suffered an undue hardship by operation of the seniority rules which do not envisage the counting of service on a cadre post. The contention of the learned counsel of the applicant is that the entire continuous service should be treated as probation period and as he had been appointed to a cadre post in the year 1991 and as per the provisions of Rule 3 of the IPS (Probation) Rules, 1954 the period for which the applicant has been appointed to a cadre post should be counted towards the period of probation and he is deemed to have been appointed to IPS in the year 1991 and on completion of one year of probation he is deemed to have been confirmed w.e.f. October, 1992 and accordingly should be accorded the regular appointment to IPS in senior scale w.e.f. October, 1992 with consequent benefits of seniority. It is further contended that the anomaly whereby the seniority rules of 1997 do not envisage the counting of period of service rendered by the applicant on a cadre post and rather counting it as service rendered as Deputy S.P. or equivalent while computing the weightage for seniority needs to be rectified by amendment in the seniority rules. Lastly, it is contended that the applicant having remained on select list duly approved by the DPC from January, 1991 till appointment in IPS the entire service rendered as DCP is to be counted towards seniority. It is in this background contended that the rules do not differentiate between the service rendered in a cadre or on an ex-cadre post.

3. On the other hand, the respondents in their reply contended that the applicant was considered and included in the list on 30.1.91 for promotion to IPS cadre of AGMU, but for want of vacancies his name could not be considered till 1996-97. In the select list of 1996-97 the applicant was placed at serial No.1 and accordingly was appointed to IPS vide order dated 12.3.98 and as per the provisions of the Probation Rules ibid he was accorded the confirmation from the date of his appointment by taking into consideration his continuous officiation on a cadre post. It is contended that the maximum period to be reckoned for the purpose of confirmation is one year that has been taken into reckoning and as such the applicant had been confirmed on the date of his appointment. As the applicant was holding the rank of Dy. S.P. or equivalent and had 19 completed years of service rendered in the rank of Dy. S.P. or equivalent he was given a total weightage of 6 years and was accordingly assigned 1991 as the year of allotment. As regards non-holding of DPC from 1988 to 1990 it is contended that this was on account of administrative exigencies as the erstwhile Union Territories cadre of IPS was being converted into the joint IPS AGMU Cadre of Union Territories and the States of Arunachal Pradesh, Goa and Mizoram consequent upon grant of Statehood to these erstwhile Union Territories. It is contended that the applicant who was too junior could not be inducted into IPS till March, 1998 and his career prospects had not been adversely affected. On filing a similar petition by one Sh. S.S. Grewal the Apex Court was satisfied with the explanation given for not holding the DPC from 1988-90 was upheld. Though, it is admitted that the applicant held the post of DCP on a cadre post from 19.10.91 till 28.7.97 and

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thereafter on an ex-cadre post but in view of Rule 3 (2) of the Probation Rules he was not entitled for confirmation in the IPS w.e.f. October, 1992 as the confirmation precedes the appointment. Unless an incumbent is appointed to the service and by promotion from the State Police Service he cannot be considered on probation and the probation period starts only after the appointment. As regards the continuous officiation towards probation the officers holding cadre post for a period exceeding one year could be at best be confirmed from the date of appointment which was done in the present case. As per the amended IPS (Regulation of Seniority) Rules, 1988 there is no provision for counting an officiating period rendered in a cadre post prior to the appointment to IPS. The year of allotment is to be determined with regard to the continuous service rendered in not below the rank of D.S.P. or equivalent. The applicant has been assigned seniority strictly in accordance with the rules. It is further contended that as per the ratio laid down in S.S. Uppal and Anr. v. Union of India, the seniority is to be determined by the rules in force on the date of appointment. The fixation of seniority follows appointment to the service. The year of allotment will have to be determined according to the rules which are in force on the date of appointment. The applicant who has been appointed only in the year 1998 the amended rules of 1997 would be applicable in his case.

4. The applicant in his rejoinder reiterates his submissions made in the OA and further contended that due to non-existence of provision in the seniority rules regarding counting of service on a cadre post continuously

the applicant has been greatly prejudiced. Furthermore, as there is no provisions in the rules the service rendered as DCP or A.C.P. being on the select list and on a cadre post for the purpose of year of allotment the applicant has suffered a hardship and under the provisions of residuary rules he is entitled for deemed relaxation of the rules. It is further contended that his seniority is to be determined by reckoning one year of every three years service rendered in the post of Dy. S.P./A.C.P. and then year to year weightage should be accorded to him for the service rendered in higher rank of DSP/DCP in the cadre/ex cadre post while continuing in the select list from 1991 to 1998. As there is no provision for counting of continuous service on cadre post the rules are ultra vires and are liable to be set aside.

5. We have carefully considered the rival contentions of the parties and perused the material on record. The first submission of the applicant is that by not holding the DPC from 1988-90 the career prospects of the applicant have been adversely affected. The vacancies were available in the year 1987 for DANIPS. The State Police Service officers of Mizoram and Arunachal Pradesh were not eligible to be considered as they were not the feeder category for IPS. Had the DPC been held rightly in the year 1987 the three vacancies would have gone to the senior SPS officers of the DANIPS who would have been absorbed in the IPS before 1991 and the petitioner would have been placed at Sl No.5 in the natural course instead of being placed at Sl. No.8 and thus would have been inducted in the IPS in the year 1991 itself. This has resulted in loss of five years seniority to the applicant

as he belongs to 1977 batch and his counter-parts viz. S/Sh. Ujjawal Misra, Mukund Upadhyaya got inducted into IPS in the year 1991 and got their seniority of 1987. We find from the reply of the respondents that the decision was taken by the Government not to operate the select list of 1987 as erstwhile Union Territory cadre of the IPS was being converted into IPS AGMU cadre and States of Arunachal Pradesh, Goa and Mizoram consequent upon grant of Statehood to these erstwhile Union Territories. As the applicant was junior he could not be inducted into the IPS till March, 1998 despite the fact that he was included in the select list since 1996. A similar grievance was also made by Shri S.S. Grewal in OA No.487/91 before the Tribunal and the Tribunal upheld the stand of the Ministry of Home Affairs and which was subsequently confirmed by the Apex Court. In this view of the matter as non-holding of the meeting of the selection committee from 1987 to 1990 is not to be attributable to the Government and was on account of reorganisation of the grant of Statehood to certain Union Territories and as the matter had already been agitated in an earlier OA and the action of the Government was found justified which was further affirmed by the Apex Court in SLP No.10278/91 we find that the reasons for not holding the selection committee's meetings were justified in those circumstances and the applicant has not at all been prejudiced. Apart from it, we find that in the subsequent years the applicant remained in the select list right from 1991 but for want of vacancies he could not have been appointed. Ultimately on his being assessed very good he was empanelled in the select list of 1996-97 and was appointed to IPS on 12.3.98. The contention of the applicant is not legally tenable and is rejected.

6. The next contention taken by the applicant is regarding Rule 3 of the I.P.S. (Probation), Rules, 1954, which is reproduced as below:

"3. Period of probation.--

3(1) Every person recruited for the service in accordance with the Indian Police Service (Appointment by Competitive Examination) Regulations, 1955 shall be appointed to the service on probation for a period of two years.

3(2) Every person recruited to the Service in accordance with--

(i) the Indian Police Service (Appointment by Promotion) Regulations, 1955,

(ii) regulation 3 of the Indian Police Service (Special Recruitment) Regulations 1957 shall be appointed to the Service on probation for a period of one year;

Provided that in the case of any person recruited to the Service in accordance with the Indian Police Service (Appointment by Promotion) Regulations, 1955, any period for which he has been appointed to a cadre post may, having regard to his performance in such post, be counted towards the period of probation;

Provided further that the Central Government may in exceptional circumstances of any case, after consulting the Commission reduce the period of probation."

It in this context it is contended by the applicant that according to this rule every person recruited to the service shall be appointed to the service on probation for a period of one year and any person appointed to the service in accordance with IPS (Appointment by Promotion) Regulations, 1955 and the period of cadre posting be counted towards the period of probation. In this background it is contended that he had been brought in the select list in the year 1991 by the competent authority the DPC consists of Chief Secretary, Joint Secretary, Ministry of Home Affairs and Member of the UPSC and had been working

on the cadre post of DCP, Rastrapati Bhawan till July 1997 and further for 7 months till 12.3.98 as DCP, Special Task Force on an ex cadre post. The learned counsel has also drawn our attention to a certificate issued by the NCT of Delhi on 18.5.98 wherein it is certified that the applicant had worked on a cadre post of DCP, Rastrapati Bhawan w.e.f. 19.10.91 to 28.10.97. Placing reliance on this rule it is contended that as the applicant was brought on the select list and had held the cadre post from 19.10.91 to July, 1997 the same should have been counted towards the probation period and as his appointment after being inducted in the select list in 1991 to the post of DCP would amount to an appointment in the higher rank by the competent authority and as such his appointment should relate back to 1991 and he is deemed to have been completed the probation period in 1992 as envisaged under the rules. Placing reliance on a decision of Apex Court in Union of India & Ors. v. Harish Chander Bhatla and Ors., Civil Writ Petition No.2481 of 1993 it is contended that the period of ad hoc officiation should have been reckoned for the purpose of seniority if a person possesses the requisite qualification for being appointed to a particular post and is appointed with the approval and consultation of the appropriate authority and continues for a fairly long period. The learned counsel for the applicant has drawn our attention to a Constitutional Bench judgement of the Hon'ble Supreme Court in Rudra Kumar Sain v. Union of India, JT 2000 (9) SC 299, wherein the following observations have been made:

"20. In the Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is

appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be "stop-gap or fortuitous or purely ad hoc". In this view of the matter, the reasoning and basis on which, the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be fortuitous/ad hoc/stop gap are wholly erroneous and, therefore, exclusion of these appointees to have their continuous length of service for seniority is erroneous."

7. In this background it is contended that his appointment which has been after due process and approval of the competent authority in the year 1991 should be deemed to be a regular appointment and further continuous officiation on a cadre post should be reckoned towards the seniority. It is further contended that the rules of seniority do not specify or distinguish between an ex cadre post or cadre officiation. The respondents on the other hand have taken the stand that the rules of Probation referred to above pre-requisites appointment to the service and the entitlement for confirmation is completion of one year on the cadre post. This clearly envisages that an officer who has been holding a cadre post for the period exceeding one year can be subject to his satisfactory performance on the post and should be confirmed to the service at best from the date of appointment to the service which is in the case of the applicant is 12.3.98. As the applicant has not been validly appointed before that date he is not liable to be confirmed from a date before his appointment to the post. By referring to Regulation 8 of the IPS (Appointment by Promotion) Regulations, 1955 it is contended that the legal status of State Police Officer included in the select list is the same as of those not included in the select list. These officers are also

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non-cadre officers and as such the officiating appointment is to conform to Rule 9. As per Rule 9 the appointment of select officer to a substantive vacancy in the service has to be made from the select list and for the time being in force. Appointment to a vacancy in the promotion quota is to be made with reference to the date of vacancy or the date of inclusion of the officer in the select list, whichever is later. In the instant case as the vacancy had arisen only in the year 1997 subsequently the applicant has been appointed to the IPS cadre and as per the provisions of Rule 9 he would not be entitled to have his appointment from the date he is officiating in the cadre as per Regulation 8, i.e., from the year 1991. The period of officiation on a cadre post is to be reckoned towards the period of probation not to its entirety but shall be restricted to what has been prescribed under the rules, i.e., one year. The applicant who has rendered service in a cadre post since 1991 to 1997 is entitled for reckoning one year period of officiating period towards the period of probation and shall be deemed to have been confirmed with effect from the date of his appointment, i.e., 12.3.98. The applicant cannot be given the benefit of this continuous officiation to deeming his appointment to the IPS cadre w.e.f. 1991 when he was brought in the select list and officiated on a cadre post upto 1997. The contention of the applicant that the entire officiating period to be reckoned towards probation period for the purpose of according him an antedating appointment w.e.f. 1992 in the IPS cadre is not as per the rules and explanation referred to above under the IPS (Appointment by Promotion) Rules, 1954. As there is no specific challenge to IPS (Appointment by Promotion) Regulations 1955 and to

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IPS (Probation) Rules, 1954 the applicant cannot derive any benefit to that extent treating his appointment in the year 1991 from the date he has started officiating on a cadre post of DCP, Rastrapati Bhawan and deeming him confirmation w.e.f. 1992 and accord him other benefits accordingly. We find that the challenge to the aforesaid rules in the amended petition is conspicuously absent and also no such specific relief has been asked for in the prayer clause with regard to this rule. As such, the contention of the applicant fails on this count also.

8. Another contention taken by the applicant is that as per the decision of the Apex Court in Bhatla's case (supra) the continuous officiation on a post should be reckoned for the purpose of according seniority should have been followed by the respondents. Further placing reliance on the ratio laid down in G.P. Doval & Ors. v. Chief Secretary, Govt. of U.P. & Ors., 1984 (4) SCC 329 it is contended that when officiating appointment is followed by confirmation unless a contrary rule is shown the service rendered cannot be ignored for reckoning the length of service. The learned counsel for the applicant has also relied upon L. Chandrakishore Singh v. State of Manipur & Others, 1999 (8) SCC 287 to contend that the seniority is determined on the basis of length of service and this length of service is determined further on the basis of continuous officiation. If the officiating appointment is followed by confirmation unless a contrary rule is shown the service rendered as such shall be reckoned as continuous length of officiating service for determination of seniority. The applicant has also placed reliance on a Constitutional Bench decision of the Apex Court in The

Direct Recruits Class II Engineering Officers' Association vs. State of Maharashtra, 1990 (2) SCC 715 and lastly contended in view of the ratio laid down in a Constitutional Bench decision of Rudra Kumar Sain's case (supra) that the applicant's appointment on a cadre post and his consequent rendering of service on that post should not have been treated as a stop-gap/fortuitous/ad hoc and should have been reckoned for the purpose of continuous length of service for determination of seniority. We have considered this contention of the applicant and find that the applicant was appointed to the IPS cadre on 12.3.98 and at that time the relevant provision of IPS (Regulation of Seniority) Rules, 1988 stood amended on 31.12.97. As per the ratio laid down in Union of India v. S.S. Uppal, JT 1996 (1) SC 258, it has been held by the Apex Court that the question of seniority is to be determined by the rules in force on the date of appointment. As the date of the appointment of the applicant in IPS is 12.3.98 the rules which are in existence are amended rules of 31.12.97 which do not envisage benefit of accord of seniority on the basis of continuous length of service in the cadre. It is also contended that none of the rules relating to the seniority have drawn any distinction between the service rendered on cadre or non-cadre post. As per the applicant he had rendered service as on a cadre post after being on select list w.e.f. 1.2.91 to 1.11.97 and also till 12.3.98 on a non cadre post as such this service rendered on continuously should have been reckoned for the purpose of seniority. Another grievance of the applicant is that while according the year of allotment the respondents had treated the service rendered by him as on a cadre post of DCP as service rendered in the rank of A.C.P. and

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accordingly he was allowed the weightage of only six years and was assigned 1991 as the year of allotment. According to him the applicant should have been accorded year to year weightage for the period of service rendered in higher rank as DCP while continuing in the select list as on cadre or ex-cadre post from 1991 to March 1998 on that post the year of allotment could have been antedated and his seniority would have been pre-poned. We find from the rules that there is no provision for reckoning the period of continuous officiation on a cadre post in IPS cadre by an incumbent after being put in the select list to be reckoned for the purpose of giving weightage and according year of allotment. Rule 3 of I.P.S. (Regulation of Seniority) Rules, 1988 deals with the assignment of year of allotment and the amended rule is reproduced as under:

3. The proviso to Rule 3 (3) (i) of the IPS (Regulation of Seniority) Rules, 1988 applied to two categories mentioned in para 1 above, whereas the CAT/Supreme Court judgment was in the case of only one category, namely, exempted probationers. In the case of the exempted probationers, the year of allotment will be the year following the year of Competitive Examination whereas in the case of second category of probationers, namely those probationers, who obtain permission to join training late on any other ground, their year of allotment depends upon the year of allotment of probationers with whom they join training. The existing proviso to Rule 3(3)(i) of the IPS (Regulation of Seniority) Rules, 1988, is being substituted with the following proviso:

"Provided that if a direct recruit officer, other than an exempted probationer within the meaning of Cl.(ee) of Rule 2 of the Indian Police Service (Probation) Rules, 1954, who is permitted to join probationary training under Sub-rule (1) of Rule 5 of the Indian Police Service (Probation) Rules, 1954, with the direct recruit officers of subsequent year of allotment, then he shall be assigned that subsequent year as the year of allotment."

(ii) The year of allotment of a promotee officer shall be determined with reference to the year in which the meeting of the Committee to make

selection, to prepare the Select List on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him in the State Police Service not below the rank of a Deputy Superintendent of Police or equivalent, up to the 31st day of December, of the year immediately before the year in which the meeting of the Committee to make selection was held to prepare the Select List on the basis of which he was appointed to the Service, in the following manner:-

(a) for the service rendered by him up to twenty one years, he shall be given a weightage of one year for every completed three years of service, subject to a minimum of four years;

(b) he shall also be given a weightage of one year for every completed two years of service beyond the period of twenty years, referred to in sub-clause (a), subject to a maximum of three years.

Explanation.--For the purpose of calculation of weightage under this clause, fractions, if any, are to be ignored.

Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer snior to him in that Select List or appointed to the service on the basis of an earlier Select List."

9. From the perusal of the above provisions it transpires that the year of allotment is to be determined with reference to the year in which the meeting of the committee to make selection was held to prepare the select list on the basis of which the incumbent was appointed to service is to be considered and the service rendered by him up to 20 years weightage of one year for every completed three years of service subject to a minimum of four years service is to be accorded to the officer. It is further provided in the explanation that an incumbent shall not be assigned year of allotment earlier than the year of allotment assigned to an officer senkior to him in that Select List or appointed to the service on the basis of an earlier Select List. Making challenge to this Rule, though

not impugned in this OA and in the prayer clause 8.2 no specific rule has been cited which is to be challenged and declared as ultra vires. Mere vague prayer that any rule or provision relied upon by the respondents should be declared ultra vires cannot be acceded to. As regards the accord of seniority to the applicant as the amended rule 3 ibid does not envisage accord of seniority on the basis of continuous officiation in a cadre post and there is no provision for reckoning the period rendered on a cadre post of DCP for the purpose of giving weightage for the purpose of grant of year of allotment the same cannot be acceded to. The Rules which are in force at the time, i.e., Rule 3 (2) ibid shall hold the field as per the ratio laid down in Uppal's case (supra) and as such in absence of any specific challenge to the rules the contention of the applicant that although he had worked on a cadre post of IPS by rendering serving w.e.f. 19.10.91 to 1.11.97 as DCP, Rastrapati Bhawan cannot be taken cognizance for the purpose of according the year of allotment and weightage to the applicant, as such this plea of the applicant is not legally tenable.

10. As regards the contention of the applicant that continuous length of service should have been reckoned for the purpose of determining seniority is concerned, it has been brought out from the Direct Recruits' case (supra) as well as from the ratio laid down in L. Chandra Kishore Singh's case (supra) that this length of officiating service should be continuous in a cadre we find that the applicant had worked as DCP, Rashtrapati Bhawan remaining on the select list from 1991 to 1997 and thereafter he was put to officiate on an ex-cadre post w.e.f. 1.11.97 to March,

1998 cannot be said to be continuous officiation on a cadre post. Apart from it, as there is no provision in the seniority rules to accord grant of benefit of continuous officiation towards the seniority. Hence, the claim of the applicant cannot be acceded to and the ratio relied upon by the applicant supra, will not apply in his case.

11. The other challenge of the applicant is that he made a detailed representation to the respondents but the same has not been disposed of by a speaking order, we find that the respondents have rejected the request of the applicant vide an order dated 14.10.98 by contending that his case is not covered under the rules and thereafter in their counter reply they have demonstrated as to how the applicant cannot claim any benefit.

12. Before parting with this case, our attention has been drawn to the ratio laid down in Rudra Kumar Sain's case (supra) wherein the Constitutional Bench of the Apex Court has laid down that if the appointment of a Government servant who possesses the requisite qualification is with the approval and consultation of the appropriate authority and continues in the post for fairly long period then such appointment cannot be held to be stop-gap/fortuitous or purely ad hoc. In that case the incumbent is entitled for accord of seniority on the basis of continuous length of service in the cadre. In Bhatla's case (supra) also the same ratio was laid down which was further confirmed in another Constitutional Bench decision of the Apex Court in Direct Recruits's case (supra). Our attention has been drawn to Rule 3 of All India Services (Conditions of Service-Residuary Matters) Rules, 1950,

which envisages power to relax rules and regulations in the event where the Central Government is of the opinion that any rule made or deemed to have been made under the Act or any regulation made under any such rule, regulating the conditions of service of persons appointed in All India Service causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that rule or regulation, as the case may be, to such an extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner. We are of the opinion that the applicant had been included in the select list of 1991 but for the vacancies his appointment to IPS was delayed and ultimately made on 12.3.98. During this period the applicant had continued till 1997 on a cadre post of IPS by rendering service as DCP, Rastrapati Bhawan and thereafter for seven months he was on an ex-cadre post. The rules for confirmation does not envisage any eventuality where the continuous officiation on a cadre post is to be reckoned for the purpose of according confirmation and the appointment from an anterior date. Likewise, the seniority rules also do not envisage any provision for reckoning the continuous length of service on a cadre/non-cadre post of IPS for the purpose of accord of seniority and also while according year of allotment the service rendered by the applicant on a cadre/non-cadre post of IPS has been ignored for giving weightage for according year of allotment, with the result the applicant has been deprived of the benefits of his service rendered on a cadre post after he was duly brought in the select list and being fully qualified. As per the Constitutional Bench decision in Rudra Kumar Sain's case (supra) such an appointment should not have been

treated as fortuitous or officiating and the incumbent should have been accorded the seniority on the basis of length of service. From all these the applicant has been deprived of the benefit of this continuous officiation in absence of any specific provision in the rules.

13. In this view of the matter and having regard to the discussion made above and reasons recorded it would be just and proper, in the interest of justice, to give the applicant ^{an opportunity for} to make a representation to the respondents under Rule 3 of the All India Services (Conditions of Service-Residuary Matters) Rules, 1960, within two weeks from the date of receipt of this order. The respondents are directed to consider the claim of the applicant for reckoning his period of continuous officiation towards seniority on a cadre post from 1991 to 1997 and also to consider accord of weightage of service rendered as DCP from 1991 to 1997 for the purposes of according him the year of allotment and to pass a detailed and speaking orders within two months thereafter, keeping in view the ratio of the Hon'ble Apex Court in Syed Khalid Rizvi v. Union of India, 1993 Supp. (3) SCC 575. The O.A. is disposed of, as above, but without any order as to costs.

S. Raju

(Shanker Raju)
Member(J)

V.K. Majotra

(V.K. Majotra)
Member(A)

"San."