

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 760/97
T.A. No.

198-

22

DATE OF DECISION 24.4.78

Suri Javeed Ahmadi & Ors : Applicant (s)

Suri Vikas Singh, Suri Yunus ^{Malik A} Advocate for the Applicant (s)
Ms. Reene Sharma

Versus

Union of India Respondent (s)

Suri R.P. Aggarwal ~~for~~ for official Reps
and Suri V.S. R. Krishna, for Private Rep Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. Hon'ble Shri T.N. Bhakt, M(J)

The Hon'ble Mr. Hon'ble Shri R.K. Ahuja, M(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?

Yes / No.
Yes.

Obj
(R.K. Ahuja)
M(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 760/97

New Delhi this the 24th Day of April 1998

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri R.K. Ahoja, Member (A)

(23)

1. Javeed Ahmad,
SP, CBI, Patna
2. Subesh Kumar Singh,
SSP, Meerut, UP
3. A.P. Maheshwari,
SSP, Gorakhpur

Petitioners

(By Advocate: Shri Vikas Singh, Shri Yunus Malik
and Ms. Reena Sharma)

-Versus-

1. Union of India,
through the Secretary,
Ministry of Home Affairs,
New Delhi.
2. State of Uttar Pradesh,
through the Secretary, Home Deptt.,
Lucknow.
3. Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi through its Secretary.
4. Director General of Police,
Uttar Pradesh, Lucknow

Respondents

(By Advocate: Shri R.P. Aggarwal)

5. Ram Adhar
SP, Basti.
6. Jamal Ashraf,
Commandant 11 Bn. PAC
Barabanki, UP.
7. R.N. Srivastava,
SP Food Cell, CID,
Lucknow.
8. C.B. Rai,
SP, Jalaun (UP)
9. Abhai Shankar,
SP, CID, Lucknow.
10. H.S. Prasad,
SP, Hardoi
11. Deo Dutta,
Commandant 23 Bn,
PAC, Moradabad.

Ques

12. C.M. Prasad,
Commandant, 25 Battalion,
PAC, Rai Bareilly.

13. S.C. Yadav,
Commandant, 6th Bn.,
PAC, Meerut.

14. G.N. Singh,
Commandant, 34 Bn.,
Varanasi, UP

15. S.C. Gupta,
Commandant, 8th Battalion,
PAC, Bareilly.

16. N.B. Singh,
Commandant, 2nd Bn.,
PAC, Sitapur.

17. KND Dwivedi,
Commandant, 12th Bn.
PAC, Fatehpur.

18. D.S. Singh,
SP, AD, OPS,
Lucknow

(24)

Private
Respondents

(By Advocate: Shri VSR Krishna)

ORDER

Hon'ble Shri R.K. Ahooja, Member (A)

This application has been filed by three directly recruited IPS officers of 1984 batch allocated to the UP Cadre who are aggrieved by the fixation of their inter se seniority vis-a-vis promoted IPS Officers by the Ministry of Home Affairs impugned order dated 21.6.1996. The facts underlying the controversy may be briefly stated.

2. In the year 1984, 8 direct recruit IPS officers, 3 of whom are applicants herein, were allocated to the UP cadre. The second officer in seniority Shri Ranji Kant Mishra, started officiating on a senior duty post w.e.f. 1.10.1987 while the others

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including Dr. Harish Chandra Singh, who was at S.No. 1 started officiating on senior posts from various dates between 12.7.1988 to 17.7.1988. On the other hand, respondents No. 5 to 18, were initially recruited to the State Police Service and joined service as Deputy Superintendents of Police between 6.1.1971 to 15.9.1997. According to the gradation list issued by the State of UP on 31.12.1994, these respondents were shown to have been appointed to the IPS against the promotion quota between 15.12.1989 to 19.12.1990. However, by an order dated 19.9.1995 the dates of appointment of respondent Nos. 5 to 8 in the IPS was refixed between 24.1.1987 to 1.7.1988. On that basis, respondent Nos. 5 to 8 became senior to the applicants herein by the impugned order dated 21.6.1996.

3. The circumstances in which the appointment of private respondent Nos. 5 to 8 came to be made as per the impugned order require to be noticed. According to the reply filed by the Union of India, a meeting of the Selection Committee took place on 27.12.1985, for consideration of the officers of the UP Police Service for promotion to the IPS. As a result a Select List consisting of 34 names was framed. Respondents No. 5 to 18 except respondent Nos. 8, 10 and 11 were included in that list. The total number of vacancies available was 17. Before that Select List could be finalised a Writ Petition No. 1549/85, Bharat Singh Vs. State of UP was filed in the Allahabad High Court and an interim order was passed on 16.1.1986 staying further promotion to the IPS from that list. This Writ Petition was

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called by the Hon'ble Supreme Court and was decided in case of Rana Randhir Singh Vs. State of Uttar Pradesh,

1989 (10) SLR 102. The stay order was vacated and the Select List was finally approved by the UPSC on 6.2.1989. 29 officers including respondents No. 5 to 7, 9, 12 to 18 from that list were appointed to the IPS vide Notification dated 15.12.1989. The next Select List was prepared on 27.3.1990, clubbing together the vacancies of 1986, 1987, 1988 and 1989. Respondents No. 8, 10 and 11 were included in that Select List and were appointed to IPS w.e.f. 19.12.1990. Both the orders dated 15.12.1989 promoting 29 officers from the Select List of 1985 as well as the Select List prepared on 27.3.1990 were challenged in OA No. 337/90, Pratap Singh Vs. Union of India in the CAT Bench of Allahabad.

The Tribunal vide its order dated 17.8.1990 quashed the appointment of Respondent Nos. 5 to 7, 9, 12 to 18 and directed that no appointment shall be made from the Select List prepared on 27.3.1990. It was further directed that a Review Meeting of the Selection Committee be called for preparation of the Select Lists on the basis of yearwise vacancies and to issue orders of regular promotion on that basis. Four meetings of the Selection Committee took place from 13.4.1992 to 1.12.1992 as a result of which yearwise Select Lists for the years 1986, 1987 and 1989-90 were prepared. It was as a result of these Select Lists prepared by the Review Selection Committee that Respondent No. 5 was appointed to the IPS with retrospective effect from 24.12.1987 on the basis of his name being included in 1986 Select List and the rest of the Respondents No. 6 to 18 were appointed to the IPS with retrospective effect on the

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basis of 1987 Select List, Respondent Nos. 6 to 15 being appointed w.e.f. 27.1.1988 and Respondent Nos. 16 to 18 being appointed w.e.f. 1.4.1988 and 1.7.1988 respectively. (27)

4. In this background, we may now see the grounds on which the impugned order dated 21.6.1996 determining the seniority of promoted IPS officers is assailed by the applicants. The applicants firstly say that the Respondents No. 5 to 18 had been officiating on senior cadre posts between 19.12.1987 to 1.7.1988 but that this officiation was contrary to the Cadre Rules as the names of any of the respondents did not exist at that time in any Select List. This ground need not detain us since it is a case of both the official and private respondents that there was no such officiation against cadre posts whether within or outside the Cadre Rules and the order of allotment of year and seniority of the private respondents is not related at all to any such claim of officiation against any post prior to their appointments to the IPS.

The second ground taken by the applicant is that the applicants and the other direct recruits could not be made junior to the Respondent Nos. 5 to 18 as a result of a proceedings before the Tribunal in which the said direct recruits were not parties. This again is not a valid ground. The Tribunal in the case of Pratap Singh (Supra) went into the question of the annual preparation of the Select List which is mandatory and the rights claimed by the parties concerned for their consideration for promotion to the IPS against the

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prescribed promotion quota. As the dispute was not regarding the inter se seniority vis-a-vis direct recruits, the applicants therein could not dispute the recruitment made by way of promotion as per the recruitment rules. In any case, if they were aggrieved by the order of the Tribunal in Bharat Singh's case, they should have taken steps to seek a review or should have filed an appeal. Having failed to do either, they cannot now plead against the order fixing the order of the seniority of the promotees.

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6. The applicants then contend that there cannot be any discrimination between the officers of the same batch directly recruited to the IPS in a particular year. The applicants say that their batchmate Shri Rajni Kant Mishra came to officiate on a senior scale post much before the applicants herein. Shri Rajni Kant Mishra started officiating on a senior post w.e.f. 1.10.1987 while even his senior Dr. Harish Chandra started officiating on a senior post only from 13.7.1988. The applicants submit that on 1.10.1987 cadre posts were available against which the applicants as well as their other batchmates could also have been promoted. But as the appointment of officers of 1984 direct recruit batch was delayed except in the case of Shri Rajni Kant Mishra, the five respondents who are shown to be promoted in between came to be placed in seniority between Shri Rajni Kant Mishra and the applicants. Private respondents, on the other hand, submit that the 1984 direct recruits were due for promotion to the senior scale only in 1988 but as Rule 6A of the IPS (Recruitment) Rules, 1954 empowers the

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State Government to appoint an officer referred to in sub rule 1 at any time to a senior post by way of temporary or local arrangement, Shri Rajni Kant Mishra who joined service on 1.12.1984 was allowed to officiate from 1.10.1987 in a leave vacancy. On that basis the private respondents claim that even he should have been deemed to have been promoted to a senior scale only in July 1988. We have examined this point carefully. No provision in the recruitment, seniority or pay rules of the IPS has been pointed out to us which prescribes that officers in a particular batch of direct recruits shall all be promoted to senior scale simultaneously. On the ^{hand} other, the IPS Pay Rules 1954 provide as follows:

IPS Pay Rules, 1954 : Rule 3

Time scale of pay.--(1) The Scales of pay admissible to a member of the Service and the dates with effect from which the said scales shall be deemed to have come into force, shall be as follows:-

Junior Scale Rs. 2200-75-2800-EB-100-4000 with effect from the 1st day of January, 1986.

(i) Senior Scale -- Time Scale 3200-15th and 26th-2600-100-3700-125-4700 with effect from the 1st day of January, 1986.

(ii) Junior Administrative Grade -- Rs. 3950-125-4700-150-5000 (non functional) with effect from the 1st day of January, 1986:

Provided that a member of the Service shall be appointed to the senior scale on his completing 4 years of service, subject to the provisions of sub-rule (2) of Rule 6-A of the Indian Administrative Service (Recruitment) Rules, 1954 and to the Junior Administration Grade on completing 9 years of service. (Emphasis supplied).

Note -- The four years and nine years of service in this rule shall be calculated from the year of allotment assigned to him under Regulation 3 of the Indian Administrative Service (Regulation of Seniority) Rules, 1954.

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Similarly, Sub Rule (2) of Rule 6-A of the IPS (Recruitment) Rules, 1954 reads as follows:

(2) An officer, referred to in sub-rule (1), shall be appointed to a post in the Senior time-scale of pay if, having regard to his length of service and experience, the State Government is satisfied that he is suitable for appointment to a post in the senior time-scale of pay:

7. It was contended by the learned counsel for the applicant that Rule 6-A (2) of the Recruitment Rules quoted above does not impose a restriction that the State Government can promote direct recruits only when such a direct recruit has put in a minimum of 4 years of service. We do not propose to go into the controversy as to whether the State Government under Rule 6-A (2) of the IPS (Recruitment) Rules, 1954 is circumscribed by Rule 3 of the IPS Pay Rules of 1954 except in the cases of appointments made as a purely or a local arrangement under Rule 6-A 3(b). Suffice it to say that under Rule 6-A (2) of the (Recruitment) Rules, it is upto the State Government, if it is satisfied, to promote a junior scale officer to the Senior Scale. Therefore, if the State Government came to promote one officer of a particular batch on a particular date before the other officers of the same batch, it cannot be said that the satisfaction of the Government extended automatically to all the officers of that batch. In any case, if the applicants herein considered that they had equal or better claim then Shri Rajni Kant Mishra for promotion to the senior scale then they should have agitated their grievance at the appropriate time before the appropriate forum. For these reasons, we do not find any substance in the arguments advanced on this ground.

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8. We may now examine the two grounds on which the impugned order has been attacked and on which lengthy arguments were made on behalf of the applicants. The first is that the private respondents not having officiated in senior scale prior to their appointment to the IPS, they are to take seniority only from the date of their actual officiation in senior posts. Secondly, it has been argued that even if the respondents are to be treated to have joined the the IPS in the senior scale, their seniority has to be fixed in terms of the Rules in force at the time of their actual appointment and not on the basis of the Rules which were in force on the date of their deemed appointment. We may now examine both these points separately.

Rule 6 (2) of IPS (Appointment by Promotion) reads as follows:

Para 21

Recruitment by promotion. (1) The Central Government may, on the recommendation of the State Government concerned and in consultation with the Commission, recruit to the Service persons by promotion, from amongst the (substantive) members of a State Police in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make.

(2) The number of persons recruited under sub-rule (1) in any State or group of States shall not, at any time, exceed 33 1/3 per cent. of the number of posts as are shown against items 1 and 2 of the Cadre in relation to that State or to the group of States in the Schedule to the I.P.S. (Fixation of Cadre Strength) Regulations, 1955).

9. Shri Vikas Singh, learned counsel for the applicants submitted that the Hon'ble Supreme Court in Syed Khalid Rizvi & Others Vs. Union of India 1993 Supp (3) Supreme Court Cases 575 have observed as follows:

Para 21

"Thus it is settled law that a promote officer appointed temporarily under Regulation 8 of the Promotion Regulations and Rule 9 of the Cadre Rules to a cadre post does not get his/her continuous

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officiation towards seniority. Seniority would be counted only from the date on which he/she was brought into the select-list by the selection committee in accordance with Recruitment Rules, Promotion Regulations and Seniority Rules and was approved by the UPSC, appointed under Rule 9 of Recruitment Rules and Regulation 9 of Promotion Regulations and has continuously officiated without break. Seniority would be entitled from the date of select-list or continuous officiation whichever is later. He/She is entitled to appointment by the Central Government to substantive vacancy under Regulation 9 of Promotion Regulation from that date. The Central Government and the UPSC should approve temporary appointment by an order in writing and also of such officiation. In that event seniority would be counted only from the date, either to his/her inclusion in the select-list or from the date of officiating appointment to the cadre post whichever is later. By operation of Explanation 1 to Rule 3(3)(b) of the Seniority Rules his seniority will be counted only from either of the later dates and the necessary effect is that the entire previous period of officiation should be rendered fortuitous and the appointment as ad hoc appointment or by local arrangement.

10. He also drew our attention to the Hon'ble Supreme Court observation in the same case in para 23.

Para 23

".....Bringing the name on the list does not confer any right to automatic appointment. The appointment should be made to a substantive vacancy within the quota in the order in the select-list unless the predecessor promotee officer in the list opts to forgo the same. Seniority Rules thus provide the source or foundation upon which the whole edifice of Indian Police Service has been built upon to assign the year of allotment. The scheme of the Rules and Regulations is an integral and continuous whole and any snap in the link would lead to distortion and land up in imbalance in the ratio and upset the smooth working of the scheme frustrating national integration, the object of the All Indian Services Act. Moreover, the recruitment by selection would give only the right to be considered according to rule and creates no right to appointment. The order of appointment by the Central Government under Rule 9 of Recruitment Rules crystallises the right of a promotee officer into the service. Seniority would be counted only from date of select-list or the date of continuous officiation after appointment whichever is later." (Emphasis supplied).

11. The learned counsel argued that even if, for the sake of argument, it was concluded that the appointment of the private respondents with retrospective effect under Rule 9 of the Recruitment Rules was valid, they could take their seniority only with reference to the date on which they

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started continuously officiating in a cadre post. He pointed out that it is the case of both the official as well as private respondents that private respondents were not being given any benefit of officiation prior to their regular appointment to the IPS. He also drew out attention to para 7 of the rejoinder filed by the applicants in which they have given the dates on which private respondents started actually officiating against the cadre posts. As per the applicants, the earliest date of such continuous officiation is in respect of Shri Ram Dhan, 5.5.1989. Shri Vikas Singh, learned counsel for the applicant submitted that in terms of the law laid down by the Hon'ble Supreme Court in Syed Khalid Rizvi (Supra), the date of officiation being later than the date of deemed appointment to the Service under Rule 9, the year of allotment and the seniority vis-a-vis direct recruit has to be determined with reference to continuous officiation which as has already been pointed out is 5.5.1989 in case of Shri Ram Dhan. On that basis Shri Ram Dhan and all those juniors to him in the promotion quota would be allocated the year lower than that of the applicants and would be consequently junior to them in service.

12. We find this reasoning to be totally misplaced. If the implications of this argument were to be accepted it would imply that appointment to the IPS by promotion can be made in the junior scale as well. This is clearly quite contrary to the specific scheme of the service.

Rule 6(3) Indian Police Service (Recruitment) Rules, 1954 reads as follows:

"The initial appointments of persons recruited to the Service under clause (b) of the sub-rule 4 in accordance with the provisions of the Indian Police Service (Appointment by Promotion) Regulations, 1955 shall be in the senior time-scale of pay".

Rule 9(2) of the IPS Recruitment Rules, 1954 also reads as follows:

The number of persons recruited under sub-rule (1) in any State or group of States shall not, at any time, exceed 33 1/3 per cent of the number of those posts as are shown against items 1 and 2 of the Cadre in relation to that State or to the Group of States in the Schedule to the I.P.S. (Fixation of Cadre Strength) Regulations, 1955.

13. It would, thus, be clear that an officer of the State Police Service is appointed to the IPS by promotion, only against a senior scale cadre post and draws his pay accordingly. Therefore, once the officer

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is substantively appointed to the IPS by promotion from a certain date, that appointment is deemed to be against a Cadre Post in the senior scale and his seniority has to be fixed accordingly. We consider that the reliance on Syed Khalid Rizvi (Supra) is also misplaced as the issue therein was the counting of period of officiation as non select list officer against a Cadre Post with respect to allocation of seniority. We agree with the learned counsel for the applicant that the case of the respondents is peculiar in as much as the general experience is that State Police Officers first officiate against the cadre post on the basis of their inclusion in the Select List before being substantively appointed to the IPS. Nevertheless the rules are unambiguous as seen above in that the substantive appointment by promotion is only to a cadre post in the senior scale.

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14. The other argument advanced on behalf of the applicant was that on the actual date of notification of appointment, the relevant seniority rule in respect of promotees had undergone a change and following the decision of the Hon'ble Supreme Court in Union of India Vs. S.S. Uppal, 1996(2) SCC 168, in such a circumstance the year of allotment would be determined under the rules in force at the time of appointment and not at the time the vacancies arose. In S.S. Uppal (Supra), Shri Uppal was in a panel of four officers found suitable for IPS cadre of MP from the non civil service quota. The appointment of Shri Uppal to the IAS came about on 15.2.1988. In the meantime on 3.2.1989 the provisions of the IAS (Fixation of Seniority Rules), 1987 were amended. As per pre-amended Rule the year of allotment of a non State Civil Service Officer was to be

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determined on adhoc basis by the Central Government on the recommendation of the State Government concerned and in consultation with the UPSC. However, by the amended Rule the year of allotment was to be determined by a certain percentage of the service by giving weightage for these years of service put in in the eligible post. The seniority of Shri Uppal was fixed by the amended rules. Shri Uppal then went to the Jabalpur Bench of this Tribunal where amongst other grounds he contended that in any event he was due for appointment against a vacancy which arose on 1.2.1989 and therefore his seniority was to be determined on the basis of the rules in force on the date of vacancy. The plea was accepted by the Tribunal but in SLP the decision of the ~~Hon'ble~~ Tribunal was set aside and the Hon'ble Supreme Court held that the question of seniority of Shri Uppal had to be determined by the rules in force on the date of his appointment to the IAS. The Supreme Court also observed that the date of occurrence has really no relevance for the purpose of seniority in the IAS since fixation of seniority is done only after an officer is appointed to the IAS.

15. It was vehemently argued by Shri Vikas Singh that the ratio of this decision applied to the case of the 5 respondents also. He pointed out that the retrospective appointment of these respondents is entirely on the basis that vacancies were available for them in 1987-88. However, the notification was issued in 1992. The IPS seniority rule had meanwhile undergone a change. Whereas earlier the year of allotment of a promotee was determined with reference to the year of

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allotment of the junior most IPS officer from amongst the direct recruit continuously officiating in the senior scale, as per the amended rules seniority was to be determined by the weightage for the service rendered in the State Government Police Service. In the present case the year of allotment and seniority of the promotees was fixed on the basis of the year of allotment and seniority of the junior most direct recruit officiating in the senior scale. This Rule as mentioned earlier was changed on 3.2.1989. According to Shri Vikas Singh, it was thus that the year of allotment and seniority of the private respondents had been fixed under the non existing rules which had been replaced by the time the actual notification came to be issued.

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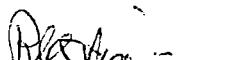
15. We, however, do not see any merit in this argument also. The crucial point in time for reference is the date from which the appointment takes effect and not the date of notification. The argument of Shri Vikas Singh would have full force if the notification issued in 1992 had prospective effect. Here instead, on the basis of directions issued by the Tribunal, the appointment of the private respondents was made with retrospective effect. The Rule which would then be applied would be the one applicable on the deemed date of appointment. For this reason, we see no infirmity in the application of the pre-amended seniority rules in respect of the private respondents.

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17. In the light of the above discussion and facts and circumstances of this case, we are unable to find any substance in the case of the applicants. Accordingly, we dismiss the OA. There is no order as to costs.



(T.N. Bhatt)
Member (J)



(R.K. Ahooja))
Member (A)

Mittal