

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 300/89

DATE OF DECISION: 31.03.92.

SHRI HARISH CHANDER BHATIA

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)

1. Whether Reporters of Local Papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes.*

J.P. Sharma

(J.P. SHARMA)

MEMBER(J)

I.K. Rasgotra

(I.K. RASGOTRA)

MEMBER (A)

March 31, 1992.

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FOR THE APPLICANTS

SHRI G.D. GUPTA, COUNSEL

FOR THE RESPONDENTS

SHRI M.L. VERMA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

S/Shri Harish Chander Bhatia, Shri Sama Singh, Vijaya Pal Singh and Khan Chand have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, challenging the action of the respondents in keeping/having kept them as ACP Grade II on officiating basis thereby denying them the seniority, status and consequential entitlements for further career progression. They have also assailed the manner of assigning seniority to direct recruits in the Delhi, Andaman and Nicobar Island Police Service (DANI Police Service for short) as to infringe Articles 14, 19 (1) (g) and 21 of the Constitution of India. They further allege that their salary levles have been fixed at unreasonable levels without taking into account the salary levels of the officers hodling comparable posts in cognate services.

2. The necessary facts of the case are that applicant No.1 Shri H.C. Bhatia was promoted to the rank of ACP in DANI Police Service on officiating basis

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w.e.f. 6.11.1972 vide Ministry of Home Affairs Notification No.7/19/72-UTS dated 2.1.1973 under Sub-rule 1(a) of Rule 25 of DANI Police Service Rules 1971. He held that the post till he retired on 31.10.1989. He was brought on probation as ACP w.e.f. 26.3.1980 vide order dated 27 March, 1980. These orders were, however, subsequently cancelled because of some of litigation in the Courts. He was again brought on probation w.e.f. 26.8.1974 vide Ministry of Home Affairs orders dated 28.7.1984 and was confirmed in the said rank w.e.f. 28.7.1986 vide Government of India, Ministry of Home Affairs order No.14018/86-UTS dated 21.10.1986. He was promoted as Assistant Commissioner, Selection Grade w.e.f. 1.12.1986 vide Government of India Order No.14016/12/87-UTS dated 20th March, 1988. His grievance, is that his service as ACP has been reckoned with effect from 28.7.1984 though he was appointed as ACP on officiating basis on 6.11.1972, resulting in loss of seniority and further chance of promotion. According to him the direct recruits who were appointed in the DANI Police service in 1973, 1974, 1975, 1976, 1977-78 became senior to him, as they were given substantive rank prior to 28.7.1984. He made a representation on 4.10.1988 and followed it by a reminder on 31.10.1988.

Applicant Nos. 2&3 were appointed ACP on officiating basis under Clause (b) Sub-rule (1) of Rule 25 of the DANI Police Rules w.e.f. 2.2.1987. Applicant No.4 Shri Khan Chand was similarly appointed vide order dated 25.5.1985. His order of appointment was, however, subject to the order of the Delhi High Court in CMP No.1565 of 1985 in CWP No.1098 of 1985 **V.P. Gupta v. Commissioner of Police.** The mainstay of the case of the applicants is that their officiating appointment as ACP was against substantive vacancies

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and, therefore, the applicants are entitled to substantive appointment to the post of ACP from the date they were promoted on officiating basis. They concede that ^{the} appointments were made according to the Recruitment Rules but the Rules are so framed as to prejudice their interest. The learned counsel Shri G.D. Gupta, who appeared for the applicants made us traverse through the Rules 24 and 25 which for facility of disposal of case are reproduced below:-

" 24. SELECTION FOR OFFICIATING APPOINTMENT

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

" 25. OFFICIATING APPOINTMENT TO DUTY

POSTS OF THE SERVICE.

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

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- (a) by the appointment of an officer included in the list referred to in sub-rule(4) of rule 15, or
- (b) If no such officer is available, by the appointment of an officer included in the list prepared under rule 24.
- (2) Notwithstanding anything contained in these rules if the exigencies of public service so require, a duty post for which a member of the service is not available may be filled on an officiating basis by the appointment with prior consultation with the Commission of an officer belonging to a state police service on deputation for such period or periods ordinarily not exceeding three years as the Central Govt may consider necessary.
- (3) Notwithstanding any thing contained in these rules, where appointment to a duty post is to be made purely as a local arrangement for a period of not exceeding six months, such appointment may be made by the administrator from person who are included in the list prepared under sub-rule(4) of rule 15, or rule 24 who are eligible for inclusion in such a list.
- (4) Any apointment made under sub-rule(3) shall be reported by the Administrator to the Central Govt forthwith.

Rules 4 & 5 of DANI Police Service Recruitment Rules 1971 referred to in the Rules extracted above, are reproduced below for facility of easy reference:-

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"4. STRENGTH OF THE SERVICE:

(1) The authorised permanent strength of the Service and the posts included therein shall be as specified in the Schedule.

(2) The number of selection grade posts in the Service shall be 13 per cent of the authorised permanent strength of the Service.

(3) The Central Government or the Administrator, subject to such conditions and limitations as may be specified by the Central Government, may, by order, create duty posts for such period as may be specified therein."

"PART--III METHOD OF RECRUITMENT

5. METHOD OF RECRUITMENT

(1) Save as provided in rule 17, appointments to the Service shall be made by the following methods; namely:-

22 (a) 50 per cent of the substantive vacancies which occur from time to time in the authorised permanent strength of the service shall be filled by direct recruitment in the manner specified in Part IV of these rules, and *Inserted with effect from the 22nd September, 1983 vide MHA Notification No.U14012/2/73-UTS dated the 10th September, 1973 xx substituted for "6x4" w.e.f. 26.2.71 vide MHA Notification No.1/5/69-DH(S) (ii) Dt. 20.9.71. (8) (not more than) Omitted w.e.f. 27.4.74 vide MHA Notification No.14012/3/74-UTS Dt. 15.4.74

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++Amended vide Notification No.14012/14/78-UTS
Dt. 13.12.78,

(b) The remaining such substantive vacancies shall be filled by selection in the manner specified in part V of these Rules from amongst officers who are substantively borne on the cadre of Inspectors of Police employed in the Union Territory of Delhi and Andaman and Nicobar Islands provided that nothing in this rule shall preclude the Central Government from holding a vacancy in the service in abeyance, or filling it on a officiating basis in accordance with the provisions of Part VIII of these rules.

(c) If the exigencies of public service so require, the Central Government may, for reasons to be recorded in writing and in consultation with the Commission, vary the percentage of vacancies to be filled by each method specified in sub-rule (1)."

Rule 4 of the 1971 Rules fixes the authorised permanent strength of the service and indicates that the posts on the permanent strength will be as listed in the Schedule. The Rule further stipulates that 13% of the authorised permanent strength of the service shall constitute the number of Selection Grade posts in the service. Rule 5 lays down the method of recruitment to fill up substantive vacancies, 50% of which are to be filled by direct recruitment in the manner as specified in Part IV of the Rules. The remaining 50% substantive vacancies are to be filled by selection in the manner specified in Part V of the Rules, from amongst the officers who are substantively borne on the cadre of Inspectors of Police.

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The 50% of the vacancies in the authorised permanent strength are filled by direct recruitment through open competition held by the Union Public Service Commission (UPSC) in accordance with Rules 6-9 of Part-IV of the Rules. The remaining 50% are filled by a selection conducted by the selection committee as prescribed in Part-V of the Rules and comprises of the following:-

- i) the Chairman or a member of the UPSC - Chairman
- ii) An officer in the Ministry of Home Affairs not below the rank of Joint Secretary to the Government of India;
- iii) the Chief Secretary, Delhi Administration;
- iv) Administrator of the Union Territory of Andaman and Nicobar Islands or the Chief Secretary of the Andaman and Nicobar Administration or any officer in the Ministry of Home Affairs nominated by that Ministry;
- v) the Commissioner of Police, Delhi.

The Committee considers all officers who are substantively borne on the cadre of Inspector of Police for not less than two years and prepares a list of officers recommended for appointments after taking into account the actual vacancies at the time of selection and those likely to occur during a year. the selection is based on merit and suitability with due regard to seniority. Part-VIII of the Rules makes an additional provision to fill up the vacancies when the number of officers available in the list referred to above is not adequate. In such a situation the Central Government can direct the Committee which has been described above to consider the case of officers who have officiated for a period of not less than three years and prepare a separate list of officers based on merit and suitability in all respects with due regard to seniority for officiating appointments

to the available vacant posts. All conditions of eligibility and the procedure for selection as prescribed in Rules 14 & 15 of Part V of the Rules are applicable mutatis mutandis in the preparation of the select list for officiating appointments. Thus there are effectually three lists available for filling up the substantive vacancies in the authorised permanent strength of the cadre. They are:-

- a) Select list prepared on the basis of direct recruitment through open competition held by UPSC;
- b) Select list for regular promotion to the DANI Police Service to fill up the remaining vacancies available from the 50% quota earmarked for promotees;
- c) select list of officers considered suitable on the basis of selection based on merit and suitability with due regard to seniority for officiating promotion when the select list (b) above does not have adequate number of persons to meet the requirement.

The applicants before us fall under the category (c) above. These officiating appointments are made in terms of Rule 25 of Part VIII of the Rules when officers in the Select List (a) and Select List (b) referred to above are not available. It is observed that the officers included in the select list (b) and select list (c) both are appointed to the "duty posts" included in the Schedule which is defined in Rules as to mean "any post specified in the Schedule and includes a temporary post carrying the same designation as in all the posts specified in that schedule and the scale of pay of which is identical to that attached to the grade II of the service and any other temporary post declared as duty post by the Central Government."

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The learned counsel for the applicants stressed that list 'c' is prepared in the same manner as list 'b' and that the rigours of Rules 14 & 15 apply mutatis mutandis to the selection made for list 'C' for officiating appointment. The learned counsel, therefore, contended that denial of the benefits to the applicants who have gone through the same procedure of selection, as the officers who were selected in terms of Rule 5 (1) (b) of the Rules would constitute discrimination. He, therefore, urged that the Rules 24 and 25 which perpetuate this discriminatory practice should be declared as unconstitutional and ultra vires of Articles 14, 16 & 19 of the Constitution of India.

When the matter was heard on 14.3.1989 the Tribunal passed ad interim order to the effect "any appointment to Selection Grade A.C.P.-II or D.C.P. will be subject to the outcome of this application."

The respondents in their counter-affidavit have taken the preliminary objection that the application is barred under Sections 20 and 21 of the Administrative Tribunals Act, 1985. They further assert that the claim of the applicants to fix their seniority from the date of officiating appointment is contrary to the provisions of DANI Police Rules, 1971. As the applicants are not appointed on probation to Grade II of the Service nor do they hold the posts substantively. Their appointments made under Rules 24 & 25 do not entitle them to become a member of the service from the date they are appointed on officiating basis. They further submit that the promotees appointed in excess of the quota cannot give seniority over direct recruits appointed within quota fixed under the Recruitment Rules. In support they have cited the judicial pronouncements listed in the margin below.*

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On merits they submit that officiating appointments are not made against the cadre post. These appointments are made to meet the requirement of administration and keeping the wheels of the administration moving. The temporary posts which are not in the cadre of DANI Police Service from the date of their selection are manned by persons who are empanelled for appointment on officiating basis. The respondents also affirm that the ratio of 50% by each mode of appointment, i.e. by direct recruitment and by promotion has by and large has been maintained. However, the temporary vacancies which could not be declared substantive because of administrative reasons are filled up by appointment on officiating basis by officers who are empanelled for such appointment. They supporty their contention by referring to Rule 24 & 25 of the Rules.

The learned counsel for the applicants specifically drew our attention to the respondents' answer to paragraph 7 (XXVIII) stating that "the Government of India is aware of the fact that direct recruits take some advantage in the matter of seniority, the temporary vacancies are quite large in the number and officiating appointments are made against this temporary vacancy. Had the temporary vacancies being converted into the permanent ones only 50% of such vacancies would have gone to the promotees and 50% to the direct recruits whereby the position of the promotees would have been the same as that of the officiating promotees.

The applicants have filed a rejoinder.

We have perused the record of the case carefully and heard the learned counsel for both the parties. We find that while the list for regular promotees is prepared from among the officers who have rendered two

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years service in the regular grade, the list for officiating arrangement is prepared from among those who have rendered service in the feeder grade for a period of not less than three years. (Emphasis supplied) The officers placed in the select list for regular promotion as ACP and in the select list for officiating promotion pass through identical procedure as in both cases selection is based on merit and suitability with due regard to seniority. The only difference is that while for the regular promotion the field of consideration extend to those who have rendered not less than two years service in the feeder grade, the field for officiating appointments extend to those officers who have officiated for a period of not less than three years in the feeder grade. The officiating arrangement as per Rule 25 are resorted to when neither a direct recruit nor an officer from the regular promotee list is available. In such a situation the respondents can obtain officers belonging to the State Police Service in consultation with the UPSC on deputation for such period or periods "ordinarily not exceeding three years." The rules also make a specific provision to the fact that "notwithstanding any thing contained in these rules where appointment to a duty post is to be made purely as a local arrangement for a period not exceeding six months such appointment may be made by the Administrator for persons who are included in the list prepared under sub-rule 4 of rule 15 or rule 24 or who are eligible for inclusion in such a list." The applicants belong to the category for whom a select list is prepared under Rule 24. They can be appointed ACPs in terms of the Rules only when appointment to a 'duty post' is to be made purely as a local arrangement for a period not exceeding six months. On the other hand, we find that the Applicant No.1 was promoted on 6.11.1972, applicants No. 2&3 were appointed on 2.2.1987 and

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applicant No.4 on 25.5.1985 on officiating basis. Their appointments to the 'duty posts' thus are made in accordance with the Rules and since they have continued as ACPs for periods far exceeding six months their appointments cannot be deemed 'as purely local arrangements'. They held appointments against the duty post in the same manner as the officers placed on the select list prepared in terms of Rule 15(4). The objective of the officiating promotion is delineated in Rule 25(3) itself. Once an appointment from the list prepared in terms of Rule 15(4) exceeds period of six months, it loses the attributes of a 'local officiating arrangement'. The rules also do not visualise any posts other than 'duty posts' which even include temporary posts. In that view of the matter, since the applicants held duty posts they cannot be distinguished from those who are placed on the select list vide Rule 15(4) of the DANI Police Service Rules, 1971. While the learned counsel for the applicants prayed for striking down the Rules 24 and 25 we are not persuaded to accept the prayer, as the Rules 24 and 25 are framed to meet certain specified contingencies for keeping the administration moving. The area of the administration cannot be circumscribed by denying them the right to adopt the method of officiating appointment to meet local requirements of short-term, as laid down in the rules. On the other hand, the respondents cannot also be allowed to make use of the provisions in Rules 24 and 25 to keep eligible officers duly selected after applying them the same rigorous standard as to those whose names are placed in the select list in terms of Rule 15(4) for years continuously, without giving them the benefit of seniority and promotions which would have been their entitlement once they were regularised. We are, therefore, of the view

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that in cases where the officiating appointments are made and are continued beyond 6 months from among the officers who are placed on the select list in terms of Rule 24, they shall be entitled to regular appointment as ACPs Grade II in the DANI Police Service with all attending benefits e.g. seniority etc. in the same manner, as those officers who had been placed in the select list prepared under Rule 15(4).

As far as the scale of pay claimed by the applicants after comparing them with the various other posts is concerned, we are not persuaded to go into the matter in view of the fact that an Expert Body like the Fourth Central Pay Commission has gone into the matter in the very recent past and the respondents (Union of India) after accepting the recommendations of the Commission have implemented the revised pay scales. We, therefore, do not see any merit in the claim for revision of pay scale, based on certain parities which the applicants have tried to establish.

In the facts and circumstances of the case the application is partly allowed. The respondents are directed to deem the applicants as having been placed on probation from the date they completed six months' service in terms of Rule 24(3) and to confer on them the benefits, as applicable to the appointee from the select list prepared under Rule 15(4) after they completed the probation period. The applicants shall also be entitled to consideration for higher posts, if they are eligible under the Rules. For that purpose, if review DPC is to be held in respect

of the applicants, the same shall be convened and in case they are found fit they will be deemed to be promoted from the date the officer junior to the applicants was promoted with consequential benefits by way of refixation of pay and payment of differential in pay and allowances, as per entitlement, as above and as actually drawn.

The above orders shall be implemented as early as possible but preferably within 16 weeks from the date of communication of this order. No costs.

J. P. Sharma

(J.P. SHARMA)

MEMBER(J)

I. K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

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MARCH 31, 1992.

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- *1. K. Shiva Reddy v. State of A.P. 1988 (7) ATC SC 445
 - *2. Markandey Singh v. M.L. Bhanot 1987 (7) ATC SC 953
 - *3. R. Prabha Devi v. Govt. of India 1988 (7) ATC SC 63
 - *4. U.O.I. v. Hiraya Lal Dev. 1988 (1) ATLT SC 641
 - *5. Mirza Ratimin Beg. v. U.O.I. 1989 (1) ATR (Hyd) 62
 - *6. Roop Chand Adlakha v. D.D.A. 1989 SC 307
 - *7. P.D. Aggarwal v. State of UP 1987 (4) ATC SC 272