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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 42
T.A. No.

1988.

DATE OF DECISION 14.7.88

Shri U.K.Katna, IPS & Others. Petitioners.

In person. Advocate for the Petitioner(s)

Versus

Union of India & Others. Respondent

Shri N.S.Mehta, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judicial).

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*

S.P. Mukerji
(S.P. Mukerji)
Administrative Member

P.K. Kartha
(P.K. Kartha)
Vice Chairman (Judl.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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Regd.No. O.A.42/1988

Date of decision: 14.7.88

Shri U.K.Katna, IPS & Others.

... Applicants.

Versus

Union of India & Ors.

... Respondents.

For applicants

... In person.

For respondents.

... Shri N.S.Mehta,
Advocate.

CORAM: Hon'ble Mr. P.K. Kartha, Vice Chairman(Judl.)
Hon'ble Mr. S.P.Mukerji, Administrative Member.

JUDGEMENT

Judgement of the Bench delivered by
Shri P.K. Kartha, Vice Chairman(Judl.)

The four applicants in this application filed under Section 19 of the Administrative Tribunals Act, 1985 belong to the Indian Police Service of the U.T. Cadre and at the time of filing the application they were posted at New Delhi as Deputy Commissioners of Police. They have sought two reliefs, namely, (1) the respondents should be directed to give them Selection Grade from 1.1.87 and (2) the retrospective operation of the Indian Police Service (Pay) 3rd Amendment Rules, 1987 so far as it relates to them should be quashed. The Union of India through the Ministry of Home Affairs, and the Ministry of Personnel and Training, Administrative Reforms and Public Grievances and Pensions have been made the respondents.

2. The first three applicants are direct recruits of the IPS of 1974 batch. Applicant No.4 is also an IPS Officer whose year of allotment has been fixed as 1974.

3. The contention of the applicants is that they have been denied selection grade which has been given to similarly situated officers of 1974 batch in several other

States. The respondents have denied this in the counter-affidavit filed by them and have stated that the applicants were not appointed to selection grade prior to 13.3.1987. It may be mentioned that the significance of this date is that the IPS (Pay) 3rd Amendment Rules, 1987 were notified on that date.

4. The position obtaining prior to the amendment of the rules and after the amendment may be mentioned.

5. The pay and emoluments of IPS officers are governed by the IPS (Pay) Rules, 1954. According to part B of Schedule III of the said Rules, prior to the amendment on 13.3.87, the number of posts in the selection grade in state cadre shall be equal to 25 per cent of the total number of senior posts in the State. The officers belonging to the IPS of all the cadres were eligible for being considered for grant of selection grade on 1st of January of the 13^{or 14} years^{or} of their service. However, only 25 per cent of officers holding senior posts in the cadre were entitled to get selection grade. The eligibility for selection grade is to be decided and selection grade is to be given before 1st of January every year.

6. The IPS (Pay) Rules 1954 were amended by the I.P.S. (Pay) 3rd Amendment Rules, 1987 vide Notification dated 13th March, 1987 retrospectively with effect from 1.1.1986. The amendment was made to give effect to the recommendations of the Fourth Pay Commission retrospectively with effect from 1.1.1986. The explanatory memorandum accompanying the amendment is as follows:-

Q. "The Central Government has decided to implement the decision taken on the recommendations made by the Fourth Central Pay Commission relating to revision of scales of pay in respect of the All India Service and the Central Civil Services Group 'A' with effect from the 1st January, 1986.

The Indian Police Service(Pay) Rules, 1954, are being amended accordingly with effect from the 1st January, 1986.

It is certified that no member of the Indian Police Service is likely to be adversely affected by this notification being given retrospective effect."

7. By the aforesaid amendment it was provided in ^{Part} ~~Part~~ 8 of Schedule III of the aforesaid rules that the number of posts in the selection grade in the State cadre shall be equal to 20 per cent of the total number of senior posts in a State reduced by the number of posts carrying pay above the senior time-scale in ^{the} ~~a~~ State subject to a minimum of 15 per cent of the senior posts in the State. The amendment also provided that the number of posts shall be increased to the extent of appointments made to that grade in the said cadre during the period from 1.1.86 to 13.3.1987 and the said number shall be diminished by one whenever an officer in that grade is promoted to higher grade until the said number is equal to the numbers ^{as} ~~are~~ determined in the main paragraph of this Sub-rule.

7-A. Appointments to selection grade of the IPS is governed by Sub-Rule 2(A) of Rule 3 of the IPS (Pay) Rules 1954, which provides as follows:-

"Appointment to the Selection Grade and to posts carrying pay above the time-scale of pay in the Indian Police Service shall be made by Selection on merit with ~~xx~~ due regard to seniority.

Provided that no member of the service shall be eligible for appointment to the Selection Grade unless he has entered the fourteenth year of service calculated from the year of allotment assigned to him under Rule 3 of the Indian Police Service (Seniority) Rules, 1954 or under Regulation 3 of the IPS (Seniority) of Special Recruits Regulations, 1960, as the case may be."

8. The manner in which the date of entry into the fourteenth year of service of an officer in terms of Sub-Rule (2A) Rule 3 of the IPS Pay Rules should be arrived at was laid down in the Department of Personnel & Training letter dated 7th January, 1985 which reads as follows:-

by "I am directed to say that the proviso to sub-rule (2A) of rule 3 of the Indian Administrative Service (Pay) Rules, 1954, inserted by this Department's notification No.27/7/74-AIS(II)-B, dated the 15th November, 1974, provides that no member of the

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Service shall be eligible for appointment to the Selection Grade unless he has entered the 14th year of service calculated from the year of allotment assigned to him (emphasis supplied). In the context of this proviso, a doubt has been raised as to how the date of entry into the 14th year of service of an officer should be arrived at.

2. An Officer enters the 14th year of service on completing 13 years of service calculated from the year of allotment assigned to him. To illustrate the point, an officer, whose year of allotment is 1960, enters the 14th year of service, in the year 1973. This officer will, therefore, be eligible for appointment to the selection grade of the Indian Administrative Service at any time in the year 1973.

3. The clarification contained in the preceding paragraph applies to the Indian Police Service also."

9. The instructions contained in the aforesaid letter were superseded by the subsequent letter issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training on 31st March, 1987. The following paragraphs of the subsequent letter which are relevant in the present context are the following: -

"2. A question has been raised with regard to the method of computation of years of service under these rules. It has been noted that the probationary training of direct recruits commences in the month of August and therefore, they will be completing 4 years, 9 years or 13 years of service, as the case may be, in the month of August. However, some of the officers might join later, creating a situation where the seniors become eligible for promotion later than their juniors in service. In order to remove such anomalies, it has been decided that the 1st day of July of the relevant year shall be reckoned for the purpose of computing the requisite number of years of service under these Rules.

3. The position is clarified as under :

- (a)
(b)

(c) Appointment to the Selection Grade

An officer shall be eligible for appointment to the Selection Grade at any time after 1st July of the year in which he completes 13 years of service subject to the provisions of the IAS (Pay) Rules, 1954 and subject to the availability of a vacancy in the Selection Grade. For example, an officer whose year of allotment is 1974 shall be eligible for appointment to the Selection Grade on or after 1st July, 1987.

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4. With regard to the officers appointed to the Service by promotion/selection, the date of computing their eligibility to the Junior Administrative Grade and the Selection Grade, on completion of 9 years and 13 years of service respectively, shall be the first day of the month following the month in which the officer has completed the prescribed number of years of service.

5. The instructions contained in this Department's letter No.20019/1/75-AIS(II) dated 17.1.1975 may be deemed to have been superseded to the extent indicated above.

6. These instructions will not adversely affect those officers who have been promoted to the Senior Scale or Selection Grade prior to 13th March, 1987, the date on which the Pay Rules have been amended.

7. These instructions shall apply mutatis mutandis to members of India Police Service and Indian Forest Service."

10. It will be noticed from the above that the letter dated 31st March, 1987 conveyed the decision of the Government that the 1st day of July of the relevant year shall be reckoned for the purpose of computing the requisite number of years of service under the IPS(Pay) Rules, 1954.

11. The respective contentions of both the parties may be summed up as follows:

- (i) The basic contention of the applicant is that on 1.1.1987, there existed four vacancies in the cadre of Selection Grade Officers of the service and they were ~~xxxxx~~ entitled to get the same. All the administrative formalities for the grant of selection grade from 1.1.1987 to the officers ought to have been finalised before this date so that they could get the selection grade from 1.1.1987. If a decision is taken to grant selection grade on a date later than 1.1.1987, the officers are given the benefits of arrears of salary etc. from 1st January of the year in which the selection grade is granted to them. The applicants have stated that the Departmental

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(Screening Committee) *Q*
 Promotion Committee met in the month of February and considered the case of applicants 1 to 3 for the grant of selection grade and in the middle of February it also recommended their cases for the grant of selection grade. The case of applicant No.4 was not put up before the D.P.C. by the department because of certain delay in fixing his seniority and he was also entitled to get the selection grade from 1st January, 1987. After the D.P.C. has made its recommendations, the matter remained pending in the concerned Ministry and no decision was taken because of the administrative latches on the part of the Government.

Q As against the above, the respondents have contended that the rules did not provide for appointment to selection grade from a date prior to the date on which the applicants entered 14th year of service. However, in view of the instructions contained in the letter dated 17.1.1975, mentioned above, they could be considered for appointment to selection grade on 1st of January, 1987. Since the appointment to selection grade is required to be made by selection on merit with due regard to seniority, it was necessary to decide their merit with reference to their up-to-date A.C.Rs. dossiers. Such A.C.Rs. became available only in February, 1987 and, therefore, meeting of the Screening Committee could not be convened before that date. The Screening Committee (Departmental Promotion Committee) decides only the fitness and inter se merit of the officers and its recommendations do not relate to appointment from a particular date. The appointment depends upon eligibility of the officers and availability of the vacancy. The recommendations of the Screening Committee are only recommendatory in nature and they have to be formally accepted by the appointing authority.

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After complete records became available in February, 1987 the Screening Committee met on 12.2.1987 to consider empanelment of IPS officers of 1974 batch for appointment to Selection Grade of the services. Its recommendations were submitted to the Minister, (President being the Appointing Authority) on 19.2.87 for acceptance and for appointment of officers to the selection grade. But the Appointing Authority observed that the officers had not completed 13 years service and asked as to how the officers could be granted Selection Grade in 13 years. Only after the Department of Personnel and Training letter dated 31st March, 1987 had rationalised the method of computation of year of service in the IPS (Pay) Rules, 1954 for appointment to various grades of service, the Appointing Authority approved the inter-se merit of the officers on 18.6.1987 and their appointment to Selection Grade in the vacancies available on the date of eligibility or those becoming available after the said date. As per the rationalised method, 1st July of the relevant year is to be computed for the purpose of eligibility for computation of length of service for appointment to different grades. Since no vacancy was available in Selection Grade on the said date the applicants could not be appointed to the Selection Grade on the said date. The applicants could not be appointed to the Selection Grade even with effect from 1.7.1987.

OK (ii) In the U.T. Cadre of the I.P.S. there were 58 senior posts on 1.1.1987 of which 25% works out to 14 who would be entitled to get the Selection Grade. 10 officers were already in the Selection Grade and the applicants were just below them in the seniority list and were thus legally entitled to get the

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Selection Grade from 1.1.1987.

As against the above, the respondents have contended that as per the amendment of the Rules with effect from 1.1.1986, the number of Selection Grade posts in U.T. cadre was reduced ^{from 14} to 9 with effect from 1.1.86. The amended rules provide for increase in the number of posts in selection grade to the extent of appointment made to that grade in a cadre during the period from 1.1.86 to 13.3.87. The amended rules further provide that the increased number shall be diminished by one whenever an officer in the Selection Grade is promoted to the higher grade until the said number is equal to the number determined in accordance with the amended rules. The number of posts in the Selection Grade, though reduced as indicated above, could be increased to the extent of the appointments made to Selection Grade from 1.1.1986 to 13.3.87 and that number shall be diminished by one whenever an officer in the selection grade is promoted to the higher scale until such number is equal to the number determined according to the amended rules. It is not the case of the applicant that they had been promoted between 1.1.86 and 13.3.87. In so far as no appointments have been made between 1.1.86 and 13.3.1987, the strength of selection grade posts remained at 9 and there was no vacancy in the Selection Grade to which the applicants could be appointed. Since nine officers of 1973 or earlier batches were already in selection grade and no officer of 1974 batch had been appointed to Selection Grade till 13.3.87 there was no case for increasing the number of Selection Grade posts. ² ~~in terms of the aforesaid selection grade post.~~

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- (iii) The applicants were entitled to get Selection Grade from 1.1.87 and the same could not be granted to them before 13.3.1987 because of delay and latches on the part of the respondents.

As against the above, the respondents have contended that it is not correct that the applicants were entitled to get the Selection Grade from 1.1.1987. In accordance with the order of 17.1.75, they were eligible for being considered for appointment to Selection Grade with effect from 1.1.1987. The Selection had not been finalised till after the issue of the orders of 31.3.87 which superseded the orders of 17.1.75 and provided for the eligibility from 1.7.87 in respect of the applicants.

- (iv) Officers belonging to 1974 batch of some of the cadres like Gujarat, the Jammu & Kashmir, Himachal Pradesh, Assam, Meghalaya, Tamil Nadu and Kerala state cadres were all given selection grade on the basis of the unamended rules which laid down that 25 per cent of the vacancies in the senior posts shall be filled up in the Selection grade. The decision to promote such officers of Selection Grade was taken before 13.3.87, but no such decision was taken in the case of the applicants.

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With regard to the above, the respondents have contended that the applicant's claim for appointment to Selection Grade is with reference to the vacancies in the Selection Grade of the U.T. cadre to which they belong and not vacancies in the other cadres. None of the office of 1974 batch of Tamil Nadu and Gujarat cadre was appointed

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to selection grade between the period from 1.1.87 to 30.6.87. The position in regard to the Government of Jammu & Kashmir is awaited. The Government of Assam, Kerala and Himachal Pradesh granted Selection Grade to some IPS officers of 1974 batch with effect from 1.1.87. In respect of such officers, the provision is already available to increase the number of posts in the Selection Grade to the extent of appointments made to that grade during the period from 1.1.86 to 13.3.1987. Since the applicants were not appointed to Selection Grade till 13.3.1987, there was no case for increasing the number of Selection Grade posts for adjusting them in the Selection Grade.

- (v) The explanatory note appended to the amended rules states that none of the officer belonging to the IPS will be adversely affected whereas the applicants have been adversely affected.

With regard to the above, the respondents have contended that the amendment was a comprehensive one carrying ^{out} the revision of the pay scales of the IPS and other related matters. These pay scales were higher than the pay scales of the service existing before 1.1.1986. Even on the specific question of Selection Grade when it was decided to revise the strength of Selection Grade, a proviso was added to ensure that the officers promoted to the Selection Grade between 1.1.86 and 13.3.87, were not adversely affected by the revision of strength of Selection Grade. The applicants had not been appointed to the Selection Grade during this period and were not, therefore, affected by the strength

of the Selection Grade being brought down from 14 to 9. The applicants had also have no legal right to promotion as such but have only the right to be considered. The promotions are made only when the Appointing Authority decides to fill up the posts.

12. The applicants have contended that the letter dated 31st March, 1987 from the Department of Personnel and Training which laid down that the 1st day of July of the relevant year was to be reckoned for the purpose of computing the requisite number of years of service was not in existence on 19.2.1987 when the Screening Committee recommended their names for appointment to the Selection Grade. The amended rules also had not come into force on 19.2.1987. They have further contended that there is no rationale for fixing the date as 1st of July and changing the original date of 1st of January and that this is arbitrary and bad in law.

13. We have carefully gone through the records of the case and heard the applicants and the learned counsel for the respondents at length. At the time of the hearing, we were told that after the filing of the application, two of the applicants have already been appointed to the Selection Grade. Hopefully, the other two may also get their appointment in their turn. They, however, stated that when selection grade is granted to a person, he is entitled to put on pips of a higher rank, e.g., a State emblem and two stars on the shoulder, whereas a person who does not belong to the selection grade, puts on only State emblem and one star on his shoulders. The grant of selection grade also confers pecuniary benefits on the person concerned. There will be substantial financial loss if the higher pay-scale of selection grade is denied to the applicants for the period between January and July, 1987.

14. The applicants have not made any allegations of mala fides in their pleadings. The respondents also have not stated in their pleadings that non-appointment of the applicants to Selection Grade was due to their unsuitability.

15. It is clear that no appointments in the Selection Grade of the U.T. Cadre of the Indian Police Service ^{to which the applicants belong} were made during the period from 1.1.1987 to 1.7.1987. The non-appointment of the applicants was due to the reduction of the number of Selection Grade posts by the retrospective amendment of the I.P.S. (Pay) Rules, 1954, w.e.f. 1.1.1986 and the change in the manner of computation for eligibility for appointment in accordance with the criteria prescribed by the letter of the Department of Personnel & Training dated 31.3.1987.

16. In the above factual matrix, we may consider the following issues which arise for consideration:-

- (i) Whether the applicants had any vested ^{be} right to appointed to the Selection Grade and whether they have been deprived of the same by the retrospective amendment of the Rules.
- (ii) Whether the eligibility of the applicants to appointment to Selection Grade is to be considered under the unamended rules or the amended rules.
- (iii) Were the applicants adversely affected by the retrospective amendment of the rules?
- (iv) Was the choice of the date of 1st July adopted ⁱⁿ in the letter of the Deptt. of Personnel & Training dated 31st March, 1987 for computation of eligibility for appointment to the Selection Grade, arbitrary?

(v) Was there any delay or laches on the part of the Government in processing the cases of the applicants for appointment to the Selection Grade?

(vi) Were the applicants subjected to discriminatory treatment?

Validity of retrospective amendment of the Rules

17. The first three questions may be considered together. The applicants have relied upon the decisions of the Supreme Court in S. Govindraju Vs. Karnataka S.R.T.C. & Another, 1986(3) S.C.C. 273 and in T.R. Kapur Vs. State of Haryana, 1986(4) S.L.R. 155.

18. Before considering the ratio of the aforesaid decisions, it is necessary to refer to the concept of Selection Grade and the concept of promotion in general, as judicially noticed.

19. In Lalit Mohan Deb & Others Vs. Union of India & Ors., 1973(3) S.C.C. 862 at 866, a Constitution Bench of the Supreme Court, referring to the Report of the Second Central Pay Commission, has observed as follows:-

"It is well recognised that a promotion post is a higher post with a higher pay. A selection grade has higher pay but in the same post. A selection grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should at least be placed in the selection grade to prevent stagnation on the maximum of the scale. Selection grades are, therefore, created in the interest of greater efficiency."

20. Thus, the concept of Selection Grade is that it is intended to prevent stagnation on the maximum of the scale and to provide an incentive for greater efficiency.

21. There is a plethora of decisions to the effect that promotion to a selection post is not a matter of right and that mere chance^{or} of promotion would not affect the condition of service. A brief reference may be made to the relevant judicial pronouncements.

22. In State of Orissa Vs. Durga Charan Das, A.I.R. 1966 S.C. 1547 at 1549, a Constitution Bench of the Supreme Court observed as follows:-

"It is well known that promotion to a selection post is not a matter of right which can be claimed merely by seniority. Normally, in considering the question of a public servant's claim for promotion to a selection post, his seniority and his merits have to be considered."

22. In Ramchandra Shankar Deodhar Vs. State of Maharashtra 1974(1) S.C.C. 317 at 329, a Constitution Bench of the Supreme Court, referring to its earlier decision in State of Mysore Vs. G.B. Purohit (1967 SLR 753), observed as follows:-

"It is now well settled by the decision of the Court in State of Mysore Vs. G.B. Purohit that though a right to be considered for promotion is a condition of service, mere chances of promotion are not. A rule which merely affects chances of promotion cannot be regarded as varying a condition of service. In Purohit's case the districtwise seniority of sanitary inspectors was changed to Statewise seniority, and as a result of this change the respondents went down in seniority and became very junior. This, it was urged, affected their chances of promotion which were protected under the proviso to Section 115, sub-section (7). This contention was negatived and Wanchoo, J., (as he then was), speaking on behalf of this Court observed: "It is said on behalf of the respondents that as their chances of promotion have been affected their conditions of service have been changed to their disadvantage. We see no force in this argument because chances of promotion are not conditions of service."

23. Similarly, in Mohammad Shujad Ali & Others Vs. Union of India, 1975 (3) S.C.C., 176 at 96, another Constitution Bench of the Supreme Court followed its

earlier decision in Deodhar's case.

24. In Dr. N.C. Singhal Vs. Union of India & Others, 1980(3) S.C.C. 29 at 41, the Supreme Court observed that "remote chances of promotion could hardly be said to be conditions^{or} of service, which if impaired, would be violative of Article 16."

25. In State of Maharashtra Vs. C.A. Kulkarni, 1981(4) S.C.C. 130 at 141, the Supreme Court has observed as follows:-

"Mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, but mere chances of promotion are not."

26. We may now refer to the decision of the Supreme Court in Govindraju's case. That case related to the termination of service of the appellant who was selected for appointment as Conductor in the Karnataka State Road Transport Corporation. His name was placed on the Select List prepared by the Selection Committee duly constituted for the purpose under the relevant Regulations. He was not given a regular appointment but was appointed to work as a Conductor in a temporary capacity. He continued to work for a period of more 240 days. While so working, his services were terminated by an order dated May 2-4, 1985 on the ground of his being found unsuitable for the post. The termination order further directed that the appellant would forfeit his chance for appointment in terms of selection and his name shall stand deleted from the Select List. This was challenged by the Appellant on the ground that the order of termination was void and illegal for non-compliance of Section 25(F) of the Industrial Disputes Act, 1947. The Supreme Court took note of the

fact that the Appellant had been selected by the Selection Committee duly constituted for the purpose and that he was allowed to be in continuous service for a period of more than one year. It was in this context that the Supreme Court observed that the inclusion of his name in the Select List confers on him the right to be considered for appointment as and when vacancy arises. The following observations of the Supreme Court are pertinent:-

"Once a candidate is selected and his name is included in the select list for appointment in accordance with the Regulations he gets a right to be considered for appointment as and when vacancy arises. On the removal of his name from the select list serious consequences entail as he forfeits his right to employment in future. In such a situation even though the Regulations do not stipulate for affording any opportunity to the employee, the principles of natural justice would be attracted and the employee would be entitled to an opportunity of explanation, though no elaborate enquiry would be necessary." (at page 276) Q2

27. The decision in Govindraju's case, to our mind, will not be of any assistance to the applicants in the present case. Though the Screening Committee had recommended their case for appointment to the Selection Grade, no Select List had been prepared with the approval of the Government. The Select List would be operative only after the recommendations of the Screening Committee had been accepted by the Government, i.e., the appointing authority.

28. It is well settled that a statute or statutory rule can be amended with retrospective operation. The I.P.S. (Pay) Rules, 1954, which were amended in the present case, had been made in exercise of the powers conferred by

sub-section (1) of Section 3 of the All India Services Act, 1951. Section 3 (1A) provides that "the power to make rules conferred by this Section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the rules or any of them, but no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable." (emphasis supplied)

29. There is a line of decisions of the Supreme Court on the validity of retrospective amendments.

30. In Wg. Commander J. Kumar Vs. Union of India, 1982(2) S.C.C. 116 at 126, the Supreme Court observed that "it is settled law that the service conditions pertaining to seniority are liable to alteration by subsequent changes that may be introduced in the rules and except to the extent of protecting promotions that have already been earned under the previous rules, the revised rules will operate to govern the seniority and future promotion prospects of all the persons in the concerned Service". In that case, the Appellant had been inducted into the cadre long before the promulgation of the new rules. Consequently, the Supreme Court held that the new rules cannot be made applicable to him.

31. In Y.V. Ranganath Vs. J. Sreenivasa Rao, 1983(3) S.C.C. 284 at 289, the Supreme Court observed that "the vacancies which occurred prior to the amended rules, would be governed by the old rules and not by the amended rules." In that case, the Supreme Court noted that under the old rules, a panel had to be prepared every year in

September and promotions should have been made out of the panel. The rules were amended before that which had the effect of depriving some employees of their right of being considered for promotion.

32. A Constitution Bench of the Supreme Court in State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni, 1983(2) S.C.C. 33 at 61, had to consider the constitutional validity of amendment to the Gujarat Panchayat Act, 1961 made with retrospective effect which sought to extinguish the status of Secretaries, officers and servants of the Gram and Nagar Panchayats who became members of a Service under the State on being allocated to the Panchayat Service. It was observed that their status could not be extinguished by a retrospective amendment of the Act. The following observations of the court are pertinent:-

"Now, in 1978 before the Amending Act was passed, thanks to the provisions of the principal Act of 1961, the ex-municipal employees who had been allocated to the panchayat service as Secretaries, Officers and servants of Gram and Nagar Panchayats, had achieved the status of government servants. Their status as government servants could not be extinguished, so long as the posts were not abolished and their services were not terminated in accordance with the provisions of Article 311 of the Constitution. Nor was it permissible to single ~~xxx~~ them out for differential treatment. That would offend Article 14 of the Constitution."

33. In ex-Capt. K.C. Arora & Another Vs. State of Haryana and Others, 1984(3) S.C.C. 281, it was observed that the Government cannot take away the accrued rights of the petitioners by making amendment of the rules with retrospective effect. In that case, under the old rules, the petitioners were to be given seniority by counting the period of Military service and the amendment of the rules with retrospective effect sought to deprive them of the same.

34. In T.R. Kapur's case, the Supreme Court referred to the earlier decisions on the subject and observed that the rules defining qualifications and suitability for promotion, are conditions of service and they can be changed retrospectively. This rule is, however, subject to a well-recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights. In view of this, the Supreme Court observed that "unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotions cannot be recalled." (at page 167) *Q* —

35. Reference may also be made to the recent decision of the Supreme Court in P.D. Aggarwal & Others Vs. State of U.P. & Others, 1987(3) S.C.C. 622, where it was observed that though the Government has powers under proviso to Article 309 to make rules and amend them giving retrospective effect, if the rules purport to take away the vested rights and are arbitrary and not reasonable, then such retrospective amendments are subject to judicial scrutiny if they have infringed Articles 14 and 16 of the Constitution. In that case, the effect of the amendment of the rules was that Assistant Engineers who had become members of the Service under the old rules, would no longer be members of the Service and would be required to wait till their selection and appointment under the amended rules. According to the Supreme Court, such an amendment would be hit by the provisions of

Article 14 and 16 of the Constitution.

36. The aforementioned cases do not lend support to the contention of the applicants that their eligibility for appointment to the Selection Grade should be governed by the unamended rules. The reason is that they have not developed any vested rights in regard to such appointment, unlike the persons who were parties before the Supreme Court in the said decisions. The names of the applicants had not been included in a select list for appointment, as in Govindraju's case. They had not already earned promotion under the unamended rules, as in Wing Commander J. Kumar's case. Similarly the cases of Rangiah, Raman Lal Keshav Lal Soni, ex Captain K.C. Arora, T.R. Kapur and P.D. Aggarwal are clearly distinguishable on their own facts. It should also be borne in mind that in the present case, the impugned amendment of the rules were made in the context of the implementation of the recommendations of the Fourth Pay Commission which were beneficial to the Service as a whole in terms of higher scales of pay and other benefits. Therefore, the reduction in the strength of the Selection Grade brought about by the amended rules, cannot be said to be unjustified or unreasonable. The reduction of the posts in Selection Grade which reduced the chances of appointment of the applicants to Selection Grade, cannot, therefore, be called in question.

Choice of 1st July as the relevant date

37. The question whether the choice of date is reasonable or not would depend upon the facts and circumstances of each case. In the present case, in the letter of Department of Personnel and Administrative Reforms dated 17th January, 1975, it had been stated that an officer will be eligible for appointment to the Selection Grade at any time in the year 1973. The letter did not indicate as to why this criteria of eligibility was adopted. In the subsequent letter dated 31st March, 1987, reference has been made to certain anomalies which had been brought to notice in regard to the method of computation of years of service. It was noted that the probationary training of direct recruits commences in the month of August and, therefore, the

will be completing four years, 9 years or 13 years of service, as the case may be, in the month of August. However, some of the officers might join later, creating a situation where the seniors become eligible for promotion later than their juniors in service. In order to remove such anomalies, it was decided that the first day of July of the relevant year shall be reckoned for the purpose of computing the requisite number of years of service for eligibility for appointments. The letter dealt with not only appointments to the Selection Grade but also appointments to senior time-scale and to the junior administrative grades. The change of date from 1st January of the year to 1st July of the year, was thus, applied uniformly for all appointments to the senior time-scale, junior administrative grade and Selection Grade. This would indicate that the persons who were to be appointed to the Selection Grade were not singled out for discriminatory treatment.

36. The Supreme Court had occasion to consider whether the fixation of a particular date is arbitrary or unreasonable.

37. In D.R. Nim vs. Union of India, A.I.R. 1967 S.C. 1301, the appellant questioned his seniority which was to be determined in accordance with the provisions contained in Indian Police Service (Regulation of Seniority) Rules, 1954. These Rules required first to ascertain the year of allotment of the person concerned for determination of his seniority. In doing so, the Government of India directed that officers promoted to the Indian Police Service should be allowed the benefit of their continuous

officiation with effect only from May 19, 1951. The appellant challenged the order because the period of officiation from June, 1947 to May 1951 was excluded for the purpose of fixation of his seniority. His grievance was that there was no rationale behind selecting this date. Upholding this view, the Supreme Court observed as follows:-

"It would be noticed that the date, May 19, 1951, to begin with, had nothing to do with the finalisation of the Gradation List of the Indian Police Services because it was a date which had reference to the finalisation of the Gradation List for the I.A.S. Further this date does not seem to have much relevance to the question of avoiding the anomalous position mentioned in para.9 of the affidavit, reproduced above. This date was apparently chosen for the I.A.S. because on this date the Gradation List for all the earlier persons recruited to the Service had been finalised and issued in a somewhat stable stage. But why should this date be applied to the Indian Police Service has not been adequately explained. Mr. B.R.I. Iyengar, the learned counsel for the appellant strongly urges that selection of May 19, 1951, as a crucial date for classifying people is arbitrary and irrational. We agree with him in this respect. It further appears from the affidavit of Mr. D.K. Guha, Deputy Secretary to the Government of India, Ministry of Home Affairs, dated December 9, 1966, that "the Government of India have recently decided in consultation with the Ministry of Law that the Ministry of Home Affairs letter No.2/32/51-AIS dated the 25th August, 1955, will not be applicable to those SCS/SPS officers, who were appointed to IAS/IPS prior to the promulgation of IAS/IPS (Regulation of Seniority) Rules, 1954, and the date of the issue of the above letter in their earlier continuous officiation was approved by the Ministry of Home Affairs and Union Public Service Commission." It further appears that "in the case of Shri C.S. Prasad also, an IPS officer of Bihar, a decision has been taken to give the benefit of full continuous officiation in ~~xxxx~~ ~~xxxx~~ officiation in senior posts and to revise his year of allotment accordingly." But, it is stated that "as Shri Nim was appointed to IPS on the 22nd October 1955, i.e., after the promulgation of IPS (Regulation of Seniority) Rules, 1954, and after the issue of letter dated 25th August, 1955, his case does not fall even under this category." The above statement of the case of the Government further shows that the date, May 19, 1951, was an artificial and arbitrary date

having nothing to do with the application of the first and the second proviso to R.3(3). It appears to us that under the second proviso to R.3(3) the period of officiation of a particular officer has to be considered and approved or disapproved by the Central Government in consultation with the Commission considering all the relevant facts. The Central Government cannot pick out a date from a hat - and that is what it seems to have done in this case - and say that a period prior to that date would not be deemed to be approved by the Central Government within the second proviso." (at page 1304-1305) 02

38. In D.S. Nakara Vs. Union of India, 1983(1) S.C.C. 305, the Supreme Court had to consider the relevance of a date fixed by the Government in the context of the liberalised pension scheme. On May 25, 1979, the Central Government issued an Office Memorandum whereby the formula for computation of pension was liberalised but made it applicable to Government servants who were in service on March 31, 1979 and retired from service on or after that specified date. By another Memorandum dated Sept. 28, 1979, this was extended to the Armed Forces personnel with a stipulation that the new rules of pension would be effective from April 1, 1979 and may be applicable to all service officers who become/became non-effective on or after that date. Following the decision in Nim's case, the Supreme Court held that there was no rationale in the fixing of the above-mentioned dates by the Central Government.

02 39. In H.V. Pardasani & Others Vs. Union of India & Ors., 1985(2) S.C.C. 468 at 475 and 476, the Supreme Court considered the question of the validity of the rule providing for fixation of seniority between the direct recruits and promotees in the grade of Section Officer on the basis of the quota reserved for direct recruits and held that prescription of quota had become necessary to work out a scheme constituting a service manned by both the direct

recruits as well as the promotees. Note 2, appearing under Rule 12(5) of the Central Secretariat Service Rules, 1962, dealt with the definition of approved service as follows:-

"In case of persons included in the Select List for the Section Officers' Grade 'approved service' for the purpose of this rule shall count from July 1 of the year in which the names of the officers are included in the Select List, in the case of direct recruits to the Section Officers' Grade, such service shall count from July 1 of the year following the year of the competitive examination on the results of which they have been recruited provided that where there is a delay of more than three months in the appointment of any candidate, such delay is not due to any fault on his part."

40. It was contended that the fixation of July 1 of the year ^{for} counting approved service was arbitrary. The Supreme Court observed that this ^{initially} appeared to be somewhat arbitrary but after hearing the counsel the court agreed with the submission advanced on behalf of the Union of India that in the process of direct recruitment, there was considerable delay although the competitive examination was held in one year, by the time the selected officer comes to join the post, more than a year is lost. Therefore, a rational view has been taken of the situation and for the computation of length of service the particular position had been made. The Supreme Court observed that in their view, this was really not open to challenge an arbitrary provision.

41. In the light of the foregoing discussion, it cannot be said that in the instant case the choice of 1st July of the relevant year for the purpose of computing the eligibility for appointment to the senior time-scale, the junior administrative grade, and the Selection Grade of the Indian

Police Service and the Indian Administrative Service, ^{or} was arbitrary or unreasonable. The same criterion ^{also} applies to all members of the Service without any discrimination. The applicants have not shown as to how this date is arbitrary. To our mind, if there is a nexus between the date of 1st July and the object sought to be achieved, it cannot be construed to be arbitrary or unreasonable. The Respondents have stated in their letter dated 31.3.1987 that the choice of this date was made keeping in mind the timing of the probationary training of the direct recruits. The applicants have neither assailed nor disputed the relevance of the reasons given by the respondents. In the circumstances, it cannot be concluded that the choice of 1st July as the relevant date for computing the years of service for appointment to the Selection Grade is arbitrary or unreasonable.

Question of delay and laches


42. As has been pointed out above, the number of posts in the Selection Grade had been reduced retrospectively from 1.1.1986. In view of this, the delay and laches on the part of the Government in processing the cases of the applicants for appointment to the Selection Grade, as alleged, is hardly of any relevance. Even if the process had been completed and the applicants had been found suitable for appointment, there were no vacancies in the Selection Grade as on 1.1.1987. In the circumstances, the allegation regarding delay and laches on the part of the respondents is devoid of any substance.

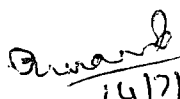
The question of discrimination

43. Admittedly, officers belonging to the 1975 batch of some of the cadres like in Gujarat, Jammu & Kashmir, Himachal Pradesh, Assam, Meghalaya, Tamil Nadu, and

Kerala, were given selection grade on the basis of the unamended rules. Provision has already been made under the amended rules to increase the number of posts in the selection grade to the extent of appointments made to that grade during the period from 1.1.1986 to 13.3.1987. The applicants were not appointed to selection grade till 13.3.1987. Therefore, the question of discrimination, as alleged by the applicants, does not arise. In the management of any all-India Service on State-wise cadre basis, synchronisation and identical prospects of promotion cannot be possible and such differentiation is inherent in the nature of such a Service operated on a State-wise basis.

44. In the light of the above discussion, we are of the opinion that the applicants are not entitled to the reliefs prayed for in the present application. The application is dismissed, with no order as to costs.


(4-7-88)
(S.P. Mukerji)
Administrative Member


(14/7/88)
(P.K. Kartha)
Vice-Chairman (Judl.)