

Reserved on 05.01.2021

Pronounced on 16th February, 2021

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

Present:

**Hon'ble Mrs. Justice Vijay Lakshmi, Member-J
Hon'ble Mr. Devendra Chaudhry, Member-A**

Original Application No. 330/000403/2018
(U/S 19, Administrative Tribunal Act, 1985)

1. Virendra Kumar Mishra aged about 56 years S/o Nand Kumar Mishra Presently working as Commandant 6th Battalion, PAC, Meerut. R/o D-1-17, Sector D, LDA Colony Kanpur Road, Lucknow.
2. Vinod Kumar Mishra aged about 54 years S/o Ram Nayak Mishra, Presently working as commandant 34 Battalion, PAC, Varanasi. R/o Vill. Diyawan Mahadev, P.S. Machhli Shahar Distt. Jaunpur.
3. Dayanand Mishra aged about 55 years S/o Late Ramkumar Mishra Presently working as Superintendent of Police Food Cell, Lucknow.
4. Nageshwar Singh, aged about 56 years S/o Shivram Singh, presently working as SP, Auraiya R/o 10, DM Compund, Caper Road Lalbagh, Lucknow.
5. Sripati Mishra, aged about 55 years S/o Ram Shiromani Mishra, presently working as Superintendent of Police (Headquarter) U.P. Vigilance, Lucknow. R/o 202A, Anant Vihar, Lohia Marg Civil Lines, Allahabad.
6. Jugul Kishore aged about 54 years S/o Late Shri Raghuvan Prasad Presently working as Superintendent of Police Bahraich, R/o-7E/5, Tashkand Road, Allahabad.

7. Ashok Kumar Tripathi, aged about 55 years S/o B.P. Tripathi, presently working as Sr. Superintendent of Police, Etawah, R/o Vill. Ramdaspur Police Station Koirauli, Sant Ravidas Nagar (Bhadoli).
8. Dr. Arvind Bhushan Pandey aged about 56 years S/o Umakant Pandey, presently working as Commandant, 25th Battalion PAC, Raebareli. R/o A-201, Civil Services Institute Towers Vipin Khand, Gomti Nagar, Lucknow.
9. Manoj Kumar Jha, aged about 57 years S/o Sri Kamlakant Jha, presently working as Supdt. of Police, Chitrakoot. R/o E-1876, Rajajipuram, Lucknow.
10. D.P.N. Pandey S/o S.N. Pandey aged about 56 years, Superintendent of Police, Economic Offences Wing, Lucknow R/o A-44, Vaidehi Nagar, Faizabad.

.....Applicants.

By Advocates – Shri S.K. Om/Shri Anil Kumar Singh.

V E R S U S

1. Union of India through Secretary, Deptt. Of Personnel & Training (DOPT) Govt. of India, New Delhi.
2. Secretary, Ministry of Home Affairs North Block, New Delhi.
3. State of U.P. through Principal Secretary (Home) Lucknow.
4. Director General of Police U.P., Lucknow.
5. Inspector General of Police (Karmik) DGP, HQ, Lucknow.
6. Baburam, Superintendent of Police Economic offences wing, PS Rail Bazar, Kanpur.

.....Respondents.

By Advocates :Shri Chakrapani Vatsyayan, learned counsel for the respondent Nos. 1 & 2/Shri Raghvendra Pratap Singh holding brief of Shri K.P. Singh, learned counsel for the respondent Nos. 3 to 5.

ORDER**Delivered By Hon'ble Mr. Devendra Chaudhry, A.M. :-**

Shri S.K. Om and Shri Anil Kumar Singh, learned counsel for the applicants, Shri Chakrapani Vatsyayan learned counsel for the respondent Nos. 1 and 2 and Shri Raghvendra Pratap Singh holding brief of Shri K.P. Singh, learned counsel for the respondent Nos. 3 to 5, all are present in Court.

2. The present original application has been filed against the order dated 11.01.2016 passed by respondent-2 (R-2) whereby the applicants' year of promotion / allotment of batch in the IPS cadre has been erroneously fixed as 2009 instead of 2007 and so they have been denied the benefit of weightage of services rendered by them in the Provincial Police Services (PPS). Despite several representations there has been no relief and hence the OA.

3. The following relief is accordingly sought:

- i. To issue directions quashing the order dated 11.1.2016 passed by R-2 insofar as it erroneously determines the year of allotment in the IPS cadre of the applicants'
- ii. To issue directions to the respondents to determine the seniority of the applicants in the IPS cadre including their batch wise seniority considering the actual services rendered by the

applicants in the PPS including the weightage accrued to the applicants and to thereby issue a fresh seniority list

- iii. To quash the Proviso of Clause contained in rule 3(3) (ii) of 1988 Rules

4. *Per* applicants, the facts of the case in brief are that the applicants were initially appointed on different dates in the PPS and belong to the batch of 1988 and 1989 as the case maybe. That they have accordingly joined on various dates as Dy. Superintendent of Police. That Shri Baburam - Respondent number- 6 (R-6) who belongs to 1987 batch had however had joined the PPS on 16.4.1995 for personal reasons although he had to join in the PPS in the year 1991 along with his other batchmates. That, on the other hand, the applicants belonging to the 1988 and 1989 batches having joined the PPS in April 1991 onwards, that is earlier to R-6. Over the passage of time a select panel was prepared for the year 2014 for promotion to the IPS cadre. In this panel, the name of the applicants as well as R-6 was considered and the applicants were allotted the year of seniority of 2009 along with R-6 being placed senior to the applicants as per the impugned seniority list (Annexure-1). That this fixation of seniority of applicants as 2009 is erroneous as per the rules regarding grant of weightage of past services rendered in the state in the PPS cadre. That this erroneous fixation has been done only to comply with the

Explanation contained in Rule 3(3) (ii) of the Indian Police Service (Regulation of seniority) Rules 1988 (Annexure-3, in short '1988 Rules') concerning fixing of the seniority of an officer who is senior in batch (in the present case R-6 of 1987 batch vis a vis the applicants of the 1988/1989 batches) even while overlooking the provisions concerning the fixing of weightage to be given for the past services rendered in terms of number of years in the PPS cadre in the case of the applicantsspecified as in Rule 3(3)(ii) of the 1988 Rules amended vide DOPT circular dated 18.04.2012 (Annexure-4).

5. That this error needs to be rectified and the respondents are free to fix any seniority of R-6 but without disturbing the seniority of 2007 which is accruable to the applicants given their 22-23 years of service and the consequential weightage which needs to be given for the same as per the extant rules. That since this correction has not been made inspite of granting of same relief in the matter of Kavindra Pratap Singh &Ors by this Tribunal in OA 463/2107 vide its judgement dated 31.03.2017. Hence it is prayed that the same relief may be allowed to the applicants in the same terms and conditions and the **R-6 can be given benefit of appropriate seniority year as per above rules including Rule 3 of theAll India Services (Conditions of Service-Residuary Matters) Rules 1960.** Since the prayed relief has not been given despite several representations; hence the OA.

6. *Per contra*, the respondents have filed counter in which while the basic facts regarding the recruitment/joining of the applicants in the concerned years in the PPS and their names finding place in the 2014 select Panel for promotion to IPS etc are admitted, it is submitted that, the representation dt 19.07.2016 of the applicant Virendra Kumar Mishra in the current OA has been disposed of by rejecting the same vide order dated 13.7.2018. That it is the decision not to consider the order of the Tribunal in 463 of 2016 as being *in rem* and is being treated as *in personam* with respect to the concerned applicants. Further that writ petition number 1309 of 2018 has been filed in the Hon High Court against the said judgement and order of this Tribunal dt. 31-3-2017 and the matter is still pending. That therefore the representation of applicant Virendra Kumar Mishra has accordingly been dismissed vide order dated 13.7.2018. That there is no reason to consider the matter of Baburam for the benefit under the AIS Rules 1960. Accordingly, since the matter is still pending in the Hon Allahabad High Court, no relief can be given to the applicants and hence the OA needs to be dismissed.

7. We have heard the arguments of the Ld. counsels of both the parties at length and examined the records/ documents filed with care. The applicants have also filed an Amendment application

No.769/2019 wherein the order dated 13.07.2018 has been challenged as the same could not have been included in the OA itself which was filed earlier to the said order. The applicants have also filed rejoinder affidavit reiterating similar facts and arguments as advanced in the OA for consideration of their matter.

8. The issue which falls for consideration before us is that as to what extent the relief sought by the applicant is identical to the relief granted in the OA 463/ 2016 and whether the applicants are accordingly entitled to the same relief given the fact that there is no stay of the Hon Allahabad High Court in the matter in the writ petition 1309 /2018 Union of India vs Kavindra Pratap Singh filed by the respondents in this OA.

9. In order to decide the above issue, it would be well that we reproduce the concerned order of this Tribunal dated 31.03.2017 and abstracts of the relevant circulars cited by the applicants/respondents as also analyse the selection of the applicants in the select panel of 2014 including the number of years of service of the applicants as also of R-6.

Order of this Tribunal in OA 463/2017 dt. 31.03.2017

29. *Accordingly, the O.A is allowed. Impugned order dated 07.08.2015 passed by the Respondent no.1 insofar as it relates to the applicants herein is quashed and set aside. The*

respondents are directed to re-determine the seniority of the applicants and fix their year of allotment as 2003 in place of 2005 as per their original weightage of 07 points.

Abstracts of The Indian Police Service (Regulation of Seniority)

Rules, 1988

3. Assignment of year of allotment

3(1) Every officer shall be assigned a year of allotment in accordance with the provisions hereinafter contained in these rules.

3(2) The year of allotment of an officer in Service at the commencement of these rules shall be the same as has been assigned to him or may be assigned to him by the Central Government in accordance with the rules, orders and instructions in force immediately before the commencement of these rules.

3(3) The year of allotment of an officer appointed to the service after the commencement of these rules shall be as follows:-

- (i) The year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held:*
- (ii) The year of allotment of a promote officer shall be determined with reference to the [year for which] the meeting of the Committee to make selection to prepare the Select List on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him in the State Police Service not below the rank of the Deputy Superintendent of Police or equivalent, upto the 31st day of December of the year immediately before the year for which the meeting of the Committee to make selection was held to*

prepare the select list on the basis of which he was appointed to the Service, in the following manner:-

- (a) *For the service rendered by him upto twenty one years, he shall be given a weightage of one year for every completed three years of service, subject to a minimum of four years:*
- (b) *He shall also be given a weightage of one year for every completed two years of service beyond the period of twenty one years, referred to in sub-clause (a), subject to a maximum of three years.*

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

Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to the service on the basis of an earlier select list.

Government of India, DOPT circular dated 18.04.2018

“...2. In the Indian Police Service (Regulation of Seniority) Rules, 1988, in rule 3, in sub-rule(3) for clause (ii).-

- (A) *The words “immediately before the year” shall be omitted;*
- (B) *For sub-clauses (a) and (b), the following clauses shall be substituted, namely:-*

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

(b) for the service rendered by him beyond 12 years, as referred to in sub-clause (a) and upto 21 years, he shall

be given a weightage of one year for every completed three years of service;

(c) for the service rendered by him beyond 21 years, as referred to in sub-clause (b), he shall be given a weightage of one year for every completed two years of service, subject to a maximum of three years".

No.14014/4/2011-AIS-I(R)... "

Abstracts of “ The All India Services (Conditions of Service-Residuary Matters) Rules, 1960

“...3. Power to relax rules and regulations in certain cases.-Where the Central Government is satisfied that the operation of-

(i) any rules made or deemed to have been made under the All India Services Act, 1951 (61 of 1951), or

(ii) any regulation made under any such rule, regulating the conditions of service of persons appointed to an All India Service causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that rule or regulations, as the case may be, to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.

4. Interpretation- *If any question arises as to the interpretation of these rules, or relating to the application or interpretation of rules, regulations or orders referred to in clauses (a) and (b) of rules 2, the Central Government shall decide the same....”*

Along with above, we may also abstract the year of recruitment and the date of joining of the applicants which is not disputed by the respondents and the same is as below:

Sl. No.	Name	Batch	Date of joining
1.	Virendra Kumar Mishra	1989	26.8.1992
2.	Vinod Kumar Mishra	“	26.8.1992
3.	Dayanand Mishra	1988	13.10.1992
4.	Nageshwar Singh	“	15.4.1991
5.	Dr. Shripati Mishra	1989	3.9.1992
6.	Jugul Kishor	“	1.9.1992
7.	Ashok Kumar Tripathi	“	13.10.1992
8.	Dr. Arvind Bhushan Pandey	“	26.8.1992
9.	Manoj Kumar Jha	“	26.8.1992
10.	D.P.N. Pandey	“	16.4.1993
11	Resp. No.6 Shri Babu Ram	1987	16.4.1995

11. Most importantly, it is relevant to peruse the order dated 04.09.2018 and order dt. 13 September 2018 of MHA whereby the benefit of the judgement of this Tribunal in 463/2016 has been finally granted by the respondents to the applicants in the OA 463/2016. Relevant portions are extracted below:

*Department of Personnel and Training
(AIS.I-Seniority Desk)*

Reference MHA's Note from pre-pages.

2. *Keeping in view Hon'ble CAT Allahabad Bench's order dated 31.03.2017 in OA No.463/2016 and orders dated 09.07.2018 in Contempt Petition No.330/164/2017 filed by Shri K.P. Singh and others therein, the matter has been considered in this Department and it has been decided with the approval of the Competent Authority that seniority/year of allotment of shri Ram Bodh may be fixed by counting his service in the post of*

Deputy Superintendent of Police w.e.f. 23.11.1987 i.e. the date on which his junior Shri K.P. Singh joined the service in relaxation of Rules 3(3)(ii) of IPS (Regulation of Seniority) Rules, 1988 by invoking the powers conferred under All India Service (Conditions of Service-Residuary Matters) Rules, 1960 as a special case not to be quoted as precedent.

3. *MHA is requested to fix the seniority/year of allotment of Shri Ram Bodh accordingly and also of other officers whose seniority/year of allotment has been restricted thereunder as per proviso to Rule 3(3)(ii) of IPS (Regulation of Seniority) Rules, 1988 in compliance of the said Court's orders subject to outcome of the Writ Petition No.1309/2018-UOI Vs. K.P. Singh and others pending before the Hon'ble High Court of Allahabad.*

4. *MHA is also requested to vigorously pursue the Writ Petition in the Hon'ble High Court of Allahabad and get the question of law settled.*

5. *MHA's file No.1-14013/18/2017-IPS.1 along with link file No.1-15016/10/2017-IPS.1 is returned herewith for taking the further necessary action in the matter accordingly.*

Sd-

(UdaiBhan Singh)

Under Secretary to the Government of

India

Tel. No.23094142

MHA[Shri Ajay Kumar Singh, US(IPS.I)], North Block, New Delhi.

“....No 1-14013/22/2016-IPS.1
Government of India/Bharat Sarkar
Ministry of Home Affairs/GrihMantralaya

13 SEP 2018
North Block, New Delhi-110 001
Dated theSeptember, 2018

ORDER

Whereas, Shri Kavindra Pratap Singh and others were appointed to the IPS from the select list of 2010 vide this Ministry's Notification No. 1-14011/10/2012-IPS.1 (IV) dated 21.12.2012. The seniority of the applicant was restricted as 2005, since an officer senior to the applicant, namely, Shri Ram Bodh was assigned a seniority of the year 2005 vide order No. 1-15011/6/2013-IPS.1 (11) dated 24.06.2013.

And whereas, Representations from Shri Kavindra Pratap Singh and others have also been received in which they have requested to re-determine their seniority and fix the allotment year as 2003 in place of 2005.

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Sl. No .	Name of the Officer(S/Sh ri)	Year of the Select List on the basis of which appointed to IPS	Date from which holding rank not below that of Dy. SP or Equivalent	Completed year of service rendered in the rank not below that of Dy. SP or equivalent till 31 st day of December of the year immediately before the year in which the SCM was held to prepare the select list on the basis of which	Total weightage in years in terms of the IPS(Regulatio n of Seniority) Rules, 1988 as amended vide notification No.14014/54/9 6-AIS (1) dtd. 31.12.97, 14014/2000- AIS (1) dated 30.08.2005	Year of allotment (in compliance of the direction of the Hon'ble Central Administrati ve Tribunal, Allahabad Bench dated 31.03.2017 in Original Application No.463/2016)

				<i>the said officer was appointed to IPS(Fraction, if any, are to be ignored)</i>		
1	2	3	4	5	6	7
11	Mrigendra Singh	2010	09.11.19 87	23 years	8 years	2002
12	Piyush Srivastava	2010	01.11.19 87	23 years	8 years	2002
13	Satya Bhushan Pathak @	2010	12.01.19 89	21 years	7 years	2003
14	Dinesh Chandra Dubey	2010	12.01.19 89	21 years	7 years	2003

@ the officers retired on superannuation the benefits may be re-fixed notionally.

And whereas, as per Rule 4 of the IPS (Regulation of Seniority) Rules, 1988, the officers at Sl. No. 1 to 12 will be placed below Shri Vijay Bhushan (SPS 2002), the junior most SPS officer of 2002 batch and above Shri Nachketa Jha (RR 2003), the senior most direct recruited IPS officer of 2003 batch and the officers at Sl. No. 13 to 14 of will be placed below Shri Modak Rajesh Dineshrao (RR 2003), the junior most direct recruit officer of 2003 batch and above Dr. Preetinder Singh (RR 2004), the senior most direct recruited IPS officer of 2004 batch Uttar Pradesh Cadre.

And whereas, this issues in partial modification of this Ministry's orders No.1-15011/6/2013-IPS.1 dated 05.03.2018 with the approval of the Competent Authority.

Now therefore, the above modification in year of allotment in respect of Shri Ram Bodh, Shri Kavindra Pratap Singh and others (as a special case not to be quoted as precedent) be subject to the outcome of the Writ Petition No. 1309/2017 filed by Union of India vs Kavindra Pratap Singh and others pending before the Hon'ble High Court, Allahabad against order dated 31.03.2017 of the Hon'ble CAT, Allahabad Bench.

Sd-
(Ajay Kumar Singh)
Under Secretary to the Government
of India
Tel. No.23094517.....”

12. As may be seen above, the said order has been passed taking into account the continuing undecided position in the WP 1309/2018 in the Hon Allahabad High Court. Quiet logically therefore, there is no reason to deny the same benefit to the applicants and it seems that the respondents are just waiting for an order of this Tribunal followed by a possible contempt as had happened in the matter of Kavindra Pratap Singh so as to grant benefit to the applicants and they are not able to provide the same on their own initiative even though the facts of the case are identical. The only plea of the respondents is that given the pending WP in the Allahabad High Court and the view that the benefit of AIS Rules 1960 cannot be given to Baburam R-6, hence the applicants have to have their seniority fixed as per rule 3(3)(ii) of 1988 rules.

13. This rationale of the respondents in not granting similar benefit to the applicants is unacceptable on the grounds of equitable justice and the benefit provided to certain applicants in an earlier decided judicial matter cannot be denied to similarly placed applicants in a subsequent matter. In fact, there is a catena of judgements of the Hon Apex court in this connection.

14. In sum, we are inclined to agree with the view of the applicants that the benefit of the judgement and order of this Tribunal given in OA 463/2016 vide order dated 31-3-2017 should be given to the applicants subject to the final decision of the Hon Allahabad High Court in WP 1309/2018: Union of India versus Kavindra Pratap Singh which is still pending and there is no stay in the matter with regards to the order of this Tribunal dt 31.03.2017. Further that since the relief in this OA is being granted in terms of the relief granted in the OA 463/2016, hence we are not adjudicating on the relief sought with respect to quashing of the Proviso / Explanation to Rule 3(3) (ii) of the 1988 Rules.

15. On the basis of foregoing discussions and detailed analysis of the matter, the prayed for relief is granted and it is directed as follows:

- i. The order dated 13.07.2018 rejecting the representation of the applicant Virendra Kumar Mishra is quashed
- ii. The order dated 11.01.2016 in respect of all applicants fixing their seniority erroneously is quashed.
- iii. The respondent/ competent authority is directed to issue orders with respect to corrected seniority of the applicants taking into account the weightage admissible as per the latest amendments and circulars of DOPT including vide dated 18.04.2012

iv. The above orders are subject to the final order in WP 1309/2018 pending in the Hon Allahabad High Court.

16. Ordered accordingly.

17. No Costs.

(Devendra Chaudhry)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

/Shakuntala/