

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1850
T.A. No.

1987.

DATE OF DECISION October 18, 1989.

Shri Balwant Singh Petitioner

Shri G.D. Gupta, Advocate for the Petitioner(s)

Versus

Union of India & Another Respondent

Shri O.P.Kashatriya & Advocate for the Respondent(s)
Shri M.L. Verma

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. P.S. Habeeb Mohamed, Member (A)

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

AB 18/10
(Amitav Banerji)
CHAIRMAN

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Shri Balwant Singh _____ Applicant (s)

Shri G.D.Gupta, _____ Advocate for the Applicant (s)

Union of India & Another _____ Respondent (s)

Shri O.P.Kashatriya _____ -es
Shri M.L.Verma _____ Advocate for the Respondent (s)

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1. Whether Reporters of local papers may be allowed to see the Judgement ?
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4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

By: Hon'ble Mr. Justice Amitav Banerji, Chairman.

Shri Balwant Singh has filed this Application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the Office Memorandum dated 21.5.1987 rejecting the bonafide claim of the applicant and for a declaration that the applicant was entitled to be considered for appointment to Indian Police Service with effect from 1972/1973 with all consequential benefits e.f. arrears of pay, allowances, seniority, promotion etc. He also prayed for directing the respondents to hold a Departmental Promotion Committee as on 1.1.1972 or in the alternative to call a review DPC as on 1.1.1973 and to promote him to IPS from 1972 and or 1973, if selected, with all consequential benefits.

Briefly stated, the facts of the case are as follows:

The applicant qualified in the IAS and Allied Services Examination held by the UPSC in the year 1962. On the basis of the above selection, he was offered appointment to Delhi and Himachal Pradesh Police Service Class -II (for short, "DHPPS"). Before the appointment was issued, he had offered his services to the Army in the wake of Chinese Aggression and joined Indian Army as Emergency Commissioned Officer in October, 1963. On receiving a letter from the Ministry of Home Affairs (for short, "the Ministry" dated 12.11.1963 informing him that he was being considered for appointment to DHPPS, he accepted the offer, but informed the Ministry that he was undergoing pre-commissioned training at the Officers' Training School, Pune in connection with his appointment as Emergency Commissioned Officer in the Army. He had further written to the Army Authorities for his immediate release. The latter were, however, not inclined to accede to the request of the applicant for immediate release. The applicant applied to the Ministry to intervene for his immediate release. He also requested that in case it was ultimately decided to continue the applicant in the Army till the emergency lasted, then in that case the lien in the DHPPS may be kept so that his interest is protected. The Ministry of Home Affairs, accepted the latter position and informed the applicant that the offer of appointment to the DHPPS will be kept open to him till he was released from the Army. He was asked to inform the Ministry as soon as he was released from the Army so that a formal

offer of appointment could be sent. The applicant also informed the Ministry that he would join the DHPPS on his release from the Army and the vacancy may be kept reserved and the lien maintained.

Subsequently, the DHPPS was converted into Delhi Himachal Pradesh Andaman & Nicobar Islands Police Service (for short, "DHANI Police Service") with effect from 1.12.1965. The Ministry wrote to the Military Secretary, Army Headquarters, New Delhi about the said conversion and asked for the release of the applicant from the Army immediately as the training of the probationers of the DHANI Police Service was going to commence some time in the month of November/December, 1966 and it was not possible to keep a vacancy reserved for the applicant beyond December, 1966. The applicant was released from the Army and he eventually joined Central Police Training College, Mount Abu on December 20, 1966.

Thereafter the applicant by his letter dated 9.10.1967 took up the question of his seniority in DHANI Police Service. The Ministry informed the applicant that the question of determining his seniority was being examined in consultation with the UPSC. Subsequently, vide order dated 5.1.1968, the seniority of the applicant in DHANI Police Service was decided to be fixed on the basis as if the applicant was actually appointed to DHPPS before 1.12.1965. The Ministry by their letter dated 17.3.1971 ordered that the applicant was deemed to be appointed to the DHPPS with effect from 28.12.1964. According to the applicant, for the purposes of determination of seniority, the date of appointment

of the applicant in DHPPS was taken as 28.12.1964. The applicant could not accept 28.12.1964 as his date of appointment and he made a detailed representation to the Ministry on 20.3.1971.

He prayed that his appointment to the DHPPS should have been from 9.10.1963 on which date he joined the Army and to treat the said date relevant for purposes of determining the seniority in DHANI Police Service. The Ministry after considering the matter ordered that the date of appointment of the applicant could be taken as 13.1.1964 vide letter dated 2.5.1972. The applicant again pointed out that 13.1.1964 would not be appropriate date of appointment of the applicant to DHPPS. The applicant submitted a further representation.

The applicant was appointed to Selection Grade of DHANI Police Service with effect from 26.2.1971 vide Notification dated 16.5.1972. The applicant was also granted special pay of Rs.75/- per month which is permissible to a Deputy Superintendent of Police performing the duties of a Sub-Divisional Police Officer with six years service as Dy. S.P.. This could only be done when the deemed date of appointment dated 28.12.1964 was taken into consideration. However, according to the letter dated 23.5.1972 the deemed date of appointed was 13.1.1964.

Subsequently, the applicant came to know that a meeting of the DPC was being held for preparing a Select List of suitable Officers for promotion to Indian Police Service (for short, "IPS"). The said promotion was, at that time, governed by Indian Police Service (Appointment by Promotion) Regulations, 1966 (hereinafter referred to as the "Regulations of 1955"). It is regulation 4 which dealt with promotion to IPS and laid down the conditions

of eligibility. Regulation 4 of the Regulations of 1955 specified that 8 years' service in the State Police Service was required for purposes of eligibility for promotion to IPS. However, vide Notification dated 2.2.1966, the said Regulation 4 of Regulations of 1955 was amended and requirement of 8 years' service was substituted by the requirement of 8 years' continuous service. The applicant learnt that he was not being considered eligible because his service was being counted from 20.12.1966 instead of 13.1.1964. He made a representation claiming that he had rendered 8 years service by 13.1.1972 taking his deemed date of appointment as 13.1.1964 and that he was eligible to be considered for the promotion of IPS. The D.P.C. had been held on 13.9.1973, but the name of the applicant was not there. He learnt that his name was not considered as his actual service was counted from 20.12.1966.

In the meantime the applicant had also taken up the question for considering his deemed date of appointment to DHPPS as 9.10.1963 instead of 13.1.1964. This request of the applicant was accepted in part vide order dated 19.8.1985, the deemed date of appointment of the applicant was ordered to be taken as 30.11.1963 instead of 13.1.1964.

There upon the applicant made a further prayer for considering the applicant eligible for promotion to IPS in 1972/1973. Subsequently, another D.P.C. was held in the year 1975. The applicant was considered eligible and not only that he was considered but selected and consequently promoted to IPS vide Notification dated 10.9.1976. The applicant was later on even confirmed vide Notification dated 30.5.1978.

Another development took place on the earlier representation of the applicant as regards his eligibility for being appointed into the IPS in 1973. The applicant has referred to a letter dated 5.3.1986 (Annexure 'V' to the Application) written by the Deputy Secretary, Ministry of Home Affairs to the Secretary, UPSC in which it was pointed out that Balwant Singh, the applicant should have also been considered for inclusion in the Select List during the year 1973 and as per seniority, his name should have ^{made} appeared at Sl.No.7 of the list. A suggestion was that a meeting of the Selection Committee may be convened to review the Select List prepared during 1973 for considering the name of the applicant. The U.P.S.C. refused to convene a review DPC on the ground that there was no provision in the rules to convene a review DPC. The applicant was, however, informed by the Memo dated 21.5.1987 that since prior to ^{the} amendment of Regulations of 1955 in June, 1978, the applicant could not be considered eligible for promotion to IPS, his claim could not be acceded to and was accordingly rejected. The Memo dated 21.5.1987 is marked as Annexure 'X' to the Application.

The applicant's further case is that ~~once~~ his deemed date of appointment to DHPPS was taken as 30.11.1963 and further the above date has been considered for the purpose of grant of increments, grant of selection Grade to IPS and grant of special pay of Rs.75/- per month for purposes of holding the charge of Sub-Divisional Police Officer do not justify the

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non-consideration of the service of the applicant from 30.11.1963 for purposes of counting eight years' continuous service for promotion to the IPS. The applicant also relied on the Instructions issued by the Ministry of Home Affairs vide its Office Memo dated 28.4.1965. It was also a plea of the applicant that he was entitled to the benefit of the Office Memo dated 28.4.1965 (Annexure Z to the Application). Lastly, it was stated that the very concept of deemed date of appointment is that the service from the deemed date of appointment has to be considered as actual service for all purposes including the seniority.

In the reply by respondent No.1- Union of India has raised a preliminary objection that the applicant had not impleaded any person individually or in a representative capacity who are bound to be affected in case the relief in the present O.A. is granted. Consequently, the O.A. is liable to be dismissed on this ground alone. The second objection that the cause of action to the applicant arose as far back as 1972 and the Application is clearly barred by time. On behalf of respondent 1 it was also stated that the applicant had relied on the facts relating to his appointment to the DHPPS and the manner in which his seniority in the said service was decided. The main plea was that the eligibility criteria laid down in the IPS (Appointment by Promotion) Regulation 1955, did not provide for counting the service in the post of DSP or equivalent from the deemed date of appointment. The provision regarding counting of service rendered by Emergency/ SSC officers was incorporated as 4th Proviso to Regulation 5(2) vide D, P&T Notification dated 16.1978 and this amendment was

effective from the date of Notification and not retrospectively.

Since the applicant had already been appointed to IPS on 10.9.1976, this amendment did not apply to him. The applicant fulfilled the eligibility criteria of 8 years' continuous service as DSP on 25.12.1974 and became eligible for consideration in 1975 only as per provision of the regulation as then existed and his case was duly considered by Selection Committee which met in 1975.

A reference was made to Regulation 4 of the unamended Indian Police Service (Appointment by Promotion) Regulation, 1955 and to Regulation 5(2). The applicant was not eligible for promotion during the year 1972, there was no question of consideration of his name for promotion to IPS during the said year. It was further

stated that service from deemed date of appointment could be given to the applicant for the purpose of promotion to the IPS
finally
but it was realised that it was not open to Government to reopen

the Select List prepared prior to 1975 because there was no provision in the regulations prior to 1.6.1978 to give credit of service in the rank of DSP from deemed date of appointment towards the eligibility for promotion to IPS. Consequently, there was no question of considering the applicant for promotion to IPS prior to 1975. The Government had duly considered all his representations and the Office Memorandum dated 21.5.1987 had been issued after due consideration of all the aspects and it is in accordance with the rules on the subject and does not suffer from any legal infirmity.

On behalf of the U.P.S.C., respondent No.2, a separate reply had been filed. There were three preliminary objections.

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The first was that the Application was misconceived and not maintainable under law. Consequently, no cause of action accrued in favour of the applicant against the respondent, UPSC. Thirdly, the Application is ~~xxx~~ barred under Section 21 of the Administrative Tribunals Act, 1985. The applicant was asking for relief w.e.f. 1972-1973 which was ex facie belated one and the Application was liable to be rejected on this ground alone.

On the merits, reference was made to Regulation 5(2) of the Promotion Regulations and it was stated that the applicant would be governed by the amended Regulation according to which 8 years' continuous service had to be rendered in the post of Deputy Superintendent of Police or an equivalent post under 3rd proviso to Regulation 5(2) of the Promotion Regulation. The name of the applicant was not included in the list of eligible officers furnished by the Govt. of India to the UPSC in connection with the selections made on 13.9.1973. Regarding the formation of a review DFC, the Commission had considered the matter and it was observed that there was no provision in the promotion regulation to review a Select List once it has been finalised and acted upon. The U.P.S.C. had informed the Ministry of Home Affairs accordingly. The Department of Personnel had stated that on consideration of all the cases, they had come to the conclusion that there was no provision in the Rules which gives any semblance of power to Government to revise a Selection List which had been finalised, acted upon and superseded by subsequent Select Lists.

The applicant had filed rejoinder to the aforesaid replies of the respondents - Union of India and the U.P.S.C. Most of these are argumentative and it is not necessary to refer to them as

most of them are reiterated above.

We have heard learned counsel for the parties and we also asked the respondents counsel to produce the official record for our perusal. This was necessary. One fact may be stated at the very outset. The statement of facts given by the applicant in this Application have been methodical and have not been disputed by the respondents. Secondly, we have received able assistance from the learned counsel for the parties in the case.

We have two questions before us. Firstly, whether the Application is maintainable before this Tribunal as according to the respondents the cause of action arose in 1972-73 and such a claim is not liable to be entertained by the Tribunal. **in view of the provision of Section 21 of the Act?** Secondly, whether the applicant is entitled to his seniority in IPS from 1973 or from 1975 and whether 1955 Regulation acted as a bar to the claim of the applicant?

Let us consider the question of maintainability of the Application first. The respondent No.1- Union of India opposes the grant of any relief to the applicant on the ground that the Application is not maintainable as it pertains to claim of 1972-73 being raised before the Tribunal on 10.12.1987. He referred to the well settled view of the Tribunal that matters which arose prior to 1.11.1982 were not to be entertained as the Tribunal has no jurisdiction to entertain. In other words, it was stated that this was a matter which was a stale claim and could not be entertained.

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Different Benches of the Tribunal have held that Applications based on cause of action arising before 1.11.1982 are not to be entertained. A Division Bench in the case of V.K. MEHRA Vs. THE SECRETARY, MINISTRY OF I & B (ATR 1986 CAT 203) has held that where the cause of action had arisen prior to 1.11.1982, the Tribunal had no jurisdiction to entertain the matter. This view had been modified later by holding that the view will not apply in a case where the cause of action is a continuing one, e.g., regarding salary or pension etc. An argument was raised that similar is the position in regard to a claim for seniority. We are not inclined to accept this contention. If the claim has been rejected, the cause of action would arise then and would not continue. However, the facts in the present case are entirely different and that is why relevant facts have been narrated in detail in this judgment.

The facts as narrated above show that the applicant made representation and almost every time it was accepted, though in part. Consequently, the applicant made further representations which again were accepted in part. As a matter of fact, the original claim of the applicant was that he was entitled to be called for in the DIC in 1973 and was also entitled to be promoted to the IPS if selected. The rules require continuous service for 8 years as Deputy Superintendent of Police before one was promoted to IPS. A question, therefore, arose as to what was his date of appointment in the original service in DHPPS since the applicant after having been successful in the competitive test and before he received the appointment, joined

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a short term Emergency Commission in the Armed Forces in the wake of Chinese aggression in 1963. He could join the service actually on his being released from Army service. A question then arose as to what should be the date of his deemed appointment in the DHPPS for the Ministry had accepted his appointment in that service and had kept his lien intact also. At first, the Ministry declared that his deemed date of appointment was 28.12.1964. Later on, on a representation they changed it to 13.1.1964. On a further representation, it was changed to 30.11.1963. It would thus be seen that this was accepted by the Government vide order dated 19.8.1985. It would thus be seen that the question about his deemed date of appointment was a live issue with the Ministry during all this period and was settled only by the order dated 19.8.1985.

The question of seniority arose thereafter. If the 8 years' period was counted from 30.11.1963, he had completed the same on 30.11.1971 and he was eligible for being considered in the DPC of 1972. But no DPC was constituted in that year. A DPC was constituted in 1973. The applicant was not considered in that DPC. Although he had represented and this matter continued to engage the attention of the Ministry. At one stage on 5.3.1986, the Ministry had written to the UPSC that the applicant was entitled to be considered for seniority. The UPSC did not agree and ultimately the Ministry also did not agree and it was conveyed to the applicant only on 21.5.1987. The real cause of action arose on 21.5.1987 and counted from that date, the Application under Section 19 of the Act was very much within time.

The distinguishing feature in this case is that the representations made by the applicant were accepted only in part and the applicant had to apply again and again for redressal of his grievance which was accepted in part so that he was appointed in

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the IPS in the year 1975. His claim for appointment with effect from 1973 was ultimately rejected on 21.5.1987. It would, therefore, be clear that a cause of action had not crystallised until 21.5.1987 when the Ministry finally answered in the negative.

In our opinion, the present Application is not barred by time and is very much maintainable.

We may now consider the second question as to whether the applicant is entitled to seniority in I.P.S. from 1973 or from 1975. We will also have to consider the Regulation 1955. We have seen that the date of the appointment of the applicant in the DHPPS was deemed to be from 30.11.1963. He could claim to be considered for selection in the I.P.S. but not before he had 8 years' continuous service in DHPPS/DHANI Police Service. Since his service had to be counted from 30.11.1963, he had completed 8 years' on 30.11.1971 and was eligible for being considered in the DPC of 1972. The next DPC that was constituted was in the year 1973. He was not considered in that D.P.C. A question arises whether he was entitled to be considered in that D.P.C.? If the answer is in the affirmative, then a Review DPC is to be convened to consider his case.

At one stage, the Department of Personnel was of the view that the applicant was entitled to be considered in the Select List of 1972. But before passing any order, they sought the views of the Ministry of Law. The Ministry of Law opined that the applicant was entitled

to be considered for promotion in the year 1972. It was further observed that in case he is to be promoted retrospectively from 1972, then rules of natural justice would demand that notice should be given to persons who have been promoted in 1973 to 1974 and who are likely to be prejudicially affected by the above action.

The Department of Personnel was of the view that a Review D.P.C. would be necessary and it was further decided that the matter be referred to the UPSC for convening a fresh meeting of the Selection Committee to review the Select List prepared during 1973. Subsequently, the Department of Personnel and Training was of the view that reconsideration of a case for inclusion in a past Select List was resorted to only on the direction of a Court but not otherwise and a Select List which has been finalised, acted upon and superseded by subsequent Select List cannot normally be reopened. Thereupon the matter was reconsidered and the Department took the view that Regulation 5 of I.P.S. (Appointment by Promotion) Regulation 1955 was effective only from 1.6.1978 and since the name of the applicant was considered for promotion to I.P.S. prior to the above date, his case will not be covered by the said provision. Since there was no provision earlier to count from "deemed date

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of appointment" a decision was taken not to reopen the Select List and the year of allotment. Ultimately the view taken was that since there was no such provision earlier, the provision of the Regulation would have no application in the case of the applicant.

The applicant had filed a representation which was also turned down. We may now look into the provisions of I.P.S. (Appointment by Promotion) Regulation 1955. Regulation 5(2) proviso 4 reads as follows:

"Provided also that in respect of any released Emergency Commissioned Officers or Short Service Commissioned Officers appointed to the State Police Service, eight years of continuous service as required under the preceding proviso shall be counted from the deemed date of their appointment to that service subject to the condition that such officers shall be eligible for consideration if they have completed not less than four years of actual continuous service, on the first day of January of the year in which the Committee meets, in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Government."

Two objections were taken to the applicability of this proviso - one, that this amendment came into effect from 1.6.1978 whereas the applicant had already been selected in the 1975 DPC for promotion to IPS; secondly, the applicant did not have eight years continuous service at the time when the 1973 DPC met as he had joined actual service on 20.12.1966. In our opinion, the second objection has no force. Once a person is deemed to have

been appointed from a particular date, the entire period from that date will be deemed to be a continuous service unless a break could be shown. It is not the case where a person joins the service, goes away elsewhere for some time, rejoins it. In the present case the applicant was selected in the service after a competitive Examination and by the time result was declared, he had already joined as Emergency Commissioned Officer in the Indian Army and he obtained permission from the Government to accept the assignment. Those were the days when there was an emergency due to the Chinese aggression in our country. It was only when he was released from the Army that he could report for duty in the DHPPS/DHANI Police Service to which he was selected. His absence from the duty in DHPPS will be deemed to have been condoned when he was given 30.11.1963 as the deemed date of appointment in DHPPS. The 8 years' period service could be counted from that date and this position is also accepted by the Government. Consequently, we find no merits in the second objection.

As far as the first objection is concerned, the stand of the Government that this proviso is not applicable in the case of the applicant because it was not a part of the Rules in 1975 when the applicant was considered and selected to I.P.S. The argument is that if this rule was retrospective in operation, it could be urged that he was entitled to the benefit of 8 years rule. In this case,

the applicant had been given a deemed date of appointment be i.e., 30.11.1963 and his service would deemed to have commenced from that date. Consequently, if 8 years' rule is applicable, it would make him eligible from 1972 but there was no DPC in that year and the DPC took place in 1973. That DPC selected candidates who were all promoted and the selections were given effect to by promoting officers from the State Police Service to the IPS Cadre. The whole matter could be reopened provided there was a review D.P.C. The view of the Government and the U.P.S.C. was that a Review D.P.C. cannot be held where the Selection List has been given effect to except where the court passed an order to that effect.

We have considered this argument and, in our opinion, the proviso 4 to the 1955 Regulation was very much operating when the Government took a decision in 1986 in the applicant's case. The Government stand was that the rule was not there when the applicant was selected in the D.P.C. of 1975. The applicant had made a representation that his case had not been properly decided and that he was entitled to be considered in the 1973 DPC as he was eligible at that time. His name was excluded because he was not considered to be eligible since his actual date of joining the service was 20.12.1966. That position changed as his date of appointment in the service was altered to 30.11.1963. We have held that the period of 8 years service would count from 30.11.1963. We are satisfied from a perusal of the

material on the record that the applicant was entitled to the benefit of the proviso 4 of the 1955 Regulation and that he could be deemed to have completed 8 years continuous service in the State Police Service by 1972. We would, therefore, hold that a Review D.P.C. should be convened to consider his case for selection in 1973.

Another leg of the argument was that this O.A. cannot succeed since the applicant has not impleaded all those persons who are likely to be affected if a Review D.P.C. is held and if the applicant is included in that List the position of all the candidates in that Select List may undergo a change and the question of seniority would be raised not only by the candidates of 1973 Select List but also of the 1975 Select List. We have absolutely no manner of doubt that there is no lacuna, much less a fatal lacuna in the array of parties in this Application. The question raised is one of impleading the proper parties who are likely to be affected if the applicant is included in the Select List of 1973 by the Review D.P.C. In our opinion, the question of impleading anyone would arise only if the Review D.P.C. meets, considers his case and selects him. If he is not selected by the Review D.P.C., the question of affecting the seniority of any other officer would not arrise. On the contrary, if he is selected, then a question would arise about his placement in the Seniority List. That would raise question of inter-se-seniority of candidates of 1973 Select List as

well as 1975 Select List. It is, therefore, evident that before assigning a place in the inter-se-seniority list that the Review D.P.C. will have to give an opportunity to all those who are likely to be affected. We, therefore, do not find any valid ground for rejecting this Application on the ground of non-impleading all such persons who are likely to be affected as they are yet to be determined. The present Application thus does not suffer from any defect in non-impleading other officers in the IPS cadre.

We are, therefore, of the view that the applicant had to go through a long process to seek redressal of his grievance which was just and deserving. We have no manner of doubt that had the applicant not joined the Emergency Commission in the Army in 1963, he would have been assigned his proper place provided he was selected by the 1973 D.P.C. Are we to understand that the applicant should suffer since he volunteered to serve the motherland when the call came in the wake of the Chinese aggression in 1962-63? While waiting for the declaration of his result in the Competitive Examination, he applied for and was selected as Emergency Commissioned Officer in the Indian Army. He joined the same with the approval of the Government and he served the Army until 1966 and immediately after his release, reported for duty. It will be a travesty of justice if we do not brush aside the technicalities of rules and the self-imposed restrictions to promote a just and legitimate cause. We are, therefore, of the view that this Application must succeed and we accordingly allow the

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O.A. with the direction that the respondents shall convene a Review D.P.C. to consider the case of the applicant for selection in 1973 of the said Police Officers to the IPS cadre within two months from the date of receipt of a copy of this order and proceed in accordance with law thereafter.

In a case like this, the Bench pauses to consider the question of costs, considering the enormous time spent by the applicant to seek justice. However, taking an overall view of the matter, we think that the ends of justice would be served if we direct the parties to bear their own costs.

(P.S. Habeeb Mohamed)
Member (A)

(Amitav Banerji)
Chairman

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Division Bench judgment pronounced in open Court today the 18th October, 1989.

(Amitav Banerji)
Chairman
18.10.1989.