

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 701 of 1990.
T.A. No.

199

DATE OF DECISION 31.10.1990.

O.P. Sharma

Petitioner

Shri J.P. Verghese

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri Ashok Desai, Solicitor Advocate for the Respondent(s)
General of India with Shri P.P. Khurana, for Respondents 1 & 2.
Shri M. Chandrasekhran with Ms. Savita Sharma and
Shri Madhav Panikar, for R-4. Shri S.K. Beri, for R-5.

CORAM

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

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

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? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal? ✓

Chd
31.10.90
(AMITAV BANERJI)
CHAIRMAN
31.10.90.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. OA 701 of 1990

Date of decision: 31.10.1990

O.P. Sharma

Applicant

vs.

Union of India

Respondents

PRESENT

Shri J.P. Verghese, counsel for the applicant.

Shri Ashok Desai, Solicitor General of India, with
Shri P.P. Khurana, for Respondents 1 and 2.

Shri M. Chandrasekharan with Ms. Savita Sharma and
Shri Madhav Panicker, for Respondent No. 4.

Shri S.K. Beri, counsel, for respondent No. 5.

CORAM

Hon'ble Shri Justice Amitav Banerji, Chairman.

Hon'ble Shri B.C. Mathur, Vice-Chairman.

(Judgment of the Bench delivered by Hon'ble Shri
B.C. Mathur, Vice-Chairman.)

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the Office Order No. 335/90 dated 6.4.1990 issued by the Central Bureau of Investigation, New Delhi, about the promotion of some Police Officers as Deputy Inspectors General of Police in the C.B.I. and his apprehension regarding promotion of Shri K. Madhavan - Respondent No. 4 - to the rank of Joint Director in the C.B.I.

2. The case of the applicant is that the applicant joined the C.B.I. as a deputationist Deputy Superintendent of Police on 1.7.1967 and was appointed as Assistant Director/S.P. in that organisation with effect from 28.10.1972. He was perma-

nently absorbed in the C.B.I. on 1.7.78. In the seniority list issued by the Respondents on 30.10.78, the applicant was shown junior to Respondents 4 and 5. On a representation made by the applicant challenging the seniority, a revised seniority list was issued on 25.9.81 in which he was shown senior to both Respondents 4 and 5 and the date of appointment was mentioned as 21.10.71 (F.N.)^A D.P.C. was held on 28.3.83 in the U.P.S.C. where the applicant was recommended to the rank of D.I.G. Respondents 4 and 5 were also considered by the said D.P.C. On 20.9.83, Respondents 4 and 5 filed a writ petition in the Supreme Court challenging the 1981 seniority when they came to know about the result of the D.P.C. The Supreme Court issued a stay order against the appointment of the applicant as D.I.G., C.B.I., in accordance with the recommendation of the UPSC on 20.8.1983. This stay was vacated, but the Supreme Court permitted Government to make ad hoc appointments to the rank of D.I.G. By notification dated 24.10.83, the applicant was appointed as D.I.G., C.B.I., on ad hoc basis with effect from 13.10.1983 until further orders. Respondents 4 and 5 filed another C.M.P. in the same writ petition for quashing the appointment of the applicant as D.I.G. with effect from 13.10.83. This appointment was, however, not quashed, but the Supreme Court subsequently passed an order that no further appointment to the post of D.I.G. in the C.B.I. be made except by making ad hoc appointments of Respondents 4 and 5. By orders dated 24.4.85, both Shri K. Madhavan, Respondent No.4, and Shri S. Sen, Respondent No.5, were appointed as D.I.G. on ad hoc basis with effect from the afternoon of 20.4.85 until further orders. Respondent No.6, Shri R.N. Sinha was also promoted ad hoc D.I.G. with effect from 25.6.86.

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3. The final judgment in the writ petition was announced on 9.10.1987 according to which the seniority list of 1981 was ordered to be quashed and the respondents were directed to prepare a fresh seniority list wherein Respondents 4 and 5 were shown as senior to the applicant. The applicant has mentioned that the notification appointing the applicant as D.I.G. from 13.10.83 was not quashed even though Respondents 4 and 5 ^{had} specifically prayed for quashing the same and that the Supreme Court's orders were both to quash the order dated 25.9.81 and to quash the seniority list of 1981, although no orders had been passed to quash the impugned order dated 25.9.81 till today. The relevant part of the judgment is reproduced herebelow:

"In the result, so far as writ petitions Nos. 9847 and 9848 of 1983 are concerned, the impugned order dated Sept. 25, 1981, appointing the Respondent No. 5 OP Sharma with retrospective effect from a notional date viz. 21.10.1971 (FN), and the Seniority List dated 17.10.81, showing the Respondent No. 5 as senior to the petitioners, are quashed. Let a Writ in the nature of certiorari issue in that regard. Further, let a Writ in the nature of mandamus issue directing the Respondents Nos. 1 to 2 publish a fresh Seniority List showing the petitioners as seniors to the Respondent No. 5. The Writ petitions are allowed and the rules are made absolute to the extent indicated above."

4. The applicant has stated that the Department circulated a fresh seniority list of the departmental officers on 3.2.1988 where Respondents 4 and 5 were shown senior to the applicant. According to the applicant, the Supreme Court never ordered for placing Respondent No. 6 as senior to the applicant and, therefore, he objected to his placement as senior to him.

According to him, he alone was eligible for promotion to the rank of Joint Director against the vacancy that arose in the year 1989 as he had completed 26 years of gazetted service and acquired 6 years' experience as D.I.G. in the CBI on 3.1.89. Respondent No. 2 had also informed the Department of Personnel in October 1989 that the applicant was the only departmental D.I.G. eligible for consideration for promotion to the post of Joint Director. In the mean time, the Department had issued the impugned order with a view to clear Respondent No. 4 to be selected since 6 years eligibility was in the way of Respondent No. 4 and thus the Respondents were making an arbitrary attempt to make him eligible by an executive order. According to the applicant, the Respondents cannot add or deduct the number of actual years of experience by way of an executive order as the impugned order wrongly proposes to deduct two years experience from him and add 1-1/2 years experience to Respondent No.4, a period which he had never worked as D.I.G.

5. The applicant has prayed to quash the impugned order dated 6.4.90 as illegal and to restrain the Respondents from considering Respondents 4 and 5 for promotion and that the Respondents should be directed to consider the applicant against the vacancy of 1989 as he is the only eligible candidate under the statutory recruitment rules.

6. In the counter filed on behalf of Respondents 1 and 2, it has been stated that the Review D.P.C. meeting held by the U.P.S.C. in September 1989 on account of revision of seniority of Shri K. Madhavan over Shri O.P. Sharma as per the judgment of the Supreme Court dated 9.10.87, had recommended the name of Shri K. Madhavan, Respondent No. 4, for promotion to the grade of DIG against the vacancy of 1981 in place of Shri O.P. Sharma who had earlier been recommended by the U.P.S.C on the basis of the old seniority which was quashed by the



Supreme Court in the case of K. Madhavan vs. Union of India in Writ Petition No. 9847-48 of 1983. The Government also approved the name of Shri O.P. Sharma for promotion as D.I.G. on regular basis with effect from 6.9.89 i.e. the date of D.P.C. against the vacancy of DIG which occurred on 31.10.85. The Government had taken into consideration the service of the applicant from 31.10.85 onwards as regular service in the scale of DIG for counting eligibility for further promotion. As such, no arbitrary decision has been taken in the case of Shri Madhavan as the decision ~~-----~~ taken by the Review D.P.C. was on the basis of seniority assigned to Shri Madhavan by the Supreme Court. It has been pointed out that the Supreme Court had quashed the notional seniority of Shri O.P. Sharma in the rank of SP given by the Government in Sept. 1981 and junior made him /to Respondents 4 and 5. It has been stated that the Supreme Court in the above Writ Petition had granted a stay order for regular promotion to the grade of D.I.G., but pending the decision regarding seniority in the grade of S.P. between S/Shri K. Madhavan and S. Sen vis-a-vis the applicant, Shri O.P. Sharma, was promoted as DIG on ad hoc basis vide orders dated 13.10.83. It was clearly mentioned that his appointment as DIG was on ad hoc basis pending decision of the Supreme Court. Although Respondents 4 and 5 were also considered by the D.P.C., but as the name of the applicant was at S1. No. 1, he was selected for appointment as DIG whereas Respondents 4 and 5 were at S1. Nos. 2 and 3 in the eligibility list. In view of this, the contention of the applicant that Respondents 4 and 5 were not selected is misplaced.

7. In the counter, it has been further stated that on the basis of the judgement of the Supreme Court dated 9.10.87 wherein Respondents 4 and 5 were declared senior to the applicant by quashing the letter dated 25.9.81 of the Government and also quashing the seniority list of the Superintendents of Police dated 17.10.81, a fresh seniority list of SPs CBI as on 1.12.87 was prepared and circulated vide letter dated 3.2.88 according to which Respondents 4 and 5 were placed above

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the applicant. In view of the judgment of the Supreme Court, placing Respondents 4 and 5 over the applicant in the seniority by quashing the notional date of promotion given to the applicant in September 1981, the notification of October 1983 automatically got superseded. As the seniority had undergone a change, a Review D.P.C. in respect of the said DPC proceedings dated 20.8.83 was held on 6.9.89 and the D.P.C. recommended the name of Shri K. Madhavan for promotion to the grade of DIG against the vacancy of 1981, against which earlier the name of the applicant had been recommended. The applicant was appointed as DIG on ad hoc basis vide Office Order 910/83 dated 13.10.83 wherein it was clearly mentioned that his appointment was ad hoc pending decision of the Supreme Court in the Writ Petition. It has also been stated in the counter that the Supreme Court in their judgment have stated that it was not thought desirable to deviate from the established principle of computing the length of service for the purpose of seniority or eligibility for the higher post from the date of appointment. In view of this, the name of Shri R.N. Sinha who was promoted as S.P. w.e.f. 30.5.72 was placed above the name of the applicant who was appointed as S.P. w.e.f. 28.10.72 but this would not make any difference at this juncture as Shri R.N. Sinha has been superseded by the applicant on regular promotion as D.I.G.

8. The Respondents have denied that they ever over-reached the statutory requirements and illegally altered the recruitment rules without resorting to the amendment procedure. The change has occurred due to the Supreme Court orders which made the applicant junior to Respondents 4 and 5.

9. In the counter filed on behalf of Respondent No. 4, it has been stated that he is admittedly the seniormost D.I.G. of Police in the CBI now and the applicant is seeking to derive a benefit from his appointment as ad hoc DIG w.e.f. 13.10.83

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on the basis of orders dated 25.9.1981 appointing him S.P. with retrospective effect from a notional date, namely, 21.10.71 (F.N.). Respondents 4 and 5 who were petitioners in the Writ Petition filed before the Supreme Court had filed an interim application along with the Writ restraining the appointment of the applicant in the post of D.I.G. The Supreme Court, by an interim order dated 22.9.1983, initially stayed further promotions to the post of DIG in the CBI, but subsequently modified the same on 6.10.1983 directing that no selection list will be prepared for the post of DIG in CBI, but it will be open to the Respondents to make ad hoc appointments which will be subject to the result of the Writ Petition. It has been stated that such interim orders are passed keeping in view that the balance of convenience and more particularly if the Writ Petition succeeds, the individual petitioner would always be entitled to the appropriate relief. In the D.P.C. of 1983, he could not be selected although graded as "very good" because he was shown junior to the applicant who was also graded as "very good", but had the correct seniority been available at that time, Respondent No. 4 would have been promoted as DIG and not the applicant and as such, Respondent No. 4 is legally entitled to be promoted from the same date, once the earlier seniority is quashed and the matter considered by a Review D.P.C.

10. The counter gives a chart to explain the legal position based on the dates of various appointments. This indicates that the promotion of the applicant as DIG on ad hoc basis on 13.10.83 became irregular and has been cancelled due to the quashing of the seniority dated 17.10.81 by the Court. Supreme and by superseding of the DPC proceedings of 1983, including the supersession of the ACC approval of 1983 by the latest approval accorded in March, 1990.

11. In his written statement, Respondent No. 4 has said that as the ad hoc appointment of the applicant as DIG from 13.10.83 has been cancelled and superseded by the Review D.P.C.

in 1989, the ad hoc appointment of the applicant as DIG w.e.f.

13.10.83 has become irregular and illegal. As the appointment was to be governed by the result of the Writ Petition, the Supreme Court has quashed the entire basis of the ad hoc appointment of the applicant as DIG.

12. Regarding the experience, Respondent No. 4 claims that experience flows out of service and that too after regular appointment. In fact, this is the very purpose of appointing an officer on a regular basis with effect from a particular date. As such the word "experience" is of lesser import than the word "service". He has given the example that if a post of Joint Secretary in a Ministry is vacant and a Director is asked to look after the work of the Joint Secretary for 3 years, the Director can certainly claim that he has the "experience" of work as Joint Secretary for 3 years, but this cannot give him the right of service as Joint Secretary for three years. Both the Superintendent of Police and the DIG are supervisory officers and the experience gained by officers of both these ranks is only in such supervisory roles and as such his experience should also count from the date he has been regularly appointed as DIG. Respondent No. 4 claims that the vacancy of DIG against which he has been appointed on regular basis w.e.f. 13.10.83 had actually arisen on 1.4.1981 and, therefore, would have been appointed in that vacancy, but for the illegal and unjustified disturbance of his seniority which was ultimately given to him by the Supreme Court. According to him, the minimum justice that should be done is that his qualifying period should be at least from 13.10.83.

13. Respondent No. 5, in his counter, has repeated most of the points already mentioned in the written statements filed on behalf of Respondents 1, 2 and 4, but has pointed out that the order dated 6.4.90 is not correct to the extent that it fails to follow a uniform principle for fixing the dates for counting the services in the grade of DIG for

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seniority and eligibility for future promotion. The order has the effect of providing that the services of the applicant should be counted from 30.5.1985 when the third vacancy arose. If these principles were violated, the service of Respondent No.5, in the grade of DIG, would have been counted from 1984 when the second vacancy had arisen, but the same was not given to him in the order dated 6.4.90.

14. The learned counsel for the applicant, Shri J.P. Verghese, has strongly contended that recruitment rules being statutory cannot be amended by executive orders. Recruitment rules specifically provided minimum 6 years experience and if this is the statutory rule, no one not having the actual experience of 6 years can be considered for promotion to the post of DIG. The only person who has the actual experience is the applicant. Seniority is quite different than experience. No body can be deemed to have acquired experience from a previous date when he has actually not worked on a cadre post. By making Respondents 4 and 5 senior to the applicant, it cannot be said that they had acquired experience and as such, while he accepts that Respondents 4 and 5 are senior, they are not eligible for promotion because of lack of actual experience. He said that as far as the applicant is concerned, even though he was working as ad hoc DIG, ad hoc service has to be counted for experience as held in the case of Dr. Ravindra Paul Kaur vs. The State of Punjab - 1979(1) SLR 454 (P&H). He said that the qualification regarding experience cannot be relaxed to accommodate non-eligible officers. He said that in P.K. Ramachandran vs. Union of India - 1983 (3) SLR 495 (SC) - the Supreme Court held that power to relax qualification pertaining to experience cannot be inferred. He further said that right to be considered for promotion is a condition of service and it can only be regulated by a rule framed under the proviso to Article 309. Shri Verghese said that seniority was relevant

only among the eligible candidates and, therefore, while Respondents 4 and 5 could be senior in the rank of S.P., but since they were not eligible under the rules, only the applicant could be considered for promotion to the rank of Joint Director in the CBI. He said that in R. Prabha Devi and others Vs. Government of India - AIR 1988 SC 902 - the Supreme Court held that seniority cannot be substituted for eligibility nor can it override it in the matter of promotion to the next higher post.

15. Shri Verghese argued that by assigning the date 13.10.83 as the date of eligibility for future promotion in respect of Respondent No.4, the competent authority, arbitrarily bestowed 'notional experience' on him for the period 13.10.83 to 25.4.85 only to make him eligible for promotion under the statutory rules. The court order giving seniority to Respondents 4 and 5, has not mentioned about the qualifying criterion "experience". The status of the applicant during 13.10.83 to 30.10.85 has not been clarified although notification dated 24.10.83 appointing him as DIG has not been revoked. The experience acquired by the applicant during this period must be computed for determining his eligibility for the post of Joint Director in CBI in terms of the recruitment rules. As far as the plea of the respondents about the revocation of ad hoc appointment as DIG of the applicant, it was pointed out that the gazette notification dated 24.10.83 does not mention that the applicant's appointment was ad hoc pending decision of the Supreme Court. This notification was later in time and is more authentic than the office order (page 124). He said that in the Writ Petition before the Supreme Court, Respondents 4 and 5 had prayed for the quashing of this notification and not the order dated 13.10.83 (page 124). The said notification was not quashed and from the order of the court it is clear that the court had no intention of quashing the said notification. In the operative portion, the Hon'ble Judges had recorded "Writ petitions are allowed and the rules are made

absolute to the extent indicated above" and, therefore, the notification was never automatically superseded. He also accused the Government of violating the normal procedure in considering various representations and movement of A.C.C. files.

16. The learned Solicitor General of India strongly urged that no consideration could be given to the pleadings of the applicant who had been continued as ad hoc D.I.G. pending final orders of the Supreme Court. He said that the applicant had been appointed as DIG on the basis of a wrong seniority list which was challenged by the respondents. He said that Shri Madhavan, Respondent No.4, was all along senior to the applicant and had the seniority case been decided immediately, the applicant would have had no case. He also said that Shri Madhavan had been deprived of the experience because of wrong orders and Government promoting the applicant as DIG and it was the duty of the court to see that no one suffers because of the wrong action of someone else. He urged that Article 309 of the Constitution must be interpreted in the manner to ensure that no injustice is done to anyone. He said that Shri Madhavan had approached the Supreme Court in 1983 itself and the Supreme Court had clarified that all appointments of DIG would be on ad hoc basis pending final decision in the Writ Petition. He said that if a person is deprived of experience due to an illegal order, he cannot be deprived of such an experience. Similarly, if a person has gained experience due to illicit orders, he does not get entitled to any advantage bestowed on him by such illicit orders. He said that Shri Madhavan, Respondent No.4, must be put in the position as DIG from the date the applicant was appointed to that post. He said that one cannot take benefit of an illicit order. He said that while the applicant was appointed as Superintendent of Police on 2.10.72, he was wrongly shown as having been promoted on 21.10.71 (F.N.) and Respondent No. 4 as on 21.10.71 (A.N.). The Supreme Court has restored the seniority list on 1.10.78 (p. 95). He said that he had nothing against Shri

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Sharma getting his due, but he cannot get advantage over persons who are senior to him all along. He explained the chronology of the events, but emphasised the point that once a Review D.P.C. is held, it takes into effect the promotions from the date promotions were ordered based on the original D.P.C. There must be full restoration of rights and Respondent No. 4 cannot be deprived of his rights because of wrong done to him earlier. He cited the case of B.S. Bhima Rao Vs. State of Mysore - 1970 S.L.R. (Mysore) 191 - where it was held that the petitioner who was not holding the actual charge as Overseer between 1958 and 1961 due to no fault of his and it was entirely due to the unjustified order of suspension, it was not open to Government to deny payment to him of the pay and allowances of the post of Overseer during that period on the sole ground that he did not actually hold charge of the post of Overseer. He also cited the case of K.K. Jaggia Vs. State of Haryana and Another - 1972 S.L.R. (P & H) 578 - where it was held that the petitioner for no fault of his was unable to perform his duties on higher posts as he was illegally not promoted to those posts at the time his promotion was due. There was, therefore, no room for contending that the pay of higher posts may not be paid for the duration that he had not worked against those posts. By giving the increments to the petitioner in the higher posts on the basis of his promotion from the dates when it fell due, Government was accepting that he had spent this period as on duty in the time scale of that post. The legal fiction would, therefore, have to be extended so as to take the situation to its logical conclusion that the petitioner would be deemed to have worked against these posts from the dates when he was due for his promotion. In the same case, the court held that if a Government servant is debarred from performing his duties on account of an illegal order having been passed, he cannot be deprived of his pay and allowances for this period.

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17. The learned Solicitor General said that as held in the above case, the legal fiction has to be extended to take the situation to its logical conclusion which in the present case is that the applicant cannot get advantage of any illicit order and similarly Respondent No. 4 cannot be deprived of his rights because of wrong fixation of seniority which was ultimately quashed by the Supreme Court.

18. The case of S. Krishnamurthy vs. General Manager, Southern Railway - (1976) 4 Supreme Court Cases 825 - was also cited where the Supreme Court held that the notional service has to be considered for the purpose of qualifying period. The case of Prayag Dass vs. Secretary to Government - 1968 S.L.R. (Allahabad High Court) 843 - was also pointed out where the promotion of the petitioners was under a mistake which was sought to be corrected because of the acceptance of the representations filed by the adversely affected Inspectors and it could be said that the petitioners' promotion was subject to their representations and the petitioners were not entitled to hold the rank of Senior Marketing Inspectors.

18. We have gone through the pleadings and given careful consideration to the arguments by the learned counsel on both sides. We have also perused the written arguments filed on behalf of the applicant and Respondent No. 4 as well as various judgments cited by them. One of the main arguments of the learned counsel for the applicant, Shri Verghese, is that the statutory recruitment rules of 1975 relating to eligibility for promotion to the post of Joint Director/Special I.G.P. required a minimum "service" whereas in the amended recruitment rules dated 3.1.89 the word "service" was substituted by the word "experience". He said that the six years experience as D.I.G. in the CBI signified that the eligibility criterion of 6 years experience as D.I.G. in the C.B.I. cannot be relaxed. He further pointed out that although "deemed service" can be assigned to an officer under certain circumstances, no body can be deemed to have acquired experience from a previous date because experience can be acquired only by actually working as D.I.G. in the C.B.I. As ad hoc service is to be counted for experience, as held in the case of Dr. Ravindra Paul Kaur Vs. The State of Punjab (supra), the experience gained by the applicant has to be counted towards his eligibility for promotion. Shri Verghese argued at some length on the question of seniority vs. eligibility. According to him Respondent No.2 had informed Respondent No.1 that the applicant was the only eligible D.I.G. for consideration under the recruitment rules and that as held by the Supreme Court in the case of R. Prabha Devi and Others vs. Government of India (supra), seniority cannot be substituted for eligibility nor can it override it in the matter of promotion to the next higher post. According to Shri Verghese, the competent authority arbitrarily bestowed on Respondent No.4 "notional experience" for the period 13.10.83 to 25.4.85 only to make him eligible for promotion under the statutory rules.

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and that in the process, they have over-reached such rules because experience can never be deemed to have been acquired. Again, by assigning 31.10.85 as the date of eligibility for future promotion in respect of the applicant, the competent authority illegally snatched away experience acquired by him while working as D.I.G. from 13.10.83 to 30.10.85.

19. The learned Solicitor General, on the other hand, pointed out that the impugned order dated 6.4.90 cannot be challenged as it has been issued by Government in compliance of the judgment of the Supreme Court dated 9.10.87 in the case of *K. Madhavan vs. Union of India and Others* (*supra*) in which the same parties had figured. It was pointed out that Respondent No.4, Shri Madhavan, was all along senior to the applicant and since the applicant was promoted D.I.G. on ad hoc basis, on the basis of seniority which was ultimately quashed, and as the appointments of the applicant as well as the respondents at later dates were ad hoc, subject to the final decision of the court, by implementing the orders of the Supreme Court, Government have only restored the rights of the respondents. In order to get over the judgment of the Hon'ble Supreme Court, the applicant has stated that "the findings of the Hon'ble Supreme Court were not supported by facts and constituted a glaring error apparent on the face of the records".

20. During the arguments, we had expressed our opinion that such a statement in the application was wholly unwarranted and that we could not take any notice of a statement that the findings of the Supreme Court were not supported by facts and constituted a glaring error apparent on the face of records. The proper course for the applicant would have ^{been} to file a review application before the Supreme Court. Such a statement should not have been made before this Tribunal.

21 The applicant was appointed as ad hoc D.I.G. on 13.10.83 on the basis of an interim order dated 6.10.83 of the Supreme Court. This order has now been cancelled. It was clear all along that all ad hoc appointments would be subject to the final decision of the Supreme Court in the case of K. Madhavan vs. Union of India (supra).

22. The case of Respondent No. 4 is that the vacancy of Joint Director arose on 1.4.81 when he was the seniormost S.P. according to the seniority list dated 1.10.78, then in force. By then, he had put in 9-1/2 years' service as S.P. against the prescribed qualifying service of 8 years. Had a DPC been held in 1981, he would have been promoted as D.I.G., but such a D.P.C. was not held and in the mean time, the applicant was made senior to him and appointed D.I.G., based on the DPC recommendations which were based on a wrong seniority. This position was corrected by holding a review D.P.C. on 6.9.89. To us, it is quite clear that ad hoc appointments to the post of DIG were subject to the final result of the writ petition and appointment of the applicant as well as the respondents would be subject to the decision of the Supreme Court in that writ petition as decided on 9.10.87. According to the Supreme Court order, both Respondents 4 and 5 were made senior to the applicant and the Supreme Court had quashed the impugned order dated 25.9.81 appointing the applicant as S.P. with retrospective effect from a notional date of 21.10.81 (F.N.) and also quashed the seniority list of Superintendents of Police dated 17.10.81.

23. We have perused the records of the meeting of the D.P.C. held on 20.8.83 as well as the minutes of the meeting of the Review D.P.C. held on 6.9.89 at 10.30 A.M. and the meeting of the D.P.C. held on the same date at 11.15 A.M. for selection of officers for officiating promotion to the post of D.I.G. in the C.B.I. We notice that in the D.P.C. held on 20.8.83, both the applicant Shri O.P. Sharma and Respondent No. 4, Shri



K. Madhavan, were shown as 'very good', but as Shri O.P. Sharma was at that time considered senior, he was recommended by the Committee for officiating promotion to the grade of D.I.G. The Review D.P.C. held on 6.9.89 considered five officers who were all assessed "very good" and they were put in the following order:

Shri
1. K. Madhavan
2. Shri Santannu Sen
3. Shri Raghuvendra Narain Sinha
4. Shri O.P. Sharma
5. Shri P.S. Mahadevan

24. In the D.P.C. meeting held on 6.9.89, the panel for officiation promotion to the grade of D.I.G. of Police in the C.B.I. was as follows:

1984 - Shri Santannu Sen
1985 - Shri O.P. Sharma
1986 - Shri Ravindra Narain Sinha.

25. The Review D.P.C. on 6.9.89 took into consideration the Supreme Court's judgment dated 9.10.87 quashing the seniority list placed before the D.P.C. which met on 20.8.83. According to Review D.P.C. rules, a person who is approved by such a Review D.P.C. is entitled to the date of regular appointment which he would have got had the correct seniority been accorded to him at the time when the original D.P.C. was held.

As such, Shri K. Madhavan, Respondent No.4, does not become eligible for regular appointment as D.I.G. on 13.10.83 when he would have got his original promotion if the correct seniority list of Superintendents of Police had been placed before the D.P.C. We do not want to go into the question whether Shri Madhavan should have been regularly appointed as DIG with effect from 1981. We see no reasons to interfere with the orders of the respondents dated 6.4.90 promoting various officers in the post of DIG, CBI, from various dates. We do not see any malafide in

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the action of the respondents promoting Shri K. Madhavan as DIG, CBI, from 1.10.83 and the applicant from 31.10.85.

26. The pertinent question which has to be examined is whether 6 years' experience can be attributed to Respondent No. 4, Shri Madhavan, based on the revised seniority given to him on the basis of the orders of the Supreme Court. Shri Verghese accepts that by the order of the Supreme Court, both Respondents Nos. 4 and 5, become senior to the applicant, but, according to him, the eligibility condition of 6 years' minimum experience cannot be diluted to suit Respondent No. 4 and that the only person qualifying under the statutory recruitment rules is the applicant who has the actual experience even though he is made junior. We are of the opinion that a person cannot be deprived of the benefits because of some orders which were subsequently quashed by the Supreme Court. The rules of natural justice demand that no one should suffer and that no injustice should be done to anyone for no fault of his. In this case, Respondent No. 4 has been deprived of the essential experience due to an order which can be termed as illegal.

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27. A number of rulings have cited on behalf of the respondents to the effect that when a Government servant is denied his rightful promotion at the correct time due to no fault of his and later justice is rendered to him, either in pursuance of a court order or even by Government acting suo moto, according to him a retrospective date of deemed promotion then all servant what the Government has lost, including seniority, service, arrears of pay and allowances and computing eligibility period for the next higher promotion should be accorded from such a retrospective date of promotion. In view of this, in computing the eligibility criteria, the necessary experience may also be attributed to him. Not doing so, would be doing a

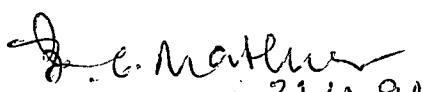
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great injustice to the Government servant concerned. This is also supported by the theory of legal fiction which takes the situation to its logical conclusion.

28. In view of the above, we are of the opinion that if any of the Respondents were denied actual experience in the post of D.I.G. as required under the recruitment rules on the basis of some orders which were later proved wrong, it would be a travesty of justice if they were denied all the benefits which should have been due to them legally. As a corollary, if a person has acquired some experience under fortuitous circumstances, such an experience may not be taken into consideration, but in the peculiar circumstances of the case, we would not like to deprive the applicant of his experience as D.I.G. on the ground that such an experience was derived on the basis of an illicit order. We hold that the actual experience acquired by the applicant may be computed for determining his eligibility in the post of Joint Director in the CBI as long as it does not adversely affect the rights of any of his seniors who were deprived of acquiring such experience because of mistaken orders.

29. We have already held earlier that there are no reasons to interfere with the impugned order dated 6.4.90 passed by the Respondents. Subject to the above observations, the application is dismissed.

30. There will be no order as to costs.


(B.C. MATHUR) 31.10.90
VICE-CHAIRMAN


(AMITAV BANERJI)
CHAIRMAN