

In the Central Administrative Tribunal  
Principal Bench, New Delhi.



Regn. No. RA- 78/92 in  
DA-1561/91

Date: 16.2.1993.

Shri R. S. Krishnaiya

.... Petitioner

Versus

Union of India & Ors.

.... Respondents

For the Petitioner

.... Shri A. K. Behra, Advocate

For the Respondents

.... Shri P. H. Ramchandani, Advocate

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)  
Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

1. Whether Reporters of local papers be allowed to see  
the judgement? Mo

(Judgement of the Bench delivered by Hon'ble  
Mr. P.K. Kartha, Vice-Chairman)

The petitioner in this R.A. is the original applicant  
in DA-1561/91 which was disposed of by judgement dated 1.11.91.

The petitioner filed DA-156/91 challenging the order of the  
respondents dated 28.12.1989 whereby he had been allotted to  
the Indian Police Service in the Union Territories Cadre,  
whereas he should have been allotted to the Rajasthan Cadre.

2. After going through the records of the case and hearing  
the learned counsel for both the parties, the Tribunal did not  
find any merit in the application which was, accordingly,  
dismissed.

3. The petitioner (Merit List rank No. 220) was allocated  
to the Union Territories Cadre in March-April, 1990, while

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Shri Vivek Bhardwaj (Rank No. 134) and Shri B.K. Dak (Rank No. 156) were allocated to their parent Cadre of Rajasthan against two posts of I.P.S. meant for the insiders. Both the insider vacancies were allocated to the candidates who were admittedly higher in rank in the merit list. Shri Vivek Bhardwaj, however, abstained from joining the Service allotted to him to appear in the subsequent Civil Services Examination after complying with the relevant provisions of the Rules. He was finally selected for the Indian Administrative Service in the subsequent examination and appointed to that Service by notification dated 25.2.1991 and had been allocated to the West Bengal I.A.S. Cadre. The petitioner claimed that he should be allotted his parent State's Cadre as an insider in the vacancy created by the appointment of Shri Vivek Bhardwaj to the I.A.S. The Tribunal observed that he cannot claim the said vacancy because an officer of the same batch had been appointed to another Service in accordance with the Rules. If this contention was accepted, the State Cadres will never stabilise, but would remain in a perpetual state of flux as this would create a general reaction in several States.

4. It has been stated in the grounds to the present petition that an error apparent on the face of the record

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has crept into the judgement dated 1.11.1991 inasmuch as the relevant statutory rules, namely, Indian Police Service (Cadre) Rules, 1954 and Indian Police Service (Recruitment) Rules, 1954 had escaped the notice of the Tribunal. It has further been argued that the aforesaid judgement is per incuriam inasmuch as the relevant statutory provisions have escaped the notice of the Tribunal. The learned counsel for the applicant also relied upon numerous decisions\* in support of his contention that a review petition would lie in the instant case and we have duly considered them.

5. The petitioner had, in his OA-1561/91, referred to the relevant rules, mentioned above but the Tribunal did not discuss the Rules in the body of the judgement.

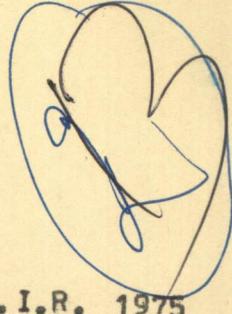
6. In our opinion, the fact that there is no discussion of the relevant rules in the judgement, does not lead to an inference that the same escaped the notice of the Tribunal. The omission to discuss the Rules in the body of the judgement, would not, in our opinion, amount to an error apparent on the face of the judgement.

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\* Decisions relied upon by the learned counsel for the petitioner:

A.I.R. 1970 J & K 163; A.I.R. 1981 Raj. 36; AIR 1986 Bombay 308; A.I.R. 1989 Bombay 309; A.I.R. 1981 A.P. 232; and 1991 (18) A.T.C. 89.

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7. In Sow Chandra Kante Vs. Sheikh Habib, A.I.R. 1975

S.C. 1500, the Supreme Court has observed that "A review of a judgement is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility".

8. The Supreme Court reiterated the same view in Avtar Singh Vs. Union of India, A.I.R. 1980 S.C. 2041.

9. We may also consider whether there are any other sufficient reasons for reviewing the judgement dated 1.11.91. In this context, the learned counsel for the applicant drew our attention to the judgement dated 31.7.1992 in OA-1478/92 (Shri Rahul Rasgotra Vs. Union of India through Secretary, Ministry of Home Affairs and Others). The applicant in that case also, had challenged the validity of the allocation contained in the letter dated 28.12.1989, as in the present one. In Rahul Rasgotra's case, the Tribunal directed the respondents to make allocation of cadre afresh, treating his appointment to the Indian Police Service w.e.f. 20.8.1990 and not on the basis of the tentative allocation contained in the impugned letter dated 28.12.1989. His allocation should be made along with the 1990 Batch of the I.P.S. Probationers and not with the 1989 Batch.

10. The learned counsel for the respondents stated that

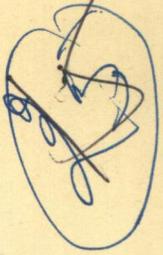
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on 13.1.1992, the Central Government have amended the Indian Police Service (Cadre) Rules, 1954 with retrospective effect from 1.1.1988 in which it has been stipulated now that for the purpose of Sub-rule (1) of Rule 5 of the Indian Police Service (Cadre) Rules, 1954, 'cadre officer' includes a person allotted to the Indian Police Service on the basis of a competitive examination held under Sub-Rule (1) of Rule 7 of the Indian Police Service (Recruitment) Rules, 1954 read with the Indian Police Service (Appointment by Competitive Examination) Regulations, 1955 and granted extension of time to join the Service. In the explanatory memorandum to the amendment, it has been stated that it gives only statutory support to the cadre allocation already made on the basis of which officers have joined their State of allotment and the allotment already made will not be disturbed. Hence, nobody is likely to be adversely affected by giving retrospective effect to these Rules.

11. The judgement of the Tribunal in Rahul Rasgotra's case does not amount to discovery of any fresh facts which could not be produced by the applicant before the judgement dated 1.11.91 was delivered. Whether the denial of the benefit of a subsequent judgement to the petitioner amounts to discrimination, or whether the retrospective amendment of the Rules is tenable, involve

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substantive questions of law which cannot be gone into in a review petition.

12. In view of the foregoing, we see no merit in the review petition. The petitioner, however, <sup>will</sup> be at liberty to file a fresh application in accordance with law, if he feels aggrieved by the aforesaid amendment to the rule or denial of the benefit of a subsequent judgement and if so advised. The review petition is disposed of with the above observations.

B.N. Dhandiyal  
(B.N. Dhandiyal) 16/2/73  
Administrative Member

*answrt*  
16/2/93  
(P.K. Kartha)  
Vice-Chairman(Judl.)