

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI.

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O.A. No. 1977 of 1993  
T.A. No.

DATE OF DECISION 14-09-1994

Shri Rupin Sharma Applicant(s)

Versus

U.O.I. & Others Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

S.K.  
(S.K. DHAON)  
ACTING CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1977 of 1993

New Delhi this the 14th day of September, 1994

Mr. Justice S.K. Dhaon, Acting Chairman  
Mr. BVK. Singh, Member

Shri Rupin Sharma  
R/o Yates Palace,  
Near Barnes Court,  
(Old Governor's House),  
Shimla-2.

...Applicant

By Advocate Shri G.D. Gupta

Versus

1. Union of India through
  - (a) The Secretary to the Min. of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi.
  - (b) The Secretary to the Ministry of Home Affairs, Department of Home Affairs, North Block, New Delhi.
2. Union Public Service Commission,  
Through its Chairman,  
Dholpur House,  
Shahjahan Road,  
New Delhi-3.
3. Government of Nagaland,  
Through its Chief Secretary,  
State of Nagaland Secretariat,  
Kohima.
4. State of Himachal Pradesh,  
Through its Chief Secretary,  
Himachal Pradesh Govt. Secretariat,  
Shimla.
5. Shri J. Adheto Sema,  
IPS Probationer (1992 Batch),  
C/o The Director,  
Sardar Vallabh Bhai Patel,  
National Police Academy,  
Hyderabad.
6. Shri Sharvan Kumar Sharma  
Rank No.79,  
IPS Probationer (1992 Batch),  
C/o Min. of Personnel, Public  
Grievances and Pensions,  
Department of Personnel & Training,  
North Block,  
New Delhi-1.



7. Shri Prakash Kumar Lohia  
Rank No.80,  
IPS Probationer (1992 Batch),
8. Shri Srivastava Krishna,  
Rank No.91,  
IPS Probationer (1992 Batch).
9. Shri Amitabh Gupta  
Rank No.97,  
IPS Probationer (1992 Batch).
10. Shri Sanjay Kumar Aggarwal,  
Rank No.98,  
IPS Probationer( 1992 Batch).
11. Shri Hemant Priyadarshy,  
Rank No.103,  
IPS Probationer (1992 Batch). ....Respondents  
C/o Ministry of Personnel,  
Public Grievances & Pensions,  
Department of Personnel & Training,  
North Block, New Delhi.

By Advocate Shri K.C. Sharma

#### ORDER

#### Mr. Justice S.K. Dhaon, Acting Chairman

Rupin Sharma who has been allocated to the Indian Police Service is aggrieved by the non-allocation to him of the State Cadre of Himachal Pradesh, which is his home State.

2. The undisputed facts are these. Rupin Sharma was allocated to the Indian Police Service on the basis of the Civil Services Examination, 1991 and ranked at S.No.99 in the merit list. It was decided to fill up 80 vacancies in the India Police Service in all. These vacancies were to be allocated to various cadres/ joint cadres. Rupin Sharma obtained the rank at S.No.17 amongst the 80 candidates selected for appointment to the Indian Police Service. He was the first and the only person selected from the State of Himachal Pradesh for appointment to that service. He expressed his willingness to be allocated to his home State viz., Himachal Pradesh. The vacancies in every cadre are ear-marked for "outsiders" and

"insiders" in the ratio of 2:1. On 22.01.92 and on 21.05.1992 the Chief Minister of Himachal Pradesh addressed two different letters to the Prime Minister of India. In both the letters, the Chief Minister emphasised that Himachal Pradesh being a small State with limited financial resources, it has been decided that the Central Government should not allocate either any officer of the Indian Administrative Service or an officer of the Indian Police Service or an officer of the Indian Forest Service to that State. In the letter dated 21.05.1992 it is emphasised that the consultation " contemplated in Rule 5(1) of the relevant cadre rules would be meaningless if the opinion of the Government of Himachal Pradesh that he does not require any officer of either of the three All-India Services is not accepted by the Central Government". The letter concludes: "....I feel that the State Government does not require any direct recruit from the All India Services for the time being and I request your kind intervention in directing the Ministries concerned appropriately so that the orders of allocation are rescinded". On 1.7.1992, the Ministry of Home Affairs sent a communication to the Chief Secretary of the Government of Himachal Pradesh that there was a proposal to allocate two candidates to the Indian Police Service Cadre of that State on the basis of the Civil Services Examination, 1991. On 08.07.1992, the Government of Himachal Pradesh by their Wireless Message informed the Ministry of Home Affairs that allotment of two candidates was not acceptable to them. Thereafter, 80 vacancies were distributed

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amongst the different states. To the State of Himachal Pradesh no seat was allocated. On 19.10.1992, the process of allocation was completed. On 22.01.1993, the Government of Himachal Pradesh by a Wireless Message informed that they were willing to take three candidates from the 1992 batch of the Indian Police Service. On 08.06.1993, the Ministry of Personnel in the Department of Personnel & Training informed Rupin Sharma that he could not be allocated to the State Cadre of Himachal Pradesh as there was no vacancy much less an "insider" vacancy available to be filled up in the cadre of that State.

3. The edifice of Rupin Sharma's case is that each State's requirement of a member of the Indian Police Service is determined every time, a competitive examination is held for the recruitment to that service and this exercise is done before the commencement of the particular examination. The argument further is that the determination of the number at that stage is final and irrevocable. The submission is that the number of officers required by the State of Himachal Pradesh was fixed at 2 for the 1991 examination.

4. We have carefully gone through the contents of this Original Application and we do not find any direct or specific averment to that effect. This shortcoming should be enough to reject the contention outright. Since arguments have been advanced at considerable length and with vehemence, we are inclined to examine the legal proposition posed by the learned counsel for the applicant.

5. The questions are; (a) whether Rule 4(2) of the Indian Police Service (Recruitment) Rules, 1954 (the Cadre Rules) contemplates the determination of the number of officers of the Indian Police Service to be allocated to a particular State Cadre? (b) if yes, whether such a determination is final? For reasons stated hereafter, our answer to both the questions is in the negative.

6.) Article 312(1) of <sup>5</sup>the Constitution, inter alia, provides that the Parliament may by law provide for the creation of one or more All-India ~~other provision~~ provisions of Chapter I (Part XIV) Services common to the Union and the State, and subject to other regulate the recruitment and the conditions of service of persons appointed to any such service. Article 312(2), inter alia, states that the service known at the commencement of the Constitution as the Indian Police Service shall be deemed to be service created by the Parliament under Article 312. Like other federal polities, our Constitution provides that the Union and the States shall have separate public services to administer their respective affairs, though there is no clear-cut bifurcation as regards the administration of the laws of the Union and the States. The effect of Article 312 is that, besides separate services for the Union and the States, there shall be certain services common to the Union and the States. Clause (2) besides the Indian Administrative Service, adopts the Indian Police Service for the purpose of Clause (1). Explaining the reasons for the creation of All-India Services, Dr. Ambedkar observed:-

" The dual polity which is inherent in a federal system is followed in all federation by a dual service. In all Federations, there is a Federal Civil Service and a State Civil Service. The Indian Federation, though a dual polity, will have a dual service, but with one exception. It is recognised that in every country there are certain posts in its administrative set-up which might be called strategic from the point of view of maintaining the standard of administration. There can be no doubt that the standard of administration depends on the calibre of the civil servants who are appointed to these strategic posts...The Constitution provides that without depriving the States of their right to form their own civil services there shall be an all-India Service recruited on all all-India basis with common qualifications, with uniform scale of pay and members of which alone could be appointed to these strategic posts throughout the Union."

7. The fall out of the creation of an All-India Service under Article 312 is that the recruitment to it and the condition of service under it can be regulated by an Act of the Union Parliament. It is by virtue of this power that Parliament has made

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the All-India Services Act, 1951 and the conditions of service, recruitment, conduct, discipline and appeal of the members of the All India Services are now regulated by the rules made under the said Act. The rules provide that the officers of the All-India Services shall be appointed and controlled by the Union Government.

8. In D.S. Garewal Vs. State of Punjab, AIR 1959 SC page 512 it was held that the words "Parliament may by law" do not mean that the rules regulating the recruitments and conditions of services must be made by Parliament itself and the power to frame rules to carry out the purposes of All-India Services Act, 1951 made by Parliament is not taken away by the aforequoted words. Therefore, in exercise of powers conferred by Section 3(1) of the said Act, rules have been framed so that recruitment, cadre and other conditions of service of the All-India Services are now regulated by the rules.

9. We may now examine the relevant rules keeping in view that the Central Government alone is empowered not only to make appointments to the All-India Services but it has the exclusive control over the members of the All-India Services. We may first consider the Indian Police Service (Recruitment) Rules, 1954 (the Recruitment Rules). Rule 2 of the Recruitment Rules contains the definitions of various expressions. We shall extract the definitions of the expressions, as material, "Commission" - the Union Public Service Commission. "Direct recruit" - a person appointed to the service after recruitment under clause (a) of sub-rule (1) of Rule 4, i.e., by competitive examination. "Member of the Indian Police" - a person who having been appointed to the police service under the Crown in

India, known as the Indian Police Service, continues on or after the commencement of the Recruitment Rules, to serve under the Government of India, or a State. "Service" - the Indian Police Service. Rule 3 states that the service shall consist of the members of the Indian Police, the members recruited to the service before the commencement of the Recruitment Rules and persons recruited to the service in accordance with the provisions of the Recruitment Rules. We are in this case concerned with the last category. Rule 4(1) relates to the method of recruitment to the service. It enumerates three methods. They are by a competitive examination, by selection of persons amongst the emergency Commissioned Officers and Short Commissioned Officers of the Armed Forces and by promotion of substantive members of the State Police Service. We are not concerned by any other method of recruitment except by a competitive examination. We shall refer to Rule 4(2) a little later. Rule 6, inter alia, states that all appointments to the service after the commencement of the Recruitment Rules shall be made by the Central Government. It makes it clear that no appointment shall be made except after recruitment by one of the methods specified in Rule 4(1). It also stipulates amongst others that the initial appointment of a person recruited to the service by a competitive examination shall be in the junior time-scale of pay. Rule 7 has many parts. We are concerned with the first two parts. The first part states that a competitive examination for recruitment to the Service shall be held at such intervals as the Central Government may in consultation with the Commission, from time to time determine. The second part

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emphasises that the examination shall be conducted by the Commission in accordance with such regulations and the Central Government may from time to time make in consultation with the Commission and the State Governments. It will thus be seen that even the holding and conduct of the competitive examination is under the control of the Central Government. The Central Government has the power to hold as many competitive examinations, as it deems fit and proper during a particular period and not to hold such an examination for a particular period.

10. The contention is that the stage of determining the number of officers to be allocated to the cadre of the Indian Police Service of the various States is only one and that is the one contemplated in Rule 4(2) of the Recruitment Rules. Rule 4(2), therefore, is the sheet-anchor of the applicant's case. We may now consider the said rule.

In the first part of Rule 4(2), the method of recruitment to the Indian Police Service for filling up a vacancy/vacancies has to be determined. In the instant case, the method determined was by a competitive examination. The said part requires the determination of the persons to be recruited by each method on each occasion by the Central Government in consultation with the Commission and the State Government concerned. The three methods, as indicated above, are mentioned in Rule 4(1). In substance, Rule 4(2), as material, states in its second part that every time the recruitment to the Indian Police Service is made by a competitive examination number of persons to be recruited has to be determined by the Central Government in consultation with the Commission and the State Government concerned. The significance of the expression "each occasion" has

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to be gathered from Rule 7(1) which confers power upon the Central Government to hold a competitive examination for recruitment to the Indian Police Service at such intervals as it (the Central Government) determines. As permitted by Rule 7(2), the Central Government has made the Indian Police Service (Appointment By Competitive Examination) Regulations, 1955 (the Regulations). In Regulation 2 certain expressions have been defined. Two expressions are relevant. In (a) "available vacancies" are defined to mean the vacancies in the Indian Police Service, which, as determined by the Central Government under the provisions of Rule 4(2) of the Recruitment Rules are to be filled on the results of an examination. In (d) "list" means the list of candidates prepared under Regulation 7. We are concerned with Regulation 7(1) which, inter alia, provides that the Commission shall forward to the Central Government a list arranged in order of merit of the candidates who have qualified by such standards as the Commission may determine. Regulation 8 minus the proviso to it which is not relevant provides that subject to the provisions of Regulations 9, 10, 12 and 13 candidates will be considered for appointment to the available vacancies in the order in which their names appear in the list. Regulation 9 relates to reservation of vacancies for Scheduled Castes and Scheduled Tribes candidates. Regulation 10 talks of disqualification for appointment on grounds of plural marriage. Regulation 11 deals with disciplinary action against a candidate. Regulation 12 relates to disqualification for appointment on medical grounds. Regulation 13 states that the inclusion of a candidates name in the list confers no right of appointment.

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11. Before proceeding further, we may examine the import of Rule 4(2) of the Recruitment Rules in the light of other provisions of the Recruitment Rules mentioned above and the relevant provisions of the Regulations referred to above. The purpose of determination of the number of persons to be recruited by a competitive examination is indicated in Rule 4(2) itself and it is that the same, is relevant for the purpose of recruitment only. Rule 6 of the Recruitment Rules which talks of appointments to the Indian Police Service brings out the distinction between recruitment and appointment. Regulation 2(a) reveals the purpose of <sup>the</sup> exercise done under Rule 4(2). It says that the number fixed under Rule 4(2) denotes the number of vacancies which are to be filled on the results of a competitive examination. Regulations 7 and 8 read conjointly indicate that after adopting the process of elimination, the Commission merely forwards a list arranged in order of merit to the Central Government and that Government considers a candidate for appointment for the number of vacancies determined under Rule 4(2) of the Recruitment Rules in the order in which their names appear in the list. A combined reading of Regulations 10, 11 and 12 discloses that the list prepared by the Commission is not final and the candidates mentioned therein are liable to be denied appointment, if their cases attract either Regulation 10 or 12. It is thus obvious that the determination of the number in Rule 4(2) really plays a role till a stage anterior to appointment.

12. We now come to the Indian Police Service (Cadre) Rules, 1954 (the Cadre Rules). Herein too,

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certain expressions are defined. Those material are: "cadre officer" which is defined to mean a member of the Indian Police Service and "cadre post" which is defined to mean any of the posts specified under item 1 of each cadre in the Schedule to the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955. Rule 3, as material, states that there shall be constituted for each State or group of States an Indian Police Service Cadre. Rule 5 of the Cadre Rules has two parts. In the first part it is stated that the allocation of cadre officers to the various cadres shall be made by the Central Government in consultation with the State Government or State Government concerned. In the second part it is stated that the Central Government may, with the concurrence of the State Governments concerned, transfer a cadre officer from one cadre to any cadre.

13. Keeping in view the purpose for which an All-India Service like the Indian Police Service has been envisaged in Article 312 of the Constitution and also Rule 3 of the Cadre Rules we are clear that an appointment to the Indian Police Service comes into existence only upon the allocation of a cadre officer to the Indian Police Service Cadre of a particular State. The examination held by the Commission to fill up the number of vacancies in the Indian Police Service on the basis of the declaration of the result of the said examination, the selection of a candidate/candidates to the Indian Police Service after the process of elimination adopted by the Commission and the Central Government and the allocation of a member of the Indian Police Service to a particular State Cadre forms part of one process beginning from a competitive examination and culminating in allocation to the cadre of a particular state. Allocation, therefore, is the last step.



14. Section 3 of the Act empowers the Central Government to frame rules relating to the recruitment and conditions of service. The Regulations framed under the Recruitment Rules and the Cadre Rules should be read together and construed harmoniously to resolve the present controversy. The said Rules and Regulations cannot be and should not be read in isolation of each other as they are not situated in water tight compartments. Rules 4(2) of the Recruitment Rules and Rule 5 of the Cadre Rules have different roles to play. They operate in different fields. In Rule 4(2) the fixation of the number of persons to be recruited by a competitive examination alone is contemplated. Nothing will turn upon the fact that, while fixing the number, consultation with the State Government concerned is enjoined. If the intention is that the number of persons to be allocated to different States is to be determined at that stage, there is no necessity for consultation with the Commission. Surely, the Commission can have no role in determining the requirement of the States concerned. The Commission has a limited role to play, i.e., conducting the competitive examination and thereafter submitting a list. The scheme is not that the "available vacancies" must necessarily be filled up. This is implicit in the definition of that expression wherein the words used are "are to be filled on the results of an examination". That apart, we have already shown above that the list prepared by the Commission and submitted to the Central Government is not sacrosanct. The process of elimination does not come to an end even after the submission of the

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list by the Commission.

15. Reading Rule 5 of the Cadre Rules again we find that the Commission has been kept out of the process of allocation of officers to various cadres whereas in Rule 4(2), the Commission is one of the three participants in the matter of fixation of the number of vacancies to be filled on the results of the examination. The exclusion of an outsider like the Commission at the stage of allocation indicates that the exercise of the power under Rule 5 of the Cadre Rules is not a mechanical one. It is considered to be an important and a serious exercise. The requirement of consultation with the State Governments or the State Government concerned at that stage destroys the argument of the applicant that the number of candidates to be allocated to each state has already been determined in Rule 4(2) of the Recruitment Rules. If the arguments is taken to its logical conclusion some of the consequences will be: There is no necessity at all of holding any consultation with the State Governments. A mere mechanical exercise is required to be done. But the scheme is otherwise.

16. Rule 5 of the Cadre Rules has to be interpreted in the back-drop that the Central Government has the overall control over the All-India Services. The power under Rule 5, therefore, exclusively belongs to the Central Government. The expression "consultation" in the scheme of the All India Service Act read with Article 312 of the Constitution and in the context and setting of the Cadre Rules does not mean recommendation.

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17. In our opinion, in Rule 4(2) of the Cadre Rules there is no determination at all of the number of officers to be allocated to a particular State Cadre. Such an exercise is confined to Rule 5 of the Cadre Rules. Assuming the number of officers to be allocated to any State/States is determined under Rule 4(2), such a determination is merely tentative and it is always open to the State Government concerned to furnish to the Central Government its revised requirements till an order of allocation is passed by the Central Government under Rule 5 of the Cadre Rules and the Central Government does not commit any illegality when it takes into account the revised version of the State Government concerned while passing an order of allocation. There is nothing in Rule 4(2) or in the scheme of the relevant rules to indicate that the power once exercised by a particular State Government for the purpose of determining its need cannot be again exercised before the final Act of allocation by the Central Government.

18. Section 14 of the General Clauses Act, 1897, inter alia, provides that where by any Central Act or Regulation any power is conferred then unless a different intention appears that power may be exercised from time to time as occasion arise. A different intention does not appear in the scheme of the Rules.

19. Reliance is placed on behalf of the applicant upon a decision of the Supreme Court in Union of India through Secretary and Another Vs. Rahul Rasgotra & Others, JT 1994(1) SC 441. There the controversy was whether a member of the Indian Police Service

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who had been allocated to a particular State but had not joined the training meant for probationers, could be considered to be a "cadre officer" within the meaning of Rule 2(a) of the Cadre Rules. In paragraph 11 of the judgment, their Lordships observed:-

" The various steps leading to the selection and appointment of a candidate to an all All India Service like the Indian Police Service as a result of a combined competitive examination and allocation of the State Cadre to him are these, namely, (1) Competitive examination; (ii) selection in the competition and determination of his order of merit; (iii) allocation of the particular All India Service to him based on his position in the order of merit; and (iv) allocation of the State Cadre to him. It is, therefore, obvious that allocation of the State Cadre is made after the stage for allotting the particular All India Service like the Indian Police Service has been made, to the selected candidate. The object and purpose of cadre allocation to the selected candidate who has been allotted to a particular Service is merely to indicate the State Cadre to which he would belong in the service and it is not necessary for this purpose for him to actually join the training. The number of total vacancies in the service and those available in the State Cadres for a particular batch being known and so also the total number of candidates selected at the competitive examination with their comparative position in order of merit, nothing more is needed to perform the

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exercise of cadre allocation at that stage and no useful purpose is served by postponing that exercise at a later date".


20. We have considered the aforequoted passage and we are of the opinion that the view we have taken is in accord with the aforequoted observations.

21. In view of the above discussion, we repel the submission made on behalf of the applicant.

22. The application fails and is dismissed but without any order as to costs.

The interim order passed on 27.10.1993 is hereby vacated.

  
(B.K. SINGH)  
MEMBER (A)

  
(S.K. DHAON)  
ACTING CHAIRMAN

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