

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD  
\*\*\*\*\*

ORIGINAL APPLICATION NUMBER 509 OF 1998

ALLAHABAD, THIS THE 22nd DAY OF JULY 2005

HON'BLE MR. JUSTICE S. R. SINGH, VICE-CHAIRMAN  
HON'BLE MR. S. C. CHAUBE, MEMBER (A)

Krishna Behari Srivastava, aged about 56 years,  
s/o Late Shri B. N. Srivastava,  
Director (Traffic),  
Department of Police, Govt. of U.P.  
Lucknow.

..... Applicant

(By Advocate: Applicant in person/Shri A. M. Srivastava)

**V E R S U S**

1. Union of India through Secretary,  
Ministry of Personnel,  
Government of India,  
New Delhi.
2. State of U. P. through the Principal Secretary,  
Department of Home Affairs,  
Govt. of U.P.  
U.P. Civil Secretariat,  
Lucknow.
3. Union Public Service Commission  
through its Secretary, Union Public Service Commission,  
Dhoulpur House, New Delhi.

..... Respondents

(By Advocate : Shri S. Singh; Shri K.P. Singh and  
Shri S. Chaturvedi)

**O R D E R**

**BY Hon'ble Mr. S. C. Chaube, Member (A)**

Through this O.A. the applicant has sought quashing of  
the assignment of year of allotment of 1975 to the applicant  
in the cadre of Indian Police Service besides a direction  
for his appointment to Indian Police Service on the basis of  
select list of the year 1977 which became effective from

*Shank*

03.07.1978 and to treat the year of allotment of the applicant as 1973. He has also challenged the select list of 1978 from which the applicant's name has wrongly been deleted and grant him all consequential benefits including his promotion to the rank of Inspector General of Police from the date his juniors were promoted.

2. Briefly, the facts are that the applicant joined U.P. State Police Service as direct Deputy Superintendent of Police of 1960 batch on 01.07.1963. His name appeared in the zone of consideration of the select committee for IPS on 20.12.1977. Accordingly his name was brought on the select list of 1977 (for the year 1978) at serial No.25 and the list was approved by UPSC on 03.07.1978. It has been stated that the applicant on the relative assessment of service record up to 1976-77 was categorized as "Very Good" by the Committee. On 12.05.1978 the applicant was appointed on cadre and senior scale post of IPS i.e. Superintendent of Police.

3. The applicant was appointed to IPS by the respondent No.1 Govt. of India on 03.10.1980. Further on 24.04.1987 60 IPS promotee officers including the applicant were assigned year of allotment in IPS cadre by the respondent No.1 Govt. of India. Applicant was assigned 1973 as year of allotment in IPS cadre. Some of the promotee IPS officers including the applicant who were aggrieved by fixation of their seniority in IPS cadre vide Govt. of India, Ministry of Home Affairs letter dated 24.04.1987 filed several O.As before CAT Allahabad Bench and contended that for the years 1971, 1975, 1976, 1979 and 1980 no select lists were prepared and as such, certain IPS Rules should be deemed to have been



relaxed and their seniority in IPS cadre should be fixed after counting their whole officiating service on the post of Superintendent of Police. The Tribunal accepted the claims of the promotee officers. Thereafter seniority of promotees in IPS cadre was re-determined. The applicant was accordingly assigned the year of allotment of 1970 vide MHA letter dated 15.07.1992 (Annexure-2 to the O.A.).

4. According to the applicant the matter went to the Hon'ble Supreme Court who vide interim order dated 28.07.1981 directed U.P. Govt. to prepare notional select list for the years it was not prepared before and file the same in the Apex Court. The Notional selects list for the year 1971, 1975, 1976, 1979 and 1980 were prepared and submitted to the Supreme Court. As some promotees had questioned the correctness of the notional select lists the Supreme Court directed the registry to return the select lists. D.G.P. vide letter dated 03.02.1993 enclosing NSL 1979 for 1980 in which applicants name was approved at Sl. No.3 invited applicant's objection. Copy of NSL 1978 for 1979 in which applicants name was de-listed was not supplied nor any information regarding that was supplied to the applicant. Applicant gave his reply dated 23.02.1993 enclosing with M.P. 3516/1998 dated 07.10.1998 Pg. 5 to 8. Notional selects earlier filed by the U.P. Govt. before Apex Court on 05.03.1992 were approved by UPSC without any modification. However, applicant's name was, due to malafide, left out from notional select list of 1978. His name was again included in notional select list of 1979 at Sl. No.3. According to the respondents on relative assessment of service record of the applicant up to 1977-1978 applicant was categorized as "Good" and his name could

*Shank*



not included in notional select list of 1978 due to statutory limit on the size of the select list and lower grading earned by him. Next year on relative assessment of service record up to 1978-79 applicant was graded as 'Very Good' and his name was included at Sl. No.3 in the notional select list 1979. According to the applicant, exclusion of his name from the notional select list of 1978 for 1979 was deliberate and malafide besides being contrary to the rules and regulations. On 05.12.1994 the Govt. of India re-determined seniority of the applicant as approved by the UPSC on 11.11.1993. Accordingly the applicant's name has been de-listed from the notional seniority list and his seniority down graded from 1973 to 1975. The applicant has contended that by this illegal act of respondents his juniors were appointed to IPS cadre and made senior to him. Further the names of such juniors could not have been included in the notional select list of 1978. Some of them were promoted as Inspector General of Police due to their ill gotten seniority in IPS Cadre. As stated by the applicant Govt. of India issued amendment to their notification dated 05.12.1994 appointing Shri Uma Shanker and Shri U. S. Srivastava to IPS cadre.

5. The applicant has contended that the direction of the Hon'ble Supreme Court has been misconstrued with a view to favouring some of the respondents; that the Apex court never directed the opposite parties to disturb the allotment of the seniority of those officers who were declared selected in the years other than those mentioned in the judgment; that the Govt. of India have acted contrary to provisions of explanation (1) of Rule-3 of IPS (Regulation of Seniority) Rules 1954; that the select list as well as seniority list

*Shank*



have to be prepared in accordance with the provisions contained in the statutory rules; that the examples cited by the applicant amply prove that the seniority list as well as select list are not based on any valid principles and as such the applicant has been arbitrarily discriminated by assignment of down graded seniority.

6. According to the respondent No.1 the applicant was included in the select list of 1977 (for the year 1978) approved by U.P.S.C. on 03.07.1978. Though the said select list was prepared for promotion of SPS officers to IPS against the vacancies due to occur in 1978 but the same remained in operation till 4<sup>th</sup> February 1981 as no select lists were prepared for the years 1979 and 1980. The name of the applicant figured at Sl. No.25 in the select list of 1977. He was appointed to IPS on 03.10.1980. His seniority in IPS was fixed vide MHA order dated 24.04.1987 along with 59 other officers.

7. Aggrieved by the aforesaid fixation of seniority certain officers moved the CAT for assigning them higher seniority by counting their pre-select list period of officiation - whether on cadre or non-cadre post by deeming the rules to have been relaxed on the ground that no select lists were prepared for the years 1971, 1975, 1976 and 1979 and 1980. Their applications were allowed by the Tribunal. Meanwhile, Union of India and some direct recruit officers filed SLPs in the Supreme Court. However, in the absence of any stay order from the Apex Court the Judgments of the Tribunal were implemented. In the process Shri M.P.Dixit who was junior select list officer than the applicant and appointed along with applicant was assigned 1970 as year of

*Shank*



allotment. Aggrieved by the said revision of seniority the applicant also filed O.A. No.402/1989 which was allowed in his favour. Accordingly, the applicant's year of allotment was also changed to 1970. However, in the said order it was specifically mentioned that this change was subject to outcome of SLP filed on behalf of Union of India.

8. Subsequently, the Supreme Court vide interim order dated 27.08.1991 in C.A. No.2932/1989 etc. including W.P. No.668/1991 filed by the applicant directed to prepare notional select lists for the years 1971, 1975, 1976, 1979 and 1980. As per the directions of the Apex Court the notional select lists were prepared by the review Selection Committee and accordingly the notional select lists so prepared were submitted in the Supreme Court. The Supreme Court vide its judgment dated 20.11.1992 in the aforesaid matter directed the registry to return the notional select lists to State Government who were further directed to finalize the notional select lists after calling objections from promotees who were included in those notional select lists. Thereafter the U.P.S.C. approved the notional select lists on 11.11.1993.

9. So far as the case of the applicant is concerned, his name was included at serial No.25 in the select list prepared on 20.12.1977 and approved by the U.P.S.C. on 03.07.1978. He was appointed to IPS vide notification dated 03.10.1980.

10. The aforesaid select list consisting names of 34 officers was prepared to fill up the vacancies anticipated during the year 1978. Of these 34 officers first 20 officers

*Shank*



were appointed to the IPS on various dates in the year 1978. However, the officers whose names figured from Sl. No.1 to 34 were appointed to the IPS against the vacancies which occurred during the years 1979 and 1980. The said select list remained in force till the year 1980 as no selection committee meeting was held in the years 1978, 1979 and 1980. According to the respondent No.1 the Supreme Court directed preparation of notional select list of the years 1978 and 1979 for vacancies which occurred during the years 1979 and 1980 respectively. There was therefore, no other way to give effect to the direction of the Supreme Court but to consider the cases of officers whose names were included at serial No.21 to 34 for inclusion in the Notional Select list of 1978 and 1979 otherwise the very purpose of preparing the notional select list as per the direction of Supreme Court would have been defeated.

11. The Review Selection Committee considered the case of applicant along with other eligible officers for inclusion in the select list of 1978. However, due to statutory limit on the size of the select list and lower grading earned by the applicant he could not be included in the select list of 1978. The case of the applicant was again considered for inclusion in the notional select list of the year 1979 and he was placed at Sl. No.3 in the said select list. The first two vacancies occurred on 01.04.1980 and the third vacancy occurred on 01.07.1980. Accordingly the appointment of the applicant was antedated from 03.10.1980 to 16.07.1980.

12. The respondent No.1 has cited Rule 3(3) (b) of the IPS (Regulation of Seniority) Rules 1954. Accordingly, the date of continuous officiation or inclusion in the select list,

*Handwritten signature*



whichever is later, is crucial date for fixation of seniority and the promote officer is assigned the year of allotment of junior most direct recruit officer who continuously officiated on a cadre post from the date earlier than the crucial date thus arrived at. Further the respondent No.1 has stated that the date of continuous officiation of the applicant was 12.05.1978 and the date of continuous inclusion in the select list was 31.01.1980. Thus, as per Rule 3(3) (b) of IPS (Regulation of Seniority) Rules 1954 the crucial date in respect of the applicant is calculated as 31.01.1980 for fixation of year of allotment. Shri O.P. Malik and Shri Pyare Lal direct recruit IPS Officers of 1975 batch started officiation in senior scale from 28.01.1980 and 12.02.1980 respectively. Therefore the applicant was assigned year of allotment of 1975, vide MHA order dated 05.12.1994.

13. The respondent No.1 has further stated that the applicant has not availed the alternate remedies available to him as per Section 20 of the CAT Act 1985. Thus, the Original Application is liable to be dismissed on this very ground. They have further pleaded that it is not necessary to maintain order of seniority of State Police Service in the select list as the selection of SPS Officers was made on the basis of merit. Further since no select committee meetings were held during the years 1978, 1979 and 1980 hence the select list prepared on 20.12.1977 (approved by UPSC on 03.07.1978) remained in force during these years. Further according to the respondent No.1 the directions of the Tribunal prima-facie were contrary to the existing rules and hence were challenged in the Supreme Court. However, in the absence of Stay against the operation of the judgment,

*Amr*



the seniority of the applicant was re-fixed and he was assigned 1970 instead of 1973 year of allotment vide order dated 15.07.1992. However, it was specifically mentioned in the said order that this change in the seniority of the applicant was provisional as well as subject to the outcome of the SLP filed by the Union of India against the judgment of Tribunal in O.A. No.402 of 1989.

14. The respondent No.1 has further clarified that the applicant had also filed writ petition No.668/1991 which was disposed off along with original application No.2932 of 1989 vide Supreme Court's Judgment dated 20.11.1992. Thus, the applicant was a party in the judgment in C.A.No.2932/1989 etc. vide which W.P. No.668/1991 filed by applicant was also disposed of.

15. On perusal of the select list of 1997 (for 1978) which was prepared on anticipated vacancies during 1978, it was observed that the officers who figured up to serial No.20 were appointed to IPS during the year 1978. S/Sri R. B. Singh and Manager Pandey (Serial No.21 and 22) were appointed to IPS on 11.07.1979. At the relevant period for time the Select Lists were prepared on the basis of calendar year and the select committee generally met in December every year. The promotion Regulations of IPS provide that a particular select list lapses when a fresh select list is approved by the UPSC under regulation 7(4). Hence if the Select List of 1978 (for 1979) would have been prepared in December 1978, the select List of 1977 would have ceased to be in operation from the date of approval of that list. Hence no appointment would have been made from the Select List of 1977 (for 1978) in the year 1979 in respect of

*Handwritten signature*

officers from Sl. No.21 onwards. Therefore, the Review Committee decided to consider S. Nos. 21 to 34 of the Select List of 1977 for inclusion in the Notional Select List of 1978 onwards. The Review committee considered the case of applicant along with other eligible offices for inclusion in the Notional Select List of 1978 (for the year 1979). However, on an overall relative assessment of his service records the committee graded him as 'Good'. As certain officers, who were assigned higher grading than the applicant could not be adjusted in the Select List due to statutory limit on the size of the list, the Review Committee did not recommend inclusion of his name in the said select list. Thereafter, the Review Committee considered his case for inclusion in the Select List of 1979 (for the year 1980) and recommended his inclusion at Sl.No.3 in the said select list. The said select list had been prepared against 9 vacancies, which occurred in the year 1980 of which the first 2 vacancies occurred on 01.04.1980 and the 3<sup>rd</sup> vacancy occurred on 01.07.1980. Hence the appointment of the applicant was ante-dated from 03.10.1980 to 16.07.1980. the deemed date of approval of the said notional Select List is 31.01.1980. As his name had not been included in the Notional Select List of 1978, the date of continuous inclusion in Select List in respect of the applicant is 31.01.1980. The applicant started officiation in senior post on 12.05.1978. Hence in terms of Rule 3(3) (b) of IPS (Regulation of Seniority) Rules 1954, the crucial date in respect of applicant for fixation of his seniority in IPS cadre has been calculated as 31.01.1980. S/Sri O.P.S. Malik and Pyare Lal, direct recruits of 1975 batch started officiation in senior post from 28.01.1980 and 12.02.1980 respectively. Therefore, the applicant has been allotted

*Shank*



1975 as year of allotment and placed between these two direct recruits.

16. Further as soon as the proceedings of New Selection Committee Meeting are approved by the UPSC, the proceedings of the earlier Selection Committee Meeting become inoperative.

17. As regards the cases of S/Sri Vir Vrashal Singh, Ram Lal, S. N. Prasad, J. S. Agarwal, K. N. Mishra, M.D. Maurya, H.P. Shukla and G.K. Shukla, are concerned none of these officers according to respondent No.1 officiated continuously on a cadre post prior to his date of appointment in IPS Cadre. According rule Rule-3(3)(b)/Explanation-1 of IPS (Regulation of Seniority) Rules 1954, their date of appointment to IPS has been taken as crucial date for fixation of their seniority in IPS. The name of S/Sri Uma Shankar and U. S. Srivastava were left out inadvertently from the order dated 05.12.1994. Orders fixing their seniority have however been issued on 23.02.1995. The name of Shir Radhey Shyam was not included in any of the notional select list of 1978 and 1979 having been retired from service on 31.01.1990 as per directions of the Hon'ble Supreme Court vide its judgment dated 20.11.1992 in O.A. No.2932 of 1989. The relevant observation is extracted below:

We accordingly hold that majority members committed the gravest of errors in holding tht Explanation 1 to rule 3(3)(b) of Seniority Rules and the relevant rules were deemed to have been relaxed and the directions given to the Central Government to refix the seniority are illegal. However, we emphasize that many of the promotees have since been retired from service after working out notional promotion and monetary benefits as this court did not stay the operation of the Tribunal's order. Arrears paid should not be recovered from them and promotions already made to some of the promotees

*Shank*



and now continuing in the respective offices may not also be recalled they have been working for some time. However, the continuing officers should not be entitled to any future promotions on the basis of the directions of the Tribunal superseding the claims of the direct recruits until they became eligible in their turn as per this judgment. The registry is directed to return the seniority lists produced by the State Government, which would give notice to the promotees who were included in the notional list of their inter se placement of the respective years 1971, 1975, 1976, 1979 and 1980 directing them to submit within a specified time, their objections, if any, and the State Government would send the list, the objections if made and all relevant record to the UPSC marking copies thereof to the Central Government. The Central Government would submit their comments to the UPSC which would consider them and may accept or modify the list as per the record and would communicate to the Central Government and the State Governments. Thereafter the Central Government would make necessary appointments on the recommendation by the State Governments as per law. The Seniority list already approved by the Central Govt. As directed by this court in the first instance subject to the above modification and for the rest of the years would stand upheld and the civil appeals to that extent are allowed and O.As stand dismissed. For others the respective years of allotment shall accordingly be assigned. The appeals are accordingly allowed with above directions. The Writ Petition is against interim directions of this court pending appeal. It is not maintainable. It is accordingly dismissed. The I.A. Nos. 1 to 10 of 1991 and C.P.No.191 of 1991 are dismissed. The directions given by the respective Tribunals stand modified. In the circumstances parties would bear their respective costs throughout.

In view of the above, the case of Sri Radhey Shyam has no relevance with the fixation of seniority of the applicant as he has already retired on 31.01.1990. Similarly, in the case of Sri S. N. Singh the respondent No.1 has issued modification on 23.02.1995. Sri S. N. Singh accordingly has been continuously included in the select list from 31.01.1979 and not 31.01.1978. Further the name of Sri R. B. Singh would not be included in any of the select list as he was due to retire on 31.12.1994.

18. According to respondent No.1 all officers except Shri H.P. Mishra had been appointed to IPS on the basis of inclusion of their names in the Select Lists of 1972 which

*Mishra*



was prepared on 27.12.1972 and approved by UPSC on 08.05.1973. The actual date of appointment of these officers is 18.01.1974 as mentioned in order dated 05.12.1994. Thus the question of mentioning of their notional dates for appointment of the IPS does not arise. So far as the case of Shri H. P. Mishra is concerned, he was appointed to IPS from 26.03.1980 on the basis of inclusion of his name at Sl.No.23 in the select list approved by the UPSC on 03.07.1978. The Review Committee has included his name at Sl. No.22 in the Notional Select list of 1979. The first two vacancies occurred on 01.04.1980. Therefore, his appointment has been post dated from 26.03.1980 to 16.04.1980. As regards S/Sri J. S. Agarwal and K.N. Mishra their appointments have been antedated as per directions dated 20.11.192 of the Supreme Court in Civil Appeal No.2932/1989. Similarly, seniority in the State Police Service has no relevance to the date of appointment to the IPS. Shri M.P. Dixit has been appointed to the IPS from the Notional Select List of 1978 whereas the applicant and Shri H.P. Mishra were appointed to the IPS from the notional select list of 1979. As regards non-assignment of notional date of appointment of IPS to S/Sri Uma Shankar, U.S. Srivastava, and Radhey Shyam it has been stated by the respondent No.1 that they retired from service on 30.04.1994, 28.02.1995 and 31.07.1990 respectively. As regards down gradation of the applicant from the year of allotment 1973 to 1980, it is stated by the respondent No.1 that the applicant has been allotted 1975 as year of allotment and not 1980. Moreover, the applicant and some other officers who were not satisfied with the seniority allotted to them originally moved the court of law on the ground that select list of certain years were not prepared for promotion of SPS officers to the IPS. Ultimately the

*Shank*

preparation of the select list in time was settled by the Apex Court and it is not that the applicant has been downgraded but he has been put at the right place according to the rules and judgment of the Apex Court. Thus, no illegality has been committed by the respondent No.1. Moreover, the applicant has not availed the alternative remedy available to him as he has not represented to the appropriate authority prior to approaching the Tribunal.

19. The respondent No.2 i.e. State of U.P. have admitted that year of allotment of the applicant was re-determined as per the directions of Hon'ble Supreme Court vide judgment dated 27.08.1991. Further the applicant was considered by the selection committee meeting held on 20.12.1977 for inclusion of his name in the select list of 1977. As per rule-5(1) of IPS (Appointment by promotion) Regulations 1955 the size of select list used to be double of anticipated vacancy. As such against 17 anticipated vacancies during 1978 a select list of 34 SPS officers was prepared. On overall relative assessment the applicant was graded as Very Good and his name was included at Sl. No.25 in the select list of 1977. However, he could not be appointed to IPS because during the year 1978 only 10 vacancies occurred. He was however, given ad-hoc promotion only on the post of Additional Superintendent of Police Gorakhpur w.e.f. 12.05.1978. Since select list for vacancies during 1979 and 1980 was not prepared the select list prepared for filling up vacancies during 1978 remained in operation. The applicant was appointed to IPS vide MHA notification dated 03.10.1980 on the basis of inclusion of 1977. The respondent No.2 has reiterated the chain of events as mentioned by the respondent No.1 with regard to the various court cases in

*Shank*



the Central Administrative Tribunal and the Apex Court directing the respondents to prepare the notional select list for the years 1971, 1975, 1976, 1979 and 1980. It is further stated that as a result of the deliberation in the Review Selection Committee Meetings the applicant could not be included in the select list of 1978 for vacancies of 1979 due to statutory limit on the size of the select list. However, he was considered for inclusion in 1979 Select List for vacancies which occurred during the year 1980 and was included at Sl. No.3 of the said select list. On the basis of the said inclusion the date of appointment to IPS was antedated from 03.10.1980 to 16.07.1980.

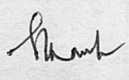
20. It is further stated that the Supreme Court in their final judgment dated 20.11.1992 in CA No.2932/1989 including W.P. No.688/1991 filed by the applicant denied the benefit of officiation during pre-select list period to promotee IPS Officers. The seniority of Promotee IPS Officers appointed to IPS before 27.07.1988 is regulated under Rule 3(3)(b) of IPS (Regulation of Seniority) Rules, 1954. Since on the basis of inclusion of the name of the applicant in select list of 1979 his date of appointment to IPS was antedated from 03.10.1980 to 16.07.1980 as he had no officiation on senior post after inclusion of his name in 1979 Select List the crucial date taken for allotment of year in IPS in his case was 16.07.1980. Accordingly he was assigned 1975 as year of allotment in IPS. It is further stated that it is not necessary that an officer found suitable for inclusion in one year's select list would be found so for the next year's select list which also considered some other officers who had become eligible for consideration.

*Handwritten signature*

21. The respondent No.2 has reiterated the reasons advanced by the respondent regarding categorization of the applicant as "Good" on over all relative assessment of his Service Record in the notional select list of 1978. They have further reiterated the same reasons as put forward by respondent No.1 for inclusion of the applicant's name in notional Select list of 1979 for anticipated vacancies of 1980 and inclusion of his names at Sl. No.3 of the select list. The respondent No.2 has further categorically stated that assignment of year of allotment to the applicant in the IPS as 1975 instead of 1973 is fully justified and according to the Rules as fixed by Govt. of India vide order dated 05.12.1994.

22. The respondent No.3 in their reply have challenged the contention of the applicant that on the basis of same records his name was not included in the select list of 1978 and have further clarified that every year one more ACR is added to the Service Record of the eligible officers. Over all relative assessment of a particular officer also depends on the service record of the other officers in the zone of consideration. In support of their contentions they have cited the observations of the Supreme Court in the case of Sayed Khalid Rizvi Vs. Union of India and Ors. the extract of which is given below:

"Inclusion of a person named in the Select list in a year does not give that person a vested right to have his name in the Select List in the Succeeding Year. The Select List shall be prepared every year and be reviewed and the revision effected so as to include the most talented, meritorious and suitable officers though junior to the persons already in the Select List".

 23. In his rejoinder affidavits, the applicant has contended that pursuant to the directions of the Hon'ble



Supreme Court on preparation of notional select list for the year 1980 the applicant filed reply dated 24.02.1993 to U.P. Govt. who forwarded the same to the UPSC and Central Govt. However, according to the applicant neither the UPSC nor the Central Govt. considered the objections filed by promotee officers as the notional select list were approved by U.P.S.C. on 11.11.1993 in toto. Due to non preparation of select list, the promotee officers had suffered hardships; that name of Shri P.D. Srivastava who was 52 years of age has been approved for inclusion in the select list in violation of mandatory provisions; that the name of the applicant has been left out from the notional select list of 1978 not because of unsuitability but because of ill will as the notional select list has not been prepared on the comparative record of service of officers; that the applicant was adjudged more meritorious in 1977 and in 1979. As such he could not be rated as unfit for inclusion of his name in the notional select list of 1978 particularly when his remark for the year 1977-78 is 'outstanding'; that Union of India and U.P.S.C. have acted against the directions of the Supreme Court by not applying their mind to the objections filed by the applicant; that Union of India did not file SLP against the judgment of Tribunal in O.A. No.402/1989 Allahabad Bench, as such the finding of the CAT in that case has become final and binding; that applicant's seniority of 1973 in IPS has never been challenged by the State Govt. or Union of India; that the notional select list of 1978 has not been prepared on the comparative merit of officers; that the date of superannuation of the applicant is less than a year and several officers junior to him have already been promoted as I.G.; that to remedy the wrong

*Shank*

caused to the applicant, he should also be promoted as Inspector General of Police.

24. The applicant further pleaded that the notification dated 05.12.1994 of Ministry of Home Affairs which determines the seniority of 82 promottee IPS Officers of U.P. Cadre is based on faulty select list and incorrect information besides being violative of the mandatory provisions of Rules and Regulations; that the MHA Notification dated 05.12.1994 refers to notional date of appointment to IPS, which is violative of mandatory provisions of Rule 3(3) (b) explanation-1 of IPS (Regulation of Seniority) Rules 1954; that the revised notional select list were directed to be prepared by the Supreme Court to remove any of the handicaps suffered by SPS Officers in the matter of seniority and not to snatch their seniority in IPS or de-notify their appointment to the IPS.

25. In the supplementary counter affidavits filed by the respondents, they have reiterated their averments made in their respective counter affidavits. The respondent No.2 in their supplementary counter affidavit has questioned the factual veracity of the chart copy (Annexure RB-1) annexed by the applicant and has further pointed out several factual inaccuracies. They have also denied the contention of the applicant that in the year 1978 there were 29 vacancies. On the other hand they have reiterated that there were only 20 vacancies. They have further stated that it is wrong to say that the names of the officers who were in notional select list of 1978 were over age i.e. above 52 years on 01.01.1978.

*Amal*



26. We have heard the counsel for the parties and perused the pleadings.

27.. We are aware that regulation of seniority of promoted IPS Officers is determined in terms of Rule 3(3)(b) of the IPS (Regulation of Seniority) Rules, 1954 by taking into account the date of continuous officiation on cadre post or inclusion of his name in the select list whichever is later. According to the respondent No.1 the date of continuous officiation of the applicant is 12.05.1978 whereas the date of continuous inclusion on the select list is 31.01.1980. Thus, in terms of Rules 3(3)(b) of IPS (Regulation of Seniority) Rules 1954 the crucial date in respect of the applicant is calculated as 31.01.1980 for fixation of the year of allotment / inter-se seniority of the applicant in the IPS. Two direct recruit IPS Officers viz. S/Sri O.P. S. Malik and Pyare Lal belonging to 1975 batch started officiation in Senior Scale from 20.01.1980 and 12.02.1980 respectively. Therefore, the applicant was assigned year of allotment as 1975 vide MHA order dated 05.12.1994.

28. There is a lot of force in the contention of the respondents that the selection of the SPS Officers to IPS is made on the basis of merit. It is also provided by the Rules that it is not necessary to maintain the gradings of one select list in respect of an officer in the subsequent select list prepared for promotion to IPS Officers.

29. The principal object of the promotion system as contained in the IPS (Appointment by Promotion) Regulations 1955 is to secure the best possible incumbents for promotion to the Indian Police Service which is the backbone of the

Police Administration of the country. The machinery designed for preparation of the select list under IPS (Appointment by Promotion) Regulations 1955 ensures objective and impartial selection. The selection committee is constituted by the high ranking responsible officers presided over by chairman or a member of the UPSC. There is no reason therefore, to hold that they would not act in fair and impartial manner in making selections.

30. The applicant has all along been maintaining that he was allotted the year of allotment of 1973 vide order dated 15.07.1992 of the Ministry of Home Affairs. According to the respondent No.1, in the said order it was specifically mentioned that this change in the seniority was provisional and shall be subject to the outcome of S.L.P. filed by Union of India against the order of Tribunal passed in O.A. No.402/1989. The applicant also admittedly filed W.P. No.688/1991 which was disposed of along with the O.A. No.2932/1989 vide Supreme Court's order dated 20.11.1992. As there was no element of finality in assignment of seniority of 1973 to the applicant in IPS, we are unable to accept the contention of the applicant on this count.

31. The applicant has contended that neither the Central Govt. nor the UPSC have considered the objections filed by him in the preparation of notional select lists of 1970, 1974, 1975, 1978, 1979 and 1980 before finalizing his appointment and seniority as a promotee IPS officers of Uttar Pradesh Cadre. On the other hand a perusal of MHA letter dated 05.12.1994 clearly shows that the Central Government/UPSC as per the directions of the Hon'ble Supreme Court in order dated 20.11.1992 in CA No.2932/1989 finalised

*Shah*



the notional select lists of 1970, 1974, 1975, 1978 and 1979 after duly considering the representations/objections of the Officers. It is further observed that the seniority of the applicant was fixed by taking 31.01.1980 as crucial date for the purpose of fixation of seniority. For the aforesaid reasons we are unable to accept the contentions of the applicant on this count being unsustainable.

32. According to respondent No.2 the applicant was given ad-hoc promotion only on the post of Additional Superintendent of Police Gorakhpur w.e.f. 12.05.1978 and as per the IPS (Regulation of Seniority) Rules, 1954 there is no provision for giving the benefit of ad-hoc promotion and officiation while determining the seniority and year of allotment of a promoted IPS Officer. There is a lot of force in the contention of the respondent No.1 that the MHA order dated 05.12.1994 is in conformity with IPS Regulations of Seniority Rules, 1954 and in pursuance of the judgment dated 20.11.1992 of the Hon'ble Supreme Court, the year of allotment of 1973 assigned to the applicant vide order dated 15.07.1992 being provisional and subject to the outcome of the S.L.P filed by Union of India no comfort can be derived by the applicant for up-gradation of his seniority from 1975 to 1973.

33. The Hon'ble Supreme Court while disposing of the Writ Petition No.688/1999 filed by the applicant in Syad Khalid Rizvi and Ors. Vs. U.O.I. & Ors. 1994 SCC (L&S) 84 have held that ad-hoc appointment of promotees to IPS cadre without compliance with Rules and Regulations being invalid and cannot be validated by deeming relaxation of Rules and Regulations when no representation or written order for

*Handwritten signature*

relaxation exists. They have further held that promotion by temporary appointment of non select list officers of State Service to cadre post in Central Service on ad-hoc or local arrangement basis cannot be termed as an appointment in accordance with law and at the best could be categorized as ad-hoc or fortuitous. Seniority of such promotees is to be reckoned from the date of their inclusion in the select list or from the date of their continuous officiation in the cadre post whichever is later on approval of their appointment by the Central Government. The Supreme Court further have held that period of their continuous officiation prior to such date would be treated as not countable and hence year of allotment cannot be assigned from the date of their initial appointment. Unless the officers are brought on the select list appointed to the cadre post and have continuously officiated thereon year of allotment cannot be assigned.

34. The applicant has placed reliance on Badri Nath Vs. Tamil Nadu & Ors. (2000) 8 SCC 395. In our view this offers no help to the applicant as he has not been able to establish beyond doubt the existence of malafides in non-inclusion of his name in the notional select list of 1977 for anticipated vacancies of 1978 in U.P. Cadre of I.P.S. Besides in Badri Nath's Case the D.P.C. had taken into consideration certain inadmissible material which is not the case made out by the applicant in the present O.A. He has also placed reliance on Shiv Kumar Sharma and another Vs. Union of India and Ors. In which the Apex Court upheld the Full Bench decision in S. S. Sambhus Vs. U.O.I. (1992) 19 ATC 571 Hyd. (FB). It was held by the Tribunal that for the period during which the applicant shouldered the higher

*Shank*



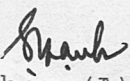
responsibilities for higher class-I post of ASW/SW their gradation as SA should be treated as one level higher than the grading awarded to them as ASW as per the ACRs for that period. Once again in our view the aforesaid decisions does not render any help to the applicant as the reasons due to which the applicant was awarded grading of Good have not been clearly established as per records before the Tribunal. Finally the applicant has cited the case of Union Territory of Chandigarh Vs. Dilbagh Singh & Ors. 1993 (1) SCC 154 in which it was held that the select list prepared in unfair and injudicious manner was liable to be cancelled. The case related to the vacancies of conductors in Chandigarh Transport undertaking as there were no statutory rules governing the filling up of such vacancies the Regional Employment Exchange of Union Territory of Chandigarh was required to the sponsored the names of eligible candidates. This judgment again is of no avail to the applicant as there are statutory rules regulating the preparation of the select list and inter-se seniority of promoted IPS Officers on their appointment to Indian Police Service.

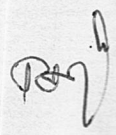
35. We are conscious of narrow scope of judicial review under the law of the land. The Hon'ble Supreme Court in a plethora of Decisions (Nutan Arvind Vs. U.O.I. & Ors., 1996 (2) SCC 488) (Durga Devi Vs. State of Himanchal Pradesh 1997(4) SCC 575) (State of M.P. Vs. Srikanth Chapekar JT 1992(5) SC 633) (Dalpath Aba Saheb Solunke Vs. B.B. Mahajan AIR 1990 SC 434 and Smt. Anil Katiyar Vs. U.O.I. & Ors. 1997 (1) SLR 153) has held that the Courts and Tribunals are not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the D.P.C. and certainly cannot sit in judgment over the selection made by

the DPC unless the selection is vitiated by the malafide or on the ground of arbitrariness. Similarly the Tribunal cannot assume the power to judge the comparative merits of the candidates and consider the fitness or suitability for appointment. Nor it is the function of the courts to hear appeals over the decisions of the selection committee and to scrutinize the relative merits of the candidates. Barring sweeping and vague allegation of malafide the applicant has not been able to establish element of malafide against him in the process decision making of the review select committee.

36. The relief as prayed by the applicant for his promotion to the rank of Inspector General of Police is closely linked with his prayer for up-gradation of his seniority from the year 1975 to 1973. As the assignment of seniority of 1973 was provisional and which was later on fixed as 1975 by the Ministry of Home Affairs under IPS (Regulation of Seniority) Rules, 1954 <sup>as per</sup> ~~besides~~ <sup>that</sup> the judgment of Hon'ble Apex Court in Syed Khalid Rizvi's case, (Supra), ~~in~~ the peculiar facts and circumstances of the case, no case for judicial intervention by the Tribunal, in our considered view, is made out.

37. For the reasons and the case law cited above, the Original Application is dismissed being devoid of merits. No costs.

  
Member (A)

  
Vice-Chairman

Shukla/-