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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.1225 of 1987

Sushil Kumar Petitioner

Versus

Union of India & Another Respondents.

Connected with

Registration O.A. No.1226 of 1987

V.N.Rai Petitioner

Versus

Union of India & Another Respondents.

Hon.D.S.Misra, A.M.

Hon.G.S.Sharma, J.M.

(By Hon.D.S.Misra, A.M.)

These two applications under Section 19 of the Administrative Tribunals Act XIII of 1985 regarding ^{petitioners'} seniority in the IPS cadre of Uttar Pradesh seek identical relief. They can be disposed of by a single judgement.

2. In O.A. No.1225 of 1987 the petitioner joined the U.P. Police Service on 21.1.56 as Dy.S.P. His services were placed at the disposal of the Intelligence Bureau, M.H.A. Govt. of India w.e.f.15.1.63 and subsequently transferred to the R&W in Cabinet Secretariat, Govt. of India w.e.f. 21.9.68. He was promoted to the rank of Joint Assistant Director in the Intelligence Bureau w.e.f. 15.3.67 on a post

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equated to the senior scale of the Indian Police Service; that some persons junior to the petitioner in the U.P. Police Service namely S/Shri Vijay Nath Singh, Kamla Mal, Bhupendra Singh, Harish Kumar etc. were promoted as Officiating S.P. in Uttar Pradesh under Rule 9(1) of the IPS (Cadre) Rules, 1954 in May, 1970; that the State of U.P. have issued a certificate vide their letter dated September 19, 1977 in (copy Annexure-7) to the effect that but for his deputation with the Govt. of India he would have been officiating as S.P. in U.P. w.e.f. 24.5.70. The petitioner was brought on the Select List of IPS in U.P. w.e.f. 8.5.73 and continued to remain on it till his appointment to the IPS on 22.8.77. The seniority of the petitioner in the IPS was determined vide M.H.A. Notification dated 24.4.87 (copy Annexure-I) and he has been given the year of allotment of 1970 in the U.P. cadre of the IPS. The petitioner's grievance is that by the order dated 24.4.87, his seniority has been determined on the basis of his continuous officiation w.e.f. 1.10.74 as against 24.5.70. The petitioner has prayed for issue of a direction to the respondents to extend the benefit of continuous officiation for the purpose of fixing his seniority and the year of allotment and to direct the respondents to consider him for promotion to the next higher post.

3. The petitioner in O.A.No.122 6 of 1987 joined the U.P. Police Service on 20.1.56. His services were placed at the disposal of the Intelligence

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Bureau, M.H.A., Govt. of India w.e.f. 16.5.61 and subsequently transferred to the R&W in Cabinet Secretariat, Govt. of India w.e.f. 21.9.68. He was promoted to the rank of Joint Assistant Director in the R&W of the Cabinet Secretariat w.e.f. 2.4.69 on a post equated to the senior scale of IPS. The petitioner was placed in the seniority list of U.P. Police Service between Shri Vijay Nath Singh, and M.C. Rawat and several persons junior to the petitioner including Shri Bhupendra Singh were promoted as officiating S.P. in U.P. under Rule 9(1) of the IPS (Cadre) Rules, 1954 in May, 1970. The Govt. of U.P. issued orders dated 30.11.77 giving the petitioner the benefit of next below rule and a certificate to the effect that but for the petitioner's deputation to the Govt. of India he would have been officiating as S.P. in U.P. in the same scale of pay and others in U.P. w.e.f. 24.5.70 (Copy Annexure-7). The petitioner was brought on the Select List of IPS in U.P. w.e.f. 8.5.73 and continued to remain on it till his appointment to the IPS on 22.8.77; that the seniority of the petitioner was determined in the IPS vide M.H.A.'s notification dated 24.4.87 (copy Annexure-1), in which he has been given the year of allotment of 1970. The seniority of the petitioner has been determined on the basis of continuous officiation w.e.f. 1.10.74 as against 24.5.70 even though he was brought on the Select List

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w.e.f. 8.5.73. The petitioner has sought a direction to the respondents to extend the benefit of continuous officiation to the petitioner for the purposes of fixing his seniority and the year of allotment and to direct the respondents to consider the case of the applicant for promotion to the next higher grade.

4. In the replies filed on behalf of the respondent^{No.1} it is stated that the two petitioners remained posted with the Govt. of India in various organisations/ Departments till their induction into the IPS and they did not hold an Indian Police Service cadre post as defined under Rule 2(6) of the IPS (Cadre) Rules, 1954; that for the purpose of seniority continuous officiation rendered by a promotee officer in a senior post is counted towards the seniority of the officer; that the certificate issued by the State Government in favour of the petitioners that but for holding ex cadre post they would have continued to hold a cadre post is valid only w.e.f. 1.10.74 and ^{from} not any date earlier than that; that the seniority of the petitioners has been determined correctly vide M.H.A. order dated 24.4.87 in accordance with the rules on the subject.

5. We have heard the learned counsel for the parties. The important points urged on behalf of the petitioners are (i) in Writ Petition No.4490 to 4499 of 1980 ^{connected} with Writ Petition No.4128-29 of 1980

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Bhupendra Singh and Others Versus Union of India & Others

The Hon'ble Supreme Court had given a direction to the respondents to determine the seniority of the twelve petitioners by adopting the ratio laid down by the Supreme Court in Narendra Chadha Vs. Union of India^(a) and Union of India Vs. G.N. Tiwari and Others^(b). This matter was finally decided by the Allahabad Bench of the Central Administrative Tribunal in O.A.n.583 of 1986 Bhupendra Singh & Others Versus Union of India & Others and the applicants in those cases have already been granted the benefit of continuous officiation on a senior post in the cadre; that the respondents should have followed the direction of the Supreme Court not only in the case of 12 petitioners in those Writ Petitions but also ^{in the case of} the petitioners who were similarly placed.

(ii) That respondent No.2 has not clearly spelt out the reasons for the relegation of the seniority of the petitioners in Indian Police Service inspite of the certificate dated 30.11.87 issued by the State of Uttar Pradesh; that but for their deputation to the Govt. of India the petitioners would have been appointed officiating Superintendent of Police in scale of pay identical to the senior scale of the Indian Police Service w.e.f. 24.5.70. This has resulted in several persons junior to the petitioners in the U.P. Police Service becoming senior in the IPS.

(a) Narendra Chadha Vs. Union of India & Others
1986.SCC(L&S)226.

(b) Union of India Vs. G.K. Tewari & Others
1986.SCC(L&S) 166.

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(iii) The interpretation given by the respondents to Rule 2(g) of the IPS (Regulation of Seniority) Rules, 1954 is discriminatory to officers of the U.P. Police Service holding a senior post vis-a-vis a directly recruited officer.

(iv) In a similar situation the respondents had by a notification dated 14.12.76 granted exemption from operation of practically all the rules to ward off similar hardship in the matter of seniority of S/Shri Onkar Sharma, A.C.Chaturvedi, J.N.Awasthi, R.K. Misra and A.N. Kaul. The petitioners' claim is that this benefit should be extended to them also.

(v) Alternatively the petitioners are entitled to the determination of their seniority in accordance with the principles laid down by this Tribunal in O.A. No.827 of 1987 Devendra Prasad Vs. Union of India decided on 12.1.88.

6. It is urged on behalf of the respondent No.1 that the judgement and order dated 22.4.87 of this Tribunal in O.A.No.583 of 1986 Bhupendra Singh & Others Vs. Union of India & Others is still under the consideration of the Hon'ble Supreme Court which has also passed an order to the effect that the impugned order of the Tribunal shall not be treated as a precedent. Regarding the certificate dated 30.11.87 issued by the State of U.P., the respondent No.1 ^{has} stated that no

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such certificate could have been issued in favour of the petitioners prior to 1.10.74 as it would have been in violation of the conditions laid down under Explanation ibid. It is also urged that the seniority in the U. P. Police Service has no direct bearing on the seniority in the I.P.S. as decided by the Hon'ble Supreme Court in Harjeet Singh's case (AIR 1980 SC.1275). Regarding interpretation of Rule 2(g) of the IPS (Regulation of Seniority) Rules, 1954, it is stated that the petitioners were holding ex cadre posts which are deemed to be cadre posts when held by a directly recruited IPS officer. As regards the case of Shri Onkar Sharma and Others, it is stated that their case was entirely on a different footing as compared to the case of the petitioners as their officiation in ex cadre posts had been approved by the Central Government in consultation with the Union Public Service Commission. The seniority rules clearly say that the date of continuous officiation in a senior post or the date of inclusion of name in the Select List whichever is later/ is the relevant date for determining seniority. The officiation rendered by the petitioners in ex cadre post, could not be regularised for the purpose of seniority from the date prior to 1.10.74.

7. We have considered the various contentions of the parties. In view of the order dated 14.7.87 of the Hon'ble Supreme Court regarding the judgement of this Tribunal dated 22.4.87 in O.A.NO.583 of 1986 we propose to decide these cases on ^{their} own merits.

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In para 9 of their replies the respondents have admitted that the period of service rendered by a promotee IPS officer in ex cadre post can also be counted towards his seniority if a valid certificate is issued by the State Government to the effect that but for holding ex cadre post the officer would have continued to hold a cadre post under Explanation 4 below Rule 3(3)(b) of the IPS (Regulation of Seniority) Rules, 1954. However, they have added in this reply that such a certificate was issued in favour of the petitioners w.e.f. 1.10.74 only vide their order dated 16.4.86 and therefore 1.10.74 was taken to be the crucial date for purposes of fixation of seniority of the petitioners. The respondents have also not disputed the authenticity of the next below rule certificate given by respondent No.2 (copy Annexure-7 to the petition) in which it is clearly certified that the petitioners would have continued to officiate in a senior post w.e.f. 24.5.70 but for their deputation to the Govt. of India. The certificate further states that all officers senior to the petitioners, except those found unsuitable have already been appointed to the post of Superintendent of Police or equivalent thereto and that this certificate was issued on the basis of one to one. The respondents have also failed to indicate any reasons why the certificate given by the State of Uttar Pradesh has not been found valid from a date earlier than 1.10.74 even though they

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In para 9 of their replies the respondents have admitted that the period of service rendered by a promotee IPS officer in ex cadre post can also be counted towards his seniority if a valid certificate is issued by the State Government to the effect that but for holding ex cadre post the officer would have continued to hold a cadre post under Explanation 4 below Rule 3(3)(b) of the IPS (Regulation of Seniority) Rules, 1954. However, they have added in this reply that such a certificate was issued in favour of the petitioners w.e.f. 1.10.74 only vide their order dated 16.4.86 and therefore 1.10.74 was taken to be the crucial date for purposes of fixation of seniority of the petitioners. The respondents have also not disputed the authenticity of the next below rule certificate given by respondent No.2 (copy Annexure-7 to the petition) in which it is clearly certified that the petitioners would have continued to officiate in a senior post w.e.f. 24.5.70 but for their deputation to the Govt. of India. The certificate further states that all officers senior to the petitioners, except those found unsuitable have already been appointed to the post of Superintendent of Police or equivalent thereto and that this certificate was issued on the basis of one to one. The respondents have also failed to indicate any reasons why the certificate given by the State of Uttar Pradesh has not been found valid from a date earlier than 1.10.74 even though they

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admit that the petitioners were brought on the Select List w.e.f.8.5.73. We are of the opinion that no reasons have been given by the respondents while ignoring the certificate given by the State of U.P. in determining the seniority of the petitioners with reference to 24.5.70.

8. The respondents have also taken shelter behind the definition of Rule 2(g) of the IPS (Regulation of Seniority) Rules, 1954. This question was considered and decided by the Allahabad Bench of this Tribunal, of which one of us was a Member in O.A.No.827 of 1987 Devendra Prasad Versus Union of India. In that case also the respondents had contended that the posts of Joint Assistant Directors in the Intelligence Bureau of R&W in the Cabinet Secretariat, Govt. of India, held by the petitioners cannot be deemed as a senior post in the cadre as they were members of the U.P. Police Service only. In that case it was held that the word 'and' preceding the words 'a post temporarily added' clearly relates to temporary addition of some post when held on senior scale by direct recruit and it does not cover the cases mentioned at item No.1 and the Deputation Reserve at item No.2. In other words the Bench rejected the contention of the respondents that the post of Joint Assistant Director in the Intelligence Bureau/R&W in the Cabinet Secretariat, Govt. of India did not come within the definition of senior post in the IPS cadre. The petitioner in that case was held to be officiating on a senior post in the IPS cadre.

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9. By applying the ratio of the above case to the instant cases the petitioners would be deemed to have been working on senior posts in the cadre with effect from the date of their appointment as Joint Assistant Directors. However, giving benefit of seniority to the petitioners with reference to the date of their continuous officiation on the post of Joint Assistant Directors may result in the petitioners' getting higher seniority than their seniors in the U.P. Police Service. The State of U.P. had certified that but for their deputation to the Govt. of India they would have continued to officiate as Superintendent of Police with effect from 24.5.70. We are of the opinion, that the grievance of the petitioners would be substantially removed if they are allowed the benefit of continuous officiation of the senior post w.e.f. 24.5.70, the date from which a certificate was issued in their favour by the State of U.P.

10. For the reasons mentioned above, we are of the opinion that the petitioners are entitled to the fixation of their seniority in the IPS cadre with reference to the date of their continuous officiation being taken as 24.5.70. We direct the respondents to redetermine the seniority of the petitioners accordingly. We also direct that the parties shall bear their own costs.

J.M.
J.M.

A.M.
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Dated the 16th Nov., 1988.

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