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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration(OA) no. 417 of 1987

A.B.Shukla

... applicant.

Versus

Union of India and others

.. Respondents.

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

Hon'ble G.S.Sharma J.M.

( By Hon'ble D.S.Misra )

In this application under Section 19 of the A.T.Act, the applicant has challenged the order dated 24.4.1987 determining the seniority of the promotee I.P.S.Officers of the U.P.State cadre counting the seniority of the applicant from 26th October, 1986 excluding the earlier about 5 years' continuous officiating service in I.P.S.cadre posts without any reason in an arbitrary and discriminatory manner.

2. The applicant's case is that he joined the U.P.Police Service w.e.f. 15.8.63 and after rendering 8 years of service in the U.P. Police Service became entitled to be included in the select list prepared for I.P.S. in accordance with Regulation 5(i) of the I.P.S.(Appointment by Promotion) Regulations, 1955 (hereinafter referred to as Promotion Regulations); that as per provisions contained in Regulations 5(i) and 5 (vi) of the Promotion Regulations the select list is required to be

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prepared every year; that the respondents failed in their duty to prepare select-list regularly inasmuch as in the years 1971, 1975, and 1976 they did not prepare any select list and in the years 1972, and 1974 the select list was shorter in size as prescribed under Regulation 5(i) of the Promotion Regulations; that on the basis of the applicant's possessing good reputation and extra-ordinary efficiency, he was promoted to the post of Addl. Superintendent of Police Lucknow w.e.f. 3.1.1975 under Rule 9 of the Indian Police Service Cadre Rules (hereinafter referred to as the Cadre Rules); that the said promotion was notified in the Gazette dated 24.2.1975 (copy annexure 1); that he worked as Addl. Superintendent of Police from 3.1.1975 to 28.12.1975, Superintendent of Police, Meerut City from 29.12.1975 to 20.3.1978, Superintendent of Police Special Investigation Branch (Cooperative Cell) Lucknow from 21.3.1978 to 9.7.78, Superintendent of Police G.R.P. Agra from 10.7.1978 to 29.3.1980 and Superintendent of Police Ghaziabad from 30.3.1980 to 19.5.1982; that the applicant was formally appointed to the I.P.S. w.e.f. 6.12.1980; that since the date of his promotion on 3.1.1975, the applicant has been continuing to hold senior post of I.P.S. at various places and at no point of time, the applicant was reverted in the State Police Service; that till the end of 1986, the respondents had not determined the seniority of the applicant and the applicant filed an application (Registration no. 277 of 1987) before this tribunal to seek the relief of direction to the

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government for determining the year of allotment of seniority of the applicant in accordance with the Rules read in the light of NARENDRA CHADDHA VS. UNION OF INDIA AND OTHERS and G.N.TIWARI VS. UNION OF INDIA AND OTHERS and similar other cases interpreting All India Service Rules; that the respondents instead of filing reply determined the seniority of the

*lt* applicant vide order dated 24.4.1987 (copy annexure 2), placing his name at sl.no. 39 pointing out in Column no.3 that he was included in the select list on 3.7.1978 and he continued to officiate <sup>continuously</sup> *lt* in senior post from 26.10.1980 and hence allotted him seniority of 1976; that the respondents have not applied their mind while determining seniority of the applicant inasmuch as the entire facts placed before them through his representation dated 9.5.86 (copy annexure 4) have not been examined and decided in accordance with the Rules.

The applicant has sought the following relief:

- i) to issue a direction directing the respondents to determine year of allotment <sup>*lt*</sup> and seniority of the applicant with reference to 3.1.1975 i.e., date on which he was promoted on the senior post of IPS and continued to work thereafter till his formal appointment in IPS;
- ii) to issue a direction directing the respondents to consider the applicant's entire service w.e.f. 3.1.1975 as on senior post of IPS cadre and to determine his seniority accordingly in view of the decision of Narendra Chaddha Vs. Union of India and others as interpreted by this Hon'ble Tribunal in case of Bhupendra Singh and others Vs. Union of India and others in registration case no. 583 of 1986;

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- iii) to quash seniority list dated 24.4.87 to the extent it determines seniority of the applicant wrongly and direction be issued to the respondents to rectify/modify the same by mentioning in column 4 of the said list as the date as 3.1.1975 and to allot year of allotment to the applicant accordingly; and
- iv) to declare rule 2(g) of IPS (Regulations of seniority) Rules, 1954 as ultra vires and violative of Art. 14 and 16 of the Constitution in so far as it provides that the post temporarily added to the cadre under second proviso to sub rule 2 of rule 4 of the IPS (Cadre) Rules 1954 held by the directly recruited officers only shall be considered as senior post and thereby exclude promotee officers from the said purview or in the alternative apply the ratio of the case of Narendra Chaddha Vs. Union of India and others and deem the said rule relaxed to the extent it operate against the applicant.

3. In the reply filed on behalf of the respondent no.1 it is stated that the seniority of the applicant has been correctly determined in accordance with Rule 3(3)(b) of the I.P.S. (Regulation of Seniority) Rules 1954; that according to the information furnished by the State Government, the applicant held cadre posts from 31.1.1975 to 28.3.1980 and 27.10.1980 to 5.12.1980 and that he held non-cadre post from 30.3.1980 to 26.10.1980; that a certificate <sup>was</sup> issued by the State Government in favour of the applicant to the effect that but for holding ex-cadre post, he would have officiated in cadre posts under Explanation 4 below Rule 3(3)(b) of the Seniority Rules but the conditions laid down therein

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were not fulfilled; that the applicant<sup>had</sup> continuously officiated in the cadre posts from 27.10.1980 onwards and this date was taken to be the crucial date for the purpose of seniority and he was correctly assigned 1976 as year of allotment in the Indian Police Service as Smt. Renuka Guttoo(RR 1976) is the junior most direct recruit of U.P.Cadre, who started officiating in cadre posts from 7.10.1980, i.e., a date earlier than 26.10.1980; that the seniority of the applicant has been determined after full application of mind in accordance with the rules on the subject.

4. In the reply filed on behalf of the respondent no.2, the State of U.P., it is stated that seniority rules require continuous officiation on a senior duty cadre post for the purpose of determination of seniority; that continuity in respect of petitioner was not maintained as he held the non cadre post of Superintendent of Police Ghaziabad from 30.3.1980 to 25.10.1980; that the exclusion of officiation prior to 26.10.1980 is neither arbitrary nor discriminatory; that respondent no.2 has always followed an uniform pattern, while posting select list officers to <sup>be</sup> non cadre posts but owing to administrative exigencies and public interest there were occasions when a select list officer was posted on an ex cadre posts; and that it is unfortunate that this has resulted in loss of seniority of the petitioner.

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5. In his rejoinder affidavit the applicant has stated that the respondent No.2 has failed to indicate the administrative exigency necessitating the posting of the applicant on a non-cadre post during 30.3.80 to 26.10.80 and has also not disputed the fact that persons junior to the applicant in the Select List were posted on cadre post in violation of Rule 8 of IPS (Appointment by Promotion) Regulations.

6. From the narration of events, the following undisputed facts emerge :

The applicant was appointed to a cadre post for the first time on 3.1.75 and he continued to work on various cadre posts upto 29.3.80. He worked as Supdt.of Police Ghaziabad w.e.f.30.3.80 to 19.5.82. The applicant was brought on the select list on 3.7.78. The applicant was appointed to the Indian Police Service by an order dated 6.12.80 but his seniority in the Indian Police Service cadre was not determined for several years. On 9.5.86 the applicant made a representation to respondent No.1 to determine his seniority but there was no response to this. In the year 1987 the applicant filed a petition under Section 19 of the Administrative Tribunals Act, 1985 which was registered as O.A.No.277 of 1987 in which the applicant sought a direction to respondent No.1 to determine the seniority . On 24.4.1987

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respondent No.1 issued an order determining the seniority of the applicant fixing 26.10.80 as the date of continuous officiation and fixing his year of allotment as 1976. The applicant's grievance is that his seniority has been determined w.e.f. 26.10.80 in an arbitrary manner. He has sought a declaration that Rule 2(g) of IPS (Regulation of Seniority) Rules, 1954 is ultra vires and violative of Article 14 & 16 of the Constitution so far as it provides that the posts temporarily added to the cadre under second proviso to sub-rule (2) of Rule 4 of the IPS (Cadre) Rules, 1954 held by the directly recruited officers only shall be considered as senior most. We propose to deal with this prayer first. It was urged on behalf of the applicant that the State of U.P. being the competent authority, he was bound to obey the orders of posting given to him by the State of U.P.; that the applicant joined as S.P. Ghaziabad in the genuine and bona-fide belief that the post was included in the IPS cadre. It was also urged that some other persons who were junior to the applicant in the U.P. Police Service and in the Select List for the IPS cadre of U.P. were working as S.P. in some other districts and the applicant should not be punished for illegal acts of the respondent No.2 in posting the applicant to a non-cadre post. The applicant has named one Budh Chandra, who was junior to the applicant in the U.P. Police Service and was appointed to the cadre post of S.P. Manpuri w.e.f. 29.3.80. These assertions are not disputed by respondent No.2, who has stated that this was done owing to administrative exigencies,

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without stating specifically what were these administrative exigencies. They also admit that "this is, of course, unfortunate that this has resulted in loss of seniority of the petitioner."

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7. It is also urged that as per 1975 Cadre Strength Notification dated 6.2.75 (Annexure-I), number of Superintendents of Police <sup>by the applicant</sup> were 48 but it does not mention the names of districts; that this notification was revised on 27.10.80 (copy Annexure-5) raising the number of posts of Superintendent of Police to 49 but there is no mention of Superintendent of Police, Ghaziabad or any other districts separately in the Notification; that in these notifications certain posts required to be manned by officers of the rank of Superintendent of Police have been specifically mentioned such as Superintendent of Police, Lalitpur, Superintendent of Police, Lucknow City, Superintendent of Police, Allahabad City etc; that prior to his posting as S.P. Ghaziabad the applicant was holding the post of Superintendent of Police, GRP Agra from 10.7.78 to 29.3.80, S.P. Investigation Branch (Cooperative Cell) Lucknow from 2 1.3.78 to 9.7.1978, S.P. Meerut City from 29.12.75 to 20.3.78, Additional S.P. Lucknow City from 3.1.75 to 28.12.75, all of which were cadre posts; that according to Regulation 8 of the I.P.S. (Appointment by Promotion) Regulations, appointment of members of State Police Service from the Select List to

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a post borne on the State Cadre should be made in accordance with the provisions of Rule 9 of the Cadre Rules and in making such appointment the State Government shall follow the order in which the names of such officers appear in the Select List. It is thus contended that as the applicant was brought on the select list on 3.7.78, he was entitled to be appointed against a cadre post in accordance with his seniority in the Select List. If the State Government chose to appoint officers junior to the applicant in the Select List on a post in the cadre overlooking the claim of the applicant, the same was violative of Regulation 8 of the I.P.S. (Appointment by Promotions) Regulation and the applicant cannot be made to suffer on account of non-compliance of the Rules by respondent no.2. In this connection a reference was made to the decision of the Hon'ble Supreme Court in 1980 SLJ-550(SC) Amrik Singh and Others . versus. Union of India in which it was held that appointment to a senior post in the cadre from amongst the officers in the Select list should be done in accordance with their inter se seniority. We have considered the matter and we feel that respondent no.2 has failed to comply with rule 8 of IPS (Appointment by Promotions) Regulation and to safeguard the interest of the applicant. Respondent no.2 has also failed to justify the posting of the applicant to a non-cadre post, while his juniors were posted to cadre posts. It would be against the principles of natural justice if the applicant is made to suffer for the illegal acts of the respondent no.2.

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8. The material rules for fixing the seniority of IPS officers are contained in the Seniority Rules. The relevant extract of rule 3 of the Seniority Rules is reproduced below :-

" 3. Assignment of Year of Allotment-(1) Every officer shall be assigned a year of allotment in accordance with the provisions hereinafter contained in this rule.

(2) The year of allotment of an officer in service at the commencement of these rules shall be same as has been assigned to him or may be assigned to him by the Central Government in accordance with the orders and instructions in force immediately before the commencement of these rules :

Provided that where the year of allotment of an officer appointed in accordance with Rule 9 of the Recruitment Rules has not been determined prior to the commencement of these Rules, his year of allotment shall be determined in accordance with the provision in clause (b) of sub-rule (3) of this rule and for this purpose, such officer shall be deemed to have officiated in a senior post only if and for the period for which he was approved for such officiation by the Central Government, in consultation with the Commission.

(3) The year of allotment of an officer appointed to the Service after the commencement of these rules shall be -

(a) where the officer is appointed to the service on the results of a competitive examination the year following the year in which such examination was held;

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(b) Where the officer is appointed to the service by promotion in accordance with rule 9 of the Recruitment Rules, the year of allotment of the junior most among the officers recruited to the service in accordance with rule 7 of those Rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former :

Provided that the year of allotment of an officer appointed to the Service in accordance with rule 9 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officers recruited to the service, in accordance rule 7 of those Rules, so started officiating shall be determined ad hoc by the Central Government in consultation with the Governments concerned.

Explanation 1- In respect of an officer appointed to the Service by promotion in accordance with sub-rule(1) of rule 9 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purpose of determination of his seniority, count only from the date of the inclusion of his name in the Selection List or from the date of his officiating appointment to such senior post whichever is later;

Provided that where the name of a State Police Service officer was included in the Select List in force immediately before the reorganization of a State and is also included in the first Select List prepared subsequent to the date of such reorganization, the name of such officer shall

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be deemed to have been continuously in the Select List with effect from the date of inclusion in the first mentioned Select List.

Explanation 2- An officer shall be deemed to have officiated continuously in a senior post from a certain date if during the period from that date to the date of his confirmation in the senior grade he continues to hold without any break or reversion a senior post otherwise than as a purely temporary or local arrangement.

Explanation 3- An officer shall be treated as having officiated in a senior post during any period in respect of which the State Government concerned certifies that he would have so officiated but for his absence on leave or training.

Explanation 4- An officer appointed to the Service in accordance with sub-rule (1) of the rule 9 of the Recruitment Rules shall be treated as having officiated in a senior post during any period of appointment to a non-cadre post if the State Government has certified within three months of his appointment to the non-cadre post that he would have so officiated but for his appointment for a period not exceeding one year, and, with the approval of the Central Government, for a further period not exceeding two years, to a non-cadre post under a State Government or the Central Government in a time scale identical to the time scale of a senior post :

Provided that the number of officers in respect of whom the certificate shall be current at one time shall not exceed one-half of the maximum size of the Select List permissible under sub-regulation (1) of regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955, and follow the orders in which the names of such officers appear in the Select List :

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Provided further that such certificate shall be given only if, for every senior officer in the Select List appointed to a non-cadre post in respect of which the certificate is given, there is one junior Select List officer officiating in a senior post under rule 9 of the Indian Police Service (Cadre) Rules, 1954;

Provided also that the number of officers in respect of whom the certificate is given, shall not exceed the number of posts by which the number of cadre officers holding non-cadre posts under the control of the State Government falls short of the deputation reserve sanctioned under the Schedule to the Indian Police Service (Fixation of Cadre Strength) Regulations 1955".

9. From a perusal of these rules it is noticed that under Rule 4 of the Recruitment Rules, recruitment to the IPS has to be made either by competitive examination or by promotion of substantive members of a State Police Service. Rule 6 of these rules further provides that all appointments to the service shall be made by the Central Government. Rule 9 of the Recruitment Rules lays down that the Central Government has to make recruitment of the State Police Service Officers by promotion after consultation with the State Government and the Union Public Service Commission in accordance with such regulations as it may make. Sub-rule (2) of Rule 9 prescribes the quota for the promoted officers. Regulation 9 of the Promotion Regulations framed under Rule 9 of the Promotion Regulations framed under Rule 9 of the Recruitment Rules lays down that the appointment of the members of the State Police Service Officers included in the Select List to the IPS has to be made by the Central Government on the recommendation of the

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State Government. Regulation 8, however, lays down an exception to this general rule and it not only empowers the State Government to make appointment of the State Police Service Officers from the Select List to the posts borne on the State cadre of the IPS but also empowers it to make the appointment of such State Police Service Officers, whose names have not been included in the Select List in the administrative exigencies in two circumstances. Firstly, if the vacancy is not likely to last for more than 3 months and secondly, if there is no suitable cadre officer available for filling the vacancy.

10. Rule 9 of the Cadre Rules also authorises the State Government to make the appointment of a non-cadre officer to a cadre post in the IPS temporarily under the two aforesaid circumstances prescribed by Regulation 8 of the Promotion Regulations. Sub-rule (2) provides that where a non-cadre officer is appointed to the cadre post for a period exceeding 3 months, the State Government has to report this fact to the Central Government immediately together with the reasons for making the appointment. Sub-rule (3) provides that on receipt of such report, the Central Government may direct that the State Government shall terminate the appointment of such officer or it may report the full facts under sub-rule(4) to the UPSC and may in the light of the advice given by the Commission, give suitable direction to the concerned State Government.

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11. The applicant has placed reliance on the view taken by the Hon'ble Supreme Court of India in

(i) Union of India and Others Versus K.L. Jain and (ii) Union of India Versus G.N.Tiwari and Others 1986 SCC (L&S)166. The Hon'ble Supreme Court gave a decision in K.L.Jain's case which was also applicable to the case of G.N.Tiwari and Others. Shri K.L.Jain, who was a substantive member of the State Civil Service (Executive) in the State of Madhya Pradesh was temporarily appointed to the post of a Collector, which is a senior post on the cadre under Rule 9 of the IAS (Cadre) Rules, 1954 and had been continuously officiating on such post w.e.f. 10.11.75 till the Central Govt. accorded its approval on 1.10.76 for his appointment in the IAS. He was assigned 1972 as the year of allotment by the Central Govt. Feeling aggrieved he filed a petition before the High Court and the High Court held that though there was no specific approval of the Central Govt. to his appointment, such prior approval was not a condition precedent for a valid appointment to a cadre post under Rule 9 of the Cadre Rules and therefore the continuous officiation by the respondents as the Collector for the period from 10.11.75 to 30.9.76 could not be ignored on the ground that the appointment was not specifically approved by the Central Govt. The High Court allowed the writ petition and held that his continuous officiation in a senior post of Collector from 10.11.75 was in accordance with Rule 9 of the Cadre Rules and the same must ensure for his benefit to give him seniority under Rule 3(3)(b) of the Seniority Rules. A similar decision was also given by the Hon'ble High Court in the case of G.N. Tiwari and Others.

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The Union of India went in appeal against the two judgements and the Supreme Court discussed the relevant provisions of the I.A.S. (Regulation of Seniority) Rules, 1954 and I.A.S. (Cadre) Rules, 1954. The observation of the Hon'ble Supreme Court in para 15 of their judgement reads as follows :-

" 15. We are not impressed with the submission that the power of the Central Government under sub-rule (2) to direct termination of appointment of a person other than a cadre officer to a cadre post for a period exceeding three months or more was a larger power and carried with it the power to direct curtailment of the period of officiation of such person. Obviously, the power to direct termination of the appointment of a non-cadre officer in a senior post is distinct from the power to direct curtailment of his period of officiation. There is no such provision made in the Cadre Rules empowering the Central Government to direct the curtailment of the period of officiation of a non-cadre officer on a cadre post for purposes of reckoning his year of allotment under Rule 3(3)(b) of the Seniority Rules. Such a power cannot be spelt out from sub-rule (2) of Rule 9 of the Cadre Rules which confers power on the Central Government to direct termination of appointment of a non-cadre officer to a cadre post. In the absence of such a provision, the impugned order passed by the Central Government appointing October 1, 1976 as the date from which the period of officiation is to be reckoned for determining the year of allotment under Rule 3(3)(b) of the Seniority Rules was wholly arbitrary and capricious and therefore rightly struck down

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by the High Court. The failure of the Central Government to give a direction under sub-rule (3) of Rule 9 to terminate the appointment of the respondents implies that their continuous officiation on a cadre post had the tacit approval of the Central Government, particularly in view of the fact that the Central Government by letter dated February 19, 1977 required the State Government to submit a consolidated proposal for approval of officiation of non-cadre officers on cadre posts for the half year ending September 30, 1976. This was followed by a report of the State Government dated March 29, 1977. The Central Government by order dated October 1, 1976 accorded its approval to their appointment in the Indian Administrative Service. Furthermore, the respondents as non-cadre officers could not be denied the benefit of continuous officiation in a senior post merely because the State Deputation Reserve Quota was over-utilized : Harjeet Singh Vs. Union of India and Amrik Singh Vs. Union of India.

The various provisions of the IAS Rules are in Pari-materia with the IPS Rules and the principles initiated in the observation of the Supreme Court would apply to the present case also. The applicant in this case was admittedly brought on the select list w.e.f. 3.7.1978 and had been working on a senior post in the cadre from a date earlier than 3.7.1978 and also earlier than 30.3.1980 when he was posted as Superintendent of Police, Ghaziabad by respondent No.2, the State of Uttar Pradesh.

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12. The <sup>next</sup> contention of the applicant is that he was working on a senior post in the cadre continuously with effect from 3.1.1975 and he is therefore entitled to the fixation of his seniority with reference to this date. In support of this contention he has brought to our notice the following observations of the Hon'ble Supreme Court in the case of Narendra Chadha Versus Union of India A IR 1981 SC.638.

".....They have been continuously holding these posts. They are being paid all along the salary and allowances payable to incumbents of such posts. They have not been asked to go back to the posts from which they were promoted at any time since the dates of their appointment..... neither the Government has issued orders of reversion to their former posts nor has anybody so far questioned the right of the petitioners to continue in the posts which they are now holding. It would be unjust to hold at this distance of time that on the facts and in the circumstances of this case the petitioners are not holding the posts in Grade IV..... But in a case of the kind before us where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the Service at all, particularly where the Government is endowed with the power to relax the Rules to avoid unjust results....."

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13. We shall ~~xxx~~<sup>first</sup> examine the contentions of the parties regarding the character of the post of S.P. Ghaziabad during the period 30.3.80 to 25.10.80, a period of seven months which has not been taken into consideration by respondent No.1 in counting the period of continuous officiation of the applicant on a senior post in the cadre. It is not disputed by respondent No.1 that during this period the applicant's name was in the Select List and the State of U.P., respondent No.2 had given a certificate to the effect that but for holding ex cadre post he would have officiated in cadre posts. Respondent No.1 has not accepted the certificate given by respondent No.2 with the statement that the required conditions envisaged in Explanation 4 below Rule 3(b) of the Seniority Rules <sup>are</sup> ~~is~~ not fulfilled. In the reply filed by respondent No.1 it has not been stated which condition of Explanation 4 (supra) has not been fulfilled. In the reply filed by respondent No.2 the view held by respondent No.1 has been termed 'unfortunate' and they have tried to wash off their hands by making such statement while admitting the loss and suffering caused to the applicant. From the reply of respondent No.2 it can be inferred that when they posted the applicant as S.P. Ghaziabad it could not have been their intention that the applicant should suffer on this account. Respondent No.2 has also not disputed the allegation of the applicant - that persons junior to the applicant in the Select List were appointed against senior post in the cadre.

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It appears to us that respondent No.2 perhaps was ignorant of the fact that the post of S.P.Ghaziabad was not yet included in the cadre of Indian Police Service. This appears to be so because although *bc* the post of S.P. Ghaziabad was created with the formation of a new district of Ghaziabad <sup>in November, 1976</sup> *lx* and was held by three directly recruited I.P.S. officers in succession before the applicant took charge of that post on 30.3.80. The ~~second~~ contention of respondent No.1 is that the applicant was not holding senior post contained in Section 2(g) of the I.P.S. (Regulation of Seniority) Rules, 1954. The learned counsel for the respondent No.1 contended that this whole definition relates to the officers directly recruited to the I.P.S. and does not cover officers of State Police Service even though the name of such officer may be included in the Select List. This question was considered and decided in O.A. No.827 of 1987, Devendra Prasad Versus Union of India by Allahabad Bench of this Tribunal, of which one of us was a Member (Justice S.Zaheer Hasan, V.C. and D.S.Misra Member). It was held in this case 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 recruits and it does not cover the cases mentioned at item No.1 and the Deputation Reserve at item No.2. Section 2(g) of the Indian Police Service (Regulation of Seniority) Rules, 1954 reads as follows :

'Senior post' means a post included and specified under item 1 of the cadre of each State in the Schedule to the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955, and includes -

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a post included in the number of posts specified in items 2 and 5 of the said cadre, and a post temporarily added to the cadre under the second proviso to Sub Rule (2) of Rule 4 of the Indian Police Service (Cadre) Rules, 1954, when held on senior scale of pay, by an officer recruited to the service in accordance with the Rule 7 of the Recruitment Rules.

This definition of senior post in clause 2(g) runs in three parts as below :-

- (i) Post specified at item No.1 of the Schedule referred to above.
- (ii) Post included at item No.2 of the said cadre schedule, and
- (iii) a post temporarily added to the cadre under the second proviso to sub rule 2 of Rule 4 of Indian Police Service (Cadre) Rules, 1954, when held on senior scale of pay by an officer recruited to the service in accordance with Rule 7 of the Recruitment Rules.

The ratio of the decision of the above mentioned case is that a post temporarily added to the cadre does not change its character merely by the accident of the post being held by a directly recruited candidate, a promotee or an officer of the State Police Service appointed under Sub Rule (1) of Rule 9 of the Indian Police Service (Recruitment) Rules. The interpretation given by the Tribunal to Rule 2(g) of IPS (Regulation of Seniority) Rules is that a senior post in the cadre does not become an ex - cadre post, when held by a State Police Service Officer, whether his name

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is included in the select list or not. The applicant has challenged the vires of this rule on the ground of discrimination violative of Article 14 of the Constitution of India. We are of the opinion that the view taken by the Tribunal in the above mentioned case is rational and applicable to the instant case. It is therefore not necessary to consider the prayer of the applicant regarding the vires of Rule 2(g) Supra. We are also of the opinion that the applicant is entitled to count the period 30.3.80 to 26.10.80 for officiation in senior duty post in the cadre.

14. For the reasons mentioned above, we are of the opinion that the reasons given by respondent no.1 for denying him the benefit of continuous officiation in a senior post in the cadre from 30.3.80 to 26.10.80 is violative of the principles of natural justice <sup>and be</sup> cannot be sustained. Accordingly, we direct respondent no.1 to treat the entire period of posting of the applicant as Superintendent of Police, Ghaziabad as being on a senior post in the cadre and to give him the benefit thereof for determination of his seniority in the I.P.S. cadre.

15. We will now deal with the prayer regarding denial by respondent no.1 of the benefit to the applicant in the matter of seniority for the period of his continuous officiation on a senior post in the

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cadre from 3.1.75 to 3.7.78, the date on which the applicant was admittedly brought on the Select List. The respondents have denied the benefit of continuous officiation on the ground that Explanation 1 to Rule 3(3)(b) of the Seniority Rules does not permit giving any benefit of seniority in the cadre of IPS. Explanation 1 reads as under:-

" In respect of an officer appointed to the service by promotion in accordance with sub Rule(1) of Rule 9 of the Recruitment Rules the period of his continuous officiation in a senior post shall, for the purpose of determination of his seniority, count only from the date of the inclusion of his name in the selection list or from the date of his officiating appointment to such senior post whichever is later."

The contention of respondent no.1 is that the period of officiation prior to the date of the inclusion of the applicant in the Select List has been ignored in accordance with the above provision in the Rules. The learned counsel for the applicant laid emphasis on the fact that the applicant was working on a senior post in the IPS cadre and was entitled to count his seniority with reference to 3.1.75 as the date of continuous officiation.

The applicant has also placed reliance on an unreported judgment of the Patna High Court in Civil Writ Petition no. 3332 of 1984 Devi Chand Sinha versus Union of India decided on 16.8.86 in which a learned single Judge of Patna High Court has upheld the continuous officiation of the petitioner before him on



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the cadre post from the date prior to the date of his inclusion in the Select List. The Union of India filed a Special Leave Petition before the Hon'ble Supreme Court but the same was rejected. The facts of that case are that Shri D.C.Sinha, a promotee IPS officer of Bihar cadre was officiating in a cadre post w.e.f. 18.5.73 till his appointment to the IPS on 2.11.1977. He was included in the Select List for the first time on 9.8.73. During the period 1.7.74 to 25.4.75, another officer who was senior to Shri D.C.Sinha in the Select List was not holding a cadre post and no certificate under Explanation 4 of Rule 3(3)(b) of the Seniority Rules, 1954 was issued by the State Government. The Union of India took the view that the appointment of Shri Sinha to a cadre post was done in preference to his senior and was in contravention of Regulation 8 of Promotion Regulations, 1955. The Union of India determined seniority of Shri Sinha in the IPS taking 26.4.75 as the crucial date. After considering the matter the Patna High Court directed that 18.5.73 has to be taken as the date of commencement of continuous officiation of Shri Sinha in a senior cadre post for determining his seniority.

16. The applicant has also alleged that respondent nos. 1 & 2 failed to observe the mandatory provisions of cadre review as contained under Rule 4 of the IPS cadre Rules which made it obligatory for the Central Government to review the State Cadre Strength after an

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interval of every three years. There was a gap of more than 5 years between the cadre review done on 6.2.75 and the next cadre review done on 27.10.80. If the respondents had observed the compliance of the said mandatory rules the cadre strength would have increased in 1978 itself as the increase in the districts in the State of U.P. was done in the year 1975-76, which was a permanent factor, necessitating the cadre review.

17. The learned counsel for the applicant also referred to the decision of Hon'ble Supreme Court in two cases of (i) 1987(Supra) SCC-256 K.N.Misra and others -Versus- Union of India & Others (ii) 1986-SCC (L & S) 226 Narendra Chaddha & Others-versus- Union of India & Others in which it has been held that the benefit of continuous officiation should accrue to the promotees irrespective of whether the promotion is regular, adhoc, officiating or otherwise.

18. The respondents have not disputed the assertion of the applicant that the above mentioned appointments were made under rule 9(1) of the Indian Police Service(Cadre) Rules, 1954 (Hereinafter referred to as Cadre Rules). It is also not disputed that the appointment was made by the second respondent under the powers vested in them under the cadre rules. The first

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appointment of the applicant as Additional Superintendent of Police(Lucknow) admittedly, a cadre post( Copy Annexure-I to the petition) does mention it as Ad-hoc promotion but it does not say that it is for a fixed period.' Rule 9 provides for certain actions to be taken by the State and the Central Government, if the appointment of a non-cadre officer to a cadre post is to continue for a period exceeding six months. The rule makes it clear that responsibility for taking these actions is on the respondents. The contention of the applicant is that on his first appointment to a cadre post, he was under a bonafide belief that his name was included in the Select List and he would be entitled to derive all the benefits including seniority in the IPS.'

19. We have carefully considered the matter. The respondents have failed to explain, why the applicant was employed on a cadre post continuously from 3.1.75 to 3.7.78 even though he was not on the Select List as stated in their reply. It can be reasonably presumed that the conditions prescribed under rule 9 of the Cadre Rules were fully complied by the respondents. In the case of Gangbir Singh versus Union of India & others-1982(2) SLJ,193(HP) <sup>it has been held</sup> that appointment made for a period exceeding six months or for any indefinite period, till the availability of a cadre officer or Select List Officer cannot be termed as a temporary or a stop gap arrangement. It appears to us that the respondents denial of the

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request of the applicant is <sup>to</sup> based on the wording of Explanation I of Rule 3(3)(b) of the seniority rules. They have failed to take into consideration the hardship caused to the applicant in the matter of his seniority in the IPS. They have also rejected the prayer of the applicant to pass an order under Rule 3 of the All India Services(Conditions of Service-Residuary matters) Rules, 1966 on grounds; which do not appear reasonable to us.

20. After taking into consideration all the facts and circumstances of the case, we are of the opinion that the ratio of the case of D.C. Sinha. versus. Union of India(Supra) is fully applicable to this case. Accordingly, we direct the respondents no.1 to refix the seniority of the applicant after taking into account the date of continuous officiation on a cadre post w.e.f. 3.1.75. We make no order as to costs.

21. Before parting with the case, we have to point out that reply filed by respondent no.2 contains affidavit of one Padmakar Srivastava, an Upper Division Assistant, who has not been authorised by respondent no.2 to file a reply or affidavit on his behalf. Rule 12 of the Central Administrative Tribunal(Procedure) Rules, 1987 provides that the reply to be filed in the case, under Section 19 of Act XIII of 1985 before the Tribunal shall be signed and verified as a written statement by the respondent or any other person duly authorised by him

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in writing in the same manner as provided for under Order VI Rule 15 of the Code of Civil Procedure. Order VI Rule 15 CPC provides that every pleading should be signed by the party and his pleader, provided that where a party, for any good cause, is unable to sign the pleading, it may be signed by any person duly authorised by him to sign the same. It is, therefore, evident that the replies to be filed in the cases under Section 19 should be filed by the respondents and in case it is not possible, the respondent should authorise someone in writing to sign and verify the same on his behalf. The Union and U.P. State are impleaded through senior officers and if under rules of business, the said senior officers have delegated their powers, the replies signed and verified by such delegated officers and in case, even such delegated officers are unable to sign and verify the replies, they should authorise some responsible <sup>be officer</sup> on their behalf and such authorisation should be filed alongwith the reply on their behalf and <sup>be</sup> such authorisation should be filed alongwith <sup>the</sup> the reply to indicate that the person filing the reply has been duly authorised by the competent authority. In the absence of such authorisation in writing, the replies filed by any inferior authority should not be accepted.

22. In the present case, the official filing the reply has stated that he has been deputed to do so without any authorisation in his favour. We could have rejected this reply, but in the interest of justice, we permitted it to be brought on the record. The Registrar is directed to send



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a copy of this paragraph to the Chief Secretary to the State of Uttar Pradesh for his information and suitable action.

*[Signature]*

MEMBER (J)

*[Signature]*

MEMBER (A)

Dt/ 18 th November, 1988/  
Sh.