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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. 702 of 1987

M.C. Rawat Applicant

Versus

Union of India & Others Respondents.

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

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

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

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985 in which the applicant has prayed for issue of a direction to respondent Nos. 1 & 2 to determine the seniority and year of allotment of the applicant with effect from 28.11.72, the date on which the applicant was promoted in senior post in IPS cadre and continuously worked thereafter till his formal appointment in IPS by the Central Government, to allot year of allotment of 1968 to the applicant and to place his name below the name of Shri P.S.V. Prasad, a direct recruit of 1968 batch and above the name of Shri Sunderavaradan Raghunathan, respondent No.3, to declare Explanation-I to rule 3(3)(b) of IPS Seniority Rules as ultra vires or in the alternative that in case of applicant Explanation-I of rule 3(3)(b) must be deemed to have been relaxed by the respondent No.1 and thereafter to determine year of allotment and seniority of the applicant in IPS cadre.

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2. Replies were filed on behalf of respondent No.1 Union of India and respondent No.2 State of U.P. but no reply was filed on behalf of private respondents 3 to 15. The applicant filed two separate rejoinders.

3. We have heard the learned counsel for the parties and carefully perused the documents on record.

4. The admitted facts of the case are that the applicant was appointed as Deputy Superintendent of Police on 18.1.56 and continued to serve as such in various capacities in the Provincial Police Service till the year 1972. The applicant was appointed to the post of Commandant, 14 Battalion PAC Kanpur, a senior post in the IPS cadre of U.P. vide U.P. Govt. Notification dated 3.1.1973 published in U.P. Police Gazette, Allahabad dated 21.3.73. The applicant continued to be posted against various senior posts in IPS cadre from time to time and ultimately the respondent No.1 appointed the applicant to the IPS with effect from 22.8.77. The seniority of the applicant in the IPS cadre was not determined by respondent No.1 until the year 1987 and the applicant preferred a claim petition No. 277 of 1987 Virendra Kumar and Others Versus Union of India & Others in this Tribunal. On receipt of a directive from the Tribunal to file reply, respondent No.1 issued an order dated 24.4.87 (copy Annexure-3) determining the

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year of allotment and seniority of the applicant. From perusal of the order dated 24.4.87 the applicant came to know that his name was included in the Select List of the year 1974 and the respondent Nos 1 & 2, treating continuous officiating service of the applicant effective from the date of inclusion of his name in the Select List allotted him 1970 year of allotment and his name has been placed after the name of Shri A.K. Mitra, a directly recruited IPS officer of 1970 Batch, respondent No.15.

5. The grievance of the applicant is that the aforesaid seniority list dated 24.4.87, ex facie is cutting of illegal and has the effect of long officiating service of the applicant in senior post in IPS cadre and has placed those incumbents above the applicant, who had served as subordinate to the applicant; that the applicant became eligible to be considered and included in the Select List in January, 1964 but due to non compliance of the rules properly by respondent Nos. 1 & 2 the applicant's name could not be included in the Select List earlier than the year 1974 resulting in not only in delay of appointment of the applicant in IPS but also caused long cruel cut off of about two years of service of the applicant in senior post of IPS cadre for the purposes of seniority in as much as the applicant started continuous officiation on a senior post in IPS cadre on 28.11.72; that in the year 1971 no Select List was prepared and the Select List prepared in the year 1972 was short in size by three persons; that the Select List of 1968 was quashed

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by Supreme Court in the case of M.L. Kapoor Versus Union of India and in order to give effect to the judgement of the Supreme Court the respondents included the name of 12 persons in the Select List of 1968 in the year 1976 without revising subsequent lists of the years 1969 to 1974; that provision pertaining to preparation of Select Lists are mandatory and their non observance being illegal, the applicant cannot be deprived the benefit of his long officiating continuous service in senior scale of IPS merely because his name could not be brought on the Select List earlier than 1974.

6. In the reply filed on behalf of respondent No.1 it is stated that the seniority of the applicant has been determined in accordance with the rules on the subject; that it is not mandatory to prepare the Select List every year; that it is incorrect to say that there was massive departure from observing the compliance of the rules and it is also incorrect to say that any injustice has been done to the applicant. In the reply filed on behalf of respondent No.2, it is stated that the continuous officiation on a senior post in the IPS cadre of the applicant, prior to his inclusion in the Select List, has been ignored by the Govt. of India for purposes of determining his seniority in the IPS cadre and that the non preparation of Select List in the year 1971 did not amount to a massive departure from the observance of the rules for the preparation of the Select List;

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that the rules provide only for the maximum size of the Select List and not for the minimum; that the applicant cannot claim the benefit of the judgement dated 22.4.87 of this Tribunal in the case of Bhupendra Singh and Others Versus Union of India as per the orders of the Supreme Court in S.L.P. No. 6066 of 1987; the judgement of the Tribunal shall not be treated as a precedent. Neither the respondent No.1 nor respondent No.2 have given any comments on the allegation of the applicant in para 6 (xxi); that the Select List of 1972 was short by three persons and that the non revision of the Select List from the year 1969 to 1974 has resulted in grave injustice to the applicant. It would be relevant to reproduce the rules governing the appointment to and determination of inter se seniority between the promotees and the direct recruits to the IPS (hereinafter referred to as the service).

7. Indian Police Service (Recruitment) Rules, 1954 lay down the procedure for the recruitment of the officers to the IPS. The relevant extract of Rule 9, which is relevant for the purpose of this case, is reproduced below :-

" 9. Recruitment by promotion- (i) The Central Government may, on the recommendation of the State Government concerned and in consultation with the Commission, recruit to the Service persons by promotion, from amongst the substantive members of a State Police in

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accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make.

(2) The number of persons recruited under sub-rule (1) in any State or group of States shall not, at any time, exceed 25 per cent of the number of those posts as are shown against items 1 & 2 of the cadre in relation to that State or to the group of States in the schedule to the IPS (Fixation of Cadre Strength) Regulations, 1955.

(3) Deleted.

(4)

(5)

(6) Notwithstanding anything contained in sub-rule (2), the Central Government may promote substantive members of a State Police Service in excess of the normal promotion quota in accordance with such regulations as the Central Government may, after consultation with the State Government and the Commission, from time to time, make."

8. Promotion Regulations regulate the procedure for the promotion of State Police Service Officers to the Indian Police Service. Regulation 3 of these Regulations provides for the constitution of a Committee for each State cadre for preparing ~~select lists~~ Select Lists in accordance with the Regulations 5 & 7. The Chairman of the UPSC and in his absence any other Member of the Commission has to preside at the meetings of the said Committee. Regulations 5 to 9 of these Regulations are reproduced below :-

"5. Preparation of a list of suitable officers-

(1) Each Committee shall ordinarily meet at

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intervals not exceeding one year and prepare a list of such members of the State Police Service as are held by them to be suitable for promotion to the Service. The number of members of the State Police Service included in the list shall not be more than twice the number of substantive vacancies anticipated in the course of the period of twelve months commencing from the date of preparation of the list, in the posts available for them under Rule 9 of the Recruitment Rules, or 10 per cent to the senior posts shown against items 1 & 2 of the cadre schedule of each State or group of States, whichever is greater.

(2) The Committee shall consider, for inclusion in the said list, the Cases of members of State Police Service in order of seniority in the State Police Service up to a number not less than five times the number referred to in Sub-regulation(1):

Provided that, in computing the number for inclusion in the field of consideration, the number of Officers referred to in sub-regulation(3) shall be excluded :

Provided further that the Committee shall not consider the case of a member of the State Police Service unless, on the first day of the January of the year in which it meets, he is substantive in the State Police Service and has completed not less than eight years of continuous service (Whether officiating or substantive) in a post of Deputy Superintendent of Police or any other post included in the State Police Service which is declared by the State Government, with the prior concurrence of the Central Government, as equivalent in status and responsibility to that of a Deputy Superintendent of Police.

Explanation 1. In computing the period of service of eight years any service rendered in any post essentially involving police duties in one or more non-police department, shall be taken into consideration, if such post is declared by the State Government with the prior concurrence of the

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Central Government as equivalent in status and responsibility to that of a Deputy Superintendent of Police.

Explanation 2. The powers of the State Government under Explanation 1 shall be exercised in relation to the members of the State Police Service of a constituent state, by the Government of that State.

(3) The Commission shall not ordinarily consider the cases of the Members of the State Police Service who have attained the age of 52 years on the first day of January of the year in which it meets :

Provided that a member of the State Police Service whose name appears in the Select List in force immediately before the date of the meeting of the Committee shall be considered for inclusion in the fresh list, to be prepared by the Committee, even if he has in the meanwhile attained the age of 52 years.

(4) The selection for inclusion in such list shall be based on merit and suitability in all respects :

Provided that where the merits of two or more officers are found to be equal, seniority shall be taken into account.

(5) The names of the officers included in the list shall be arranged in order of seniority in the State Police Service :

Provided that any junior officer who in the opinion of the Committee is of exceptional merit and suitability may be assigned a place in the list higher than that of officers senior to him.

(6) The list so prepared be reviewed and revised every year.

(7) If in the process of selection, review or revision it is proposed to supersede any member

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of the State Police Service, the Committee shall record its reasons for the proposed supersession.

6. Consultation with the Commission - The list prepared in accordance with regulation 5 shall then be forwarded to the Commission by the State Government alongwith -

- (i) the records of all members of the State Police Service included in the list ;
- (ii) the reasons as recorded by the Committee for the proposed supersession of any member of the State Police Service; and
- (iii) the observations of the State Government on the recommendations of the Committee.

7. Select List - (1) The Commission shall consider the list prepared by the Committee alongwith the other documents received from the State Government and unless it considers any change necessary, approve the list.

(2) If the Commission consider it necessary to make any change in the list received from the State Government the Commission shall inform the State Government of the changes proposed and after taking into account the comments, if any, of the State Government may approve the list finally with such modification, if any, as may, in its opinion, be just and proper.

(3) The list as finally approved by the Commission shall form the Select List of the members of the State Police Service.

(4) The Select List shall ordinarily be in force until its review and revision, effected under sub-regulation (4) of regulation 5, is approved under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2):

Provided that, in the event of any new service or Services being formed by enlarging the existing State Police Service or otherwise being approved by the Central Government as the

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State Police Service under clause (j) of sub-regulation (1) of regulation 2, the Select List in force at the time of such approval shall continue to be in force until a new list prepared under regulation 5 in respect of the members of the new State Police Service, is approved under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2):

Provided further that in the event of a grave lapse in the conduct or performance of duties on the part of any member of the State Police Service included in the Select List, a special review of the Select List may be made at any time at the instance of the State Government and the Commission may, if it so thinks fit, remove the name of such member of the State Police Service from the Select List."

8. Appointment to cadre Posts from the Select List- Appointments to members of the State Police Service from the Select List to posts borne on the State Cadre or the joint Cadre of a group of States, as the case may be, shall be made in accordance with the provisions of rule 9 of the Cadre Rules. In making such appointments, the State Government shall follow the order in which the names of such officers appear in the Select List:

Provided that where administrative exigencies so require, a member of the State Police Service whose name is not included in the Select List or who is not next in order in that Select List may, subject to the aforesaid provisions of the Cadre Rules, be appointed to a cadre post if the State Government is satisfied -

- (i) that the vacancy is not likely to last for more than three months, or
- (ii) that there is no suitable cadre officer available for filling the vacancy.

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9. Appointments to the Service from the Select List - (1) Appointments of members of the State Police Service to the Service shall be made by the Central Government on the recommendations of the State Government in the order in which the names of members of the State Police Service appear in the Select List for the time being in force.

(2) It shall not ordinarily be necessary to consult the Commission before such appointments are made, unless during the period intervening between the inclusion of the name of a member of the State Police Service in the Select List and the date of the proposed appointment there occurs any deterioration in the work of the member of the State Police Service which, in the opinion of the State Government, is such as to render him unsuitable for appointment to the service."

9. 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 the 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

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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 ,

(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 with rule 7 of those Rules, so started officiating shall be determined ad hoc by the Central Government in consultation with the Government 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 purposes of determination of his seniority, count only from the date of

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the inclusion of his name in the Select 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 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 Govt. in a time scale identical to the time scale of a senior post:

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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 order in which the names of such officers appear in the Select List:

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."

10. It is clear from the rules discussed above 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)

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of Rule 9 prescribes the quota for the promoted officers. Regulation 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 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.

11. 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 Govt. 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 Committee, give suitable direction to the concerned State Government.

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12. The contesting respondents have not disputed that the applicant was appointed to a senior post in the cadre with effect from 28.11.72 and that he continuously officiated in a cadre post until his appointment in the IPS and that the continuous officiation of the applicant in a cadre post was made under Rule 9 (1) of the IPS (Cadre) Rules, 1954. It is also not disputed that the appointment was made by the second respondent under powers vested in them under the Cadre Rules and in the exigency of service as no suitable cadre officer was available to fill in the vacancy. 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 the fact of his being included in the Select List only in the year 1974 came to his knowledge only on the receipt of O.M. dated 24.4.87 fixing his seniority in the IPS cadre. It is also contended by the applicant that due to the lapse on the part of the two contesting respondents his name was not included in the Select List earlier than 1974 and that he cannot be deprived of his right of seniority with reference to the date of his continuous officiation on a cadre post. The contention of the respondents is that it is not mandatory that the Select List is prepared every year and that the size of the Select List even though it was short by three persons during the year 1972 did not effect any right of the applicant. The learned counsel for the applicant cited a decision of

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the Hon'ble Supreme Court in the case of Union of India Versus M.L. Kapoor AIR 1974 SC 87, in which it was held that proviso to Regulation 4(2) of the Promotion Regulation makes it abundantly clear that there must be a fresh Select List every year by making a review or revision of the previously existing Select List. It was further observed in that case that paramount duty cast upon the Selection Committee to draw up a list under Regulation 5(1) of such members of the State Police Service as satisfy the condition under Regulation 4 and as are held by the Committee to be suitable for promotion to the service would be discharged only if the Committee makes the selection from all the eligible candidates every year. In view of the above observations of the Hon'ble Supreme Court we are unable to uphold the contention of the contesting respondents regarding non-preparation of the Select List every year and no minimum size of the Select List. Accordingly, we hold that there has been non-observance of the mandatory provision of the rules regarding yearly preparation/review of the Select List and short size of the Select List between the years 1969 and 1974.

13. The main contention of the applicant is that the applicant cannot be denied his due seniority in the IPS cadre due to non-observance of the mandatory provisions in the Rules. The contention of the respondents is that the seniority of the applicant has been fixed in accordance with Rule 3(3)(b) of the Seniority Rules. In the light of Explanation I,

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Rule 3(3)(b) of the Rules which provides that when the officiation in a senior post is from a date prior to the date of the inclusion in the Select List the officiation will be counted only from the date of the inclusion of the name in the Select List. The learned counsel for the applicant contends that in view of the massive departure by the contesting respondents in the preparation of the Select List the principles enunciated in the following cases should be made applicable to the case of the applicant.

- (i) Narendra Chadha Vs. Union of India
AIR 1987 SC 638.
- (ii) An unreported judgement of the Patna High Court in Civil Misc. Writ Petition No. 3332 of 1984 Devi Chand Sinha Vs. Union of India decided on 16.8.86.
- (iii) Union of India Vs. G.N. Tewari and Others
1986 SCC (L&S) 166.

The following observations of the Hon'ble Supreme Court in the case of Narendra Chadha Vs. Union of India (supra) has been brought to our notice :-

".....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

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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...."

The facts of second case are that Shri Devi Chand Sinha, a promotee officer of Bihar Cadre was officiating in a cadre post with effect from 18.5.73 till his appointment to the IPS on 2.11.77. His name was included in the Select List for the first time on 9.8.73. During the period 1.7.74 to 25.4.75, the another officer who was senior to Shri Devi Chand 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. The Union of India filed a Special Leave Petition before the Hon'ble Supreme Court but the same was rejected.

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In the third case of Union of India Versus G.N.Tewari, the Hon'ble Supreme Court gave a decision in K.L. Jain's case which was also applicable to the case of G.N.Tewari. 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.Tewari 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 enunciated in the observation of the Supreme Court would apply to the present case also.

14. In the case of Narendra Mathur Vs. Union of India decided by the Jodhpur Bench of this Tribunal 1988(2) ATLT (CAT) 596 pertaining to a promotee officer of the Indian Forest Service, it has been held that in determining the seniority the benefit of continuous service in the cadre post has to be construed and interpreted in the light of explanation 2 to Rule 3(2) (c) of the Seniority Rules applicable to the Indian

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Forest Service. In that case the applicant, who was a member of Rajasthan State Forest Service was appointed on officiating basis to a cadre post in the Indian Forest Service with effect from July 26, 1978. He continuously officiated on that post without any interruption till the date of his promotion to the Indian Forest Service on April 1, 1981. On receipt of a report from the State Government the Central Government considered the question of approval of officiation period in consultation with the Union Public Service Commission and had granted ex facto approval in accordance with the provisions of Cadre Rules in request of the following periods :-

8.8.1978 to 31.3.1979 and

3.11.1980 to 31.3.1981.

The year of allotment of the applicant was determined as 1976 after reckoning November 3, 1980 as the relevant crucial date. After discussing the observations of the Hon'ble Supreme Court in Union of India Versus G.N.Tewari (supra) and Harjeet Singh Vs. Union of India and Others 1980 SCC (L&S) 351 the Tribunal held that the applicant was entitled to the benefit of continuous officiation in a senior post commencing from July 29, 1978 for the purpose of assignment of year of allotment. Rule 3(2)(c) of the Indian Forest Service (Seniority) Rules, is similar to the Indian Police Service (Seniority) Rules and the relevant provisions of the Indian Forest Service regarding recruitment, promotion and regulation of seniority are similar to those of the Indian Police Service. Explanation I to Rule 3(2)(c) of the Indian

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Forest Service (Seniority) Rules is identical with Explanation I of Rule 3(3(b)) of the Indian Police Service (Seniority) Rules. The Tribunal has ignored Explanation I which provides that the period of continuous officiation prior to inclusion of name in the Select List should not be counted for the purpose of determination of seniority and has held that Explanation 2 which permits counting the period of continuous officiation in a senior post in the cadre for determination of seniority was applicable, ~~in this case~~. In our opinion the instant case is very similar to the case referred to above.

15. The principle enunciated in the above mentioned judgement^s is to effect that the benefit of continuous officiation should accrue to the promotees ^{on} irrespective of whether the promotion is regular or temporary basis if the period of continuous officiation is regularised subsequently. The respondents have failed to explain why the applicant was employed on a cadre post continuously from 28.11.72 even though he was not on the Select List until the year 1974. This period of about 2 years cannot be considered as a short period or as an adhoc promotion. Rule 9 of the Cadre Rules provides for certain actions to be taken by the State and Central Governments if the appoints 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

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these actions is on the respondents. 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 Vs. Union of India & Others 1982(2) HP SLJ 193 it has been held that appointment made for a period exceeding six months or for any indefinite period, till the availability of a Cadre Officer or a Select List Officer cannot be termed as a temporary or Stop Gap Arrangement.

16. We have carefully considered the matter and we are of the opinion that the denial of seniority to the applicant in the IPS cadre with reference to the date of his continuous officiation on a senior post in the cadre is against the principles of natural justice and equity. They have failed to take into consideration the hardship caused to the applicant in the matter of his seniority in the Indian Police Service cadre.

17. After taking into consideration all the facts and circumstances of the case, we direct the respondent No.1 to re-fix the seniority of the applicant after taking into account the date of continuous officiation on a cadre post with effect from 28.11.72. We make no order as to cost.

[Signature]
Member (J)

[Signature]
30.1.89
Member (A)

Dated the 30th Jan., 1989

RKM