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Reserved

Central Administrative Tribunal, Allahabad.

Registration No.14 of 1988

S.K.Chandra ... Applicant

Vs.

Union of India
and 30 others ... Respondents.

Hon'ble G.S.Sharma, JM
Hon'ble K.J.Raman, AM

(By Hon'ble G.S.Sharma, JM)

In this Original Application u/s.19 of the Administrative Tribunals Act XIII of 1985 (hereinafter referred to as the Petition) the Applicant has prayed that the order dated 24.4.1987 passed by the Union of India- Respondent no.1 fixing the seniority of the Applicant and the Respondent Nos. 3 to 31 be quashed and the Respondent no.1 be directed to redetermine his seniority after taking into consideration the entire period of his officiation as Superintendent of Police (for short SP) from 3.1.1975 till his appointment to the Indian Police Service (for short IPS) and for a direction to the State of U.P.- Respondent no.2 to grant him all consequential benefits accruing due to him on such refixation of seniority.

2. Shortly stated, the relevant facts of this case are that the Applicant was recruited as Deputy SP in U.P. on 15.3.1963 and was confirmed on this post on 15.3.1965. After rendering the service of 8 years, the Applicant became entitled to get his

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name included in the select list prepared under Regulation 5(1) of I.P.S. (Appointment By Promotion) Regulations, 1965. Such select list is to be prepared every year under the rules but no select list was prepared in 1971, 1975 and 1976 while the list prepared in 1972 and 1974 were short in size. The Applicant was promoted on 3.1.1975 as ~~Additional~~ Superintendent of Police Meerut which is a senior post of U.P. Cadre of IPS under rule 9 of IPS Cadre Rules and since then the Applicant continued to be posted as SP or on equivalent post and he was formally appointed in the IPS on 6.12.1980 and thereafter he continued to work on the various senior posts in IPS cadre and at no point of time the Applicant was reverted to the State Police Service after his promotion on 3.1.1975.

3. It is further alleged that till the end of 1986, the Respondent no.1 did not fix the seniority of the Applicant in IPS cadre and for the first time vide its order dated 24.4.1987 while fixing the seniority of the Applicant, he was assigned 1974 as the year of allotment ignoring his officiation as SP Ghaziabad from 14.11.76 to 15.7.77 and as SP Economic Offences Wing (CID) Kanpur from 18.5.78 to 31.1.79. The grievance of the Applicant, therefore, is that his seniority was adversely affected by ignoring his officiation on the senior cadre posts for about 4 years without his any fault which amounts to discrimination prohibited by Articles 14 and 16 of the Constitution. He has further complained that the definition of 'senior post' given in rule 2(g) of the IPS Seniority Rules is discriminatory as the same (temporarily added post to the cadre) if held

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by a direct recruit to IPS under rule 7 of the IPS Recruitment Rules is treated as senior post while the same post if held by a promotee officer is not treated as the senior post. Respondent nos.3 and 16 and one Vijay Shankar, who are recruits were also appointed as Superintendent of Police, Ghaziabad and the said post was always treated for them as cadre post. Similarly, the post of Superintendent of Police, EDW (CID Kanpur when occupied by direct recruits A.K.Mitra and M.C.Rawat immediately before and after the Applicant was treated as a cadre post. This has been wrongly denied in the case of the Applicant which is discriminatory. The allegation of the Applicant is that he never knew whether he was being posted on a cadre post or a non-cadre post and he never had any choice in the matter of posting and according to his continuous officiation on the senior post to the cadre, he is entitled to get his name included in the select list of 1971 with all consequential benefits.

4. The case has been contested on behalf of the Respondent nos. 1 and 2 only. The Private Respondent nos. 3 to 31 did not file any reply in this case. In the reply filed on behalf of the Union of India, it has been stated that the Respondent no.1 had fixed the seniority and assigned the year of allotment to the Applicant on the basis of the information furnished by the State of U.P. on the basis of his service record. The name of the Applicant was included in the select list for the first time on 3.7.1978 and continued till he was appointed to the IPS on 6.12.1980. The Applicant had held the cadre post ~~xxx~~ continuously from 1.2.1979

and in terms of rule 3 (3) (b) of the IPS (Regulation of Seniority) Rules, 1964, 1.2.1979 was taken to be the crucial date for the purpose of fixation of his seniority. The Applicant is not entitled to take into consideration his officiation on ex-cadre post equivalent to cadre post which is not permissible under the rules and the seniority of the Applicant has been rightly determined in accordance with the directions of the Hon'ble Supreme Court in its various pronouncements.

5. The State of U.P.- Respondent No.2 has stated in its reply that no select list was prepared for the years 1971, 1975 and 1976 and preparation of select list every year is not mandatory. It is also not mandatory to prepare select list upto its minimum size. The Applicant was promoted in 1975 on adhoc basis as cadre officers of IPS were not available to man the senior post. The posts of SP Ghaziabad and SP Economic Offence Wing (CID) Kanpur held by the Applicant were ex-cadre posts and these posts were equivalent to Senior Duty Post of IPS cadre but under the rules, officiation on non-cadre post is not taken into account for determining the seniority. The Applicant cannot plead ignorance about the nature of the post as the cadre posts are published in the Gazette of India.

6. The Applicant filed two separate rejoinders to the replies filed by the Respondent nos. 1 and 2 and reiterated that under the rules as well as under the various pronouncements of this Tribunal and the Hon'ble Supreme Court his continuous officiation on senior post whether cadre or non-cadre is liable to be taken into consideration for the purpose of fixation of seniority and the seniority fixed otherwise is not in accordance with law.

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7. After going through the pleadings of the contesting parties it appears that there is no dispute in this case about the fact that the Applicant was initially appointed as Dy.SP in this State and was promoted as Addl.SP on 3.1.1975 and once promoted to the cadre of SP he was never reverted to the lower cadre of the State Police Service. It is also an undisputed fact that the name of the Applicant was included in the select list on 3.7.1978 and he was appointed as a member of the Indian Police Service w.e.f. 6.12.1980. Before the inclusion of his name in the select list, he was posted as SP Ghaziabad from 14.11.1976 to 15.7.1977 and thereafter for some time before the inclusion of his name in the select list, he worked as SP Economic Offences Wing (for short EOW) Kanpur from 20.5.78 till 31.1.79. These two posts of SP Ghaziabad and SP EOW Kanpur have been treated as non-cadre posts and as such, for reckoning the seniority of the Applicant, his officiating service in the cadre of SP prior to 1.2.79 was ignored. The contention of the Applicant is that these posts were senior posts and in view of the own admission of the State of U.P. in para 9 of its reply, these posts were equivalent to senior duty post of IPS cadre.

8. There is also no dispute in this case that in 1971, 1975 and 1976 before the name of the Applicant was included in the select list, no select list was prepared. According to the Applicant, the select list is to be prepared every year and the select lists prepared in the years 1972 and 1974 were short in size. On the other hand, the U.P. State

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has contended that no minimum or maximum size of the select list has been laid down under the rules and it is not mandatory to prepare the select list every year. In order to appreciate the respective contentions of the parties, we will like to reproduce below the relevant extract of Regulation 5 of the IPS (Promotion) Regulations, 1955 :-

"5. Preparation of a list of Suitable officers-

(1) Each Committee shall ordinarily meet at 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 of the senior posts shown against items 1 and 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 upto a number not less than five times the number referred to in sub-regulation (1):

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(3) The Committee 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."

It is true that Sub-Regulation (1) of Regulation 5 uses the word 'ordinarily' but interpreting the proviso to the then Regulation 4(2) of the IPS (Promotion) Regulations 1955 corresponding to the present Regulation 5(3) } in the case of Union of India Vs. M.L.Kapoor (AIR 1974 SC-87), the Hon. Supreme Court had made the following observations :-

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" Proviso to Regulation 4(2) 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. ... "

9. The Allahabad Bench of the Tribunal in a number of cases has held that despite the use of the word 'ordinarily' in Regulation 5, it is mandatory for the State Government to prepare the select list every year. We also do not find force in the other contention of the Respondent no.2 that there is no minimum or maximum size of the select list. The maximum size of the select list has been given in Sub-Regulation (1) and the members of the State Police Service more than twice the number of substantive vacancies anticipated in the course of the period of 12 months cannot be included in the select list. Sub-Regulation (2) gives a clue to the minimum size of the list and it provides that the Committee shall consider for inclusion in the select list the cases of the members upto a number of not less than 5 times the number to be included in the select list. In case, in any State or in any year ~~the~~ the eligible candidates of the State Police Service ^{but not more than five times of} are more than twice ^{the} likely vacancies, then, all are entitled to be considered for the inclusion of their names in the select list and if the sufficient number of eligible and suitable candidates are available the selection committee cannot cut short the size of the list and in that case, the maximum size will also become the minimum size of the select list. In other cases, the availability of suitable candidates for inclusion in the select list will determine the minimum size of the select list. In case, the State Govt. acts otherwise, it denies their valuable right to the suitable State Cadre Officers to get their names included in the select list. In a number of cases the Allahabad

Bench has held that by not preparing the select list in 1971, 1975 and 1976 and preparing the select list of short size in 1972 and 1974, ^{by 1} the Respondent nos. 1 and 2 there was a massive departure from the observance of the rules for the preparation of the select list and by giving the advantage of the principles of law laid down by the Hon. Supreme Court in the cases of Narendra Chaddha Vs. Union of India (A.I.R. 1987 SC-638) and Union of India Vs. G.N.Tewari 1986 SCC(1&S)-166) the State Police Officers were allowed the benefit of getting their continuous officiation on senior post reckoned for determining their seniority. If required, we may quote a few decisions - O.A.No. 702 of 1987 M.C.Rawat Vs. Union of India decided on 30.1.1989; O.A.No. 417 of 1987 A.B.Shukla Vs. Union of India decided on 18.11.1988 and O.A.No.626 of 1987 Triveni Kumar Joshi Vs. Union of India decided on 9.12.1988. On the same principle, in case, the Applicant succeeds to establish that he was continuously officiating on the senior post from 3.1.1975, he is entitled to the benefit of this officiation for determining his seniority.

10. The Applicant started officiating on the senior post on 3.1.1975 and till he was appointed to the IPS on 6.12.1980 he worked on 6 different posts. His posting as SP Ghaziabad from 14.11.1976 to 15.7.1977 and as SP EDU Kanpur from 18.5.78 to 3.11.79 has not been treated by the contesting Respondents ~~on~~ a senior post though these two posts have been treated as equivalent to the senior posts in the IPS. 'Senior Post' has been defined by clause (g) of rule 2 of the IPS Regulation of Seniority Rules, 1954 and according to this definition senior post means a post included in item no.1 of the cadre of each State and included in items 2 and 5 of the schedule to the IPS (Fixation of Cadre Strength) Regulations, 1955. According to the ^{Ottar Pradesh} schedule of these regulations, 48 posts of SPs, 3 other specified posts of SPs, 9 posts of Addl.SP, 4 posts of SP Intelligence

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9 posts of SP CID, 9 posts of SP Vigilance, 5 posts of SP Railways and 1 post of SP High Court have been specified in item no.1. In item no.2, 40% of 138 posts included in item no.1 have been mentioned as Central Deputation Reserve Posts and 20% under item no.5 have been mentioned as Deputation Reserve Posts. It is thus apparent that even the posts of Addl.SPs have been treated as senior posts in IPS cadre according to these regulations. 48 posts of SPs have not been specified districtwise. 9 posts of SP CID have also not been specified department wise. As a matter of fact, Ghaziabad district was carved out of two districts of Meerut and Bulandshahr of this State and came into existence w.e.f. 14.11.1976 and the Applicant was the first incumbent of this office. As by that time, the schedule was not revised, the SP Ghaziabad was perhaps not included in the schedule prescribing the senior posts and Respondent nos.1 and 2 want that the Applicant should suffer on account of this lapse on their part. In the aforesaid case, A.B.Shukla Vs. Union of India (Supra) the Applicant was also posted as SP Ghaziabad from 30.3.80 to 19.5.82 and on the refusal of the Respondents to treat his officiation on the said post as his officiation in the senior post for determining his seniority, it was held that it was a senior post and he was granted the advantage of his continuous officiation on the senior post by counting his tenure as SP Ghaziabad. Thus, so far as the officiation of the Applicant as SP Ghaziabad from 14.11.1976 to 15.7.1977 is concerned, his case is fully covered by the said case and we need not enter into any other discussion for giving him the relief in this connection. On the same analogy, we are of the view that the officiation of the Applicant as SP CID in the EDW Kanpur from 18.5.1978 to 31.1.1979 should be treated as his officiation on the senior

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post in the IPS and the Applicant is thus also entitled to the benefit of his continuous officiation on the senior post from 3.1.1975 for determining his seniority in the IPS cadre according to rule 3 (3) (b) of the IPS (Regulation of Seniority) Rules, 1954.

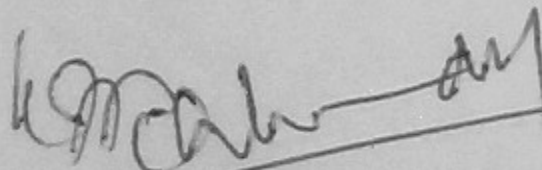
11. As mentioned above, the State of U.P. has admitted that the post of SP Ghaziabad and SP EDW Kanpur are equivalent to senior duty posts of IPS cadre. In para 17 of its reply ~~wherein~~ it has been mentioned that certificate as required by explanation 4 to sub-rule (3) of rule 3 of IPS (Seniority) Rules could not be issued as it is issued ^{satisfaction of} on the ~~the~~ requirements of the relevant rules and one of the conditions is that the State deputation should be unutilised during the relevant period. The State Govt. has not stated ^{anything} further in this connection and it has not been established that at the time the Applicant officiated on the afore-said post, the State deputation quota was overutilised or was not under utilised. Further, in the case of Union of India Vs. G.N.Tewari (Supra) it was held by the Hon. Supreme Court that the benefit of continuous officiation in a senior post ⁿ cannot be denied merely because the State deputation reserve quota was over utilised.

12. The Respondents have not denied the facts stated by the Applicant in para 6(xvi) of the petition that S/Sri Vijay Shankar, Tilak Kak and Har Amol Singh direct recruits of IPS were appointed as SP Ghaziabad and the said post was treated as cadre post for them and similarly Sri A.K.Mitra another direct recruit had officiated as SP EDW Kanpur before the Applicant and Sri MC Rawat had acted as such after him and the said post was also treated as cadre post for them. There has, thus, been discrimination against the Applicant in treating these posts differently for the period

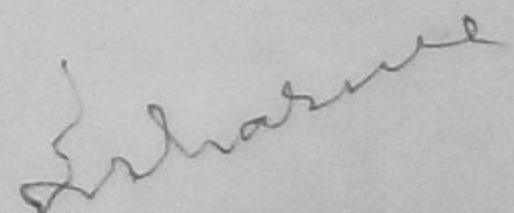
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of his officiation and we are of the view that according to the definition of the senior post, which is more comprehensive than the definition of cadre post, the post of SP Ghaziabad and SP EDW Kanpur, even if not originally included in the schedule should be deemed to have been added to it under items 2 and 5 of the schedule aforesaid. In O.A.No.827 of 1987 Devendra Pal Vs. Union of India decided by another Bench of the Tribunal at Allahabad on 12.1.1988, it was held that the word 'and' used in rule 2(g) of Seniority Rules includes the post mentioned in items 2 and 5 of the schedule. We are, therefore, of the view that even on this ground, on the creation of these additional posts of equivalent grade, they should be treated as senior posts according to the definition of senior post given under the rules and the Respondent nos. 1 and 2 were not justified in denying the benefit of continuous officiation in the senior posts to the Applicant on account of his officiating on these posts for the periods aforesaid. The petition, therefore, succeeds and the Applicant is entitled to the seniority claimed by him.

13. The petition is accordingly allowed and the Respondent nos. 1 and 2 are directed to redetermine the seniority of the Applicant from the date of his continuous officiation on the senior post w.e.f. 3.1.1975 and grant him all consequential reliefs within a period of one month from the date of the receipt of this order. The parties shall bear their own costs.



MEMBER (A)



MEMBER (J)

Dated: Sep. 14, 1989
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