

Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No.223 of 1988

1.K.P.Tripathi  
2.Yogendra Pal and  
3.P.P.Srivastava .... Applicants.

V<sub>01</sub>.

Union of India and 35 others ... Respondents.

Hon. G. S. Sharma, J.M  
Hon. K. J. Raman, A.M

(By Hon. G. S. Sharma, J.M.)

In this joint petition u/s.19 of the Administrative Tribunals Act XIII of 1985, the Applicants who are promotee Indian Police Service Officers, have sought a direction to the Union of India and the State of U.P. - Respondent nos. 1 and 2 to redetermine their seniority and year of allotment in the IPS cadre by relaxing explanation 1 to rule 3(3)(b) of IPS (Regulation of Seniority) Rules, 1954 (hereinafter referred to as the IPS Seniority Rules) and for granting consequential reliefs.

2. The Applicants were initially recruited as Deputy Superintendents of Police (for short Dy.SP) in the State of U.P. in 1958. They were promoted as Superintendents of Police (for short SP) or on equivalent posts in 1973 and were appointed in IPS on 25.4.78 and confirmed in IPS on 25.4.79. The private Respondent nos. 3 to 8 are the direct IPS officers of U.P.Cadre of 1969 batch, Respondent nos. 9 to 13 are of 1970 batch, Respondent nos. 14 to 17 are of 1971 batch, Respondent nos. 18 to 29 are of 1972 batch and the Respondent nos. 30 to 36 belong to 1973 batch. The Applicants complain that after putting in 8 years service in the State Police Service when they became eligible for recruitment to the IPS, between 1968 and 1976 select lists for the appointment of the State

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Police Service officers in IPS were not prepared at all in 3 years and in 2 years, they were short in size and after the decision of the Hon. Supreme Court in the case of M.L. Kapoor, and IPS officer, the select list of 1968 was revised in 1974 without revising the select lists of intervening years and their contention is that in case, the select lists ~~would have~~ been prepared regularly and correctly, they would have been assigned 1968 as their year of allotment and placed above the private Respondent nos. 3 to 36 in the seniority list but the Respondent nos. 1 and 2 wrongly assigned them 1973 as their year of allotment placing them below the Respondent nos. 3 to 36. It is further alleged that all the Applicants had started officiating on senior posts from 1973 and due to the non-observance of the mandatory provisions of preparing the select lists by the Respondent nos. 1 and 2, the seniority of the Applicants should be determined by relaxing the provisions of explanation 1 to rule 3(3)(b) of IPS Seniority Rules.

3. The petition has been contested on behalf of Respondent nos. 1 and 2. The private Respondents neither filed any reply nor put in appearance at the time of hearing. In the reply filed on behalf of State of U.P., it has been stated that the Applicant no. 1 was given adhoc promotion on 15.5.1973 and he was appointed to IPS on 25.4.1978, he served on non-cadre post from 15.5.73 to 13.3.77 and on deputation from 14.3.77 to 9.8.77. The Applicant no.2 who was given adhoc promotion w.e.f. 21.5.73 worked on non-cadre post of Dy.Commandant XXXII Bn.PAC from 18.6.73 to 11.12.73 and again on non-cadre post of SP Vigilance from 29.6.76 to 10.8.77. The Applicant no. 3, who was given adhoc promotion on 23.5.73 had worked on non-cadre post of SP Anti Dacoity Operation from 23.5.73 to 1.4.74 and again from 17.1.77 to 24.4.78

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as SP II Police Headquarters, Allahabad. The Applicants are not entitled to the benefit of their serving on non-cadre posts before their appointment in IPS. The State of U.P. has further stated that it is not mandatory to prepare the select list every year and there is no ~~minimum~~ size of the select list and the seniority of the Applicants was correctly determined ~~as per~~ according to ~~the~~ rules and they are not entitled to the seniority claimed by them.

4. The Union of India -Respondent no.1 had stated in its reply that the seniority of the Applicants was correctly determined according to the rules and the decisions of the Courts of law on the subject. The applicants have filed another petition- D.A.No. 1167 of 1987 which is still pending. The petition is devoid of merits and deserves to be rejected.

5. Before advertizing to the points in controversy I will like to place on record that there is no controversy in this case about the fact that all the 3 Applicants were initially appointed in U.P. Police Service as Dy.SP and they started officiating on senior post of SP or on equivalent posts from 13.5.73 & 21.5.73 and 23.5.73 respectively. All of them were appointed to IPS on 25.4.78. There is also no dispute regarding the legal position that after putting in 8 years service as Dy.SP, an officer of the State Police Service becomes eligible for being considered for the inclusion of his name in the select list to be prepared under rule 5 of IPS (Appointment by Promotion) Regulations, 1955. The seniority of the promotee IPS officers is determined in accordance with the provisions of rule 3(3)(b) of the IPS(Promotion)Rules. Explanation 1 to this rule provides that the period of continuous officiation of a promotee officer in a senior post, shall, for the purposes of determination

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of his seniority, count only from the date of the inclusion of his name in the select list, or, from the date of his officiating appointment to such senior post, whichever is later.

6. There is also no dispute in this case about the fact that in the years 1971, 1975 and 1976, no select lists were prepared and in 1972 and 1974, the select lists prepared were short in size. The contention of the Respondent no.2, however, is that it is not mandatory to prepare the select list every year and no minimum size of the select list has been prescribed under the rules. This contention was repelled by the Allahabad Bench of the Tribunal successively in a number of similar cases and upholding the view that the scheme of rules contemplates that the select lists should be prepared every year and minimum size of the select lists has also been prescribed under the rules, it was held that by not preparing the select lists in 1971, 1975 and 1976 and preparing the select lists of short size in 1972 and 1974 in U.P., there was a massive departure from the observance of the rules governing the preparation of the select lists and as such, for determining the seniority of the promotee officers going to be affected by the non-observance of rules, the provisions of explanation 1 to rule 3(3)(b) of IPS Seniority Rules should be deemed to have been relaxed for determining their seniority and the same should be reckoned from the date of the continuous officiation of the promotee officers in the senior posts. In this connection we may quote a recent decision rendered on 14.9.1989 in O.A.No.14 of 1988-S.K.Chandra Vs. Union of India by us.

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7. In view of this settled position, I am of the view that the only point arising for determination in the instant case is whether the Applicants had officiated continuously on the senior posts before their names were included in the select lists? The senior post has been defined in clause (g) of rule 2 of IPS Seniority Rules which lays down that senior post means a post included and specified under item 1 of the cadre of the concerned State in the schedule to IPS (Fixation of Cadre Strength) Regulation, 1955 and includes 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 when held on senior scale of pay by an officer directly recruited to the service. This definition is wider than the definition of cadre post as given in clause (b) of rule 2 of the IPS (Cadre) Rules, 1954 to the extent that it also includes the posts included and specified in items 2 and 5 besides the posts temporarily added as above. The schedule of U.P. to the IPS (Fixation of Cadre Strength) Regulations shows that there are 48 posts of SP, 9 posts of Addl. SP, 4 posts of SP Intelligence Department, 9 posts of SP CID, 9 posts of SP Vigilance Establishment, 18 posts of Commandant PAC Bn., 2 posts of SP ECO Intelligence and Investigation Wing (CID). <sup>besides some other posts and 1</sup> in all there are 138 posts under item no.1. There are 54 posts under item no.2 for Central Deputation Reserve and 29 posts under item no.5 for other Deputation Reserve.

8. The Respondent no.2 has treated the officiation of the Applicant no.1 on the post of SP Vigilance Lucknow from 15.5.1973 to 13.3.1977 on non-cadre post. It has been submitted on behalf of the Applicants in their rejoinder that there is no earmarking of any post of SP in Vigilance Establishment and as the post of SP Vigilance Establishment has been shown

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to be a senior post in the schedule, no such post can be treated as a non-cadre post. I find myself in agreement with this contention. It further appears from annexure RA-3 to the rejoinder filed by the Applicants to the reply of the Respondent no.2 that the appointment of the Applicant no.1 as SP Vigilance Establishment Lucknow was made under R.9 of the IPS(Cadre)Rules,1954 and as such, it is totally incorrect on the part of the Respondent no.2 to treat this posting of the Applicant no.1 as non-cadre. The Respondent no.2 has further shown the officiation of the Applicant no.1 from 14.3.77 to 9.8.77 on deputation and this has also been treated as an non-cadre post. The nature of deputation has not been stated. It has also not been stated that the deputation post was not equivalent to the senior post of IPS. In sub-para (p) of para 5 of their rejoinder, the Applicants have stated that the Applicant no.1 was sent on deputation to Govt. of India as Security Officer in Scooters India Ltd.,a Govt. of India undertaking, and this post was equivalent to SP. The Applicants have further stated that when the Applicant no.1 was serving on deputation junior State Police Service Officers were officiating on senior posts and he is entitled to the benefit of the principle of law laid down by the Allahabad Bench of the Tribunal in OA.No.827 of 1987

Devendra Prasad Vs. Union of India decided on 12.1.1988 in which the post held even by a promotee officer and included under item 2 of the schedule was treated to be a senior post. This contention of the Applicant also appears to be correct. There is nothing on behalf of the Respondents to show that the post of Security Officer, Scooters India Ltd., was not equivalent to the post of SP or it was otherwise not fit to be treated as a senior post. I am, therefore, of the view that the officiation of the Applicant no.1 even on this post should be treated

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~~in his officiation~~ on a senior post for the purposes of determining his seniority and the contention of the Respondents to the contrary is not correct.

9. Regarding the officiation of the Applicant no.2 from 18.6.1973 to 11.12.1973 on the non-cadre post of Dy.Commandant PAC alleged by the Respondent no.2, the Applicants have stated, in their rejoinder that the post of Dy.Commandant XXXII Bn. Lucknow was a senior post in IPS and it was declared as being temporarily added in that cadre as senior time scale post. As no document was filed in support of this contention, the Rx Applicants were given an opportunity to furnish the proof, if any, in support of this assertion but they could not lay their hands on any such material and failed to support this contention by any document. ~~I am~~ <sup>I am</sup>, therefore, of the view that the post of Dy.Commandant PAC which is otherwise equivalent to post of Dy.SP in this State cannot be said to be a senior post in IPS cadre and the officiation of the Applicant no.2 on this post from 18.6.1973 to 11.12.1973, therefore, cannot be treated to be on senior post and on this ground his officiation from 21.5.73 <sup>P.A.C. 1</sup> to 13.6.73 as Commandant V Bn. Varanasi cannot be treated ~~to be~~ <sup>in continuation of the service rendered on the senior post</sup> ~~before~~ <sup>before</sup> ~~after~~ <sup>after</sup> 11.12.1973.

10. The Respondent no.2 has further treated the officiation of Applicant no.2 as SP Vigilance State Electricity Board, Lucknow from 29.6.76 to 10.8.77 on non-cadre post. State Electricity Board is a Public Undertaking of the State of U.P. and at the most the posting of the Applicant no.2 as SP Vigilance UPSEB Lucknow can be said to be on deputation and it being so, this posting is liable to be included under item no.5 to the schedule of IPS (Fixation of Cadre Strength) Regulations on account of the Deputation Reserve and as the post of SP Vigilance has already been mentioned

as a senior post in this schedule the officiation of the Applicant no.2 in this post, therefore, cannot be ignored for the purposes of determining his seniority and it is bound to be taken into consideration as ~~an~~ officiation in senior post.

11. Now coming to the case of the Applicant no.3, <sup>I</sup> ~~we~~ find that the Respondent no.2 has treated his officiation as SP Anti Dacoity Operation Agra from 23.5.73 to 1.7.74 and as SP II PHQ Allahabad from 17.1.77 to 24.4.78 as on non-cadre post. The Applicants have filed with their rejoinder copy of the notification dated 8.7.74 (annexure RA-4) to show that a post of SP at the Police Headquarters <sup>is</sup> ~~was~~ equivalent to a senior post in the <sup>thereunder</sup> ~~under~~ IPS cadre was created. By this document they want to show that the post of SP PHQ is a senior post in the IPS cadre. Even otherwise it appears from the schedule of the cadre strength of this State that not only the post of SP even 9 posts of ~~✓~~ Addl.SP have also been treated as senior posts. <sup>I am</sup> ~~we are~~, therefore, inclined to accept the contention of the Applicants that the officiation of the Applicant no.3 as SP Anti Dacoity Operation and as SPII PHQ cannot be treated below the post of Addl.SP especially when nothing is shown on behalf of the Respondents that this posting was given to the Applicant no.3 on a lower post on account of any misconduct on his part by way of reversion from senior post. It further appears from the allegations made by the Applicants in para 5(e) of their Rejoinder to the reply of the State of U.P. that when the Applicant no.3 was holding the post of SP Anti Dacoity Operation, one junior officer, namely, Hanuman Prasad Tripathi was holding the post of SP Bahraich. Even otherwise, the post of SP Anti Dacoity Operation appears to be a responsible post involving more risk and responsibility than the SP of a district. In para 5(i) of the Rejoinder, the Applicants have further stated

that when the Applicant no.3 was holding the post of SP Police Headquarters Allahabad one junior officer S.K. Tripathi was holding the post of SP Etah. ~~I am~~ <sup>I am</sup> therefore, satisfied that the officiation of the Applicant no.3 on the non-cadre post alleged by the Respondent no.2 was, for all purposes and intent, on senior post in the IPS cadre and the same cannot be ignored for determining his seniority.

12. The contention of the Respondent no.2 <sup>is</sup> that the officiation of the Applicants was purely temporary on adhoc basis and the same cannot be considered for the purpose of reckoning their seniority. The officiation of the Applicants for about 5 years before their appointment to IPS cannot be said to be adhoc and we have already observed above that on account of non-observance of the rules of preparing the select lists, continuous officiation of the Applicants in senior posts prior to the inclusion of their names in the select lists is to be taken into consideration for the purposes of determination of their seniority. The petition, therefore, succeeds in part.

13. Before parting with this case, <sup>I will like</sup> ~~I will like~~ to dispose of the objection of the Respondent no.1 regarding the filing of another case- O.A.No.1167 of 1987 by the present Applicants. <sup>I</sup> ~~I~~ have seen its record and it appears that even in that case, the Applicants have claimed seniority from certain date by condoning their officiation in non-cadre post. The Applicants are guilty of making a false declaration in para 10 of this petition by concealing this fact. But, as the Applicants did not like to take any benefit of the filing of the said petition nor prayed to stay the disposal of the present petition till disposal of OA No.1167 of 1987, it neither adversely affects the rights of the Applicants nor gives any benefit to the

Respondents and as such, this petition can be disposed of without waiting for the disposal of OA No.1167 of 1987.

14. I would accordingly allow the petition in part and the Respondent nos. 1 and 2 be directed to redetermine the seniority of the Applicants in IPS cadre and to re-assign the appropriate year of allotment to them treating their continuous officiation in senior posts from 15.5.73 18.12.73 and 23.5.73 respectively within a period of one month from the date of the communication of this order and to grant them all consequential benefits within a period of next one month leaving the parties to bear their own costs.

*G.S.Sharma*  
(G.S.Sharma)  
MEMBER(J)

Dated  
kkb.

By Hon'ble K.J.Raman, AM

I have gone through the judgment prepared by brother Sharma, JM. I concur and order accordingly.

*K.J.Raman*

(K.J.Raman)  
MEMBER(A)

Dated 25.9.1989