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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 45 of 1988

K.N. Bhatt & others Applicants.

Versus

Union of India & others Respondents.

Connected with

Registration (O.A.) No. 46 of 1988

R.B. Srivastava & others Applicants.

Versus

Union of India & others Respondents.

Connected with

Registration (O.A.) No. 467 of 1988

Virendra Kumar & another Applicants.

Versus

Union of India & others Respondents.

Hon'ble D.S. Misra, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. D.S. Misra, A.M.)

In these three separate applications, filed under Section 19 of the Administrative Tribunals Act, 1985, the seniority of the applicants determined by the Union of India (respondent no.1) vide its order No. I-15011/5/86-IPS.I, dated 24.4.1987 has been challenged and a prayer has been made to issue a direction to respondents no. 1 and 2 to determine the year of allotment and seniority of the applicants with reference to the date of continuous officiation in a senior post in the Indian Police Service Cadre. The facts and circumstances of the three cases being similar, the same can be disposed of by a common judgment.

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2. In O.A. No. 45 of 1988 the brief facts are that the five applicants in this case, who were initially appointed in the U.P. Police Service on various dates, claimed that they were appointed to a senior post in the Indian Police Service (IPS) under Rule 9 of IPS Cadre Rules on different dates during the year 1973-74 and continued to officiate on a senior post in IPS Cadre until their appointments to IPS during the year 1978-79; that the applicants have also contended that the posts held by them were not earmarked for promotee officers but were interchangeable, inasmuch as the directly recruited officers as well as promotee officers were liable to be promoted against the said posts; that respondents no. 3 to 29 are directly recruited IPS officers; that till the year 1987 respondents no. 1 and 2 did not determine inter se seniority of the applicants in ^{the cadre} ~~IPS~~ in spite of several representations filed by them; that some of the promotee IPS officers preferred two claim petitions before this Tribunal as OA No. 200 of 1987 and OA No. 277 of 1987 and when the Tribunal directed respondents no. 1 and 2 to file their reply, respondent no.1 issued the order No. I-15011/5/86-IPS.I, dated 24.4.1987 determining the year of allotment and seniority of the applicants and other State Police Officers (copy Annexure '3'); that from a perusal of the impugned seniority list dated 24.4.87 the applicants came to know that they were brought on the select list of 1977 and their seniority has been determined with reference to the date of inclusion ^{of their names} in the select list and their right of seniority with reference to the date of their continuous officiation on a senior post in IPS Cadre has been denied to them; that applicant no.1 became eligible to be considered and included in the select list of IPS in the year 1966, applicants no. 2 & 3 became eligible in the year 1967 and applicants no. 4 & 5 became eligible in the year 1968, but respondents no. 1 and 2 miserably failed in preparing the select list regularly in accordance with the rules depriving the applicants their right of inclusion in the select list in the years

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earlier than the year 1977; that respondents no. 1 and 2 have ^{extensively} ~~generally~~ deviated from observing IPS Service Rules in preparation of the select list from the year 1971 to 1976 resulting in the denial of rights of the applicants in the matter of seniority in IPS.

3. In O.A. No. 46 of 1988 the brief facts are that the applicants (12 in number) were appointed to the U.P. Police Service on various dates during the years 1964 to 1969 and continued to work as Deputy Superintendent of Police (Dy.SP) under the State of U.P., respondent no.2; that respondents no. 3 to 88 are directly recruited IPS officers in the batches of 1972 to 1979; that all the applicants were appointed to a senior post in IPS Cadre under Rule 9 of IPS Cadre Rules and they continued to officiate on such a post until their appointments to IPS; that till the year 1987 respondents no. 1 and 2 did not determine inter se seniority of the applicants in IPS inspite of several representations filed by the applicants to determine their seniority and year of allotment; that respondent no.1 vide its order dated 24.4.1987 determined the year of allotment and seniority ignoring the period of officiation on a senior post in the cadre prior to their inclusion in the select list; that the applicants came to know about the date of their inclusion in the select list only on receipt of the impugned order dated 24.4.1987. The applicants have prayed for issuing a direction to respondents no. 1 and 2 to determine their seniority and year of allotment with reference to the date from which they started working continuously in a senior post in IPS cadre, and to issue a declaration that Explanation I to Rule 3(3)(b) of IPS Seniority Rules is ultravires and violative of Articles 14 and 16 of the Constitution of India.

4. In O.A. No. 467 of 1988 the brief facts are that the two applicants in this case were appointed to U.P. Police Service in the year 1963 and on the basis of their meritorious and unblemished ^{be} service record, respondent no.2, in exercise of powers under Rule 9 of IPS Cadre Rules, 1954, promoted the applicants as Superintendent of Police (SP), which were senior posts in IPS Cadre; that the

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applicants continued to be posted against various other senior posts in IPS Cadre from time to time and were ultimately appointed to IPS in the year 1980; that respondents no. 3 to 33 are directly recruited IPS officers in the batches of 1969 to 1973; that till the year 1987 respondents no. 1 and 2 did not determine inter se seniority of the applicants in IPS ^{Cadre} in spite of various representations preferred by them; that respondent no. 1 vide its order dated 24.4.87 determined the year of allotment and seniority of the applicants with reference to the date of their inclusion in the select list and ignoring the period of their officiation in the cadre post; that the impugned seniority list dated 24.4.1987 is wholly arbitrary, illegal and against the rules and has the effect of cutting off long officiating service on senior posts in IPS ^{Cadre} without any rationale. The applicants have prayed ^{for} ^{of} ^{the} ^{for} issue a direction to respondents no. 1 and 2 to determine seniority and year of allotment of the applicants with reference to the date on which they were initially appointed in the senior post in IPS ^{Cadre} and to issue a direction, declaring Rule 2(g) and explanation I to Rule 3(3)(b) of IPS (Regulation of Seniority) Rules, 1954, as ultravires and violative of Articles 14 and 16 of the Constitution of India.

5. The reply filed on behalf of the Union of India (respondent no.1) in all the three cases are similar and to the effect that the seniority and year of allotment of the applicants in IPS Cadre has been fixed on the basis of information furnished by the State of U.P., respondent no.2; that the allegations made against the Union of India in the petitions are baseless, false and without having footings; that they have fixed the seniority and year of allotment of the applicants on the basis of rules and the impugned seniority list is correct, legal and does not suffer from any manifest error of law; that they have followed the procedure and decision of the Hon'ble Supreme Court in terms of the decision in the case of ^{vs} G.N. Tewari & others v. Union of India & others; that there was some delay in finalising the seniority list of the petitioners on

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account of the fact that the matter relates to the State Government also and it took sometime in correspondence between the State Government and the answering respondent.

6. In the reply filed on behalf of respondent no.2, State of U.P., ^{is} ~~in which~~ the details of officiation of the applicants in all the three cases on various posts and the period of their posting has been indicated. It is also stated that the answering respondent created some ex-cadre posts equivalent to IPS Cadre in public interest, but these posts cannot be treated as cadre posts; that due to paucity of cadre officers in IPS, the State Government was compelled to man the posts by State Police Service Officers purely on ad hoc basis in public interest; that there was no intention on the part of respondent no.2 to cause any delay in the matter of determination of seniority of the applicants; that a State Police Service Officer becomes eligible to be included in the select list after completing eight years of service, but mere eligibility of an officer is not sufficient for inclusion of his name in the select list; that it is not mandatory to prepare the select list every year or upto its maximum size as the rules provide only for the minimum size of the select list; that the orders of respondent no.1 dated 24.4.1987 are very much in accordance with IPS seniority rules.

7. In QAs No. 46 of 1988 and 467 of 1988 no reply has been filed on behalf of any of the private respondents. In OA No. 45 of 1988 a reply has been filed on behalf of respondents no. 18 to 29 in which it has been stated that the applicants did not at all officiate on any senior post of IPS Cadre and the ~~petitioners~~ applicants have no cause of any grievance in that regard; and that the order dated 24.4.1987 has given benefit to the applicants to which they were not entitled to. No reply has been filed on behalf of other private respondents.

8. Rejoinder affidavits ^{been} have /filed by the applicants in all the three cases in which the allegations made in the claim ~~petitioners~~ are reiterated.

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9. We have heard the arguments of the learned counsel for the parties. Sri S.C. Budhwar, learned counsel for the applicants contended that the points raised in these applications were adjudicated by this Tribunal in OA No. 417 of 1987, A.B. Shukla v. Union of India & others, OA No. 626 of 1987, T.K. Joshi & others v. Union of India, and OA No. 702 of 1987, M.C. Rawat v. Union of India & others. Sri Budhwar also produced photo copy of the order dated 10.2.1989 passed by the Hon'ble Supreme Court in SLP No. 1348 of 1989 against the judgment dated 12.12.1988 in OA No. 626 of 1987 (supra) from which it is clear^{be} that the Hon'ble Supreme Court had not granted any stay of the orders of this Tribunal in OA No. 626 of 1987 (supra). The contention of Sri Budhwar is that the decision of this Tribunal in the above mentioned cases is fully applicable to the facts and circumstances of these cases and ^{may} also be disposed of accordingly.

10. On going through the ^{said} decisions of the Division Bench of this Tribunal it is noticed that all the issues involved in the three applications, under consideration, were discussed and adjudicated by the same Division Bench, consisting of both of us as Members of the Division Bench, while considering the matter in OA No. 626 of 1987, T.K. Joshi & others v. Union of India. The Division Bench also dealt with these matters in OA No. 36 of 1988, Jagdish Singh Changesh & others v. Union of India & others, in which the applicants were direct recruits to IPS in the State of U.P. and had also challenged the order of seniority of promotee officers which ^{is} contained in the order dated 24.4.1987 passed by the Government of India. We are, therefore, of the opinion that it is not necessary for us to go into the various details of each case in giving our decision. The private respondents in all the three cases filed ^{be} written arguments and the counsel for the parties in all the three cases are also common. We are also of the opinion that it would be sufficient to discuss the points raised in the written arguments

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filed on behalf of private respondents no. 3 to 29 in OA No. 45 of 1988.

11. The first point urged on behalf of the private respondents is that the applicants' promotions were wholly illegal and contrary to the rules and these were terminated by the State Government in the year 1974-75 and they were given the status of ^h special grade officers in the U.P. Police Service on temporary basis. It has also been urged that the applicants never officiated legally on a cadre post and are, therefore, not entitled to the benefit of their continuous officiation under Explanation I to Rule 3(3)(b) of IPS (Regulation of Seniority) Rules, 1954. The third point urged on behalf of the private respondents is that the applicants' appointments were purely ad hoc, in the nature of a local arrangement and as they were not brought under select list they could not have been appointed to a cadre post as several IPS officers were working on non-cadre posts and they were available for such posting. The fourth point urged on behalf of the private respondents is that the alleged officiation of the applicants was neither approved by the Central Government nor certified by the State Government under Rule 3 of IPS (Regulation of Seniority) Rules, 1955. Yet another contention of the private respondents is that the applicants have not exhausted the departmental remedies available to them under Rule 25 of the All India Services (D&A) Rules, 1969. The next contention of the private respondents is that the seniority of the applicants should be counted from the date they were appointed in IPS. The last contention of the private respondents is that the Hon'ble Supreme Court in the appeal arising out of T.K. Joshi's case and J.S. Gangesh's case have directed that the judgments rendered in the said cases would not be treated as precedents. In the written arguments filed on behalf of the private respondents it is stated that the case law cited and relied upon by them in T.K. Joshi's case would also be applicable in the present case.

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12. We have carefully perused the documents on record. The learned counsel for the applicants has filed a copy of the order of the Hon'ble Supreme Court in SLP No. 1348 of 1989, Syed Khalid Rizvi & others v. Union of India & others, against the judgment and order dated 12.12.1988 in Registration (OA) No. 626 of 1987, T.K. Joshi & 6 others v. Union of India & others, dated 10.2.1989. On going through this order it is noticed that no such order, as alleged by the private respondents, containing a direction of the Hon'ble Supreme Court that the judgment rendered by this Tribunal in the above mentioned cases would not be treated as precedent. The Hon'ble Supreme Court has rejected the prayer of the applicants for grant of stay and directed that "any promotion given pursuant to the seniority list published by the Government of India will be subject to the result of the appeal". In view of the above observations of the Hon'ble Supreme Court the last contention of the private respondents is incorrect. The ^{other} points urged in all the three applications are broadly covered in the judgments in OA No. 626 of 1987, T.K. Joshi & others v. Union of India & others, OA No. 702 of 1987, M.C. Rawat v. Union of India & others, and OA No. 417 of 1987, A.B. Shukla v. Union of India & others. All these points have been discussed in detail^{ly} and adjudicated by us in the above mentioned cases. We are, therefore, of the opinion that it is not necessary to deal with these points afresh in these applications, as it will amount to unnecessary repetition of our ^{findings} on various issues. It is also noticed that respondents no. 1 and 2 have not disputed the assertions of the applicants that their initial appointment on cadre posts were made under Rule 9(1) of IPS Cadre Rules, 1954. It is also not disputed that the appointment of the applicants on cadre posts were made by the second respondent under the powers vested in them under Cadre Rules. Respondents no. 1 and 2 have also admitted that the applicants continuously officiated on cadre posts or ex-cadre equivalent posts without any break until their appointment to IPS. Respondent no.2 has also admitted that the continuous officiation of the applicants on such posts was in public interest and exigencies of administration due to paucity of suitable cadre officers. It is also not disputed by any of the

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contesting respondents that the applicants performed their duties efficiently and to the entire satisfaction of respondent no.2 resulting in their appointment to IPS. It appears that all the facts and circumstances of the case have not been taken into consideration by respondent no.1, Union of India, while fixing their seniority in IPS Cadre.

13. In view of above, we are of the opinion that the denial of due seniority to the applicants in IPS Cadre by respondent no.1 is not inconformity with the principles enunciated by the Hon'ble Supreme Court of India in Narendra Chaddha v. Union of India & others (1986 (1) SCC 154) and Union of India v. G.N. Tewari & others (1986 (1) SCC 89). The principles of seniority and relaxation laid down by the Hon'ble Supreme Court in the aforementioned cases should have been made applicable to the case of the applicants by the Union of India. Accordingly we direct respondent no.1 to re-fix the seniority of the applicants ^{with reference to be} ~~as per their continuous~~ ^{or equivalent service posts - be} ~~on a cadre post~~ ^{be} within a period of two months from the date of receipt of a certified copy of this order. All the three applications are disposed of accordingly. We make no order as to costs.

Sharma
MEMBER (J).

Sharma
MEMBER (A).

Dated: March 23, 1989.

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