

15 (A2/1)
Central Administrative Tribunal
Allahabad

ORIGINAL APPLICATION NO. 529/88.

M.P. Dixit

: Applicant

Versus

Union of India and 24 others

: Respondents

Bench consisting of:

Hon'ble Shri G.S. Sharma, Judicial Member

Hon'ble Shri N.V. Krishnan, Administrative Member

Delivered by Hon'ble Shri NV Krishnan

I have had the advantage of perusing the judgment of my learned brother, Hon'ble Shri GS Sharma, Judicial Member. With deep regret, I find myself unable to concur with one conclusion arrived at by him in his judgment, which is basic to the disposal of this application.

2. It is not necessary to repeat the facts of the case, as they have been clearly stated in my learned brother's judgment. Two questions are involved. The first is whether, on the facts and in the circumstances of the case, the applicant, who was an officer of the State Police Service of Uttar Pradesh, officiated continuously from Nov., 1974, on a Senior Post, as defined in the Indian Police Service (Regulation of Seniority) Rules, 1954 - Seniority Rules, for short - prior to the inclusion of his name in the Select List of the IPS for the first time on 3.7.78. If the answer to this question is in the affirmative, the second question is whether such officiation, even ^{if} ~~it~~ be prior to the inclusion of his name in the Select List,

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can, after his appointment to the Indian Police Service, be considered for the purposes of determining his year of allotment in the Indian Police Service Cadre of Uttar Pradesh, in relaxation of the Explanation-1 to Rule 3(3)(b) of the Seniority Rules.

3. The first question has to be considered with reference to the posts of Chief Security Officer, Benares Hindu University (BHU, for short) and Commandant, Police Training School, Moradabad. Admittedly, before the inclusion of his name in the Select List, the applicant held these two posts respectively from November, 1974 to September, 1977 and from September, 1977 to July, 1978.

4. Before proceeding further, the definition of 'Senior Post' in Rule 2(g) in the Seniority Rules may be seen.

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

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

The first issue has to be considered with reference to this definition. It may also be added that the posts mentioned against items 1, 2 and 5 of the cadre of each State, as referred to in the definition above, are also referred to as cadre posts.

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5. My principal disagreement with my learned brother relates to his finding that the officiation of the applicant on the two posts referred to in para 3 above is officiation on a Senior Post. It is convenient to consider the question separately in respect of each of the two posts.

6. The reasons for which my learned brother has held that the officiation of the applicant on the post of Chief Security Officer B.H.U. is officiation on a Senior Post are given in para 6 of his judgment. The applicant had relied strongly on the three certificates exhibited as RA-1, RA-2 and RA-3, with his rejoinder to the reply of Respondent-2. My learned brother has agreed with the applicant's contention that these three annexures should be treated as certificates contemplated by Explanation 4 to rule 3(3)(b) of the Seniority Rules. He has also observed that the State Govt. has already treated the post of Chief Security Officer, BHU, as equivalent to that of a Superintendent of Police (S.P., for short) and held that in view of the aforesaid three certificates, the period of officiation on this post should be treated as officiation on a Senior Post.

7. I find that the State Government's letter dated 13th April, 1978 (RA-1), in so far as it concerns the applicant, has been totally modified by their letter dated

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13.7.79 (Annexure-RA2). This is a letter to the Inspector General of Police, UP to the effect that, had the applicant not gone on deputation to the Govt. of India, he would have continued to officiate as a S.P. on the Uttar Pradesh Police Service Special Grade of Rs.1200-1700 from 8th January, 75 - or on an equivalent post- with effect from 8.1.75, ie, the date with effect from which Shri TN Agarwal, an officer junior to him, began to officiate as S.P. on that pay scale. There is a further direction therein under the Financial Rules that, for the purpose of pay fixation and reckoning increments in the Uttar Pradesh Police Special Grade, the service rendered by the applicant on deputation shall be taken into account. It from the Ann. RA-2 certificate is clear/that if the applicant had not been sent on deputation as Chief Security Officer, BHU - which has given rise to a controversy whether that post is a senior post or not - all that would have happened is that he would have been posted as a SP on the Uttar Pradesh Police Service Special Grade of Rs.1200-1700/- from 8.1.75. Obviously, that post of SP is included in the State Police Service cadre on a State Police time scale of pay, albeit the same as the senior time scale of the IPS. The certificate does not state that but for the deputation to BHU, the applicant would have officiated on one of the Senior Posts or on one of the IPS cadre posts on the senior time scale. This certificate, therefore, does not establish

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that the post of Chief Security Officer, BHU, when held by the applicant was a senior post or a cadre post.

8. Similarly, the letter dated 29th May, 78, of the Inspector General of Police (Annexure-RA 3), is merely a certificate to the effect that had the applicant, while on deputation to the BHU as Chief Security Officer, not proceeded on leave for the periods indicated therein, he would have officiated as a S.P. This certificate has necessarily to follow the Ex. RA-2 examined above, which was given by the State Govt. for the whole period of deputation, whether the applicant was on leave or not ^{during such deputation.}

It cannot give any greater advantage to the applicant than RA-2 itself. There is nothing in this letter to draw a conclusion that the deputation post held by the applicant was a Senior Post.

9. Admittedly, the post of Chief Security Officer, BHU, is an ex.cadre post under a foreign employer. The Govt. of Uttar Pradesh, ie, Respondent 2, has categorically stated in para 6 of the counter affidavit, that this post, when it was held by the applicant, was a non-cadre post and that it was not declared equivalent to a cadre post. The certificate RA-2 does not, in express terms, declare that this post is equivalent to a cadre post. In fact, there is no mention at all about the Indian Police Service or any of the statutory rules applicable to that Service

in this certificate.

10. In para 14 of his rejoinder to the counter affidavit filed by the Respondent-1, the applicant has pointed out that Virendra Kumar, his junior, was promoted to a senior post with effect from 3rd January, 1975. On that ground, he claims that the State Govt. did not have a rational policy of posting and, therefore, irrespective of any other considerations, his posting as Chief Security Officer, BHU, should be treated as a posting on a post equivalent to a senior post. He has also filed a copy of the counter affidavit filed by the Govt. of UP in claim Petition No. 467/86 before the CAT, Allahabad (Annexure RA-1 to the applicant's rejoinder to the counter affidavit of Resp.1). In that counter affidavit, it was stated that Shri Virendra Kumar's name was included in the Select List for the first time on 3.7.78, ie, the same date as the applicant, and that, prior to that date, he was appointed as SP to a non-cadre post of Superintendent of Police, G.B., CID, from 3.1.75 to 16.5.76 and after a course of training thereafter, he was appointed to a non-cadre post of Superintendent of Police, Vigilance, Lucknow from 29.8.76 to 17.2.77. Thereafter, he held cadre post continuously from 16.2.77. It is, therefore, clear that Shri Virendra Kumar did not hold a Senior Post from 3.1.75, as alleged by the applicant.

11. The other question is whether Annexure-RA1, RA-2 and RA-3 can be treated as certificates under Explanation-4 to Rule 3(3)(b) of the Seniority Rules. In simple terms, Rule 3(3)(a) provides that the year of allotment of a direct recruit will be the year following the year in which the competitive examination he passed was held. In respect of a promoted officer like the applicant, Rule 3(3)(b) provides that his year of allotment will be the same as that of the junior-most direct recruit who officiated continuously in a Senior Post from a date earlier than him. This general rule in respect of promoted officers is qualified by 4 Explanations under Rule 3(3)(b).

12. It would appear that the main issue in this case turns round the first explanation to Rule 3(3)(b) of the Seniority Rules, as will be clear from para-2 supra. That Explanation states that the period of officiation of a promoted officer shall be counted for the purposes of seniority only from the date on which his name is included in the Select List or from which he started officiating continuously on a senior post, whichever is later.

13. Explanation-4 directs that a promoted officer shall be treated to have officiated on a Senior Post, during a period when he was appointed to a non-cadre post, if the State Govt. certifies that, but for such appointment to

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a non-cadre post, he would have officiated on a senior post. There are, however, four conditions subject to which alone such certificate may be given and there are also 3 provisos to this explanation. The four conditions are as follows:-

(i) The certificate should be given within 3 months of the officer's appointment to a non-cadre post,

(ii) The certificate may be given on the authority of the State Govt. alone, if the period of appointment to an non-cadre post does not exist one year,

(iii) If the period of such appointment exceeds one year, the approval of the Central Govt. is necessary, but in no case can the period of total appointment exceed three years,

(iv) The pay scale of the non-cadre post should be identical to the time scale of the senior post. The second proviso to this Explanation alone needs to be referred to. That runs as follows:-

"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."



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14. It is, thus clear that the certificate visualised in Explanation-4 to Rule 3(3)(b) of the Seniority Rules, is to be given only when an officer, already included in the Select List, is appointed to a non-cadre post, while his junior is holding a cadre post. Before the applicant was posted as Chief Security Officer, BHU, his name was not included in the Seniority List. In fact, his name was so included after he ceased to hold ~~that~~ post. Therefore, the question of treating any of the certificates RA-1, RA-2 and RA-3 as one under Explanation-4 to Rule 3(3)(b) does not arise.

15. My learned brother's judgment refers to certain decisions of the Allahabad Bench of the Tribunal in which the provisions of Explanation-1 to Rule 3(3)(b) of the Seniority Rules have been relaxed in certain ^{special} circumstances. He has mentioned, as an instance, the decision of the Bench in SK Chandra Vs. Union of India and others (OA 14/88). The applicant himself has referred to the decision rendered by a majority in OA 583/86 - Bhupendra Singh and others Vs. Union of India and others. In this case, which was heard by my learned brother and Hon'ble DS Mishra, Administrative Member, there was a difference of opinion about the nature of relief to be granted. Thereupon, in pursuance of an order by the Chairman of the Central Administrative Tribunal, the matter was referred to ^{the} Hon'ble Justice Shri S. Zaheer Hasan, Vice Chairman, of the Allahabad Bench,

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under Section 26 of the AT Act. As seen from his judgment, the question referred to him was as follows:-

"Whether in view of the violent departure from the rules of preparing the Select Lists by the Government, the period of officiation of the petitioners in the cadre posts prior to the inclusion of their names in the Select Lists has to be counted for assigning the year of allotment to them by excluding the Explanation 1 to Rule 3(3)(b) of the IPS Seniority Rules?"

The answer given by him to the reference is as follows:-

"the period of officiation of the applicants in the Cadre Posts prior to inclusion of their names in the Select Lists has to be counted for assigning the year of allotment to them in view of the relaxation of the requirement of Explanation 1 to Rule 3(3)(b) of the Indian Police Service (Regulation of Seniority Rules) as stated above."

16. These rulings are helpful only in so far as they concern Explanation-1 to Rule 3(3)(b) of the Seniority Rules.

17. Two other important decisions of the Allahabad Bench of the Tribunal, namely, OA 417/87-AB Sukhla Vs. Union of India and others and OA 626/87-- TK Joshi and others Vs. Union of India and others, are referred to in Annexure-RA-2 to the rejoinder filed by the applicant to the reply of Respondent-1. These 2 cases are, however, distinguishable. Thus, in the former case while the applicant's name was included in the Select List from 3.7.78, it was admitted that prior to that date - and in fact upto 29.3.80 - he continued to work on cadre posts. He was posted as Superintendent of Police, Ghaziabad, on a non-cadre post from 30.3.80 to 19.5.82, though in the

meanwhile, he was appointed to the Indian Police Service on 6.12.80. Para 30 of the judgment in the second case, shows that the applicants therein had admittedly officiated continuously on cadre posts without break until their appointments to the Indian Police Service. Thus, in these two cases, the officiation prior to inclusion in the Select List was undisputedly on cadre posts. Further, in the former case, the posting to a non-cadre post was after the inclusion of the applicant's name in the Seniority List.

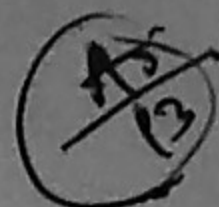
18. Thus there is no judicial pronouncement regarding Explanation 4 to Rule 3(3)(b) of the Seniority Rules. The certificate under the aforesaid Explanation 4, can be given only subject to the restrictions and conditions mentioned therein and to the provisos thereunder, one of which provides that it shall be given only in respect of an officer, who has been posted to an ex-cadre post, after his name was included in the Select List. It is, thus, clear that Annexure RA1, RA2 and RA3 cannot be considered to be certificates under Explanation 4 to Rule 3(3)(b) of the Seniority Rule and therefore, the applicant was not holding a senior post while posted as Chief Security Officer, BHU.

19. For the aforesaid reasons, I find that the officiation by the applicant on the post of Chief Security Officer, Benares Hindu University from November, 1974 to September, 1977 cannot be considered to be officiation

on a Senior Post.

20. The aforesaid posting was followed by ^{the applicant's} officiation as Commandant, Police Training School, Moradabad, from September, 77 to July, 78. In respect of this post, the applicant has filed a copy of the State Government's letter dated 25.2.77 (Annexure RA-4) alongwith his rejoinder to the counter affidavit of Respondent-2. It is stated therein that after considering the Report of the Gore Committee, the State Government had taken certain decisions in regard to the Police Training School (Head Constables Course), Moradabad. One of the decisions taken was that the Head of the Institution would be of the rank of a Superintendent of Police in the pay scale of Rs.1200-1700, Which is the same as the Senior scale applicable to the Indian Police Service at that time. Accordingly, a post of Superintendent of Police (Commandant) in the pay scale of 1200-1700 was created. It was directed that this post of Superintendent of Police be added temporarily to the IPS Cadre of the State. In addition, it was also declared that this post of S.P. was equivalent to the post of Superintendent of Police mentioned in Schedule III of the IPS (Pay) Rules. In the circumstances, my learned brother has concluded that it is established that the applicant's officiation on this post is officiation on a Senior Post.

21. Prima facie, it would appear from the above narration that the post, when held by the applicant, ^{would have} amounted to his



officiation on a Senior Post. A closer examination, ^{however,} ~~shows~~ that this is not correct. No doubt, this is a Senior Post, it having been temporarily added to the IPS Cadre of Uttar Pradesh, a circumstance mentioned in the definition of "Senior Post" extracted in para 4 ante. But the definition also clarifies that a post temporarily added to the IPS Cadre will be a Senior Post, only if it is held by an officer recruited under Rule 7 of the IPS Recruitment Rules, 1954, ie, a direct recruit. As the applicant was not a member of the IPS while holding this post, his officiation on this post cannot be held to be ^{on} a cadre post.

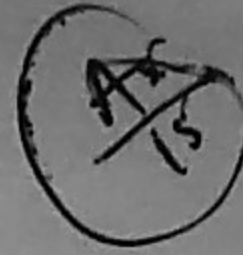
22. In this context, I find it somewhat intriguing why the definition of 'Senior Post' in Rule 2(g) of the Seniority Rules should insist that a post temporarily added to the cadre under the second proviso to sub rule 2 of rule 4 of the Indian Police Service (Cadre) Rules, 1954, should, in order to be considered to be a Senior Post, be held on the Senior scale of pay by only a direct recruit. No difference would have been made if it had ^{been} held by a cadre officer appointed by promotion. What seems to be clear is that it cannot be held by a non-cadre officer, as in that circumstance, it would cease to be ^a cadre post. The purport of the second proviso to Rule 4(2) of the IPS (Cadre) Rules, 1954 has been stated to be explained by the Ministry of Home Affairs in letter No.14/51/66-AIS(III) dated 21.2.1966, ~~as stated~~ in the book 'All India Services Manual' by

RN Mishra (Second Edition) at page 655 thereof. Extracts from that letter are reproduced below:-

"5.3 It would appear from the above discussion that the provision was made to meet the sudden and immediate need for extra posts subject to the condition that such posts will be held by cadre officers only." xxx xxx xxx xxx xxx
xxx xxx xxx xxx xxx

"5.4 If no cadre officer is available, a temporary post created with whatever designation, should not be added to the IAS/IPS cadre. If the post is held by State Civil/Police Service Officer, whether in the Select List or not, it will be a temporary addition to the State Civil/Police cadre of a State or an ex-cadre post counted against deputation reserve, if any, provided in that cadre or it may be an isolated post in the State Civil/Police Service to ~~xxx~~ which the State Civil/Police Officer could be appointed with the approval of the State Public Service Commission, if so required by the State Rules."

23. It is thus clear that the power to add a post temporarily to the IPS cadre is to be resorted to only if it is found that without such addition a cadre officer cannot be accommodated. Therefore, whether the insistence of Rule 2(g) of the Seniority Rules that, for the purposes of that definition, the holding of such a temporarily added cadre post by a direct recruit is necessary, is correct or not, it is clear that the creation of a temporary post and its addition to the IPS cadre is justified, only if it is to accommodate a cadre officer. Therefore, when that post is held by a non-cadre officer, the basic reason for its addition to the cadre ceases to exist and it automatically becomes a non-cadre post and therefore it ceases to be Senior Post. Viewed in this light, the officiation on the post of Commandant, Police Training

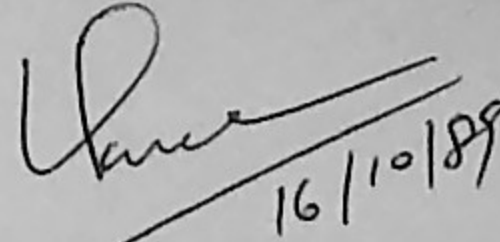


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School, Moradabad, cannot be treated as officiation on a Senior Post.

24. As a result, I find that the applicant's officiation on neither of the two posts mentioned in para 3 is officiation on a Senior Post for the purpose of Rule 3(3)(b) of the Seniority Rules. That being the case, in my view, the second question referred to in para 2 supra does not arise for consideration in this case.

25. For the foregoing reasons, I do not find any substance in this application and hence it is dismissed.


16/10/89

(N.V. Krishnan)
Administrative Member