

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

O.A. NO. 337 1990.
~~TA. NO.~~

DATE OF DECISION _____

Pratap Singh

PETITIONER

Shri S. C. Chakravarty

Shri Sushir Agarwal

Advocate for the
Petitioner(s)

VERSUS

Union of India & others

RESPONDENT

Shri R. A. Pandey

Shri R. P. Khare

Advocate for the
Respondent(s)

CORAM :

The Hon'ble Mr. Justice Kamleshwar Nath, re.

The Hon'ble Mr. K. O'bayya, Am.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether to be circulated to other Benches ? Yes

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17.8.90

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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration D.A. No.337 of 1990

Pratap Singh Applicant

Versus

Union of India & 20 Others Respondents.

Hon.Mr.Justice K.Nath, V.C.

Hon.Mr.K. Obayya, Member(A)

(By Hon.Mr.Justice K.Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for quashing the appointment of respondents 5 to 20 under orders dated 15.12.89 contained in Annexure-I, for a mandamus to respondents 1 to 3 to convene a Selection Committee Meeting to prepare yearwise select lists of 1986, 1987, 1988 and 1989 after determining vacancies according to Indian Police Service (Appointment by Promotion) Regulations 1955 (for short the Regulations) and to issue promotion orders only thereafter and further to convene a meeting of the Selection Committee to prepare select list of 1990 still later. A mandamus is also sought against respondents 2 to 4 to finalise the applicant's matter regarding annual confidential remarks of the years 1984-85 and 1985-86 for which the issue of his integrity certificate has been withheld and thereafter to consider the applicant's case in the appropriate select list for appointment to the I.P.S. There is also a prayer to summon the record of Selection Committee Meeting held on 27.3.90 who has prepared a select list illegally

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by clubbing together the vacancies of various years in violation of the regulations and to pass suitable orders in that regard.

2. Applicant Pratap Singh was recruited to the U.P. Police Service and appointed as Deputy Supdt. of Police on 15.11.71. After eight years of service he became eligible for being considered for promotion to the I.P.S. On 16.12.84 he was promoted and posted as Additional Supdt. of Police Barabanki. In the meantime, select lists for the years 1981 to 1984 were prepared in respect of which the applicant has no grievance.

3. While posted in Barabanki, some anonymous complaints were made against the applicant and they were investigated by the Anti Corruption Organisation of the Govt. of U.P. under the control of Director General of Police. While recording the annual confidential remarks for the period from 16.12.84 to 31.3.85 (i.e. of the year 1984-85) the Supdt. of Police Barabanki remarked, and the Reviewing Authority agreed, that the integrity certificate could not be issued due to the pending investigation into the complaints.

4. On 27.12.85, the Selection Committee met and framed a list of 34 officers of the U.P. Police Service approved for promotion to the I.P.S.; the number of vacancies dealt with by the Selection Committee at that time was 17. The Selection Committee did not find the applicant to be fit for inclusion in the select list. However, before the select list of 27.12.85 could be finalised and promotion orders could be issued, Writ Petition No.1549 of 1985 Bharat Singh & Another Vs. State of U.P. and Another was filed in the Hon'ble High

of Judicature at Allahabad and an interim order was passed by the Hon'ble High Court on 16.1.86 staying further promotion to the post of Supdt. of Police or Additional Supdt. of Police from that list. The matter stayed there.

5. Like the Adverse A.C.R. of the year 1984-85, the applicant's A.C.R. for the year 1985-86 also did not carry an integrity certificate on the same ground viz the pendency of investigation into the complaints against the applicant.

6. But Bherat Singh's Writ Petition No.1549 of 1985 was transferred to the Supreme Court to be decided alongwith other Writ Petition. On 4.11.85, the Hon'ble Supreme Court decided the matters in the leading case of Rana Randhir Singh Vs. State of U.P. & Others reported in 1989 (1) SLR 1, a copy of the judgement is Annexure-CA2 on the record of this case. The stay order was vacated. Thereafter the State Govt. approached the U.P.S.C., respondent No.3 for approval of the select list dated 27.12.85. The U.P.S.C. approved the list on 6.2.89. Thereupon the State Govt. recommended to Union of India, respondent No.1 for appointment of 29 officers of the select list dated 27.12.85 to the I.P.S. Respondent No.1 issued the impugned appointment orders of those 29 persons by Annexure-A1 dated 15.12.89. Of those 29 persons, the applicant challenged the appointment of respondents 5 to 20. That is the first part of the applicant's case.

7. The second part of the applicant's case concerned the preparation of the select list on 27.3.90.

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While the applicant did not make any representation against the A.C.R. entries of 1984-85 and 1985-86 in which his integrity certificate had been withheld on account of pending investigation into the complaints, he did make representations dated 2.5.89, Annexure-A4, dated 8.5.89, Annexure-A5 and Annexure-A6 to the concerned authorities ^{and} ^{g.g.} on 22.5.89, the Anti Corruption Organisation directed the concerned officials to expedite the investigation and to submit the report. Fearing that he would again be excluded from the select list of the Selection Committee Meeting dated 27.3.90, he made representation dated 23.3.90, Annexure-A8 to the State Govt. for prompt action in the investigation. The Anti Corruption Organisation submitted a report to the Director General of Police on 26.3.90 which, according to the applicant, held the complaints to be baseless. However, the Selection Committee did meet on 27.3.90 by which time the complaints against applicant had not been finally dealt with; The Selection Committee did not find the applicant fit for being included in the Select List. The Selection Committee prepared a list of 34 officers (vide para 40 of the Counter of respondent No.2); however on the basis of that select list no orders had been issued (vide para 50 of the counter of respondent No.21).

8. We may mention atonce that this application was filed on 20.4.90. Earlier the applicant had filed an application No.OA 295 of 1990 at the Lucknow Circuit Bench of this Tribunal for relief against the select list

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of 27.12.85. A preliminary objection on behalf of the respondents is that in view of the institution of O.A. No. 295 of 1990 at Lucknow, this application is not maintainable. The learned counsel for the applicant correctly contends that the relief claimed in the present case is not to quash the select list of 27.12.85 but to quash appointments which have been made on the basis of that list in so far as they relate to the years in respect of which the select list of 27.12.85 could not be made use of. The learned counsel for the applicant has submitted that assuming without admitting that the select of 27.12.85 was valid, it could, nevertheless, not be used to make appointments of respondents 5 to 20. We accept the submission and hold that this application is maintainable despite the application pending at the Lucknow Circuit Bench.

9. On the first part of the case namely the appointment of respondents 5 to 20, the applicant's grievance is that the select list of 27.12.85 could be made use of only for the vacancies upto the year 1986 and since the appointment of respondents 5 to 20 has been made against vacancies of still later years, their appointment is contrary to the provisions of the regulation and therefore is invalid.

10. On the second part of the case namely regarding the select list of 27.3.90, the applicant's grievance is that it has been prepared not on the basis of vacancies from year to year but on the vacancies of 1987, 1988 and 1989 clubbed together which was not

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permissible under the provisions of the regulations and therefore is invalid. To this part of the case also the respondents have a preliminary objection. It is stated that the select list of 27.3.90 is still only in the state of a select list and that no final order having been passed with regard to it, there is no order which could be challenged by the applicant in this application. We think that the objection is more technical than real. After all, the select list of 27.3.90 has only to be considered by the U.P.S.C. and thereafter, if approved by the U.P.S.C., has to be followed by the final orders of appointments which may be issued by respondent No.1. A significant feature is that the case of respondent No.2 in para 40 of the counter is that there is no justifiable ground for holding back the career prospects of 34 officers who are on the select list of 27.3.90. We may mention that the Union of India have not filed any counter in this case. This averment in the counter of State of U.P. leaves no manner of doubt that so far as the Govt. is concerned, they are inclined to give appointment to the 34 officers who are included in the select list dated 27.3.90. We do not think that if this action of the Govt. is not in accordance with the law, we may permit it to be perpetuated and then to be challenged after the mischief has already been done. We should state here that while considering the cases of both the parties in the matter of interim relief on 8.5.90 this Tribunal had passed the following interim

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order :-

" We direct that till the disposal of this petition, the respondents may finalise the select list and if they prepare the select list on the basis of vacancies from year to year, they may proceed to give effect to it subject to the ultimate result of this petition, but if they do not finalise the list on the basis of the vacancies from year to year but on the basis of the vacancies clubbed together, effect shall not be given to the finalized select list till further orders of this Tribunal".

11. In other words, we have taken cognizance of the applicant's grievance and the respondents' contention in the matter of validity of the select list dated 27.3.90 on the question of the procedure adopted for preparing it. Our order dated 8.5.90 figured before the Hon'ble Supreme Court in S.L.P.(Civil) Nos.8020 and 8021 of 1990. The Hon'ble Supreme Court by their order dated 11.7.90 held that since the matter is already before us for final hearing we ought to proceed and decide the case on the date fixed without granting adjournment and if an adjournment was granted we may consider the question of vacating the interim order. The Hon'ble Supreme Court do not appear to have accepted the contention of the respondents that the claim of the applicant in respect of the select list dated 27.3.90 was pre-mature. We have heard the case on the merits and this is the judgement which we are delivering. The preliminary objection in this regard, therefore is not fit to be accepted.

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12. Separate counters have been filed by respondents 2, 10 and 21. For all practical purposes the stand which has been taken by respondents 10 and 21 is the same as taken up by respondent No.2 except that respondent No.21 has also raised certain preliminary objections in the counter itself which we have already referred to. The case of the respondents is that the promotion of the applicant as Additional Supdt. of Police Barabanki with effect from 16.12.84 is not material because it was made under the State Govt. Rules purely on the basis of seniority-cum-suitability whereas the selection to the I.P.S. has to be made on the basis of merit. It was next said that the Selection Committee of 27.12.85 found the applicant to be unfit not merely because the A.C.Re of five years from 1981 to 1984-85 had been seen, as alleged by the applicant, but because he was found to be unfit on a consideration of the entire service record. It was next said that the report of the Anti Corruption Organisation in the complaints against the applicant was still under the consideration of the D.G.P. and after it is considered by the D.G.P. it will have to be examined by the State Govt. when alone it would be possible to pass final orders in that regard. In the meantime, the applicant's integrity certificate remains withheld for the years 1984-85 and 1985-86.

13. It is next urged that on the basis of the select list on 27.12.85 orders of appointment should have been issued but for the interim orders of the

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Hon'ble High Court passed on 16.11.86 and vacated by the Hon'ble Supreme Court on 4.11.88 after which alone the process of approval by the U.P.S.C. was taken in hand. It was said that after the approval of the U.P.S.C. appointment orders were issued in December, 1989 on the cadre post of the I.P.S. on the basis of select list dated 27.12.85 and that on 15.12.89 only the formal notification of those appointments was issued.

14. The most important part of the respondents' case is that since appointment on the basis of the select list of 27.12.85 remained suspended on account of the stay order and litigation and in the meantime the services of senior police officers were necessary to the Govt., appointments were made only after the select list became operative when the stay order was again vacated by the Hon'ble High Court. That being so, it was open to the Govt. to make appointment from that list against the vacancies of whatever year were available and that it was not at all necessary to confine the appointment only to those years for which the select list dated 27.12.85 was framed.

15. The respondents said that the preparation of select list every year is not mandatory which should be clear from the expression "ordinarily" in Rule 5(1) of the Regulation.

16. In respect of the select list of 27.3.90, it is stated that the Regulations have been materially amended and therefore the earlier procedure was not

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applicable. It was said that the Rules and Regulations did not forbid appointment of all the officers in a select list if there are vacancies available in the promotion quota. It was added in para 33 of the counter of respondent No.2 that the Selection Committee had before it datewise and yearwise details of vacancies as set out in Annexure-CA.3 and the Selection Committee drew up the select list keeping that list of vacancies in view in accordance with the amended Regulations. It was stated that 29 officers from the select list of 27.12.85 were promoted against these very vacancies which included some upto 27.1.88. The remaining vacancies (Nineteen) plus 9 anticipated vacancies upto 31.3.91 formed the basis of select list of 27.3.90. We may mention that the details and break up of the vacancy contained in Annexure-CA3 have not been controverted in the applicant's rejoinder. The main question for consideration is whether according to the applicable rules and regulations respondents 1 to 3 were bound to prepare select lists only on the basis of yearwise vacancies and not to club the vacancies of different years into one and whether they were competent to make appointment from the list pertinent to a particular year against vacancies relevant for a later year.

17. Elaborate arguments have been placed before us by Shri S.C. Budhwar, the learned counsel for the applicant, by Shri K.N. Tripathi, the learned counsel for respondent No.2 and by Shri R.A. Pandey, the learned counsel for respondent No.21. The contention of the learned counsel for the applicant is that there have been no major changes in the rules ever since the

decision in M.L.Kapoor's case. The sheet-anchor of the applicant's case in the decision of the Hon'ble Supreme Court in the case of Union of India Vs, M.L.Kapoor and others 1974 SC 87 and the learned counsel says that this Bench of the Tribunal following the decision in M.L.Kapoor's case has repeatedly held that the select list has to be framed on the basis of yearwise vacancies and not on the basis of vacancies of several years clubbed together.

18. To begin with we may briefly notice the changes in the regulations on the subject.

19. Amendments and modifications have been made from time to time by the Govt. in the Regulations. The most important of the amendments came in 1977. For a proper appreciation of the changes in the Regulations we proposed to refer to them in three distinct classes. The Regulations as prevailed at the time of M.L.Kapoor's case are mentioned by us as the 'initial provision'. The amended Regulations as they existed at the time of the Selection Committee meeting of 27.12.85 are referred by us as 'subsequent provisions'. The last amendments came on 7.11.89; we refer to them as the 'latest provisions' as they were applicable for the purposes of the select list of 27.3.90.

20. In the initial provisions Regulation 4(1) said that the Selection Committee shall meet at intervals "ordinarily not exceeding one year" and consider the cases of all the substantive members of the State Police Service who on the first day of the January of that year had completed not less than eight years continuous service in a post of Dy.S.P

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Regulation 5(1) required the Selection Committee to prepare a list of such members of the State Police Service as satisfied the conditions specified in Regulation 4 and are held by the Committee to be suitable for promotion to service. The number of members of the State Police Service included in the list were not to be more than twice the number of substantive vacancies anticipated in the course of the period of 12 months commencing from the date of preparation of the list in the posts available for them under Sub Rule (2) of Rule 9 of the Recruitment Rules. Regulation 5(5) required the selection to be on merit and suitability in all respects with due regard to seniority. Regulation 5(4) required the list so prepared to be reviewed and revised every year. Regulation 7(4) said that the select list would ordinarily be in force until its review and revision effected under Sub Regulation (4) of Regulation 5 is approved under Sub Regulation (1) or finally approved under Sub Regulation (2) of Regulation 7. Regulation 8 provided for appointment of members of the State Police Service to the state cadre by the State Govt. from the select list in accordance with ~~the~~ Rule 9 of the Cadre Rules in the order in which the names appear in the select list. Regulation 9 (1) required the appointment of members of the State Police Service to the IPS to be made by the Central Govt. on the recommendation of the State Govt. in the order in which the names of the members of the State Police

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Service appeared in select list for the time being in force. These are the initial provisions which prevailed^{h/} at the time when M.L. Kapoor's case was decided.

21. In the subsequent provision (relevant for the purposes of the Selection Committee Meeting of 27.12.85) Regulation 4 was ~~deleted~~. However, Regulation 5 (1) mentions that each Selection Committee must ordinarily meet at intervals not exceeding one year. This is precisely what the initial provision of Regulation 4(1) required.

22. Regulation 5(1) in the subsequent provision went on to say that the Selection Committee shall prepare a list of such members of the State Police Service as are held by them to be suitable for promotion to the service; this was also contained in Regulation 5(1) of the initial provision.

23. Regulation 5(1) of the subsequent provisions went on to provide that 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 12 months commencing from the date of preparation of the list in the post available for them under Rule 9 of Recruitment Rules; this is also substantially the same as included in Regulation 5(1) of the initial provisions.

24. Similarly, the initial provision of annual review and revision of the select list in Regulation

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5(1) as well as that select list being ordinarily in force until such review or revision in Regulation 7(4) are carried verbatim in Regulations 5(6) and 7(4) of the subsequent provisions. Lastly, the initial provision in Regulation 8 for appointment of members of the State Police Service to the State Cadre by the State Govt. and in Regulation 9(1) for appointment of members of the State Police Service to the IPS by the Central Govt. from the select list for the time being in force is carried verbatim in Regulation 8(1) and 9(1) respectively of the subsequent provisions.

25. It will thus be seen that the initial provision of the Selection Committee to meet ordinarily at intervals not exceeding one year, for the select list to be reviewed and revised every year, for it remaining in force ordinarily until its review and revision and for appointment therefrom to the State Cadre by the State Govt. and to the IPS by Central Govt. from such list if in force at the time being had been preserved in the subsequent provision. It is also clear that the use of the expression "ordinarily" for the Selection Committee to meet annually and also for the Selection Committee to remain in force till it is reviewed or revised has a directory tone consistent with the possible circumstances in the matter of making selection and appointment, but the use of the word "shall" in the matter of review and revision of the select list every year carries the mandate of its being recast from year to year. The up shot is that according to both the initial provisions and the subsequent provisions while

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there may be occasions for the Selection Committee to be unable to meet annually and in consequence thereof to keep the select list in force till its next review and revision, the mandate, nevertheless, is that the select list shall be reviewed and revised every year. The only way of making a harmonious construction of the possibility of the Selection Committee not meeting every year yet the select list to be reviewed and revised every year, is to ensure that as and when the Selection Committee meets it prepares the select list on the basis of yearwise vacancies because that will ensure the consideration of the eligible cases every year for the purposes of review and revision.

26. The only substantial change in the subsequent provisions from the initial provisions relates to the zone of consideration and the criterion of selection. In Regulation 4(1) of the initial provision, the zone of consideration consisted of all the substantive members of the State Police Service who on the first day of January of the year in which the Selection Committee meets had completed not less than eight years continuous service whether officiating or substantive in a post of Dy.S.P.; whereas in the subsequent provision contained in Regulation 5(2) read with Regulation 5(1) the zone was of the members of the State Police Service in order of seniority in that service of a number equal to three times of twice the number of substantive vacancies anticipated in the course of the period of 12 months commencing from the date of preparation of the list in the posts available for the members under Rule 9 of the Recruitment Rules or

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a certain percentage of senior posts. Again, according to Regulation 5(2) of the initial provisions selection was to be made on merit and suitability in all respects with due regard to seniority, in the subsequent provisions contained in Regulation 5 (4) and 5(5) the members of the State Police Service were to be classified as 'Outstanding', 'Very Good', 'Good' and 'Unfit' and to be arranged in the select list in that order signifying that the entire selection was exclusively on the basis of merit. Whileⁱⁿ the initial provision also, the criterion was merit and suitability in all respect but that was hedged in with due regard to seniority; but in the subsequent provision the concept of seniority with merit was completely done away with. The categorization in the subsequent provision was to be made exclusively and wholly on the basis of merit and once that categorization was arrived at, the names in the select list were to be set out according to those categories although within the categories the names were to be arranged in order of seniority in the State Police Service. The important angle of these changes in the subsequent provisions as compared from the initial provision is that the changes have nothing to do with the period of time in which the Selection Committee was to meet or for which the select list was to remain in force.

27. In M.L. Kapoor's case 1974 S.C. 87 the select list of 1968 for the IPS as also for the IAS respectively from the U.P. State Police Service and U.P. Civil (Executive) services came up for consideration in the light of Regulations 4 to 7 of the IPS (Appointment by Promotion) Regulations, 1955 and IAS (Appointment by Promotion) Regulations, 1955. The Hon'ble Supreme Court observed

that both the sets of the Regulations were in identical terms and therefore proceeded to interpret the regulations concerning the IAS. Those were the initial provisions. In para 22 the Hon'ble Supreme Court observed that the required number in the select list "as those to be selected by a comparison of the merits of all the eligible candidates of each year". In para 35 it was stated that under Regulation 4(1) "it is the duty of the Committee to consider in every year the cases of all substantive members of the States Civil/Police Service who on the first day of January of that year had completed not less than eight years of continuous service....." In para 41 it was held that Regulation 5(4) made it clear that as far as possible there should be a revision or review of the select list every year. Para 42 runs as follows :-

" 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 listWhen Regulation 5(4) says that the list prepared in accordance with Regulation 5(1) shall be reviewed and revised every year, it really means that there must be an assessment of the merit and suitability of all the eligible members every year. The paramount duty cast upon the Committee to draw up a list under Regulation 5(1) of such members of the State Civil/Police Service as satisfied the conditions and 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 selection from all the eligible candidates every year".

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28. These observations of the Hon'ble Supreme Court leave no manner of doubt whatsoever that in the initial provisions a fresh select list had to be prepared every year by making a review or revision of the previously existing select list. The paramount duty of the Selection Committee to prepare the appropriate select list could be discharged only if the Committee made the selection from all the eligible candidates every year. Further in para 44 of the judgement the Hon'ble Supreme Court interpreted the true import of the expressions "Review and Revisions" and observed as follows :-

" Though the words used in Regulation 5(4) are 'review and revision', a fresh assessment must be made of the merit and suitability of all the members remaining in the previous list and of other eligible members in the State Civil/Police Service..... In other words, the inclusion of the name of member in the select list for a year will not be an entitlement for inclusion in the select list for succeeding year".

28. The up shot is that the select list prepared for a particular year entitles the members included in that list to a right of appointment so long as the list remains in force but would not confer a right for inclusion in the select list for the subsequent year. The necessary corollary is that if a fair selection and scheme of appointment is to be preserved the select lists must be made on the basis of year to year vacancies and the appointments must be made only on that basis. As already pointed out there is no material change in the subsequent provisions from the

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initial provisions in these respects. If there was any doubt in this respect it appears to have been dispelled by the observations of the Hon'ble Supreme Court in the case of R.S. Das and Others Vs. Union of India 1987 SC 593 which dealt with the subsequent provisions.

29. In the case of R.S. Das and Others the select list for the IAS for the years 1978, 1979, 1980 and 1983 were challenged. The applicable provisions were contained in the IAS (Appointment by Promotion) Regulation 1955 which indicated above are materially the same as in the IPS (Appointment by Promotion) Regulations, 1955 as also observed by the Supreme Court in M.L. Kapoor's case. In para 12 of R.S. Das's case the Hon'ble Supreme Court observed that Regulation 5 provided that the Committee shall ordinarily meet at the interval not exceeding one year to prepare the list and that the select list shall ordinarily be enforced until a fresh list is prepared and approved for the subsequent year. In para 25, the Hon'ble Supreme Court observed as follows :-

" Select list is prepared each year which ordinarily continues to be effective for a year or till the fresh select list is prepared".

30. The view recorded in para 36 is as follows :-

" Regulations contemplate preparation of select list each year....As the select list is to be prepared each year, the State Govt. should take action well in advance to avoid any delay".

31. Having regard to these repeated observations of the Hon'ble Supreme Court there can be no manner of doubt that even under the subsequent provisions while

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the Selection Committee is expected to meet ordinarily every year, the select list itself had to be prepared as if it was being prepared each year even though the Selection Committee meets after one year. This could be done only by the method of confining a particular select list to only those vacancies which are appurtenant to the year for which the select list ought to have been prepared on annual basis. It is absolutely plain, and the learned counsel for the parties concede that the zone of consideration must vary with the number and the year of vacancies from time to time so that some persons who were eligible for being considered against one particular year's vacancies may not be eligible for being considered for a later years' vacancies. Likewise, some persons who would not have been eligible if select list was prepared on yearwise vacancy basis, may be considered if the vacancies of several years are clubbed together. As already indicated the inclusion of officers' name in one select list does not confer a title for inclusion in the subsequent select list.

32. Reliance by the learned counsel for the applicant on the decisions of this Tribunal rendered earlier in the cases of Triveni Kumar Joshi Vs. Union of India 1989(1) UPLBEC (TRI) 62, S.K.Chandra Vs. Union of India and Others (1989) 2 UPLBEC 39(TRI) and decision dated 25.9.89 in O.S. No.223 of 1988 K.P.Tripathi & Others Vs. Union of India to show that select list must be made from year to year is not misplaced because even though all those decisions concerned the select lists for the years from 1971 to 1976, the legal position as applicable to the select lists of those years is equally applicable to the legal position under the subsequent

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provisions as indicated above. We agree with the learned counsel for the respondents that there may be occasions and bonafide reasons on account of which the Selection Committee may not be able to meet every year and we also agree that in such an event the last select list continues to remain in force till a new list is framed; but we are unable to agree to the contention that the last select list can also be made use of for filling vacancies of the years for which it was neither framed nor it could be framed legally because if that was to be done the essence of the scheme of selection in the light of the zone of consideration of the eligible candidates would be lost and persons who would otherwise have been considered may be excluded and those who were not entitled to be considered may be included. The result is that while an old but for the time being in force select list may be used as a source for making appointments whenever the need arises before the new select list is prepared, the appointments must be confined to the particular years vacancies for which the select list was made and the appointments cannot be made for the vacancies of any other year.

33. The learned counsel for the respondents however referred to the case of R.S. Das relating to three officers Tejinder Singh, M.P. Mitra and Gurdev Singh included in the select list approved for the year 1979 who were appointed after the Selection

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Committee had met on 31.12.80. It is sought to be argued that despite the meeting of the Selection Committee, appointment from the previous year list was made and was upheld by the Hon'ble Supreme Court. A reading of the decision will show that the Hon'ble Supreme Court upheld the appointment of those three officers because although the Selection Committee had met on 31.12.80, the list could not be finally approved by the Commission and therefore the 1979 list remained effective. The significant point is that it does not appear to have been urged that the three officers were being given appointment for posts which did not concern the vacancies of the year 1979 but of some subsequent years. There can be no doubt that if the appointment of those officers was made against the vacancies of the year for which the select list had been approved, namely the year 1979, there could be no objection to their appointment so long as the select list of the year 1980 had not been finalized.

34. The learned counsel for the respondents then urged that there may be a case where no officer suitable enough on the merits may be found for the vacancies of a particular year or where the vacancies of a particular year may still remain outstanding after the officers of the select list have already been appointed. He says that there is no provision for carrying forward of the vacancies of a year to the subsequent year and in such an event if the appointments from a particular select list must be confined only to the vacancies for the year for which the select list was prepared then those vacancies will

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remain unfilled for ever ~~0000~~. The contention, in our opinion, is misconceived. The expression "substantive vacancies anticipated in the course of the period of 12 months commencing from the date of preparation of the list" in Regulation 5(1) would include not only the future vacancies during the period of 12 months from the date of the preparation of the list but also all those vacancies which are in existence at the time of the preparation of the select list. Anticipation relates to something which is prospective and as soon as something which is prospective is added to something which is present, the sum total itself becomes an anticipation. There is no question of carrying forward of the previous year vacancies. The sum total of the vacancies which are in existence on the date when the Selection Committee meets and the prospective vacancies in the course of 12 succeeding months constitute, in our opinion, anticipated vacancies for the purposes of Regulation 5(1). It is for all these vacancies that the Select Committee must frame a select list but the select list must be drawn on the basis of yearwise vacancies.

35. We may now come to the latest provision, i.e. the provisions following the amendments made by the IPS (Appointment by Promotion), Second Amendment Regulation, 1989 in force from 7.11.89. The last Selection Committee met on 27.3.90 i.e. under the latest provisions. In Regulation 2 containing definitions for the purposes of the Regulations a clause (1) has been added to define the expression

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"year". The expression now means the period from 1st of April to the 31st March of the succeeding year. Before this amendment, the Selection Committee could meet at any time within one year from the date of the last meeting. It is not necessary to repeat that it could have even met later because of the use of the expression "ordinarily" in Regulation 5(1). The amended definition while not disturbing ~~that~~ that flexibility in Regulation 5(1), has given a rigidity to the particular period for which the select list has to be made "reviewed and revised" under the provisions of the Regulations. The next amendment made of Regulation 5(1) by substituting that Sub Rule, reduces the number of persons who may be included in the select list. According to the latest provisions, the number of members to be included in the list would be the number of substantive vacancies anticipated in the course of the period of 12 months commencing from the date of preparation of the list in the posts available for them under Rule 9 of the Recruitment Rules plus only 10% of such number. In the earlier provisions the number was to be the twice of the number of substantive vacancies anticipated during such period. This amendment has no bearing upon the preparation of the list on yearwise vacancies. The next significant amendment is the addition of a proviso to Sub Regulation (4). According to this proviso no appointment to the service under Regulation 9 must be made after the meeting of the fresh Selection Committee to draw up a fresh list under Regulation 9 is held. This amendment resolves the conflict between the

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interest of a person whose name is included in a select list of a particular year but who is given an appointment before the finalization of the subsequent select list which does not contain his name. According to the pre-amendment Regulation as interpreted in R.S.Das's case appointment from a particular select list could be made despite the holding of the meeting of a subsequent Select Committee and preparation of a list thereby so long as such list is not finally approved by the U.P.S.C. This benefit to the officers contained in the previous select list has been withdrawn by the amendment which now says that as soon as the meeting of the subsequent Selection Committee is held, no appointment can be made from the previous select list. The intention obviously is not to carry forward the benefit of appointment of officers selected for a particular year's vacancy to a subsequent year which is under the consideration of a subsequent Selection Committee as and when it meets. Our attention has not been invited to any other provision contained in the amendment dated 7.11.89 which could lead to the conclusion that the requirement of preparing select list on the basis of yearwise vacancy has been done away with. The learned counsel for the applicant has referred to the case of Y.V.Rangaiyya and Others Vs. State of Andhra Pradesh and Others 1983 SC 852 to contend that appointments against vacancies prior to the enforcement of the amendment of 1989 has got to be made only in accordance with the Rules and Regulations as

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they were prior to the amendment. It is the admitted case of the respondents that a select list dated 27.3.90 has not been prepared on the basis of yearwise vacancy but has been prepared on the basis of all the vacancies from 1987 onwards clubbed together. On a careful consideration of all the aspects of the controversy we are clearly of the opinion that the select list of 27.3.90 thus prepared is not according to the law and appointments on that basis cannot be made.

36. We may now refer to some other points raised by the learned counsel for the respondents. It is urged that the persons contained in the select list of 27.3.90 have not been impleaded as respondents in this case and therefore the petition is not maintainable. Admittedly, the list has not yet become final and no appointment orders have been passed. No person on that list thus has acquired any vested right. There is no question of impleading the persons named in that list as respondents in the present case. Respondents' learned counsel next contends that the relief in respect of the applicant's A.C.Rs 1984-85 and 1985-86 seeking the respondents 2 and 4 to finalize the applicant's representations and to issue integrity certificate for those years is beyond the jurisdiction of this Tribunal because the ACRs relate to the period when the applicant was a member of the State Police Service and therefore can be challenged only before the U.P. Public Services Tribunal. It is urged that this dispute does not constitute "a matter concerning recruitment, of the

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applicant to an All India Service within the meaning of Section 14(i)(a) of the Administrative Tribunals Act, 1985. We are unable to agree. Regulation 5(iv) required the Selection Committee to categorize the officers in the zone of consideration "on an overall assessment of their service record". That would include the applicant's A.C.Re for the years 1984-85 and 1985-86. Since that material is open for consideration before the Selection Committee it is certainly a matter which concerns the applicant's recruitment to the IPS. It would therefore be within the scope of Section 14(i) (a) of the Administrative Tribunals Act. The learned counsel for the applicant refers in this connection to the case of Amrutappa Vs. State of Kerala 1990(1) SLR 211 and says that the expression "matter concerning recruitment" will include all matters which stand in the applicant's way and hence would be within the purview of this Tribunal. In any case if any part of the cause of action is within the jurisdiction of this Tribunal, the entire dispute would also be within the jurisdiction of this Tribunal. The fact that the U.P. Public Services Tribunal also may have jurisdiction in the matter does not stand in the way of this Tribunal exercising jurisdiction in the same matter especially in the light of the provisions of the Administrative Tribunals Act that jurisdiction of all other courts are barred where the jurisdiction of this Tribunal is exercisable. It is next urged that as stated in paras 9 and 14 of the Counter on behalf of the

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respondent No.2 the entire service record of the applicant and not merely the entries of the five years alleged by the applicant, were considered for the purposes of the select list of 27.12.85 and since he has been found unfit he has no case for coming before this Tribunal. We have already pointed out that in this case we are not concerned with the validity or otherwise of the exclusion of the applicant from the select list of 27.12.85; that is subject matter of O.A. No.295 of 1990 pending at the Lucknow Circuit Bench. The present case concerns the validity of the appointments made on the basis of that list and the select list of 27.3.90. For reasons already recorded, this application is maintainable in those respects. A further argument of the respondents on these very lines in respect of select list of 27.3.90, that, as stated in para 29 of the counter on behalf of respondent No.2, the applicant's representation dated 23.3.90 against the A.C.Rs of 1984-85 and 1985-86 and other matters was placed before the Selection Committee on 27.3.90 and yet the Committee after considering all the relevant materials found the applicant unfit, does not impress us so far as the question of maintainability of this application is concerned. It is not stated in the counter that the withholding of the integrity certificate for the years 1984-85 and 1985-86 were just ignored by the Selection Committee and that they went by the other record of the applicant. The presumption is that the

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withholding of the integrity certificate would have been considered by the Selection Committee. We have no manner of doubt that the delay on the part of the respondents 2 and 4 in this regard is wholly of their own inaction for which the applicant cannot be prejudiced. The complaints must have been made in 1985 or 1986. According to paras 15, 16 and 17 of the application, the Anti Corruption Organisation had reported in 1987 that the complaints were unfounded, but further investigations were ordered. According to paras 22 to 26 of the application when in May, 1989 the applicant pressed upon the investigations to be expedited, the Director General ordered on 22.5.89 to expedite them. According to paras 33 and 34 of the application, again the Anti Corruption Organization submitted a report to the D.G.P. on 26.3.90 that the complaints were baseless. The respondents simply said that the report of the Anti Corruption Organization was re-examined by the D.G.P. before being sent to the State Govt. so that the process of enquiry is not yet complete. It would be completed only when the State Govt. accepts the report. That the complaints of senior police officer should remain undisposed of for almost 4 to five years is anything but commendable. All that is stated in the counter is that the applicant's representation dated 23.3.90, Annexure-8 to the State Govt. to take prompt action in the matter of the investigation was placed before the Selection Committee; there is not a

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whisper that the report of the Anti Corruption Organization holding the complaints to be baseless were also placed before the Selection Committee. Be that as it may, the applicant has a genuine grievance in respect of the delay on the part of the concerned respondents and the failure of the State Govt. to take a decision on the complaints pending which the integrity certificate of 1984-85 and 1985-86 were withheld. We are of the opinion that the applicant has sufficient cause of action to enable him to file this application which therefore is maintainable.

37. The last point urged on behalf of the respondents is that even if the applicant's appointment gets delayed he will not suffer because he will have his appointment on the basis of his year of allotment in view of the proviso to Rule 3(2)(c) of the IPS (Regulation of Seniority) Rules, 1988. We are unable to find any such assurance in the proviso. Moreover, there is no reason why a wrong should be permitted to be perpetuated simply because some benefit can accrue at some future time. The rights have to be determined in present and that being so we are satisfied that the applicant has a case.

38. It was stated more than once in the course of the hearing that if the exclusion of the applicant from the select list is found to be erroneous, one post may be reserved for him whereas the remaining selection and the appointments may be permitted to be given effect to. We might have conceded to that request ~~which~~ particularly in view of the fact that respondents 2 and 4 have not yet finalised

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the matters of withholding of the applicant's integrity certificates for the year 1984-85^{and 1985-86,} which are certainly material for his consideration for the purposes of the select list. But on the totality of the facts and circumstances which ^{have} emerged in this case and which have been described above, we feel that the interests of justice, not only to the applicant but to the service as a whole, will be served by our passing an appropriate order in the matter of the reliefs claimed in this case. As pointed out by the learned counsel for the applicant in a very large number of cases relating to the IPS, this Tribunal has been stating on every occasion that the only valid and legal method of framing a select list was to prepare it on the basis of year to year vacancies and yet respondents 1 to 3 have not felt convinced and have been taking the unjustified way of making selections by clubbing together the vacancies of a number of years. The only excuse which they are able to lay their hands on are the stay orders passed by the High Court or by the Tribunal. It is no pleasure for the Courts or the Tribunals to restrict the functioning of the Govt. in the matter of making appointment but if the Courts and the Tribunals find that in spite of repeated adjudication the Govt. do not feel convinced to act ^{what} in accordance with the orders and ~~the~~ Tribunals have stated, there is no option but for the Courts and

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Tribunals to interfere. In our opinion, ^{under our} constitutional democracy citizens and the employees are governed by the rule of law not by Rule of men. Things cannot be permitted to be done at the fancy of some persons who are unable to appreciate the true legal position. We are aware of the anxiety which has been expressed more than once by the Hon'ble Supreme Court over the adverse effect on the morale and the efficiency of the police force on account of such litigations pending over a number of years and involving such a large number of officers, but shall the Courts stay their hands simply because the numbers are involved ^{or} simply because for its own reasons the authorities concerned choose to act in a manner which is not in accordance with law. If the decisions of this Tribunal which concerned the select lists of the period from 1971 to 1976 left any manner of doubt in the minds of the authorities about the effect of the amendment which came in 1977 they should better have taken guidance from the decision of the Supreme Court in the case of R.S. Das which dealt with the post amendment vacancies and they would have found that so far as the method and procedure of preparing select lists are concerned they are substantially the same as they were when the select lists of earlier years were considered and struck down by this Tribunal in the earlier judgements.

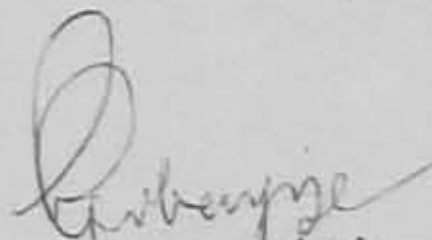
39. On a careful consideration of all the aspects of the controversy and our anxious thought to the problems which are faced by the Govt. as also of the grievance of the applicant we allow this petition and quash the appointments of respondents 5 to 20 by the

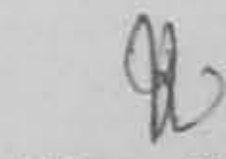
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orders dated 15.12.89 contained in Annexure-I. We direct respondents 2 to 4 to finalise the applicant's matters regarding his annual confidential reports of 1984-85 and 1985-86 including the matter of withholding his integrity certificate for those years and to pass final orders thereon within a period of two months from the date of the receipt of a copy of this judgement. We further direct that no appointment shall be made from the purported select list of 27.3.90 to the IPS. We lastly direct respondents 1 to 3 to convene the meeting of the Selection Committee and to take appropriate action for preparation of the select lists on the basis of yearwise vacancies bearing in mind the observations contained in the body of this judgement within a period of six months from the date of receipt of a copy of this judgement and to issue orders of regular promotion to the IPS only after the finalization of such select list. Parties shall bear their costs of this petition.


Member (A)


Vice Chairman

Dated the 17th Aug., 1990.

RKM