

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated : This the 5th day of July 2002.

Original Application no. 288 of 1995.

Hon'ble Maj Gen K.K. Srivastava, Member (A)  
Hon'ble Mr. A.K. Bhatnagar, Member (J)

1. Sri Pratap Narayan Saxena, S/o late S.N. Saxena, DIG (Admin), D.G.P Hqrs.
2. S.K.A. Rizvi, S/o Late S. Mahfooz Ali DIG (Operation) UP LKW.
3. Har Prasad Shukla, S/o Sri Ram Nath Shukla, DIG PAC, S/S KNR.
4. Budh Chand, S/o Late Saraju Prasad, Comdt 25 Bn PAC RBI
5. P.N. Dwivedi, S/o Sri Bhagwati Pd. Dwivedi, DIG/SP, CBCID LKW
6. Puttu Lal, S/o Late Bishun Lal, Comdt. 23rd Bn, PAC MDD.
7. Dr. Ajit Kumar Singh, S/o Sri Ram Priti Singh, Comdt. 31 Bn PAC RDR.
8. N.R. Srivastava, S/o late R.L. Srivastava, SP Trg & Security LKW.
9. Om Prakash Tripathi, S/o Sri Ram Lakhan Tripathi, SSP VNS.
10. S.K. Garg, S/o Sri Om Prakash, SSP Ghaziabad.
11. S.K. Saxena, S/o late R.N. Saxena, SP CBCID Hqrs, LKW.
12. H.N. Srivastava, S/o Late L.P. Srivastava, SP Spl, Enquiries, LKW.
13. Ram Adhar, S/i Sri Ram Swaroop, SP E.O.W. CID, UP LKW.
14. Chandra Bhal Rai, S/o Sri S.S. Rai, Comdt. 36 Bn. PAC, VNS.
15. Ashok Kumar Mishra, S/o late S.N. Mishra, Secretary, Police Reforms Commission, LKW.
16. Jamal Ashraf, S/o Late Jamil Ashraf, SP CB CID LKW.
17. Pratap Singh, S/o Late Salig Ram, SP Spl, Crime DGP Hqrs, LKW.
18. R.N. Srivastava, S/o late U.N. Srivastava, Comdt. 33 Bn PAC, JSI.
19. Deo Dutta, S/o Sri Chhedi Lal, SP Vig Estt. LKW.
20. R.N. Katheria, S/o Late B. Chandra, SP Unnao.

21. N.B. Singh, s/o sri Omkar Singh, Comdt II Bn PAC STP.
22. Subhash Chandra Gupta, s/o sri K.M. Gupta, SSP NTL.
23. S.C. Yadav, s/o Rameshwar Singh, SSP Allahabad.
24. Vijay Kumar Tewari, s/o sri K.K. Tewari, SP Rlys, Allahabad.
25. G.N. Singh, s/o Late Vijay Bahadur Singh, Comdt. 34th Bn PAC VNS.
26. Radhey Shyam Tripathi, s/o late N.P. Tripathi, SP CB CID LKW.
27. Ajay Kumar S/o Sri S.B. Saxena, SP Mirzapur.
28. Ram Sewak, s/o Sri Buddha, SP Pithoragarh.
29. Mahendra Pratap Singh, s/o Sri K.P. Singh, SP, CB, CID, LKW.
30. Vijay Kumar Verma, s/o Late K.P. Verma, Dy. Director Traffic LKW.
31. P.K. Joshi, s/o Sri S.B. Joshi, SP Food Cell, LKW.
32. Ashok Kumar, s/o Sri Khan Sahai, SP Kanpur (Dehat)
33. Ram Naraian Yadav, s/o late M.L. Yadav, SSP Mathura.
34. Prabhat Kumar, s/o late Moti Lal Gupta, SP Pratapgarh.
35. S.S. Maheshwari, s/o Sri H.L. Maheshwari, SP Mahoba.
36. Ravishanker, s/o Late Mata Avtar, SP Ardh Kumbh, Allahabad.
37. Sri Ram Tripathi, s/o Late M.N. Tripathi, SP Bhadohi.
38. Chandra Deo, s/o Sri Paras Nath Tewari, SP (R) INT, Agra.
39. Amar Dutt Mishra, s/o Sri S.D. Mishra, SP Lakhimpur Khira.
40. D.C. Pandey, s/o Sri S.P. Pandey, Comdt 41 Bn PAC GZB.
41. Prem Nath Pathak, s/o Sri Shyam Chanan Pathak, DIG/Comdt. 26 BN. PAC GKR.
42. Prem Chand Singh, s/o Late B.R. Singh, DIG/SP Vig ALD
43. R.D. Tripathi, s/o Late Sri Sita Ram Tripathi, DID/Comdt. 35Bn PAC LKW.

... Applicants

By Adv : Sri Sudhir Agarwal

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, New Delhi.

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2. State of UP through the Secretary Home, UP Shasan, Lucknow.
3. The Director General of Police, UP Lucknow.
4. The Union Public Service Commission Dholpur House, New Delhi, through its Chairman.
5. R.N. Mishra
6. P.D. Srivastava
7. Pratap Bhan Bajpai
8. Dwarika Singh
9. Balrak Mallick
10. Bhagwan Singh

Through, Director General  
of Police, U.P., Lucknow.

... Respondents

By Adv : Sri K.P. Singh, Sri S.C. Tripathi  
& Sri S Kumar

O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member (A).

This Original Application has been filed by 43 applicants who are Members of I.P.S. of U.P. Cadre, having been promoted from the Provincial Police Service seeking following reliefs :-

- i. to summon the entire record from the respondents pertaining to the select lists or State Police Officers of U.P. Cadre of IPS since 1971 till 1985 and to quash the same in so far as it is not in accordance with law and to direct the respondents to prepare the said select list fresh in accordance with law.
- ii. to issue a mandamus directing the respondents to review and revise the various select lists and in particular of the years 1972, 1973, 1974, 1977, 1978, 1981, 1982, 1983, 1984 and 1985 in order to exclude the names of such State Police Officers who got appointment in IPS before the date of the said select list and to include the names of other eligible

State Police Officers in the said lists.

- iii. to issue a mandamus directing the respondents to appoint the select list State Police Officers in promotion quota of IPS of UP Cadre from the date vacancies in their quota occurred as per the direction of Govt. of India as contained in the orders dated 14.3.1977 and 30.10.1984, Annexure A-10 and A-11 to Compilation II and/or to make appointment notional/actual as per the direction of Hon'ble Supreme Court on any such uniform and rational basis as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- iv. to quash the order dated 8.8.1994 and 5.12.1994 to the extent of para-4, entries contained in column-3, 5 and 6 and to direct the respondents to pass fresh orders by giving dates of inclusion of the names in the select lists and the dates of notional/actual appointments as per law and to determine year of allotment and seniority of promotee IPS Officers of U.P. Cadre, thereafter in accordance with law and to modify further paras i.e. paras 4 and 5 accordingly of the orders dated 8.8.1994 and 5.12.1994 respectively.
- v. to issue any other direction as this Hon'ble Court/Tribunal may deem fit and proper in the circumstances of the case.
- vi. to award costs throughout the applicants."

2. The facts, as pleaded by the applicant, are that Indian Police Service (in short IPS) is an All India Service, as defined under All India Services Act 1951. The recruitment and conditions of service in IPS are governed by several Rules framed under All India Services Act, 1951. For the purpose of present Original Application IPS (Appointment by Promotion) Regulations, 1955 are relevant and in particular Regulations 5, 6 and 7 are to be considered which would be referred subsequently. The contention of the applicants is that as per Regulations-5 of Appointment

by Promotion Regulations, 1955, preparation of Select list of the Members of State Police Officers, every year, is mandatory as was also held by Hon'ble Supreme Court in the case of Union of India Vs. ML Kapoor, AIR 1974 SC 87. The aforesaid law was reiterated by Hon'ble Supreme Court subsequently also in the case of Syed Khalid Rizvi Vs. Union of India and others reported in JT 1992 (Supp) (SC) 169. The applicants contended that in the years 1971, 1975, 1976, 1979 and 1980 no select list was prepared, as contemplated under Regulations-5 of Appointment by Promotion Regulation. This resulted in Post-poning the appointment of Members of State Police Services in IPS and also adversely affected their year of allotment and seniority. The effect and consequence of non-preparation of the select list for the aforesaid years was ultimately considered by Hon'ble Supreme Court in Syed Khalid Rizvi's case (supra) and in para 34 of the judgment Hon'ble Supreme Court has held as under :-

"We have, therefore, no hesitation to hold that preparation of select list every year is mandatory. It would sub-serve the object of the Act and the Rules and affords equal opportunity to the promotee officers to reach higher echelon of service. The dereliction of statutory duty must satisfactorily be accounted for by the State Government concerned and this Court take serious note of wanton infraction."

Hon'ble Supreme Court in the aforesaid case of Syed Khalid Rizvi (supra), took the view that since preparation of select list every year was mandatory and there was non compliance of the said Mandate on the part of authorities and, therefore, concerned authorities should be directed to take steps of preparation of select list notionally for the aforesaid years and make appointment accordingly. From the judgment of Hon'ble Supreme Court in Syed Khalid Rizvi's case (supra) it is clear that Hon'ble Supreme Court required the authorities to prepare notional select lists of aforesaid five years, and when the said Select list was placed before Hon'ble Supreme Court, the concerned Members of service, raised certain

objection regarding correctness of those lists. In the circumstances Hon'ble Supreme Court in Para 37 of the judgment issued following directions :-

"Registry is directed to return the select list produced by the State Government which would give notice to the promotees who were included in the notional list of their inter-se- placement of respective years 1971, 1975, 1976, 1979 and 1980 directing them to submit within the specified time their objections, if any, and the State Government would send the list, objections if made and the relevant records to the Central Govt. would submit their comments to the Union PSC which would consider them and may accept or modify the list as per the record and would communicate to the Central Govt. and the State Govt.. Thereafter the Central Govt. would make necessary appointment on the recommendation made by the State Government as per the law."

The applicants submitted that against the Notional select list prepared for the year 1971, 1975, 1976, 1970 and 1980 as permitted by Hon'ble Supreme Court, many of the applicants filed their objections/representations and two of such representations have been filed as Annexure-5 and A5 before this Tribunal. The applicants however, contended in para 4.12 of the OA that the respondents did not communicate any decision on the objections filed by the applicants and on the other hand issued orders dated 8.8.1994 and 5.12.1994, Annexure A-1 and A2, wherein Column-5 the date of notional appointment of IPS was mentioned as revised on account of preparation of the aforesaid Notional select lists and making appointments retrospectively.

3. The applicants have further submitted that from 1981 to 1984 the Select list were prepared every year but again in the year 1985 the Select committee met on 27.12.1985 to prepare a list under Regulation-5 but before it could be approved by Union PSC, Hon'ble Allahabad High Court in the case of Basant Singh Vs. State of UP and others, passed an interim order staying

preparation of the Select list and appointment in IPS in promotion quota. The said writ petition was ultimately finalised by the verdict of Hon'ble Supreme Court, delivered on 3.11.1988 (Judgment reported in AIR 1989 SC 218 Rana Randhir Singh Vs. State of UP and others). Thereafter, the list prepared on 27.12.1985 was approved by the Union PSC on 6.2.1989 and the appointments were made by the Government of India from the aforesaid select list by clubbing all the vacancies which became available upto February 1989. These appointments were challenged in OA no. 337 of 1990 which was decided by this Tribunal vide order dated 17.08.1990 holding that since preparation of the Select list every year was mandatory, hence clubbing of the vacancies and making appointment from one Select list was not valid. Against the aforesaid judgment of the Tribunal an appeal was filed before Hon'ble Supreme Court, which was also decided alongwith Syed Khalid Rizvi's case (supra), wherein aforesaid aspects of the matter stood affirmed.

4. The applicants have further pointed out that this Tribunal vide its judgment dated 27.8.1992 in OA no. 812 of 1992 R.D. Tripathi Vs. Union of India and others, has clearly held that appointment in pursuance to 1985 Select list which were made on 15.12.1989 were liable to be made with retrospective effect and <sup>in</sup> ~~while~~ issuing the impugned orders dated 8.8.1994 and 5.12.1994, respondents in Column 5 have given date of notional appointments with retrospective effect in view of direction of Hon'ble Supreme Court in Syed Khalid Rizvi's case (supra) as also issued by this Tribunal in R.D. Tripathi's case (supra). The contention of the applicants on the basis of aforesaid fact is three fold. The applicants, first contended that Notional select list of 1979 and 1980 have not been prepared in accordance with rule. For preparation of 1979 select list, the Select

Committee met in December 1978 and thus cut off date for the purpose of Eligibility etc. as per Regulation-5 was 1.1.1978. Regulation -5 sub-regulations (ii) and (iii) as it was available on the Statute book for the aforesaid select list may be quoted below.-

""Regulation 5 (ii) and (iii) of IPS  
(Appointment by Promotion) Regulations, 1955

(ii) The Committee shall consider for inclusion in the said list, cases of Members of the State Police service, in order of seniority in the State Police service to number not less than three times the number referred to in sub- regulation(i)

Provided that in computation of number for inclusion in the field of consideration number for officers referred to in sub Regulation (iii) shall be excluded :-

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(iii) The Committee shall not ordinarily consider the cases of members of State Police service who have attained the age of 52 years on the first day of January of the year in which it meets.

Provided that members of the State Police Services whose names appear in the select list inforced immediately before the date of meeting of the committee, shall be considered for inclusion in the fresh list to be prepared by the Committee, even if he has in the meantime, attained the age of 52 years."

The applicants contended that the size of the Select list of 1979 was 23 as is also admitted in para 19 of the Counter affidavit filed by the Union PSC. Thus as per Regulation 5 (ii) of the Regulations the zone of consideration consisted of '69' officers. The respondents included the names of Sri Pratapbhan Bajpai, Sri Swarika Singh and Sri Balraj Malik, not only in the eligibility list but also in the notional select list of 1979 although

in the eligibility list their names were at serial nos. 74, 92 and 103 ie beyond the zone of consideration.

5. The applicants also submitted that no person who had attained the age of 52 years on the 1st January of the year, in which the select committee meets could have been considered. The date of birth of Sri Parmeshwari Dayal Srivastava as 15.10.1925, as is apparent from Annexure A-7 which is photo copy of the gradation list published by the State of UP of State Police Services and on page 93 of Compilation II the name of Sri Parmeshwar Dayal and his date of birth is given at serial no. 128. He was already over 52 years of age on 1.1.1978 and, therefore, in-eligible to be considered for selection in IPS in preparing 1979 notional select list. However, in order to nullify the actual effect and advantage which could have gone to the promotee officers, the respondents have included not only ineligible State Police officers in the eligibility list but also, those, who were beyond the zone of consideration, have been considered and actually included in the select list so as to deprive the other eligible and competent senior officers from being included in the select list.

6. Thus the applicants contended that in order to deprive actual advantage to eligible and competent State Police Officers, the applicants no. 6, 41, 42 & 43 who were much senior and were at serial no. 52, 54, 55 and 56 in the eligibility have been excluded while the persons <sup>h h</sup> who were ineligible and beyond the zone of consideration besides being much junior in the State Police service, have been included in the select list although those persons were never actually appointed in Indian Police Services and this was only a paper work to deprive the promotee officers of the actual advantage which they would have been entitled, had Hon'ble Supreme Court directions been observed and implemented in words and spirit.

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7. Similar contention has been raised by the applicants challenging the correctness of notional select list of 1980 for which Selection Committee met in December 1979 and the relevant assertions in this regard have been made in paras 4.18 to 4.22 of the Original Application.

8. The second submission of the applicants is that the select list is a chain action and on account of notional back dated appointments, certain others select lists required to be reviewed and revised inasmuch as Members of the State Police Service who got appointed in IPS, would continue to find their names in the select list of the years prepared subsequent to their date of appointment in IPS, which was also not in accordance with law.

9. The third contention of the applicants is that the notional date of appointment shown in column-5 of the impugned orders are not based on any Uniform or other valid principles, inasmuch as in certain cases the date of appointment has been shown within few days from the date of availability of vacancies while in other cases it has been shown after several weeks, months or even years, which has gone to the extent of two to four years. The submission of the learned counsel for the applicant is that notional date of appointment has to be given on some rational and Uniform Principle i.e. either date of occurrence of vacancy or after reasonable time from the date of occurrence of vacancies or any other principle as could have been applied, in the facts and circumstances of the present case.

10. On behalf of the respondents all the four official respondents have filed their counter affidavits. However the private respondents have not responded inspite of service.

11. The Government of India, respondent no. 1, in its written statement has stated that it has finalised notional select list of various years as per direction of Hon'ble Apex Court and on the basis of information made available to it. It has explained that the State Government is the sole Custodian of service record of the State Police Officers. The Selection Committee meeting to prepare the select list is convened by the Union PSC on the basis of list of eligible officers alongwith the service record furnished by the State Government, directly to the Commission. The select list prepared by the Selection Committee is finally approved by the Union PSC. The respondent no. 1 only nominates the nominee of the Central Government as member of the Selection Committee as and when the meeting is fixed by the Commission. It has thus further said that the subject matter of Original Application <sup>is primarily</sup> concerned with the State Government and Union PSC. In para 8 of the Written Statement the respondent no. 1 has said that year of allotment and seniority to 1982 promotee IPS Officers vide order dated 5.12.1994 and 8.8.1994 has been determined on the basis of proposal forwarded by the State Government. The orders of the Govt. of India were based strictly on the direction of Hon'ble Apex Court in its judgment dated 20.11.1992 in the case of Syed Khalid Rizvi Vs. Union of India & others (supra) and the appointment etc. are based on the specific recommendations and materials supplied by the State Govt.

12. The respondents no. 2 and 3 ie the State Govt. and the Director General of Police, U.P. have filed common reply. As per the respondent no. 2 and 3 it is said that the orders dated 8.8.1994 and 5.12.1994 have been issued by

the Govt. of India on the basis of select list/Notional select list, as were prepared in accordance with ~~Hon'ble~~ Apex Court direction and as per IPS (Seniority) Regulation which was in force prior to 1988. It is submitted that exercise of preparation of notional select list was undertaken as per direction of Hon'ble Supreme Court contained in the order dated 22.8.1991 in Civil appeal no. 2932 of 1989 filed by Vikram Singh and others Vs. Union of India & others which was finalised as per final order of ~~Hon'ble~~ Apex Court dated 20.11.1992., Syed Khalid Rizvi and others vs Union of India and others (supra). The respondents no. 2 and 3 have further stated that in view of Supreme Court's direction dated 20.11.1992, the State Govt. vide letter dated 19.1.1993 invited objections of the Officers including in the Notional select list through the Director General of Police, U.P. Twenty four officers represented and their representations were sent to the Union PSC on 6.3.1993. Thereafter, three more representations were received which were also sent to the Union PSC alongwith the comments of the State Government. The Government of India forwarded their views to the Commission on 19.5.1993. After detailed examination of the representations, the comments of the State Government and the views of the Central Govt., the Commission conveyed their approval to the Notional select list of the year 1971, 1975, 1976, 1979 and 1980 on 11.11.1993. It further submits that as per direction of the <sup>Hon'ble</sup> Supreme Court dated 20.9.1990 passed in SLP no. 12505 of 1980, Review Selection Committee met on 13/16.4.1992 and it prepared Notional select lists of 1986, 1987, 1988 and 1989. On the basis of prepared Notional select lists of the aforesaid years, the Govt. of India anti dated the date of appointments of promotee IPS Officers vide its Notification dated 19.9.1995. The respondents no. 2 and 3 further said that as the Hon'ble Supreme Court did not issue any direction for communication of the order passed on the representations were not communicated to the <sup>not submitted by the concerned officers, hence order on the representations</sup>

concerned officers. It further submits that the order dated 8.8.1994 and 5.12.1994 passed by the Govt. of India seems to be based on Rules and Regulations on the subject. The respondents no. 2 and 3 have also disputed the representation alleged to be filed by the applicant stating that the said representations do not seem to have been received in the State Govt.. It further submits that there is ~~not~~ provision for review of the select lists once prepared and acted upon, but they are reviewed on the specific direction of the Courts/Tribunal. Thus the select lists of 1972, 1973, 1977, 1978, 1981, 1982 and 1984 were not reviewed on the basis of preparation of notional select lists, as no such directions were given by the Hon'ble Supreme Court regarding those years. In para 19 of the counter reply, the respondents no. 2 and 3 have stated that the select committee have considered 113 officers to prapare notional select list of 1979 consisting of 23 names. The officers over 52 years of age as on 1st January 1978 were also required to be considered as per Regulation. 45 such officers were considered by the Committee. The names of Sri PN Mishra, Sri PD Srivastava, Sri PB Bajpai, Sri Dwarika Singh, Sri Balraj Mullick, Sri Puttulal, ~~SRI~~ Sri CD Sharma, Sri PN Pathak, Sri PC Singh & Sri PD Tripathi were considered at sl no. 62, 66, 74, 92, 103, 52, 53, 54, 55 & 56 respectively. The officers graded as 'Very Good' including those at sl no. 62, 66, 74, 92 & 103 were included in the select list of 1979. It further states that the name of Sri Bhagwan Singh, Sri Ravindra Nath Mishra, Sri Parmeshwari Dayal were included in the notional select list of 1979 since they have become eligible for inclusion in the zone of consideration and they were graded as 'Very Good' and hence were included in the notional select list of 1979. It is stated that 5/4 officers who were included in the notional select list of 1979 and 1980 could not be given appointment in IPS as they were at the bottom of the select list. In respect of the date of notional and actual appointment in IPS, the

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respondents no. 2 and 3 have said that date has not been given in imaginary and arbitrary manner, but the notional dates of appointments have been determined on the basis of notional select list. It is also contended that appointments of select officers were made with a gap of few months, but this has not been done intentionally. The officers have been given benefit of continuous officiation. It has also denied that anti dated appointments are without any rational and uniform basis. In para 26 the respondents no. 2 and 3 have denied the charge annexed as Annexure 12 to 26 to Compilation II in the Original Application and it has been stated that correct chart is being prepared and will be filed before this Hon'ble Tribunal during the course of argument. It is pointed out that no such chart was ever placed before us by the respondents.

13. The Union PSC in its counter affidavit has also stated that notional select list were prepared as per the direction of the Court. Regarding consideration of the representations submitted by certain officers, it is stated that the same were considered by the Commission and its advise was conveyed to the Govt. of India on 11.11.1993. It further submits that the Commission applied its mind on both the occasions i.e. at the time of approval of the select list on 5.3.1992 and consideration of the representations as per Court's direction dated 20.11.1992. Regarding the manner of preparation of the notional select list etc. it has taken a stand similar to that of the State Government and the facts by the State Government, regarding the select list of 1979 and 1980.

14. The applicants have filed rejoinder affidavit to the aforesaid counter affidavit, wherein they have reiterated the stand in the Original Application. In respect to the State Govt.'s

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denial regarding receipt of representation of the applicants, as stated in the Original application, photo copy of acknowledgement has been annexed showing that the representation was received in the ~~Office~~ of the State Government as well as Director General of Police, and was also sent to the respondents no. 1 and 4.

15. We have heard Sri Sudhir Agarwal, learned counsel for the applicant and Sri S.C. Tripathi learned counsel for Union PSC (respondent no. 4), Sri K.P. Singh, learned counsel appearing on behalf of State of Uttar Pradesh and Director General of Police, UP (respondent no. 2 and 3). The parties were also afforded opportunity to file written submissions and we have received written submissions filed by the applicants and by the respondent no. 4. We have perused the records and have considered various submissions made by the parties.

16. On the rival submissions made by the parties three basic issues are required to be decided in the present Original Application :

- i. Whether the Notional Select List of 1979 and 1980 have been prepared in accordance with the Regulations as were operative at the relevant time.
- ii. Whether the Notional date of appointment/anti-dating of appointment have been made on some valid, rational or Uniform principle or is arbitrary. If no uniform principle has been applied by the respondents in giving notional date of appointment, as a result of preparation of notional select list/revision of notional select list, what should be factors on which anti-dating or appointments should be made?
- iii. Whether, as a result of anti-dating of appointments, the inclusion of the name of such officers who are already appointed in Indian Police Services in subsequent select list treating them as Members of State Police Service, is valid or it should have resulted in revision

of such select lists to the extent of inclusion of the names of other officers excluding the officers who are already appointed in IPS ?

As admitted by respondents no. 2 to 4 the Select List of 1979 was required to be prepared for including 23 names therein. Regulation 5 (ii) of Appointment by Promotion Regulations 1955, as it stood in 1978 provided that Member of State Police Service who are liable to be considered for inclusion in the State Select List would not be less than three times in number, referred to in Sub-regulation (i). The First Proviso of Sub-regulation (ii) of Regulation-5 excludes the number of Officers referred to in sub- regulation (iii) in computing number for inclusion in the field of consideration under Sub regulation (ii). Sub regulation (iii) of Regulation-5 provides that the Committee shall not ordinarily consider the cases of Member of State Police Services, who have attained the age of 52 years on the first date of January of the year, in which it meets. The first proviso of Sub regulation (iii) of Regulation- 5 however provides that Member of State Police Service whose name appears in the Select list in force immediately before the date of meeting of the Committee shall be considered for inclusion in the fresh select list to be prepared by the Committee, even if he has in the meantime attained the age of 52 years. A cumulative reading of the aforesaid provisions it is clear that for preparation of the select list of 1979, for which meeting of the Select Committee took place in December, 1978, the cut off date for the purposes of eligibility was '1.1.1978'. The size of the select list was 23 and hence not less than 69 officers could have been included in the Select list. The word 'not less than' in Sub- Regulation (ii) shows that the minimum size of the eligibility list is "three times" the number of the names to be included in the Select list, but it can be more than three times, in view of subsequent provision as contained in the proviso to sub-regulation (ii), and Sub regulation

3. For example, if the officers are above 52 years of age as on 1st January 1978, they could have been included in the eligibility list beyond the number of 69, provided their names were already included in the select list in force immediately before the date of meeting i.e. of 1978 select list. The respondents no. 2, 3 and 4 in their counter affidavit have admitted that 45 officers above the age of 52 years as on 1st January 1978 were considered, which included the names of respondents no. 5 to 9. However, the record shows that none of respondents no. 5 to 9 were included in the select list of 1978. Further the respondent no. 6 Sri P.D. Srivastava, whose date of birth is 15.10.1925, was above 52 years of age as on 1.1.1978 and hence his name could not have been included in the eligibility list of 1978 select list. However, not only he was included in the eligibility list but even in the select list. This obviously vitiated the preparation of 1979 select list inasmuch as not only the ineligible persons were included in the eligibility list, but even included in the Select list was illegal. Further, so far as respondents no. 5, 7, 8 and 9 are concerned, they were not above 52 years of age as on 1.1.1978 and as per their own admission of respondents no. 2 to 4, respondent no. 7 was at sl no. 74 in the eligibility list, the respondent no. 8 at sl no. 92 in the eligibility list and the respondent no. 9 was at sl no. 103 of the eligibility list. No reason has been assigned as to why the said respondents were included in the eligibility list beyond 69, since they were not to be included in the select list on account of being over age under the First Proviso to Sub Regulation (ii) of Regulation- 5 reads with Sub regulation (iii) of Regulation- 5 of Appointment by Promotion Regulation. Thus the respondents have not acted in accordance with the rule by including respondents no. 6 to 9 in the eligibility list of 1979 notional Select list and also by including their names ultimately in the said Select list as

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they were either ineligible or were beyond the zone of consideration, and should not have been included at all. This vitiates the notional select list of 1979 to the extent, the respondent no. 5 to 9 have been included in the select list of 1979 and to that extent said select list is liable to be quashed and should be re-drawn by respondents no. 1 to 4 in accordance with law.

17. Similarly, in the notional select list of 1980, respondent no. 10 was included in the eligibility list as well as in the select list although he was above 52 years of age as on 1.1.1979. Similarly, the respondent no. 6 was also included in the aforesaid select list and for the reasons stated above, regarding ineligibility of respondent no. 6 for inclusion of his name in 1979 select list, his inclusion and selection in the eligibility list as well as selection in 1980 is also vitiates. In these circumstances 1980 select list in so far as it includes the names of respondents no. 6 to 10 is vitiates in law and to that extent is liable to be quashed.

18. The second question relates to Notional date of appointment assigned to the applicants and other promotee IPS Officers of U.P. Cadre, on account of preparation of aforesaid notional select lists of various years. The applicants have placed on record a chart of occurrence of vacancies from October 1968 till 1995. The State of U.P. in its counter affidavit has also filed details of occurrence of vacancies on various dates as Annexure CA3 which is more or less similar to Annexure A9 to Compilation I filed by the applicants, but only shows additional vacancies inasmuch as the applicants have shown the

availability of 176 vacancies upto 1.3.1995 although as per State Government there were 179 vacancies upto 1.3.1975. The applicants have accepted version of the State Government and on the basis thereof a chart has been placed before us explaining as to how anti-dating has been done in an arbitrary manner, even when vacancy was available and select list officers were available. To demonstrate the above facts, some illustrative cases may be mentioned as under :

Sl. no.	Name	Select list from which included continuously	Date from which vacancy was available	Notional date of appointment
1	2	3	4	5
1.	Sri PN Saxena	1981	30.6.1981	11.12.1982
2.	Sri SKA Rizvi	1981	09.11.1981	22.11.1983
3.	Sri HP Shukla	1981	31.07.1981	11.12.1982
4.	Sri PN Dwivedi	1982	01.10.1982	22.11.1983
5.	Sri AK Singh	1985	01.02.1985	01.02.1986
6.	Sri JS Agarwal	1974	13.09.1976	16.05.1979
7.	Sri LM Singh	1986	01.08.1978	11.12.1982
8.	Sri Prem Chandra	1986	01.07.1984	01.08.1987

19. Although the respondents have said that the notional date of appointment is not arbitrary but have not mentioned anything as to what was the basis on which notional date of appointments have been assigned to various officers including the applicants. It is no doubt true that a Government servant has no right to claim the appointment on a post from a particular date. However, the present case is totally different because of peculiar facts and circumstances, referred to above, which shows that on account of failure on the part of respondents no. 1 to 4

in observing their obligation of preparation of Select lists of State Police Officers every year, the said officers had suffered adversely. In order to mitigate their sufferance, this Tribunal as well as Hon'ble Apex Court directed not only to prepare notional select lists every year, but also to make appointments accordingly. In compliance thereof, the respondents no. 1 to 4, have anti-dated appointments after preparing the notional select lists. However, it is also incumbent upon the respondents no. 1 to 4 to <sup>base</sup> anti-dated appointments on some valid and just criterion, since this is notional date and therefore, the logics which are otherwise applicable in cases where the appointments are made, as a matter of fact, in regular way, would not apply and here a policy decision is to be taken to assign the year of allotment on <sup>the</sup> just and valid <sup>the</sup> criterion, for example, may be the date of occurrence of vacancy or after a reasonable time from the date of occurrence of vacancy i.e. 15 days or 33 days in order to compensate the time to cover up the period, it would have taken in processing the appointments after preparation of the select lists and similar other factors. However, as stated above, and records show, that in some cases the notional date of appointment is within few days from the date of occurrence and in other cases it varies from few days, few weeks, few months and even few years. This is apparently arbitrary and discriminatory. The Apex Court in the case of E.P. Royyappa Vs. Union of India & Ors AIR 1974 SC 555 has clearly observed in para 85 as under :-

"Article 14 and 16 strikes it arbitrariness and State action and ensures fairness and equality of treatment. They require that the State action must be based on valid relevant principles applicable, alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality."

21.

The above dictum of Hon'ble Supreme Court has been consistently followed since then. In the present case, for the purpose of notional select list also, the respondents while selecting notional date for meeting of the select committee and date of approval of the select list, have also followed <sup>W</sup> just principles. For example, for notional select list of 1979, the date of meeting of select list has been taken as December 1978, and date of approval of select list has been taken as 31.1.1979. Similarly for 1980 Notional select list, the date of meeting of the select committee has been taken as December 1979 and the date of approval of the select list as 31.1.1980. The same pattern has been applied in the earlier select lists of 1971, 1975, & 1976. In these circumstances it was incumbent upon the respondents no. 1 to 4 to apply similar Uniform criterion for anti-dating notional appointments and either it ought to have been the date of availability of vacancy, or after a reasonable time from the date of occurrence of vacancy in order to cover up the period which would have taken in processing the appointment ie after 15 days or a month from the date of vacancy or so. The respondents have miserably failed to point out any single criterion or principle on the basis whereof notional dates of appointment has been assigned to the applicants and other officers, what to talk of its justification or validity. The reply filed by the respondents are absolutely silent in this regard.

20. The applicants have claimed that appointment cannot be denied arbitrarily and for the said purpose, has relied upon the judgment of Jodhpur Bench of the Tribunal in case of G.P. Nagar Vs. Union of India and others, 1993 Vol (24) ATC page 517 wherein the Tribunal has observed that denial of appointment cannot be on arbitrary basis.

21. The applicants have also relied upon the case

of Ram Saran Singh Vs. Union of India & Ors 1995 Vol (2) UPLB & EC 51, which is the judgment of Principal Bench of the Tribunal in the matter of appointment of Indian Administrative Services and wherein the Tribunal has held that after inclusion the names in the select list the officers cannot be denied appointment from the date of vacancy.

22. The reliance has also been placed by the applicants in the case of P.K. Nambodram Vs. Union of India & Ors 1996 Vol (34) ATC 587, which is a case pertaining to appointment in Indian Police Services, wherein also Ernakulam Bench of the Tribunal has observed when vacancies are available, the select list officers must be appointed and appointment should not be denied arbitrarily.

23. The law referred to above is unexceptional. It is true that while anti dating the appointments as a result of preparation of notional select lists of various years, the official respondents have not acted on the basis of any uniform or reasonable basis, but it appears that notional dates have been given in an arbitrary manner, which is illegal. The question as to what should be the principles on the basis where of notional appointments could have been given to the applicants and other officers. The claim of the applicants that notional appointments should have been given with effect from the date of occurrence of vacancies after inclusion of their names in the select list, cannot be accepted, inasmuch as a perusal of IPS (Appointment by Promotion) Regulation shows that after select list is finalised, the State Government on the occurrence of vacancy is required to send proposal for appointment to the Central Govt. along with its comments and thereafter it is the Central Government which notifies appointment in the service. Obviously this would have consumed some time and hence appointment from the date of

23.

occurrence of vacancy after inclusion of name in the select list is not acceptable. Considering the stand taken by the respondents in respect to finalisation of the notional select lists, for which similar exercise is required to be undertaken at the level of State Government, Central Government and the Union PSC, the official respondents on their own have treated one month's time to be a reasonable time which would have consumed in finalisation of the select list we feel that for the purpose of giving anti-dating notional appointment, period of 15 days, would be reasonable, inasmuch as in the matter of appointment only the State Government and the Central Government are involved and the exercise undertaken is much less than what it is required for the purpose of finalisation of the select list. Therefore, we are of the view that notional appointments ought to have been assigned to the applicants and similarly placed other persons after 15 days <sup>h</sup> <sup>h</sup> from the date of availability of vacancy, after inclusion of the names of the incumbents in the select list.

24. The ~~third~~ issue raised by the applicants, infact, is the logical corollary of the exercise undertaken, as aforesaid. A perusal of IPS (Recruitment) Rules, and IFS (Appointment by Promotion) Regulation clearly shows that feeder cadre consists of such persons who are members of the "State Police Service." Regulation 5 (1) of Appointment by Promotion Regulations provides that the Committee <sup>h</sup> <sup>h</sup> shall prepare a list of such members of "State Police Service" as are held by them to be suitable for service. It is apparent that the select list could contain the names of only such persons who are members of the " State Police Service" and by no stretch of imagination a situation can be conceived where the members of IPS may be included either in the eligibility list or in the select list for considering promotion to Indian Police Service. Such a situation is neither permitted

under the Rules and Regulations nor can be permitted to occur at any point of time. A person, who is already member of Indian Police Service, cannot be considered to be a member of "State Police Service" so as to be included in the list to be prepared under Regulation-5 which is ultimately finalised and termed as " Select List ". However, as a result of preparation of notional select lists and notional appointments, as per direction of Hon'ble Apex Court, it is apparent that in many of the remaining select lists, a situation had arrived where the names of persons who are already appointed in IPS have been shown to continue. The applicants have filed a chart to demonstrate the said situation as Annexure-6. Some of illustrations from the same may be given as under :-

Sl no	Name of Officer	Date of appointment in IPS	Select list of which he is continuing after appointment in IPS
1.	2.	3.	4.
1.	Sri V.B. Singh	16.09.1971	(1) 1972 Select list where the Select Committee met on 31.12.1971  (2) 1973 Select List, for which Select Committee met on 27.12.1972
2.	Sri R.P. Dubey	11.11.1971	1972 Select list for which Committee met on 31.12.1971
3.	Sri HK Chaturvedi	11.11.1971	1973 Select list for which Committee met on 27.12.1972
4.	Sri Hari Singh	10.03.1975	1977 Select list for which meeting took place on 29.12.1976
5.	Sri JS Agarwal	16.05.1979	Included in the list of 1981, 1983 and 1984

25. Similar is the position in respect of several other officers and this has been demonstrated by the applicants in Annexure-6 of the Original Application. Necessary facts in this

regard have already been stated by the applicants in Para 4.14 of the O.A. The respondents no. 2 and 3 in para 13 of the Counter affidavit have stated "that the contents of para 14 of the OA being matter of record need no reply." Similar, is the reply in Para 14 of the counter affidavit filed on behalf of the Commission. None of the Official respondents have explained as to how the above situation was allowed to continue inasmuch as, in the above circumstances, as a natural corollary, it was incumbent to have revised the subsequent Select lists to the extent they include the names of such officers who are already appointed in Indian Police Service, and in their place, other suitable eligible officers ought to have been included. We fail to appreciate this inaction on the part of respondents. It has only encouraged further litigation which could have been nipped at bud without compelling the applicants to approach this Tribunal. The stand taken by the respondents that the Select list are reviewed and revised only under the orders of the Court and not otherwise cannot be appreciated, particularly in view of the facts and circumstances of the present case where due to non preparation of various select lists a different situation was allowed to occur. Hence when an exercise was undertaken, full effect ought to have been allowed by the respondents to the said exercise so that entire house ought to have been set at right. The continuance of the names of members of IPS in the Select list could not be even defended during the course of argument by the learned counsels for the official respondents and they could not say anything justifying the aforesaid situation. In these <sup>choice</sup> circumstances we are not left with any other <sup>but</sup> to accept the submission of learned counsel for the applicants in this regard and to hold that continuance of the names of such officers who are already appointed in IPS in the select lists of subsequent year of U.P. Cadre was contrary to the rules.

Amended Para 26 of the Order dated 05.07.2002  
(Amended by order dated 23.08.2002)

26. In the facts and circumstances and in view of our findings and discussions made herein above, original Application is allowed and following directions are issued to the respondents no. 1 to 4 :

(i) Notional Select List of 1979 to the extent it has included respondents no. 5 to 9 is quashed and the respondents no. 1 to 4 are directed to re-draw the aforesaid notional select list in accordance with law and in view of the observations made above and to include the names of eligible and suitable officers of State Police service in place of respondents no. 5 to 9 and to make appointment from the due date accordingly.

(ii) Notional select list of 1980 is quashed to the extent it includes the name of respondents no. 6 to 10 and respondents no. 1 to 4 are directed to re-draw the aforesaid notional select list in accordance with law and in view of observations made above and to include the names of eligible and suitable officers of state Police service in place of respondents no. 6 to 10 and to make appointment from due date accordingly.

(iii) <sup>Notional</sup> Date of Notional appointment of the applicants and other promotee IPS Officers would be with effect from 15th day from the date of availability of vacancy, after inclusion of the name of the said person in the Select List, and to that extent the dates of notional appointment mentioned in column nos. 5, Para-2 of the orders dated 8.8.1994 and 5.12.1994 are quashed and the respondents no. 1 and 2 are directed to issue revised order giving notional date of appointment as above in respect to the applicants and other similarly placed persons.

(iv) the respondents no. 1 to 4 are directed to review and revise the various select list of relevant years to the extent they contain the names of the Officers

Amended by  
Order dated  
23.08.2002

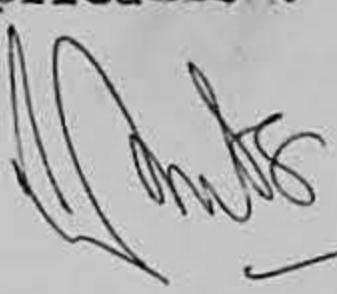
*M. Anil Kumar*  
M. Anil Kumar

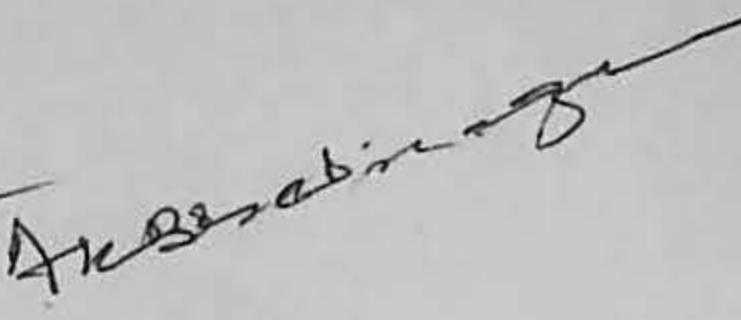
*M. Anil*

already appointed in Indian Police Service and in their place other suitable and eligible officers shall be included.

the respondents no.1 to 4 are further directed to undertake entire exercise, as aforesaid, within a period of four months from the date of communication of this order and also to give consequential benefits to the applicants ..

(v)



  
D. M. Dantre  
Commissioner