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(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

No
Promotion

M.A./ 97/93 in

O.A. No. /322/89

T.A. No.

DATE OF DECISION 26-3-1993

B.S.Gahlot

Petitioner

Mr.S.Tripathi

Advocate for the Petitioner(s)

Versus

Union of India & others

Respondent

Mr.Mukesh Patel For Mr.Jayant
patel for resp.no.1.

Advocate for the Respondent(s)

Mr.R.J.Oza for resp.no.2 and

Mr.A.H.Mehta and Mr.Nanavaty for
resp.no.3 to 12.

CORAM :

The Hon'ble Mr. R.C.Bhatt

: Judicial Member

The Hon'ble Mr. V.Radhakrishnan

: Admn.Member

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

B.S.Gahlot,
District Superintendent of Police,
Palanpur .

.....applicant

(Advocate : Mr.S.Tripathi)

versus

1. Union of India (Notice to be served
through The Secretary to the Govt.
of India, Ministry of Home Affairs,
North Block, New Delhi .
2. The State of Gujarat
(Notice to be served on the Additional
Chief Secretary to the Government of
Gujarat., Home Department, Sachivalaya,
Gandhinagar .
3. R.M.S.Brar,
D.I.G., C.I.D. (Crime)
Ahmedabad .
4. J.Mahapatra,
D.I.G. (Admn.)
Ahmedabad .
5. K.Nityanandan,
S.P.C.I.D. (Crime)
Ahmedabad .
6. O.P.Mathur,
Additional Commissioner of Police,
(Sec.1) Ahmedabad .
7. S.P.Khandwala,
D.I.G. (Ahmedabad Range)
Ahmedabad .
8. Chitaranjan Singh,
Add.Commissioner of Police,
(Sec.II) , Ahmedabad .
9. M.D.Mina,
Add.Commissioner of Police,
Vadodara .
10. H.R.Gehlot,
Chief Security Officer, G.E.B.,
Vadodara .

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11. Maniram,
Joint Secretary (Home)
Gandhinagar.
12. K.R.Kaushik (On deputation to
I.P.C.L., Baroda, Baroda.)

...respondents.

(Advocates : Mr.Mukesh Patel for
Mr.Jayant Patel for
res.no.1.
Mr.R.J.Oza, for resp.no.2.
Mr.A.H.Mehta and
Mr.Nanavaty for resp.no.3 to 12)

O R A L O R D E R


M.A./97/93 in


O.A./322/89

Date : 26-3-93

Per : Hon'ble Mr.R.C.Bhatt,
Judicial Member

None is present for the original
respondent no.1 who has filed M.A./97/93 for
extension of time. Hence, the application is
dismissed for default.


(V. RADHAKRISHNAN)
Admn. Member


(R.C. BHATT)
Member (J)

*SS

DATE	OFFICE REPORT	ORDERS.
16.4.93		<p style="text-align: right;">(14)</p> <p>Heard learned advocate Mr. Mukesh Patel for Mr. Jayant Patel for the original respondents and Mr. N.D. Gohil for the original applicant.</p> <p>2. This application is made by the original respondents for restoration of the M.A. 97/93. This application shows that when the M.A. came up for hearing before the Bench of this Tribunal on 26th March, 1993, the clerk of the learned advocate appearing for the respondents could not trace out the matter by mistake and therefore the learned advocate for the original respondents as well as the officers had not knowledge about the listing of the aforesaid application. The second ground given for absence of the applicant on that date is that the learned advocate also had some personal work and hence he could not come and he came to know about the dismissal of the M.A. later on. Having perused the application for restoration, we accept the averments made therein and restore the M.A. filed by the original respondents which was dismissed for default. M.A. 97/93 is restored. No order as to costs. M.A. 143/93 is allowed and is disposed of.</p> <p><u>M.A. 97/93 in O.A. 322/89</u></p> <p>Heard learned advocate Mr. Mukesh Patel for Mr. Jayant Patel for the original respondents and Mr. N.D. Gohil, learned advocate for the original applicant.</p> <p>2. Today we have restored this M.A. which was dismissed for default earlier in which the applicant i.e., original respondents has sought extension of time for implementing the order of this Tribunal upto 30th March, 1993. The learned advocate for the original applicant submits before us that the SLP filed by the original respondents before the Hon'ble Supreme Court is already dismissed. The time sought for extension is also over and hence this M.A. has become infructuous and is dismissed. There</p>

DATE

OFFICE REPORT

ORDERS.

is now no reason for the original respondents not to implement our judgment when according to learned advocate for the original applicant, the S.L.P is dismissed.



(M.R. Kolhatkar)
Member (A)



(R.C. Bhatt)
Member (J)

vtc.

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 322 OF 1989, O.A.No. 325 OF 1989,
~~326 OF 1989~~
O.A.No. 326 OF 1989, & O.A.No. 356 OF 1989.

DATE OF DECISION 13-02-1992.

Shri B.S.Gahlot and Others Petitioner

Mr. M.R. Anand, Mr. Gohil &

Shri S.Tripathi Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Shri Jayant Patel, Shri R.J.Oza, Advocate for the Respondent(s)

Shri A.H.Mehta and Shri P.R.Nanavaty

CORAM :

The Hon'ble Mr. A.B.GORTHI : ADMINISTRATIVE MEMBER

The Hon'ble Mr. R.C.BHATT : JUDICIAL MEMBER

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

Shri S. G. Joshi

O.A. No.322 OF 1989

Shri B.S.Gahlot,
District Superintendent
of Police,
Palanpur.

O.A. No. 325 OF 1989

Shri Rajkumar Benjamin,
Dy.Commissioner of Police (Admn),
Shahibaug,
Ahmedabad - 380 004.

O.A. No.326 OF 1989

Shri Biharidan Jivabhai Gadhvi,
Dist. Supreintendent of Police,
Bharuch.

O.A. No. 356 OF 1989

Shri R.C.Dimri,
Dist. Superintendent of Police,
Bhavnagar.

...APPLICANTS.

(Advocates: Mr.S.Tripathi)
Mr.M.R. Anand &
N.D. Gohil)

Versus

Union of India and
(Notice to be served through
the Secretary to the Govt. of India
Ministry of Home Affairs,
North Block,

New Delhi

4. Mr.J.Mahapatra,
D.I.G.(Admn.),
Ahmedabad.
5. Mr.K.Nityanandan,
S.P. C.I.D.(Crime),
Ahmedabad.
6. Mr.S.P.Khandwawala
D.I.G.(Ahmedabad Range),
Ahmedabad.
7. Mr.O.P.Mathur,
Addl.Commissioner of Police,
(Sec.I),Ahmedabad.
8. Mr.Chitranjan Singh,
Addl.Commissioner of Police(Sec.II),
Ahmedabad.
9. .M.D.Mina
Addl.Commissioner of Police,
Vadodara.
10. Mr.H.R.Gehlot,
Chief Security Officer,
G.E.B.,
Vadodara.
11. Mr.Maniram,
Joint Secretary (Home),
Gandhinagar.
12. Mr.K.R.Kaushik,
(On Deputation to I.P.C.L.,
Baroda.),
Baroda.

...RESPONDENTS.

(Advocates : Mr.Jayant Patel for resp.no.1,
Mr.R.J.Oza,for resp.no.2,
Mr.A.H.Mehta and
Mr.P.R.Nanavaty for resp.no.3 to 12.)

J U D G M E N T

Date : 13-02-1992.

Per : Hon'ble Mr.A.B.Gorthi : Administrative Member

1. By this judgment we are deciding original applications no.322/89, 325/89, 326/89, and 356/89, as the facts contained in all these applications are almost identical except for a few minor variations in dates, and the questions of law raised therein and arguments advanced by the learned advocates for the parties are common, to all the four ^{applications.} applicants. 2

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2. The applicants namely Mr.B.S.Ghalot, Mr.R.Benjamin, Mr.B.J.Gadhvi, and Mr.R.C.Dimri, who belong to Indian Police Service (I.P.S. for short), feeling aggrieved by the action of Union of India, (Respondent No.1), in delaying the preparation of the select list for appointment ^{to} of IPS and the ² consequential improper fixation of the year of allotment to them, have filed these applications under Section-19 of the ~~Central~~ Administrative Tribunals Act, 1985. The reliefs sought by each of them ^{are} ~~being~~ that their ² names should be included in the select list of the year between 1975-1980, against the available vacancies and ~~that~~ their year of allotment should accordingly be revised and refixed.

3. All the four applicants are those who, in response to the call of the Nation, volunteered to join the army to safe guard the territorial integrity of the Country soon after the Chainese aggression in the year 1962. Having served in the army as Emergency Commission ^{ed} Officers for about five years or so, (E.C.O.s for short), they were released. With a view to rehabilitate such officers, ^{a certain} ~~such a~~ ² number of vacancies were kept reserved for them in various services, both in the Central and the State Government. The applicants were selected ~~in~~ to the Gujarat State Police Service and joined the said service in the rank of DYSP. Subsequently, they were selected for entry in to I.P.S. where they are now serving.

4. Some relevant and important dates in respect of each applicant may be stated at the outset so as to ^{help} appreciate the facts of the case in ¹ proper perspective. Mr. B.S. Gahlot, joined pre-commission training ⁱⁿ for the army on 21.1.1964, and joined ^h State Police Service on 15.12.1972. In view of his past service in the army, his deemed date of appointment as DYSP in the State Police Service ~~were~~ ^{was} shown as 3.7.1967. He was promoted as D.S.P. on 6.9.1979, and was subsequently appointed to I.P.S. on 3.3.1982, having been placed on selected list on 29.9.1981. Mr. R. Benjamin, joined Pre-commission training on 20.7.1964, joined State Police on 15.12.1972, and was appointed to IPS on 26.12.1981. Mr. B.J. Gadhvi, joined Pre-commission training on 25.6.1965, joined State Police on 1/3.2.1973, ^{and} ~~was~~ ^h appointed to IPS on 26.12.1981. Mr. R.C. Dimri, joined pre-commission training on 29.7.1963, joined State Police on 26.8.1974, and was appointed to IPS on 3.3.1982. All the four applicants were given deemed date of appointment to State Police Service as in the case of Mr. B.S. Gahlot. Further they were all promoted as D.S.P. on 6.9.1979, and after due selection were brought ~~on to~~ the selected list for entry into IPS on 29.9.1981.

5. The woes of the applicants began when their deemed date of appointment as DYSP in the State Police ~~were~~ ^{was} shown as 3.7.1967, and not from ^h the date of their joining pre-commission training in the Army. Subsequently, although they became due for confirmation as DYSP, as soon as they completed

two years of service in the State Police, their confirmation was delayed till 13.10.1980, although on that date approval was accorded for their confirmation with retrospective effect from the date on which each of them completed two years service. Either as a result of this delayed approval of their confirmation or otherwise, their cases were not considered by the selection committee for entry into IPS as soon as they completed the requisite period of service, which is eight years, in the State Police Service. The selection committee met as late as in 1981, as a result of which they were brought on to the ~~selected~~ list only with effect from 29.9.1981. As a result of this inordinate delay in the process of selection for IPS, Mr. Benjamin and Mr. Gadhvi, were given the year of allotment as 1976, where as in respect of Mr. Gahlot and Mr. Dimri, it was 1977. The applicants contended that justice was not done to them as ~~some~~ of their erstwhile juniors have now become their seniors.

6. On behalf of the private respondents (No. 3 to 12), it has been stated that the applicants cannot have any grievance as their cases for promotion, confirmation, and appointment to the IPS have been processed in accordance with ^{the} relevant rules and regulations. They have already been given considerable advantage over others because of their past service in army. As regards the fixation of the year of allotment, it is related to the date of continuous officiation on a cadre ~~of~~ post or the date from which a candidate was brought on a ~~selected~~ list for entry into IPS, ^{whichever was later.} On behalf of the State of Gujarat,

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the respondent No.2, it was brought out that the applicants who joined the State Police Service in the years 1972, 1973, and 1974, were given the benefit of their previous service in the army and were accordingly given deemed date of their appointment as DYSP, with effect from 3.7.1967, strictly in accordance with the existing rules. This antiquated issue in any case cannot be raised before the Tribunal at this stage, particularly when the Tribunal has no jurisdiction to question the decision taken by a State Government. It has further been ^{asserted} ascertained that since the applicant's cases for confirmation in the rank of DYSP could be finalised only on 13.10.1980, they could not be said to have become substantive DYSP's prior to that date and hence there was no irregularity even if the selection committee did not meet between 1976 and 1980. There was also a case pending before the Gujarat High Court, on account on which, seniority list of the State Police Officers including the applicants could not be finalised and without such a seniority list, the selection committee could not have been assembled. On behalf of the Union of India (respondent No.1), it has been stated that soon after the selection committee met and selected the applicants on 29.9.1981, they were appointed to IPS in the years 1981, and 1982. As regards the assignment of the year of allotment, the same is governed by Rule-3, of the IPS, (Regularisation

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of seniority), Rules, 1954, according to which it is related to the date of selection or the date of continuous officiation in a senior post, whichever is later. Since the applicants were posted to officiate on such senior cadre posts during the years 1979/'81, they were correctly assigned the year of allotment as 1976 and 1977.

7. We may briefly summarise the important and essential issues raised by Shri M.R.Anand, learned counsel for the applicants : -

(i) The year of entry in the State Police Service should have been the same as the date of their entry in-to their pre-commission training in the army and not 3.7.1967, as ~~was~~ ^{was} determined by the State Government.

(ii) The applicants having joined the State Police Service in the year 1972, 1973, and 1974, should have been confirmed as DYSP in the State Police Service as soon as they completed two years service in the said appointment. Their confirmation was delayed till 13.10.1980, although it was given retrospective effect from the dates from which they completed two years service in the State Police.

(iii) They ^{should} ~~could~~ have been declared as eligible for consideration by the selection committee for entry into IPS as soon as they completed eight years' service in the State Police.

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(iv) The selection committee should have met in the year 1977, in which case they would have been brought under select list in the same year, and not in 1981, as ^{has been} ~~they~~ _{have} done.

(v) They should have been assigned the year of allotment taking into consideration the date on which they ^{were} ~~deemed~~ to have been appointed to the State Police Service, i.e., 3.7.1967, and the date on which they completed eight years service in the State Police and not on the basis of the date of their continuous officiation in a senior post, or the date of their delayed selection.

8. On behalf of the respondents, an objection was raised at the very out-set about the maintainability of this application on the ground of delay and laches. The respondents contended that most of the issues raised by the applicants pertain to acts of commission and omission by the Gujarat State Government prior to 1981, and hence barred by limitation specified under Section-21, of the ~~Central~~ Administrative Tribunals Act, 1985. It is true that some of the grievances raised by the applicants pertain to the period prior to their selection for I.P.S. in 1981. However,

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their main grievance in the final analysis is regarding the delay in ^{their} ~~the~~ selection ^{to the I.P.S} and the resultant issue pertaining to the assignment of the year of allotment. They persistently approached the concerned authorities for ^{relief} ~~release~~ without any success. In fact, as alleged by the applicants, a final communication with regard to the fixation of the year of allotment in their case was not ^{received even at the time of} ~~raised prior to the~~ filing of these applications.

9. Learned counsel for the applicants drew our attention to the case of Shri Ramchandra Shankar Devdhar Vs. The State of Maharashtra, AIR, 1974, SC.P.259, wherein it was observed, inter alia, as under :

"The Rule which says that a Court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is a delay, the Court must necessarily refuse to entertain the petition. The question is one of discretion to be followed on the facts of each case."

10. We are conscious of the fact that when substantial justice and technical considerations are

pitted against each other, the case of justice gets preference. In any case, ^{our} ~~much~~ interference is now being sought by the applicants only in relation to the existing grievance which is the incorrect assignment of year of allotment based on their delayed selection by the selection committee. For this purpose and for a proper appreciation of ^{the} ~~a~~ alleged grievance, it will, ^{however,} ~~be~~ necessary to examine the correctness or otherwise of some of the decisions taken in their regard in the past.

11. The applicants contended that the date on which they joined pre-commission training in the army should have been deemed as the date of appointment as DYSP. This contention has been squarely refuted by ~~the~~ respondent no.2, explaining the correct rule position. As there was no direct recruitment of DYSP in the State of Gujarat, in 1964, and 1965, and the two candidates who were ^{directly recruited} ~~selected~~ in 1966, were regularly appointed with effect from 3.7.1967, ~~the~~ ^{the} applicants' seniority too was fixed with effect from 3.7.1967, as per G.R.Home Department No.DYS-1073/6615-B, dated 8.5.1975. We, therefore, do not find any ^{impropriety} ~~impropriety~~ in the fixation of the deemed date of the applicants' joining the State Police Service as 3.7.1967.

(9/6)

12. The second grievance of the applicants is that although they became due for confirmation as soon as they completed 2 years of actual service in the State Police; their confirmation as Dy.S.P. was finally approved as late as on 13.10.1980. Although the said order gave them confirmation with retrospective effect i.e. from the date on which they completed 2 years services, they were ^{not} ~~were~~ treated as substantive till the year of 1980 for want of publication of their confirmation. On this aspect, learned counsel for the respondent No. 2 has stated that the delay in publishing approval of the Govt. confirming the applicants was of a routine nature and cannot be questioned by the applicants. He further ~~maintained~~ ^{maintained} that since their confirmation was ~~commenced~~ ^{not published} till 13.10.1980, they could not have been treated as substantive appointees and hence there was no question of submitting their names to the selection committee for entry into I.P.S. We are not convinced with the line of argument taken on behalf of respondent No. 2. The State Government having unduly delayed the publication of the confirmation of the applicants, cannot be allowed to take advantage of the delay and claim that the applicants were not confirmed till 13.10.1980 and hence their names could not have been sent for selection. Since the applicants have been confirmed in the rank of Dy.S.P. from the date on which they completed 2 years' service in the State Police, ^{at that date} ~~they~~ ^{be} should be reckoned for all practical purposes as the date of their confirmation. In any case, this issue is not very much relevant because as per the relevant rules the applicants would become eligible for selection for entry into IPS only on completion of 8 years of service in the State Police. I.P.S. (Appointment by Promotion) Regulation, 1955,

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Rule 5(2) second proviso reads as under :

"Provided also that the Committee shall not consider the case of a member of the State Police Service unless on the first day of January of the year in which it meets he is substantive in the State Police Service and has completed not less than 8 years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other posts or posts declared equivalent thereto by the State Government."

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As already stated(supra), the applicants completed 8 years of service in 1985 commencing from the date on which they ^{were} deemed to have been appointed as Dy.S.P. in the State Police. They also became substantive as soon as they completed 2 years service in the years, 1974, 1975 and 1976. Accordingly, they all would become eligible for consideration by the Selection Committee in the year 1976 as by that time they had completed 8 years service and were holding substantive appointments of Dy.S.P.

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The contention of the applicants that they became eligible for consideration by the selection committee in the year 1972 i.e. when they completed 8 years from the date of their entering pre-commission training in the army, to say the ^{least} ~~last~~ ^{fallacious} is fallacious. Their period of 8 years would ~~account~~ only from the date on which they ^{were} deemed to have entered the State Police Service i.e. 3.7.1967. In this context, an avoidable controversy ~~has~~ also been brought before us. Vide Gazette notification dated 17.6.1978, ^{The} I.P.S. (Appointment by Promotion) Regulation, 1955 ^{was amended} ~~were remanded~~ as a result of which released E.C.Os and S.S.C.Os would become eligible for entering into IPS after 8 years of continuous service subject to the condition that such officers shall be eligible for consideration if they have completed

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not less than 4 years of actual continuous service on the first day of the January of the year in which the committee meets, in the post of Dy. Superintendent of Police or in any other post or post declared equivalent thereto by the State Government. Whether ~~the~~ ^{amended} said rule would act prospectively only or with retrospective effect was debated before us. In this context, our attention was drawn to the case of Dr. S. Krishna murthy v. Union of India (1989) 4 SCC 689 where the Hon'ble Supreme Court held that unless the act empowers the Central Government to make rules with retrospective effect, the rule made under the said act could not be given any retrospective effect. Accordingly, ^{the} requirement of ~~next~~ ^{an} ECO or SSCO completing 4 years actual continuous service would not apply to ^{this} the applicants in ~~their~~ case. They become eligible for consideration for entry into IPS when they completed 8 years service from the date of their deemed entry in to the State Police Service as already stated.

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The most crucial issue raised by the applicants is that their names should have been projected for consideration by the selection committee which should have been held in the year 1977 in respect of Gahlot, ^{in respect of} ~~and~~ Benjamin in 1978, in respect of Gadhavi in 1979, and in respect of Dimri in 1979. Clubbing ~~of~~ all of them together with several others of the subsequent batches and placing their names before a selection committee in the year 1981 has caused them great prejudice as they have all been brought into the select list w.e.f. 29.9.1981. The respondents admit that no selection committee met in the years, 1977, 1978, 1979 and 1980. The reason advanced is that a case was pending in the High Court of Gujarat where

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the seniority of some of the Dy.S.Ps. of the State including the applicants, was under challenge. The respondents further contended that as the applicants' confirmation was not announced until 13.10.1980, their names could ^{not} have been projected for selection even if the selection committee ^{had met} ~~met~~ prior to 1981. We are not convinced with either of these two contentions. Admittedly, there was no court order preventing the respondents from constituting the selection committee during the period 1977 to 1980. Secondly, the applicants having become due for confirmation in the years 1974, 1975 and 1976 the State Government could not take ^{its} ~~plea~~ that due to ^{its} ~~their own complacency~~ ^{uncompletion} in promptly proclaiming the confirmation of the applicants with effect from the due dates, they could deny the applicants ^{their} ~~right~~ to be considered for selection as soon as they completed 8 years of service in the State Police and became eligible for selection for entry into I.P.S. The fact remains that the applicants belonging to three different batches were clubbed together with some other officers belonging to subsequent batches and were all screened by the selection committee that was held in 1981. In this regard, the learned counsel for the applicants drew our attention to some ^{of the} ~~other~~ decided cases which may briefly be discussed here. In the case of P.N. Goswami v. Union of India SLJ 1988(4) (CAT) 229 - Gauhati bench of this Tribunal held as follows :

"In view of the discussion above, it must be held that the non inclusion of the names of the two applicants in the select list from 1973 onwards was not due to any fault of theirs. On the other hand, ^{the} ~~the~~ concerned authorities of the State Govt., the Central Government and the UPSC been meticulous about the discharge their duties as enjoined by the promotion regulation, their names would have been in the select list at least for a substantial part of the period of their continuous officiation in cadre posts. It would therefore be

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in the interest of justice to hold that their names should be deemed ~~be~~ in the select list continuously with effect from a date on which the UPSC should be deemed to have approved the list prepared by the Committee on 31.12.1973."

In the case of V.P. Shah and N.P. Parekh v. Union of India decided in T.A.43/86 by C.A.T. Ahmedabad dated 2nd February, 1990 the question involved was the propriety of clubbing officers of the Gujarat Administrative Service who were due for selection for the ^{year} 1974 to 1979, ~~came~~ ~~under examination~~. The applicants in that case who were not selected for entry into I.A.S. challenged the clubbing of their names with those of the subsequent batches. In the aforesaid judgment by the Ahmedabad Bench, the case of Basava Sindivele decided by the Madras Bench of the Tribunal, reported in AIR 1987(2) CAT 275 also was considered. We, however, do not consider it necessary to refer to it as it pertains to the consideration of certain candidates for promotion within the department by a departmental promotion committee. After considering all aspects of the case and relevant case law, the Tribunal ^{in the case of V.P. Shah} observed ~~thus~~ "We hold that the select list of suitable officers prepared by the committee ~~on~~ ^{at} its meeting held in 1979 under regulation of the I.A.S. (Appointment by Promotion) Regulation, 1955 is invalid to the extent that the cases of the petitioners have not been properly considered on account of illegal clubbing of vacancies and enlarging the zone of consideration and also by adopting the provision of I.A.S. (Appointment by Promotion) Regulation, 1955 as amended in the year 1977 in regard to the vacancies which arose prior to the amendment. We direct the respondents to constitute committee afresh and to consider the officers including the petitioners for inclusion in the select list for each year from 1974 to 1979 separately ^{Considering}"

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only those would have come within the zone of consideration in the individual years adopting procedure as per the regulations which stood prior to the amendment in 1977 for the vacancies which arose prior to the date on which the amendment took effect to consider the petitioners suitability and to appoint them into the I.A.S. if they are found suitable in any of the years notionally and to give them all consequential benefits arising out of such appointment.."

16 The respondents vehemently contended that ~~any~~ ^{ice} no injustice was done to the applicants just because they were clubbed together with some other officers of subsequent batches. In this regard, they have placed reliance on I.P.S. (Appointment by Promotion) Regulation 1955 Rule 5 (1) which reads as under :

Rule 5(1) :

Each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Police Service as are held by them to be suitable for promotion to the service. 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 twelve months commencing from the date of preparation of the list, in the posts available for them under rule 9 of the recruitment rules, or 5 percent of the senior posts shown against items 1 and 2 of the cadre schedule of each State or group of States, whichever is greater (Emphasis added).

As ^{the} Rule states that the committee shall ordinarily meet at intervals not exceeding one year, it was contended that it was not mandatory for the committee to meet every year without fail. The applicants have no right to demand that the committee shall meet ^{invariably once a year} ~~intervally~~. Relying on the judgment of this Bench of the Tribunal in V.P. Shah's case (supra), the learned counsel for respondents No. 3 to 12 Shri Arun Mehta contended that the use of the term 'ordinarily' does not make it illegal not to hold

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selection committee meeting every year and that there is no right vested in the applicants ^{to demand} that the selection ^{committee} meeting ^{should} be held regularly. Learned counsel for the respondents has also drawn our attention to the case of S. Sarvanaperumal and others v. Union of India SLR 1988(6) CAT 148. In that case, the question involved was the number of officers to be included in the select list and it was held that 'under rule 5(1) (supra) indicates that it has fixed only the maximum and not the minimum number to be included in the select list.' We do not see in what manner the judgment of the Tribunal in that case supports the respondents' contention. Another case cited by the learned counsel for the respondents which is Gopal Chandra v. Union of India in 1990(5) SLR 121 (CAT : Cuttack). In that case also, the issue involved ^{ed} pertaining to ceiling laid down for the number of candidates to be brought on the select list and there was no reference in it to the holding of selection committee to consider the case of several batches at one time.

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In the light of the facts of the instant case and the case law cited above, we hold that it was improper on the part of respondent No. 1 and 2 to place the names of the applicants alongwith several others of ^{Subsequent} ~~junior~~ batches for consideration by the selection committee that was held in 1981. In this view that we are taking, we are fully supported by ^{the} judgment of the Tribunal in the case of P.N. Goswami v. Union of India ^(Supra) ~~SLR 1988(4)~~ ~~C.A.T. (Gauhati Bench)~~. After relying on the judgment of the Hon'ble Supreme Court in the case of M.L. Kapur v. Union of India 1974 SCC (L&S) 5, the Tribunal held as under :-

" The respondents UPSC and the Central Government

have relied heavily on the judgment of the Supreme Court in the case of M.L. Kapur v. The Union of India, in support of some of their contentions which are being soon discussed. At this stage we may only notice the Supreme Court's observations on the periodicity of the Selection Committee meeting. In interpreting regulation 5(2) about the selection Committee duty; to make an unrestricted choice of the post available persons, the Supreme Court had an occasion to refer to this periodicity for the selection committee meeting, and the court observed at paragraph 22 as :

" The selection committee has an unrestricted choice of the best available talent from amongst eligible candidates, determined by reference to reasonable criteria applied in assessing the facts revealed by service records of all eligible candidates so that merit and not mere seniority is the governing factor. A simple reading of the Regulation 5(2) clearly indicates this to be the correct view. The required number has thus to be selected by a comparison of merits of all the eligible candidates of each year.(emphasis added)"

In discussing on the periodicity of the review of the select list, the Supreme Court has observed at another place at paragraph 42 of the same judgment as :

"42. 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 list. By Regulation 4(2), a person who has attained the age of 52 years shall not be considered as an eligible candidate notwithstanding the fact that he is a substantive member of the service. Then the proviso to Regulation 4(2) says that if his name has been entered in the select list for the previous year, he might be considered for inclusion in the fresh select list for the next year, even if he has passed the age of 52 years. When Regulation 5(4) says that the list prepared in accordance with Regulation 5(1) shall be reviewed or revised every year, it really means that there must be an assessment of the merits 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 satisfy the condition under 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 the selection from all the eligible candidates every year."(emphasis added).

There should, therefore, be no doubt that but for the exceptions, situations illustrated above where the holding of the meeting of the Selection Committee is rendered impracticable or where the holding of the meeting becomes an unnecessary and expensive formality, the list has to be prepared every year."

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Accordingly, as has ^{also} been directed by this Bench of the Tribunal in V.P. Shah's case (supra), we direct the respondent No. 1 to constitute a fresh selection committee solely to consider the applicants for inclusion in the select list of the ~~appropriate~~ year between 1977 and 1979 as deemed appropriate.

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A rather confusing plea was taken by the applicants with regard to the year of allotment in the relief sought by them in the applications. They prayed for a direction to the respondents to confer upon them 1964 as year of allotment in the State Police Service (underlined for emphasis). However, if we look at the application in its totality, it would appear that their main grievance is with regard to the assignment of the year of allotment in the I.P.S. The learned counsel for the respondents opposed the said relief being sought by the applicants on the ground that no specific plea in clear and unambiguous ^{terms} stand was taken in the applications in this regard. Further, our attention has been drawn to I.P.S. (Regulation of Seniority) Rules, 1954. Rule 3 of the said rules which governs the assignment of the year of allotment reads as under :-

"Rule 3 : Assignment of Year of Allotment :

- (1) Every officer shall be assigned a year of allotment in accordance with the provisions herein after contained in this rule.
- (2) (Not relevant)
- (3) The year of allotment of an officer appointed to the service after the commencement of these rules, shall be
 - (a) (a) Where the officer is appointed to the service on the results of a competitive examination the year following the year in which such examination was held;
 - (b) Where the officer is appointed to the service by promotion in accordance with rule 9f of the Recruitment Rules, the year of allotment of the junior most among the officers recruited to the

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service in accordance with rule 7 of these rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former;

Provided that the year of allotment of an officer appointed to the service in accordance with rule 9 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officers recruited to the service, in accordance with rule 7 of those rules so started of officiating shall be determined adhoc by Central Government in consultation with the State Governments concerned ;

Explanation 1.--- In respect of an officer appointed to the service by promotion in accordance with sub rule (1) of Rule 9 of the recruitment rules, the period of his continuous officiation in a senior post shall, for the purposes of determination of his seniority; count only from the date of inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post whichever is later:"

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The aforesaid Rule 3(3)(b) read with explanation (1) leaves no room for any doubt or ^{speculation} ~~subsequently~~ as regards the method of fixation of the year of allotment. In the case of an officer who is appointed to the IPS by promotion in accordance with rule 9 of the Recruitment Rules, as is the case with the applicants, their year of allotment will be the same as that of the junior most among the officers recruited to the service in accordance with rule 7 of the Recruitment Rules i.e. direct recruits to IPS, who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former. The explanation (1) to the said rules, further clarifies that for the purpose of determination of seniority, the period of continuous officiation in a senior post shall count only from the date of inclusion of the promotee's name in the select list or from the date of his officiating

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appointment to such senior post which-ever is later. Admittedly, the date of continuous officiation on senior post in respect of B.J. Gadhave was 9.9.1979, in case of R. Benjamin 7.12.1980 and in case of B.S. Gehlot and R.C. Dimri 21.11.1981. The respondents in their reply have brought out ^{this aspect} very clearly by relying on a communication of the Govt. of India letter No. 15011/6/83-IPS-1 dated 31st March, 1989 addressed to the Secretary to the Govt. of Gujarat which is Annexure A-3, to the application. The said communication would show that the applicants were placed in the select list w.e.f. 29.9.1981 but their date of continuous officiation in cadre post was as already stated above. In view of of the rule position, Shri R. Benjamin and B.J. Gadhave who officiated on senior cadre posts w.e.f. 7.12.1980 and 9.9.1979 respectively had to be placed below one M.D. Meena, a direct recruit of 1976 batch, as officers of that batch held continuous officiating appointments in senior cadre post w.e.f. 1980-81. Similarly, V.S. Gehlot and R.C. Dimri who assumed senior cadre posts on continuous officiating basis w.e.f. 21.11.1981 had to be placed below one Upendra Singh, a direct recruit of 1977 batch, who assumed a senior cadre appointment on continuous officiation w.e.f. 8.11.1981. This explains the rationale ^{of} ~~as to~~ how the applicants would be eligible for the years ^{of} ~~for~~ 1976 and 1977 as ^{their} ~~the~~ years of allotment. In view of this rule position, an attempt was made on behalf of the applicants to ^{seek} ~~give~~ exemption to the applicants as was done in the case of some I.A.S. officers of Jammu and Kashmir cadres vide Govt. of India letter No. 14014/43/86-IAS(1) dated 30th July, 1987 which is ^{at} ~~the~~ Annexure A-7 to the application. From this communication, it is apparent that in respect of the

said IAS Officers, ^{as} ~~had~~ the select list ^{had not} been prepared ⁶
annually, ^{but} ~~and not~~ after a gap of 10 years ~~as was done in~~ [✓]
~~their case~~, the Govt. of India felt that undue hardship
would be caused to them and accordingly, relaxed the
relevant rules. Consequently, the said officers were [✓]
assigned various years of allotment between 1975 to 1980.
Learned counsel for the applicants, Shri M.R. Anand
made a forceful argument that the chance to officiate
in a senior/cadre post is often fortuitous in nature
and does not appear to be guided by any rule or seniority
as can be seen by the fact that Shri B.J. Gadhvi who
was confirmed as Dy.S.P. w.e.f. 1.2.1975 was promoted
to a senior post in an officiating capacity on 9.9.1979
whereas M/s. R. Benjamin and B.S. Gehlot who were
confirmed as Dy.S.P. on 15.12.1974 i.e. on a date earlier
than that of B.J. Gadhvi, could get the chance to
officiate in such a senior post w.e.f. 7.12.1980 and
21.11.1981 respectively only. He, therefore, argued
that the date of continuous officiation should have no
relevance or at least should not be made the basis for
assigning the year of allotment. Howsoever attractive
and compelling the argument ^{maybe,} ~~is~~, we are unable to accept ¹
it because of the unambiguous wording of Rule 3 of the
I.P.S. (Seniority) Rules, ^{Regulation of} ~~1946~~ and because no question [✓]
was raised ^{in the applications} challenging the validity of the said rule. ⁴
Opposing this suggestion, learned counsel for the
respondents argued vehemently that it would not be
proper for the Tribunal to give a direction to the
Union of India to make a similar relaxation in the
application of the relevant rules to the applicants
as it was entirely for the Union of India alone, to
decide the said question. In this regard, Shri Arun
Mehta, learned counsel for the respondents No. 3 to 12

attempted to place reliance on a judgment of the Hon'ble Supreme Court in the case of D.R. Nim, IPS Vs. Union of India 1967, SLR, 221. In the said judgement, the import of rule-3 of the Indian Police Service (Regulation of Seniority) Rules, 1954 governing the assignment of year of allotment has been elaborately explained. The learned counsel for the respondents further drew our attention to the case of D.D. Suri Vs. Union of India 1979(3)SLR page, 689 wherein, the Hon'ble Supreme Court observed inter alia, as Under:

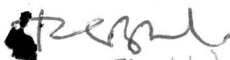
"Even assuming there was a power to condone the deficiency, the matter rested entirely in the discretion of the Government of India. When a decision in a policy matter like this is left to the absolute discretion of the Executive, we do not see how the courts can interfere and issue a direction to the Govt. of India to reconsider the matter afresh."

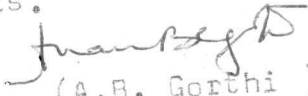
We, therefore, do not consider it appropriate to direct the Government of India to make any relaxation in the Rules in respects of the applicants.

20. In the result, we allow the applications to the limited extent and direct respondent no. 1 to constitute a fresh selection committee to consider the cases of the 4 applicants in O.A. Nos. 322, 325, 326 and 356 of 1989 for inclusion of their names in the select list of the appropriate year between 1977 and 1979 and to give all consequential reliefs to the applicants including reconsideration of the year of allotment in their respect, if the same is warranted

under the relevant rules. Respondent no. 1 shall convene the selection committee for the aforesaid purpose within a period of 6 months from the date of receipt of a copy of this judgment.

Applications are disposed of in the above terms without any order as to costs.


(R.C. Bhatt)
Member(J)


(A.B. Gorthi)
Member(A)

Dated: 13th February, 1992.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

1. Review Appl.No.9/92
In
O.A.No.322/89

Shri B.S.Gahlot,
District Suptd.of Police,
Palanpur.

2. Review Appl.No.10/92
In
O.A.No.325/89

Shri Rajkumar Benjamin,
Dy.Commissioner of Police(Admn.),
Shahibaug, Ahmedabad.

3. Review Appl.No.11/92
In
O.A.No.326/89

Shri Biharidan Jivathai Gadhvi,
Dist.Superintendent of Police,
Bharuch.

4. Review Appl.No.12/92
In
O.A.No.356/89

Shri R.C.Dimri,
Dist.Superintendent of Police,
Bhavnagar.

.....Applicants

VERSUS

Union of India & Others

.....Respondents

CORAM:

Hon'ble Mr.A.B. Gorthi, Member (A)

Hon'ble Mr.R.C.Bhatt, Member (D)

Per: Hon'ble Mr.A.B.Gorthi, Member (A)

Judgment

All the above Review Applications raised common question of facts and law and are therefore decided by this common order.

2. By means of the Review Applications, the applicants have brought to our notice two typographical errors which have kept into our judgment. Firstly the name of Shri B.S. Gahlot has been wrongly printed as V.S.Gahlot and that it should have been B.S.Gahlot. Secondly the figure

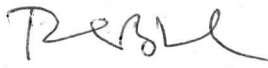
1985 appearing on page 13 in the second line of para 13 should have read as 1975. The corrections suggested are accepted. We direct that certified true copy of the judgment be corrected accordingly.


3. The applicants have suggested further amendments to our judgment but we do not accept the same. The main thrust of the suggestions now made by the applicants is with regard to our direction to the respondents to constitute a fresh Selection Committee to consider the applicants for inclusion in the Select List of the year between 1977-1979 as deemed appropriate. In this context it is relevant to note that from the very beginning the applicants in their representations were requesting for being included in the Select List in the appropriate year between 1977-1980. This will be evident from a communication of the Home Department of Government of Gujarat dated 11th April, 1989 addressed to the Secretary to the Govt. of India, Ministry of Home Affairs New Delhi. Accordingly we rightly directed the respondents to ~~include the names of~~ the applicants in the Select List to consider inclusion of the applicants's names in the select list of the appropriate year between 1977-79. However, as has been observed by us in para 13 of our judgment, the applicants who were deemed to have been regularly appointed to the Gujarat State Police Service with effect from 3.7.1967 have completed 8 years of service in 1975. Further as discussed in para 12, I.P.S. (Appointment by promotion) Regulations 1955 Rule 5(2), ~~the Second~~ proviso, lays down that the Selection Committee shall not consider the case of a Member of the State Police Service unless on the first day of January of the year in which it meets

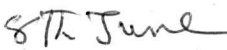
(42)

he is substantive in the State Police Service and has completed not less than 8 years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other posts or posts declared equivalent thereto by the State Government. The respondents are therefore directed to keep the aforesaid provision of Rule 5(2) in view while determining the question of inclusion of the applicants's names in the select list of the appropriate year. The applicants having joined the State Police Service in the year 1972, 73 and 74 became due for confirmation as soon as they completed 2 years service in the said appointment. This fact as also the fact that they were deemed to have completed 8 years of service in 1975 may be taken into consideration by the respondents for the purpose of inclusion of the applicant's names in the select list of the appropriate year.

4. Subject to our aforesaid observation, which may be read as integral to our judgment dated 13.2.1992 the Review Applications are otherwise hereby dismissed.


(R.C. Bhatt)
Member (J)


(A.B. Gorthi)
Member (A)


Date: ~~13.2.~~ 1992,

(sph)