

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

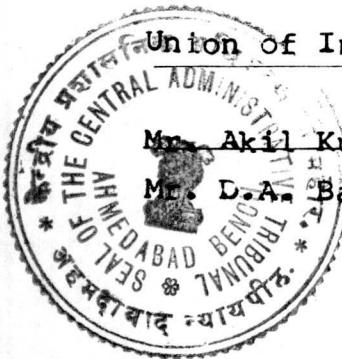
O.A. No. 283/92  
XXXXXX

DATE OF DECISION 10.01.1995.

Shri G.K. Makwana Petitioner

Mr. B.P. Tanna & D.V. Mehta Advocate for the Petitioner(s)

Versus



Union of India and Others. Respondent

Advocate for the Respondent(s)

Mr. Akil Kureshi

Mr. D.A. Bambhaniya

CORAM :

The Hon'ble Mr. V. Radhakrishnan Member (A)

The Hon'ble Dr. R.K. Saxena Member (J)

Shri G.K. Makwana  
5-A Shri Sai Krupa  
Pradhyumna Society  
Ramol Road, Ahmedabad.

Applicant.

Advocate Mr. E.P. Tanna  
Mr. D.V. Mehta

## Versus

1. Union of India  
(through the Secretary  
Government of India,  
Ministry of Home Affairs  
Department of Personnel  
& Administrative Reforms  
New Delhi
  
2. Union Public Service  
Commission (through its  
Secretary) Dholpur  
House, New Delhi
  
3. The State of Gujarat  
(through the Chief  
Secretary, Sachivalaya  
Gandhinagar.
  
4. C.M. Leuva  
21, Niharika Bunglows  
Near Himatlal Park  
Ambawadi, Ahmedabad.

### Respondents

## Advocate

Mr. Akil Kureshi  
Mr. D.A. Bambhaniya

JUDGMENT

In

Date: 10.01.1995.

O.A. 283/ 1992

Per Hon'ble

Shri V. Radhakrishnan

Member (A)

The applicant challenges the assignment of year of allotment on his promotion to I.A.S. by the respondents as unlawful and illegal. The applicant joined as Section Officer in the State Government in July 1967. In January 1977, he was promoted

to the post of Under Secretary. He was appointed as Deputy Secretary on 26.12.1980 and continued to hold the post of Deputy Secretary in different Departments. The applicant was promoted to selection grade of Rs.2000-2250 from 1.12.1985. He was inducted to I.A.S. cadre on 2.3.1987. The applicant was selected to I.A.S. from non-State Civil Service Officers as per Rule 4 (1) (c) and Sub-Rule-2 of Rule (8) of I.A.S. (Recruitment) Rules, (herein after called as in short) Recruitment Rules 1954, which provide that the Central Government may, on recommendation of the State Government concerned and in the consultation with the U.P.S.C. and in accordance with such regulations as the Central Government may, after consultation with the State Governments and the U.B.S.C. from time to time make, recruit to the service, any person of outstanding ability and merit serving in connection with the affairs of the State who is not a Member of the State Civil Service of the State but who holds a gazetted post in substantive capacity. The applicant's contention is that as per Rule 3 (3) (b) and 3(3) (c) of I.A.S. (Regulation of Seniority) Rules, 1954, (herein after called Seniority Rules in short), the year of allotment of the officer promoted to the I.A.S. out of non-State Civil Services officers should be based on the continuous officiation of such an officer on a post equivalent in status and pay to that of a Senior Time Scale Post. The post of the Deputy Secretary in Sachivalaya or in the Secretariat is considered as Senior Time Scale post. According to the petitioner, he was holding the post of



Deputy Secretary in the Government of Gujarat from 1980. According to him the Government while fixing the year of allotment to such a promoted officer takes into account the year in which the direct recruit could have been eligible to hold such post after completion of four years of service. In other words for fixing the year of allotment of four years are required to be counted back-ward from the date of continuous officiation. The contention of the applicant is therefore, that as he had continuously officiating the post of Deputy Secretary from 1980 on wards the Government should have fixed the year of his allotment by going four years backwards and arrived at 1976 as the year of allotment. However, the applicant was allotted 1983 as year of allotment.

The applicant represented to the State Government for revision of his year of allotment. But that representation has been rejected after 4 years without assigning any reason. The applicant claims that because of wrong year of allotment, he will be required to work under his juniors. He also claimed that his promotion to the post of Secretary could not be given due to wrong year of allotment as person of I.A.S. 1976 batch have been appointed to the post of Secretary. He also states that had he continued in the State Government service he would have become Joint Secretary in 1988. Even persons junior to him have become Joint Secretaries in the State Government being selected to the I.A.S., he is suffering from loss of seniority as well as lesser pay. The applicant has supported his case <sup>by</sup> the judgment

of the High Court of Gujarat in S.C.A.No.1305/84 and Letters Patent Appeal No.137 of 1985. He claims to be on a better footing in the above mentioned cases. He has also relied on O.A.536/86 and O.A.851/86 decided by the Bench of Central Administrative Tribunal, Madras. He has a view that these judgments support his stand for attaining year of allotment.

2. He has mentioned that two State Civil Service Officers Shri N.C.Dave and Shri S.K.Saiyed, who are encadred to I.A.S. along with the applicant have been given the year of allotment of 1976, while the applicant has been given 1983 as year of allotment which is discriminatory.

3. The applicant amended the O.A. with permission in February, 1993 after the respondent No.2 gave a written reply. He has questioned the argument of the State Government that as officers of Gujarat Administrative Services who are encadred along with the applicant were given the year of allotment as 1983. The applicant cannot be placed before the State Service Officers as per rules. According to the applicant, the G.A.S. officers are entitled for earlier year of allotment. Simply because they have not challenged the year of allotment, injustice cannot be done to him. He has stated that one of the officers Shri C.M.Leuva has challenged the year of allotment and claimed earlier year of allotment. In view of the foregoing, the applicant has prayed for the following reliefs and interim relief .

( a ) To quash and set aside the letter dated 3-2-1992 (Annexure A/12) passed by the Under Secretary to the Government of India ;

( b ) To declare that the applicant is entitled to the year of allotment of 1976 and he is required to be placed at Sr. No. 117 A in the list of Officers Borne On the I.A.S. Cadre of Gujarat as on 1st January, 1992.

Interim relief :

( a ) To restrain the respondents-authorities from promoting any person shown at Sr. No. 118 onwards on the list of Officers Borne On the I.A.S. cadre of Gujarat (Annexure A/9) without considering the case of the applicant;

( b ) To direct the respondents authorities to consider the case of the applicant as if he is at Sr No. 117 A in the list of Officers Borne On the I.A.S. cadre of Gujarat (Annexure A/9) and further to promote the applicant to the post of Secretary or equivalent to that of Secretary in the State of Gujarat ;

( c ) To stay the further execution and implementation of the letter dated 03-2-1992 (Annexure A/12) issued by the Under Secretary to the Government of India. \*

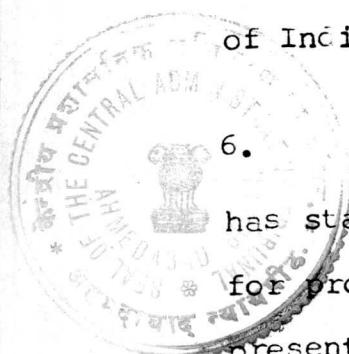
The interim relief was not however pressed in view of the fact that learned advocate for the respondent No. 3 had stated at the Bar that one post of Secretary in I.A.S. cadre will be kept vacant till the disposal of this case.

4. The respondent No. 3 i.e. the State of Gujarat in the written reply have stated the following : 'The post of Deputy Secretary, Government of Gujarat is

1400-1800, while that of the Senior Scale of I.A.S. is 1200-2000/- Hence the post of Deputy Secretary which was held by the applicant is not equivalent to Senior Time Scale post of I.A.S.

5. According to them while fixing the year of allotment, the continuous officiation in a post equivalent to Senior Time Scale post is required to be taken into consideration and four years are required to be counted back-ward while fixing the year of allotment. The applicant was holding Class -I post as Non- State Civil Service Officers of the State. He was included in the select list prepared for promotion to I.A.S. and appointed on 9-3-1987. According to them, the year of allotment has to be fixed by the Central Government as per Rule 3 (3) (c) of the I.A.S. (Regulation of Seniority) Rules 1954. According to the proviso to the Rule, where the officer is appointed to the I.A.S. by way of selection, the year of allotment of such an official shall be decided on ad hoc basis by the Central Government on recommendation of the State Government concerned and in consultation with the U.P.S.C. provided that he shall not be allotted year earlier than the year of allotment of a State Civil Service Officer appointed in the service by promotion whose length of service is more than length of continuity of service of the former. The recommendation of the State Government was submitted to the Government of India. The Government of India intimated the State Government that five State Civil Service Officers viz. Shri M.C. Joshi,

Kum. K.M. Chauhan, Shri N.A. Vohra, Shri C.M. Leuva and Shri K.K. Asrani were appointed to the I.A.S. on 9-3-1987 and rendered longer length of State Civil Service than the gazetted service of the applicant. The SCS Officers were assigned in 1983 as the year of allotment under proviso Rule 3 (3) (b) of the I.A.S. (Regulation of Seniority) Rules 1954. The applicant could not be assigned a year of allotment earlier than 1983, Shri Ravi (R.R. 1983) was the junior most direct recruit officer who was promoted to senior scale of I.A.S. earlier than 9-3-1987 i.e. the date of appointment of the applicant to I.A.S. In view of this the applicant was assigned 1983 as year of allotment, as per Rule 3 (3) (c) of the I.A.S. (Regulation of Seniority) Rules 1954. For the purpose of inter-se seniority, he is placed below the SCS Officers appointed to I.A.S. by promotion with 1983 as their year of allotment. A representation made by the applicant was rejected by the Government of India. Thereafter the applicant filed the present O.A.



6. The respondent No. 3 i.e. State Government has stated that the applicant is not at present eligible for promotion as Secretary to Government as per his present seniority. However, one post of Secretary is kept vacant till the disposal of this case.

7. Regarding provision of year of allotment of Shri N.C. Dave and Shri S.K. Saiyed is concerned they have stated that they are governed by Rule 3 (3) (b)

whereas the case of the applicant falls under Rules 3 (3) (c) of the Indian Administrative Service (Regulation of Seniority) Rules 1954 and hence not comparable.

The respondents have also taken the contention that the applicant has not exhausted all the remedies in that, he had not submitted a memorial to the President of India.

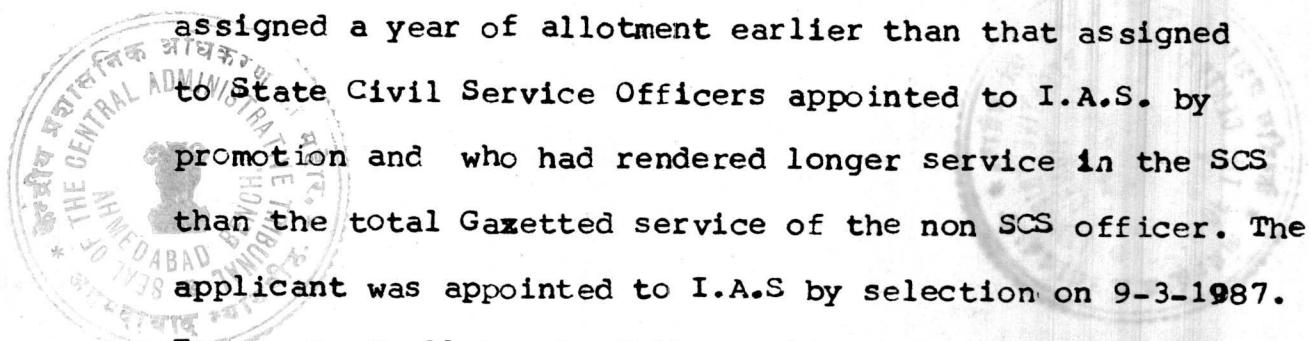
8. They have also stated that the SCS Officers who are appointed to the Indian Administrative Service on 9-3-1987, along with the applicant have put in more length of service in the State Civil Service than the length of service of the applicant.



Shri M.C. Joshi	09-4-1962
Kum. K.M. Chauhan	16-8-1965
Shri N.A. Vohra	08-6-1967
Shri C.M. Leuva	02-4-1967
Shri K.K. Asrani	10-4-1967

9. Accordingly they say that as per Rule 3(3) (c) of the Indian Administrative Service (Regulation of Seniority) Rules 1954, the applicant cannot be given year <sup>leave</sup> of allotment earlier than 1983. Hence they <sup>have</sup> prayed for the rejection of the application. The

Government of India, respondent no.1 in their reply have stated that under Rule 3(3) (c) of the Seniority Rules the year of allotment of a non State Civil Services Officer is determined ad hoc on the recommendation made by the State Government and in consultation with the U.P.S.C. For this purpose all the posts held by the officer prior to his appointment to I.A.S. by selection are considered so as to identify the post which can be held to be comparable to the senior scale of I.A.S. The non State Civil Service Officer then becomes entitled to year of allotment of the Direct recruit officer who started officiating on selection post earlier than the officiation by the SCS officers on a post equivalent to the senior scale posts of I.A.S. This is done on the basis of the analogy of Rule 3 (3) (b) of the Seniority Rules. However, it has been stated under the proviso Rule 3 (3) (b) of the seniority rules the non SCS officers on appointment to I.A.S. by selection cannot be assigned a year of allotment earlier than that assigned to State Civil Service Officers appointed to I.A.S. by promotion and who had rendered longer service in the SCS than the total Gazetted service of the non SCS officer. The applicant was appointed to I.A.S by selection on 9-3-1987. The year of allotment of the applicant has been restricted to 1983 under Rule 3 (3) (c) of the Seniority Rules according to the year of allotment of Non SCS Officer. It cannot be higher than that of a SCS Officer who is appointed to I.A.S. earlier than him and whose length in SCS is longer than the Gazetted service of the non SCS Officer. While



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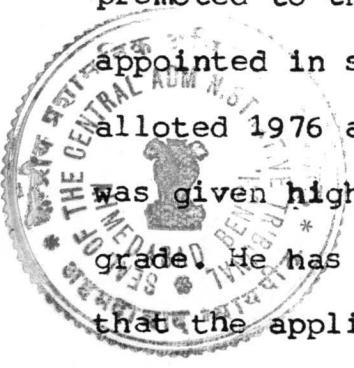
determining the seniority of the applicant it was noticed that Shri M.C. Joshi and five other SCS officers who had rendered longer length of service of SCS than the Gazetted service of Shri Makwana who was appointed to the I.A.S. earlier than him. Shri Joshi and other SCS officers were assigned 1983 as year of allotment in I.A.S. as such the applicant could not be allotted higher year of allotment than 1983 assigned to Shri Joshi and other SCS Officers as per the provisions then existing of the Seniority Rules. Accordingly he was allotted 1983 as year of allotment. They have denied that the applicant was entitled 1976 as a year of allotment. They also stated that the facts of the case of Shri Bakshi and C.S. Sampat are not similar to that of the applicant. The relief given by the High Court of Gujarat in their case will apply to them only and not to any other person. The representation made by the applicant was also rejected on these grounds. Regarding the applicant's contention that he would have been better off in his parent department than joining I.A.S., it has been stated that once he had decided to come over to I.A.S. he is governed by the Rules & Regulations existing in I.A.S. and he had voluntarily opted to come to I.A.S. and he cannot now compare his prospects in I.A.S. with his parent cadre. Even if the applicant is given the benefit of the posts held by him before his appointment to I.A.S. under the proviso to Rule 3 (3) (c) of the Seniority Rules he cannot get higher year of allotment in I.A.S. than 1983 as given to Shri Joshi and five other SCS Officers having longer length of service in SCS Gazetted service than of Shri Makwana. They have stated that the vires of the Rule 3(3) (c) of the Seniority Rules has been <sup>considered</sup> ✓ by the Supreme Court. It has also been stated that as the year of



allotment has been correctly fixed the applicant has no claim for immediate promotion to the post of Secretary and hence they have prayed for permission to fill in the post of Secretary which has been kept vacant.

10. The applicant has filed rejoinder. He had filed rejoinder before the reply filed by the respondent no.2. He assumed that the respondent no.2 is not filing any reply. However, respondent no.2, has filed their reply later.

11. The applicant has not agreed to the reaspons stated by respondent no.3 that he had been assigned 1983 as year of allotment because the State Civil Service Officers Ms. Joshi Chauhan, Vohra, Leuva, Asrani were appointed to I.A.S. in 9-3-1987. He has claimed that these five officers have also been given wrong year of allotment. He claims that all the above five persons are entitled for 1977 as year of allotment taking into account the fact that on 4-8-81 all of them were promoted to the scale of 1400-1800. As the applicant had been appointed in senior sclae in 1980 he claims that he should be allotted 1976 as the year of allotment. He also claims that he was given higher pay scale of Rs. 2000-2250/- in the selection grade. He has contested the claim by the respondent no.2 that the applicant cannot be placed above the State Civil Service Officers, as they have been given wrong year of allotment. The applicant has repeated that he was promoted as Deputy Secretary in the scale of Rs. 1400-1800 which compares well with the scale of pay of senior scale of I.A.S. i.e. 1200-2000. The applicant had stated that it is not necessary for him to file memorial to the President of India before approaching the Tribunal.

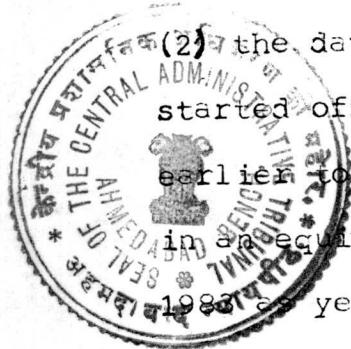


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11(a). Mr.C.M.Leuva, one of the SCS officers promoted along with the applicant to I.A.S. on his own accord made himself a party to the O.A. as respondent no.4 in January, 1994.

12. Mr.Tanna learned advocate for the applicant drew our attention to the career of the applicant who had joined as Section Officer in G.A.D. in the Secretariat of Government of Gujarat in May 1967. He was appointed as Deputy Secretary on 26.12.1980 and, promoted to selection grade in May 1986, and inducted to I.A.S. in March, 1987. He had outstanding career on account of which he was selected to I.A.S. for the non-State Secretariat Services Officers. Taking into account the fact that he was appointed as Deputy Secretary in December 1980 which is a senior scale post, year of allotment should have been correctly given as 1976, taking into account the date from which the junior most direct recruit I.A.S. officer was appointed to Senior Scale. On the other hand he had been given 1983 as year of allotment. This had put him in grave disadvantageous position compared to his juniors who had become senior to him and actually drawing more pay than him. Had he continued in Sachivalaya he would have become Joint Secretary and would have been drawing more pay. In this connection he invited our attention to the Judgment of the Gujarat High Court in SCA/1305/84 Baxi and Sampat vs. Union of India and Others. In that case it was observed by the Learned Judge that the method of assignment of year of allotment to the State Civil Services Officers promoted in accordance with sub rule (1) of I.A.S. (8) of the Recruitment Rules was to be applied to

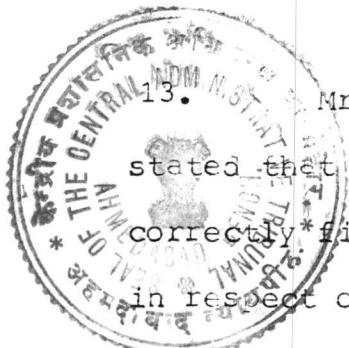
non State Secretariat Officers selected in accordance with  
 IAS  
 sub rule (2) of Rule (8) of the Recruitment Rules subject  
 to the proviso to clause (c) of Rule 3 (3) of the Seniority  
 Rules. In that case one of the petitioners Shri Baxi was  
 appointed to the post equivalent to Deputy Secretary with  
 effect from April 1974. The post of Deputy Secretary is  
 equivalent to senior time scale post of I.A.S. cadre. Taking  
 into account the date when the junior most direct recruit  
 in the I.A.S. cadre started officiating in Senior Scale post  
 which was 1969, Mr. Baxi was entitled for 1969 as year of  
 allotment. Similarly in the case of Shri Sampat another  
 petitioner who was appointed to the post equivalent to  
 Deputy Secretary in 1973. In his case the junior most direct  
 recruit in I.A.S. started officiating in the senior post  
 with effect from June 1973. This direct recruit belonged to  
 1967, hence he was entitled for 1967 as year of allotment.  
 Hence he argued that the criterion for giving year of  
 allotment is based on (1) the date on which the promoted  
 officer has been working in a senior scale post and ;



the date on which the junior most direct recruit officer  
 started officiating in the senior time scale of I.A.S.  
 earlier to the date of commencement of such officiation  
 in an equivalent post by the promotee. If this is adopted,  
 1983 as year of allotment given to the applicant was  
 obviously incorrect as the applicant had started officiating  
 as Deputy Secretary which is a Senior Time Scale post from  
 December, 1980 and the junior most direct recruit I.A.S.  
 officer who started officiating in the senior time scale of  
 I.A.S. belong to 1976 batch. He pointed out that two SCS,  
 Shri N.C. Dave and S.K. Saiyed who were appointed to  
 I.A.S. in March 1987 along with the applicant had been

A handwritten signature in black ink, appearing to read "J. B. K." or a similar variation.

assigned the year of allotment as 1976. Accordingly the applicant should have been allotted 1976 as year of allotment. The State Government's argument that Shri M.C.Joshi and four other officers who belonged to SCS and promoted along with the applicant were given 1983 as year of allotment and hence the applicant who was promoted along with them to I.A.S. who belonged to Non-SCS category had to be placed below them in the matter of allotment as per the proviso to Rule 3 (3) (c) of the **Seniority** Rules, cannot be accepted as the applicant cannot be made to suffer the wrong year of allotment assigned to the five SCS officers. He pointed out that these five SCS officers had submitted representations regarding the wrong year of allotment. The respondents should review and correct the year of allotment made to the SCS officers if found necessary but the applicant cannot be made to suffer due to their inaction.



13. Mr.Akil Kureshi learned counsel for the respondents stated that the applicant's year of allotment has been correctly\* fixed. He pointed out that the year of allotment in respect of the five other State Civil Service officers are also correctly fixed, according to Rules. He said that the applicant had not established that they were wrongly fixed. On the basis that these five officers year of allotment was correctly fixed, the year of allotment in case of the applicant was fixed keeping in view the proviso to Rule 3 (3) (c) of the **Seniority** Rules. As per the proviso the year of allotment of the applicant can not be fixed ahead of the State Civil Service Officers appointed to I.A.S. in the same year. He referred to the case of Union of India Versus **G.K. Sangameshar** (A.I.R.1994 SC 612) wherein it has been held by the Supreme Court that Rule 3(3) (c) is legal and valid. Further, representations made by the

five SCS officers have been rejected by the Government of India. He was also of the view that the five officers of SCS had longer year of service than the applicant, and the applicant cannot be placed before them. He argued that these five SCS officers should have been joined as respondents by the applicants and hence the application is not maintainable.

14. We may first dispose of the preliminary objection raised by Shri Akil Kureshi learned advocate for Respondent No.1, that the application is not maintainable because the five SCS Officers who have been mentioned in the application have not been impleaded as parties. We are not persuaded to his contention. This is not a case where a seniority list as such is under challenge. It is not prayed that the applicants may be assigned seniority over any particular officer or a few officers of the I.A.S. The relief claimed by the applicant is only for assignment of proper year of allotment. As the Union of India & State of Gujarat have been impleaded as respondents we are satisfied that the necessary parties are on record for an effective adjudication of the controversy.

15. Mr. Akil Kureshi further based his arguments on the interpretation of Rule 3 (3) (c) of the Seniority Rules relating to assignment of year of allotment. For convenience the entire rule is reproduced below :

*Ab*

**Regulation of Seniority Rules, 1954.**

"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.

(3) The year of allotment of an officer appointed to the service after the commencement of these rules, shall be : -

(b) Where the officer is appointed to the service by promotion in accordance with sub-rule (1) of rule 8 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the 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 sub-rule (1) of rule 8 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officer recruited to the Service in accordance with rule 7 of those Rules so started officiating shall be determined ad hoc by the Central Government in consultation with the State Government concerned.

(c) Where the officer is appointed to the Service by selection in accordance with sub-rule (2) of rule 8 of the Recruitment Rules, such year as may be determined ad hoc by the Central Government on the recommendation of the State Government concerned and in consultation with the Commission.

Provided that he shall not be allotted a year earlier than the year of allotment of an officer appointed to the Service in accordance with sub-rule (1) of rule 8 of the Recruitment Rules, whose length of service in the State Civil Service is more than the length of continuous service of the former in connection with the affairs of the State."

It may be the contention that proviso to rule 3 (3) (c) to safeguard the interest of officers promoted from State Civil Service to I.A.S. who have longer years of service than the officers promoted from non-State Civil Services.

However, it does not mean that the year of allotment of non-State Civil Service officers can be determined in any manner without rhyme or reason. The year of allotment of non-State Civil Service officers has to be determined after giving

due regard to the basic principles of fair play and natural justice. In this connection, it is useful to quote from the judgment in the case of Shri K.Ramachandran Vs. Union of India decided by the Ernakulam Bench of C.A.T. in O.A.NO. 536/1986 wherein the applicant who was also a non-State Civil Service officer selected to I.A.S. had challenged the year of allotment giving to him.

16. We are extracting certain portions from the judgment in Ramchandran's case where this aspect was discussed.

"On a conspectus of the provisions contained in clause (a) (b) and (c) of Sub rule (3) of Rule 3 of the Seniority Rules, it is clear that as regard the direct recruits the State Service promotees and the non-State Service selectees, three different modes are provided in these three clauses for fixing the year of allotment. Obviously it has been so done taking into account the three totally different channels from which they come into the service. And regarding each category a method which if we may say so is consistent with the source has been provided so that no detriment or injustice is caused to the officers falling within the three categories. While in the case of the promotee State Service Officers the year of allotment of the juniormost among the direct recruits who has officiated continuously in a senior post from a date earlier than the commencement of such by the officer is fixed as the year of allotment, due to obvious reasons neither that method nor any other straight-jacketed method has been provided regarding the selectee non-State Civil service officers, in respect of whom such year as may be determined ad hoc by the Central Government on the recommendation of the State Government and in consultation with the Commission, shall be the year of allotment. The wholesomeness of the principle underlying the above method can well be appreciated when a reference is made to Rule 8 (2) of the Recruitment Rules under which the selectees are recruited. They are persons of outstanding ability and merit not being a member of the State Civil Service but who have held a gazetted post in a substantive capacity for not less than eight years. They are persons who had held responsible gazetted post in connection with the affairs of the State, comparable in importance and responsibility to the State Civil Service for a pretty longer number of years. Their selection itself is only on a special case.

*16*

Indeed the provisions in sub rule (2) of Rule 8 of the Recruitment Rules has been laid down for inducting such persons to the IAS so much so there is every reason for not providing a rigid rule in the matter of the assignment of the year of allotment of such selectee officers and leaving it to be determined ad hoc by the Central Government on the recommendation of the State Government concerned."

In a subsequent case decided by the same Bench in O.A. Nos. 851/86 and 852/86, it was held that assignment of year of allotment in the case of the applicant could not be sustained in law or logic. The respondents were directed to assign the year of allotment to the applicants afresh giving due regard to the service of the applicant in the post of Deputy Secretary to Government by reckoning the same service equivalent to the post in the senior scale in the I.A.S. and on considering the date the juniormost direct recruit started to officiate in the senior scale of I.A.S. longer than the date of appointment of the applicants to the post of Deputy Secretary.

17. The perusal of the judgments by the Hon'ble Supreme Court in similar matters also support this view. They are as under :

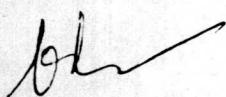
1. In case of B.R. Kapur Vs. Union of India & Ors., AIR 1980 SC 1275. While examining IPS Seniority Rules which are similar to IAS Seniority Rules, the Court observed "the most important factor for the purpose of assignment of year of allotment, the date of continuous officiation in a senior post is the only relevant factor."

2. In Amrik Singh & Ors. Vs. Union of India & Ors., AIR 1980 SC 1447, the Supreme Court declared "it is perfectly open for Central Government to relax any irregularity by relaxing any particular Rule or Regulation ..... Government must be satisfied, not subjectively but objectively, that any rule or regulation affecting the conditions of service of a member of the All India Services causes undue hardship, then the inequitous consequence thereof may be relieved against by relaxation of the concerned rule or regulation."

"When we consider the year of allotment what becomes large is Rule 3 (iii) (b). Continuous officiation is the decisive factor".

3. In case of R.N.Sinha Versus State of Bihar, 1983 Lb.I.C.165, it was decided "for the purpose of assignment of the year of allotment the date of continuous officiation in a senior post is the only relevant factor".

4. In case of Union of India Vs. G.N.Tiwari & Ors., 1986 SCC (L&S) 166. The Court observed "they were also entitled by reason of the legal fiction contained in explanation 2 to Rule 3 (3) (b) of the Seniority Rules to have the entire period of their continuous officiation without a break in a senior post from the date of their officiating appointment to such senior post till the date of their appointment into the service, counted for purpose of determining their



year of allotment under rule 3 (3) (b) of the Seniority Rules".

18. In the present case the respondents have not been able to place any material on record showing as to how they have arrived at the year of allotment of the applicant as enshrined in the rules. They have only repeatedly stressed the restrictive portion of the proviso to rule 3 (3) (c) Z arguing that the applicant cannot be placed ahead of State Civil Service officers selected to I.A.S. along with them.



However, they have not explained as to how 2 officers namely Mr. M.C. Dave and Mr. S.K. Saiyed were assigned the year of allotment as 1976 as they were also promoted to I.A.S. along with the applicant. The main argument of the respondents is that as Mr. M.C. Joshi and five others of State Civil Service were promoted along with the applicant to I.A.S. were given 1983 as year of allotment. The applicant of the Seniority Rules, in order to satisfy proviso of Rule 3 (3) (c) Z had to be necessarily given same year of 1983 as year of allotment and placed below the five SCS officers. They have not given any reason for giving 1983 as year of allotment to the five SCS officers. In fact, these five SCS officers had made representation against the year of allotment which was turned down by the respondents. The applicant has rightly therefore, questioned the year of allotment given to him. The applicant cannot <sup>be</sup> made to suffer if these five <sup>^</sup> SCS officers have been given the wrong year of allotment. Any mistake committed in fixing the year of allotment of the five State Civil Service officers cannot deny the rightful claim of the applicant for a correct year of allotment.

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Therefore, we are not convinced of the reasons given out by the respondents regarding assignment of year of allotment to the applicant. We feel that it has not been done in a proper way taking into account the length of the officiating service in the senior scale and the post he was holding at the time of his selection to I.A.S. Accordingly, we quash and set aside the orders of the Government of India dated 3.2.1992, conveying rejection of the applicant's representation against the wrong assignment of year of allotment -Annexure-A/12. Keeping in view of the observations made above, respondent no.3 is directed to review the applicant's case in consultation with respondent No.1 and re-assign **his** year of allotment to I.A.S. as per rules within a period of three months from the date of receipt of these orders. It is open to the respondents to review and reassign the year of allotment given to the State Civil Service Officers Mr.Joshi and others if found necessary. With the above directions, the application is allowed.

No order as to costs.

Sd/-

(Dr.K.K.Saxena)  
Member (J)

Sd/-

(V.Radhakrishnan)  
Member (A)

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