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के.प्र.प्र. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निःशुल्क प्रक्रिया
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

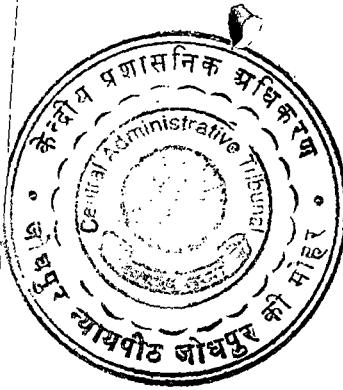
1. O.A. No. 276/1998
2. O.A. No. 277/1998

DATE OF DECISION : 17.07.2002

1. J.P. Chandelia **Petitioner's**
2. R.N. Arvind
Mr. Sanjeev Purohit (in OA No. 276/98)
Mr. M.S. Singhvi with Mr. N.K. **Advocate for the Petitioner (s)**
Khandelwal (in OA No. 277/98)

Versus

Union of India and Ors. **Respondent's**
Mr. N.M. Lodha, Sr. C.G.S.C. **Advocate for the Respondent (s)**
Mr. Kamal Dave, for the State of Rajasthan



CO-RAM :

The Hon'ble Mr. Justice O.P. Garg, Vice Chairman

The Hon'ble Mr. A.P. Nagrath, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes

-sd-

(A. P. NAGRATH)
Adm. Member

-sd-

(JUSTICE O. P. GARG)
Vice Chairman

7/19

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 276 and 277 of 1998
(O.A.Nos. 194/95 & 332/97 CAT, Jaipur)

Date of Decision : This the 17th day of July, 2002.

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The Hon'ble Mr. Justice O.P. Garg, Vice Chairman

The Hon'ble Mr. A.P. Nagrath, Administrative Member

.....

J.P. Chandelia S/o Shri B.R. Chandelia,
Aged around 44 years, Resident of 15 A, Sooraj Nagar (E)
Civil Lines, Jaipur. Presently posted as
Deputy Secretary to Government,
State Enterprises Department,
Government of Rajasthan,

.....Applicant in OA No. 276/98

By Advocate Mr. Sanjeev Purohit, Adv. brief holder for
Mr. Govind Mathur.

...

R.N. Arvind S/o Shri Hanuman Prasad,
Aged around 50 years, Resident of B 56-57,
Gangasagar Colony, Vaishali Nagar, Jaipur.
Presently posted as Managing Director,
Rajasthan State Cooperative Marketing-
Federation Ltd (RAJFED), Jaipur.

.....Applicant in OA 277/98

By Advocate Mr. M.S. Singhvi with Mr. N.K. Khandelwal.

VERSUS

1. Union of India through Secretary
Department of Personnel, Pension & Public Grievances
Government of India,
New Delhi.
2. State of Rajasthan through Secretary,
Department of Personnel,
Government of Rajasthan,
Jaipur.
3. Union Public Service Commission through
Secretary, Dholpur House, Shahjahan Road,
New Delhi.Respondents in both OAs.

By Advocate Mr. N.M. Lodha, for the U.O.I.

By Advocate Mr. Kamal Dave, for the State of Rajasthan.

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O R D E R

PER MR. JUSTICE O.P. GARG, VICE CHAIRMAN :


The above named two applicants, Sarv Shri J.P. Chandelia and R.N. Arvind, who were the senior members of State Administrative Service of Rajasthan, have since been appointed on promotion to Indian Administrative Service (IAS). They are aggrieved on account of in-action on the part of the respondents to give them appointment in IAS against the quota of the year 1992-93 as well as on account of the positive decision of the respondents to assign them the Year of Allotment (YOA) as '1988'. Shri R.N. Arvind, is admittedly junior to Shri J.P. Chandelia. By and large, he would swim or sink with the findings and decision which may be arrived at in the case of Sh. J.P. Chandelia. The facts and the controversy in the two OAs overlap. With a view to

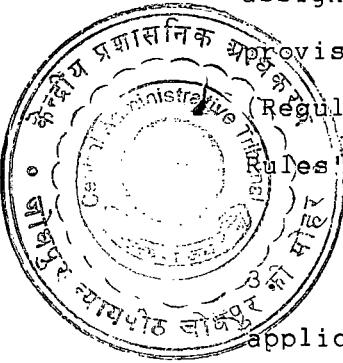
avoid repetition and for the sake of clarity, it is proposed to decide both these O.As by this common judgement.

2. By way of preface, it may be pointed out that the promotion of the members of the State Civil Service to IAS, is governed by the provisions of Indian Administrative Service (Appointment by Promotion), Regulation, 1955 [for short 'Promotion Regulations']. The Promotion Regulations have come into being with a view to open-up avenues and to provide opportunities for advancement and progression in career for the members of the State Civil Service as well as to avoid stagnation and to give due recognition to their merit and excellence in the discharge of their public duties. The promotion regulations are virtually the complete code or apparatus providing a mechanism for appointment on promotion to IAS from amongst the members of the State Civil Service. Under the Promotion Regulations, a committee, ~~xxx make selections~~ as contemplated under Regulation 3, was constituted for the purpose of selection of the officers of Rajasthan Cadre for promotion to IAS against the quota of 27 vacancies (23 substantive and 4 unforeseen/fortuitous) of the year 1992-93. The Committee met on 23rd, 24th and 25th of March, 1992. The list prepared by the Committee was approved by the Union Public Service Commission (UPSC) on 4th May, 1992. In the select list, the name of Shri J.P. Chandelia appeared at 20th position while the name of Shri R.N. Arvind, found place at sl. No. 21 i.e. just below Shri J.P. Chandelia. On the recommendations of the State Government, Officers whose names appeared from sl. Nos. 1 to 19 (Up to Shri P.C. Balai) were appointed under the provisions of Promotion Regulation 9 (1).

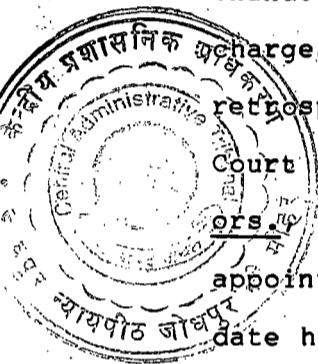
The select list was not operated by the State Government in respect of the officers whose names appeared from sl. nos. 20 to 27. The first vacancy which would have been available to Shri J.P. Chandelia, occurred on 1st February, 1993. His promotion was with-held on account of issue of a Chargesheet dated 9th February, 1993 under Rule 16 of the Rajasthan Civil Services (CC&A) Rules, 1958. Shri Chandelia, filed O.A. No. 100/1993 before the Jaipur Bench of this Tribunal on 17th February, 1993. An interim order was passed in that O.A. on 16th March, 1993 to the effect that "any appointments made or any meeting of the fresh Selection Committee under Regulation 5 will not prejudice the case of the applicant." The said O.A. was finally decided on 18th August, 1993 with the direction to the State Government to consider the case of the applicant (Shri J.P. Chandelia), expeditiously and make necessary reference/recommendation either under Regulation 9 (1) or Regulation 9 (2), 10 or third Proviso to Regulation 7 (4) of the Promotion Regulations. Two months' time was allowed to make such a reference/recommendation. The interim order dated 16th March, 1993 stood discharged. The departmental inquiry against Shri J.P. Chandelia, culminated in his exoneration from all the charges on 24th August, 1994. Due to pendency of the departmental inquiry against Shri J.P. Chandelia, who was at 20th position in the select list, appointment of Shri R.N. Arvind, whose name was at sl. No. 21 and other selectees occupying down-ward positions in the select list, were stalled and in effect the select list of the year 1992 was operated in respect of only 19 officers as against 27 selectees. Another selection committee for filling up 25 vacancies of the quota for the year 1993-94 met on 26th October,

1993. The break-up of the 25 vacancies was, 12 existing + 9 anticipated + 4 unforeseen/fortuitous. The list prepared by the selection committee on 26th October, 1993 acquired the status of select list within the meaning of Promotion Regulation 7 (3) on approval by the Commission on 28th December, 1993. The name of Shri J.P. Chandelia, found place at Sl. no. 9. Incorporation of his name in the select list was treated as "provisional" subject to clearance of inquiry pending against him. Shri R.N. Arvind, was placed at 10th position i.e. again just below Shri Chandelia. Since the selection of Shri R.N. Arvind was unconditional, he was appointed on promotion to IAS by Notification dated 31st December, 1993. After Shri J.P. Chandelia was completely exonerated of the charges against him on 24th August, 1994, the process of making his 'conditional' selection as 'un-conditional', was initiated and ultimately, he came to be appointed on promotion to IAS on 25th September, 1994. Both, Shri J.P. Chandelia and Shri R.N. Arvind, have been assigned the Year of Allotment (YOA) as '1988', in terms of the provisions of Rule 3 of the Indian Administrative Service Regulation of Seniority), Rules, 1987 [for short "Seniority Rules"].

The wood-cut profile of the grievance of both the applicants is: that since they have been duly selected for promotion to IAS by the selection committee which met in the month of March, 1992, to fill-up the vacancies for the quota of the year 1992-93, they should have been appointed against the vacancies of that year and in any case, if, for certain reasons Shri J.P. Chandelia, was not to be extended the benefit of



appointment on account of initiation of departmental inquiry against him, there was no earthly reason to defer appointment of the officers whose names appeared in the select list below Shri J.P. Chandelia and against whom, there was no material to deny the benefit of promotion to IAS; that the select list could be operated in respect of the selectees placed at sl. Nos. 21 to 27, as in view of the 2nd Proviso to Promotion Regulation 9 (1) appointment of an officer junior to select list officer, whose name has been included or deemed to be included provisionally in the select list, one post could have been kept vacant for such a provisionally included officer. The stand taken by Shri J.P. Chandelia is that after he had been completely exonerated of the charges, he would be treated to have been promoted with retrospective effect in view of the law laid down by the Apex Court in the case of Union of India & Ors. Vs. K.V. Jankiraman & Ors. AIR 1991 SC 2010, and thus, has to be deemed to have been appointed on promotion to IAS on 1st February, 1993, on which date he was entitled to be promoted on the basis of his placement in the select list of the year 1992. Shri R.N. Arvind, has also pleaded that if, Shri J.P. Chandelia, is given benefit of retrospective promotion, as claimed by him, in that event, he is also entitled to promotion with retrospective effect as he was placed just below Shri J.P. Chandelia in the select list of the year 1992. Both of them have further asserted that if they are deemed to be the promotees from the select list of the year 1992, the resultant effect would be that their YOA would stand changed from '1988' to '1987'. They have also challenged the subsequent select list of the year 1993 as the vacancies of the year 1992-93 had been wrongly clubbed together with the



anticipated and unforeseen/fortuitous vacancies of the year 1993-94. According to them by illegally clubbing the vacancies of two years, the zone of consideration was unlawfully enlarged with the result some of their juniors in the State service, got an occasion to march-over them. Taking the above grounds, the two applicants viz. Sarv Shri J.P. Chandelia and R.N. Arvind, have filed separate O.As as mentioned above under Section 19 of the Administrative Tribunals Act, 1985, for the two specific reliefs; firstly, that the respondent No. 1 be directed to issue orders appointing them to IAS on promotion in accordance with the Promotion Regulations against the vacancies of the year 1992-93 and secondly, to assign them YOA prior to the year 1988 treating them to have been appointed to IAS against the vacancies of the year 1992-93. These OAs were initially filed before the Jaipur Bench but were transferred to this Bench by the Hon'ble Chairman of the Tribunal on administrative ground.

Separate replies have been filed in both the O.As by the Union of India (respondent No.1) as well as the State of Rajasthan (respondent No.2). The UPSC (respondent No.3), has chosen not to file any reply as it was not required. The replies filed in both the OAs are almost on identical lines. The thrust of the reply on behalf of Union of India is, that under Promotion Regulation 9, it is the State Government which makes the recommendation for appointment of an officer whose name appears in the select list and since the State Government limited the recommendation only in respect of the officers up to Shri P.C. Balai, placed at sl. No. 19, no further appointments in the absence of recommendation of the State Government could be made.

As regards Shri J.P. Chandelia, it is pointed out that a select list officer becomes "deemed provisional" in the select list in view of the first Proviso to Regulation 7 (3) of the Promotion Regulations. It is further asserted that in terms of the Regulation 7 (4) of the Promotion Regulations, the 1992-93 select list ceased to be operative on coming into force of the 1993-94 select list and consequently, the applicants could not be appointed on the basis of the list which became inoperative or had lapsed. The allegations with regard to the YOA and clubbing of the vacancies have been denied and it is maintained that the select list of the year 1993 was prepared strictly in accordance with the provisions of Promotion Regulations and the allotment of year has been made in the light of the provisions of Rule 3 of Seniority Rules.

5. We have heard Shri Harish Purohit brief holder for Shri Govind Mathur, counsel for Shri J.P. Chandelia and Shri M.S. Singhvi, Senior Advocate, assisted by Shri N.K. Khandelwal, for Shri R.N. Arvind, on the one hand and Shri N.M. Lodha, for the Union of India and Shri Kamal Dave, for State of Rajasthan, on the other, at considerable length and have given our thoughtful consideration to the matter.

6. Shri N.M. Lodha, raised a preliminary objection about the entertainability and maintainability of the OA filed by Shri R.N. Arvind, on the ground that it is hit by the provisions of Section 21 of the Administrative Tribunals Act, 1985, being hopelessly barred by time. Shri R.N. Arvind, has moved a M.A. No. 4/1999 for condonation of delay, if any. A detailed reply has been



filed in the Misc. Application opposing the condonation of delay. For the reasons contained in the order of date passed in the said Misc. Application we have come to the conclusion that there was no delay in filing the O.A. by Shri R.N. Arvind and in any case, the delay, if any, shall stand condoned. The order passed in the Misc. Application aforesaid, shall form part of this judgement and in the light of the order passed in the Misc. Application, the preliminary objection taken by the respondents stands negatived.



Now, we come to the merits of the case. Shorn of all superfluities, the thumb nail sketch of the case of the parties has been narrated above. It is an indubitable fact that both the applicants were duly selected for promotion to IAS/in the select list of the year 1992. Both of them were to be appointed on promotion to IAS as against the substantive vacancies. However, the list of 1992 was operated by the State Government only upto Shri P.C. Balai, whose name appeared at sl. No. 19 of the select list. Since a departmental inquiry was contemplated against Shri J.P. Chandelia, who was at sl. No. 20 and as a matter of fact, a chargesheet has been served upon him on 9th February, 1993, his name in the select list, was to be deemed as provisional. An officer, who, at the time of selection, is facing an inquiry or a criminal charge or if, the State Government with-holds his integrity certificate, inclusion of his name in the seniority list is treated as 'provisional' in view of the Proviso to Sub Regulation (5) of Regulation 5. The name of an officer whose name has been included unconditionally in the select list, shall be deemed to be provisional, if, after such

inclusion, a chargesheet is issued to him or a chargesheet is filed against him in a Court of law. [See Proviso to Regulation 7 (3)]. Such officers whose names have been included provisionally under Proviso to Sub Regulation (5) of Regulation 5 or whose name is deemed to be provisional under Proviso to Sub Regulation (3), of Regulation 7, cannot be appointed to IAS unless his name is made unconditional by the Commission on the recommendation of the State Government during the period the select list remains in force. In this connection, a reference may be made to the provisions of the 2nd Proviso of Sub Regulation (1) of Regulation 19. Therefore, there was a valid reason for not recommending the name of Shri J.P. Chandelia for appointment to IAS. The State Government adopted a right course by deferring the recommendation for appointment in respect of Shri J.P. Chandelia, till such time his name was made unconditional. But, certainly there was no reason not to operate the select list of 1992 in respect of the officers including that of Shri R.N. Arvind, who was at sl. No. 21 down below up to sl. No. 27 on the occurrence of the substantive or unforeseen vacancies. It appears that the State Government misunderstood and misinterpreted the interim order dated 16th March, 1993 passed by the Jaipur Bench of this Tribunal in O.A. No. 193/1993 filed by Shri J.P. Chandelia. This aspect of the matter has been discussed in detail while finally disposing of the said O.A. on 18th August, 1993. The interim order was not intended to forestall the appointments of the officers whose names appeared in the select list below Shri J.P. Chandelia. As a matter of fact, to meet the contingency as has arisen on account of deferring of the case of Shri J.P. Chandelia, a specific and

explicit provision has been made in the 2nd Proviso to Sub Regulation (1) of Regulation 9, which reads as follows :-

"While making appointment of an officer junior to a select list officer whose name has been included provisionally in the select list, one post will have to be kept vacant for such a provisionally included officer."

The implication of the above provision is that merely because of the name of a senior officer has been included or deemed to be included as provisional, all those officers who were juniors to him in the select list, would not suffer in the matter of appointment and the select list is capable of being operated with regard to the juniors in the select list. The interest of the senior officer has been fully protected by keeping a post vacant for him. Obviously, the stand taken by the State Government that since the appointments were to be made strictly in the order in which the names of the members of the State Civil Service appeared in the select list, the list could not be operated beyond sl. No. 19 (Shri P.C. Balai), as Shri J.P. Chandelia could not be appointed on account of his being subjected to departmental inquiry, is against the provision quoted above. Shri R.N. Arvind at sl. No. 21 or for that matter all other candidates who were duly selected and found their respective positions below Shri J.P. Chandelia could not have suffered. In any case, the interim order passed by the Jaipur Bench of this Tribunal did not prevent the State Government in making recommendation for appointment of Shri R.N. Arvind and others. Be that as it may, the stark reality is that the select list of the year 1992 was operated only with regard to the

officers whose names were incorporated in the select list from sl. Nos. 1 to 19. The officers whose names were from sl. Nos. 20 to 27 were never recommended by the State Government for appointment to IAS. The legal position which flows from the Promotion Regulations is that the Union of India has to act only on the recommendations of the State Government. Since the State Government failed to make recommendation for appointment in respect of the officers at sl. Nos. 20 to 27 they could not be appointed by the Union of India.

Now, the moot point for consideration and determination is with regard to the life of the select list of the year 1992. The 1st Proviso to Sub Regulation (4) of Regulation 7 makes the position clear. It provides that no appointment to the service under Regulation 9 shall be made after the meeting of the fresh committee to draw up a fresh list under Regulation 5 is held. This provision came to be considered with reference to the life of the list prepared by the selection committee on an earlier occasion, in a number of decisions. In a recent decision of the Jaipur Bench of this Tribunal in O.A. No. 509/1996 N. R. Yadav versus Union of India & ors., decided on 3.6.2002, we have, after taking into consideration the decision of the Apex Court in the case of Nepal Singh Tanwar vs. Union of India (Civil Appeals No. 16769 to 16771 of 1996 decided on 9th December, 1996), as well as Division Bench decisions of Chandigarh Bench in M.S. Rao vs. Union of India & ors. (1997) 36 ATC 86, Hyderabad Bench in the case of V.R.K. Molhan Rao vs. Union of India & ors. (1998) 38 ATC 271 and Jaipur Bench in the case of Motilal Gupta vs. Union of India & anr. 2001 (2) AISLJ 81 (CAT), made a concise statement of



law that the select list prepared by the Selection Committee and finally approved by the Commission, holds good and remains operative till the meeting of the next Selection Committee to draw up a new selection panel is held, meaning thereby, the earlier select list shall remain alive and operative only till the date on which meeting of the next Selection Committee takes place. In view of this firm legal position, the select list of the year 1992 expired, stood lapsed or became inoperative on 26th October, 1993, on which date, undoubtedly the next meeting of the Selection Committee was held to prepare a select list of 25 members of the State Civil Service for appointment on promotion to IAS. In view of the unambiguous and clear provisions made in the Promotion Regulations as interpreted in the decisions aforesaid, the earlier list prepared by the Selection Committee which met in March, 1992, came to be inoperative and of no consequence on the date (26.10.93) on which the next Selection Committee met to prepare a fresh panel, even though some of the officers whose names appeared in the select list of the year 1992 were left out as they could not, for whatever reasons it may be, get the benefit of promotion to IAS. The crux of the matter is that the select list of the year 1992 in respect of the officers, who were not promoted to IAS, stood lapsed and inoperative on the date on which the next meeting of the Selection Committee was held.

9. On behalf of the applicant, Shri R.N. Arvind, it was urged that since his selection in the year 1992 was unconditional and inspite of the fact that the appointment of his senior, Shri J.P. Chandelia on promotion to IAS was deferred, he (Shri R.N. Arvind) was entitled to be promoted and since, for no fault of his, he was by-passed, he has to be given promotion from the retrospective date. To the same effect is the submission on behalf of the other applicant, Shri J.P. Chandelia, that since he has been ultimately



exonerated after departmental enquiry from the charges levelled against him, he too is entitled for promotion from the back date.

The learned counsel for the applicants placed emphatic reliance on the decision of the Apex Court in the case of K.V. Jankiraman (supra). Shri N.M. Lodha, learned counsel for the Union of India, repelled this submission and pointed out that the observations made by the Apex Court in K.V. Jankiraman's case are not attracted in the present case in view of the specific Regulations governing the promotion of the State Civil Officers to IAS. We have considered the respective submissions made on behalf of the parties and would hasten to observe that K.V. Jankiraman's case is of no assistance to the applicants. In that case, the Apex Court in para 7 of the report ruled as follows:-


"We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary / criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests."

On the strength of the above observations, it was asserted on behalf of Shri J.P. Chandelia that he was entitled to benefit of promotion to the IAS right from the date a vacancy would have been

available to him on the basis of his selection in the year 1992, as he was completely exonerated of the charges and was not found blameworthy in the least. There can be no quarrel about the general proposition of law laid down by the Apex Court in the case of K.V. Jankiraman. As a matter of fact, the above observations of the Hon'ble Supreme Court now form part of a well embedded general principle of service jurisprudence. Nevertheless, the Apex Court had not intended to lay down an inflexible rule that in every case where an employee is exonerated in disciplinary/criminal proceedings, he shall be entitled to all the benefits including that of promotion from retrospective date. The above observations are, therefore, not of universal application particularly in those cases where the statutory provisions are otherwise. This aspect of the matter came to be considered by the Apex Court in a subsequent case of Union of India vs. Mohan Singh Rathore, 1997 SCC (L&S) Page 113. The Regulations governing appointment on promotion to Indian Police Service (IPS) came to be considered in that case. The Promotion Regulations of IAS and IPS are pari materia and, therefore, what has been said in Mohan Singh Rathore's case (supra) would be applicable to the case of IAS also. In the case of Mohan Singh Rathore, the Jaipur Bench of the Tribunal in O.A. No. 793 of 1992 by order dated 7.8.95 directed the Union of India/State Government to appoint Shri Rathore on par with his juniors. Setting aside the decision of the Tribunal, the Apex Court made a scathing criticism about the approach of the Tribunal in following terms:

"It is seen that the Tribunal does not appear to have had any knowledge of the operation of the provisions of Promotion Regulations. It treated them on a par with general principles of service jurisprudence and directed, without referring to any of the relevant rules, the appellant-Government to appoint him. Therefore, on principle of law the order of the Tribunal is obviously illegal. It is accordingly set aside."

The above observations of the Apex Court are directly on the point and in the light of the said observations, the general principles of law laid down in K.V. Jankiraman's case (supra) would not be attracted to the facts of the present case. The provisions of the Promotion Regulations had to be given effect to.

10. In the case of J.P. Chandelia, issue of "no deterioration certificate" was an essential requirement before his case for promotion to IAS could be considered. After the selection of Shri Chandelia, a departmental enquiry was initiated. In view of the Promotion Regulations, referred to above, his selection was to be deemed as provisional. He could not be appointed to IAS on the basis of the 1992 select list till his name was made unconditional by the Commission on the recommendation of the State Government during the period the said select list remained in force. Issue of "no deterioration certificate" before appointment on promotion to IAS was mandatory as has been held in Mohan Singh Rathore's case (supra) and reiterated in the case of S.A. Engineer vs. Union of India and Ors., (1999) 1 SCC page 304. The reason for requirement of issue of "no deterioration certificate" before appointment of a member of the State Civil Service whose name has been included "provisionally" in the select list or is deemed to be provisional is that the Union of India as well as the State Government should be sure enough that there has been 'no deterioration' in the service of the incumbent in the interregnums. Before promotion, the Government has the right to ascertain and gauge the quality, integrity, honesty and efficiency of the officer concerned.

11. On behalf of the respondents reliance was placed on the



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observations made by the Apex Court in the case of S.A. Engineer (supra). It is a case directly on the point interpreting the Promotion Regulations for appointment to IAS. In that case, the appellant S.A. Engineer was selected for appointment on promotion to IAS by the Committee which met in the month of December, 1984. His name was included in the select list at serial No.11. The Commission approved the select list, but the State Government did not operate the select list and sent no proposal to the Central Government and as such no appointment was made from the select list prepared in the year 1984. Subsequently, the Selection Committee met in December, 1985, to fill up 13 vacancies. The name of the appellant appeared at serial No. 9. The State Government while forwarding the proposal for appointment of other candidates to the Central Government excluded the name of the appellant. The Central Government wanted to know if there had occurred any deterioration in the performance of the appellant after his name was included in the select list which, rendered him unsuitable for appointment to the IAS. Since the name of the appellant was not forwarded to the Central Government, he approached the Bombay Bench of the Central Administrative Tribunal which, by judgement dated 15.02.90 directed the State Government to appoint him to the IAS on the basis of 1987 select list, which in the meantime, had come into being. The appellant was given appointment in pursuance of the order of the Tribunal. Though the appellant was promoted in the year 1987, he claimed salary on the ground that he should be treated to have been promoted to IAS in 1986. The Tribunal did not grant this part of the relief of the appellant, who carried the matter before the Apex Court by filing an appeal. The appeal was dismissed with the observations that it was not that it was without any reason that the State Government did not issue "no deterioration certificate" in



the case of the appellant and did not recommend his name for promotion to IAS. There were serious allegations against the appellant which were being enquired into. It was not that any mala fide is alleged against the action of the State Government. Apex Court furhter observed that the appellant has not suffered in his seniority in the State of Maharashtra as far as the promotee officers are concerned inasmuch as because of his not getting "no deterioration certificate" officers junior to him could not be appointed and have rather suffered more as they could not be promoted till the appellant was either promoted or his name deleted from the select list. The Apex Court took the view that since the appellant was promoted to the IAS in 1987 he could not draw salary as an officer belonging to IAS for the year 1986 though he might have held a cadre post.

12. In view of the specific provisions made in the Promotion Regulations and the decisions aforesaid, the applicant Shri J.P. Chandelia is not entitled to the benefit of appointment on promotion on the basis of his selection in the year 1992 for one simple reason that the select list of the year 1992 was not operated in respect of his name for valid reasons. Whatever reasons may have been for not operating the select list in respect of the officers shown below Shri J.P. Chandelia, the fact remains that the 1992 select list expired when another Selection Committee met in October, 1993. Shri R.N. Arvind, has been appointed on the basis of the select list of the year 1993 on the due date and Shri J.P. Chandelia came to be appointed after his complete exoneration from the charges which formed part of the departmental enquiry against him.

13. On behlaf of Shri R.N. Arvind, it was urged that he was entitled to get benefit of revision of the year of allotment for the



reason that he is entitled to the benefit of fraction of the year above the 6 year's weightage in the light of the provisions of Rule 3 of the Seniority Rules. This submission has been stated simply to be rejected. Rule 3 of the Seniority Rules has been quoted in extenso in para 4(6) of the O.A. No. 277/98 filed by Shri Arvind. A reading of the Rule 3 would make it clear that sub clause (b) [it deals with the seniority of promoted officers] expressly provides that in the calculation, fractions are to be ignored. The submission on behalf of the applicant, Shri Arvind, that .66 year should be construed to be a whole year is, therefore, baseless. It would be pertinent to mention that Shri J.P. Chandelia figured at Sl. No. 9 of the 1993 select list, whereas Shri R.N. Arvind was at Sl. No. 10. Though Shri Chandelia was actually promoted to IAS on 19.09.94, his seniority was fixed considering his deemed appointment to the IAS as from 31.12.93 on which date, his immediate junior (Shri R.N. Arvind) from the same select list ~~was~~ promoted. In terms of proviso to Rule 3(3)(ii) of the Seniority Rules, the promoted officers cannot be assigned the year of allotment earlier than the year of allotment assigned to the officer senior to him in that select list. In view of this provision, the seniority of Shri R.N. Arvind cannot be fixed higher than the seniority assigned to Shri J.P. Chandelia. Shri Arvind cannot stage a march over his senior - both in service and in the select list.

14. There is yet another aspect of the matter. Both the applicants have claimed the year of allotment prior to the year 1988 on the premises that they should be treated to have been promoted on the basis of 1992 select list. The implication of this assertion is that if they are treated to have been appointed to IAS on the basis

of 1993 select list, 1988 as the year of allotment has been correctly assinged. We have mentioned in sufficient details the reasons why the applicants could not be treated to have been appointed on the basis of the select list of the year 1992. Without resorting to tautology, suffice it to say, that since the select list of the year 1992 was not operated by the State Government and had ultimately lapsed as a result of the meeting of the subsequent Selection Committee, the applicants could not be deemed to have been selected on the basis of the list which, in law, became non-existent. Both on legal and factual matrix, the applicants were appointed by virtue of their selection and incorporation of their names in 1993 select list. For the purposes of seniority, they have been rightly assigned 1988 as the year of allotment. Their grievance on the point is totally unfounded and unsustainable.

15. A short and swift reference be made to another submission made on behalf of the applicants. They have challenged the selection of the year 1993 on the ground that vacancies of the years 1992-93 and 1993-94 have been clubbed, which has resulted in enlarging the zone of consideration. It was brought to our notice that this aspect of the matter was considered in O.A. No. 23/94 - Ranjeet Singh Gathala vs. Union of India and Ors., which has been decided on 23.05.2000 by the Jaipur Bench of this Tribunal. Clubbing of the vacancies has been held to be bad in law and it was found necessary that the respondents shall hold a meeting of review Selection Committee for preparation of select list separately for the vacancies of the years 1991-92, 1992-93 and 1993-94 keeping in view the law laid down by the Apex Court in the case of Vipin Chand Heera Lal Shah, 1997 SCC (L&S) page 41. Pursuant to the aforesaid



decision, the matter is engaging the attention of the concerned authority. The applicants have been appointed on the basis of the incorporation of their names in the 1993 select list itself. They cannot be permitted to hold loose and fast. They cannot challenge or strike against the same selection on the basis of which, they came to be promoted to IAS. For purposes of the present O.As, the plea with regard to invalidity of the selection on the ground of clubbing the vacancies, is meaningless and otiose.

16. In the result, for the reasons stated above, we find that both the O.As are devoid of any merits and substance. The applicants are not entitled to any relief. The two O.As are, therefore, dismissed without any order as to costs.

-sd-

(A. P. NAGRATH)
Adm. Member

-sd-

(JUSTICE O. P. GARG)
Vice Chairman

cvr.

प्रभागित तही प्रतिलिपि
प्रभाग अधिकारी (न्यायिक,
प्रशासनिक अधिकारी
जोधपुर

~~Renier L. G.~~
~~23/10/02~~

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