

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 179/2012

Reserved on 13.2.2014

Pronounced on 31 March, 2014

Hon'ble Sri Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

Arvind Kumar Dwivedi aged about 57 years son of late Sri Shiwa Kumar Dwivedi resident of 6/166, Vipul Khand, Gomti Nagar, Lucknow, at present posted as Special Secretary, General Administration , Govt. of U.P., Lucknow.

Applicant

By Advocate:- Sri B.K.Shukla

Versus

1. Union of India through Secretary, Ministry of Personnel and Training, Govt. of India, New Delhi.
2. State of U.P., through Principal Secretary, Personnel and Appointment, Govt. of U.P., Civil Secretariat, Lucknow.
3. Arvind Narain Mishra aged about 56 years son of Sri Govind Narain Mishra, presently posted as Special Secretary (Finance), Govt. of U.P.,

Respondents

By Advocate: Sri Rajendra Singh for R.NO.1

Sri U.N. Mishra for R.No.2

Sri Vikas Vikram Singh for Sri I.B. Singh Learned Senior Advocate for R.No.-3.

ORDER

DELIVERED BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present O.A. is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

- i) to issue an appropriate order or direction quashing the order dated 4.4.2012 passed by the Opposite Party No. 2/ Principal Secretary, Personnel and Appointment contained in Annexure No. 1 to the O.A. with all consequential benefits.
- ii) to issue an appropriate order or direction commanding the opposite parties not to disturb or interfere with the seniority of the applicant as fixed vide Govt. order dated 27.8.99.
- iii) to issue any other relief which this Hon'ble Tribunal may deem just and proper in the circumstances of the case.

iv) to allow this original application with all costs in favour of the applicant.

2. The applicant challenges the validity of the order dated 4.4.2012 issued by the Respondent No. 2. It is also indicated that he claims himself to be a Demobilized Officer was commissioned as short Service Commissioned Officer on 23.5.1975 and thereafter he was released from Indian Army in August 1980. The applicant applied against the advertisement for recruitment to the Provincial Civil Services which was issued on 20.4.1980. After undergoing the process of direct recruitment, the applicant got selected and appointed to the Provincial Civil Services (Executive Branch) on 6.7.1982 and he was assigned seniority of PCS Batch, 1981. The applicant also claimed to get his seniority in PCS cadre according to the judgment of the Hon'ble Supreme Court pronounced in the case of Dilbagh Singh Vs. State of U. P. reported in 1995 (4) SCC 495 and Mahesh Chandra Vs. State of U.P. decided on 25.8.1998. Since the Reservation Rules, 1973 and Appointment Rules, 1980 were interpreted by the Hon'ble apex Court, therefore the benefit of past services of the Armed Forces were given to the applicant while re determining his seniority as per the demobilized Officers Appointment Rules, 1980, as the said benefit was given to other similarly situated officers. Accordingly the applicant's seniority was re-determined vide order dated 27.8.1999, and the applicant was backdated from PCS Batch 1981 to PCS Batch 1976 and he was placed below one Sri Yogendra Kumar Bahel. Accordingly, the benefit of about 5 years of seniority was given to the applicant. The learned counsel appearing on behalf of the applicant has also pleaded that the order dated 27.8.1999 of re-determination of applicant's seniority was wrongly interfered with by the Respondent No. 2 by issuing the impugned order dated 4.4.2012 whereby it was held that since the process of selection of the applicant in PCS has neither commenced nor concluded prior to 6.8.1978. Not only this, it is also indicated by the applicant that the seniority of the applicant has attained finality which

was given to him on 27.8.1999 and the same was not in dispute before the Hon'ble Apex Court in the case of **Rajendra Pratap Singh Yadav & Others vs. State of U. P and Others reported in 2011 (7) SCC 743**

as such, the applicant's placement in the seniority be not disturbed.

3. The arguments advances on behalf of the applicant was that the judgment of the Hon'ble Apex court passed in Rajendra Pratap Singh Yadav's case was not a judgment in rem, but the judgment in personem and the same shall apply prospectively, therefore, the benefit of seniority which was conferred upon him, cannot be withdrawn at this belated stage, which has been done in the instant case therefore, action of the respondents while passing the order dated 4.4.2012 is liable to be quashed and the respondents be directed not to interfere with the seniority of the applicant as determined by the State Government vide order dated 27.8.1999.

4. That by the order dated 4.4.2012 (Annexure-1) State Government has set aside its own order dated 27.8.99 giving him back seniority of 1976 batch instead of 1981 batch. The plea of State Govt is that it is done so to comply with the judgment dated 5.7.2011 rendered by Hon'ble Supreme Court in the case of **Rajendra Pratap Yadav and others Vs. State of Uttar Pradesh & Others (2011) & SCC 743.**

5. The concept of back seniority and benefit of past service arose with the publication of UP Non-technical (ClassII) services (Reservation of vacancies for demobilized officers) Rules 1973 (hereinafter referred to as 1973 rules). Demobilized officer meant disabled defence service officer, emergency commissioned officer and the short service commissioned officer of the armed forces of the union who was commissioned on or after November 1, 1962 but before January, 10, 1968 or on and after December, 3, 1971 upto 27.3.1977 and released any time thereafter. However, these rules were to remain in force only for a period of 5 years. These rules ceased to exist on 5.8.1978. When the 1973 rules lapsed in 1978 some selections for the vacancies reserved under 1973 rules were concluded or the selection

process was on but the appointment could not be made. To regularize the selection and appointment of these officers against the vacancies reserved under 1973 Rules, a new set of rules i.e. 1980 rules were promulgated on 19.8.80 by the State Government. Thus 1980 rules do not deal with reservations. They are only rules for appointment. Rules governing reservations are 1973 rules which ceased to exist after 5 years. i.e. on 5.8.1978. 1980 rules do not deal with reservation. They are only Rules for appointment. Under 1980 rules, there is no provisions with respect to reservation of vacancies to the demobilized officers of the armed forces of the union. These rules are new set of rules for the purpose of regularizing appointments of demobilized officers whose selection procedure had commenced or concluded under 1973 rules but appointment were not made prior to 6.8.78. The 1980 rules have been given retrospective effect with effect from 6.8.1978 to regularize the appointment of demobilized officers whose selection, Process was concluded or commenced before 6.8.1978. Rule 4 of 1980 Rules prescribes a cut off date which provides that the benefit of the Rules shall be available only against the vacancies reserved for demobilized officers under 1973 rules whose process of recruitment commenced or was completed prior to 6.8.1978 when 1973 rules lapsed. Therefore, a demobilized officer whose selection was not against the vacancies reserved under 1973 rules and his process of selection started after 6.8.78 is not entitled to seniority under 1980 rules.

6. The admitted fact is that the applicant was released from the army on 20.4.1980. An advertisement was issued on 5.8.1980 for selection and appointment to UP Government Service (Executive Branch).The applicant appeared in the examination and succeeded. He was appointed on 6.7.1982. The appointment order, Annexure-5 of O.A. mentions that seniority between officers inter se and vis-a vis other officers will be determined according to UP Civil (Executive Branch) Service Regulations 1941. Thus a relevant question is whether the Govt. can grant seniority to a selected short service commissioned officer dehors the rules. The only

exception could be that the officer was a demobilized officer who had been appointed during foreign aggression in the army and had competed in civil service before the expiry of 1973 rules under the vacancies reserved for demobilized officers. Thus in order to claim benefit of back seniority and past military service, the following conditions were to be satisfied:-

- (i) On joins army during proclamations of emergency.
- (ii) one competes for civil service being a demobilized officer
- (iii) The process of selection commenced or concluded before 5.8.1978.
- (iv) Recruitment was for the vacancies reserved under 1973 rules for a demobilized officer.

7. The learned counsel appearing on behalf of the respondent No. 2 i.e. the State of U. P. submitted that the applicant was appointed in the Provincial Civil Services on 6.7.1982 after undergoing the process of direct recruitment, which was advertised on 5.8.1980 does not refer about the Demobilized Officers Reservation Rules, 1973 nor Demobilized officers Appointment Rules 1980. As such, the applicant cannot claim any benefit of the aforesaid two rules. It is also argued by the learned counsel for the respondents that in the appointment order of the applicant, it is clearly mentioned that his seniority shall be determined as per the relevant provisions of the relevant Service Rules applicable on PCS cadre on this count also, the applicant cannot claim special seniority as provided in Demobilized Officers Reservation Rules, 1973 and Demobilized Officers Appointment Rules ,1980. the learned counsel for the respondents has also submitted that the bare reading of the judgment of the Rajendra Pratap Singh Yadav (supra), is clarified that the said judgment is a judgment in rem and after that the review petition was also filed and one sri Arvind Narain Misra also filed the contempt petition for non compliance of the judgment and order passed in the case of Rajendra Pratap Singh Yadav (Supra) and 12 others, similarly situated persons, list was furnished by the State of UP along with the Short counter affidavit filed before the Hon'ble Apex Court on 17.11.2011 and after taking

cognizance by the Hon'ble Apex Court, the Hon'ble Apex court issued notice to the State Government for which the State government has filed his explanation.

8. That Judged in the background of above, it can be said that the applicant was not entitled to back seniority or benefit of military service. That it was further contended by the State of U.P. that the Hon'ble Apex Court had not only passed the judgment and order on Rajendra Pratap Singh Yadav's case (Supra) regarding seniority of Sri Rakesh Kumar Jolly, Sri Rajendra Singh and Sri Sudhir Kumar, but in respect of other similarly situated employees.

On the basis of the factual background and the legal submissions made by the learned counsel for the respondent No. 2, it is clear that the judgment of Rajendra Pratap Singh Yadav case was not a judgment in personem, but was in fact a judgment in rem and was therefore fully applicable on the applicant as well because applicant's recruitment and appointment is not covered by any stretch of imagination under the demobilized Officers Reservation Rules, 1973 or by Demobilized Officers Appointment Rules 1980. Not only this, it is also argued by the learned counsel for the respondents appearing on behalf of the State that even if the Reservation Rules, 1973 are stretched to the year 1980 by application of Dilbagh Singh (supra), the same does not change the terms of either the advertisement dated 5.8.1980 or the appointment order of the applicant dated 6.7.1982. Not only this, there is no amendment in appointment Rules 1980 and which are still contained the cut-off date of 6.8.1978. Needless to say that unless the said date of 6.8.1978 is changed, amended, altered the applicant's case cannot be said to be covered by legal fiction.

9. However, 1973 and or 1980 rules have been subject matter of extensive litigation before High Court, Allahabad and Hon'ble Supreme Court. **IN the case of Ram Janam Singh Vs. State of UP. 1994(2) SCC 622**, the Apex Court declared (refer to Para 9) of the judgment) that the reservations for appointment of demobilized officers

who had been commissioned during periods of emergency formed a class by themselves and the preferential treatment given to them in the matter of seniority was justified. Paras 9,11, and 14 of the judgment read as under:-

“9. On behalf of the appellant , it was pointed out that as it is, with the reservation for appointment of demobilized officers who had been commissioned on or after November, 1, 1962, but before January 10, 1968 and those who had been commissioned after December 3, 1971, during the periods of emergency, the seniority of the members of the State Civil Services has been affected, but such demobilized officers being a class by themselves, there was justification to give them a preferential treatment in matter of seniority. But, there cannot be any conceivable reason to extend the same benefit in the matters of seniority to persons who had been commissioned during normal times i.e. after January 10, 1968 when the emergency had been lifted and before December 3, 1971 when another emergency was imposed. The State also supported the stand of the appellant and purported to justify as to how Rule 3(1) of 1973 Rules and Rule 3(b) of the 1980 Rules covered a class of persons who cannot be treated on a par with those appointed after January 10, 1968 and before December 3, 1971.

11. It appears that the framers of the 1973 and 1980 Rules while treating the persons who had been commissioned on or after November 1, 1962 but before January 10, 1968 and again on or after December 3, 1971, took into account the circumstances and the background in which such persons were commissioned in Armed Forces i.e. when the nation was faced with foreign aggressions and the cry of the time was that persons should join the Armed Forces to defend the integrity and sovereignty of the nation.

14..... According to us, the plea that even persons who joined army service after cessions of foreign aggression and revocation of emergency have to be treated like persons who have joined army service during emergency due to foreign aggression is a futile plea and should not have been accepted by the High Court.”

10. Subsequently, in the case of *Dilbagh Singh Vs. State of UP 1995*

(4) SCC 495, a different interpretation of Reservation Rules 1973 and Appointment Rules 1980 was pronounced by Hon'ble Supreme Court. As per Dilbagh Singh case a person recruited after 1978 was entitled for the benefit of seniority even after the expiry of 1973 Rules (i.e. even after 6.8.1978). It was held that right of reservation in appointment provided under 1973 Rules should be deemed to be in operation till 1980 Rules were

framed and thus the appellant of the said case was held entitled to seniority as per 1980 Rules, though his process of recruitment had commenced on 2.5.1979 i.e. much after the cut off date of 6.8.1978 and the said advertisement of 1979 did not provide for reservation of vacancies as provided in the reservation Rules 1973. The case of Dilbagh Singh was upheld by the Apex Court in the case of **Mahesh Chand vs State of U.P. 2000(10) SCC 492** wherein at page 493, it was observed as under in paras 5 and 6 of the judgment.

“5. Rule 4 enables the appointment of persons selected for appointment against vacancies reserved for demobilized officers, as a result of recruitment , the process of which was concluded or commenced prior to 6-8-1978: these persons are made eligible and can be considered for appointment against vacancies reserved for demobilized officers under the 1973 Rules.

6. The scope of Rule 5 is wider. It regulates the seniority and pay of persons appointed against vacancies referred to in the 1973 Rules. Therefore, while it may cover those who are appointed under Rule 4, it also covers all others who are appointed against vacancies referred to in the 1973 Rules. That being so, the judgment in the case of Dilbag Singh Vs. State of U.P. (1995) 4 SCC 495 which construed Rule 5, does not require reconsideration on the ground that Rule 4 was omitted from consideration.”

11. The High court of Allahbad relying on the decision of Dilbagh Singh allowed the writ of Santosh Kumar Dwivedi and Sushil Kumar Yadav whose seniority was fixed by State Government as of 1977 and 1976 batch. The applicant's case being at par was also given back seniority of 1976 batch by order dated 27.8.1999.

12. Subsequently, the controversy was set at rest in the case of **State of UP and another Vs. DinKar Sinha (2007) 10 SCC 548** where it was categorically held that a person whose appointment in the civil/police service is not against the vacancies reserved under 1973 Rules cannot claim seniority under 1980 Rules. The Hon'ble Apex Court observed as under:-

29. Submission of Mr. Rai that the respondent having joined the pre- commissioned training in 1976 would be entitled to the benefit of the 1973 Rules or thereby rights were accrued to him, in our opinion, has no merit.

30. The 1980 Rules, as noticed hereinbefore, only have a limited operation by regularizing appointments of

demobilized officers whose selection process had been commenced or concluded under the 1973 Rules but appointments had not been made before the expiry thereof. There was no provision for reservation of vacancies for the demobilized officers of the Armed Forces of the Union of India.

33. Not only the nomenclature of the 1980 Rules is different from that of the 1973 Rules, the purport and object is also different. Whereas the 1973 Rules provided for reservation of vacancies for the demobilized officers, the 1980 Rules provided for appointment of demobilized officers to a limited category of employees.

36. The same principle has been reiterated in *Mahesh Chand (supra)* wherein this Court held:

"6. The scope of Rule 5 is wider. It regulates the seniority and pay of persons appointed against vacancies referred to in the 1973 Rules. Therefore, while it may cover those who are appointed under Rule 4, it also covers all others who are appointed against vacancies referred to in the 1973 Rules. That being so, the judgment in the case of Dilbag Singh which construed Rule 5, does not require reconsideration on the ground that Rule 4 was omitted from consideration."

It is, therefore, evident that the 1980 Rules would cover only those persons who were appointed against the vacancies referred to in the 1973 Rules and not those who joined much later.

13. That before proceeding with the merits of the case, the submissions made on behalf of State of U.P. about the relevant provisions of the Demobilized Officers Reservation Rules, 1973 and Demobilized Officers Appointments Rules, 1980 and their applicability in the instant case needs to be considered. It appears that after the cessation of first emergency due to external aggression/war on 10.1.1968, an attempt was made by State of U.P. to rehabilitate its disabled defence service officers, emergency commissioned officers and Short Service Commissioned Officers of the Armed Forces of the Union and for that purposes, the State of U.P. had initially promulgated Special Rules, namely U.P. Non-Technical (Class-II) Services (Reservation of vacancies for Demobilized Officers) Rules, 1968, whereby 20% of the permissible vacancies in all 'Non-technical Class-II Services' to be filled by direct recruitment, were reserved for the aforesaid Demobilized Officers. The said Rules, namely the 'first Reservation Rules, 1968' had a life of 5 years and expired on 28.3.1973.

14. That the imposition of second emergency on 3.12.1971 due to external aggression by Pakistan, which was followed by imposition of emergency due to internal disturbance in 1975, the second Reservation Rules, namely " U.P. Non-Technical (Class-II) Services (Reservation of vacancies for Demobilized Officers) Rules, 1973 were promulgated on 6.8.1973. As per Rule 1 (3), the applicability of the said Rules, namely the 'Second Reservation Rules, 1973, was for a period of 5 years from the date of their natural death on 6.8.1978.

Rule 3 of the said Reservation Rules provided that only 10% of permanent vacancies of all Non-Technical (Class-II) Services shall be reserved for the Demobilized Officers. Rule 4 provided special method of recruitment for them, which merely included examination of compulsory subject and viva voice test.

15. That under Rule 6 of the Reservation Rules, 1973, special seniority was provided for those, whose appointment was made against 10% vacancies of Non-Technical (Class-II) Services reserved under section 3 of the Reservation Rules, 1973. Under this special seniority, provision, such appointees were to be given seniority as per their second attempt for appointment to PCS, irrespective of their actual date of appointment. This special seniority provided for backdating of seniority.

16. That it is also relevant to note that if 10% vacancies were not reserved under the advertisement for appointment of Demobilized Officers under the Reservation Rules, 1973, and if the general 8% reservation as provided by G. O. dated 20.8.1973 issued by the State Government for ex-Armymen in the matter of recruitment was applied in the advertisement, no special seniority can be given to the selectees, as contemplated under the Reservation Rules, 1973. This was in fact the case in hand because applicant's advertisement dated 5.8.1980 does not have any reference to the Reservation Rules, 1973, rather it reserved only 8% vacancies for appointment of ex-servicemen. It is also to be noticed that before the expiry of the Reservation Rules, 1973 on 5.8.1978, vacancies

were advertised on 12.7.1978 for the combined State Civil Services Examination, 1978 and this advertisement categorically provided that 10%vacancies shall be reserved for Demobilized Officers under the Reservation Rules, 1973. Even before the process of the said recruitment could have been completed the Reservation Rules, 1973 died their natural death of 5.8.1978. In order to save the aforesaid selection advertised on 12.7.1978, a special purpose rule, namely U.P. Non-Technical(Class-II Group B) Services (Appointment of demobilized Officers) Rules, 1980 was promulgated, which was implemented w.e.f. 6.8.1978 so as to save the aforementioned selection advertised on 12.7.1978. It is also to be seen that the aforesaid Rules 1980 made no provision for reservation of Demobilized Officers. Even the short title of the Rules of 1980, unlike the Rules of 1968 or 1973 do not use the word reservation . the nomenclature of the rules 1980 only uses the word appointment of demobilized officers. For ready reference , Rule 4 of Appointment Rules 1980 is reproduced herein below:-

“4. Appointment: a person, selected for appointment to a non-technical Class II/Group B service or post, against the vacancies reserved for Demobilized Officers, as a result of recruitment, the process of which was concluded or commenced prior to August 6, 1978, in accordance with the provisions of the Uttar Pradesh Non- technical (Class II) Service (Reservation of Vacancies for Demobilised officers) Rules, 1973 (hereinafter to be referred to as the said rules, shall be eligible and be considered for appointment against the vacancies reserved for demobilized officers under the said rules:

Provided that the reserved vacancies shall be utilized first for the appointment of Disabled Defence Service Officers, and if any such vacancies still remain unfilled the same shall then be made available to other Emergency commissioned Officers and Short Service Commissioned Officers.

Explanation:- the notification of vacancies or the advertisement there of by the commission shall, among other be a process of recruitment within the meaning of this Rule.”

17. That it was vehemently emphasized by the Counsel for the State of U.P. that a perusal of Rule 4 and its explanation clearly provide that only such appointments to Non-Technical (Class-II) Services can be covered under the Appointment Rules, 1980, which fulfills the following two conditions:-

(a) The said appointment should have been made against the 10% vacancies reserved under the 1973 Rules.

(b) The process of the recruitment must have either commenced or concluded prior to 6.8.1978.

From the explanation of Rule 4, it was emphasized that since issuance of advertisement would include commencement of the recruitment process, therefore as per Rule 4, it should have been made prior to 6.8.1978, and only then an appointment can be said to be covered by the Appointment Rules, 1980.

The advertisement dated 5.8.1980 as contained in Annexure No. CA-5, against which the applicant claims his appointment was not issued prior to 6.8.1978 and it also does not reserve 10% vacancies under the Reservation Rules, 1973 (instead it reserves only 8% vacancies as per the G. O. dated 20.8.1977). Not only this, the appointment order of the applicant also does not refer, either to the Reservation Rules, 1973 or the Appointment Rules 1980 but on the contrary, it refers to determination of his seniority as per the normal services Rules applicable on Provincial civil Services (Executive Branch), and therefore, the applicant is bound by the terms and conditions of his appointment order which he has willfully accepted without any objection and joined the services in 1982 without any protest.

18. That so far as applicability of the relevant Case Laws cited by both the parties is concerned, the provisions of the aforementioned Reservation Rules, 1973 and Appointment Rules, 1980, came up for consideration before the Hon'ble Apex Court on several previous occasions and 5 judgments were pronounced by the Hon'ble Apex Court regarding interpretation of the aforesaid two special Rules, out of which the applicant has mainly relied on the judgments of **Dilbagh Singh (Supra)** and **Mahesh Chandra (Supra)**.

19. That in **Dilbagh Singh's** case, the Hon'ble Apex court observed in para 3 that-

"Rules were withdrawn w.e.f. 6.8.1978, the appellant is not entitled to the benefit when he was recruited in the year 1979. that appears to be obviously a mistaken stand taken by the Government, since 1980 Rules have been given retrospective effect w.e.f. 6.8.1978. Thereby even 1973 Rules may be deemed to be in operation till 1980 Rules were framed afresh."

Subsequently the aforesaid matter was referred to three Judges Bench in Mahesh Chand's case, in which the Hon'ble Apex Court had held that-

"The scope of Rule 5 is wider. It regulates the seniority and pay of persons appointed against vacancies referred to in the 1973 Rules. Therefore, while it may cover those who are appointed under Rule 4, it also covers all others who are appointed against vacancies referred to in the 1973 Rules. That being so, the judgment in the case of Dilbag Singh which construed Rule 5, does not require reconsideration on the ground that Rule 4 was omitted from consideration."

20. That the applicant, while relying on **Dilbagh singh (Supra)** and **Mahesh Chandra (Supra)** contented that since the benefits of Reservation Rules, 1973, by operation of law, were extended up to 1980 and since advertisement of his selection was issued on 5.8.1980, therefore even while applying the principles laid down in para 39 of Rajendra Pratap Singh Yadav's case (Supra), the 1973 Rules should be treated to have been extended up to 1980 and consequently the applicant should be given the benefit of special seniority by applying the Appointment Rules, 1980, under which his appointment should be deemed to have been made.

21. That the aforesaid submission of the applicant was strongly refuted by the Learned Counsel for the State of U.P. by explaining that even if Reservation Rules, 1973 which died its natural death on 6.8.1978 are deemed to have been stretched up to 1980, the applicant cannot derive any benefit from the same because his advertisement dated 5.8.1980 did not have any reference to the Reservation Rules, 1973 and instead of reserving 10% vacancies under 1973 Rules, only 8% vacancies under the G.O. dated 20.8.1977 were reserved, which does not entitle the applicant to claim any special seniority under the aforesaid Special Rules.

Apart from that it was clarified that in none of the aforesaid judgments, cut off date of 6.8.1978 as mentioned in Rule 4 of the Appointment Rules, 1980, was either amended or even interpreted. The cut off date of Rule 4 is still 6.8.1978. Thus rule 4 of Appointment Rules, 1980, clearly provide that only those appointments can be said to have been made under the said Rules, which were made against the vacancies reserved under the Reservation Rules, 1973 and process of which were either commenced or concluded prior to 6.8.1978. Thus the provisions of Rule 4 of Appointment Rules, 1980 cannot cover those appointments, whose process of recruitment was started in August 1980 and who were not in existence, even if their continuance, by legal fiction is presumed up to 1980. Under these circumstances, the applicant's appointment cannot be said to be covered by Appointment Rules, 1980 in any manner.

22. That at this juncture, it was clarified by the Counsel for the Respondent No. 2 that applicability of the Reservation Rules, 1973 or Appointment Rules, 1980 further came up for consideration by the Hon'ble Apex Court in the State Appeal i.e. **State of U.P. Vs. Dinkar Sinha reported in 2007 (10) SCC 548**, in which the Hon'ble Apex Court made the following observations in Para 27 to Para 36 relevant extract of which are being reproduced again herein below:-

"Pr. 27.The 1980 Rules seek to give limited retrospective effect by conferring benefits in regard to appointment to the reserved post for the Demobilized Officers whose process of recruitment was to be completed or commenced before 6.8.1978 in accordance with the 1973 Rules. Rules 5 of the 1980 Rules, however, is in pari material with Rule 6 of the 1973 Rules.

Pr. 30 The 1980 Rules, as noticed hereinbefore, only have a limited operations by regularizing appointments of Demobilised Officers whose selection process had been commenced or concluded under the 1973 Rules but appointments had not been made before the expiry thereof. There was no provision for reservation of vacancies for the Demobilised Officers of the Union of India.

Pr. 31. The 1973 Rules was a temporary statute. It died its natural death on expiry thereof. The 1980 Rules does not contain any repeal and saving

clause. The provisions of the relevant provisions of the relevant provisions of the General Clauses Act will, thus have no application. Once a statute expires by efflux of time, the question of giving effect to a right arising there under may not arise. In any event, in this case, no such right accrued to the respondent. Reservation to the extent of 2 % might have been fixed by reason of a government order issued in the year 1977 but the same had nothing to do with the 1973 Rules or with the 1980 Rules.

Pr. 32 The 1980 Rules neither repealed nor replaced the Rules the 1980 Rules provided for a new set of Rules. They were to have a limited application viz. regularization of appointment of Demobilized Officers.

Pr. 33 Not only the nomenclature of the 1980 Rules is from that of the 1973 Rules, the purport and object is also different. Whereas the 1973 Rules provided for reservation of vacancies for the Demobilised Officers, the 1980 Rules provided for appointment of Demobilised Officers to be a limited category of employees.

Pr. 34 The 1980 rules for the aforementioned effect has been given a retrospective effect i.e. from 6.8.1978 only for achieving the said purpose notices herein before. By reason thereof, this the 1973 rules had not been kept alive.

Pr. 36It is , therefore, evident that the 1980 rules would cover only those persons who were appointed against the vacancies referred to in the 1973 Rules and not those who joined much later."

23. That it was explained on behalf of the State of U.P. that prior to pronouncement of the judgment of **Dinkar Sinha's case**, the interpretation given in **Dilbagh Singh's case and Mahesh Chandra's case** was the Law of the Land, which was strictly applied by the State Government. After the pronouncement of the judgment of **Dinkar Sinha's case** on 9.5.2007, it became fully established that unless a person's appointment is made against 10% vacancies reserved under 1973 Rules and unless process of his appointment had commenced prior to 6.8.1978, no special seniority contemplated under the Special Rules can be given to him.

Therefore, when the matter regarding seniority of Demobilized Officers of Appointment Department and Home Department again came

up before the Hon'ble Supreme Court asked the State Government to explain about its stand on the issue, the State Government had filed a Supplementary Counter Affidavit on 17.11.2011 in the case of **Rajendra Pratap Singh Yadav's**. In para 15 of the said Supplementary Counter Affidavit, it was stated as follows:-

“15. That the law laid down by this Hon'ble Court in the case of **Dinkar Sinha**, being the latest judgment on the subject matter of the instant petitions, which has considered all the three previous judgments, therefore all these Special Leave Petitions are governed by the same. Therefore, it is most respectfully submitted that the present Special Leave Petitions be adjudicated by this Hon'ble Court, while applying the ratio of **Dinkar Sinha's case**.”

By the same supplementary Counter Affidavit, a list of past beneficiaries of special seniority of Reservation Rules, 1973 and Appointment Rules, 1980, which were similarly situated to the contesting parties (and which included the applicant as well), was also furnished in the form of a Chart before the Hon'ble Apex Court.

24. That with the aforesaid factual background, the Hon'ble Apex Court after considering all the previous Case Laws pronounced a detailed judgment and order on 5.7.2011 in **Rajendra Pratap Singh Yadav's case reported in 2011 (7) SCC 743**, relevant portion of Paras 23, 24, 25, 26, 39 & are being reproduced herein below:-

“Pr. 23Therefore, a mobilised Officer, whose selection was not against the vacancies reserved under the 1973 Rules and his process of selection started after 6.8.1978, by no stretch of imagination, is entitled to the seniority under the 1980 Rules.

Pr. 24.It is not in dispute that Respondent 4 was appointed in the year 1994 against the 8% vacancies reserved under the Government Order dated 20.8.1977.....Since the appointment of Respondent 4 in the U.P. Police Service in the year 1994 was not against the vacancies reserved under the

1973 Rules, he could not have been granted seniority of eight years by the State Government.

Pr. 25

.....Seniority of the Officers appointed in the U.P. Police Services after 1980 shall be determined in accordance with provisions of Rule 21 of the U.P. Police Service Rules, 1942. Therefore, the respondent could not have been assigned seniority of eight years only because he happened to be a Short Service Commissioned Officer.

Pr. 26

.....Service conditions mentioned in the order of appointments is binding on the employee and employer like if the same are not against the statutory rules governing the service conditions or public policy or the provisions of the Constitution of India. The appointment order of Respondent 4 specifically mentions that the seniority of Respondent 4 and other officers selected shall be determined in accordance with the U.P Police Service Rules, 1942. It is also submitted that having accepted this service conditions as mentioned in the appointment order, the claim of Respondent 4 for grant of eight years seniority as he was a Short Service Commissioned Officer could not have been allowed.

Pr. 39

The 1973 Rules ceased to exist after five years i.e. on 5.8.1978. The life of the Rules, according to the judgment delivered in Dilbag Singh was extended upto 1980. In any even no one could be given the benefit of the 1973 Rules after 1980. Admittedly, Respondent 4 was appointed in 1994 and the benefit could not have been extended to Respondent 4.

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Respondent 4 did not join the armed forces during Emergency and thus stealing a march over 181 officers is not only contrary to the Rules but is discretionary and arbitrary and violative of Articles 14 and 16 of the Constitution. We are clearly of the view that Respondent 4 and similarly placed employees could not have been given the benefit of the 1973 Rules. These Rules were not in existence when they were appointed. Therefore, they could not have derived any benefit from the 1973 Rules."

25. That on the basis of the aforesaid pronouncements of the Hon'ble Apex Court especially those of **Dinkar Sinha and Rajendra Pratap Singh Yadav (Supra)**, which were passed by the Hon'ble Apex Court after taking cognizance of Dilbagh Singh's case (Supra) and a judgment of 3 judges, Bench pronounced in Mahesh Chandra's case (Supra) it is revealed that the Hon'ble Apex Court has interpreted the relevant provision of Reservation Rules, 1973 & Appointment Rules 1980 and thereafter it was categorically held that:

- (a) Appointment Rules, 1980 would cover only those persons, who were appointed against the vacancies reserved under the Reservation Rules, 1973 and not those, who were appointed against the vacancies reserved under the Government Order of 1978.
- (b) A Demobilized Officer, whose selection was not made against the vacancies reserved under the 1973 Rules and whose process of selection had started after 6th of August 1978, by no stretch of imagination, is entitled to special seniority provided under 1980 Rules.

After considering the detailed submissions of the parties and after perusing the relevant case laws placed before the Bench, it has become abundantly clear that the Reservation Rules of 1973 provided for 10% reservation of vacancies along with special selection procedure and special seniority to be given to demobilized officer. But need less to say that these rules died their natural death on 5.8.1978 and thereafter the appointment Rules 1980 made no provisions for Reservation of Demobilized Officers. Even the short title of the rules of 1980 unlike the Rules of 1968 and 1973 do not use the word "Reservation of Demobilized Officer". The title of the Rules 1980 only uses the word 'Appointment of Demobilized Officer'. This Appointment rules 1980 was made specifically to protect the selection which was advertised on 12.7.1978 i.e. the selection process, which had commenced prior to 6.8.1978.

26. That the Hon'ble Apex Court in **Dinkar Singh's case (Supra)** has categorically held in para 31 that special seniority under Appointment Rules, 1980 can be given only to those persons, whose appointments were

made against 10% vacancies reserved under the Reservation Rules, 1973 and not to those, who joined much later. This was followed by a categorical pronouncement by the Hon'ble Apex Court in paras 39 & 44 of the judgment of **Rajendra Pratap Singh Yadav's case (Supra)** in which it was said that while referring to **Dilbagh Singh's case (Supra)** and **Mahesh Chand's case (supra)** that according to those judgments, 1973 Rules were extended up to 1980. In any event, no one could be given the benefit of 1973 Rules after 1980. While referring to the appointment of the private respondent in that case, who was appointed much after 1980, it was clarified that the said benefit cannot therefore be extended to the persons appointed much later because at the time of their appointment, the said Rules were not in existence, therefore, they cannot derive any benefit from 1973 Rules.

27. That in the instant case, the applicant had joined the Civil Service in 1982 and at that time, the Reservation Rules, 1973 was certainly not in existence. For this reason as well, the applicant's claim to special seniority under Reservation Rules, 1973 and Appointment Rules, 1980 is not tenable in law.

28. That the Hon'ble Apex Court in Para 26 of **Rajendra Pratap Singh Yadav's case (supra)** has already held that service conditions mentioned in the order of appointments are bindings on both the employer and employee, therefore the applicant, after having accepted the offer of Appointment, also accepted all the conditions mentioned therein, hence his seniority ought to have been determined only under the provisions of U.P. Civil (Executive Branch) Service Regulations, 1941 and the same cannot be legally determined according to Rule 5 of the Appointment Rules, 1980 as claimed by the applicant. Hence the contention of the applicant in that regard is not tenable in law. Since the order dated 4.4.2012 passed by the Respondent No. 2 i.e. State of U.P. is strictly in accordance with the law laid down by the Hon'ble Apex Court in **Rajendra Pratap Singh Yadav's case (Supra)**, therefore there is no

infirmity in the order impugned in the instant O.A. and the applicant's challenge to the same is not sustainable in law, hence the same is rejected.

29. That so far as the submission of the applicant that judgment of Dilbagh Singh was affirmed in Mahesh Chand, which is passed by 3 judges Bench of the Hon'ble Apex Court and subsequent judgments of **Dinkar Sinha's case and Rajendra Pratap Singh Yadav's** case were two Judges only is concerned, it is submitted that the said contention is absolutely baseless, misconceived and ill founded. Firstly it is noteworthy here that the Hon'ble Apex Court, while passing two subsequent judgments of **Dinkar Sinha's case and Rajendra Pratap Singh Yadav's** case have duly considered the pronouncements of **Dilbagh Singh's case and Mahesh Chand's** case and therefore, they are not per-in-curium. Secondly this contention of 3 Judges Bench being considered by subsequent Bench of two Judges were duly considered and noted down in para 32 of **Rajendra Pratap Singh Yadav's case (supra)**, but even then the Hon'ble Apex Court has categorically given its findings in paras 39 & 44, therefore it is not open for the applicant to raise the said issue again before this Tribunal. Lastly it would not be proper for this Tribunal not to apply the subsequent judgments of **Dinkar Sinha's case and Rajendra Pratap Singh Yadav's case**, when both of the aforesaid judgments duly refer to the law laid down in **Dilbagh Singh's case and Mahesh Chand's** case and the same have been distinguished in the subsequent judgments. Hence the contention made by the applicant in that regard is not tenable in law and hence rejected.

30. That the applicant had also contended that the word "similarly situated" used in para 44 of the judgment of **Rajendra Pratap Singh Yadav's case (Supra)** only refers to three private respondents i.e. Rakesh Kumar Jolly, Rajendra Singh & Sudhir Kumar and it does not apply to any other person, hence the said judgment should not have been applied on the applicant for taking away the special seniority given to

him under the Reservation Rules, 1973 merely because the word similarly situated was mentioned therein in the past.

This contention is also not tenable in view of the fact that when the State of U.P. was not applying the judgment of **Rajendra Pratap Singh Yadav's** case on other similarly situated persons (including the applicant), who were earlier given the said benefit as per the directions contained in para 44 of the judgment and when a contempt case was fixed as discussed earlier, the Hon'ble Apex Court had itself taken cognizance of the aforesaid contemptuous action by issuing notices to the State of U. P. in the said contempt petition filed by private Respondent No. 3 i.e. Sri Arvind Narain Mishra and the contempt petition was converted into an I.A. of the said case of **Rajendra Pratap Singh Yadav Vs. State of U.P.** After issuance of the aforesaid contempt notice, an action is taken and a report was prepared by the State of U. P. and the status of action taken on the other similarly situated persons including the applicant was submitted through a reply affidavit. As soon as the copy of the said affidavit was given to the applicant of contempt petition, the contempt petitioner had withdrawn the said contempt petition after having been satisfied that the compliance of the judgment was made on similarly situated persons.

31. That apart from the aforesaid factual background, the judgment of **Rajendra Pratap Singh Yadav's case** is indeed a "judgment in rem" and not a judgment in personem" because Rule 4 of the Appointment Rules 1980 and the application of Reservation Rules 1973 the appointees after the cut-off date of 6.8.1978 has been duly considered by the Hon'ble Apex Court in the judgment of **Rajendra Pratap Singh Yadav's case (Supra)** cannot exclude him from the application of the aforesaid judgment, which is now the Law of the Land and this Tribunal is fully bound by the judgment pronounced by Hon'ble apex Court under Article 141 of the Constitution of India. Therefore, the said contention of the applicant is not tenable in law.

32. That lastly the applicant tried to suggest that the judgment of **Rajendra Pratap Singh Yadav's case** only have prospective operation i.e w.e.f. 5.7.2011 and onwards and it does not operate retrospective. The submission of the applicant in that regard is that since his seniority had already been finalized, therefore under the garb of **Rajendra Pratap Singh Yadav's case (supra)**, his seniority could not have been re-determined by passing the impugned order and the said judgment could not have been applied retrospectively. The Hon'ble Apex Court in a judgment delivered in **M. A. Murthy Vs. State of Karnataka & Others (2003) 7 SCC 517** has laid down that normally the decision of the Hon'ble Supreme Court enunciating a principle of law is applicable to all cases irrespective of its state of pendency because it is assumed that what is enunciated by Hon'ble Supreme Court is, in fact, the law from inception. The Doctrine of prospective overruling, which is a feature of American Jurisprudence is an exception to the normal principle of law. In view of the law laid down by the Hon'ble Apex Court, the applicant's objection about applicability of **Rajendra Pratap Singh Yadav's case (Supra)** cannot be accepted. Moreover, the respondent cannot be faulted for applying the law laid down by the Hon'ble Apex Court in Rajendra Pratap Singh Yadav's case, while issuing the impugned order and while re-determining the applicant's seniority.

33. Finally the Apex Court in the case of **Rajendra Pratap Yadav and Others vs. State of Uttar Pradesh and others (2011) 7 SCC 743**, after considering the entire earlier case law on the subject laid down that the seniority can be claimed by those demobilized officers who were recruited under reserved vacancies of 1973 rules and whose recruitment had either commenced or concluded prior to the expiry of 1973 rules i.e. 6.8.1978. In any event, no one could derive any benefit after 1980. One who joined service after 1980, could not be given the benefit of rules. The Hon'ble Apex Court in para 33 has also taken notice of earlier judgments such as Dilbagh Singh and Mahesh Chandra. In the final, the Apex Court

directed the State Govt. to publish a fresh seniority list. Thus, the 1973 or 1980 Rules were finally interpreted and question of law decided after having considered the entire law on the subject. Consequently, it is a judgment in rem and binding on all whether they were party or not. The action of the State Govt. in passing the order dated 4.4.2012 in the circumstances is absolutely justified.

34. The O.A. in the above background is dismissed without any order as to costs.

J. Chandra

(Jayati Chandra)
Member (A)

U.R. Choudhary

(Navneet Kumar)
Member (J)

HLS/-