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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
LUCKNOW CIRCUIT BENCH

Registration O.A. No.190 of 1988 (L)

Vikramaditya Singh Applicant

Versus

Union of India & Others Respondents

Hon.Mr.Justice K.Nath, V.C.

Hon.Mr. M.M. Singh. Member(A)

(By Hon.Mr. Justice K.Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for refixing the applicant Vikramaditya Singh's seniority in the post of Constable, Head Constable and Asstt. Sub Inspector of Police in the Central Bureau of Investigation and in particular to be placed above respondent No.5 Dayal Singh Rawat. There is also a prayer to direct the applicant to be promoted as Head Constable from the date the next junior constable was so promoted; similarly there is a request for his further promotion as Asstt. Sub Inspector of Police, in particular as from the date of promotion of respondent No.5. Annexure-13, an order dated 4.8.88 by which^a number of persons were promoted as Head Constables^h is also^h sought to be quashed and a further direction is sought to restrain the respondents from holding the examination for promotion of Head Constables to the post of Asstt. Head Constables as per Notice, Annexure-14 dated 19.9.88.

2. The applicant, Vikramaditya Singh was appointed as a Constable on 31.10.66 in the U.P. State Police. He

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was confirmed as such on 31.10.69. He was sent on deputation to the C.B.I. as Constable at Lucknow on 18.5.74. On 15.4.79 an examination described as a qualifying examination for promotion as Head Constable was held and the applicant qualified that examination.

3. On 1.1.83 the applicant was permanently absorbed as Constable in the C.B.I. Annexure-3 is a list of persons who were promoted as Head Constables; person at Sl.No.1 was promoted on 24.12.85, persons at Sl.Nos 2 to 47 were promoted on 4.8.88. Annexure-4 is another list by which a number of persons who were Constables were further promoted as Asstt. Sub Inspector of Police; the person at Sl.No.1 was promoted on 26.7.82, others were promoted on various dates in the year 1987. The applicant's grievance is that the persons named in lists Annexures 3 and 4 were all junior to him as Constables so that he had been superseded while persons junior to him had been promoted as Head Constables and even as Asstt. Sub Inspector of Police.

4. Annexure-5 is a seniority list dated 2.5.85 of Constables. The applicant stands at Sl.No.529. His date of appointment was indicated as 31.10.69 instead of 31.10.66. On his representation dated 17.6.85, Annexure-6 the date of appointment was corrected to be 31.10.66 vide Annexure-7.

5. By Annexure-8 dated 6.1.88, the applicant applied for promotion as Head Constable, but the application was rejected by orders contained in Annexure-9 dated 25.2.88 on the ground that he still stood at Sl.No.529

in the seniority list and only those Constables were considered for promotion as Head Constable who had been confirmed, i.e. absorbed upto 15.11.77; it was stated in Annexure-9 that his case for promotion as Head Constable would be considered on his turn.

6. The applicant made further representations on 4.4.88, Annexure-10, Annexure-11 and 22.6.88, Annexure-12 for promotion as Head Constable. A D.P.C. met on 14.7.88 which selected 68 Constables for promotion as Head Constable contained in the list, Annexure-13 dated 4.8.88 but the applicant was not included in that list.

7. It appears that in 1977 as well as 1978 the applicant had submitted his option for absorption in the C.B.I. but it had not been accepted on account of non-availability of quota for deputationists; he again applied for absorption in 1979 and his application was forwarded by Annexure-20 dated 12.7.79 to the Head Office. He was absorbed with effect from 1.1.83 by order dated 1.5.85, Annexure-2.

8. The applicant's case is that while he was declared successful at the qualifying test held on 15.4.79 in which he had appeared against the quota of deputationists, he was not promoted while persons junior to him namely Ram Singh, N.M.Maniappa, K.J.Sunder Rao, Om Prakash I and Dayal Singh Rawat, respondent No.5 were promoted as Head Constables. He further said that while the list of the examination of 15.4.79 had not been exhausted, another departmental qualifying examination was held on 14.9.80 from which also promotions were made, but he was not bound to take that examination. The applicant claims that on the very basis of the examination held

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on 15.4.79 he should have been promoted and that his services as Constable in U.P. Police should have been counted for the purposes of his seniority in the C.B.I. He has placed reliance on the decision of the Supreme Court in the case of K.Madhvan and Another Versus Union of India & Others 1987 SC 2291 (supra = 1987(5) SLR 725).

9. This Original Application was filed on 26.10.88. An interim order was passed on 4.5.89 enabling the applicant to appear at the selection test for the post of Assistant Sub Inspector of Police; the applicant appeared at the test on 6.5.89; the applicant's result is subject to the ultimate orders that may be passed in this case. Respondent No.5, Dayal Singh Rawat was declared successful and was promoted as Assistant Sub Inspector of Police by order dated 15.12.89 on the basis of that examination. On the facts stated above, the applicant has prayed for the reliefs set out in the first para of this judgement.

10. The case in defence is mainly set out in the Counter Affidavit of respondents 1 to 4; the Counter Affidavit of respondent No.5 adopts the statement of defence in the Counter Affidavit of respondents 1 to 4. According to the respondents, the seniority of the Constables who came over to the C.B.I. on deputation is governed by their date of absorption in the C.B.I. under the Office Memorandum dated 22.12.59, Annexure-C.3 which contains the general principles for determining seniority of various categories of persons employed in the Central Services; the length of service in the parent Department is not to be counted. It is next said that promotion to the post of Head Constable from the post of Constable was initially governed by the C.B.I.

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(class III and class IV posts) Recruitment Rules, 1967, Annexure-C1 issued on 4.7.67 and according to those rules the post of the Head Constable was a selection post, appointment to which was to be done on merit and not by seniority. The nature of the post of the Head Constable was converted into a non-selection post by the C.B.I. (Class III and Class IV posts) Recruitment (Amendment) Rules, 1980 under Annexure-C2 dated: 25.7.80. It is said therefore that only from 25.7.80 promotion to the post of Head Constable could be made on the basis of seniority; prior to that date it had only to be made on the basis of merit. We may mention that the particulars of the examination held on 15.4.79 were not set out correctly in the original counter affidavit. Complete details were given in the supplementary counter dated 18.1.90. It is stated that out of 80 vacancies for Head constables, only 20 vacancies were earmarked for deputationist quota, being 25% but the applicant was placed at 28th position in the D.P.C. panel, hence he could not be promoted on the basis of that examination. It was next said that under the general principles of seniority contained in Annexure -C3, the applicant's seniority was governed by the date of absorption i.e. 1.1.83. It was urged that the Supreme Court decision in the case of K.Madhavan could not apply to the applicant because the applicant was governed by the principles set out in Annexure- C.3.

11. It was next pleaded that in respect of the qualifying examination held on 14.9.80, there were only 20 vacancies under deputation quota. It was therefore urged that the applicant was not entitled to be promoted as Head constable and much less as an Asstt. Sub Inspector of Police.

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12. In addition to the case stated in the Counter Affidavit of respondents 1 to 4, the stand taken by the respondent No.5 is that he was appointed as Constable in the Rajasthan Police on 17.7.71 and joined the C.B.I. Jaipur Branch on deputation on 21.11.75. He said that he appeared in the examination of 15.4.79, was declared pass for promotion as Head constable but could not be promoted for reasons explained in the other Counter Affidavit. He said that by Annexure-C 16 dated: 9.4.84 he was promoted as Head Constable on Adhoc basis against the deputation quota and that in the Police of Rajasthan itself he had been promoted as Head Constable on 30.4.84 Vide Annexure-C.17 on the basis of written test of Head Constables conducted by State Police Authorities of Rajasthan. He said that he was absorbed in the C.B.I. as Head Constable on 31.3.85 while the applicant had been absorbed only as Constable on 1.1.83. He appeared at the promotion examination for the post of Astd. Sub Inspector on 6.5.89 and having been declared successful was promoted as A.S.I. on 15.12.89.

13. The respondents have also strenuously urged that the applicant's claim is highly belated and is barred by limitation and the principles of delay and laches.

14. The applicant filed rejoinder. He did not dispute the position that under the Recruitment Rules of 1967 the post of the Head Constable was to be filled on merit as a selection post and that only from 25.7.80 it was converted into a non-selection post. However, he urged that under the Recruitment Rules of 1967 the period of deputation of a Constable was to be only five years for which he had also made an application which

was recommended by Annexure.15 dated 12.7.79. His absorption as late as 1.1.83 was alleged to be unjust and discriminatory. He urged that even after absorption in 1983 he was entitled to be considered for promotion in 1985 and 1988 in the general category of 60% quota for direct recruits and not as a deputationist. He added that the general principles of seniority contained in Annexure- C3 do not apply because they do not cover cases of Constables drawn from various categories; reliance was again placed on the decision of the Supreme Court in the case of K.Madhavan (Supra) .

15. He next said that by letter dated 15.9.84, Annexure-16 he and sixteen other Constables were invited to give option for transfer to any part of India in case of promotion as Head Constable on Adhoc basis; by Annexure-17 dated 17.9.84 he and two other constables give their option accordingly, but he was denied promotion although there were fifteen vacancies of Head Constables including those at Lucknow where he was posted as indicated in Annexure-16. In the matter of limitation, delay and laches he urged that he has been making representations and therefore his claim may not be disallowed on that ground.

16. We have heard the learned counsel for the parties at considerable length and have been taken through the material on the record.

17. The Recruitment Rules of 1967 provided for appointment of Constables in the ratio of 30% by direct recruits and 70% by transfer/deputation of persons working in similar or equivalent grades in central or State Police Force failing which by direct recruitment.

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Para 7 of the O.M. dated 22.12.59 containing general principles of determining seniority dealt with cases of "Transferees". Sub para(i) laid down that relative seniority(i.e. inter ^{se} as seniority) of persons appointed by transfer shall be determined in accordance with the order of their selection for such transfer, i.e. the one who is selected earlier would be senior to the other who is selected later. Sub para (ii) dealt with subject of relative seniority of transferees vis-a-vis direct recruits and promotees, with which we are not concerned here. It will be seen that para 7 did not deal in terms with "deputationists" as distinguished from "transferees". Deputation is a "special temporary duty" (vide Article 77 of the Civil Services Regulations) while transfer may be on permanent duty or temporary duty. When transfer is on temporary duty to a Central service from subordinate office or Department of the Central or State Govt to a post outside the cadre of regular line , it is in the nature of deputation. While a power of transfer is normally exercised exclusively by the appointing authority in the parent department, (vide F.R.15 read with FR11), a deputation appointment can be made only when both the parent department and borrowing department agree. Appendix 5 to Swamy's compilation of "F.R.&S.R. Part I" IXth edition contains OM dated 7.11.75 containing instruction^{and} orders¹ on the subject of deputation. Para 3².5 says that permanent appointment made by transfer is not deputation. " When a deputationist is permanently absorbed he is under rules appointed on transfer". (see para 21 of the Supreme Court judgement in K.Madhvan's case (Supra) . This lacuna in para 7 of the O.M. dated 29.5.86 was noticed in D.P. & T.OM No.20010/7/80.Estt(D)Dt.29.5.86 printed at page 13 and 14 of Swamy's compilation on

"Seniority and Promotion in Central Govt. service"

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Ist Edn. (1988). Instructions were given in para 2 of O.M. dated 29.5.86 to " fill this gap " and sub para (iv) was added to O.M. dated: 22.12.59. This sub para provides that where a person is taken on deputation/ transfer" and is absorbed later on, his seniority will normally be counted from the date of absorption, subject to the modification that if he had been holding the same or equivalent grade on regular basis in his parent Department, such regular service in the grade will also be taken into account in fixing his seniority, but he will be given seniority from the later of the two dates viz.

- (i) date since holding the post on deputation, and
- (ii) date since appointment on regular basis to the same or equivalent grade in the parent Department. These provisions regarding deputationists could apply only since the issue of O.M. dated 29.5.86 to fill the gap.

We are concerned with facts as they stood prior to that O.M. In the absence of specific provisions, the general law of equality and fairness as enunciated with reference to Articles 14 and 16 (i) of the constitution of India must be adopted. It is here that Madhavan's case comes in. The law is stated in para 21 of the judgement as follows:-

" We may examine the question from a different point of view. There is not much difference between deputation and transfer. Indeed when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one Govt. Department to another. It will be against all rules of Service Jurisprudence, if a government servant holding particular post is transferred to the same or an equivalent post in another Govt. Department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer

cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent Department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. See R.S.Mokashi versus I.M.Menon (1982) 1 SCC 379; Wing Commander J.Kumar Versus Union of India (1982) 3 SCR 453".

18. The respondent's contention that the decision in Madhavan's case concerns only para 3 of O.M. dated 22.12.59 and does not concern para 7 is not quite correct, because para 21 of the judgement dealt with the matter "from a different point of view" than para 3 of the O.M. which was dealt with in para 20 of the judgement. We have pointed out that in terms para 7 did not deal with the case of deputationists; the applicable general law in this situation is set out by the Supreme Court in para 21 of the judgement. In this view of the matter, the entire length of service of the applicant as Constable in U.P. Police from 31.10.66 must count for his seniority as Constable in the C.B.I. We may mention that the concept of applicant's confirmation as Constable in U.P. Police service is irrelevant, a concept which has been repeatedly dubbed as one of the "inglorious uncertainties of Govt. service depending neither on efficiency nor availability of substantive vacancies", e.g. See the case of Direct Recruits Class II Engineering Officers Association and Others Versus State of Maharashtra reported in judgement Today 1990(2) SC 264

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and decided on 2.5.90. Having regard to the principles of equality and fairness enshrined in the Articles 14 and 16 (1) of the Constitution, the cases of Constables drawn from various States on deputation to the C.B.I. must be dealt with at par, hence among all such Constables, the applicant must be accorded seniority as Constable in the C.B.I. after counting his services as Constable from 31.10.66 in U.P. In particular, he must be held to be senior to respondent No. 5 as Constable.

19. We shall revert to the effect of laches and delay on this right of the applicant shortly, but we may now examine the question of his promotion as Head Constable.

20. The Rules for promotion as Head Constables are contained in Annexure-C1 of 1967 which remained in force till 24.7.80 when they were amended by Annexure-C2 with effect from 25.7.80. Under the former, the post of Head Constable was a "selection post", under the latter, it became a "non-selected post"; but under both the passing of a "qualifying examination conducted by the C.B.I." was a sine qua non in respect of transferres/deputationists claiming to be promoted. For this category both said :

"30% persons working in analogous or equivalent grades in Central/State Police Forces or Central/State Govt. Departments, or Constables in the Central/State police Forces with six years service as Constable who have qualified in the qualifying examination conducted by the C.B.I."

It should be noted that when the examination of 15.4.79 was held the quota of Deputationists/Transferres was 25% by an amendment dated 1.3.78 (vide circular notice dated 12.4.78 Annexure -C-13). Controversy surrounds the true effect of the post being a "selection post" or "non-selection post". The statement in para 6(iii) of O.A

that the examination does not affect seniority amongst the examinees is specifically rebutted in para 5 of the Counter Affidavit stating that under Annexure- C1 promotion had to be made on the basis of merit at the examination; there is no specific denial of this position in rejoinder.

21. We notice that according to Swamy's Compilation on " Seniority and Promotion in Central Govt. Service" 1st Edn.(1988) at page 88, "Selection posts" are those to which promotion is 'based on merit with due regard to seniority', and "non-selection post" is one promotion to which is based on "seniority subject to rejection of unfit". Since for purposes of promotion as Head Constable in both types of posts, a qualifying examination is essential, it follows that such examination reveals merit for a selection post and fitness for a non-selection post. The element of seniority is common to both; in the case of selection, it is taken care of by the executive instructions regarding the 'Zone of consideration' arranged in order of seniority and being a certain multiple of the number of vacancies to be filled; in the case of non-selection promotion it is taken care of by the gradation list of the feeder cadre. In the former, the result of the qualifying examination must indicate the merit of the persons in the 'Zone of consideration'; in the latter, each person in the gradation list must establish suitability his/at the qualifying examination failing which the person next below must be considered for fitness, but there is no running up the ladder as a result of the qualifying examination.

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22. The nature of Examination held on 15-4-79 is reflected in the examination notice Annexure-C13. It sets out a quota of 75% for Directly recruited Constables in service in SPE/CBI, and 25% for Constables of Central/State Police Forces/Departments working on deputation in the C.B.I. and says that these classes of Constables may be promoted as Head Constables to the extent of their quota subject to their qualifying the Examination. The examination consisted of 2 written papers of 50 marks each, & the minimum qualifying marks in each paper 33 1/3%, paras 4 & 5 then go on to say as follows :-

4. The examination as already stated is a qualifying one. It means that once a constable has qualified in the written test, he will not have to appear in the written test once again. The validity of the results of the written test and Confidential records etc. will be for one year, which period may be extended by six months more in special circumstances. If the validity of a panel expired and if in the meantime any Constable who has qualified in the written test is not promoted, his case will be considered ~~upon~~ when the next panel is prepared. For this purpose, he will not be required to sit at the written test once again.

5. The names of the candidates who are approved for promotion will be arranged on the panel in accordance with their seniority unless the Departmental promotion Committee for special reasons to be recorded in writing assigns higher or lower seniority ~~to~~ to any particular candidate."

23. Certain features are very important . Para 4 lays down that a constable who has qualified in the written test will not be required to appear at any later written test

and even if he is not promoted and the validity period of the panel has expired, he will nevertheless be considered at the time of preparation of the next panel. The panel will be prepared not only on the basis of the written test but also on assessment of "Confidential records etc". Para 5 lays down that names of approved constables have to be arranged in order of seniority, but the D.P.C. may for special reasons to be recorded in writing, assign higher or lower seniority to any particular candidate. This variation of seniority is the effect of process of "Selection". On a consideration of all these elements of the examination in their totality it appears to us that constables who were on deputation could be promoted only against 25% vacancies, that not only they were to secure 33.1/3% in each of the written papers to qualify in the written test but also their service record was to be assessed by the D.P.C. That on the appraisal of the result in written papers of the service record, the D.P.C. was to determine their merit with due regard to seniority and finally on such determination to re-arrange their seniority in the panel on the basis of merit.

24. This situation continued till 25.7.80 when the Rules were amended and the post of Head Constables was made a non-selection post, with the result that from 25.7.80, the Constables who qualified in the written examination were to be considered in order of their seniority subject to clear confidential record etc. were to be treated as suitable for promotion as Head Constable and the same order of seniority was also to be maintained in the panel of Head Constables.

25. We may now examine how the case of applicant's promotion was dealt with. To begin with, he urged that his absorption was delayed upto 1.1.1983 unjustly and

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in a discriminatory manner. According to M.H.A. letter dated 29.7.67, Annexure-C.15, addressed to S.P. CBI among the various principles to be followed for absorption a minimum period of 3 years service in CBI was required and percentages prescribed in the Recruitment Rules were to be followed for absorption. It is the respondents case that the applicant could not be absorbed earlier as he did not fall within the quota. Indeed the SP CBI Lucknow where the applicant was working, wrote in his letter, Annexure-20 dated 12.7.79 to the Administrative Officer CBI ND, that applicants 5 year deputation period expired on 17.5.79, and was willing to be absorbed which could not be done for want of quota, that the HO might consider whether he could be absorbed in the quota available in another branch otherwise he was to be repatriated. However, the applicant's learned counsel pointed out with reference to the seniority list Annexure-5 that Gulab Singh(S.No.449) came to CBI on 3.10.75 but was absorbed on 1.7.80, that D.K.Malik(S.No.450) came to CBI on 7.12.77 but was absorbed on 1.7.1980, that C.S.Chaddha (S.No.458) came to CBI on 19.6.1979 but was absorbed on 19.6.1981 whereas the applicant who came to CBI on 18.5.74, i.e. before all of them, was absorbed on 1.1.1983. It is therefore urged that no set formula of absorption was observed and that there could be no problem of quota as persons who joined CBI after the applicant, were absorbed but the applicant was not. However, Annexure-C.15 also says that the 3 years service record before absorption should be without blemish. The learned counsel for the respondents points out that the applicant's absorption w.e.f. 1.1.1983 appears to have followed S.P. letter of 16.12.82, Annexure-C.14, forwarding application of 5 constables, including the applicant,

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who gave in writing that he was willing to be absorbed, accepted the Rules of Seniority as contained in the circular dated 22.12.89, Annexure-C.3. This undertaking according to respondents learned counsel operates as estoppel against the applicant. We find that the problem of absorption of the constable is so much shrouded in confusion in facts and criteria and affects so many persons who are not parties to this petition that it is not fair or just to interfere with it after so many years.

26. In respect of the examination held on 15.4.79, the supplementary C.A. dated 18.1.90, mentions that there were 80 vacancies in all of which 25% i.e. 20, were reserved for the deputationist according to the Recruitment Rules, that the list of marks contained in Annexure-C.12 has a number of candidates who got higher marks than the applicant in the written test but were not selected by the D.P.C. on the basis of gradings done after assessing the character rolls, that the applicant was assigned 28th position in order of merit by the D.P.C. in the panel, hence he could not be promoted as Head Constable. According to the marks list of the candidates who sat at the examination, the applicant scored 68 marks in the written tests while 41 deputationist candidates got more than 68 marks. As already mentioned, the merit had to be worked out on the combined appraisal of the marks scored in the written test and the service record, Annexure.C.5 is the list dt.17.11.89 of 47 candidates promoted as Head Constable, Annexure-C.6 is list dated 6.12.79 of the remaining 33 constables promoted as Head Constable on the examination of 15.4.79. This list contains the names of N.M.Maniappa, Ram Singh, K.J.Sundar Rao and Om Prakash I, but not of Dayal Singh Rawat, R.5, about whom the applicant has a grievance.

27. After the filing of this supplementary counter, the applicant got his petition amended on 2.2.90 and pointed out by such amendment that Ram Singh, N.M. Maniappa, K.J.Sundar Rao, Om. Prakash and Dayal singh Rawat who were junior to him were promoted. Annexure -C.12 is the list of 390 Constables of all classes who had appeared at the qualifying examination held on 15.4.79 for promotion to the post of Head Constables and is arranged in the descending order of the marks obtained. According to this list, the applicant had secured 68 marks (S1. No.120) while respondent No.5 has secured 80 marks (S1. No.19) and K.J.Sunder Rao had secured 71 marks (S1.No.77); Om Prakash I, Ram Singh and N.M.Maniappa however had secured only 66, 53 and 49 marks respectively (at S1. No.124,276, and 310), which are all less than the marks of the applicant). We have pointed out that merit was to be determined on the combined appraisal of the marks secured and the service record. We do not think that Om Prakash I, Ram Singh, N.M.Maniappa scoring less marks than the applicant in the written test necessarily entitled the applicant to a higher grading than they. It is not possible therefore to accept the applicant's case of promotion on the basis of the examination of 15.4.79.

28. The next qualifying examination was held on 14.9.80 when the post of Head constable had ceased to be a selection post and became a non-selection post. The applicant became entitled to the benefits of two elements in the recruitment process. Firstly, having passed the qualifying examination of 15.4.79, he was not required to appear again at the examination for 14.8.80; he was entitled to be considered for empanelment on the basis of having already passed the examination. Secondly, he was entitled to count his service in U.P.Police for purposes of seniority,

and was not tied down to his absorption in the C.B.I which came as late as 1.1.83. He was therefore entitled to be promoted as Head constable in the promotion process for which the examination of 14.9.80 was held if he could be found suitable on the basis of his service record. The respondents however adopted the date of absorption for seniority on the basis of the general principles contained in annexure C-3. We have already held that to be incorrect.

29. But the whole exercise took place in the year 1980; therein comes the impediment of delay and laches. The earliest seniority list on the record is that of the deputationists alone filed by the applicant himself. This is annexure 19 concerning deputationist who appeared in the exam dated 15.4.79. It invited objection by 25.7.79 and warned that if no objection was filed by then the particulars given in the list would be presumed to be correct and the list would be treated as final. The applicant points out that it was framed on the basis of commencement of deputation in C.B.I, neither on date of absorption, nor on date of appointment in the parent department. Even so, the applicant did not file any objection. Annexure 5 is the combined seniority list of all categories of Constables. The entire seniority list, it seems, would have to be recast affecting the service prospects of hundreds of constables as would appear from the seniority list Annexure.5 issued on 2.5.85 drawn as on 1.3.85 on the basis of date of absorption. If the seniority was redrawn on the basis of length of service in the parent Department, the applicant who is at serial No. 529 would perhaps go above S.No. 193, and yet a large number of deputationists with longer service in the parent department, would stand at S.N. 195, 196, 198 to 202, 205 to 217, 219 to 226, 232 to 268 and several others. They would all be adversely affected as admitted by the applicant himself in his representation

dated 4.4.88, Annexure.9 . The only representation which the applicant made against the seniority list is Annexure 6 dated 17.6.85 where he said that the date of his appointment should be mentioned as 31.10.66 instead of 30.10.69; he did not object to fixation of his seniority. The desired correction was made, vide annexure.7. Only on 6.1.88 he represented (vide Annx.8) against seniority as reflected in Annexure.5. That, of course, was rejected, vide Annexure 9 dated 25.2.88, on the basis of the date of absorption and the applicant was informed that only those persons were being considered for promotion who had been absorbed upto 15.11.77 whereas the applicant was absorbed on 1.1.83. One may wonder whether the representation dated 6.1.88, Annexure 8, was inspired by the Supreme Court decision dated 9.10.87 in K.Madhavan's case (Supra); but it appears to be too late in the day to reopen the promotions given in the year 1980 on the rule of absorption though ~~eff~~ oneous. The learned counsel for the respondents has correctly placed reliance on the decision of the Supreme Court in the case of R.S.Makashi & others -Vs- I.M.Menon & others, 1982 Sc.101. On the basis of a Govt. resolution of 22.3.68 a final gradation list, after inviting objections, was issued in Nov. 72 as on 1.4.68. The petitioner did not challenge it. Another provisional seniority list was issued in April 1973, but he did not file objections in time. In representation made in Nov 1973, he did not challenge the principle in Govt. resolution of 22.3.68. The representation was rejected in December, 1973. On filing of W.P. in July, 1976 for quashing the Government resolution dated 22.3.68 and the gradation list of 1975, without furnishing valid explanation for delay, the petition was held to be barred by delay & laches as it sought to disrupt seniority, rank, promotions which had accrued to a large number of respondents (162 persons impleaded) during the period from 22.3.68 and the filing of the W.P.

A similar situation exists in this case, hence it is not possible to disturb the promotions made in 1980 by an application filed in 1988. The case of G.P. Doval and others -Vs- Chief Secretary Govt. of U.P. & others (1984) 4S.C.C. 329 relied upon by the learned counsel for the applicant concerns a challenge to a provisional seniority list which never became final, hence is distinguishable. In the case before us the seniority list Annexure 5 is not shown to be provisional and indeed the applicant made an objection Annexure 6. dated 17.6.85 on the limited point of the correct date of commencement of service which was allowed on 1.12.87 in Annexure 7 and correction was made.

30. We may mention that in his rejoinder, the applicant urged that after he had been absorbed on 1.1.83 promotions were made in 1985 and 1988 but he was again ignored. He said that after absorption, he was entitled to be considered against 60% quota of promotees and not against deputationist quota of 40% (After 1978 amendment to 1967 Rules, the quota was 75% to 25% respectively); but that is a new case which cannot be permitted to be raised for the first time in a rejoinder.

31. It may not be out of place to mention that between 1985 and 1988, D.P.&T. O.M. No. 20020/7/80 Estt(D) dated 29.5.86 was issued inserting sub para(iv) in O.M. dated 22.12.59 referred to in para 17 of this judgement. It could be relevant for the promotions made in 1988. It did not figure in K.Madhavan's case although one of the writ petitions there was of the year 1986. The learned counsel for the parties have also not referred to it. We need say no more in this connection, except about a feature which seems to be strange to us. Having provided that seniority of a deputationist will normally count from the date of his absorption, and that

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the regular service in the same or equivalent grade in the parent department will also be taken into account in fixing seniority (a principle recognised in K. Madhavan's case), it goes on to say that seniority will be given from the 'later' of the two dates. Regularisation in the parent department will always precede absorption in the borrowing department; for as soon as a person is absorbed, he ^{is} permanently transferred to the borrowing department and his ^{lien} ~~if~~ any comes to an end in the parent department and nothing remains to be regularised there. So in all cases the date of absorption will be later than the date of regularisation in the parent department; hence seniority will have to be given from the date of absorption and none other; the provision of benefit of service in the parent department thus is set at naught. Again, if the concepts of 'confirmation' is an 'inglorious uncertainty of Govt. service'; the concept of absorption can be no better. In K. Madhavan's case, the eligibility criterion for promotion as D.I.G. in C.B.I' (D.I.G./Dy. Director) Recruitment Rules 1975 came up for consideration. The rule required "8 years service in the grade rendered after appointment thereto on regular basis". Repelling the contention that service on regular basis meant service after absorption, the S.C. held that since the Rules of 1975 gave no explanation of the expression, it was not desirable to deviate from the principle of computing the length of service for the purposes of seniority or eligibility for higher post from the date of appointment, hence the expression would mean appointment to the post on regular basis in contradistinction to appointment on an adhoc, stop-gap, or purely temporary basis. The date of absorption was ignored and the total length of service in the grade was taken into account.

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32. The applicant has been promoted as Head Constable on 5.4.90 during the pendency of the present case. The applicant has raised specific grievance about the promotion of N.M.Muniappa, Ram singh, K.J.Sunder Rao, and Om Prakash I as Head Constable on the basis of the examination of 15.4.79 (vide Annexure C-6). Their length of service (including that in the parent department) was less than that of the applicant, their seniority was counted from the date of absorption. We have already held that it is not possible to give relief to the applicant on the basis of their promotion due to impediment of delay and laches. The grievance regarding R.5 D.S.Rawat only remains to be considered. The applicant has erroneously alleged that R5 too was promoted in consequence of the examination of 15.4.79. The promotion list Annexure C-5 do not contain his name; and indeed it is specifically stated in the counters of the department & R.5 that the later was not promoted as a result of the said examination.

33. The circumstances of R5's promotion may be stated. He was appointed as a Constable in Rajasthan Police on 17-7-71. He joined the C.B.I on deputation on 20.11.75, and was given adhoc promotion as Head Constable with effect from 9.4.84 when he took charge under order dated 16.11.83 Annexure C-16, and was absorbed as Head-Constable on 31.3.1985 (without being absorbed as a Constable). He was also placed on the panel Annexure C-17 dated 30.4.84 for promotion as Head Constable in Rajasthan State Police on the result of an examination held in March, April 1984 for the purpose on the basis of notice issued on 25.1.84, He was given promotion as Adhoc Head Constable in Rajasthan State Police by an order dated 4.5.84 Annexure C-17A by a way of " Paper transaction", as he was already on deputation on the C.B.I.

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34. Promotion from the post of Head Constable to Assistant Sub Inspector of Police was originally governed by C.B.I (Assistant Sub Inspector) Recruitment Rules 1977 Annexure 27 in which the A.S.I. post was a 'selection Post'. However under the revised Rules Annexure 26 dated 5.2.87 it was converted in to a 'non-selection post'. A departmental qualifying examination for the purposes appears to have been held on 6.5.89. By notice Annexure 22 dated: 6.10.1989 candidates who qualified at the departmental competition exam on 6.5.89 were called for interview. R5 appeared at the examination; applicant was allowed to appear at the exam under interim order dated 4.5.89 passed by this Tribunal. Annexure 24 dated 14.12.89 in the list of successful Head Constables. R5 D.S.Rawat is one of the successful candidates; the applicant's result are held up pending disposal of this case. R5 has been promoted as A.S.I.

35. The applicants grievance is that R5 was junior to him on the ^{critierion} of length of service (including that in parent department), on the ~~critierion~~ ^{critierion} of commencement of deputation in C.B.I., or on the basis of absorption in the C.B.I, hence he ought to be promoted as Head Constable, and Assistant Sub Inspector from the date when R5 was so promoted. The respondents case (vide Supplementary CA dated 8.3.90) ^S in that R5 was promoted as Head Constable on adhoc basis by Annexure C-16 against quota of deputationists with 10 years service in SPE/CBI on the basis of length of service, and since he was subsequently promoted as adhoc Head Constable in the parent department w.e.f. 30.4.84, his case is not comparable with the applicant case. It was further said that since R5 had completed 3 years regular service as Head Constable in C.B.I, he was eligible for promotion as A.S.I. whereas the applicant having been promoted as Head constable only on 5.4.90, he was not eligible to appear even at the

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examination date 6.5.89 for the post of A.S.I. According to them, the occasion for absorption of R5 as constable did not arise as in the meantime he had already been promoted as Head Constable in the parent department, while the applicant was not.

36. The respondents case that R5 had completed 10 years service in the SPE/CBI as required by the Rules Annexure C-1, when he was given adhoc promotion in the C.B.I is incorrect because his deputation C.B.I commenced on 20.11.75, and the order of his adhoc promotion, Annexure C-16, was passed on 16.11.83 although he took charge on 9.4.84. His promotion in Rajasthan State Police as Head Constable came still later i.e. on 30.8.84, vide Annexure C-17. The placement of R5 as Head constable in C.B.I, thus, is not the result of his being *drafted* to the C.B.I in his capacity as Head constable. On the contrary, the applicant having joined the C.B.I on 18.5.74 should have had a prior claim than R5 under the 10 year service Rule in Annexure C-1, but the fact remains that neither of the two persons was qualified to be promoted as Head constable under that Rule on 9.4.84 when R5 was so promoted. But at the same time, there can be no in other words, merely because R-5 was wrongly parity in wrong; promoted as Head constables on 9.4.84, it does not justify an equally wrong promotion of the applicant with effect from that date. If the applicant cannot claim promotion on the date when R5 was promoted, the only question that remains is the appropriate date from which he could be promoted.

37. The principle of seniority which the respondents had been following under the supposed authority of the general rules contained in Annexure C-3 was negatived by the Supreme Court in K.Madhavan's case decided on 9.10.87. The law declared by the Supreme Court is binding not only on all courts but also on all civil authorities vide

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vide Articles 141 and 144 of the Constitution of India and they are bound to act in aid thereof. Normally, a judicial pronouncement does not 'create law'. Courts do not legislate; they only declare what the law is. In that sense, the Supreme Court judgement dated 9.10.87 could be considered to be a declaration of law as it had existed even when the seniority principles were laid down in O.M. dated 22.12.59, Annexure-C.3, but to apply that law of precedents in the matters which have arisen in this case will militate against the findings of laches and delay already recorded, and will unsettle innumerable matters already settled. We should think therefore that a fair and just line to adopt would be to give effect to the law declared by the Supreme Court from the date when it was declared, i.e. from 9.10.87. Indeed it should have been the duty of the department itself to apply the true principle of seniority in the case of constables immediately, and as on 9.10.87. We hold therefore that as on that date, as also thereafter, respondents 1 to 4 must recast the seniority of the deputationist constables on the basis of continuous length of service in the parent department in the same or equivalent grade, and then adjudge their fitness for promotion as Head constable on the basis of the qualifying examination coupled with the service record, without disturbing the promotions of all those persons who had been promoted before 9.10.87.

We might have directed the respondents to undertake that exercise and then fix the appropriate date of promotion of the applicant as Head constable; but in the facts and circumstances of this case we do not find it necessary to do so, and instead pass the

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appropriate orders ourselves. The respondents have been denying seniority to the applicant on the principle of absorption, i.e. from 1.1.83. Since we hold that it should be fixed on the basis of the length of his service as constable in the parent department, it should be from 31.10.66. Out of 20 deputationist constables promoted as Head Constables as a result of the examination of 15.4.79, set out in list Annexure-C.8, 6 persons viz. Ram Singh(Delhi), M.M.Muniyappa, Ram Singh (UP), V.James, K.J.Sundar Rao and Om Prakash I had their dates of appointment in the parent department after that of the applicant (see Annexure-19). That was the stage when the post of Head Constable was a selection post. When the next examination was held on 14.9.80, the post of Head Constable was a non-selection post. Annexure-3 is a list of 47 constables whose date of appointment is after that of the applicant. Only one of them was promoted as Head Constable in 1985; the rest were promoted on 4.8.88. The case in para 6 of the department's counter is that those constables were either direct recruits confirmed or deputationists absorbed, much before the applicant, seniority of the deputationists being counted from the date of absorption. It is not stated that the applicant was not 'suitable' on an appraisal of his service record, the applicant having already passed the qualifying examination dated 15.4.79. We should hold therefore that immediately on the Supreme Court judgement dated 9.10.87, the applicant was fit to be promoted as Head Constable. We therefore direct that the applicant shall be deemed

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to have been promoted as Head Constable with effect from 9.10.87.

38. However, such deemed promotion did not make him eligible to appear at the qualifying examination for promotion as Asstt. S.I. held on 6.5.89 because the Recruitment Rules, Annexure-26 required 3 years regular service in the grade of Head Constable. It is not possible therefore to give him the benefit of his taking the qualifying examination dated 6.5.89 for the post of A.S.I.

39. On a careful consideration of all the matters we direct as follows :-

(1) The applicant shall be deemed to have been promoted as Head Constable with effect from 9.10.87 and shall be given consequential benefits thereof within 3 months from the date of receipt of a copy of this judgement.

(2) The interim orders permitting him to appear at the qualifying examination for the post of Asstt. Sub Inspector of Police held on 6.5.89 are revoked and his results thereat are set aside.

(3) The respondents 1 & 2 are directed to recast the seniority of the Constables as on 9.10.87 on the basis of counting the deputationist length of service in the parent department in the same or equivalent grade for seniority in the C.B.I. and consider their cases for promotion as Head Constable in accordance with rules in


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other respects, but shall not interfere with the promotions of those constables who had already been promoted before 9.10.87; this exercise shall be undertaken only after giving reasonable opportunity to persons who may be affected. Respondents 1 and 2 shall comply with these directions within nine months from the date of receipt of a copy of this judgement.

Parties shall bear their costs of this case.

M M Singh
Member (A)

 25.6.91
Vice Chairman

Dated the 25th June, 1991.

RKM