

Along with O.A. 125/89(L)

ANNEXURE - A

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH LUCKNOW

INDEX SHEET

CAUSE TITLE O.A. No. 74/89 of 199

Name of the parties

H. N. Srivastava

Applicant.

Versus.

Union of India & Others

Respondents.

Part A.B.C.

Sl No.	Description of documents	Page
1-	Check List	A1 - A2
2-	Order Sheets.	A3 - A10
3-	Judgment Dated 2.2.90	A20 - A26
4-	Judgment Dated 25 Sep. 90.	A27 - A54
5-	Petition	A55 - A70
6-	Power	A71
7-	Annexure	A72 - A78
8-	C.A.	A79 - A125
9-	R.A. No. 2.	A126 - A149
10-	R.A. No. 3 & 4	A150 - A190
11-	Suppl. C.A.	A191 - A201
12-	C.A. No. 2.	A202 - A212
13-	Suppl. C.A. No. 3 & 4	A218 - A222
14-	R.A. No. 3 & 4	A223 - A232
15-	R.A. No. 3	A233 - A241
16-	Suppl. Affidavit	A242 - A250
17-	Suppl. Application & Affidavit	A251 - A258

Bench Copies

18- Certified that no further action is required to be taken and that the case is fit for disposal to the record room. C. file

Checked

23/6/2011

~~B259 - B474~~

P.T.

19. Misc. Papers

75 - C506

14.05.92

# CENTRAL ADMINISTRATIVE TRIBUNAL

## ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Central Administrative Tribunal  
Circuit Bench, Lucknow  
Date of Filing 3/4/89  
Date of Receipt by Post.....

Registration No.

74

of 1989

A1

Mahant Singh  
Deputy Registrar

APPLICANT (s) ... Shri H.N. Srivastava

RESPONDENT(s) ... Union of India and others

### Particulars to be examined

### Endorsement as to result of Examination

1. Is the appeal competent?
2. (a) Is the application in the prescribed form?  
(b) Is the application in paper book form?  
(c) Have six complete sets of the application been filed?
3. (a) Is the appeal in time?  
(b) If not, by how many days it is beyond time?  
(c) Has sufficient case for not making the application in time, been filed?
4. Has the document of authorisation, Vakalat-nama been filed?
5. Is the application accompanied by B. D./Postal-Order for Rs. 50/-
6. Has the certified copy/copies of the order (s) against which the application is made been filed?
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed?  
(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly?

yes

yes

yes

Two sets have been filed

yes

-

-

yes

yes

There is no such order

yes

Attested by Mahant Singh

Particulars to be ExaminedEndorsement as to result of Examination

- (c) Are the documents referred to in (a) above neatly typed in double space ? *yes*
8. Has the index of documents been filed and paging done properly ? *yes*
9. Have the chronological details of representation made and the outcome of such representations been indicated in the application ? *yes*
10. Is the matter raised in the application pending before any Court of law or any other Bench of Tribunal ? *no*
11. Are the application/duplicate copy/spare copies signed ? *yes*
12. Are extra copies of the application with Annexures filed ?
- (a) Identical with the original ? *yes*
- (b) Defective ? *no*
- (c) Wanting in Annexures *no*
- Nos...../Pages Nos..... ?
13. Have file size envelopes bearing full addresses, of the respondents been filed ? *no*
14. Are the given addresses, the registered addresses ? *yes*
15. Do the names of the parties stated in the copies tally with those indicated in the application ? *yes*
16. Are the translations certified to be true or supported by an Affidavit affirming that they are true ? *NA*
17. Are the facts of the case mentioned in item No. 6 of the application ?
- (a) Concise ? *no*
- (b) Under distinct heads ? *no*
- (c) Numbered consecutively ? *yes*
- (d) Typed in double space on one side of the paper ? *yes*
18. Have the particulars for interim order prayed for indicated with reasons ? *yes*
19. Whether all the remedies have been exhausted. *yes*

Let before court on 3/4/89.

brahmandras  
3.13.89

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH AT COCHIN.  
\*\*\*\*

O.A./T.A. No. 74 1989(4)

H.N. Srivastava

Applicant(s)

Versus

002 P.O.

Respondent(s)

Sr.No.	Date	Orders
--------	------	--------

3.4.198.

Hon'ble Mr. Justice Kamleshwar Nath, V.C.,  
Hon'ble Mr. D.S. Misra, A.M.,

Admit

Issue notice to the respondents to file reply within four weeks to which rejoinder may be filed within one week time thereafter.

Regarding interim relief, issue notice to respondents and list for orders on 17.4.1989. If in the meantime the opposite parties make any promotions/appointments to the I.P.S. from the cadre of U.P.P.S., at least one post shall remain unfilled and will abide by the further orders of this Tribunal.

A.M.

V.C.

6/4/89

OB

Notices issued to the respondents through  
regd. post fixed 17.4.89 for orders

msb  
6/4/89

C.M.A.No.99/89(L)

CMA No.100/89(L)

in

O.A.No.74/89(L)

connected with OA 76/89(L)

Hon' Mr. D.S. Misra, A.M.

Hon' Mr. D.K. Agrawal, J.M.

27/4/89

The amendment application filed by the applicant is allowed and may be incorporated in the claim petition within 2 days.

We have heard the learned counsel for the applicant, on the application for grant of interim relief. The learned counsel for the applicant, wants to file certain other papers in support of his various contentions in the application. List this case for ~~consolidation~~ prayer <sup>for</sup> interim relief on 28-4-89.

J.M.

(sns)

A.M.

BR  
Necessary amendment has been incorporated in the petition today. No other papers have been filed by the applicant. Case is submitted for orders on interim relief.

27/4

Ab

C.M.No.100/89

in

O.A. No.74/89(L)

Hon' Mr. D.S. Misra, A.M.

Hon' Mr. D.K. Agrawal, J.M.

28/4/89

On the request for the learned counsel for the applicant, the case is adjourned to 11-5-89 for disposal of interim relief in application No. 100/89. Dr. Dinesh Chandra, learned standing counsel put his appearance on behalf of the respondent no. 1 i.e. Government of India. The learned counsel for the applicant may supply a copy of application for interim relief to the learned counsel for respondents to enable them to prepare reply and file written objection, if any, on or before 11.5.89.

J.M.

(sns)

A.M.

512  
C.M. Am. No 107/89 (C)  
has filed by the learned  
counsel for the applicant.  
No reply filed by  
the respondents.  
Submitted for order

A8

C.M.A.NO.100/89(L)

In  
O.A. No.74/89Hon' Mr. K.J. Raman, A.M.

16/5/89

Shri S.C. Budhwar, learned counsel for the applicant is present. Shri Anoop Kumar, learned counsel for the respondent Nos. 3 & 4 (State of UP. and D.G.(P) files Vakalatnama and an application for vacating the stay order dated 11-5-89. Copy of the application has been given to the respondents. The applicant may file rejoinder, if any, within one week. The case be listed for orders on miscellaneous application No. 100/89(L) on 30-5-89, in the meantime the interim order already issued shall continue.

MEMBER (A)

(sns)

30.5.89

No sitting is to be held today. Therefore there is no alternative but to adjourned the case. The earliest date that can be fixed is 6.6.89. The learned counsel for the applicant has been informed accordingly. On account of no sitting. No order on stay can be passed today.

h  
B.O.CHon' Mr. D.S. Mishra, A.M.6-6-89

Shri Anoop Kumar, learned counsel for the No.3 and 4 requests for a short time authorisation of respondents 3-4 for filing counter reply. ~~and another counter reply~~ on behalf of respondents No.3 & 4. He is allowed one week's time to do so. The rejoinder to the short counter affidavit filed on behalf of respondents No.3 and 4 may be kept on record and if another counter reply is filed on behalf of respondents 3 and 4, the applicant shall be given opportunity to file rejoinder, if any. The case be listed for further orders on 29-6-89. In the meantime the stay order passed on 11-5-89 will be continued till that date.

A.M.

(sns)

A/10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

REGISTRATION No. O.A. No. 74/89 of 1989

APPELLANT  
APPLICANT

H.N. Srivastava

VERSUS

DEFENDANT  
RESPONDENT

UNION of India & ors

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
10/8/89	<p><u>Hon' Mr. D.K. Agrawal, J.M.</u></p> <p><del>For orders, vide my order dated</del> 10/8/89 passed in O.A. No. 125 of 1989(L) C.B. Rai Vs. Union of India governs this case as well.</p> <p style="text-align: center;"><i>[Signature]</i> J.M.</p> <p>(sns)</p> <p><i>20/9/89</i> Hon Justice K. Hathi, VC. Hon. K. Chagga, J.M.</p> <p><i>Since Anup Kumar files counter on behalf of opposite party No. 324. Opposite party No. 1 may file counter within two weeks. The applicant may file rejoinder in respect of all the counters by 19-10-89 when the case will be taken up for further orders. The interim order will continue till that date.</i></p> <p style="text-align: center;"><i>[Signature]</i> Am. <span style="margin-left: 100px;"><i>[Signature]</i> VC.</span></p>	

*12*

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
---------------------------------	--	--

21/12/89

Hon' Mr. Justice Kamleshwar Nath, V.C.  
Hon' Mr. K. Obayya, A.M.

Shri A.K. Chaturvedi counsel for the applicant says that the senior Advocate Shri S.C. Budhwar who has to argue these cases missed his morning train at Allahabad Railway Station today and therefore, has not been able to come. He has requested that the case be taken up tomorrow, but that is not possible because a Bench is not available <sup>for</sup> tomorrow. List these bunch cases on 30-1-90 for hearing.

*[Signature]*  
A.M.

*[Signature]*  
V.C.

(sns)

Case is submitted for hearing.

25/1

30/1/90

Hon. Justice K. Nath, V.C.  
Hon. K. T. Ramani, A.M.

Shri A.K. Chaturvedi informs that Shri S.C. Budhwar will address the arguments on behalf of the petitioners in two out of the bunch of four cases. It will be desirable to take up the case for arguments tomorrow to avoid any duplication of hearing. Put up tomorrow.

*[Signature]*  
A.M.

*[Signature]*  
V.C.

AB

CA 74/0815 EW 76/08, 940815 &  
93/084

31/1/90

Hon. Justice K. Nath, V.C.  
Hon. K. J. Raman, A.M.

In the course of arguments submitted by Sri S.C. Butwar, the learned counsel for the applicant, it is pointed out that the Select list in dispute suffers from infirmity of being short sized. The Select list carries 34 names according to the learned counsel it ought to have 40 names. Reasons for the size of 40 are set out in para 5 of the rejoinder of Sri S.K. Sharma in reply to the Counter Affidavit of opposite parties 3 & 4. The learned State counsel says that he will have to obtain instructions on that point. The case will continue as part heard tomorrow; in the meantime the learned counsel for the State Govt. will place the relevant data on this subject before this Tribunal.

Counsel for opposite party No. 2 says that he has the proceedings of the Select Committee but he is instructed to claim privilege. Orders were also passed for the State Govt. to produce the A.C.R. of the concerned officers. The Standing Counsel is directed to keep them available at the time of arguments when the case will be taken up tomorrow.

*[Signature]*  
A.M.

*[Signature]*  
V.C.

1.2.90

Hon. Justice K. Nath, V.C.

Hon. K. J. Raman, A.M.

Arguments of the counsel for the applicant heard in part and will continue on the date to be announced tomorrow. Put up tomorrow for orders in the matter of the application for production and inspection of ACRs and proceedings of the Select Committee.

*[Signature]*  
A.M.

*[Signature]*  
V.C.

RKM

Q A 74/89 AIS

Honble Mr. P. C. Jain A. M  
Honble Mr. J. P. Sharma J. M

The case be listed before the bench  
before which this case has already been  
heard in part, on 27.7.90

J. M

Ce.  
J. M

27.7.90 Hon. Mr. Justice K. Mathur, C.  
Hon. Mr. K. Chagga, B.M.

This is a part-heard case  
of the Bench in which Hon. K. J. Ramani  
was a member. That Bench  
is not available before Sept 90.  
It is desirable to hear and  
dispose of this case as early  
as possible. It is directed  
that all these cases be taken  
for final hearing at  
Allahabad on 7-8-90

J. M

Ce.  
J. M

7.8.90 Hon. K. Mathur / Hon. K. Ramani A.M.  
Put up for hearing on.  
10.8.90. J. M

117

SHORT ORDER.

27. These are all the points which have been raised in these cases. For reasons recorded above, all the petitions deserve to be and are dismissed. Parties shall bear their costs. Let the A.C.Re be returned to the Department concerned.



Member (A)



Vice Chairman

Dated the 17<sup>th</sup> Aug., 1990

RKA

A18

Hon'ble K. Nath, V.C.  
Hon'ble K.J. Raman, A.M.

This Bench will not be available for practically one month. The record was transferred from Lucknow Bench to this Bench as a part heard case in the hope that it will be <sup>possible</sup> ~~passed~~ to expedite and conclude its hearing, but that has not been possible. It is, therefore, directed that record of <sup>this case</sup> ~~this case~~ shall be returned to Lucknow Bench where it shall be listed for final hearing on 23.4.1990.

(K. NATH)  
VICE CHAIRMAN

This case has been  
ad on 104.90.  
CAT, M14.  
S. R. H.  
inspected  
by and  
copy of  
some Dec today  
H. R. H.  
25.5.90  
covered for A. K. Sharma


13/2/90


A19

Hon. Justice K. Math, C.  
Hon. K. J. Raman, J.

Soni Anup Kumar on behalf of opposite party No. 2 files an application for permission to file supplementary counts in view of certain facts introduced by the applicant in his rejoinder. We consider two weeks time is adequate. Opposite party No. 3 will cause a copy of the supplementary counts to the applicant's counsel within two weeks and the case be listed for final hearing on 6/3/90.

The learned counsel for both the parties say that the office has not furnished to them the copies of the detailed orders dated 2/2/90 on the question of opposite parties' producing certain ACRs and minutes of the meeting of the Selection Committee. The order was judicial in nature and the copies shall be delivered to the counsel for both the parties by the office on making proper applications for copy.

  
A.M.

  
V.C.

Re


Hon. Mr. O.K. Agrawal, J.M.  
Hon. Mr. Kobayya A.M.

23-4-90

The case is adjourned to

30-5-90.

A.M.

  
J.M.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD

\*\*\*\*\*

O.A. NO.

74/88

Contra 6/84

93/89, 76/89 & 92/89

198 .

~~T.A. NO.~~

DATE OF DECISION \_\_\_\_\_

H. N. Srivastava

PETITIONER

S. C. Bhatnagar

Advocate for the  
Petitioner(s)

H. M. Mehrotra

VERSUS

Union of India & others

RESPONDENT

D. D. Chandra

Advocate for the  
Respondent(s)

Amp Kumar

CORAM :

The Hon'ble Mr. Justice K. N. Rao, VC.

The Hon'ble Mr. K. J. Raman, J.

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

Dinesh/

\*\*\*\*\*

5/190

2/2/1990

Hon. Justice Kamleshwar Nath, V.C.  
Hon. K.J. Raman, Member (A)

O.A. No. 74 of 1989  
H.N. Srivastava Vs. Union of India & Others  
O.A. No. 93 of 1989  
S.K. Sharma Vs. Union of India & Others  
O.A. No. 76 of 1989  
A.K. Misra Vs. Union of India & Others  
O.A. No. 92 of 1989  
J.S. Agarwal Vs. Union of India & Others.

The four cases described above have been filed for inclusion of the name of the applicants, who are officers of the U.P. Police Service, in the Select List prepared for the year 1985 for promotion to the Indian Police Service.

2. The Select List of 34 officers was prepared in which the name of the applicants was not included; some persons junior to them were included therein.

3. The applicants have demanded production and inspection of their own Character Rolls as also the Character Rolls of five officers who, according to them, had distinctly poorer record of service than the applicants; these officers are mentioned to be B.B. Das, K.N. Dwivedi, Daya Shanker Singh, O.P. Tripathi and P.N. Pathak. They have also demanded production and inspection of the minutes of the Select Committee which framed the Select List.

4. Orders were passed by this Tribunal for the opposite parties to produce the Character Rolls of the applicants and the Minutes of the Meeting. Dr. Dinesh Chandra representing the Union of India and the Union Public Service Commission has produced the minutes of the Select Committee Meeting; <sup>Shri</sup> Anup Kumar appearing on behalf of the State of U.P. has produced the ACRs of the applicants. We have perused these papers.

5. Shri S.C. Budhwar, the learned counsel for ~~xxx~~ Shri H.N. Srivastava and S.K. Sharma has prayed for an opportunity to inspect these papers and also to require the opposite parties to produce the ACRs of these five officers named above for the counsel's inspection. Shri H.M. Mehrotra appearing for Shri A.K. Misra and Shri Kapil Dev appearing for Shri J.S. Agarwal have joined in the request made by Shri S.C. Budhwar.

*Q*

6. The learned counsel appearing for the opposite parties have filed applications claiming privilege against the inspection of these papers by the counsel for the applicants.

7. We have heard the learned counsel for the parties at some length. We may mention that the counsel for the opposite parties said that they may file affidavits of the concerned officers claiming privilege, but we have not considered it necessary to do so and Shri S.C. Budhwar has no objection. We may mention that Administrative Tribunal has wider powers in the matters of procedure than the Courts; we think that considerations of substantial justice should outweigh the requirements of technicalities. The dispute in this case may affect a large number of officers. The case is getting delayed and therefore we have chosen not to wait for the formalities of making an affidavit to claim privilege. We treat the application of the counsel, made on the authority of the officers concerned, to be adequate for the purpose. In passing we may refer to the following statements of law at page 397 of Volume X of Halsbury's Laws of England 2nd Edition :-

" Documents need not be produced for inspection where an objection is taken in the affidavit of documents by the Head of a Public Department or other like State official, or by any responsible officer acting under the instructions of or with the consent of such Head of the Department that the disclosure of the information is contrary to public policy or detrimental to public interest or service".

8. We accept the statement of Dr. Dinesh Chandra and Shri Anup Kumar that they have been instructed by the competent authority to make the application claiming privilege.

9. The question of privilege in respect of the Minutes of the Select Committee Meeting has figured

1

before this Tribunal and other forums in several cases. The learned counsel for the applicant has referred to the cases of R.S. Das Vs. Union of India 1987 SC 593 para 28, Hari Ram Meena Vs. State of Rajasthan 1989(2) SLR 386 (CAT Jodhpur), K.V.Reddy Vs. Directorate General of Police, Andhra Pradesh 1989(2) SLR 230 (CAT Hyderabad) and a decision of the Full Bench of this Tribunal at the Principal Bence in the case of B.N.Rangwani Vs. Union of India & Others published in 1986-1989) Full Bench judgements of CAT at page 116. The decision in the case of P.Banerjee Vs. Union of India & Others ATR 1986 CAT 16 (Principal Bench) also figured before us. It has been held in all these cases that the proceedings of the Select Committee cannot be claimed as privileged in a case ~~where~~ where the process of selection has been challenged. In the cases of B.N. Rangwani Vs. Union of India (Supra) and Hari Ram Meena Vs. State of Rajasthan the Tribunal directed that the documents shall be disclosed to the applicants. The right of production and disclosure affirmed in the case of Shri P.Banerjee Vs. Union of India & Others (Supra) however was not followed by actual inspection by the applicants because the applicants there left the record to the perusal of the Tribunal itself and did not insist upon inspection. The reasons of the proceedings being affairs of State or their disclosure being opposed to public interest and several other reasons were considered in these decisions and were rejected. It is not necessary to repeat those reasons here. The upshot is that the minutes of the Select Committee cannot be withheld from the applicants counsel as prayed.

10. In respect of the ACRs there are two distinct classes :

(1) ACRs concerning the applicants themselves (2) ACRs concerning officers other than the applicants. In the case of B.N.Rangwani (supra), which was a case of

R

compulsory retirement and in the case of Hari Ram Meena Vs. State of Rajasthan (supra) which was a case for promotion, the prayer was to produce the ACRs of the applicants and those prayers were granted. Our attention has not been invited to any decision in which the applicants were also allowed to inspect the ACRs of officers other than the applicants themselves. We may point out that in the Full Bench case of B.N.Rangwani Vs. Union of India, the direction to inspect the official record was made subject to Sections 123, 124 of the Evidence Act under which the executive authorities are entitled to claim privilege. In that case privilege had not been claimed at all and that was one of the reasons for which the inspection had been allowed.

11. Our attention had not been invited to any decision which authorises an inspection of the ACRs of persons other than the applicants. We think that besides the claim of privilege by the executive authorities under Sections 123, 124 of the Evidence Act, the officers whose ACRs are under consideration are entitled to a protection under the General Law of the Land in the matter of disclosure and inspection of their ACRs. It is well recognised that apart from comments on general qualities, such as integrity, intelligence, industry, conduct, attitude of superiors with subordinates, relation to fellow employees, work ~~at~~ aptitude etc. of the officers reported upon, the ACR<sup>12</sup> has also to contain a summing up in general terms of the officer's good and bad qualities. It is expected therefore that Character Rolls would as a Rule give general appreciation of Character, conduct and qualities of the officer reported upon and a reference to specific incident could be made by way of illustration to support adverse comments of a general nature e.g. inefficiency, delay, lack of initiative, etc. Page 446 of Swamy's Complete Manual on 'Establishment Administration' for Central Govt.

Q

Service 2nd Edn. (1988) may be seen in this connection. In other words, the ACRs are expected to contain the qualities, intellectual and moral of an officer for good or for bad; there may be remarks of approbation, there may be strictures of condemnation. The question is whether such documents should be open to the public gaze despite the being unpublished official records. We cannot lose ~~the~~ sight of law of defamation, civil and criminal; and while the making and communication of derogatory remarks by the superiors to the subordinates may be privileged in the eye of law of defamation, their publication even through the Court may constitute actionable defamation under Civil Law and also in certain circumstances under the Criminal Law. We may refer to the provisions of Section 499 of the Indian Penal Code where publication of imputation concerning any person intending to harm or having reason to believe that such imputation will harm the reputation of such person constitutes a defamation except in cases excepted. Explanation 4 would show that an imputation is said to hurt a person's reputation when it lowers the moral or intellectual character of the person in the estimation of others. We should think therefore that before we make the ACRs of persons who are not party to the case open to public gaze, which will constitute publication, we must take care that such publication does not infringe the law of defamation. We may also say that the dignity of person is sought to be protected by the Constitution of India itself not only in its preamble but also in Article 51-A laying down the fundamental duties of a citizen. It is the bounded duty of the Tribunal therefore to ensure that the intention and the policy of law is not violated by any of the orders which this Tribunal may pass. The Tribunal must take a panoramic view of the entire situation and not confine itself to bare technicalities of the requirements of privilege; the Law of the Land

is far wider than the limited claim of privilege. We should hold therefore that the ACRs of officers other than the applicants themselves <sup>cannot be</sup> disclosed to the applicants. The disclosure of the applicants' own character roll to them is a matter of their own choice, and if they have chosen to run the risk of publication of material which may turn out to be defamatory they cannot complain of the injury which is suffered by them voluntarily; but we cannot impose any such burden upon other officers.

12. In this connection we may refer to the fact that in para 28 of their judgement the Hon'ble Supreme Court in the case of R.S. Das Vs. Union of India (Supra) have only spoken of "perusal of service record of the petitioner and its comparison with the service record of the officers who have been preferred"; the Supreme Court did not go on to say that the service records of other officers may also be inspected by the petitioner.

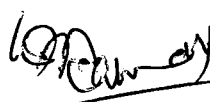
13. The limitation which we find necessary to impose in the matter of production and inspection of the ACRs has to be extended as a corollary to the contents of the Minutes of the Select Committee Meeting. In other words, while the categorization/gradation of the applicants by the Select Committee may be made available to the applicants for their perusal, as also ~~the~~ that of the officers who have been placed on the select lists, it would not be proper to make available such categorization/grading in respect of other officers in the field of eligibility but not included in the select list. It will also be appreciated that a Select List is capable of being revised every time the Select Committee meets subsequently and therefore the categorization/grading of the officers other than those who have been placed on the Select List is capable of being varied in the proceedings of the Select Committees in later years. The upshot is that Select Committee categorization/gradings for the year 1985 are relevant


*R*

only for the year 1985 and are liable to change in later years in respect of officers who are not brought on the Select List. It would not be appropriate therefore to make available to the applicants the categorization/gradation of officers other than those brought on the Select List, in addition to the applicants themselves in the present case.

14. These are the reasons for which we had passed a short order in the following terms on 2.2.1990 :-

" For reasons to follow we direct that the ACRs of applicants H.N.Srivastava, S.K.Sharma, A.K.Misra and J.S.Agarwal for the years from 1980-81 to 1984-85, which have been produced before us may be inspected by the applicant's counsel, that the ACRs of B.B.Das, K.N.Dwivedi, Daya Shanker Singh, O.P.Tripathi and P.N.Pathak shall be produced before this Tribunal for the perusal of the Tribunal but shall not be inspected by the counsel for the applicants, that a true copy of the minutes of the meeting of the Select Committee in which the impugned Select List was prepared, alongwith Annexure-2 and only that part of Annexure-I which contains the names of the applicants and of the persons placed in the Select List, Annexure-2 shall be submitted to the Tribunal which also the applicant's counsel will be at liberty to inspect. It is further directed that the information collected by the applicants from the above material shall not be used by them for any purpose other than for the purposes of these four cases. The case be listed for further arguments at Allahabad on 13.2.1990 when the opposite parties shall produce the material as indicated herein. "

  
Member (A)

  
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD

\*\*\*\*\*

O.A.NO. 74, 92, 93 & 125 of 1985  
198.  
~~T.A.NO.~~

DATE OF DECISION \_\_\_\_\_

1. H.N. Sarvestava  
2. Shri Kumer Sharma  
3. J.S. Agarwal  
4. ~~C.B. Rai~~

PETITIONER

Sri S.C. Buthwar

Advocate for the  
Petitioner(s)

VERSUS

Union of India & others

RESPONDENT

Advocate for the  
Respondent(s).

CORAM :

The Hon'ble Mr. Justice Kamleshwar Pathy, C.

The Hon'ble Mr. L. J. Raman, member (A)

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

Yes

Yes

Yes

Yes

Dinesh/

\*\*\*\*\*

Rs

25.9.90.

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
LUCKNOW CIRCUIT BENCH  
Registration O.A. No.74 of 1989(L)

H.N. Srivastava ..... Applicant

Versus

Union of India & Others ..... Respondents

Connected with

Registration O.A. No.93 of 1989(L)

Shiv Kumar Sharma ..... Applicant

Versus

Union of India & Others ..... Respondents

Connected with

Registration O.A. No.92 of 1989 (L)

Jegdish Soren Agarwal .... Applicant

Versus

Union of India & Others ..... Respondents

Connected with

Registration O.A. No.125 of 1989(L)

C.B. Rai ..... Applicant

Versus

Union of India & Others ..... Respondents

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

Hon. Mr. K.J. Roman, Member (A)

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

These four applications under Section 19 of the Administrative Tribunals Act, 1985 described above raise common question of law. The grievance consists of non inclusion of the applicants names in the select list dated 27.12.85 for promotion to the IPS. The common

prayer in all the cases is to have the applicants names included in the disputed select list; in O.A. No.125 of 1989 there is also a further prayer to quash the entire select list.

2. Shri H.N.Srivastava was appointed as a Deputy Supdt. of Police in the U.P. Police Service on 5.1.71. He was confirmed in the service and after occupying different posts in U.P. Police Service, was promoted as Joint S.P. in July, 1983. On 1.12.84 he was promoted as Additional S.P. at Monpuri.

3. Shri S.K.Sharma was appointed as Dy.S.P. on 9.11.71. He was promoted as Joint S.P. on 4.11.82 and again as Additional S.P. on 13.12.84 in a pay scale equivalent to the scale of the senior post in the IPS.

4. Shri Jagdish Saran Agarwal was appointed as Dy.S.P. on 26.2.57 and after having functioned on various posts in the U.P. Police Service was appointed as Additional S.P. Nainital on 10.4.74. Thereafter he was working on equivalent post and his name was included in the IPS select list for the year 1981, 1983 and 1984. However, he was not placed in the select list of 1985.

5. Shri C.B.Rai was appointed as Dy.S.P. on 15.11.71. After having worked in various capacities in U.P. Police Service he was promoted in December, 1984 as Additional S.P.

6. A common grievance of all the applicants is that the Appointment by Promotion Regulations, 1955 required

88

the officers of the State Police Service to be categorised into four categories namely 'Outstanding', 'Very Good', 'Good' or 'Unfit' but the respondents 1 to 3 have not done the categorisation in accordance with the Rules. Counters have been filed on behalf of the U.P.S.C. and the State Govt. and they have stated that the categorisation has been done in accordance with the Rules. The applicants have filed rejoinders.

7. On behalf of the applicants' arguments have been addressed by Shri S.C. Budhwar and Shri R.A. Pandey and assisted by        companions; on behalf of respondent No.2 Dr. Dinesh Chandra has appeared and on behalf of respondents 3 and 4 Shri Anup Kumar has appeared. We have heard the learned counsel for both the sides and have carefully perused the material on the record.

8. The contention of the learned counsel for the applicant is that according to the provisions of the IPS (Promotion by Appointment) Regulations, 1955, the categorization of the officers of the State Police Service is to be done essentially by the departmental officers and the Selection Committee must follow that categorization for the purposes of Regulations 5(5). It is urged that as a matter of fact categorization has not been done at all by the Departmental Officer who recorded the ACR either as a Reporting Officer or as a Reviewing Officer or as Accepting Officer. In this situation, the learned counsel for the applicant says, the Selection Committee has to make this categorization but before doing so it must set out norms on the basis of which the categorization is to be done. It is stated that the Selection Committee

2

did not frame any norms for the purpose and therefore the entire categorization is erroneous. That being so, the select list is said to be invalid. The respondents' case is that regulations had not required categorization to be done by the Departmental Officers. It is said that instructions of the Govt. of U.P. for making categorization by the officers regarding the A.C.R were issued only in 1984 and therefore there was no occasion of making any categorization during the years till the instructions in that regard were issued. It is next said that the Regulations had not required the Selection Committee to draft or frame any norms for making categorization and that in the nature of things the assessment and grading of the officers for the purpose of categorization has to be done only on individual case for which formation of any set norms is not physically possible. It is urged that if the appreciation of the ACRs by the Selection Committee has been made in a fair and reasonable manner without any malafides, of which there is no allegation in the petitions, the categorization done by the Selection Committee is not open to question. The learned counsel for the applicants however insists that in the absence of norms for categorization the categorization is bound to be arbitrary and therefore cannot be sustained.

9. The relevant portions of the IPS (Appointment by Promotion) Regulations, 1955 are clauses 4 and 5 of Regulations 5. They run as follows :-

"(4) The Selection Committee shall classify the eligible officer as 'Outstanding', 'Very Good', 'Good' or 'Unfit', as the case may be, on an over all relative assessment of their service records.

R

- 5 -

(5) The list shall be prepared by including the required number of names first from amongst the officers finally classified as 'Outstanding', then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter se within each category shall be in the order of their seniority in the State Police Service".

10. Clause 4 says in unmistakable terms that the Selection Committee shall classify the eligible officer. That should be the end of the story in so far as the question of categorization by the Departmental Officers is concerned. Further there is no denial by the applicant of the assertions in the Counter on behalf of the State that the instructions of the State Govts. regarding categorization of the officers while making the Annual Confidential Reports was done only by G.O. No.36/1/1976/Karmik-2 dated 30.10.86, Annexure-CA.2A. Para 9 of this letter sets out five gradings :- 'Outstanding', 'Very Good', 'Good', 'Fair' and 'Poor' and refers to an earlier letter of even No. dated 28.3.84. According to para 20 of the Counter, the instructions regarding grading are contained in the G.O. dated 30.10.86, Annexure-CA.2A. It may be that in the 1984 G.O. provisions for the gradings may have been made but we do not have it before us. In any case there can be no doubt that when the Selection Committee met on 27.12.85 and was to consider the service records normally upto 31.3.85, because the A.C.R of 1985 could not be completed till the date of the meeting, the Departmental officers were not bound to make any grading or categorization by themselves. Even otherwise the

92

A32

- 6 -

gradings if any done by the Departmental Officers could not be binding upon the Selection Committee because the power and responsibility of categorization of the eligible officers vested to the Selection Committee under Regulation 5(4). These Regulations were framed by the Central Govt; any instructions to the contrary by the State Govt. to its Departmental officers could not supersede the powers and obligations of the Selection Committee under the Regulations.

11. The learned counsel for the applicants however referred to the decision of the Hon'ble Supreme Court in the case of R.S. Das Vs. Union of India & Others 1987 SC 593 para 30 to contend that categorization was to be done by the Departmental Authorities. We do not find any such view in the decision of the Hon'ble Supreme Court. In any case the Supreme Court have not said that despite the clear provisions in Regulation 5(4) the Selection Committee cannot make its own categorization. Of course, the Selection Committee has to take into account the categorization made by the Departmental Officers, but they are not tied down to that categorization. It will also be appreciated that categorization by the Departmental Officers is made in different years by different authorities. But Selection Committee has to make only one categorization in respect of each individual officer on an appreciation of the over all record of the officer. It follows therefore that it is just not possible for the Selection Committee to follow the categorization done by the Departmental Officers.

92

12. The learned counsel for the applicants then urged that on the facts of these cases categorization was not done by the Departmental Officers and therefore in view of the decision of the Hyderabad Bench of this Tribunal in the case of K.V. Reddy Vs. Director General and Inspector General of Police (1989) 2 SLR 230 it was necessary for the Selection Committee to indicate the procedure and the standard test adopted by them for the purpose of making categorisation. The idea is, as also emphasized by the learned counsel for the applicants, that by adopting a procedure and standard arbitrariness in categorization by the Selection Committee can be eliminated. While the observation is not without substance, it cannot be said that if no standard procedure or test has been laid down before making categorization, the categorization done by the Selection Committee is not valid. In the first place, there is no specific provision in the Regulation itself that the Selection Committee must frame a procedure and standard test for categorization. We have perused the A.C.Rs of the applicants as also of some of the officers who have been brought on the select list/<sup>but</sup>who according to the applicants, should/<sup>not</sup>have been so brought, on the prayer made by the applicants in pursuance of which the respondents have produced the ACRs under the orders of this Tribunal. We find that in respect of different years Reporting Authorities, the Reviewing Authorities and the Accepting Authorities have recorded their views in varying ways and using various expressions of all kinds. This is true of each of the officers. On facts therefore the nature of the entries given by the Departmental Officers to the various eligible officers

- 8 -

are such that they cannot be strictly bound down to any procedure or standard test for categorization. In an attempt to lay down a procedure and adopt a standard test in the midst of this multifarious appreciation of the service record of the eligible officers by the Departmental Officers from year to year, all that can be ensured by the Selection Committee is to act in a fair and just manner without malice in fact or in law. If that standard is satisfied the categorization cannot be struck down simply because some standard procedure or test for categorization has not been laid down as a precedent step for categorization. The law does not expect the impossible. It would have been somewhat different if the Regulations themselves said that before making categorization the Selection Committee must frame some norms or standard test or procedure for categorization of the officer. In that case a Selection Committee would have to perform an uphill task however difficult it may have been, but then the regulations having not provided for any such requirement, it was enough for the Selection Committee to make an over all relative assessment of the service record of the officer within the meaning of clause 4 of Regulation 5 in a fair and bonafide manner. We have already said that the applicants have not challenged the bonafide of the respondents in categorising the eligible officers.

13. The learned counsel for the applicants next contend that the proceedings of the Selection Committee ~~do not~~ do not indicate the numbers or period of years whose records were scrutinised by the Selection Committee to make the classification in accordance with Regulation 5(4). It is true that the minutes, in this regard,

135

simply state that " the Committee examined the records of the officers (whose names are included in the Annexure-1), who fulfilled the conditions of eligibility, and assessed them as indicated against their names". The counter of the U.P.S.C. also does not indicate the number of years or the period for which the records were examined. The contention of the learned counsel for the respondents is that the Committee went by the over all records. The contention of the learned counsel for the applicant is that neither the Committee nor the counter say so. In para 7 (xviii) of H.N. Srivastava's application, in para 21 of S.K.Sharma's application, in para 7(xix) of J.S. Agarwal's application, the stand taken is that generally 5 years remarks of an officer are taken into consideration at the time of making promotions. Applicant C.B. Rai has stated nothing in this regard. Broadly speaking, all the applicants have stated that their service record was always 'Outstanding' or 'Excellent' and was better than several juniors who have been selected. We have therefore scrutinised the ACRs of the applicants and the concerned officers who have been selected. We must make it clear that the Tribunal does not sit as a Selection Committee; it is <sup>not</sup> for the Tribunal to make an over all assessment and categorization of the eligible officers. All that this Tribunal has to see is whether there was such material in the ACRs of the applicants and the concerned officers as could reasonably persuade the Selection Committee to make the categorization as it did. We notice the situation to be as follows :-

gn

A36

(1) Shri H.N.Srivastava : Between 1.4.80 and 31.3.85, remarks of 'excellent performance' are recorded only for the year 1980-81. For the year 1981-82 he has been categorized as 'Good' by the Reporting Officer; the Reviewing Officer has mentioned his conduct to be excellent but while he did not make categorization, he mentioned the officer's work to be basically sound. The learned counsel for the applicant says that the expression "excellent conduct" will supersede the categorization as 'Good' and should be treated as 'Outstanding'. We are unable to agree. The assessment has to be made not merely of conduct but of work and conduct. The Reviewing Authority did mention that the conduct was excellent but so far as the work is concerned he simply mentioned that the work of the officer was basically sound. The gradation therefore could not be into the category of 'Outstanding'. For the year 1982-83 he was given 'Outstanding' remarks; but for the year 1983-84 the remarks speak of only 'good' performance. For the year 1984-85 the remarks used the expression of 'Very Good performance', but the Director General only recorded that he was a useful officer which remark unmistakably watered down the remarks recorded by the Reporting Authority. The substance of the service record therefore is that out of five years, H.N.Srivastava was marked out as 'Outstanding' in 2, 'Good' in 2 and 'useful' in one year. If the Selection Committee graded him only as 'Good', no palpable illegality can be said to have been committed by the Committee.

Q2

A32

In this connection the learned counsel for the applicants has urged that the applicant had worked in two different capacities during different times namely for some time as Deputy Supdt. of Police and other times as Supdt. of Police like all other officers. He says that the service record for the higher post deserves to be given a higher weightage for same grading as compared with that on the lower post. We see no reason to agree to this contention. The learned counsel for the applicants has not been able to refer to any decision on these lines. On the contrary the gradation of an officer is made on the basis of the best of his capacity on the particular post on which he worked for the time being. The object of categorization is not merely to see what posts were held with what distinction; it is also necessary to see in addition as to what was the performance of the officer on the specific post which he occupied for the time being. Every officer is expected to produce the best on the post on which he is working for the time being. If he is graded as 'Good' on one post the value of his assessment as a whole for the particular year on that particular post would carry the same weight if for any subsequent year on a higher post also he was graded as 'Good'. It would only show that the officer as a whole during his certain tenure of his working was giving an output or performance of a particular category; it is immaterial whether the post is a higher or a lower post. The Selection Committee has to choose not only a person with the best record but a person who has been the best person throughout the service record. We are therefore

Q2

unable to accept the contention of the learned counsel for the applicants that there should be some weightage for the remarks given for a higher post. We think that no palpable unreasonableness or arbitrariness in the categorization of H.N. Srivastava by the Selection Committee is made out.

(2) Shri S.K.Sharma : During the years 1980-81, 1981-82 and 1982-83 the remarks contained in his ACR described him as 'Good' although no categorization has been done. For the year 1983-84 the remarks not only described him as 'Average' but the D.I.G. even categorised him as an officer of average calibre. The learned counsel for the applicants says that during this period the applicant S.K. Sharma was holding a dual charge. Besides being Joint Supdt. of Polico he was also holding a further charge of part of the Establishment Work at the Intelligence HQrs. The learned counsel for the applicants says that since the officer was holding <sup>two</sup> charges his categorization as average is comparable with 'Good' of a single charge office. We are afraid, we cannot accept this contention; indeed the learned counsel wants to take us into the forbidden ground. We cannot make assessment. At the same time, it is noticeable that according to the record, the applicant was not holding the full charge of the Establishment Work; the record only mentions that he held a part of the Establishment Work in his charge.

In the year 1984-85 the first part of the record during five months from 30.7.84 to 13.12.84 when the applicant was working as Joint Supdt. of Police the

remark recorded is that he could not cope up with the work and had to be shifted to the HQre where his output was satisfactory. This plainly is too poor. During the remaining three months from 30.12.84 to 31.3.85 when he was working as Additional S.P. Banda, the Reporting Officer categorised him as 'Excellent'; the Reviewing Officer did not disagree with that assessment. With only one excellent and that too for a period of three months, and four 'Good', one 'Average' and one not better than satisfactory for five months, we cannot say that the Selection Committee acted arbitrarily or in an unreasonable manner in categorising Shri S.K. Sharma as only 'Good'.

(3) Shri J.S. Agarwal: The remarks for the year 1980-81 described him only as 'Satisfactory', in 1981-82 as 'Good'. In one month's period from 1.4.82 to 29.5.82 in the year 1982-83 the remarks mentioned him as 'Good' while in the remaining period of the year from 5.6.82 to 31.3.82 nothing specific is mentioned except that the officer was well behaved and experienced. The entries for the year 1983-84 are in the same tenor ; he was described as experienced, intelligent, speed of disposal satisfactory, relations good, having worked hard, exercised proper supervision over the investigations. Nothing more is mentioned. For the year 1984-85 the remarks described him as 'Very Good' for the period from 1.4.84 to 9.1.85, <sup>but</sup> for the remaining period from 10.1.85 to 31.3.85 the remarks speak of him as being 'Good'. The Selection Committee classified him as 'Unfit'. We do not think that anything palpably illegal, per-verse, arbitrary or unreasonable is to be found in that assessment.

A40

(4) Shri C.B. Rai : The remarks regarding this officer for the first part of the year 1980-81 speak of him as being extremely good and those for the second part of the year speak of his work being good. For the year 1981-82 the statements in the remarks mentioned him as 'Very Good'. In the first seven months of the year 1982-83 the remarks used <sup>the</sup> expression 'Good' in different respects; for the later four months the officer is described <sup>as</sup> conscientious intelligent and hard working without using any of those usual qualifications. For the year 1983-84 during the period upto 29.11.83 <sup>as</sup> the reporting officer spoke of the officer being good whereas the Reviewing Officer described him as 'Very Good', in the remaining part of the year he was described only as a hard working, dependable officer. In the year 1984-85 for the period ending 13.12.84 he was described as conscientious, hard working and sincere, none of the usual expressions like 'Good', 'Excellent', 'Outstanding' et was made use of in the report. The remarks for the remaining part of the year also do not contain any remarkable features. In short the best which he achieved was 'Very Good' in 1981-82 and 1983-84 but for the remaining period under consideration he was treated to be only 'Good' in 1980-81 and 1982-83 and the rest of the record was essentially non committal. The Selection Committee classified him as 'Good'. We do not think that any palpable error, irregularity or impropriety or arbitrariness can be found in that grading.

14. We may mention that in the case of J.S. Agarwal, emphasis was laid in para 7(vii) to the fact that the applicants name was included in the select list of 1981, 1983 and 1984. The statement in para 12 of the counter

92

is that the applicants' name was included in the lists which became effective from 12.11.81, from 29.3.84 and from 24.8.85 but between the first and the second lists his name was not included in the list which became operative from 31.7.82. There is no denial of this ~~category~~ exclusion of the applicants' name from the select list of the year 1982 in rejoinder para 9. The result is that it is not as if the applicants name was continuously included in the select lists of 1981 till 1984; since it was not included in the select list of 1982. It is obvious that every time the select list is prepared, some new material in the service record of the officers is to be considered. . The Selection Committee prepares the select list for <sup>a</sup> particular year exercising its own judgement in making <sup>the</sup> categorization and selection. It is well settled that the mere inclusion of a name of a person in the select list creates no right. It is also not said, nor we are aware, that if a person's name is included in some previous select list, his non inclusion in the subsequent list is <sup>to be</sup> explained by reasons. We do not think therefore that the fact of the applicant's name being included in the select list of 1981, 1983 and 1984 brings any claim so far as the preparation of select list of 1985 is concerned.

15. It was urged on behalf of the applicant that some of the persons who have been brought on the select list in question were facing disciplinary proceedings and yet they were selected and the fact of pendency of disciplinary proceedings was not brought to the notice of the Selection Committee. Allegations in this regard were made in respect of Satish Chandra Yadav, K.N.D. Dwivedi

A42

- 16 -

Bal Krishna Chaturvedi and Devendra Bahadur Rai in the case of Shri H.N.Srivastava and C.B. Rai. Indeed, C.B.Rai filed a chart of Anti Corruption enquiries, Annexure-3 in his application and referred to the same in para 4(34) and para 4(35) of the application. In para 21 of the counter it was stated that the position of the enquiries as shown against the officers is neither signed nor verified by ~~some~~ <sup>any</sup> officer of the Anti Corruption Organisation hence the respondents made no comment thereon. In para 16 of the rejoinder the applicants correctly urged that the fact ~~and~~ <sup>the</sup> position of enquiries was in the knowledge of respondents themselves and it was for them to disclose the contents of the enquiry and whether the records of enquiries were placed before the Selection Committee. There is no doubt that it was the duty of respondents 3 and 4 to furnish particulars in respect of chart in Annexure-3 and therefore it may be fairly said that there is no specific denial of those allegations. The applicants nevertheless filed a detailed chart in Annexure-RA1 alongwith the rejoinder. This chart contains the name of two officers. We notice that only in respect of five of these officers namely Bal Krishna Chaturvedi, K.N.D.Dwivedi, Devendra Bahadur Rai, Girish Nandan Singh and Om Prakash Tripathi enquiries were pending at the time when the Selection Committee met. Bal Krishna Chaturvedi's Anti Corruption Department enquiry commenced by letter dated 19.9.85. It was hardly three months before the meeting of the Selection Committee. K.N.D.Dwivedi's enquiry was instituted and completed in 1978 and according to Annexure-RA1 he was recommended a warning. The complaint against Devendra Bahadur Singh

Q

443

- 17 -

for which enquiry was instituted on 6.7.80 concerned misuse of authority and according to Annexure-RA1 the enquiry was completed and reports submitted on 7.10.76, i.e. after the Selection Committee Meeting. The enquiry against Shri Girish Nandan Singh and Om Prakash Tripathi on allegations of corruption commenced on 14.5.84 and 10.7.84 respectively and they were still pending during the Selection Committee Meeting. The particulars of the enquiry against Satish Chandra Yadav are not contained in Annexure-RA1 but it is admitted in the Selection Committee proceedings itself that disciplinary proceedings instituted against him were pending. It does not appear that the fact of the pendency of enquiries against the rest of the officers was brought to the notice of the Selection Committee; but emphasis has been laid by the learned counsel for the respondents on the admitted fact that all those enquiries were still pending and according to the submissions of the learned counsel they were only in the preliminary stage.

16. We may point out that in para 3 of the minutes of the Selection Committee Meeting two kinds of officers are indicated. There were two officers including Satish Chandra Yadav in respect of whom disciplinary proceedings were mentioned as having been instituted and still pending and there were two other officers including one of the applicants, J.S. Agrawal in respect of which the State Govt. has finally decided to institute disciplinary proceedings. It is not

2

A44

disputed that in the first instance complaints are investigated; that is known as the preliminary enquiry. When a prima facie case is made out in the preliminary enquiry then the competent authority has to take decision whether regular departmental disciplinary enquiry is to be instituted or not. When a decision is taken to institute a regular departmental enquiry then disciplinary enquiry can be said to be contemplated which commences at the stage of issuing the chargesheet. It appears that administratively the Govt. considers the stage of taking decision to be adequate for the purposes of treating the case to have proceeded to the stage of a regular departmental disciplinary enquiry. That is how Satish Chandra Yadav appears to have been at the stage of disciplinary enquiry and J.S. Agarwal appears to have been at the stage of contemplated disciplinary enquiry. The decision of the Govt. of India in these situations is set out in para 12 at page 36 of All India Services Manual Part III corrected upto 1.8.84 and issued by the Department of Personnel and Training of the Govt. of India. It is mentioned that according to the existing practice members of the concerned service whose suitability for promotion is considered by the Selection Committee and against whom disciplinary proceedings are pending are included in the select list subject to clearance of enquiries pending against them. It goes on to say that the State Govt. have been requested that a list of officers against whom disciplinary proceedings are pending ~~on the basis of the chargesheet~~ and list of officers in respect of whom it has been finally

92

AUS

- 19 -

decided to institute disciplinary proceedings may invariably be given to the Chairman of the Selection Committee as in the proforma enclosed at the time of the meeting of the Committee. A letter dated 6.2.82 of the Department of Personnel and Administrative Reforms is cited. This decision of the Govt. of India indicates two situations. Firstly a list of all such officers against whom either the proceedings are pending or final decision to institute a disciplinary proceedings has been taken is to be furnished and secondly the pendency of such proceedings does not stand in the way of the officer being considered by the Selection Committee and to be included in the select list; such selection is only subject to clearance of the enquiries pending against him. The decision speaks of only two types of cases (1) where a disciplinary proceeding is pending, and (2) where it has been finally decided to be instituted disciplinary proceedings. Prima facie the stage of investigation is a third stage which precedes both of these stages and therefore apparently cases where only investigations are in hand need not be referred to the Selection Committee. The matter of Selection Committee proceedings qua disciplinary enquiries came up for consideration before a Full Bench of this Tribunal at Madras in the case of K.Ch.Venkata Reddy and Others Vs. Union of India & Others decided on 2.3.87 and published <sup>at page 158</sup> in "Full Bench Judgements of Central Administrative Tribunal (1986-89)" by Bahri Brothers. Paras 31, 32 and 33 of the decision contain significant observations of the Full Bench. It was stated that in O.M. dated 14.7.77 it had been decided by the Govt. that sealed cover procedure should be followed

DL

A46

- 20 -

in those cases where after investigation the evidence collected indicates prime facie case against the officer concerned and not when the preliminary investigation is pending and no conclusion is reached about the prima guilt of the officer as at that stage there is no ground for treating the said officer as one whose conduct is under investigation. The Full Bench went on to say that in the instructions in cases of officers against whom a decision has been taken by the disciplinary authority to initiate proceedings and those against whom sanction for prosecution is issued, sealed cover procedure is contemplated, but between the decision and the actual initiation of proceedings there may be a time lag which may not be uniform and specific. It was further said that to ensure uniformity and certainty the date of initiation of the proceedings should be taken as the basis for applying the sealed cover procedure and " it is well established that the date of initiation of proceedings is the date when the charge memo is served on the officer and the chargesheet is filed before the Court". It was also held that the sealed cover procedure contemplated that a person against whom disciplinary proceedings had been initiated and were pending may also be considered for promotion and if he is found fit and selected his result shall be kept in a sealed cover to be opened and acted upon after the completion of the said proceedings. The true position therefore is that so long as the matter is at the stage of investigation cognizance of the proceedings is not to be taken by the Selection Committee;

92

cognizance is to be taken and papers have to be placed by the State Govt. before the Selection Committee only in those cases where either a decision to institute regular disciplinary proceedings has been taken or a disciplinary proceeding has actually been instituted, and even there the cases of the officers have to be considered by the Selection Committee; only results have to be kept in a sealed cover. That was the legal position prevailing at the time when the Selection Committee met on 27.12.85. We may say that even subsequently the similar position prevailed in terms of the Govt. of India, Department of Personnel & Training O.M. No.22011 dated 12.1.88 mentioned at page 521 of Suamy's Complete Manual "On Establishment and Administration for Central Govt. servant" Second Edition. The instruction is mentioned to be as follows :-

"The departmental promotion committee shall assess the suitability of the Govt. servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending or contemplated against them or where the investigation is in progress."

17. Annexure-RA1 is only a chart to the proceedings before the Anti Corruption Organization which is essentially concerned with preliminary investigation; it is not concerned with the holding of any departmental disciplinary enquiry. Apparently, therefore the proceedings referred to therein concerned investigations and not disciplinary enquiries. It is also clear that in respect of Bel Krishna Chaturvedi, Devendra Bahadur Rai

92

Girish Nandan Singh and Om Prakash Tripathi, the investigations were still pending when the Selection Committee met. There was no question of furnishing their papers to the Selection Committee. Only in respect of K.N.D.Dwivedi some warning had been recommended by the Anti Corruption Organisation in 1978. We do not think that a warning awarded in 1978 was relevant for the purpose of the Selection Committee which met in the year 1985. We may refer in this connection to an O.M. No.21 dated 15.5.71 of the Department of Personnel of the Govt. of India and mentioned at page 527 of Swamy's Compilation referred to above which shows that even a censure entry does not stand in the way of an officer being considered for promotion. It appears from the minutes of the Selection Committee that the cases of those officers against whom either the Govt. had taken a decision finally to institute the disciplinary proceedings or against whom the disciplinary proceedings were actually instituted and pending were placed before the Selection Committee and were considered by the Selection Committee. The Committee also took care to say that the name of Satish Chandra Yadav had been included in the list provisionally subject to clearance of the enquiries pending. We do not think, in the facts and circumstances of these cases, that any infirmity attaches to the proceedings of the Selection Committee only on the basis of the so called disciplinary enquiries against some of the officers who were placed in the select list.

18. It was lastly said that there were officers like K.N.D.Dwivedi and Satish Chandra Yadav who had been

superseded by his juniors for promotion as Additional S.P. in 1984 while all the applicants e.g. C.B.Rai had been promoted in the year 1984. The submission is that the selection by the Committee has been unfair. In compliance of our order dated 2.2.90 on the application of the applicants for the purpose after hearing the counsel for both the parties the respondents have produced before us the ACRs of the concerned selected officers namely Brij Bhushan Das, K.N.D.Duivedi, Daya Shanker Singh, Om Prakash Tripathi, K.N.Pathak, Surendra Kumar Saxena, Satish Chandra Yadav and Devendra Bahadur Rai. All of them have been categorised by the Selection Committee as 'Very Good'. Carefully bearing in mind the limitation of this Tribunal in examining the service records and categorisation of the officers on that basis by the Selection Committee we have found the position to be as stated hereafter.

18.A. For the year 1980-81, 1981-82, 1983-84 and 1984-85 Om Prakash Tripathi earned remarks which described him as 'Outstanding' or 'Excellent'. Only for the year 1982-83 the remarks of the Reporting Authority described him as 'Very Good' whereas those of the Accepting Authority described him partly as 'satisfactory' and partly as 'Good'.

19. For the year 1981-82, 1983-84 and 1984-85 the remarks described Devendra Bahadur Rai to be 'Excellent' or 'Outstanding'. For the year 1980-81 and 1982-83 the remarks described him as 'Very Good' officer.

20. For the year 1982-83, 1983-84 and 1984-85 the remarks described the performance of Satish Chandra Yadav to be 'Outstanding'. For the year 1980-81 and 1981-82 the Reporting Officer recorded remarks for the officer

92

ASD

- 24 -

being 'Very Good' whereas the Accepting Authority assessed him as 'Good' for the year 1980-81 and 'Excellent' for the year 1981-82.

21. For the year 1981-82, 1982-83 and 1984-85 the remarks given to K.N.D. Dwivedi described him as 'Outstanding'. For the year 1980-81 the remarks described him as 'Very Good'; for the year 1983-84 when the officer worked as P.R.O. to the Director General of Police the Reporting Authority recorded the officer's performance to be 'satisfactory'; there is no remark by the Reviewing Authority as he has retired; there is no remarks by the Accepting Authority.

22. For the year 1980-81, 1981-82, 1982-83 and 1984-85 Daya Shanker Singh was described with the remarks to be an 'Outstanding' officer. It is interesting that for the period from 1.4.80 to 3.11.80 the Reporting Authority as well as the Reviewing Authority had recorded the officer's work to be 'Outstanding' and behaviour to be 'exemplary'; the Accepting Authority while he recorded that he agreed with that assessment observed that Daya Shanker Singh was a 'Good' officer. The remark of the Accepting Authority is self inconsistent. If he agreed with the remarks of the Reporting and Reviewing Authorities there is no question of his having been assessed only as a 'Good' officer. For the year period from 3.11.80 to 31.3.81 the Commissioner of the Division remarked adversely on the basis of the non cordial relations with the District Magistrate. The D.G.P. who is the Accepting Authority observed that ~~controversy~~ controversy related to the

election of 1981 and should not be attributed to the year 1980-81. In the remarks from the year 1981-82, the first part <sup>upto</sup> 28.11.81 carried the Commissioner's adverse remarks aforesaid, but in the second part between 4.12.81 and 31.12.82 he was remarked by the Reporting Authority to be a 'Very Good' officer which was improved by the Reviewing Authority to be an 'Excellent' officer. We are clearly of the opinion that the Selection Committee had enough relevant and positive material before it to assess Daya Shanker Singh, K.N.D. Dwivedi, Satish Chandra Yadav, Devendra Bahadur Rai and Om Prakash as 'Very Good' officers according to the category.

23. However in respect of Brij Bhushan Das, Surendra Kumar Saxena and Prem Nath Pathak the categorization by the Selection Committee ignores relevant adverse material in those officers' records.

24. Only for the year 1981-82 Brij Bhushan Das was described in the remarks to have excelled in the field work and office work to which the Reviewing and Accepting Authorities agreed. For the year 1982-83 the Reporting Authority again described his performance to be 'Excellent' but the Reviewing Authority reduced it to his being a 'Good' field worker whereas the Accepting Authority simply mentioned that he did well. Obviously the grading was reduced. For the year 1984-85 the Reporting Authority simply mentioned that the officer had done well as Principal of the B.P.C.; but the Reviewing Authority observed that supervision over

- 82

the accounts was not good and an embezzlement of Rs.50,000/- was committed . The Reviewing Authority went to observe that the officer shrugged the responsibility the Accepting Authority agreed with the views of the Reviewing Authority. The remarks were definitely adverse for the year 1984-85. For the year 1980-81 the remarks described him either as 'satisfactory' or 'good'.

25. Only for the year 1984-85 Surendra Kumar Saxena's work and performance is spoken of by the Reporting Authority to be 'Outstanding'; but that was down-graded by the Reviewing Authority to be only 'Good'. For the year 1983-84 the Reviewing and the Accepting Authority considered the officer to be 'Very Good'. For the year 1980-81 all the authorities described his work and conduct to be 'satisfactory'. For the year 1982-83 the work and conduct was described to be 'Good'. In 1981-82 the Reporting Authority has stated the performance of the officer to be 'Good' but the Reviewing Authority recorded that the officer was careless and did not enjoy good reputation for honesty. The Accepting Authority however did not agree with this assessment of the Reviewing Authority; but nevertheless described the officer to be only 'satisfactory'.

26. Prem Nath Pathak was remarked by the Reporting Authority to be 'Outstanding' only for the year 1981-82 with which the Reviewing Authority agreed. For the year 1982-83 the Reporting Authorities remarked him to be 'Excellent' but the Reviewing Authority reduced quality of work and performance to be 'Very Good' with which the Accepting Authority agreed. For the year 1983-84

the Reporting Authority described him to be 'Excellent' but the Accepting Authority only mentioned that he generally did well. That was a reduction in the grading. In the year 1984-85 for first less than three months i.e. from 1.4.84 to 22.6.84 the Reporting Authority remarked the officer to be 'Excellent'; there is no remark of the Reviewing or the Accepting Authority. But for the remaining part of the year from 18.7.84 to 31.3.85 the Reporting Authority's remarks described him only as 'Good' with which the Reviewing Authority agreed and the Accepting Authority made an adverse remarks by saying that the officer was ineffective. On a careful consideration of the material on the record we are of the opinion that the Selection Committee (which of course have not recorded any norms or criteria for making the assessment which we have said by itself was not a matter of fault) have no palpable or relevant material to assess Surendra Kumar Saxena, Brij Bhushan Das and Prem Nath Pathak to be 'Very Good' officers. Their gradation by the Selection Committee cannot be upheld to be fair. But even if we eliminate these three officers we do not find that the applicants can have any real benefit for themselves for the purposes of relief in this case. According to Annexure-1 in which the officers in the field of eligibility have been set out in the order of their seniority and the Selection Committee have made categorization, Brij Bhushan Das, Prem Nath Pathak and Surendra Kumar Saxena stand at Sl.Nos 17, 18 and 33 respectively. Although J.S. Agarwal stands at Sl.No.1 he has been correctly graded as 'Unfit'. Shiv Kumar Sharma, H.N.Srivastava and C.B.Rai who have been graded as 'Good' stand at Sl.Nos. 29, 32 and 40. The list contains five

82

A54

- 28 -

officers who have been categorised as 'Good' and are senior to Shiv Kumar Sharma. So even if the names of Brij Bhushan Das, Prem Nath Pathak and Surendra Kumar Saxena are excluded from the select list the persons who move up would be other than those who are applicants in this case. In either view of the matter the applicants cannot get any relief in this case.

27. These are all the points which have been raised in these cases. For reasons recorded above, all the petitions deserve to be and are dismissed. Parties shall bear their costs. Let the A.C.Rs be returned to the Department concerned.



Member (A)



Vice Chairman

Dated the 15<sup>th</sup> August .., 1990.

25<sup>th</sup> September

RKM

Central Administrative Tribunal

Circuit Bench, Lucknow

Date of Filing 30/3/89

Date of Receipt by Post.....

Ltr on 3/4/89

Deputy Registrar

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
ADDITIONAL BENCH AT LUCKNOW.

I N D E X

IN RE:

REGISTRATION NO.

74

OF 1989 (C)

District: Azamgarh.

Between

H.N. Srivastava

....

Applicant

Versus

Union of India and Others .... Opposite Parties.

<u>Sl.No.</u>	<u>Particulars of documents</u>	<u>Page No.</u>
1.	Application u/s 19 of the Central Administrative Tribunal Act '85	1-16
2.	<u>Annexure No.1</u> Copy of representation	17-21
3.	Vakalatnama	22

Nature for  
30/3/89  
Chaitanya Kumar Durr  
30/3

Kapil Durr

Advocate,

Dated March 30, 1989 Counsel for the Applicant.

Place : Lucknow.

Before the Central Administrative Tribunal,  
Additional Bench,  
Lucknow.

Application No. of 1989 (L)  
(U/S 19 of the Administrative Tribunals Act 1985)

District Azamgarh.

Between:

H.N.Srivastava ... Applicant

Versus

Union of India and others ..... Respondents.

1. Particulars of the Applicant:

- (i) Name of the applicant: H.N.Srivastava.
- (ii) Name of father: L.P.Srivastava
- (iii) Age of the applicant: 44 years.
- (iv) Designation and particulars  
of office: Commandant 20th Battalion,  
P.A.C. Azamgarh.

(v) Office address: 20th Battalion, P.A.C. Azamgarh.

(vi) Address for service of notices: 20th Battalion,  
P.A.C., Azamgarh.

2. Particulars of the respondents:

(i) Name of the respondent

(ii) Name of father/husband

(iii) Age of the respondent

(iv) Designation and particulars  
of office

(v) Office address:

(vi) Address for service of notices:

I. Union of India, through the Secretary,  
Home Affairs, New Delhi.

II. The Union Public Service Commission, New  
Delhi through its Chairman.

III. The State of Uttar Pradesh through the  
Secretary, Home Department, Civil Secretariat,  
Lucknow.

IV). The Director General of Police, Uttar  
Pradesh, Lucknow.

3. Particulars of the order against which  
application is made. The application is  
against the following order:

The present application is made against  
the non-inclusion of the name of the applicant

in the select list of 1985 ~~batch~~ of Provincial Police Service Officers for being promoted in the cadre of Indian Police Service by promotion, which is being acted upon in the year 1989.

4, Subject in brief:

The applicant is a member of the Uttar Pradesh State Police Service and belongs to 1968 batch. On the basis of his seniority, suitability and eligibility as also on the basis of outstanding record of service in the State Police Service he is entitled to be considered for being promoted in the Indian Police Service cadre in terms of the Regulations known as the Indian Police Service (Appointment by Promotion) Regulations 1955 prior to his juniors and ~~an~~ inferiors. The opposite parties have prepared a select list for the year 1985 in respect of the Officers of Uttar Pradesh Provincial Police Service for their elevation in the Cadre of Indian Police Service and it has been sent to the Uttar Pradesh Government for implementation. In this list the names of the Officers of Provincial Civil Service from 1961 to 1970 have been included, but it does not include the name of the applicant though he belongs to 1968 batch and has out-standing service record at his credit.

5. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

6. Limitation:

The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985.

7. Facts of the Case:

The facts of the case are given below:

i. That the applicant is an Officer of Provincial Police Service, Uttar Pradesh and was directly recruited by the U.P. Public Service Commission, Allahabad against 1968 batch.

ii. That after his appointment in the Provincial Police Service cadre of Uttar Pradesh he remained posted in various districts of Uttar Pradesh and the details of his postings are given as under:

<u>Sl.No.</u>	<u>Designation &amp; place of posting.</u>	<u>Period.</u>
1.	Circle Officer City, Faizabad	1972 to 1974
2.	Dy. Supdt. of Police, City, Allahabad	1974 to 1976
3.	Dy, Supdt. of Police, City, Agra	1976-1977

-5-

4. Staff Officer  
(Addl.I.G.Training) Lucknow. 1977-1978
5. Dy, Supdt of Police,  
Incharge, Uttar Kashi 1978-1981
6. Senier Staff Officer,  
P.A.C. Hqrs. Lucknow. 1981-1983
7. Joint Supdt. of Police/  
Addl. Supdt. of Police,  
Mainpuri. 1983 to 1988
8. Commandant, 20th Batta-  
lian, P.A.C., Azamgarh 1988 till date.

iii. That from the above narration it is evident that the applicant always held very responsible posts in the Police Department in very important districts of Uttar-Pradesh. He has held charges of three Divisional Hdqrs. as D.S.P. City from 1972 to 1977 one after the other, a unique record achieved by any Police officer of state. He has served as Staff Officer of in the State Training Hdqrs. and PAC Hdqrs.

He has served as Joint S.P./Addl. S.P., Mainpuri, a sensitive and Crime Prone Distt., for  $4\frac{1}{2}$  years.

He has held charge of Distt. Uttar Kashi from 1978 to 1981, and holding charge of 20th. Bn., P.A.C., Azamgarh on which senior scale I.P.S. officers are posted. It was on account of out-standing and excellent career of the applicant he was given the postings of very higher responsibilities and always gave outstanding performance.

iv. That the applicant throughout his service career has never been communicated any adverse material and he

*Sw*

has reasons to believe that his character roll entries have always been excellent and outstanding.

V. That the criteria for preparing the select list of the members of the State Police Service for being promoted in the Indian Police Service Cadre is laid down in Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations 1955, which reads as under:

5. Preparation of a list of Suitable officers:

(1) Each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Police Service as are held by them to be suitable for promotion to the Service. The number of members of the State Police Service included in the list shall not be more than twice the number of substantive vacancies anticipated in the course of the period of twelve months, commencing from the date of preparation of the list, in the posts available for them under rule 9 of the Recruitment Rules, or 10 per cent of the senior posts shown against items 1 and 2 of the cadre schedule of each State or group of States, whichever is greater.

(2) The Committee shall consider, for inclusion in the said list, the cases, of members of State Police Service in order of seniority in the State Police Service up to a number not less than five times the number referred to in subregulation (1):

Provided that, in computing the number for inclusion in the field of consideration, the number of Officers referred to in sub-regulation(3) shall be excluded:

-7-

Provided further that the Committee shall not consider the case of a member of the State Police Service unless, on the first day of the January of the year in which it meets, he is substantive in the State Police service and has completed not less than eight years of continuous service ( whether officiating or substantive ) in a post of Deputy Superintendent of Police or any other post included in the State Police Service which is declared by the State Government, with the prior concurrence of the Central Government, as equivalent in status and responsibility of that of a Deputy Superintendent of Police.

(4) The selection for inclusion in such list shall be based on merit and suitability in all respect:

Provided that where the merits of two or more officers are found to be equal, seniority shall be taken into account.

(5) The names of the officers included in the list shall be arranged in order of seniority in the state Police service:

Provided that any junior officer who in the opinion of the Committee is of exceptional merit and suitability may be assigned a place in the list higher than that of officers senior to him.

(6) The list so prepared be reviewed and revised every year.

(7) If in the process of selection, review or revision it is proposed to supersede any member of the State Police Service, the Committee shall record its reasons for the proposed supersession.

dw

Vi. That against the 17 vacancies in the State Police Service, Uttar Pradesh a list of 34 persons was prepared in respect of the year 1985 but the name of the applicant has not been included in the said list in gross violation of the said Rule 5.

Vii. That the petitioner was fully eligible for the inclusion of his name in the said select list in terms of the said Regulation 5.

Viii. That in the select list of 1985 which is going to be implemented within a day or two, the names of the batchmates of the applicant i.e. of 1968 have been included besides the Officers of subsequent batches of 1969 and 1970.

IX. Govt. is intending to promote all officers of 1985 select list to I.P.S. Cadre against the provisions of Para 5 (6) of Indian Police Service (Appointment by promotion) regulation 1955 .

X. That Sarva Sri A.K. Singh and N.R. Srivastava, who are senior to the petitioner and belong to 1967 Batch were suspended in 1977 and they were subjected to disciplinary proceedings. Sri R.D. Tripathi of 1966 Batch, K.N.D. Dwivedi of 1970 batch, Satish yadav of 1970 Batch whose names are included in the select list were also subjected to enquiries in 1985 when the select list was prepared. Sri Satish yadav/ Sri K.N.D. Dwivedi were not promoted as Addl. SpP. in 1984 along with other officers of their Batch. Sri Satish yadav was also not promoted in Senior Scale of State Police Service along with his Batchmates.

Xi. That against S /Sri R.D. Tripathi (1966 batch), A.K. Singh (1967 Batch), and B.K. Chaturvedi of (1968 Batch) inquiry proceedings are still pending.

Sri D.B. Roy of 1969 batch and other Junior to D.B. Roy were reverted in April 1986 whereas petitioner remained as Addl. S.P. in Manpuri.

Xii. That none of the officers Junior to petitioner whose names find place in the select list were elevated to the post of Joint S.P./ Addl. Police Superintendent and then as Commandant which post is equivalent to the post of District Superintendent of Police earlier to the petitioner. The petitioner was elevated to the post of Joint S.P. in 1983, Addl. S.P. in 1984 and then as Commandant of P.A.C. in 1988 on the basis of his outstanding service career.

Xiii) Petitioner also crossed the efficiency bar in 1984 in the pay scale of Joint S.P. Vide Shasanadesh No. 3548/ Attah- PU. SE. - 1-26/1/26/74 Dtd. 30-9-1985 .

Xiv) S/Sri Satish yaday and K.N.D. Dwivedi whose names are included in the select list were elevated to the post of Addl. SpP. in year 1986 & December 1987 respectively. They were not promoted even to the post of S.P./ Commandant of P.A.C., like the applicant.

XV. That while preparing the impugned select list due weightage has not been given to the service record of the petitioner and the character roll entries as per requirement of the Regulation referred to above and officers having inferior record of service and many junior to the applicants have been included in the select list.

Xvi) That in the preparation of the select <sup>list</sup> ~~rules~~ the requirements of sub rules (4) (5) and (6) of Regulation 5, reproduced above have altogether been over looked in an arbitrary manner.

xiii) That the annual remarks of the Police Officers are recorded on over all assessment of work and conduct during the year ~~mm~~ and every officer is assigned one of the following category:

1. Outstanding.
2. Very good
3. Good
4. Not fit.

xvi) That at the time of promotions generally five years' remarks of an officer are taken into consideration. If four out of the five, including the last remarks are outstanding and he has no adverse report, the officer is placed in 'Outstanding' category. Such an officer becomes senior to all those categorised as 'Very good' or 'ggood', irrespective of his original placement in the gradation list. An officer on whom three remarks out of five are categorised as 'very good' and has no adverse report, is categorised as 'very good'. All officers categorised as 'very good' are placed immediately after those categorised as 'outstanding'. Officers who have at least three good remarks are categorised as 'good' provided there is no adverse remark. Officers who are categorised as 'good' are placed immediately below below the junior most officer of 'very good' category. This criteria has been followed in the matter of fixing the said categories in the matter of promotions.

h

XIX. That the applicant was selected for his promotion to the post of Joint Superintendent of Police in 1983, Addl S.P. in 1984, and thereafter Posted Commandant, P.A.C. prior to the officers Junior to him on the basis of his being an officer of Outstanding category but while making selection for the promotion in Indian Police Service cadre he has altogether been ignored and officers of inferior categories and even junior to the applicant have been included in it in gross violation of Articles 14 and 16 of the Constitution.

XX. That the revision of the select list for 1985 has also not been subsequently reviewed and revised in the subsequent years as per requirement of Regulation 5 (6).

XXI. That as soon as the petitioner learnt about exclusion of his name in the select list he immediately preferred a representation, a true copy of which is being filed as Annexure No. 1 to this application.

XXIi. That from the facts, circumstances and reasons stated above it becomes obvious that the applicant has been subjected to high type of discrimination in the Matter of Promotion in face of his juniors and inferiors also.

XXIii) That in case all the existing vacancies of 1985 are filled up from amongst the select list the applicant -----

would be subjected to further litigation for no fault of on his part and it would be expedient in the interest of justice that this Hon'ble Tribunal may be pleased to issue suitable directions to the opposite parties to safeguard the legal claim of promotion of the applicant in the cadre of Indian Police Service and to reserve one post in this cadre for the petitioner and that the promotion orders on the basis of select list would be subject to the decision of this application.

xxiv That the applicant is filing the instant application before this Hon'ble Tribunal on the following amongst other:

: G R O U N D S :

- i) Because in the matter of promotion the applicant has been subjected to arbitrary and discriminatory treatment and the fundamental rights guaranteed to him under Articles 14 and 16 of the Constitution have been denied to him.
- ii) Because due to inaction and arbitrary exercise of powers by the authorities concerned the name of the applicant has not been included in the select list at the appropriate place.

- 43 -

iii) Because non-inclusion of the name of the applicant in the impugned select list in face of juniors and inferiors is arbitrary, illegal and visits the petitioner with penal consequences.

iv) Because the select list has not been prepared strictly in accordance with the criteria as laid down in Regulation 5 reproduced above

v) Because in view of the facts and circumstances stated above the applicant is legally entitled for the inclusion of his name in the impugned select list for his elevation in I.P.S. cadre.

8. Detailse of the remedies exhausted:

The applicant declares that he has availed of all the remedies available to him under the relevant service Rules. The copy of the representation preferred raising his grievance has been filed as Annexures to this application.

9. Matters not previously filed or pending with any other Court.

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court of law or any other authority or any other Bench of the Tribunal and nor any such application, writ petition

or suit is pending before any of them.

10. Relief Sought:

(i) That the opposite parties may kindly be directed to include the name of the applicant in the select list of 1985 for his promotion in the cadre of officers of Indian Police Service from the date the promotions in the said cadre are made and his name be placed in the said list on the basis of merit which may be determined in accordance with the provisions of law.

(ii) That the opposite parties may kindly be further commanded to keep one post in the I.P.S. cadre reserved which are to be filled up on the basis of the impugned select list.

(iii) That any other appropriate direction as may be deemed just and proper may also be issued to the opposite parties.

(IV)  
11. Interim order, if any, prayed for.

Pending final decision on the application, the applicant seeks issue of the following interim order:

(a) That the opposite parties may kindly be directed to keep one post in the I.P.S. cadre reserved for the petitioner, which may be filled up on the basis of the select list.

*Amendment - X -  
incorporate order  
Court orders of date.  
27/4/89*

*hvv*

12. In the event of application being sent by Registered post, it may be stated whether the applicant desires to have oral hearing at the time admission stage and if so, he shall attach a self addressed Post Card/Inland letter at which intimation regarding the date of hearing could be sent to him:

13. Particulars of Bank Draft /Postal Orders in respect of the Application Fee:

1. Name of the Bank on which drawn.

2. Demand Draft No.

or

1. Number of Indian Postal order(s)

*DD 827833*  
2. Name of the issuing Post Office

*High Court Lucknow*

3. Date of issue of Postal Order(s)

*22-3-89*  
4. Post Office at which payable.

14. List of enclosures:


1..... *Representation dt. 13.3.89*

2.....

3.....

Verification

I, H.N.Srivastava aged about 44 years son of  
Sri L.P.Srivastava, at present posted as Commandant,  
20th Battalion, Azamgarh, do hereby verify that the  
contents of paras 1 to 14  
to are true to my personal knowledge  
and that Paras ✓ to ✕ believed to be  
true on legal advice and that I have not suppressed  
any material fact.

  
Signature of the applicant.

Dated March 30, 1989

Place: Lucknow.

Kapil Dev  
Advocate  
Counsel for the applicant

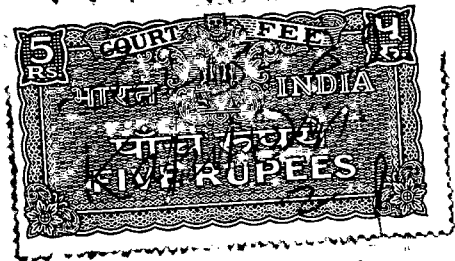
बिनादालत श्रीमान Central Administrative Tribunal महोदय  
at Lucknow

वादी (मुद्दे)

मुद्दे (मुद्दालेह)

का

वकालतनामा



H. V. Smarshankar

वादी (मुद्दे)

Respondent

Union of India & others बनाम

प्रतिवादी (मुद्दालेह)

Kapil Dev, Adv. High Court एडवोकेट महोदय  
Lucknow वकील

नाम अदालत	नाम मुद्दालेह	नाम फरीकन
.....	.....	.....
.....	.....	.....
.....	.....	.....

को अपना वकील नियुक्त करके (इकरार) करता हूँ और लिख देता हूँ इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करे या अन्य कोई कागज दाखिल करे या लौटावे या हमारी ओर से डिगरी जारी करावे और रुपया वसूल करे या सुलहनामा या इकबाल दोबा तथा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करे और तस्दीक करे या मुकद्दमा उठावे या कोई रुपया जमा करे या हमारी या विपक्ष (फरीकसानी) का दाखिल किया रुपया अपने या हमारे हस्ताक्षर-युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करे। वकील महोदय द्वारा की गई वह कार्यवाही हमको सर्वथा स्वीकार है और होगी। मैं यह भी स्वीकार करता हूँ कि मैं हर पेशी स्वयं या किसी अपने पैरोकार को भेजता रहूँगा। अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसको जिम्मेदारी मेरे वकील पर न होगी। इसलिए यह वकालतनामा लिख दिया कि प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर.....

साक्षी (गवाह).....

साक्षी (मुद्दालेह).....

दिनांक.....

महीना.....

Accepted  
Kamini

Before the Central Administrative Appellate  
Tribunal Additional Bench  
Lucknow

O.A. No

of 1989 (2)

H. N. Srivastava — Petitioner

vs

Union of India &  
others — respondents

Index

Annexure no/

Page no.

17-21

Amil Desai  
Advocate  
Counsel for Applicant



Dr

बिफोर दि सेन्ट्रल एडीमिनिस्ट्रेटिव ट्रिबुनल, व एडीशनल बैच,  
 सैट, लखनऊ

रजिस्ट्रेशन नम्बर

आफ 1989

एच० एन० श्रीवास्तव

पिटीशनर

बनाम

यूनियन आफ इण्डिया एण्ड अदर्स

अपोजिट पार्टीज

अनेक्जर नम्बर ।

सेवा में,

उ० प्र० शासन  
लखनऊ ।

द्वारा- पुलिस महानिदेशक

उ० प्र०, लखनऊ

महोदय,

विभाग में जनवर्चा है कि मेरा नाम प्रान्तीय पुलिस सेवा से भारतीय पुलिस सेवा में प्रोन्नति हेतु वाली वर्ष 1985 की चयन सूची में नहीं है।

उपरोक्त सूचना से मुझे अत्यधिक आश्चर्य, असीम कष्ट एवं अपार मानसिक तनाव हुआ है। मैं वर्ष 1968 की ज्येष्ठता का सीधी भर्ती का प्रान्तीय पुलिस सेवा का अधिकारी हूँ तथा प्रशिक्षण के उपरान्त निम्नलिखित स्थानों पर नियुक्त रहा हूँ।

क्रम सं०	पद एवं नियुक्ति का स्थान	कब से	कब तक
1-	क्षेत्राधिकारी नगर, फैजाबाद	1972	1974
2-	डी० सी० पी० सिटी, इलाहाबाद	1974	1976
3-	डी० एस० पी० सिटी, आगरा	1976	1977
4-	स्टाफ आफिसर, एडीशनल आई० जी० ट्रेनिंग, लखनऊ	1977	1978

Attested by  
 [Signature]

[Signature]



-3-

राज्य पुलिस सेवा के वरिष्ठ वेतनमान में मई-1977 में प्रोन्नत के पश्चात एवं जुलाई 1983 के पूर्व राज्य पुलिस के प्रशिक्षण एवं पीसी मुख्यालयों के क्रमशः स्टाफ आफिसर एवं सीनियर स्टाफ आफिसर के पद पर एवं उत्तरकाशी जिले का पुलिस उपाधीक्षक प्रभारी नियुक्ति किया गया। ये नियुक्तियाँ भी महत्वपूर्ण एवं अपने प्रकार की उपलब्ध थी।

जुलाई 1983 में राज्य पुलिस सेवा के नक्सूजित पद संयुक्त पुलिस अधीक्षक पद पर उच्च वेतनमान में प्रोन्नति देकर मैनपुरी जनपद में नियुक्ति किया गया। यह पद पुलिस अधीक्षक के समकक्ष था। दिसम्बर 1984 में अतिरिक्त पुलिस अधीक्षक के पद पर मैनपुरी जनपद में प्रोन्नति किया गया। इस पद का वेतनमान भारतीय पुलिस सेवा को वरिष्ठ वेतनमान था। मैनपुरी जैसे संवेदनशील तथा अपराधग्रस्त जनपद में लगभग साढ़े चार वर्ष की नियुक्ति भी अपने आप में एक उपलब्धि थी।

उपरोक्त से स्पष्ट है कि सेवाकाल के प्रारम्भ से लेकर वर्ष 1985 में चयन सूची बनने तक मेरी नियुक्ति प्रदेश के अत्यन्त संवेदनशील, जटिल एवं जोखिम भरे महत्वपूर्ण पदों पर रही। उपरोक्त नियुक्तियों के कार्यकाल को विभिन्न जनपदों, सम्बन्धित परिक्षेत्रों एवं प्रदेश के सभी वरिष्ठ अधिकारियों द्वारा सराहा गया और उपरोक्त कार्यकाल के मध्य कार्यकुशलता, सत्यनिष्ठा, ईमानदारी की छाप जो मैंने कमाई उसकी भिन्नता प्रदेश के सभी अधिकारियों को है। मेरी पहचान प्रदेश पुलिस सेवा में ईमानदारी व कार्यकुशलता के कारण ही है।

वर्ष 1985 के पश्चात भी मैनपुरी जैसे संवेदनशील एवं अपराधग्रस्त जनपद में लगभग ढाई वर्ष और नियुक्ति रहा। तत्पश्चात् मार्च 1988 में सेनानायक 20वीं वाहिनी पीसी आजमगढ़ के पद पर दक्षता एवं ईमानदारी के साथ कार्य कर रहा हूँ। इस नियुक्ति काल में भी वाहिनी की विभिन्न जटिल समस्याओं जैसे भूमि का अधिग्रहण तथा अनुशासन को पुनः स्थापित करने, खेल्कू में वाहिनी स्तर को सेक्टर एवं प्रदेश स्तर पर लाने में अधिक प्रयास किया। इस

Attestation for copy

तथ्य की जानकारी प्रदेश के सभी अधिकारियों को है। उपरोक्त प्रकार वर्ष 1985 के पश्चात सभी नियुक्तियों में अपने से वरिष्ठ अधिकारियों की प्रशंसा का पात्र बना।

यह भी अंकित करना अनुचित न होगा कि इस चयन सूची में कुछ ऐसे अधिकारियों के नाम हैं जो अपने सेवाकाल में निलम्बित रहे हैं, अथवा राज्य पुलिस सेवा के जूनियर स्केल से सीनियर स्केल में समय से प्रोन्नति नहीं हुए हैं, अथवा अतिरिक्त पुलिस अधीक्षक के वेतनमान में भी समय से प्रोन्नति नहीं किये गये। कारण स्पष्टतया उनके विरुद्ध कोई न कोई कार्यवाही अवश्य रही होगी। जब उपरोक्त प्रकार के अधिकारी चयन सूची में आ गये हैं, तो मेरे नाम का चयन सूची में न आना अपने आप में एक आश्चर्य ही कहा जायेगा। जबकि उपरोक्त अवधि में मुझे किसी भी प्रकार का किसी भी स्तर के अधिकारी द्वारा चेतावनी तक नहीं दी गई न ही किसी प्रकार का सदेश विपरीत वार्षिक मंतव्य के सम्बन्ध में मुझे प्रेषित किया गया अतः विपरीत वार्षिक मंतव्य का प्रश्न ही नहीं उठता है।

तीन मण्डलीय मुख्यालयों का डी० एस० पी० सिटी, राज्य पुलिस के प्रशिक्षण एवं पी० एस० मुख्यालय के क्रमशः स्टाफ आफिसर एवं सीनियर स्टाफ आफिसर, उत्तरकाशी जिले का प्रभारी एवं मैनपुरी जिले का अतिरिक्त पुलिस अधीक्षक वर्ष 1985 तक नियुक्त रहने के पश्चात् भी मेरा नाम चयन सूची में न होना अपने आप में एक विरोधाभास है। उपरोक्त से यह भी स्पष्ट है कि मेरी नियुक्ति 1985 के पूर्व स्वम् 1985 के पश्चात् उत्तरकाशी जनपद में स्वम् सेनानायक 20वीं वाहिनी के स्वतंत्र प्रभार पर कार्यकुशलता, दक्षता एवं ईमानदारी के साथ रही है।

मुझे सदैव है कि अभिलेखों के एकत्रीकरण के समय कहीं न कहीं कोई गलती अवश्य हुई है, अन्यथा मेरा नाम चयन सूची में अवश्य होता।

Attested True copy



-5-

प्रदेश शासन के अनुरोध है कि अभिलेखों में पुनः दिखवाकर मेरे सदैव का निवारण करें एवं § 11 वर्ष 1985 की चयन सूची में सम्मिलित करें, § 21 अखिल भारतीय सेवाएँ पुलिस प्रोन्नति से नियुक्ति के 1955 नियमन 5 के प्रतिवर्ष चयन सूची बनने के प्राविधानों के अन्तर्गत नई चयन सूची पुनः बनाई जाये तथा वर्ष 1985 की चयन सूची पर कार्यवाही न की जाये जिससे की अखिल भारतीय सेवाओं पुलिस प्रोन्नति से नियुक्ति के 1955 के नियमन 5 के प्राविधानों की पूर्ति नियमानुसार हो सके तथा वर्ष 1985 की चयन सूची में जिन अधिकारियों के नाम आ गये हैं तथा उनके विरुद्ध कार्यवाही लम्बित है, के नामों पर पुनर्विचार किया जावे।

§ 31 नम्बर § 11 तथा नम्बर § 21 पर जब<sup>तक</sup> कार्यवाही पूर्ण न हो वर्ष 1985 की चयन सूची पर कार्यवाही अमल में नलाई जाये।

दिनांक 13-3-1989

भवदीय,

ह0/- अपठनीय

§ स्थ0 एन0 श्रीवास्तव§

सेनानायक,

20 वीं वाहिनी, पी0 ए0 सी0

आजमगढ़ ।

Admitted for ex/2

20.3.89  
**Kapil Deo**

Advocate (High Court)

Flat No. 3, Shyam Shawan

B3, Cantt. Road, Lucknow.

178

# Annexure No 2

Annexure No 2

(197)

313 211

Murli Dhar SP UKI/H.N. Srivastava COMDAC 20 BN/P.K.  
 Ghosh Vice Principal PTC II MOD/D. S. Ashok Addl. SP BRY/  
 C.B. Rai SP (R) Int. GKR/Ajai Kumar addl. SP Kumbh Mela  
 ALD W. LG PTC II MOD/SP BRY/DG INT LKW/DIG ALD/ISS  
 P20/CC 44 MRT/COMDAC 8/ISS PTC II CD 37/SSP 9TH IGRS  
 LKW/DIG BRY/SP BRY/XONE/KWR/LKW/DIG PAC LKW/DIG  
 PAC W/S MOD/DIG PTC II MOD/DIG PAC LKW/DIG  
 DIG AGO/DIG GW4/IG MRT XONE/DIG PAC. P/C VNS  
 CHIEF ACCOUNTS OFFICER PTC II MOD/DIG PAC. P/C VNS  
 W LKW/JOINT. SECY HOME (P.S) 2 LKW/DIG PTC II MOD (ALL  
 -LOCAL O/H)

Pos! — DG LKW: NO. DG-1/18(4) 09 = 23/4 = 4/c  
 Murli Dhar SP UKI is transferred and posted as addl. SP  
 P20 II. H. Srivastava COMDAC 20 is transferred and posted  
 as Dy. Comdt. 44 BN PAC MRT P.K. Ghosh Vice Principal PTC  
 II MOD is transferred and posted as dy. Comdt. 8 BN  
 PAC BRY D. S. Ashok addl. SP BRY is transferred and  
 posted as addl. SP PTC II C.B. Rai SP (R) Int. GKR is  
 transferred and posted as dy. Comdt. 37 BN PAC KWR  
 Ajai Kumar addl. SP Kumbh Mela ALD is transferred  
 and posted as addl. SP 9TH O should hand  
 over this charge immediately and take over new  
 assignment after availing minimum period  
 joining time = 4

C. DASH

आदेश (आदेशावली) : हस्ताक्षर और पदनाम

दिनांक 25/4

स्थान

हस्ताक्षर और पदनाम

दिनांक

0315/24

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, LUCKNOW

A79

CA

O.A. No. ~~74/89~~ 74/89 L

H.N. Srivastava --- Applicant  
Versus  
Union of India & others. -- Opp. Parties

APPLICATION FOR CONDONATION OF DELAY  
IN FILING COUNTER AFFIDAVIT

The abovenamed respondent no.3 & 4 respectfully  
beg to state as under :-

That for the facts and reasons stated in  
the accompanying counter affidavit, the counter  
affidavit could not be filed earlier and it is  
respectfully prayed that the delay in filing  
counter affidavit be condoned and the attached  
counter affidavit may be taken on record.

Filed today  
L  
25/9

Recd. one copy  
Sudhir Adv.  
28/9/89  
11.00 A.M.

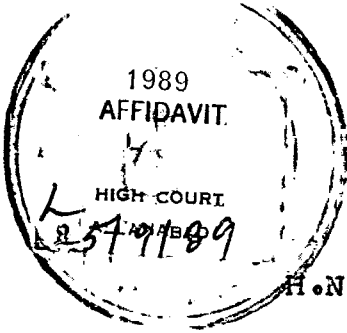
Lucknow, dated:  
September 25, 1989.

Anoop Kumar  
( ANOOP KUMAR )  
Advocate  
Counsel for Respondents 3 & 4.

AEC

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, LUCKNOW.

O.A. No.74/89



H.N. Srivastava

--- Applicant

Versus

Union of India & others

--- Opposite Parties

COUNTER AFFIDAVIT ON BEHALF OF OPPOSITE  
PARTIES No. 3 & 4 to THE CLAIM PETITION.

I, Durga Shanker Misra aged about 27 years son of Sri Madan Misra presently posted as Joint Secretary, Home Department, Government of Uttar Pradesh Lucknow, do hereby solemnly affirm and state on oath as under :-

1. That the deponent is the Joint Secretary Home as such is fully conversant with the facts of the case. The deponent has read the contents of the Claim Petition of H.N. Srivastava (hereinafter referred as claim petition) and after understanding the same is filing this Counter Affidavit to controvert the same.
2. That the contents of paragraphs 1, 2 and 3 of the claim petition need no comment being matters on record.
3. That in reply to contents of paragraph 4 of the claim petition it is stated that the case of the



petitioner was considered by the Selection Committee which met on 27.12.85 for inclusion of his name in the Select List alongwith other eligible State Police Service Officers. The said Selection Committee did not find the petitioner fit for inclusion in the Select List. The contention of the petitioner that he has outstanding service records holds no ground because the service records of the petitioner were assessed by the high level Selection Committee under the Chairmanship of a member of Union Public Service Commission in accordance with the procedure laid down in Regulation- 5(4) of the I.P.S. (Appointment by Promotion) Regulations - 1955 (hereinafter referred as Promotion Regulations) and he was assigned a suitable 'grading' keeping in view of his service records as a whole. In accordance with Promotion Regulation 5(5) the Committee prepared a Select List of 34 Officers, the size of which was determined in accordance with Regulation 5(1) of the Promotion Regulation - 1955 being the double of number of substantive vacancies. The applicant was not included in the list only because sufficient number of officers were available who were assigned a better 'grading' than the applicant.

4. That the contents of paragraphs 5 and 6 of the claim petition need no comment being matters on record.
5. That the contents of paragraph 7(1) of the claim petition are matters on record hence need no comment.

6. That the contents of paragraph 7(ii) of the claim petition are not disputed.
7. That the contents of paragraph 7(iii) of the claim petition are admitted to the extent that the petitioner remained posted on various posts of P.P.S. till 1988 and thereafter he was transferred and posted as Commandant of 20th Bn. P.A.C., Azamgarh in a purely temporarily arrangement. The contention made otherwise, if any, is denied being baseless because every post of Police Department is important and responsible by its own right and the postings are made in public interest.
8. That the contents of paragraph 7(iv) of the claim petition are not admitted as stated. As far as petitioner's contention of his character roll entries being of excellent and outstanding nature is concerned, it is stated that according to Regulation 5(4) of the Promotion Regulations, the Selection Committee is required to classify the eligible officers as "outstanding", "very good", "good", or "unfit" as the case may be on an overall relative assessment of their service records. According to Regulation - 5(5) of the Promotion Regulations, the list is required to be prepared by including the required number of names first from amongst the officers finally classified as "outstanding" then from amongst those similarly classified as "very good" and thereafter from amongst those similarly classified as "good" and the order of the names inter-se-within each category have to be in the order of their seniority in the State Police Service. In this

S.S. Nigam  
25/9

✓

A83

process the junior officers who are assigned higher gradings may find a higher place in the rank in the List, while the senior officers with lower gradings may come down or even may not find a place in the List.

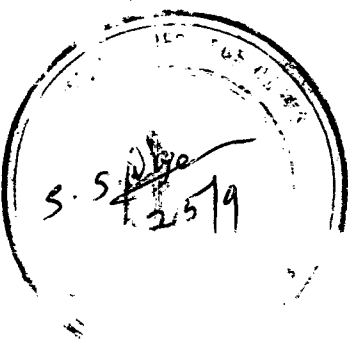
9. That the contents of paragraph 7(v) of the claim petition are not correct as stated. The Regulation 5 of I.P.S. (Appointment by Promotion) Regulations - 1955 which deals with the preparation of a list of suitable officers as on 27-12-85 is as follows -

"\*\*5. Preparation of a list of Suitable officers. -

(1) Each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Police Service as are held by them to be suitable for promotion to the Service. The number of members of the State Police Service included in the list shall not be more than twice the number of substantive vacancies anticipated in the course of the period of twelve months, commencing from the date of preparation of the list, in the posts available for them under rule 9 of the Recruitment Rules, or 50 per cent of the senior posts shown against items 1 and 2 of the cadre schedule of each State or group of States, whichever is greater.

(2) The Committee shall consider for inclusion in the said list, the cases of members of the State Police Service in the order of seniority in that service of a number which is equal to three times the number referred to in sub-regulation (1) :

Provided that such restriction shall not apply in



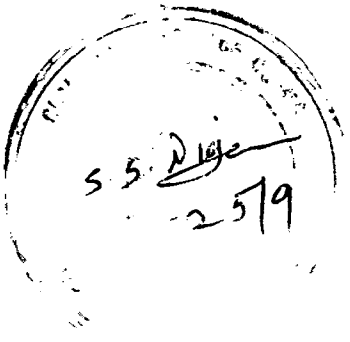
respect of a State where the total number of eligible officers is less than three times the maximum permissible size of the select list and in such a case the Committee shall consider all the eligible officers :

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulation (3) shall be excluded :

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

Explanation : The powers of the State Government under the third proviso to this sub-regulation shall be exercised in relation to the members of the State Civil Service of a constituent State, by the Government of that State.

(2A) Notwithstanding anything contained in sub-regulations (1) and (2), the list referred to in sub-regulation (1) shall be prepared separately in respect of each State Police Service. The number of members of the State Police Service included in each such part of the list shall not be more than twice the number of substantive vacancies anticipated in the course of the period of 12 months, commencing



A85

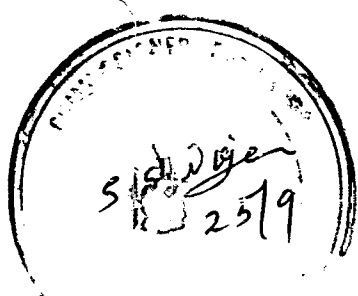
from the date of the preparation of the list in the posts available for them under the rule 9 of the Recruitment Rules or 5 per cent of the senior posts shown against items 1 of the Cadre in the schedule to the Indian Police Service (Fixation of Cadre Strength) Regulation, 1955 (hereinafter referred to as the Cadre Schedule) under the Government of the Constituent State concerned and the senior posts shown against item 2 of the Cadre Schedule notionally reckoned against that State, whichever is greater.

Explanation : The number of senior posts whose against item 2 of the cadre schedule of the Joint Cadre divided in the proportion of the number of posts under the Government of each of the Constituent States shown against item 1 of the Cadre schedule shall be notionally reckoned against each of the Constituent States for the purpose of this sub-regulation."

(3) The Committee shall not consider the cases of the Members of the State Police Service who have attained the age of 54 years on the first day of January of the year in which it meets :

Provided that a member of the State Police Service whose name appears in the select list in force immediately before the date of the meeting of the Committee shall be considered for inclusion in the fresh list, to be prepared by the Committee, even if he has in the mean while attained the age of 52 years.

Provided further that a member of the State Police Service who has attained the age of fiftyfour years



on the first day of January of the year in which the Committee meets shall be considered by the Committee, if he was eligible for consideration on the first day of January of the year or of any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year of years."

(4) The Selection Committee shall classify the eligible officers as 'Outstanding, 'Very Good', 'Good' or 'Unfit', as the case may be, on an overall relative assessment of their service records.

(5) The list shall be prepared by including the required number of names, first from amongst the officers finally classified as 'Outstanding, then from amongst those similarly classified as 'Very Good', and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in the order of their seniority in the State Police Service.

(6) The list so prepared shall be reviewed and revised every year."

For the above, the AIS manual Part III (Fifth Edition) may kindly be referred to.

10. That in reply to contents of paragraph 7(vi) of the claim petition it is stated that the applicant was not included in the Select List of 1985 only because sufficient number of officers who were assigned a higher grading than the applicant were available.

AS1

11. That in reply to contents of paragraph 7(vii) of the claim petition it is submitted that in view of the facts stated in the preceeding paragraphs the name of applicant could not be brought on the Select List. It is also added that the applicant was assigned a grading which could not enable him to be included in the Select List.

12. That in reply to contents of paragraph 7(viii) of the claim petition, it is submitted that since there was no irregularity in implementing the Select List of 1985, it has already been implemented after its approval by respondent No.2 i.e. Union Public Service Commission as per rule <sup>that is the officers on the Select List</sup> have been posted on the Cadre Posts of IPS against the vacancies in promotion quota of Cadre & schedule according to rules.

13. That the apprehensions as stated in para 7(ix) of the claim petition are baseless because preparation of Select List of 1985 prepared on 27-12-85 by the Selection Committee is not against the provision of para 5(6) of IPS (Appointment by Promotion) Regulations - 1955 and was duly sent to the Union Public Service Commission, New Delhi but the Union Public Service Commission could not approve the same as the Hon'ble High Court was pleased to stay the preparation of the select in the writ petition filed by Basant Singh & others (W.P. No. 1449/85; Basant Singh Versus State of U.P. & others). The stay order granted by the Hon'ble High Court is as follows :-

" Issue Notice.

Heard counsel for the parties. Meanwhile the respondents are restrained from making any further promotion to the post of Superintendent of Police unless seniority list is prepared in accordance with

S. S. Dige  
3579

A88

the directions issued by the Services Tribunal and further no select list for the IPS grade will be prepared without finalisation of the seniority list.

Sd. K.N.S.

Sd. R.S.D.

16.1.86"

Annexure CA-1.

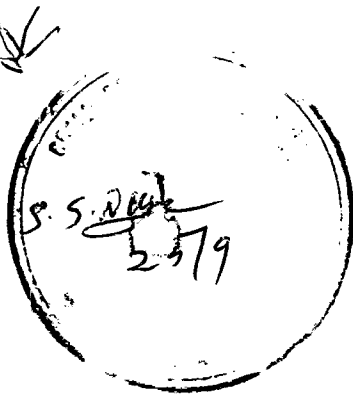
A true copy of the above stay order of Hon'ble High Court is annexed herewith as Annexure CA-1.

Annexure CA-2.

This writ petition of Basant Singh & others versus State of U.P. and others was ultimately clubbed with the writ petition filed by Rana Randhir Singh and others versus State of U.P. and others in the Hon'ble Supreme Court and this petition of Rana Randhir Singh was finally decided on 4.11.1988. A copy of the judgment of Hon'ble Supreme Court is annexed herewith as Annexure CA-2. After the decision & order of Hon'ble Supreme Court in this petition the interim stay orders passed by Hon'ble High Court in the writ petition of Basant Singh ceased to exist and on 6.2.89 the Union Public Service Commission approved the Select List prepared on 27.12.85. Thus from the above it is quite clear that Regulation 5(6) of I.P.S. (Appointment by Promotion) Regulation - 1955 can not be said to be followed due to interim stay order of the Hon'ble High Court in the writ petition of Basant Singh. Hence the contention of the petitioner in the paragraph under reply that preparation of Select List of 1985 is against the provisions of para 5(6) of I.P.S. (Appointment by Promotion) Regulation - 1955 is baseless and incorrect.

S. S. Singh  
2579

14. That in reply to contents of paragraphs 7(x) and 7(xi) of the claim petition it is submitted that the Selection Committee which met on 27.12.85 had made its recommendations after exhaustively scrutinising the service records of all eligible officers, hence allegations of the applicant against certain officers being unfit for inclusion of their names in the select list is misconceived and unfounded. It is further stated that the select list was prepared in accordance with rules and regulations.
15. That the contents of paragraph 7(xii) of the claim petition are baseless in view of the position explained in preceding paragraph 7. It is further stated that the applicant was posted as Commandant P.A.C. as only officiating capacity and not on promotion basis.
16. That the contents of paragraph 7(xiii) of the claim petition are not disputed.
17. That the contents of paragraph 7(xiv) of the claim petition are not admitted as stated. It is submitted that the Select Committee under the Chairmanship of a member of U.P.S.C. and consisting of Chief Secretary, U.P., Home Secretary, Govt. of U.P.; Joint Secretary, Govt. of India in Ministry of Home Affairs; D.G. and I.G.P., U.P. and the seniormost I.G.P. holding cadre post in the State of U.P. who are very senior officers of Government of India and the State Government peruse the records of all the eligible officers who were considered for inclusion in the select list as stated in para-7 and prepared the list as per rule.



For this, promotion to an ex-cadre temporary post of State Police Service in the special grade of Additional S.P. is no criteria.

18. That in reply to contents of paragraph 7(xv) of the claim petition it is stated that it is absolutely incorrect to say that due weightage has not been given to the service record of the petitioner and Character Roll entries as per requirement of the Regulations referred to above. It is also incorrect to allege that officers having inferior record of service and many junior to the applicant have been included in the select list. The Select Committee which met on 27-12-85 honestly adhered to the Regulations prescribed in I.P.S. (Appointment by Promotion) Regulations - 1955.

19. That the allegations made in paragraph 7(xvi) of the claim petition are totally misconceived and vague. The applicant has not specifically quoted a single instance where requirements of sub-rule (4)(5) and (6) of Regulation 5 have not been adhered to by the Select Committee.

20. That the contents of paragraph 7(xiv) which should have been numbered as 7(xvii) are not accepted as stated. The instructions of the State Government in respect of writing the A.C.R. of officers of the State Government including State Police Service Officers are contained in G.O. No. 36/1/1976-Karmik-2 dated 30-10-86 <sup>2</sup> annexed as Annexure-CA-2-A. <sup>2</sup> According to these instructions they are to be graded in one of the following categories on the basis of their overall work and conduct :-

ANNEXURE-CA-2-A

- (1) Outstanding
- (2) Very good
- (3) Good
- (4) Fair
- (5) Bad

21. That the contents of paragraph 7(xv) which should have been numbered as 7(xviii) are not accepted as stated. There is no such provision under rules quoted in para-9 above nor has the Government of India, which is the rule making authority under the AIS Act 1951, issued any such instructions as stated in this paragraph.
22. That the contents of paragraph 7(xix) of the claim petition are admitted to the extent that the applicant was selected for his promotion to the post of Jt. S.P. in 1983 and Addl. S.P. in 1984. But it is absolutely incorrect to say that while making selection for promotion in I.P.S. cadre he has altogether been ignored and officers of inferior categories have been included in the Select List in gross violation of Article-14 and 16 of the Constitution. As already stated in preceeding paragraphs Selection Committee considered the petitioner as well as other eligible officers for including their names in the list and made its recommendations only after scrutinizing service records of each and every officer according to the Regulations of I.P.S. (Appointment by Promotion) Regulations - 1955.
23. That with regard to contents of paragraph 7(xx) of the claim petition it is submitted that the Hon'ble



A92

-13-

High Court of Judicature at Allahabad had passed an order dated 16.1.86 in W.P. No. 1549 of 1985 filed by Sri Basant Singh versus State of U.P. and others. The Hon'ble Court had ordered that the respondents are restrained for making any further promotions to the post of Superintendent of Police or Additional S.P. unless seniority list is prepared in accordance with the directions issued by the Service Tribunal and further no Select List for the I.P.S. grade will be prepared without finalisation of seniority list. The copy of this order is annexed as Annexure CA-11. The aforesaid stay order of the High Court ceased to exist only after decision in the case of Rana Randhir Singh versus State of U.P. etc. in which the Hon'ble Supreme Court of India pronounced its final judgment on 4.11.88. It is worth mentioning again that the W.P. of Sri Basant Singh was tagged with the W.P. of Rana Randhir Singh versus State of U.P. & others.

In view of the orders of Hon'ble Supreme Court in the case of Rana Randhir Singh and others the list of 1985 which had already been sent to respondent No.2 i.e., U.P.S.C. for approval, was approved by respondent No.2 on 6.2.89 and thereafter this Select List came in force and was subsequently implemented. And therefore due to the aforesaid stay order in the case of Sri Basant Singh the list prepared in 1985 came in force for implementation only in 1989 and so the question of its review in subsequent years after 1985 does not arise.

✓  
S. P. Singh  
25/9

24. That the contents of paragraph 7 (xxi) of the claim petition are admitted and it is further stated that

before the answering respondents could consider it to take any decision the petitioner filed this claim petition before this Hon'ble Tribunal and this way he did not care to exhaust departmental remedy available to him as per rules. Only on this ground the claim petition is liable to be dismissed.

25. That the contents of paragraph 7(xxii) of the claim petition are denied vehemently in view of the position explained in preceeding paras and the apprehensions of the applicant are totally unfounded and baseless.

26. That the contents of paragraph 7(xxiii) of the claim petition, it is submitted that all vacancies of 1985 have already been filled up and no injustice has been caused to the applicant. It is further submitted that one post in the promotion quota of I.P.S. has been kept unfilled in compliance of the Hon'ble Tribunal's order dated 30-6-89.

27. That the contents of para 7(xxiv) are denied and it is stated that the grounds taken therein are not tenable in the eyes of law and the claim petition is liable to be dismissed with costs.

28. That the contents of para 8 of the application are not correct. The applicant moved his representation to the answering respondent only on 13.3.89 and before the answering respondent could take any decision on it, the applicant moved this Hon'ble Tribunal. Thus the applicant did not wait even for a month. (This way it is misleading to state that he has exhausted all the departmental remedy available to him.)

55/114  
25/9

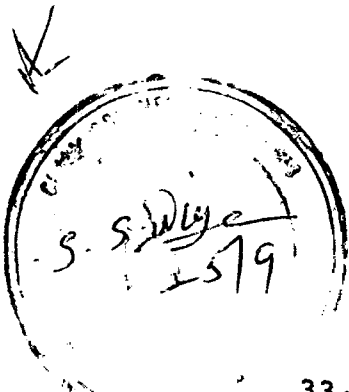
A94

-15-

29. That the contents of paragraph 9 of the claim petition need no comment.
30. That the contents of para 10 of the claim petition are denied and it is stated that the claimant is not entitled to get any relief claimed in para under reply and the claim petition is liable to be dismissed with cost.

ADDITIONAL PLEAS

31. That the contents of paras 11 and 12 of the claim petition need no comment.
32. That the petitioner has challenged the select list of 1985 in his main petition and apprehended that his seniority in I.P.S. would be adversely effected if he is posted on a non cadre post of I.P.S. on the basis of transfer order dated 23.4.89. The petitioner's apprehensions are based on I.P.S. (Appointment by Promotion) Regulations- 1955. As has already been brought to the notice of Hon'ble Tribunal through this respondent's short counter affidavit dated 29-6-89, that Government of India i.e. Respondent No.1 have already amended these Regulations of 1955 vide its notification No.14014/40/88-AIS (1) dated 27.7.88, a photostat copy of which has already been filed and annexed to the short counter affidavit. And since as submitted in earlier paragraphs that this select list came in force only in 1989, the amended rule will be applicable for determination of the seniority of the officers who are on this select list and subsequently. After comparing these, old and amended rules, the Hon'ble Tribunal would find that it has become absolutely unnecessary to hold a cadre post of I.P.S. to get the benefit of officiation on a cadre-post.
33. That during the discussions on the application for interim relief it was claimed by the petitioner that the posts of Additional S.P. are cadre posts of I.P.S.

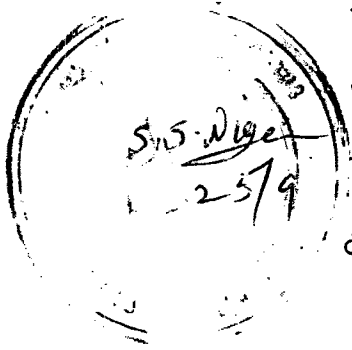


A95

It would be relevant to point out here that the posts of Additional Superintendents of Police were created in 1984 and as well as in 1986 to provide an officer who can be second in command in <sup>every district now a</sup> ~~way~~ <sup>distinct</sup> in the State Police Service. The order of creation of these <sup>h and its clarification as Annexure-CA-3A</sup> posts are annexed herewith as Annexure No. CA-3 for the perusal of Hon'ble Tribunal. The orders would themselves reveal that these posts of Additional Superintendents of Police are State Police Service posts and have been created on purely temporary basis. These posts ~~are~~ can not be compared to the posts of Additional Superintendents of Police which were included earlier in the cadre of Indian Police Service and later on decadred by the respondent No.1 vide their notification No.11052/3/87 AIS (II)A dated 27-1-1988 annexed to this Counter Affidavit, as Annexure No. CA-4. These 11 posts of Additional S.P. of I.P.S. Cadre have <sup>h</sup> ~~been~~ not been decadred by the State Government as has been alleged by the petitioner during the discussion but the Government of India has decadred these posts after reviewing their utility in the <sup>h Triennial h</sup> ~~Tribunal~~ Cadre Review of 1986.

34. That the petitioner and certain other officers of State Police Services were appointed to the cadre posts of I.P.S. under Rule 9 of I.P.S. (Cadre) Rules, 1955 due to paucity of cadre officers in the State. Moreover, as stated in earlier paragraph No. 32 <sup>h</sup> it is again reiterated for the sake of emphasis that under the amended I.P.S. (Regulation of Seniority) Rules, 1988, the officiation of the non-cadre officers on cadre posts does not accrue them any claim for the determination

ANNEXURE-CA-3  
ANNEXURE-CA-3A



A96

-17-

of their seniority in I.P.S. when they are promoted to I.P.S. under rules after coming on the Select list. As soon as cadre officers were available due to the approval of the Select List of 1985, the petitioner had to be reverted to the post of Additional S.P. in the State Police Service.

35. That on 30.6.89 the Hon'ble Tribunal was pleased to produce before the court service records along with the summary of annual confidential report of the petitioner and also the proceedings of the Selection Committee of 1985 regarding which it is submitted that the proceedings (summary of annual confidential report) of the Selection Committee may be produced by the respondent no.2 since the Select Committee is constituted under the Chairmanship of U.P.S.C.

36. That since personal records of the officers were not available with the answering respondent and they were to be sought and collected from the respondent 4 along with their comments and the respondent no.4 had to collect it from the district where the officer is posted, hence this process took time and delayed the preparation of the counter reply of the claim petition.

37. That the delay in filing counter affidavit is bonafide and is liable to be condoned.

Lucknow, dated:  
September 25, 1989.

DEPONENT

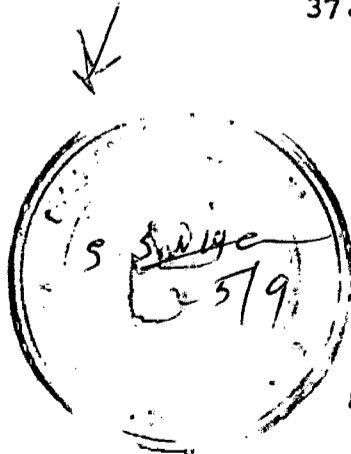
VERIFICATION

I, the abovenamed deponent do hereby verify that the contents of this Counter affidavit from paras 1 to 26, 28 (except bracketed portion), 29, 30 to 36 are true to my own knowledge on the basis of records and those of paras 27, 28 (bracketed portion), 30 & 37 are believed by me to be true. No part of it is false and nothing material has been concealed; so help me God.

Lucknow:  
Dated: September 25, 1989.

DEPONENT

I, Anand Kumar Clerk of  
Adversate

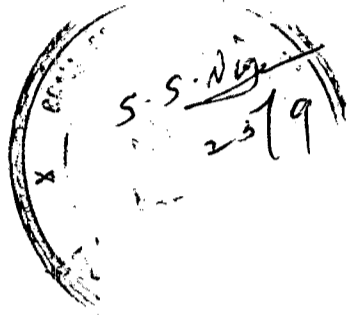


A97

-18-

do hereby declare that the person making this affidavit and alleging himself to be Sri D. S. Mishra is the same person who is known to me from the perusal of record produced before me in this case.

Anand Kumar  
Advocate



Solemnly affirmed before me on 25<sup>th</sup> the day of September 1989 at 1.30 a.m./p.m. who has been identified by the aforesaid.

I have satisfied myself by examining the deponent that he has understood the contents of this affidavit which has been read over and explained by him.

S. S. Nigam  
JAYATI SUMAN NIGAM  
OATH COMMISSIONER  
High Court, Lucknow  
No. 76 of 25/9/89

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW.

O.A.NO. 74 OF 1989 (L)

H.N.SRIVASTAVA.....APPLICANT

VERSUS

UNION OF INDIA & OTHERS.....RESPONDENTS

ANNEXURE - CA -

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL SIDE

APPELLATE/ORIGINAL JURISDICTION

Dated Allahabad, the 16.1.1986.

PRESENT: The Hon'ble Mr. Justice K.N. Singh.

and Hon'ble Mr. Justice Ravi S. Dhawan.

Writ No. 1549 of 1985.

Order on the application of petitioners. of 198

In re: Distt. Allahabad.

Basant Singh o/o Sri Amir Singh Petitioner,

at present posted as Asstt. Commandant  
Special Police Force, Moradabad and others Appellant,  
Versus

ORDER

State of U.P. through its Secretary Respondent.  
Ministry of Home Lucknow and others.

Issue notice.

Read counsel for the parties. Meanwhile the respondents are restrained from making any further promotion to the post of Superintendent of Police or Additional Superintendent of Police unless seniority list is prepared in accordance with the directions issued by the Services Tribunal and further no select list for the I.P.S. Grade will be prepared without finalization of the seniority list. Sd/-K.N.S.

Sd/-R.S.D.  
16.1.86.

GROO COED

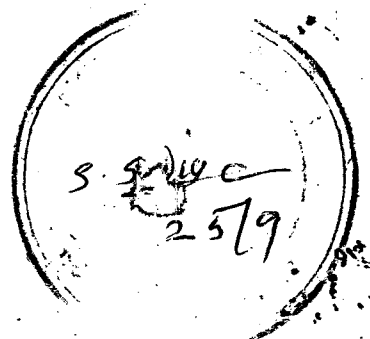
Section Officer  
Hdqd Deptt. High Court  
Allahabad

S.O.

13.1.86

कोर्ट के अधिकार का अतिक्रमण  
निषेधित है।  
अधिकार का अतिक्रमण  
हो रहा है।

PSUP-27 HC-2-7-84. 50:000 (T)



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, LUCKNOW.

O.A.NO. 74 OF 1989 (L)  
H.N.SRIVASTAVA.....APPLICANT  
VERSUS  
UNION OF INDI A & OTHERS.....RESPONDENTS

ANNEXURE - CA - 2  
IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

WRIT PETITION NO. 13409 OF 1983

Rana Randhir Singh & Ors.

... Petitioners

Versus

State of U.P. & Ors.

... Respondents

WITH

WRIT PETITION NOS. 711, 1100, 1272-73 of 1986

Rajiv Narain Srivastava & Ors. etc.

... Petitioners

Versus

State of U.P.

... Respondent

WITH

TRANSFER CASE NOS. 23-25 OF 1987

Pasant Singh & Anr. etc.

... Petitioners

Versus

State of U.P.

... Respondent

J U D G M E N T

RANGANATH MISRA, J.

Writ Petitions Nos. 711, 1100, 1272-73 of 1986 are applications under Article 32 of the Constitution by a set of direct recruits to the U.P. Police Service Class II, while Writ Petition No. 13409 of 1983 is by a set of promotees to

A100 21

[ 2 ]

the Constitution and bearing No. 109 of 1985 before the Allahabad High Court by a set of promotees challenging the order of the U.P. Public Services Tribunal (Lucknow Bench) has been transferred to this Court and has been registered as Transferred Case No. 23 of 1987. Writ Petition No. 4475 of 1984 filed before the Allahabad High Court under Article 226 of the Constitution at the instance of the State of Uttar Pradesh and its Inspector General of Police against the same decision of the U.P. Public Services Tribunal has also been transferred to this Court and registered as Transferred Case No. 25 of 1987. Writ Petition No. 10751 of 1984 filed before the Allahabad High Court by different sets of promotees for a direction to the State Government to appoint the petitioners therein in terms of the recommendations of the State Public Service Commission and for treating such appointments as substantive has been transferred to this Court and registered as Transferred Case No. 24 of 1987. In all these applications excepting the last one the dispute is mainly one relating to inter se seniority. All these writ petitions have been heard analogously and are being disposed of by the common judgment of this Court.

The dispute relating to inter se seniority in these applications has to be disposed of on an appropriate interpretation of the Uttar Pradesh Police Service Rules, 1942 framed under section 241 of the Government of India Act, 1935.

Straightaway we may proceed to analyse the Rules.

Rule 2 indicates that the status of the service is

S. P. Singh  
25/9

A101 22

[ 3 ]

Uttar Pradesh Police Service which is a State Service in Class II. Rule 3(g) defines "Member of the Service" to mean:

"A person appointed in a substantive capacity under the provisions of these rules or of rules in force previous to the introduction of these rules to a post in the cadre of the service and includes every such officer who was appointed as temporary Deputy Superintendent of Police under the stated notifications and subsequently appointed in a substantive capacity from the date of his substantive appointment."

Rule 4 authorises the Governor to determine the strength of the service from time to time and until the permanent strength is varied the strength would be as shown in the appendix. Rule 5 prescribes that recruitment to the service shall be made on the basis of the result of a competitive examination conducted by the State Public Service Commission and by promotion of permanent Inspectors of Police. The proviso to the said rule authorises the Governor in the interest of the public service to sanction the appointment of Sub-Inspectors of Police who have been approved for substantive appointments of Inspectors of Police and have officiated as Inspectors for not less than two years. Rule 7 provides that the Governor shall decide the number of recruits to be taken from each of the two sources specified in Rule 5 and the proviso prescribes that not less than half the number of candidates to be recruited each year shall be recruited by promotion. Part V of the Rules lays down the procedure for direct recruitment while Part VI deals with recruitment by promotion. Rule 17(1) provides :-

1. For purposes of recruitment under Rule 5(1) a selection based on the criteria

A/02 23

shall be made in the manner hereinafter provided from amongst permanent Inspectors of Police."

Sub-rule (7) provides :-

"The names of the candidates selected in the first list, up to the number of permanent vacancies intended to be filled substantively during the course of the year, shall be drawn up and rearranged in order of seniority and they will be appointed against substantive vacancies in the cadre of service in the same order."

Sub-rule (8) provides :-

"The remaining names of the first list will be transferred from the top of the second list which will then form the select list. The candidates will be appointed against officiating and temporary vacancies in the order in which their names stand in the list, as and when vacancies occur during the course of the year....."

Rule 18 in Part VII makes provision for the waiting list of the candidates and provides :-

"(1) The commission shall prepare a list of candidates for direct recruitment in order of their proficiency as disclosed by the aggregate marks finally awarded to each candidate. If two or more candidates obtain equal marks in the aggregate the commission shall place them in order of merit on the basis of their general suitability for the service as determined by the result of the viva voce test."

Rule 18(2) provides :-

"The list of candidates considered suitable for promotion under Rule 17(7) shall be arranged in order of seniority as Inspectors of Police."

Rule 20 prescribes :-

"The Governor shall make appointments to the service on the occurrence of the substantive vacancies by taking candidates alternatively so far as this may be possible,

S. S. W. G.  
25/9

from the two lists of 18..... Rule

Rule 21 deals with seniority and promotion

Seniority in the service shall be determined according to the order of appointment in a substantive capacity and if two or more candidates are appointed on the same date, their seniority shall be determined according to the order in which their names appear in the order of appointment;

Provided that -

1. The inter se seniority of direct recruits selected in one batch shall be determined according to their merit at the selection but a candidate may lose his seniority if he fails to join without sufficient reasons when appointment is offered to him and the decision of the Governor as to the sufficiency of the reasons shall be final;
2. The inter se seniority of the promotees, selected in one selection, relating to one particular year of recruitment shall be determined according to their seniority in the post from which they are promoted;
3. ....
4. ....
5. Vacancies are required to be filled on every occasion by direct recruitment and promotion and the inter se seniority of persons appointed by promotion and direct recruitment against the vacancies of a particular year, shall be determined by arranging their names alternatively, the first one being of the person appointed by promotion, and placing the names of persons remaining persons below en bloc.

Explanation - A direct recruit shall not be entitled to seniority earlier to the year of recruitment solely on the ground that there has been no recruitment in that year.

55/142  
25/9

These Rules lead to the position that the post of Deputy Superintendent of Police is to be filled up by direct recruitment as also by promotion on the basis of 1:1. Appointment on substantive capacity makes the incumbent a member of the service. While there may be temporary posts in the cadre, seniority is to be determined according to the date of appointment in substantive capacity. Temporary service is not intended, therefore, to count for seniority.

Law is well-settled by a catena of decisions of this Court that if there be a rule to regulate seniority, seniority shall be regulated by the same. In view of the fact that Rule 21 prescribes the manner of computation of seniority, inter se seniority has to be determined on the basis of the provisions of the rule.

While the legal position in regard to seniority is clear, on account of callous indifference on the part of the State Government to adhere of the scheme in the rules relating to recruitment from the two sources and make substantive appointments in time, the picture has been totally confused. Recruitment has not been made from either source strictly in compliance with the Rules and there are several instances where a temporary or officiating appointee though not approved by the Public Service Commission has been allowed to continue on such temporary or officiating post without being reverted forthwith. Rule 7 contemplates that the Governor has to decide the number of recruits to be taken from each of the two sources every year but this rule has not been strictly followed. Instead temporary and ad hoc

5-5-59  
25/9

26  
A  
105

[ 7 ]

As a result of such action the  
promotions has been greater than of direct  
the requirement of confirmation under the scheme  
rules has also not been properly followed.  
the appointments have not been made substantive.  
On that account, the total picture of the service has been

As we find the dispute was raised in the Services  
Tribunal in the year 1975 by way of a claim petition. The  
writ petitions before this Court are either of 1982 or of  
1984. We are of the view that if the entire dispute of  
seniority is reopened at this stage, serious prejudice may be  
done to many of the officers who on the basis of the  
seniority, have obtained further promotions. It is  
relevant to take note of the fact that many of such officers  
have retired and all the officers who may be affected are  
not before us. It has also been pointed out to us that  
promotions have been made up to the period ending 1980.  
In such circumstances we have found it prudent not to  
disturb inter se seniority fixed upto 1980 inclusive and  
not refixation of inter se seniority on the basis of  
the rules from 1981 inclusive onwards. All incumbents  
whether directly recruited or promoted after 31st December,  
shall be subjected to refixation of their seniority on  
the basis of the provisions contained in the rules and  
particularly Rule 21(5). Temporary vacancies which have been  
created have been in existence for a continuous period of

S. S. D. G.  
2579

106

29

shall be treated as permanent vacancies  
permanent cadre of the service and shall be  
account for purposes of computation of seniority.  
All substantive appointments and promotions made  
on or after 1st December, 1980, shall be treated to have been  
in accordance with the Rules. Recruitment on the basis of  
the sources shall be kept in view and the State  
shall ensure that within a period of five years (by end of  
1985) proper ratio shall be reflected.

The State of Uttar Pradesh is directed to publish  
a vacancy list on the basis of the directions given  
in the Rules. Six months hence after granting confirmations  
to the cadre of Deputy Superintendent of Police keeping the  
service in view. There shall be a direction to the State of  
Uttar Pradesh that the scheme in the Rules shall be strictly  
followed and when a temporary or officiating appointment is  
made, the officer is not approved by the Public Service  
Commission, within one month of such non-approval the  
officer shall be reverted and would not be entitled to be  
promoted to the promotional post of Deputy Superintendent of

Before we part with this case we must point out  
that the continuous failure of the State Government to  
implement the Rules has brought about a critical situation  
in the service. Litigations have been pending for more than  
five years in different courts. On account of pendency of  
these cases the efficiency of the service has been

S. S. Singh  
25/9

107

affected. Inter se dispute between public servants does not affect the efficiency of the service but brings about dissension, misunderstanding, a sense of rivalry, and ultimately brings indiscipline. That seems to have happened in the present case. We commend to the State of Uttar Pradesh that recurrence of such a situation should not be permitted. We also find that many of the officers in the cadre rush to the court or the tribunal too often and interim orders are made by the Court to hold up the progress of the State Government in giving effect to the rules. Interim orders in such matters should not ordinarily be made as the position can always be rectified when judgment is rendered.

The writ petitions are accordingly disposed of with the directions indicated above. Transferred Case No. 24 of 1997 is not one raising the dispute of inter se seniority and should not have been transferred to this Court as a connected matter. We accordingly direct the case to be sent back to the High Court for disposal in accordance with law.

.....J.  
( RANGANATH MISRA )

.....J.  
( F.M. VENKATACHALIAH )

New Delhi;  
November 4, 1998.

3—चरित्र पंजिकाओं में प्रविष्टियों के लिखे जाने और उससे संबंधित विभिन्न मुद्दों पर शासन द्वारा समय-समय पर निर्देश जारी किये जाते रहे हैं। वस्तुतः इस संबंध में जारी किये गये शासनादेशों की संख्या इतनी अधिक हो गयी है कि प्रविष्टि लिखने वाले अधिकारियों को कभी-कभी इस दिशा में भ्रम होना स्वाभाविक है। इस दृष्टिकोण से इस शासनादेश के संलग्नक में इस प्रकरण पर अभी तक जारी किये गये शासनादेशों का समावेश करते हुए एक संकलित टिप्पणी बनायी गयी है। आशा है यह टिप्पणी प्रविष्टि लिखने वाले अधिकारियों के लिए उपयोगी होगी और इसके फलस्वरूप प्रविष्टियां लिखने के सम्बन्ध में शासन की नीति एक स्थान पर उपलब्ध हो सकेगी।  
संलग्नक : यथोक्त

भवदीय,

जे० ए० कल्याण कृष्णन,  
मुख्य सचिव।

संख्या 36/1/1976 (1)—कार्मिक—2 तद्दिनांक

प्रतिलिपि सचिवालय के समस्त अनुभागों को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

आज्ञा से,

महेश नारायण सक्सेना,  
अनु सचिव।

शासनादेश संख्या 36/1/1976—कार्मिक—2 दिनांक 30 अक्टूबर, 1986 का संलग्नक  
वार्षिक प्रविष्टियां अंकित करने के विषय में शासन की नीति

वार्षिक प्रविष्टियां  
अंकित करने  
की प्रक्रिया  
(शासनादेश संख्या  
36/1/76  
कार्मिक-2  
दिनांक 21-5-  
76 एवं 6-8-76  
एवं संख्या:  
क-1419/दो-  
क-1971 दिनांक  
18-1-72

1—श्रेणी "घ" के कर्मचारियों के सम्बन्ध में प्रविष्टि उसी अधिकारी द्वारा लिखी जायेगी, जिसके साथ वह कर्मचारी सरकारी कार्य के निष्पादन में सम्बद्ध रहा हो। इस वर्ग के कर्मचारियों के लिए एक ही स्तर की प्रविष्टि पर्याप्त मानी जायेगी। अन्य अराज-पत्रित कर्मचारियों के सम्बन्ध में प्रविष्टि लिखने के लिए दो स्तर—प्रतिवेदक तथा स्वीकर्ता प्राधिकारी—नियत किये जायेंगे। राजपत्रित अधिकारियों के सम्बन्ध में प्रविष्टि लिखने के लिए तीन स्तर—प्रतिवेदक, समीक्षक तथा स्वीकर्ता प्राधिकारी—नियत किये जायेंगे।

2—प्रत्येक अधिकारी की वार्षिक गोपनीय प्रविष्टि ठीक उसके ऊपर के प्राधिकारी (प्रतिवेदक प्राधिकारी) द्वारा लिखी जायेगी, उस प्रविष्टि का पुनरीक्षण प्रविष्टि लिखने वाले अधिकारी के ठीक ऊपर के प्राधिकारी (समीक्षक प्राधिकारी) द्वारा तथा उसका स्वीकरण पुनरीक्षण करने वाले अधिकारी के ठीक ऊपर के प्राधिकारी द्वारा किया जायेगा। समस्त प्रशासनिक विभाग अपने अधीनस्थ सेवाओं तथा अधिकारियों के संबंध में आवश्यकतानुसार प्रतिवेदक/समीक्षक/स्वीकर्ता प्राधिकारी नियत करेंगे।

3—प्रविष्टि लिखने, उसका पुनरीक्षण अथवा स्वीकरण करने के लिये यह आवश्यक होगा कि उक्त प्राधिकारी ने संबंधित अधिकारी का कार्य कम से कम 3 मास तक देखा हो। यदि प्रतिवेदक अधिकारी ने किसी अधिकारी का कार्य कम से कम 3 मास तक नहीं देखा है और समीक्षक प्राधिकारी ने उसका कार्य उक्त अवधि में देखा है तो उसकी प्रविष्टि समीक्षक प्राधिकारी द्वारा लिखी जायेगी तथा उसका पुनरीक्षण एवं स्वीकरण स्वीकर्ता प्राधिकारी द्वारा किया जायेगा। यदि किसी अधिकारी का कार्य प्रतिवेदक तथा समीक्षक प्राधिकारी दोनों ने कम से कम तीन महीने तक तक नहीं देखा है और स्वीकर्ता प्राधिकारी ने उसका कार्य उक्त अवधि में देखा है तो उसकी प्रविष्टि स्वीकर्ता प्राधिकारी द्वारा लिखी जायेगी और यदि प्रतिवेदक, समीक्षक तथा स्वीकर्ता प्राधिकारी में से किसी ने इस अधिकारी का कार्य कम से कम 3 महीने तक नहीं देखा है तो इस आशय का उल्लेख चरित्र पंजी में कर दिया जायेगा। विशेष परिस्थितियों में प्रविष्टि देने के लिये तीन माह का नियम लागू न होगा, यदि प्रविष्टि में कार्य का सामान्य मूल्यांकन न किया जाय, वरन् उसमें विशिष्ट तथ्यों एवं घटनाओं के आधार पर अधिकारी विशेष की भूमिका के संबंध में अनुकूल या प्रतिकूल मन्तव्य का उल्लेख किया जाये।

कम से कम तीन मास की अवधि की गणना के संबंध में यह स्पष्ट किया जाता है कि यदि संबंधित प्राधिकारी उपार्जित अवकाश, चिवित्सा अवकाश अथवा निजी कार्य पर अवकाश पर रहता है, अथवा कार्य भार से मुक्त होकर किसी अन्य प्रयोजन हेतु अपने पद पर कार्यरत नहीं रहता है अथवा अपने कार्यस्थल से दूर प्रशिक्षण पर बाहर रहता है तो ऐसी अवधि की गणना उक्त तीन मास में नहीं की जायेगी।

55/19  
25/9

4-प्रतिवेदक/समीक्षक अथवा स्वीकर्ता प्राधिकारी को सेवा से अवकाश ग्रहण करने, पद को त्याग देने के उपरान्त अथवा उसके निलम्बित रहने की अवस्था में वार्षिक प्रविष्टि लिखने, उसके पुनरीक्षण अथवा स्वीकरण करने का अधिकार न होगा। यदि प्रतिवेदक प्राधिकारी द्वारा वार्षिक प्रविष्टि अंकित कर दी गयी है किन्तु समीक्षक अथवा/तथा स्वीकर्ता प्राधिकारी के सेवा-निवृत्त हो जाने, पद त्याग देने या निलम्बित रहने के कारण प्रविष्टि की समीक्षा अथवा/तथा स्वीकरण नहीं कर सके हैं तो ऐसी स्थिति में समीक्षक/स्वीकर्ता प्राधिकारी में से किसी एक या दोनों की प्रविष्टि के अभाव में प्रतिवेदक प्राधिकारी द्वारा अंकित प्रविष्टि ही सम्बन्धित अधिकारी की आलोच्यना वर्ष की प्रविष्टि मानी जायेगी।

प्राधिकृत अधिकारी की सेवानिवृत्ति, निलम्बित, पद त्यागने की स्थिति में तथा उसके वर्तमान पद स्थान से स्थानान्तरण की दशा में (शा 0 सं 0 36/1/76 का-2; दि 0 21-5-76 ब 31-10-81

5-यद्यपि सेवा निवृत्त हो जाने के बाद प्राधिकारी को वार्षिक या किसी प्रकार की प्रविष्टि देने का अधिकारी नहीं रह जाता है, परन्तु इसका तात्पर्य यह नहीं है कि उसने जिन अधिकारियों के कार्य को तीन महीने से अधिक अवधि तक देखा है उनके कार्य का मूल्यांकन करके अपनी राय जाहिर न करे। परन्तु यह मूल्यांकन उनको सेवानिवृत्त होने के पहले करना है। सामान्यतया प्रत्येक अधिकारी को अपनी सेवा निवृत्ति की तिथि की जानकारी रहती है। अतः उस प्राधिकारी का यह कर्तव्य है कि वह सेवानिवृत्ति की तिथि के एक महीने पहले अपने अधीनस्थ कर्मचारियों/अधिकारियों के कार्य का मूल्यांकन करके प्रविष्टि दे दे।

(शा 0 सं 0 36/1/76-का-2 दि 0 15-3-77

6-जब किसी अधिकारी का स्थानान्तरण अचानक हो जाये और उनका अपनी पुरानी जगह से चार्ज देने और नई जगह पर चार्ज लेने के लिये इस प्रकार तिथि का निर्धारण किया गया हो कि उनको अपने अधीनस्थ कर्मचारियों/अधिकारियों के कार्य के सम्बन्ध में प्रविष्टि देने या टिप्पणी छोड़ने का समय न हो तब ऐसे मामलों में नई जगह पर जाते समय वे उन सभी कर्मचारियों/अधिकारियों की सूची अपने साथ लेते जायें जिनके सम्बन्ध में उनको प्रविष्टि देनी है और नई जगह पर चार्ज लेने के एक महीने के अन्दर वह इन कर्मचारियों/अधिकारियों के सम्बन्ध में प्रविष्टि निश्चित रूप से भेज दें। यदि ऐसा नहीं होता है तो एक माह के उपरान्त प्रविष्टि देने के अधिकार को विलुप्त भी किया जा सकता है। हो सकता है कि उनका स्थानान्तरण सम्बन्धी नोटिफिकेशन भी उस समय तक जारी न किया जाये जब तक उनके द्वारा दी जाने वाली प्रविष्टियां या टिप्पणियां प्राप्त नहीं हो जाती।

7-राजपत्रित अधिकारियों को ऐसी अवधि, जिसके बारे में प्रविष्टि दी जानी हो, में किये गये कार्य के विवरण (डिस्क्रिप्शन आफ वर्क) देने हेतु अवसर देकर उसे प्राप्त किया जाये और ऐसे विवरण केवल तथ्यात्मक रूप से एक फूलस्कैप पेज में 300 शब्दों तक ही संलग्न प्रपत्रानुसार सम्बन्धित अधिकारी द्वारा प्रतिवेदक प्राधिकारी को विलम्बतम 15 अप्रैल तक उपलब्ध करा दिया जाये। प्रविष्टि के प्रपत्र में प्रतिवेदक प्राधिकारी को सबसे प्रथम उपरोक्त विवरण के सम्बन्ध में अपनी प्रतिक्रिया व्यक्त करनी चाहिये, जिसमें यह स्पष्ट किया जाये कि क्या वह अधिकारी के स्वमूल्यांकन से सहमत है और यदि नहीं तो क्यों? यदि सम्बन्धित अधिकारी द्वारा कार्य विवरण अप्रैल, के तीसरे सप्ताह के अन्त तक प्रतिवेदक प्राधिकारी को उपलब्ध नहीं कराया जाता है, तब बिना उनकी प्रतीक्षा किये प्रतिवेदक प्राधिकारी द्वारा अपना मन्तव्य अंकित कर दिया जायेगा।

8-(1) अराजपत्रित कर्मचारियों की वार्षिक प्रविष्टियां हर हालत में दिनांक 15 मई तक पूरी कर ली जायें। जिन मामलों में प्रविष्टियां लिखने के दो स्तर प्रतिवेदक एवं स्वीकर्ता प्राधिकारी निर्धारित हों, उनमें प्रतिवेदक प्राधिकारी अपनी संस्तुति 30 अप्रैल तक अवश्य ही स्वीकर्ता प्राधिकारी को उपलब्ध करा दें, जो अपना मन्तव्य अंकित करते हुये प्रविष्टि को 15 मई तक पूरी करा देंगे।

वार्षिक प्रविष्टियां अंकित करने हेतु समय सारिणी (शा 0 सं 0 36/1/76-का 0-2, दि 0 15-3-77)

(2) ऐसे राजपत्रित अधिकारी जिनके प्रतिवेदक समीक्षक तथा स्वीकर्ता प्राधिकारी विभागाध्यक्ष तथा उनसे निम्न स्तर के अधिकारी हैं उनके सम्बन्ध में वार्षिक प्रविष्टियां निश्चित रूप से दिनांक 31 मई तक पूरी कर ली जायेंगी।

(3) ऐसे राजपत्रित अधिकारी जिनके समीक्षक स्वीकर्ता प्राधिकारी शासन स्तर के अधिकारी हैं। उनके सम्बन्ध में प्रविष्टि विभागाध्यक्ष द्वारा शासन को, शासन के प्रशासनिक अनुभाग में विलम्बतम 15 मई तक भेजी जायेगी और सम्बन्धित प्रशासनिक अनुभाग इन प्रविष्टियों को 15 जून तक पूरी करा लेंगे।

S. S. Nigam  
25/9

(4) ऐसे राजपत्रित अधिकारी जिनके प्रतिवेदक/समीक्षक तथा स्वीकर्ता प्राधिकारी शासन स्तर के अधिकारी हैं, उनके सम्बन्ध में वार्षिक प्रविष्टि प्रतिवेदक प्राधिकारी द्वारा दिनांक 15 मई तक, समीक्षक प्राधिकारी द्वारा 31 मई तक तथा स्वीकर्ता प्राधिकारी द्वारा 15 जून तक अंकित की जायेगी। यदि किसी मामले में निर्धारित समय सारिणी के अनुसार प्रविष्टि को लिखे जाने में प्रतिवेदक प्राधिकारी द्वारा समीक्षक प्राधिकारी को प्रविष्टि उपलब्ध नहीं कराई जाती है और निर्धारित तिथि से 6 माह की अवधि गुजर जाती है तो ऐसे मामलों में समीक्षक अधिकारी को अपने स्तर से ही प्रविष्टि लिख देनी चाहिये। ऐसी स्थिति में यदि बाद में प्रतिवेदक प्राधिकारी से प्रविष्टि प्राप्त होती है तो उस पर कोई कार्यवाही नहीं की जायेगी। उदाहरणार्थ राजपत्रित अधिकारियों के सम्बन्ध में वर्ष 1985-86 की प्रविष्टि यदि 15 दिसम्बर, 1986 तक प्राप्त नहीं होती है तो समीक्षक प्राधिकारी उसे स्वयं लिख सकता है।

इसी प्रकार निर्धारित तिथि से एक वर्ष बाद स्वीकर्ता प्राधिकारी प्रविष्टि स्वयं लिख सकते हैं, यदि प्रतिवेदक/समीक्षक प्राधिकारी से संस्तुति उपलब्ध न हो। उदाहरणार्थ राजपत्रित अधिकारियों के सम्बन्ध में वर्ष 1985-86 की प्रविष्टि यदि स्वीकर्ता प्राधिकारी को 31 मई, 1987 तक प्राप्त नहीं होती है तो स्वीकर्ता प्राधिकारी स्वयं लिख सकते हैं।

जिन कार्यों के मामले में प्रविष्टि लिखे जाने में केवल दो ही स्तर हैं, वहां प्रथम स्तर से प्रविष्टि के निर्धारित तिथि के 6 माह की अवधि गुजर जाने के बाद भी न प्राप्त होने पर दूसरे स्तर से अर्थात् स्वीकर्ता प्राधिकारी के स्तर से प्रविष्टि लिखी जा सकती है।

यदि किसी ऐसे अधिकारी को जिसका वह कर्तव्य है कि वह अपने अधीनस्थ कर्मचारियों/अधिकारियों को प्रविष्टि दे, उपर्युक्त समय सारिणी के अनुसार प्रविष्टि नहीं देता है तो समय से प्रविष्टि न देने के लिये उसे सक्षम स्तर या शासन की ओर से प्रतिकूल प्रविष्टि भी दी जा सकती है।

वार्षिक प्रविष्टि में

ग्रेडिंग (शा 0 सं 0

36/1/76 कामिक-2

दि 0 28-3-84)

9-वार्षिक प्रविष्टि के अंत में प्रतिवेदक प्राधिकारी द्वारा सम्बन्धित कार्मिक के सम्पूर्ण कार्य एवं आचरण के परिपेक्ष्य में उसकी ग्रेडिंग की जायेगी। यह ग्रेडिंग निम्न वर्गीकरण के अन्तर्गत होगी :-

- 1-उत्कृष्ट
- 2-अति उत्तम
- 3-उत्तम
- 4-अच्छा
- 5-खराब

समीक्षक प्राधिकारी द्वारा प्रतिवेदक प्राधिकारी द्वारा की गयी "ग्रेडिंग" से असहमति की दशा में उनके स्तर से इसका पर्याप्त आँचिष्य दिया जाना अपेक्षित होगा।

इसी प्रकार स्वीकर्ता प्राधिकारी स्तर पर असहमति की दशा में पर्याप्त आँचिष्य दिया जाना अपेक्षित होगा।

विभिन्न स्तरों से अंकित की गई ग्रेडिंग में किसी भी विरोधाभास की दशा में स्वीकर्ता प्राधिकारी द्वारा दी गई ग्रेडिंग ही अधिकारी की वास्तविक ग्रेडिंग मानी जायेगी। किसी अधिकारी को "उत्कृष्ट" श्रेणी में वर्गीकृत किये जाने की दशा में प्रविष्टिकर्ता प्राधिकारी को उन विशिष्ट आधारों का स्पष्ट उल्लेख करना होगा जिनके आधार पर उक्त अधिकारी को "उत्कृष्ट" श्रेणी में वर्गीकृत किया गया है। आशय यह है कि "उत्कृष्ट" श्रेणी में वर्गीकरण अत्यन्त विशिष्ट परिस्थितियों में ही पूर्ण आँचिष्य देते हुये किया जाये। इसी प्रकार यदि उच्चतर स्तर तथा समीक्षक अथवा स्वीकर्ता प्राधिकारी द्वारा प्रतिवेदक अधिकारी की ग्रेडिंग से असहमत होते हुये "उत्कृष्ट" श्रेणी अंकित की जाती है, तब उन स्तरों पर भी पूर्ण आँचिष्य दिया जाना आवश्यक होगा।

शा 0 सं 0 36/

1/78-वा-2 दि 0

26-2-79

10-मूल्यांकन में समीक्षक प्राधिकारी की भी विशिष्ट भूमिका है और यह तभी निभायी जा सकती है जब समीक्षक प्राधिकारी सम्बन्धित अधिकारी के कार्य स्तर एवं आचरण के बारे में समुचित जानकारी रखें अन्यथा एक रूटीन पृष्ठांकन द्वारा प्रतिवेदक प्राधिकारी की प्रविष्टि से सहमति व्यक्त किया जाना ही सम्भव हो पाता है। असहमति की दशा में प्रतिवेदक प्राधिकारी से जिन बिन्दुओं पर असहमति है उनका उल्लेख स्पष्ट रूप से किया जाना चाहिये ताकि पूरी प्रविष्टि का समुचित मूल्यांकन किया जा सके। समीक्षक प्राधिकारी स्तर से इन विशिष्ट टिप्पणियों की पूर्ति की अपेक्षा

S. S. Nigse

25/79

की जाती है कि वे प्रतिवेदक प्राधिकारी द्वारा दी गयी प्रविष्टि के बारे में अपना स्पष्ट मत अंकित किया करे, साथ ही अपनी ओर से भी जो यथोचित मूल्यांकन है, उसे अंकित करे।

11—यदि किसी वर्ष प्रविष्टि अंकित करना सम्भव न हो तो उन कारणों का उल्लेख करते हुए इस आशय का प्रमाण-पत्र सम्बन्धित कर्मचारी की चरित्र पंजी में उसी वर्ष अंकित कर देना चाहिए, ताकि कर्मचारी को किसी प्रकार की हानि न हो। यह एक न्यायिक सिद्धान्त है कि जब तक कर्मचारी की चरित्र पंजी में उसके कार्य एवं आचरण के विरुद्ध कोई प्रतिकूल उल्लेख न हो तो उसका कार्य एवं आचरण असंतोषजनक नहीं माना जा सकता। इस आधार पर यदि किसी कर्मचारी की किसी वर्ष प्रविष्टि अंकित न हुई हो और उस आशय का प्रमाण-पत्र चरित्र पंजी में उपलब्ध हो तब उस वर्ष विशेष में कर्मचारी का कार्य एवं आचरण संतोषजनक माना जायेगा।

12—राज्याधीन सेवा के समस्त राजपत्रित अधिकारियों की गोपनीय पंजिका में निम्नीलिखित अभिलेख रखे जायेंगे।

(1) सरकार द्वारा जारी किए गये प्रशंसा पत्र संकल्प, सेवा की मान्यता के उपलक्ष्य में प्रदान किये गये किन्हीं पदक के पुरस्कारों आदि से सम्बन्धित अभिलेख।

(2) अनुशासनिक कार्यवाही के तहत दिए गए दण्ड के आदेश की प्रतिलिपि।

(3) अधिकारी को चेतावनी देते हुए अथवा सरकार का असंतोष अथवा भर्त्सना सूचित करते हुये, उसे सम्बन्धित पत्रादि की प्रतिलिपि।

(4) अधिकारी के विरुद्ध उसकी गोपनीय रिपोर्ट में उल्लिखित आरोपों अथवा अभिकथनों पर जांच के अन्तिम परिणाम का अभिलेख।

(5) अधिकारी द्वारा अध्ययन के किसी पाठ्यक्रम अथवा उसके द्वारा लिये गये प्रशिक्षण अथवा उसके द्वारा प्राप्त की गयी डिग्री/डिप्लोमा या प्रमाण पत्रों का अभिलेख।

(6) अधिकारी द्वारा प्रकाशित कोई पुस्तक, लेख अथवा अन्य प्रकाशन के संबंध में अभिलेख।

(7) ऐसी भाषाओं के संबंध में अभिलेख जिनमें अधिकारी ने लिखने पढ़ने में दक्षता प्राप्त की है।

13—यदि प्रशासनिक कारणवश किसी अधिकारी का नियत समय से पूर्व स्थानान्तरण किये जाने की संसृति की जाती है, तो सम्बन्धित अधिकारी की वार्षिक गोपनीय प्रविष्टि अंकित करते समय उन कारणों तथा तथ्यों को ध्यान में रखा जाय जिनके आधार पर स्थानान्तरण की संसृति की गई थी।

14—वर्ग-3(समूह "ग") के कर्मचारियों को प्रशिक्षण के उपरान्त दिये गये प्रमाण पत्रों की प्रतिलिपियां उनकी चरित्र पंजी तथा व्यक्तिगत पत्रावली में रखी जायेंगी।

15—ऐसे मामले में जहां निर्वाचन के सम्बन्ध में किसी रिटर्निंग आफिसर द्वारा किये गये गलत कार्य की भर्त्सना किया जाना अपेक्षित हो, मुख्य निर्वाचन आफिसर के सम्प्रेक्षण (Observations) जिन्हें कि वह भारत निर्वाचन आयोग नई दिल्ली को भी दिखायेंगे, मुख्य सचिव को प्रस्तुत होंगे। तत्पश्चात इन्हें सम्बन्धित अधिकारी के विभाग में उपयुक्त स्तर को अग्रसारित किया जायेगा और यह अपेक्षा की जायेगी कि इन सम्प्रेक्षणों को वार्षिक प्रविष्टि अंकित करते समय अन्य तथ्यों के साथ ध्यान में लिया जाय।

16—अनुसूचित जाति/जनजाति को सेवा में प्रदान किये गये आरक्षण को निष्ठा एवं कठोरता पूर्वक कार्यान्वित किये जाने का शासन का संकल्प है। आरक्षण सम्बन्धी आदेशों का दृढ़ता से अनुपालन कराने हेतु विभिन्न सेवा के उत्तरदायी राजपत्रित अधिकारियों की वार्षिक प्रविष्टि अंकित करने हेतु उनके लिये निर्धारित प्रपत्र में एक विशिष्ट स्तम्भ निम्न आशय का जोड़ दिया जाय:—

“सेवाओं में अनुसूचित जातियों/जन जातियों के प्रतिनिधित्व को पूरा करने एवं तत्संबन्धित विभिन्न शासनादेशों का कार्यान्वयन करने के लिये प्रभावी रूप से अपने दायित्व को निभाया”

वार्षिक प्रविष्टि अंकित न हो पाने के कारणों का उल्लेख (शा0 सं0 36/8/76 का-2 दि0 9-5-77)

चरित्र पंजी में रखे जाने वाले अभिलेख। शा0 सं0 36/9/76-का-2 दि0 24-1-77

(शा0 सं0 36/3/77-का-2, दि0 29-4-77)

(शा0 सं0 6554/का0-2/76 दि0 2-11-76)

(शा0 सं0 027/6/79-का-2/80 दि0 20-6-80)

आरक्षण संबंधी आदेशों का अनुपालन-प्रविष्टि में उल्लेख (शा0 सं0 27/5/79 का-2 दि0 19-9-81)

S. S. Singh  
2579

एक घटना के लिये प्रविष्टि में-प्रतिवेदक/समीक्षक/स्वीकर्ता प्राधिकारी के स्तर से किसी घटना या त्रुटि (शा 0 सं 0 21/82) विशेष के लिए प्रतिकूल प्रविष्टि अंकित की गयी और उसी घटना या त्रुटि की जांचोपरान्त का-2/1983 दि 0 6-2-84) दोष सिद्ध होने पर भर्त्सनात्मक या प्रतिकूल प्रविष्टि पुनः दी गयी। यद्यपि वार्षिक प्रविष्टि दण्ड स्वरूप न होकर, सम्बन्धित कार्मिक के बारे में उसके ऊपर के अधिकारियों द्वारा किया गया वास्तविक मूल्यांकन होता है, फिर भी संबंधित कार्मिक की चरित्र पंजिका में एक ही घटना या त्रुटि के लिये दो अलग अलग प्रतिकूल प्रविष्टियों को बनाये रखना नैसर्गिक न्याय के सिद्धान्त के अनुरूप नहीं है। दोनों प्रतिकूल प्रविष्टियों की पृष्ठभूमि अलग अलग है फिर भी चूंकि घटना या त्रुटि एक ही रही है इसलिए उस घटना के लिये दी गयी प्रतिकूल वार्षिक प्रविष्टि तथा जांचोपरान्त भर्त्सनात्मक/प्रतिकूल प्रविष्टि को एक दूसरे के साथ सम्बद्ध किया जाना चाहिए तथा सेवा संबंधी प्रकरणों के निस्तारण में एक ही माना जाना चाहिये।

जांचोपरान्त  
निर्णयानुसार  
प्रविष्टि किस वर्ष  
में लिखी जाये।  
(शा 0 सं 0 36/  
1/77-का-2  
दि 0 6-4-84  
विशेष प्रविष्टियां

18-एसे प्रकरणों पर जिनमें जांचोपरान्त सेसर या निन्दात्मक प्रविष्टि दिये जाने का निर्णय लिया जाता है, यह प्रविष्टि सम्बन्धित कर्मचारी/अधिकारी की चरित्र पंजिका में उसी वर्ष की प्रविष्टि में रखी जाय जिस वर्ष तदनुसार कार्यवाही का निर्णय लिया गया है। यह उल्लेख अवश्य कर दिया जाय कि प्रकरण संबंधित के सेवा काल के किस पट व वर्ष से संबंधित रहा है और पाई गयी त्रुटि किस प्रकृति की रही है, जिससे चरित्र पंजिका का मूल्यांकन करते समय दी गयी प्रविष्टि के स्वाभाविक असर को दृष्टिगत रखा जा सके।

19-कभी-कभी विशेष अनुकूल या प्रतिकूल प्रविष्टि किसी घटना/कार्य विशेष के संबंध में दी जाती है। इस संबंध में शासन ने निर्णय लिया है कि विशेष प्रविष्टि अंकित करने के बारे में ठीक वही प्रक्रिया अपनाई जायेगी जो सामान्य वार्षिक प्रविष्टि अंकित करने हेतु अपनाई जाती है किन्तु यह ध्यान में रखा जाना चाहिए कि ऐसी विशेष प्रविष्टि किसी घटना/कार्य विशेष के संबंध में ही हो तथा इसमें सामान्य मूल्यांकन न किया गया हो। यदि ऐसी विशेष प्रविष्टि प्रतिकूल हो तो उसे संसूचित करने तथा उसके विरुद्ध प्राप्त प्रत्यावेदन के निस्तारण के संबंध में भी वही प्रक्रिया अपनाई जाय जो सामान्य प्रतिकूल प्रविष्टियों के संबंध में अपनाई जाती है। विशेष प्रविष्टियां आलोच्य वर्ष में किसी भी समय आवश्यकतानुसार दी जा सकती है किन्तु यह प्रयास किया जाना चाहिये कि ऐसे अवसर बहुत कम और कभी-कभी अत्यावश्यक स्थिति में ही सामने आये। सामान्य तौर पर ऐसे मामलों का समावेश वार्षिक प्रविष्टि में ही किया जाना अधिक उपयुक्त होगा।

प्रतिकूल प्रविष्टि  
संसूचित करना  
(शा 0 सं 0 36/  
1/76 का 0-2-  
दि 0 21-5-76)

20-यदि वार्षिक प्रविष्टि में किसी प्रतिकूल बात का उल्लेख किया गया है तो प्रतिकूल अंश संसूचित करते समय प्रतिवेदक/समीक्षक/स्वीकर्ता तीनों प्राधिकारियों की प्रविष्टियों से अवगत कराया जायेगा।

शा 0 सं 0 36/1/  
77 का-2-दि 0  
21-3-77)

21-किस प्रविष्टि को अथवा उसके किस अंश को प्रतिकूल मानकर संसूचित करना है इसका निर्णय सक्षम अधिकारी अथवा उसके द्वारा नामांकित अधिकारी करेगा। प्रतिकूल अंश के होने पर समस्त प्रविष्टि संसूचित करनी होती है। यदि किसी अंश को प्रतिकूल न मानकर संसूचित नहीं किया गया है तो वह प्रविष्टि मूल्यांकन के समय नजरअंदाज की जा सकती है।

प्रतिकूल प्रविष्टि  
के विरुद्ध प्रत्या-  
वेदन की दो

22-प्रतिकूल प्रविष्टियों अथवा अन्य प्रतिकूलात्मक आदेश जिन पर स्पष्टीकरण की अपेक्षा हो जारी करते समय ही संबंधित कर्मचारी से यह अपेक्षा की जाय कि वह अपने प्रत्यावेदन की दो प्रतियां उपलब्ध करा दे, जिससे प्रत्यावेदन के शीघ्र निस्तारण में अपेक्षित सहायता हो सके। संबंधित अधिकारियों/कर्मचारियों से दो प्रतियों में प्रत्यावेदन भेजने के बारे में उपरोक्त उद्देश्य की पृष्ठभूमि में केवल अनुरोध किया जाय। यदि किसी दशा में प्रत्यावेदक द्वारा दो प्रतियों में प्रत्यावेदन नहीं भेजा जाता है तो केवल इस आधार मात्र पर न तो ऐसे प्रत्यावेदन निरस्त किये जायेंगे और न ही दूसरी प्रति प्राप्त होने की प्रत्याशा में प्रत्यावेदन के निस्तारण में विलम्ब किया जायगा।

प्रतिकूल प्रविष्टि 23-यदि किसी अधिकारी/कर्मचारी की सत्यनिष्ठा के बारे में जांच की जा रही है तो ऐसी दशा में प्रतिवेदक प्राधिकारी को सत्यनिष्ठा प्रमाणित करने अथवा सत्य-सत्यनिष्ठा संसूचित निष्ठा अप्रमाणित करने के बजाय यह इंगित कर देना चाहिए कि प्रश्नगत मामले की जांच। (शा 0 सं 0 जांच की जा रही है। जांच पूरी हो जाने पर जांच का परिणाम देखने के उपरान्त सत्य-36/1/77-का 0-2 निष्ठा को प्रमाणित अथवा अप्रमाणित किया जाना चाहिए। दि 0 15-3-84)

S.S. Nigam  
25/9

24—प्रतिकूल प्रविष्टि संसूचित किये जाने के संबंध में कभी-कभी ऐसी स्थिति सामने आती है कि वार्षिक गोपनीय प्रविष्टियों में संबंधित अधिकारी/कर्मचारी के कार्य का मूल्यांकन संतोषजनक अंकित होता है किन्तु प्रतिवेदक अधिकारी सत्यानिष्ठा के संबंध में यह उल्लेख करते हैं कि सत्यानिष्ठा के संबंध में प्राप्त शिकायतों पर जांच की जा रही है, अतः जांच के बाद ही सत्यानिष्ठा प्रमाणित किया जाना समीचीन होगा। इस प्रकार की अप्रमाणित सत्यानिष्ठा के प्रकरणों को भी संबंधित अधिकारी/कर्मचारी को संसूचित किया जाना स्वच्छ कार्मिक नीति के हित में होगा।

25—प्रतिकूल प्रविष्टियों को संसूचित करने, उनके विरुद्ध प्रत्यावेदन देने तथा प्रत्यावेदन पर निर्णय लेने आदि के संबंध में निम्नलिखित प्रक्रिया अपनाई जाय :—

(क) प्रतिकूल प्रविष्टि संसूचित किये जाने के लिये सभी प्रविष्टियों के पूर्ण रूप से अंकित हो जाने के बाद प्रतिकूल प्रविष्टि 6 सप्ताह के अन्दर संबंधित अधिकारी/कर्मचारी को लिखित रूप में सक्षम प्राधिकारी द्वारा संसूचित कर दी जाये और चरित्र पंजीक में इस बात का प्रमाण पत्र दे दिया जाय कि प्रतिकूल प्रविष्टि संबंधित अधिकारी को किस तिथि को संसूचित की गयी तथा कब उसकी प्राप्ति स्वीकार हुई। प्रतिकूल प्रविष्टि को संसूचित व किये जाने का तथ्य गम्भीर दोष के रूप में लिया जाय और उत्तरदायी कर्मचारी/अधिकारी के विरुद्ध अवश्य ही समुचित कार्यवाही की जाय।

(ख) प्रतिकूल प्रविष्टि के विरुद्ध प्रत्यावेदन देने के लिये :—

प्रतिकूल प्रविष्टि संसूचित किये जाने की तिथि से 6 सप्ताह के अन्दर प्रत्यावेदन प्रस्तुत किये जाने का समय दिया जाय। यदि उक्त अवधि के अन्दर प्रत्यावेदन प्राप्त नहीं होता है तो प्रविष्टि अन्तिम समझी जाय तथा इस अवधि के बाद प्राप्त प्रत्यावेदन को अस्वीकार कर दिया जाय। सक्षम प्राधिकारी को फिर भी यह अधिकार होगा कि यदि वह यह समझते हैं कि उक्त निर्धारित अवधि के भीतर प्रत्यावेदन प्रस्तुत न किये जाने के पर्याप्त कारण हैं तो वह इस अवधि को आवश्यकतानुसार 6 सप्ताह तक बढ़ा सकते हैं।

(ग) प्रतिकूल प्रविष्टि के विरुद्ध प्रत्यावेदन पर निर्णय लेने के लिये :— प्रतिकूल प्रविष्टि के विरुद्ध समय के अन्दर प्रस्तुत किये गये प्रत्यावेदनों पर उनके प्राप्ति की तिथि से तीन महीने के अन्दर निर्णय ले लिया जाय और उससे यथाशीघ्र संबंधित अधिकारी को अवगत करा दिया जाय।

26—प्रत्यावेदन के निस्तारण का अधिकार रखने वाले अधिकारी के कार्यालय में प्रत्यावेदन प्राप्त होने के एक सप्ताह के अन्दर प्रतिकूल प्रविष्टि देने वाले प्राधिकारी के पास आख्या भेजने के लिये पत्र भेज दिया जायेगा और प्रतिकूल प्रविष्टि देने वाला प्राधिकारी उस पत्र के प्राप्त होने के एक महीने के अन्दर अपनी आख्या निश्चित रूप से प्रत्यावेदन का निस्तारण करने वाले अधिकारी के पास भेज देगा। यदि 6 सप्ताह के अन्दर प्रतिकूल प्रविष्टि देने वाले प्राधिकारी की आख्या न प्राप्त हो तो प्रत्यावेदन पर विचार करने वाले अधिकारी को यह अधिकार होगा कि वह गुणवगुण के आधार पर उपलब्ध कागजात को देखते हुए प्रत्यावेदन का निस्तारण कर दें। यह सुनिश्चित करने के लिये कि प्रविष्टियों के विषय में निर्धारित समय सारिणी के अनुसार कार्यवाही हो, समस्त प्रशासनिक विभागों अथवा नियुक्त प्राधिकारियों के कार्यालयों में इस हेतु एक रजिस्टर खोला जाना चाहिये, जिसमें वार्षिक प्रविष्टि पूर्णरूप से अंकित किये जाने, प्रतिकूल प्रविष्टि संसूचित किये जाने तथा प्रतिकूल प्रविष्टि के विरुद्ध प्रत्यावेदन प्राप्त होने के तिथि स्पष्ट रूप से अंकित होनी चाहिए। इस रजिस्टर की मासिक समीक्षा की व्यवस्था भी होनी चाहिये जिससे की प्रतिकूल प्रविष्टि के विरुद्ध दिये गये प्रत्यावेदन पर प्रतिकूल प्रविष्टि अंकित किये जाने की तिथि से तीन माह के अन्दर निर्णय लिया जा सके। यदि आवश्यक हो तो विभाग में इस कार्य के लिये एक अधिकारी को विशिष्ट रूप से नामांकित किया जाना चाहिए।

27—सेवा निवृत्ति, पदत्याग या निलम्बन की अवस्था में प्रविष्टिकर्ता प्राधिकारी से प्रतिकूल प्रविष्टि के विरुद्ध दिये गये प्रत्यावेदन पर उनकी आख्या प्राप्त न की जाये।

प्रतिकूल प्रविष्टि संसूचित करने एवं प्राप्त प्रत्यावेदन के निस्तारण की प्रक्रिया शा 0 स 0 36/1/77, का-2 दि 031-3-77)

सेवानिवृत्त, निलम्बित अधिकारी से आख्या प्राप्त न करना शा 0 स 0 36/1/76-का-2, दि 0 18-7-80)

S.S. Singh  
25/9

प्रतिकूल प्रविष्टि के विरुद्ध प्रत्यावेदनो पर निर्णय का स्तर (शा० सं० 36/1/78 का-2, दि० 23-11-78)

28—न्यायिक तथा प्रशासनिक दोनों स्तरों से यह माना जाना सिद्धान्त है कि प्रतिकूल प्रविष्टि के विरुद्ध दिये गये प्रत्यावेदन पर प्रतिवेदक तथा प्रविष्टिकर्ता अर्थात् संबंधित पक्षगण के अलावा एक अन्य तीसरे स्तर पर निष्पक्ष एवं स्वतन्त्र रूप से विचार कर उस पर निर्णय लिया जाना चाहिए। तदनुसार शासन द्वारा विचारोपरान्त यह निर्णय लिया गया है कि प्रविष्टिकर्ता द्वारा दी गयी प्रतिकूल प्रविष्टि पर निर्णय अपने स्तर से न लेकर उससे अगले स्तर ( next higher level ) पर ही लिया जाना चाहिये।

प्रत्यावेदन पर अंतिम निर्णय (शा० सं० 36/1/77-का०-2, दि० 21-3-77)

29—प्रतिकूल प्रविष्टि के विरुद्ध प्रत्यावेदन पर निर्णय हो जाने के उपरान्त यह प्रविष्टि अंतिम मानी जायेगी और इस विषय में कोई द्वितीय प्रत्यावेदन स्वीकार नहीं किया जायेगा। प्रायः प्रतिकूल प्रविष्टि के संबंध में शासन को मेमोरियल भी प्रस्तुत किये जाते हैं। इस संबंध में शासन की यह नीति है कि यदि संबंधित प्रतिकूल प्रविष्टि के विरुद्ध प्रत्यावेदन पर निर्णय शासन स्तर पर लिया जा चुका है और मेमोरियल में कोई नये तथ्य नहीं हैं, तो मामले में पुनर्विचार की आवश्यकता नहीं होनी चाहिये। मेमोरियल प्रस्तुत करने एवं उसके निस्तारण के संबंध में विस्तृत निर्देश एम० जी० ओ० के प्रस्तर-773 में दिये गये हैं।

प्रविष्टियों के प्रतिकूल ग्रंथ का खंडन स्पष्ट रूप से किया जाना : (शा० सं० 36/1/77-का०-2, दिनांक 21-3-77)

30—प्रतिवेदक, समीक्षक तथा स्वीकर्ता प्राधिकारी द्वारा किसी स्तर पर विरोधी मत व्यक्त किये जाने की दशा में, स्वीकर्ता प्राधिकारी द्वारा व्यक्त किया गया मत अन्तिम मूल्यांकन माना जायेगा। यदि प्रतिवेदक अथवा/तथा समीक्षक प्राधिकारी द्वारा अंकित प्रतिकूल प्रविष्टि को स्वीकर्ता प्राधिकारी द्वारा पूर्ण रूप से अथवा आंशिक रूप से स्पष्टता खंडित कर दिया गया है तो वह प्रतिकूल प्रविष्टि उस सीमा तक प्रभावहीन समझी जायेगी जिस सीमा तक उसे स्वीकर्ता प्राधिकारी द्वारा स्पष्ट रूप से खंडित किया गया हो। यदि प्रतिकूल प्रविष्टि पूर्ण रूप से खंडित हो गई है तो यद्यपि वह चरित्र पंजी में बनी रहेंगी तथापि उसे संसूचित किये जाने की आवश्यकता नहीं है और यदि प्रतिकूल प्रविष्टि पूर्ण रूप से खंडित नहीं की गयी है तो प्रविष्टि का वह भाग जो स्पष्ट रूप से खंडित नहीं किया गया है, प्रतिकूल माना जायेगा और ऐसी दशा में संबंधित अधिकारी को सम्पूर्ण प्रविष्टि से अवगत कराया जायेगा।

31—इस प्रकार यदि प्रतिवेदक प्राधिकारी के मूल्यांकन से समीक्षक प्राधिकारी असहमति प्रकट करते हैं तो प्रविष्टि उस सीमा तक संशोधित मानी जायेगी। यही व्यवस्था स्वीकर्ता प्राधिकारी के मूल्यांकन के विषय में भी लागू होगी, अर्थात् स्वीकर्ता प्राधिकारी द्वारा दिया गया मूल्यांकन प्रतिवेदक तथा समीक्षक प्राधिकारी के मूल्यांकन को अतिक्रमित करेगा। इसलिये समीक्षक तथा स्वीकर्ता प्राधिकारी को स्पष्टतः दर्शित करना चाहिए कि वे प्रविष्टि के किस अंश अथवा किन वाक्यों को खंडित करना व प्रभावहीन रखना चाहते हैं।

अवलोपित प्रविष्टि के स्थान पर नई प्रविष्टि (शा० सं० 25/3/80-का-2, दि० 7-5-81)

32—यदि प्रतिकूल प्रविष्टि के विरुद्ध प्राप्त प्रत्यावेदन के निस्तारण पर सक्षम प्राधिकारी द्वारा उसे अवलोपित किये जाने का निर्णय लिया जाय तो अवलोपित प्रविष्टि के स्थान पर नये सिर से कोई नई प्रविष्टि देने का सामान्यतः आचरण नहीं है क्योंकि ऐसी प्रविष्टि उस अधिकारी द्वारा दी जा सकती है जिसने सक्षम होने के साथ साथ प्रविष्टि अर्जित करने वाले अधिकारी/कर्मचारी का काम निर्धारित तीन माह की न्यूनतम अवधि तक देखा हो। किन्तु यदि अवलोपन का निर्णय लेते समय ऐसे तथ्य सामने आते हैं कि जिन्हें प्रविष्टिकर्ता प्राधिकारी द्वारा प्रविष्टि अंकित करते समय ध्यान में लेना चाहिए था, और उनका उल्लेख करना चाहिए था पर ऐसा किया नहीं गया तो सक्षम प्राधिकारी उनके अंकित किये जाने के बारे में अलग से निर्देश दे सकते हैं।

अवलोपित प्रविष्टि सम्बन्धी प्रक्रिया— (शा० सं० सी-आर-583) II-ए-38 -1956 दि० 5-12-1959

33—अवलोपित/संशोधित प्रविष्टि के सम्बन्ध में निम्नांकित प्रक्रिया अपनाई जाये :

1—प्रविष्टि के विलुप्त किये जाने वाले अंश को इस प्रकार बंद कर दिया जाय या मिटा दिया जाय कि उसे पढ़ा न जा सके।

2—उक्त कार्य राजपत्रित अधिकारी द्वारा अपने हस्ताक्षर से किया जाये। लिपिकीय व अन्य पदों के संदर्भ में कार्यालय अधीक्षक या मुख्य सहायक को विभागाध्यक्ष द्वारा इस कार्य के लिये प्राधिकृत किया जा सकता है।

3—संगत आदेशों की संख्या व दिनांक, आदेश पारित करने वाले अधिकारी का पदनाम, सम्बन्धित पत्रावली व उसके पृष्ठ का संदर्भ जिस पर आदेश पारित

S. S. Dige  
25/9

हुए हों, चित्र-पंजी में प्रविष्टि के सम्मुख इंगित किये जाय तथा उस प्राधिकारी द्वारा हस्ताक्षर किये जाय जिसने यह कार्यवाही सम्पादित की हो।

34—यद्यपि प्रतिकूल प्रविष्टि को संसूचित न किये जाने का अवसर नहीं आना चाहिए और ऐसी दशा में संबंधित उत्तरदायी कर्मचारी/अधिकारी के विरुद्ध संसूचित कार्यवाही अवश्य की जानी चाहिये, फिर भी स्थायीकरण पदोन्नति, दक्षतारोक आदि प्रकरणों के समय ऐसे अवसर आ सकते हैं, जब नियुक्ति प्राधिकारी/चयन समिति को यह पता चले कि कई वर्ष पूर्व की अमुक प्रतिकूल प्रविष्टि से संबंधित अधिकारी को संसूचित नहीं किया गया है। चूंकि उक्त अधिकारी को प्रतिकूल प्रविष्टि की सूचना नहीं प्राप्त हुई जिससे उसके विरुद्ध प्रत्यावेदन देने के अवसर से उसे वंचित कर दिया गया, अतः इस तथ्य को ध्यान में रखते हुए संबंधित अधिकारी के कार्य/आचरण के समग्र मूल्यांकन पर उक्त प्रतिकूल प्रविष्टि का प्रभाव आका जाना चाहिए।

संसूचित न की गई प्रतिकूल प्रविष्टि का प्रभाव

35—यदि प्रतिकूल प्रविष्टि संसूचित कर दी गई है और उसके विरुद्ध प्रत्यावेदन देने की अवधि शेष हो अथवा प्रत्यावेदन प्राप्त हो चुका हो परन्तु उसका निस्तारण नहीं किया जा सका हो तब संबंधित अधिकारी के सेवा संबंधी प्रकरणों के निस्तारण की कार्यवाही प्रत्यावेदन पर निर्णय होने के बाद की जानी चाहिए। इस दृष्टिकोण से यह आवश्यक है कि पदोन्नति हेतु चयन समितियों की बैठक आयोजित करने के पूर्व नियुक्ति प्राधिकारी/विभागाध्यक्ष द्वारा यह सुनिश्चित कर लिया जाना चाहिए कि प्रतिकूल प्रविष्टियों के विरुद्ध प्राप्त प्रत्यावेदनों का निस्तारण करा लिया गया है। यदि प्रत्यावेदनों का निस्तारण किन्हीं अपरिहार्य कारणों से सम्भव न हो पाये और यदि चयन समिति ऐसी प्रविष्टि को ध्यान में लेते हुए अमुक कार्मिक के संबंध में निर्णय ले तो उस प्रत्यावेदन पर अन्तिम निर्णय हो जाने पर तदनुसार उस मामले में आवश्यकतानुसार पुनर्विचार हेतु चयन समिति की बैठक पुनः आयोजित की जानी चाहिए।

प्रतिकूल प्रविष्टि के विरुद्ध प्राप्त प्रत्यावेदन संबंधित रहने की दशा में कार्यवाही

36—शासन की नीतियों तथा कार्यक्रमों के कार्यान्वयन में जिला प्रशासन एक महत्वपूर्ण स्थान रखता है। जिला स्तर पर विभिन्न विभागों द्वारा चलाई जाने वाली योजनाओं को सुचारु रूप से चलाने हेतु जिला प्रशासन के उत्तरदायित्वों में पर्याप्त वृद्धि हुई है। तदनुसार जिला प्रशासन की कार्य कुशलता तथा उपादेयता को बढ़ाने की नितान्त आवश्यकता समझी गई। इस सन्दर्भ में जिलाधिकारियों के नियंत्रण को अधिक प्रभावी बनाने के प्रश्न पर शासन द्वारा गम्भीरता से विचार किया गया और यह निर्णय लिया गया कि जिला स्तर पर समस्त राज्याधीन विभागों (पुलिस विभाग को छोड़कर) के अधिकारियों की वार्षिक गोपनीय प्रविष्टि जिलाधिकारी द्वारा लिखी जायेगी।

जिला स्तरीय अधिकारियों की प्रविष्टि जिलाधिकारी द्वारा लिखी जाय (शा 0 सं 0 36/3/76-का 0-2, दि 0 31-8-76)

37—जिलाधिकारियों के द्वारा अंकित प्रविष्टि सम्बन्धित विभाग के मण्डल स्तर के अधिकारियों के माध्यम से विभागाध्यक्ष को भेजी जायेगी। यह प्रविष्टि पूर्व की भांति जिला योजनाओं को सफल बनाने में सम्बन्धित अधिकारी के योगदान, उनकी सत्यनिष्ठा के संबंध में सामान्य ख्याति तथा जनता के प्रति उनके व्यवहार के बारे में ही होगी।

(शा 0 सं 0 36/3/76-का 0-2, दिनांक 6-5-85)

38—मण्डल स्तर के विभागीय अधिकारी, जिलाधिकारी द्वारा अंकित प्रविष्टि की बिना कोई विवेचना किये हुए मूल रूप में अपनी प्रविष्टि में शामिल करते हुए विभागाध्यक्ष को अग्रसारित कर देंगे। जहां तक विभागाध्यक्ष का प्रश्न है उन्हें क्योंकि संबंधित अधिकारी से जिलाधिकारी को अपेक्षित सहयोग मिला है या नहीं इस बारे में कोई व्यक्तिगत जानकारी होने का अवसर सामान्यतया नहीं होता है, अतः इस पहलु को छोड़कर जिलाधिकारी द्वारा दी गयी प्रविष्टि के अन्य दो पहलुओं—सत्यनिष्ठा की सामान्य ख्याति एवं जनता के प्रति व्यवहार—के बारे में वे अपना मत यदि जिलाधिकारी से भिन्न हो तो अंकित कर सकते हैं।

39—जिलाधिकारी द्वारा प्रतिकूल प्रविष्टि अंकित किये जाने की दशा में संबंधित अधिकारी अपना प्रत्यावेदन अपने विभागाध्यक्ष को प्रस्तुत करेंगे जो संबंधित जिलाधिकारी से आख्या प्राप्त कर यदि वे स्वयं सक्षम होंगे तो प्रत्यावेदन का निस्तारण अपने स्तर पर करेंगे अन्यथा उसे अपनी आख्या के साथ, शासन के संबंधित प्रशासनिक विभाग को निस्तारण हेतु भेज देंगे। प्रत्यावेदनों पर निर्णय देने के लिये जो स्तर निर्धारित है उनमें कोई परिवर्तन नहीं होगा।

S.S. Nigam  
2579

मण्डल स्तरीय  
अधिकारियों की  
प्रविष्टि मण्डला-  
युक्त द्वारा लिखी  
जायेगी

(शा० सं० 36/  
10/76-का-2,  
दि० 17-2-77)

40—मण्डल स्तर पर शासन की नीतियों एवं कार्यक्रमों के उद्देश्यपूर्ण समन्वय एवं शीघ्र कार्यान्वयन तथा जनता की शिक्षाओं के निराकरण का उत्तरदायित्व मुख्य रूप से मण्डलायुक्तों को सौंपा गया है। इस हेतु यह आवश्यक है कि मण्डलायुक्तों को भी समस्त विभागों का पूर्ण सहयोग प्राप्त हो।

41—इस पृष्ठभूमि में शासन द्वारा यह निर्णय लिया गया है कि राज्याधीन समस्त विभागों के (पुलिस विभाग को छोड़कर) क्षेत्रीय स्तर के अधिकारियों की वार्षिक प्रविष्टि विभागीय प्रतिवेदक प्राधिकारी के अतिरिक्त संबंधित मण्डलायुक्तों द्वारा भी अंकित की जाय। मण्डलायुक्त अपने मण्डल में कार्यरत उक्त क्षेत्रीय स्तर अधिकारियों के संबंध में वार्षिक प्रविष्टि अंकित करेंगे।

42—मण्डलायुक्त की प्रविष्टि यथापूर्व सम्बन्धित विभागाध्यक्ष के माध्यम से शासन को भेजी जायेगी और विभागाध्यक्ष उसे मूल रूप में अपने प्रविष्टि के साथ शामिल कर लेंगे। यदि मण्डलायुक्त किसी अधिकारी के बारे में प्रतिकूल प्रविष्टि अंकित करते हैं तो संबंधित अधिकारी के प्रत्यावेदन पर विभागाध्यक्ष प्रतिकूल प्रविष्टि अंकित करने वाले प्राधिकारी की टिप्पणी प्राप्त करके उसे शासन के संबंधित प्रशासनिक विभाग को निस्तारण हेतु भेज देंगे।

(शा० सं० 36/10/  
76-का०-2, दि०  
22-1-86)

43—मण्डलायुक्तों को विकास कार्यक्रमों के कार्यान्वयन तथा विभागों के सर्विस डिलीवरी सिस्टम के पर्यवेक्षक का उत्तरदायित्व सौंपे जाने के परिपेक्ष्य में शासन ने यह निर्णय लिया है कि क्षेत्रीय स्तर के अधिकारियों की प्राविधिक क्षमता को छोड़कर अन्य सभी पहलुओं के विषय में प्रविष्टि अंकित करने का अधिकार मण्डलायुक्त को होगा। मण्डलायुक्तों के लिये यह अनिवार्य नहीं है कि वह प्रतिवर्ष सभी क्षेत्रीय स्तर के अधिकारियों के विषय में अपने मंतव्य अंकित करें। यदि किसी अधिकारी ने विशेष रूप से प्रशंसनीय कार्य किया है अथवा कार्य के प्रति उदासीनता बरती है और मण्डलायुक्त यह समझते हैं कि इस बात का उल्लेख उस अधिकारी की प्रविष्टि में किया जाना चाहिये तो ऐसा करने के लिये सक्षम हैं। मण्डलायुक्त की प्रविष्टि यथावत् संबंधित विभागाध्यक्ष को भेजी जायेगी और विभागाध्यक्ष द्वारा अंकित की जाने वाली प्रविष्टि में यह मूल रूप से सम्मिलित की जायेगी। मण्डलायुक्त द्वारा अंकित प्रविष्टि पर समीक्षक तथा स्वीकर्ता प्राधिकारी द्वारा कोई विवेचना नहीं की जायेगी। प्रतिकूल प्रविष्टि अंकित किये जाने की स्थिति में उनके विरुद्ध प्रत्यावेदन पर शासन के संबंधित प्रशासनिक विभाग में निर्णय लिया जायेगा।

पर्वतीय क्षेत्र में  
नियुक्त मण्डल  
स्तरीय अधिका-  
रियों की प्रविष्टि  
(शा० सं०-36/  
10/76-का०-2,  
दि० 31-12-  
83)

44—सचिव, पर्वतीय विकास विभाग, पर्वतीय क्षेत्र में नियुक्त विभागीय मण्डल स्तरीय अधिकारियों (संयुक्त निदेशक, उप निदेशक, सहायक निदेशक, अतिरिक्त मुख्य वन संरक्षक) और अधीक्षण अभियन्ता तथा वन संरक्षकों को जो कि प्लान योजना के कार्यान्वयन से संबंधित हैं, की चरित्र पंजी में वार्षिक मूल्यांकन करेंगे। यह मूल्यांकन सभी विकास विभागों के अधिकारियों के विषय में होगा। इसकी व्यवस्था निम्न प्रकार होगी :-

(क) आयोजनागत विभागों के मण्डल स्तर के वरिष्ठतम अधिकारियों तथा अधीक्षण अभियन्ताओं व वन संरक्षकों को प्रविष्टि देने का अधिकार सचिव, पर्वतीय विकास विभाग को होगा।

(ख) सचिव, पर्वतीय विकास विभाग की प्रविष्टि चरित्र पंजिका में मूल रूप में रखी जायेगी तथा उनका पुनरीक्षण संबंधित विभाग के मंत्री जी द्वारा, यदि साधारण रूप से विभागीय सचिव की प्रविष्टियों पर भी वे पुनरीक्षण करते हैं, किया जायेगा।

(ग) मण्डलायुक्त/जिलाधिकारी के विषय में सचिव, पर्वतीय विकास विभाग अपना मूल्यांकन मुख्य सचिव को भेजेंगे। इन अधिकारियों के विषय में समीक्षा/स्वीकृत मन्तव्य लिखते समय इसको ध्यान में रखा जायेगा।

उपयुक्त अधिकार सचिव, पर्वतीय विकास को प्रदत्त विशेष अधिकार हैं। चरित्र पंजिका लिखने की सामान्य विभागीय प्रक्रिया इसके अतिरिक्त पूर्ववत् रहेगी।

सचिव, पर्वतीय विकास द्वारा विभागाध्यक्ष स्तर पर पर्वतीय क्षेत्र के लिये नियुक्त अथवा नामित उत्तरदायी अधिकारी के कार्य एवं आचरण पर अंकित किये गये मूल्यांकन के विरुद्ध प्रत्यावेदन, यदि कोई हो, पर विचार एवं निर्णय का अधिकार शासन स्तर पर पर्वतीय विकास विभाग के माध्यम से मुख्य सचिव तथा मुख्य मंत्री जी

5.5.19  
579

करी होगा। इसी प्रकार मण्डलीय अधिकारियों के कार्य और आचरण के सम्बन्ध में विभागाध्यक्ष स्तर पर पर्वतीय क्षेत्र के लिये नियुक्त नामित अधिकारी द्वारा किये गये मूल्यांकन के विरुद्ध प्रत्यावेदन, यदि कोई हो, पर विचार एवं निर्णय का अधिकार शासन स्तर पर पर्वतीय विकास विभाग का होगा।

उपयुक्त आदेशों के कार्यान्वयन में विभागाध्यक्षों के स्तर पर नामित उत्तरदायी अधिकारी वित्तीय वर्ष के अन्त में सम्बन्धित मण्डलीय स्तर के अधिकारी, अधीक्षक अभियन्ता, वन संरक्षक, जैसी भी स्थिति हो, द्वारा किये गये कार्यों का विवरण, नियुक्ति की अवधि तथा अपना अभिमत पर्वतीय विकास सचिव को उपलब्ध करायेंगे। मण्डलायुक्त/जिलाधिकारी यह विवरण अपने सम्बन्ध में सीधे, पर्वतीय विकास सचिव को भिजवा देंगे। इसकी अन्तिम तिथि 15 मई होगी। सचिव, पर्वतीय विकास द्वारा किया गया मूल्यांकन प्रशासनिक विभाग के सचिव को अधिकारी की चरित्र पंजी में सम्मिलित करने हेतु भेजा जायेगा।

45—जिन अधिकारियों के नियुक्ति प्राधिकारी राज्यपाल हैं, उनकी चरित्र पंजिका शासन के प्रशासनिक विभागों में रखी जायेगी तथा शेष चरित्र पंजिकाएँ सम्बन्धित विभागाध्यक्ष अथवा कार्यालयाध्यक्ष, जो भी नियुक्ति प्राधिकारी हों, के कार्यालय में रखी जायेगी। जिन श्रेणी—2 (समूह "ख") की सेवा के अधिकारियों के सम्बन्ध में लघुशास्त्र एवं दक्षता रोक पार कराने के अधिकार विभागाध्यक्ष को दिये गये हैं, ऐसे अधिकारियों के संबंध में चरित्र-पंजिका की एक प्रति शासन से संबंधित विभागाध्यक्ष के कार्यालय में भी रखी जायेगी।

चरित्र पंजी का  
रख-रखाव (शा 0  
सं 0 36/1/76-  
का-2 दि 0  
21-5-76  
तथा शा 0 सं 0  
18/5/81-का-1,  
दि 0 26-8-  
1981)

46—सरकारी कर्मचारियों की चरित्र-पंजिका निम्न अवधि तक सुरक्षित रखी जायें।

(शा 0 सं 0 8579/  
दो-क- 77/1/70  
दिनांक 24-9-  
71)

1—सेवा निवृत्त होने, सेवा से हटाये जाने,  
सेवा से बर्खास्त होने, सेवा छोड़कर अन्यत्र चले  
जाने, त्याग पत्र देने इत्यादि पर

ऐसी किसी घटना  
के पांच वर्ष बाद  
तक

2—सेवा काल में मृत्यु हो जाने पर

मृत्यु के बाद दो वर्ष तक

#### उक्त प्रस्तर—7 में उल्लिखित प्रपत्र का प्रारूप

प्रासंगिक अवधि में किये गये कार्य का तथ्यात्मक विवरण (Description of work)  
(जो अधिकतम 300 शब्दों में ही अंकित किया जाय)

- 1—अधिकारी का नाम
- 2—पद नाम
- 3—मूल्यांकन से सम्बन्धित पद/पदों पर  
कार्यरत रहने की अवधि/अवधियाँ
- 4—पद से सम्बन्धित कार्य का संक्षिप्त विवरण
- 5—तथ्यात्मक विवरण

पी.एस.यू.पी.—ए.पी. 13 सा. नियुक्ति —11-86—(2065)—1986—8,000—(रि०)।

5.5.2010  
10-5/9

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, LUCKNOW.

O.A.NO. 74 of 1989 (L)

H.N.SRIVASTAVA.....APPLICANT

VERSUS

UNION OF INDIA & OTHERS.....RESPONDENTS

ANNEXURE - CA - 3

प्रेषक

श्री प्रभा शर्मा मिश्रा,  
संयुक्त सचिव, उत्तर प्रदेश शासन।

सेवा में,

महानिदेशक एवं पुलिस महानिरीक्षक,  
उत्तर प्रदेश,  
लखनऊ।

गृह (पुलिस सेवाओं) अनुभाग-२

दिनांक लखनऊ, १८/०४/८९

महोदय,

मुझे यह कर्तव्य का निदेश हुआ है कि राज्यपाल महोदय ने निम्नलिखित ३७ पदों के लिये स्क-स्क अपर पुलिस अधीक्षक के अस्थाई निःसंकर्ष पदों को सृजित करने के लिये को स्वाकृति प्रदान की है -

- |               |                     |
|---------------|---------------------|
| (१) जाजमगढ़   | (२०) हरदोई          |
| (२) बांदा     | (२१) जालौन          |
| (३) दस्ती     | (२२) झांसी          |
| (४) ददायूं    | (२३) जौनपुर         |
| (५) देहरादून  | (२४) कानपुर (देहात) |
| (६) बाराबंकी  | (२५) सीता           |
| (७) बिजनौर    | (२६) ललितपुर        |
| (८) बुलन्दशहर | (२७) मैनपुरी        |
| (९) बलिया     | (२८) मुजफ्फरनगर     |
| (१०) देवरिया  | (२९) मधुरा          |
| (११) देहरादून | (३०) पीलीभीत        |
| (१२) सीता     | (३१) प्रतापगढ़      |
| (१३) इटावा    | (३२) रायबरेली       |
| (१४) फाजिल्हा | (३३) रामपुर         |
| (१५) फतेहपुर  | (३४) शाहजहाँपुर     |
| (१६) फतेहगढ़  | (३५) सुल्तानपुर     |
| (१७) गोंडवा   | (३६) सातापुर        |
| (१८) गाजीपुर  | (३७) उन्नाव         |
| (१९) हमीरपुर  |                     |

२- उपरोक्त प्रस्ताव १ में सृजित पदों के लिये को तय है २० फरवरी १९८९ तक के लिये स्क स्क के अधीन किने जा रहे हैं कि इन्हें किसी पूर्व सूचना के किसी भी समय समाप्त किया जा सकता है।

३- बाई०पा०स० (वित्त) नियमावली, १९५४ के नियम ६(२) के अन्तर्गत राज्यपाल महोदय यह घोषित करते हैं कि उपरोक्त प्रस्ताव १ में सृजित समस्त पद स्तर एवं उच्चदायित्व में बाई०पा०स० (वित्त) नियमावली, १९५४ का अनुच्छेद ३(बी) में उल्लिखित पुलिस अधीक्षक के समकक्ष माने

जायेंगे तथा इन पदों पर नियुक्त अधिकारी आई०पी०एस० के सीनियर स्केल (६० १२०००, १७००) में या राज्य सरकार द्वारा इसके समकक्ष सृजित वेतनमान में वेतन प्राप्त करेंगे और इसी साथ साथ आई०पी०एस० अधिकारियों की समय समय पर अनुमन्य महंगाई भत्ता प्राप्त करेंगे।

४- जब तक उपरोक्त प्रस्तर १ में सृजित पद चलते रहेंगे तब तक शासनादेश संख्या ७६६४।आठ-पु०स०-१-५२२(७०)।७६ दिनांक ६ नवम्बर १९८३ में सृजित उ०प्र० प्रदेश पुलिस सेवा के स्पेशल ग्रेड के ७० पदों में से ३७ पद समाप्त माने जायेंगे। इसके अतिरिक्त शासनादेश संख्या ४३५२।आठ-पु०स०-२-५३१(१)।८१ दिनांक १८ नवम्बर १९८२ में सृजित संयुक्त पुलिस बयोडाक, आजमगढ़, फतेहगढ़, इटावा, मैनपुरी एवं सटा के ५ पद, शासनादेश संख्या ३६२३।आठ-पु०स०-१-५३१(१)।८१ दिनांक २१ नवम्बर १९८३ में सृजित संयुक्त पुलिस बयोडाक, फाँजाबाद एवं बस्ती के दो पद तथा शासनादेश संख्या ५०४२।आठ-पु०स०-१-६१२(३)।८४ दिनांक १३ नवम्बर १९८४ में सृजित संयुक्त पुलिस बयोडाक के १६ पद समाप्त हो जायेंगे।

५- इस सम्बन्ध में होने वाला व्यय चालू वित्तीय वर्ष १९८४-८५ के आय-व्यय लेखा शांकी ० २५५-पुलिस आयोजनर के अन्तर्गत सम्बद्ध उपशांकी एवं प्राथमिक क्लासों के नामे डाला जायेगा।

यह आदेश वित्त विभाग के अशांकीय संख्या ई-१२।१७६७-दस-८४ दिनांक १९ नवम्बर १९८४ द्वारा प्राप्त खचकी सहमति से जारी किये जा रहे हैं।

भवदीय,

( प्रभा शंकर मिश्रा )  
संयुक्त सचिव।

संख्या: ५०२५(१)।आठ-पु०स०-१-८४।

प्रतिलिपि निम्नलिखित को सूचना एवं आवश्यक कार्यवाही हेतु प्रेषित

- १- महालेखाकार, उ०प्र० प्रदेश, इलाहाबाद।
- २- वित्त (व्यय नियंत्रण) अनुभाग-१२।
- ३- गृह (पुलिस) अनुभाग-१।
- ४- गृह (पुलिस) अनुभाग-७।
- ५- गृह (पुलिस सेवाएँ) अनुभाग-१।

आशा है,

( प्रभा शंकर मिश्रा )  
संयुक्त सचिव।

प्रतिका-क

प्रतिका-X

अनुमोदित।

(जि.रि.जा. सि.टि.)  
मुख्य सचिव  
वित्त विभाग

5.5.1984  
25/11

20/11

प्रेषक,

Annexure No e A. 3-Hदुर्गा शंकर मिश्र,  
संयुक्त सचिव,  
उत्तर प्रदेश शासन।

सेवा में,

महानिदेशक एवं पुलिस महानिरीक्षक,  
उत्तर प्रदेश लखनऊ।

गृह पुलिस सेवायें। अनुभाग-2, लखनऊ, दिनांक: 13, अप्रैल, 1989.

महोदय,

मुझे यह कहने का निदेश हुआ है कि शासनादेश संख्या- 5052/आठ-पु0से0-2-1984, दिनांक 1 दिसम्बर, 1984 में अपर पुलिस अधीक्षक के 37 अस्थायी पद तदर्थ रूप से सृजित किये गये थे, जिनका कार्यकाल अन्तिम बार शासनादेश संख्या- 1716/आठ-पु0से0-2-512 111/85, दिनांक 13 मार्च, 1986 द्वारा 28.2.1987 तक बढ़ाया गया था। कालान्तर में शासनादेश संख्या- 3715-आठ-पु0से0-2-512111/85, दिनांक 1 सितम्बर, 1986 द्वारा अपर पुलिस अधीक्षक के 35 अस्थायी पद और तदर्थ रूप से 17 अप्रैल, 1986 के भूतलक्षी प्रभाव से इस शर्त के अधीन सृजित किये गये थे कि इनमें से दो पद अधिकारियों की सेवानिवृत्ति के उपरान्त समाप्त हो जायेंगे और अपर पुलिस अधीक्षक के तदर्थ रूप से सृजित उक्त सृजित अस्थायी पदों की संख्या 70 तक सीमित रहेगी। शासनादेश दिनांक 1 सितम्बर 1986 में सृजित पदों में से दो अधिकारियों की सेवानिवृत्ति के परिणामस्वरूप 33 पदों का कार्यकाल अन्तिम बार शासनादेश संख्या- 4518/आठ-पु0से0-2-512 111/85, दिनांक 5 मई, 1987 द्वारा 29.2.88 तक बढ़ाया गया था।

2- उक्त शासनादेशों से उत्पन्न भ्रान्ति को दूर करने हेतु श्री राज्यपाल महोदय ने यह आदेश प्रदान किये हैं कि शासनादेश संख्या- 5052/आठ-पु0से0-2-1984, दिनांक 1 दिसम्बर 1984 तथा शासनादेश संख्या-3715/आठ-पु0से0-2-512111/85, दिनांक 1 सितम्बर, 1986 द्वारा तदर्थ रूप से सृजित अस्थायी पद उत्तर प्रदेश पुलिस सेवा के संवर्ग के निःसंवर्गीय पद हैं और ये समस्त पद आईओपी 0 एस्त 0 संवर्ग के निःसंवर्गीय पद नहीं हैं। अतः शासनादेश दिनांक 1.12.1984 के प्रतर-3 को और शासनादेश दिनांक 1 सितम्बर, 1986 में प्रयुक्त शब्द "आईओपी 0 एस्त 0 के सीनियर स्केल के समकक्ष" को विलोपित करते हुए श्री राज्यपाल ने आदेश दिये हैं कि अपर पुलिस अधीक्षक के उपरोक्त सभी पदों को वेतनमान 1200-1700 के विशेष वेतनमान में उत्तर प्रदेश पुलिस सेवा के अधिकारियों के लिये सृजित हुआ माना जायेगा और उन्होंने यह भी आदेश दिया है कि 1.1.1986 के पूर्व इन पदों के धारक उक्त वेतनमान में वेतन मंहगाई भत्ता, अतिरिक्त मंहगाई भत्ता, तदर्थ मंहगाई भत्ता तथा अन्तरिम सहायता

122

42

उसी प्रकार पायेंगे जैसा कि सम्बन्धित वेतनमान में केन्द्रीय कर्मचारियों को तत्सम्य उपलब्ध थी। इसके अतिरिक्त उत्तर प्रदेश पुलिस सेवा में पुलिस उपाधीक्षकों के वरिष्ठ वेतनमान या कमिश्न वेतनमान में जो वर्दी अनुसरण भत्ता तथा अन्य भत्ते जो अनुमन्य हैं, वह अनुमन्य होंगे। 1.1.1986 तथा उसके पश्चात् उक्त पदों के अधिकारी वही वेतनमान तथा भत्ते पायेंगे जैसा कि शासन द्वारा वेतन पुनरीक्षा के पश्चात् निश्चित किया जाय।

3- मुझे यह भी कहने का निर्देश हुआ है कि शासनादेश 1.12.1984 में सृजित अपर पुलिस अधीक्षक के 37 पद तथा शासनादेश दिनांक 1.9.86 में सृजित 35 पद जो बाद में 33 पद रह गये, के कार्यकाल को 28.2.90 तक और बढ़ाये जाने की स्वीकृति श्री राज्यपाल ने प्रदान कर दी है, परन्तु प्रतिबन्ध यह है कि यह सभी पद बिना किसी पूर्व सूचना के इसके पूर्व भी समाप्त किये जा सकते हैं।

4- उपरोक्त उल्लिखित शासनादेश दिनांक 1.12.1984 तथा 1.9.1986 में तदर्थ रूप से सृजित अपर पुलिस अधीक्षक के अस्थाई पदों पर होने वाला व्यय संलग्न वर्ष तथा वर्ष 1989-90 में आय-व्यय के निम्नलिखित लेखाशीर्षक के अन्तर्गत संलग्न उपशीर्षक एवं प्राथमिक ईकाईयों के नाम डाला जायेगा।

- 111 2055-पुलिस-आयोजनेत्तर- 109-जिला पुलिस-01-जिला पुलिस-मुख्य।
- 121 2055-पुलिस-आयोजनेत्तर- 104-विशेष पुलिस-01-राज्य सशस्त्र कान्स्टेबलरी मुख्य।

5- यह आदेश वित्त विभाग के अशाओपओसं० ई-12/933/दत-89, दिनांक 11, अप्रैल, 1989 द्वारा प्राप्त उनकी सहमति से जारी किये जा रहे हैं।

भवदीय,

दुर्गा शंकर मिश्र।  
संयुक्त सचिव।

संख्या- 5465(1)/आठ-पुओसे०-2-तददिनांक।

प्रतिलिपि निम्नलिखित को सूचना एवं आवश्यक कार्यवाही हेतु प्रेषित:-

- 111 महानिरीक्षक, पुलिस मुख्यालय, इलाहाबाद।
- 121 वित्त व्यय नियंत्रण अनुभाग-12,
- 131 गृह पुलिस-7
- 141 गृह पुलिस सेवाएं अनुभाग-1
- 151 महालेखाकार, उत्तर प्रदेश इलाहाबाद।

आज्ञा से,

दुर्गा शंकर मिश्र।  
संयुक्त सचिव।

3.5.219  
25/9

# Annexure No C A 4

A 123

44

(TO BE PUBLISHED IN THE GAZETTE OF INDIA IN PART I SECTION 3(1))

No.11052/3/67-LIS(II)-A

Government of India

Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training

.....

New Delhi, the 27<sup>th</sup> January, 1988

## NOTIFICATION

G.S.R.No.....In exercise of the powers conferred by sub-section(i) of Section 3 of All India Services Act, 1951 (61 of 1951), read with sub-rule (1) and the first proviso to sub-rule (2) of Rule 4 of the IPS(Cadre) Rules, 1954, the Central Government, in consultation with the Government of Uttar Pradesh hereby makes the following regulations further to amend the Indian Police Service(Fixation of Cadre Strength) Regulations, 1955, namely:-

1. (1) These regulations may be called the Indian Police Service(Fixation of Cadre Strength) Second Amendment Regulations, 1988.
- (2) They shall come into force on the date of their publication in the Official Gazette.

In the Schedule to the Indian Police Service(Fixation of Cadre Strength) Regulations, 1955 for the heading 'Uttar Pradesh' and the entries occurring thereunder, the following shall be substituted, namely:-

### 'UTTAR PRADESH'

1. Senior posts under the Uttar Pradesh Government

203

Director General and Inspector General of Police

1

✓ Director, Civil Defence-cum-Commandants General, Home Guards

1

✓ Inspector General of Police, PAC

1

✓ Inspector General of Police, Intelligence Deptt.

1

✓ Inspector General of Police, CID, UP, Lucknow

1

✓ Director, Vigilance, UP, Lucknow.

1

✓ Inspector General of Police, Kanpur/Gorakhpur/Lucknow/Bareilly/Meerut Zones

5

✓ Inspector General of Police, Railways, UP, Lucknow

1

✓ Inspector General of Police, Technical Services, U.P. Lucknow

1

✓ Inspector General of Police, Training, UP, Lucknow

1

....2/-

Deputy Inspector General of Police, Administration

1

Deputy Inspector General of Police,

12

Deputy Inspector General of Police & Additional  
Principal, Police Training College-I

1

Deputy Commandant General, Home Guards

1

Deputy Inspector General of Police, Railways

2

Deputy Inspector General of Police, Economic  
Intelligence and Investigation Wing, CID

1

Deputy Inspector General of Police, Anti-Corruption  
C.I.D.

1

Deputy Inspector General of Police, PAC, Northern  
Southern, Western and Eastern Sectors

4

Deputy Inspector General of Police, Special Enquiries

1

Deputy Inspector General of Police, CID ( )

3

Deputy Inspector General of Police, Intelligence Deptt.

1

Deputy Inspector General of Police, Headquarters

1

Deputy Inspector General of Police, PAC Headquarters

2

Deputy Inspector General of Police, Karnik, Allahabad

1

Deputy Inspector General of Police, Training

1

Principal Police Training College-II, Moradabad  
Principal Police Training College-III, Sitapur  
Deputy Inspector General of Police (Armed Training)  
Centre, Sitapur

1

1

1

1

1

Joint Director, Vigilance

1

Deputy Inspector General of Police, Special Crime and SCIB

1

Assistant Inspector General of Police

1

Assistant Inspector General of Police, PAC

1

Superintendents of Police

57

Superintendent of Police, Headquarters

1

Superintendent of Police, (City), Kanpur, Lucknow, Agra,  
Allahabad, Varanasi, Meerut, Bareilly, Gorakhpur,  
Moradabad and Aligarh

10

Assistant Inspector General of Police, Training

1

Superintendent of Police, Intelligence Deptt.

6

5.5.1960  
2579  
...3/-

Superintendents of Police, CID	10
Superintendent of Police, Anti-Corruption CID, UP	1 ✓
Superintendent of Police, CID, SIB, Co-operative	1 ✓
Superintendent of Police, CID, SIB, Agriculture	1 ✓
Superintendent of Police, EOW, CID	1 ✓
Superintendent of Police, Vigilance Establishment	11 ✓
Superintendent of Police (Special Inquiries)	1 ✓
✓ Superintendent of Police, High Court, Allahabad	1 ✓
Superintendent of Police, Railways, Allahabad, Agra, Lucknow, Gorakhpur, Moradabad & Jhansi	6 ✓
Superintendent of Police, I/C Research Sec. IB, CID UP, Lucknow	1 ✓
Commandant, PAC, Battalions	29 ✓
Commandant, RTC, Chunar	1 ✓
✓ Vice-Principal, Police Training College, Moradabad	1 ✓
Commandant, Head Constable/CP Course, Police Training School, Moradabad	1 ✓
Vice-Principal, Armed Training Centre, Sitapur	1 ✓
Staff Officer to Commandant General, Home Guards	1 ✓
Deputy Director, Civil Defence	1
Vice-Principal, Police Training College-II, Moradabad	1 ✓
✓ Commandant, Central Training Institute, Home Guards	1 ✓
Vice-Principal, Police Training College-II, Sitapur	1 ✓
Superintendent of Police, ECO Intelligence and Investigation Wing (CID)	2 ✓

203

2.	Central Deputation Reserve at 40% of 1 above	81
3.	Posts to be filled by promotion and selection under Rule 9 of the IPS (Recruitment) Rules, 1954 at 33-1/3% of 1 and 2 above	94
4.	Posts to be filled by Direct Recruitment (1 and 2 minus 3 above).	190
5.	Deputation Reserve at 22.5% of 4 above	43
6.	Leave Reserve at 5.62% of 4 above	11
7.	Junior Posts at 23.17% of 4 above	44
8.	Training Reserve at 11.91% of 4 above	23

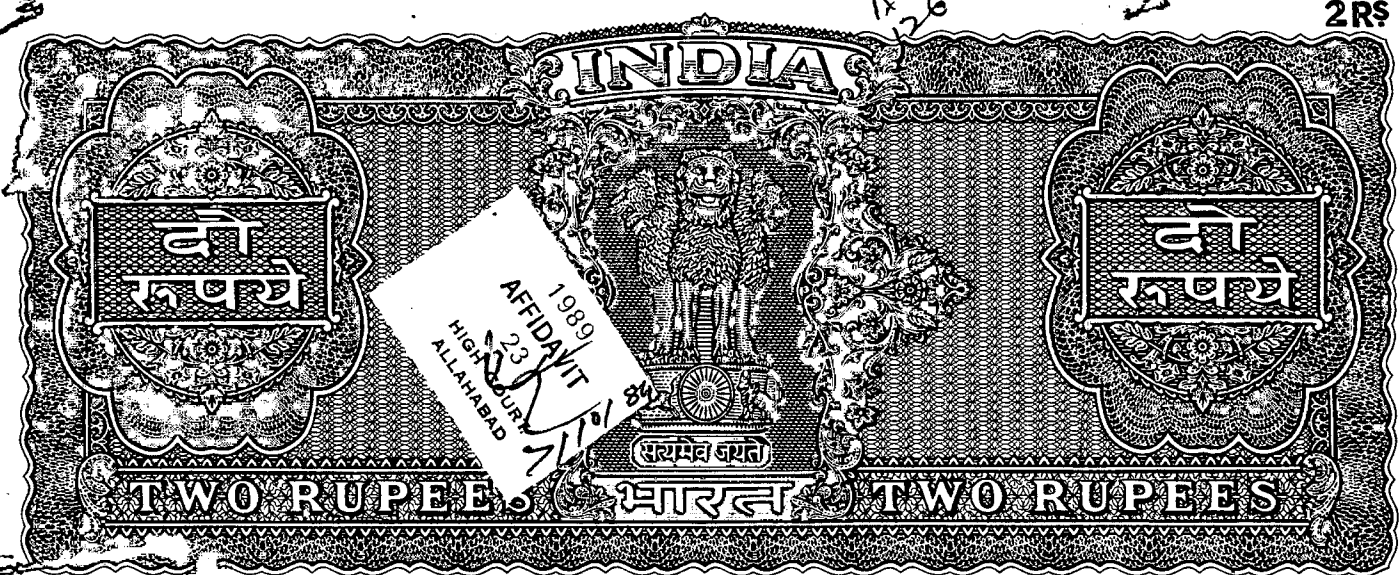
Direct Recruitment Posts 311

Promotion Posts 94

Total Authorised Strength 405

S.S. Nigam  
25/9

432522  
(K.B.L. SAXENA)  
Desk Officer



by Ch...  
affidavit...  
no oath...  
no read...  
im, who...  
Kaleh...  
7/11/89

Before the Central Administrative Tribunal  
Additional Bench at Lucknow —

Rejoinder Affidavit of (To the Counter affidavit  
of respondent No 2

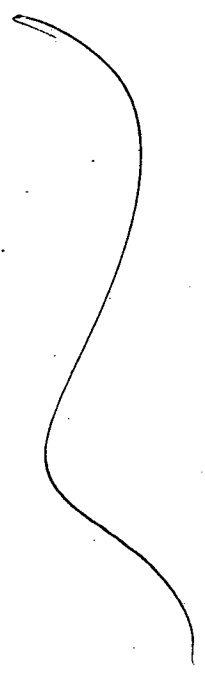
See

O.A. Case No 74 of 1989 (L)

H. N. Srivastava — Applicant

Union of India & others — Respondents

Filed today  
19/11/89



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH AT LUCKNOW

\*\*\*\*

REJOINDER AFFIDAVIT  
(to the counter affidavit of respondent no.2)

IN

O.A.CASE NUMBER 74 of 1989 (L)

H.N.Srivastava -----Applicant

Versus

Union of India and others -----Respondents

AFFIDAVIT OF H.N.Srivastava  
aged about 44 years Son of  
Sri L.P.Srivastava, Presented  
posted as Supdt. of Police  
Vigilence, Faizabad

(deponent)

I, the deponent abovenamed do  
hereby solemnly affirm and state as under:

1. That the deponent is the applicant  
in the instant case and as such he is fully  
conversant with the facts of the case deposed to  
below.

A  
128

-2-

2- That the deponent has read the contents of paragraphs of the counter affidavit filed by respondent no.2 and as such has understood their contents fully. ✓

3. That the contents of paras 1,2 and 3 of the counter affidavit do not call for any reply for want of knowledge. ✓

4. That in reply to the contents of para 4 of the counter affidavit, as it is stated that the applicant has referred the relevant regulations in para under reply as applicable on the date when the said select list in question was to be prepared. The averments to the contrary contained in para under reply are denied. ✓

5. That the contents of para 5 of the counter affidavit as stated are incorrect and denied. It is incorrect to say that the select committee prepared the select list in accordance with the procedure laid down in Regulation 5 of the Promotion Regulation and the service record was assessed by the select committee in accordance with the procedure laid down in Regulation 5(4) of the Promotion Regulation and ~~he~~<sup>it</sup> was assigned grading accordingly. It is further denied that the select committee determined the size, ✓

R 7/10/89

Jan

of the select list in accordance with the regulation 5(1) of the Promotion Regulation inasmuch as on the face of it the select list is short in size and the select committee deliberately left the names of the other suitable officers from being included in the select list without any reason in an arbitrary and discriminatory manner. For the size of the select list being short the applicant has stated in detail in the rejoinder affidavit filed earlier in reply to the short counter affidavit of respondent no.3 and 4 wherein it has been categorically stated that after 26th May 1983 about 23 vacancies occurred in the promotion quota of IPS. At that time the applicant did not possess the gradation list of IPS officers published by the Government itself in order to bring out the precised position of <sup>vacancies</sup> ~~the vacancy~~. Fortunately <sup>now</sup> the applicant has been able to lay his hands on the gradation list of 1980 and <sup>the details of</sup> ~~further~~ various appointment made thereafter, ~~showing various vacancies and~~ ~~appointment made in IPS upto 1983 and thereafter till the select list in question was to be prepared and its size etc.~~ which are being given in detailed herein after'.

(a) That before 1985 the last cadre review was done vide notification dated 27th Oct. 1980 whereby promotion quota was made to '82

-4-

(b) That on 1.1.1980 as per gradation list published by the Government showing the position of various IPS officers of U.P. Cadre, '75' officers were appointed in promotion quota of IPS working in State of U.P., and a true copy of the list of the above officers is being filed herewith and marked as Annexure-RA1 to this affidavit.

(c) That thereafter as per Cadre revision vide notification dated 27th Oct. 1980 promotion quota was increased to '82' from the existing '78' hence four more vacancies occurred in promotion quota leaving at seven vacancies. Besides that on account of retirement and death of various promotee officers from 1.1.1980 to 27.12.1986 '38' vacancies in all occurred. Details of the above vacancies are given hereinafter:

Sl.no.	Year	Name	Date of retirement / Death
1	1980	Sri Manohar Chaturvedi	Retired on 31.3.1980
2	"	Sri Kameshwar Singh	Retired on 30-6-1980
3	"	Sri M.C. Jauhari	Retired on 31-7-1980
4	"	Sri H.K. Chaturvedi	Retired on 31-8-1980
5	1981	Sri R.C. Bhalla	Retired on 28.2.1981
6	"	Sri K.P. Srivastava	"

5/10/89

Am

A  
131

-5-

- 7- 1981 Sri L.M.Tewari Retired on 31.5.1981
- 8- " Sri A.A.Zaidi Retired on 30.6.1981
- 9- " Sri Hari Singh Retired on 31.7.1981
- 10- " Sri H.C.Nigam Retired on 31.8.1981
- 11- " Sri Iqbal Krishna Retired on 31.10.1981
- 12- " Sri K.D.Sharma Retired on 30.11.1981
- 13- 1982 Sri C.P.Naiyar Retired on 30.9.1982
- 14- " Sri R.D.Pandey Retired on 31.12.1982
- 15- " Sri V.B.<sup>L</sup>Gupta Retired on 31.7.1982
- 16- " Sri S.C.Mookherji Retired on 28.2.1982
- 17- " Sri K.B.Singhal Retired on 31.7.1982
- 18- " Sri S.M.Ghosh Retired on 30.9.1982
- 19- 1983 Sri K.P.Tewari Retired on 31.8.1983
- 20- " Sri J.N.Awasthi Retired on 31.7.1983
- 21- " Sri P.N.Misra "
- 22- " Sri V.B.Singh Retired on 31.5.1983
- 23- " Sri B.N.Dhaon Retired on 31.7.1983
- 24- " Sri O.P.Agnihotri Died in May 1983
- 25- 1984 Sri R.K.Misra Retired on 30-6-1984
- 26- 1985 Sri Onkar Sharma Retired on 30.4.1985
- 27- " Sri J.S.Tingal Retired on 31.1.1985
- 28- " Sri Diwakar Acharya Retired on 31.7.1985
- 29- " Sri Mahesh Singh Retired on 31.1.1985
- 30- 1986 Sri A.N.Kaul Retired on 31.1.1986
- 31- " Sri Ram Lal "
- 32- " Sri J.N.Tewari "
- 33- " Sri S.B.Dubey "
- 34- " Sri Z.U.Ahmad Retired on 28.2.1986
- 35- " Sri K.D.Dixit Retired on 31.7.1986

7/10/89

W

- 36- 1986 Sri P.M. Misra / <sup>Srivastava</sup> Retired on 31.8.1986  
 37- " Sri A.N. Tewari Retired on 30.11.1986  
 (307) 38- " R.P. Dubey " " 31.7.1986

(d) That hence till the end of the year 1983 there were 31 vacancies in promotion quota against which till 19.12.1983 following '27 appointments were made in IPS (Cadre) of U.P. from the State Police officers

<u>Sl. no.</u>	<u>Name</u>	<u>Date of appointment in IPS</u>
1-Sri H.P. Misra		26.3.1980 ✓
2-Sri Uma Shanker		"
3-Sri K.B. Srivastava		"
4-Sri M.P. Dixit		3.10.1980 ✓
5-Sri Virendra Kumar		6.12.1980 ✓
6-Sri A.K. Pandey		"
7-Sri Uma Shanker Bajpai		"
(10) Radhey Shyam		"
8-Sri S.K. Chandra		" ✓
9-Sri U.C. Ghildiyal		"
10-Sri U.S. Srivastava		"
11-Sri A.B. Shukla		"
12-Sri L.M. Singh		11.12.1982 ✓
13-Sri Jagdish Chandra		"
14-Sri R.B. Srivastava		"
15-Sri P.N. Saxena		"
16-Sri S.K. Tripathi		"
17-Sri H.R. Shukla		"
18-Sri Giriraj Shah		22-11-1983 ✓
19-Sri K.N. Roy		"
20-Sri B.P. Gupta		"
21-Sri Basdeo Lal		"
22-Sri S.K.A. Rizvi		"

7/10/84

Hu

A  
133

-7-

23- <sup>c</sup> Sri S.N.Singh	19.12.1983 ✓
24- <sup>r</sup> Sri C.D.Sharma	" ✓
25- <sup>n</sup> Sri P.N.Dwivedi	" ✓
26- <sup>r</sup> Sri R.S.Rana	" ✓

(e) That after 19.12.1983 no further appointments were made in promotion quota of IPS by the respondents. ✓

(f) That as stated in para under reply that the select committee held its meeting on 27th Oct. 1985 which was bound to take into consideration the existing vacancies as well as the vacancy likely to occur in the next 12 months i.e. upto Dec. 1986. ✓

(g) That as stated above upto the end of 1983 out of the existing 31 vacancies only '27' appointments were made and four vacancies were existing in the end of 1983. ✓

7/10/89

(h) That further the Government vide notification no. 6397/8-2-1100(137)/ 79 dated 23.11.1984 added three post of Commandant in PAC as permanent addition in IPS cadre resulting in existing total number of vacancies of Item no. 1 and 2 as per schedule dated 27th Oct. 1980 increased from 246 to <sup>249</sup>350. A true copy of the said notification dated 24.11.1984 is being filed as Annexure-RA2 to this affidavit. ✓

(i) That due to addition of three posts of Commandant in PAC Bn 39, 40 and 41 the promotion quota got increased from '82' to '83' and one vacancy occurred. ✓

(j) That besides the above 14 vacancies occurred <sup>likely to occur</sup> in the year 1984 to 1986 due to retirement of the promotee officers making total number of vacancy available to the select committee on 27th Dec. 1985 as '19'. ✓

(k) That as per Regulation 5(1) of the Appointment by Promotion Regulation, the size of the select list ought to have been twice the number of vacancies or 50 percent of item no. 1 and 2 whichever is greater. The size of the select list confined to '34' makes it apparently short in size without there being any reasons although para under reply clearly shows that the applicant was <sup>not</sup> placed ~~under~~ in the grade of unfit but he could not be included because of sufficient number of officers as per the requisite size of the select list of higher grading were available. Hence the exclusion of the applicant was wholly arbitrary and discriminatory. ✓

7/1/89

(l) That further assertion that grading was done properly is incorrect and denied inasmuch as the service record of the applicant is far better than the service record of the incumbents whose names have been included in the select list. It is true that in

-9-

*promotion by selection & marginal* cases this Hon'ble Court will not sit as appellate authority over the assessment of the select committee but where the assessment of the select committee is challenge on the ground of arbitrariness, This Hon'ble Tribunal has sufficient jurisdiction to see and to go through the record to find out as to whether the assessment made by the select committee is patently arbitrary or not. No material has been brought by the respondents in the counter affidavit showing that the assessment was not arbitrary and <sup>a</sup> bald and assertions have been made that the assessment was made in accordance with the rules which is not at all sufficient to repel the challenge made by the applicant on the ground of arbitrariness. This Hon'ble Tribunal in the case of A.B.Shukla Vs. Union of India, ~~Ex~~ Dorilal Pal Vs. Railway Board has observed frequently that where a challenge is made on the ground of arbitrariness it is for the respondents to place sufficient material before the court to repel the challenge on the ground of arbitrariness and bald assertions denying the assertions <sup>of the applicant</sup> is not at all sufficient. Hon'ble Supreme court has also expressed the same view in the case of Ramanna D.Shetty Vs. IAA I and D.S.Nakara Vs. Union of India in which the applicant crave leave to place the same before this Hon'ble Tribunal at the time of hearing of the case. *✓*

(m) That it is stated that on the basis of the select list of 1985 no appointment can be made in the year 1989 inasmuch as per Regulation 5(6) of the Appointment by Promotion Regulation the select list is

-10-

bound to be reviewed and revised every year. In the circumstances the applicant is entitled to be considered and review as per his existing service record <sup>of 6.</sup> in the years 1986-, 1987 & 1988 and 1989 and otherwise no appointment without considering the subsequent records of subsequent years can not be made as it will defeat the purpose of the said regulation. Every year his <sup>a</sup> separate unit <sup>&</sup> has to be taken into consideration accordingly and without preparing the select list of the subsequent years no appointment in IPS in the year 1989 can be made from the select list of 1985 at all.

6- (b) That the contents of para 7 of the counter affidavit does not call for any reply.

7- That in reply to the contents of para 8 of the counter affidavit it is stated that the reference made <sup>to the</sup> when judgment of Hon'ble Supreme court in R.S. Dass Vs. Union of India and H.L. Deo Vs. U.P. Public Service Commission is wholly misconceived inasmuch as in those cases the applicants were seeking a direction from the Hon'ble court for inclusion of their name in the select list as such. A bare perusal of the judgment of Hon'ble Supreme court in R.S. Das Vs. Union of India will clearly show that the proceedings of the select committee were not challenged on the ground that assessment made by the select committee was on account

R  
7/10/89

dw

of malic in law ,and without application of mind. Hon'ble Supreme court was considering the validity of the amendment made in Regulation without dispensing with the requirement of giving reasons while selected junior officers in preference to the senior State Police officers. Hon'ble court clearly stated that recording of reasons was not atall necessary in the matter of promotion to be made on the criterion of merit alone. However while Hon'ble Supreme court denied any right to a government servant to challenge non selection on the <sup>avil</sup> ~~angle~~ of Article 14 and 16, ~~it~~ the ~~court~~ took precaution and care of observations that non selection must be <sup>fair</sup> ~~carped~~ and in an objective manner. The observation of Hon'ble Mr. Justice K.N. Singh relying in this respect are being quoted under:

"If eligible officers are considered on merit ~~in obje any objection made~~ in an objective manner no government servant has any legal right to insist for promotion nor any right is protected by Article 14 and 16 of the Constitution."

The above observation are also contained on page 4 of the counter affidavit under reply. ~~Another~~ Hon'ble ~~Member~~ Justice Mookherji also expressed his views in agreement to that <sup>observation & in</sup> ~~and~~ a separate concurrent judgment obseved as follows:


"I would like to suggest to the Government and the authorities concerned that there should

-12-


be some basis for categorisation of the officers and such basis should be objective and not merely subjective evaluation and further more such basis should be formulated in the form of guideline. Objectivity in the subjective evaluation of the work of difference officers would go along the way to generate and feeling that justice has been done and unless members of administration feels that justice has been done to them the administration can not become a effective weapon for social change ushering social justice."

8. That it is stated that if the character roll entries of an officer are exceptionally good and outstanding and the others officers do not have such entries and the selection committee has yet chosen to categorise the other officers in higher grading then the assessment made by the select committee is patently arbitrary and shows non application of mind and in any case no proper categorisation. /

9- That the jurisdiction to select an incumbent arises from proper and correct categorisation and if categorisation itself has not been done by application of mind ~~themselves~~ then the selection itself



\_\_\_\_\_



4



A  
140

-14-

regulations and quality of leader  
- ship are very good. "

(c) That in the year 1981-82 while the applicant was in PAC Headquarters some of the observations of ACR were as under: ✓

"... I find him to be sincere hard working officer His knowledge of rules and office procedure is very good and he has ungrudgingly worked beyond office hours to dispose of heavy work in PAC Headquarters." ✓

Relevant extract of 1982-83 entries at PAC Headquarters are as under: ✓

"In some highest officer of outstanding ability and his conduct was exemplary. He is indeed a set asset to the department." ✓

(d) That while the applicant joined at Mainpuri for the year 1983-84 relevant extract of ACR are as under: ✓

"He has been a asset to the distt. Police in supervision of crime. He is very prompt in submitting report has ✓ He is very good control over his subordinate and his capacity to extract work from them". ✓

In the circumstances the averments made in para under reply are denied. ✓

141

-15-

11- That in reply to the contents of para 9 of the counter affidavit it is stated that the select list as prepared in Dec.1985 by the select committee is wholly illegal, arbitrary and is liable to be quashed.

12- That the contents of para 10 of the counter affidavit does not call for any reply.

13- That the contents of paragraphs 11 and 12 of the counter affidavit are denied and the detailed facts stated herein before and in various paras including paras 7(22) and (23) of the application are reiterated as correct.

14- That the contents of para 13 of the counter affidavit are denied.

15- That the contents of para 14 of the counter affidavit does not call for any reply.

I, the deponent abovenamed do hereby declare that the contents of paras 1 to 4, 5 to 10, 6, 8, 11 to 15 of this affidavit are true to my personal knowledge and those of paras 5 to 10, 9, are based on the perusal of record and those of paras 7, are based on legal advice which all I believe to be true and nothing material has been concealed and no part of it is false. So help me God.


DEPONENT

2\*-16-  
VINOD K.R. DUBVEDI, Advocate, Civil  
I, ~~Chand Singh clerk to Sri Sudhar~~

Court, RAIZABAD

~~Subscribed and sworn to before me on this 1st day of May 1964~~ do hereby declare that the person making this affidavit and alleging himself to be Sri H.N. Srivastava is the same person who is known to me from the perusal of record.

(VINOD K.R. DAVAR (I))

Advocate 7/10/89  
Solemnly affirmed before me on the th  
.1989 at a.m/p.m who has been identified  
esaid. 

I have been satisfied myself by examining the deponent that he has understood the contents of this affidavit which has been read over and explained to him.

*Rajah*  
OATH COMMISSIONER 7/10/89

h

7/10/89

A  
143

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH

ANNEXURE-I

In

Rejoinder Affidavit

In

O.A. No. 74 of 1989

<sup>u.N.b</sup>  
H.<sup>N.</sup>~~H.~~ Srivastava - - - - - Applicant

Versus

Union of India and others - - - - - Op. parties

List of Promotee Cadre Officers as on 1.1.80  
against Schedule Strength of 1978.

<u>Sl.No.</u>	<u>Name</u>	<u>Date of Birth</u>
1.	K.P.Tiwari	10.8.25
2.	C.P. Nayyar	10.9.24
3.	K.D. Sharma	11.11.23
4.	R.D.Pande	1.12.24
5.	K.P.Srivastava	23.2.23
6.	H.C. Nigam	15.8.23
7.	Onkar Sharma	15.4.27
8.	J.H. Awasthi	2.7.25
9.	R.K. Mishra	26.6.26
10.	A.N. Kaul	7.1.28

2.

11.	J.S. Tingal	4.1.27
12.	D. Acharya	18.7.27
13.	B.B.L. Gupta	10.7.25
14.	R.C. Bhalla	3.2.23
15.	P.N. Mishra	1.7.25
16.	R.P. Dubey	20.7.28
17.	S.C. Mukherji	18.2.24
18.	A.A. Zaidi	24.6.23
19.	M. Chaturvedi	1.3.22
20.	Iqbal Krishna	20.10.23
21.	J.N. Tiwari	1.1.28
22.	Ram Saran	5.7.29
23.	K.D. Dixit	17.7.28
24.	Z. Ahmad	2.2.28
25.	S.B. Dubey	5.1.28
26.	A.N. Tiwari	6.11.28
27.	H.K. Chaturvedi	21.8.22
28.	P.M. Srivastava	16.8.28
29.	Vir Prashat Singh	10.5.25
30.	Om Prakash	11.3.30
31.	B.N. Sharma	15.9.30
32.	M.C. Johri	26.7.22
33.	Mahesh Singh	19.1.27
34.	Hari Singh	4.7.23

A  
145

3.

35.	K.B. Singhal	4.7.24
36.	V.N. Singh	16.1.32
37.	M.C. Rawat	27.12.30
38.	G.K. Shukla	1.7.30
39.	Bhupendra Singh	24.11.32
40.	Harish Kumar	28.6.30
41.	Ram Lal	2.1.28
42.	S.N. Prasad	30.3.32
43.	L.P. Bhatnagar	3.11.31
44.	S.P. Mishra	1.1.32
45.	A.P. Sharma	1.10.32
46.	K.P. Rai	1.2.31
47.	R.B. Mishra	30.8.32
48.	N.C. Jodhi	31.12.31
49.	J.M. Saxena	24.9.32
50.	B.K. Singh	25.1.34
51.	B.N. Dhawan	2.7.25
52.	K.P. Tripathi	30.1.33
53.	D.K. Agarwal	7.5.32
54.	K.N. Bhatt	3.7.33
55.	Yogendra pal	5.2.32
56.	P.P. Srivastava	1.11.32
57.	Ahmad Hasan	2.1.34
58.	O.P. Agnihotri	6.3.36

A  
146

4.

59.	A.N. Singh	1.7.30
60.	R.S. Narain	22.4.35
61.	R.C. Srivastava	4.8.34
62.	Hori Lal	25.4.31
63.	H.P. Tripathi	1.7.34
64.	T.K. Joshi	1.3.36
65.	R.B. Singh	5.12.36
66.	Manager Pandey	10.5.37
67.	S.N. Ghosh	6.9.24
68.	Kameshwar Singh	15.6.22
69.	J.S. Bhandari	29.12.30
70.	Sushil Kumar	19.3.30
71.	V.N. Roy	1.7.30
72.	Devendra Prasad	20.12.30
73.	Sheoraj Singh	10.1.30
74.	L.M. Tiwari	1.5.23

*du*

\_\_\_\_\_

14

बीफोर सेन्ट्रल एडमिनिस्ट्रेटिव ट्रिब्युनल लखनऊ बैंच

-----

एने कर नं० ६ ६

इन

रिजवाइटर एकीकृत

इन

जी. ए. 74/89

एच.ए.ए. प्रो.वासीव. . . . . अप्लीकेंट

कामि

प्रतिनयन ज्ञान संविधा एण्ड अद्वैत . . . . . वपी.पाटी.

-----

संख्या-6397/आठ-2-1100/137/79

प्रेम,

राम लाल,  
उप सचिव,  
उत्तर प्रदेश शासन,

सेवा में,

प्रतिनयन संविधा निराकरण,  
आठए.आठ  
उपरोक्त मजदूर



विषय:- नव प्रवृत्त क्रिषि सेवा की 3 वाहिनियों 39, 40 तथा 41 की तथा

पुलिस उप-हाथिनरीय क्रिषि सेवा से सम्बद्ध अमरत अस्थाई पदों का

स्थापित करना :-

-----

महोदय,

उपर्युक्त विषयक का 0 ए 0 सी 0 मुख्यालय के अन्तर्गत ए.सी. 2-82-7

दिनांक 19 अप्रैल 1984 के संदर्भ में मुझे यह कहने का निर्देश हुआ है कि श्री

राज्यगाने दस्यु उन्मूलन बाट रहित जाति तथा दंगों पर नियंत्रण करने हेतु

गठित तीन क्रिषि सेवा वाहिनियों 39, 40 तथा 41 के वाहिनियों मुख्यालय

तथा उससे सम्बद्ध अस्थाई पदों किनका ब्यौरा संलग्न तालिका का क्रम

2 व 3 में संदर्भ किया है तथा किनका कुल उक्त तालिका में क्रम 5

में उल्लिखित सामनादेशों में दिया गया था और किनकी 2848 री 1985

तक चलते रहने हेतु आदेशों का क्रम -6 में उल्लिखित सामनादेशों द्वारा निर्दिष्ट है

का मुझे है जो उनके समक्ष जाँच कर पुनराक्षिप्त यत्नमान में 1 मार्च 1984 से

स्थाई नियोजन की स्वीकृति प्रदान कर दी है ये पद अपने संदर्भ में

स्थाई प्रवृत्ति नगरी जायेंगे सामनादेश दिनांक 28 मार्च 1984 को तदनुसार

संशोधित तालिका में दिया है।

149

• 3 •

वायोजनोत्तर में जंगल संजोद्धा उप राज्यों एवं प्राकृतिक क्षेत्रों में नान आजायेगा ।

3. यह आदेश वित्त विभाग के जगसकीय सं० ई० 12/1662/वस 84 दिनांक 22 नवम्बर 1984 में प्राप्त उनकी सहमति से जारी किए जा रहे है ।

भवदीय,

१ राम लाल १  
उप सचिव

संख्या - 6397/1 आर-2- तददिनांक

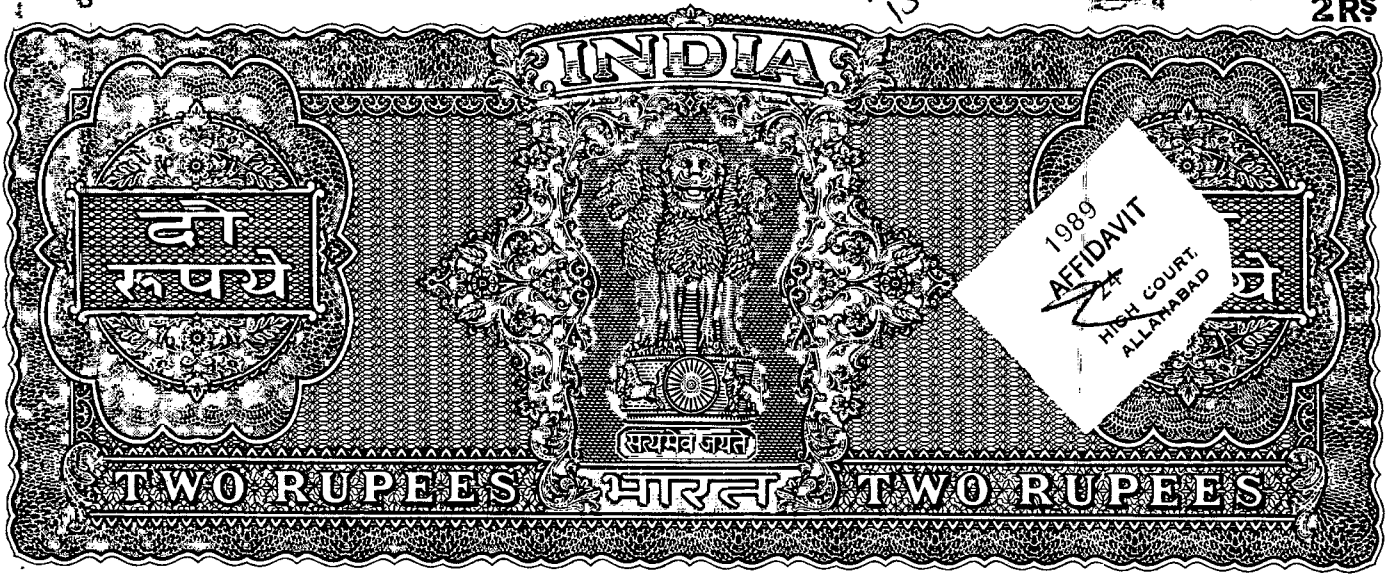
प्रतिनिधि निमजिओ को बचनार्थ एवं जाकयकयवाली हेतु प्रेषित:-

1. नवाजिकार, उ,पु, इलाहाबाद।
2. गृह प्रविष्टि अनुभाग-7
3. वित्त, वी, न, ई, नुभ ग -12
4. गृह प्रविष्टि सेवा, अनुभाग /12
5. पुलिस महानिरीक्षक, उ०पु० इलाहाबाद जं०

आशा है

१ ह० र० लाल  
उप सचिव

सं० ११/११/११



Before the Central Administrative Tribunal  
Additional Bench at Lucknow —  
CNO 29 HC

Lalch  
7/10/87

Rejoinder affidavit (To the Counter affidavit  
of respondents no. 574  
in  
Case No. 74 of 1989(L)

H. A. Srivastava — Applicant —

vs.

Union of India & Others — Respondants —

R  
7/10/89

A-151

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH AT LUCKNOW

REDOINDER AFFIDAVIT  
(TO the counter affidavit of respondents no.3,4)

IN

O.A.CASE NO. 74 of 1989 (L)

H.N.L Srivastava -----Applicant

Vs.

Union of India and others-----Respondents

AFFIDAVIT of H.N.Srivastava  
aged about 44 years Son of Sri  
L.P.Srivastava Presently posted  
as Supdt. of Police Vigilance  
Faizabad.

(deponent)

I, the deponent abovenamed do  
hereby solemnly affirm and state as under:

1- That the deponent is applicant in the  
instant case and as such he is fully conversant with

-2-

the facts of the case deposed to below. 1

- 2- That the deponent has read the contents of paragraphs of the counter affidavit filed on behalf of respondents no.3 and 4 and has understood their contents fully. 1
- 3 That the contents of paras 1,2 of the counter affidavit do not call for any reply. ✓
4. That the contents of para 3 of the counter affidavit as stated are patently incorrect and denied. It is stated that the select committee as per norms of U.P. Public Service Commission used to considered five years ACR of an officer for the purposes of preparing the select list under regulations of the IPS (Appointment by Promotion) Regulations as is clear from the circular dated 13.12.1984 issued by the Director General of Police, U.P. A true copy of the said circular is being filed as Annexure-RA1 to this affidavit. There <sup>were</sup> ~~are~~ no guideline and procedure for giving particular category <sup>to</sup> ~~of~~ an officer when the select committee held its meeting on 27.12.1985 and hence categorisation made of various officers was patently arbitrary and without application of mind. The ACRs of an officer which were out standing and excellent were given lower category than the ACRs of other officers who do not possess ACRs of that category. No material has been placed by the respondents 1

7/10/89

A, 53

-4-

in ~~their~~ counter affidavit <sup>under reply</sup> showing that they have applied their mind in the matter of selection while giving categorisation to the concerned officers and bald allegations made is wholly insufficient and can not be taken into consideration as proper reply to the challenge made by the applicant on the ground that categorisation and considerations made by the select committee itself was wholly arbitrary and without application of mind. The arbitrariness of the select committee is apparent from the fact that the applicant's ACR were for better than the ACR of the officers who have been selected and who do not possess even comparable ACR with the applicant's outstanding ACR which will be clear from the following facts.: *a*

(a) That for the year 1978-79 the applicant while posted at Uttar Kashi some of the relevant observations in the entry are that; "His work and conduct during few months he was under me was found to be very good. " The successor Dy. Inspector General of Police has observed as follows: *a*

"I hold that he is a very good officer." *a*

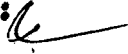
The reviewing and accepting authority accepted the assessment of Dy. Inspector General of Police, Garhwal Range. *a*

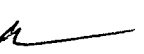
(b) That in the year 1980-81 the applicant was *a*


*a*  
7/11/89


A  
197


-5-


(b) That in the year 1980-81 the applicant was categorised as excellent. Some of the observations are as under: 

"The officer is young, energetic, disciplined and loyal. He has excellent administrative capacity. His knowledge of law and rules and regulations and quality of leadership are very good." 

(c) That in the year 1981-82 while the applicant was in PAC Headquarters some of the observations of ACR were as under: 

"I find him to be sincere hard working officer. His knowledge of rules and office procedure is very good and he has ungrudgingly worked beyond office hours to dispose of the heavy work in PAC Headquarters." 

Relevant extract of 1982-83 entries at PAC Headquarters are as under: 

"In some highest officer of outstanding ability and his conduct was exemplary. He is indeed an asset to the department." 

30.11.1987  
7/10/87  
[illegible text and signatures]

dw

(d) That while the applicant joined at Mainpuri for the year 1983-84 relevant extract of ACR are as under:

"He has been a assets to the Distt. police in supervision of crime. He is very prompt insubmitting report He has very good control over his subordinate and his capacity to extract work from them."

5- In the circumstances the averments made in para under reply are incorrect and denied. The further assertion that the select list was prepared twice the number of substantive vacancy in accordance with regulation 5(1) is also incorrect and denied inasmuch as apparently the select list prepared is short in size as will be borne out from the following facts:

(a) That the select list prepared by the select committee was short in size and the select committee deliberately left the names of the other suitable officers from being included in the select list without any reason in an arbitrary and discriminatory manner. For the size of the select list being short, the applicant has stated in detail in the rejoinder affidavit filed earlier in

the select list was short in size and the select committee deliberately left the names of the other suitable officers from being included in the select list without any reason in an arbitrary and discriminatory manner. For the size of the select list being short, the applicant has stated in detail in the rejoinder affidavit filed earlier in

-7-

reply to the short counter affidavit of respondent no.3 and 4 wherein it has been stated that after 26th May 1983 about 23 vacancies occurred in the promotion quota of IPS. At that time the applicant did not possess the gradation list of IPS officers published by the Govt. itself in order to bring out the precised position of the vacancies. Fortunately the applicant <sup>now</sup> has been able to lay his hands on the gradation list of 1980 and further various appointment orders ~~gradation~~ made thereafter, ~~showing various vacancies and appointment made in IPS upto 1982 and thereafter till the select list in question was to be prepared and its size etc.~~ which are being given in detailed hereinafter:

(b) That before 1985 the ~~sel~~ last cadre review was done vide notification dated 27th Oct. 1980 whereby promotion quota was made to '82'

(c) That on 1.1.1980 as per gradation list published by the Govt. showing the position of various IPS Officers of U.P. Cadre, '75' officers were appointed in promotion quota of IPS working in State of U.P. and a true copy of the said list of the above officers is being filed as Annexure-Ra2 to this affidavit

151

(d) That thereafter as per cadre revision vide notification dated 27th Oct.1980 promotion quota was increased to '82' from the existing '78' hence four more vacancies occurred in promotion quota leaving at seven vacancies. Besides that on account of retirement and death of various promotee officers from 1.1.1980 to 27.12.1986 '38' vacancies in all occurred. Details of the above vacancies are as under:

Sl.no.	Year	Name	Date of retirement
			Death
1	2	3	4
1-	1980	Sri Manohar Chaturvedi	Retired on 31-3-1980
2-	"	Sri Kameshwar Singh	Retired on 30-6-1980
3-	"	Sri M.C.Jauhari	Retired on 31-7-1980
4-	"	Sri H.K.Chaturvedi	Retired on 31-8-1980
5-	1981	Sri R.C.Bhalla	Retired on 28-2-1981
6-	"	Sri K.P.Srivastava	"
7-	"	Sri L.M.Tewari	Retired on 31.5.1981
8-	"	Sri A.A.Zaidi	Retired on 30-6-1981
9-	"	Sri Hari Singh	Retired on 31-7-1981
10-	"	Sri H.C.Nigam	Retired on 31st August 1981
11-	"	Sri Iqbal Krishna	Retired on 31st Oct.1981

7/11/89

A  
158

-9-

12-	1981	Sri K.D.Sharma	Retired on 30th Nov.1981
13-	1982	Sri C.P.Naiyar	Retired on 30th Sept.1982
14-	"	Sri R.D.Pandey	Retired on 31.12.1982
15.	"	Sri V.B.L.Gupta	Retired on 31.7.1982
16	"	Sri S.C.Mookherji	Retired on 28.2.1982
17.	"	Sri K.B.Singhal	Retired on 31.7.1982
18-	"	Sri S.M.Ghosh	Retired on 30-9-1982
19.	1983	Sri K.P.Tewari	Retired on 31.8.1983
20-	"	Sri J.N.Awasthi	Retired on 31.7.1983
21.	"	Sri P.N.Misra	"
22.	"	Sri V.B.Singh	Retired on 31.5.1983
23.	"	Sri B.N.Dhaon	Retired on 31.7.1983
24.	"	Sri O.P.Agnihotri	Died in May 1983
25.	1984	Sri R.K.Misra	Retired on 30-6-84
26-	1985	Sri Onkar Sharma	Retired on 30-4-1985
27-	"	Sri J.S .Tingal	Retired on 31-1-1985
28-	"	Sri Diwakar Acharya	Retired on 31-7-1985
29-	"	Sri Mahesh Singh	Retired on 31-1-1985
30-	1986	Sri A.N.Kaul	Retired on 31-1-1986
31-	"	Sri Ram Lal	"

21/0/89

hw

32-	1986	Sri J.N.Tewari	Retired on 31-1-1986 ✓
33-	"	Sri S.D.Dubey	" ✓
34-	"	Sri Z.U.Ahmad	Retired on 28-2-1986 ✓
35-	"	Sri K.D.Dixit	Retired on 31-7-1986 ✓
36-	1986	Sri P.M. Misra <sup>Srivastava</sup>	Retired on 31-8-1986 ✓
37-	Sri	Sri A.N.Tewari	Retired on 30-11-1986 ✓
(38)	"	R. P. Dubey	31-7-86 ✓

(e) That hence till the end of the year 1983 there were 31 vacancies in promotion quota against which till 19-12-1983 following '27' appointments were made in IPS Cadre of U.P. from the State Police service.

<u>Sl.no.</u>	<u>Name</u>	<u>Date of appointment in IPS</u>
1-	Sri M.P.Misra	26.3.1980 ✓
2-	Sri Uma Shanker	"
3-	Sri K.B.Srivastava	"
4-	Sri M.P.Dixit	3.10.1980 ✓
5-	Sri Virendra Kumar	6-12-1980 ✓
6-	Sri A.K.Pandey	"
7-	Sri Uma Shanker Bajpai	"
(8)	Rodhey Shyam	"
8-	Sri S.K.Chandra	" ✓
9-	Sri U.C.Ghildiyal	"
10-	Sri U.S.Srivastava	"
(11)	Sri A.B.Shukla	"
12-	Sri L.M.Singh	11.12.1982
13-	Sri Jagdish Chandra	"
14-	Sri R.B.Srivastava	" ✓

A  
160

-11-

15-Sri P.N.Saxena	11.12.1982 ✓
16-Sri S.K.Tripathi	" ✓
17-Sri H.R.Shukla	" ✓
18-Sri Girraj Shah	22-11-1983 ✓
19-Sri K.N.Roy	" ✓
20-Sri B.P.Cupta	" ✓
21-Sri Basdeo Lal	" ✓
22-Sri S.K.A.Rizvi	" ✓
23-Sri S.N.Singh	19.12.1983 ✓
24-Sri C.D.Sharma	" ✓
25-Sri P.N.Dwivedi	" ✓
26-Sri R.S.Rana	" ✓

(f) That after 19.12.1983 no further appointments were made in promotion quota of IPS by the respondents ✓

(g) That as stated in para under reply that the select committee held its meeting on 27th Oct. 1985 which was bound to take into consideration the existing vacancies as well as the vacancy likely to occur in the next 12 months i.e. upto Dec. 1986. ✓

(h) That as stated above upto the end of 1983 out of the existing 31 vacancies, only '27' appointments were made and four vacancies were existing in the end of 1983. ✓

(i) That further the Govt. vide notification no. 6397/8-2-1100(137)/2/79 dated 23.11.1984 added three posts of Commandant in PAC as permanent addition in PES Cadre resulting in existing total number of vacancies of Item no.1 and 2 ✓

8/11/89

-12-

as per schedule dated 27th Oct.1980 increased from 246 to 350. A true copy of the said notification dated 23.11.1984 is being filed as Annexure-3 to this affidavit.

7 (j) That due to addition of three posts of Commandant in PAC Bn no.39,40 and 41 the promotion quota got increased from '82' to '83' and one vacancy occurred.

(k) That besides the above 14 vacancies occurred <sup>likely to occur</sup> in the year 1984 to 1986 due to retirement of the promotee officers making total number of vacancy available to the select committee on 27th Dec. 1985 as '19'.

(1) That as per regulation 5(1) of the Appointment by Promotion Regulation, the size of the select list ought to have been twice the number of vacancies or 50 percent of item no.1 and 2 which ever is greater. The size of the select list confined to 34 makes it apparently short in size without there being any reasons although para under reply clearly shows that the applicant was not placed in the grade of unfit but he could not be included because of sufficient number of officers as per the requisite size of the select list of higher grading were available. Hence the exclusion of the applicant was wholly arbitrary and discriminatory.

-13-

6- That the contents of paras 4,5 6 of the counter affidavit do not call for any reply. ✓

7- That the contents of para 7<sup>and 8</sup> of the counter affidavit are denied. Detailed facts have been stated above and in the various paras including paras 7(3) of the application which are reiterated as correct. More over detailed reply has been given in reply to the contents of para 3 of the counter affidavit which may be perused here at also. ✓

8- That in reply to the contents of para 9 of the counter affidavit the respondents have quoted regulation 5 of IPS by promotion regulation and hence being matter of record does not call for any reply.

9- That in reply to the contents of paras 10 and 11 of the counter affidavit detailed reply has already been given in reply to the contents of para 4 of the counter affidavit which may very kindly be perused here also. Further the contents of paras 6 and 7 of the application are reiterated as correct. The averments to the contrary contained in para under reply are incorrect and denied. ✓

7/11/89

16w

10- That the contents of para 12 of the counter affidavit, as stated are denied. It is stated that the select ~~commit~~ list of 1985 being patently illegal and bad and has no sanctity in the eyes of law and does not confer any right upon the officers whose names are included therein to claim any benefit on that basis. ✓

11- That in reply to the contents of para 13 of the counter affidavit it is stated that the select list of 1985 is illegal having been prepared in arbitrary and discriminatory manner and also in violation of regulation 5 of the IPS (Appointment by Promotion) Regulation and hence the same is liable to be quashed. Further in any case the respondents are bound to prepare yearwise select list and in the year 1989 no appointment could be made from the select list of 1985 unless and until the service record of the subsequent years is also considered and the select list is reviewed and revised every year as contemplated under regulation 5(6) of the Promotion Regulation in order to prepare a valid and correct seniority list for the purposes of making appointment in IPS in the year 1989. ✓

5/11/89

12- That the contents of para 14 of the counter affidavit are denied. Detailed and correct facts have already been stated in reply to the contents of para 4 of the counter affidavit which may be perused here at also. The averments to the contrary are incorrect and denied. ✓

HW

-15-

Further more the contents of paras 10 and 11 of the application are reiterated as correct. Details of various proceedings pending against those officers whose names have been included in the select list bs being filed herewith and marked as Annexure-4 to this affidavit

13- That the contents of para 15 of the counter affidavit are denied and those of para 7(12) of the application are reiterated as correct. 2

14- That the contents of para 16 of the counter affidavit does not call for any reply

15- That in reply to the contents of paras 17 and 18 of the counter affidavit it is stated that while giving officiating promotion on the post of Addl. Supdt. of Police which was in senior scale of IPS, the State Govt. has constituted a departmental selection committee which considered all eligible incumbents including those officers who <sup>have</sup> ~~are~~ being included in the <sup>impugned</sup> select list yet most of the officers who have not been included in the select list were not found fit even for the purposes of adhoc promotion in the year 1983- 1984 when the applicant was selected and was given such promotion. The committee constituted by the Govt. for giving promotion to the post of Addl. Supdt. of Police in the year 1984 consists of Chief Secretary of U.P. Govt. Home Secretary of U.P. Government and the Director General of Police. In that selection Sri S.C. Yadav, and Sri K.N. Dwivedi, were not at all selected on the basis of service

7/1/89

HW

-16-

record itself and it is strange enough that the officers who were not found fit even for adhoc promotion in the year 1984 were found to be meritorious enough to those officers who were selected in the year 1984 just in the next year and this clearly shows that the select committee has neither made grading by application of mind nor its selection is fair and impartial and it has supported the applicant's contention that the select committee had acted in arbitrary and discriminatory manner and the selection process in its entirety is in violation of Article 14 and 16 of the Constitution. After publication of the select list a Daily news paper Times of India Lucknow in its edition dated 3.5.1989 has also issued detailed article on the above select list and with regard to the corr. character of various officers who names have been included therein, a true copy <sup>already on record D.A. no. 189, C.B. Rai vs. UOI.</sup> whereof is being filed as Annexure-5 to this affidavit. This clearly shows that either the select committee constituted under rule 9 of the Promotion Regulation was not made aware of the full facts or the correct details were not placed before it by the State government for the reasons best known to them and in any case its action amounts to malice in law biased and mala fide and hence it vitiates the entire selection. Further the contents of para 7(14) and (15) of the application are reiterated as correct.

16-

That the contents of para 19 of the counter affidavit are denied and those of para 7(16) of the

Nw

166

-17-

is hereby reiterated as correct. ✓

17- That the contents of para 20 of the counter affidavit are misconceived and denied inasmuch as the Govt. order dated 30.10.1986 filed along with counter affidavit under reply is wholly irrelevant for the purposes of present case as the selection itself was held on 27.12.1985 and hence even the orders issued from time to time before the said date only are liable to be considered for the purposes of instant case. Even assuming without admitting that the aforesaid Govt. order has any relevance the applicant is advised to state that in grading the which is contrary to regulation 5 of IPS (Appointment by Promotion) Regulation will be arbitrary and ultravires. ✓

18- That the contents of para 21 of the counter affidavit are incorrect and denied. The circular issued by the Director General of Police which in turn refers the policy of U.P. is clear on the subject which has been filed as Annexure-RA1 to this affidavit and may be perused. The averments to the contrary contained in para under reply are denied. ✓

19- That the contents of para 22 of the counter affidavit are not admitted in view of detailed facts stated herein before and in various paras including para of the application which are reiterated as correct. ✓

12/10/87

21/01/81

Ida

-19-

23- That the contents of para 26 of the counter affidavit is false and denied. No order of appointment to the best of the knowledge of the applicant have been issued to the selectees of 1985 select list making their appointment in IPS so far. ✓

24- That the contents of para 27/and 28 of the counter affidavit are denied in view of the facts stated herein before and in various paras for the application which are reiterated as correct. ✓

25- That the contents of para 29 of the counter affidavit does not call for any reply. ✓

26- That the contents of para 30 of the counter affidavit are denied in view of the facts stated herein before. ✓

27- That the contents of para 31 of the counter affidavit does not call for any reply. ✓

28- That the contents of para 32 of the counter affidavit are denied. It is stated that it is settled law that the rules applicable to a particular vacancy when it exists will apply and the subsequent amended rules will have no application to those vacancies. The matter was discussed in detail before this Hon'ble court when stay matter came up for consideration and the ✓

Now

20-

applicant crave leave to place the same before this Hon'ble court at the time of arguments if necessary for the purposes of main application. However the main application is confined at present only to the validity of the select list and hence for the purposes of validity of the select list of 1985 the question of seniority as such is not relevant and in any case it is reiterated that the officers appointed on the vacancy occurred prior to amendment of the rules in the year 1988 shall be entitled to be governed by the rules as exists on the date of occurrence of the vacancy.

29- That the contents of para 33 of the pounter affidavit are denied. It is stated that there can not be any distinction of the two incumbents working on the post of Addl. Supdt. of Police discharging identical duties receiving identical pay scale for any reasons whatsoever and the distinction drawn by the respondents is patently arbitrary and violative of Article 14 and 16 of the Constitution and in any case it is reiterated that the applicant is holding post of Addl. Supdt. of Police as a senior post in IPS.

30- <sup>in reply to</sup> That/ the contents of para 34 of the petition counter affidavit the assertion that the applicant and certain other officers were appointed to IPS Officers under rule 9 of Cadre Rules due to paucity of Cadre offices in the State. Rest of the contents of para under reply are denied.

21-

31- That in reply to the contents of para 35 of the counter affidavit it is stated that the production of proceeding of the select committee and the service record before this court is material and much relevant for the proper adjudication of the case which will clearly show and will substantiate the contention of the petitioner that the select held in 1985 was arbitrary ,unfair,discriminatory and grading of the various officers was not done in accordance with the regulations. A

32- That the contents of paras 36 and 37  
of the counter affidavit do not call for any reply

I, the deponent abovenamed do hereby declare that the contents of paras 1 to 3, 4 (Partly), 6 to 10, 12 to 14, 15 (Partly), 16, 19 to 27, 28 (Partly), 30, 31, 32 of this affidavit are true to my personal knowledge and those of paras 4 (Partly), 15 (Partly), 17, 18, \_\_\_\_\_ are based on the perusal of record and those of paras 11, 28 (Partly), 29, \_\_\_\_\_ are based on legal advice which all I believe to be true and nothing material has been concealed and no part of it is false So help me God. ✓


Deponent

A  
173

-22-


VINOD KUNAR DWIVEDI, ADVOCATE, CIVIL  
I, ~~2200 2200 2200 2200 2200 2200~~


COURT PADDABH ~~2200 2200 2200 2200 2200 2200~~ do hereby declare that the  
person making this affidavit and alleging himself to be Sri  
H.N. Srivastava is the same person who is known to me from  
the perusal of record.

 7/10/89  
(VINOD K. DWIVEDI)  
Advocate 7/10/89

Solemnly affirmed before me on the th day  
of Oct. 1989 at a.m/p.m who has been identified by the  
aforesaid.

I have been satisfied myself by examining the  
deponent that he has understood the contents of this  
affidavit which has been read over and explained to him

  
OATH COMMISSIONER  
10/10/89

 7/10/89

A  
174

BEFORE C. A. T. LUCKNOW DELCH

.....

ANNEXURE: (RA-I)

IN

REFOINDER AFFIDAVIT

IN

O. A. No. 74 of 1989

<sup>N.R.</sup>  
H. No. 881/2010 - - - - - Appellant

VS.

Union of India and

others - - - - - Opp. Parties

For Petitioner

J.N. CHATURVEDI

EO: I-343-70

DIRECTOR GENERAL OF POLICE

UTTAR PRADESH.

Dated: Lucknow, Dec. 13, 1984.

Dear Sir,

Recently I have had occasion to see a large number of Annual Confidential Reports on Ds.

Superintendents of Police to be considered for

being brought on the selectlist of the I.P.S.

Apart from the remarks being vague the categorization

*fw* officers has often been erratic. It is Applicable

A  
175

- 2 -

that some of you are not aware of the norms prescribed by the U.P.S.C. for the selection of officers for being brought on such promotion lists.

2. Every such candidate is assigned one of the following categories:-

1. Outstanding
2. Very good
3. Good
4. Not fit.

Generally five years' remarks on an officer are taken into account. If four out of the five, including the last remarks, are outstanding and he has no adverse report, the officer is categorized as 'outstanding'. Such an officer becomes senior to all those categorized as 'very good' or 'good' irrespective of his original placement in the promotion list. An officer on whom three remarks out of five are categorized as 'very good' and has no adverse report, is categorized as 'very good'. All officers categorized as 'very good' are placed immediately after those categorized as 'outstanding'. The order of seniority of those placed

A  
176

- 3 -

In a particular category would remain undisturbed. Officers, who have at least three good remarks are categorized as 'good' provided there is no adverse remark. Those not falling in any of the above categories, are categorized as 'Not fit'. Officers who are categorized as 'good', are placed immediately below the junior most officer of the 'very good' category (the inter seniority of the officers of this category too remains undisturbed).

3. If the selection Committee finds enough number of officers in the 'outstanding' and the 'very good' categories, it will not select those falling in the 'good' category, even if they are senior.

4. In view of this it is of very great importance that officers are categorized after deep consideration. It has been noticed in several cases that while an officer has been categorized as 'good' the reading of the entire remark on him would indicate as 'very good'. Such casualness can lead to grave miscarriage of justice and

irrevocably undermine the career of an officer. Much worse, it erodes the confidence of the subordinate officers in the fairness and soundness of judgment of their seniors. I shall request you to pay serious attention to this matter while recording annual remarks on your subordinates. I should like to remind you all that balanced assessment of the worth of your subordinates is an important and sacred duty cast upon each of us. I shall expect all Io. G. and D. Io. G. to improve while recording the annual remarks their views about the capabilities of each reporting officer to assess the worth of his subordinates. I am also going to do likewise. The remarks on Io. G., D. Io. G. and So. P. will be recorded by me only after I have had an opportunity of assessing their respective worth as reporting and reviewing officers.

5. Kindly acknowledge this letter.

Yours sincerely,

( J. N. CHATURVEDI )

A  
179

**U S O**

All Impres. Coml. of Police, U.P.

All Dy. Insps. Genl. of Police, U.P.

All Sr. Supds. of Police/

All Supdts. of Police, U.P.

All Commandants, P.C. BnO. U.P.

TRUE COPY

... in the earth office ...  
... road over and ...  
... the solemnity ...

A  
179

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH

ANNEXURE-2

In

Rejoinder Affidavit

In

O.A.No. 74 of 1989

H.V. Srivastava- - - - -Applicant

Versus

Union of India and others - - - - -Opp. Parties.

List of promotee Cadre Officers as on 1.1.80  
against Schedule Strength of 1978.

<u>Sl.No.</u>	<u>Name</u>	<u>Date of birth</u>
1.	K.P. Tiwari	10.8.25
2.	C.P. Nayyar	10.9.24
3.	K.D. Sharma	11.11.23
4.	R.D. Pande	1.12.24
5.	K.P. Srivastava	23.2.23
6.	H.C. Nigam	15.8.23
7.	Onkar Sharma	15.4.27
8.	J.N. Awasthi	2.7.25
9.	R.K. Mishra	26.6.26
10.	A.N. Kaul	7.1.28

## 2.

11.	J. S. Tingal	4.1.27
12.	D. Acharya	18.7.27
13.	B. B. L. Gupta	10.7.25
14.	R. C. Bhalla	3.2.23
15.	P. N. Mishra	1.7.25
16.	R. P. Dubey	20.7.28
17.	S. C. Mukherji	18.2.24
18.	A. A. Zaidi	24.6.23
19.	M. Chaturvedi	1.3.22
20.	Iqbal Krishna	20.10.23
21.	J. M. Tiwari	1.1.28
22.	Ram Saran	5.7.29
23.	K. D. Dixit	17.7.28
24.	Z. Ahmad	2.2.28
25.	S. B. Dubey	5.1.28
26.	A. N. Tiwari	6.11.28
27.	H. K. Chaturvedi	21.8.22
28.	P. M. Srivastava	16.8.28
29.	Vir Prashat Singh	10.5.25
30.	Om Prakash	11.3.30
31.	B. N. Sharma	15.9.30
32.	M. C. Johri	26.7.22
33.	Mahesh Singh	19.1.27
34.	Hari Singh	4.7.23

Hw

A  
181

3.

35.	K.B. Singhal	4.7.24
36.	V.N. Singh	16.1.32
37.	M.C. Rawat	27.12.30
38.	G.K. Shukla	1.7.30
39.	Bhupendra Singh	24.11.32
40.	Harish Kumar	28.6.30
41.	Ram Lal	2.1.28
42.	S.N. Prasad	30.3.32
43.	L.P. Bhatnagar	3.11.31
44.	S.P. Mishra	1.1.32
45.	A.P. Sharma	1.10.32
46.	K.P. Rai	1.2.31
47.	R.B. Mishra	30.8.32
48.	N.C. Joshi	31.12.31
49.	J.M. Saxena	24.9.32
50.	B.K. Singh	25.1.34
51.	B.N. Dhawan	2.7.25
52.	K.P. Tripathi	30.1.33
53.	D.K. Agarwal	7.5.32
54.	K.N. Bhatt	3.7.33
55.	Yogendra Pal	5.2.32
56.	P.P. Srivastava	1.11.32
57.	Ahmad Hasan	2.1.34
58.	O.P. Agnihotri	6.3.36

Hw

A  
182

4.

59.	A.N. Singh	1.7.30
60.	R.S. Narain	22.4.35
61.	R.C. Srivastava	4.8.34
62.	Hori Lai	25.4.31
63.	H.P. Tripathi	1.7.34
64.	T.K. Joshi	1.3.36
65.	R.B. Singh	5.12.36
66.	Manager Pandey	10.5.37
67.	S.N. Ghosh	6.9.24
68.	Kameshwar Singh	15.6.22
69.	J.S. Bhandari	29.12.30
70.	Sushil Kumar	19.3.30
71.	V.N. Roy	1.7.30
72.	Devendra Prasad	20.12.30
73.	Sheoraj Singh	10.1.30
74.	L.M. Tiwari	1.5.23

Handwritten signature: *H. W. ✓*

A  
143

बीफोर सेंट्रल एडमिनिस्ट्रेटिव ट्रिबनल लखनऊ बैंच

एनैक्टर नं० डार.ए.३६

इन

रिजवाइडर एप्रीडिक्ट

इन

डी.ए.

74/89

एच.एच. श्रीवास्तव . . . . . जजलैड

बनाम

अनिन जाक अडिया एण्ड हदर्स . . . . . अपी.पाटी.

डिया -6397/डार-2-1100/137/79

प्रेषक,

राम लाल,

उप सचिव,

उत्तर प्रदेश शासन ।

सेवा में,

पुलिस महानिराकरण,

बी०ए०सी०

उ०प्र० लखनऊ

॥2॥

विषय:- नव सृजित विधि सेवा की 3 वाहिनियों ॥39,40 तथा 41॥ तथा पुलिस उप महानिरीक्षक, विधि सेवा से सम्बद्ध समस्त अस्थाई पदों का स्थायीकरण :-

=====

महोदय,

उपरोक्त विषयक पी0ए0सी0 मुख्यालय के पत्र क्रिया पी0ए0सी0-2-82-7 दिनांक 19 अप्रैल 1984 के संदर्भ में मुझे यह कक्षी का निर्देश प्राप्त है कि श्री राजमाने दस्यु उन्मुक्तन, बाट रक्षित कार्य तथा इन पर नियंत्रण पारी हेतु गठित तीन विधि सेवा वाहिनियों ॥39,40 तथा 41 के वाहिनियों मुख्यालय तथा उससे सम्बद्ध समस्त अस्थाई पदों, जिनका व्यौरा अलग तालिका कात्तम 2 व 3 में दिया गया है तथा जिनका सृजन उक्त तालिका के कात्तम-5 में उल्लिखित शासनादेशों में किया गया था और जिनकी 28 फरवरी 1985 तक चलते रहने हेतु आदेश कात्तम-6 में उल्लिखित शासनादेशों द्वारा निर्दिष्ट किये जा चुके हैं, की उनके सम्बद्ध शक्ति पुनरीक्षित वेतनमान हैं। मार्च, 1984 से स्थाई किये जाने की स्वीकृति प्रदान कर दी है। ये पद अपने ही वर्ग में स्थायी वृद्धि माने जाएंगे। शासनादेश दिनांक 28 मार्च 1984 की तदनुसार प्रयोजित समझा जाय।

A  
185

॥३॥

आधीसीदार के द्वारा अधिष्ठित उप शीर्षकी एवं प्रारम्भिक कार्यों के नाम डाला जायेगा ।

3. यह आदेश वित्त विभाग के आवासकीय सं० सं० 12/1662/स 84 दिनांक 22 नवम्बर, 1984 से प्रप्ति उनकी सक्षमति से जारी किए जा रहे हैं ।

भवदीय,

॥रामलाल॥  
उप सचिव

क्रिया - 6397/1/आर-2- तददिनांक

प्रतिलिपि निम्नलिखित की सूचनार्थ एवं आवश्यक कार्यवाही

के प्रति:-

- ॥१॥ महानिरीक्षक, उ०प्र०, इलाहाबाद ।
- ॥२॥ गृह पुलिस ॥ अनुभाग-7
- ॥३॥ वित्त व्यय नियंत्रण अनुभाग-12
- ॥४॥ गृह पुलिस सेवाएं अनुभाग-12
- ॥५॥ पुलिस महानिरीक्षक, उ०प्र० इलाहाबाद । लक्ष्मण ।

आज्ञा से

॥सत्य प्रतिलिपि॥

॥ड० राम लाल॥  
उप सचिव

981  
A

કચ્છ-કોચિ-ક

બપોર સેન્ટ્રલ એડમિનિસ્ટ્રેટિવ ટ્રિબનલ સેન્ટ્રલ લક્ષ્મી ।

-----

દોસ્ત નં 0141

દો

રિજા હન્ડર અપોઝિટ

દો

અ.દ. નં

74/89

દો દો શીવાસ - - - - - અપોઝિટ,

બનામ

પ્રિયન આપ ફિલ્ડા દો અવર્સ - - - - - અપોઝિટ

-----

દો

681

अधिकाारी का नाम जांच किस कार्यालय द्वारा सौंपी गयी तथा दिनांक आरंभ का पूर्ण विवरण जांच की वर्तमान

1 2 3 4 5

श्री बुद्धचन्द्र मुन्दस मखमिकदेविक = पुलिस महापरीक्षक भूषणार जांच पूर्णकर आहया जांच आहया में श्री बुद्धचन्द्र पुलिस अधीक्षक, कार्यालय 1.9.1986 दिनांक नवंबर 28, 85 पुलिस अधीक्षक के आचरण

को भेजी गयी । की भर्त्सना किए जाने की संस्तुति की गयी ।

श्री एस.के. सक्सेना, पुलिस महापरीक्षक, भूषणार जांच पूर्णकर है । -----  
अपर पुलिस अधीक्षक, बरेली जाने, बरेली

दिनांक 21.1.01988

श्री के.एन.डी. द्विवेदी, ५ भासन भूषणार जांच पूर्णकर आहया जांच आहया में श्री के.एन.डी. द्विवेदी पुलिस उपाधीक्षक दिनांक फरवरी 17.1978 दिनांक मार्च 171978 पुलिस उपाधीक्षक की सेवावनी दिवसे

द्वारा भेजी गयी । जाने की संस्तुति की गयी ।

3

1 2 3 4 5

श्री देवेन्द्र बहादुर राय, पुलिस महानिरीक्षक, पद का दुस्यथा जाँच पूर्णकर आख्या जाँच आख्या में श्री देवेन्द्र बहादुर राय तत्कालीन पुलिस उप अधीक्षक, 3050 लक्ष्म दिनांक दिनांक जुलाई 1086 देवरिया को भर्त्सना प्रविष्टि दिखे पुलिस अधीक्षक जुलाई 6 1980 द्वारा भेजी गयी । जाने को संस्तुति की गयी ।

श्री आर०डी त्रिपाठी, पुलिस महानिरीक्षक, भ्रष्टाचार जाँच पूर्णकर आख्या दिनांक जाँच आख्या में श्री आर०डी त्रिपाठी कासिक 3050 लक्ष्म रिरखते लेने 2.8.87 को भेजी गयी कोड०५० राजकीय नियमावली 1966

के नियम सं० 24 का अनुपालन करने का दोषी पाया गया ।

1 2 3 4 5

श्री गिरिश नन्दन सिंह पुलिस महानिदेशक, भुट्टावार जांच प्रवर्तित

पुलिस उपधीक्षक उ०प्र० लक्ष्मण सिंह उत्पीडन संकेत

14.5.1984

श्री हरिराजसिंह, पुलिस उप महानिदेशक, मद के दलदलयोग जांच पूर्णकर जांच आख्या में श्री हरिराजसिंह

पुलिस अधीक्षक, प्रशासन उ०प्र०, लक्ष्मण आख्या दि० 3.2.1987 को भविष्य के लिए तर्क किये जाने

दिनांक अगस्त 1, 1986 को भेजी गयी । की सरचुति की गयी है ।

श्री ओम प्रकाश त्रिपाठी पुलिस महानिदेशक भुट्टावार जांच प्रवर्तित है ।

संयुक्त पुलिस अधीक्षक, जलसंपर्क अधिकारी के

दिनांक 10.7.84

190

1

2

3

4

5

श्री बालकृष्ण कर्तव्येदी,

पुलिस उप महानिरीक्षक, पी०ए०सी० के कान्सटेबलों की भीर्त में अध्यक्षीयता

जॉब प्रचलित है ।

प्रशासन ई००५० लक्ष्मण

से सपना लेने आदि के आरोग्य में लगाये गये है ।

दिनांक १०.१.४५

श्री मुरलीधर पाठक

पुलिस उप महानिरीक्षक, पी०ए०सी० चिकित्सालय के प्र ति अतिरिक्त एव

जॉब प्रचलित है ।

पी०ए०सी० मुख्यालय दिनांक नियमों के प्रतिबल कार्य करने तथा चिकित्सालय के

भाग पदों में बाधा डालने के आरोग्य ।

श्री हरिराजसिंह

पुलिस महानिरीक्षक के

भ्रष्टाचार उत्पीडन आदि के आरोग्य

जॉब प्रचलित है ।

फौगट ।

सहायक०५०

दिनांक २५.४.४४

सत्य प्रतिलिपि

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
CIRCUIT BENCH AT LUCKNOW.

O.A.NO. 74 OF 1989 (L)

H.N.SRIVASTAVA.....APPLICANT

<sup>23h</sup>  
VERSUS

UNION OF INDIA & OTHERS.....RESPONDENTS.

SUPPLEMENTARY COUNTER AFFIDAVIT TO THE  
REJOINDER AFFIDAVIT OF H.N.SRIVASTAVA

I, *Rohit Nandan* s/o Sri *Yashoda Nandan*

aged about 33 years, presently posted as Joint Secretary,  
Home Department, Government of Uttar Pradesh, Lucknow do  
solemnly state on oath as under:-

1- That the deponent is presently posted as Joint Secretary,  
Home Department, Government of Uttar Pradesh, Lucknow and as  
such he is fully conversant with the facts of the case. The  
deponent has read the contents of Rejoinder affidavit of  
Sri H.N.Srivastava( hereinafter <sup>23h</sup> ~~referred to~~ referred to as  
R.A.) and <sup>202</sup> after fully understanding the same is filing this  
Supplementary Counter Affidavit to controvert facts alleged  
in the same.

2- That the contents of paragraphs- 1 to 3 of the Rejoinder  
Affidavit need no comments.

3- That the contents of paragraph-4 of the R.A. denying the  
contents of paragraph-3 of the C.A. are denied and the  
contents of paragraph-3 of the C.A. are again reiterated and  
it is stated that in paragraph-4 of the R.A. the applicant  
has referred to the Circular letter No. 1-343-70 dated  
13-12-1984 issued by the then Director General of Police to



*[Signature]*

all subordinate officers saying interalia that " generally five years remarks of an officer are taken into account while considering the officers for being brought on the Select List of the IPS ". In this connection it is submitted that preparation of Select List for IPS is <sup>32</sup>governed by I.P.S. (Appointment by Promotion) Regulations-1955 framed by the Union of India i.e., respondent No.1 and no other rules or order issued by any subordinate authority can be applicable while preparing the Select List for IPS which is an All India Service. The circular dated 13.12.1984 issued by the then Director General of Police, U.P. can not have any effect or over riding effect on the Statutory Rules framed by the Union of India. The petitioner in the para under reply has quoted certain A.C.R's which were never communicated or shown to him. He should be directed to disclose his source of obtaining these ACRs. The contention made otherwise, if any, is denied being baseless and misconcieved.

4- That the contention made in paragraph-5 of the R.A. is denied being incorrect, baseless and misconcieved and the contents of paragraph-4 of the Counter Affidavit are reiterated and it is stated that it is wrong to say that the Select List prepared in 1985 is short in size. It is further stated that list of persons promoted to IPS cadre and vacancies given by the petitioner is incorrect. However a list of 73 promoted <sup>27</sup>IPS officers already promoted prior to the meeting of Select Committee which met on 27.12.85 is annexed as ANNEXURE-SCA- I to this supplementary counter affidavit. It is submitted that according to I.P.S.

(Appointment by Promotion) Regulations-1955, rule-5(1) the



*[Handwritten signature]*

A 1993

size of the Select List should be double the number of the existing vacancies and the <sup>27/</sup>vacancies anticipated during the coming twelve months in the promotion quota of IP8. It is added that at the relevant point of time as many as <sup>27/</sup>73 <sup>promote officer</sup>were already appointed by promotion against the promotion quota of 82 as shown in the ANNEXURE-SCA<sup>27/</sup>I thereby leaving 9 vacancies

~~202/~~

besides 8 vacancies were anticipated during the course of next 12 months due to retirement of officers as given below, making a total of 17 vacancies in the promotion quota on the basis of which the Select list of 34 officers was prepared:-

S/Shri

1-	A.N.Kaul <sup>27/</sup>	1.2.86	Retirement
2-	R.P.Dubey	1.1.86	-do-
3-	J.N.Tewari	1.1.86	-do-
4-	Z.U.Ahmad	1.2.86	-do-
5-	S.B.Dubey	1.2.86	-do-
6-	A.N.Tewari	1.12.86	-do-
7-	P.M.Srivastava	1.9.86	-do-
8-	Ram Lal	1.1.86	-do-

The petitioner <sup>27/</sup>~~XXXXX~~ in the para under reply has further stated that he has been able to lay his hands on the gradation list of 1980. In this connection the answering deponent has annexed a list of officers appointed in the promotion quota on 27.12.85 i.e., the date of meeting of the said Select List and the same is reitearted. As regards the strength of promotion quota it is stated that the same is fixed in accordance with I.P.S.(Fixation of Cadre Strength) Regulations-1955. So far as

2



the notification dated 23.11.84, copy annexed as ANNEXURE-III to the R.A., is concerned the same was issued by the State Government by which all the temporary posts in 39, 40 and 41 Battalion<sup>202</sup>, P.A.C. were made permanent which does not mean an automatic increase in the promotion quota. Any change in the promotion quota can be made only by the Triennial Review Committee as provided in I.P.S. (Cadre) Rules-1954.

5- That the contents of para-6 of the Rejoinder Affidavit need no comments.

6- That with regard to contents of para-7 of the R.A. the reply given in paras 7 & 8 of the Counter Affidavit are reiterated.

7- That the contents of para-<sup>202</sup>8 of the <sup>202</sup>Rejoinder Affidavit need no reply.

8- That the contention made in para-9 of the Rejoinder Affidavit is denied and the paras-10 and 11 of the counter affidavit are reiterated.

9- That the allegations made in para-10 of the Rejoinder Affidavit are <sup>202</sup>emphatically denied being baseless and misconceived in view of what has been stated in foregoing paras as also in the counter affidavit filed by the answering respondents.

10- That the contention made <sup>202</sup>in para-11 of the Rejoinder Affidavit is denied being baseless in view of what has been submitted in details in para-13 of the counter affidavit which are again reiterated.

11- That with regard to contents of para-12 of the Rejoinder Affidavit, the reply given in paras above as also in the counter affidavit filed by the answering respondents may be referred to.



APJ

8<sup>2n</sup>✓

12- That the contents of paragraph-13<sup>2n</sup> of the Rejoinder Affidavit are denied and those of para-15 of the counter affidavit are reiterated.

13- That the contents of para-14 of the Rejoinder Affidavit are denied and those of para- 16<sup>2n</sup> of the counter affidavit are reiterated.

14- That the contents of para-15 of the Rejoinder Affidavit as written are denied and it is stated that the posts against which the petitioner was promoted as Addl. S.P. were created in the scale of U.P. Police Service Cadre vide G.O. No. 5052/VIII-PS-2-1984 dated 1.12.84<sup>2n</sup> read with G.O. No. 5465/VIII-PS-2-512(1)/85 dated 13.4.89<sup>2n</sup> and not in the senior scale of I.P.S. For rest of the contents ~~of para-16~~<sup>2n</sup> the reply given in para-17 and 18 of the counter affidavit are reiterated. The allegations made in para under reply are denied being baseless. It is further stated that no bias or malafide has been alleged against any member of the Selection Committee or against any person.

15- That the contents of para-16<sup>2n</sup> of the Rejoinder Affidavit are denied and that of para-19 of the counter affidavit are reiterated.

16- That para-17<sup>2n</sup> of the Rejoinder affidavit are denied and the contents of para-20 of the counter affidavit are reiterated. The provisions contained in Regulation 5(4) of IPS(Appointment by Promotion) Regulations 1955 as produced below may be referred to:-

Regulation 5(4):

" The Selection Committee shall classify the eligible officers as "outstanding", "Very Good", "Good", or "Unfit".





A196

It is stated that the Select Committee itself made classification of the eligible officers as outstanding, Very Good, Good or Unfit. The contention made otherwise, if any, is denied being baseless.

15-<sup>27</sup> ✓ That the contents of paragraph-18 of the Rejoinder Affidavit are denied being baseless and misconcieved in view of what has been stated in paras above and the contents of para-21 of the C.A. are again reiterated.

16-<sup>27</sup> ✓ That the contents of para-19 of the Rejoinder Affidavit are denied and those of para-22 of counter affidavit are reiterated.

17-<sup>27</sup> ✓ That the allegations made in para- 20 of the Rejoinder Affidavit are denied being baseless and misconcieved in view of what has been stated in paras above.

18-<sup>27</sup> ✓ That the contents of para-21 of the Rejoinder Affidavit are denied and that of para-24 of counter affidavit are reiterated.

20-<sup>27</sup> ✓ That the contents of para-22 of the Rejoinder affidavit are denied and that of para-25 of the Counter Affidavit are reiterated.

22-<sup>27</sup> ✓ That with regard to the contents of para-22 of Rejoinder Affidavit are denied and that of para-25 of the counter affidavit are reiterated.

22- That with regard to the contents of para-23 of the Rejoinder affidavit it is stated that 29 select list officers have since been appointed to I.P.S. The contention made otherwise, if any, is denied being unfounded.

23- That the contents of paragraph-24 of the Rejoinder Affidavit are denied and the contents of para 28 of the counter affidavit are reiterated.



*[Handwritten signature]*

24- That the contents of para-25 of the rejoinder affidavit need no comments.

25- That the contents of para-26<sup>27</sup> of the Rejoinder Affidavit are denied and those of para-30 of the counter affidavit are reiterated.

26- That the contents of para-28<sup>27</sup> of the Rejoinder Affidavit need no reply.

27- That the contents of para-28 of the Rejoinder Affidavit are denied and the contents of para-32 of the C.A. are reiterated and it is stated<sup>that 27</sup> as the appointment have been made after 1988 therefore service rules of 1988 will apply.

28- That the contents of para-29 of the Rejoinder Affidavit<sup>27</sup> are not admitted in view of what has been stated in para-14 above and it is stated that selection was made on the basis of overall relative assessment of the service records of the ~~xxx~~<sup>27</sup> eligible candidates. The contents of para-33 of the counter affidavit are again reiterated.

29-<sup>27</sup> That the contents of para-30 of the Rejoinder Affidavit<sup>27</sup> are denied and those of para-34 of the counter affidavit are reiterated.

30- That the contents of para-31 of the Rejoinder Affidavit<sup>27</sup> are emphatically opposed and those of para-35 of the counter affidavit are reiterated.

31- That the contents of para-32 of the Rejoinder affidavit do not call for any comment.

LUCKNOW;

DATED: 5/3/96.

DEPONENT

( रोहित मन्दन )

संयुक्त सचिव,

गृह एवं लोक निर्माण



VERIFICATION

I, the abovenamed deponent do hereby verify that the contents of this supplementary counter affidavit ~~xxx~~<sup>202</sup> from paragraphs 1, 2, 3 (part) to 31 — are true to my own knowledge on the basis of the records and those of paras 3 (part) — are believed to be true. No part of it is false and nothing material has been concealed. So help me God.

LUCKNOW;

202  
DATED : 5/3/90.

DEPONENT

( रोहित नन्दन )

संयुक्त सचिव,

गृह एवं जन विभाग

I, Padmakar Srivastava, HDA, Home (Police Service) Section-2, clerk of

do hereby declare that the person making this affidavit and alleging himself to be Sri Rohit Nandan is the same person who is known to me from the ~~perusal~~<sup>202</sup> perusal of record produced before me in this case.

5.3.90.

(PADMAKAR SRIVASTAVA)

202  
Solemnly affirmed before me on 202 the day of March, 1990 at a.m./p.m. who has been identified by the aforesaid.

I have satisfied myself by examining the deponent that he has understood the contents of this affidavit which has been read over and explained to him.

202

202



A199

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH AT LUCKNOW.

ANNEXURE - SCA - I

O.A.NO. 74 OF 1989 (L)

H.N.SRIVASTAVA.....APPLICANT

VERSUS

UNION OF INDIA & OTHERS.....RESPONDENTS

Sl.No.	Name of IPS/SPS Officer	Date of birth	Date of appointment to I.P.S.
--------	-------------------------	---------------	-------------------------------

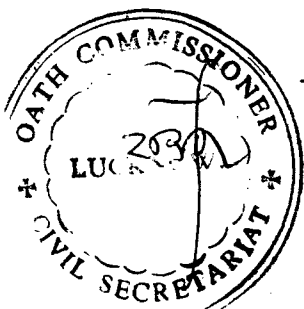
1.	A.N. Kaul	7-1-28	11-1-68
2.	R.P. Dube	20-7-28	20-1-72
3.	Jai Nath Tiwari	1-1-28	14-4-71
4.	Ram Saran	5-7-29	20-1-72
5.	Z.U.Ahmed	2-2-28	18-1-74
6.	Shyam Babu Dube	5-1-28	18-1-74
7.	Amar Nath Tewari	6.11.28	18-1-74
8.	Pyare Mohan Srivastva	16-8-28	18-1-74
9.	Om Prakash	11-3-30	18-1-74
10.	B.N. Sharma	15-9-30	18-1-74
11.	Jodh Singh Bhandari	29-12-30	22-8-77
12.	Sushil Kumar	19-7-30	22-8-77
13.	Vijai Nath Singh	16-1-32	22-8-77
14.	Vishnu Narayan Roy	1-7-30	22-8-77
15.	Mahesh Chandra Rawat	27-12-30	22-8-77
16.	Ghanshyam Krishn Shukla	1-7-30	22-8-77
17.	Bhupendra Singh	24-11-32	22-8-77
18.	Devendra Prasad	20-12-30	22-8-77
19.	Harish Kumar	28-6-30	22-8-77
20.	Sheo Raj Singh	10-1-30	22-8-77
21.	Ram Lal	2-1-28	22-8-77
22.	Shyam Nath Prasad	30-3-32	22-8-77
23.	I.P. Bhatnagar	3-11-31	22-8-77
24.	S.P. Mishra	1-1-32	22-8-77
25.	Anand Prakash Sharma	1-10-32	22-8-77
26.	Kailash Pati Rai	1-2-31	22-8-77
27.	Ravi Bhushan Misra	30-8-32	5-4-78
28.	N.C. Joshi	31-12-31	5-4-78



2

A260

29. Jag Mohan Saxena	24-9-32	5-4-78
30. Brijendra Kumar Singh	25-1-34	5-4-78
31. Kashi Prasad Tripathi	30-1-33	25-4-78
32. Devendra Kumar Agrawal	7-5-32	25-4-78
33. Kewal Nand Bhatt	3-7-33	25-4-78
34. Yogendra Pal	5-2-32	25-4-78
35. P.P. Srivastava	1-11-32	25-4-78
36. Ahmad Hasan	2-1-34	25-4-78
37. A.N. Singh	13-1-35	25-4-78
38. R.S. Narain	22-4-35	25-4-78
39. Ramesh Chandra Srivastava	4-8-34	25-4-78
40. Hori Lal	25-4-31	25-4-78
41. H.P. Tripathi	1-7-34	25-4-78
42. T.K. Joshi	1-3-36	29-7-78
43. Ran Bahadur Singh	5-12-36	11-7-79
44. Manager Pande	10-5-37	11-7-79
45. H.P. Mishra	18-7-37	26-3-80
46. Uma Shanker	5-4-36	26-3-80
47. K.B. Srivastava	8-6-38	3-10-80
48. M.P. Dixit	10-1-37	3-10-80
49. Virendra Kumar	18-1-40	6-12-80
50. Ashok Kumar Pande	12-11-38	6-12-80
51. S.K. Chandra	20-7-37	6-12-80
52. U.C. Ghildiyal	22-5-37	6-12-80
53. A.B. Shukla	13-2-37	6-12-80
54. Uma Shanker Bajpai	28-11-37	6-12-80
55. Uma Shanker Srivastava	24-2-37	6-12-80
56. Radhey Shyam	31-1-32	6-12-80
57. Lalit Mohan Singh	10-7-36	11-12-82
58. Jagdish Chandra	25-7-36	11-12-82
59. R.B. Srivastava	28-6-38	11-12-82
60. Pratap Narain Saxena	14-7-40	11-12-82



61. Har Prasad Shukla	2-8-41	11-12-82
62. Sri Kant Tripathi	10-7-41	<del>22-11-83</del> 11-12-82
63. Girdi Raj Shah	15-4-40	22-11-83
64. S.K.A. Rizvi	8-6-38	22-11-83
65. Kamal Narain Roy	2-3-39	22-11-83
66. B.P. Gupta	2-1-38	22-11-83
67. Basdeo Lal	31-3-39	22-11-83
68. Eagan Das Maurya	4-7-29	19-12-83
69. P.N. Devodi	2-1-42	19-12-83
70. Gopal Krishna Shukla	23-6-39	19-12-83
71. R.S. Rana	20-6-40	19-12-83
72. Surendra Nath Singh	7-1-43	19-12-83
73. Chandra Dutt Sharma	13-2-42	19-12-83



A202

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD  
CIRCUIT BENCH : LUCKNOW

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO.II

In :

Case No. O.A. 74 of 1989

H.N. Srivastava

... Applicant

Versus

Union of India & others.

... Respondents

45 years

I, I.P. Tuli aged about 45 years son of  
Shri R.L. Tuli, Under Secretary, Union Public Service  
Commission, New Delhi do hereby solemnly affirm and  
state as under :-

1. That the ~~applicant~~ deponent is Under Secretary in Union Public Services Commission and is fully conversant with the facts deposited hereinafter.
2. That the contents of paras 1 to 6 of the application need no comments.
3. That the contents of para 7(i) to 7 (iv) relate to the Government of Uttar Pradesh Respondent no.3. (iii) who will make necessary submissions in this regard.
4. That in reply to the contents of para 7(v) of the application it is stated that the some of the Regulations which have been reproduced

.....2.



in the application have since been ammended and new provisions have been substituted . It is submitted that for correct reading of the Regulations and upto date copy of All India Service Mannual Part II may kindly be perused.

5. That in reply to the contents of para 7 (vi) to 7 (viii) of the application it is stated that the Selection Committee, constituted under regulation 3 of the Indian Police Service (Appointment by promotion) Regulations, 1955 (hereinafter referred to as Promotion Regulations), met on 27th December, 1985 for preparation of Select List of State Police Service Officers of U.P. for promotion to the I.P.S., considered the name of the applicant alongwith other eligible officers. The Committee prepared the Select List in accordance with the prodedure laid down in Regulation 5 of the Promotion Regulations. The service records of the applicant was assessed by the Selection Committee in accordance with the procedure laid down in Regulation 5(4) of the Promotion Regulations and he was assigned a grading. In accordance with Regulation 5(5) the Committee prepared a ~~size~~ Select List of 34 names, which was determined in accordance with Regulation 5(1) of the Promotion Regulation. The applicant was not included in the Select List only because sufficient number of officers who were assigned a higher grading than the applicant were available. The statement of the applicant for non-inclusion of his name in the said Select List is in gross violation of the Rule 5, is incorrect.



*[Signature]*

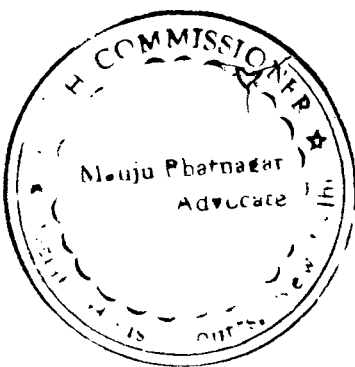
Cont....2.

6. That in reply to para 7 (ix) of the application it is submitted that the Select List which was prepared on 27th December, 1985 has been approved by the Union Public Service Commission on 6th February, 1989. The appointments of State Police Service Officers included in the Select List are being made by the Government of India under rule 9 of the I.P.S. (Appointment by Promotion) Regulations 1955 on receipt of necessary proposals from the concerned State Government. No such proposals have been received by the Govt. of India from the Govt. of U.P. upto 26th June, 1989.

7. That the contents of paras 7(x) to 7(xiv) relate to the Government of U.P. who will make necessary submission in this regard.

8. That in reply to the contents of para 7 (xv) to 7 (xix) it is submitted that the service record and character roll entries of the petitioner alongwith other eligible officers were thoroughly examined and on an overall assessment of these records, the eligible officers including the petitioner were classified as 'Outstanding', 'Very Good', 'Good' or 'Unfit' as required under regulation 5(4) of the Promotion Regulations. In this process the Junior Officers with higher grading may go higher in rank in the Select List, while the Senior Officers with lower grading may come down and may not be included in the Select List. In this connection the Hon'ble Supreme Court while upholding the Select List for promotion in case of R.S. Dass Vs. Union of India (Civil Appeal Nos. 4370/83 and 4372/1983) inter-alia held as under :

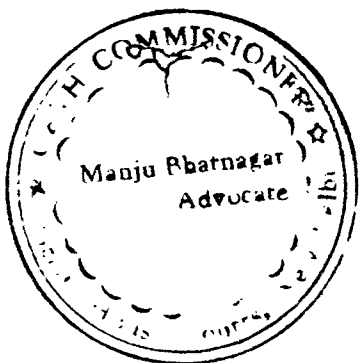
"Regulation 5 minimised the role of seniority in the process of selection and importance



A205

- 4 -

and primary was given to merit. This indeed is a laudable object and helps in having the best for the country. It is also true that if selection is made on merit alone for promotion to higher service, selection of such an officer through junior in service in preference to his senior does not really amount to supersession. If promotion is made on merit alone, the senior officer per-se has no legal right to promotion and if promotion is made on merit, it cannot be said that senior officer has been superseded ..... The amended Regulations have brought in significant change and now the process of selection as contemplated by Amended Regulations do not require the Selection Committee to record reasons for the supersession of officers of the State Civil Service..... Article 16 ensures equality in matters relating to appointment and promotion to an officer or post under the State. It enjoins State not to practise discrimination in matters relating to appointment and promotion. A member of the State Civil Service eligible for selection for promotion to the IAS has right to be considered alongwith others for selection for promotion. If eligible officers are considered on merit, in an objective manner no Government servant has any legal right to insist for promotion nor any such right is protected by Article 14 or 16 of the Constitution. Article 16 does not insist that reasons should be recorded for non-selection of a member of a State Service..... Having regard to the legislative history and the purpose and the object which, was sought to be achieved by the amendments there could be no mandatory legal obligation on the committee to record reasons..... Principles



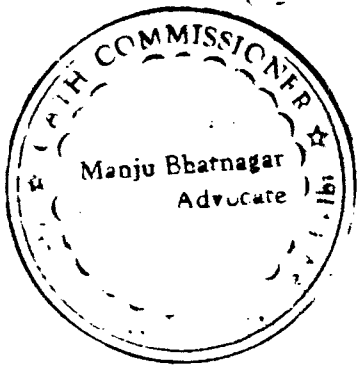
w

*J.C.*

5.

of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person. In the absence of statutory provision to all administrative authority is under no legal obligation to record reasons in support of its decision. There is no scope for applying principles of natural justice in matters relating to selection of suitable members of State Service for promotion to a higher service..... If during the process of selection a senior officer is proposed to be superseded by virtue of not being included in the select list, and if opportunity is afforded to him to make representation and only thereafter the list is finalised, the process would be cumbersome and time consuming. In this process it will be difficult for the Committee to prepare and finalise the select list within a reasonable period of time and the very purpose of preparing the Select List would be defeated. Scheme of the Regulations, therefore, clearly warrant execution of principle of audi-alterom partem. No vested legal right of a member of State Civil Service who after being considered, is not included in the Select list, is adversely affected. Non-inclusion in the Select List does not take away any right of a member of the State Civil Service that may have accrued to him as a Government servant, therefore, no opportunity is necessary to be afforded to him for making representation against the proposed supersession.....

The Selection Committee is constituted by high ranking responsible officers presided over by Chairman or a Member of the Union Public Service Commission. There is no reason to hold that they would not act in fair and impartial manner in making selection. The recommendat-



*[Signature]*

ions of the Selection Committee are scrutinised by the State Government and if it finds any discrimination in the selection it has the power to refer the matter to the commission with its recommendations. The Commission is under a legal obligation to consider the views expressed by the State Government alongwith the records of officers, before approving the select list. The Selection Committee and the Commission both include persons having requisite knowledge, experience and expertise to assess the service records and ability to adjudge the suitability of officers. In this view we find no good reasons to hold that in the absence of reasons the Selection would be made arbitrarily."

findings

These findings were reaffirmed in the case of H.L.Dev

Versus Union Public Service Commission & others

(AIR 1988, SC 1069) by the Hon'ble Supreme Court

which held that as to how the records of eligible officers should be assessed is the concern of the Selection Committee and the Tribunal cannot take upon itself this function. In view of the above, the contention of the applicant that he has been superceded by his juniors is untenable. The Selections have been made in accordance with the prescribed procedure and cannot be termed as arbitrary. The case of the applicant has duly been considered by the Selection Committee without any discrimination.



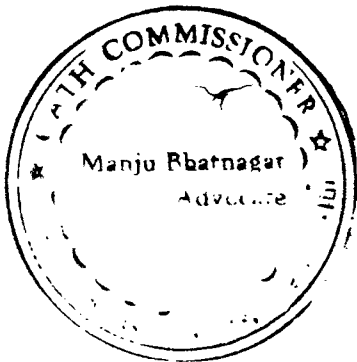
*[Handwritten signature]*

Cont.....7

- 7 -

9. That in reply to the contents of para 7 (xx) of the application it is stated that the Hon'ble High Court of Judicature at Allahabad has passed an order dated 16.1.86 in W.P. no.1549 of 1985 filed by Sri Basant Singh Vs. State of U.P. & others. The Hon'ble High Court had ordered that the respondents are restrained from making any further promotion to the post of Superintendent of Police or Addl. Supdt. of Police unless seniority list is prepared in accordance with the directions issued by the Service Tribunal and further no Select List of the I.P.S Grade will be prepared without finalisation of the seniority list.

The Select List prepared on 27th December, 1985 was not approved earlier because of Court Stay. The Govt. of Uttar Pradesh have informed that as per Supreme Court decision dated 4.11.1988, the seniority of the officers considered by the Selection Committee is not affected. Accordingly as proposed by Government of Uttar Pradesh, the Union Public Service Commission have approved the Select List of 1985 on 6th Feb, 1989.



10. That the contents of para 7 (XXI) relate to the Govt. of U.P. which will make necessary submissions in this regard.

11. That the contents of para 7 (xxii) of the application are denied. The position have already been explained in the foregoing paragraphs.

12. That in reply to the contents of para 7 (xxiii) of the application it is submitted that there are

....8

A handwritten signature in dark ink, appearing to be "J. Bhatnagar".

A209

8.

more vacancies in promotion quota of the IPS of Uttar Pradesh as on date as compared to the number of officers included in the Select List in question. Assuming, even if all the officers included in the Select List are appointed to IPS, sufficient number of the vacancies will be available in the promotion quota to accommodate the applicant in case his prayer is agreed to by the Hon'ble Bench of the Central Administrative Tribunal. The service interest of the applicant will not suffer on this ground.

13. That in reply to the contents of para 7 (xxiv) of the application it is submitted that the grounds taken are not tenable in fact and law, the application lacks merit and is liable to be dismissed with cost.

14. That the contents of para 8 to 14 of the application need no comments.

I identify the deponent who has signed in my presence.

Lucknow, dated,  
August 3<sup>rd</sup>, 1989.

  
DEPONENT.



VERIFICATION

I the above named deponent do hereby verify that the contents of paras 1 to 14 are true to the best knowledge and belief and nothing material has been concealed and no part of it is false. So help me God.


Lucknow, dated,  
August 9<sup>th</sup> 1989

  
DEPONENT.

Solemnly affirmed before me and read over explained to the deponent to be correct.

I identify the deponent who has signed this affidavit before me.

Advocate.

  
Oath Commissioners, N. T. Elhi.  
9.8.89

A710

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD  
CIRCUIT BENCH : LUCKNOW

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. II

In :

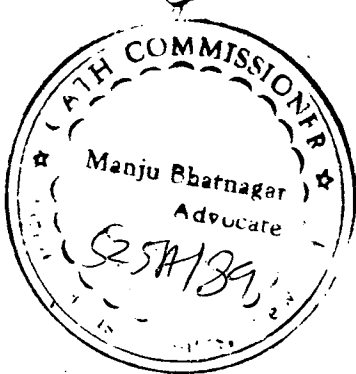
Case No. O.A. 74 of 1989

H.N. Srivastava ... Applicant  
Versus  
Union of India & others. ... Respondents

45 years

I, I.P. Tuli aged about 45 years son of  
Shri R.L. Tuli, Under Secretary, Union Public Service  
Commission, New Delhi do hereby solemnly affirm and  
state as under :-

1. That the ~~applicant~~ deponent is Under Secretary in Union Public Services Commission and is fully conversant with the facts deposed hereinafter.
2. That the contents of para 1 to 6 of the application need no comments.
3. That the contents of para 7(i) to 7 (iv) relate to the Government of Uttar Pradesh Respondent no.3. (iii) who will make necessary submissions in this regard.
4. That in reply to the contents of para 7(v) of the application it is stated that the some of the Regulations which have been reproduced

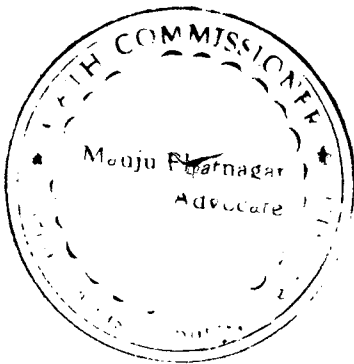


*[Signature]*

.....2.

in the application have since been amended and new provisions have been substituted. It is submitted that for correct reading of the Regulations and upto date copy of All India Service Manual Part II may kindly be perused.

5. That in reply to the contents of para 7 (vi) to 7 (viii) of the application it is stated that the Selection Committee, constituted under regulation 3 of the Indian Police Service (Appointment by promotion) Regulations, 1951 (hereinafter referred to as Promotion Regulations), met on 27th December, 1955 for preparation of Select List of State Police Officers of U.P. for promotion to the I.P.S., considering the name of the applicant alongwith other eligible officers. The Committee prepared the Select List in accordance with the procedure laid down in Regulation 5 of the Promotion Regulations. The service records of the applicant was assessed by the Selection Committee in accordance with the procedure laid down in Regulation 5(4) of the Promotion Regulations and he was assigned a grading. In accordance with Regulation 5(5) the Committee prepared a ~~Size~~ Select List of 34 names, which was determined in accordance with Regulation 5(1) of the Promotion Regulation. The applicant was not included in the Select List only because sufficient number of officers who were assigned a higher grading than the applicant were available. The statement of the applicant for inclusion of his name in the said Select List is in gross violation of the Rule 5, is incorrect.



*[Signature]*

Cont..... 3

A212

6. That in reply to para 7 (ix) of the application it is submitted that the Select List which was prepared on 27th December, 1985 has been approved by the Union Public Service Commission on 6th February, 1989. The appointments of State Police Service Officers included in the Select List are being made by the Government of India under Rule 9 of the I.P.S. (Appointment by Promotion) Regulations 1955 on receipt of necessary proposals from the concerned State Government. No such proposals have been received by the Govt. of India from the Govt. of U.P. upto 26th June, 1989.

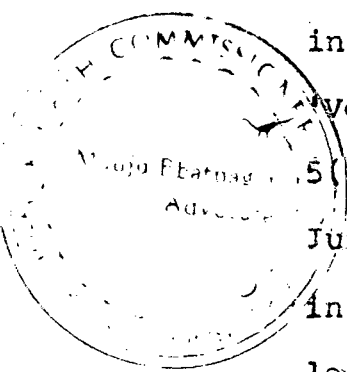
7. That the contents of paras 7(x) to 7(xiv) relate to the Government of U.P. who will make necessary submission in this regard.

8. That in reply to the contents of para 7 (xv) to 7 (xix) it is submitted that the service record and character roll entries of the petitioner alongwith other eligible officers were thoroughly examined and on an overall assessment of these records, the eligible officers including the petitioner were classified as 'Outstanding', 'Very Good', 'Good' or 'Unfit' as required under regulation 5(4) of the Promotion Regulations. In this process the Junior Officers with higher grading may go higher in rank in the Select List, while the Senior Officers with lower grading may come down and may not be included in the Select List. In this connection the Hon'ble Supreme Court while upholding the Select List for promotion in case of R.S. Dass Vs. Union of India (Civil Appeal Nos. 4370/83 and 4372/1983) inter-alia held as under :

"Regulation 5 minimised the role of seniority in the process of selection and importance



.....A



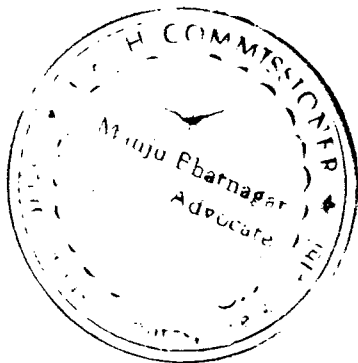
A  
213

and primacy was given to merit. This indeed is a laudable object and helps in having the best for the country. It is also true that if selection is made on merit alone for promotion to higher service, selection of such an officer though junior in service in preference to his senior does not really amount to supersession. If promotion is made on merit alone, the senior officer per-se has no legal right to promotion and if promotion is made on merit, it cannot be said that senior officer has been superseded ..... The amended Regulations have brought in significant change and now the process of selection as contemplated by Amended Regulations do not require the Selection Committee to record reasons for the supersession of officers of the State Civil Service..... Article 16 ensures equality in matters relating to appointment and promotion to an officer or post under the State. It enjoins State not to practise discrimination in matters relating to appointment and promotion. A member of the State Civil Service eligible for selection for promotion to the IAS has right to be considered alongwith others for selection for promotion. If eligible officers are considered on merit, in an objective manner no Government servant has any legal right to insist for promotion nor any such right is protected by Article 14 or 16 of the Constitution. Article 16 does not insist that reasons should be recorded for non-selection of a member of a State Service..... Having regard to the legislative history and the purpose and the object which, was sought to be achieved by the amendments there could be no mandatory legal obligation on the committee to record reasons ..... Principles



of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person. In the absence of statutory provision to all administrative authority is under no legal obligation to record reasons in support of its decision. There is no scope for applying principles of natural justice in matters relating to selection of suitable members of State Service for promotion to a higher service..... If during the process of selection a senior officer is proposed to be superseded by virtue of not being included in the select list, and if opportunity is afforded to him to make representation and only thereafter the list is finalised, the process would be cumbersome and time consuming. In this process it will be difficult for the Committee to prepare and finalise the select list within a reasonable period of time and the very purpose of preparing the Select List would be defeated. Scheme of the Regulations, therefore, clearly warrant execution of principle of audi-alterom partem. No vested legal right of a member of State Civil Service who after being considered, is not included in the Select list, is adversely affected. Non-inclusion in the Select List does not take away any right of a member of the State Civil Service that may have accrued to him as a Government servant, therefore, no opportunity is necessary to be afforded to him for making representation against the proposed supersession.....

The Selection Committee is constituted by high ranking responsible officers presided over by Chairman or a member of the Union Public Service Commission. There is no reason to hold that they would not act in fair and impartial manner in making selection. The recommendat-



*Int.*

ions of the Selection Committee are scrutinised by the State Government and if it finds any discrimination in the selection it has the power to refer the matter to the commission with its recommendations. The Commission is under a legal obligation to consider the views expressed by the State Government alongwith the records of officers, before approving the select list. The Selection Committee and the Commission both include persons having requisite knowledge, experience and expertise to assess the service records and ability to adjudge the suitability of officers. In this view we find no good reasons to hold that in the absence of reasons the Selection would be made arbitrarily.

findings

These findings were reaffirmed in the case of H.L. Dev Versus Union Public Service Commission & others (AIR 1988, SC 1069) by the Hon'ble Supreme Court which held that as to how the records of eligible officers should be assessed is the concern of the Selection Committee and the Tribunal cannot take upon itself this function. In view of the above, the contention of the applicant that he has been superceded by his juniors is untenable. The Selections have been made in accordance with the prescribed procedure and cannot be termed as arbitrary. The case of the applicant has duly been considered by the Selection Committee without any discrimination.



*Jul*

Cont.....

9. That in reply to the contents of para 7 (xx) of the application it is stated that the Hon'ble High Court of Judicature at Allahabad has passed an order dated 16.1.86 in W.P. no.1549 of 1985 filed by Sri Basant Singh Vs. State of U.P. & others. The Hon'ble High Court had ordered that the respondents are restrained from making any further promotion to the post of Superintendent of Police or Addl. Supdt. of Police unless seniority list is prepared in accordance with the directions issued by the Service Tribunal and further no Select List of the I.P.S Grade will be prepared without finalisation of the seniority list.

The Select List prepared on 27th December, 1985 was not approved earlier because of Court Stay. The Govt. of Uttar Pradesh have informed that as per Supreme Court decision dated 4.11.1988, the seniority of the officers considered by the Selection Committee is not affected. Accordingly as proposed by Government of Uttar Pradesh, the Union Public Service Commission have approved the Select List of 1985 on 6th Feb, 1989.



10. That the contents of para 7 (XXi) relate to the Govt. of U.P. which will make necessary submissions in this regard.

11. That the contents of para 7 (xxii) of the application are denied. The position have already been explained in the foregoing paragraphs.

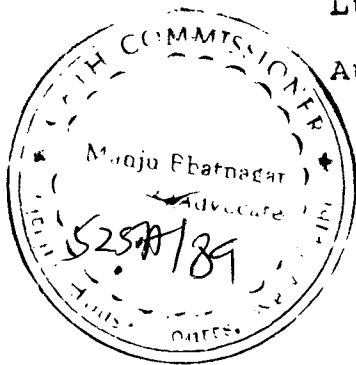
12. That in reply to the contents of para 7 (xxiii) of the application it is submitted that there are

more vacancies in promotion quota of the IPS of Uttar Pradesh as on date as compared to the number of officers included in the Select List in question. Assuming, even if all the officers included in the Select List are appointed to IPS, sufficient number of the vacancies will be available in the promotion quota to accommodate the applicant in case his prayer is agreed to by the Hon'ble Bench of the Central Administrative Tribunal. The service interest of the applicant will not suffer on this ground.

13. That in reply to the contents of para 7 (xxiv) of the application it is submitted that the grounds taken are not tenable in fact and law, the application lacks merit and is liable to be dismissed with cost.

14. That the contents of para 8 to 14 of the application need no comments.

Lucknow, dated,  
August 9<sup>th</sup>, 1989.



*[Signature]*  
DEPONENT.

#### VERIFICATION

I the above named deponent do hereby verify that the contents of paras 1 to 14 are true to the best knowledge and belief and nothing material has been concealed and no part of it is false. So help me God.

Lucknow, dated,  
August 9<sup>th</sup> Aug 1989

*[Signature]*  
DEPONENT.

I identify the deponent who has signed this affidavit before me.

Solemnly affirmed before me read over  
explained to the deponent to be correct.

Advocate.

*[Signature]*  
Cath. Commissioners, Lucknow  
9.8.89

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH AT LUCKNOW

A218

C.M. An. No. ~~159~~ /89(L)  
In re:  
O.A.No.74/1989 (L)

H.N. Srivastava --- Applicant  
Versus  
Union of India. --- Respondents

APPLICATION FOR PERMISSION TO FILE SUPPLEMENTARY  
COUNTER AFFIDAVIT

The above named respondents No.3 and 4  
respectfully beg to state as under :-

That for the facts and reasons stated in  
the accompanying supplementary counter affidavit  
it is respectfully prayed that the <sup>respondents</sup> ~~applicant~~  
may be allowed to file Supplementary Counter  
Affidavit and the attached supplementary  
counter affidavit may be taken on record.

Recd. Encl. copy  
Shallir Singh  
Adv.  
(Counsel for the Applicant)  
at 11 A.M.  
on 6.6.89.

Lucknow, dated:  
June 6, 1989.

Anoop Kumar  
(Anoop Kumar)  
Advocate  
Counsel for Respondents 3 & 4

A 219

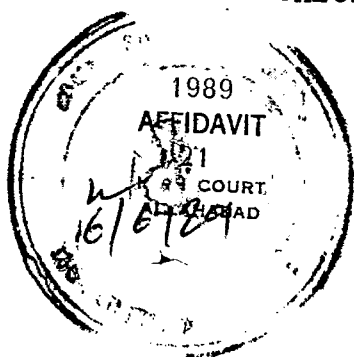
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH AT LUCKNOW

C.M. An.No. /89(L)  
In re:  
O.A. No. 74/1989(L)

H.N. Srivastava --- Applicant

Versus

Union of India & others --- Respondents



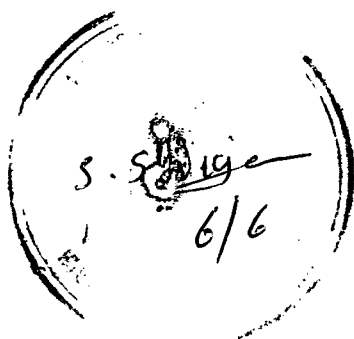
SUPPLEMENTARY COUNTER AFFIDAVIT ON BEHALF  
OF RESPONDENT No.3 AND 4 TO THE REJOINDER  
OF THE APPLICANT.

I, Padma<sup>h</sup>ar Srivastava aged about 36 years son of late Sri J.N. Srivastava presently posted as U.D.A. Home (Police Services) Section-2, U.P. Secretariat Lucknow do hereby solemnly affirm and state as under :-

1. That the applicant has raised certain facts in his Rejoinder affidavit which are liable to be controverted. Therefore the necessity of filing this supplementary counter affidavit arose.

2. That it may be pertinent to mention here that due to the strike of Secretariat employees, the detailed reply of counter affidavit to the main petition as well as other applications could not be filed because the allegations mentioned in those applications and main petition are to be verified from the records.

3. That the applicant had already been relieved from the post of Commandant, 20th Battalion, P.A.C. Azamgarh on 1st of May 1989 afternoon and on the



6/6/89.

same day itself in the afternoon the applicant had already handed over charge to Sri S.C. Yadav, his reliever who is still holding the charge.

4. That the applicant concealed the aforesaid facts from this Hon'ble Tribunal and got the stay Order on 11th<sup>th</sup> May 1989 from the Hon'ble Tribunal.
5. That when the answering respondents no.3 and 4 moved an application on 16.5.89 for vacating the stay order, then the applicant on 25.5.89 sent a telegram to the Home Secretary informing him that the applicant has assumed charge of 20th Bataillion, P.A.C., Azamgarh and also sent the post copy of confirmation along with the charge certificate in which there ~~was~~ is no signature of the relieving authority. A copy of the same is attached herewith as Annexure SCA-I to this Supplementary Affidavit.
6. That the applicant has prepared the aforesaid charge certificate for the purposes of this case in order to prejudice this Hon'ble Tribunal.
7. That in this way according to the applicant he has assumed the charge of a post on which Sri S.C.Yadav had already taken over charge on 1st day of May 1989 from the applicant.
8. That in this way there are two officers on the same post and for this reason also if the stay order is not vacated, the answering respondents would suffer great and irreparable



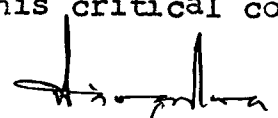
*[Signature]*  
6/6/89

A221

loss and have to face this critical condition.

LUCKNOW:

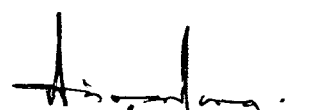
DATED : JUNE 6, 1989

  
DEPONENT  
6/6/89.

V e r i f i c a t i o n :

I, the above named deponent do hereby verify that the contents of this supplementary counter affidavit from paras 1 to 8 are true to my knowledge and belief. No part of it is false and nothing material has been concealed. So help me God.

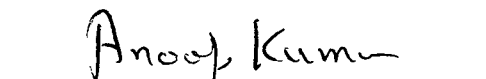
Lucknow : Dated: 6-6-89

  
DEPONENT  
6/6/89.  
Clerk to Sri

I,


Anoop Kumar Advocate High Court

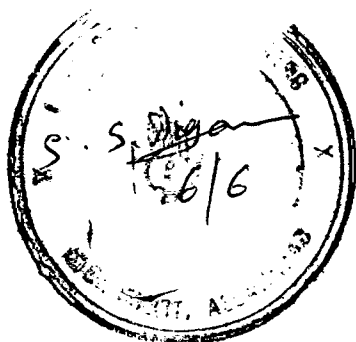
Allahabad, Lucknow Bench Lucknow do hereby declare that the person making this affidavit and alleging himself to be Sri Padmakar Srivastava is the same person who is known to me from the perusal of records produced before me in this case.

  
Anr.

Solemnly affirmed before me on 6.6.89 the day of 6 June 1989 at 10.00 a.m./p.m. who has been identified by the aforesaid.

I have satisfied myself by examining the deponent that he has understood the contents of this affidavit which has been read over and explained to him.

  
OATH COMMISSIONER  
SATYA SINGH NIGAM  
OATH COMMISSIONER  
High Court, Lucknow Bench Lucknow.  
No. 21/160 Date 6.6.89



Union of India ser. ---

Respondents

Annexure No SC-A - I

कोषाधिकारी, अजमेरगढ़ ।

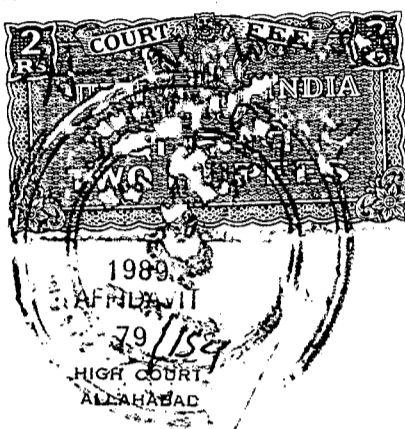
PS2  
2/27/15

6/6/89

A223

Filed today  
30/5/09

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD  
CIRCUIT BENCH AT LUCKNOW



RECOINDER AFFIDAVIT  
(To the short Counter-affidavit of respondents no.3,

IN

O.A.CASE NO. 74/89(L)

H.N.Srivastava .....Applicant

Vs.

Union of India and others .....Respondents

Affidavit of H.N. Srivastava<sup>2</sup>  
aged about 44 years Son of  
Sri L.P. Srivastava<sup>2</sup>  
Posted as Commandant,<sup>2</sup>  
20th Bu., PAC., Azamgarh.<sup>2</sup>

(deponent)

I, the deponent abovenamed do  
hereby solemnly affirm and state as under:

1- That the deponent is the applicant in the  
instant case and as such he is fully conversant with  
the facts of the case deposed to below.



A 224

-2-

2- That the deponent has read the contents of paras of the counter affidavit filed on behalf of respondents no.3 and 4 and as such he is fully acquainted with the facts of the case deposed to below.

3- That the contents of para 1 of the counter affidavit does not call for any reply.

4- That the contents of para 2 of the counter affidavit does not call for any reply. However, it is stated that the posting of the applicant from the post of Commandant, 20 Bn, P.A.C. Azamgarh to the post of Dy. Commandant, 44 Bn, P.A.C. Meerut is not merely transfer simply but it amounts to change of cadre of the applicant from the Cadre post to a non cadre post which is also inferior in status to the post of Commandant P.A.C. The aforesaid posting is wholly illegal inasmuch as the respondents no.3 and 4 in order to alleged accommodation of the incumbents selected in the select list of 1985 has made such posting, although in fact till this date '47' vacancies to senior cadre post in promotion quota of IPS are existing and therefore, even if all the select list officers are accommodated there is no need to change the status of the applicant. In fact the aforesaid change is being made in order to cause break in continuous officiation on a senior post in Cadre in order to cause loss of seniority to the applicant. In case subsequently



A225

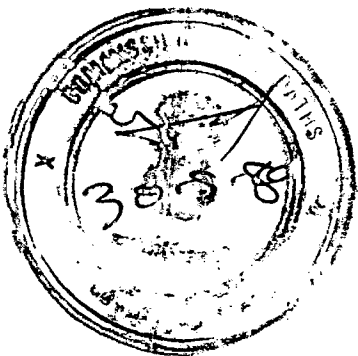
-3-

his claim is allowed and he is selected and appointed in IPS accordingly. Details of the vacancies are as under:

(a) On 22.5.1988 the select committee had fifteen vacancies which includes the existing vacancies as well as the vacancies likely to occur in the following 12 months from the date of commencement of the meeting of the select committee.

(b) That after 22.5.1983 the following vacancies occurred :

<u>Sl.no.</u>	<u>Name</u>	<u>Date of occurrence of vacancy</u>
1-Sri P.N.Misra		1-7-1983
2-Sri J.N.Awasthi		2-7-1983
3-Sri B.N.Dhawan		2-7-1983
4-Sri K.P.Tewari		10-8-1983
5-Sri K.N.Misra		1-11-1983
6-Sri O.P.Agnihotri		12.5.1983
7-Sri Shiv Poojan Singh		1-1-1984
8-Sri R.K.Misra		26-6-1984
9-Sri J.S.Tingal		4.1.1986
10-Sri Mahesh Singh		19.1.1985
11-Sri Onkar Sharma		15.4.1985
12-Sri Diwakar Acharya		18.7.1985
13-Sri J.N.Tewari		1-1-1986
14-Sri Ram Lal		2-1-1986



-4-

15-Sri Shyam Babu Dubey	5-1-1986
16-Sri A.K.Kaul	7-1-1986
17-Sri P.N.Tripathi	30 1.1986
18-Sri Zainuddin Ahmad	2.2.1986
19-Sri J.R.Gupta	1-3-1986
20-Sri K.D.Dixit	17-7-1986
21-Sri R.P.Dubey	20.7.86
22-Sri P.M.Srivastava	16.3.1986
23-Sri A.N.Tewari	6.11.1986
24-Sri M.D.Maurya	31.7.1987
25-Sri Ram Saran	31-7-1987
26-Sri Sheo Raj Singh	31.1.1988
27-Sri Om Prakash	31-2-1988
28-Sri Sushil Kumar	31-2-1988
29-Sri Harish Kumar	30-6-1988
30-Sri V.N.Roy	30-6-1988
31-Sri G.K.Shukla	"
32-Sri U.N.Sharma	30.9.1988
33.Sri Jodh Singh Bhandari	31.12.1988
34-Sri M.C.Rawat	"
35-Sri Devendra Pd.	"



(o) That by besides above the IPS Cadre Schedule of IPS U.P.Cadre has been revised vide gazette notification dated 20.2.1988 whereby promotion quota of U.P. Cadre of IPS has been revised from '82' to 94 i.e. increase of '12' posts.

-5-

5- That the contents of para 3 of the counter affidavit being matter of record does not call for any reply. As the respondent no.3 did not put in appearance before the Hon'ble Tribunal on 11.5.1989 and as the applicant was going to incur loss irreparable and the Hon'ble court felt satisfied that with the genuineness of the grievance of the applicant it passed the following interim order on 11.5.1989:

"Sri Budhwar, learned counsel for the applicant argued in pursuance of Misc.application no.100/89 (L) filed on 29.4.1989 thereafter a supplementary application on the same issue has been filed on 28.4.1989 and also another application on the same issue has been filed on 11.5.1989 containing a supplementary affidavit. In the orders dated 29.4.1989 the learned counsel for the applicant was directed to supply a copy of the application for interim relief to the learned counsel for the respondents to enable them to prepare reply and file written objection, if any, on or before 11.5.1989. No reply has been filed on behalf of the respondents. Sri Dinesh Chandra, learned counsel is present on behalf of Union of India (Respondent no.1) None is present on behalf of respondent no.3 namely State of U.P through the Secretary, Home Deptt., The learned counsel for the applicant states that even though another interim order was passed earlier in this case reserving a vacancy for the applicant pending final orders in this case, in the



-6-

meanwhile the applicant has been transferred to a non cadre post by a Radiogram dated 23.4.1989 which according to rules cited by the learned counsel for the applicant, deprived the applicant from counting his seniority in continuation, in the post which he is holding within the cadre. The posting of this officer is being done by respondent no.3, who, however, unfortunately have not responded or been represented by any one. Considering the circumstances the case is posted for hearing on the interim relief in Application no.100/89(L) on 16th May 1989. Till that date status quo ante shall provide i.e. to say, the applicant shall be treated to be on the post which he had been holding before the impugned transfer order were issued, and shall not be compelled to take charge in the new post of Dy. Commandant, PAC 44 Bn Meerut. A copy of these orders may be served on the respondent no.3 today. For this purpose a copy meant for respondent no.3 may be handed over to the learned counsel for the respondent no.1, who has undertaken to serve the same to respondent no.1.



The aforesaid order has been extended by this Hon'ble Tribunal vide order dated 16th May 1989 upto 30th May 1989.

6- That in reply to the contents of para 5 of the counter affidavit it is stated that the Hon'ble Tribunal passed the aforesaid order dated 11.5.1989 extended on

A229

-7-

16.5.1989 on the basis of rules applicable to the applicant's case and the averments to the contrary contained in para under reply are incorrect and denied.

In reply to  
7- That/the contents of para 6 of the counter affidavit it is not disputed that by notification dated 27.7.1988 IPS (Regulation of seniority) Rules, 1988 had come into force and the earlier rules have been repealed. However by proviso to sub rule (2) of Rule 8 of the Seniority rules, 1988 orders made earlier shall be deemed under the provision of the new rules. The applicant is further advised to state that the seniority is a civil right vested in the incumbents in accordance with the rules and in accordance with 1954 Seniority Rules right to count officiating services for the purposes of seniority vested in the applicant from the date he officiated on the senior post and, therefore, that right can not be divested <sup>from</sup> ~~and~~ the applicant by the subsequent rules and therefore so far as applicant is concerned he is entitled to be considered in accordance with the old rules and new rules are not applicable to him at all otherwise the new rules shall be ultravires, violative of Article 16 of the Constitution read with section 3 of All India Services Act.



8- That the contents of paras 7 and 8 of the counter affidavit in view of the facts stated herein

-8-

before are wholly misconceived, incorrect and denied. In case it is stated that the status of the applicant can not be reduced in order to give effect to an illegal and incorrect select list and the petitioner's right to hold the post of Commandant, P.A.C., or any post equivalent to that can not be adversely affected while conferring the same benefit to his junior officers. At this stage it is necessary to state here that the select list prepared by the respondent is also illegal on account of being short in size and hence in violation of regulation 5(1) of IPS (Appointment by Promotion) Regulation 1955 inasmuch as according to the details of the vacancies given above 1985 select list ought to have contained the names of '44' incumbents although list of only '34' incumbents have been prepared. Hence the entire list is liable to be ignored and/or in the alternative the respondents are bound to consider and include ten more names in the select list of 1985 and the applicant is also entitled to be considered for the same. Unless and until 1985 select list is prepared in accordance with the rules no order adverse to the applicant in consequence of the said select list can be passed and the applicant's status can not be changed to his detriment by posting him against the post which is of inferior status.



9- That in reply to the contents of para 9 of the counter affidavit the assertions contained in the preceding paras are reiterated as correct and assertions to the contrary contained in para under reply are incorrect and denied.

-9-

10- That the contents of para 10 of the counter affidavit are wholly false, incorrect and denied. The respondent shall not suffer any loss inasmuch as the respondents are hold- already intending not to reduce the pay scale of the applicant and it is only a matter of status of the post against which the applicant has to be posted. The number of vacancies available are quite large and therefore there is no question of any loss to be suffered by the respondents. The assertions to the contrary contained in para under reply are incorrect and denied.

I, the deponent abovenamed do hereby declare that the contents of paras 2 1 to 10 - 2 are based on true to my personal knowledge and those of paras 2 are based on perusal of record and those of paras 2 are based on legal advice which all I believe to be true and nothing material has been concealed and no part of it is false. So help me God.

H  
DEPONENT

I, 2 Baljoo Singh clerk to Sri SUDHIR AGARWAL ADVOCATE HIGH COURT ALLAHABAD do hereby declare that the person making this affidavit and alleging himself to be Sri 2 is the same person who is known to me from the perusal of record.

Solemnly affirmed before me on the 2 day of May 1989 at 2 2 who has been identified by the aforesaid. 2 2



A232

2/ Identify the deponent -10- who has signed before  
me on 30/5/89 & me personally. I have been satisfied myself by

examining the deponent that he has understood the contents of this affidavit which has been read over and explained to him.



Oath commissioner

HW

OK - H. H. Jee  
D. B. ARUNAJ  
OATH COMMISSIONER  
High Court, Lucknow, Bench Lucknow  
No. 49/1/89  
Date 30/5/89

A233

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH AT LUCKNOW

O.A. No. 748 OF 1989

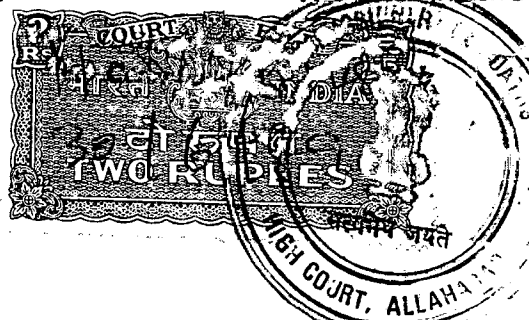
H.N.Srivastava

...Applicant

Versus

Union of India and others

Respondents



Received Cts  
Anup Kumar  
Adm.  
30/6/89 at 11 AM.

Rejoinder Affidavit to the Counter Affidavit  
filed by State of U.P. (Respondent No.3) on  
29.6.89 before this Hon'ble Tribunal.

I, H.N.Srivastava, aged about 44 years, son of  
Sri L.P. Srivastava presently posted as Commandant 25th Bn.  
P. A. C. Azamgarh do hereby solemnly affirm and state as under:

1. That the deponent is <sup>the</sup> applicant in the above noted  
<sup>case</sup> and is as such fully acquainted with the facts of the  
case. The deponent received the short Counter Affidavit  
dated 26th June, 1989 alongwith stay vacating application  
dated 11.5.89 on 29th June 1989 at 10.45 A.M. in the  
Hon'ble Tribunal.

2. That the contents of paras 3 and 4 of the  
supplementary Counter Affidavit dated 26th June 1989  
states regarding the factum of filing two short  
Counter Affidavit dated 16.5.89 and 6.6.89 and also the  
order dated 6.6.89 passed by this Hon'ble Tribunal  
and therefore the said facts being matter of record  
need no reply.



dw

A234

3. That the contents of paras 5 to 12 of the <sup>short</sup> Supplementary Counter Affidavit dated 26th June 1989 are the verbatim reproduction of para 2 to 9 of <sup>short</sup> supplementary Counter Affidavit dated 16.5.89 in reply whereof the applicant has already filed a Rejoinder Affidavit on 30th May 1989 before this Hon'ble Tribunal. In order to avoid repetition in the matter the applicant most respectfully request the Hon'ble Tribunal <sup>that</sup> ~~to treat~~ the Rejoinder Affidavit filed by the applicant on 30th May 1989 may be read in reply of contents of para 5 to 12 of the <sup>short</sup> Supplementary Counter Affidavit dated 26.6.89 and be treated as part and parcel of instant Rejoinder Affidavit.

4. That the applicant is replying the remaining paras of <sup>short</sup> supplementary Counter Affidavit dated 26th June 1989 as hereunder:-

(a) That the contents of para 1 of the <sup>short</sup> Supplementary Counter Affidavit dated 26.6.89 need no reply.

(b) That the contents of para 2 of Supplementary Counter Affidavit dated 26.6.89 is not admitted as stated. In reply it is submitted that the instant application was admitted by this Hon'ble Tribunal on 3rd April 1989 and the notice were issued to the Respondent with the direction to file Counter Affidavit of their replies. The respondent did not file any detailed Counter Affidavit to the main application although the <sup>strike</sup> of Secretariat staff commenced from 14th May 1989 only. The aforesaid <sup>strike</sup> ended on 19th June 1989 and the instant short Counter Affidavit alleged to have been prepared on 26th June 1989 and has been filed and served on 29th June 1989. The aforesaid



A235

3

fact clearly shows that the ~~supp~~<sup>2</sup> respondents have enough time to prepare and file a detailed reply to the main application as well as the ~~supplementary~~<sup>2</sup> Affidavit filed by the applicant but they have deliberately avoided to do so for the reasons best known to them. Hence the contention made in para under reply that the respondent no. 3 could not prepare the detailed counter affidavit due to strike of secretariat employees is absolutely false and incorrect, hence denied.

(c) That in reply to the contents of para 13 of the assertion that the applicant concealed the fact of giving charge to <sup>2</sup> successor in pursuance of the transfer order dated 23rd April 1989 from the Hon'ble Tribunal and obtained the stay order dated 11 May 1989, is absolutely false, incorrect and denied. On 11th May 1989 the Hon'ble Justice K. <sup>2</sup> Raman, A. <sup>2</sup> specifically made a query from Shri S.C. Budhwar, Advocate the Counsel for the applicant as to whether the applicant has given charge or not. Sri Budhwar categorically stated that the applicant has already handed over the charge of the post of Commandant 20th Battalion P.A.C. Azamgarh but has not taken over the charge of the post of Dy. Commandant P.A.C. 44th Battalion Meerut. Considering the factum of giving over the charge of 20th Battalion P.A.C. and in order to effectively protect the interest of the applicant the Hon'ble Tribunal passed the order of status quo ante. The relevant part of the order dated 11 May 1989 is being quoted as hereunder-

" Till that date status quo ante shall



provide, that is to say, the applicant shall be treated to be on the post which he had been holding before the impugned transfer order were issued and shall not be compelled to take charge in the new post of Dy. Commandant 44th Bn. Meerut ".

(d) That the contents of para 13 of the <sup>2 short</sup> ~~supplementary~~ Counter Affidavit dated 26.6.89 have been shown on the basis of knowledge and belief. On ~~11th~~ <sup>7th</sup> 11th May 1989 none was present before the Tribunal on behalf of the State of U.P. as is also apparent from the order dated 11.5.89. Hence there is nothing available on record to show that the applicant concealed any fact from the Hon'ble Tribunal and obtained stay order and the Hon'ble Tribunal was not apprised of the factum of handing over charge hence the respondent no. 3 has deliberately made a false allegation against the applicant <sup>and has 2 sworn 2</sup> as also shown a false affidavit knowingly it to be false as there is nothing to show how the deponent of the <sup>2 short 2</sup> ~~supplementary~~ Counter Affidavit dated 26.6.89 derived the said knowledge although neither he was present nor any one else on his behalf on 11th May 1989.

Further it may also be pointed out that the aforesaid allegation appears to be clearly an after-thought inasmuch as in the earlier <sup>2 short 2</sup> ~~supplementary~~ counter affidavit dated <sup>2</sup> 16th May 1989 filed alongwith the stay vacating application no such allegation was made. If the aforesaid false allegation came to the knowledge



*[Handwritten signature]*

of respondent no. 3 subsequently neither the source of such knowledge has been disclosed nor it has been asserted anywhere in the <sup>Short</sup> ~~supplementary~~ Counter Affidavit dated 26.6.89.

(e) That the contents of para 14 and 15 of the <sup>Short</sup> ~~supplementary~~ counter affidavit dated 26.6.89 as stated are not admitted. The respondent after being communicated with the order dated 11 May 1989 did not issue any direction to the applicant or Sri S.C. Yadav who had ~~been~~ taken over charge from the applicant of the post of Commandant 20th Battalion P.A.C. Azamgarh. The applicant personally met with the various senior Officers requesting them to issue suitable directions in the light of order dated 11 May 1989 of Hon'ble Tribunal but they sat tight over the matter. Hence the applicant had no other alternative but to inform the respondent no. 3 that he had assumed charge as Commandant P.A.C. 20th Battalion Azamgarh in pursuance of the orders of Hon'ble Tribunal. The said communication was also necessary for the release of applicant's pay etc. hence the contention that the applicant sent the said telegram only after the stay vacating application was moved and the said action is for the purpose of the case is wholly false, incorrect and denied.



(f) That the contents of paras 16 and 19 of the application as stated are not admitted and hence denied. The Hon'ble Tribunal vide order dated 11 May 1989 has clearly protected the interest of the applicant to the extent that applicant's continuous officiation on senior post in I.P.S. may not be broken and for that the order of the status quo ante has been passed.

The applicant has no grievance against the transfer from Azamgarh to any other place but his request is that he should be posted against the senior post in I.P.S.

The applicant has already pointed out in his rejoinder affidavit filed on 30th May 1989 that <sup>2 many 2</sup> ~~there are~~ vacancies <sup>2</sup> are

<sup>2 lying 2</sup> in the promotion quota in I.P.S. in 1989 and therefore there is no inconvenience or difficulty to the respondent in posting the applicant on senior post in the cadre. Hence the <sup>2 assertion 2</sup> contrary to the aforesaid in para under reply are incorrect and denied.

(g) That in case the interim order dated 11 May 1989 is not confirmed the applicant shall suffer great and irreparable loss for the following reasons -

(i) That the vacancies which are going to be filled occurred before the promulgation of the new rules of seniority of 1988 and hence the same are liable to be filled in accordance with earlier rules.

(ii) That in the earlier rules which were applicable till 26th <sup>2</sup> July 1988 the continuous officiation on senior post in I.P.S. was liable to be counted <sup>2</sup> for the purposes of year of allotment and seniority. Hence any incumbent of State Police Service if officiated continuously on senior post was entitled to counter the entire officiating service on senior post.

(iii) That the applicant was promoted on a senior post in I.P.S. as Additional S.P. under rule 9 of the I.P.S. Cadre rules in the year 1988 and is continuously holding the same till this date.

(iv) That the applicant was eligible and entitled

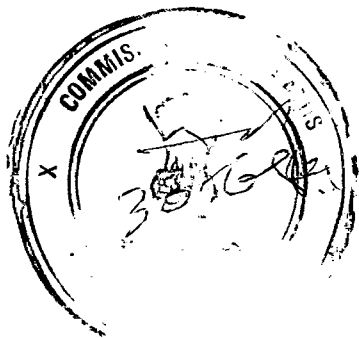


to be considered for inclusion in Select List of 1988 and onward but he could not be so considered or included firstly for the reasons that all the select lists <sup>ie. from 1988 to 1985</sup> prepared were short in size prescribed under regulation 5(1) of the IPS (Appointment by Promotion) Regulations and secondly due to stay order passed by the Hon'ble Supreme Court with regard to appointment by promotion in I.P.S. from the officers of State Police Service of U.P. in a case with regard to the dispute of seniority among the State Police Officers.

(v) That hence the delay occurred in the matter of appointment in I.P.S. due to the stay order passed by a court of law cannot be applied to the detriment of the applicant hence amendment in the rules cannot effect the right of the applicant in the matter of seniority and appointment in I.P.S. merely because the said action could not be taken earlier due to <sup>no</sup> ~~the~~ fault of the applicant.

(vi) That in any case the select~~ed~~ list of 1985 cannot be made a basis for appointment in I.P.S. in the year 1989 inasmuch as review and revision of the select list every year is mandatory and non-consideration of service record of all the eligible incumbents every year is only violative of Article 16 but also is in the teeth of mandatory recruitment rules.

(vii) That there is no reason available for the Government to give a break in the continuous officiation of the applicant on senior post in I.P.S.



th

inasmuch as 41 vacancies in promotion quota are lying vacant and the select list of 1986 and onwards has yet to be prepared. Further there is no deterioration in the work and performance of the applicant but to the best of his knowledge the character roll entries are exemplary.

(viii) That <sup>the</sup> ~~the~~ fact <sup>the</sup> ~~h~~ State Government by posting the applicant against the post which is not equivalent to I.P.S. cadre post <sup>is</sup> ~~is~~ acting mischievously and neither any equity is in their favour nor they are otherwise entitled to do so under law.

(ix) That the post of Dy. Commandant is equivalent to the post of Assistant Commandant and in fact no such post under the designation of Dy. Commandant in P.A.C. has been created till this date under the provisions of P.A.C. Act. The duties and responsibilities and status of Dy. Commandant P.A.C. is equivalent to the post of Dy.S.P. and uptill now the post has been held by the officers of the rank of Dy.S.P. hence the order of transfer amounts to reversion and therefore in order to protect the interest of applicant in I.P.S. the same should not be given effect at <sup>all</sup> ~~all~~.



(h) That it may be stated that a similar case challenging the validity of the select list of 1985 has been admitted by Hon'ble Tribunal in which also the allegation similar <sup>to</sup> ~~h~~ that which have been made by the applicant, are contained and the said case <sup>is</sup> ~~is~~.

lv

A241

O.A. No. 125 of 1989 C.B. Rai Versus Govt. of India  
has been fixed for Final Hearing on 10 August 1989  
and the interim order similar to the order dated  
11.5.89 has been passed in that case also.

*[Signature]*  
Applicant/Deponent

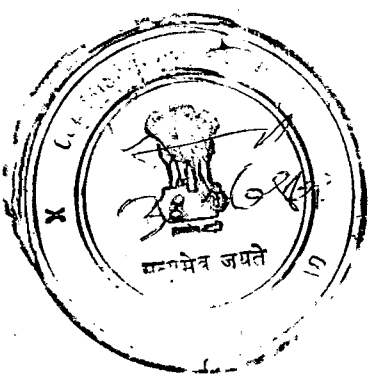
Verification

I, the deponent do hereby verify that the  
contents of paras 1 to 4<sup>2</sup> of the R.A. are true to his  
personal knowledge. No part of it is false and nothing  
material has been concealed, so help me GOD.

*[Signature]*  
Deponent

I identify the deponent, who has signed  
before me. I submitted me personally.

*[Signature]*  
Advocate



I solemnly affirm before me on 30-6-89  
at Lucknow, U.P. by the deponent  
Shri. H. M. Srivastava  
who is identified by me as *[Signature]*  
Advocate, Lucknow, Allahabad  
I have examined him regarding  
the contents of the R.A. and he understands  
the contents of the R.A. and the oath which  
he has taken.

*[Signature]*  
N. D. AHUJANI  
OATH COMMISSIONER  
High Court, Lucknow/Bench Lucknow  
No. 13/173  
Date 30/6/89

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW  
BENCH LUCKNOW

CIVIL MISC. APPLICATION NO. 166 OF 1989 (L).

IN

O.A. No. 74 of 1989 (L)

R. R. 11.5.89

H.N. Srivastava -----Applicant

Vs.

Union of India and others.....Opp. Parties

To,

The Hon'ble Vice Chairman and his companion  
members of the aforesaid Tribunal.

The humble application of the applicant  
abovesigned most respectfully sheweth as under:

1 That an interim application dated 24.4.1989  
is pending before this Hon'ble Tribunal and the instant  
affidavit is being filed in furtherance as supplementary  
to the aforesaid stay application. Therefore the instant  
affidavit be taken on record and be treated as part  
and parcel to the aforesaid application

En: Srivastava  
Kumar  
to pl. keep  
in record  
& obtain the  
necessary  
orders of the  
Hon'ble Court  
by. this appl.  
Q 11  
5


A242

-2-

P R A Y E R

WHEREFORE on the facts stated above it is most respectfully prayed that this Hon'ble Tribunal may be pleased to take the affidavit on record and the same may very kindly be treated as part and parcel to the aforesaid application.

Dt: 11 May 1989

  
Counsel for the applicant

A244

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW  
BENCH LUCKNOW

SUPPLEMENTARY AFFIDAVIT

IN

O.A. NO. 24 of 1989 (L)

H.N.Srivastava .....Applicant

Vs.

Union of India and others.....Opp.Parties

Affidavit of H. N. Srivastava  
aged about 44 years Son of Sri

-----  
Posted as ~~Commandant~~ 20<sup>th</sup> Bn POC.

----- ~~Agamkhar~~ -----  
-----

(deponent)

I, the deponent abovenamed do  
hereby solemnly affirm and state as under:

1- That the deponent is looking after this case on  
behalf of the applicant and as such he is fully  
acquainted with the facts of the case deposed to  
below.

*[Handwritten signature]*

A245

-2-

- 2- That by means of instant application challenging the select list of 1985 prepared for Indian Police Service by the Government on the ground that the aforesaid select list has been prepared in most arbitrary and illegal manner <sup>assessment</sup> and assumed by the selection committee had not based on the service record of the various candidates on extraneous consideration.
- 3- That on 3.4.1989 after hearing the parties the Hon'ble Tribunal granted indulgence by directing the respondents to leave one vacancy while making appointment of the incumbents whose name have been included in the aforesaid list of 1985.
- 4- That irritated by the aforesaid application filed by the applicant the State Government vide its radiogram dated 25.4.1989 directed the transfer of the applicant from Commandant PAC XX Bn, PAC Azamgarh and has posted as Dy. Commandant 44 Bn P.A.C. Meerut.
5. That the applicant immediately filed an application for amendment challenging the aforesaid transfer and posting order and also filed application for interim relief requesting the Hon'ble Tribunal to stay the operation of the aforesaid order dated 25.4.1989 and /or in the alternative to direct the respondents to post the applicant on or equivalent post which the applicant is holding since 1988 i.e. a post in the cadre of Supdt of Police.

-3-

6. That the aforesaid application for interim relief came up for consideration before a bench of this Hon'ble Tribunal consisting of Hon.D.S.Misra, D.K.Agarwal on 27.4.1989 and the Hon'ble Tribunal inquired the applicant's counsel as to how many vacancies in a cadre post in promotion quota of IPS are available and also to show as to how the applicant is prejudiced by the aforesaid order while pay scale of Dy.Commandant and Commandant P.A.C. are similar and hence in order to clarify the aforesaid query made by the Hon'ble Tribunal the instant affidavit is being filed.
- 7- That since <sup>March</sup> ~~August~~ 1988 the applicant is continuously holding senior/<sup>cadre</sup>post of IPS holding the post of Commandant, XX Bn, P.A.C., Azamgarh.
- 8- That the post of Commandant is senior post in D.P.S. although the post of Dy.Commandant is neither a cadre post in IPS nor is otherwise equivalent in rank and status of the said post.
- 9- That continuance on a cadre post is relevant for the purposes of seniority etc. and in case the applicant is made to join the post of Dy.Commandant his continuity on the senior post of IPS shall be broken and this will result to the detriment of the applicant in the matter of seniority and further promotion etc.

- 10- That in fact there is no post of Dy. Commandant in the cadre of IPS and the aforesaid order amounts to reversion of the applicant on a lower post.
11. That the select list of 1985 is already under challenge and the Hon'ble Tribunal after being prima facie satisfied that the allegations made by the applicant in the instant application granted interim order.
12. That the Dy. Commandant P.A.C. can not bear badges etc. meant for member of IPS or officer holding senior post in IPS.
13. That a large number of junior officers to the applicant ~~is being~~ who are still non cadre officers are holding cadre post although the applicant is being denied the same.
14. That further a number of non cadre officer as well as non select officers are continuing to hold senior/<sup>cadre</sup>post for example one Sri Prem Chandra is holding the post of Supdt. of Police Vigilance, Kanpur which is a cadre post even till this date.
- hr

Page 8

-5-

15- That according to the information of the applicant at present there are '45' vacancies and even if the entire officers of 1985 select list are posted against cadre post '14' vacancies shall remain vacant and therefore there is no reason to dislodge the applicant from the cadre post to a non cadre post which is inferior in rank and status also.

16- That in the year 1985 at the time of commencement of meeting of the select committee there were atleast '17' vacancies available in the promotion quota of IPS inasmuch as according to regulation 5 of IPS (Appointment by Promotion) Regulation, the size of the select list is twice number of the vacancies or 10 percent of Item no. I and II which ever is greater. Ten percent of Item no. I and II, according to the notification enforced in the year 1985 comes to '25'. As the select list has been prepared containing 34 names, this obviously shows that it has been prepared on the basis of number of vacancies and, therefore, by any means '17' vacancies were available at that time. Further thereafter following promotee IPS officers retired since 1987 till this date:

<u>Year</u>	<u>Name of promotee Officers</u>	<u>Date of retirement</u>
1987	Sri Ram Saran	31.7.1987
"	Sri Bhagwan Das Maruya	31.7.1987
1988	Sri Shiv Raj Singh	31.1.1988

A249

-6-

1988	Sri Om Prakash	31.3.1988
1988	Sri Sushil Kumar	31.3.1988
1988	Sri Harish Kumar	30.6.1988
1988	Sri V.N.Roy	30.6.1988
1988	Sri G.K.Shukla	30.6.1988
1988	Sri B.N.Sharma	30.9.1988
1988	Sri Jodh Singh Shandani	31.12.1988
1988	Sri Mahesh Chandra Rawat	31.12.1988
1988	Sri Devendra Prasad	31.12.1988
1989	Sri K.P.Roy	31.1.1989.

17- That besides above '12' post have increased in the promotion quota of IPS in view of the Cadre Schedule notification dated 27.1.1988 whereby the quota of promotee officers has been increased from 82 to 94

18- That in view of IPS (Seniority and Recruitment) Rules for the purposes of seniority continuous officiation on a senior cadre post is necessary and in case if aforesaid continuation is allowed to be broken the applicant shall not be able to be compensated even if the instant application is allowed and the relief are granted to the applicant inasmuch as for the purposes of seniority he shall ~~submit~~ suffer.

19. That in the circumstances it is expedient in the interest of justice that this Hon'ble Tribunal may be pleased to direct the respondent no.3 to post the applicant against any senior cadre post of IPS during the pendency of instant application in this Hon'ble Tribunal.

A250

I, the deponent abovenamed do hereby declare that the contents of paras 1 to 19 of this affidavit are true to my personal knowledge and those of paras \* are based on the perusal of record and those of paras are based on legal advice which all I believe to be true and nothing material has been concealed and no part of it is false. So help me God.

*hw*

DEPONENT

I, *Rulab Chandra* Clerk to Sri *Kapilendra*

~~SECRETARY~~ ADVOCATE HIGH COURT ALLAHABAD do hereby declare that the person making this affidavit and alleging himself to be Sri *H.N. Srivastava* is the same person who is known to me from the perusal of record produced before me in this case.

Solemnly affirmed before me on the 7th day of May 1989 at 10 a.m./p.m who has been identified by the aforesaid.

*hw*  
I have been satisfied myself by examining the deponent that he has understood the contents of this affidavit which has been read over and explained to him

*of the commission*

A 251

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH

LUCKNOW

Civil Misc. Application No. 107 of 1989(L).

In re:

O.A. NO. 74 OF 1989 L )

H.N. Srivastava

..... Applicant

In re :

H.N. Srivastava

.... Applicant

Versus

Union of India and others

.... Respondents.

----

SUPPLEMENTARY APPLICATION

The above named applicant most respectfully  
begs to state as under-


1. That as has been stated in the original application that the applicant was promoted as Additional Superintendent of Police in the year 1984, and subsequently to the post of commandant in March 1988 and since then he has been working as Commandant 20th Bn. P.A.C. Azamgarh. It is to be mentioned here that when the cadre of Additional Superintendent of Police was created then vide ~~an~~ a Govt. order dated 1.12.84 it was clarified that the status and responsibility of the post of additional S.P. will be in the I.P.S. Senior Scale

off

of Rs. 1200-1700 and they will be entitled for the same and the relevant G.O. No. 5025 /Aath /Police Section-2/1984 dated 1.12.1984 is being filed herewith as Annexure No. S-1 to this Application.

2. That there are so many posts still available in the State equivalent to the post of Commandant and it is specifically mentioned here that even post of Commandant is vacant in the 44th Bn. P.A.C. at Meerut where the petitioner is being sought to be reverted and posted as Dy. Commandant.

Lucknow-Dated,  
April 28, 1989

  
Advocate,  
Counsel for the Applicant.

A253

प्रतिलिपि : शासनादेश सं: 5025/आठ-मु0से0-2-1984 दिनांक: 1-12-84  
 प्रेषक:-रजनीकान्त मुदगल, उ0प्र0सचिव गृह पुलिस सेवाएं अनुभाग-2 लखनऊ जो  
 महानिदेशक एवं पुलिस महा निरीक्षक उ0प्र0 लखनऊ को सम्बोधित तथा  
 अन्य को प्रेषित किया गया है। शासनादेश की प्रतिलिपि पुलिस महा निरीक्षक  
 कार्यालय उ0प्र0 लखनऊ के पत्रांक 1-22-84 दिनांक: 22-12-84 द्वारा प्राप्त।

मुझे यह कहने का निर्देश हुआ कि राज्यपाल महोदय में निम्नलिखित  
 37 जसदों के लिए एक एक अवर पुलिस अधीक्षक के अध्याई निःसर्गिक पदों  
 को सूचित किये जायें की स्वीकृति प्रदान की है।

- |              |                |
|--------------|----------------|
| 1-आजमगढ़     | 20-हरदोई       |
| 2-बाँदा      | 21-जालौन       |
| 3-बलिया      | 22-झाँसी       |
| 4-बदायूँ     | 23-जीमूर       |
| 5-बहराईय     | 24-कानूर देहात |
| 6-पाराबकी    | 25-खीरी        |
| 7-खजौर       | 26-खलितपुर     |
| 8-बलिया      | 27-मैनपुरी     |
| 9-देवरिया    | 28-मुजफ्फरपुर  |
| 10-कुलन्दशहर | 29-मधुरा       |
| 11-देहरादून  | 30-बीलीभीत     |
| 12-रटा       | 31-मुताषगढ़    |
| 13-इटावा     | 32-रायबरेली    |
| 14-कैजाबाद   | 33-रामपुर      |
| 15-फतेहपुर   | 34-शाहजहापुर   |
| 16-फतेहगढ़   | 35-सुल्तानपुर  |
| 17-गौन्दा    | 36-सीतापुर     |
| 18-गाजीपुर   | 37-उन्नाव      |
| 19-हमीरपुर   |                |

2- उपरोक्त पुस्तक-1 में सूचित पदों को भरे जाने की तिथि से 28 फरवरी  
 1985 तक के लिए इस शर्त के अधीन किये जा रहे हैं कि इन्हें किसी पूर्व सूचना  
 के किसी भी समय समाप्त किया जा सकता है।

3- आर्डीपी0रस0 वेतन। नियमावली 1954 के नियम 9(3) के अधीन राज्यपाल  
 महोदय यह घोषित करते हैं कि उपरोक्त पुस्तक-1 में सूचित समस्त पद स्तर  
 एवं उत्तरदायित्व में आर्डीपी0रस0 के तीसरे स्केल र0 1200-1700 में या राज्य  
 सरकार द्वारा इसके समकक्ष सूचित वेतनमान में वेतन प्राप्त करेंगे। और इसके साथ  
 साथ आर्डीपी0रस0 अधिकारियों को समय-समय पर अनुमन्य मंहगाई भत्ता प्राप्त  
 करेंगे।

4- जब तक उपरोक्त पुस्तक में सूचित पद चलते रहेगें तब तक शासनादेश  
 7964/आठ-मुसे05221701/79 दिनांक: 9 नवम्बर 1983 में सूचित, उत्तर प्रदेश पुलिस  
 सेवा के स्पेशल ग्रेड के 70 पदों में से 37 पद समाप्त माने जायेंगे। इसके अतिरिक्त  
 शासनादेश सं: 4352/आठ-मु0से0-2-5311/81 दिनांक: 10 नवम्बर 1982 में सूचित  
 सुपुंक्त पुलिस अधीक्षक आजमगढ़, फतेहगढ़, इटावा, मैनपुरी एवं रटा के पद  
 शासनादेश सं: 3923/आठ-मु0से0-1-5311/81 दिनांक: 13 नवम्बर 1984 में  
 सूचित सुपुंक्त पुलिस अधीक्षक के 19 पदों में से 13 पद समाप्त हो जायेंगे।

*Kapil Dev*

Advocate (High Court)

Flat No. 3, Shyam Bhawan  
 33, Cantt. Road, Lucknow.

A251

-2-

5- इस सम्बन्ध में होने वाला व्यय चालू वित्तीय वर्ष 1984-85 के आय व्ययक लेखा शीर्षक 1255 -बुलि आयोजनेतर \* के अन्तर्गत सम्बद्ध अशुद्धि एवं प्राप्ति इकाइयों के नामे माना जायेगा ।

6- यह आदेश वित्त विभाग के अध्यासकी संख्याई-12/1767-दस-84 दिनांक: 1 दिसम्बर 1984 द्वारा प्राप्त उनकी सहमति से जारी किये जा रहे हैं।

---

Attshar

Cen

Kapil Dev

Advocate (High Court)

Flat No. 3, Shyam Bhawan  
33, Cantt. Road, Lucknow.

A255

In the Central Administrative Tribunal at Allahabad  
Circuit Bench, Lucknow

Misc. Application No. 73 of 1990 (G)

In

C.A. No. 74 of 1989

H.N. Privatsava Versus Union of India and Others

Union Public Service Commission ..... Applicant

This humble petition of the applicant above named  
most respectfully  
SUBMITTED

1. That vide order dated 30.6.89 this Hon'ble Tribunal directed the applicant (Opp. Party No.2) to produce the minutes of the Selection Committee Meeting held on 27.12.1985 for selection of State Police Service officers of U.P. and Bihar for to the Indian Police Service.

2. That the Minutes of the Selection Committee held on 27.12.85 are unpublished official records relating to the affairs of the State and their disclosure will be prejudicial to public interest and will materially affect the freedom and candour of expression of opinion in the determination and execution of public policy.

3. That an affidavit claiming privilege from the production of the minutes duly sworn by the Chairman, Union Public Service Commission is being filed.

4. That in accordance with the practice followed by the Commission in such cases, the Commission is to claim privilege from production of the minutes of the meeting of the Selection Committee dated 27.12.85 in the Tribunal.

Prays accordingly,

J. (Signature)  
(Mr. Vinesh Chandra)

Counsel for the Applicant

A258

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW.

O.A.No. 74 of 1989 (L)

Shri H.N. Srivastava  
Commandant, 20th Battalion  
P.A.C. Azamgarh.

..... Applicant

VS.

Union of India, through the  
Secretary, Home Affairs  
New Delhi and others.

..... Respondents.

A F F I D A V I T

I, H.K.L. Capoor, aged 64 years, Chairman,  
Union Public Service Commission, New Delhi do hereby  
solemnly affirm and state as follows:

1. Hon'ble Central Administrative Tribunal, Circuit  
Bench, Lucknow have ordered on 30th June, 1989, the  
production of records in the Tribunal relating to and  
touching upon all the matters and contentions raised  
in the aforesaid application.

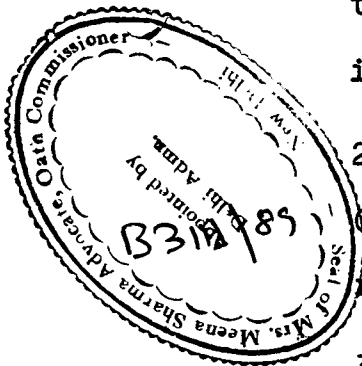
2. I, as Chairman of the Union Public Service  
Commission, am in control of and incharge of its  
records.

3. I have carefully read and considered the relevant  
records and have come to the conclusion in respect of  
them as under:-

Details of item for which  
privilege is claimed.

Union Public Service Commission  
file relating to the meeting  
dated 27th December, 1985, of

I find that the  
records relevant to  
the present



Hasib's  
24/7/89

A257

- 2 -

the Selection Committee for selection of the State Police Service Officers of Uttar Pradesh for promotion to the Indian Police Service particularly minutes of the meeting of the Selection Committee.

application are the minutes of the meeting of the Selection Committee, which met on 27.12.1985 for selection of the State Police Service Officers of U.P. for promotion to the Indian Police Service. I have seen the minutes.

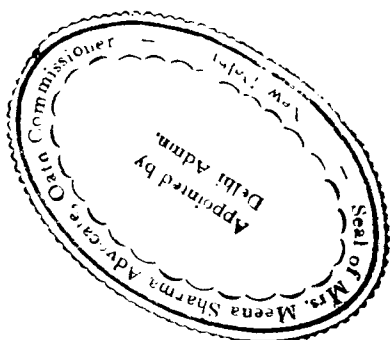
These consist of the following pages :-

<u>Date of meeting.</u>	<u>No. of pages</u>
27.12.1985	8

These are unpublished official records relating to the affairs of the State and their disclosure will cause injury to public interest and will materially affect the freedom and candour of expression of opinion in the determination and execution of public policy.

4. I do not, therefore, give permission to any one under Section 123 of the Indian Evidence Act, 1872 to produce the said documents or to give any evidence derived therefrom and claim privilege under the said Act.

Contd....3.



Has been 16  
24/7/89

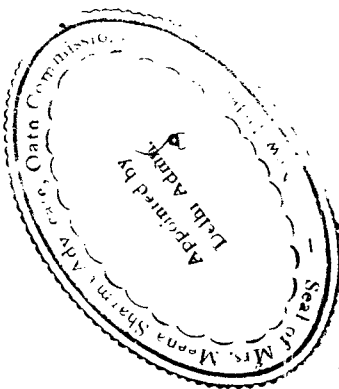
A258

5. However, I hasten to point out that I have no objection whatsoever to the documents in regard to which privilege has been claimed, being produced for perusal by the Hon'ble Members of the Tribunal for satisfying themselves about the bona-fides and genuineness of the privilege.

6. I realise the solemnity and significance attached to the exercise of power under Section 123 of the Indian Evidence Act, 1872 and privilege is not being claimed on the ground of expediency or to avoid an embarrassing or inconvenient situation or because it is apprehended that the documents, if produced would defeat the case of the Union of India.

Solemnly, affirmed at New Delhi, this 24<sup>th</sup> day of July, 1989.

H.K.L. CAPOOR  
CHAIRMAN  
UNION PUBLIC SERVICE COMMISSION  
DEPONENT.



VERIFICATION:

I, H.K.L. Capoor, do hereby solemnly affirm and state that the contents of paragraphs 1 to 6 are true to my knowledge.

H.K.L. CAPOOR  
CHAIRMAN  
UNION PUBLIC SERVICE COMMISSION  
DEPONENT.

Solemnly affirmed before me, read over & explained to the deponent, admitted as correct.

*[Signature]*  
Oath Commissioner, New Delhi

24 JUL 1989