

Central Administrative Tribunal

Lucknow Bench

INDEX SHEET

Cause Title On 76 of 1989 (C)

Name of the Parties Aside Kumar Mishra Applicant

versus

Union of India

Respondents.

Part A.E.C.

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File B/C destroyed on 09-5-12. (S. 65)

CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH,

23-A, Thornhill Road, Allahabad-211001

Central Administrative Tribunal
Circuit Bench, Lucknow

Date of Filing 5/4/09

Date of Receipt by Post 5/4/09

Dist on 5/4/09

Deputy Registrar (J)

Registration No.

76

of 1989

APPLICANT (s)

A. R. Malik

RESPONDENT (s)

Uo 2. 22

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

Only two sets filed

yes

yes

yes. I.P.O. No DD 027927
dt 5-4-09
Rs 50/-

No

yes by Counsel

Particulars to be ExaminedEndorsement as to result of Examination

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

Yes

yes

No

yes

Only two copies along with the application.

not yet

yes

yes

NA ~~yes~~

yes

yes

yes

yes

yes
but the date in the Annexure is ~~not~~ shown as 3/4/09.

May be listed before the Court on 6/4/09.

A. Anand

Order Sheet
OA No. 76/89(L)

(13)

①

6-4-89

Hon. Justice K. Nath --- VC
Hon. D. S. Misra --- AM

Admit.

For detail orders, see our
orders of date passed on the
main petition.

Pl

VC

Pl
AM

L

Spare copies for
respondents have not
been filed so far
hence notice copies

OK

This case is ordered
to be put up on 17.4.89
for hearing on interim matter
alongwith OA No. 74 of 89 (C)
Case is submitted
for orders on Interim Matter

Hon' Mr. Justice K. Nath, VC.
Hon' Mr. D.S. Misra, AM.

Ans
17/4

17-4-89

The learned counsel for the applicant states that
he has not taken steps. He is allowed 24 hours
time for taking steps. Put up for orders
on 19-4-89.

Pl
A.M.

Pl
V.C.

(SNS)

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

OK
Counsel for applicant
has taken steps for
service of notices on
respondents.
Submitted for orders

19/4/89

Steps have been taken, ~~up~~ Notices
~~have been~~ issued. List this case for
orders on 11-5-1989.

A.M.

V.C.

(sns)

OK
Notices issued
respondent No 1 to
Nepd. Post - fixing
for orders

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

REGISTRATION No. C.M.A. 144/89(L)
In O.A. No. 76/89(L)

APPELLANT
APPLICANT

A.K. Mishra

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
---------------------------------	--	--

continued from pre page...

to the respondents. The learned counsel for the respondents 3 & 4 requests for 2 weeks time for filing reply. The learned counsel for the applicant objects to this. He states that the time be allowed, and the interim order be issued in the meanwhile. After considering the arguments of both these sides, the time of one week is allowed to the respondents. The case be listed for hearing on interim relief on 24-5-89. I do not find this to be a fit case for granting interim order till that date.

A.M.

(sns)

22/5/89

B.O.C

No sitting. Adjourned to
30/5/89 for orders

22/5

30/5

No sitting. Adjourned to
29/6/89 for orders/hearing

B.O.C

Of In compliance of Court's order of 16/5/89 no reply have been filed by the learned counsel for the respondents. Submitted for order.

Of Objection to the application for interim stay order filed by the learned counsel for the respondents today.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

REGISTRATION No. 76 of 1989(1)

APPELLANT
APPLICANT

A. K. Mishra

VERSUS

DEFENDANT
RESPONDENT

U.O.A

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
17709	No sitting Adj. to 100.09. for hearing.	
10/8/89	<p><u>Hon' Mr. D.K. Agrawal, J.M.</u></p> <p>Shri H.M. Mehrotra, learned counsel for the applicant and Shri Anoop Kumar, learned counsel for respondent Nos. 3 and 4 are present and heard. In view of the orders passed in O.A. No. 74/89(L) H.N. Srivastava Vs. Union of India and ors and O.A. No. 125/89(L) C.B. Rai Vs. Union of India and ors, I am of the opinion that the interim relief asked for cannot be denied to the applicant as well. Consequently the respondents Nos. 3 & 4 are directed to post the petitioner to a post equivalent to the post, he was holding before the impugned order of transfer dated 18-4-1989 (a cadre/non-cadre post of IPS). Let the counter affidavit be filed within four weeks hereof to which the applicant may file rejoinder affidavit within 2 weeks thereafter. List this case along with O.A. No. 93/89(L), S.K. Sharma Vs. Union of India & ors, O.A. No. 104 of 1989(L) R.K. Trivedi Vs. Union of India and ors, O.A. No. 74/89(L) H.N. Srivastava Vs. Union of India & ors, O.A. No. 125 of 89(L) C.B. Rai Vs. Union of India and ors,</p>	<p>h Boc</p> <p>OB The case is sub- mitted for order on C.M. No 107/89(L) 2 interim matters No reply filed on amendment application. h g/p</p> <p>contd...</p>

Received by
B.K. Mishra
11-8-89

(7) (Ab)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

O.A. No. 76/89(L)
REGISTRATION No. _____ of 198 .

APPELLANT
APPLICANT

A.K. Mishra

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
19/10/89	<p>Hon' Mr. D.K. Agrawal, J.M. <u>Hon' Mr. K. Obayya, A.M.</u></p> <p>Shri H.M. Mehrotra, Counsel for the applicant and Shri Anoop Kumar counsel for respondent nos. 3 & 4 and Dr. Dinesh Chandra counsel for the respondent nos 2 are present and heard. The applicant's counsel files rejoinder to the counter filed by respondent nos. 3 and 4. He also desires time for filing rejoinder to the counter filed on behalf of respondent no.2. Allowed. Let the rejoinder be filed within 2 weeks hereof.</p> <p>Dr. Dinesh Chandra counsel for respondent no.2 states that no counter affidavit is to be filed on behalf of respondent no. 1 i.e. Union of India.</p> <p>List this case for <u>hearing on 7-12-1989.</u></p> <p>An application has been moved by respondent nos. 3 & 4 for modification for^{of} interim order passed on 10.8.89. Learned counsel for respondent nos. 3 & 4 has stated before us that they are willing to post the applicant to the post of Additional S.P. or equivalent thereto, but that the word "cadre or non cadre of IPS post" may not be ^{en}forced. We have heard the learned counsel for the parties. We are of the view that Notwithstanding the words "cadre or non cadre of IPS post" used by us in the interim order dated 10.8.89, we direct hereby the respondent nos. 3 & 4 to implement the order of posting on</p>	

..... contd...

OR Copy of order issued to the respondents on 20.10.89.
L
21/11

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

from pre page

as Additional S.P. or equivalent there to. Specific orders were passed by this Tribunal that the Opposite parties will issue orders to post the applicant as Additional S.P. The opposite parties are given 10 days time to post the applicant as Additional S.P. without further delay. The case be put up for orders on 3-1-90 when opposite parties 3 and 4 will place a copy of the posting order of the applicant, before this Tribunal.

Copy of this order be given to the counsel for opposite parties 3 and 4 today.

A.M.

V.C.

(sns)

OK - No copy of posting order of the applicant has been filed
Submitted for order
h
21/1/90

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

Shri H.M. Melhotra counsel for the applicant and Shri Anoop Kumar counsel for the O.P.No.3 & 4 are present. Shri Anoop Kumar says that although he had received a copy of the order dated 21/12/89 on 22-12-89, but, he could not communicate the same to the Department. He requests for a short time. The case be listed on 12-1-90 for orders.

A.M.

V.C.

(sns)

No Selting - Adj. to 16-1-90
Both the parties are present

h
14/1/90

OK
Submitted for order
h
15/1

8/8/90

Hon. K. Nath, VC

Hon. K. J. Ramani, AM

Put up the bill at Lucknow Circuit

Barak on 28/8/90

AM.

VC.

28.8.90 Hon. Mr. D. K. Agrawal Jm.
Hon. Mr. K. J. Ramani, AM.

CR

Shri H. N. Maheshwari for
applicant and filed Supp.
Rejoinder affidavit. Keep
it on record. Shri Anand
Kumar appears for Cr.
Since it is a first heard
case, list it on

Case has been
received on 13.8.90
from CAT, Ahd. by
S. Suresh Kumar (C)

Supplementary RA
has not filed.

S. F. H.

14-9-90.

AM

De
Jm.

14.9.90

Hon. Mr. Justice K. Nath, VC
Hon. Mr. M. M. Singh AM

On the request of learned
Counsel for the applicant. Sri
H. N. Maheshwari the case is adjourned
to 13.11.90 for hearing

H. N. L
AM

VC

CR

Case is ready
for hearing.
S. F. H.

14/11/90

O.A. 76/89(4)

(13) (13) (13)

10.12.90

D.R.

Put-up 20.12.90

7 fixing date
+ final
hearing

20.12.90

No sitting adj to 13.3.91

13.3.91

No sitting adj to 10.5.91
Q

10.5.91

Hon Justice U.C. Srivastawa - VC
Hon Mr. A. B. Gorthi AM

On the request
of counsel for respondents
case is adjourned to 28.8.91
for hearing.

Q
AM

W
VC

28.8.91

No sitting adj to 28.10.91
Q

28.10.91

No sitting adj to 21.1.92
Q

21.1.92

No sitting adj to 30.3.92
Q

30.3.92

No sitting adjourned
to 14/5/92 for hearing.
Q

14.5.92

No sitting adj to 28.5.92
Q

OR
PP, RA have
been exchanged
SSTH
Q
27/5

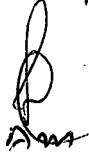
(A10)

04761824

6.1.93

Heard Mr Joshua I.C. Smith v
Habit Mr R. Obayya am

Judgment pronounced today
with open Court.


Dmt


v

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

ORIGINAL APPLICATION No. 76 of 1989

Ashok Kumar Misra

Applicant

Versus

Union of India & others

Respondents.

Shri Anurag Srivastava

Counsel for Applicant.

Shri V.K. Chaudhary

Counsel for Respondents.

Coram:

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant was recruited as a member of the U.P. State Police Service in the year 1969 and joined the service in the year 1971. He was posted on various posts in different districts and was given senior scale in April, 1980. He was promoted to the post of Additional Superintendent of Police when he ^{was} posted as City C.O./at Roorkee. According to the applicant his performance has been very good and he has also been given letter of appreciations for the work done by him and he has always ^{or outstanding} been given excellent/remarks, except when he was posted at Moradabad as C.O. City, there was a riot in the month of August, 1980 at Meerut and for the said riot he was given adverse entry for the year 1980-81 which was communicated to him in the year 1982. He made representation to the Director General of Police who rejected the same whereafter he preferred a Memorium to the Governor

of Uttar Pradesh which is still pending disposal. Despite the said entry he was promoted as Additional Superintendent of Police in the year 1984. The grievance of the applicant is that although he was entitled to but he has not been promoted to the I.P.S. cadre, his name has not been included in the select list although the same should have been included and that is why he prayed that the respondents be directed to promote him ^{by} including his name in the select list of 1985 and the respondents be further directed to keep one post in the I.P.S. cadre reserved. Subsequently, by way of amendment, he has prayed that the order dated 18.4.89 reverting the applicant from the post of Additional Superintendent of Police to the post of Deputy Commandant, P.A.C. may be quashed and he may be continued on any cadre post of I.P.S.

2. The select list, which according to the applicant has been prepared, is not in accordance with the Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations 1985, which reads as under:

"2. 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 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 percent 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 upto 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:

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 exception 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."

According to the applicant, there were 17 vacancies and list of 34 persons was prepared but the applicant's name was not included in the said list, although he was fully eligible for the same. Shri A.K. Sing, N.R. Srivastava were senior to the applicant and R.D. Tripathi of 1966 batches and Shri K.N.D. Dwivedi and Shri Satish Yadav were of 1970 batch who were subjected to disciplinary enquiry even then their names were included in the select list so prepared and the said Satish Yadav and Shri K.N.D. Dwivedi were not promoted as Additional S.P. in the year 1984 and were also not placed in the the

115

list but their names have been placed in some other list. According to the applicant due weightage was not given to the service record of the applicant and the officer having inferior record of service and much junior to him were included in the list.

3. The Union Public Service Commission as well as the State of U.P. have filed the written statement and have opposed the prayer of the applicant. They have stated that the name of the applicant was not included in the list because sufficient number of persons were having better grading than the applicant. The Selection Committee is to classify the grading of eligible officers i.e. 'outstanding', 'Very good' and 'good', as the case may be and overall relative assessment of the service record. In this connection reference has been made to the case of R.S. Dass vs. Union of India (AIR 1987 SC 593) which pertains to the case of ~~an~~ I.P.S. service, wherein it was held that selection made of such officer though junior does not really amount to supersession and promotion made on merit, it cannot be said that senior officer has been superseded and 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 for making representation against the proposed supersession. The view taken above has been re-affirmed by the Hon'ble Supreme Court in the case of H.L. Dev vs. U.P.S.C. and others (AIR 1988 SC 1069). According to the respondents Allahabad High Court, vide its order dated

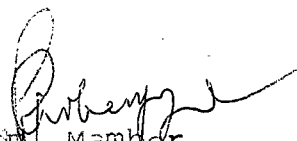
16.1.1986 in writ petition No. 1449/85 'Basant Singh vs. State of U.P. and others' restrained the respondents from making any promotion for the post of Superintendent of Police and Additional Superintendent of Police unless the seniority list is prepared in accordance with the directions issued by the Services Tribunal and further no select list for the IPS grade will be prepared without finalization of the seniority list. As per the decision of the Hon'ble Supreme Court in the case of Rana Randhir Singh and others vs. State of U.P. and others the above interim order ceased and the U.P.S.C. approved the select list on 27.12.88 and the list was prepared, and according to the respondents the said select list is not against the provisions of Regulation 5(6) of the I.P.S. (Appointment by Promotion) Regulation, 1955. There is no material from which it could be inferred that the officers having bad record were graded high and the applicant's record was not bad yet he has been excluded. It is difficult to accept such allegation in the absence of any material on record and what has been stated by the respondents is on the basis of record. It may be that the applicant may not have adverse remarks and sometimes his record was good or sometimes bad. It is overall assessment which will be considered. If the adverse entry has not been expunged, in case the same is expunged and the same is taken into account, and the applicant never informed of them which were taken into account, there being no allegation in this behalf and


u

in the matter of promotion sometimes junior can be ~~selected~~ selected earlier than the senior one or sometimes senior ~~do not~~ do not get promotion but it all depends on the assessment and no arbitrariness or malafide has been levelled against the selection committee which met. The norm of selection are made on the basis of service record and it cannot be said that the seniority list has not been made in accordance with the rules. As far as reversion is ~~concerned~~ concerned, it has been pointed out by the respondents that the post of Superintendent of Police, Fatehpur is a temporary and non cadre post created on adhoc basis vide G.O.No. 5026/8/PS/2/1984 dated 1.12.84 and by the said G.O. 37 posts of Additional Superintendent of Police as specified in the said G.O. in 37 districts/have been created and vide G.O. dated 1.9.86 33 posts were created which were to be filled in as specified in the G.O and thus the applicant was posted on a non cadre adhoc post. In view of the said GOs the posts of Deputy Commandant Sitapur and Additional S.P. Fatehpur were non cadre adhoc posts and there is no reversion of the applicant at all.

4. In view of this fact which could not be controverted successfully, obviously, the applicant, whose pay scale too has not been lowered, it cannot be said that any reversion order has been passed and accordingly, the applicant has failed to prove any ground of relief. Thus,

the application has got to be dismissed and it is
dismissed. No order as to costs.


Adm. Member.


Vice Chairman.

Shakeel/-

Lucknow: Dated 6/1/1992

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
(LUCKNOW BENCH)
LUCKNOW.

O.A. NO 76/183 199 (L)

T.A. NO _____

Date of Decision _____

A.K. Misra Petitioner.

Shri Anand Sharma Advocate for the
Petitioner(s)

V E R S U S

Union of India Respondent.

Shri M. C. Chatterjee Advocate for the
Respondents

C O R A M

The Hon'ble Mr.

Justice M.C. Sharma, J.

The Hon'ble Mr.

K. Chatterjee, J.

1. Whether reporter of local papers may be allowed to see the Judgment ? ye
2. To be referred to the reporter or not ? ye
3. Whether to be circulated to other benches ? ye
4. Whether ~~the~~ their Lordships wish to see the fair copy of the Judgment ? ye

li
VICE-CHAIRMAN/MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL CIRCUIT BENCH

LUCKNOW

I N D E X

In re:

REGISTRATION NO. 76

OF 1989 (C)

Central Administrative Tribunal
Circuit Bench, Lucknow
Date of Filing 5/4/89
Date of Receipt by Post 5/4/89

Deputy Registrar (J)

District Fatehpur

Between

Ashok Kumar Misra

... Applicant

AND

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 1985	1-17
2.	Measure No. 1 Copy of representation	
3.	Vakalatnama	18

filed today
noted for 6/4/89

Officer
for

Lucknow dated
April 5 1989

Anurag

(ANURAG SRI VASTAVA)
ADVOCATE
COUNSEL FOR THE APPLICANT

list before the Court
on 6-4-89

Director
5/4/89
P.S.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH

LUCKNOW

Application No. 76 of 1989 (1)
(U/S 19 of the Administrative Tribunals Act 1985)

District Fatehpur

Between:

Ashok Kumar Misra

... Applicant

AND

Union of India and others

... Respondents

1. Particulars of the Applicant:

- | | |
|--|--|
| (i) Name of the Applicant: | Ashok Kumar Misra |
| (ii) Name of Father : | Late Sri Surendra Nath Misra |
| (iii) Age of the applicant : | 44 Years |
| (iv) Designation and Particulars of Office : | Additional Superintendent of Police Fatehpur |
| (v) Office Address : | Additional Superintendent of Police Fatehpur |
| (vi) Address for service :
of notices | Additional S.P Fatehpur |

2. Particulars of the Respondents:

- (i) Name of the respondent
- (ii) Name of father/husband

as below

as below

- (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. 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 1969 batch. On the basis of his
seniority, suitability and eligibility as also on the basis of

Qureshi

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 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 Police Service from 1961 to 1970 have been included, but it does not include the name of the applicant though he belongs to 1969 batch and has outstanding 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:

That facts of the case are as follows:-

- i. That the applicant is an Officer of Provincial Police Service, Uttar Pradesh and was directly recruited by the U.P.

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Public Service Commission, Allahabad in the year 1969.

ii. That after his appointment in the Provincial Police Service cadre of Uttar Pradesh he joined service on 15.11.1971 and remained in various districts of Uttar Pradesh and was duly confirmed in service as Deputy Superintendent of Police on 15.11.1973. The details of his postings at various districts are given as under:-

<u>Sl.No.</u>	<u>Designation and Place of Posting</u>	<u>Period</u>
1.	Dy Superintendent of Police, Lakhimpur	1973 to 1975
2.	Dy Superintendent of Police (Communal Section) Intelligence Headquarters Lucknow	1975 to 1977
3.	C.O. City, Muzaffarnagar	1977 to 1978
4.	Dy Superintendent of Police Training College, Moradabad	1978 to 1980
5.	C.O. City Moradabad	1980 to 1981
6.	Staff Officer to Inspector General Railways	1981 to 1984
7.	C.O. City Roorkee	1984 to 1985 (Jan)
8.	Thereafter the applicant was promoted in 1984 to the rank of Additional S.P. and remained at Roorkee till January 1985 and thereafter he joined at Pratapgarh as Additional Superintendent of Police	1985 to 1986
9.	Additional Superintendent of Police Gazipur	1986 to 1987
10.	Additional Superintendent of Police Fatehpur	1987 till date

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iii. That from the above narration it would become clear that the applicant has always held very responsible post in the Police Department in very important and sensitive districts of Uttar Pradesh. He was given senior scale in April 1980 and also cross the Efficiency Bar at due time. He has also served as Staff Officers to the Inspector General Railways from 1981 to 1984 and has also remained posted at Police Training College Moradabad as Deputy Superintendent of Police 1978 to 1980. It was on account of outstanding and excellent career of the applicant that he was given postings of very higher responsibilities in sensitive districts and his performance was always unblemished and outstanding.

iv. That after being given senior scale in April 1980 the applicant was promoted from the post of Deputy Superintendent of Police to that of Additional Superintendent of Police in the year 1984 while he was posted as C.O. City Roorkee.

v. That it is also relevant to mention here that during his tenure as C.O. City Roorkee his performance was outstanding and one dreaded dacoit Jageta was killed in an encounter with the Police under the leadership and supervision of the applicant. For this act he was given a letter of appreciation (Prasshasti Patra) by the Director General of Police Uttar Pradesh and Inspector General of Meerut Zone. Recently as Additional Superintendent of Police Fatehpur another dreaded criminal Ramesh Yadav was killed in encounter with the Police at Fatehpur under the applicant leadership and directions.

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It is submitted that during various district postings many notorious criminals were arrested and brought behind the bars and under the supervision of the applicant and the work and conduct of the applicant was always appreciated by the Government Police as well as other senior/officers. The fact that his work was unblemished and of a esteemed performance would be evident from the fact that all along his career he has been given remarks of outstanding dedicated officers.

vi. That all along his service career the applicant has received excellent remarks and his character roll entries have always been excellent and outstanding but for one instance when he was posted at Moradabad as C.O. City there was a riot in the month of August 1980 and for the said riot he was awarded and adverse entries for the year 1980-81 which was communicated to him in the year 1982. The applicant immediately made a representation against the said adverse entries to the Director General of Police which was rejected and thereafter the applicant preferred a memorium to the Governor of Uttar Pradesh which is still pending disposal before his excellency.

vii. That it is relevant to mention here that inspite of the adverse entries in the year 1980-81 the applicant was promoted to the rank of additional S.P. in the year 1984 and since 1981 till date his character roll entires are excellent and outstanding.

viii. 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 and 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 upto 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:

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 exception 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, reviewed on revision it is proposed to supersede any member of the State Police Service, the Committee shall record its reasons for the proposed supersession.

ix. That against the 17 vacancies in the Indian Police Service Cadre of Uttar Pradesh a list of 34 persons were 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 Regulation 5 as quoted in the preceding paragraph.

x. That the applicant was and is fully eligible for the

inclusion of his name in the said select list in terms of said Regulation 5 and also eligible for promotion to the Indian Police Service Cadre.

xi. That the applicant has come to know through reliable sources and through a news paper item published in a newspaper Dainik Jagran of 2nd of April 1989 published from Lucknow that the select list of 1985 is going to be implemented within a day or two and the names of the batchmates of the applicant i.e. of 1969 have been included besides the officers of subsequent batch of 1970.

xii. That the Government of Uttar Pradesh is intending to promote all officers of 1985 select list of the Indian Police Service Cadre against the provisions of Regulation 5(6) of Indian Police Service (Appointment by Promotion) Regulation 1955.

xiii. That it is also relevant to mention here that Sarva Sri A.K. Singh and N.R. Srivastava, who are senior to the applicant and belong to 1967 batch of Provincial Police Service were suspended in 1977 and they were also 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 and Sri K.N.D. Dwivedi were not promoted as Additional S.P. in 1984 along with other officers of their batch. Sri Satish Yadav was also not promoted given senior scale along with his batchmates.

xiv. That against Sri R.D. Tripathi (batch 1966), A.K. Singh (1967 batch) and B.K. Chaturvedi of (1968 batch) inquiry proceeding are still pending. It is also relevant to mention here that Sri R.N. Katheria (1969 batch), Sri Chandra Mani Prasad (1969 batch) Abhai Shanker (1969 batch), N.B. Singh (1970 batch), K.N.D. Dwivedi (1970 batch) Daya Shanker Singh (1970 batch) and Satish Yadav (1970 batch) whose names are included in the select list are all junior to the applicant and the service record of the applicant is better than those officers. It is also relevant to mention here that Sri N.B. Singh, Sri K.N.D. Dwivedi and Satish Yadav were not promoted at due time along with their batchmates but were promoted as Additional Superintendent of Police much later. Sri Satish Yadav was promoted as Additional Superintendent of Police in the year 1986 and Sri K.N.D. Dwivedi was promoted as Additional Superintendent of Police in ~~May~~ December 1987.

xv. That the applicant states that while preparing the impugned select list due weightage was not given to the service record of the applicant and the character roll entires as per requirements of Regulation 5, and Officers having inferior record of service and much junior to the applicant have been included in the select list.

xvi. That the applicant submits that in the preparation of select list the requirements of sub regulation (4), (5) and (6) of Regulation 5 for all together being over looked in an arbitrary manner.

xvii. That it is relevant to mention here that the Annual remark

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

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

xviii. That normally at the time of promotions 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 good, 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 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.

xix. That the applicant was given senior scale in April 1980 and thereafter he was promoted to the rank of Additional S.P. in 1984 prior to the Officers junior to him on the basis of is

being an officer of outstanding category but while making selection for promotion in India Police Service Cadre his candidature has altogether been ignored and officers of inferior categories and even junior to the applicant have been included in the select list in gross violation of Articles 14 and 16 of the Constitution of India.

xx. That it is submitted 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 applicant learnt about the exclusion of his name in the select list he immediately preferred a representation, a true copy of is 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 the face of his juniors and inferior officers.

xxiii. That in case all the existing vacancies of 1985 are filled up from amongst the impugned select list the applicant would be subjected to further litigation for no fault of 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 India Police Service

and to reserve one post in this cadre for the applicant and that the promotion orders on the basis of select list would be subject to the decision of this application.

xxiv) That the applicant submits that the promotions which are being made on the basis of select list of 1985 are in gross violation of Regulation 5 of the Indian/Service (Appointment by Promotion) Regulation 1955.

xxv) 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

- (a) Because in the matter of promotion to the Indian Police Service Cadre the applicant has been subjected to arbitrary and discreminatory treatment and the fundamental rights guaranteed to him under Articles 14 and 16 of the Constitution of India have been denied to him.
- (b) 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.
- (c) 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 applicant with penal consequences.

- (d) Because the select list has not been prepared strictly in accordance with the criteria laid down in Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulation 1955.
- (e) 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 selection in I.P.S. cadre.
- (f) Because no promotion can be made from the Provincial Police Service to the I.P.S. Cadre without strictly following the provision of Regulation 5 of the Indian Police Service (Appointment by Promotion) 1955.
- (g) Because the proposed promotions on the basis of impugned select list are contrary to Regulation 5(6) of the Indian Police Service (Appointment by Promotion) Regulation 1955.

8. Details 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 Annexure No.1 to this application.

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

The applicant further declares that he had not

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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.

9A to 9-I - (as in paras 1 to 9 respectively of attached application allowed vide order dated 10.8.1989, Hon'ble)

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.

(ii-A) That the order dated 18.4.89 passed by the O.P.s No. 3 and 4 removing the applicant from the cadre post of Additional
(iii) That any other appropriate direction as may be deemed just and proper may also be issued to the opposite parties.

Interim order, if any, prayed for

11. 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

Added
vide order dated 10.8.1989 allowing the Amendment Application
Hon'ble

Added vide
Amendment Application allowed on 10.8.1989

(7) S.P. Potehar to the post of Deputy Commandant, 25th Battalion, Koe Soreli requested and he may be confirmed on any cadre post of I.P.S.
Hon'ble

keep one post ~~of~~ in the I.P.S. cadre reserved for the applicant, which may be filled up on the basis of the select list.

12. Particulars of Postal Orders in respect of
Application Fee:

1. Number of Indian Postal Order : PP/4 827929
2. Name of the issuing Post Office : High Court Bredh Lubrow
3. Date of issue of postal order : 5.4.1989
4. Post Office at which payable : Lubrow

13. List of Enclosures:

- 1: Representation

Ans

Verification

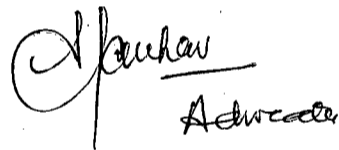
I, Aahok Kumar Misra, son of late Sri Surendra Nath Misra, aged about 44 years working as Additional Superintendent of Police Fatehpur do hereby verify that the contents of paras 1 & 9 are true to my personal knowledge and paras 7 viii, 7 xv believed to be true on legal advice and that I have not suppressed any material fact.

Lucknow dated

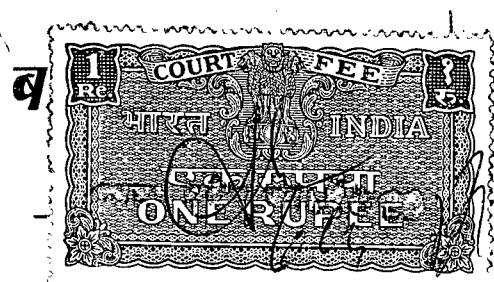
April 5 1989



SIGNATURE OF THE APPLICANT


Advocate

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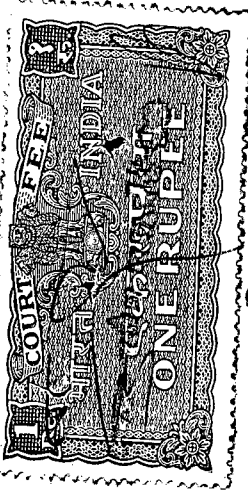
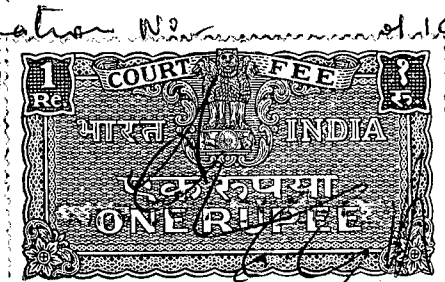
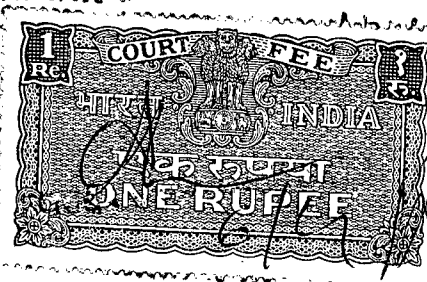
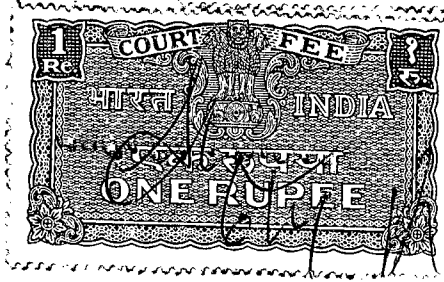


the Central Administrative Tribunal
Constituted Bench, Lucknow

महोदय

का

वकालतनामा



Ashok Kumar Mehta

बनाम Union of India प्रतवादी (रेस्पान्डेंट)

नं० मुकद्दमा

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पेशी की ता०

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ऊपर लिखे मुकद्दमा में अपनी ओर से श्री A. K. Jauhari, Advocate

and Sri Anurag Srivastava, Advocate वकील

एडवोकेट महोदय

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

नाम बदलन
नं० मुकद्दमा
नाम फरीकन

हस्ताक्षर

Accepted
Anurag Srivastava
A. K. Jauhari

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

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In The Central Administrative Tribunal Circuit Bench,
Lucknow.

I N D E X

In re:

Registration No. of 1989.

District Fatehpur

Between

Asnok Kumar Misra

... Applicant

AND

Union of India and others

... Opposite Parties.

S.No.	Particulars of Annexure	Page No.
1.	Annexure No.1 (Copy of Representation)	1 - 3

Lucknow: dated:

April 5 1989.

(ANURAG SRIVASTAV)

Advocate

Counsel for Applicant.

18/11/85

आई०पी०एस० 1985 की चयन सूची
के सम्बन्ध में प्रतिवेदन । अशोक कुमार सिंह
अपर पुलिस अधीक्षक

सेवा में,

उ०प्र० शासन,
लखनऊ ।
=====

द्वारा:- पुलिस महानिदेशक,
उ०प्र० लखनऊ ।

महोदय,

विभाग में जनचर्चा 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 1969 की ज्येष्ठता की सीधी श्रृंखला को 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, लखीमपुर	1973	1975
2.	इन्टेलिजेन्स डेस्कवाटर्स, लखनऊ	1975	1977
3.	डी०एस०पी० सिटी, मुजफ्फरनगर	1977	1978
4.	पुलिस प्रशिक्षण कालेज, मुरादाबाद	1978	1980
5.	सी०ओ० सिटी-1, मुरादाबाद	1980	1981
6.	स्टाफ आर्किस्टर, आई०जी०रेलवे, लखनऊ ।	1981	1984
7.	सी०ओ० रुड़की	1984	1985
8.	अपर पुलिस अधीक्षक, प्रतापगढ़	1985	1986
9.	अपर पुलिस अधीक्षक, गाजीपुर	1986	1987
10.	अपर पुलिस अधीक्षक, फतेहपुर	1987	-

उपरोक्त नियुक्ति के विवरण में मैंने सदैव अपने नियुक्त स्थान पर पूर्ण मनोयोग एवं समर्पित भावना से पुलिस विभाग की छवि, गरिमा तथा अधिकारियों के निर्देशों को सदैव सर्वोपरि मानकर पालन किया। फलस्वरूप जनपदों की नियुक्तियों के दौरान प्रायः सभी जनपदों में कुख्यात अपराधियों की गिरफ्तारी तथा लम्बी अवधि से चल रहे डकैतों के सरगना या तो गिरफ्तार हुये या पुलिस मुठभेड़ में

(Signature)

मारे गये। उदाहरण स्वल्प जिला फतेहगढ़ में प्रशिक्षण के दौरान कुख्यात अन्तर-परिक्षेत्रीय गुलशेरा-शमशेरा गैंग से मुठभेड़, लखीमपुर में अन्तरपरिक्षेत्रीय शिवदीन गैंग, सहारनपुर में अन्तर-परिक्षेत्रीय जंगता गैंग तथा फतेहपुर में अन्तर-परिक्षेत्रीय मम रमेश यादव गैंग व वशीर गैंग के सफाये में मेरी प्रमुख भूमिका के लिए मुझे पुलिस महानिरीक्षक, पुलिस उप-महानिरीक्षक के स्तर से व्यक्तिगत बधाइयाँ व प्रशस्ति-पत्र प्रदान किये गये तथा सदैव मैंने अपने अधिकारियों को अपनी कार्यक्षमता से प्रसन्न रखा।

इन्टेलीजेन्स हेडक्वार्टर्स, पुलिस प्रशिक्षण कालेज तथा आई०जी० रेलवे के स्टाफ आफिसर जैसे महत्वपूर्ण नियुक्तियों में मैंने पूर्ण मनोयोग एवं समर्पित भावना का तथा विभागीय कार्य क्षमता का परिचय देकर उत्कृष्ट सेवा उदाहरण प्रस्तुत किये।

केवल वर्ष 1980 में मुरादाबाद में मेरी सी०ओ० सिटी -1 की नियुक्ति के तीन महीने बाद प्रदेश व्यापी दंगे में मुरादाबाद नगर भी प्रभावित हुआ था। जिसमें श्री० वी०एन० सिंह-एस०एस०पी०, श्री० बी०बी० दास, अपर पुलिस अधीक्षक तथा मुझ तत्कालीन सी०ओ० सिटी ने अपने उत्तरदायित्वों का भरपूर निवांढ किया। हाई कोर्ट के जस्टिस श्री एम०पी० सक्सेना की अध्यक्षता में जांच कमीशन बैठा और उसी दौरान दुर्भाग्यवश तत्कालीन ज्येष्ठ पुलिस अधीक्षक श्री वी०एन० सिंह ने मुझे प्रतिकूल प्रविष्टी दी थी। मुझे उनके साथ केवल 3-1/2^{माह} काम करने का अवसर मिला था। इस 3-1/2^{माह} के कार्य की प्रतिकूल प्रविष्टी पर मैंने माननीय राज्यपाल महोदय तत्कालीन, उत्तर प्रदेश को वर्ष 1983 में प्रतिवेदन पुलिस महानिरीक्षक, रेलवे श्री जे०एन० चतुर्वेदी के माध्यम से प्रस्तुत किया था। जो वर्ष 1985 में नियुक्ति सूची के समय तक निर्णित नहीं हुआ था। इस प्रकार इस 3-1/2 के माह के कार्य की प्रतिकूल प्रविष्टी का नियमानुसार जिस पर प्रतिवेदन राज्यपाल महोदय के पास ~~अवलम्बित~~ था, उसको प्रतिकूल प्रविष्टी नहीं माना जायेगा।

पूर्ण सेवाअवधि में उपर्युक्त विणेत प्रविष्टी के अलावा कोई भी प्रतिकूल प्रविष्टी, निलम्बन, सेंसर प्रविष्टी अथवा चेतावनी मुझे नहीं मिली क्योंकि मैंने सदैव उत्कृष्ट सेवा-भावना से विभाग की गरिमा को बनाये रखने में अपने अधिकारियों के निर्देशों का पालन किया और इसकी कारण सभी अधिकारियों ने मेरे कार्य को सदैव उत्कृष्ट कोटि का आंका है। जिसके फलस्वरूप मुझे सीनियर स्केल व अतिरिक्त पुलिस अधीक्षक के पद पर प्रान्तितायाँ अपने बैच में ^{समय} से मिलती आ रही है। मेरी पहचान प्रदेश पुलिस सेवा में एक ईमानदार, कार्यकुशल एवं दक्ष तथा भरोसेमंद अधिकारी की रही है।

मैं अपने अधिकारियों का सदैव प्रशसापात्र ही बना रहा।

[Signature]

[Signature]

यहां पर यह कहना अनुचित न होगा कि वर्ष 1985 की चयन सूची जिसका प्रकाशन मैंने "दैनिक जागरण" समाचार पत्र में दिनांक 2.4.89 को पढ़ा मैं ऐसे नाम भी हूँ जो सेवाकाल में निलम्बित रहे, राज्य पुलिस सेवा के सीनियर स्केल से सीनियर स्केल तक मैं समय से प्रोन्नत नहीं हुए तथा अतिरिक्त पुलिस अधीक्षक के वेतनमान में प्रोन्नत के समय उन्हें पात्र नहीं समझा गया था। जबकि यह प्रोन्नतियाँ वर्ष 1985 के आस-पास अथवा उसके पूर्व ही की गयी थी। यह तथ्य स्पष्ट करते हैं कि इनकी प्रोन्नति के पात्र न पाया जाना इनके विरुद्ध किसी कायेंवाही से रही होगी। ऐसे अधिकारियों का चयन सूची में नाम आ जाना और उसमें मेरा नाम न होना विभाग तथा मेरे लिए एक आश्चर्यपूर्ण स्थिति है। सन् 1985 से पूर्व समय से मुझे सीनियर स्केल व अतिरिक्त पुलिस अधीक्षक की प्रोन्नति मुझे क्रमशः वर्ष 1980 व 1984 में प्राप्त हुई थी जबकि चयन-सूची में आये कुछ नाम इन प्रोन्नतियों तक में सम्मिलित नहीं थे। अतः इससे मेरी स्थिति अत्यन्त दयनीय, मेरी बिना किसी गल्ती, के, हो जाती है। यह स्थिति अपने में एक विरोधाभास है।

उद्देश है कि सम्भवतः अभिलेखों के सूत्रीकरण के समय कोई त्रुटि से ही यह स्थिति बनी है कि मेरा नाम चयन सूची में नहीं है।

अस्तु मेरा प्रदेश शासन से अनुरोध है कि अभिलेखों का पूर्ण निरीक्षक कर मुझे मेरी ज्येष्ठता के क्रम से वंचित हो जाने के स्थिति से बचाया जाय तथा वर्ष 1985 की चयन-सूची में सम्मिलित करने की कृपा की जाये एवं ओखल भारतीय पुलिस सेवा पुलिस प्रोन्नति से नियुक्त के 1955 नियमन 54 व 64 के प्रावधानों के अन्तर्गत ही चयन सूची कायांति न्वत करने की प्रक्रिया अपनायी जाये। ऐसा न होने से विभिन्न अवसरों पर चयन-सूची में अंकित अधिकारियों के विरुद्ध होने वाली कायें-वाहियों के बावजूद उन्हें तो लाभ मिलेगा परन्तु नियमानुसार मुझे न्याय नहीं मिल सकेगा। अतः पुनर्विचार न्यायपूर्ण है।

मुझे आशा एवं पूर्ण विश्वास है कि मेरे इस प्रतिवेदन पर शासन गंभीरता से विचार करने की कृपा करेगा तथा मुझे विभाग की सेवा में अपना मनोबल बनाने रखने में, समर्पित भावना से कार्य करने में पूर्ण न्याय उपयुक्त विवरणों पर विचार करके देगा।

[Signature]

दिनांक:

[Signature]
[Signature]
[Signature]

[Signature]
अपर पुलिस अधीक्षक 31/4/89

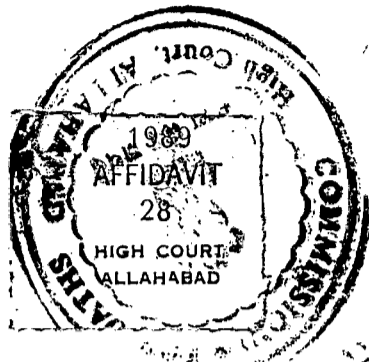
फतेहपुर, उ०प्र०

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD

CIRCUIT BENCH : LUCKNOW

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO.2

Case No. O.A. no.76 of 1989 (L)



Ashok Kumar Misra

Applicant

Versus

Union of India & others.

Respondents.

I, I.P. Tuli, aged about 46 years son of Smt R.L. Tuli, Under Secretary, Union Public Service Commission, New Delhi, do hereby solemnly affirm and state as under :

1. That the deponent is Under Secretary, in the office of the Union Public Service Commission, New Delhi who is fully conversant with the facts of the case deposed hereinafter and is authorised to swear this affidavit on behalf of Respondent no.2.

2. That the deponent has read the application filed by the applicant and understands the contents thereof.

3. That the contents of paras 1 to 6 of the application need no comment.

4. That the contents of paras 7(i) to 7(vii) relate to the State of U.P.; Respondent No.III, which will make necessary submissions in this regard.

Cont...2.



A43

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5. That the content of para 7(viii) of the application relate to provisions of IPS (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as Promotion Regulations). It is submitted that for correct reading, and upto date copy of the All India Service Mannual (Part-III) may kindly be perused.

6. That in reply to the contents of paras 7(ix) and 7(x) of the application it is submitted that the Selection Committee which met on 27th December, 1985 for preparation of Select List of State Police Service Officers of U.P. for promotion to the IPS, considered the case of the applicant alongwith other eligible officers. The Selection Committee was constituted under Regulation 3 of the IPS (Appointment by Promotion Regulations, 1955 (hereinafter referred to as P romotion Regulations)). The committee prepared the Select List in accordance with the procedure laid down in Regulation 5 of the Promotion Regulation. 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 Regulation and he was assigned a grading. In accordance with Regulation 5(5) the Committee prepared a 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



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Cont....3.

3.

available. The statement of the applicant that non-inclusion of his name in the said Select List is in gross violation of the Rule 5, is incorrect. He cannot substitute his own judgment for that of the Selection Committee.

7. That the contents of para 7 (xi) to 7(xiv) relate to the State Government, Respondent No.III who will make necessary submissions in this regard.

8. That in reply to the contents of paras 7(xv) to 7(xix) of the application it is submitted that according to Regulation 5(4) of the Promotion Regulations, 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. According to Regulation 5(5) of the Promotion Regulations, the Select 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 the names inter-se within each category shall be in the order of their seniority in the State Police Service. 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.

It is further submitted that the Supreme Court of India while upholding the Select List for promotion



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Cont....4.

of the Punjab State Civil Service Officers to the IAS for the years, 1978, 1979, 1980 and 1983 in the case of Shri R.S. Dass Versus Union of India vide their judgment dated 11.12.1986 in Civil Appeal Nos. 4370/83 and 4372 of 1983, ^(AIR-1987-SC-593) inter-alia observed as under :-

"Regulation 5 minimised the role of seniority in the process of selection and importance 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 Article 16 ensures equality in matters relating to appointment and promotion to an office⁽¹⁾ 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

Cont...5.



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."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 a fair and impartial manner in making selection. The recommendation of the Selection Committee are scrutinised by 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 along with the records of officers, before approving the select list. The Selection Committee and the



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Contd.....6.

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AUX

- 6 -

Commission both include persons having requisite knowledge, experience and expertise to assess the service records and ability to adjudge the 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"

The Hon'ble Supreme Court has re-affirmed these findings in H.L.Dev Vs. UPSC and others (AIR 1988 SC 1069) and further 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 superseded 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.

9. That in reply to the contents of para 7 (xx) of the application it is submitted that the Hon'ble High Court of Judicature at Allahabad had passed order dated 16.1.1986 in W.P. No. 1549 of 1985 filed by Shri 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 for the IPS Grade will



Cont....7.



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 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 the Government of Uttar Pradesh, the Union Public Service Commission have approved the Select List of 1985^o on 6th February, 1989. More details in this regard may be submitted by Respondent no.III the Government of Uttar Pradesh.

10. That the contents of para 7 (xxi) of the application relate to the State of U.P. who will make necessary submission in this regard.

11. That in reply to the averments made in para (xxii) of the application it is stated that the applicant has not been subjected to any sort of discrimination as explained in detail in paragraph 8 above.

12. That the contents of para 7 (xxiii) of the application relate to the State Govt. of U.P. who will make necessary submission in this regard.

13. That in reply to the contents of para 7 (xxiv) and 7(xxv) of the application it is submitted that in view of the averments made in preceding paragraphs, the applicant is not entitled to any of the relief prayed for in so far as this respondent is concerned.

Cont.....8.



The application is without merit in fact and law and it should be dismissed with costs in so far as this respondent is concerned.

14. That the contents of para 8 to 13 need no comments.

sept. 6,
August, 1989.


DEPONENT.

VERIFICATION:

I, the abovenamed deponent do hereby verify that the contents of paras 1-14 of this affidavit are true to my personal knowledge as derived from record in this office and also based on legal advice and no part of it is false and nothing material has been concealed in it. So help me God.

Sept 6,
August, 1989.


DEPONENT.

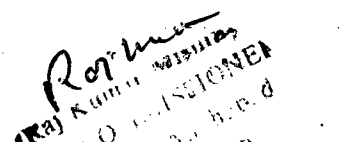
I identify the deponent who has signed this affidavit before me and known by me.


Advocate.



Solemnly affirmed before me on this
day of 1989 at am/pm by the deponent
who has been identified by Dr. Chandra

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


Raj Kumar Mishra
BATH CO. COMMISSIONER
High Court, Allahabad
I know bench
28/12-5
NO. 6-9-89
Date

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ब अदालत श्रीमान्

महोदय

[वादी अपीलान्त]

प्रतिवादी [रेंस्पाडेन्ट]

श्री *Genl. Adm. ...* का *Civil Bench, Lucknow*

वकालतनामा

टिकट

वादी (अपीलान्त)

श्री *Abdur Kunn M...*

बनाम *Munir Ghani & M...*

प्रतिवादी (रेंस्पाडेन्ट)

नं० मुकद्दमा ० A.76 सन् १९४९ (२) पेशी की ता०

१६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री *Dr. J. N. Chandra* ...

Add. Gen. Secy. Standing Council High Court वकील
Lucknow महोदय
एडवोकेट

नाम अदालत
मुकद्दमा नं०
नाम फरीकन

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाब देही व प्रश्नोत्तर करे या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें मुकद्दमा उठावें या कोई रुपया जमा करें या हारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवें या पंच नियुक्त करें—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने परोकार को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे ।

Accepted
J.G.S.
Sharma

साक्षी (गवाह)

Signature

हस्ताक्षर ... (for Respondent No. 2)

साक्षी (गवाह)

Signature

दनांक ... १६/४ ... महीना ... ०८/४ ... सन् १९४९ ई०

स्वीकृत

(AS)

Counsel
BEFORE THE ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

O.A. NO. 76/89 (L)

A.K. Misra.

--- Claimant

Versus

Union of India & ors. ---

Opp. Parties

APPLICATION FOR CONDONATION OF DELAY IN FILING
COUNTER AFFIDAVIT.

The above named 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 may be
condoned and attached counter affidavit
may be taken on record.

Lucknow, dated:

Anoop Kumar
(ANOOP KUMAR)
Advocate

September 25, 1989. Counsel for Respondent 3 and 4

*Filed delay
with*

(352)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

O.A. No. 76/89 (L)

A.K. Misra

Claimant

Versus

Union of India & ors.

Opposite Parties

APPLICATION FOR MODIFICATION OF STAY ORDER

DATED 10.8.89.

The abovenamed opposite parties 3 and 4
respectfully beg to state as under :-

That for the facts and reasons stated in the
accompanying counter affidavit, it is respectfully
prayed that the stay order dated 10.8.89 may be
modified ^{to this effect} that the respondents may not be directed
to post the applicant on a Cadre/non Cadre post
of I.P.S.

Anoop Kumar
(ANOOP KUMAR)
Advocate

Counsel for Opposite Parties 3 & 4

Lucknow, dated:

September 25, 1989.

(AS3)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW.

O.A.No.76/89 (L)

1989
AFFIDAVIT

117
HIGH COURT
ALLAHABAD

25/9/89

A.K. Misra.

--- Claimant

Versus

Union of India & ors.

--- Opposite Parties

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT

3 & 4 TO THE APPLICATION OF A.K. MISRA.

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 Department, as such is fully conversant with the facts of the case, the deponent has read the contents of the claim petition of A.K. Misra (hereinafter referred as claim petition) and after understanding the same is filing this Counter Affidavit to controvert the same.
2. That the contents of paragraph 1, 2 and 3 of the claim petition need no comment being matter on record.
2. 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 along with other eligible

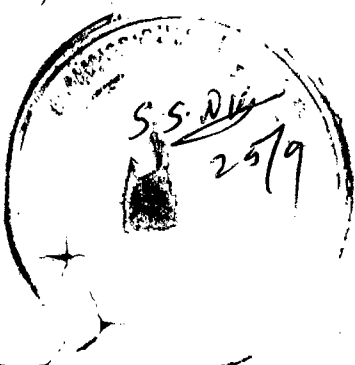
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State Police Service Officers. The said Selection Committee did not find the petitioner fit for inclusion of his name in the Select List. The contention of the petitioner that he has outstanding service records holds no ground because the service records of the petitioner were assessed by the high level Selection Committee under the Chairmanship of a member of the 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 to as Promotion Regulations) and he was assigned a suitable grading keeping in view of his service records as a whole. In accordance with Promotion Regulations 5(5) the Committee prepared a list of 34 officers, the size of which was determined in accordance with Regulation 5(1) of the Promotion Regulations- 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 comments being matters on record.
 5. That the contents of paragraph 7(1) of the Claim Petition are matters on record hence need no comments.
 6. That the contents of paragraph 7(ii) of the Claim Petition are not disputed.

ASS

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 filing of this petition. 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 posting on these posts are made in public interest.
8. That the contents of paragraph 7(iv) of the Claim Petition are not disputed.
9. That the contents of paragraph 7(v) & 7(vi) of the Claim Petition are not admitted as stated. As far as ~~possible~~ petitioner's contention of his service records being of 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 from amongst the officers finally classified as "outstanding" than from amongst 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 process the Junior Officers

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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 lists.

10. That the contents of paragraph 7(viii) 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 item 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

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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 States where the total number of eligible officers is less than three times the maximum possible size of the select list and in ~~extra~~ 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 Rules, on the first day of January of the year in which it meets, he is in 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 Dy. Supdt. of Police or in any other post or posts declared equivalent thereto by the State Government;

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



(2-A) Notwithstanding anything contained in sub-regulation (1) and (2), the list referred to in sub regulation (1) shall be prepared separately in respect of

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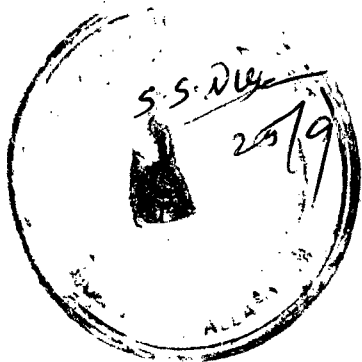
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each state police service. The number of members of the state police service included in each such part of the list shall not be more than twice the number of substantive vacancies anticipated in the course of the period of 12 months, commencing from the date of the preparation of the list in the posts available for them under the rule -9 of the Recruitment Rules or 5 percent of the senior posts shown against item 1 of the cadre in the schedule to the Indian Police Service (Fixation of cadre strength) Regulations 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 shown 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 notionallyreckoned against each of the constituent states for the purpose of the sub-rule 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 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 meanwhile attained the age of 52 years;

Provided further that a member of the State Police Service who has attained the age of 54 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 or years;

(4) The Selection Committee shall classify the eligible officers as "outstanding", "very good", "Good", or "unfit" as the case may be, on an over all 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 the 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 A.I.S. Manual Part III (Fifth Edition) may kindly be referred to.

11. That in reply to paragraph 7 (ix) of the Claim petition it is stated that the applicant was not included in the Select List of 1985 only because

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sufficient number of officers who were assigned a higher grading than the petitioner were available.

12. That in reply to contents of paragraph 7(x) of the Claim petition it is submitted that in view of the facts stated in preceding paragraphs the names of the 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.
13. That in reply to contents of paragraph 7(xi) of the Claim Petition, it is submitted that ~~xxxx~~ since there was no irregularity in implementing the Select List of 1985, it has already been implemented after its approval by the respondent No.2 i.e., Union Public Service Commission as per rule ^h i.e. the officers on the select list have been posted on the cadre posts of D.P.S. ^h
14. That the apprehensions as stated in paragraph 7(xii) 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 provisions of para 5(6) of I.P.S. (Appointment by Promotion) Regulation- 1955 and was duly sent to the Union Public Service Commission, New Delhi but the U.P.S.C. could not approve the same as the Hon'ble High Court was pleased to stay the preparation of the Select List in writ petition no.1449/85 Basant Singh versus State of U.P. and 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



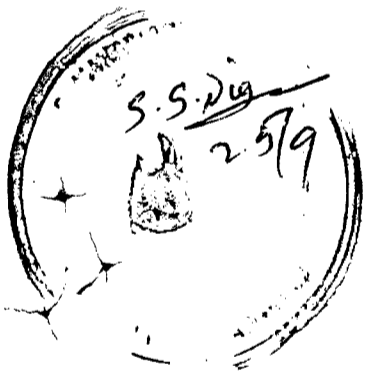
unless seniority list is prepared in accordance with the directions issued by the Services Tribunal and further no Select List for the I.P.S. grade will be prepared without finalisation of the seniority list.

Sd. K.N.S.

Sd. R.S.D.
16.1.86

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

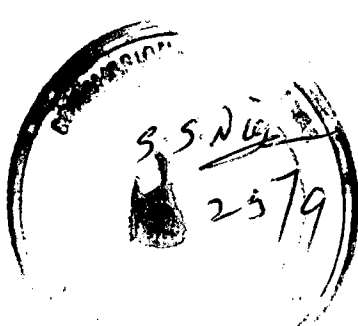
This writ petition of Basant Singh & others Versus State of U.P. and others was ultimately clubbed with the writ petition filed by Rana Randhir Singh and others versus State of U.P. and others in the Hon'ble Supreme court and this petition of Rana Randhir Singh was finally decided on 4.11.88. A copy of the judgment of the Hon'ble Supreme Court is annexed herewith as Annexure-CA-2. After the decision and the order of Hon'ble Supreme Court in this petition, the interim stay order 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 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) Regulations-1955 is baseless and incorrect.



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15. That in reply to the contents of paragraph 7(xiii) and 7(xiv) of the claim petition it is submitted that the Selection Committee met on 27.12.85 had made its recommendations after exhausting scrutinising the service records of all eligible, 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.
16. That in reply to 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 adduced to the Regulations prescribed in I.P.S. (Appointment by Promotion) Regulations-1955.
17. 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.
18. That the contents of paragraph 7(xvii) of the



Claim Petition 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. According to these instructions they are to be graded in one of the following categories on the basis of their over all work and conduct :-

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

19. That the contents of paragraph 7(xviii) of the Claim Petition 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 A.I.S. Act 1951, issued any such instructions as stated in this paragraph.

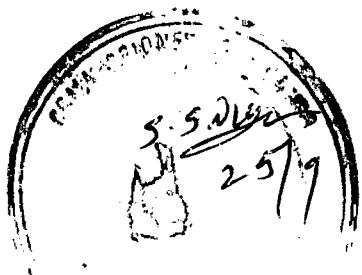
20. That the contents of paragraph 7(xix) of the Claim Petition are admitted to the extent that the applicant was given senior scale of P.P.S. in 1980 and was promoted to the post of Addl. S.P. in 1984, But it is absolutely incorrect to say that while making selection for promotion in I.P.S. cadre he has ~~was~~ 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 clearly stated in preceding paragraphs Selection Committee considered the case of the petitioner as well as



other eligible officers for including their names in the list and made its recommendations only after scrutinising service records of each and every officer according to the Regulations of I.P.S. (Appointment by Promotion) Regulations-1955.

21. That with regard to contents of paragraph 7(xx) of the claim petition it is submitted that the Hon'ble High Court of Judicature at Allahabad had passed an order dated 16.1.86 in writ petition No.1549 of 1985 filed by Shri Basant Singh versus State of U.P. and others. The Hon'ble Court had ordered that the respondents are restrained from making any further promotions to the post of Supdt. of Police or Addl. 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 C.A.-II. 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~~ the Hon'ble Supreme court of India pronounced its final judgment on 4.11.88. This ~~workbook~~ 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. and others.

In view of the orders of Hon'ble Supreme Court in the case of Rana Randhir and others and 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.

22. That the contents of paragraph 7(xxi) of the Claim petition ~~xxxxx~~ 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 alone the claim petition is liable to be dismissed.
23. That the contents of paragraph 7(xxii) of the claim petition are denied vehemently in view of the position explained in preceding paras and the apprehensions of the applicant are totally unfounded and baseless.



24. That in reply to 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 6.4.89.
25. That the contents of paragraph 7 (xxiv) of the claim petition are not accepted as stated in view of the facts mentioned in preceding paragraphs.
26. That the contents of paragraph 7(xxv) are denied

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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.

27. That the contents of para 8 of the claim petition are not correct. The applicant moved his representation to the answering respondents only on 3.4.89 and before the answering respondent could take any decision on it, the applicant moved this Hon'ble Tribunal on 6.4.89.
28. That the contents of para 9 of the claim petition need no comment.
29. That the contents of paragraph 9-A of the Claim Petition need no comments.
30. That the contents of paragraph 9-B of the Claim Petition need no comments.
31. That the contents of paragraph 9-C of the Claim Petition are admitted to the extent that the applicant was transferred from the post of Additional Superintendent, 25th Battalion, P.A.C., Rae Bareilly where the applicant has already taken over the charge. The rest of the contents of para under reply are denied and it is stated that the post of Additional S.P. Fatehpur is not a cadre post of I.P.S. On the contrary this post is purely a temporary and non cadre post of State Police Service created on adhoc basis. The post of Additional S.P. and that of Deputy Commandant of a P.A.C. Battalion are equivalent and are in the Special Grade of Rs.1200-1700 of State Police Service and therefore the transfer of the applicant from the post of Additional S.P. Fatehpur to Dy. Commandant does not amount to any reversion of the



~~applicant~~

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applicant.

32. That the contents of paragraph 9-d of the claim petition are denied. The applicant has compared his case with those of Sri H.N. Srivastava and Sri C.B. Rai of these two officers Sri H.N. Srivastava was holding a cadre post of I.P.S. according to the provisions of I.P.S. (Cadre) Rules but transfer of Sri H.N. Srivastava from cadre post to that of non cadre post of State Police Service did not amount to any reversion under the provisions of rules. In fact Sri H.N. Srivastava was posted to his substantive post as soon as cadre officers became available on account of approval of the select list of 1985. The similar is the case of C.B. Rai with a difference that before his appointment and transfer to his substantive post he was holding a non cadre post of I.P.S. It is repeated for emphasis that the applicant was never posted on a cadre or non cadre post of I.P.S. nor he is a select list officer hence his transfer from the post of Additional S.P. Fatehpur to Dy. Commandant 25th Battalion P.A.C. Rae Bareilly is merely a routine transfer done in public interest. It is again reiterated that his case before the transfer cannot be compared with that of Sri H.N. Srivastava and Sri C.B. Rai.



33. That the contents of paragraph 9-E are emphatically denied in view of the reply given in para 9-C and 9-D above.

34. That the contents of paragraph 9-F are denied vehemently being based on misconceived knowledge of the

applicant . As already stated that the post of Additional S.P. Fatehpur is purely a temporary and non cadre post of State Police Service created on ~~ad hoc~~ adhoc basis. The order of creation of this post is annexed as Annexure-C.A. 1^u & 1A^u Whereas posts of Additional S.P. as specified in the Schedule appended to the I.P.S. (Fixation of Cadre strength) Regulations-1955 were cadre posts of I.P.S. However now even these 11 posts have been decadred due to the review of the cadre in January 1988. The ordrs of respondent no.1 regarding revision of cadre strength are annexed herewith as Annexure-C.A. 2^u

35. That the contents of paragraph 9-g of the claim petition is denied. I.P.S. (Regulation of seniority) Rules -1954 have been amended vide Government of India's Notification No.14014/40/88-AIS(1) dated 27th July 1988 by which I.P.S. (Regulation of Seniority) Rules-1954 and other rules corresponding to the said rules in force have been repeated. Now the latest rules regarding fixation of seniority are named as I.P.S. (Regulation of Seniority) Rules 1988. A photo copy of the said amended rules has already filed along with objection to the application for interim relief. Therefore it is submitted that the applicant can not claim any benefit enunciated in I.P.S. (Regulation of Seniority) Rules -1954. By this amendment it has become absolutely irrelevant whether an officer continuously held a cadre or non cadre post of I.P.S. before his inclusion in the select list for the purposes of determination of seniority, hence



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the contention of the applicant is baseless and misconceived.

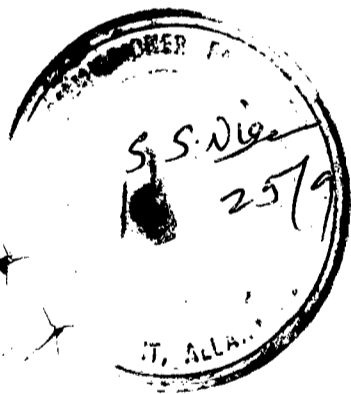
36. In view of the facts stated above contents of paragraph 9-h and 9-i has no legs to stand and it is prayed that the application be dismissed with cost.
37. That the contents of para 10 of the claim petition are denied and it is stated that the claimant is not entitled to get any relief claimed in the para under reply and the claim petition is liable to be dismissed with cost.

ADDITIONAL PLEAS

38. That it is also respectfully submitted before the Hon'ble Tribunal that the applicant was never posted on a cadre/non cadre post of I.P.S., before the impugned order of transfer dated 18.4.89. Also through that order he was posted on non-cadre special grade post of State Police Service in the rank of Additional S.P./Dy. Commandant P.A.C.

It is also stated that Sri H.N. Srivastava was holding a Cadre post of I.P.S. and Sri C.B. Rai was holding a non cadre post of I.P.S. before the impugned order of transfer dated 18.4.89 and therefore the case of the applicant is different than that of Sri H.N. Srivastava and Sri C.B. Rai.

In view of the facts stated above it is most respectfully requested that the Hon'ble Tribunal may be pleased to review its order dated 10.8.89



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and revise it to the effect that the respondents are not directed to post the applicant on a cadre/non cadre post of I.P.S.

39. That since personal records of the officer were not available with the answering respondent and they were to be sought and collected from the respondent no.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 counter reply of this claim petition.

40. That the delay 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 25 to 27 to 36 & 38 to 39 are true to my own knowledge on the basis of records and those of paras 26, 37 to and 40 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, Anoop Kumar Advocate do hereby declare that the person making



JK

AN
this affidavit and alleging himself to be
Sri D. S. Mishra is the
~~Anoop Kumar~~
same person who is known to me from the
perusal of record produced before me in this
case.

Anoop Kumar
Advocate



Solemnly affirmed before me on 25th
the day of September 1989 at 1:50 p.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
JAYYAS LAL NIGAM
OATH COMMISSIONER
High Court, Lucknow
No. 17 Date 25/9/89

संख्या: ५०२५/वाठ-५०२०-२-१६८४।

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

सेवा में,

महानिदेशक एवं पुलिस महानिरीक्षक,
उत्तर प्रदेश,
लखनऊ।

गृह (पुलिस सेवायें) अनुभाग-२

दिनांक लखनऊ, १ दिसम्बर १९८४।

महोदय,

मुझे यह कलन का निदेश हुआ है कि राज्यपाल महोदय ने निम्नलिखित ३७ जगहों के लिये स्क-स्क अपर पुलिस अधीक्षक के अस्थाई निःसंकाय पदों को सृजित किये जाने की स्वाकृति प्रदान की है -

- | | |
|---------------|---------------------|
| (१) जाजमगढ़ | (२०) हरदोई |
| (२) बांदा | (२१) जालौन |
| (३) बस्ती | (२२) फासो |
| (४) बदायूं | (२३) जौनपुर |
| (५) बहराँच | (२४) कानपुर (देहात) |
| (६) बाराबंकी | (२५) खीरी |
| (७) बिजनौर | (२६) ललितपुर |
| (८) बुलन्दशहर | (२७) मैनपुरी |
| (९) बलिया | (२८) मुजफ्फरनगर |
| (१०) देवरिया | (२९) मथुरा |
| (११) देहरादून | (३०) पीलीभीत |
| (१२) छटा | (३१) प्रतापगढ़ |
| (१३) छटावा | (३२) रायबरेली |
| (१४) फाँजाबाद | (३३) रामपुर |
| (१५) फतेहपुर | (३४) शाहजहाँपुर |
| (१६) फतेहगढ़ | (३५) सुल्तानपुर |
| (१७) गौण्डा | (३६) सातापुर |
| (१८) गाजीपुर | (३७) उन्नाव |
| (१९) हमीरपुर | |

२- उपरोक्त प्रस्तर १ में सृजित पद भरे जाने की तिथि से २८ फरवरी १९८५ तक के लिये इस स्तर के अधान किये जा रहे हैं कि इन्हें किसी पूर्व सूचना के किसी भी समय समाप्त किया जा सकता है।

३- बाई०पा०स्स० (वित्त) नियमावली, १९५४ के नियम ६(२) के अधान राज्यपाल महोदय यह घोषित करते हैं कि उपरोक्त प्रस्तर १ में सृजित समस्त पद स्तर एवं उन्नयन प्रवृत्ति में बाई०पा०स्स० (वित्त) नियमावली, १९५४ का अनुसूची ३(बी) में उल्लिखित पुलिस अधीक्षक के समकक्ष माने

जायेंगे तथा इन पदों पर नियुक्त अधिकारी जाई०पी०एस० के सोनियर स्केल (२० १२००-१७००) में या राज्य सरकार द्वारा इसके समकक्ष सृजित वेतनमान में वेतन प्राप्त करेंगे और इसके साथ साथ जाई०पी०एस० अधिकारियों को समय समय पर अनुमन्य महंगाई भत्ता प्राप्त करेंगे ।

४- जब तक उपरोक्त प्रस्तर १ में सृजित पद चलते रहेंगे तब तक शासनादेश संख्या ७६४।जाठ-पु०से०-१-५२२(७०)।७६ दिनांक ६ नवम्बर १९८३ में सृजित उपर प्रदेश पुलिस सेवा के स्मैरल ग्रेड के ७० पदों में से ३७ पद समाप्त माने जायेंगे । इसके अतिरिक्त शासनादेश संख्या ४३५२।जाठ-पु०से०-२-५३१(१)।८१ दिनांक १८ नवम्बर १९८२ में सृजित संयुक्त पुलिस अयोध्याक, आजमगढ़, फतेहगढ़, इटावा, मैनपुरी एवं एटा के ५ पद, शासनादेश संख्या ३६२३।जाठ-पु०से०-१-५३१(१)।८१ दिनांक २१ नवम्बर १९८३ में सृजित संयुक्त पुलिस अयोध्याक, फाँजाबाद एवं बस्ती के दो पद तथा शासनादेश संख्या ५०४२।जाठ-पु०से०-१-६१२(३)।८४ दिनांक १३ नवम्बर १९८४ में सृजित संयुक्त पुलिस अयोध्याक के १६ पद समाप्त हो जायेंगे ।

५- इस सम्बन्ध में होने वाला व्यय चालू वित्तीय वर्ष १९८४-८५ के आय-व्यय लेखा शाष्किक 'सू५-पुलिस आयोजन' के अन्तर्गत सम्बद्ध उपशाष्किकों एवं प्राथमिक इकाइयों के नामे डाला जायेगा ।

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

भवदीय,

(प्रभा शंकर मिश्रा)
संयुक्त सचिव ।

संख्या: ५०२५(१)।जाठ-पु०से०-१-८४।

प्रतिलिपि निम्नलिखित को सूचना एवं आवश्यक कार्यवाही हेतु प्रेषित

- १- महालेखाकार, उपर 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 ।

प्रेषक,

Amrejur NO (17) 11

22

दुर्गा 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 है 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 स्त0 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 स्त0 के सीनियर स्केल के समकक्ष" को विलोपित करते हुए श्री राज्यपाल ने आदेश दिये है 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 महंगाई भत्ता, अतिरिक्त महंगाई भत्ता, तदर्थ महंगाई भत्ता तथा अन्तरिम सहायता



उसी प्रकार पायेंगे जैसा कि समकक्ष वेतनमान में केन्द्रीय कर्मचारियों को तत्सम्य उपलब्ध थी। इसके अतिरिक्त उत्तर प्रदेश पुलिस सेवा में पुलिस उपाधीक्षकों के वरिष्ठ वेतनमान या कनिष्ठ 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 निदेश हुआ है कि शासनादेशा 1.12.1984 में सृजित अपर पुलिस अधीक्षक के 37 पद तथा शासनादेशा 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 शासनादेशा दिनांक 1.12.1984 तथा 1.9.1986 में तदर्थ रूप से सृजित अपर पुलिस अधीक्षक के अस्थाई पदों पर होने वाला व्यय सुसंगत वर्ष तथा वर्ष 1989-90 में आय-व्यय के निम्नलिखित लेखाशीर्षक के अन्तर्गत सुसंगत उपशीर्षक एवं प्राथमिक ईकाइयों के नाम डाला जायेगा।

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

5- यह आदेशा 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।

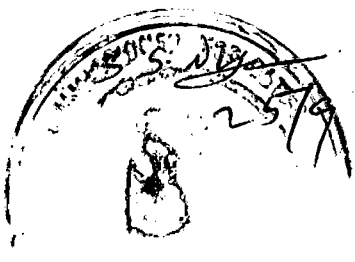
संख्या- 5465(1)/आठ-पुओसे०-2-तददिनांक।

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 सेवार्थ अनुभाग-1
- 151 महालेखाकार, उत्तर प्रदेश इलाहाबाद।

आज्ञा से,

दुर्गा शंकर मिश्र।
संयुक्त सचिव।



Annexure No. 2 A/29

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

No. 11052/3/67-AIS(II)-4

Government of India

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

.....

New Delhi, the 27th January, 1988

N O T I F I C A T I O N

G.S.R.No.....In exercise of the powers conferred by sub-section(1) 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/-

5.5.24
25/9

177 25

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	1
Principal Police Training College-III, Sitapur	1
Deputy Inspector General of Police (Armed Training) Centre, Sitapur	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

....3/-

5-5-24
5/9

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 ✓

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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



432/322
(K.B.L. SAXENA)
Desk Officer

A79

In the Central Administrative Tribunal
Circuit Bench, Lucknow.

O.A. No. 76/1989 (L)

A.K. Misra

-----Applicant.

Versus

Union of India & others

-----Opposite parties.

REJOINDER OF APPLICANT IN REPLY TO THE COUNTER AFFIDAVIT
OF O.P. NO. 2.

- 1- That the applicant has carefully gone through the Counter Affidavit of Sri I.P. Tuli, Under Secretary, Union Public Service Commission, New Delhi and fully understood the Contents thereof. A copy of the Counter Affidavit was served on the applicant on 19/10/1989.
- 2- That the contents of paras 1,2,3 & 5 of the Counter Affidavit do not call for any reply. In para 3 of the C.A., no comments have been offered in respect of paras 1 to 6 of the application which accordingly stand unrebutted by and admitted to the O.P. No. 2.
- 3- That with regard to the contents of para 4 of the C.A. in reply to paras 7 (i) to 7 (vii) of the O.A., it is submitted that the O.Ps 3 and 4 have in paras 5,6 & 8 of their C.A. not disputed the correctness of the contents of paras 7 (i), 7 (ii) and 7 (iv) respectively of the O.A. The reply given by O.Ps No. 3 and 4, in paras 7 and 9 of their C.A. to the contents of paras 7 (iii) and 7 (v) & 7 (vi) respectively of the O.A. have been adequately replied in paras 4 and 5 respectively of the Rejoinder already filed and their contents are hereby adopted as part and parcel of this Rejoinder and may be read as such.

Chandra

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It is submitted that the contents of para 7 (vii) of the O.A. which have not been replied by the O.Ps thus stand unrebutted and uncontroverted and are reiterated.

- 4- That the correctness of the contents of para 6 of the Counter-Affidavit are denied while those of paras 7 (ix) and 7 (x) of the O.A. are reiterated. It is denied that the Selection Committee, which met on 27th December, 1985, met for preparation of the select list or that it prepared the select list or even that it followed the procedure laid down in Regulation 5 of the Promotion Regulations of 1955 in making the relative assessment of the Service Records of the applicant which themselves were incomplete in as much as the appreciation letter (already filed as Annexure R-1 to the Rejoinder of the applicant in reply to the Counter Affidavit of the O.Ps No. 3 and 4) given to the applicant for displaying praise worthy extra-ordinary bravery and courage in personally leading the Police Force on the night of 28th /29th July, 1984, in the encounter with the gang of the most dreaded and notorious daccit Jagata which resulted in the latter's death and arrest of his associates and recovery of all their arms, was neither kept or ^{or} incorporated in the annual remarks awarded to the applicant for the relevant year 1984-85, nor otherwise placed before the meeting of the selection committee as part of the Service Records of the applicant, in gross violation of and against the ~~specific~~ provisions of the Government orders on the subject contained in Karmik-2 Anubhag's Office Memorandum No. 36/9/76- Karmik- 2 dated 24/1/1977 and office Memo No. 36/9/76 Karmik- 2 dated 4/5/1977 (which require that appreciation Letters must invariably be kept on the Character Roll) true copies of which are already on record as Annexure Nos. R-2 and R-3 respectively to the Rejoinder of the applicant in reply to the C.A. of the O.Ps No. 3 and 4, as well as against Regulations 5(4) and 5 (5) of the I.P.S. (Appointment by Promotion) Regulations, 1955. The non-placement of the said Appreciation Letter in the Character Roll of the applicant as also before the selection

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committee, which met on 27.12.1985, must have weighed heavily with it against the deponent, vis-a-vis ~~other~~^{the} eligible candidates, including in particular, those juniors to the applicant whose names have been included in the list prepared by it in 1985. It is denied that the Selection Committee either prepared a Select List as such, or that it prepared the list (not select list) in accordance with Regulation 5(5). The contents of the Rejoinder of the Applicant, filed in reply to the C.A. of O.Ps. No. 3 and 4, particularly paras 5, 6 and 7 thereof adequately reply to the contents of para 6 of the Counter Affidavit of O.P. No. 2, and may be treated as the applicant's reply to them and as part and parcel of this Rejoinder. It is true that the applicant can not substitute his own judgement for that of selection committee, as contended in the C.A., but if (a) the entire relevant service record of the applicant was not placed before the Selection Committee as mentioned above, and (b) the ACRs made basis for gradation of the petitioner ~~but~~^{and} the Selection Committee had not enough time on 27th Dec. 1985, to scrutinize the bulk when the remarks were not recorded in the light of various rules and directions for the purposes of relative assessment of service records of the petitioner vis-a-vis other eligible officers, and also (c) the size of the list could not have proper appreciation in relation to then existing vacancies to include the petitioner so graded on some reasonable norms, the grading assigned to him by the latter could not be correct or fair.

- 5- That paras 7, 10 and 12 of the C.A., it has been stated that the contents of paras 7 (xi) to 7 (xiv), 7 (xxi) and 7 (xxiii) respectively of the application relate to the state Government of U.P. who will make necessary submissions in regard to them it is stated that the state Government of U.P. (O.P. No. 2) in paras 13 to 16, 22 and 24 of its C.A. submitted its reply to the contents of the aforesaid paras of the application

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The applicant has in paras 7,8,9,14 & 16 of his Rejoinder filed in reply to that C.A. made his submissions in regard to those paras and the applicant hereby reiterates them and adopts them as his reply and the same may kindly be read as part and parcel of this Rejoinder as well.

- 6- That the contents of para 8 of C.A. as stated except the mention of the contents of Regulations 5(4) of the promotion Regulations of 1955, and reproduction of the ^{the} observations of the Hon'ble Supreme Court of India, from its Judgement dated 11-12-1986, in the case of R.S. Dass, Versus Union of India as well as the observations of that court in the case of H.L. Dev, Versus U.P.S.C. & others referred in the said para, are incorrect and, as such, are denied, and the contents of paras 7 (xv) to 7 (xix) of the application are reiterated. Further the contents of paras 9,10,11 & 12 of the Rejoinder of the applicant already filed in reply to the contents of paras 16,17,18,19 & 20 of the C.A. of O.Ps. No. 3 and 4 are also relevant in this connection and may be treated as part and parcel of this para No. 6 of this Rejoinder and read as such. It is denied the Selection Committee was required to prepare or had in fact had prepared any Select List as such or even, That under Regulation 5(5) of the Promotion Regulations of 1955, any Select list was required to be prepared. It is stated that as the entire relevant service records of the applicant were not placed before the Selection Committee, the latter could not possibly make a correct and fair relative assessment in respect of the applicant vis-a-vis ^{the} other eligible candidates. The entries available in the Character Roll, which themselves were not made in accordance with the standing orders of the State Government could, in themselves, not form the basis for judging comparative merit of various eligible candidates; other service records e.g. appreciation letters etc. had also to be examined/ scrutinized for doing so, lest miscarriage of justice might result. In this connection the circular letter dated 13.12.1984, of then D.G. of Police Sri J.N. Chaturvedi, a true copy of which has



already been filed by the applicant as Annexure -R-4 to his Rejoinder in reply to the Counter Affidavit of the O.Ps. 3 and 4, deserves to be perused by this Hon'ble Tribunal as it throws ample light on the vague and nonsatisfactory state of affairs prevailing in the Department in the matter of awarding of annual remarks in the Character Roll of Police Officers and their erratic categorization or classification.

The applicant is also filing a true copy of a circular letter dated 4/4/1982, issued earlier under the signature of Sri Naresh Kumar, the then Director General of Police, as Annexure No. R-1 to this Rejoinder. Its perusal would show that the manner of recording annual remarks in the Character rolls of Gazetted Officers of Police Department rendered the appraisal of their personality and performance to be superficial, inadequate, cryptic and even indifferent. This circular also contained several salient points for guidance of officers charged with the duty of awarding and/or reviewing annual remarks. These two circulars dated 6.4.1982, and 13.12.1984, read with the contents of the circular letter dated 1.4.1989, of the Head quarters of the D.G.P, a true copy of which has already been filed as Annexure R-5 to the Rejoinder of the Applicant to the C.A. of ^{or} O.Ps No. 3 and 4, (in which three after circulars dated 10.3.1986, 31.7.1987, and 21.3.1988, have been referred) clearly go to show that the standing orders on the subject of award of Annual entries were not being followed.

The observations made by the Hon'ble Supreme Court are no doubt pious and correct, but actual practice of the O.Ps. is not in consonance with them, with the result that relative objective assessment of the service records was not possible in a fair and correct manner, as is amply demonstrated by the situation disclosed in Annexure R-1 to this Rejoinder and Annexure 4 & 5 to the Rejoinder of the applicant filed in reply to the Rejoinder of the Applicant filed in reply to the C.A. of the O.Ps. 3 and 4. Preparation according to rules, regulations and standing orders of the Government and actual placement of all

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the relevant service records of eligible officers before the Selection Committee is one thing and assessment of the service records in an objective manner is an entirely different thing. If the former is grossly or substantially defective, then the latter cannot, in the very nature of things, be correct and objective and will be rendered arbitrary and discriminatory. This is what has happened in the case of the Applicant.

As has been explained in detail by the Applicant in his Rejoinder to the C.A. of the O.Ps No. 3, and 4, ^{four} ~~four~~ of six Members of the Selection Committee, which prepared the list (not the select list) for promotion to the I.P.S. in December 1985, were the same who made the Selection for promotion to the post of Addl.S.P. in 1984. In the ^{latter} selection, the Applicant was selected and promoted even without the said Appreciation Letter (Annexure R-1 to the Rejoinder of the Applicant in reply to the C.A. of O.Ps. No. 3 and 4) while some of the seniors of the Applicant including Sarvashri Satish Yadav and K.N.D. Dwivedi were not so selected and promoted. It is admitted to the O.Ps. that the annual entries awarded to the Applicant since 1981 till the date of filing of the present Application are excellent and outstanding and also that he was promoted as Addl.S.P. in 1984, inspite of the adverse entry for the year 1980.81. The applicant's annual entry for the year 1984-85, was wrongly categorized and the aforesaid Appreciation letter was also not placed in his character roll. This prevented the Selection Committee from making a just and proper relative comparative assessment in an objective manner. Arbitrariness and discrimination thus unavoidably crept in.

- 7- That the contents of para 9 of the Counter Affidavit in reply to the contents of para 7 (xx) of the Application are more or less to the same effect as of para 21 of the C.A. of O.Ps. No. 3, and 4, The Applicant had replied to them in para 13 and also para 8 of his Rejoinder there to already filed earlier, and their contents are hereby adopted by the applicant in reply to para 9 of the C.A. and the same may kindly be read as part and parcel of this Rejoinder.


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It is, however, denied that the select list was prepared on 27.12.1985, It is stated^h that the proceedings of the ~~meeting~~^a of ~~and~~^a the list prepared as a result of the meeting of the Selection Committee held on 27.12.1985, was got approved by the O.P. No. 3 from O.P. No. 2 under Regulations 6 and 7 without observing the mandatory provisions of Sub-Regulation (6) of Regulation 5 of the said ~~Promotion Regulations~~^a of 1955.

- 8- That the contents of para 11 of the C.A. are vehemently denied while the contents of para 7 (xxii) of the O.A. are reiterated on the basis of facts elaborated in the foregoing paragraphs of this Rejoinder read with the applicant's Rejoinder to the C.A. of the O.Ps No. 3, and 4, already filed earlier which may also be read as part and parcel of this Rejoinder.
- 9- That the contents of para 13 of the C.A. are denied while those of paras 7 (xxiv) and 7 (xxv) of the Application are reiterated in view of the submissions made in this Rejoinder as well as in the Rejoinder of the Applicant already filed in reply to the C.A. of the OPs No. 2 and 3 which may also be read as part and parcel of this Rejoinder.
- 10- That the Applicant is filing a true copy of G.O. dated 13.4.1989 as Annexure R- 2 to this Rejoinder. This G.O. amounts to amendment of the earlier G.O. dated 1.12.1984. The legal points involved would be explained at the time of arguments.
- 11- That in view of the submissions made in the preceding paragraphs of this^a Rejoinder, the Rejoinder already filed earlier in reply of the C.A. of O.Ps No. 3 and 4 and in the Application, it is evident.^h ^a That the applicant has been discriminated against arbitrarily and against the specific provisions of the Rules and Regulations as well as the ^a Constitution of India. That being so, the Application deserves to be allowed with costs and appropriate orders/ directions issued to the O.Ps accordingly;

Counsel For Applicant,


H.M. Mehrotra) 11/11/89
Advocate.


(A.K. Misra)
Applicant.

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VERIFICATION

I, A.K. Misra, the applicant named above, do hereby declare and verify on oath that the contents of this Rejoinder are true to my knowledge based on records and legal advice which I believe to be true. Nothing material has been concealed and no false statement has been made therein.

Verified at Lucknow on this 1st day of November, 1989.

A.K. Misra
(A.K. MISRA) 1/89
APPLICANT

In the Central Administrative Tribunal, Grant Bench, Lucknow
O. A. No. 76/1989 (L)
A. K. MISRA Versus Union of India & 3 others

ANNEXURE NO. R-1

J. G. P. No. 34(5)

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CONFIDENTIAL/IMMEDIATE

D.O.NO. CO(2)-ACR-81-82 (Instrns)

DIRECTOR GENL/INSPR GENL OF POLICE,
UTTAR PRADESH,

Dated: Lucknow, APRIL 6, 1982.

My dear Sir,

It need hardly be re-emphasised that recording of proper Annual Confidential Remarks on the personality and performance of officers serving under you is important to the officers reported upon and the Department alike as it is only in the light of these remarks that the confirmation, promotion, postings, deputations, pensions etc in respect of particular officers are decided upon. Apparently, if such remarks are wanting in desirable details, the officers may unduly benefit or suffer leading to staff mismanagement ultimately telling upon the wellbeing of the department and going against public interest.

2. You would have noticed that the proforma prescribed for recording A.C.Rs on IPS Officers seeks to secure remarks on certain aspects of personality and performance of an officer although a host of quite important ones stand left out. In any case, the ACR sheet prescribed for recording ACRs on other Gazetted Officers of the department is just a plain sheet of paper without demanding remarks on particular points with the result that appraisal of their personality and performance tend to be superficial, inadequate, cryptic and even indifferent which is not a happy position. Some of the Senior Officers have spoken

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- 15) Is he sympathetic to the grievances of subordinates ?
- 16) Does he take interest in the welfare of his subordinates ?
- 17) Is he good in promoting sports and other activities within his jurisdiction ?
- 18) Does he possess a secular mind ?
- 19) Does he visit scene of crime with speed and offer guidance in investigation ?
- 20) Does he possess aptitude for organising preventive action against crime ?
- 21) Is he good at maintenance of SR Files and Crime Register ?
- 22) Does he carry regular and adequate inspections without sacrificing quality of inspections ?
- 23) Does he make surprise checks of PSSs/OPs and guards ?
- 24) Is any of his efforts or achievements specifically to be recognised ?

3. Needless to say, Reporting/Reviewing Officers should not be swayed away by a particular good or bad performance of the officer reported upon but assess his worth in the perspective of his actions and activities in their entirety noticed over the whole year. Besides, Reporting/Reviewing Officers are expected to exercise balance and fairness while discharging their important duty of recording Annual Confidential Remarks and as such they would only bring discredit to themselves by making inadequate, indifferent or hurried assessments.

4. You are requested kindly to follow the spirit of the guidelines laid down in this Circular.

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प्रेषक,

ANNEXURE NO. R-2

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दुर्ग शंकर मिश्र,
संयुक्त सचिव,
उत्तर प्रदेश शासन,

सेवा में,

महानिदेशक एवं पुलिस महानिरीक्षक,
उत्तर प्रदेश लखनऊ।

गृह {पुलिस सेवार्य} अनुभाग-2, लखनऊ : दिनांक : 13 अप्रैल, 1989

महोदय,

मुझे यह कहने का निदेश हुआ है कि शासनादेश संख्या: 5052/आठ-मु0से0-2-1984, 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-मु0से0-2-51211/85, दिनांक 13 मार्च, 1986 द्वारा 28-2-1987 तक बढ़ाया गया था। कालान्तर में शासनादेश संख्या - 3715-आठ-मु0से0-2-51211/85, 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 जायें 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-मु0से0-2-51211/85, 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-मु0से0-2-1984, दिनांक 1 दिसम्बर 1984 तथा शासनादेश सं०: 3715/आठ-मु0से0-2-51211/85, 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 आईपीएस के निःसंवर्गीय पद नहीं हैं। अतः शासनादेश दिनांक 12-12-1984 के प्रस्तर-3 को और शासनादेश दिनांक 1 सितम्बर 1986 में प्रयुक्त शब्द "आईपीएस के निःसंवर्गीय पद" को विलोपित करते

- ॥2॥ वित्त व्यय निवर्तन अनुभाग-12,
॥3॥-गृह पुलिस "7"
॥4॥ गृह पुलिस सेवाये अनुभाग-1,
॥5॥- महालेखाकार, उत्तर प्रदेश, इलाहाबाद ।

आज्ञा से,

॥ दुर्गा शंकर मिश्र ॥
संयुक्त सचिव ।

मुख्यालय पुलिस महानिदेशक, एवं पुलिस महानिरीक्षक, उत्तर प्रदेश लखनऊ ।
संख्या: डीजी-दरे** ए०सी०अवर०-252-84, दिनांक: लखनऊ: मई 27, 1989

प्रतिलिपि निम्नलिखित अधिकारियों को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित है । वे कृपया उक्त शासनादेश के अनुसार अपर पुलिस अधीक्षक का वेतन निर्धारण करने के पश्चात वेतन आहीरित करने का कष्ट करें

- 1- समस्त ज्येष्ठ पुलिस अधीक्षक, प्रभारी उ०प्र० ।
- 2- समस्त पुलिस अधीक्षक, प्रभारी उत्तर प्रदेश ।
- 3- समस्त सेनानायक पी०एस०सी०, बाहिनी उ०प्र० ।

॥ सी०डी०प्रेमी ॥

पुलिस उपमहानिरीक्षक, मुख्यालय,
उत्तर प्रदेश ।

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित :-

- 1- समस्त पुलिस महानिदेशक उ०प्र० ।
- 2- समस्त पुलिस महानिरीक्षक, उ०प्र० ।
- 3- समस्त पुलिस उपमहानिरीक्षक, परिक्षेत्र उ०प्र० ।
- 4- समस्त पुलिस उपमहानिरीक्षक, पी०एस०सी० सेक्टर उ०प्र० ।
- 5- पुलिस उपमहानिरीक्षक, पी०एस०सी०, मुख्यालय, उ०प्र० लखनऊ ।
- 6- पुलिस उपमहानिरीक्षक/ मुख्य लेखाधिकारी, उत्तर प्रदेश पुलिस मुख्यालय, इलाहाबाद ।
- 7- पुलिस उपमहानिरीक्षक, पी०टी०सी प्रथम/द्वितीय, मुरादाबाद / तृतीय सीतापुर ।
- 8- पुलिस उपमहानिरीक्षक, भ्रष्टाचार निवारण संगठन, अप०अनु०विभाग, उ०प्र० लखनऊ ।

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH
LUCKNOW

O.A. No. 76/89 (L)

A.K. Misra

..... Applicant

Versus

Union of India & other

... Opp. parties.

REJOINDER OF APPLICANT IN REPLY TO THE
COUNTER AFFIDAVIT OF O.Ps. NO. 3 & 4.

1. ^{dr} The applicant has carefully ^{dr} ~~af~~ gone through the Counter Affidavit of Sri Durga Shankar Misra, Joint Secretary, Home Department, Govt. of U.P. filed on behalf of O.Ps. No. 3 and 4 and fully understood its contents. A copy of this Counter Affidavit was served on the applicant on 6.10.1989.
2. That the contents of paras 1, 2, 4, 5, 6, 8, 10, 28, 29 and 30 of the counter affidavit do not call for any reply.
3. That with regard to the contents of para 3 of the C.A., it is submitted that on the basis of the record of service of the deponent/applicant, the Selection Committee could not have found him unfit or not fit for inclusion of his ^{dr} name in the list of 1985, at least in comparison to his juniors and some others whose record or performance of service was definitely inferior to that of the deponent/applicant, as would be apparent to this

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Hon'ble Tribunal on perusal and scrutiny of the service records of eligible candidates including the deponent/applicant and the proceedings of the Selection Committee already summoned to be produced before it, as also from the facts mentioned below. The mere fact that the service records of the deponent/applicant (as also of other eligible candidates) were assessed by a high level selection committee is, in itself, no guarantee that the selection made by it was fair. The grading assigned to the deponent/applicant as well as to other eligible candidates has not been disclosed in the counter affidavit. It has been stated in the counter affidavit that the deponent/applicant was not included in the select list only because sufficient number of officers, who were assigned a better grading than the deponent/applicant, were available. The main question for consideration by this Hon'ble Tribunal, therefore, is whether the grading made by the Selection Committee of the deponent/applicant vis-a-vis of some others, whose names are mentioned below and who have been included in the Select List, is just/correct on the basis of their record of service and also whether the overall assessment made by the Selection Committee was at all objective or whether it was tainted ~~was subjective~~ by extraneous considerations or was subjective.

Sarvashri Satish Yadav and K.N.D. Dwivedi of 1970 batch are both juniors to the deponent/applicant in the P.P.S. and they, along with some others, were not promoted as Additional S.P.s in

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1984 when the deponent/applicant, who is of 1969 batch of P.P.S., and some others were so promoted. The criteria adopted for making selection for promotion as Additional S.P. was "merit". It is thus obvious that the deponent/applicant was found better than or superior to the aforesaid two officers shortly before the selection committee met to ^{be} prepare the list under Regulations 5 (4) and 5(5) of the I.P.S. Appointment by Promotion Regulation, for promotion to the I.P.S. what transpired within this short interval which had the effect of catapulting the position and which resulted in the inclusion of the aforesaid two officers in the list to the exclusion of the deponent /applicant who is also senior to both of them. It is important to note here that a majority of the members of the selection committee which prepared the said list of 1985 for promotion to I.P.S. were also members of the Selection Committee which made the selection for promotion as Additional S.Ps in 1984. This Hon'ble Tribunal may especially peruse the service records of the deponent/applicant and the aforesaid two officers for the year 1984-85 with a view to deciding whether the inclusion of the aforesaid two officers for the year 1984-85 with a ^{view} ~~view~~ to deciding whether the inclusion of the aforesaid two officers in the said list of 1985 to the exclusion of the deponent/applicant who was senior and more experienced than the aforesaid two officers, was justified and correct. It ^{is} ~~is~~ needless to add that

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seniority and experience are important constituents for determining merit. It appears that in the year 1984-85 the service record of the applicant have apparently been relatively assessed as detrimental for purposes of promotion to IPS as compared to others including in particular juniors to the applicant e.g. Sri K.N.D. Dwivedi, S.C. Yadav, N.B. Singh, R.N. Kotheria, C.M. Prasad etc. . However, it is very important to note here that the remarks for 1984-85 have not been communicated to the applicant which might have had the effect of keeping the applicant out of the list prepared in 1985. On the other hand the applicant was given the Appreciation Letter in that year (Annexure R-1) for extra-ordinary bravery which has not come on record anywhere and was also not placed before the Selection Committee. This category of extra-ordinarily high standard of work did not have any, parallel in that year among the eligible officers whose case were considered by the Selection Committee. This appreciation letter (Annexure R-1) could not but result in categorizing the applicant as "outstanding the year 1984-85, but unfortunately all the departmental standing orders of the State Government on this subject were flouted in not placing the said Appreciation Letter in the service records of the applicant which were put up before the Selection Committee and this deterred the Committee from making a fair and just assessment of the applicant vis-a-vis other eligible officers.

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Sri Satish Yadav was not even promoted to the senior scale of the P.P.S. alongwith others of his batch.

Sri Satish Yadav was promoted as Additional S.P. in the year 1986, i.e. about two years after the promotion to that post of the deponent/applicant and also about a year after his inclusion in the said list for promotion to I.P.S. Sri K.N.D. Dwivedi was promoted as Additional S.P. in the year 1987. Both Sri Yadav and Sri Dwivedi were superseded for promotion as Additional S.P. even when many juniors of their batch (1970) were so promoted. The scale of pay of the senior scale of I.P.S. for promotion to which the said list was prepared in 1985 and the scale of pay of the post of Additional S.P. (leaving aside the point whether the post of Additional S.P. was a cadre post of I.P.S. at the time (1984) when the deponent/applicant was promoted to it, or not) was/is identical and a majority of the members forming selection committee for both the selections were common. This open service records of the deponent /applicantⁱⁿ speak of his relatively better merit than that of the aforesaid two officers.

Under regulation 3 of the I.P.S., (Appointment of Promotion) Regulations, 1955, the Selection Committee constituted for making the selection committee constituted for making the selection, consisted of the following :-

1. Chairman or Member of the
Union P.S.C.

Chairman

[Signature]

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2. Chief Secretary to U.P.
Government ... Member
3. Secretary to U.P. Govt.
Home Department ... Member
4. Inspector General of Police
(Now Director General of
Police) ...
5. Seniormost Deputy Inspector General of Police
(Now seniormost Inspector General of Police)
6. A nominee of the Govt. of India not below the
rank of a Joint Secretary.

The Selection Committee which made the selection for promotion as Additional S.P. included the officers mentioned at sl. No. 2, 3, 4 and 5. It does not stand to reason as to how and why those who were found unfit for promotion as Additional S.P.s in 1984 were found fit for inclusion in the said list in 1985 for promotion to I.P.S., particularly when they were juniors to the deponent/applicant and when under sub rule (2) of rule 5 of the I.P.S. (Appointment by Promotion) Regulations, 1955, the selection committee was required to consider for inclusion in the list, the cases of members of the state Police Service in the order of seniority in that service.

In this connection it is very relevant and important to note that the facts mentioned above relating to Sri Satish Yadav and Sri K.N.D. Dwivedi Vis-a-vis the deponent were specifically alleged in para 7(xiii) and 7(xiv) of the original application of the deponent/applicant, but their correctness has

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not been denied in para 15 of the counter affidavit. This non-denial by the O.Ps No.3 and 4 amounts to their acceptance/admission of the facts alleged by the deponent /applicant. The claim made by the ~~deponent/applicant~~ ^{deponent} ~~XXXXXXXXXXXXXXXXXXXX~~ ^{applicant} O.Ps no. 3 and 4 in para 15 of the counter affidavit that the Selection Committee had made its recommendations after exhaustively scrutinizing the service records of all eligible candidates and, therefore the allegations of the deponent/applicant against certain officers being unfit for inclusion of their names in the said list, is misconceived and unfounded, is not correct, as is apparent from the uncontroverted facts mentioned by the deponent/applicant. The import of the claim made by the deponent/applicant was /is that the record of service of the deponent/applicant was decidedly superior to that of the aforesaid two officers and, therefore, the only conclusion which can be drawn is that the Selection Committee did not prepare the said list for promotion to I.P.S. in accordance with the provisions contained in Sub-Regulations (4) and (5) of Regulation 5 of the I.P.S. (Appointment by Promotion) Regulations, 1955. A perusal and scrutiny by this Hon'ble Tribunal of the service records of the eligible candidates and the proceedings of the Selection Committee and the said list prepared by them would amply demonstrate the correctness of the assertions made by the deponent/applicant and the falsity of the claims made by the answering O.Ps in their Counter Affidavit. The use of the words "Select List" in para 15 of the counter

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affidavit is incorrect and, as such, is not admitted.

It is reiterated, and it was already mentioned in para 7 (xiii) of the original application that Sri Satish Yadav was not found fit for promotion and also not promoted even to the senior scale of the P.P.S., ^{the} criteria for promotion to which was/is "seniority subject to the rejection of the unfit" (and not merit), alongwith others of his batch including his own juniors. The correct-ness of this fact has also not been denied in the Counter Affidavit of the answering O.Ps. This is also a material fact and circumstance which deserves to be taken into consideration by this Hon'ble Tribunal before drawing its conclusions in the merits of the claims of the deponent/applicant, more so when the selection for promotion to the senior scale was made within five years preceding 1985 in which year the Selection Committee met to prepare the said list for promotion to the I.P.S.

It is also important and relevant that, as is already mentioned in para 7 (xiii) of the original application and which facts have also ^{been} ~~not~~ denied by the answering O.Ps. in their counter affidavit, that Sarvashri A.K. Singh and N.R. Srivastava (seniors to the deponent/applicant and belonging to 1967 batch of P.P.S.) were suspended in 1977 and disciplinary proceedings were also taken against them

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as a result of which they were reliably also punished, but despite all this, they were included in the said list of 1985. The deponent/applicant, on the other hand was never suspended and no disciplinary proceeding was ever taken against him and he was never punished, instead he was highly commended in August 1984 for extraordinary bravery but ~~to~~ its record was omitted from being put up before the Selection Committee. Yet he was not included in the said list of 1985. This has rendered the said list as being patently unfair and discriminatory against the deponent/applicant.

As was stated by the deponent/applicant in para 7(Xiii) of the Original Application, Sri R.D. Tripathi of 1966 batch (both juniors to the deponent/applicant) were subjected to serious enquiries in 1985 when the said list was prepared and this fact has not been denied in the Counter Affidavit, and yet they have been included in the said list, whereas the deponent/applicant, who belongs to 1969 batch and did not face any such enquiry, has not been included in the said list of 1985. This, too, has rendered the said list unfair and discriminatory against the deponent/applicant who was highly commended in the same year. The enquiry proceeding against Sri R.D. Tripathi was reliably pending when the deponent/applicant had filed his present application in this Hon'ble Tribunal and this fact has also not been denied in the counter affidavit.

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Enquiry proceedings against Sri A.K. Singh (1967 batch) and Sri B.K. Chaturvedi (1968 batch) were pending and this fact has not been denied in the counter affidavit and yet they have been included in the said list of 1985. No such enquiry proceeding was taken and/or was/is pending against the deponent/applicant, yet he has not been included in the said list.

Sri N.B. Singh (1970 batch), who is junior to the deponent/applicant, was also not promoted as Additional S.P. alongwith his batch mates, but was promoted later on and this fact alleged by the deponent/applicant in in para 7(XIV) of his original application has also not been denied by the answering O.Ps in their Counter Affidavit, and yet he had been included in the said list of 1985, but the deponent /applicant was not so included.

It has been specifically alleged in para 7 (XIV) of the Original Application that Sarvashri R. N. Katharia (1969 batch), Chandra Mani Prasad (1969 batch) , Abhai Shankar (1969 batch), N.B. Singh(1970 batch), K.N.D. Dwivedi(1970 batch), Daya Shanker Singh (1970 batch) and Satish Yadav (1970 batch) are all juniors to the deponent/applicant and that the service record of the deponent/applicant is also better than that of the aforesaid officers. These contentions of the deponent/applicant have not been denied or controverted by the answering O.Ps in para 15 of their counter affidavit and therefore, stand



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confirmed and admitted. The obvious conclusion is that the Selection Committee did not act fairly and/or did not prepare the said list in accordance with the rules and regulations and after really assessing the relative merits of the eligible candidates after scrutinizing their service records.

In the face of the uncontroverted facts mentioned above, as also in the original application, whose correctness has not been denied. in the counter affidavit of the answering O.Ps, the statement or claim made in para 16 of the counter affidavit of the answering O.Ps is false and stands ^htotally nullified :-

4. That the contents of para 7 of the counter affidavit in so far as they dispute or are contrary to the contents of para 7 (iii) of the Original Application, are not correct and, as such, are denied, while those of paras 7(iii) of the Original Application are reiterated.

5. That the contents of para 9 of the Counter Affidavit in so far as they dispute the correctness of the facts stated in paras 7 (v) and 7(vi) of the Original Application, ^hare not correct and the facts stated in para 7 (v) and 7(vi) of the Original Application are re-^diterated. As proof of the correctness of the deponent's claim regarding his outstanding performance in relation to the encounter with the dreaded dacoit Jagta, who was killed in the encounter, a true copy of a letter of appreciation granted to the deponent by the Director General of Police, U.P. and the Inspector General of Police, Meerut Zone, Meerut under their joint signature

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on 30.8.1984 is being filed as Annexure No. R-1 with this Rejoinder. This speaks for itself. It is now quite clear from a perusal of the counter affidavit of the O.Ps that this important letter of Appreciation had not been kept in the Character roll of the deponent, nor placed before the Selection Committee which prepared the said list of 1985 in gross violation of and against the specific provisions of the following Government Orders on the subject as well as Regulation 5(4) and 5(5) of the I.P.S. (Appointment by Promotion) Regulations, 1955 :-

1. Office Memo No.36/9/76-Karmik-2 dt. 24.1.1977 issued by Karmik Anubhag-2 of the State Government of U.P.
2. Office Memo No.36/9/76-Karmik-2 dt. 4.5.1977 which require that appreciation letters must invariably be kept on the Character Roll. True copies of the aforesaid two office memos. dated 24.1.1977 and 4.5.1977 are annexed as Annexure R-2 and Annexure R-3 respectively to this Rejoinder. The non-placement of the said important Application Letter in the Character Roll of the deponent as also before the Selection Committee, which prepared the said list of 1985 for promotion to I.P.S. must have weighed heavily with the Selection Committee against the deponent vis-a-vis other eligible candidates, including in particular, those juniors to the deponent whose names have been included in the said list.

As to classification of eligible officers under Regulation 5 (5) of I.P.S. (Appointment by

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Promotion) Regulations 1955, it is submitted that classification or categorization of annual entries in character rolls was required to be made under standing orders of the State Government of U.P. but while some officers who awarded the entries did make such classification, some others did not. The deponent understands that no classification or categorization was made in respect of most of annual entries awarded in the character roll of the deponent for reasons best known to the senior officers who awarded the entries in controvention of various standing orders ^{of} the subject. This adversely affected the chances of the deponent being placed in a higher class vis-a-vis other eligible officers, including in particular his juniors, in whose character roll, entries earned by them may have been classified or categorized.

It also appears that the Selection Committee entrusted with the task of categorising eligible officers under Rule 5(5) on the basis of an over-all relative assessment of, their service records is swayed by the categorization or classification of annual entries made by Reporting, Reviewing and Accepting authorities. Apart from the remarks being vague, the categorization of officers thus made has been found to be erratic. In support of this contention, the deponent is filing a true copy of a circular No.I-343-70 dated 13.12.1984 issued by to all Senior Officers of the Department by Sri J.N. Chaturvedi, the then Director General of Police, U.P. (presently Chairman, Public Service Commission, U.P.) with the direction that they should pay serious attention to while recording annual remarks. This matter as casualness in this matter



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could lead not only to grave mis-carriage of justice and irreversibly undermine the image of concerned officers but also erodes the confidence of subordinate officers in the fairness and soundness of judgment of their seniors. A true copy of the said circular letter dated 13.12.1984 is being filed as ANNEXURE R-4 to this Rejoinder. The position in record to officers in respect of whose annual entries no categorization/classification is made, vis-a-vis others, can better be imagined by this Hon'ble Tribunal than described by the deponent.

A true copy of yet another circular letter dated 1st April, 1989 issued by the Headquarters of the Director General of Police to all Senior Officers is also being filed as ANNEXURE R-5 to this Rejoinder. This circular throws ample light on the deplorable situation prevailing in relation to writing of annual remarks in the character roll of officers, their categorization and other allied matters. The arbitrariness and casual approach on the part of the A.C.R. writing machinery is evident from this circular, which makes or mars the career of the subordinates..

6. That the contents of paras 11 and 12 of the Counter Affidavit are denied while those of para 7 (ix) and 7(x) of the Original Application are reiterated. The legal points which support the deponent's contention would be submitted at the time of arguments. It is, however, denied that any Select List was prepared in 1985 on the basis of the list prepared under rule 5(5) in 1985.

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7. That with regard to the content of para 13 of the Counter Affidavit, it is submitted that grave irregularities were committed in preparing the list under Regulation 5(5), consultation with the Union Public Service Commission under Regulation 6, finalization of the said List ^{by} ~~by~~ "Select List" by the Commission under Regulation 7, and as a result thereof, also in making of appointments under Regulation 8 of the said I.P.S. (Appointment by Promotion) Regulations, 1955 and the claim and contention of the O.Ps No.3 and 4 to the contrary made in para 13 of the Counter Affidavit are absolutely incorrect and, as such, are denied. The contents of para 7 (XI) of the Original Application are reiterated. The legal points involved in the said para would be submitted at the time of arguments.

8. That with regard to the contents of para 14 of the Counter Affidavit, it is reiterated, as was stated in para 7 (xii) of the Original Application, that there has been grave and serious violation of Sub-Regulation(6) of Regulation 5 of the I.P.S. (Appointment by Promotion) Regulations, 1955. The interim orders of the Hon'ble High Court and the Hon'ble Supreme Court and/or even the final order of the Hon'ble Supreme Court in the cases mentioned in the said para, did not say or imply that the clear specific and mandatory provisions of Sub Regulation (6) of Regulation 5 of the said Regulations of 1955, be blatantly violated by the O.Ps or that further action under Regulations 6,7, and 8 thereof

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be taken in 1989, on the list prepared under Sub-Regulation 5 of Regulation 5 without first complying with the mandatory provisions of Sub-Regulation (6) of Regulation 5 thereof. Para 13 of the Rejoinder may also be read as part and parcel of this para of the Rejoinder. Hence the contents of para 14 of the Counter Affidavit are denied.

9. That the contents of paras 15, 16 and 17 of the Counter Affidavit are denied while those of paras 7 (xiii), 7(xiv), 7(xv) and 7(xvi) of the original Application are reiterated. The factual points/instances have already been mentioned in the Original Application, while legal point and supporting facts would be advanced during arguments which are very important and relevant for the decision of this case.

10. That with regard to the contents of para 18 of the Counter Affidavit, it is submitted that even before the issue of G.O. dated 30.10.1986, there were in existence standing orders of the ~~State~~ Government requiring categorization of Officers in their annual remarks. A perusal of circular letter dated 13.12.84 (Annexure R-4) confirms this.

11. That the contents of para 19 of the Counter Affidavit are denied and those of para 7 (XVIII) of the Original Application are reiterated. The norms prescribed by the Union Public Service Commission for selection of Officers for being brought on such promotion list as mentioned in para 7 (xviii) of the original Application find full support from none

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else than the then Director General of Police, U.P. who was and is an important Member of the Selection Committee, in the circular dated 13.12.1984 issued by him (Annexure R-4). It is unfortunate that the O.Ps who include the Secretary to U.P. Govt., Home Department and the Director General of POLICE, U.P., who had himself issued the said circular, are not aware of this. The Hon'ble Tribunal may itself draw necessary conclusions/inferences from the arbitrary denial by O.Ps who/were and are required to make the Selection as Members of the Selection Committee, in regard to the norms or guidelines prescribed by the Union Public Service Commission whose Chairman or Member presides over the Selection Committee. How could fair play and justice be expected in such a situation is a serious matter for consideration of this Hon'ble Tribunal for taking a decision in this case.

12. That the contents of para 20 of the Counter Affidavit are denied while those of para 7 (xix) are re-iterated for reasons already mentioned in the Original Application as well as in various paragraphs of this Rejoinder including in particular in paras ^{3, 4} 5 and 8 ~~5~~ thereof. Violations of Articles 14 and 16 would be pointed out during arguments.

13. That the facts mentioned in para 21 of the Counter Affidavit do not mean or lead to an inference that the mandatory provisions contained in Sub-regulation (6) of Regulation 5 of the IPS (Appointment by Promotion) Regulations, 1955 requiring review and revision every year of the list prepared under that

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Sub-Regulation could be flouted. Under Regulation 6 of the said Regulations of 1955, only the list prepared in accordance with Regulation 5 (which included and includes Sub-Regulation 6 thereof), alone could be forwarded to the Union Public Service Commission alongwith the records of all eligible candidates (including those included in the list as well as those excluded from the list) and the observations of the State Government on the recommendations of the Selection Committee for its approval. But as no such review and revision was made in any subsequent years viz in 1986, 87 and 1988, there could be and there was no question of taking any further action in 1989 under Regulations 6, 7 or 8 of the said ^aRegulation/s of 1955 on the list prepared under Regulation 5(5) in the year 1985, without first getting it reviewed and revised under Sub-Regulation (6) of Regulation 5. The interim orders of the Hon'ble High Court or even the final order of the Hon'ble Supreme Court referred in para 21 of the Counter Affidavit did not direct or amount to direct the O.Ps to take further action on the list (prepared under Sub-Regulation (5) of Regulation 5) in accordance with the provisions of Regulations 6, 7 and 8 of the said Regulations of 1955 without first subjecting it to a review and revision as mandatorily required under Sub-Regulation (6) of Regulation 5. The orders of the Hon'ble Courts were clearly misconstrued by the O.Ps who in their eagerness to perpetuate injustice went ahead with the blatantly

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unfair and illegal list prepared in 1985 under Sub-Regulation (5) of Regulation 5 and took further illegal action in 1989 under Regulations 6,7 and 8 without observing the mandatory provisions contained in Sub-Regulation (6) of Regulation 5 of the said Regulations of 1955. Para 8 of this Rejoinder may also be read as part and parcel of this para of the Rejoinder. This step has resulted in inflicting permanent damage to all eligible officers excepting a few who figured in the list prepared in 1985 under Sub Regulation (5) of Regulation 5 of the said Regulations of 1955, which is discriminatory, arbitrary and violative of Articles 14 and 16 of the Constitution.

14. That the contents of para 22 of the Counter Affidavit do not carry any legal weight and have no force whatsoever, because the representation dated 3.4.1989 (Annexure No.1 to the Original Application) was not a prescribed departmental remedy available to the deponent/applicant under any rule governing him and, therefore, the question of exhausting that remedy did not arise. The applicant was not legally bound to await the orders of the OPs on his said representation before availing of his legal remedy by way of filing ~~the~~ before this Hon'ble Tribunal the instant Original Application, which, in that event, would have been rendered infructuous. The original application of the deponent/applicant ~~is~~ is not liable to be dismissed on this or any other ground, and the claim and contention of the O.Ps to that effect are wholly incorrect, baseless and legally untenable and are, as such, denied. And in any case, nothing prevented the O.Ps from considering/

allowing that representation during this long intervening period from 3.4.1989 onwards. Had they done so, there would have been no necessity for the deponent to pursue the present case.

15. That the contents of para 23 of the Counter Affidavit are wholly incorrect and are vehemently denied, while those of para 8[~](xxii) of the Original Application are reiterated on the grounds elaborated in the foregoing paragraphs of this Rejoinder.

16. That in para 24 of the Counter Affidavit it has been stated that all vacancies of 1985 have already been filled up on the basis of the list prepared in 1985 and yet it has been claimed that no injustice has been caused to the applicant/deponent. This obviously amounts to a contradiction in terms. If all the vacancies of 1985 and anticipated vacancies of 1986 have been filled up from the said patently unfair list prepared in 1985 under Sub-Regulation (5) of Regulation 5 after getting it converted into a Select List under Regulations 6 and 7 without being reviewed and revised under Sub-Regulation (6) of Regulation 5, even though it was mandatorily required to be so reviewed and revised, this action of the opposite parties is totally arbitrary, discriminatory and violative of the principles of equality guaranteed under Articles 14 and 16 of the ^aConstitution. By this illegal action of the O.Ps patent injustice has caused to the applicant/deponent along ^{with a} sizeable number of other

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eligible officers, because the applicant was entitled to be included in the List of 1985 in preference to those whose record of service was inferior to that of the applicant, more particularly in preference to his juniors whose record of service was also inferior to that of the applicant, as stated in paras 8 (xiii) and 7 (xiv) of the Original Application and various paras of this Rejoinder, and secondly because by merely keeping one post in the promotion quota of I.P.S. unfilled which naturally means in the vacancies of 1986 or subsequent years, the applicant, even if appointed to I.P.S. ultimately, would be placed junior in I.P.S. cadre to his own inferiors and juniors who did not deserve to be placed in the said list of 1985. In fact, such reservation, as is mentioned in para 24 of the Counter Affidavit, amounts to contempt of the interim order dated 6.4.1989 of this Hon'ble Tribunal, because such reservation (keeping unfilled) of one post was to be made from out of the vacancies of 1985 and not after filling them.

17. That the contents of paras 25 and 26 of the Counter Affidavit are denied while those of para 7(xxiv) and 7(xxv) of the Original Application are reiterated in view of the submissions made in various paras of this Rejoinder.

18. That the contents of para 27 of the Counter Affidavit are denied. The full and correct position in this regard has been mentioned in para 14 of this

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Rejoinder which may be read and taken as the Applicant's reply to the contents of para 27 of the Counter Affidavit also.

19. That the contents of para 31 of the Counter Affidavit, in so far as they amount to denial of the contents of para 9-C of the original application ^{denied} ~~are reiterated~~ and the contents of para 9-C of the Original Application are re-iterated.

Just as it is true that the scale of the posts of Additional S.P. and Deputy Commandant P.A.C. was/is the same, as claimed by the O.Ps ; so also it is true that the scale of pay of the posts of Commandant, P.A.C. and Superintendent of Police was/is the same and the two scales in question are also equivalent to the senior scale of the I.P.S., but the fact remains that the post of Deputy Commandant, PAC is definitely inferior in designation rank, status, powers, duties and responsibilities as compared to the post of Commandant, P.A.C. as well as as compared to the post of Additional S.P.

In this connection, a true copy of Home (Police Services) Anubhag-2's G.O. dated 5.5.1987 is also being filed with this Rejoinder as its Annexure R-6 . A perusal of para 6 of the said G.O. clearly shows that the designation of the post is still "Assistant Commandant" under the P.A.C. Act so far. It is stated that the posts of Assistant Commandant in PAC are originally held by junior scale officers of the U.P. ^{Police} ~~Public~~ Service as well as

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by officiating Deputy Superintendents of Police. If at the time of entry into service as a directly appointed Dy. Supdt. of Police, the deponent/applicant had been posted in P.A.C., he would have been designated as Assistant Commandant. It is a pity that the deponent/applicant is legally still an Assistant Commandant despite all his experience, seniority, merit and promotions to at least two higher scales.

In view of the above submissions, the so-called transfer of the deponent/applicant is nothing short of reversion, violating Article 311 of the Constitution.

20. That the contents of paras 32, 33 and 34 of the Counter Affidavit are denied while those of paras 9-D, 9-E and 9-F of the Application are reiterated. It is further stated that much had been argued in this regard before the Hon'ble Tribunal on 10.8.1989, which, after detailed hearing, had been pleased to conclude that the case of the deponent/applicant was similar to that of Sri H.N. Srivastava and Sri C.B.Rai in all respects, except in the matter of their postings, which were discriminatory. Hence, the deponent/applicant was also given the interim relief to remove the discrimination. The contents of paras 32, 33 and 34 of the Counter Affidavit speak against the conclusions already reached by the Hon'ble Tribunal after giving ample opportunity to both the sides to have their say. It was not in the hands of the deponent/applicant

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to procure his posting on any particular post. The deponent had only complied with the orders of the State Government which had evidently given rise to glaring discrimination which was removed by this Hon'ble Tribunal's interim order dated 10.8.1989. However, it is stated that the said interim order has not yet been complied with by the O.Ps despite a lapse of over two months. The Annexures No.C-A-1, CA 1-A and C.A.-2 appended to the Counter Affidavit had already been placed before and perused by the Hon'ble Tribunal at the time of arguments on 10.8.1989.

21. That the contents of para 35 of the Counter Affidavit are irrelevant for purposes of the petitioner's case. The amended Rule came into force on 27.7.1988 and would, therefore, not be applicable to the officers included or to be included in the list of 1985 or even of subsequent years prior to the issue of the said notification. The deponent/applicant would be governed by the old Rules of 1954, in case this petition is allowed. As such, the contents of para 35 of the Counter-Affidavit are denied and those of para 9-G of the Application are re-iterated so that the deponent/applicant is not discriminated against in any manner.

22. That the contents of para 36 of the Counter Affidavit are not correct and, as such, are denied. The Hon'ble Tribunal has already granted the prayer for interim relief vide its order dated 10.8.1989 in

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order to remove discrimination in the matter of posting on good grounds. The interim order dated 10.8.1989 deserves to be confirmed.

23. That the contents of para 37 of the Counter Affidavit are denied while those of para 10 of the application are re-iterated. The interim order dated 6.4.1989 deserves to be confirmed and the deponent/applicant deserves to be included in the list of 1985.

24. That the contents of para 38 of the Counter Affidavit under "Additional Pleas" are not correct and, as such, are vehemently denied. The posting of similarly placed officers in a discriminatory manner was/is a cause of grievance to the concerned officers including the deponent/applicant and the O.Ps cannot be allowed to take shelter behind the untenable plea, based on mere discretion in posting for furthering discrimination. It is re-iterated that the cases of Sarvashri H.N. Srivastava and C.B. Rai are identical/similar in all respects except discrimination done to the deponent/applicant. The prayer of the O.Ps for review and revision of the interim order dated 10.8.89 is wholly baseless and untenable and deserves to be rejected. The said interim order deserves to be confirmed with a direction to the O.Ps to comply with it within a short period to be specified by this Hon'ble Tribunal.

25. That the contents of para 39 of the Counter Affidavit are not correct and, as such, are denied

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There is nothing in the Counter-affidavit for which the relevant records were not already available in Lucknow either with the O.P. No.3 or with O.P. No.4 and there was nothing to be collected from outside Lucknow for preparing it. Each and every day's delay has not been explained at all.

26. That in view of the contents of the various paragraphs of the Counter Affidavit and this Rejoinder, there were/are no goods reasons for condoning the delay and the application for condonation of delay in filing the counter affidavit deserves to be rejected.

27. ^d That in view of the submissions made in the preceding paragraph of this Rejoinder, it is evident that the deponent/applicant has been grossly discriminated against arbitrarily and against the specific provisions of the Rules and Regulations as well as the Constitution of India. The application deserves to be allowed with costs and appropriate orders/directions issued to the O.Ps. accordingly.

A.K. Misra
(A.K. MISRA)
A P P L I C A N T

Verification

I, Ashok Kumar Misra, son of Late Sri Surendra Nath Misra, aged about 44 years, presently working as Deputy Commandant, P.A.C., 27th Battalion,

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A.K. Misra

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Sitapur, on duty at Lucknow, do hereby verify that the contents of para 1 are true to my personal knowledge and those of paras 2 to 27 are true on the basis of records and legal advice, which I believe to be true, that no part of it is false and nothing material has been concealed.

Lucknow.

October 18, 1989

A.K. Misra

(A.K. MISRA)

APPLICANT

H.M. Mehrotra

(H.M. MEHROTRA)

ADVOCATE

COUNSEL FOR APPLICANT.

18.10.89

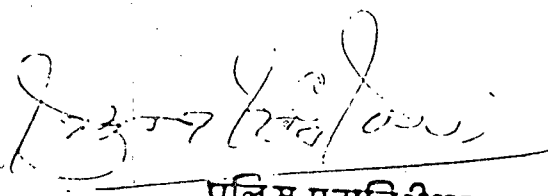
Before the Central Administrative Tribunal, Lucknow
O. A. No. 76/89(L)
A.K. MISRA VS. Union of India & 3 others

ANNEXURE No. R-1



प्रशंसा-पत्र

पश्चिमी उत्तर प्रदेश के कुरत्यात डकैत जगता पुत्र जयमल गूजर निवासी बीजोपुरा, थाना-क्षेत्र लक्सर जनपद सहारनपुर के साथ दिनांक २८/२६ जुलाई १९८६ की रात्रि में पुलिस मुठभेड में मारा गया, जिसमें पुलिस बल का सर्वोत्कृष्ट एवं साहसिक नेतृत्व करने, जगता के साथियों की गिरफ्तारी में सफल निर्देशन करने तथा उसके तमाम हथियारों की बरामदगी में स्वयं पुलिस टुकड़ी का कुशल नेतृत्व करने के सराहनीय कार्य हेतु श्री अशोक कुमार मिश्र पुलिस उपाधीक्षक, रुड़की क्षेत्र की प्रशंसा की जाती है।



पुलिस महानिरीक्षक

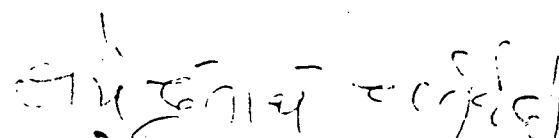
मेरठ जोन, मेरठ

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वृहत्स्पतिवार

सहारनपुर

30-८-१९८७



जयेन्द्रनाथ चतुर्वेदी

पुलिस महानिदेशक

30 प्र०

T. C.



Before the Central Administrative Tribunal, Lucknow

O. A. No. 76/89 (L)

11/9

A. K. MISRA VS. Union of India & others

ANNEXURE NO. R-2

अध्याय 4] वार्षिक वेतन वृद्धि, गोपनीय प्रविष्टि, सत्यनिष्ठा प्रमाण एवं दक्षता रोक 143

(6)

O. M. No. 36/9/76-Karmik-2
dated January 24, 1977

विषय : अभिलेखों का आख्या में सम्मिलित होना ।

Subject : Facts to be incorporated entries.

अधोहस्ताक्षरी को यह कहने का निर्देश हुआ है कि शासन द्वारा इस प्रश्न पर गंभीरता से विचार करने के उपरान्त कि राज्याधीन सेवाओं के अधिकारियों की वार्षिक गोपनीय आख्या में कौन-कौन से अभिलेख सम्मिलित किये जायें, निर्णय लिया गया है कि अखिल भारतीय सेवाये (गोपनीय पंजिया) नियम 1970 के प्राविधानों को दृष्टि में रखते हुए राज्याधीन सेवा के समस्त राजपत्रित अधिकारियों (समूह 'क' तथा समूह 'ख') की गोपनीय पंजिका में निम्नलिखित अभिलेख रखे जायेंगे :

- (1) अनुशासनिक कार्यवाही में सम्बन्धित नियमों के अन्तर्गत कोई भी दण्ड लगाने के आदेश की प्रतिलिपि ।
- (2) सरकार द्वारा जारी किये गये प्रशंसा-पत्र/संकल्प, सेवा की मान्यता के उपलब्ध में प्रदान किये गये किन्हीं पदकों, पुरस्कारों आदि के सम्बन्ध में अभिलेख ।
- (3) अधिकारी को चेतावनी देते हुये अथवा सरकार का असन्तोष अथवा भर्त्सना सूचित करते हुये उसे सम्बन्धित पत्रादि की प्रतिलिपि ।
- (4) अधिकारी के विरुद्ध उसकी गोपनीय रिपोर्ट में उल्लिखित आरोपों अथवा अधिकथनों पर जांच के अन्तिम परिणाम अभिलेख ।
- (5) अधिकारी द्वारा अध्ययन के किसी पाठ्य-क्रम अथवा उसके द्वारा लिए गए प्रशिक्षण अथवा उसके द्वारा प्राप्त की गई डिग्रियों, डिप्लोमाओं अथवा प्रमाण-पत्रों का अभिलेख ।
- (6) अधिकारी द्वारा प्रकाशित कोई पुस्तक, लेख अथवा अन्य प्रकाशन अथवा ऐसे प्रकाशन के सम्बन्ध में अभिलेख जिसके लिए वह जिम्मेदार हो ।
- (7) ऐसी भाषाओं के सम्बन्ध में अभिलेख, जिन्हें अधिकारी जानता हो अथवा उसने सीखी हो ।

2. यह भी निर्णय लिया गया है कि राजपत्रित अधिकारियों की गोपनीय पंजिका सम्बन्धित विभागों द्वारा दो प्रतियों में रखी जायें तथा पंजिकाओं को हर लिहाज से अद्यावधिक रखा जाय ।"

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Before the Central Administrative
Tribunal, Lucknow

O.A. NO. 76/89(L)

A. K. MISRA Vs. Union of India & 3
Others

ANNEXURE NO. - R-3

(11)

O. M. No. 36/9/76-Karmik-2

dated May 4, 1977

विषय : खरित्र पंजिका पर प्रशंसा पत्र का रक्खा जाना ।

Subject : Placing of appreciation document on Character Rolls.

"अधोहस्ताक्षरी को इस अनुभाग के कार्यालय ज्ञाप संख्या 36/9-76-कर्मिक-2, दिनांक 24 जनवरी 1977 की ओर आपका ध्यान आकृष्ट करने का निर्देश हुआ है कि जिसमें आदेश जारी किये गये हैं कि अखिल भारतीय सेवाएँ (गोपनीय संस्था) नियम, 1970 के प्राविधानों की दृष्टि में रखते हुए राज्याधीन सेवा के समस्त राजपत्री अधिकारियों (समूह 'क' तथा समूह 'ख') की गोपनीय पंजिका में सरकार द्वारा जारी किये गये प्रशंसा-पत्र/संकल्प, सेवा की मान्यता के उपलब्ध से प्रदान किये गये पदकों, पुरस्कारों आदि के सम्बन्ध में अभिलेख रक्खे जायेंगे। इस सम्बन्ध में यह भी देखा गया है कि कभी-कभी उत्कृष्ट एवं सराहनीय कार्यों के लिये राज्याधीन कोई विभाग किसी अन्य विभाग के अधिकारी/अधिकारियों की प्रशंसा-पत्र इत्यादि प्रदान करते हैं परन्तु उनकी सूचना सम्बन्धित विभाग को नहीं देते हैं। फलस्वरूप ऐसे प्रशंसा-पत्र आदि सम्बन्धित अधिकारी की गोपनीय पंजिका में सम्मिलित नहीं हो पाते। अतः यह आवश्यक है कि ऐसे प्रशंसा-पत्र इत्यादि की जानकारी अधिकारी से सम्बन्धित विभाग, जिसके वह नियंत्रणाधीन है, को प्रत्येक दशा में अवश्य कराई जाय। अनुरोध है कि भविष्य में यह सुनिश्चित कर लिया जाय कि किसी भी अधिकारी के प्रशंसा-पत्र आदि उसकी गोपनीय पंजिका में अवश्य उपलब्ध रहे।"

T.C.

Prasad

Before the ~~THE~~ CENTRAL ADMINISTRATIVE
TRIBUNAL, LUCKNOW
O.A. NO. 76/89 (L) 8/12
A.K. MISRA VS. UNION OF INDIA & 3 OTHERS
ANNEXURE NO. R-4
CONFIDENTIAL

REKATURVEDI

No: I- 345-70

DIRECTOR GENERAL OF POLICE
UTTAR PRADESH.

Dated: Lucknow, Dec. 13, 1984

Sir,

Recently I have had occasion to see a large number of Confidential Reports on Dy. Superintendents of Police considered for being brought on the select list of the Department. Apart from the remarks being vague the categorisation of officers has often been erratic. It is possible that some officers are not aware of the norms prescribed by the UPSC for promotion of officers for being brought on such promotion.

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

- 1) Outstanding
- 2) Very good
- 3) Good
- 4) Not fit

Usually 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 promoted as 'outstanding'. Such an officer becomes senior to those categorised as 'very good' or 'good', irrespective of his original placement in the gradation list. An officer in whom three remarks out of five are categorised as 'outstanding' and has no adverse report, is categorised as 'outstanding'. All officers categorised as 'very good' are

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placed immediately after those categorised as 'outstanding'. The inter se seniority of those placed in a particular category would remain undisturbed. Officers, who have at least three good remarks are categorised as 'good' provided there is no adverse remark. Those not falling in any of the above categories, are categorised as "not fit". Officers categorised as 'good', are placed immediately below the juniormost officer of the 'very good' category (the 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 if they are senior.

4. In view of this it is of very great importance that officers are categorised after deep consideration. It has been noticed in several cases that while an officer has been categorised as 'good', the reading of the entire remark on him would show that he should have been categorised as 'very good'. Such casualness can lead to miscarriage of justice and irreversibly undermine the confidence of an officer. Much worse, it erodes the confidence of subordinate officers in the fairness and soundness of the assessment of their seniors. I shall request you to pay special attention to this matter while recording annual remarks of your subordinates. I should like to remind you all that it is a balanced assessment of the worth of your subordinates that is an important and sacred duty cast upon each of us. I shall expect all Is.G. and D.Is.G. to express, while recording

cate that
he should
have been
categorised

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Rudra

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-3-

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 Is.G., D.Is.G. and Ss.P. will be recorded by me only after I have had an opportunity of assessing their respective worth as reporting and reviewing officers.

Kindly acknowledge this letter.

Yours sincerely,

(J.N. CHATURVEDI)

13/12/84

All Insps Genl of Police, U.P.

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

All Sr. Supdts. of Police / All Supdts. of Police, U.P.

All Commandants, P.C. Bns., U.P.

T.C
Gupta

Before the Central Administrative Tribunal, Lucknow

O. A. NO. 76/89 (1)

A.K. MISRA VS. Union of India & 3 others

ANNEXURE NO. R-5

गोपनीय/महत्वपूर्ण

रमेश चन्द्र दौलत,
पुलिस उप महा निरीक्षक, प्रशासन।

अर्द्धातकीय पत्र संख्या डीजी-सीआर-5-89

मुख्यालय पुलिस महा निदेशक,

उत्तर प्रदेश।

दिनांक: लखनऊ: 1 अप्रैल, 1989

प्रिय महोदय,

कृपया भारतीय पुलिस सेवा तथा राज्य पुलिस सेवा के

- 11 डीजी.सीआर-85-86, दि 10-3-86 | अधिकारियों की वार्षिक गोपनीय प्रविष्टियाँ
12 डीजी.सीआर-86-87, दि 31-7-87 | अंकित कर उपलब्ध कराने विषयक शासन
13 डीजी.सीआर-5-88, दि 21-3-88 | द्वारा समय-समय पर निर्गत शासनादेश तथा
इस मुख्यालय द्वारा जारी किये गये पारस्परिक परिपत्रों का अवलोकन करें।

2. मुझे यह कहने का निर्देश हुआ है कि प्रश्नगत प्रकरण में पूर्व में
निर्गत आदेशों का पूर्णतः अनुपालन नहीं किया जा रहा है। प्रायः
गोपनीय प्रविष्टियों में निम्नलिखित कमियाँ प्रकाश में आयी हैं :-

- 111 अधिकारी के संबंध में जो मन्तव्य अंकित किया जाता है उसमें
आलोच्य अवधि पूर्णतः स्पष्ट नहीं की जाती। सम्पूर्ण अवधि
में जिस स्थिति में भी अधिकारी नियुक्त रहा हो, उसका उल्लेख
स्पष्ट रूप से किया जाय।
121 कतिपय समीक्षक एवं स्वीकृत अधिकारी यह स्पष्ट रूप से अंकित
नहीं करते कि वह प्रतिवेदक अधिकारी द्वारा दिये गये मन्तव्य
से किस सीमा तक सहमत अथवा असहमत है। इसका उल्लेख स्पष्टतः
करें।
131 राज्य पुलिस सेवा के अधिकारियों के संबंध में अधिकतर प्रतिवेदक
अधिकारी अपने द्वारा दिये गये मन्तव्य के अन्त में संबंधित
अधिकारी के सम्पूर्ण कार्य एवं आचरण के अनुसार श्रेणी category
का उल्लेख नहीं करते। यह अत्यन्त आपत्तिजनक है। अतः कृपया
शासनादेश संख्या 36/1/1976-कॉमि-2 दिनांक 30 अक्टूबर
1986 के पैरा 9 में निहित कर्तव्य के अन्तर्गत प्रतिवेदक अधिकारी
द्वारा दिये गये मन्तव्य के अन्त में, श्रेणी का उल्लेख अवश्य किया
जाय।

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5- अन्ततोगत्वा प्रत्येक भारतीय पुलिस सेवा के अधिकारियों की वार्षिक गोपनीय प्रविष्टियाँ पाँच प्रतियों में, पुलिस अधीक्षक : नान आइपीएस की वार्षिक गोपनीय प्रविष्टियाँ चार प्रतियों में तथा उ०प्र० पुलिस सेवा के अधिकारियों की प्रविष्टियाँ दो प्रतियों में, इस मुख्यालय को निर्धारित अवधि में प्रत्येक वर्ष में उपलब्ध कराने का कष्ट करें।

भव

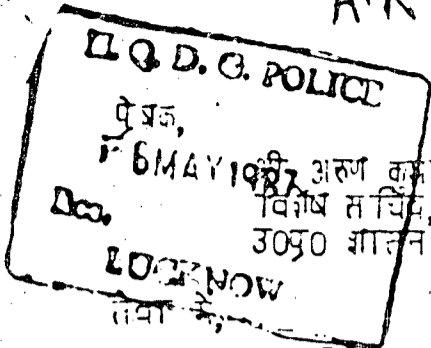
सेवा में,

1. रमेश चन्द्र शर्मा 13

11. समस्त पुलिस महानिदेशक, उ०प्र०।
12. समस्त पुलिस महानिरीक्षक, उ०प्र०।
13. समस्त पुलिस उप महानिरीक्षक, उ०प्र०।
14. निदेशक 'दूर संचार' पुलिस रेडियो अनुभाग, उ०प्र०।
15. समस्त ज्येष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक, प्रभार संचार, उ०प्र०।
16. समस्त सेनानायक, पीसटी वाहिनियाँ तथा प्रशिक्षण केन्द्र।
17. समस्त पुलिस अधीक्षक, रेलवेज, उ०प्र०।
18. समस्त पुलिस अधीक्षक, प्रभारी पुलिस प्रकोष्ठ/इकाईयाँ।

1/11/34

[Signature]



महानिदेशक एवं पुलिस महानिरीक्षक,
उत्तर प्रदेश, लखनऊ।

गृह/पुलित सेवाधे/अन०-२

लॉनक दिनांक 5 मई 1987

महोदय,

शासनादेश संख्या-3715/आठ-पु010-2-512111/85, दिनांक 1 सितम्बर, 1986 द्वारा आई०पी०एस्० के सीनियर स्केल के समकक्ष रुपये 1200-1700 के विशेष ग्रेड में 35 अपर पुलिस अधीक्षक के अस्थाई पदों को दिनांक 28-2-87 तक तदर्थ स्म से सृजित किया गया था। यह पद इत शर्त के अधीन सृजित किये गये थे कि जब तक यह पद चलते रहेंगे तब तक उत्तर प्रदेश पुलिस सेवा के विशेष वेतनमान 11540-22001 के 33 पद रिक्त रहेंगे और 2 नये पदों पर ही अतिरिक्त दिल्लीय भार निहित होगा। यह दो पद जैसे ही दो अधिकारी सेवानिवृत्त होंगे स्वतः समाप्त हो जायेंगे। अब अपर पुलिस अधीक्षक के अतिरिक्त पदों की कुल संख्या-33 हो गई है क्योंकि दो अधिकारी सेवानिवृत्त हो चुके हैं। अतः श्री राज्यपाल महोदय उपरोक्त 33 पदों का कार्यकाल दिनांक 29-2-88 तक बढ़ाये जाने को पूर्व में निर्धारित शर्तों के अधीन स्वीकृति उक्त शर्त पर प्रदान करते हैं कि इन सम्बन्ध में होने वाला व्यय चालू वर्ष के आय-व्यय में लेखानुदान तथा तत्सम्बन्धी विनियोग अधिनियम द्वारा प्राधिकृत धनराशि से वहन किया जायेगा और अनुवर्ती अवधि के लिये मूल आय व्यय तथा तत्सम्बन्धी विनियोग अधिनियम द्वारा उपलब्ध हो जाये।

2-- उक्त शासनादेश के क्रम में मुझे यह भी कहने का निदेश हुआ है कि श्री राज्यपाल महोदय ने पूर्व में सृजित 37 पदों के अलावा उपरोक्त सृजित अस्थाई अपर पुलिस अधीक्षक के तदर्थ 33 पदों को निम्नलिखित स्थानों परभारे जाने की तिथि से आवंटित किये जाने की स्वीकृति प्रदान की है :-

क्र०	स्थान	पदों की संख्या
1	2	3
1--	द्वितीय वाहिनी, पी०एस्सी०, सीतापुर।	1 पद
2--	चतुर्थ वाहिनी, पी०एस्सी०, इलाहाबाद।	1 पद
3--	छठी वाहिनी, पी०एस्सी०, मेरठ।	1 पद
4--	आठवीं वाहिनी, पी०एस्सी०, बरेली।	1 पद
5--	10वीं वाहिनी, पी०एस्सी०, जहांगीराबाद।	1 पद

क्र०--2/

T.C.

[Signature]

- 83127
- सहायक तेनानायक के 3। पद तथा अमराध अनुसंधान विभाग के एक ज्येष्ठ पुलिस उपाधीक्षक तथा अभियुक्त विभाग का एक ज्येष्ठ पुलिस उपाधीक्षक कुल 33 पद। जो उ0प्र0 पुलिस सेवा सम्यन् के वरिष्ठ वेतनमान में है, का उपयोग पुलिस महानिदेशक अपनी आवश्यकता अनुसार अन्य करेगे तथा इन 33 पदों के स्थान पर पुलिस उपाधीक्षकों के कनिष्ठ वेतनमान के 33 पद पहले ही उपरोक्त शांतनादेश दिनांक 1-9-86 द्वारा समाप्त कर दिये गये थे।

5-- उपर्युक्त प्रस्तर-2 में उल्लिखित पी0ए0सी0 के लिये आवंटित 3। पदों पर होने वाला व्यय वर्ष 1987-88 के आव-व्यय के तहत शीर्षक 2055-पुलिस-आयोजनेतर-104 - विजे पुलिस-आयोजनेतर-कांन्टेबलरी -मुख्य के अन्तर्गत सुतंगत उपशीर्षक एवं प्राथमिक इकाइयों के नामें डाले जायेंगे।

6-- श्री राज्यपाल यह भी आदेश देते हैं कि पी0ए0सी0 वाहिनीयों के लिये प्रस्तावित उक्त 3। पदों के आवंटन के फलस्वरूप अमर पुलिस अधीक्षक स्तर के अधिकारी जो पी0ए0सी0 में तैनात किये जायेंगे का पदनाम सहायक तेनानायक होगा जो वाहिनी के Second-in-command रहेंगे तथा इन पदों का वेतनमान वही होगा जो शांतनादेश संख्या-3715/आठ-पु0सी0-2-51211/85, दिनांक 1-9-86 में अमर पुलिस अधीक्षकों का वेतनमान उल्लिखित है। इन अधिकारियों को बालान्तर में उप तेनानायक पदनाम दिये जाने हेतु पी0ए0सी0 एक्ट में आवश्यक संशोधन करने की कार्यवाही अलग से की जायेगी।

7-- यह आदेश वित्त विभाग के अभातकीय संख्या-ई-12-957/वत-87, दिनांक 21-4-87 द्वारा प्राप्त इनकी सहसति से जारी किये जा रहे हैं।

भवदीय,

अरुण कुमार बिट्ट
विशेष तथित।

संख्या: 496811/आठ-पु0सी0-2-तददिनांक

प्रतिलिपि निम्नलिखित को सूचनाई एवं आवश्यक कार्यवाही हेतु प्रेषित:-

- 1-- महानिदेशक, उत्तर प्रदेश, इलाहाबाद।
- 2-- वित्त : व्यय नियन्त्रण : अनुभाग-12
- 3-- गृह : पुलिस : अनुभाग-1
- 4-- गृह : पुलिस : अनुभाग-7
- 5-- गृह : पुलिस सेवा : अनुभाग-1

T. C.
[Signature]

आज्ञा ले,
अरुण कुमार बिट्ट
विशेष तथित।

43 A/28
B/28

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT BENCH AT LUCKNOW.

O.A.NO. 76 OF 1989 (L)

A.K.MISRA.....APPLICANT

VERSUS

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

SUPPLEMENTARY COUNTER AFFIDAVIT TO THE
REJOINDER AFFIDAVIT OF SRI A.K.MISRA



- 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
hereby solemnly affirm and state on oath as under:-
- 1- That the deponent is ²⁷presently 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 the Rejoinder Affidavit of Sri A.K.Misra(hereinafter referred to as R.A.) and after fully understanding the same is filing this ²⁷Supplementary Counter Affidavit to controvert the facts alleged in the same.
 - 2- That the contents of para-1 of the Rejoinder Affidavit need no reply.
 - 3- That the contents of para-2 of the Rejoinder Affidavit need no reply.
 - 4- That the contents of para-3 of the Rejoinder Affidavit are not admitted and those of para-3, 15 and 16 of the Counter Affidavit are reiterated. The Select Committee

perused all the relevant records of the eligible officers and after an overall relative assessment of ^{203✓} their service records categorised them as per rules. It is again reiterated that it is incorrect to allege that officers having inferior record of service to the applicant have been included in the Select List.

5- That the contents of para-4 of the Rejoinder Affidavit are denied and those of para-7 of the Counter Affidavit are reiterated.

6- That the contents of para-5 of the Rejoinder Affidavit are denied and those of para-9 of the Counter Affidavit are reiterated. It is added that instructions contained in G.O.No. 36/9-76-Karmik-2 dated 24.1.77 and other such Govt. orders are followed in the matter ^{ml} relating to maintenance of Character Rolls. As regards Circular letter issued on 13.12.84 and 1.4.89 by the then D.G.P., U.P. it is stated that categorisation of service records of the officers in eligibility field is done by the Select Committee in accordance with I.P.S.(Appointment by Promotion) Regulations 1955. The instructions issued by the D.G.P., U.P. can not have effect or overriding effect on the said regulations framed by the Govt. of India.

7- That the contents of para-6 of the Rejoinder Affidavit are denied and those of para-11 and 12 of the Counter Affidavit are reiterated.

8- That the contents of para-7 of the Rejoinder Affidavit are denied and the contents of para-13 of the Counter Affidavit are reiterated.



D

B/30

- 9- That the contents of para-8 of the Rejoinder Affidavit are denied and those of para-14 of the Counter Affidavit are reiterated.
- 10- That the contents of para-9 of the Rejoinder Affidavit are denied and those of paras 15,16 and 17 of the Counter Affidavit are reiterated.
- 11- That the contents of para-10 of the Rejoinder Affidavit are denied and those of para-18 of the Counter Affidavit are reiterated.
- 12- That the contents of para-11 of the Rejoinder Affidavit are denied and those of para-19 of the Counter Affidavit are reiterated.
- 13- That the contents of para-12 of the Rejoinder Affidavit are denied and those of para- 20 of the Counter Affidavit are reiterated.
- 14- That the contents of para-13 of the Rejoinder Affidavit are denied and those of para-14 and 21 of the Counter Affidavit are reiterated.
- 15- That the contents of para-14 of the Rejoinder Affidavit are denied and those of para-22 of the Counter Affidavit are reiterated.
- 16- That the contents of para-15 of the Rejoinder Affidavit are denied and those of para-23 of the Counter Affidavit are reiterated.
- 17- That the contents of para-16 of the ^{Rejoinder}~~Counter~~ Affidavit are denied and those of para- 24 of the Counter Affidavit are reiterated.
- 18- That the contents of para-17 of the Rejoinder Affidavit are denied and those of para-25 and 26 of the Counter Affidavit are reiterated.



B13

19- That the contents of para-18 of the Rejoinder Affidavit are denied and those of para-27 of the Counter Affidavit are reiterated.

20- That the contents of para-19 of the Rejoinder Affidavit as written are denied and the contents of para-31 of the Counter Affidavit are reiterated.

21- That the contents of para-20 of the Rejoinder Affidavit are denied and the contents of para-32, 33 and 34 of the Counter Affidavit are reiterated.

22- That the contents of para-21 of the Rejoinder Affidavit are denied in view of what has been stated in para-35 of the Counter Affidavit.

23- That the contents of para-22 of the Rejoinder Affidavit are denied and the contents of para 36 of the Counter Affidavit are reiterated.

24- That the contents of para-23 of the Rejoinder Affidavit are denied and those of para-37 of the Counter Affidavit are reiterated.

25- That the contents of para-24 of the Rejoinder Affidavit are denied and those of para-38 of the Counter Affidavit are reiterated.

26- That the contents of para-25 of the ²⁷Rejoinder Affidavit are denied and those of para-39 of the Counter Affidavit are reiterated.

27- That the contents of para-26 of the Rejoinder Affidavit are denied.

28- That the contention made in para-27 of the Rejoinder Affidavit is denied being baseless and misconceived²⁷ in view



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²⁷² of what has been stated in the Counter Affidavit and also in the foregoing paragraphs.

LUCKNOW:

DATED: 5.3.90

²⁷²
DEPONENT
(रोहित नन्दन)
संयुक्त सचिव,
गृह एवं गोपन विभाग

VERIFICATION

I, the abovesaid ²⁷² deponent do hereby verify that the contents of this supplementary counter affidavit from paras 1 to 5, 6 (part) to 28 — are true to my own knowledge on the basis of the records and those of paras 6 (part) — are believed to be true. No part of it is false and nothing material has been concealed. So help me God.

LUCKNOW:

DATED: 5.3.90.

²⁷²
DEPONENT
(रोहित नन्दन)
संयुक्त सचिव,
गृह एवं गोपन विभाग

I, Padmalabar Sarmah ²⁷² U.D.A. Home (Police Services) Section-2. clerk of Sri 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 of records produce before me in this case.

²⁷²
(PADMAKAR SRIVASTAVA)

Solemnly affirmed before me on ²⁷² the day of March, 1990 at a.m./p.m. who has been identified by the aforesaid.

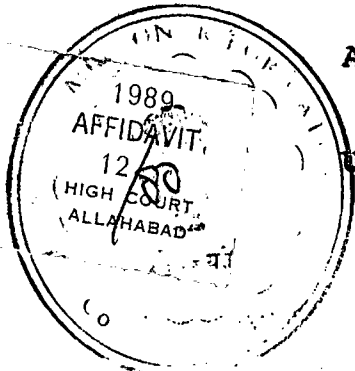
I have satisfied myself by examining the deponent that he has understood the contents of this affidavit which has been read over and explained to him.

OATH COMMISSIONER.



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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CIRCUIT BENCH, LUCKNOW
O.A.NO. 76 of 1989(L)



A.K.MISRA.....APPLICANT
VERSUS
UNION OF INDIA & OTHERSRESPONDENTS

SUPPLEMENTARY COUNTER AFFIDAVIT

I, Anil Kumar Tewari, aged about 35 years, s/o Shri Hari Prasad Tewari posted as Upper Division Assistant, Home (police services) Section-2, Government of Uttar Pradesh, Lucknow do hereby solemnly affirm and state on oath as under:-

- P.T.
L
3/16/11/20
- Anil Kumar Tewari
1. That the deponent abovenamed is Upper Division Assistant, Home Department, Govt. of Uttar Pradesh, Lucknow and is duly authorised by Home Secretary, Govt. Of Uttar Pradesh, Lucknow and as such is fully conversant with the facts of the case. The deponent has read the Claim Petition and the interim orders dated 10.8.89 and 19.10.89 passed by the Hon'ble Tribunal and has also read the orders dated 21.12.89. (Authorisation letter is annexed as annexure SCA-I).
 2. That on 18.4.89 the applicant was transferred from the post of Additional Superintendent of Police, Fatehpur to the post of Deputy Commandant, 25th Battalion, P.A.C., Rae-Bareilly.
 3. That against the aforesaid transfer order, the applicant moved an application for interim relief (C.M.A.NO. 144/89 (L)).
 4. That the respondent No 3 and 4 filed objection to the said application.
 5. That on 10.8.89 the Hon'ble Tribunal was pleased to pass the interim order directing the answering respondents to post the applicant to a post equivalent to



the post he was holding before the impugned order of transfer dated 18.4.89 (a cadre/non-cadre post of I.P.S.)

6. That as the post of the Additional Superintendent of Police, Fatehpur where the applicant was posted prior to his transfer is neither a cadre nor non-cadre post of I.P.S. as will appear from G.O.NO.5015/VII-PS-2-1984 dated 1.12.84 annexed alongwith counter filed as Annexure No. MCA-I. Therefore the answering respondents moved an application for modification of stay order dated 10.8.89 alongwith the Counter Affidavit.
7. That on 19.10.89 the Hon'ble Tribunal was pleased to modify the interim order dated 10.8.89 directing the answering respondents to post the applicant on any of the post of Additional Superintendent of Police unspecified earlier or specified later.
8. That the applicant is now posted as Deputy Commandant 27th Battalion, P.A.C., Sitapur.
9. That vide G.O.NO. 5025/VIII-PS-2-1984 dated 1.12.84 ,37 posts of Additional Superintendent of Police were created for the members of Provincial Police Service, U.P. for 37 districts specified in the G.O. The copy of the G.O. dated 1.12.84 has already been filed as Annexure No. CA-I to the Counter Affidavit.
10. That vide G.O.NO.1/VII-PS-2-512(1)/85 dated 1.9.86, 33 more posts of Additional Superintendent of Police of Provincial Police Service were created. In this way there are 70 posts of Additional Superintendents of Police Of P.P.S. The photo Copy of G.O. dated 1.9.86 is being filled herewith as Annexure No. SCA-II to this Supplementary Counter Affidavit.
11. That out of 70 posts of Additional Superintendents of Police 37 posts were specified for 37 districts as mentioned in G.O. dated 1.12.84 copy of which is annexed as CA-I to the Counter Affidavit and vide G.O.NO.4968/VII-PS-2-512(1)/85 dated 5th May, 1987 remaining 33 posts

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of Additional S.P. were to be filled as specified in the said G.O. The photocopy of the G.O. dated 5.5.87 is being filed herewith as Annexure No. SCA-III to this Supplementary Counter Affidavit.

12. That the Additional Superintendent of Police posted in different PAC battalions vide G.O. dated 5.5.87 ~~5.5.89~~ were designated as Assistant Commandants and subsequently re-designated as Deputy Commandants.

13. That in view of the G.O. dated 1.12.84, copy annexed as CA-I to the Counter Affidavit and G.O. dated 1.9.86 copy annexed as SCA-II and dated 5.5.87 copy annexed as Annexure-SCA-III to this Supplementary Counter Affidavit, the post of the Additional S.P. Fatehpur where the applicant was posted before transfer, the post of Deputy Commandant, 25th battalion PAC Rai-Bareilly where the applicant was transferred and the post of Deputy Commandant, 27th battalion, PAC, Sitapur where the applicant is at present posted are the posts of Additional Superintendents of Police.

14. That this affidavit is being filed herewith for the kind information of this Hon'ble Tribunal in Compliance of its order dated 19.10.89 and 21.12.89.

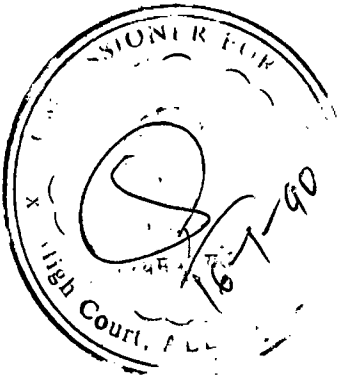
Amal Kumar
DEPONENT

V I R I F I C A T I O N

I, the abovenamed deponent, do hereby verify that the contents of this counter affidavit from paras 1 to 13 are true to my knowledge on the basis of the records and the para 14 is believed by me to be true. No part of it is false and nothing material has been concealed: So help me God.

LUCKNOW: DATED
JANUARY, 16th 1990

Amal Kumar
DEPONENT



Amal Kumar

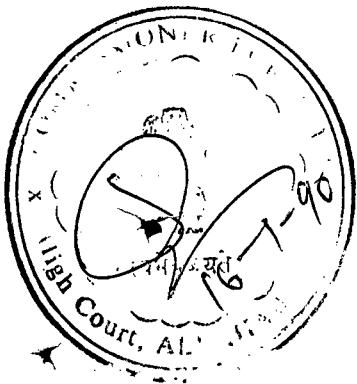
1136

I, Anoop Kumar, Advocate do hereby declare that the person making this affidavit and alleging himself to be Sri Anil Kumar Tewari - - is the same person who is known to me from the perusal of records produced before me in this case.

Anoop Kumar
Advocate

Solemnly affirmed before me on 16-1-90 the day of January 1990 at 9.20 a.m./p.m. who has been indentified 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.



[Signature]

Rajiv Lalit Chandra Vastav

OATH COMMISSIONER

To - - - Date 16-1-90

12/1942

AB7

GOVERNMENT OF UTTAR PRADESH
HOME (POLICE SERVICES) SECTION- 2

No: / VIII-PS-2-545(8)/89

Sri Anil Kumar Tewari, Upper Division Assistant, Home
(Police Services) Section-2, U.P. Secretariat, Lucknow has been
authorised to file Supplementary Counter Affidavit in O.A.No.76
of 1989 (L) A.K. Misra versus Union of India & Others in the
Central Administrative Tribunal, Circuit Bench, Lucknow.

hct
(SANT KUMAR TRIPATHI)
HOME SECRETARY



Anil Kumar

प्रेषक,

श्री राजपाल शर्मा
श्री अरुण कुमार बिहारी,
विशेष सचिव,
उत्तर प्रदेश शासन।

2/19/86
K/38

सेवा में,

महा निदेशक एवं पुलिस महा निरीक्षक,
उत्तर प्रदेश, लखनऊ।

गृह पुलिस सेवायें अनुभाग-2

लखनऊ, दिनांक,

1 अप्रैल, 1986.

महोदय,

मुझे यह कहने का निदेश हुआ है कि शासनादेश संख्या-5025/पु0से0-2-1985, दिनांक 1 दिसम्बर, 1984 में अमर पुलिस अधीक्षक के 37 अस्थाई निःसम्बन्धी पद सृजित किये गये थे, जिनका कार्यकाल अन्तिम बार शासनादेश संख्या-716/आठ-पु0से0-2-512111/85, दिनांक 13-3-86 में 28-2-87 तक बढ़ाया गया था, के क्रम में श्री राज्यपाल ने आईओपीएस के सीनियर स्केल के समकक्ष रू 1200-1700 के विशेष ग्रेड में 35 और अमर पुलिस अधीक्षक के अस्थाई पदों को तदर्थ रू से सृजित किये जाने हेतु सहमति प्रदान कर दी है। श्री राज्यपाल महोदय ने यह भी आदेश दिये है कि अमर पुलिस अधीक्षक को उपरोक्त तदर्थ 35 अस्थाई पद 17 अप्रैल, 1986 के भूतलक्षी प्रभाव से सृजित माने जायेंगे और 28 फरवरी, 1987 तक चलते रहेंगे, बशर्ते कि उन्हें बिना किसी पूर्व नोटिस के इससे पहले ही समाप्त न कर दिया जाय।

2.. जब तक उपरोक्त प्रस्तर एक में सृजित पद चलते रहेंगे तब तक उत्तरप्रदेश पुलिस सेवा के विशेष वेतनमान 1540-2200 के 33 पद रिक्त रहेंगे। इस प्रकार केवल दो नये पदों पर ही वित्तीय भार निहित रहेगा। यह दो पद जैसे ही दो अधिकारी सेवानिवृत्त होंगे स्वतः समाप्त हो जायेंगे और इसके बाद अमर पुलिस अधीक्षक के तदर्थ पदों की संख्या किली भी समय 70 से अधिक नहीं होगी।

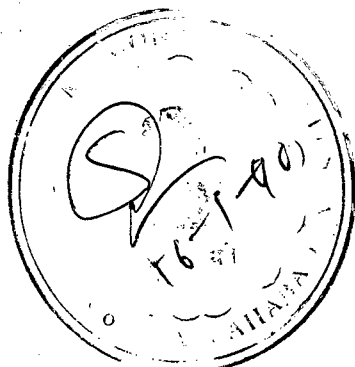
3.. उपरोक्त शासनादेश दिनांक 1-12-84 में दी हुई अन्य शर्तें प्रस्तर-1 में सृजित पदों पर भी लागू रहेगी।

4.. उपरोक्त पदों पर होने वाला व्यय साल वित्तीय वर्ष 1986-87 के आय व्यय लेखाशीर्षक 255-पुलिस आयोजनाओं के अन्तर्गत सेम्बेड उप शीर्षकों एवं प्राथमिक इकाईयों के नामे डाला जायेगा।

5.. यह आदेश वित्त विभाग के अशासकीय सूत्र संख्या-3129/एच-86 दिनांक 1/5/86 द्वारा प्राप्त उनकी सहमति से जारी किये जा रहे हैं।

भवदीय,

श्री राजपाल शर्मा
श्री अरुण कुमार बिहारी,
विशेष सचिव।



11211

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संख्या: 111/आठ-पु0रो0-2-512111/85

प्रतिलिपि निम्नलिखित को सूचना एवं आवश्यक कार्यवाही
के लिए प्रेषित :--

- 111- महासेवाकार, उत्तर प्रदेश, झांझाबाद ।
- 121- वित्त विभाग नियन्त्रण अनुभाग-12
- 131- गृह विभाग अनुभाग-1,
- 141- गृह विभाग अनुभाग-7
- 151- गृह विभाग सेवायें अनुभाग-1

आज्ञा से,

24

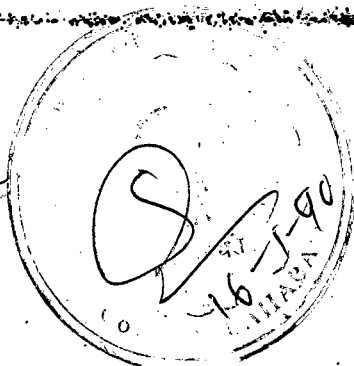
(सहायक सचिव)

असम कुमारी सिंह

विशेष सचिव।

24.8.85

असम कुमारी सिंह



A/40

संख्या: 4968/आठ-पु0से0-2-51211/85

प्रेषक,

श्री अरुण कुमार बिट,
विशेष सचिव,
उप0 गीतना।

सेवा में,

महानिदेशक एवं पुलिस महानिरीक्षक,
उत्तर प्रदेश, लखनऊ।

गृह पुलिस सेवायें अनु0-2

लखनऊ, दिनांक, 5 मई, 1987

महोदय,

गीतनादेश संख्या-3715/आठ-पु0से0-2-51211/85, दिनांक 1 सितम्बर, 1986 द्वारा आई0पी0एस0 के सीनियर स्केल के समकक्ष स्तर पर 1200-1700 के विशेष ग्रेड में 35 अपर पुलिस अधीक्षक के अस्थाई पदों को दिनांक 28-2-87 तक तदर्थ स्तर से सृजित किया गया था। यह पद इस शर्त के अधीन सृजित किये गये थे कि जब तक यह पद चलते रहेंगे तब तक उत्तर प्रदेश पुलिस सेवा के विशेष वेतनमान 1540-2200 के 33 पद रिक्त रहेंगे और 2 नये पदों पर ही अतिरिक्त वित्तीय भार निहित होगा। यह दो पद जैसे ही दो अधिकारी सेवानिवृत्त होंगे स्वतः समाप्त हो जायेंगे। अब अपर पुलिस अधीक्षक के अतिरिक्त पदों की कुल संख्या-33 हो गई है क्योंकि दो अधिकारी सेवानिवृत्त हो चुके हैं। अतः श्री राज्यपाल महोदय उपरोक्त 33 पदों का कार्यकाल दिनांक 29-2-88 तक बढ़ाये जाने को पूर्व में निर्धारित शर्तों के अधीन स्वीकृति उस शर्त पर प्रदान करते हैं कि इस सम्बन्ध में होने वाला व्यय चालू वर्ष के आय-व्यय में लेखानुदान तथा तत्सम्बन्धी विनियोग अधिनियम द्वारा प्राधिकृत धनराशि से वहन किया जायेगा और अनुवर्ती अवधि के लिये मूल आय व्यय तथा तत्सम्बन्धी विनियोग अधिनियम द्वारा उपलब्ध हो जाये।

2— उक्त गीतनादेश के क्रम में मुझे यह भी कहने का निदेश हुआ है कि श्री राज्यपाल महोदय ने पूर्व में सृजित 37 पदों के अलावा उपरोक्त सृजित अस्थाई अपर पुलिस अधीक्षक के तदर्थ 33 पदों को निम्नलिखित स्थानों पर भरे जाने की तिथि से आवंटित किये जाने की स्वीकृति प्रदान की है :—

स्थान	पदों की संख्या
1— दिल्ली वाहिनी, पी0एस0सी0, सीतापुर।	1 पद
2— जयपुर वाहिनी, पी0एस0सी0, इलाहाबाद।	1 पद
3— छत्ती वाहिनी, पी0एस0सी0, मेरठ।	1 पद
4— आठवीं वाहिनी, पी0एस0सी0, बरेली।	1 पद
5— 10वीं वाहिनी, पी0एस0सी0, जहाँगीराबाद।	1 पद

1	2	
6--	11वीं वाहिनी, पी०ए०सी०, सीतापुर ।	--
7--	12वीं वाहिनी, पी०ए०सी०, फतेहपुर ।	--
8--	15वीं वाहिनी, पी०ए०सी०, आगरा ।	--
9--	20वीं वाहिनी, पी०ए०सी०, आजमगढ़ ।	--
10--	23वीं वाहिनी, पी०ए०सी०, मुरादाबाद ।	--
11--	24वीं वाहिनी, पी०ए०सी०, मुरादाबाद ।	--
12--	25वीं वाहिनी, पी०ए०सी०, रायबरेली ।	--
13--	26वीं वाहिनी, पी०ए०सी०, गोरखपुर ।	--
14--	27वीं वाहिनी, पी०ए०सी०, सीतापुर ।	--
15--	28वीं वाहिनी, पी०ए०सी०, इटावा ।	--
16--	30वीं वाहिनी, पी०ए०सी०, गोण्डा ।	--
17--	31वीं वाहिनी, पी०ए०सी०, स्ट्रपुर ।	--
18--	32वीं वाहिनी, पी०ए०सी०, लखनऊ ।	--
19--	33वीं वाहिनी, पी०ए०सी०, झाँसी ।	--
20--	34वीं वाहिनी, पी०ए०सी०, वाराणसी ।	--
21--	35वीं वाहिनी, पी०ए०सी०, लखनऊ ।	--
22--	36वीं वाहिनी, पी०ए०सी०, रामनगर वाराणसी ।	--
23--	37वीं वाहिनी, पी०ए०सी०, कानपुर ।	--
24--	38वीं वाहिनी, पी०ए०सी०, अलीगढ़ ।	--
25--	39वीं वाहिनी, पी०ए०सी०, ओबरा व मिर्जापुर ।	--
26--	40वीं वाहिनी, पी०ए०सी०, हरिद्वार ।	--
27--	3 41वीं वाहिनी, पी०ए०सी०, गाजियाबाद ।	--
28--	42वीं वाहिनी, पी०ए०सी०, नैनी, इलाहाबाद ।	--
29--	43वीं वाहिनी, पी०ए०सी०, एटा ।	--
30--	44वीं वाहिनी, पी०ए०सी०,	--
31--	45वीं वाहिनी, पी०ए०सी०,	--
32--	अपराध शाखा, अपराध अनुसंधान विभाग	--
33--	अभिलेखना विभाग, उत्तर प्रदेश	--

3-- इस सम्बन्ध में होने वाला व्यय चालू वर्ष में आय-व्यय की अनुदान त-27-लेखाशीर्षक "2055-पुलिस-आयोजनेत्तर" के अन्तर्गत सुसंगत उपशीर्षक एवं प्राथमिक इकाइयों के नामे डाला जायेगा ।

4-- मुझे यह भी कहने का निदेश हुआ है कि श्री राज्यपाल ने यह भी स्वीकृति प्रदान की है कि 31 पी०ए०सी० वाहिनीयों के लिये स्वीकृत ज्येष्ठ

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1/311

सहायक सेनानायक के 31 पद तथा अमराध अनुसंधान विभाग के एक ज्येष्ठ पुलिस उपाधीक्षक तथा अभिलूचना विभाग का एक ज्येष्ठ पुलिस उपाधीक्षक कुल 33 पद जो 3090 पुलिस सेवा सम्बर्ण के वरिष्ठ वेतनमान में है, का उपयोग पुलिस महानिदेशक अपनी आवश्यकतानुसार अन्यत्र करेंगे तथा इन 33 पदों के स्थान पर पुलिस उपाधीक्षकों के कनिष्ठ वेतनमान के 33 पद पहले ही उपरोक्त शासनादेश दिनांक 1-9-86 द्वारा समाप्त कर दिये गये थे।

5-- उपर्युक्त प्रस्तर-2 में उल्लिखित पी०ए०सी० के लिये आवंटित 31 पदों पर होने वाला व्यय वर्ष 1987-88 के आय-व्ययक के लेखा शीर्षक "2055-पुलिस-आयोजनेत्तर-104 -विशेष पुलिस-01-राज्य तशस्त्र कान्स्टेबलरी -मुख्य" के अन्तर्गत सुसंगत उपशीर्षक एवं प्राथमिक इकाइयों के नामें डाले जायेंगे।

6-- श्री राज्यपाल यह भी आदेश देते हैं कि पी०ए०सी० वाहिनीयों के लिये प्रस्तावित उक्त 31 पदों के आवंटन के फलस्वरूप अगर पुलिस अधीक्षक स्तर के अधिकारी जो पी०ए०सी० में तैनात किये जायेंगे का पदनाम सहायक सेनानायक होगा जो वाहिनी के Second-in-command रहेंगे तथा इन पदों का वेतनमान वही होगा जो शासनादेश संख्या-3715/आठ-पु०से०-2-512111/85, दिनांक 1-9-86 में अगर पुलिस अधीक्षकों का वेतनमान उल्लिखित है। इन अधिकारियों को कालान्तर में उप सेनानायक पदनाम दिये जाने हेतु पी०ए०सी० एक्ट में आवश्यक संशोधन करने की कार्यवाही अलग से की जायेगी।

7-- यह आदेश वित्त विभाग के आगतकीय संख्या-ई-12-957/दस-87, दिनांक 21-4-87 द्वारा प्राप्त इनकी सहमति से जारी किये जा रहे हैं।

भवदीय,

R
अरुण कुमार बिट्ट
विशेष सचिव।

संख्या: 4968111/आठ-पु०से०-2-तददिनांक

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:—

- 1-- महालेखाकार, उत्तर प्रदेश, इलाहाबाद।
- 2-- वित्त व्यय नियन्त्रण अनुभाग-12
- 3-- गृह पुलिस अनुभाग-1
- 4-- गृह पुलिस अनुभाग-7
- 5-- गृह पुलिस सेवायें अनुभाग-1

आज्ञा से,

R
अरुण कुमार बिट्ट
विशेष सचिव।

प्रेषक,

श्री राजपाल श्री
श्री अरज कुमार सिंह,
विशेष सचिव,
उत्तर प्रदेश शासन।

सेवा में,

महा निदेशक एवं पुलिस महा निरीक्षक,
उत्तर प्रदेश, लखनऊ।

गृह/पुलिस सेवायें/अनुभाग-2

लखनऊ, दिनांक,

19/06/86
अप्रैल, 1986.

महोदय,

मुझे यह कहने का निदेश हुआ है कि शासनादेश संख्या-5025/पु0से0-2-1985, दिनांक 1 दिसम्बर, 1984 में अमर पुलिस अधीक्षक के 37 अस्थाई निःसम्बन्धीय पद सृजित किये गये थे, जिनका कार्यकाल अन्तिम बार शासनादेश संख्या-716/आठ-पु0से0-2-512111/85, दिनांक 13-3-86 में 28-2-87 तक बढ़ाया गया था, के क्रम में श्री राज्यपाल ने आईपीएस के सीनियर स्केल के समकक्ष रू 1200-1700 के विशेष ग्रेड में 35 और अमर पुलिस अधीक्षक के अस्थाई पदों को तदर्थ रू से सृजित किये जाने हेतु सहमति प्रदान कर दी है। श्री राज्यपाल महोदय ने यह भी आदेश दिये है कि अमर पुलिस अधीक्षक को उपरोक्त तदर्थ 35 अस्थाई पद 17 अप्रैल, 1986 के भूतलक्षी प्रभाव से सृजित माने जायेंगे और 28 फरवरी, 1987 तक चलते रहेंगे, बशर्ते कि उन्हें बिना किसी पूर्व नोटिस के इससे पहले ही समाप्त न कर दिया जाय।

2.. जब तक उपरोक्त प्रस्तर एक में सृजित पद चलते रहेंगे तब तक उत्तरप्रदेश पुलिस सेवा के विशेष वेतनमान 1540-2200 के 33 पद रिक्त रहेंगे। इस प्रकार केवल दो नये पदों पर ही वित्तीय भार निहित रहेगा। यह दो पद जैसे ही दो अधिकारी सेवानिवृत्त होंगे स्वतः समाप्त हो जायेंगे और इसके बाद अमर पुलिस अधीक्षक के तदर्थ पदों की संख्या कितनी भी समय 70 से अधिक नहीं होगी।

3.. उपरोक्त शासनादेश दिनांक 1-12-84 में दी हुई अन्य शर्तें प्रस्तर-1 में सृजित पदों पर भी लागू रहेगी।

4.. उपरोक्त पदों पर होने वाला व्यय बाल वित्तीय वर्ष 1986-87 के आय व्यय लेखाशीर्षक 255-पुलिस आयोजन के अन्तर्गत सम्वेद उप शीर्षकों एवं प्राथमिक इकाईयों के नामे डाला जायेगा।

5.. यह आदेश वित्त विभाग के अशासकीय संख्या-3129/ए-86 दिनांक 11/5/86 द्वारा प्राप्त उनकी सहमति से जारी किये जा रहे हैं।

भवदीय,

श्री राजपाल श्री
श्री अरज कुमार सिंह,
विशेष सचिव।

1/2/11

7/1/11

संख्या: 111/आठ-पुरो0-2-512111/85

प्रतिलिपि निम्नलिखित को सूचना एवं आवश्यक कार्यवाही
के लिए प्रेषित :--

- 111- महालेखाकार, उत्तर प्रदेश, इलाहाबाद ।
- 121- वित्त [व्यय नियन्त्रण] अनुभाग-12
- 131- गृह [पुलिस] अनुभाग-1,
- 141- गृह [पुलिस] अनुभाग-7
- 151- गृह [पुलिस सेवाएँ] अनुभाग-1

आज्ञा से,

८५

(निर्देशक शर्मा)

असिस्टेंट कमिशनर

विशेष तयिव।

५.५.८५

A145

संख्या: 4968/आठ-पु0से0-2-51211/85

प्रेषक,

श्री अरुण कुमार बिट,
विशेष सचिव,
उ0प्र0 शासन।

सेवा में,

महानिदेशक एवं पुलिस महानिरीक्षक,
उत्तर प्रदेश, लखनऊ।

गृहपुलिस सेवाये अनु0-2

लखनऊ, दिनांक, 5 मई, 1987

महोदय,

शासनादेश संख्या-3715/आठ-पु0से0-2-51211/85, दिनांक 1 सितम्बर, 1986 द्वारा आई0पी0एस0 के सीनियर स्केल के समकक्ष रुपये 1200-1700 के विशेष ग्रेड में 35 अपर पुलिस अधीक्षक के अस्थाई पदों को दिनांक 28-2-87 तक तदर्थ स्म से सृजित किया गया था। यह पद इस शर्त के अधीन सृजित किये गये थे कि जब तक यह पद चलते रहेंगे तब तक उत्तर प्रदेश पुलिस सेवा के विशेष वेतनमान 1540-2200 के 33 पद रिक्त रहेंगे और 2 नये पदों पर ही अतिरिक्त वित्तीय भार निहित होगा। यह दो पद जैसे ही दो अधिकारी सेवानिवृत्त होंगे स्वतः समाप्त हो जायेंगे। अब अपर पुलिस अधीक्षक के अतिरिक्त पदों की कुल संख्या-33 हो गई है क्योंकि दो अधिकारी सेवानिवृत्त हो चुके हैं। अतः श्री राज्यपाल महोदय उपरोक्त 33 पदों का कार्यकाल दिनांक 29-2-88 तक बढ़ाये जाने को पूर्व में निर्धारित शर्तों के अधीन स्वीकृति उस शर्त पर प्रदान करते हैं कि इस सम्बन्ध में होने वाला व्यय चालू वर्ष के आय-व्यय में लेखानुदान तथा तत्सम्बन्धी विनियोग अधिनियम द्वारा प्राधिकृत धनराशि से वहन किया जायेगा और अनुवर्ती अवधि के लिये मूल आय व्यय तथा तत्सम्बन्धी विनियोग अधिनियम द्वारा उपलब्ध हो जाये।

2-- उक्त शासनादेश के क्रम में मुझे यह भी कहने का निदेश हुआ है कि श्री राज्यपाल महोदय ने पूर्व में सृजित 37 पदों के अलावा उपरोक्त सृजित अस्थाई अपर पुलिस अधीक्षक के तदर्थ 33 पदों को निम्नलिखित स्थानों परभारे जाने की तिथि से आवंटित किये जाने की स्वीकृति प्रदान की है :--

क्र0सं0	स्थान	पदों की संख्या
1	2	3
1--	द्वितीय वाहिनी, पी0एस0सी0, सीतापुर।	1 पद
2--	चतुर्थ वाहिनी, पी0एस0सी0, इलाहाबाद।	1 पद
3--	छठी वाहिनी, पी0एस0सी0, मेरठ।	1 पद
4--	आठवीं वाहिनी, पी0एस0सी0, बरेली।	1 पद
5--	10वीं वाहिनी, पी0एस0सी0, जहांगीराबाद।	1 पद

1	2	3
6--	11वीं वाहिनी, पी०ए०सी०, सीतापुर ।	-- 1 पद
7--	12वीं वाहिनी, पी०ए०सी०, फतेहपुर ।	-- 1 पद
8--	15वीं वाहिनी, पी०ए०सी०, आगरा ।	-- 1 पद
9--	20वीं वाहिनी, पी०ए०सी०, आजमगढ़ ।	-- 1 पद
10--	23वीं वाहिनी, पी०ए०सी०, मुरादाबाद ।	-- 1 पद
11--	24वीं वाहिनी, पी०ए०सी०, मुरादाबाद ।	-- 1 पद
12--	25वीं वाहिनी, पी०ए०सी०, रायबरेली ।	-- 1 पद
13--	26वीं वाहिनी, पी०ए०सी०, गोरखपुर ।	-- 1 पद
14--	27वीं वाहिनी, पी०ए०सी०, सीतापुर ।	-- 1 पद
15--	28वीं वाहिनी, पी०ए०सी०, इटावा ।	-- 1 पद
16--	30वीं वाहिनी, पी०ए०सी०, गोण्डा ।	-- 1 पद
17--	31वीं वाहिनी, पी०ए०सी०, स्ट्रपुर ।	-- 1 पद
18--	32वीं वाहिनी, पी०ए०सी०, लखनऊ ।	-- 1 पद
19--	33वीं वाहिनी, पी०ए०सी०, झांसी ।	-- 1 पद
20--	34वीं वाहिनी, पी०ए०सी०, वाराणसी ।	-- 1 पद
21--	35वीं वाहिनी, पी०ए०सी०, लखनऊ ।	-- 1 पद
22--	36वीं वाहिनी, पी०ए०सी०, रामनगर वाराणसी ।	-- 1 पद
23--	37वीं वाहिनी, पी०ए०सी०, कानपुर ।	-- 1 पद
24--	38वीं वाहिनी, पी०ए०सी०, अलीगढ़ ।	-- 1 पद
25--	39वीं वाहिनी, पी०ए०सी०, ओबरा मिर्जापुर ।	-- 1 पद
26--	40वीं वाहिनी, पी०ए०सी०, हरिद्वार ।	-- 1 पद
27--	41वीं वाहिनी, पी०ए०सी०, गाजियाबाद ।	-- 1 पद
28--	42वीं वाहिनी, पी०ए०सी०, नैनी, इलाहाबाद ।	-- 1 पद
29--	43वीं वाहिनी, पी०ए०सी०, एटा ।	-- 1 पद
30--	44वीं वाहिनी, पी०ए०सी०,	-- 1 पद
31--	45वीं वाहिनी, पी०ए०सी०,	-- 1 पद
32--	अपराध शाखा, अपराध अनुसंधान विभाग	-- 1 पद
33--	अभिलेखना विभाग, उत्तर प्रदेश	-- 1 पद

3-- इस सम्बन्ध में होने वाला व्यय चालू वर्ष में आय-व्यय की अनुदान त-27-लेखाशीर्षक "2055-पुलिस-आयोजनेत्तर" के अन्तर्गत सुसंगत उपशीर्षक एवं प्राथमिक इकाइयों के नामे डाला जायेगा ।

4-- मुझे यह भी कहने का निदेश हुआ है कि श्री राज्यपाल ने यह भी स्वीकृति प्रदान की है कि 31 पी०ए०सी० वाहिनीयों के लिये स्वीकृत ज्येष्ठ

सहायक सेनानायक के 31 पद तथा अपराध अनुसंधान विभाग के एक ज्येष्ठ पुलिस उपाधीक्षक तथा अभिलूचना विभाग का एक ज्येष्ठ पुलिस उपाधीक्षक कुल 33 पद जो उ0प0 पुलिस सेवा सम्मर्ग के वरिष्ठ वेतनमान में है, का उपयोग पुलिस महानिदेशक अपनी आवश्यकतानुसार अन्यत्र करेंगे तथा इन 33 पदों के स्थान पर पुलिस उपाधीक्षकों के कनिष्ठ वेतनमान के 33 पद पहले ही उपरोक्त शासनादेश दिनांक 1-9-86 द्वारा समाप्त कर दिये गये थे।

5-- उपर्युक्त प्रस्तर-2 में उल्लिखित पी0ए0सी0 के लिये आवंटित 31 पदों पर होने वाला व्यय वर्ष 1987-88 के आय-व्ययक के लेखा शीर्षक "2055-पुलिस-आयोजनेत्तर-104 -विशेष पुलिस-01-राज्य सशस्त्र कान्स्टेबलरी -मुख्य" के अन्तर्गत सुसंगत उपशीर्षक एवं प्राथमिक इकाइयों के नामें डाले जायेंगे।

6-- श्री राज्यपाल यह भी आदेश देते हैं कि पी0ए0सी0 वाहिनीयों के लिये प्रस्तावित उक्त 31 पदों के आवंटन के फलस्वरूप अपर पुलिस अधीक्षक स्तर के अधिकारी जो पी0ए0सी0 में तैनात किये जायेंगे का पदनाम सहायक सेनानायक होगा जो वाहिनी के Second-in-command रहेंगे तथा इन पदों का वेतनमान वही होगा जो शासनादेश संख्या-3715/आठ-पु0से0-2-51211/85, दिनांक 1-9-86 में अपर पुलिस अधीक्षकों का वेतनमान उल्लिखित है। इन अधिकारियों को कालान्तर में उप सेनानायक पदनाम दिये जाने हेतु पी0ए0सी0 एक्ट में आवश्यक संशोधन करने की कार्यवाही अलग से की जायेगी।

7-- यह आदेश वित्त विभाग के अगासकीय संख्या-ई-12-957/दस-87, दिनांक 21-4-87 द्वारा प्राप्त इनकी सहमति से जारी किये जा रहे हैं।

भवदीय,

R

अरुण कुमार बिट्ट
विशेष सचिव।

संख्या: 496811/आठ-पु0से0-2-तददिनांक

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:—

- 1-- महालेखाकार, उत्तर प्रदेश, इलाहाबाद।
- 2-- वित्त विभाग नियन्त्रण अनुभाग-12
- 3-- गृह विभाग पुलिस अनुभाग-1
- 4-- गृह विभाग पुलिस अनुभाग-7
- 5-- गृह विभाग सेवाएं अनुभाग-1

आज्ञा से,

R

अरुण कुमार बिट्ट
विशेष सचिव।

Amshang Date Fixed 30.5.90
Date Fixed 28.8.90
A/48

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT LUCKNOW
O.A. NO. 76 OF 1989(L)

A.K. MISRA

... Applicant

VERSUS

UNION OF INDIA AND OTHERS

... Respondents

SUPPLEMENTARY

REJOINDER OF APPLICANT IN REPLY TO THE SUPPLEMENTARY
COUNTER AFFIDAVIT OF SRI ROHIT NANDAN, JOINT SECRETARY,
HOME DEPARTMENT, GOVERNMENT OF UP, LUCKNOW FILED IN
REPLY TO THE REJOINDER OF THE APPLICANT

1. That the applicant had filed his rejoinder in reply to the counter affidavit of OPs no. 3 and 4, whereafter there was no question of filing any supplementary counter affidavit by the State Government of UP, but even ~~though~~ ^{in them} they have filed the supplementary counter affidavit of Sri Rohit Nandan, Joint Secretary. The same is, therefore, not permissible under the law and the rules.
2. The only paragraphs of the supplementary counter affidavit of Sri Rohit Nandan which call for reply are nos. 4 and 6 thereof. The rest of the paras of the supplementary counter affidavit are mere routine paras calling for no specific reply by the applicant.
3. In para 4 of the supplementary counter affidavit, the contents of para 3 of the rejoinder affidavit of the applicant ~~had~~ ^{in have in} not been admitted and those of paras ~~13, 14 and 15~~ ⁱⁿ 3, 15 and 16 of the counter affidavit ~~had~~ ^{in have in} been reiterated. It has further been stated that the Select Committee ⁱⁿ perused all the relevant records of the eligible officers and after an ~~over~~ ⁱⁿ all relative assessment of their service record, categorised them as per rules. It has also been reiterated that it is incorrect to allege that officers having inferior record of service to the applicant have been included in the select list. In this connection, it is stated that Sri Rohit Nandan, has not replied to the detailed facts mentioned by the applicant in para 3 of his rejoinder; on the contrary he has made a vague ⁱⁿ assertion and shifted the burden

to the select committee. In this connection, it is stated that a chart containing brief synopsis of the ~~summary~~ character role entries for the last 5 years of eligible candidates is prepared and put up before the select committee. It is this synopsis in which incorrect summary of the character role entries is made not by the select committee but by others and it is not even verified by anyone including the select committee. Even otherwise, the select committee clearly does not appear to have applied ~~its~~ ^{his} mind or made a correct comparative assessment of some of the officers named by the applicant in para 3 of his rejoinder, because otherwise it was not at all possible for the select committee or the Union Public Service Commission to include the names of those officers in the list prepared by ~~which~~ ^{whom} it who were not only juniors to the applicant but whose ~~whose~~ ^{whose} character role entries also did not justify their names being included in the said list. The contents of para 4 of the supplementary counter affidavit of Sri Rohit Nandan are accordingly denied and those of para 3 of the rejoinder of the applicant are reiterated.

4. That in para 6 of the supplementary counter affidavit of Sri Rohit Nandan, the contents of para 5 of the rejoinder affidavit have been denied and those ^{of} para 9 of the counter affidavit have been reiterated. The applicant reiterates the contents of para 5 of his rejoinder and disputes the correctness of para 9 of the counter affidavit in so far as they dispute the correctness of the facts stated in paras 7 (v) and 7(vi) of the original application which are also reiterated. It has been stated in para 6 of the supplementary counter affidavit that the instructions contained in GO no. 36/9-76-Karmik-2 dated 24.1.77 and other such Government orders are ~~not~~ ^{followed} in the matter relating to maintenance of character roles. The question for ~~consideration~~ ^{consideration} is whether the instructions contained in the aforesaid GO are generally followed or not, but whether they were actually and physically followed in the present case or not. The contents of para 5 of the applicant's rejoinder ^{do} show that the said GO was not actually followed or observed. As regards circular letters issued on 13.12.1984 and 1.4.1989 by the then Director General of Police, it has been stated in para 6 of the supplementary counter affidavit that

that categorisation of service records of the officers in the eligibility ^{on} ~~field~~ is done by the select committee in accordance with IPS ^{on} ~~Regulations~~ (Appointment by ^{on} ~~promotion~~) / ^{on} ~~Regularisation~~, 1955. In this connection, the same facts has been mentioned in para 3 in reply to para 4 of the supplementary counter affidavit ^{on} ~~are reiterated~~ and ^{on} ~~the same~~ may be read in reply to ~~the~~ para 6 of the supplementary counter affidavit. The further statement that instructions issued by the Director General of Police, UP, can not have effect or over-riding effects on the said ^{on} ~~Regulations~~ framed by Government of India may be correct, but the fact remains that the Director General of Police, UP, issued ^{on} ~~the~~ said circular immediately after attending a meeting of the select committee for promotion to the IPS, of which he was himself a member. In his circular, he has mentioned very important points which struck him during the course of the scrutiny of character roles in his capacity as a member of the said selection committee. The points mentioned by him in his aforesaid circular can not, therefore, be ignored or side-tracked. The contents of para 5 of the rejoinder affidavit in this record are, therefore, reiterated.

5. In para 28 of the supplementary counter affidavit it has been stated that the contention made in para 27 of the rejoinder is denied, being baseless and ^{on} ~~misconceived~~ ^{on} ~~in view of~~ ^{on} ~~the~~ what has been stated in the counter affidavit and also in the foregoing paras of the supplementary counter affidavit. The applicant is advised to state that this denial is baseless and meaningless, because in para 27 of his rejoinder, the applicant had stated that in view of the submissions made ^{on} ~~in~~ ^{on} ~~paras 1 to 26 of the rejoinder, it was~~ ^{on} ~~convenient~~ ^{on} ~~that the applicant~~ ^{on} ~~had been grossly discriminated against arbitrary~~ ^{on} ~~and against specific~~ ^{on} ~~provisions of the Rules and Regulations as well as the~~ ^{on} ~~Constitution~~ of India.

Misra
23/5/90

Misra 23/5/90
(A.K. MISRA) 23/5/90
APPLICANT

A/54

: 4 :

VERIFICATION

I, Ashok Kumar Misra, s/o. Sri Late Surendra Nath Misra, aged about 44 years, presently working as Deputy Commandant, PAC, 27th Battalion, Sitapur, do hereby verify that the contents of paras 1 to 5 of this supplementary rejoinder are true ~~to~~ on the basis of records and legal advice, which I believe to be true; ~~that no part of it is false and nothing~~ material has been concealed.

Ashok
23/5/90

Lucknow

May
~~April~~ 23, 1990
H. M. Mehta

Ashok
23/5/90
(A.K. MISRA)

H. M. Mehta
~~23/5/90~~
(H.M. MEHTA) 23.5.90
ADVOCATE
COUNSEL FOR THE APPLICANT
H. M. Mehta

14152

Before Central Administrative Tribunal
Circuit Bench, Lucknow

O. A. No. 76/1989 (L)

A. K. Misra..... Applicant

Versus

Union of India & othersOpposite Parties

Rejoinder Affidavit of Applicant in reply to the Counter affidavit of Sri Padmakar Srivastava U.D.A. on behalf of O.Ps No. 3 and 4 filed as an objection to the application for Interim Relief:

I, A. K. Misra, aged about 44 years, s/o of Late Sri Sri Surendra Nath Misra, presently posted as Deputy Commandant, P.A.C. 25th Battalion, Rae Bareilly, do hereby solemnly affirm and state as under:-

1. That the deponent is the Applicant in this application and, as such, is fully competent to file this Rejoinder Affidavit.
2. That the deponent has gone through counter Affidavit dated 24.5.1989 of Sri Padmakar Srivastava, U.D.A. on behalf of O.Ps No. 3 and 4 and fully understood its contents.
3. That in reply to para 1 of the C.A. it is stated that Sri Padmakar Srivastava was not competent to swear the C.A. on behalf of O.Ps No. 3 and 4 as the authority to file C.A. ~~contained~~ contained in Annexure- C.A.-1 is illegal. The Joint Secretary Home (Police-Section-2), who was himself authorized to file the ~~unauthorized~~ C.A. on behalf of the O.Ps No. 3 and 4, could not further delegate the same authority to Sri Padmakar Srivastava, U.D.A.
4. That the contents of paras 2 and 3 of the C.A. in reply to paras 1 to 4 of the Application for I.R. do not call for any reply. This Hon'ble Tribunal has, vide its interim order dated 6.4.89, already ordered that one post in the I.P.S. cadre shall remain unfilled and will abide by the further orders of this Hon'ble Tribunal.
5. That the contents of Para 4 of the C.A., as stated, are not admitted. It is submitted that --

(a) in the Schedule to the I.P.S. (Fixation of Cadre strength) Regulations, 1955, 9 posts (by number and not by specified place) of Additional Superintendent of Police and 18 posts (by number and not by specified places) of Commandant, P.A.C. were included as posts in the Cadre of I.P.S. Thus, any officer posted as Additional Superintendent of Police in any district would naturally be deemed to be posted on a Cadre post of I.P.S.

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(b) That the claim and contention of the U.Ps that the post of Additional S.P. Fatehpur is not a Cadre post of I.P.S. ~~XXXXXX~~ is not supported by any cogent evidence and, as such, is not acceptable as correct. The learned Counsel for O.Ps No. 3 and 4 (Sri Anoop Kumar, Advocate) had during the course of ~~xx~~ arguments on 3.7.1989 in the application for interim relief ~~sh~~, shown to the Hon'ble Tribunal a copy of U.P. Govt. G.O. dated 1.12.1984 whereby 37 ex-Cadre posts of Additional S.P. including one ^{iv} district Fatehpur were ~~created~~ created. Copy of that G.O. had not been filed with the G.A. and is now being filed by the applicant as Annexure R.A.-1 to this R.A. A perusal of this G.O. confirms that these 37 posts of Additional S.P. are ex- P.P.S. (and not ex- I.P.S.) Cadre.

ANNEXURE R.A.-1

(c) The nine posts of Addl.S.P. included in the Cadre of the I.P.S. as per schedule to the I.P.S. (Fixation of Cadre strength) Regulations, 1955, could not be taken out of the I.P.S. Cadre by the U.P. Govt. and/or the D.G.P. (O.Ps No. 3 and 4) who were/are not competent to do so by ^{any} stretch of imagination. Inclusion in or exclusion from the I.P.S. Cadre of any post or posts can be done only by the Union of India in consultation with the Union Public Service Commission (O.Ps No. 1 and 2) and not otherwise. When the Applicant along with C. B. Rai and H.N. Srivastava (applicants in identical applications which are also pending before this Hon'ble Tribunal), was promoted as Additional S.P. in the year 1984, he, along with the afore said two officers, ~~was~~ was holding the Cadre posts in the I.P.S. Cadre in terms of the said Cadre Schedule of I.P.S. which could not be over-ridden by the U.P. Govt. by the issue of the said G.O. (Annexure R.A.-1). The said G.O. (Annexure R.A.-1) issued by the Govt. of U.P. could not certainly take the nine posts of Additional Supdt. of Police out of the Cadre strength of I.P.S. ~~because~~ because it ~~could not~~ ^{would} amount ^{to} amending the I.P.S. (Fixation of Cadre Strength) Regulations 1955 including its schedule. Therefore, even if it be taken for the sake of argument, though the O.Ps have not claimed it, that the nine posts of Additional S.P. (by numbers and not by specified places), which were included in the cadre strength of the I.P.S., were also created outside the Cadre of the P.P.S (or ex-cadre to P.P.S.) by the State Government of Uttar Pradesh, vide the said G. O. (Annexure R.A.-1), the fact that the applicant, along with Sarvashri C.B. Rai and H.N. Srivastava held Cadre posts of I.P.S., remained a firm fact. The fact of the matter, however, is that the status of the unspecified nine posts of Addl. S.P. included in the Cadre strength of the I.P.S. could not legally be altered by the U. P. Govt. on its own without first getting them excluded from the Cadre of I.P.S., and this was not done.

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(d) Sri C.B. Rai was initially promoted to the post of

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Addl. S.P. in 1984 and was thereafter first transferred as Addl. S.P. Lalitpur and thereafter as Supdt. of Police (B) Intelligence, Gorakhpur before being reverted as Deputy Commandant P.A.C. 37th Battalion, Kanpur.

(e) Sri H.N. Srivastava (Applicant in Application No. 74) was initially promoted to the post of Addl. S.P. ~~Mainpur~~ Mainpuri 1984 and was thereafter transferred as Commandant, P.A.C., 20th Battalion, P.A.C. Azamgarh before being reverted as Deputy Commandant, P.A.C. 44th Battalion, Meerut.

(f) The Applicant was initially promoted as Additional S.P. Pratapgarh in 1984 and was thereafter transferred as Addl. S.P. Ghazipur and then as Addl. S.P. Fatehpur before being ~~reverted~~ ^{reverted} as Dy. Commandant, P.A.C. 25th Battalion, Rai Bareilly. It may not be out of place to mention here that from the post of Addl. S.P. Pratapgarh the applicant was initially transferred to join as Commandant, A.T.C. Sitapur, but later on, while on joining time, the said order of transfer was modified and the applicant was diverted as Addl. S.P. Ghazipur.

(g) It is further stated that after the applicant had taken over charge as Deputy Commandant, P.A.C. Bareilly on 28.4.1989, he has been ordered to be transferred as Deputy Commandant, P.A.C. 27th Battalion, Sitapur. Unfortunately for the first time in the service career of the applicant, he has been/ is being made to work under non- I.P.S. officers, viz Sri G.N. Singh and Sri J.S. Agarwal respectively.

(h) Postings on transfer of Officers is the privilege of the State Government of U.P. and the D.G.P (O.Ps 3 and 4) and it is not open to any ~~officer~~ officer including the applicant to get himself posted on any particular post to any particular place. Thus the applicant, as also Sarvashri C.B. Rai and H.N. Srivastava, held posts of Addl. S.P., S.P. and Commandant P.A.C. interchangeably and one after the other. It is just a chance that Sarvashri C.B. Rai and H.N. Srivastava happened to be posted as Supdt. of Police and Commandant P.A.C. respectively in April, 1989, when they were reverted as Deputy Commandant P.A.C. and the applicant happened to be posted ^{as} Addl. S.P. (and not as Commandant P.A.C. or S.P.) at the time when he was reverted as Deputy Commandant P.A.C. It is most respectfully submitted that the specific post or the specific place of posting of the applicant (or any one or both of the officers mentioned above) ought not to be and is not a relevant consideration which should weigh with this Hon'ble Tribunal in granting a similar relief to the applicant ^{has} been granted by it on 11.5.89 and 30.6.89 to Sri H.N. Srivastava (Applicant in Application No. 74 of 1989) and Sri C.B. Rai.

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6. That with regard to the last sentence of para 5 of the C.A. it is submitted that Sarvasmri C.B. Rai and H.N. Srivastava have, on their reversion to the post of Deputy Commandant, P.A.C., not taken over charge of their new posts upto the ^{2 of the 4} date passing of the interim orders by This Hon'ble Tribunal restoring status quo ante and posting on any Cadre post of I.P.S. any where in Uttar Pradesh. The applicant had, however, complied with the orders and he came to this Hon'ble Non'ble Tribunal only thereafter. The applicant should not be denied the interim relief only because he obeyed the orders of the O.Ps No. 3 and 4 .

7. In para 6 of the C.A., it has been ~~stated~~ stated that due to paucity of officers of the rank of Addl. S.P. some posts of Addl. S.P. are laying vacant and the respondents propose to fill them up very soon. In this connection, it is most humbly submitted that the paucity of Addl. S.Ps. ^{has} clearly been created and /or aggravated by the O.Ps themselves by reverting the applicant, as also some others, for no rhyme or reason. The posts of Addl. S.P. ^{has} this rendered vacant have now been filled by promoting P.P.S. officers very much ~~junior~~ junior ~~to the applicant~~ to the applicant. The applicant's reversion was unjust and unfair, besides being wholly uncalled-for and unnecessary.

8. That in reply to the contents of para 7 of the C.A. in reply to the contents of ~~the~~ para 8 of the Application for interim relief, it is submitted that no law or rule or regulation contained in any Act, Rule or Regulation mandates the State Government to fill a Cadre post of I.P.S. ~~by replacing one non-cadre officer by another non-cadre officer~~ by replacing one non-cadre officer by another non-cadre officer (even though the latter may be a Select List Officer), particularly after the filing of the instant Application before this Hon'ble Tribunal. By his shifting from the Cadre post of Additional S.P. to a non- cadre post of Deputy Commandant P.A.C., as has been done by the reversion of the applicant in the garb of transfer, the applicant has been/would be deprived of the benefit of counting the period of continuous officiation as I.P.S. ~~in the cadre post~~ cadre post for the purpose of assignment of " year of allotment " and determination of seniority in the I.P.S. Cadre, in case the applicant is ^{ultimately} placed in the Select list of 1985, as already prayed in the main Application. The O.Ps no. 3 and 4 cannot and should not be permitted to snatch away the said benefit through the illegal order of the reversion dated 18.4.89 issued in the garb of an order of transfer after the filing of the main Application (No. 74 of 1989) and grant of the interim relief ^{on} ~~in~~ 6.4.1989 by this Hon'ble Tribunal .

9. That in reply to the contents of para 8 of the C.A, it is submitted that the Select list of 1985 was prepared for filling only 17 substantive vacancies in the I.P.S. Cadre which were reported to

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the Union Public Service Commission (^{CP.} ~~of~~ No. 2). The Select list was prepared including 34 names (twice the ^{number} of substantive vacancies) in terms of Regulation 5 of I.P.S. (Appointment by Promotion) Regulation, 1955, but it does not mean or imply that all the 34 officers included in the Select List are required to be promoted to the I.P.S. According to rules, only 17 officers, out of the said Select ^{List} of the 34 officers, can be promoted to I.P.S. Out of the remaining officers included in the Select list of 1985, only those can be appointed to the I.P.S. who would be appointed in the place of those who after being appointed to the I.P.S. ^{don't} ~~join~~ for any reason. The rest cannot be appointed to the I.P.S. ^{even} even if substantive vacancies, which accrued subsequently, exist, because, for such vacancies a new Select list would have to be prepared in respect of the subsequent year or years. Select list is compulsorily required to be prepared every year. Thus, only the first 17 officers available out of the Select List of 34, could at best be appointed on Cadre ^{said} posts of I.P.S. The appointment of the remaining officers of the ~~Select~~ List of 1985 on Cadre posts was not at all justified in any case as their inclusion in the Select List of 1985 is of no consequence whatsoever for filling substantive Vacancies in the Cadre ^{of I.P.S.} which occurred subsequently for which fresh select Lists have to be prepared for the years 1986, 1987, 1988 and 1989. Even if, therefore, the present claim of the applicant for inclusion in the Select List of 1985 is not accepted, the applicant would necessarily be considered for inclusion in the Select List of years subsequent to 1985. The appointment by the O.Ps, No. 3 and 4 of the remaining officers included in the Select List of 1985 (except first 17 ^{available} officers) on Cadre posts of I.P.S. ~~is~~ is, therefore, totally unjustified. Their inclusion in the Select List of 1985 does not entitle them for any preferential treatment as against their seniors ^{in the} officers P.P. S. including the applicant. That being so, due to being senior in the P.P.S., the applicant has a preferential claim to be appointed on a Cadre post of I.P.S. ~~as~~ ^{as} compared to his juniors in P.P.S. whose names are included in the Select Lists of I.P.S. below the first 17 available officers.

10. That the contents of Para 9 of the C.A. in reply to the contents of para 10 of the Application for interim relief, as stated, are not correct and are misleading both in content as well as in spirit. Even though the post of Commandant P.A.C. 25th Battalion Rae Bareilly may be a Cadre post of I.P.S., it is stated that many non-I.P.S. (both direct as well as promoted) officers as well as many non-Select List Officers were and are still holding the Cadre posts of I.P.S. It is stated that the following officers inter alia falling in the aforesaid categories were appointed by the O.Ps No. 3 and 4 on the cadre posts of I.P.S. and some of them are still continuing to hold them:-

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Sl. No.	Name	Cadre posts of I.P.S. on which appointed	Whether still working on Cadre post of IPS,
1.	Sri J.S. Agarwal (Non-IPS & non-Select List)	Commandant PAC. 27th Battalion, Sitapur.	Still working; not reverted
2.	Sri R.K. Trivadi (Non-IPS & Non-Select list)	Supdt. of Police U. P.S.E.B.	Still working ; not reverted
3.	Sri H.N. Srivastava (Non-IPS & Non Select list)	Commandant, P.A.C. 20th Battalion Azamgrah	Still working under interim order of the Tribunal (though rendered reverted)
4.	Sri C.B. Ray (Non Non-IPS & NON Select List)	Supdt. of Police (R) Intelligence, Gorakhpur.	---do---
5.	Sri D. B. Roy (Non-IPS)	Supdt of Police (City) Kanpur.	Still working
6.	Sri R.N. Srivastava (Non-IPS)	Superintendent of Police (R) Intelligence Lucknow.	Still working
7.	Sri K.N.D. Dwivedi (Non-IPS)	Superintendent of Police (R.A.) Allahabad	Still working
8.	Sri Debi Singh Ashok (Non-IPS)	Superintendent of Police (RA) Bareilly	Still working
9.	Sri Prem Chand (Non-IPS & Non-Select List)	Superintendent of Police (R) Intelligence, Kanpur	Still working; not reverted
10.	Sri G.N. Singh (Non-IPS)		not working as Commandant PAC

It is submitted that out of the above mentioned nine officers, officers at serial nos. 4, 7 and 8 and 10, namely Sarvasmai C.B. Rai K.N. Dwivedi Debi Singh Ashok and G.N. Singh are also juniors to the applicant.

It is further submitted that even though Sri G.N. Singh may have been included in the Select List of 1985, his name is not within the first 17 officers of that Select List and, as such, has no claim or right, as such, to be appointed on Cadre post of I.P.S. because the Select List of 1985 has already become overdue for review and revision in respect of the years 1986, 1987, 1988 and 1989. Therefore, he can have no preferential claim to be appointed on cadre post of IPS on account of being included in the Select List of I.P.S. When a Select List becomes inoperative on account of not having been reviewed and revised every year in accordance with the provisions contained in Regulations 5 of the I.P.S. (Appointment by Promotion) Regulations, 1955, no appointments on cadre posts of I.P.S. can be made from that list. In the present case, as appointments on Cadre posts of I.P.S. up to the limit of 17 substantive vacancies for which the said Select list was prepared, could not be made in time stay orders of the Hon'ble High Court, as claimed / stated by the applicant.

compared to the seniority obtainable under the old Rules of 1954.

(e) Under section 3(1A) of the All India Services Act, 1951 introduced by the All India Services (Amendment) Act, 1975, (Act No. 23 of 1975) even though the power ^{to} make rules conferred by section 3(1) shall include the power to give retrospective effect from a date not earlier than the date of commencement of the said Amendment Act (which is 9.5.75), to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable. Even though the new rules of 1985 have apparently not been given retrospective effect as such, the provisions thereof relating to the assignment of "year of allotment" and determination of seniority have the effect of applying them retrospectively and, therefore, they are illegal and ineffective/inoperative, being contrary to the letter and spirit of section 3(1A) of the said Act.

12. That with regard to the last sentence of para 10 of the C.A., it is stated that even though this Hon'ble Tribunal had passed the interim order dated 6.4.1989 ex-parte without hearing the answering respondents, the latter have now already filed their Counter Affidavit and this Hon'ble Tribunal has made a detailed hearing of the contesting parties on 3.7.1989. In a similar/identical Application No.74 of 1989 (H.N. Srivastava versus Union of India and others), this Hon'ble Tribunal had passed fresh interim orders on 11.5.89 (after the first interim order dated 3.4.89) restoring status quo ante and again, after detailed hearing of parties, on 30.6.89 directing the O.Ps to post the applicant of that Application on any cadre post of I.P.S. Denial of similar interim relief to the present applicant on any ground whatsoever would be unjust and unfair and would amount to making invidious distinction and discrimination, which this Hon'ble Tribunal must seek to avoid.

13. That the contents of para 11 of the C.A., except the last sentence thereof, have already been suitably replied in earlier paragraphs, including in particular paras 11 and 12 of this Rejoinder Affidavit and, therefore, they call for no additional reply. As to the last sentence of para 11 of the C.A., a similar statement has been made in para 4 of the C.A. to which a suitable reply has already been furnished in para 5 of this Rejoinder Affidavit and, as such, it calls for no additional reply.

14. That with regard to the contents of paras 12 and 13 of the C.A., it is submitted that as the Select List of 1985 could be approved by the Union P.S.C. only in February 1989 because of the stay orders of the Hon'ble High Court, which became inoperative through the order dated 4.11.1988 of the Hon'ble Supreme Court, it is obvious that the Select List of 1985 can be acted upon now, but such acting upon now shall have to be deemed to be acting upon in the appropriate period in 1985 or 1986 when it ought to have been acted upon in the normal course, and not thereafter. Thus, substantive appointments to the I.P.S. to the extent of filling 17 substantive vacancies can be made from the Select List of 1985 and these appointments shall have to be deemed to have been made in 1985 or 1986. Officiating appointments

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para 13 of the C.A., only first 17 available officers from the Select List of 1985 ^{new} can be appointed to cadre posts of I.P.S. The rest cannot have any such claim, as for them the said Select List has become inoperative and infructuous. They are just as good P.P.S. officers as others not included in the said Select List of 1985. If, therefore, cadre posts of I.P.S. have to be filled by appointment of P.P.S. officers (i.e. non-IPS Cadre and non-Select List officers), as has been the case hitherto, then obviously, seniority in P.P.S. should be the only criteria. The view expressed in para 9 of the C.A. to the contrary or at variance with the above, is not correct, reasonable or equitable and is also misleading.

11. That the contents of para 10 of the C.A., except the last sentence thereof, as stated, are not correct, and, as such, are denied and those of para 11 of the application for interim relief ^{which} are correct, are reiterated. It is stated that the I.P.S. (Regulation of Seniority) Rules, 1988 contained in Notification dated 27.7.1988 (Annexure C.A.-II to the C.A.) do not apply and cannot be made applicable to those officers of the Select List of 1985, who may be appointed to the cadre posts of I.P.S., because:-

(a) they came into force on the date of their publication in the official gazette viz. on 27.7.1988 and not on or from any date earlier than that. They cannot adversely affect the benefit in the matter of assignment of "year of allotment" and determination of seniority in the I.P.S. cadre, which one may get by virtue of continuous officiation started long before the enforcement of the said new Rules, under the old Rules of 1954.

(b) the appointments on cadre posts of I.P.S. of officers of the Select List of 1985, even though they may be actually made in 1989, shall have to be deemed to have been made at the proper time in 1985 or 1986, because these appointments could not be made then on account of stay orders of the Hon'ble Allahabad High Court, as stated in para 12 of the C.A. filed on behalf of O.Ps No. 3 and 4.

(c) under rule 8(2) of the new I.P.S. (Regulation of Seniority) Rules, 1988, the seniority of officers appointed to the Service prior to the coming into force of the said new Rules shall be determined in accordance with the I.P.S. (Regulation of Seniority) Rules, 1954 in force on the date of their appointment to the Service. In the present case, the date of the appointment in the I.P.S. of those officers of the Select List of 1985 who have been/may be appointed to the I.P.S. shall be deemed to be in 1985 or 1986, because these appointments could not be made due to stay orders of the Hon'ble High Court.

(d) the benefit already accrued under the rules of 1954 cannot be snatched or taken away by the enforcement of the new Rules of 1988 which have the effect of giving a lower seniority in the I.P.S. as

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compared to the seniority obtainable under the old Rules of 1954.

(e) Under section 3(1A) of the All India Services Act, 1951 introduced by the All India Services (Amendment) Act, 1975, (Act No. 23 of 1975) even though the power ~~to~~ make rules conferred by section 3(1) shall include the power to give retrospective effect from a date not earlier than the date of commencement of the said Amendment Act (which is 9.5.75), to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable. Even though the new rules of 1985 have apparently not been given retrospective effect as such, the provisions thereof relating to the assignment of "year of allotment" and determination of seniority have the effect of applying them retrospectively and, therefore, they are illegal and ineffective/inoperative, being contrary to the letter and spirit of section 3(1A) of the said Act.

12. That with regard to the last sentence of para 10 of the C.A., it is stated that even though this Hon'ble Tribunal had passed the interim order dated 6.4.1989 ex-parte without hearing the answering respondents, the latter have now already filed their Counter Affidavit and this Hon'ble Tribunal has made a detailed hearing of the contesting parties on 3.7.1989. In a similar/identical Application No.74 of 1989 (H.N. Srivastava versus Union of India and others), this Hon'ble Tribunal had passed fresh interim orders on 11.5.89 (after the first interim order dated 3.4.89) restoring status quo ante and again, after detailed hearing of parties, on 30.6.89 directing the O.P.s to post the applicant of that Application on any cadre post of I.P.S. Denial of similar interim relief to the present applicant on any ground whatsoever would be unjust and unfair and would amount to making invidious distinction and discrimination, which this Hon'ble Tribunal must seek to avoid.

13. That the contents of para 11 of the C.A., except the last sentence thereof, have already been suitably replied in earlier paragraphs, including in particular paras 11 and 12 of this Rejoinder Affidavit and, therefore, they call for no additional reply. As to the last sentence of para 11 of the C.A., a similar statement has been made in para 4 of the C.A. to which a suitable reply has already been furnished in para 5 of this Rejoinder Affidavit and, as such, it calls for no additional reply.

14. That with regard to the contents of paras 12 and 13 of the C.A., it is submitted that as the Select List of 1985 could be approved by the Union P.S.C. only in February 1989 because of the stay orders of the Hon'ble High Court, which became inoperative through the order dated 4.11.1988 of the Hon'ble Supreme Court, it is obvious that the Select List of 1985 can be acted upon now, but such acting upon now shall have to be deemed to be acting upon in the appropriate period in 1985 or 1986 when it ought to have been acted upon in the normal course, and not thereafter. Thus, substantive appointments to the I.P.S. to the extent of filling 17 substantive vacancies can be made from the Select List of 1985 and these appointments shall have to be deemed to have been made in 1985 or 1986. Officiating appointments

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from the Select List of 1985 cannot, however, be made now, because these had already been made and those appointed have already held the cadre posts in officiating capacity and the benefit which has accrued to them as a result of holding the said posts cannot be snatched away. The said Select List has already outlived its life after expiry of 12 months, because it could not be reviewed and revised as yet thereafter, although under the rules it ought to have been reviewed and revised every year. The relevant rules governing assignment of "year of allotment" and determination of seniority in I.P.S. in respect of the officers of the Select List of 1985 who are substantively appointed to the I.P.S., shall be the old Rules of 1954 and ~~not~~ the new Rules of 1988, as already explained in detail in para 11 of this Rejoinder Affidavit. The contention to the contrary contained in para 12 and 13 of the C.A. are not legally correct and, as such, are denied.

15. That with regard to the contents of para 14 of the C.A. in reply to the contents of para 15 of the application for interim relief, it is stated that the Select List of 1985 can be implemented now only in so far as the first 17 available officers included in that Select List are concerned. The rest cannot ~~now~~ be appointed ~~now~~ (and could not be appointed even if the said Select List had been approved by the Union P.S.C. in 1985 or 1986) to the cadre post of I.P.S., because persons, whether included or not included in that Select List, have already held cadre posts of I.P.S. in the appropriate period in the past and they cannot now be dislodged from those posts retrospectively. In other words, the Select List of 1985 has lost all force and has become inoperative in so far as the remaining officers of that Select List, except the first 17 available officers thereof, ^{are concerned.} They can have no preferential claim or right to be appointed or posted on the cadre posts of I.P.S. even in an officiating capacity. They will have to take their chance as P.P.S. officers, along with others, according to their inter-se seniority in the P.P.S. cadre, for purposes of officiating appointment on the cadre posts of I.P.S., as ~~was~~ being done in the past few years when no Select List officers were available. The position has also been explained in para 9 of this Rejoinder Affidavit which may also be read as part of this para.

16. That with regard to the contents of para 15 of the C.A., it is stated that the strike by the staff of the Secretariat was only for a few days and a detailed counter affidavit to the main Application could be filed by the answering O.P.s both before and after the strike. Sri Padmakar Srivastava, U.D.A. who has filed this counter affidavit in reply to the application for interim relief has attended this Hon'ble Tribunal even during the strike period in the Secretariat.

17. That the applicant in all fairness deserves to be ^{ordered to be} posted on a cadre post of I.P.S. as has been ordered by this Hon'ble Tribunal on 30.6.1989 in the case of Sri H.N. Srivastava (Application No. 74 of 1989) which is identical to that of the applicant. Both were promoted as Additional S.P. in 1984 by the same order. Subsequent postings were on transfer only. It is just a

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chance that the last posting, prior to reversion as Deputy Commandant, PAC under the order dated 18.4.1989, in the case of the applicant was as Additional S.P. Fatehpur, while that of Sri H.N. Srivastava was on the post of Commandant, PAC, Azamgarh only from 1988, prior to which he was also posted as Additional S.P. A substantial portion of the period of continuation officiation on cadre post of I.P.S. (from December 1982 1984 ~~upto~~ upto date) claimed by Sri H.N. Srivastava was on the post of Additional S.P. and only a very small period of a few months only was on the post of Commandant, PAC, Azamgarh). That should not make any difference to the situation so far as the merits of the application for interim relief ^{is} concerned.

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DEPONENT

VERIFICATION

I, the above named deponent, do hereby verify that the contents of paras 1 and 2 of this affidavit are true to my knowledge and belief, while those of paras 3 to 17 are based on ^{personal knowledge} records and legal advice, which I believe to be true. No part of it is false and nothing material has been concealed; so help me God.

Lucknow:

Dated 5 July, 1989

[Signature]

[Signature]
DEPONENT

I, H.M. Mehrotra, Advocate, High Court, Allahabad, do hereby declare that the person making this affidavit and alleging himself to be Sri A.K. Misra is ~~is~~ the same person who is known to me from the perusal of records produced before me in this case.

[Signature]
(H.M. MEHROTRA)
ADVOCATE

Solemnly affirmed before me on 5th July, 1989 at 2.00 P.M. by the deponent, Sri A.K. Misra, who has been identified by Sri H.M. Mehrotra, Advocate 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.

[Signature]
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1-10-1944

वृत्तिलिपि : शासनादेश सं: 5025/आठ-मुंते-2-1984 दिनांक: 1-12-84
 मुंताक:- राजनीतान्त मुदरा, 3050 साक्षि गृह वृत्ति लेवारे। अनुभाग-2 लखानु जो
 महा निदेशक एवं वृत्ति महा निरीक्षक 3050 लखानु को सम्बोधित तथा
 अन्य को पृष्ठस्थित किया गया है। शासनादेश की वृत्तिलिपि वृत्ति महा निरीक्षक
 का सं: 3050 लखानु के पत्रांक 1-22-84 दिनांक: 22-12-84 द्वारा प्राप्त।

मुझे यह कहने का निर्देश हुआ कि राज्यपाल महोदय ने निम्नलिखित
 37 पदों के लिए एक एक अरर वृत्ति अधीक्षक के अध्याई निःसर्गीय पदों
 को सृजित किये जाने की स्वीकृति प्रदान की है।

1-आजमगढ़	20-हरदोई
2-बांदा	21-जालौन
3-बलिया	22-बाँसी
4-बटावा	23-जौनपुर
5-बहराईच	24-कानपुर देहात
6-बाराबंकी	25-खीरी
7-बिजनौर	26-मलितपुर
8-बलिया	27-मैन्पुरी
9-देवरिया	28-मुजफ्फरपुर
10-कुलन्दरावर	29-मधुरा
11-देहरादून	30-मीलौभीत
12-रटा	31-मुतापगढ़
13-हटावा	32-रायबरेली
14-जौनपुर	33-रायपुर
15-कतेहर	34-शाहजहाँपुर
16-कतेहगढ़	35-मुल्तानपुर
17-गोन्डह	36-तोतापुर
18-गाजीपुर	37-उन्नाव
19-हमीरपुर	

2- उपरोक्त पुस्तक-1 में सृजित पदों को भरे जाने की तिथि से 28 फरवरी
 1985 तक के लिए इन पदों के अधीन किये जा रहे हैं कि इनमें किसी पूर्व सूचना
 के बिना भी समय समाप्त किया जा सकता है।

3- आर्टिक्ल 10 के तहत नियमावली 1954 के नियम 913 के अधीन राज्यपाल
 महोदय यह घोषित करते हैं कि उपरोक्त पुस्तक-1 में सृजित समस्त पद स्तर
 एवं उत्तरदायित्व में आर्टिक्ल 10 के तहत स्तर 1200-1700 में या राज्य
 सरकार द्वारा इसके समकक्ष सृजित वेतनमान में वेतन प्राप्त करेंगे। और इसके साथ
 साथ आर्टिक्ल 10 अधीनस्थों को समय-समय पर अनुमान्य महंगाई भत्ता प्राप्त
 करेंगे।

4- जब तक उपरोक्त पुस्तक में सृजित पद चलते रहेंगे तब तक शासनादेश
 7964/आठ-मुंते-5221701/79 दिनांक: 9 नवम्बर 1983 में सृजित उत्तर प्रदेश पुलिस
 सेवा के लेवल 7 के 70 पदों में से 37 पद समाप्त माने जायेंगे। इसके अतिरिक्त
 शासनादेश सं: 4352/आठ-मुंते-2-5311/81 दिनांक: 10 नवम्बर 1982 में सृजित
 सृजित वृत्ति अधीक्षक आजमगढ़, बतेहगढ़, हटावा, मैन्पुरी एवं रटा के पद
 शासनादेश सं: 3923/आठ-मुंते-1-5311/81 दिनांक: 13 नवम्बर 1984 में
 सृजित सृजित वृत्ति अधीक्षक के 12 पदों पद समाप्त हो जायेंगे।

Kapil Deo

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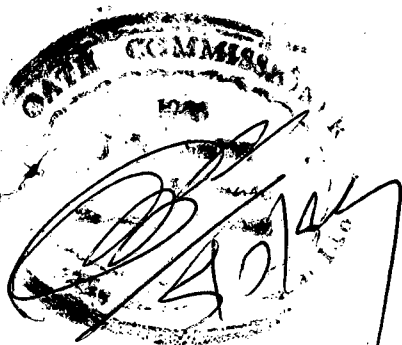
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5- इस सम्मन्ध में होने वाला व्यव वाल वित्तीय वर्ष 1984-85 के आय
व्यय लेखा शीर्षक 1255 "मु. लि. आयोजनेतर" के अन्तर्गत सम्बद्ध
अवशोषक एवं पूंजीगत इकाइयों के नामे माना जायेगा ।

6- यह आदेश वित्त विभाग के अध्यापकी संख्याई-12/1767-दत-84
दिनांक: 1 दिसम्बर 1984 द्वारा प्राप्त उनकी सहमति से जारी किये
जा रहे हैं।

TC
Amor



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For the Oath Commission,
Lucknow.

U. A. B. B.
Commissioner
Public Service Commission