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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

LUCKNOW CIRCUIT BENCH

Registration O.A. No.18 of 1989 (L)

Nirathi Lal Gupta and Others ..... Applicants

Versus

Union of India & Others ..... Respondents.

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

Hon. Mr. K. Obrey, Member (A)

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

This application under Section 19 of the Administrative Tribunals Act, 1985 is for holding that an amendment made in the Indian Administrative Services (Regulation of Seniority) Rules, 1987 by notification dated 18.1.88 contained in Annexure A.4 to this petition is insufficient, arbitrary and violative of Article 14 of the Constitution of India and for issue of consequential direction to rule numbers 1 and 2 to further amend these rules by reducing a review Rule 3(2) in terms of one suggested in para 7.13 of the petition.

2. One of the sources of recruitment to the Indian Administrative Services (for short IAS) is promotion from officers of U.P. Civil Service (Executive Branch). The applicants are senior officers of that service and were promoted to the I.A.S. before January, 1988. It was noticed in course of time that the officers belonging to the different states

promotion to the I.A.S. This was proposed to be done by means of an amendment to Rule 3(7)(ii) of the I.A.S. (Regulation of Seniority) Rules, 1987 which dealt with determining the year of entitlement to the promoted officers. It was suggested that while the year of entitlement may be calculated initially according to the existing rules, the proposal was that the first 12 years of the service may be excluded and for the balance of the service an additional entitlement might be given at the rate of one year for every three years of service subject to a ceiling of five years. After consultation with the various State Govts the Govt. of India ultimately came out with the I.A.S. (Regulation of Seniority) First Amendment Rules, 1988 notified and made effective from 10.1.88. Annexure-A/1 is a copy of these amendment rules. Existing Rule 3(7)(ii) of the rules of 1987 was substituted by amended rule which provided for three things. (i) entitlement of four years was to be given for 12 years service rendered in the State Civil Service. Under clause (b) further entitlement of one year for every three years of service rendered in the State Civil Service in addition to 12 years aforesaid was provided for subject to a maximum entitlement for five years. Clause (c) laid down that entitlement under clause (b) would be calculated with effect from the year in which the officer was appointed to the I.A.S. A provision in the following terms was added to the amended rule :-

Provided that it shall not be taken as a year of entitlement earlier than the year of entitlement assigned to an officer promoted to the I.A.S. from the list of promoted officers in the service on the basis of qualifying merit.

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Civil Services of this country had to undergo varying length of service in the State Services before they were actually promoted to the I.A.S. This duration varied from 8 to 28 years with the result that those officers who were promoted after long service were at a disadvantage in the matter of their seniority with others and were not able ~~at~~ <sup>W</sup> sometimes even to get Senior Time Scale of the I.A.S. before their superannuation. The U.P. Civil Service (Executive) has an association of the officers of which the applicant No.1 is the President. Annexure-A is a representation dated 19.1.74 by the Association to the Govt. of India in the Ministry of Home Affairs on a number of points for improvement of the service conditions of the officers of the U.P.Civil Service (Executive Branch). The matter was examined at different levels of the Govt. and ultimately by Annexure-A.2 dated 9.7.76 the Govt. of India sought for the opinion of all State Governments. It is pointed out by the Govt. of India that disparity in different States in the duration of service of officers in the State Civil Services (Executive Branch) immediately before promotion to the IAS, varying from 8 to 28 yrs, was causing frustration to the officers of some States inasmuch as they were not even able to get the Senior Time Scale for superannuation. It was stated that a High Power Committee constituted for the purpose considered extremely important that of the rules of seniority to compensate such officers of the State Civil Services for the fact that

rection to the I.A.S. This was proposed to be done by means of an amendment to Rule 3(7)(ii) of the I.A.S. (Regulation of Seniority) Rules, 1987 which dealt with determining the year of entitlement to the promoter officers. It was suggested that while the year of entitlement may be calculated initially according to the existing rules, the proposal was that the first 12 years of the service may be excluded and for the balance of the service an additional entitlement might be given at the rate of one year for every two or three of service subject to a ceiling of five years. After consultation with the various State Govts. the Govt. of India ultimately came out with the I.A.S. (Regulation of Seniority) first amendment Rules, 1990 notified and made effective from 10.1.88. Annexure-A is a copy of these amendment rules. Existing Rule 3(7)(ii) of the rules of 1987 was substituted by amended rule which provided for three things. In clause (a) entitlement of four years was to be given for 12 years of service rendered in the State Civil Service. Under clause (b) further entitlement of one year for every three years of service rendered in the State Civil Service in addition to 12 years aforesaid was provided for subject to a maximum entitlement for five years. Clause (c) laid down that entitlement under clause (b) could be calculated with effect from the year in which the officer was appointed to the I.A.S. A proviso in the following terms was added to the amended rule :-

Provided that it shall not be calculated in year of entitlement earlier than the year of entitlement assigned to an officer according to him in that select list of a minimum of 1000 officers in the hierarchy prior to his appointment to the I.A.S.

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- 4 -

3. The effect of the amendment was to provide for a minimum duration of four years and a maximum duration of nine years for determining the year of entitlement. It goes without saying that duration in year of entitlement affects seniority of the officers.

4. The grievance of the applicants is that since the amending rule was made applicable with effect from 10.1.88 by Annexure-A.4, the benefit therefore was not available to the officers of the U.P. Civil Service (Executive Branch) who had already been promoted before 10.1.88. It is said that the grievance of the officers which was sought to be addressed by the amendment and for which the policy decision had been taken after the advice of the High Power Committee did not accrue to the officers who had already been promoted before 10.1.88 and therefore the amendment fails to carry out the purpose which was sought to be achieved. For this reason, according to the applicants, the amendment is insufficient and arbitrary within the meaning of Article 14 of the Constitution of India and has to be further amended.

5. It is the common case of both the parties that the amendment was made with a view to bring rule to the officers of the ~~State~~ State Civil Services on account of the disparity in the duration of service rendered by them before their entry in administrative service. It is for that object that amendment in the Rule of year of entitlement was made. In the ordinary course of things, it could be assumed that the Govt.

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would urtch the interests of all the persons who were similarly situated and in that case bring the benefit of the amendment not only to those who were to be promoted after the date of enforcement of the amendment but also to those who had been promoted earlier. The principal legal hurdle in the way of the respondents, as stated in their counter, is that any retrospective operation to the amendment would have violated the provisions of Section 3(1A) of the All India Services Act, 1951. Sub Section 1 of Section 3 of that Act authorises the Central Govt. to make rules for regulation of recruitment and conditions of services of persons appointed to an All India Service. It is in exercise of that power that the I.A.S. (Regulation of Seniority) Rules, 1987 were framed and enforced with effect from 6.11.87. It will be noticed that the amendment in question was brought about within 2½ months of the enforcement of the regulation of seniority rules. The question is whether Section 3(1A) of the All India Services Act really stands in the way of the respondents to give effect from some date earlier to 18.1.88. Sub Section 1A of Section 3 of All India Services Act runs as follows :-

"The power to make rules conferred by this Section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act to the Rules in any of them, but no retrospective effect shall be given to any Rule so as to prejudicially affect the interest of any person to whom such rule may be applicable."

6. The case of the respondents is that in terms of the second part of this Sub Section, it is not possible to give retrospective effect to the amendment because "it prejudicially affects the interest of the persons appointed to the IAS by direct recruitment". The applicants have laid emphasis upon the expression "the interest of any person to whom such rule may be applicable" and contend that the amendment is not applicable to direct recruits at all and is confined in its applicability to promoted only. It will be immediately noticed that the rule employs two different phrases in the same clause namely "prejudicially affect" and "may be applicable". The concept is that there may be persons who are prejudicially affected by the rule and yet are not the persons to whom the rule is applicable. It will be immediately appreciated that in respect of the State Civil Service officers who are promoted after 18.1.88, some of the direct recruits are bound to be prejudicially affected because such promoted would have an year of allotment prior to the year of allotment of the direct recruits but it is not said that for that prejudice to the direct recruits even the amending rule is invalid. There is no doubt that the amendment has been made only to clause (ii) of Rule 3(3) of the Regulation of Seniority Rules, 1987 and that clause applies to promoted only and to none else. The up shot is that while the direct recruits may be prejudicially affected by the amendment, they are certainly not the persons to whom the amendment could be made applicable. In order to

employ the bar contained in Sub Section 1A of Section 3 of the All India Services Act, 1951 both the conditions must coexist; not only the rule in question, to wit the amending rule before us, should prejudicially affect a person but it must also apply to that person. The second condition being not applicable to the direct recruits, we are of the opinion that the Govt. is not precluded by <sup>Sub</sup> <sub>h-</sub> Section 1A of Section 3 of the Act from giving retrospective effect to the amending rule of 1988.

7. The learned counsel for the respondents has placed reliance upon a decision of the Patna Bench of this Tribunal in Registration O.A. No.135 of 1989 Dr.H.K.Sinha and Others Vs. Union of India & Others decided on 4.5.90 and says that this Tribunal has already held that the rule in question could not be given a retrospective effect. After setting out Sub Section 1A of Section 3 of the All India Services Act, 1951 the Patna Bench of this Tribunal observed in para 14 of the judgment as follows :-

" It will thus be seen that the Central Govt.'s power to make rules retrospectively are fettered by the provisions of Sub Section 1A of the Act which allows no power to the Govt. to give retrospective effect which prejudicially affects the interest of any person to whom such rule may be applicable. If the amended rules are given retrospective effect it will have adverse effect on the seniority of direct recruits. The Central Govt. cannot give retrospective effect to these rules, and if any such rule is given retrospective effect, it will be ultra vires the Act under which the rules have been framed. Therefore no retrospective effect can be given to the amended rule".

(AID)

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8. It is clear from these observations that the expression "any person to whom such rule may be applicable" in Sub Section 1A of All India Services Act, 1951 was not considered or interpreted by the Patna Bench. With respect, we may say that the Bench was impressed by the fact that amended rule would adversely affect the seniority of direct recruits; but that answered only one of the two conditions set out in Sub Section 1A of Section 3 of the All India Services Act. To our mind, the prejudice to the direct recruits does not stand in the way of giving retrospective effect to the amending rule which is applicable exclusively to the promoters and does not apply to any direct recruits.

9. Moreover, it is also well settled that a rule which merely affects the chance of promotion of a person does not affect any right. In this connection, we may refer to a decision of the Hon'ble Supreme Court in the case of Union of India and Others Vs. Dr. S. Krishnamurthy and others (1989) 4 SCC 689. Certain Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces were recruited in 1969 to the Indian Police Service or Indian Forests Service which already had several officers promoted from the State Civil Services. Later on, by amendment of the Indian Police Services (Regulation of Seniority) Rules, 1954 and Indian Forests Services (Regulation of Seniority) Rules, 1968 weightage was given to the Commissioned Officers recruited to the

(AP)

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Indian Police Service/Indian Forest Service for their army service by which they were assigned "years of allotment" earlier than the years assigned to the promoted officers. The promoted officers of the IPS/IFS challenged the amendment giving weightage and assigning years of allotment on the ground that they prejudicially affected the interests of the promoted officers within the meaning of Sub Section 1A of Section 3 of All India Services Act, 1951 introduced into that Act by the amending Act of 1975. The impugned amendments had been made prior to the 1975 amendment of the Act of 1951. After holding that the 1975 amendment of the All India Services Act, 1951 applied also to the prior impugned amendments in the rules the Supreme Court addressed themselves in para 15 and 16 to the promoted's contention that the impugned rules prejudicially affected their vested interests or rights. It was held in para 16 as follows :-

" This contention does not at all impress us. The respondents have been given a particular seniority in accordance with the relevant rules. The seniority of the respondents is not taken away or interfered with by the impugned rules. The year of allotment of the respondents remains the same and is not altered to their prejudice. The impugned rules only provide for giving weightage to the ECOS and SSCOS for their post service in the army during the emergency period and their year of allotment will be determined in accordance with the impugned rules".

10. Dealing with the promoted's contention that the grant of year of allotment by impugned rule made the promoted junior to the ECOS etc so that their chances of promotion were seriously affected, the

Supreme Court held :-

".....Even assuming that the seniority of the respondents or their chances of promotion are affected by impugned rules, surely it cannot be said that there has been a contravention of the fundamental rights of the respondents. Nobody has a fundamental right to a particular seniority or to any chance of promotion. It is not the case of the respondents that because of the impugned rules, their cases for promotion will not be taken into consideration by the authorities".

11. In para 18 the Supreme Court reiterated that the impugned rules did not affect the vested rights of the promoted. We are of the opinion, therefore, that if the respondents chose to give the benefit of the amendment of January, 1988 to the promoted officers of the U.P. State Civil Service retrospectively, it could not be considered to violate the provisions of Sub Section 1A of Section 3 of the All India Services Act, 1951. Of course, such retrospective effect could not be given from a date earlier than the date of commencement of the All India Services (Amendment) Act, 1975 as clearly mentioned in Sub Section 1A of Section 3 of All India Services Act, 1951. The expression "this Act" in that Sub Section refers to the Amendment Act, 1975 and not to the original All India Services Act, 1951 which was described in the Amendment Act of 1975 as the Principal Act (see para 9 of Dr. S. Krishnamurty's decision supra).

11. The decision of the Supreme Court in Dr.S. Krishnamurty's case supra did not come to the notice of the Patna Bench ~~of~~ which decided Dr.S.K.Sinha's case referred to above on 4.5.90. Another reason, contained in the counter in support of refusal to give retrospective operation to the amendment is that it would unsettle all the past cases for redetermination of seniority. This contention is only partially true because, in any case, the amendment has reopened past issues atleast in respect of those officers who came to be promoted after 18.1.88, the date of enforcement of the amendment. If it was feasible to reopen some cases by prospective operation of the amendment, there is no reason why some other cases also could not be similarly reopened by a retrospective operation thereof.

12. The applicants have stated in paragraphs 7.14 to 7.17 that the senior officers of the State Service like the applicants do not get benefit in salary by getting into the IAS and would have got higher salary if they continued to be in the State Service and that for that reason some officers' names in the petition refused to opt for the IAS or even resigned from the service. There is no specific denial of these averments in the counter; only in para 13 of the counter it is stated that for promotion of the 1000 promoted officers upto Rs.5700/- the Govt. of India has issued orders by letter No.11737/25/87-AIS (IT) dated 21.1.88. It is established therefore that the officers like the present applicants have suffered

(A22)

- 12 -

on account of the refusal of the Govt. to make the amendment retrospective. There is no denial of this position in the rejoinder.

13. The ultimate question, nevertheless, is whether this Tribunal can direct the Govt. to make the amendment retrospective. It is well settled that the Courts cannot direct that certain legislative measure be taken. The Court may examine any measure taken, but there can be no mandamus to direct a particular law to be made. From a practical angle, we may also refer to another part of the applicants' case which deals with the proviso added by the amendment under consideration in Rule 2 clause (c) of Rule 3(3) (iii) of the I.A.S. (Regulation of Seniority) Rules, 1987. In para 7.13 it is pointed out by the applicants that the insertion of this proviso also deprives the State Civil Service Officers of appropriate weightage which was contemplated by the amendment made to Rule 3(3)(iii). That is true, but the validity of that proviso has been upheld by the Patna Bench of this Tribunal in C.A. No. 17 of 1989 Dr. S. K. Sinha and Others Vs. Union of India & Others referred to above. The question then is whether any real and practical benefit would be brought to the applicants if the amendment was made retrospective in face of the proviso referred to above. In this situation, the question whether or not the Govt. might or ought to make the amendment retrospective is essentially a question of policy which will have to be done exclusively by the executive without interference from the judiciary. It is for the affected officers to think in any direction like the one which took in the

(P23)

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such landing to the amendment in question, to take up the matter at the administrative level with the Government and unless the Govt. themselves are persuaded to make the amendment retrospective, the relief which the applicants are seeking in this case cannot come to them through this Tribunal. The ultimate result of this case simply is that the reason for which the respondents have expressed their inability to make the amendment retrospective must be held to be unsatisfactory. At the same time it is clear that the respondents have misdirected themselves in specifying the scope of their power to give retrospective effect to the amendment. That misdirection deserves to be set right by giving another opportunity to the respondents to reconsider the question.

14. This petition is partly allowed only to the extent that the respondents are directed to reconsider the applicants' case of giving retrospective effect to the I.A.S. (Regulation of Seniority) First Amendment Rules, 1988 issued under notification dt. 19.1.88 contained in Annexure-A.4 bearing in mind the observations contained in this judgement. The respondents shall take the final decision in this matter within a period of ~~six~~ months from the date of receipt of a copy of this judgement.

  
Member (A)

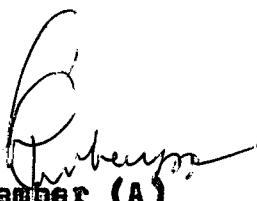
  
Vice Chairman

Dated the 10<sup>th</sup> Aug., 1990.

R.S.P.

Due to non availability of a Bench with

one of us as the Member at Lucknow Circuit Bench for quite some time, this judgement is being delivered at Allahabad. Office will issue copies to the parties immediately and will despatch the record alongwith the copy of the covering letter to the Lucknow Circuit Bench.

  
Member (A)   
Vice Chairman

Dated the 10<sup>th</sup> Aug., 1990.

ANNEXURE - A

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH LUCI NO. .

INDEX SHEET

CAUSE TITLE C.A.T/10 of 1999 (L)

Name of the parties N. L. Gupta

Applicant.

Versus.

Union of India Respondents.

Part A.B.C.

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File No. 1720/92-11  
Sup. Ct. Regd. No. 1720/92-11

28/12/11. 6. 2011.

Re Check  
New  
93/6/2011 Regd.

Shrikant  
14/12/92

CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, LUCKNOW

25/1/89

Registration No. 10 of 1969 (C)

APPLICANT(S) N. L. Goforth

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Particulars to be examined

Endorsement as to result of examination

1. Is the appeal competent ? *72*

2. a) Is the application in the prescribed form ? *73*

b) Is the application in paper back form ? *74*

c) Have six complete sets of the application been filed ? *75*

3. a) Is the appeal in time ? *76*

b) If not, by how many days is it beyond time ? *77*

c) Has sufficient time for not making the application in time, been filed ? *78*

4. Has the document of authorisation/ Vakalatnama been filed ? *79*

5. Is the application accompanied by C.O./Postal Order for Rs.50/- *80*

6. Has the certified copy/copies of the order(s) against which the application is made been filed ? *81*

7. a) Have the copies of the documents relied upon by the applicant and mentioned in the application, been filed ? *82*

b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ? *83*

c) Are the documents referred to in (a) above neatly typed in double space ? *84*

8. Has the index of documents been filed and paginating done properly ? *85*

9. Have the chronological details of representation made and the outcome of such representation been indicated in the application ? *86*

10. Is the matter raised in the application pending before any court of Law or any other Panel or Tribunal ? *87*

(A)

Peculiarities to be examinedEndorsement as to result of examination

1. Are the application/duplicate copies signed ? *Y*

2. Are extra copies of the application with annexures filed ? *Y*

3. Is it identical with the Original ? *Y*

4. Is it in application form ? *Y*

5. Are there any annexures ? *Y*

6. Are the annexures in file size envelopes ? *No*

7. Are the full addresses of the parties to the case correctly indicated in the application ? *Y*

8. Are the declarations certified and supported by an affidavit affirming that they are true ? *NA*

17. Are the dates of the case correctly indicated in the application ? *Y*

(a) Are they correctly typed ? *Y*

(b) Are they in distinct blocks ? *Y*

(c) Are they unnecessarily  ? *Y*

(d) Are there too much space on one side of the paper ? *Y*

9. Are the particulars for interim relief prayed for indicated with reasons ? *No*

10. Whether all the remedies have been exhausted. *Y*

27-27

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ORDER SHEET

Regd. O.A.No. 18 of 1989(L)

(1) 24.2.1989 Hon. D.S.Misra, AM  
Hon. G.S.Sharma, JM

On the request of learned counsel for the applicant he is allowed one week's time to file an application for filing joint petition. List it for admission on 23.2.1989.

JM

AM

24.2.1989  
kkb.

(2) 3.1.89

*5, R*  
An application for filing joint petition has been allowed by the counsel for the applicant within the time allowed by this Hon'ble Tribunal. 23.2.89. fixed for admission ~~on~~ with office report. Submitted for admission.

Jay  
3.1.89

(AU)

C.M. 15/09

in

C.M. 10/09

(3) 23/2/09.

1703 & 5. 22nd, Am.

1704 & 5. S. Sharma, Am.

Civil misc. application No. 15/09  
boycying for the five applicants joining  
together in a single petition  
is allowed. The application  
is admitted. Issue notice  
to the opposite parties to  
file reply within a month.  
Registers of any may be  
filed within the month thereof.  
Put up on 28.1.09.

AC

TM.

is

Am.

19/3/09

(AU)

~~Notice issued~~  
Steps taken for services  
of notices by counsel for applicants  
on 17.3.09

Notice issued to the septs.  
through Repd Post. fixing  
for final hearing.

19/3

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT BENCH, LUCKNOW

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ORDER SHEET

REGISTRATION No. 0.A. No. 18/89(L) of 198

APPELLANT  
APPLICANT

N.L. Gupta and ors

## VERSUS

DEFENDANT  
RESPONDENT

Union of India and ors

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
	<u>Hon' Mr. D.K. Agrawal, J.M.</u>	
1/1/89	Present. None for the applicant.  Dr. Jinesh Chandra, Advocate for the respondents no. 1 and 2.	
	Counter affidavit is being filed today. The applicant may file rejoinder within 2 weeks hereof. List this case on <u>16.10.89</u> for hearing.	
		<i>J.M.</i>

(R)

OA 18/89(L)

8/5/90

Hon. Mr. D.K. Agrawal, I.M.  
Hon. Mr. K. Obayya, A.M.

Shri B.C. Saxena, for the applicant and Shri D. Chandra, for OP No-2 are present. OP No-1 is unrepresented. The OP No-2 has filed supplementary counter affidavit today. The learned counsel for the applicant, therefore, desires time to file supplementary rejoinder. Allowed. Let, <sup>supple</sup> rejoinder affidavit if any be filed within one week here of.

List it for hearing on 22/5/90

sd.

A.M.

Def  
J.M.

OR

No Supplementary R.A. filed. as per court's order dt. 8.5.90.  
Submitted for hearing  
L 16/5.

22/5/90

Hon. Mr. B.C. Saxena, V.C.  
Hon. Mr. D.K. Agrawal, O.M.

Shri B.C. Saxena, for the applicant, and Shri D. Chandra, for the opposite parties are present.

On the request of Shri D. Chandra the case is adjourned to 26/6/90.

sd.

Def  
J.M.

Agrawal  
V.C.

26/6/90

Hon. Mr. Justice K. Nalini V.C.  
Hon. Mr. K. Obayya. A.M.

On the request of both the parties case put up tomorrow.

A.M.

Def  
V.C.

SR  
S.F.H

L  
25/5

All communications should  
be addressed to the Registrar,  
Supreme Court, by designation,  
NOT by name.  
Telegraphic address :-  
"SUPREMECO"

1st  
D. No. 2096/91/XI

SUPREME COURT  
INDIA

181  
Dated New Delhi, the 18th February, 1993.

S.V. P. No 33/93  
FROM The Registrar (Judicial),  
Supreme Court of India,  
New Delhi.

TO The Registrar,  
Central Administrative Tribunal,  
Allahabad, Lucknow Circuit Bench,  
Lucknow.

CIVIL APPEAL NO. 4788 OF 1992.  
(Registration C.A. No. 18 of 1989).

Niroti Lal Gupta and Ors.

...Appellants.

Versus

Union of India and Anr.

...Respondents.

Sir,

In continuation of this Registry's letter of even number dated the 19th November, 1992, I am directed to transmit herewith for necessary action a certified copy of the Decree dated the 11th November, 1992 of the Supreme Court in the said appeal.

Please acknowledge receipt.

Yours faithfully,

*Keshav*  
for Registrar (Judicial).

D.V.B.  
25/2/93

" 1067/93

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S.A

11th November, 1992.

CORAM:

HON'BLE MR. JUSTICE A.H.AHMADI  
HON'BLE MR. JUSTICE H.N.PUNCHHI  
HON'BLE MR. JUSTICE K.RAMASWAMY

For the Petitioners/

Appellants on 6th.

August, 1992.

: M/s. R.B.Misra and Vishwajeet Singh,  
Advocates.

For the Petitioners/

Appellants on 7th and

11th August, 1992.

: M/s. R.K.Jain and M.L.Verma, Senior  
Advocates.

(Mr. Vishwajeet Singh, Advocate with them).

For the Respondents : Mr. H.K.Puri and Ms. Abha Sharma, Advocates.

The Petition for Special Leave to Appeal above-mentioned alongwith connected matter being called on for hearing before this Court on the 6th, 7th and 11th days of August, 1992, UPCJ perusing the record and hearing counsel for the parties herein, the Court took time to consider its Judgment and the matter being called on for Judgment on the 11th day of November, 1992, THIS COURT DOTH grant Special Leave to appeal and DOTH in allowing the resultant appeal ORDER:

1. THAT the Judgment and Order dated 10th August, 1990 of the Central Administrative Tribunal, Allahabad, Lucknow Circuit Bench in Registration O.A.No.18 of 1989(L) be and is hereby set aside and in place thereof an order holding <sup>in and declining</sup> that the failure to consult all the State Governments or Union Territories on the proviso to rule 3(3)(ii) or (iii) of the Indian Administrative Service (Regulation of Seniority) First Amendment Rules 1983 does not render the proviso ultra vires invalid or void be and is hereby substituted;

2. THAT the parties herein shall bear their own costs throughout;

AND THIS COURT DOTH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned;

WITNESS the Hon'ble Shri Madhukar Hiralal Kania, Chief Justice of India at the Supreme Court, New Delhi, dated this the 11th day of November, 1992.

*Sak*  
(V.K.DEORA)  
JOINT REGISTRAR.

IN THE SUPREME COURT OF INDIA  
 CRIMINAL CIVIL APPELLATE JURISDICTION

426834

Certified to be true copy

Assistant Registrar (Jud.)

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Supreme Court of India

Ms.

J.P.

CIVIL APPEAL NO. 4788 OF 1992.ARISING OUT OF:

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 13823 OF 1991.  
 (Petition Under Article 136 of the Constitution of India from the Judgment and Order dated the 10th August, 1990 of the Central Administrative Tribunal, Allahabad, Lucknow Circuit Bench in Registration O.A.No. 18 of 1989(L) ).

1. Niroti Lal Gupta  
 S/o. Sri Mani Ram  
 Presently posted as Special Secretary to Govt. of U.P. Rural Development Department, Lucknow (U.P.).
2. Sri Janardan Prasad  
 S/o Sri I.N. Tewari  
 Presently Posted as Special Secretary to Govt. of U.P. Agriculture Department, Lucknow (U.P.)
3. Kailash Narain Pande  
 S/o Sri Lakshmi Chand Pande  
 Presently posted as Director, Land Acquisition Board of Revenue, U.P. Lucknow (U.P.).
4. Rajendra Dutt Pathak  
 S/o Sri Kashi Ram Pathak  
 Presently posted as : Special Secretary Institutional Finance, Lucknow (U.P.).
5. Ram Sharan Varshney  
 S/o Sri Brij Nandan Lal  
 Presently as Joint Secretary to Govt. of U.P. Department of Personnel, Lucknow (U.P.).

...Appellants.

Versus

1. Union of India  
 through Secretary Personnel and Training Government of India North Block, Vijay Chowk New Delhi.
2. State of Uttar Pradesh through Chief Secretary Appointment, Sachivalaya, Annexie Bhawan, Lucknow (U.P.).

...Respondents.

(AO)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

- A L L A H A B A D

- Lucknow Circuit Bench -

O.A.NO. 18 1939 (L)  
F.A.NO.

DATE OF DECISION

Nirothi Deo Gupta by self for self PETITIONER  
Sir B. C. Saksena Advocate for the  
Sir S. C. Srivastava Petitioner(s)

VERSUS

Union of India for the State RESPONDENT  
Dr. Dinesh Chandra Advocate for the  
Respondent(s)

SCRAM :

The Hon'ble Mr. Justice (L. N. N. R. C.)

The Hon'ble Mr. K. Obayya, A. M.

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

Dinesh/

\*\*\*\*\*

— 15/9/39.

125

25/1/84

In the Central Administrative Tribunal

Additional Bench at Allahabad,

Lucknow Circle, Lucknow.

.....

Application No. 10 of 1989 (L)

( under section 19 of the Central Administrative  
Tribunal Act, 1985 )

BETWEEN

Niroti Lal Gupta and others

... Applicants.

AND

Union of India and another

... Respondents.

DETAILS OF APPLICATION:

1. Particulars of the applicants:

1.1 (i) Name of the applicant : Niroti Lal Gupta  
X

(ii) Name of father : Sri Mani Ram

(iii) Age of the applicant : 53 years

(iv) Designation and particulars of office in which employed : Additional Commissioner, Sales Tax, U.P., P.C.F. Building, Station Road, Lucknow.

B. Chakraborty  
Advocate

Ref. No. 10 No. 2096/91/XI  
Dt. 19-11-92

Sub:- Petition for Special leave to  
Appeal (Civil) No. 4788 of 92 &  
4794 of 92.

i. N.L. Gupta & Ors (Petitioners)  
versus

Union of India (Resp.)  
with

ii. J.A.S. (S.C.S.) Association  
& P. (Petitioners)

versus

Union of India (Resp.)

May like to peruse a certified copy of  
above received from Supreme Court of India in a  
S.L.P. against the judgment passed by this Tribunal  
in the case O.A. 10/1989 (L)

i. N.L. Gupta & Ors  
versus

Applicants

Union of India

Respondent

The Hon'ble Supreme Court of India  
has allowed the S.L.P. and directed that the  
order of the Central Administrative Tribunal, Allahabad  
Bench at Lucknow is set aside.

Submitted for ~~both~~ ~~both~~ perusal.

Verbal  
12/1/93  
J.L.

Off. Registration

(A119)

communications should  
be addressed to the Registrar,  
the Court, by designation,  
NOT by name.  
Telegraphic address :-  
"SUPREMECO"

D. No. 2096/91/XI.

SUPREME COURT  
INDIA

Dated New Delhi, the 19th November, 1992. 19

FROM

Mr. V.S. Meicker, B.A. LL.B.,  
Assistant Registrar.

TO

The Deputy Registrar,  
Central Administrative Tribunal's  
Allahabad Lucknow Circuit Bench,  
Lucknow.

CIVIL APPEAL NO. 4788 OF 1992.

(From Central Administrative Tribunal Judgment and Order  
dated 10th August, 1990 in Registration O... No. 18/1989).

H.L. Gupta & Ors.

.. Appellants.

Versus

Union of India & Anr.

.. Respondents.

Sir,

In pursuance of Order XIII, Rule 6, S.C.R. 1966 I am directed  
by their Lordship of the Supreme Court to transmit herewith a  
certified copy of the Judgment/Order dated the 11th November, 1992  
in the appeal above mentioned.

The Certified copy of the decree made in the said appeal  
will be sent later on.

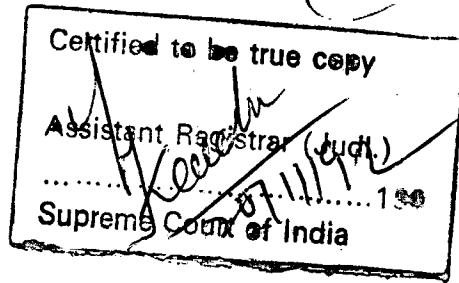
Please acknowledge receipt.

Yours faithfully,

*J.S. Meicker*  
ASSISTANT REGISTRAR.

Smt Reeta  
Rizvi  
A. P. A. B.  
C. P. S. S.  
H.R.C.  
6/11/93 for two Personal 2  
for the Hon'ble V.C. & M.A.  
6/11/93 to the Hon'ble V.C. & M.A.  
so. 30.11.92

Received by Hand  
vs and returned  
today  
6/11/93  
Akbar  
so.



[ 1 ]

410217

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

WRIT PETITION (C) NO.499 OF 1991

Indian Administrative Service  
(S.C.S.) Association, U.P. & Ors. ... Petitioners

Vs.

Union of India & Ors. ... Respondents

WITNESS

CIVIL APPEAL Nos. 4788/92 & 4794 OF 1992  
(Arising out of S.L.P.(C) Nos. 13822/91 and 12469/90)

Nirothi Lal Gupta & Ors. ... Appellants

Vs.

Union of India & Ors. ... Respondents

JUDGMENT

K. RAMASWAMY, J.

Special leave granted.

Service (Regulation of Seniority) Rules, 1954, for short 'the Seniority Rules'. In the meantime the Rules were repealed and replaced by I.A.S. (Regulation of Seniority) Rules, 1987 which came with effect from Nov. 5, 1987 for short 'New Seniority Rules'. The first respondent issued Circular letter dated September 5, 1986 to the State Govts. indicating amendments for fixation of seniority of officers promoted from State Civil Services' to I.A.S. to give weightage over and above 4 years in the assignment of year of allotment as per the existing relevant rules, namely, four years for the first 12 years state service with additional weightage of one year for every two to three years' completed service subject to a maximum of five years. After receiving suggestions or comments from State Governments, the Central India exercising the power under Sub-sec. (1) of Sec.3 of All India Service Act, 1951 for short, 'the Act' amended the New Seniority Rules, 1987 which amendment was published in the gazette of India on February 3, 1989 for short the 'First Amendment Rules'. The proviso thereto was made limiting its operation prospectively from February 3, 1989. Putting the proviso and its prospective operation in issue, the appellants from U.P. in Civil Appeal No. of 1992

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[ S ]

to quash the order dated December 12, 1990 made by the Ministry of Personnel, Public Grievance and Pension Department and for a mandamus to extend the benefits flowing from the First Amendment Rules to its members promoted prior to January 1988 and to the petitioners Nos. 2 to 17 in particular. It is needless to state that the first Amendment Rules would operate with full effect from 1992, while the Promotee Officers promoted between 1988 to 1991 would reap partial benefit.

Rule 3 of the Seniority Rules, 1954 postulated assignment of the year of allotment as per the Rules to every officer appointed to the Indian Administrative Service, be it a direct recruit or a promotee officer. The promotee officer appointed in accordance with rule 9 of the IAS Recruitment Rules read with regulation 9 of IAS Promotion Regulations shall be allotted an year of allotment next below the junior most direct recruit officer recruited in accordance with rule 7 of the Recruitment Rules (Direct Recruitment Rules) and who officiated continuously in a senior post from a date earlier than the date of the commencement of such officiation by the promotee officer. Under the New Seniority Rules 1987, rule 3(1) postulates that every

(b) he shall also be given a weightage of one year for every completed three years of service beyond the period of twelve years, referred to in sub-clause (a), subject to a maximum weightage of five years. In the calculation, fractions are to be ignored.

(c) The weightage mentioned in sub-clause (b) shall be calculated with effect from the year in which the officer is appointed to the service:

Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to the service on the basis of an earlier Select List.

(3)(iii) The year of allotment of an officer appointed by selection shall be determined in the following manner:-

(a) for the first 12 years of gazetted service, he shall be given a weightage of 4 years towards fixation of the year of allotment;

(b) he shall also be given a weightage of one year for every completed 3 years of service beyond the period of 12 years, referred to in sub-clause (a), subject to a maximum weightage of 5 years. In this calculation, fractions are to be ignored,

(c) the weightage mentioned in sub-clause (b) shall be calculated with effect from the year in which the officer is appointed to the service:

Provided that he shall not

[ 9 ]

of 5 years. In its calculations fractions are to be ignored. The weightage shall be computed from the year of appointment of the officer to the service. The offending proviso limits the operation of Rule 3(3)(ii)(a) and (b) that such an officer shall not be assigned an year of allotment earlier than the year of allotment assigned to the officers senior to him in that select list or appointed on the basis of an earlier select list. Under rule 3(3)(iii) also, though not relevant for the purpose of the case but serves as an analogy, that the year of allotment of an officer appointed by selection shall also be given the year of allotment in the same manner as adumbrated in sub-rule 3(3)(ii) and its effect also was circumscribed under the proviso that he shall not become senior to another non-state Civil Service Officer already appointed to the service. It is, therefore, clear that the New Seniority Rules were to be operative from November 6, 1987 and the First Amendment Rules from February 3, 1989 with the result that in assigning the year of allotment, full weightage of 9 years' eligible service was given to the promotee State Civil Service Officers. However, the senior officer to him/her appointed from the State Civil Service earlier in the same select list or one above him in the previous select list shall

Under sec. 3(2) of the Act, every rule made by the Central Govt. under Sec.3(1) and every regulation made thereunder or in pursuance of any such rules, shall be laid, as soon as may be, after such rule or regulation is made, before each House of Parliament while in session. Before the expiry of the session, if both Houses agree to make any modification to such rules or regulations or both Houses agree that such rules or regulations should not be made, the rule or regulation shall thereafter have effect, only in such modified form or be of no effect as the case may be. So, however, that any such modification or annulment shall be, without prejudice to the validity of anything previously done under that rule or the regulation. Thereby the rules or regulations made in exercise of the power under sec.3(1) of the Act regulating recruitment and the conditions of service for persons appointed to an All India Service are statutory in character.

No statute shall be construed so as to have retrospective operation unless its language is such as plainly to require such a construction. The legislature, as its policy, give effect to the statute or statutory rule

interpreting sections 70 and 90 of the U.P. District Board Act, in particular, the expression "orders of any authority whose sanction is necessary", held that "No doubt it is the duty of the court to try to harmonise various provisions of an Act passed by the legislature. But it is certainly not the duty of the court to stretch the words used by the Legislature to fill in gaps or omissions in the provisions of an Act". In Halinakaya Bysck v. Shyam Suder Baldar & Ors., this court held that it is not competent to any court to proceed upon the assumption that the Legislature has made a mistake. The court must proceed on the footing that the Legislature intended what it has said. Even if there is some defect in the phraseology used by the Legislature the court cannot aid the Legislature's defective phrasing of an act or add or amend or, by construction make up deficiencies which are left in the Act. The approach adopted contra by the High Court was held illegal. In Commissioner of Sales tax, U.P. v. Auriya Chamber of Commerce, Allahabad, this court held that in a developing country like ours any legal system may permit judges to play a creative role and innovate to ensure justice without doing violence to the norms set by legislation. But to invoke

(2) (1953) SCR 533 at 545

(3) (1986) 2 SCR 430 at 438

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fundamental laws or gross miscarriage of justice. It could thus be held that the legislature intended that the First Amendment Rules would operate prospectively from February 3, 1989, the date of their publication in the Gazette of India. Its policy is explicit and unambiguous. Rule 3(3)(ii) intended to remedy the imbalances while at the same time the proviso intended to operate prospectively to avert injustice to the officers recruited/promoted earlier than the officer promoted later to that date. The proviso carved out an exception to ward off injustice to the officers that became members of I.A.S. earlier to those dates.

Whether the proviso is violative of Art. 14 and Art. 16(1) of the Constitution of India? Undoubtedly all the promotees from the State Civil Service constitute a class preceding or succeeding the first Amendment Rules. The purpose of temporary truce carved out by the proviso is self-evident. By dint of merit, ability and suitability a junior officer could steal a march over the senior officers in the State Civil Service and get entry into the Indian Administrative Service earlier to the senior officers and thus becomes a member of the Indian Administrative Service. Thereby he becomes senior in service. The senior state civil service officer, who was superseded

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rule 3(3)(ii) fully becomes operational graded weightage was given to the promotees. In other words it prevented to get seniority earlier to the date of his/her appointment to the Indian Administrative Service. Equally it intended not to let endless chain reaction occur to unsettled the settled interests in seniority. These compulsive circumstances denied the benefits of full 9 years weightage to officers promoted during 1987 to 1992. The discrimination, though is discernable, but inevitable to ensure just results. In other words the proviso prevented unequals to become equals. The contention of P.P. Rao, therefore, that invidious discrimination was meted out to senior officers and that they are similarly circumstanced are devoid of force.

This court by a Constitution Bench in the State of Jammu & Kashmir v. T.N. Khosa and J. Kumar v. Union of India, held that the amended rules varying the conditions of service would operate in future and governs the future rights of the existing personnel. The ratio therein does not apply to the peculiar facts

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(4) (1974)1 SCR 771 at 779

(5) (1982)3 SCR 453 at 463

officers or officers promoted earlier to Feb. 3, 1980 and the proviso avoided such unjust results. Giving retrospective effect or directing to apply the rule to all the seniors irrespective of the date of promotion to I.A.S. cadre would land in or lead to inequitous or unjust results which itself is unfair, arbitrary and unjust, offending Art. 14 of the Constitution. To avoid such unconstitutional consequences the proviso to rule 3(3)(ii) of the First Amendment Rule was made. The doctrine of kicking down or picking up, put forth in Union of India v. P.K. Roy, equally cannot be extended to the facts of the case. But for the proviso the operation of rule 3(3)(ii) would be inconsistent with Sec.3(1A) of the Act. Equally though the doctrine of Reading down is a settled principle of law, its application to the facts of the case would lead to injustice to the officers promoted earlier to the appellants. A writ of mandamus commanding the respondents to give full benefit of weightage of rule 3(3)(ii)(a) & (b) of the First Amendment Rules would amount to direct the executive to disobey the proviso which is now held to be intra vires of the Constitution. In the light of the above discussion

to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable."

Its bare reading clearly indicates that the rules made under the Act shall not be given retrospective effect so as to prejudicially affect the interest of any person to whom such rules may be applicable. The attempt of Sri Vaidyanathan that this rule may be so read as applicable only to the promotee officers vis-a-vis the senior promotee officers cannot be accepted. The Lucknow Bench of the C.A.T. glossed over it by adopting strange construction that since the offending proviso to rule 3(3)(ii) of the First Amendment Rules would apply to promotee officers inter se, Sub-section 1(A) of section 3 of the Act would not apply to the direct recruits, to say the least, is a disparate construction. There is a distinction between right and interest. No one has a vested right to promotion or seniority, but an officer has an interest to seniority acquired by working out the rule. Of course, it could be taken away only by operation of valid law. Sub-section (1A) of sec.3 of the Act enjoins the authorities not to give retrospective effect to such a rule or regulation so as to avoid "prejudicial affect to the

right in their contention that there is no vested right to seniority and is variable and defeasible by operation of law. In A.K. Maatnagar v. Union of India,<sup>(9)</sup> this court held that seniority is an incidence of service and when rules prescribe the method of computation, it is squarely governed by such rules. This would be amplified by following hypothetical illustrations. In a direct recruitment the seniority would be arranged in the order of merit and it starts from the date of joining the duty. Suppose 'A' to 'D' were appointed on the same day and 'A' was senior most among them. But 'A' did not pass the prescribed tests and for varied reasons 'A's probation was confirmed after a long period. In the meanwhile 'B' to 'D' were confirmed. 'B' to 'D' thereby became senior to 'A' though appointed in the same day and 'A' was no.1 among them. Suppose probation was not declared mala fide resulting in delayed confirmation and 'A' challenged it in a court of law and succeeded in proving mala fide action and consequential direction was issued by the court to confirm 'A' from the date of his appointment. Though 'B' to 'D' became seniors to 'A' by early confirmation, their seniority was varied by 'A' later

promotion was on the basis of merit and ability 'B' was found to be more meritorious and was promoted earlier to 'A' to 'C'. 'B' thereby would become senior to 'A' to 'C' though he was juniormost in the feeder service. The right to seniority and interest thereby were varied by operation of law. Suppose 'B' and 'C' also have the benefit of reservation in promotion as well and by its application they were promoted earlier to 'A' though the latter was more meritorious. 'A' was later on promoted. He cannot claim his seniority over 'B' and 'C' who scaled a march over 'A' and became senior to 'A' in promoted cadre or service. The seniority of 'A' thereby was varied. However, law itself may protect the legitimate interest in seniority while granting relief to persons similarly circumstanced like the one under sec.3(1A) of the Act read with proviso to Rule 3(3)(ii) & (iii) of the First Amendment Rule. It was neither void nor ultra vires offending Arts. 14 and 15 (1) of the constitution.

Admittedly, the draft of the First Amendment rules, as circulated to the State Governments, did not contain the offending proviso. It is stated in the counter affidavit filed on behalf of the Central Govt. that some of the State Governments had suggested to

implies a conference of two or more persons or an impact of two or more minds in respect of a topic in order to enable them to evolve a correct or at least a satisfactory solution. In order that the two minds may be able to confer and produce a mutual impact it is essential that each must have for its consideration full and identical facts which can at once constitute both the source and foundation of the final decision. In that case the question related to the transfer of a High Court Judge from one High Court to another. In that context this court considered whether sounding of the Chief Justice of India without meaningful consultation would be proper discharge of the constitutional obligation by the President. In that context the principle of law laid was that the respective view point of the Govt. and the Chief Justice must be known to each other and both were to discuss and examine the merits of the proposed transfer. The meaning of the word "consultation" was evaluated in that backdrop. This court approved the dictum laid by K. Subba Rao, J., as he then was, in K. Pushpam v. State of Madras.

(11)

Commission or any irregularity in consultation under Art. 320 does not effect the ultimate decision taken by the authority under Art.311 of the Constitution. In Ram Gopal Chaturvedi v. State of Madhya Pradesh the same view was reiterated. In N. Raghavendra Rao v. Dy. Commissioner, South Kanara, Mangalore, words "prior approval" of the Central Govt. in construing the proviso to sec.115(7) of S.K. Act of the words of varying the conditions of service the Constitution Bench held that "prior approval" would include general approval to the variation in the conditions of service within certain limits indicated by the Central Govt. Same view was reiterated by another Constitution Bench in Mohd. Sujat Ali & Ors. v. Union of India.

(16)

In Chandramouleshwar Prasad v. Patna High Court & Ors., construing the word "consultation" in Art.263 of the Constitution, another Constitution Bench in the context of removal of a District Judge by the Governor on the recommendation of the High Court, held

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(14) (1970)1 SCR 472  
 (15) (1964)7 SCR 549  
 (16) (1975)1 SCR 449 at 459-471  
 (17) (1970)2 SCR 655 at 674 & 675

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to carry on business guaranteed under Art.19(1)(g) of the Constitution. Therefore, when the Act prescribes prior consultation of the Electricity Board such condition was incorporated to prevent abuse of power and to ensure just exercise of the power. Section 4 of the Electricity Supply Act enjoins, in public interest, to consult the Board before revocation of the licence. Consultation provided an additional safeguard to the licensee and when revoking the licence the Govt. acts in two stages. Before and after the explanation was received and when the Govt. considered the explanation, it is mandatory that it should consult the Electricity Board and non-consultation rendered the order as void. Consultation of the Board, was, therefore, held to be a condition precedent for making order of revocation.

In Naraindas Indurkhya v. State of M.P. & Ors., M.P. Madhyamik Siksha Adhiniyam Act, 1973 provided that before prescribing the text-books the Chairraan of the Board was to be consulted. Its infraction was considered and held that any attempted exercise of the power by the State Govt. without

the revised tariff on the table of the House or Houses of the State Legislature and such statement is open to discussion therein, the Board is bound to take into consideration such modification, if made, or any comments made on such statement by the state legislature. Under those circumstances it was held that the non-compliance of Sec.16(5) did not render the revision of tariff invalid.

In Follo & Anr. v. Minister of Town & Country Planning, Sec. 1(1) of the Towns Act, 1946 envisages (21) the Minister of Town & Country Planning after consultation with the local authorities, if satisfied that it is expedient in the national interest that any area of land should be developed as a new town by the Corporation established under the Act, he may make an order designating that area as a site of the proposal of the new town. On October 7, 1946 press notice was issued giving the date of meeting of the representatives of the local authorities and the Minister explained in the meeting what he had in his mind in arriving at the boundaries of the area.

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(21) (1943)1 All Eng. Reports 13

effecting the union of beneficents under Sec.3(1) of the Pastoral Reorganisation Measures, 1949 which postulates of "consultation so far as is practicable". Construing the language it was held that a meeting was held explaining the proposed scheme, the members of the Church though opposed the scheme, it was approved. As such it was held that the action was valid and there was proper consultation.

In Port Louis Corporation v. Attorney General of Mauritius, the local Govt. of Mauritius was empowered under the Local Government Ordinance, 1962 by sec.73(1) to alter the boundaries of any town, district or village, after consultation with the local authorities concerned. The Governor and Council of Ministers in May 1963 had in their minds to alter the boundaries of Port Louis, so that the villages surrounding Port Louis Township would be embraced within and would enlarge the area of the town of Port Louis. The Minister by a letter asked the views of the local authorities, enclosing the details of the proposed alteration and the map. Majority Councillors

P138

the appellants. In that case the question was the year of allotment under the Forest Service (Regulation of Seniority) Rules, 1963. By fixation of the year of allotment it had retrospective effect from the date when the promotee was brought into select list or the date of appointment whichever was later. Under those circumstances it was held that retrospective operation of the rules did not prejudicially affect any vested right much less any fundamental rights of the officers recruited from the State service.

The result of the above discussion leads to the following conclusions :

- (1) Consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points involved to evolve a correct or at least satisfactory solution. There should be meeting of minds between the proposer and the persons to be consulted on the subject of consultation. There must be definite facts which constitute foundation and source for final decision. The object of the consultation is to render consultation meaningful to serve the intended purpose. Prior consultation in

pass appropriate orders or take decision thereon. In such circumstances it amounts to an action "after consultation".

(6) No hard and fast rule could be laid, no useful purpose would be served by formulating words or definitions nor would it be appropriate to lay down the manner in which consultation must take place. It is for the Court to determine in each case in the light of its facts and circumstances whether the action is "after consultation", "was in fact consulted" or was it a "sufficient consultation".

(7) Where any action is legislative in character, the consultation envisages like one under Sec.3(1) of the Act, that the Central Govt. is to intimate to the State Governments concerned of the proposed action in general outlines and on receiving the objections or suggestions, the Central Govt. or Legislature is free to evolve its policy decision, make appropriate legislation with necessary additions or modification or omit the proposed one in draft bill or rules. The revised draft bill or rules, amendments or additions in the altered or modified form need not again be communicated to all the concerned State Governments nor have prior fresh consultation. Rules

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and it was not necessary to have prior consultation again to bring the proviso on statutes as part of the First Amendment Rules. The contention of Sri Vaidyanathan that the proviso is rendered void for the absence of consultation of the State Govts. is devoid of any force.

By operation of Sub-sec.(2) of Sec.3 the rules were laid on the floor of each House of the Parliament. There were no suggestions or alterations made by either House of Parliaments. Thus the First Amendment Rules stood approved by the Parliament. Under the circumstances we have no hesitation to hold that the failure to consult all the State Governments or Union Territories on the proviso to rule 3(3)(ii) or (iii) of the First Amendment Rules does not render the proviso ultra vires, invalid or void. Accordingly, we do not find any merit to issue the writ as prayed for in the writ petition. The Writ Petition and Civil Appeal arising out of S.L.P. (C) No.12459/90 are dismissed. The appeal arising out of S.L.P. (C) No.13823/91 is allowed and the order of the Central Administrative Tribunal, Allahabad, Bench

(A26)

2.

(v) Office address : Additional Commissioner,  
Sales Tax, U.P., P.C.F.  
Building, Station Road,  
Lucknow.

(vi) Address for  
service of  
notices : C-17, Butler Palace  
Colony, Lucknow.

1.2 (i) Name of the : Sri Janardan Prasad  
applicant

(ii) Name of father : Sri I.N.Tewari

(iii) Age of the : 52 years  
applicant

(iv) Designation : Joint Secretary,  
and particulars  
of office in  
which employed  
Institutional Finance,  
Government of Uttar  
Pradesh, 16 Vidhan Sabha  
Marg, Lucknow.

(v) Office address : Joint Secretary,  
Institutional Finance,  
Government of Uttar  
Pradesh, 16 Vidhan Sabha  
Marg, Lucknow.

(vi) Address for  
service of  
notices : D-16, Butler Palace  
Colony, Lucknow.

1.3 (i) Name of the : Kailash Narain Pande  
applicant

(ii) Name of father : Sri Lakshmi Chand Pande

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3.

(iii) Age of the applicant : 54 years

(iv) Designation and particulars of office in which employed : Collector and District Magistrate, Haridwar

(v) Office address : Collector and District Magistrate, Haridwar

(vi) Address for service of notices : C-57 Butler Palace Colony, Lucknow.

1.4 (i) Name of the applicant : Rajendra Dutt Pathak

(ii) Name of father : Sri Kashi Ram Pathak

(iii) Age of the applicant : 52 years

(iv) Designation and particulars of office in which employed : Additional Director of Consolidation, U.P., Lucknow.

(v) Office address : Additional Director of Consolidation, U.P., Lucknow.

(vi) Address for service of notices : 4/5 Multi Storey Building, Butler Palace Colony, Lucknow.

1.5 (i) Name of the applicant : Ram Sharam Varsheny

(ii) Name of father : Sri Brij Nandan Lal

(iii) Name of the applicant : 47 years

(A2D)

4.

(iv) Designation and particulars of office in which employed : Joint Secretary, Excise and Labour, Government of U.P., Lucknow.

(v) Office address : Joint Secretary, Excise and Labour, Government of U.P., Lucknow.

(vi) Address for service of notices : J-3, Housing Board Colony, 6, Park Road, Lucknow.

2. Particulars of the respondents:

(i) Name and/or designation of the respondents

1. Union of India, through the Secretary, Personnel and Training, Government of India, North Block, Vijay Chowk, New Delhi.

2. State of Uttar Pradesh, through Chief Secretary, Appointment, Sachivalaya, Annexie Bhawan, Lucknow.

(ii) Office address of the respondents

As above

(iii) Address for service of notices

As above

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

(A) (i) Order number with reference to Annexure number. : Notification no.14014/17/86-AIS(I) dated Annexure No.A-4.

(ii) Date : 18.1.1988

(iii) Passed by : Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Government of India, Published in the Government of India Gazette in Part II Section 3(i) (Extraordinary).

(B) : Order Notification No. 14014/17/86-AIS(I) dated 18.1.1988 passed by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Government of India, published in the Government of India Gazette in Part II Section 3(i) (Extraordinary).

4. Subject in brief:

By the aforementioned notification rules

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called the Indian Administrative Service (Regulation of Seniority) First Amendment Rules, 1988 have been notified bringing about an amendment in rule 3(3)(ii) in the IAS (Regulation of Seniority) Rules, 1987.

The said amendment aims at giving additional weightage to promotee officers in the assignment of their year of allotment on account of the considerable frustration that they suffer due to belated promotions to the I.A.S., so that they may be able to get Supertime Scale in I.A.S. before Superannuation. But the amendment, as it has been done, has failed to achieve this objective. It has consequently resulted in denial of weightage in seniority to the applicants who are promotee officers and who are also suffering frustration on account of their belated promotion to the I.A.S.

5. Jurisdiction of the Tribunal:

The applicants declare that the subject-matter of the order against which the applicants want redressal is within the jurisdiction of this Hon'ble Tribunal.

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6. Limitation:

Applicants further declare that the petition is within limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.

7. Facts of the case:

7.1. That applicants 1 to 5 after brilliant academic record entered in the U.P. Civil Service (Executive Branch) after they were selected at a combined competitive examination conducted by the U.P. Public Service Commission. Applicants nos. 1 to 4 were selected at the said combined examination held in the year 1959 while applicant no.5 was selected at the said competitive examination held in the year 1963.

7.2 That the applicants had served the State Government of Uttar Pradesh for 24 years and above. They have had very distinguished service with respondent no.2 and on being found suitable for promotion to the Indian Administrative Service their names were placed in the select list contemplated to be prepared by Regulation 5 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. The applicants 1 to 4 were appointed to the Indian Administrative Service on 23.7.1985 and were confirmed with effect from 23.7.1986. Applicant no.5 was appointed to

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the Indian Administrative Service on 22.7.1987.

7.3 That recruitment and conditions of services of the persons appointed to the Indian Administrative Service are regulated under the provisions of the All India Services Act 1951 ( hereinafter referred to as the Act ). Section 3 of the Act empowers the Central Government to make rules for the regulation of recruitment and conditions of service of persons appointed to I.A.S. In exercise of the said power under section 3 the Central Government amongst other various rules framed rules called the Indian Administrative Service (Regulation of Seniority) Rules, 1954.

7.4 That applicant no.1 had been the President of the U.P. Civil (Executive Branch) Service Association for three years and had been representing respondent no.2 about the delay in promotion of the members of the U.P. Civil Service (Executive Branch) to the I.A.S.

7.5 That the said service Association of which the applicants along with other P.C.S. Officers are members had preferred a representation dated 19.1.1984 to the Hon'ble Minister of Home, Government of India, New Delhi. A true copy of the said representation dated 19.1.1984 is being annexed as Annexure No.A-1 to this application.

A perusal of the said representation would show which fact is hereinagain reiterated that there was great disparity in promotion prospects in the various States of India. Whereas in States like Kerala and Karnataka PCS Officers of 8-10 years of service get into the I.A.S. while in the State of Uttar Pradesh PCS Officers are placed in the IAS after 25-27 years of service. The Association by the said representation suggested remedial measures to remove the said anomalous situation and disparity in promotion prospects of its members. In support of the said assertion of fact applicant no.1 who was the President of the Association referred to the statement made by the then Secretary Personnel, Government of India, before the Estimates Committee of the Parliament. The said statement is as follows:-

" Actually my own experience over the last few months has been that as a result of the existing rules and systems, a lot of distortions have appeared in the operations of the systems. I would give you only one instance. In Karnataka, where I was last month I found that the State Service Officers with a service of only about 12 years were being considered for the select list. But when I went to U.P., I found that the officers who have put in

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even 27 years of service were still out of consideration ..... there is an element of distortion which has come in.

In the said representation the findings of the Estimates Committee have also been referred to. The said Committee in its report made the following observations:-

"The Committee are constrained to find that while in one State, State Civil Service Officers of 12 years seniority are being considered for inclusion in the Select List for promotion to IAS, in another State, Officers with even 27 years seniority are out of the range of consideration for promotion. The Committee would like Government to examine the entire scheme of recruitment to IAS/IPS/IFS by promotion from State Civil/Police/Forest Service so as to evolve a procedure of selection, which ensure that by and large equitable opportunities are available to Officers of comparable seniority and age from different States for promotion to All India Services."

7.6 The Central Government decided to accept the recommendation of the Estimates Committee and

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appointed a High Power Committee consisting of the Secretaries to the Government of India and Chief Secretaries of some States and also decided to ask the Committee to make an analysis of promotion opportunities from State Services to the All India Services and to suggest ways and means to correct the imbalance in promotion prospects. The High Power Committee considered the question whether the seniority rules could be amended to provide for additional weightage in seniority to promote officers to compensate them for their belated promotion to I.A.S. and made recommendations for amendment in seniority rules. The said recommendations were accepted by the Government of India.

7.7 That on the basis of the recommendations of the High Power Committee for amendment in seniority rules the respondent no. 1 by circular letter bearing no. F.No.14014/17/86-AIS (I) dated 9th September, 1986 sent a proposal for adopting a revised formula for fixation of seniority of officers promoted to IAS. A true copy of the said letter dated 9.9.1986 is being annexed as Annexure no. A-2 to this application. A perusal of the said circular would show that with a view to compensate for belated promotion to the I.A.S. of P.C.S. Officers in some States

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the High Power Committee has suggested certain proposals for amendment in the IAS. (Appointment by Promotion) Regulations, 1955. The proposal was for providing additional weightage over and above the year of allotment as per the relevant rules. The period of weightage suggested to be provided was four years for the first 12 years of service in the PCS and thereafter an additional weightage of one year for every 2 or 3 years of service completed in the said Civil Service.

7.8 That by a notification dated 6.11.1987 the Central Government in exercise of power conferred by sub-section (1) of section 3 of the All India Services Act, 1951 made rules called the Indian Administrative Service (Regulation of Seniority) Rules, 1987. The said 1987 rules repealed the I.A.S. (Regulation of Seniority) Rules, 1954 and all other rules corresponding to the said rules in force immediately before the commencement of the 1987 rules. A photostat copy of the said notification dated 6.11.1987 is being annexed as Annexure no. A3 to this application. However, the said rule 1987 did not meet the demand made by the U.P. Civil Service (Executive Branch) Association and accordingly the Association continued to press for its members being given weightage of seniority to compensate for their

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belated promotion to the Indian Administrative Service.

7.9 That the proposal for revised formula for fixation of seniority of promoted officers to the I.A.S. as made by circular letter dated 9.9.1986 was partially given effect to by respondent no.1 when it issued a notification dated 18.1.1988 bringing about certain amendment in rule 3(3)(ii) of the I.A.S. (Regulation of Seniority) Rules, 1987. A photostat copy of the said notification dated 18.1.1988 is being annexed as Annexure No.A-4 to this application.

7.10 That the Indian Administrative Service (Regulation of Seniority) First Amendment Rules, 1988 (hereinafter referred to as the First Amendment Rules, 1988) contained in the notification dated 18.1.1988 have been provided to come into force on the date of their publication in the Official Gazette.

7.11 That the date of publication in Gazette as the date for coming into force of the said First Amendment Rules, 1988 has no nexus with the object sought to be achieved and the purpose for which the said amendment in the IAS (Regulation of Seniority) Rules, 1987 was made. In other words, the purpose for effecting amendment was to remove the

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consequential disparity on account of belated promotions of PCS Officers to the IAS. The said disparity was sought to be remedied to certain extent by providing for a weightage of seniority over and above the year of allotment. The said purpose is not served by only amending rule 3(3) (ii) of the I.A.S. (Regulation of Seniority) Rules, 1987 since this results in exclusion of such of the officers who were promoted to the IAS prior to the publication of the said notification dated 18.1.1988 in which category the applicants would fall.

7.12 That the entire efforts and representations of the applicants some of whom were office-bearers of the Association at the relevant time prior to their promotion to IAS have brought them no benefit at all and the First Amendment Rules made as a result of the said efforts have not given them any relief whatsoever.

7.13 That the purpose of giving weightage in seniority to promote officers and that of implementing the recommendation of the High Power Committee can only be served by adding a proviso to the following effect to Rule 3(2) of IAS (Regulation of Seniority) Rules, 1987 by way of further amendment:-

" Provided that notwithstanding anything

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contained to the contrary in these rules or the I.A.S. (Regulation of Seniority) Rules, 1954 the year of allotment of a promotee officer in service at the commencement of these rules shall be assigned or re-assigned to him in accordance with rule 3(3)(ii) of this Rule."

The incorporation of the proposed proviso still leaves unredressed a further grievance of the applicants against the first proviso to clause (c) of Rule 3(3)(ii). The said proviso reads as under:-

" Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to the service on the basis of an earlier Select List."

The applicants respectfully submit that the said proviso overlooks the fact that the principle of giving weightage to the PCS Officers promoted to the IAS, was only against direct recruits and not vis-a-vis the promoted officers. The said proviso has the effect of deprivation of due weightage contemplated to be given by the earlier provisions of the First Amendment Rules not only to the PCS. Officers already promoted to the IAS but even to

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those who may come to be promoted to the IAS, for several years hereafter. In some cases the deprivation and discrimination would continue to be effective in view of the fact that in the select list it is possible that one of the officers who has been placed in the select list on account of merit alone but has put in only 8 years of service in the P.C.S. while other officers may have put in 23 or 24 years of service. The said exceptionally meritorious officer would get only four years of weightage while officers appointed after him will lose their weightage. Thus the said proviso is not only discriminatory but is a negation of the principle enunciated in the amended provision of rule 3.

7.14. That the present notification does not give any benefit to the applicants. The applicants were promoted to IAS in the senior scale when they had only 7 to 9 years of service before their superannuation. Under the IAS Pay Rules, 1954 the last pay drawn by the applicants in the State Civil Service is protected up to Rs. 5700/- only in the IAS. However, in the remaining period of service in the IAS, i.e., 7 to 9 years which the applicants have, the applicants would reach the stage of Rs. 5000/- only in the scale of Rs.3950-5000 (Junior Administrative Grade) just before their

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superannuation. Had the applicants refused to join IAS and had continued in the State Civil Service, the maximum salary that the applicants would have drawn near the date of their superannuation would have been Rs. 6500/-. These facts would show that by joining the IAS for certain period, the applicants have been put to financial loss of about Rs. 1500/- per month and after their retirement the recurring loss of Rs. 750/- per month in pension apart from the loss in D.A. till they are eligible to grant of pension.

7.15 That the aforesaid discrepancy has forced a number of officers of the State Civil Service who were on the select list of the IAS to opt out of joining the Indian Administrative Service. The names of the said officers are:-

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1. Ramesh Chandra
2. Mahendra Prakash
3. K.K.N. Singh
4. Ashok Kumar
- and
5. Prabhu Nath Misra

The said officers have been on the select list since 1983 but despite an offer of promotion to the IAS they have refused to join IAS and they have foregone their chances of promotion to IAS.

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7.16 That one Ram Swarup who was also in the U.P. State Civil Service (Executive Branch) was promoted to the Indian Administrative Service in the year 1985 but subsequently looking to the monetary loss sent his resignation from the IAS and his resignation was accepted by opposite-party no.1 and he presently continues in the U.P. State Civil Service (Executive Branch).

7.17 That by way of elaboration of the assertions made in para 7.14 hereinabove it is relevant to state that petitioners 1, 3 and 4 were working in the U.P. Civil Service (Executive Branch) in the then scale of Rs. 2300-2700. This was the position which was obtaining prior to their induction in the I.A.S. The said scale of Rs. 2300-2700 has been recommended to be revised by the U.P. Pay Commission to Rs. 5900-200-6700 and it is moot to state that had the said petitioners continued in the U.P. Civil Service (Executive Branch), they would have now been placed in the said revised scale of Rs. 5900-6700. The present revised senior scale of IAS is Rs. 3200-4700. The said petitioners have accordingly been made to suffer financial loss.

7.18 That by notification dated 13.3.1987 issued by the Government of India, Ministry of Personnel, P.G. and Pensions, (Department of Personnel and Training) rules called the Indian Administrative Service (Pay) Second Amendment Rules, 1987 have

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been made to amend the IAS (Pay) Rules, 1954 which are hereinafter called the Pay Second Amendment Rules, 1987. By the said Pay Second Amendment Rules, 1987 Junior Administrative Grade has been provided for in the scale of Rs. 3950-5000 with effect from the First Day of January, 1986. It has further been provided that a member of the service shall be appointed to the senior scale on his completing four years of service subject to the provisions of sub-rule 2 of rule 6-A of the Indian Administrative Service (Recruitment) Rules, 1954 and to the Junior Administrative Grade on completing 9 years of service. For purposes of calculating 4 years and nine years of service in the said rule it has been provided that it would be from the year of allotment assigned to a member of service.

Applicants 1 to 4, as indicated hereinabove, have been allotted 1980 as the year of allotment. If the IAS (Regulation of Seniority) Rules, 1987 as amended by notification dated 18.1.1988 had been made effective with retrospective effect so as to cover all the members presently working in the IAS, the applicants 1 to 4 would have been eligible to four years weightage and the year of promotion would be reckoned as 1976. On that basis they would have been deemed to have completed 9 years of service in 1985 and to be placed in the Junior Administrative Grade under the

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I.A.S. (Pay) Second Amendment Rules, 1987. The financial loss would have been mitigated to a considerable extent.

It is further relevant to state that over and above the Junior Administrative Grade a selection Grade Rs. 4800-5700 and a super-time scale Rs. 5900-6700 have also been provided for by the IAS (Pay) Second Amendment Rules, 1987. The super-time scale in the IAS is admissible to members of the said service on completing 18 years of service. But State of U.P. has been granting this scale to the members of the service on completion of 16 years only. The applicants 1 to 4 in the event of reckoning of their year of allotment as 1976 and keeping in view the year in which they would be attaining the age of superannuation would reasonably hope to be placed in the super-time scale.

7.19 That it is further relevant to state that the revision in the scales of pay for the U.P. Civil Service (Executive Branch) has been recommended by the U.P. Pay Commission subsequent to the applicants confirmation in the IAS thus leaving no option to the said applicants to revert back to the U.P. Civil Service (Executive Branch).

7.20 That under section 3 of All India Services Act, 1951 the Central Government has been enjoined

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to make rules after consultation with the Governments of the States concerned. In pursuance of the said provision the proposal contained in letter dated 9.9.1986 (Annexure A-2) was sent by the respondent no.1 to the State Governments. Since in the said letter it had not been specified that the proposal would be made effective only from a future date and exclude the benefit of the said proposal for adopting a revised formula for fixation of seniority for officers who had already been promoted to IAS, the amended rules necessarily has resulted in their being no consultation with State Government on that aspect of the matter.

7.21 That being aggrieved by the provision in the notification dated 18.1.1988 whereby the amended rules have been made effective only for the future promotee officers, the applicants are preferring the present petition which would otherwise be cognizable by the Hon'ble High Court under Article 226 of the Constitution of India and are challenging the said amendment on the following, amongst others,

G R O U N D S

(a) Because the provision in the Amendment Rules contained in Annexure A-4 that they apply only to officers appointed to the

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service after the commencement of these rules is clearly arbitrary and violative of the provisions of Articles 14 and 16 of the Constitution of India.

(b) Because the amendment made has no nexus with the object and purpose for which the amendments to the IAS (Regulation of Seniority) Rules were being made. The provision that the said Amendment Rules would come into force on the date of their publication in the official Gazette has unjustifiably resulted in ~~exempt~~ exclusion of officers of the State Civil Service brought into the IAS prior to the date of publication of the said Amendment Rules.

(c) Because under section 3 of All India Services Act before making rules regulating conditions of recruitment it is incumbent on the Central Government to consult the State Governments. In view of the divergence in the proposal sent for purposes of obtaining the said consultation from the State Governments and the final shape in which the Amendment Rules have been framed is violative of the said provision of

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section 3 and it must be held that there was no consultation with the State Governments as far as that aspect is concerned.

(d) Because it is against all good sense that incumbents like the applicants receiving promotion to IAS retire at a salary of Rs. 5000/- per month which is less than the salary they would be entitled to had they not opted for I.A.S. This could easily be eliminated by making Annexure A-4 retrospective.

(e) Because respondent no.1 was committed to give one year's benefit in I.A.S. for every three years completed service in P.C.S. to an incumbent of the letter who got promoted; therefore the provision of Annexure A-4 depriving the applicants of the benefit of accepted principle of weightage in seniority is negation of justice.

(f) *2/1/6*  
Because otherwise also the respondent no.1, to make the weightage system intelligible and uniform and not offending against the equality clause has to be directed to give the benefit of Annexure A-4 retrospectively so as to cover all the applicants.

(g) Because the directly appointed I.A.S. Officers lose nothing, if promoted officers to the I.A.S.

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are given weightage as the direct recruits to the I.A.S. get promotion according to the time scale in each State.

(h) Because the provision in Annexure A-4 making it applicable to officers appointed to the Service after the commencement of these rules suffers from the vice of breach of promise of giving weightage to the applicants.

#### 8. Relief Sought

It is most humbly and respectfully prayed that this Hon'ble ~~Tri~~ibunal may be pleased:

(i) to hold the provisions contained in the IAS (Regulation of Seniority) First Amendment Rules, 1988 as notified by notification dated 18.1.1988 and contained in Annexure-A-4 to this application as insufficient, arbitrary and violative of Article 14 of the Constitution and issue direction to respondents nos.1 and 2 to further amend the I.A.S. (Regulation of Seniority) Rules, 1987 by adding the proviso as given in para 7.13 of this application to Rule 3(2).

(ii) to issue a further direction to respondents nos.1 and 2 to apply the provisions in the said Amendment Rules, 1988 to the applicants

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and to give them weightage in seniority over and above the year of allotment with all consequential benefits in the matter of fixation of pay, promotion and placement in the next higher grades from the date on which each of the applicants becomes entitled consequently.

(iii) to give the applicants such other benefits and reliefs as this Hon'ble Tribunal may deem just and proper in the circumstances of the case.

(iv) to award to the applicants the costs of this application.

9. The applicants further declare that the subject-matter of the present application is not pending in any court of law but the applicants have learnt that the direct recruits have presented a petition in 1988- A.C.Pandey and others versus Union of India and another which is pending at the Additional Bench at Allahabad on 8th December, 1988.

10. Particulars of the Bank Draft.

Name of the Bank

D.D.NO.

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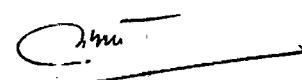
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11. List of enclosures.

1. Representation dated 19.1.1984.
2. Letter dated 9.9.1986.
3. Notification dated 6.11.1987
4. Notification dated 18.1.1988

VERIFICATION

I, Niroti Lal Gupta, aged about 53 years, son of Sri Mani Ram, resident of C-17, Butler Palace Colony, Lucknow, presently posted as Additional Commissioner, Sales Tax, U.P., P.C.P., Building, Station Road, Lucknow, do hereby verify that the contents of paras 1 to 11 are true to my personal knowledge and belief and that I have not suppressed any material fact.

  
(N.L.GUPTA)  
Applicant No.1.

Lucknow:

Dated: January , 1989 Counsel for the applicants.

To

The Registrar,  
Central Administrative Tribunal,  
Lucknow Circle, Lucknow.

(A.Y.)

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In the Central Administrative Tribunal  
Additional Bench at Allahabad,  
Lucknow Circle, Lucknow.

REPLY  
Miroti Lal Upadhyay and others ... respondents  
and

Union of India and another ... respondents  
*Amicus No A/1*  
... Civil Service Association  
(Executive Branch)

Council House  
Lucknow  
Dear Sirs...  
Dated January, 10, 1979  
Hon'ble Minister of Home,  
Government of India,  
New Delhi.

Sir,

The I.P.C. Civil Service/Executive Branch  
Association seeks your indulgence in certain  
matters affecting the I.P.C. Civil Service  
Executive Branch on account of discriminatory  
provisions included in the Indian Administrative  
Service rules and some other factors. Needless to  
point out that the I.P.C. Civil Service has its  
own history and traditions. Its role in the  
pre and post independence administrative set up  
has earned for it a reputation unmatched by any  
other service. At different times it has been  
described as the backbone of the administration  
in the state or the number one service.

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state...ole played by its earstwhile members in the administration of post independence India is duly recognise..

All went well for a decent or so, after the Independence when its promotions were linked with the Indian Administrative Services. People with 11-12 years of seniority in the PSC got into IAS and generally, retired with a seniority of about 25 years in the All India service with all its benefit. But gradually the situation deteriorate and in this state officers of 27-28 years of seniority began to be taken into the IAS. The result is that their seniority in the IAS at the time of retirement come to be not more than 12-13 years. At present, consequently, when P....C. Takru, who is working as the Secretary of Uttar Pradesh retires, no one promoted from the PSC will remain in the rank of a commissioner and none is likely to reach that state in the foreseeable future unless remedial measures are taken at once.

The plight of this service is further aggravated when its promotion prospects are compared with those of their counterparts in states like Kerala, Tamil Nadu, Karnataka, Andhra, Maharashtra, Punjab and Jammu and many other states. Whereas in Kerala and Karnataka PSC officer of 8-10 years of seniority are getting into the IAS, in Uttar Pradesh it is taking 17 years time to

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that goal, the prime of their lives is spent by these officers in subordinate positions. Officers recruited in the year 1957 are yet to be absorbed to the All India service. This disorderly and the promotion prospects is telling upon the efficiency and morale of the members of the service in this state. This fact, as appreciated by the then Secretary Personnel, Government of India, when he deposited before the estimates committee in the following words.

" Actually my own experience over the last few months has been that as a result of the existing rules and systems, a lot of distortions have appeared in the operations of the systems. I could give you one instance. In Karnataka here, I was last man to find that the state service officers with a service of only about 12 years were being considered for the select list. But when I went to B.P., I found that the officers who have put in even 27 years of service were still out of consideration... there is an element of distortion which has come in".

and the estimates committee later on observed as follows:-

" The Committee are constrained to find that while in one state, state civil service officers of 12 years seniority are being considered for inclusion in the select list for promotion to being another state, officers with even 27 years seniority are out of the select list.

consideration for promotion. The Committee would like Government to examine the entire scheme of recruitment to T.A.S/I.P.S.

T.A.S by promotion i.e. state civil / Forest Service so as to evolve a procedure of selection, which ensure that by and large equitable opportunities are available to officers of comparable seniority and experience from different states for promotion to All India Services".

The members of the services are aware that the management of this cadre is the responsibility of the State Government, but ever since the linkage of the promotions of the members of this service with that of the T.A.S, the State Government expresses their inability to do much in the latter. The excuse put forth is that they cannot create a parallel to the T.A.S, and that since the members of this service are promoted to the T.A.S they cannot be given channels of substantial promotions independently. whenever an effort is made to create any new scale in this service, the matter is invariably referred to Government of India, for clearance. Therefore, this service has to approach the Government of India for issuing a directive to the State Government to do something for the removal of the grievances of this cadre besides what the Government of India has to do by way of removing the discriminatory provisions contained in the T.A.S service rules. They would like

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first to point out the provision of the T.A.S. rules which have been incorporated or amended to favour the direct recruits viz-a-viz the permanent staff.

1. The rule 33-A

In the rule 33-A it is provided that 15% posts of the T.A.S. are to be filled by promotions from the P.G.S./Administrative Service. While computing this percentage, the posts in the leave reserve and the state deputation reserve are not taken into account.

The posts of these two categories are earmarked for the direct recruits, whereas it should have been otherwise.

2. The rules provide that in special circumstances the Central Government may on the recommendation of the State Government concerned and in consultation with the commission recruit to the service any person of outstanding ability and merit serving in connection with the affairs of the state who is not a member of the state civil service but has held a gazetted post in a substantive capacity. Such requirement can be to the extent of 15% of the posts fixed for promotion from the state services. This provision, by itself, is only an enabling provision and does not impose on Government of India or the State Government of any duty to recruit officers from other services for the posts in the T.A.S., neither, the authority to the Government of a state is controlled and abridged by the clause "in special circumstances". The Government must first come to a conclusion that "special circumstances" exist to warrant recruitment.

In other services and that they must see that officers of outstanding ability and merit are available in other services. Our contention is, that under the rules, unless special circumstances warrant such recruitment, it cannot be done. But during the last 4-5 years the Government have made it a practice to deprive the already hard pressed cadre of this service in this state of one or two posts every year by giving them away to the members of other services though they have their own channels of reasonable promotions. This needs immediate attention of the Government of India.

#### Fixation of Seniority

In the matter of fixation of seniority, favour has been shown to the direct recruits. To exemplify the discriminatory character of the rules, example of the State Civil Service of the Uttar Pradesh here promoted ~~\*\*~~ officers are given preference over direct recruits while fixing the seniority may be cited. In the ~~\*\*~~ all the promoted officers are placed below the junior most direct recruit who has started officiating in the senior scale of the ~~\*\*~~. This provision sometimes creates very peculiar situations. For example if ~~\*\*~~ and ~~\*\*~~ are promoted to the ~~\*\*~~ and ~~\*\*~~ was senior to ~~\*\*~~ in the State Civil Services, ~~\*\*~~ has to remain junior to ~~\*\*~~ in the ~~\*\*~~ if they are promoted simultaneously, and if ~~\*\*~~ joins the ~~\*\*~~, before ten direct recruits are promoted to the senior scale, but ~~\*\*~~ joins the ~~\*\*~~ due to certain reasons, after those ten officers, in such a case ~~\*\*~~ has to lose his seniority over the ten direct recruits. There is no fixed ratio.

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now to fix inter-seniority of the direct and promoted IAS officers. The Government must pay its attention to this anomaly.

#### 3) Promotion quota:

At present only 35-1/3 percent posts of the senior duty posts of the IAS are reserved for promotion. Considering the vast cadre's obtaining in the states particularly the bigger ones, the percentage of promotion to the IAS must be raised to at least 50. This will remove the imbalance between the officers inducted from the two sources and give appropriate recognition to the experience and age and ultimately will help to bring balanced approach in the administration, as already recommended and in principle has been accepted by Government of India.

#### 4) Fixation of pay

Previously promoted officers were generally fixed at a higher level in the senior scale and had to wait till at the maximum of the scale before getting promotion to the selection grade, were given one increment immediately in the selection grade if they had remained at the maximum of the scale for not less than a year. At no. rule has been revised and every day including the promoted officer have to wait at the initial of the selection grade which happens to be the same as the maximum of the senior scale of one year before getting the next increment. This rule, obviously, has been made to harm the promoted officer. The direct recruits

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generally get promotions to the selection grade on completion of 11-13 years by which time they reach only about 16 0 in the senior scale and they are allowed a jump of about L.S. 400/- when promoted to the selection grade of the senior scale. On the other hand in I.P.A. a promoted officer is fixed at the maximum of the senior scale when he is promoted to the I.P.A. or reaches that stage within 2-3 years with the result that he has to mark time at the stage of L.S. 1,000/- (maximum of the senior scale) for 225/- 'selection grade' he had again to mark at the same stage for one year more. At the time when Government allow special increment without any promotions to those who are held up at the maximum of a scale for three years, this amendment of the rule with a view to harming only the promoted officers is highly objectionable and discriminatory.

Emendial measures suggested:-

1. The promotion quota to the I.P.A. must be raised from 55-1/3 to 50.
2. While computing the promotion quota posts in the leave reserve and state deputation reserve should also be taken into consideration.
3. The I.P.A. rules should be amended in order to remove discriminatory provisions in respect of fixation of seniority and pay.
4. In states like I.P.A. all recruitents to the first class services must be stopped until and until the position improves substantially.

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- 9 -

5. Government of Uttar Pradesh should be directed to take remedial measures to improve the promotion prospects of the state cadre so that the members of this cadre do not feel disgruntled when they compare themselves with members of sister services either in this state or the civil services of other states of the country.

telegraphed from T.C.  
to [unclear] Ad

Yours faithfully,  
Ed. Heigle  
Montgomery,  
President

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(Abo)

30

In the Central Administration Tribunal  
Additional Bench at Allahabad,  
Lucknow Circle, Lucknow.

REPLY

Wiroti Lal Gupta and others.... .... Petitioners

C.R.

Union of India and another ... Respondents  
Amendment 42

.....14/17/86-AI(I)

Government of India

Ministry of Personnel, Public Grievances & Pensions

Department of Personnel and Training

Dear Sir/Madam

the 8th Sept., 1986

To

The Chief Secretaries of all the  
State Government (HP)

Subject: I.A.S.-Seniority-Proposal for adopting a revised  
formula for fixation of seniority of  
promoted officers.

Sir,

I am directed to refer to this Department's  
letter No. 14/17/86-AI(I) dated 30th July, 1986  
on the above mentioned subject and to say that under  
rule 5(2) of the I.A.S. (Appointment by promotion)  
Regulations, 1955, a State Civil Service Officer is  
eligible for being considered for promotion  
only when he has completed 8 years of continuous  
service. However, in practice it has been found that  
the promotions are in the Civil Service

takes place as early as in 8-10 years in some states and as late as 25-28 years in some other states. The belated promotions to the IAS in some of the states cause considerable frustration that they are not able to get super-time scale as before superannuation. It is in this context that the question was considered in High Power Committee whether the seniority rules can be amended to provide for additional weightage in seniority to such officers to compensate them for their belated promotions to IAS.

The suggestion mentioned in para 2 of this Department's letter dated 30.7.1976 is, therefore, modified as follows:-

- (i) The years of allotment of the state civil Service officers and able to be by promotion may first be calculated as per the present rules.
- (ii) Therefore, an additional weightage may be given over and above the year of allotment determined as per present rules.
- (iii) From the total service rendered by the officer in the state civil Service, the first 12 years of service referred to in the third proviso to rule 5(2) of IAS (Appointment by promotion) regulations, 1953 may be excluded and for the balance of the said service, an additional weightage may be given at the rate of one year for every two or three years of service subject to a upper ceiling of 15 years. ~~On the above, modifications, the annexure referred to in para 3 of this Department's letter~~

(Ab<sup>2</sup>)

-3-

32

30.7.1986 has been revised and is enclosed  
for information of the State Government

3. It is requested that the views of the  
State Government may now be communicated  
to this Department on the modified suggestions  
contained in para 2 above.

Yours faithfully,

Shri ...upta  
Joint Secretary to the  
Govt. of  
India.

Answered from  
T.E.

Answered  
16/12/88 Red.  
Mr. K. K. Dube

2/101

P 63  
33

In the Central Administrative Tribunal,

Additional Bench at Allahabad

Lucknow Circle, Lucknow

--

Application no.

of 1988

BETWEEN

Niroti Lal Gupta and others

-Applicants

AND

Union of India and another

-Respondents

Annexure no. A-3

In reply  
Ans

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34

PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY  
PART II SECTION 3 SUB SECTION (1) DATED 6.11.87.

Government of India  
Ministry of Personnel, Public Grievances and Pensions

Department of Personnel & Training

New Delhi, the 6th November, 1987.

NOTIFICATION

Ref: GSR No. 896 (R). In exercise of powers conferred by sub-section (1) of section 3 of the All India Services Act, 1951 (61 of 1951), the Central Government, after consultation with the Government of States concerned, hereby makes the following rules, namely:

1. Short title and commencement. (1) These rules may be called the Indian Administrative Service (Regulation of Seniority) Rules, 1987.

(2) They shall come into force on the date of their publication in the official Gazette.

2. Definitions. In these rules, unless the context otherwise requires,

(a) 'cadre' means the Indian Administrative Service Cadre constituted in accordance with rule 3 of the Cadre Rules;

(b) 'Cadre Rules' means the Indian Administrative Service (Cadre) Rules, 1954;

(c) 'Cadre Schedule' means the Schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955;

(d) 'Commission' means the Union Public Service Commission;

(e) 'competitive examination' means the examination referred to in rule 7 of the Recruitment Rules;

(f) 'direct recruit officer' means an officer appointed to the service through a competitive examination in accordance with rule 7 of the Recruitment Rules;

(g) 'gradation list' means the gradation list prepared under rule 5 of these rules;

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H.M.

Provided that if a direct recruit officer is permitted to join probationary training under Rule 5(1) of the IAS (Probation) Rules, 1954, with direct recruit officers of a subsequent year of allotment, then he shall be assigned that subsequent year as the year of allotment.

(ii) the year of allotment of a promotee officer shall be the same as the year of allotment of the junior-most among the direct recruit officers who officiated continuously in a senior post from a date earlier to the date of appointment of the promotee officer to the Service.

(iii) The year of allotment of an officer appointed by ex selection may be determined ad hoc by the Central Government on the recommendation of the State or the Government concerned and in consultation with the Commission.

Provided that he shall not be allotted a year, or earlier than the year of allotment of a promotee officer already appointed to the Service and whose length of service in the State Civil Service is more than the length of continuous service of the former in connection with the affairs of the State.

(4) Notwithstanding anything contained in clause (ii) of these sub-rules, (3), if a promotee officer officiated continuously in a senior post in accordance with the provisions of rule 9 of the Cadre Rules, he may be assigned the year of allotment of the junior most direct recruit officer who was appointed to officiate in a senior post from a date earlier to the date of commencement of such officiation of the promotee officer, subject to the following conditions that,

(a) the name of the promotee officer is included in all the Select Lists in force between the date of his officiation and the date of his appointment to the service;

(b) the name of the promotee officer is included in all the Select Lists in force between the date of his officiation and the date of his appointment to the service;

Provided that where the name of an officer was included in the Select List in force immediately before the re-organisation of the States and is also included in Select List prepared subsequently to the date of such reorganisation the name of such officer shall be deemed to have been included in the Select List prepared subsequently to the date of such reorganisation.

(ii) the name of the promotee officer is included in all the Select Lists in force between the date of his officiation and the date of his appointment to the service;

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(d) a Select List Officer shall be treated as having officiated in a senior post during any period of leave or training if the State Government issues a certificate that but for such leave or training, he would have so officiated in a senior post if he had been in a senior post during that period.

(e) an Officer who occupies a lower rank in a Select List shall not be given the benefit of such officiation in a senior post/ex-cadre post from a date earlier to the date from which such benefit is admissible to an officer who is higher in rank in that Select List.

4. Inter-se seniority of the officers who are assigned the same year of allotment. - The inter-se seniority of the officers appointed to the Service shall be in the following order and in each category the inter-se seniority shall be determined in the following manner -

(i) direct recruit officers shall be ranked inter-se in the order of merit as determined in accordance with rule 10 of the Indian Administrative Service (Probation) Rules, 1954; eggs eligible to selection.

(ii) promotee officers shall be ranked inter-se in the order of their dates of appointment to the Service.

Provided that if the date of appointment of more than one officer is the same, their inter-se seniority shall be in the order in which their names are arranged in the Select List on the date of appointment to the Service;

(iii) officers appointed by selection shall be ranked inter-se in the order in which their names are arranged by the Commission for the purpose of appointment to the Service by selection.

5. Gradation List. - There shall be prepared every year for each State Cadre and Joint Cadre a gradation list consisting of the names of all officers borne on that cadre arranged in order of seniority.

6. Fixation of the Seniority of officers transferred to another cadre. - (1) If a direct recruit officer is transferred from one cadre to another in public interest, his year of allotment shall remain unchanged and his inter-se position among the direct recruits having the same year of allotment in the cadre to which he is transferred shall remain the same as determined in accordance with rule 10 of the Indian Administrative Service (Probation) Rules, 1954.

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10/10/1988

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- : 7 :-

No. 14014/76/84-AIS(I)

Dated, the

November'87

Copy forwarded for information to :-

1. All State Governments (with 2 spare copies).
2. All Union Territories (except Delhi, Pondicherry, Lakshdweep and Chandigarh) (with 2 spare copies).
3. Ministry of Environment and Forests, IES-II Section, New Delhi.
4. Ministry of Home Affairs, (IPS) Section.
5. All Accountant Generals.
6. Ministry of Law & Justice (Department of Legislature), N. Delhi.
7. The Comptroller & Auditor General of India, New Delhi.
8. The Secretary, Union Public Service Commission, New Delhi (with 5 spare copies).
9. Lok Sabha Secretariat, New Delhi (Committee Branch).
10. Rajya Sabha Secretariat, New Delhi with reference to their Memorandum No. RS.12(1)/67-Com. dated the 11th September'67 and O.M. No. RS.7(21)/69-Com. dated the 27th Jan., 1969 for the use of Committee on Subordinate Legislation (with 1 spare copy).

(D. P. Bagchi)

Joint Secretary to the Govt. of India

200 spare copies.

*Retained from*

*16/12/83*

462

41

In the Central Administrative Tribunal  
Additional Bench at Allahabad,  
Lucknow Circle, Lucknow

---

Application no.

of 1988

BETWEEN

Niroti Lal Gupta and others

-Applicants

AND

Union of India and another

-Respondents

---  
Annexure no- A-4

Annexure A-4

(AIA)  
A.Y-6-2 PA.4  
42

(TO BE PUBLISHED IN THE GAZETTE OF INDIA IN  
PART II SECTION 3(i) EXTRAORDINARY)

No. 14014/17/86-AIS(I)  
Government of India  
Ministry of Personnel, P.G. & Pensions.  
(Department of Personnel & Training)

.....  
New Delhi, the 18 Jan., 1988.

NOTIFICATION

G.S.R. NO..... In exercise of the powers conferred by sub-section (1) of section 3 of the All India Services Act, 1951 (61 of 1951), the Central Government, after consultation with the Government of States, hereby makes the following rules further to amend the Indian Administrative Service (Regulation of Seniority) Rules, 1987, namely : -

1. (1) These rules may be called the Indian Administrative Service (Regulation of Seniority) First Amendment Rules, 1988.  
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the IAS (Regulation of Seniority) Rules, 1987 Rule 3(3) (ii) shall be amended as below :  
"(ii) The year of allotment of a promoted officer shall be determined in the following manner : -
  - (a) For the service rendered by him in the State Civil Service upto twelve years, in the rank not below that of a Deputy collector or equivalent, he shall be given a weightage of four years towards fixation of the year allotment;
  - (b) he shall also be given a weightage of one year for every completed three years of service beyond the period of twelve years, referred to in sub-clause (a), subject to a maximum weightage of five years. In this calculation, fractions are to be ignored;
  - (c) the weightage mentioned in sub-clause (b), shall be calculated with effect from the year in which the officer is appointed to the service :  
Provided that he shall not be assigned a year of allotment earlier than the year

..... 2/-

*Mr. K. K. K. K. K.*

*1. C. A. M.*

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No. 14014/17/86-HIS (I) New Delhi, the 18 January, 1986  
Copy forwarded for information to:-

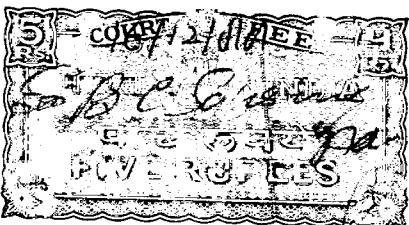
1. The Chief Secretaries of all the State Governments.
2. Ministry of Home Affairs (IPS) Section/UTS Section.
3. Ministry of Environment & Forests (IFS II Section).
4. All Accountant Generals.
5. Ministry of Law & Justice (Department of Legislation) N.Delhi.
6. The Comptroller and Auditor General of India, New Delhi.
7. The Secretary, Union Public Service Commission, New Delhi.
8. Lok Sabha Secretariat, New Delhi (Committee Branch)
9. Rajya Sabha Secretariat, New Delhi.
10. AIS.II Section, Department of Personnel and Training.

(RANJAN CHATTERJEE)  
Deputy Secretary to the Govt. of India

*In file*  
*Attached from F.C.*  
*Ansord*  
*16/12/86 Ad.*  
*Cm*

[वादी] अपीलान्ट ✓  
प्रतिवादी [रेस्पान्डेन्ट] ✓

श्री



(टिल्ट)

Niraj Kumar Gupta and others  
vs

Union of India & Others (रेस्पान्डेन्ट)

मुकदमा नं०

सन् ८८

पेशी की ता०

१६ ई०

ऊपर लिखे मुकदमा में अपनी ओर से श्री

Shri B.C. Salwana - Advocate

वकील

Shri S.C. Khandelwal - Advocate

महोदय  
एडवोकेट

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ कि इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जबाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया बसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकदमा उठावें या कोई रुपया जमा करें या हमारी या विपक्षी (फरीकासनी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर पुक्त (दस्तखती) रसीद लेवें या पंच नियुक्त करें-वकील महोदय द्वारा को गई वह सब कार्यदाही हमको सर्वथा स्वीकार है और होगी से यह की स्वीकार करता हूँ कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूँगा उपर मुकदमा अदम पैरवी में एक तरफ मेरे विलाप फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह अदालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे ।

Accepted  
B.C. Salwana

हस्ताक्षर

साक्षी (गवाह)

साक्षी (गवाह)

Accepted  
S.C. Khandelwal

दिनांक

महीना

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ग्रन्तीकार पुस्तकालय

(AP)

IN THE CIVIL APPELLATE DIVISION OF THE  
CIRCUIT BENCH: LUCKNOW.  
Case No. 18 of 1969.

Shiroti L. I. Gupta & Others ... Applicants  
Versus  
Union of India & others ... Respondents

COUNTER AFFIDAVIT OF DEPOSER OF  
RESPONDENT NO. 1 & 2

L. R. S. Mathur aged about 46 years son of Late D. P. Mathur  
Desk Officer, Department of Personnel & Training, Government  
of India, New Delhi do hereby solemnly affirm and state as  
under :-

1. That the deponent is Desk Officer in the Ministry  
of Personnel, Public Grievances & Pensions, Deptt.  
of Personnel and Training, Government of India,  
New Delhi and is authorised to swear this affidavit  
on behalf of respondents.

2. That the deponent has read the petition filed by  
the applicants and it is understood the contents  
thereof.

3. That the deponent is fully conversant with the facts  
of the case deposed herein after.

4. That the contents of para 1 to 6 of the application  
are correct and need no comments.

5. That the content of para 7.1. and 7.2 of the applica-  
tion are admitted except that Sri R. S. Vashney

11-8-79

ASO

was appointed in IAS after completing 23 years of service in State Civil Service.

6. That the contents of para 7.4 call for no comments.
7. That the contents of para 7.5 to 7.10 of the application are admitted. It is, however, stated that Govt. of India had sent a proposal to all the state govt. for introducing a weightage formula for fixation of seniority of the State Civil Service officers appointed to the IAS by promotion as contained in their letter no. F.N.14014/7/86-IAS(4) dated 9.9.86 (Annexure A.2 of the application). The state of U.P. (Respondent no.2) sent their concurrence to the said proposal vide their letter no.1211/II-1-19/1(96)86 dt. 13.2.87. After having received the concurrence of their proposal from all the State governments, the respondent no.1 (Govt. of India) issued notification no. 14014/17/86-IAS(1) dated 18.1.88, giving effect to the above proposal by amending rule 3(3)(ii) of the IAS (Regulation of Seniority) Rules, 1987 (Annexure No.A-4) as First Amendment Rules, 1988.
8. That in reply to the content of para 7.11 of the application it is stated that the amendment to Rule 3(3) (ii) of the IAS (Regulation of Seniority) Rules 1987 called First Amendment Rules, 1988 introduced under notification dt. 18.1.88, came into force on the date of their publication in the Gazette i.e. 13.1.88. An amendment to a rule cannot be made effective retrospectively. The

Cont....3.



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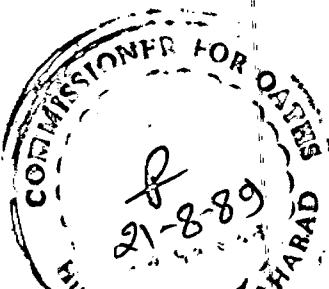
(A74)

amendment is to be operative only prospectively.

Since the promoted officers will be getting higher seniority in the IAS than what they would have got prior to the amendment, therefore the directly recruited IAS recruited IAS officers are adversely affected. It was, therefore, not legally permissible to apply these amendments retrospectively. Besides, it was neither desirable nor feasible to reopen all the past cases for re-determination of seniority as it would have led to unsettling the issues settled long ago. The amendment was, therefore, rightly given effect from the date of its publication in the official gazette dated 18.1.1988. It has never been <sup>the</sup> intention of the Union of India, Respondent no.1 in this case, to give higher seniority to those promoted officers who were already in position and therefore it is not correct for the applicants to allege that the purpose of removing the disparity could not be served by the said amendments.

9. That the contents of ~~para~~ 7.12 of the application are admitted. No benefit of the amendment to Seniority rules is admissible to the applicants as they were appointed to the IAS by promotion prior to 18.1.88.

10. That in reply to the contents of para 7.13 of the application it is stated that the proviso suggested by the applicants in this paragraph cannot be adopted, as the proposed proviso would require the amended rule to have retrospective effect. As regards the apprehension of the applicant that if an officer with 8 years of service in the State Civil Service is placed in the select list on account of merit alone then he will restrict the seniority of the officers to be



(A75)

appointed after him, who may have put in much longer service, it is submitted that this apprehension is without any basis. The IAS (Appointment by Promotion) Regulations, 1955 have been amended on 30.3.89 according to which how the zone of consideration of the eligible officers has been reduced from six times the number of vacancies to a little more than three and half times the number of vacancies.

~~Zone of consideration is three and half times the number of vacancies.~~ In view of this, the possibility of a junior officer, with much less service, superseding any senior officer, ~~with much less service, superseding~~ ~~in consideration of senior officers~~ with much longer service, has been considerably reduced because the officers within the zone of consideration will be having more or less equal length of service.

11. That in reply to the contents of para 7.14 of the application it is admitted that the present amendment does not give any benefit to the applicant. However, it is submitted that the petitioner nos. 1 to 4 have been allotted 1980 as the year of allotment in accordance with the old rules and as such they will be eligible for Junior Administrative Grade of Rs.3950-5000/- after 9 years of service, ~~from the~~ ~~date of their appointment to the IAS.~~

12. That in reply to the contents of para 7.15 and 7.16 it is stated that Sri Ramesh Chandra who was appointed to IAS from promotion quota on 11.6.84,

Cont....



resigned from the I.A.S. and his resignation was accepted by the Govt. of India with effect from 11.6.84. Sri Ram Swarup who was appointed to I.A.S. from promotion quota on 23.7.85 also resigned from I.A.S. and his resignation has been accepted w.e.f. 22.6.88. S/sri Mahendra Prakash, Prabhu Nath Misra, K.K. N. Singh and Ashok Kumar who were in the IAS Select list, however, did not give their option for appointment to I.A.S. and they were left out and officers next to them in the Select List were appointed to I.A.S.

13. That in reply to the contents of para 7.17 of the application it is stated that the petitioner no. 1, 3 and 4 were appointed to the IAS on 23.7.85. After obtaining their options for joining the IAS. It will be relevant to point out that for protection of pay of promotee officers upto 5700/-, the Govt. of India have issued orders vide their letter No. 11030/25/87-AIS (II) dt. 21.1.88.

24. That in reply to para 7.18 of the application it is stated that the seniority of the petitioner no. 1 to 4 has been fixed according to old rules and they have been given 1980 as the year of allotment. The amendment to the Seniority List cannot be applied to the applicants and the averments made in this regard are misplaced.

15. That in reply to the contents of para 7.19 of the application it is stated that the orders of confirmation in respect of petitioner no.5 have not yet

Cont....6.



(ATT)

issued.  
been received from [redacted]. Rest of  
the contents need no comments.

16. That in reply to the contents of para 7.20 of the application it is stated that this respondent had sought the comments of the State Government, in letter dated 9.9.86 on the proposal to amend the Seniority Rules for introduction of the weightage formula. It was not necessary to specify in that letter that the amendment to the rules will be made with prospective effect because it is very well understood by all the State Governments that an amendment to the rules can be made only with prospective effect unless nobody is adversely affected by such an amendment. Since the direct recruit IAS officers would have been adversely affected by amending the rules retrospectively, therefore, there was no need to write to the State Governments specifically that the amendments will cover only the future cases. In fact no State Government had any doubt about this particular issue.

17. That the contention of the applicant as indicated in para 7.21 (a) of the application that the prospective applicability of the amendments is arbitrary and violative of the provisions of Articles 14 and 16 of the Constitution is denied. On the other hand any retrospective application of this amendment would have been discriminatory against the direct recruit IAS officers and also against the principle of natural justice.

Cont..7



(A78)

18. That in reply to said sub paras (b) to (h) of para 7.21 of the application it is stated that in view of the averments made in the preceding paragraphs, the grounds taken by the applicant are not tenable in fact and law, the application lacks merit and liable to be dismissed with costs.

19. That in reply to para 8 of the application it is stated that applicant has failed to make out a case for the relief sought by them.

20. That in reply to para 9 of the application it is stated that Sri A.C. Pandey, I.A.S. (R.R.-84) and other officers have filed a petition No.928 of 1983 in the Central Administrative Tribunal, Allahabad Bench against Government of India, Department of Personnel & Training Notification No.14014/17/86-IAS(I) dated January 18, 1988 by which Rule 3(3)(ii) of IAS (Regulation of Seniority) Rules, 1987 has been amended.

Lucknow, dated,

August 21, 1989

*Deo dñs*  
D A P O N S A R T

VERIFICATION

I, the abovenamed deponent do hereby verify that the contents of paras 1 of this affidavit are true to my personal knowledge and those of paras of this affidavit are based on record and those of paras of this affidavit are based on legal advise which all I believe to be true and that no concealed in it. So help me God.

Lucknow, dated 21-8-89

*Deo dñs*  
D A P O N S A R T

I identify the deponent who has signed before me and is personally known to me.

*J. I. - A*  
ADVOCATE

Solemnly affirmed before me on this 21 day of August 1989 at 3-15 pm by the deponent who has been identified by

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

*R. K. M.*  
Raj Kumar Misra  
LAW COMMISSIONER  
In Court, Allahabad  
Lucknow Bench  
561175  
Date 21-8-89

ब अदालत श्रीमान्

[वादी अपीलान्ट] Central Industrial Tribunal का  
प्रतिवादी [रेस्पाइन्ट] Circuit Bench, Lucknow

महोदय

वकालतनामा

वादी (अपीलान्ट)

टिकट

Mr. Lal Singh & Mrs. बनाम Union of India प्रतिवादी (रेस्पाइन्ट)

नं० मुकद्दमा १४ सन् १९८९(२) पेशी की ता० १६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से भी... ) mess... ( लिखें ... ...

All... Com... Law... Standard... Mess... Mr... Lucknow... वकील  
Lucknow महोदय  
एडवोकेट

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नाम अदालत नं० मुकद्दमा नाम फरीदनाम

को अपना वकील नियुक्त करके प्रतिज्ञा ( इकरार ) करता हूँ और लिखे देता हूँ इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जबाब देही व प्रश्नोत्तर करे या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया बसूल करें या सुलहबामा 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 ( फरीदसानी ) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त ( दस्तखती ) रसीद से लेवें या पंच नियुक्त वरें—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूँ कि मैं हर पेशी पर स्वयं या किसी अपने पंरोकार को भेजता रहूँगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फेसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे ।

४ लेटेमूर  
हस्ताक्षर

साक्षी (गवाह) ... ... ... ... ... ... ... ... ... ... ... ... ...

दनांक ..... ..... ..... ..... ..... महीना ..... ..... ..... ..... ..... सन् १६ ई०

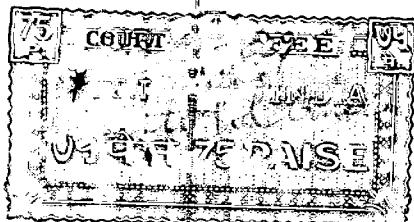
स्वीकृत

480

In the Central Administrative Tribunal at Allahabad,  
Circuit Bench, Lucknow

Case no. 18 of 1989

AFFIDAVIT  
IN COURT  
ALLAHABAD



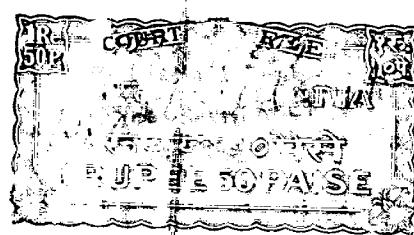
Niroti Lal Gupta and others

--Applicants

versus

Union of India and another

--Respondents



REJOINDER-AFFIDAVIT ON BEHALF OF APPLICANTS

Nos. 1 to 5

--

I, Niroti Lal Gupta, aged about 53 years, son of Sri Mani Ram, resident of C-17, Butler Palace Colony, Lucknow, do hereby solemnly take oath and affirm as under:-

Recd by  
J. Ch. Dr. 16/1  
Ansver 2/2

1. That the deponent is one of the applicants in the above-mentioned case and as such is fully conversant with the facts deposed to herein-after.
2. That the deponent has gone through the counter-affidavit filed by Sri M.S. Rathur, Desk Officer, Department of Personnel and Training, Government of India, New Delhi on behalf of

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the respondents and has fully understood the contents of the same.

3. That the contents of paras 1 to 7 of the counter-affidavit need no comments except that the contents of the letter no. 1211/II-1-19/1 (96) 86 dated 13.2.1987 of Government of U.P. need be divulged. The applicants have reason to believe that the recommendation of Government of U.P. was different from <sup>what</sup> ~~which~~ it has been made out to be.

4. That the contents of para 8 are not admitted. The Union of India has framed <sup>several</sup> ~~service~~ rules giving them retrospective effect. Latest example of such a rule making is Government of India Order no. 20015/2/88 A.I.S. (II) dated 4th August, 1989 which has been made effective from 1st January, 1986. It is denied that the retrospective application of the rule would adversely affect the direct recruits, as their own seniority will remain undisturbed. The pay structure of the I.A.S. will ensure that they get their promotions to various grades at the dot. It is surprising that the Union of India has taken such a stand which is contrary to facts. The contention in the counter-affidavit that it was not the intention of Union of India to give higher seniority to promoted officer already in position does not give reasons for doing so.

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The deponent begs to submit that these assertions are imaginary and not based on facts. The IAS. consists of direct recruits as well as promoted officers and any service conditions have to look after the interest of both the segments. The weightage formula was accepted to remove disparity in inter- State promotions to IAS. and to compensate State Service Officers for belated promotions ~~to IAS and to~~ If direct recruits in one State are not adversely affected by promotion of a PCS. Officer to IAS after 12 years of service, they have no logical and cogent reasons to be adversely affected by promotion of officers of P.C.S. in another State after 12 years and his being given a weightage of 4 years in seniority. So this argument is absolutely misconceived. The weightage has nothing to do with the status of direct recruits who will continue to get their time scale. The Union of India before framing amended rules never made any distinction between PCS. Officers promoted before the weightage rule and after it. It is therefore figment of imagination to say that it was never the intention of Union of India to give higher seniority to those promoted officers who were already in position or that it was not found desirable or feasible to reopen the past cases for re-determination of seniority. These matters were in fact never considered by the Union of India and the amendments were made in routine without seeing whether the

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objective intended to fulfil the recommendations of the Estimate Committee and the High Power Committee as circulated in circular letter dated 9.9.1986 was being achieved or not. Since the amendment made has fallen short of achieving its objective, the same may be corrected by inclusion of proposal made in para 7.13 of the application which is in the nature of a proviso and provisos are a common feature of all rules.

5. That in reply to the contents of para 9 it is stated that this para states the position as it is under the amended Rules. It does not give reason why the promoted officers who were in service on the date of amendment should not get the compensation for belated promotion by way of weightage in seniority. It thus tried to avoid the issue raised in the claim petition.

6. That in para 10 of the counter-affidavit it is stated that the proviso proposed in para 7.13 of the application, if accepted, will make the amended Rules retrospective. It is contended that it is not illegal to give retrospective effect to any rules if it is necessary in the interest of justice to do so. It is specifically provided in Section 3(2-A) of the All India Service Act that any rule or regulation can be

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amended retrospectively. Since in the instant case the amended rules are not doing justice with officers promoted earlier to these rules, they should be given retrospective effect by suitable modification like the one suggested. It has also been contended that the Union of India has reduced the field of eligibility for promotion to IAS. and so there is no apprehension of a junior officer superseding a senior officer in State Services. The deponent states with humility that the possibility of such an effect on the seniority of a senior person still remains though slightly less and therefore the provision is discriminatory. The deponent further seeks permission of the Hon'ble Tribunal to introduce a hypothetical case where seniority of officers promoted before amended rules, say in 1984, was not determined but was determined after these rules. These officers are entitled to weightage as per amended rules. There are several States where seniority of officers recruited prior to January 1988 is not yet fixed due to litigation or any other reason but such officers will now get benefit of these rules while the applicants are denied the same. Thus officers promoted with the applicants will get higher seniority than the applicants, if their seniority is determined after coming into force of these rules. This disparity can only be solved by making the Rules retrospective.

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7. That in reply to the contents of para 11 of the counter-affidavit it is pointed out that it was stated in para 7.14 of the application that if the applicants had refused promotion to I.A.S., they could have drawn roughly up to Rs. 6,500.00 in their State Cadre. The averments made in the para under reply tactfully avoid the issue. This is a recognised principle of service of jurisprudence that no one shall be made to suffer by promotion. The applicants should, therefore, get protection up to or near this stage of pay by being given the weightage in seniority.

8. That the contents of paras 12 and 13 of the counter-affidavit call for no reply.

9. That the arguments made in para 14 of the counter-affidavit are strongly refuted and those of para 7.18 of the application are reiterated.

10. That the contents of para 15 of the counter-affidavit call for no reply.

11. That the contents of para 16 of the counter-affidavit are strongly denied. There is no factual basis to assume that it was well understood by all State Governments that the amendment would be prospective. There was in fact no occasion and no reason for such understanding by the State Government. In fact the State of Uttar Pradesh has had a different approach to the problem.

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The State Government amended fixation of seniority rules of promoted P.C.S.Officers and implemented them with retrospective effect as is evident from the ~~xxxx~~ letter no. 5025/II-(3)-19-3(81)/74 dated October 5, 1985 a photostat copy of which is being annexed as Annexure no. RA-1 to this rejoinder-affidavit. The proposed amendment had the simple objective of compensating for belated promotion. It was, therefore, natural to assume that it would be applicable to all Officers who got belated promotion or would so get in future. It is unnatural to assume that it would apply to future promotion only particularly when it was intended to deal with problems/ills of the old existing P.C.S. officers who got belated promotions.

Much has been said about the adverse effect of the retrospection of amended rules to direct recruits. The Union of India in the counter-affidavit are trying to make out a case for direct recruit IAS Officers in supporting their Petition no. 928 of 1988 filed in Central Administrative Tribunal, Allahabad Bench, whereas in normal course the counter-affidavit should have supported the prospective character of the amendment. The case made out for direct recruits is factually incorrect because the applicants by getting weightage would at the most get the seniority of 1976 and the direct officers of this batch already stand promoted to selection grade.

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22/9/89

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Therefore, they do not stand to suffer at all by the applicants getting weightage. In fact no direct recruit would suffer if the promoted officers are allowed to get their weighted seniority because the direct recruits are bound to get their promotions whenever they become due. If the contention of the Union of India is that since the promoted officers were shown as juniors to some direct recruits and the change of the seniority of the promoted officers would hurt the ego of such direct officers, then the Union of India should think of the promoted officers also under whom these very direct recruits had worked as S.D.Ms etc. and have now become senior to them. In fact the retrospective application of the rules will only wipe out some of the tears of these unfortunate promoted officers who were eligible for promotion after eight years but were actually promoted after 25 years of service. It is a general principle of equity that those who claim equity must come with clean hands. The deponent seeks indulgence to show that equity is not in favour of direct recruits:-

(a) The Central Pay Commission had recommended a pay scale of Rs. 3000-5000 for IAS senior scale. To benefit the direct recruits it was converted to Rs. 3200-4700 so that they get a higher start of Rs. 3200/- in place of Rs. 3000/- . No direct recruit ever reaches the maximum of a

senior scale and is promoted to Junior Administrative Grade in 9th year of service and in selection grade after 12 years. Thus in ninth year he gets a rise of Rs. 450/- and in 12th year Rs. 600/-. The promoted officers have been made to lose Rs. 300/- at the maximum stage and to stagnate at Rs. 4700/- for many years. The applicants will get this maximum for at least three years continuously.

(b) To benefit direct recruits further a new scale known as JAG has been introduced so that in 12 years of service they get 5000/- which otherwise they would not get.

(c) Special pay is admissible against certain posts in Government. The pay rules of IAS were amended to again favour direct recruits by providing that pay and special pay together will not exceed the maximum of the scale. Read with para

(a) above it will be very clear that direct IAS will always get in special pay as they will never reach the maximum of the scale whereas promoted officers who normally reach it, will be deprived of the special pay. The applicants nos. 1 to 4 are in fact not getting special pay since January, 1987 even though they are working against special pay posts.

(d) Again to favour direct recruits the pay rules provide that in case of officers in selection grade the pay and special pay shall not

exceed Rs. 6150/- . Thus a margin for Rs. 450/- special pay has been provided only because promoted officers reach the stage of Rs. 5700/- in that scale.

(e) The Union of India has again connived in amending seniority rules to the advantage of direct recruits so that in spite of the amendment no promoted officer gets the provided weightage till 1992.

(g) That promoted officers on each promotion are fixed either at para a lower level in the higher grade whereas rules have been framed to ensure a sum of several hundred rupees to the direct recruits on each promotion. ~~because~~ The case of any officer would prove it.

12. That in view of the averments made in paragraph-  
1 to 11 of this rejoinder-affidavit the contents  
of paras 17 to 20 of the counter-affidavit are  
denied and those of paras 7.21, 8 and 9 of  
the application are reiterated. (It is submitted  
that direct recruits do not in equity or law have  
a case against the applicants and that the  
amendment to the seniority rules is discriminatory  
and it discriminates between promoted officers  
themselves who are similarly situated and it does  
not achieve the proposed objectives. The  
petitioner, therefore, deserves to be allowed by

(A.S.Y)  
22/6/89

(AC)

by issuing a mandamus to Union of India to modify the amended rules so as to give the due weightage in seniority to the applicants and all promoted officers similarly situated.)

The sum and substance of the counter-affidavit seems to be ~~unconcealed~~ anxiety of the authorities to boost the direct recruits at the cost of the promoted officers who have been forced to drag their feet. The gap of pay of Rs. 1275/- between a direct recruit and promoted officers of the same batch has been reduced to Rs. 150/- within a span of seven years. Promoted Officer gets only an increase of Rs. 375/- during this ~~the~~ period whereas the direct recruits have been given increase of Rs. 1500/- .

S/ 244  
Deponent

Lucknow Dated

22.9.1989

I, the deponent named above do hereby verify that contents of paras 1 to 12 except the portion within brackets are true to my own knowledge and those of portion within brackets are true on the advice received from my counsel which I believe to be true. No part of it is false

(R.K.)

-12-

and nothing material has been concealed;  
so help me God.

Lucknow Dated

C. 1989  
Deponent

29.9.1989

I identify the deponent who has signed in my presence.  
~~He is personally known to me.~~  
(R.K. Srivastava)  
Clerk to Sri B.C. Saksena, Advocate

Solemnly affirmed before me on 22.9.89  
at 6.00 a.m/p.m by Nitoti Lal Gupta  
the deponent who is identified by Sri R.K. Srivastava  
Clerk to Sri B.C. Saksena  
Advocate, High Court, Allahabad. I have satisfied  
myself by examining the deponent that he understands  
the contents of the affidavit which has been read  
out and explained by me.

CART OFFICE  
85/286  
22.9.89

892

In the Central Administrative Tribunal at Allahabad,  
Circuit Bench, Lucknow

--

Case no. 18 of 1989

Niroti Lal Gupta and others

--Applicants

versus

Union of India and another

--Respondents

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Annexure no. RA-1

22.9.89

SC

संख्या—5025/दो—(3)—19-3(81)/74

(RJ3)

प्रेषण,

श्री हरीश चन्द्र गुप्ता,  
दिवेष सचिव,  
उत्तर प्रदेश शासन,  
सेवा में,  
समस्त जिलाधिकारी  
उत्तर प्रदेश।

लखनऊ : दिनांक : 5 अक्टूबर, 1985 ।

विषय—उत्तर प्रदेश सिविल (कार्यकारी, शाखा) सेवा में प्रोन्नत अधिकारियों को स्थानापन्न सेवा का लाभ देते हुए उनकी ज्येष्ठता का निर्धारण।

महोदय,

दिवेष  
राज्यमाला 3

उपरोक्त विषय पर मुझे यह कहने का निदेश हुआ है कि शासन ने यह निर्णय लिया है कि उत्तर प्रदेश सिविल (कार्यकारी शाखा) सेवा में स्थानापन्न रूप से प्रोन्नत अधिकारियों की प्रथम नियुक्ति को पी ० सी ० एस ० में भीलिंग नियुक्ति स्वीकार करते हुए, प्रोन्नत अधिकारियों को पी ० सी ० एस ० में, प्रोन्नति कोटे की सीमा तक, सम्पूर्ण स्थानापन्न सेवा का लाभ ज्येष्ठता निर्धारण में दिया जाय जो केवल उन प्रोन्नत अधिकारियों को अनुमत्य होगा जिनकी पी ० सी ० एस ० में नियुक्ति उत्तर प्रदेश लोक सेवा आयोग द्वारा अनुमोदित की जा चुकी है।

2—पी ० सी ० एस ० संवर्ग में दिनांक 10-7-61 के पहले प्रोन्नत कोटे को कोई सीमा निर्धारित नहीं थी। दिनांक 10-7-61 की प्रचलित नियमावली में संशोधन करके यह प्राविधिक नया कि प्रोन्नति से लिये अधिकारियों की संख्या किसी भी समय संवर्ग के कुल पदों की संख्या के 25 प्रतिशत से अधिक नहीं होगी। दिनांक 8 जुलाई, 1982 को अवैतित नियमावली में इस सीमा को बढ़ाकर 33-1/3 प्रतिशत कर दिया गया।

3—दिनांक 10-7-61 को संवर्ग के कुल पदों की संख्या के 25 प्रतिशत से काफ़ी अधिक संख्या में प्रोन्नत अधिकारी सेवा में ये जिसके कारण वर्ष 1961 से लेकर 1968 तक प्रोन्नत कोटा में कोई रिक्त उपलब्ध नहीं हो सकी व्योंगि इनमें से इस अवधि में सेवा निवृत्ति, मृत्यु, प्रत्यावर्तन, सेवामुक्ति अथवा काडरस्ट्रेन्य के बढ़ने के कारण 25 प्रतिशत की सीमा तक जितने पद प्रोन्नत कोटा के लिये उपलब्ध हो सकते थे उससे अधिक प्रोन्नत अधिकारी पद धारण करने थे।

4—इस प्रकार सर्वप्रथम रिक्ति 1969 में हुई है। ज्येष्ठता निर्धारण की इस प्रक्रिया में जिस तिथि पर प्रोन्नत कोटे की सीमा के अन्दर कोई रिक्ति हुई है उसी तिथि में पात्र अधिकारी को समायोजित किया गया है। यदि रिक्ति काडरस्ट्रेन्य के बढ़ने से उत्पन्न हुई है तो स्ट्रेन्य के बढ़ने की तिथि में पात्र अधिकारी को समायोजित किया गया है।

5—इन अधिकारियों को वर्ष 1969 से 1976 तक की ज्येष्ठता के अधिकारियों के परिप्रेक्ष्य में व्यवस्थित किया गया है क्योंकि प्रोन्नत अधिकारियों को इसी अवधि के बीच की ज्येष्ठता मिल रही है। इसीलिये संलग्न परिशिष्ट में केवल इस प्रक्रिया से प्रभावित 38 प्रोन्नत अधिकारियों की व्यवस्थित किया गया है। इस निर्णय के फलस्वरूप राज्यपाल महोदय यह आदेश देते हैं कि प्रोन्नत अधिकारियों को इस निर्णय का लाभ देते हुए संलग्न परिशिष्ट के अनुसार उनकी ज्येष्ठता निर्धारित की जाये।

6—यहां यह स्पष्ट किया जाता है कि शासन इस शासनादेश से सं रग्न ज्येष्ठता सूची के विरुद्ध ज्येष्ठता नियम के अधीन रहते हुए, इसके जारी होने की तिथि से तीन माह के भीतर आने वाले प्रत्यावेदनों की गुणावगुण आधार पर विचार करने के लिये तैयार है। अनुरोध है कि आप कृपया अपने अधीनस्थ सम्बन्धित अधिकारियों को इसकी लिखित सूचना दें। इस शासनादेश की अधिकारियों में वितरण हेतु दस अतिरिक्त प्रतियां संलग्न हैं तथा आवश्यकतानुसार अन्य अतिरिक्त प्रतियां शासन से मंगा लें।

संलग्नक : परिशिष्ट ।

मवदीय,  
हरीश चन्द्र गुप्ता,  
विशेष सचिव ।

In the Central Administrative Tribunal,  
Additional Bench at Allahabad,  
Lucknow Circle, Lucknow

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C M. 136/96 (C)

Supplementary Affidavit

In Re:

Original Application no. 18 of 1989

Niroti Lal Gupta and others

--Applicants

Versus

Union of India and another

--Respondents

I, Niroti Lal Gupta, aged about 54 years,  
son of Sri Mani Ram, resident of C-17, Butler  
Palace Colony, Lucknow, do hereby solemnly take  
oath and affirm as under:-

1. That the deponent is one of the applicants  
in the above-noted case and as such is fully  
conversant with the facts deposed to hereunder.

2. That at the time the rejoinder-affidavit was  
filed, necessary documents were not available  
and therefore they could not be filed along  
with the rejoinder-affidavit in support of the

assertions made in para 6 thereof. The said documents have now become available in support of the assertions already made in the said paragraph 6 of the rejoinder-affidavit wherein it was stated that " there are several States where seniority of officers recruited prior to January 1988 is not yet fixed due to litigation or any other reason but such officers will now get benefit of these rules while the applicants are denied the same." In support of the said assertion a true copy of an order bearing no. 14014/47/89-AIS (1) dated 17.5.1989 issued by the Personnel, Public Grievances and Pension Ministry, Government of India and addressed to the Chief Secretary, Rajasthan Government, Jaipur is being annexed as Annexure no. SA-1 to this affidavit. A perusal of the same would show that certain PCS Officers of the Rajasthan Cadre who were promoted to IAS. by notification dated 29.12.1988 have been assigned a weightage of 9 years in accordance with the provisions of rule 3(3)(ii) (a) and (b). The said officers had put in 27 years service or more in the State Civil Service of Rajasthan and due to weightage their year of allotment has been fixed as 1979.

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-3-

In the same context it is relevant to state that petitioner no. 5 who was promoted to I.A.S. on 22.7.1987 has been given 1982 as the year of allotment. The officers mentioned in the order dated 17.5.1989 have been promoted to I.A.S. very much subsequent to the petitioners and by being given 9 years weightage have been given an earlier year of allotment than the petitioners.

x

It is further relevant to indicate that <sup>Service</sup> the State Civil Officers of the U.P. Cadre who have been promoted after January 18, 1988 have been assigned 1983 as the year of allotment and have been denied the weightage to the extent given to the Rajasthan Cadre Officers promoted in the same year. A few names of such U.P. Cadre Officers are Sarvsri Subhas Bhaukhandi, D.D. Bahuguna, Km. Uma Varma, Sri G.P. Varshaney, and Sri G.D. Maheshwari.

Lucknow Dated

11/5/89 5/12/89

*Qm*  
Deponent

I, the deponent named above do hereby verify that contents of paras 1 and 2 of this affidavit are true to my own

(AAG)

-4-

knowledge. No part of it is false  
and nothing material has been  
concealed; so help me God.

Lucknow Dated

*Amrit*  
Deponent

~~5-12-89~~  
5-12-89

I identify the deponent who has signed in my  
presence.

*R.K. Srivastava*  
(R.K. Srivastava)  
Clerk to Sri B.C. Saksena, Advocate

Solemnly affirmed before me on 5-12-89

at 10.10 a.m./p.m. by *N. K. Srivastava*  
the deponent who is identified by Sri *R.K. Srivastava*  
clerk to Sri *B.C. Saksena*,

Advocate, High Court, Allahabad. I have satisfied  
myself by examining the deponent that he understands  
the contents of the affidavit which has been read  
out and explained by me.

*R.K. Srivastava*

Clerk to Sri B.C. Saksena, Advocate

Lucknow, Bihar

C. No. 38

Date 5-12-89

Sheet no 1909

४९८

गूप्त पीप एवं नेटवर्क टेक्नोलॉजीज ट्रैनिंग इंस्टीट्यूट लखनऊ  
सर्किल लखनऊ

लैम प्रेटीशन नं आफ । १९८९

निरोती लाल उप्ता ----- प्रेटीशन

दाम

बूर्ज अफ इंडिया तथा अन्य ----- अपोल्यूटीज  
एनेक्स नं ५-१

संख्या । ४०१४/४७/८९-अ०१-टॉक्सिक।

भारत सरकार

नार्मिल लोन शिक्षागत तथा पेशन राज्य

नार्मिल और प्रशिक्षण विभाग

नई दिल्ली दिनांक १७-५-१९८९

तेवा में

मुख्य सचिव  
राजस्थान सरकार,  
भारत।  
ज्ञानपुर

विभाग भारतीय प्रशासनिक सेवा राज्यान सर्वी-वर्ष । १९८८ में  
नियुक्त हैं एवं राज्य सेविल सेवा के अधिकारियों की  
पौरलृपता का निर्धारण।

महोदय,

मुझे यह कहने लाभक्षेत्र है कि राज्यान राज्य सिविल सेवा

सर्वी-राम रत्न उप्ता, नेप्सप्पुलन्दिया, जीप्सजनराता एवं तेज

टिनार हनवारी लाल सारन्ध्रत नियत सिंह भांटारी राम द्वारा ।

प्री-मीडिया और सुलादेव छात्रीय ने स विभाग की अधिकृति

संख्या । ४०१५/२४/३८-अ०१-टॉक्सिक। दिनांक २९-१२-८९ द्वारा प्रदान है।

१६ अटांटापर भारतीय प्रशासनिक सेवा में नियुक्त होना चाहा -

2- भारतीय प्रशासनिक सेवा में उनके भावउन चर्चा के विवरण -

ਪ੍ਰਕਨ ਦੀ ੧੦-੧-੧੯੬੮ ਨੇ ਗਤਾ ਸੰਖਾਰੋਤਾਤ ਮਾਰਕੀਂਗ ਪ੍ਰਣਾਲੀ ਲੋਕ ਲੋਧਾ

वरिष्ठता का विनायमन नियमावली, 1987 के नियम 3,3,11 के अनुसार जांच कर ली गई है।

३ एजन सरकार द्वारा नी वर्दि सूचना के अद्यार दिन समी अडिलाइग्ने  
के पदोन्नति द्वारा भारतीय प्रशासन सेपा में उन्ही देशगृहित से पर्द

रोजा विविल सेवा में 27 वर्ष से अधिक की अवधि पूरी कर ली थी। इसके बाद अधिकारीगाँ को वोरेष्टता नियमापनी के द्वारा 3,321

इन्हे तथा छोड़ा गया तो वह वास्तव में अद्वितीय उनके अपेक्षित वर्णन का नियार्णन करने के उद्देश्य से १० वर्षों का अड्डत्वा द्वारा देखा गया वर्णन है।

इस लिए सर्वथी राम रत्न युप्ता के इस उत्तिष्ठाने द्वारा उनी १०८०० रुपानी

ਲਾਮੋਹਨ ਭਾਟਨਾਂ ਰਿਹਾਂ ਬਨਵਾਰੀ ਲਾਲ ਸਾਰਥਿਤ ਵਖਤ ਸਿੰਹ ਮੰਡਾਰੀ ਰਾਮ

ਚਾਰ ਸਿੰਹ ਪੀਪਲਜ਼ ਵਾਲ ਔਰ ਸੂਲਾਖੇ ਵਾਂਗ ਚਲਿਆ। 1979 ਜਾਪਿਆਨ ਵਿੱਚ

• ये में नियन्त्रित जाता है और उनका नाम भारतीय प्रधाराने का

(A 101)

- 3 -

सेवा के राज्यान्वयन के अधिकारीयों की पढ़ना

सूची व विवरण नियमावली के नियम 411 के द्वारा दी मर्दाना

द्वारा १८०८० में १९७५ के नीचे रखा जाएगा।

प्रधानमंत्री

मर्दाना  
द्वारा अधिकारी

संग प्रतीक्षिष्ठा

— — — — —

(R.F.)

In the Hon'ble Central Administrative Tribunal at Allahabad,

Circuit Bench, Lucknow.

Misc. Application No. 317 of 1990. (L)

Union of India & Others ..... ..... Applicant/Respondent No. 2

In

Case No. 18 of 1989.

Miroti Lal Gupta & Others ..... ..... Applicants.

Versus.

Union of India & Others ..... .... Respondents.

Is,

The Hon'ble Vice Chairman & His Companion Member  
of the aforesaid Tribunal.

The application of the humble applicant most respectfully sheweth :-

1. That full facts have been given in the accompanying Supplementary Counter affidavit.
2. That for the facts & circumstances stated in the accompanying Supplementary Counter Affidavit it is expedient in the interest of justice that the supplementary Counter Affidavit may be taken on record & the petition may be disposed of & dismissed with costs.

*f T.  
Sud  
8/5/90*

It is, therefore, most respectfully prayed that this Hon'ble Tribunal may be pleased to admit the accompanying Supplementary Counter affidavit and to dismiss the petition with costs.

Lucknow ;

Dated : A.S. 9

( Dr. Dinesh Chandra )

Advocate,  
Addl. Standing Counsel,  
Council for the Respondents.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ALLAHABAD  
CIRCUIT BENCH, LUCKNOW

CASE NO. 18 of 1989.

Niroti Lal Gupta & Others ... Applicants

## Versus

Union of India & Others ... Respondents

SUPPLEMENTARY COUNTER AFFIDAVIT

I, M.S. Mathur aged about 47 years son of  
Late Shri D.P. Mathur, Under Secretary, Department of  
Personnel and Training, Government of India, New Delhi, do  
hereby solemnly affirm and state as under :-

1. That the deponent is authorised to swear this affidavit on behalf of the Respondents.
2. That the deponent has read the supplementary affidavit and the rejoinder filed by the applicant and has understood the contents thereof.
3. That the deponent is well conversant with the facts of the case deposed hereinafter.
4. That the contents of para 1 of the supplementary affidavit need no comments.
5. That in reply to the contents of para 2 of the said affidavit it is submitted that applicant has referred to his earlier assertion that :-

"There are several States where seniority of officers recruited prior to January 1988 is not yet

RICOH

fixed due to litigations or any other reason but such officers will now get benefit of these rules while the applicants are denied the same." The applicant in support of his assertion has referred to the fixation of the year of allotment of the promoted officers of Rajasthan cadre. However, as has been mentioned by the applicant himself, these officers of Rajasthan were appointed to IAS by promotion on 29.12.88, i.e., much after the amendment to the Seniority Rules, introducing weightage formula, came into force on 18.1.88. Thus, the reference to the Rajasthan officers does not support the contention made by the applicant that the officers appointed to IAS prior to January 1988 will also get benefit of the weightage formula, if their seniority had not yet been fixed.

As regards the Rajasthan officers, it may be clarified that they were appointed to IAS by promotion after 18.1.88 and were given full benefit of 9 years of weightage and consequently 1979 as the year of allotment because the State Civil Service officers of Rajasthan appointed to the IAS by promotion prior to their appointment had been assigned 1979 as the year of allotment. Thus, proviso to Rule 3(3)(ii) of the Seniority Rules did not restrict their years of allotment. On the other hand, in so far as U.P. cadre is concerned, since the petitioner No.5 was appointed to IAS on 22.7.87, he was assigned 1982 as the year of allotment as per the Seniority Rules in force at that point of time. On the other hand, those officers of U.P. cadre who were appointed to IAS after 18th January, 1988, were assigned 1983 as the year of

*Also*

allotment, because of the restriction contained in proviso to Rule 3(3)(ii) of the Seniority Rules. U.P. State Civil Service officers appointed to IAS earlier than them have been assigned 1983 as the year of allotment, therefore, their year of allotment had also to be limited to 1983, and as such they could be given the full weightage of the service rendered by them. As mentioned earlier, the full weightage of the service rendered was given to the Rajasthan officers, promoted in the same year because the restriction contained in proviso to Rule 3(3)(ii) did not reduce their seniority.

In this connection it may be clarified that the restriction under proviso to Rule 3(3)(ii) is applicable only with reference to the officers belonging to the same cadre. It so happened that in the case of Rajasthan, the appointments to IAS by promotion prior to 1988 were made only in 1984 and those officers had been assigned 1979 as the year of allotment. Thus, the officers of Rajasthan appointed in 1988 were also entitled to the year of allotment upto 1979, which was eventually given to them because they had rendered more than 27 years of service. On the other hand, since there have been regular appointments to IAS by promotion in U.P. cadre, officers appointed after 18.1.88 cannot be assigned year of allotment earlier than 1983, even though they had rendered much longer service and were entitled to higher weightage because the U.P. cadre officers who were earlier appointed had been assigned 1983 as the year of allotment, the officers appointed in 1988

could not be given year of allotment earlier than 1983 under proviso to Rule 3(3)(ii) of the Seniority Rules.

6.1 That it is worthwhile to submit that the amendment to the IAS (Regulation of Seniority) Rules, 1987, introducing the formula for determination of the year of allotment of the State Civil Service officers on their promotion to IAS, was carried out after consulting all the State Governments. Most of the State Governments had concurred with the proposal and they had also understood that the amendment will have only a prospective effect. In fact, all the rules and amendments thereto take effect either from the date of their publication in the official gazette or from the date otherwise specified. However, if it is proposed to amend a rule with retrospective effect, it will have to be clearly stated, not only in the proposal circulated to the State Governments but also in the draft notification. Thus, it is incorrect to say that the State Governments were under the impression that the amendments to the rules will have retrospective effect. In so far as contents of the letter of the Government of Uttar Pradesh are concerned, it is for the State Government of Uttar Pradesh to say whether they would divulge its contents or not.

6.2 That it is admitted that the Central Government have powers to frame or amend the rules with retrospective effect under Section 3(1A) of the All India Services Act, 1951, but in the same section it has been provided that 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.

(H/C)

6.3 That the argument of the applicants that even by retrospective application of the amendment the direct recruit IAS officers would not have been adversely affected, is incorrect. It is true that the year of allotment of the direct recruit officers would have remained the same, but if the seniority of already promoted officers were to be refixed as per the weightage formula, they would have got much higher seniority and in the process direct recruit officers would have become junior to many such officers who were junior to them in inter-se seniority. Thus, it is not correct that the direct recruit officers would not have been adversely affected by the retrospective application of the amendment to the seniority rules.

Another group of officers, who would have been adversely affected by the retrospective application of this amendment is such State Civil Service officers who got appointment to the IAS after putting in relatively lesser service. For example, if in a particular State a State Civil Service officer was appointed to IAS by promotion after putting in less than 15 years of service, but if he had officiated continuously on a cadre post after inclusion of his name in the select list prior to his appointment to the IAS, then he would have got the benefit of officiation and thus, might have been assigned the year of allotment being more than 4 years in terms of weightage. If the weightage formula is made applicable to him, then he would be entitled to only 4 years of weightage and thus, if the year of allotment of all the promoted officers were to be refixed under the weightage formula, then he might have lost one or two years of seniority.

(R/C)

Thus, officers like this example would have been adversely affected by the retrospective application of the weightage formula.

The apprehension of the applicants that in some of the States the officers who were appointed to IAS prior to 18.1.88, but whose seniority was fixed after that date will get the benefit of weightage formula, is not correct. The weightage formula is applicable only to such State Civil Service officers whose date of appointment to IAS is 18.1.88 or thereafter.

7. That regarding the averments made in the Rejoinder affidavit relating to pay matters, it is submitted that the promotee officers are not allowed protection of pay, they were drawing in the States; on their induction into IAS. Their pay is first brought at 1.1.86 level after deducting DA/ADA etc. allowed and merged in the scales after 1.1.86 (This date is 1.1.73 in case of promotees inducted prior to 1.1.86) and then it is fixed in the IAS pay scales at the next stage. From 1.1.86, they are also allowed protection of reckonable State Civil Service pay upto Rs.6700/- (Rs.4700/- as maximum of the IAS Senior Time Scale and Rs.1000/- as personal pay). Consequent to the application of revised Seniority Rules, some officers also straightaway get Junior Administrative Grade and their pay is fixed in that grade accordingly under the same formula.

8. That with regard to para 11(b) of the rejoinder affidavit, it is stated that the contention of the applicant is not correct. The Junior Administrative Grade of the IAS is Rs.3950-5000 and a direct recruit IAS officer does not get Rs.5000 in the 12th year. On entering 14th year, however, he can be placed in the selection grade with the pay of Rs.4800/-. Selection Grade too is allowed on seniority-cum-merit and on

A/107

availability of vacancies.

9. That in reply to para 11(c) of the Rejoinder affidavit, it is stated that it will be incorrect to say that these rules have been framed to benefit direct recruit officers and to deprive promotees from getting the benefits of special pay. This provision has historical existence and it is there to ensure that officers in a particular grade and getting special pay do not draw more than what another officer would get in the higher scale if he is not getting special pay in that scale.

10. That in reply to para 11(d) of the said affidavit, it is stated that this provision has been in existence to maintain the inter-service parity between the IAS and the IPS officers of D.I.G. level in IPS (Pay scale Rs.5100-6150) both of whom are eligible for appointment as Directors at the Centre, in which case this dispensation of drawal of pay upto Rs.6150 is allowed. Both are the feeder grades for higher posts in their Services having the pay scale of Rs.5900-6700.

11. That in reply to para 11(g) it is stated that normally, this position appears after the Junior Administrative Grade when the officers from different streams begin to be remunerated equally. In any case, it is because of the pay fixation formula mentioned in para 7 above, promotees cannot sometimes be allowed protection of pay on their entry into the IAS because some States indiscriminately increase the pay scales for their officers and in the process, some officers begin to get more pay in the States than the pay they would have drawn at the Centre with the same length of service.

RJD

12. That in view of the submissions made in the above paragraphs, the averments made by the applicant are not tenable in fact and law, the application lacks merit and is liable to be dismissed with costs.

Lucknow:

Dated: 7.5.91

*J. E.*  
Deponent

VERIFICATION

I, the above named deponent do hereby verify that the contents of paras 1 to 3 of this affidavit are true to my own knowledge and those of paras 4 to 12 are believed by me to be true as per records and legal advise of my counsel. That nothing material facts has been suppressed.

Signed and verified this the *7* day of *July*, 1990  
within the court compound at Lucknow.

Lucknow:

Dated: 7.5.91

*J. E.*  
Deponent.

I identify the deponent who has signed before me.

*J. E.*  
Advocate.

Solemnly affirmed by the deponent

at *10* a.m./p.m. who has been

identified by Shri *Adv. O. Chaw*, Advocate,  
High Court of Lucknow Bench.

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

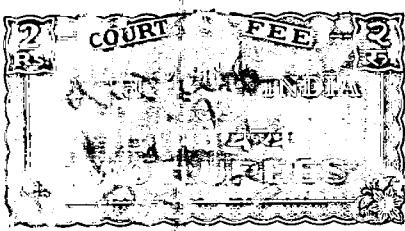
In the Central Administrative Tribunal at Allahabad  
Circuit Bench, Lucknow

--

1989  
AFFIDAVIT  
120

Case no. 18 of 1989

F. P. 22.5.90



Niroti Lal Gupta and others

-Applicants

versus

Union of India and another

--Respondent

SUPPLEMENTARY REJOINDER AFFIDAVIT ON BEHALF  
OF APPLICANTS NOS. 1 to 5

I, Niroti Lal Gupta, aged about 55 years,  
son of Sri Mani Ram, resident of C-17, Butler  
Palace Colony, Lucknow, do hereby solemnly take  
oath and affirm as under:-

1. That the deponent is applicant no. 1 in the  
above-noted case and as such is fully acquainted  
with the facts deposed to hereinafter.

2. That the deponent has gone through the  
supplementary rejoinder-affidavit filed by  
Sri ~~N. S.~~ Mathur, Under Secretary, Department of  
Personnel and Training, Government of India,  
New Delhi and has fully understood the  
contents of the same.

(Signature)

AIIC

-2-

3. That the contents of paragraphs 1 to 4 do not call for any reply.

4. That in reply to para 5 of the supplementary counter-affidavit it is stated that the contents of para 2 of the supplementary affidavit of the deponent dated 17.11.1989 has not been understood in proper perspective. Had the Rajasthan Administrative Service Officers been promoted prior to the amended seniority rule of 1988 (for which vacancies existed) they would not get weightage in seniority. The inaction on the part of the Selection Committee constituted under Regulation 3 of the Indian Administrative Service (Appointment by Promotion) Regulation, 1955 to meet and prepare the select post has resulted in benefit of weightage in seniority to Rajasthan Officers, which they would not otherwise get. This case was quoted as an example of the anomalous situation that the implementation of amended seniority rules could create. The petitioners are also of the same seniority in State Civil Service as the RAS officers but since they were promoted prior to amendment, they are being denied the weightage and placed in 1980 which RAS officers have been placed in 1979 and this is the anomaly to which attention of the Hon'ble Tribunal has been attempted to be drawn. While it is not disputed that under the existing rules, those promoted after amendment

D  
21/8/82

Chm

ANS

-3-

will get weightage in seniority and those promoted earlier will not, the deponent seeks indulgence of the Hon'ble Tribunal to assess the cited example of anomaly in implementation of weightage rules in the perspective of its being discriminatory as between officers of same seniority in different State Service.

5. That in reply to the contents of paragraph 6.1 it is reiterated that the State of U.P. had no occasion to understand that the amendments will be prospective. Contents of paragraph 11 of the rejoinder-affidavit are reiterated.

It is further stated that the supplementary counter-affidavit has been filed on behalf of both the Union of India and the State of U.P., therefore the statement that "in so far as contents of the letter of the Government of Uttar Pradesh are concerned, it is for the State Government to say whether they would ~~not~~ divulge its contents or not", that the contents of letter should be divulged since the All India Services Act provides for framing of rules both prospective and retrospective, the objective for which the rules are made will determine whether the rules should be applicable retrospectively or prospectively. In this case, all promoted officers of most of the Northern States were sufferers on account of belated promotion.

The Estimates Committee of the Parliament and the Secretaries Committee had studied this plight

B/14

of the promoted officers and recommended for weightage in seniority and therefore if any relief has been granted, it should be available to all those officers who were adversely affected by belated promotion and were in service. The objective of 18.1.1988 ~~the~~ amendment therefore fully justified its being given retrospective effect.

6. That contents of paragraph 6.3 need no reply.

7.1 That in reply to the contents of paragraph 6.3 it is reiterated that prejudicial effect of the retrospectivity of the amended rules is not to be considered in relation to direct recruit officers because amended rule does not apply to them. This rule being applicable only to the promoted officers, the question of any adverse effect on direct officers cannot be considered in view of section 3 ( i A) of the All India Services Act <sup>1951</sup> which is quoted below:-

A/8 iv

"3(i A). The power to make rules conferred by this section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, 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.".

Chm

(AII5)

-5-

7.2 In reply to second part of paragraph 6.3 it is submitted that this relates to assignment of year of allotment under rule 3 (u) of the IAS (Regulation of Seniority) Rules, 1987 and not under rule 3(B) (ii). By the amendment rule 1988 rule 3(u) of the 1987 rules has been deleted and, therefore, the intention of Government of India is clear that no seniority is henceforth to be fixed on the basis of continuous officiation. Further, it is rule 3(3)(ii) which has been prayed to be made retrospective and not rule 3(u) and, therefore, officers whose seniority was fixed under rule 3(u) would not be affected at all by the amendment being made retrospective. The averment in the supplementary counter-affidavit that they will be adversely affected is not correct.

7.3 The averments made in the last part of para 6.3 is not disputed.

8. That the contents of para 7 are not disputed.

9. That in reply to the contents of para 8 , it is submitted that the direct officers get a jump of Rs. 450/- in 9th year of service and begins to get Rs. 3950/- from Rs. 3500/- in senior scale which otherwise he would not get if the Junior Administrative Grade had not been introduced. On account of drafting error Rs. 5000/-

*✓*  
~~Rs. 5000/-~~ <sup>On</sup> in ninth years has been mentioned which is regretted.

10. That the contents of paragraph 9 are denied and the averments made in para 11(C) of rejoinder-affidavit are reiterated. It is further stated that there is no historical reason for granting or denying special pay. In Secretariat it is granted as a compensation for meeting transport expenses to and from ~~Office~~ <sup>Office</sup> and for there not being any orderly/peon attached with the officers. Posts that do not carry special pay have official vehicles and orderly/ peons attached with them. The pay plus special pay in selection grade has been allowed up to Rs. 6150/- when the maximum of the scale is Rs. 5700/-. No direct officer ever reaches the maximum of senior time scale of the Junior Administrative Grade but there is a possibility of their reaching the scale of Rs. 5700/- and therefore this limit has been extended to ~~former~~ <sup>new</sup> direct recruits only. In fact, the explanation is only imaginary and neither true nor reasonable.

*A  
9/8/11*  
11. That in reply to the contents of para 10 it is submitted that the explanation given by the respondents goes against their theory of historical reasons. In the first place, it will not maintain parity in the I.A.S. and the I.P.S. Their lengths of service when they go to the centre as Directors, are not equal. Secondly, if the D.I.G. also gets special pay on the post

(A17)

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of Director, he will again get more than his I.A.S. counterpart. Thirdly, parity is not meant only for these I.A.S. Officers who are posted as Directors, large number of I.A.S. Officers in that grade will go without special pay and lastly, when the Government decided to give higher scale of pay to the D.I.Gs. they did not say that they wanted to bring parity in pay of the officers of ~~the~~ <sup>two</sup> cadres. The fact is that ~~the service~~ <sup>or since</sup> the direct recruits in the Government of India get promotion to the supertime scale after completing 18 years of service, by which time their salary level reaches Rs. 5400/- and the special pay at that level may be Rs. 500/-. Thus they would begin to lose special pay after they cross the stage of Rs. 5200/-. Hence, this provision was made to prevent loss of special pay to direct recruits in selection grade and DIG/ Director story has been created as an excuse for getting special pay as all DIG/Directors do not always get Rs. 6150/- on this post.

12. That contents of para 11 are denied as imaginary. Para 11(g) of rejoinder-affidavit is about fixation of pay from one scale of pay of I.A.S. to next higher scale and not from those ~~in scales of other civil service~~ senior to I.A.S. The point will be further illustrated at the time of hearing.

13. That the assertions made in the supplementary counter-affidavit are thus imaginary and misleading and deserve to be rejected.

Lucknow Dated 21.5.1990

*[Signature]* Deponent

ATD

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I, the deponent named above, do hereby verify that the contents of paras 1 to 13 are true to my own knowledge. No part of it is false and nothing material has been concealed; so help me God.

Lucknow Dated

21.5.1990

Deponent

Chintu

I identify the deponent who has signed in my presence  
(R.K. Srivastava)  
Clerk to Sri B.C. Saksena, Advocate

1. Signature  
2. Signature  
Solemnly affirmed before me on 21-5-1990  
at 11-4 Sa.m/p.m by  
the deponent who is identified by Sri R.K. Srivastava  
clerk to Sri B.C. Saksena  
Advocate, High Court, Allahabad. I have  
satisfied myself by examining the deponent that  
he understands the contents of the affidavit  
which has been read out and explained by me

At-OD  
C. T. W. COMMISSIONER  
33 H 24  
21-5-90