

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 24th FEBRUARY 1987

Present : Hon'ble Sri Ch. Ramakrishna Rao - Member (J)
Hon'ble Sri L.H.A. Rego - Member (A)

APPLICATION No. 1401/86

N. Rudra Murthy
LDC? Provident Fund Commissioner's Office
Bangalore 560 025 - Applicant

(Sri S.B. Swethadri, Advocate)

and

1. Regional Provident Fund Commissioner,
Karnataka
8, Raja Ram Mohan Roy Road,
Bangalore 560 025
 2. Mahabaleshwara Holla) UDCs
 3. Sujaya) Office of the Regional
 4. Umesha) Provident Fund
 5. Mariamma) Commissioner's Hampanakatta
 6. Vijaya Kumar) ~~XXXXXXXXXXXX~~
Mangalore 1
- Respondents

(Sri M.S.Padmarajaiah, Senior C.G.S.C.)

This application came up for hearing before
this Tribunal for hearing and Hon'ble Sri Ch. Ramakrishna
Rao, Member (J) to-day made the following

O R D E R

This application was initially filed in the High
Court of Karnataka and subsequently transferred to this
Tribunal. The facts giving rise to this application are,
briefly, as follows. The applicant was appointed as

...2

Ch

Lower Division Clerk ('LDC') in the office of the Regional Provident Fund Commissioner, Bangalore ('RPFC') on 27-03-1981. Respondents 2 to 6 were appointed as ~~xxxx~~ LDC on 9-4-1981. R2 was promoted as Upper Division Clerk ('UDC') in may 1983. Respondents 3 to 6 were promoted as UDCs on 6-10-1983. In the draft seniority list prepared on 20.10.82 respondents 2 to 6 were shown as seniors to the ~~xx~~ applicant. The applicant made a representation to the RPFC. Not satisfied with the office memo dated 8.11.1983 issued by RPFC in reply ~~xx~~ the applicant ~~x~~ has filed this application.

2. Sri S.B. Swethadri, learned counsel for the applicant, submits that though his client joined service earlier than respondents 2 to 6 and has thus put in longer ~~service~~ service than R 2 to 6, his client's name figures below the names of R 2 to 6; and that the inclusion of a clause to the effect that the seniority of his client would be fixed after those selected earlier though joined duty later will not have the effect of making R2 to 6 senior to his client.

3. Sri M.S. Padmarajaiah, Senior C.G.S.C., appearing the respondents submits that selection of candidates for the Sub-Regional Office, Mangalore was made by the Departmental Promotion Committee ('DPC') in its proceedings dated 9.12.80 whereas the selection for the Regional Office, Bangalore was made by the DPC in its proceedings dated 18.3.81; that since the ~~selection~~ list ~~xx~~ for the office at Mangalore was prepared earlier than the ~~selected~~ list for the Bangalore office, it was decided administratively

to accord seniority to the former; that the candidates in the selected^{list} list for the office at Mangalore could not be appointed earlier due to administrative reasons; that the ranking of the candidates was done based on merit and in view of these features, the date of joining will not be deciding factor in determining seniority.

Ans 4. We have consider^{ed} the rival contentions. Normally, the candidates selected for appointment as LDCs in the Sub-Regional Office, Mangalore, among whom R2 to 6 figure, should have been appointed before the candidates selected for the Regional Office, Bangalore, among whom the applicant is one, joined service. But this could not be done due to administrative reasons, with the result that the applicant joined service earlier than respondents 2 to 6. In our view, ~~it~~ is a fortuitous circumstance which should not confer any right on the applicant to the prejudice of respondents 2 to 6. To put matters beyond doubt, the following clause was inserted in the offer of temporary appointment issued to the applicant :

"Further it is made clear that his seniority in the cadre of LDC will be fixed only after all those selected earlier to his/her batch have reported for duty/joined duty whose appointments are withheld for the present."

The applicant did not demur to this clause.

5. We are, therefore, satisfied that the date of joining service should not be taken as the deciding factor in determing^{ing} seniority in the present case.

6. In the result the application is dismissed. No order as to costs.

Subramanian
Member (J)

[Signature]
Member (A) 24.2.1987

Where the findings of the inquiring authority are adverse to the delinquent officer, it is open to the Disciplinary Authority to consider the material and evidence, come to a different conclusion and exonerate him from charges. If on the other hand, the inquiring authority holds that the charges are not proved, it is open to the Disciplinary Authority to take a different view and record findings. Where the Disciplinary Authority is satisfied that some evidence which would have been available was not collected by the inquiring authority, it may even

direct the Inquiring Authority to proceed further with the inquiry in the interests of justice. There is no provision in the rules to order a *de novo* inquiry after wiping out the inquiry already conducted. Since the second respondent had no authority to do so. Exhibit P4 deserves to be and is hereby quashed. It is, however, open to him to apply his mind once again to the record of inquiry and take appropriate action in accordance with law. The petition is allowed in this manner but, under the circumstances without costs

O—

IN THE HIGH COURT OF JUDICATURE, KARNATAKA

[W. P. No. 9375 of 1980, dated 16th March, 1982]

PRESENT :

MR. JUSTICE K. S. PUTTUSWAMY

Between

Vijayadevaraj Urs

and

G. V. Rao and others

Constitution of India — Art. 16 — Indian Police Service (Regulation of Seniority) Rules, 1954 — Rule 6 — ("Seniority") — Meaning of — Determination of seniority — Promotion to select on grade post — How made?

It this writ petition, the petitioner challenges the appointment of the first respondent as Director General of Police in Karnataka.

Held: The term "seniority" in the public service is longer length of service in the very same grade or cadre. If the seniority

is to be determined with reference to the very original entry into service of the officers ignoring the various developments that take place in their career, it would undoubtedly destroy the very concept of promotions and all the incidents flowing from the same. A person may be senior to another in the initial

cadre. But that, by itself, cannot be a justification to ignore the promotions, supersessions and hold that a person promoted earlier would still be junior to the person superseded in the promotional post also. (Para 17)

A person appointed or promoted earlier is always senior to the person appointed or promoted later. A person confirmed earlier takes precedence over a person not confirmed or confirmed later. If a post falls vacant it is filled by the person who has served longest in the post immediately below. (Para 18)

It is clear in the instant case, the rules only regulate the seniority of the officers at the initial entry of their service either by direct recruitment or by promotion at the highest to the senior scale of IPS and do not regulate the subsequent promotions, supersessions and other consequences that flow from them. (Para 27)

A civil list published by the Government, is not a seniority list or gradation list of the officers in any cadre. The preface to the list itself says so. The placement found in the civil list can hardly be the basis to hold that the first respondent is senior to the petitioner. (Para 32)

In the case of promotion by selection the merit and suitability of the officer in all respects irrespective of his seniority is the prime factor. Seniority becomes relevant only when the merit of two or more eligible officers is found to be equal in all respects and not otherwise. The first and foremost requirement is that the promoting authority, as a matter of fact, should find that the merit of two or more officers, is equal in all respects. Without such a specific finding in the first place, the authority cannot be guided by the element of seniority for promotion. If the authority finds that the merit of two or more persons is equal in all respects, then and then only the senior can be promoted and not otherwise selection made without such a comparative assessment of the merits of the officers is vitiated. (Para 40)

Petition allowed.

Cases Referred Chronological Paras

A. I. R. 1975 S. C. 87	36
[1972-1 L. L. J. 490]	15
(1971) 2 S. L. R. 799	58, 59
(1970) 2 MYS. L. J. 187.	18
A. I. R. 1969 S. C. 1249	15
[1970-1 L. L. J. 370]	57
[1968-II L. L. J. 830]	19, 42

JUDGMENT

An unfortunate dispute which should not normally arise among the higher echelons of the Indian Police Service borne on the Karnataka cadre, has arisen between the petitioner and respondent No. 1 to the posts of Inspector General of Police (hereinafter referred to as the "IGP") and the Director General of Police (hereinafter referred to as the "Director") of the Government of Karnataka. But, this Court in exercise of its extraordinary jurisdiction under Art. 226 of the Constitution, cannot avoid determining the same, for which reason it is necessary to notice the salient facts in the first instance and, thereafter deal with the questions that arise for determination.

2. On 10-8-1946, the petitioner was appointed as an Assistant Superintendent of Police in the then princely State of Mysore. On the merger of the said State in the Indian Union and the formation of the new State of Mysore now called as Karnataka, under the States Reorganisation Act, the services of the petitioner stood allotted to the new State. But, even before the formation of the new State, the petitioner who had satisfactorily completed his probation and confirmed, was appointed under the special Rules made thereto the Senior scale of Indian Police Service (hereinafter referred to as "IPS") with effect from 13-5-1952, one of the premier All India Services constituted under

the All India Services Act of 1951. On his appointment to the IPS, the petitioner was allotted 1949 as the year of allotment. On 11-11-1968 the petitioner was promoted as DIG. On 10-6-1976 he was promoted as Addl. IGP. On 31-7-1977 he was further promoted as Spl. IGP in the time scale of Rs. 2,500-2,750 and was confirmed in that post with effect from 1-6-1979.

3. On 1-11-1950 respondent No. 1 entered IPS by direct recruitment and was allotted to the then Hyderabad State, from which State he stood allotted to the new State from 1-11-1956. He was promoted to IPS senior scale with effect from 13-9-1955. So far as the said cadre, respondent No. 1 is senior to the petitioner and this is not disputed by him also.

4. On 20-4-1970 respondent No. 1 was promoted as DIG. He was promoted as Addl. IGP on 26-10-1976 and was thereafter promoted as Spl. IGP on 30-5-1979 in the time scale of pay of Rs. 2,500-2,750. In that last post, respondent No. 1 has been confirmed with effect from 1-7-1980.

5. In Order No. DPAR 137 SPS 79 dated 8-1-1980 Government sanctioned the creation of the post of Director on a consolidated pay of Rs. 3,000 with a special allowance of Rs. 250 per month for a period of one year with effect from 10-1-1980 and promoted one Sri H. Veerabhadraiah against the said post from that date. Sri Veerabhadraiah attained superannuation on 30-6-1980 and retired from service on that day.

6. On the retirement of Sri Veerabhadraiah, Government decided not to continue the post of Director and posted respondent No. 1 as IGP from the afternoon of 30-6-1980 and issued Notification No. DPAR 115 SPS 80 dated 28-6-1980 (Annexure-H) thereto. On 30-6-1980 the petitioner approached this Court challenging the said Notification with a prayer for stay. But, in the absence of an order of stay, respondent No. 1 assumed charge as IGP on the afternoon of 30-6-1980 and continued to discharge the duties of the said post from that date.

7. In Order No. DPAR 309 SPS 81 dated 15-12-1981 (Annexure-J) Government again sanctioned the creation of the post of Director on a consolidated pay of Rs. 3,000 with special allowance of Rs. 250 per month for a period of one year with a further direction to keep the post of IGP vacant. On the same day, Government by its Notification No. DPAR 309 SPS 81 (Annexure-K) promoted respondent No. 1 against the said post which he naturally assumed on the same day, from which day he has been discharging the duties of the said post. Not unnaturally, the petitioner has again challenged the said promotion of respondent No. 1 and has sought for various consequential reliefs.

8. According to the petitioner, the post of IGP was a promotional post and respondent No. 1 whose record of service was not satisfactory has been promoted to that post without considering his legitimate and superior merit for the same.

9. So far as the promotion of respondent No. 1 to the post of Director which survives, the petitioner claims that he is senior to the former and Government has promoted him without considering his superior merit to hold that post.

10. In its return, respondent No. 2 has alleged that respondent No. 1 who entered IPS earlier to the petitioner and has been assigned higher ranking over him in the senior scale of that service, notwithstanding the fact that he was promoted and confirmed earlier as Spl. IGP., was senior to the petitioner. Respondent No. 2 has alleged that the posts of IGP and Spl. IGP are equivalent posts and the posting of respondent No. 1 who was holding the post of Spl. IGP was not a promotion but was only a transfer. On the question that really survives for consideration, viz., the promotion to the post of Director, respondent No. 2 has alleged that the case of the petitioner, respondent No. 1 and other eligible officers were considered and on a proper evaluation of their claims, it has rightly promoted respondent No. 1.

11. Respondent No. 1 has filed a separate return supporting respondent No. 2.

12. As noticed earlier, respondent No. 1 who had been posted as IGP is no longer holding that post and the post itself has been kept vacant. Hence, the challenge of the petitioner to the same no longer survives for consideration and is, therefore, rejected as having become infructuous. But, this is not true so far as his promotion to the post of Director.

13. On the pleadings and contentions urged before me, two points arise for determination and they are:

15 (I) Whether the petitioner is senior to respondent No. 1 in the cadre of Spl. IGP?

20 (II) Whether there has been a proper, legal and valid consideration of the cases of the petitioner and respondent No. 1 to the post of Director?

I propose to examine these questions in their order.

25 *Re: Point No. I:*

14. Sri N. Santhosh Hedge, learned counsel for the petitioner urged, that the petitioner who had been promoted and confirmed earlier to respondent No. 1 in the cadre of Spl. IGP was senior to the latter in that cadre and it is only the seniority in that cadre that should have been reckoned to decide their relative claims for the post of Director and not the initial seniority in the senior scale of IPS.

15. Sriyuths B. S. Keshava Iyengar, learned Advocate General appealing for respondent No. 2, and Murlidhar Rao, learned counsel for respondent No. 1 urged that the initial seniority in the senior scale of IPS continues to govern the seniority of the officers under the Indian Police (Service Regulation of Seniority) Rules-1954 (hereinafter referred to as the "Seniority Rules") and the same is not altered at any time, notwithstanding the earlier or

later promotions of the officers to various superior posts of the Department. In support of their contention, learned counsel for the respondents strongly relied on the rulings of the Supreme Court in *State of Orissa v. Binode Kishore*, A. I. R. 1969 S.C. 1249 and *Ramprakash v. S. A. F. Abbas* A. I. R. 1972 S.C. 2350.

16. The term "seniority" which is not defined in All India Service Act, the Seniority Rules or the General Clauses Act is not a term of art. But, still that term has come to acquire a definite and legal meaning in public services.

17. The term "seniority" in the public service is longer length of services in the very same grade or cadre. If the seniority is to be determined with reference to the very original entry into service of the officers ignoring the various development that take place in their career, it would undoubtedly destroy the very concept or promotions and all the incidents flowing from the same. A person may be senior to another in the initial cadre. But, that by itself cannot be a justification to ignore the promotions, supersessions and hold that a person promoted earlier would still be junior to the person superseded in the promotional post also. An officer may be senior to another in the initial cadre or when both of them join service in one and the same cadre. But, that cannot be the position in the superior posts filled by promotion. By holding that the officer promoted earlier is senior to the officer promoted later, the seniority in the initial cadre is neither affected nor destroyed. One is not antithesis to another. On any principle of logic or law, the contention urged for the respondents that respondent No. 1 is senior to the petitioner even in the cadre of Spl. I.G.P. is not sound.

18. A person appointed or promoted earlier is always senior to the person appointed or promoted later. A person confirmed earlier takes precedence over a person not confirmed or confirmed later. According to respondents themselves the post of IGP and Spl. IGP are equivalent posts and are interchangeable. I will assume this to be the correct position for the purpose of this case.

19. In *N. Chandramouli v. State of Mysore*, (1970) 2 Mys. L. J. 187, a Division Bench of this Court, examining the relative claims of regularly appointed and irregularly appointed candidates and their *inter se* seniority in the preparation of the inter-state seniority list of Government Insurance Department and the term "seniority" and its incidents thereto, observed thus:

10 "Seniority in simple English means a longer life than of another thing or person taken for comparison. In the case of Government servants, it means 'the length of service'. If the service of one person is longer than that of another, the first named person is called senior to the other. The value of the right of seniority is the right to consideration for promotion to a higher post in cases where promotion is made on seniority - cum - merit basis. In such cases, it is undoubted that seniority taken into account is the seniority in the grade immediately below the promotional post or in the grade which is described as the grade from which promotions are to be made. It proceeds upon the basis that the comparisons for purpose of seniority is between equals or those that are in the same grade or equated grades. It is incongruous to say or even to conceive that seniority is a concept involving comparison between the length of service in one grade and the length of service in another grade. If so, it becomes perfectly clear that it is impossible to compare regular service with irregular service for determining seniority between the regularly appointed Government servants and irregularly appointed Government servants. The very concept of seniority makes it impossible to postulate such a comparison".

50 In *Santram Sharma v. State of Rajasthan*, [1968-II L.L.J.-830], to which I will draw a detailed reference at a later stage, the Supreme Court has observed thus:

"That means that if a post falls vacant it is filled by the person who has served longest in the post immediated below".

The observations made in *Chandramouli's* case (supra) which are unexceptional and sound have not been dissented by the Supreme Court or by this Court in any later ruling. So also the observation made in *Santram Sharma's* case (supra) has not been departed by the Supreme Court in any later ruling.

20. Let me now examine whether the above general principles have been departed or thrown overboard in the Seniority Rules and any contrary provision is made to merit the acceptance of the contention urged for the respondents.

21. The Seniority Rules made under the Act are statutory Rules and prevail to the extent provisions are made in them. But, if the Rules do not specifically provide and deal with any matter, then the general principles noticed by me earlier, would govern the matter.

22. The title of the "Service Rules" does not give any indication of regulating the seniority of the members of the Indian Police Service throughout their entire career. R. 1 only states the title of the Rules. R. 2 that defines certain terms does not define the term "seniority". R. 3 deals with the year of allotment.

23. Rs. 4 and 5 of the Rules are important. The heading of these Rules do not even say that those Rules will regulate the seniority of the officers of the services in all promotional posts, Sub-rule (2) of R.4 deals with the seniority of those officers who were already in service prior to the commencement of the rules. Sub-rule (3) of the same Rule deals with the *inter se* seniority of officers appointed to the junior scale of IPS by competitive examination and the *inter se* seniority of officers appointed by promotion from the State cadres during the period referred to therein. Sub-rule (4) deals with the seniority of officers either by direct recruitment after

published annually in relation to the police department, in which the name of respondent No. 1 is placed above the petitioner, urged that the former is senior to the latter.

32. A civil list published by Government is not a seniority list or gradation list of the officers in any cadre. The preface to the Civil list itself expressly states so. A Civil list at the highest, only publishes the names of the officers working in a particular department as on a particular date. In this view, the placement found in the Civil list can hardly be the basis to hold that respondent No. 1 is senior to the petitioner. Hence, I reject this contention of Sri Iyengar.

33. Everyone of the rulings relied on by the learned counsel for the respondents do not really bear on the point and assist them.

34. Firstly, that petitioner was promoted to the cadre of Spl. IGP earlier to respondent No. 1 is not disputed by the respondents. Secondly, that petitioner had been confirmed in that post with effect from 1-6-1979 and that respondent No. 1 has been confirmed in that post only from 1-7-1980 is not also in dispute. On the application of the general principles to these facts, it inevitably follows that the petitioner is senior to respondent No. 1 in the cadre of Spl. IGP, though it may be in the initial cadre of IPS senior scale he was junior to the latter. In this view, I hold and declare that the petitioner is senior to respondent No. 1 in the cadre of IGP and Spl. IGP.

35. With regret and pain it has to be observed that the permanent civil service did not examine this aspect as it was bound to and assist the Chief Minister.

Re: Point No. II:

36. Sri Hegde urged that the promotion of respondent No. 1 who was junior to the petitioner, that too without a fair and proper consideration of merit and suitability in all respects to hold the post, is violative of Art. 16 of the Constitution and illegal. In

support of his contention Sri Hegde strongly relied on the ruling of the Supreme Court in *Union of India v. M. L. Capoor*, A. I. R. 1975 S. C. 87.

37. Learned counsel for the respondents maintained that the case of the petitioner, respondent No. 1 and all other eligible officers had been fairly and properly considered by the promoting authority and that authority being of the opinion, that the merit of the petitioner and respondent No. 1 was equal in all respects, had rightly promoted respondent No. 1 and there were no grounds to interfere with the same.

38. The Director is the head of the Police Department in the State. As the head of the Department, a person holding the post will be in overall command and supervision of the entire police force in the State which necessarily includes all officers and men in that force. Among the manifold, important and delicate duties the Director has to discharge, he has to act as the guide, friend and philosopher of the police force in the State. The image of the police force with the general public, the relationship of the officers among themselves, their relationship with their subordinates and *vice-versa*, would to some extent at least depend on the personality, ability and other qualities of the head of the department. Leonard D. White's statement in his treatise, introduction to the study of Public Administration to the following effect is equally applicable to the officer holding the post of Director :

"But higher positions are usually supervisory in nature and require ability to work with others, to coordinate, and to lead, as well as possession of special knowledge".

39. An officer to fill the post of Director, besides being a man of unquestionable integrity, should be the very best person or the most meritorious person in the cadre immediately lower to the cadre of promotional cadre, unless the Recruitment Rules so permit and not in any other cadre much less in the initial cadre. In other words, the post of Director has necessarily to be filled on the basis of promotion by selec-

tion and not on any other basis, much less on seniority cum-merit basis. The fact that the post is a cadre or an ex-cadre post does not make any difference in filling up the post by selection.

40. In the case of a promotion by selection, the merit and suitability of the officer in all respects to hold the promotional post in the public interest, irrespective of his seniority is the primary factor. Seniority becomes relevant only when the merit of the two or more eligible officers is found to be equal in all respects and not otherwise.

41. Leonard D. White clearly sets out the objects, and the methodology of promotions to lower and superior posts in Chapter 26. Without reproducing the entire chapter, it is useful to set out a few excerpts that are relevant, some of which have been approved by the Supreme Court notably in *Santram Sharma's* case (supra) and are as follows :

"The management of promotions is partly a technical question, but it is also deeply affected by common-sense, judgment and fairness. A badly planned promotion system harms the service not merely by pushing ahead unqualified persons but also by undermining the morale of the whole group. The hope for timely promotion is so normal and so widespread that the influence of a good promotion system is all pervasive. It is one of means of holding in Government service the best qualified men and women who enter the lower grades and is thus an important phase of a career service. Conversely, delay in promotion may become one of the surest means of driving them out. In any large scale organization it cannot be left to chance or to the casual attention of the persons most concerned in particular cases, for the larger the organization the greater the likelihood that promising employees may be shunted off into dead ends. In an expanding administrative system,

such as has on the whole characterized all levels of the American Government, new positions are frequently created and promotion is accelerated, but in a static or contracting system, promotion prospects are greatly reduced.

The principal object of a promotion system is to secure the best possible incumbents for the higher positions, while maintaining the morale of the whole organization. The main interest to be served is the public interest not, the personal interest of members of the official group concerned. The public interest is best secured when reasonable opportunities for promotion exist for all qualified employees, when really superior civil servants are enabled to move as rapidly up the promotion ladder as their merits deserve and as vacancies occur, and when selection for promotion is made on the sole basis of merit. For the merit system ought to apply as specifically in making promotions as in original recruitment.

x x x

Employees often prefer the rule of seniority, by which the eligible longest in service is automatically awarded the promotion. Within limits, seniority is entitled to consideration as one criterion of selection. It tends to eliminate favouritism or the suspicion thereof; and experience is certainly a factor in the making of a successful employee. Seniority is given most weight in promotion from the lowest to other subordinate positions. As employees move up the ladder of responsibility, it is entitled to less and less weight. When seniority is made the sole determining factor, at any level, it is a dangerous guide. It does not follow that the employee longest in service in a particular grade is best suited for promotion to a higher grade; the very opposite

may be true. Consistent application of the rule of seniority up the scale to supervisory and administrative positions would in itself cause the resignation of the better men and thus invite progressive deterioration in the higher grades where special competence is particularly needed".

42. In *Santram Sharma's* (supra) case, the Supreme Court examining the supersession of a member of IPS borne on the Rajasthan cadre, who of course was senior to the persons promoted to the posts of Deputy IGP and IGP of Rajasthan State, has pointed out the various circular instructions issued by the Government of India regulating promotions by selection and their validity. All those circulars referred to at para 7 of the judgment show that the superior posts in the Police Department of a State had to be filled by promotion by selection.

43. Let me now examine as to how and on what basis Government has promoted respondent No. 1.

44. File No. DPAR 309 SPS 81 of the Government Secretariat deals with the creation of the post of Director in the first instance and deals with the consideration of cases of the petitioner, respondent No. 1 and other eligible officers for promotion. The noting and orders on that file dealing with the creation of the post of Director has no relevance to the case.

45. But, so far as the point in issue, then Deputy Secretary, DPAR Services made a brief and colourless note with which the then Chief Secretary concurred by affixing his signature and placed the file before the Chief Minister, who also happened to be the portfolio Minister of the Department. The said note of the Deputy Secretary and Chief Secretary read thus:

"On the previous occasion when the post of Director General of Police was created, selection of the officer for appointment against the post appears to have been

made by the Chief Minister keeping in view the service records and the confidential reports of the officers. As per the Government order dated 18th October, 1976 specific guidelines have been laid down for regulating the promotion/selection of the members of the IPS to the various grades of service. The Government order has indicated a Screening Committee for the purpose of promotion to the post of DIG, Addl. IG and the IGP. It is silent with regard to the composition of the Screening Committee for the post above the rank of IGP.

The following officers of the rank of IG of Police are to be considered for promotion to the post of Director General of Police newly created.

- 1) Sri G. V. Rao (RR 1949)
- 2) Sri D. Vijayadevaraj Urs (1949)
- 2) (a) Sri S. M. Warty (on deputation with GOI)
- 3) Sri K. C. K. Raja (RR 1951)
- 4) Sri P. S. Chellappa (RR 1953)

The CR Dossiers of these officer are placed below in the file. Papers may be submitted to the Chief Minister for the selection of the officer to be appointed as Director General of Police so as to issue the order of appointment and the post simultaneously.

15--11-81 Sd/- (Usha Ganesh),
Dy. Secretary. DPAR (Services)
5-12-81 Sd/- (N. Narasimha Rao)

Chief Secretary
Chief Minister."

46. On an examination of the said notes, the Chief Minister on 14-12-1981 made the following minute:

"There are no specific guidelines laid down to regulate the promotion

of officer to the rank of Director General of Police. Hence, the principle of promotion by selection from amongst officers of the rank of IGP was followed.

5

I have gone through the confidential reports and other service records of the officer of the rank of IGP. Amongst these officers Sri S. M. Warty is not available being on deputation with the Government of India. No officer could be categorised as outstanding on perusal of the confidential reports of the remaining officer. Hence, promotion to the post of Director General of Police, was taken up on the basis of seniority. Sri G. V. Rao is the senior most officer of the rank of IGP. His service records and the confidential reports are satisfactory. Accordingly, I recommend that Sri G. V. Rao may be promoted to the post of Director General of Police and appointed as the Director General of Police in the newly created post. Orders in this behalf may issue.

30

14-12

Sd/- (R. Gundu Rao)
Chief Minister.

In pursuance of the said minute of the Chief Minister Notification No. DPAR 309 SRS 81 dated 15-12-1981 was issued by Government promoting respondent No. 1 as Director.

47. What emerges from the aforesaid notes, minutes and orders are these: (i) that respondent No. 1 was considered to be senior to the petitioner on the basis that he had entered Indian Police Service earlier to the petitioner obviously without reference to the various developments that had taken place in their career; (ii) that the Chief Minister formed the opinion that none of the eligible officers were 'outstanding'; and (iii) the Chief Minister ordered the promotion of respondent No. 1 solely on the ground that he was senior to the petitioner and no other ground.

48. That in the senior scale of IPS, respondent No. 1 was senior to the petitioner

230

is correct. But, that fact had no relevance in deciding as to who was senior in the cadre immediately below the cadre of Director, viz., IGP/Spl. IGP.

49. Earlier, I have found that the petitioner appointed and confirmed earlier to the cadre of Spl. IGP was senior to respondent No. 1. But, from the proceedings it is clear that the same has been ignored.

50. The note of the Deputy Secretary concurred by the Chief Secretary refers to the confidential reports of the four officers holding the posts of IGP. But, in the first sentence of the 2nd para of his minute, the Chief Minister states that he has perused the confidential reports and other service records of the officers. No other service records of the officers were placed before him or before this Court. All that was placed before the Chief Minister and this Court were only the confidential reports of the four officers and no other service records. Evidently the expression that other service records of the officers were perused by him appears to be an inadvertent mistake.

51. An examination of the minute made by the Chief Minister shows that the selection post has been filled up on the basis of seniority-cum-merit, which is the normal rule that is followed in filling up lower cadre posts of a Government department. A selection post cannot be converted into a non-selection post, assuming that there are no outstanding officers also. From this it follows that the selection is vitiated.

52. In case of a promotion by selection, the element of seniority tilts the balance in favour of one or the other, only if the authority finds that the merit of two or more officers that are in the range of selection is equal in all respects and not otherwise. The first and foremost requirement is that the promoting authority as a matter of facts should find that the merit of two or more officers is equal in all respects. Without such a specific finding in the first place, the authority cannot be guided by the element of seniority for promotion. If the authority finds that the merit of two or more persons is equal in

all respects, then and then only the senior in the cadre of officers eligible for promotion can be promoted to the superior post and not otherwise.

53. Learned counsel for the respondents without disputing the correctness of the above principles, urged that the promoting authority, as a matter of fact, has found that the merit of the petitioner and respondent No. 1 was equal in all respects and on such a finding had promoted respondent No. 1 who was senior to the petitioner.

54. Earlier I have set out the note made by the Deputy Secretary and the Chief Secretary and the minute made by the Chief Minister in its entirety. Even placing the most charitable construction on all off them, it is impossible to hold that the promoting authority, as a matter of fact, found that the merit of the petitioner and respondent No. 1 was equal in all respects. Any such conclusion by this Court would be plainly opposed to the very minute of the Chief Minister. I have, therefore, no hesitation in rejecting this contention urged for the respondents.

55. The term ("outstanding") employed by the Chief Minister is not capable of an easy and precise definition. In matters of promotion, there is also an aspect of merit or the highest grading of merit. In any event such a conclusion cannot be reached by merely asserting that there are no "outstanding" officers without making a comparative assessment of the merits of the officers. By making a mere bald statement to that effect that none are "outstanding" and then take up the case for promotion on the basis of seniority-cum-merit, is to really avoid or burk the issue. After all to expect a Caesar, a Napoleon or a Shivaji in an administrative service or a police service is to ask for the moon itself on earth.

56. Let me assume that the opinion of the Chief Minister that none of the eligible officers were "outstanding" is correct. In such an event also, it was not open to the promoting authority to convert the post into a non-selection post as has been done. Any such attempt is fraught with grave

dangers and destroys the very concept and content of a selection post. In such a situation also, the best among all the eligible officers has to be selected to the promotional post. Unfortunately the promoting authority has not attempted to do the same as it was bound to.

57. From the foregoing it follows that there has not been a proper consideration and selection to the post of Director and the same is vitiated for more than one reason. A proper selection has necessarily to be made by the promoting authority in the first instance and not by this Court; vide *State of Mysore v. Syed Mohmood*, [1970-1 L. L. J. 370]. As there has not been a proper selection, there is no alternative for this Court except to quash the promotion of respondent No. 1 and direct Government to make a proper selection.

58. As seen earlier, respondent No. 1 has been holding the post of Director for some time past. Before a fresh selection is made and orders are issued, the Department cannot be without a Director. After all such continuance is absolutely necessary in the public interest and such a principle has been accepted by the Supreme Court in *Gurnam Singh v. State of Rajasthan*, (1971) S. L. R. 799. In this view, it is necessary to permit respondent No. 1 to continue to hold that post till a fresh selection is made and orders are issued by Government. But, such continuance cannot obviously be taken into consideration by Government in making a fresh selection.

59. The petitioner is due to retire from service on 30-4-1982 and respondent No. 1 is due to retire from service on 31-10-1982. But, this factor cannot be a ground for this Court to decline to exercise its extraordinary jurisdiction. Any such attitude by this Court would virtually amount to this Court abdicating its power and making the exasperated litigant at the inordinate delays that take place in the disposal of cases by Courts for a variety of reasons, to lose all faith in Courts. Even the hearing of this case which commenced as early as on 28-1-1982, was concluded as late as on 10-3-1982 for a variety of reasons, the details of which are not necessary to

notice. These facts also demand Government to make a fresh selection with utmost expedition.

60. So far I have dealt with the merits and recorded my findings and conclusion holding that the matter requires a re-examination by Government. In order to enable Government to satisfactorily re-examine the matter I consider it proper to refer to a ruling of the Supreme Court on the meaning of the term "merit" and on the desirability of constituting a Screening Committee to examine the records of all the eligible officers and submit its report to the concerned Minister to take a proper decision.

61. In dealing with the term "merit" in the Rajasthan Administrative Service Rules, 1954, a unanimous Constitution Bench of the Supreme Court in *Gurnam Singh's* case, (supra) speaking through Vaidialingam, J., has observed thus:

"No doubt the term 'merit' is not capable of an easy definition, but it can be safely said that merit is a sum total of various qualities and attributes of an employee such as his academic qualifications, his distinction in the University, his character, integrity, devotion to duty and the manner in which he discharges his official duties. Allied to this may be various other matters or factors such as his punctuality in work, the quality and outturn of work done by him and the manner of his dealings with his superiors and subordinate officers and the general public and his rank in the service. We are only indicating some of the broad aspects that may be taken into account in assessing the merits of an officer. In this connection it may be stated that the various particulars in the annual confidential reports of an officer, if carefully and properly noted, will also give a very broad and general indication regarding the merit of an officer".

In evaluating the merit of the officers to the post and making a selection, it is

necessary for Government to bear these observations of the Supreme Court.

62. There are no specific Rules regulating the method of selection to the post of Director. The circular instructions issued by Government of India only directs that the senior posts of Indian Police service should be filled up by promotion or selection. In this view, it was open to Government to regulate the details of selection by executive orders.

63. In exercise of its executive powers, Government has made Order No. GAD 12 SIS 76 dated 18th October, 1976 setting out the guidelines for filling up the senior posts of the Department and the constitution of Screening Committees. Cl. III of the said order contemplates the constitution of a Screening Committee to make selections for posts other than IGP. The said order in terms does not provide for constitution of a Screening Committee for making selection to the post of IGP or the Director. But, this omission does not prevent Government from constituting a Screening Committee of such officers as may be decided by it, of course excluding the eligible officers whose cases have to be considered and have its assistance before taking a decision. The report of the Study Team of State Level Administration of the Administrative Reforms Commission recommends the constitution of a Screening Committee for making selection to higher posts in these terms :

"Appointment to selection posts shall be made on the recommendation of a committee with the Chairman of the Public Service Commission as its Chairman, the Chief Secretary and any other senior Secretary as Member. Opportunity should be thrown open to all so as to attract the best talent".

The last recommendation of the term that opportunity should be thrown open to all so as to attract the best talent cannot obviously be resorted to in the circumstances.

64. An examination of the service records by a high level expert committee would be of great assistance to the concerned

Minister to take a decision. In my view, the constitution of such a Committee by Government is highly desirable. But, whether Government should constitute such a Screening Committee or not and have its assistance or not is a matter for it to decide.

65. In the light of my above discussion. I make the following orders and directions :

(a) I quash Notification No. DPAR 309 SPS 81 dated 15-12-1981 (Annexure K) ;

(b) I issue a writ in the nature of *mandamus* to respondent No. 2 to consider the case of the petitioner, respondent No. 1 and other eligible officers for promotion to the post of Director General of Police, make a fresh selection in accordance with law and in the light of the observations made in this order, with utmost expedition and in any event on or before 31-3-1982. But, till a fresh selection is made, respondent No. 1 shall continue to hold the post of Director which fact shall not be taken into considera-

tion by Government in making a fresh selection.

(c) On a fresh selection if Government finds that the petitioner should have been promoted as on 15-12-1981 and so promotes him as Director, it shall also make available to him all consequential and monetary benefits flowing from such an order.

66. Rule issued is made absolute with costs payable by respondent No. 2. Advocate's fee Rs. 250.

67. Let a copy of this order be communicated to respondent No. 2 within 3 days from this day. Let another copy of this order be also furnished to the learned Advocate General within the same time.

(Note)—On appeal by the State in WA 581 of 1982, the Division Bench, consisting of D. M. Chandrashekar, C. J. and N. Venkatachala, J. have, by judgment dated 29-3-1982, confirmed the judgment of the single Judge.

—o—

IN THE HIGH COURT OF JUDICATURE, KERALA

[O. P. No. 3396 of 1982, dated 15th June, 1982.]

PRESENT :

MR. JUSTICE U. L. BHAT

Between

Thomas

and

Cochin Refineries Limited

Constitution of India — Arts. 12 and 226 — Cochin Refineries Ltd., whether "other Authority" under Art. 12 — Whether writ will lie against the Cochin Refinery?