

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO: 590/93

Date of Decision: 16/10/98

P.V.Joshi

.. Applicant

.. Advocate for  
Applicant

-versus-

State of Maharashtra & Ors.

.. Respondent(s)

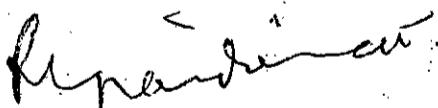
Dr.D.Y.Chandrachud, Additional Solicitor General &  
Shri M.I.Sethna, Senior Standing .. Advocate for  
Counsel along with Shri V.D.Vadhavkar. Respondent(s)

CORAM:

The Hon'ble Justice Shri R.G.Vaidyanatha, Vice-Chairman,  
The Hon'ble Shri D.S.Baweja, Member(A).

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to N  
other Benches of the Tribunal ?

  
(R.G.VAIDYANATHA)

VICE - CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 590/1993.

Pune, this the 16th day of October 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,  
Hon'ble Shri D.S.Baweja, Member(A).

P.V.Joshi, I.P.S.,  
Flat No.10, Building No.18,  
Anand Nagar,  
Paud Road,  
Pune - 411 029.

... Applicant.

V/s.

1. State of Maharashtra  
through Chief Secretary  
to the Govt. of Maharashtra,  
G.A.D., 5th floor, Mantralaya,  
Bombay - 400 032.
2. Union of India,  
through Secretary,  
Union Home Ministry,  
Department of Personnel,  
Pension & Public Grievances,  
North Block, Central Secretariat,  
New Delhi.
3. Shri Sanjeev Dayal, IPS,  
Addl. Commissioner of Police  
in the O/o.Commissioner of  
Police, Greater Bombay,  
Opposite Crawford Market,  
Bombay - 400 001. .... (Deleted)
4. Shri Y.C.Pawar, IPS,  
Addl. Commissioner of Police  
in the Office of Commissioner of  
Police, Greater Bombay,  
Opp. Crawford Market,  
Bombay - 400 001. .... (Deleted)
5. Shri S.B.Kulkarni, IPS,  
Dy. Inspector General of Police,  
in the Office of Director General  
of Police, Shahid Bhagat Singh Rd.,  
Old Council Hall,  
Bombay - 400 039.
6. Shri M.S.Mahesh Gauri,  
Dy.Inspector General of Police,  
State CID (Crime), Sangam Bridge,  
Shivaji Nagar,  
Pune - 411 005. .... Respondents.

(By Dr.D.Y.Chandrachud, learned  
Additional Solicitor General for  
State of Maharashtra, Shri M.I.Sethna  
along with Shri V.D.Vadhavkar for R-2,  
R-3 & 4 deleted and R-5 & 6 are  
unrepresented).

ORDER

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. The applicant had filed number of M.Ps., of which four M.Ps. are still pending viz. M.P. Nos. 201/95, 300/95, 401/95 and 903/96. We have heard the applicant who appeared in person and the learned counsel for the respondents and disposing of the O.A. and the said four M.Ps. by this order.

2. The applicant who is an I.P.S. Officer and working as Superintendent of Police has approached this Tribunal for certain reliefs. He is a 1976 batch I.P.S. Officer. He was allotted to State of Maharashtra in 1977. He was originally in the Junior Scale and then promoted to Senior Scale and ~~has~~ been recently promoted to the Junior Administrative Grade. The applicant being an I.P.S. Officer is an All India Service Officer and governed ~~by~~ the All India Services Act, 1951. He was appointed by the Government of India. His case is that since an All India Officer is appointed by the Government of India and governed by the 1951 Act, the State Government has no powers about the service conditions of the applicant including promotion etc. His case is that the State Government or the Governor has no Administrative power over an All India Services Officer. The State Government cannot make any Rules or Regulations regarding promotion of IPS Officers. It is also alleged that the Central Government cannot delegate any of its powers regarding promotion etc. to the State Government. Even if there is any delegation of such powers by the Central

to the State Government, it is ultra vires of the Constitution and ultra vires of the 1951 Act and liable to be struck down. The government resolution dt.31.1.1990 issued by the State of Maharashtra prescribing conditions of promotion to Selection Grade of IPS and to the grade of Deputy Inspector General of Police is illegal. In pursuance of the Government resolution dt. 31.1.1990 the applicant's case for promotion was considered by DPC appointed by the State Government. Initially, the applicant was not considered for promotion due to pendency of Disciplinary Enquiry against him. After the applicant was exonerated in the Disciplinary Enquiry, the applicant was considered and given promotion to Selection Grade w.e.f. 1.12.1992, but the applicant has been denied arrears of salary from the date his immediate junior got promoted. The proceedings of the DPC are liable to be quashed. The applicant was again considered by a DPC in 1992 for promotion to the rank of Deputy Inspector General of Police. It is alleged that due to personal prejudice on the part of the DPC members, applicant was not recommended for promotion. It is alleged that the very Constitution of DPC by the State Government was illegal. The DPC has promoted some of the juniors of the applicant to the rank of DIG, ~~who~~ are Respondents No.3 to 6. The Executive power exercised by the State Government in respect of IPS Officers ~~are~~ contrary to Article 162 of the Constitution of India. The applicant therefore, has approached this Tribunal praying for a direction that the Government resolution dt. 31.1.1990 is ultra vires of not only the 1951 Act, but also the Constitution of India and ~~for~~ quashing of Executive actions and orders of the State Government

issued on the basis of that Government resolution, to quash the DPC proceedings of 1991 and 1992 and 1993, O granting promotion to the rank of DIGs for 1976 batch and 1977 batch of IPS Officers, for a direction or order restraining operation of those provisions of Rules framed under the 1951 Act, to declare that all Executive orders issued by Government of India delegating Executive and Legislative powers to the State Government as null and void.

3. The State Government R-1 has filed a reply opposing the application. It is stated that the application is not maintainable. It is stated that the promotion to the post of DIG of Police is considered from the feeder cadre of Superintendent of Police (Selection Grade) and is governed by All India Services Act, 1951, All India Services (Condition of service Residuary Matters) Rules, 1960, Indian Police Service (Cadre) Rules, 1954, and I.P.S. (Pay) Rules, 1954. It is stated that as per the Rules, the State Government has been empowered to consider the case of IPS Officers for promotion to the rank of DIG Police. The Government of India has issued Executive Orders to all the State Governments to have a uniform policy regarding promotion. The applicant was considered for promotion to the post of DIG of Police in the year 1992. The applicant could not be recommended for promotion due to his grading on the basis of ACRs and the DPC found him unfit for promotion. The procedure followed by the State Government of Maharashtra for making promotions to the DIG Police is as per the 1951 Act and relevant Rules made by the Government of India. That the Government resolution

dt. 31.1.1990 is perfectly legal and valid. Number of allegations made in the application are denied. It is stated that all the Rules made by the Central Government and Executive instructions issued by the Central Government and the State Government are according to law. The allegations of mala fides or prejudice on the part of the DPC members is denied. The juniors of the applicant were found fit for promotion by the DPC and accepted by the Government of Maharashtra. That the applicant is not entitled to any of the reliefs. It is therefore, prayed that the application be dismissed with costs.

Though there is no separate reply on behalf of the Union of India, from the record we find that the Union of India has adopted the stand of the State Government.

4. The applicant who argued the case in person contended that the All India Services is in the Union list and only the Parliament can make the law and the Rules can be made by the Central Government and that the State Government has no role in the promotion or other service conditions of the IPS Officers. He submits that his own promotion to the Senior scale done by the State Government was illegal. According to him the State Government cannot make any promotions to Officers borne on All India Services. Therefore, he contended that any rules or resolutions made by the State Government or Constitution of DPCs made by the State Government for promotion of IPS Officers is illegal. He also contended that Central Government alone can do promotions and it cannot even delegate powers to the State Government.

He also submitted that the 1960 Rules and some other Rules under which powers are delegated by the Central Government to the State Government are invalid being unconstitutional. On the other hand, the learned Additional Solicitor General Dr. D.Y.Chandrachud and the learned Senior Standing Counsel Mr.M.I.Sethna along with Mr.V.D.Vadhavkar appearing for both Union of India and the State Government refuted all these contentions and contended that as per the Rules framed under section 3 of the 1951 Act, the State Governments have powers to make promotions to different cadres in the All India Services including IPS. It was further submitted that ~~these~~ practise is going on for the last 50 years in all the three All India Services viz. Indian Administrative Service, Indian Police Service and Indian Forest Service. That the applicant was not promoted on the basis of ~~service~~ records and his previous application seeking promotion was dismissed by this Tribunal in O.A. 1195/92 and the applicant cannot now turn around and again challenge his promotion on imaginary grounds. It was therefore, submitted that there is no merit in the application and it is liable to be dismissed. We have also heard both sides regarding the pending M.Ps.

5. In the light of the arguments addressed before us, the points that fall for determination are :

- (1) Whether the State Government has no powers to make promotions in the IPS cadres as alleged in the application?
- (2) Whether the applicant is entitled to <sup>all</sup> or any other reliefs prayed for in the application?

(3) Whether the applicant is entitled to any reliefs in the M.Ps. 201/95, 300/95, 401/95 and 903/96?

(4) What order?

6. Point No. 1.

The substance of argument of the applicant is that since he is appointed to an All India Service by the Central Government, the State Government has no administrative powers over IPS Officers including the power of promotion. We find from the record that applicant has at some times challenged even the order of transfer given by the State Government. Many times during the arguments he was referring to General Clauses Act. In our view, the General Clauses Act is of no help to us for considering the point under consideration. What Section 16 of the General Clauses Act says is that a power to make appointment shall also include the powers to suspend or dismiss any person. We are not for a moment concerned with the disciplinary powers of either the Central Government or the State Government in respect of All India Service Officers. There is also no dispute between the parties that the initial recruitment to the service whether it is IPS, IAS or IFS it rests with the Central Government. Now the dispute is whether after the initial recruitment to the service, whether the promotions are to be effected only by the Central Government as contended by the applicant or it can be done by the State Government as per the Rules framed by the Central Government under section 3 of the All India Services Act.

7. The applicant was harping very much on the power

of the Central Government and the power of the Parliament under Article 312 of the Constitution of India. He went on arguing that since All India Services is in the Union list, the Parliament alone can legislate and it is only the Union Government which can have control over the All India Service and that the State Government has no control over the All India Service Officers.

Article 312(1) of the Constitution reads as follows:

"Notwithstanding anything in Chapter VI of Part VI or Part XI, if the council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all-India services (including an all-India Judicial service) common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service."

For the present purpose, sub-clauses 2, 3 and 4 are not relevant.

The Article clearly says that Parliament may provide law for the creation of All India Services and to regulate the service conditions.

By virtue of this power conferred under Article 312 of the Constitution of India, the Parliament enacted the All India Services Act, 1951. It contains only four sections. Section 3 enables the Central Government to make Rules for the Recruitment and Conditions of Service of All India Officers. Then it also provides that the Rules so framed by the Central Government shall be placed before the Parliament, which can if necessary make some amendments to the said rules. It is well settled that after the Rules are kept before the Parliament and if they are not amended or modified by the Parliament, the Rules become final and operative after the expiry of the

time mentioned in Section 3(2) of the said Act.

Now, therefore, we find that Parliament has enacted a law conferring power on the Central Government to make Rules not only for Recruitment, but also in respect of service conditions of the All India Service Officers.

8. Now it is not disputed that under the power vested in the Central Government under section 3 of the 1951 Act, number of rules are made from time to time in the last 50 years. We will only refer to some of the Rules which are necessary for our present purpose. The IPS (Recruitment) Rules, 1954 provide for the nature and mode of recruitment of IPS Officers. The mode of Recruitment is given in Rule 4 which provides for both direct recruitment from the competitive examination and by promotion from the State Police Service. Section 6(1) of the Rules provide that all appointments to the service shall be made by the Central Government and such appointments shall be in the manner of Recruitment as mentioned in Rule 4. The contention of the applicant both in the O.A. and at the time of arguments is that this power ~~some~~ under section 6 applies to all appointments to the IPS Service in all cadres from the lowest to the highest. We are unable to see as to how the applicant can contend that Central Government can make all appointments from the lowest cadre to the highest cadre of the IPS under Rule 6. In our view, Rule 6 pertains only to the appointment ~~to~~ the service as mentioned in Rule 4 necessarily means and implies the initial appointment to the IPS cadre. It does not speak about any further promotion after a candidate is selected to the IPS cadre.

9. Therefore, reading Rule 6 along with Rule 4 the only inference possible is that Central Government has powers of appointing all candidates to the service at the initial stage, in one of the modes provided under Rule 4, does not speak about promotions after the initial recruitment/appointment.

No doubt, Rule 6-A(1) provides that Officers recruited under Rule 4 may be placed in Senior Time Scale of pay by the State Government concerned. The applicant contended vehemently that State Government has only a limited power under Rule 6-A to appoint an Officer in Senior Time Scale of Pay and State Government has no other powers to give promotions to IPS Officers thereafter. If we read Rule 6-A(1) and (2), it only shows that after a candidate is initially appointed by the Central Government under Rule 6 and then allotted to the State Government, the State Government is empowered to give Senior Time Scale of Pay to a particular Officer or Officers on the basis of their experience length of service etc. It does not speak about promotions as such. It is only a case of giving higher scale of pay depending upon the Officers length of service etc.

There is no other provision in the 1954 Rules giving powers either to Central Government or State Government about further promotions in the IPS cadre. The whole 1954 Rules is confined only to the initial Recruitment and not about further promotions in the cadre.

10. Then, we come to IPS (Pay) Rules, 1954. It provides for several rules providing sanction of pay scales and increments to IPS Officers. Then we find

Rule 3 (2A) which provides for appointments to the Selection Grade and to posts carrying pay above the Time Scale of Pay shall be made by selection on merit with due regard to seniority. But the Rules do not provide as to who is the promoting authority. Any how, promotions to higher grades are to be done on the basis of merit-cum-seniority.

Then we come to IPS (Cadre) Rules, 1954. The Rules provide that each State will have a State Cadre of IPS Officers and the strength of the cadre will be decided by the Central Government in consultation with the State Government (vide Rule 4). Rule 7 is very important and it reads as follows :

"All appointments to cadre posts shall be made -  
(a) in the case of a State Cadre, by the State Government; and  
(b) in the case of a Joint Cadre, by the State Government concerned.

Provided that for the purpose of filling Leave vacancies ..... the State Government may, delegate to Heads of Departments, its powers of making appointments to cadre posts."

Rule 7 therefore, clearly provides that all appointments to the cadre of IPS shall be made by the State Government concerned. The Central Government is nowhere in the picture. The Rules are framed by the Central Government in consultation with the State Governments under the power conferred under Section 3 of the 1951 Act.

Here the State Government is empowered to make all appointments in the State Cadre. The applicant has submitted that the Head Note or Heading of Rule 7 is "Postings". It is well settled that the Head Note or Heading cannot control the contents of the sections or Rule. The Heading is only a guideline. We have to see

the contents of the Section or Rules to find out the intention of the Law Maker. The Rule, therefore, clearly provides that it is State Government which has powers to make all appointments to cadre posts in the State Cadre.

Now arises a question as to what is meant by a Cadre Post. This can be answered by referring to the IPS (Fixation of Cadre Strength) Regulations, 1955.

We have already seen that Rule 4 of the Cadre Rules says that the strength and composition of the Cadre in each State should be determined by the Central Government in consultation with the State Government. Accordingly, in consultation with the State Governments the Central Government has made the IPS (Fixation of Cadre Strength) Regulations, 1955. It provides the cadre strength for different States. As far as Maharashtra is concerned the Regulation shows the strength and composition of the IPS Cadre. The total number of Senior posts under the State Government is fixed at 111; it includes one post of D.G.P., one post of Director of Vigilance, four posts of Commissioners of Police for Bombay, Pune, Nagpur and Thane and similarly different posts are mentioned including the posts of Additional Commissioner of Police, Deputy Commissioner of Police, Superintendent of Police etc.

Now the cadre appointments are to be done by the State Government. If an Officer is to be posted as a Deputy Commissioner of Police, an Assistant Commissioner has to be promoted and posted as Deputy Commissioner of Police. Similarly, the State Government has to decide and promote a Deputy Commissioner as Commissioner of Police. Therefore, for all appointments to the cadre of IPS from the strength and composition

of the cadre, the State Government has been empowered to make appointments. Hence by conjoined reading of 1954 Cadre Rules and the 1955 Fixation of Cadre Strength Regulations, we can conclude that it is the State Government and the State Government alone which has been empowered to make appointments to different cadres in the IPS cadre of a State. Therefore, naturally the State Government will have to promote the Junior Officers as Senior Officers and Senior Officers to higher levels to fill up the cadre posts. No power has been retained by the Central Government to make promotions or appointments to the State cadre except the initial recruitment to the service.

11. It was argued by the applicant that the Central Government cannot delegate its powers to the State Government and even if it is delegated, its powers under the above Rules, the delegation of power is illegal and liable to be struck down.

We have already seen that under Article 312 the Parliament can provide for All India Services and then regulate Rules for recruitment and service conditions. We have already extracted Article 312 which clearly shows that the All India Services are common to the Union and the States. It is not as if there is an IPS cadre or IAS cadre in the Central Government. Though it is an All India Cadre, ~~All~~ Officers are sent to State Governments only few Officers are sent on deputation by State Government to the Central Government. There is nothing known as IAS Officers or IPS Officers of the Central Government. All IAS Officers or IPS Officers are on the State Cadre only. They are only sent to Central

Government on deputation on a fixed tenure. The Officers are borne on the State Cadre. They are paid by the State Governments, they are controlled by the State Governments, but the Central Government has reserved the initial recruitment and the final order of dismissal from service or removal from service. In this connection, we may refer to All India Services (Discipline & Appeal) Rules, 1969. It applies to all All India Officers including the IPS Officers. A perusal of this Rule shows that the State Government is competent to suspend an All India Service Officer. The State Government is competent to initiate Disciplinary action against an All India Service Officer of the State Cadre. Then, the State Government can even impose minor penalties. As far as major penalties are concerned like Compulsory Retirement or Removal from Service or Dismissal from Service, after holding a departmental enquiry, the papers are to be submitted to the Central Government. Therefore, it cannot be said, as contended by the applicant, that the State Government has no Administrative control and no powers over the IPS Officers and that the entire powers vests in the Central Government. If we peruse the number of Rules framed by the Central Government under Section 3 of the 1951 Act, major powers are given to the State Governments regarding the State Cadre of IPS Officers, IAS Officers etc.

12. The applicant invited our attention to some authorities.

In AIR 1979 SC 193 (Chief Justice of Andhra Pradesh and Another etc. v/s. L.V.A. Dikshitulu and Ors.), The question was about Administrative powers of the High Court over the subordinate Judicial Officers.

The applicant wanted to rely on para 27 of the reported Judgment where the Supreme Court has observed that the power of appointment given to the High Court over the subordinate Judicial Officers under Article 229 includes the power to suspend, dismiss, remove or compulsorily retire from service etc. Even in the present case, under the 1969 Rules the Central Government has reserved the major penalty powers like dismissal, removal from service etc. Further we have to make a distinction between the Judiciary and the Executive. The basic feature of the Constitution of India is to maintain and uphold the independence of the Judiciary. Therefore, the control over the subordinate Judicial Officers have been vested in the High Court. We may also mention that in matters of judicial appointments though the Constitution uses the word in consultation with the Chief Justice of a High Court or Supreme Court, the trend of decisions is that "consultation" means "concurrence". But we cannot imply the same meaning to the word "consultation" occurring in any other statute, for example in service matters the Government will have to consult the Public Service Commission, but it is well settled that recommendations of the Public Service Commission is not binding on the Government. Similarly, under section 3 of the 1951 Act, the Central Government will have to consult all the States before making the Rules regarding service conditions of All India Service Officers. Here also, the suggestions or proposals made by the State Government are not binding on the Central Government. But the ~~same~~ will not apply so far as the Judiciary is concerned. Therefore, the observations of the Supreme Court in the above case cannot be applied to

Service Conditions of other Executive Officers.

In AIR 1955 SC 549 (Rai Sahib Ram Jawaya Kapur and Ors. V/s. The State of Punjab), The question was whether the Executive Powers of the State Government can go against the provisions of any Constitution or any Law. The Supreme Court has observed that Executive power can be exercised on any matter even though not covered by law, but it should not go against any specific provision of Constitution of Law. The applicant wants to rely on the observations at para 7 of the reported Judgment which say that the Executive power of the Central Government extends to all matters with respect to which the Parliament can make law. The applicant's contention is that since the State has no powers to make Laws in respect of Union List and since Union List is under the control of the Central Government and the Parliament, the State Government cannot have any Executive power over the subjects covered by the Union list.

In our view, the argument has no merit. It is nobody's case that the State Legislature or State Executive is controlling any subject covered by Union list. We presently point out that this All India Service Cadre is not in that category or <sup>in</sup> the exclusive domain of the Union Government. On the other hand, it is a common cadre both for Union and the States. In fact, the cadre is meant for the State though few Officers are sent to Union Government on deputation. If the Officers are borne on the State Cadre and are paid salary by the State Government then naturally it should be under the control of the State Government. We have already seen how the Rules

framed by the Central Government show that the State Government is given most of the powers over the All India Service Officers working in the respective States except the initial recruitment and the final order of dismissal or removal or compulsory retirement.

In AIR 1960 SC 430 (Narendra Kumar and Ors. V/s. The Union of India and Ors.) which is a case of questioning the validity of a Notification issued by the Government under Sec. 3 of the Essential Commodities Act (1955). The Supreme Court has observed that any Notification or Rule issued under section 3 of the Essential Commodities Act should not be contrary to provisions of the Constitution.

In our view, this decision has absolutely no application to the facts of the present case. The applicant has not demonstrated that any of the service rules framed by the Central Government by virtue of the powers under section 3 of 1951 Act are contrary to any of the provisions of the Constitution of India.

The applicant has also relied on AIR 1986 SC 515 (Indian Express Newspapers (Bombay) Private Limited. and Ors. V/s. Union of India and Ors.), which is a case in which many of the Newspapers questioned the Government Order regarding levying duty on the Newsprints. The applicant placed reliance on para 73 of the reported Judgment which only says that a subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. It is pointed out that the subordinate legislation may be questioned on the ground that it does not conform to the statute under which

it is made or that it is contrary to some other statute. It can also be questioned on the ground that it is unreasonable or arbitrary. In our view, these observations and this decision ~~has~~ absolutely no bearing on the point under consideration. The applicant has not been able to show and demonstrate how the Rules framed by the Central Government under section 3 of the 1951 Act are contrary to the provisions of the statute viz. 1951 Act or any other statute or provisions of the Constitution.

13. The learned Additional Solicitor General invited our attention to two authorities.

In AIR 1970 SC 77 (Debesh Chandra Das V/s. Union of India & Ors.), An IAS Officer questioned the right of the Central Government to re-patriating him to the State Government which amounted reversion and thereby reduction in rank. The Supreme Court has clearly pointed out that for the IAS the cadre is only at the State level and there is no separate cadre in the Government of India. This is what the Supreme Court has observed in para 7 of the reported Judgment:

"There was no separate cadre in the Government of India as defined in the Fundamental Rule mentioned above. There were only cadres in the States."

Then the Supreme Court refers to the IAS (Cadre) Rules 1954 and the (Fixation of Cadre Strength) Regulations, 1955 which are identical to IPS Rules which we have already mentioned. Then the Supreme Court pointed out in para 9 of the reported Judgment as follows :

"Under Article 312, these services must be considered common to the Union and the State."

Therefore, it is not a case of that there being some exclusive cadre belonging to the Central Government as

contended by the applicant. It is a cadre which is common to both Union and the States. In fact in para 10 the Supreme Court has observed as follows :

"The position that emerges is that the cadres for the Indian Administrative Services are to be found in the States only. There is no cadre in the Government of India."

Therefore, when the cadre is at the State level and the Rules provide that the State Government shall make appointments to the cadre post, the argument that Central Government alone can make appointments to different cadre posts has no meaning. Such an argument will run contrary to the dictum of the Supreme Court in the above mentioned Judgment.

In AIR 1959 SC 512 (D.S.Garewal V/s. The State of Punjab and Another, Respondents; The Union of India, Intervener), An IPS Officer on the State cadre of Punjab challenged the departmental enquiry initiated against him by the State Government. It was argued that the 1951 Act could not have been enacted by the Parliament under Article 312. Then it was argued that there is delegation of power made under Section 3 of the Act was excessive and therefore Section 3 of the Act, 1951 Act should be struck down. Then it was argued that the Punjab Government cannot initiate disciplinary enquiry under the Rules against an IPS Officer. All these contentions were rejected by the Supreme Court. The Supreme Court held that the 1951 Act is valid and there was no delegation of power and that under the Rules the State Government has powers to initiate disciplinary action against an IPS Officer. All these observations of the Supreme Court clearly answer the contention of the

applicant's prayer in this O.A.

14. In this connection, we may also refer to the two decisions of the Apex Court which we have noticed.

In AIR 1967 SC 1910 (Sant Ram Sharma V/s. State of Rajasthan and Ors.), where one of the IPS Officers had challenged the promotion of the IGP of Rajasthan by superceding the petitioner therein. The Supreme Court has referred to the 1954 Rules, the 1951 Act and some other Rules. One of the contentions before the Supreme Court was that in the absence of any statutory rules promotion to selection grade cannot be made on the basis of Administrative instructions. There was also an argument that the State Government cannot make promotions to the posts of Additional IGP and DIG of Police. The Supreme Court rejected this contention. It is stated that wherever the Rules are silent, the action can be taken on the basis of Executive or Administrative instructions. Then there was a comment in that case about using of the word merit "for the purpose of promotion". In this case the applicant is also challenging the merit criteria. The Supreme Court observed that there is nothing wrong in mentioning merit for the basis of promotion.

Then we also refer to a case reported in 1993(1) SLR (SC) 69 (Indian Administrative Service (S.C.S.) Association, UP & Ors. V/s. UOI & Ors and Nirothi Lal Gupta & Ors. V/s. Union of India & Ors.). It was a case pertaining to IAS Officers. There also the Supreme Court has considered the 1954 seniority rules of IAS Officers, Section 3 of the 1951 Act and similar provisions. We may mention here that though different

Rules are made for IAS and IPS Officers, by and large Rules are identical. What is the nature of these Rules has been explained <sup>by</sup> to the Supreme Court in para 6 of the reported Judgment as below :

"Under Sec.3(2) of the Act, every rule made by the Central Government 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 rules 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."

Therefore, we find that the Rules are held by the Supreme Court to be statutory in character. If that is so, then there is nothing wrong to the respondents have taken steps of promotions of IPS Officers under these statutory Rules. Then in para 16 of the reported Judgment the Supreme Court has clearly ruled that under section 3(1) of the 1951 Act Central Government can make any Rule regulating the recruitment and conditions of service of All India Service. It is again declared that these rules are statutory in character. It is further observed in para 29 that these rules were kept before the floor of the Parliament and no alterations are made by the Parliament. Therefore, we hold that in view of the law declared by the Apex Court all the Rules framed by the Central Government under section 3 of the 1951 Act are statutory in character and are to be followed both by the Central Government and State Government.

15. In this connection, we may also refer to the All India Services (Conditions of Service - Residuary Matters) Rules, 1960. These are common rules meant for all the All India Service like IAS, IPS, IFS etc. The Rules provide that Central Government may make Rules regarding service conditions of the All India Officers, but till such Regulations are made, in respect of Officers serving in the Central Government the Rules applicable to Officers of Central Service Class-I will apply and irrespective of Officers working in the State Government they will be governed by the State Civil Service Rules pertaining to Class-I.

Therefore, if no Rules are made by the Central Government regarding promotions and if the Officer is working in the State Government then his promotion has to be done as per the State Government Rules applicable to Class-I Officers of the State.

16. We are also not impressed by the argument of the applicant that the Central Government cannot delegate its powers to the State Government regarding promotions of IPS Officers. There is no bar in the Rules for such delegation. Further, the Rules do not provide that Central Government alone should promote Officers of the IPS and other cadres. Under Section 3 of the 1951 Act, the Central Government can make Rules about the Recruitment and Appointment and Service conditions of All India Service Officers in consultation with State Governments. It does not say that Central Government itself should promote the Officers, but Central Government should make Rules regarding service conditions in consultation with the State Governments.

Those Rules may provide either the Controlling Officer should be Central Government or the State Government regarding transfers, disciplinary action, promotion etc. If the Parliament had given all the rights only to Central Government regarding All India Officers, then of course, the Central Government cannot delegate its powers to the State Government. Here under section 3 of the Act, Parliament has conferred right on the Central Government to make Rules. It does not say as to how the Rules should be made and who should have control over the All India Service Officers. All those things should be reflected in the Rules. But the Central Government has framed the Rules in consultation with the State Governments by keeping certain powers to itself and giving certain powers to State Government. We do not find any illegality or the Rules being unconstitutional as contended by the applicant.

17. By a stroke of pen, the applicant wants to change the practise that is obtained all over India regarding All India Services for the last 50 years merely because he has been superceded by the State Government. In our view, the contentions of the applicant, to say the least, are mis-conceived, fallacious and absurd. There is no merit in any of the contentions of the applicant in challenging the power of the State Government to effect promotions of IPS Officers.

In the previous O.A. viz. O.A. 1195/92, the applicant had challenged the supersession on merits. He wanted a direction that Respondents No.1 and 3 in that O.A. viz. the State Government should consider the case of the applicant for promotion to Selection

Grade of IPS and to the rank of D.I.G. without reference to the illegal adverse remarks against the applicant in the O.A. On the request of the applicant himself, we have sent for the original file of O.A. 1195/92 and find that the applicant himself sought a specific prayer in prayer clause (g) in para 8 asking for a direction to the State Government to promote him to the post of D.I.G. by ignoring the adverse remarks in the ACRs. He filed this O.A. in 1992. On merits, his O.A. was dismissed by this Tribunal since it was found that applicant's case had been considered by the DPC and he was found not suitable for promotion. The O.A. was dismissed on 6.4.1993. When this was brought to the notice of the applicant, immediately he replied that he had filed an SLP in the Supreme Court against the Judgment of this Tribunal and it is pending. Immediately Mr. M. I. Sethna, the learned Senior Standing Counsel for the respondents replied that the applicant's SLP in the Supreme Court has since been dismissed. When we secured the original file of 1582/93 we find that the SLP has been dismissed by the Supreme Court for default. We are not very much concerned about the SLP at this stage. The point is that in the previous O.A. the applicant challenged his supersession and he wanted a direction to the State Government to promote him to the rank of DIG. After his O.A. was dismissed in April 1993, the applicant became wiser, just two months later and filed the present O.A. in June, 1993 and again challenging the supersession on his new imaginary legal ground that the State Government has no powers to make promotions of IPS Officers. The learned counsel for the respondents contended that the applicant having filed the previous

O.A. seeking direction to State Government to promote him is estopped from questioning the right of the State Government two months later after the dismissal of his earlier O.A. on merits. The only submission of the applicant is that there is no estoppel against statute and therefore he can still question the right of the State Government to promote IPS Officers. It is not a question of estoppel against a statute. It is a question of the applicant having come to the Tribunal challenging his supersession on some grounds. Having failed in that application, he cannot turn around two months later and file one more O.A. on some different ground. The principles of constructive res judicata mentioned in section 11 of the Code of Civil Procedure, which is a public policy, gets attracted. A decision <sup>may</sup> will be right or wrong, but the same matter cannot be re-agitated on some other grounds. Whenever an applicant files a case he must take all permissible grounds to challenge his supersession. After having lost his case on merits he cannot turn around two months later and ask the same relief, but on a different ground. Then what is more. After having filed this O.A. in June, 1993, the present applicant has filed one more application one year later viz. O.A. 142/94. In fact we have heard common arguments and we are pronouncing Judgment even in that O.A. also to day. In O.A. 142/94 also the applicant is challenging his supersession on the ground that all the Senior IPS Officers over and above the applicant in the State of Maharashtra are no longer IPS Officers and

they must be deemed to have become State Government servants and they have no right to write the C.Rs. of the applicant and therefore all the C.Rs. of the applicant for the last 20 years should be quashed and applicant should be declared the sole IPS Officer for the whole of Maharashtra and on that ground he should be given promotion.

It is therefore, seen that applicant is filing application after application for the same relief viz. challenging his supersession by taking one ground or the other ground. We do not find any merit in the contentions of the applicant.

For the above reasons our finding that the State Government has powers under the Rules to effect promotions of IPS Officers and the right of the Central Government is only about initial appointment or recruitment to the IPS cadre. Point No.1 is answered accordingly.

18. Point No.2.

The first prayer in the O.A. is to declare that the State Government Resolution dt. 31.1.1990 is ultra vires of the 1951 Act and the Constitution of India and liable to be quashed. We have already seen that the Central Government has not reserved any right to make promotions to IPS cadres after the initial recruitment/appointment. We have already referred to the relevant Rules which show that the State Government is empowered to make promotions to the different cadres. We may also point out that Central Government has given Executive Instructions or Administrative Instructions to the State Government for making promotions in the IPS cadre has and/also given guidelines in that regard. One such

document is on record which is at page 131 of the paper book. It shows that the Central Government has asked the State Government to make promotions as per the revised guidelines issued. We have already referred to one of the decisions of the Supreme Court where it is pointed out that on the area not covered by statutory Rules, administrative directions can be issued and can be followed.

Here, the Central Government has authorised the State Government to make promotions. The State Government has made the impugned Resolution prescribing the mode of promotion. Therefore, we do not find any illegality in the State Government Resolution dt. 31.1.1990. In view of our finding on Point No.1 that the State Government has powers to make promotions in the IPS cadre, we do not find any illegality in the State Government Resolution dt. 31.1.1990. Hence this relief asked by the applicant cannot be granted.

Other prayers in the application are again questioning the right of the State Government to make promotions to All India Service. In view of our finding on Point No.1, the State Government has full powers to make promotions to the IPS Officers in the IPS cadre and therefore none of the reliefs asked for by the applicant can be granted. Point No.2 is answered accordingly.

19. Point No.3.

Now, we will consider four M.Ps. which are pending for consideration.

The first M.P. is 201/95 (page 200 of the paper book) which is filed by the applicant challenging the authority of some of the Officers to write his CRs.

In the present O.A. the applicant is challenging the authority of the State Government to promote IPS Officers from one grade to another grade in the cadre. There is no prayer challenging the authority of the Competent Authority to write ACRs of the applicant. If once it is held that the State Government has full administrative control over the IPS Officers including the right of promotion then the higher Police Officers in this <sup>State</sup> date have a right to write the CRs of the applicant. Hence we do not find any illegality if the Senior Officers of the applicant write the CRs of the applicant as per Rules. In view of our finding on Point No.1, the State Government has full powers <sup>on</sup> administrative control over the IPS Officers including the right to promotion and therefore the present MP does not survive for consideration in view of our finding on Point No.1. Hence M.P. 201/95 is liable to be rejected.

M.P. No.300/95 (page 211 of the paper book) is a petition filed by the applicant challenging the continuation of certain posts in the IPS cadre in the State of Maharashtra beyond 3.12.1992. According to the applicant the State Government could not have continued these posts on or after 3.12.1992. These posts are being occupied by a number of Senior Officers, they are not made parties to this application. If these posts mentioned in the M.P. are abolished, those Officers will have to be reverted or will have to be posted elsewhere. Orders affecting third parties cannot be passed unless they are impleaded and they are heard in the matter. Further the applicant has not established as to how the continuation of the posts mentioned in the M.P. are illegal. Further, in view of our finding in the O.A. that the State Government has full administrative control over the IPS cadres except to the extent some powers are retained by the Central Government under the Rules, the State Government has full authority to create or abolish posts in the IPS cadre subject to the approval of the Central Government and within the cadre strength sanctioned to the State. Hence M.P. 300/95 is liable to be dismissed as being of no merit.

20. M.P. 401/95 (page 221 of the paper book) is filed by the applicant calling upon the State Government to disclose its powers to effect transfers of IPS Officers.

We have already given a finding that the State Government has full administrative control over the IPS Officers which includes the power of promotion, transfer, initiating disciplinary action etc. The only

thing is that the State Government has no powers to make initial recruitment/appointment to IPS cadres and it has no powers to give major penalties like dismissal, removal or compulsory retirement to IPS Officers. In other respects the State Government has full administrative control over the IPS Officers, except to the extent the powers retained by the Central Government under different Rules framed under section 3 of the 1951 Act. Hence M.P. 401/95 has no merit and is liable to be dismissed.

21. The last M.P. which is pending for consideration is M.P. 903/96 (at page 249 of the paper book). It is filed by the applicant requesting the Tribunal to disallow the replies filed by the respondents to the O.A. and M.Ps. since they are not in conformity with the Rules of Procedure of this Tribunal. The only thing pointed out is that there is no proper verification as per Rules.

It is well settled that Rules of Procedure are meant to advance the cause of Justice. Now it is always a question of substantial justice to the parties. The question is whether the State Government has a right to promote IPS Officers or not on the basis of the provisions of the Constitution, the 1951 Act and the Rules. The fact that there is some defect in the reply and is not properly verified will not give any right to the applicant to claim promotion to the IPS Officers contrary to all the Rules. A Tribunal or Court is always concerned about substantial justice to a party. It is not guided by errors of procedure or technicalities. Even without considering any of the replies either to the O.A. or to the M.Ps., the application is liable to be

rejected being devoid of any merit for the reasons we have already pointed out in discussing Point No.1. The applicant has to succeed or fall on his own strength. We have already pointed out while discussing Point No.1 that applicant has no case and his contentions are mis-conceived. This present M.P. is another such mis-conceived petition filed by the applicant. Hence we find no merit in the M.P. and is liable to be dismissed

22. The learned senior counsel Mr.Sethna appearing for the respondents brought to our notice that in some M.Ps. some allegations are made against him and against some of the Officers of the State Government and against his junior Mr.V.D.Vadhavkar. He submitted that the disposal of the O.A. or M.Ps. should not come in the way of himself or his junior or concerned Officers to take whatever legal action that is permissible against the applicant. We make it clear that the disposal of the O.A. or M.Ps. will certainly not affect the rights of either Mr.Sethna or Mr.Vadhavkar or any other Officers of the Government to take whatever legal action that is permissible in law against the applicant, for making allegations against them.

(a) For the above reasons we answer Point No.3 in the negative.

23. In the result, the application fails and is hereby dismissed with costs. M.P. Nos. 201/95, 300/95, 401/95 and 903/96 are also dismissed. We direct the applicant to pay Rs.1,000/- to each of the respondents viz. R-1 and R-2. The costs may be paid directly to R-1 and R-2 or deposited in the office of the Tribunal within two months from to day.

*D.S.Baweja*  
(D.S.BAWEJA)  
MEMBER (A)

B.

*R.G.Vaidyanatha*  
(R.G.VAIDYANATHA) (6.10.98)  
VICE - CHAIRMAN