(22)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 1170/92 & 199
T.A. No. 1171/92

DATE OF DECISION 15.9.2000

Pradeep Kumar Vyas & Nand Kishore — **Petitioner**

Mr. P.V.Calla — **Advocate for the Petitioner (s)**

Versus

Union of India and ors. — **Respondent**

Mr. U.D.Sharma — **Advocate for the Respondent (s)** No.1

CORAM :

The Hon'ble Mr. MR. JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

The Hon'ble Mr. MR.N.P.NAWANI, ADMINISTRATIVE MEMBER

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

(N.P.NAWANI)
Adm. Member

(B.S.RAIKOTE)
Vice Chairman

(22)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 15.9.2000

OA No.1170/92

Pradeep Kumar Vyas, IPS S/o Shri Laxmi Narain, posted as Superintendent of Police, Churu, Rajasthan

.. Applicant

Versus

1. Union of India through the Secretary to the Govt. of India, Ministry of Home Affairs, North Block, New Delhi.
2. The State of Rajasthan through the Secretary to the Govt. DOP and AR, Govt. of Rajasthan, Jaipur.
3. Shri Vasudeo Verma, IPS, Superintendent of Police, Jhalawar.
4. Shri Manphool Singh Poonia, IPS, Superintendent of Police (Vigilance) Jaipur.
5. Shri N.K.Patni, IPS, Superintendent of Police, CID, Jaipur.
6. Shri Kalyan Mal Sharma, IPS, Superintendent of Police, Bharatpur.
7. Shri Mohan Singh Bhati, IPS, Superintendent of Police, Sawaimadhopur.
8. Shri Rameshwar Singh, IPS, Superintendent of Police, Doongarpur.
9. Shri Shankar Surolia, IPS, Superintendent, CBI, Jaipur.
10. Shri Banwarilal Sharma, IPS, Superintendent of Police, Rajasthan State Bureau of Investigation, Jaipur.

.. Respondents

OA No.1171/92

Nand Kishore, IPS S/o Shri Shyam Behari, working as

Superintendent of Police, Rajasthan State Bureau of Investigation, Jalebi Chowk, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary to the Govt. of India, Ministry of Home Affairs, North Block, New Delhi.
2. The State of Rajasthan through the Secretary to the Govt. DOP and AR, Govt. of Rajasthan, Jaipur.
3. Shri Vasudeo Verma, IPS, Superintendent of Police, Jhalawar.
4. Shri Manphool Singh Poonia, IPS, Superintendent of Police (Vigilance) Jaipur.
5. Shri N.K.Patni, IPS, Superintendent of Police, CID, Jaipur.
6. Shri Kalyan Mal Sharma, IPS, Superintendent of Police, Bharatpur.
7. Shri Mohan Singh Bhati, IPS, Superintendent of Police, Sawaimadhopur.
8. Shri Rameshwar Singh, IPS, Superintendent of Police, Doongarpur.
9. Shri Shankar Surolia, IPS, Superintendent, CBI, Jaipur.
10. Shri Banwarilal Sharma, IPS, Superintendent of Police, Rajasthan State Bureau of Investigation, Jaipur.

.. Respondents

Mr. P.V.Calla, counsel for the applicants

Mr. U.D.Sharma, counsel for respondents No. 1

CORAM:

Hon'ble Mr. Justice B.S.Raikote, Vice Chairman

Hon'ble Mr. N.P.Nawani, Administrative Member

Order

Per Hon'ble Mr. N.P.Nawani, Administrative Member

It is proposed to dispose of the above mentioned two Original applications by this common order as the facts, the relief sought and question of law involved are similar. For reference, we are taking up OA No. 1170 of 1992.

2. The applicants have prayed that respondent No.3 to 10 may be declared junior to the applicants and the year of allotment 1981 to respondent No.3, 1982 to respondent No.4 and 1983 to respondent No.5 to 10 be declared illegal and respondents No. 1 and 2 be directed to allot the year 1984 or any other subsequent year to these respondents. In the alternative, it has been prayed that Rule 3(3)(ii) of the Indian Police Service (Regulation of Seniority) Rules, 1988 (for short Seniority Rules of 1988) be declared ultra-vires of Articles 14 and 16 of the Constitution of India and the same may be struck down to the extent it provides for allotment of year to promotees, who were appointed in the senior scale after the applicants.

3. Some of the facts which are undisputed are that the applicants are the direct recruit Indian Police Service (for short IPS) officers having qualified in 1983 Examination and given 1984 as the year of allotment. A copy of the Presidential Notification appointing them to the IPS is at Ann.A2. Both the applicants were granted senior scale in the IPS vide order dated 26.2.1988 (Ann.A3) and assumed the charge on 27.2.1988 (F.N.). Respondent No.3, Shri Vasudeo Verma, RPS (Rajasthan Police Service) was appointed under Rule 9 of the Indian Police Service (Cadre) Rules, 1954 (for short, Cadre Rules of 1954) on the cadre post of Commandant, IV Battalion, RAC on 24.5.1988

(Ann.A4) and his pay was fixed in the senior scale of IPS under Rule 4(5) of the Indian Police Service (Pay) Rules, 1954 (for short, Pay Rules of 1954). Vide the Presidential Notification dated 2.12.1988 (Ann.A5) issued by the Government of India (for short, GOI), Ministry of Home Affairs (for short, MHA), three officers, including respondent No.3, were appointed to the IPS under the powers conferred by sub-rule (1) of Rule 9 of the IPS (Recruitment) Rules, 1954 (for short Recruitment Rules of 1954) read with sub-regulation (1) of regulation 9 of the Indian Police Service (Appointment by Promotion) Regulations, 1955 (for short, Promotion Regulations of 1955) and allocated Rajasthan Cadre under the Cadre Rules of 1954. The applicants are aggrieved by the senior position given to respondent No.3 and some other officers (respondents Nos. 4 to 10) in the Civil Lists published as on 1.11.1989 and 1.1.1991. They made detailed representations dated 20.1.1992 and 30.1.1992 respectively to Secretary to GOI, MHA and Special Secretary, Govt. of Rajasthan in Department of Personnel and Administrative Reforms, which, according to the reply filed by respondent No.1, were duly considered and decision rejecting the same was communicated to the State Government vide letter dated 11.5.1993 (Ann.RI/1).

4. We have heard Shri P.V.Calla, learned counsel for the applicant and Shri U.D.Sharma, learned counsel for respondent No.1, the Union of India. We have also examined all the pleadings, documents and the relevant rules/regulations.

5. After carefully considering the pleadings and the arguments advanced before us, we are of the opinion that the controversy in this OA can really be focussed into the core question whether it would be Seniority Rules of 1954 or the Seniority Rules of 1988 that would be applicable for determining

the seniority of the respondent No.3 and other promotee officers arrayed as respondents Nos. 4 to 10. If answer turns out to be in favour of Seniority Rules of 1988, we will also examine if Rule 3(3)(ii) of the Seniority Rules of 1988 is ultra-vires of Articles 14 and 16 of the Constitution of India as alleged by the applicants. To consider these issues, we will also have to examine other relevant rules/regulations in view of the inter-connectivity that is bound to be a feature of such comprehensive scheme of rules and regulations framed under Section 3(1) of the All India Service Act, 1951.

6. Before we proceed to examine and decide the questions posed in the preceeding paragraph, it will be useful to extract the provisions in the relevant rules/regulations:-

"Cadre Rules of 1954

Rule 9. **Temporary appointment of non-cadre officers to cadre posts.-**

(1) A cadre post in State shall not be filled by a person who is not a cadre officer except in following case, namely:-

(a) if there is no suitable cadre officer available for filling the vacancy.

Provided xxx xxx

(b) if the vacancy is not likely to last for more than three months:

Provided xxx xxx

(2) A cadre post shall not be filled by a person who is not a cadre officer except in accordance with the following principles, namely:

(a) if there is a Select List in force, the appointment or appointments shall be made in the

order of names of the officers appear in the Select list;

xxx xxx xxx

Pay Rules of 1954

xxx xxx xxx

Rule 4(5). The initial pay of an officer of a State Police Service who has been appointed to hold a cadre post in an officiating capacity in accordance with rule 9 of the Indian Police Service (Cadre) Rules, 1954, shall be fixed in the manner specified in Section III of Schedule II.

Section III of Schedule II: (i) The initial pay of a member of the State Police Service appointed to officiate in a cadre post shall be fixed in accordance with the principles enunciated in Section I.

Recruitment Rules of 1954

Rule 4. **Method of recruitment to service.-** (1) Recruitment to the Service, after the commencement of these rules, shall be by the following methods, namely:

(a) by a competitive examination;

(b) by promotion of substantive members of a State Police Service.

xxx xxx xxx

Rule 6. **Appointment to the Service.-** (1) All appointments to the Service after the commencement of these rules shall be made by the Central Government and no such appointment shall be made except after recruitment by one of the methods specific in rule 4.

(2) The initial appointment of person recruited to the Service under clause (a).. of sub-rule (1) of

Rule 4 shall be in the junior time scale of pay.

(3) The initial appointment of persons recruited to the Service under clause (b) of the sub-rule (1) of rule 4 in accordance with the provisions of the Indian Police Service (Appointment by Promotion) Regulations, 1955 shall be in the senior time scale of pay.

Rule 9.**Recruitment by promotion.**- (1) The Central Government may, on the recommendation of the State Government concerned and in consultation with the Commission, recruit to the Service persons by promotion, from amongst the (substantive) members of a State Police Service in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make.

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Promotion Regulations of 1955

Regulation 9. **Appointments to the Service from the Select List.**-(1) Appointment of the members of the State Police Service to the Service shall be made by the Central Government on the recommendation of the State Government in the order in which the names of members of the State Police Service appear in the Select List for the time being in force.

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Seniority Rules of 1954

Rule 3. **Assignment of year of allotment.**- (1) Every officer shall be assigned a year of allotment in accordance with the provisions hereinafter contained

in these rules.

(2) xxx xxx xxx

(3) The year of allotment of an officer appointed to the Service after the commencement of these rules, shall be:-

(a) where the officer is appointed to the Service on the result of a competitive examination, the year following the year in which such examination was held;

(b) where an officer is appointed to the Service by promotion in accordance with rule 9 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the Service in accordance with rule 7 of these Rules, who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former.

Provided that the year of allotment of an officer appointed to the Service in accordance with rule 9 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officers recruited to the Service, in accordance with rule 7 of those Rules, so started officiating shall be determined ad hoc by the Central Government in consultation with the State Government concerned.

Rule 6.**Gradation List.**- There shall be prepared every year for each State Cadre and Joint Cadre a gradation list consisting of names of all officers borne on that cadre arranged in order of seniority in accordance with the provisions of rules 4,5, 5A and

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Seniority Rules of 1988

xxx xxx xxx

Rule 3.**Assignment of year of allotment.**- (1) Every officer shall be assigned a year of allotment in accordance with the provisions hereinafter contained in these rules.

(2) The year of allotment of an officer in Service at the commencement of these rules shall be the same as has been assigned to him or may be assigned to him by the Central Government in accordance with the rules, orders and instructions in force immediately before the commencement of these rules.

(3) The year of allotment of an officer appointed to the Service after the commencement of these rules shall be as follows:-

(i) The year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held;

xxx xxx xxx

(ii) The year of allotment of a promotee officer shall be determined in the following manner:-

(a) For the service rendered by him in the State Police Service upto twelve years, in the rank not below that of a Deputy Superintendent of Police or equivalent, he shall be given a weightage of four years towards fixation of the year of allotment;

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

(c) the weightage mentioned in sub-clause (b) shall

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be calculated with effect from the year in which the officer is appointed to the Service.

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

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

Rule 8.**Repeal and Saving.**- (1) The Indian Police Service (Regulation of Seniority) Rules, 1954 and all other rules corresponding to the said rules in force immediately before the commencement of these rules are hereby repealed.

(2) The seniority of the officers appointed to the Service prior to the coming into force of these rules shall be determined in accordance with the Indian Police Service (Regulation of Seniority) Rules, 1954 in force on the date of their appointment to the Service.

Source: For Seniority Rules of 1954 - All Indian Services Manual, 1992 Ed. A.K.Kulshrestha, Capital Law House, Delhi - 110 032.

For other Rules/Regulations - All Indian Service Manual Ed. R.N.Mishra, Hind Publishing House, P.B. No.1-092, Allahabad- 211 001.

7. We can now advert to the question of the applicability of the Seniority Rules as framed by us in paragraph 4 of this

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order. The contention of the applicants in these OAs is that while they were promoted to the senior scale of the IPS on 27.2.1988, the respondent No.3 was appointed in the senior scale of the IPS vide order dated 24.5.1988. The applicants' contention is that they were thus promoted to the senior scale of IPS earlier than the respondent No.3 and similarly situated persons named in para 4(vii) of the OA (respondents Nos. 4 to 10) were also appointed to senior scale of IPS after the appointment of the applicants but despite this, these persons have been shown senior to the applicants in the Civil Lists published as on 1.11.1989 and 1.1.1991, which is illegal because the seniority of the applicants qua the others is to be determined on the basis of 1954 Rules. It is also contended that as per rule 8(2) of 1988 Rules, the seniority of the applicants is to be determined in accordance with the seniority Rules of 1954. The official respondents have controverted such a claim. They have stated that the Seniority Rules of 1954 were repealed on 27.7.1988 by Seniority Rules of 1988 and Rule 8(2) of the Seniority Rules of 1988 specifically provides that the seniority of officers appointed prior to the coming into force of these rules shall be governed by the Seniority Rules of 1954. It is, therefore, contended on behalf of the official respondents that year of allotment (seniority) of 1984 already assigned to the applicants under the provisions of Seniority Rules of 1954 stands as final and there is no question of redetermination of their year of allotment. It has further been contended that the appointment of respondent No.3 in the IPS was notified on 2.12.1988 i.e. a date after 27.7.1988 and hence Seniority Rules of 1988 were applicable to him and he was assigned year of allotment as 1981 correctly as per provisions of the said Seniority Rules of 1988 and other promotee officers mentioned by the applicants have also correctly been assigned years of

allotments of 1982 and 1983. The learned counsel for the respondent No.1 has referred to the cases of IAS (SCS) Association U.P. and Ors. v. Union of India and ors., 1993(1) SLR 69; Syed Khalid Rizvi v. Union of India and ors., 1993 (1) SLR 89; Union of India and ors. v. S.L.Uppal and ors., 1996(1) SLR 671; M.Bhagyanathan Nadar v. Union of india and ors., 1995 (31) ATC 540 (CAT) and Dr. H.K.Sinha and ors. v. Union of India and Ors.,1990 (14) ATJ 171 in support of all his contentions and we have given our respectful attention to these cases.

8. We have given our serious consideration to rival contentions and have also gone through all the pleadings and examined the relevant provisions in the rules/regulations. The applicant were selected for appointment in the IPS on the basis of 1983 Examination and were appointed to the IPS by the Presidential Notification dated 17.4.1985, a copy of which has been annexed by the applicants as Ann.A2. Undoubtedly, the Seniority Rules of 1954 were in operation at that time. In terms of rule 3(3) (a) of the Seniority Rules of 1954, they were assigned the year following the examination i.e. 1984 as the year of allotment. The applicant have themselves stated in para 4(ii) of the OAs that they are "direct recruit in IPS of 1984". The official respondents have, of course, contended that they have rightly been assigned the year of allotment (seniority) of 1984. It is an undisputed fact that the Seniority Rules of 1954 were repealed and the new Seniority Rules of 1988 were brought into force with effect from 27.7.1988. Rule 8 of the Seniority Rules of 1988 has also been extracted under para 5 of this order. The provision relating to repeal of Seniority Rules of 1954 as incorporated can be seen in sub-rule (1) of Rule 8. A plain and fair reading of the sub-rule (2) of the said Rule 8 further provides that the seniority of officers appointed to the

Service prior to coming into force of these rules (i.e. the Seniority Rules of 1988) shall be determined in accordance with the Indian Police Service (Regulation of Seniority) Rules, 1954 in force on the date of their appointment in the Service. The appointment of the applicant in the IPS was made on 17.4.1985(copy filed by the applicant as Ann.A2) in which it is also mentioned that "the President is pleased to appoint following candidates who completed successfully at the Civil Services (Main) Examination, 1983....". In the case of S.L.Uppal (supra), it has been held that "seniority of an officer appointed into the IAS is determined according to the seniority rules applicable on the date of appointment in the IAS". This judgment of the Apex Court also applies in the case of IPS, as the rules/regulations for all these All India Service are analogous. The applicants were appointed to IPS on 17.4.1985. The Seniority Rules of 1954 were repealed only in 1988 with the promulgation of new Seniority Rules of 1988 w.e.f. 27.7.1988. It is, therefore, clear that the Seniority Rules of 1954 were applicable on the applicants and having succeeded in the Examination of 1983, they were correctly assigned the year 1984 as the year of allotment in terms of Rule 3(3)(a) of the Seniority Rules of 1954. The year of allotment (seniority) in respect of officers belonging to the All India Services, including IPS, is determined only once for their entire service life and having been determined at the beginning of the Service, it is final and does not change thereafter. There is absolutely no ambiguity in the Seniority Rules but we can still draw support from the decision rendered by the Patna Bench of this Tribunal in the case of Dr. H.K.Sinha and ors. v. Union of India and ors. (1990) 14 ATC 171, wherein it was, inter alia, held that the year of allotment is assigned only once and once it is assigned, the officer's seniority is determined on that basis,

it becomes final. In the present case, the seniority rules of 1954 were in force when the applicant were appointed in the IPS and we find no infirmity in determination of the year of allotment as 1984 in terms of provisions of seniority rules of 1954. The applicants have also in para 5(b) of the OA have contended that as per Rule 8(2) of the Seniority Rules of 1988, the seniority of the applicants is to be determined in accordance with the Seniority Rules of 1954. We are not clear as to what exactly the applicants seek to convey through this contention. It has been made clear in Rule 8(2) of the Seniority Rules of 1988 that the seniority of officers appointed to the Service prior to the coming into force these rules shall be determined in accordance with Seniority Rules of 1954. Therefore, the year of allotment (seniority) of the applicants as already determined under the provisions of the Seniority Rules of 1954 stands and there is no question of re-determination of their seniority. We are, therefore, of the considered opinion that the year 1984 as the year of allotment allotted to the applicants is correct and final.

9. The other contention of the applicants regarding seniority issue is that they were promoted to the senior scale of the IPS on 27.2.1988 whereas respondent No.3 was appointed in the senior scale of the IPS vide order dated 25.4.1988 and thus the applicants were appointed to the senior scale earlier than respondent No.3 and respondents No.3 could not have, therefore, been made senior to them. Such a contention is not sustainable in law since there are specific provisions in the Seniority Rules for determining the seniority of direct recruit and promotee officers. As already discussed above, the seniority of the applicants, as direct recruits qualifying in the examination of 1983, was correctly determined and they were given the year

of allotment of 1984. We have also come to the conclusion that such determination of year of allotment is done only once and is final. Respondent No.3 was appointed in the IPS by the Presidential notification dated 2.12.1988 in exercise of the powers conferred by sub rule 1(1) of Rule 9 of the Recruitment Rules of 1954 read with sub regulation (1) of Regulation 9 of the Promotion Regulations of 1955. Rule 9(1) of the Recruitment Rules of 1954 as extracted in para 4 of this order provides for recruitment by promotion. Such recruitment to the Service by promotion is made by the Central Government on the recommendation of the State Government concerned and in consulation with the UPSC. Sub-regulation (1) of Promotion Regulations of 1955 has also been extracted in para 4 and a plain reading of the said sub-regulation will show that appointment of the members of the State Police Service (for short SPS) shall be made by the Central Government in the order in which the names of the members of the SPS appeared in the select list. It is, therefore, clear from a reading of Rule 9(1) of the Recruitment Rules, 1954 and Regulation 9(1) of the Promotion Regulations, 1955 as referred in the notification dated 2.12.1988 that the name of respondent No.3 was in the select list and his appointment/promotion to IPS was from amongst the substantive members of the SPS. It is not disputed that the amended Seniority Rules of 1988 came into force on 27.7.1988. Respondent No.3 having been appointed to IPS vide notification dated 2.12.1988 was, therefore, covered under the Seniority Rules of 1988. Rule 3 of the Seniority Rules of 1988 provides for assignment of year of allotment to the IPS officers. This Rule has been extracted in para 4 of this order. A plain reading of the said Rule will indicate that Rule 3(3)(i) provides for assignment of the year of allotment to direct recruits and the provision remain un-altered in the Seniority

of allotment of 1984. We have also come to the conclusion that such determination of year of allotment is done only once and is final. Respondent No.3 was appointed in the IPS by the Presidential notification dated 2.12.1988 in exercise of the powers conferred by sub rule 1(1) of Rule 9 of the Recruitment Rules of 1954 read with sub regulation (1) of Regulation 9 of the Promotion Regulations of 1955. Rule 9(1) of the Recruitment Rules of 1954 as extracted in para 4 of this order provides for recruitment by promotion. Such recruitment to the Service by promotion is made by the Central Government on the recommendation of the State Government concerned and in consulation with the UPSC. Sub-regulation (1) of Promotion Regulations of 1955 has also been extracted in para 4 and a plain reading of the said sub-regulation will show that appointment of the members of the State Police Service (for short SPS) shall be made by the Central Government in the order in which the names of the members of the SPS appeared in the select list. It is, therefore, clear from a reading of Rule 9(1) of the Recruitment Rules, 1954 and Regulation 9(1) of the Promotion Regulations, 1955 as referred in the notification dated 2.12.1988 that the name of respondent No.3 was in the select list and his appointment/promotion to IPS was from amongst the substantive members of the SPS. It is not disputed that the amended Seniority Rules of 1988 came into force on 27.7.1988. Respondent No.3 having been appointed to IPS vide notification dated 2.12.1988 was, therefore, covered under the Seniority Rules of 1988. Rule 3 of the Seniority Rules of 1988 provides for assignment of year of allotment to the IPS officers. This Rule has been extracted in para 4 of this order. A plain reading of the said Rule will indicate that Rule 3(3)(i) provides for assignment of the year of allotment to direct recruits and the provision remain un-altered in the Seniority

Rules of 1988 viz. that the year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held. Rule 3(3)(i) provides for the manner in which the year of allotment of promotee officer shall be determined. Briefly stated, Rule 3(3)(ii) provides for the manner weightage is to be given to officers promoted from SPS. Under Sub-clause (a), for the service upto 12 years in the rank not below that of Deputy Superintendent of Police or equivalent, a weightage of four years is given towards fixation of the year of allotment. Under sub-clause (b) weightage of one year is also given for every completed 3 years of service beyond the period of 12 years subject to a maxiumum of 5 years. In sub-clause (c), it is provided that weightage mentioned in sub-clause (b) is w.e.f. the year in which the officer is appointed to the Service. It is noticed from a comparison between the Seniority Rules of 1954 and those of 1988 that as far as determination of the seniority of the promotee officers is concerned, the amended Seniority Rules of 1988 provide for a different system of assignment of year of allotment to promotee officers. It may not be out of place of mention here that as observed by the Apex Court in the case of IAS (SCS) Associaition UP (supra) that "Seniority Rules of 1954 were maneded after it was brought to the notice of the Government of India that there is a wide disparity in the different States in the promotional avenues from the State Civil Service to All India Administrative Serivce. The Estimate Committee of the 7th Lok Sabha too in its 77th Report highlighted the injustice". The issue was deliberated and ultimately resulted in incorporation of the Rule 3(3)(i) in the Seniority Rules of 1988. Respondent No.1, the Union of India, have enclosed as Ann.R-I/1 a copy of the Govt. of India, Ministry of Home Affairs letter dated 27.2.1989 in which detailed calculations have been given on the basis of which respondent No.3 was assigned 1981 as the year of

allotment. It has been mentioned that respondent No.3 had rendered 21 years of service in the rank not below that of Deputy Superintendent of Police or equivalent and, therefore, he was given a total weightage of 7 years in terms of Rule 3(3)(ii) of the Seniority Rules of 1988. We have carefully examined the provisions incorporated in Rule 3(3)(ii) and the assignment of the year of 1981 as the year of allotment in respect of respondent No.3 as per letter dated 27.7.1989 (Ann.RI/2) and find no infirmity in the allotment of 1981 as the year of allotment in respect of respondent No.3.

10. The applicants have also claimed that since they were promoted to senior scale of the IPS on 27.2.1988, a date earlier than 25.4.1988 when respondent No.3 was given the Senior Scale, the applicant have to be treated senior to respondent No.3. We find no force in this contention of the applicants. We have already come to the conclusion that the year of allotment in IPS is assigned to the officers in terms of provisions of the relevant Seniority Rules at the time of their appointment in the Service and it is done only once and is final. There is no provision in the relevant rules/regulations to consider the date of promotion to the Senior Scale in determining the seniority of an IPS officer. We also note that respondent No.3, while he was still a member of RPS and had not yet been appointed to the IPS, was granted the Senior Scale of the IPS vide order dated 24.5.1988 (Ann.A4) and the Seniority Rules of 1954 could not have been applied to him while he was still a RPS officer.

11. As can be seen from the Cadre Rules of 1954, extracted in para 6 of this order, Rule 9 provides for appointment of a non-cadre officer to a cadre post in exceptional circumstances. The very title of the said rule is "Temporary appointment of

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non-cadre officers to Cadre Post". Such exception have been clearly stipulated in the said rule itself. It can be noted from sub-clause (a) and (b) that such appointments can be resorted to only if there is no suitable cadre officer available for filling the vacancy and if the vacancy is not likely to last for more than three months. Under the proviso to these sub-clauses, it is provided that the State Government is required to take approval of the Central Government if the conditions mentioned in provisos apply. In sub-rule (2) of Rule 9 of the Cadre Rules of 1954, it is further provided that if a cadre post is required to be filled from out of the officer(s) whose name figure in the Select List, it should be done in the order in which the name of officers figure in the Select List. The intention of the Rule 9 of the Cadre Rules of 1954 is to permit temporary appointment of a non-cadre officer (whether in the Select List of not) for a short period as an exception, in the special circumstances stipulated in this Rule. Otherwise, the normal rule is that a cadre post shall not be filled by a person who is not a cadre officer. The order dated 24.5.1988 (Ann.A4) clearly states that Shri Vasudeo Verma, RPS (respondent No.3) is appointed under Rule 9 of the IPS (Cadre) Rule, 1954 to the cadre post of Commandant, IV Bn. RAC. The same order also stipulates that his pay is fixed in the Senior Scale of the IPS under Rule 4(5) of the Pay Rules of 1954. It is, therefore, quite clear that respondent No.3 was only temporarily appointed on officiating basis to a cadre post of IPS vide Ann.A4 and at that time, he was still a member of the State Police Service and not IPS. Thus, the case of the respondent No.3 could not have any relevance to the IPS Seniority Rules, since the respondent No.3 continued to be a member of the SPS till he was appointed to the IPS, after more than six months later, on 2.12.1988 vide Ann.A5. Accordingly we hold that the dates of promotion to Senior Scale of IPS of the applicants and that of respondent No.3 have

absolutely no relevance to the assignment of year of allotment (seniority) to either the applicants or the respondent No.3.

12. The applicants have also, in the alternative, challenged the vires of Rule 3(3)(ii) of the Seniority Rules of 1988. The said rule is extracted in para 6 of this order. In paragraph 9 of this order, we have already briefly stated the background which led to the promulgation of the new Seniority Rules of 1988. In fact, this background has been mentioned in the judgment of Hon'ble the Supreme Court in the case of IAS (SCS) Association (supra). It is evident therefrom that it was noticed that there was wide disparity in the promotion opportunities of the officers of the State Service (feeder to three All India Services) and it was giving rise to injustice. In fact, in the said case, the Apex Court had examined the rule 3(3) of the Seniority Rules. Hon'ble the Supreme Court observed that "there is no vested right to seniority and the same is variable and defeasible by operation of law." The Apex Court did not declare any part of rule 3(3) of the Seniority Rules violative of Articles 14 and 16 of the Constitution of India. It has also to be noted that it was only after an elaborate exercise, involving examinations and consultations, that the new Seniority Rules of 1988 were brought into the statute books by the framers of the Rules. It was felt necessary to describe briefly this background only to show that Rule 3(3)(ii) of the Seniority Rules of 1988 reflects the intent of the Central Government to clothe a deliberate policy decision of removing injustice and rationalise promotion opportunities in different States with statutory powers. Normally, this Tribunal does not intervene with such policy, clearly laying down a system of weightage to be given to promotee officers in determining their year of allotment as provided in rule 3(3)(ii) of the Seniority Rules of 1988, as long as it is not abritrary and unreasonable.

13. The role of the Tribunal is not to rewrite a statute but only to expound it; to ensure that it does not give unbridled or arbitrary powers to authority so as to violate the mandate of Articles 14 and 16 of the Constitution. We find that rule 3(3)(ii) has been incorporated in the Seniority Rules of 1988 with a specific purpose by the framers of the rules, which was to remove the injustice and the disparity in the promotion, opportunities amongst SPS officers in different States. It has been well accepted principle of the service jurisprudence that the classification between direct recruits and promotees is reasonable so as to serve different purposes. In case of direct recruits the law intends to infuse the new blood in the system and in the case of promotees, the law also wants to exploit experience and expertise of the promotees. The persons belonging to one class cannot complain of violation of right of equility with reference to certain advantages or dis-advantages provided to other class as long as such classification is reasonable. In our considered opinion, the classification between direct recruits and promotees based on different source of recruitment with different objectives is reasonable and it has been accepted as such for all these years. Having regard to their long experience, if certain advantages are granted to the promotees in the form of a system of weightage on the basis of their service and experience in the Government, the direct recruits cannot make any grievance of the same. It is within the functions of the executive to frame rules/regulations to implement an administrative policy which it, in its wisdom, feels necessary. We, therefore, find no justification to declare Rule 3(3)(ii) of the Seniority Rules of 1988 as ultra-vires of the Articles 14 and 16 of the Constitution of India. Further, the impugned rules are analogous to rules in respect of IAS and

IFS that have been in existence for the last more than twelve years and they have stood the test of the time. According to those rules also assignment of the year of allotment has been made to very large number of promotee officers based on the system of weightage as provided in those rules. We, therefore, are of the considered opinion that rule 3(3)(ii) of the Seniority Rules of 1988 is not ultra-vires of the Articles 14 and 16 of the Constitution of India.

14. In view of the discussions recorded above, we answer the questions posed in para 4 of this order in the manner that the Seniority Rules of 1988 are the ones applicable in the case of respondent No.3, as also the other respondents Nos. 4 to 10; there is no infirmity in assignment of years of allotment to these respondents and rule 3(3)(ii) of the Seniority Rules of 1988 are not ultra-vires of Articles 14 and 16 of the Constitution of India.

15. The Original Applications are, therefore, found to be devoid of any merit and are accordingly dismissed with no order as to costs.

(N.P.NAWANI)
Adm. Member

(B.S.RAIKOTE)
Vice Chairman