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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD

ORIGINAL APPLICATION NO.558 OF 1997

DATE OF ORDER: February, 1998

BETWEEN:

V.R.K.MOHAN...RAO

.. APPLICANT

AND

- Union of India rep. by its Secretary, Ministry of Home Affairs, North Block, New Delhi,
- The Secretary, Ministry of Personnel, North Block, New Delhi,
- The Union Public Service Commission rep. by its Secretary, Dholpur House, New Delhi,
- The Government of Andhra Pradesh, rep. by its Chief Secretary, Secretariat, Hyderabad.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.K.Prabhakar Reddy

COUNSEL FOR THE RESPONDENTS: Mr.N.R.Devaraj for R1 to R3 Mr.P.Naveen Rao for R4

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGEMENT

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

Heard Mr.K.Prabhakar Reddy, learned counsel for the applicant, Mr.N.R.Devaraj, learned standing counsel for the Respondents 1 to 3 and Shri P.Naveen Rao, learned standing counsel for the Respondent No.4.

2. The brief facts of this case as given in the OA and the replies filed by the respondents 1 to 3 and Respondent NO.4 are as follows:-

The applicant was appointed as Deputy Superintendent of Police on 1.1.79. Presently he is working as Regional Intelligence Officer, Hydrabad Region, Hyderabad in the rank of Superintendent of Police (Non-cadre).

A select list for 1995-96 for appointment by promotion to the Indian Police Service as per the Indian Police Service (Appointment by Promotion) Regulations, 1955 was prepared by the Selection Committee which met on The anticipated vacancies for selection by 22.2.96. promotion for that year was assessed as 3. To cater to the unforeseen/fortuitous vacancies that may occur as a part of the select list subject to the minium of two and maximum of 20% of the substantive vacancies were also included in that Thus the select list was prepared by keeping five officers for prômotion to IPS cadre (3 for anticipated vacancies and 2 for unforeseen/fortuitous vacancies). applicant in this OA was placed as the last candidate i.e, 5th candidate for promotion to the IPS Cadre. Thus he was kept in waiting list for pormotion to the IPS cadre against the unforeseen/fortuitous vacancies that may arise in due The State Government conveyed its concurrence to the Union Public Service Commission on the recommendation made by the Selection Committee in the letter dated 24.2.96. After the Committee met, one more vacancy had

arisen on 28.2.96 due to the demise of one of the promotee IPS officers namely Sri YSN Sarma. That was informed to the Government of India, Ministry of Home Affairs by the State Government in the letter dated 12.3.96. Public Service Commission approved the select list on 4.4.96 which was communicated to the State Govt. by the Government of India in their letter dated 16.4.96. first three officers were appointed to IPS by the Govt. of India in the notification dated 28.5.96. The 4th candidate namely K.Lakshman Mohan who was included in the select list at Sl.No.4 as a reserved candidate was also appointed to the IPS on 1.1.97 in the 4th vacancy that occurred on 1.1.97. It is stated that the applicant who was included at Sl.No.5 in the select list could not be appointed to the IPS since no substantive vacancy had arisen within the period of 12 months from the date of preparation of the select list i.e, 22.2.96. The next select list for 1996-97 could not be prepared as the valid seniority list of State Police Officers in the category of Deputy Superintendent of Police (Category II) has not been finalised. Thus before 22.2.97, the first four candidates in the select list were appointed to the IPS cadre by promotion leaving the applicant who was at Sl.No.5 in the select list.

4. The Indian Police Service Cadre of Andhra Pradesh was reviewed in the year 1991. A notification revising the cadre strenth was issued by the Govt. of India, Department of Personnel & Training (DP&T for short) on 3.2.93. In the letter NO.127/SCC/94-8 dated 9.11.94, the State Government sent a proposal to the Government of India, Ministry of Home Affairs for conducting the trienniel review of the IPS

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cadre of Andhra Pradesh under the provisions of IPS (Cadre) Rules, 1954. Govt. of India, Ministry of Home Affairs in their letter dated 8.3.95 had informed that the last trienniel review was notified on 3.2.93 and hence the next review would be taken up in February 1996 and it was further directed the State Govt. to send proposals in November/December, 1995. However, the Director General & Inspector General of Police, A.P., Hyderabad requested the Govt. to press the Govt. of India to take up the review of the IPS cadre of A.P. on the ground that there had been no increase in the IPS cadre of AP during the last six years. In the meanwhile, a notification was issued by the Govt. of India on the specific request of the State Govt. holding a mid term cadre review. The Review Committee met on 20.1.97 revised the cadre strength by their notification dated The same was published in Gazette of India dated 25.3.97. 9.4.97 (GSR No.187). As per the revision of the cadre strenth, the IPS cadre of A.P, was raised from 183 to 194. By this increase the number of posts in the promotion quota

promotion to IPS cadre though he was in the select list as a last candidate in the select list prepared by the Committee which met on 22.2.96 against the restructured posts allocatable to the promotion quota. It is stated that the applicant cannot be promoted as the vacancies had arisen one year after the date of Selection Committee met i.e, after 22.2.97, in view of the Govt. of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training Memo No.14015/54/95-AIS(I) dated



had risen from 46 to 49.



12.1.96 (Annexure A-I to the OA).

- 6. Aggrieved by the above, the applicant has filed this OA praying for direction to the respondents to consider his case for appointment by promotion to the IPS cadre against the vacnacies that had arisen due to the cadre review by which three more posts were created against the promotion quota to the IPS cadre by the notification dated 25.3.97.
- 7. The first contention of the respondents in this OA is that three posts enhanced in the promotion quota cannot be treated as unforeseen/fortuitous vacancies so far as the the aforesaid select list of 1995-96 is concerned. The learned counsel for the respondents 1 to 3 submitted that the posts added due to mid term cadre review cannot be treated as unforeseen/fortuitous vacancies. The vacancies that had arisen only due to the death or resignation can be treated as unforeseen/fortuituous vacancies. Hence the vacancies created by the mid term cadre review cannot be brought under the heading unforeseen/fortuitous vacancies and hence the applicant has no right to demand for promotion against those vacancies.
- 8. The very fact that waiting list is kept for unforessen vacancies, the vacancies that arise due to any cause that cannot be determined earlier at the time of preparation of the select list is to be filled by the wait listed candidates in the select list. The unforeseen vacancies may arise due to any cause either due to death or due to resignation. The vacancies arisen due to cadre



review also cannot be foreseen at the time of preparation However, in the present case, the of the select list. State of Andhra Pradesh was insisting for cadre review due to shortage of IPS officers for which a proposal had already been submitted to the Ministry of Home Affairs by the State Government earlier to the date of meeting of the Thus there was a possibility of Selection Committee. creation of posts due to the cadre restructuring though nothing could be said on the date of Selection Committee meeting in regard to the creation. Hence the submission that the vacancies due to restructuring cannot be brought under the unforeseen/fortuitous vacancies cannot be taken as proper submission. Further the meaning for the word 'fortuitous' as given in the Oxford Dictionary is that "due to or characterized by chance, accidental, casual". meaning as indicated above for the term "fortuitous" cannot under the coming not treated as Thus by insistance of the State unforeseen/fortuitous. Government, the cadre review proposal was accepted by the Central Govt. which resulted in creation of posts due to the cadre restructuring. Hence these vacancies should also be treated as unforeseen/fortuituous and cannot be said that these vacncies do not come under the category to be filled by wait listed candidates.

9. The respondents relying on the paragraphs 3 and 4 of the memorandum of the DP&T dated 12.1.96 submit that the unforeseen/fortuitous vacancies that may occur during the period of next 12 months commencing from the date of preparation of the list are to be filled up from the waiting list part of the select list. The scheme and the structure of the rules do not envisage operation of the

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select list to fill up the vacancies occurring beyond the it is designed, which which is 12 months period for from the date οf the commencing preparation of the list) as such vacancies come within the ambit of consideration of the next Selection Committee The current select list can be only, whenever held. operated during the validity period to fill up only those vacancies that were anticipated and taken into account in the preparation of the list. The select list cannot be used to fill up the vacancies that occur outside the period considered by the selection committee since the select list was not designed to fill up such vacancies arising in the State Cadre after a period of 12 months from the date of meeting of the Selection Committee.

Selection respondents submit that the select 22.2.96 prepared Committee met on the consisting of five officers for promotion to the IPS cadre. The officers included in the select list can aspire to be promoted against the vacancies which occur upto 22.2.97 and vacancies that may occur after 22.2.97 cannot be filled by the officers kept in the select list. Even presuming that the vacancies created due to the cadre restructuring are to treated unforeseen/fortuitous vacancies should have occurred on or earlier to 22.2.97 to be filled by the officers in the select list which the committee prepared in the meeting held on 22.2.96. vacancies due to the cadre restructuring was notified by

This force from the dete of publication of the state of publication of the DP&T on 25.3.97 and it came in the Gazette Notification effect from 9.4.97 (GSR No.187) the waiting candidate in the select list cannot be posted against the vacancies arising due to the cadre restructuring which

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occurred after 22.2.97.

- The learned counsel for the applicant submits that the select list prepared on 22.2.96 by the Selection Committee as approved by the Union Public Service Commission on 4.4.96 under Regulation 7(1) of IPS (Appointment by Promotion) Regulations, 1955, is still valid as per the Regulation 7(4) of the same Regulations since no fresh list was drawn as per Regulation 7(1) of the said Regulations and the same is not exhausted though vacancies are available. Hence the applicant is entitled for appointment to IPS from the vacancies existed from 25.3.97 which are within that "year" as per the Regulation 2(1) of the said Regulations which defines the "year" as commencing from the first date of April and ending on 31st day of the March of the subsequent year.
- 12. To analyse the submission of both sides as above, it is necessary to peruse the relevant Regulations of the Indian Police Service (Appointment by Promotion) Regulations, 1955.
- 13. Sub Regulation (4) of Regulation 7 reads as follows:-

"The Select List shall ordinarily be in force until its review and revision, effected under sub-regulation (4) of Regulation 5 is approved under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2)."



Sub regulation (4) of Regulation 5 states that-

"The Selection Committee shall classify the eligible officers as 'out-standing', 'very good', Good' or 'Unfit' as the case may be, on an overall relative assessment of their service records."

Sub regulation (1) of Regulation 5 is reproduced below:-

Preparation of list of Each Committee - (1) shall meet at intervals ordinarily not exceeding one year and prepare a list of such members of the State Police Service, held by them to be suitable for promotion to the Service. The number of members of the State Police Service to be included in the list shall be calculated as the number of substantive vacancies anticipated in the course of the period of 12 months, commencing from the date of preparation of the list, in the posts available for them under rule 9 of the Recruitment Rules plus twenty percent of such number of two whichever is greater" (Emphasis added)

The number of members of the State Police Service to be considered for inclusion in the list as per Regulation 5(1) is given in the sub-regulation (2) of Regulation 5 which reads as below:

"The committee shall consider for inclusion in the said list, the cases of members of the State Police Service in the order of seniority in that service of a number which is equal to three times



the number referred to in sub-regulation (1)."

As per sub-regulation (1) of Regualtion-5, the number of members of the State Police Service to be included in the list shall be calculated as the number of substantive vacancies anticipated in the course of the period of 12 months commencing from the date of preparation of the list, in the posts available for them under Rule 9 of the Recruitment Rules plus twenty per cent of such number or two whichever is greater. The regulation is that 'each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such Members of the State Police Service, as held by them to be suitable for promotion to the service'. The word 'ordinarily' indicates the anticipated vacancies to be considered ie, only those vacancies which occur in 12 months from the date of meeting of the Selection Committee. It does not categorically prevent inclusion of the anticipated vacancies that occur after 12 months from the date of preparation of the select list and before meeting of the next Selection Committee. The word 'ordinarily' which is emphasised by us in the sub regualtion (1) of Regulation 5 is to be read in a manner which will help the candidates kept on waiting list to be promoted and also enable the department to fill up vacancies which are essential to run the Department. The Department of Personnel & Training letter dated 12.1.96 (Annexure A-1 to the OA) reads as if there is an embargo in the rule for considering vacancies for promotion of the wait listed officers that arise after 12 months period from date of preparation of the select list. This navor interpretation, it appears, is/a very restricted view and may not be in consonance with the provisions of the



Regulation 5 of the said Regulations, in view of the word "ordinarily" used in the Regulation 5(1).

The above view appears to be is also the view taken by the Apex Court in the reported case in 1998(1) 'SCALE (SP) 7 (Nepal Singh Tanwar v. Union of India). that case, the DPC for the year 1991-92 for promotion to IAS cadre met on 26.3.92 and selected 8 candidates for appointment to All India Service against 6 vacancies. first six persons were appointed against those vacancies. The appellant in that case was appointed on 12.8.92 against vacancy which became available by then. The | Selection Committee for the next year 1992-93 did not meet till The appointment of the Appellant in that case 12.8.92. appointed on 12.8.92 was challenged on the ground that the Appellant could not have been appointed as by then the list exhausted. . The Tribunal quahsed the Appellant's appointment holding that it was mandatory under the rules to prepare the list within one year and affect, the expiry of one year the previous select list lapsed. The Apex Court (back) held that quashing of the appointmnent of the Appellant in that case to the IAS cadre by the Tribunal was erroneous and upheld the appeal and thereby upheld the appointment of the Appellant therein on 12.8.92 even after a lapse of 12 months from the date the DPC met i.e, 26.3.92. relevant observation of the Apex Court in that case is reproduced which is self explanatory:-

"The Union Public Service Commission in its communication dated 13.9.96 has stated in regard to the appointment of the appellant that "so long as the next



Selection committee do not meet, previous select list continued to be in It would, therefore, appear that force". Regulation 7 (4.) read under Regulation 5 unless the select list is prepared for the succeeding year continues. previous select list Rizvi's case (JT 1992(Suppl.) SC 169) it is no doubt true that this court stated that under Regulation 5 preparation of the select list every year is mandatory. However, this decision was considered in C.A.Nos.3891-94/94 (H.R.Kasturirangan v. Union of india) and it was clarified by order dated 28.7.93 that the observations had to be read in the light of the subsequent observation in that very judgment wherein it was stated that dereliction of the statutory duty must be satisfactorily accounted for by the State Government which meant that if the State Government was in a position satisfactorily account for its failure to prepare a select list as required by Regulation 5 that would be a valid ground for its failure to prepare the select list for the subsequent years. Regulation uses the expression 'ordiarily' which, means that ordinarily it is the duty of the State Government to prepare the select list unless there are satisfactory reasons to account for its If it is able to show failure to do so. that it failed to prepare the select list account of certain reasons and those reasons are found .to be satisfactory by the court its failure to prepare the select list would be excused. In the instant case, although the meeting was scheduled on 26.3.92 it was postponed and a new select list was not prepared as

required by Regulation 5 for four reasons which we have set out hereinbefore. We are of the opinion that these four reasons gave a satisfactory explanation for the failure to prepare the select list required by Regulation 5. We are, therefore, satisfied that the appointment of the appellant on 12.8.92 on the premise that the select list continued to be in operation was not violative of Regulation 5 of the Regulations."

- 15. In the present case, it is stated in para 6 of the reply filed on behalf of the 4th Respondent that the "next select list for 1996-97 could not be prepared as the valid seniority list of State Police Service Officers in the category of DSP (Cat.2) has not been finalised". The reason given for not preparing the new select list as per Regualtion 5 appears to be a satisfactory explanation for the failure to prepare the next select list. Hence we are justified in coming to the inclusion, in view of the observation of the Apex Court referred to above that the case of the applicant who is wait listed for promotion to IPS cadre against the restructured post which was notified by the DP&T by the notification dated 25.3.97.
- 16. The applicant contends that as per Rule 2(1) of the said Regulations, the "year" is defined "as commencing from first day of April and ending on the 31st day of March

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of the subsequent year". If that is the definition of the year, the select list prepared should cater to the vacancies arisen during that period of one year. The present select list prepared for the year 1995-96 prepared on 22.2.96 should cater to the vacancies that arise from 1.4.96 to 31.3.97. The notification for the revised cadre strenth was issued by the Govt. of India, DP&T on 25.3.97 and hence the Govt. of India notification came into effect from 25.3.97 and that date is before the expiry of one year viz, 31.3.97. Hence the vacancy had occurred during the year in question i.e, between 1.4.96 to 31.3.97 and hence that vacancy should be filled up by the wait listed candidate.

- The affidavit filed by the State Govt. states that the Government of India notification came into effect from 25.3.97 whereas the affidavit filed by the Central Government states that the cadre strenth of A.P., came into force with effect from 12.4.97 as the same was published in the Gazette of India on 12.4.97 (GSR No.187). A copy of the Notification was produced before us by the Central Govt. though the learned counsel for the State Government expressed his inability to produce the Gazette Notification dated 12.4.97. The learned counsel for the Central Govt. further submits that the notification of DP&T dated 25.3.97 comes into force on the publication in the official Gazette ie, from 12.4.97.
- 18. The learned consel for the applicant submits that it is no doubt that the Gazette Notification was issued on 12.4.97. But the vacancy had already been created by the



DP&T notification dated 25.3.97. Hence the new post created is to be taken as having come into existence from the date of the issue of the DP&T notification dated He also submits that the cadre review meeting 25.3.97. convened on 20.1.97 as approved by the Cabinet Secretary, New Delhi came into effect from 25.3.97 vide Govt. of India notification No.11052/2.96-AIS(II), dated 25.3.97. it should be taken that the restructured posts had come into existence due to restructuring earlier to 31.3.97 and publication of the modification in not from the date of the official Gazette Notifications in It is also submitted by the learned counsel the Cazette. for the applicant that the Respondents 1 to 4 herein never gazette publication for appointment insisted on He further states vacancies on several earlier occassions. that the cadre strenth of IPS for promoting officers was enhanced from 44 to 46 due to trienniel review held in The corresponding enhancement of the cadre strenth 1988. in IPS for A.P, Establishment was notified on 13.12.88 vide notification No.11052/8/88 AIS11-A dated 13.12.88 of Dept. of Personnel & Training. It is further gathered that the same was published in the Gazette of India on 31.12.88 vide GSR No.999. However, four officers.from the select list were appointed to IPS much before the Gazette Notification i.e, on 23.12.88. The names of the officers who were appointed to IPS on 23.12.88 are given in the second rejoinder dated 10.12.97. From the above, the learned counsel for the applicant wanted to impress on us that the date of notification by DP&T is the criteriam for new vacancies coming into effect and not the date of Gazette publication.



- 19. The learned counsel for the respondents 1 to 3 submitted that the incidence mentioned in the year 1988 is one of the "rarest of rare incidence". That should not be quoted as precedence to be followed in future cases.
- 20. In order to ascertain the position fully, the Central Government was asked to produce any standing instructions in regard to filling up of the posts coming into being and also the reasons for appointing the officers in 1988 earlier to the issue of the Gazette Notification, vide docket order dated 22.12.97. The learned counsel for the respondents of the Central Government was also asked to state the exceptions, if any, for appointing officers in that year earlier to the issue of the Gazette notification dated 31.12.88, vide docket order dated 22.1.98.
- 21. . A reply has been filed in regard to the above queries in this OA by the Central Government on 13.2.98. In that reply, it is clearly stated that there are no seperate instructions which may clarify as to the date from which the posts come into being. It is further stated that general rule regarding the date of effect of legislation/subordinate legislation from the date of its publication in the official Gazette unless specifically mentioned otherwise in the notification etc, applies to all notifications issued under the IAS/IPS/IFS Fixation of Cadre Strenth Regulations. By the above submission, the Central Government asserts that the date of publication in the official Gazette is proper date for the posts coming into being and not the date of issue of the notification unless both the dates are

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- 22. In the reply, reasons for operating posts by appointing five officers to the IPS cadre in the year 1988 of Andhra Pradesh earlier to the issue of the Gazette Notification was not given. In the reply it is also not stated reasons for exception in this connection. The learned counsel for the respondents of the Central Government only submitted that 1988 cases were on a different footing and that cannot be a reason for granting the relief to the applicant.
- 23. The logic put forward for operating posts and appointing officers earlier to the issue of the Gazette Notification in the year 1988 eludes our grasp. There is no satisfactory reason given in that connection. There are no seperate insutrctions also clarifying the date from which the posts come into being. The general rule shall be in order if no body questions the general rule. But in the present case a situation had arisen wherein a duly selected wait listed officer is languishing for promotion to the IPS cadre post available even before 31.3.97. Merely stating that it, is a general rule cannot be a reason to deny the opportunity of promotion to the applicant herein. Further, as stated earlier, there is no logic put forward for not adhering to the rule in the year 1988. Even if it is the rarest incidence that cannot be stated to be an isolated case and relied upon for future. As there is a precendence for operating the posts and appointing the officers even earlier to the issue of the Gazette Notification, there is no reason in not adhering to that course of action in the present case. The above view of ours also is in accordance with the Apex Court observation referred to above.



we are of the opinion that the applicant is entitled for the promotion in the posts created due to restructuring of the IPS cadre.

- 24. From the above, the applicant has justified his case due to (i) Regulations 5 and 7 of IPS (Appointment by Promotion) Regulations, 1955; (ii) the Apex Court judgment cited above and (iii) appointment of officers in 1988 to IPS cadre even before the issue of the Gazette Notification.
- 25. In the result, the OA has to be allowed and accordingly it is allowed. The respondents are directed to appoint the applicant to the IPS cadre against the vacancy that was created in the promotion quota due to mid-term cadre review which was notified by the Department of Personnel & Training Notification dated 25.3.97 and the Gazette Notification dated 12.4.97.
- 26. Time for compliance is three months from the date of receipt of a copy of this judgement.

27. No order as to costs.

(B.S.JAI PARAMESHWAR)

MEMBER (JUDL.)

26.2-58

DATED: 7th February, 1998

(R.RANGARAJAN) MEMBER (ADMN.)

MDR

vsn

Copy to:

- The Secretary, Min. of Home Affairs, North Block, New Delhi.
- The Secretary, Min. of Personnel, North Blook, New Delhi.
- The Secretary, Union Public Service Commission, Dholpur House, New Delhi.
- 4. The Chief Secretary, Govt. of A.P, Secretariat, Hyderabad.
- 5. One copy to Mr.K. Prabhakar Reddy, Advocate, CAT, Hyderabad.
- 6. One copy to Mr.N.R.Devraj, Sr.CGSC, CAT, Hyderabad.
- 7. One copy to Mr.P. Naveen Rao, Advocate, CAT, Hyderabad.
- 8. One copy to D.R(A), CAT, Hyderab ad.
- 15.Copy to All the Reporters, CAT, Hyderabad.
- 16. One duplicatecopy.

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IN THE CENTRAL HOMINISTRITIVE TRIBUNAL HYMERABAD BENCH HYDERABMYH

THE HISTBLE MR. BIRANGARAJAN : M(A)

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THE HOW'BLE MY. B.S. DAI PARAMESHWAR:

DATED: 26/2/98

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M.A./R.A/C.A.NO.

in

D.H.NO. 558/97

ENDITIED WISTAIN ON USECTIONS

ALLUWID

OTSPOSED OF WITH DIRECTIONS DISPUSSED AS WITHDRAWN DISMISSED FOR DEFAULT ORDERED/REDECTED

NO ORDER AS TO COSTS.

TYUCO II

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केन्द्रीय प्रशासनिक बंधिकरण Central Administrative Tribunal प्रेक्टर /DESFATCH

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ESTRE TRIPUTS

NO SERVICE TRIPUTS