

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 11.03.2003

OA No.11/2002

1. Rajeev Kumar Dasot, IPS s/o Shri R.C.Dasot, at present working as Superintendent of Police (Security), Police Headquarters, Jaipur r/o 103, Pooja Apartments, Khawasji Ka Bagh, Durgapura, Jaipur.
2. Mohan Lal Lather, IPS s/o Shri Raghbir Singh, at present working as Superintendent of Police, CID (CB), Police Headquarters, Jaipur r/o C-29, Hanuman Nagar, Khatipura, Jaipur.

.. Applicants

VERSUS

1. Union of India through the Secretary to the Govt. of India, Ministry of Home Affairs, IPS Section, New Delhi.
2. The Secretary to Government, Government of Rajasthan, Department of Personnel A-1, Rajasthan, Jaipur
3. Shri Liyakat Ali Khan, IPS at present working as Superintendent of Police, Rural Jaipur, Jaipur
4. Shri M.M.Atre, IPS, at present working as Superintendent of Police, Udaipur District, Udaipur.
5. Shri P.D.Sharma, IPS, at present working as Asstt. Inspector General of Police, II, Police Hqs., Jaipur
6. Shri R.D.Goyal, IPS, at present working as Superintendent of Police, A.C.D. Bharatpur.
7. Shri Govind Narayan, IPS, at present working as Superintendent of Police, Jodhpur Rural, Jodhpur.

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8. Shri Kundan Lal Sharma, IPS, at present working as Superintendent of Police, Bikaner
9. Shri Ummed Singh Krishnia, IPS, at present working as Superintendent of Police, Bundi
10. Shri H.C.Bhagat, IPS, at present working as Superintendent of Police, Anti-Terrorist Cell, Police Hqs. Jaipur

.. Respondents

Mr. M.S.Gupta, counsel for the applicants

Ms. Shalini Sheoran, proxy counsel to Mr. Bhanwar Bagri, counsel for the respondent No.1

Mr. U.D.Sharma, counsel for respondent No.2

Mr. Prahlad Singh, counsel for respondent No.3

Mr. R.P.Sharma, counsel for respondent No.7

None present for other respondents.

CORAM:

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R

Per Hon'ble Mr. H.O.GUPTA.

The applicants are aggrieved of the order dated 20.12.2001 (Ann.A1) issued by the Ministry of Home Affairs, Government of India, whereby the private respondents Nos. 3 to 10 have been assigned seniority over the applicants. In relief, they have prayed for quashing the said order and for appropriate directions to re-draw the seniority list on the basis of the year of selection i.e. the year 2000 of the private respondents by allowing their weightage of years in accordance with Rules of 1988.

2. The case of the applicants as made out, in brief,

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is that:-

2.1 Both the applicants, having qualified the Civil Service Examination conducted by the Union Public Service Commission (UPSC), were appointed to the Indian Police Service (IPS) and were allotted to the State of Rajasthan. After completion of the probation period, they were confirmed in the cadre of IPS. 25 officers of the Rajasthan Police Service including private respondents were appointed to the IPS cadre vide Ministry of Home Affairs notification dated 12.9.2000 (Ann.A2). The Ministry of Home Affairs vide impugned order dated 20.12.2001 (Ann.A1) addressed to the Chief Secretary, Govt. of Rajasthan, assigned seniority to private respondents in the IPS cadre. By the said order, the private respondents have been assigned year of allotment as 1986 by deeming them to be appointed in IPS cadre in the year 1990-91 and 1991-92. It has been mentioned in the said order that the seniority of the private respondents shall be computed under Rule 3(3)(ii) of the IPS (Regulation of Seniority) Rules, 1988 taking the last date of the Select List year, in which the concerned State Police Service officers were included, as deemed date of their appointment on the basis of the advice of the Department of Personnel and Training of the Govt. of India.

2.2 They submitted representation on 26.6.01 (Ann.A3) to the Ministry of Home Affairs, Govt. of India for assigning proper seniority to the promoted RPS officers but the impugned order dated 20.12.01 (Ann.A1) has been passed by not considering their representation.

3. The main grounds taken by the applicants are



that:-

3.1 The provisions contained in sub-clauses (a) and (b) of clause (ii) of sub-rule (3) of rule 3 of Rules of 1988 have grossly been contravened by assigning the year of allotment to the private respondents as 1986 and further placing them above the applicants, who are direct recruit IPS officers of the year 1987.

3.2 As per their knowledge, the Selection Committee met sometime in the year 2000, prepared select list and made recommendations for promotion/appointment of the private respondents to IPS cadre. The weightage was required to be given on the basis of the year of meeting of the Selection Committee i.e. the year 2000. Since the rule provides for a maximum weightage of 10 years and the Selection Committee met in the year 2000, the private respondents could not have been allotted the year 1986. They were required to be allotted the year as 1990. Since the applicants are direct recruits of 1987 batch, they will be senior to the private respondents. By incorrectly allotting them the year 1986, the applicants have been made junior to the private respondents. There is no justified reason or ground in assigning year of allotment as 1986 to the private respondents.

3.3 The private respondents have been assigned seniority from the date of their deemed selection and not from the date of the meeting of the Selection Committee, which is a gross violation of clause (ii) of sub-Rule 3 of Rule 3 of Rules of 1988. In the Rules of 1988 as amended in 1997, it has been clearly mentioned that deemed relaxation of Rules and Regulations is not permissible. In this regard, reliance is placed on Hon'ble Apex Court in the case of Syed Khalid Rizvi vs. Union of India [1993 (1)

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SLR 89 SC]. The Hon'ble Apex Court has further laid down that the seniority should be fixed from the date of select list or from the date of officiation whichever is later and, therefore, the law laid down by the Apex Court has been ignored. The private respondents have been incorrectly allotted the year as 1986 by incorrectly interpreting the provisions of statutory rules.

3.4 The applicants were not afforded opportunity of being heard and furthermore the representation dated 26.6.2001 (Ann.A3) submitted by the humble applicants has not been considered while passing the impugned order under challenge.

4. Briefly stated, the respondent No.1, in reply, has submitted that:-

4.1 A meeting of the Review Selection Committee to prepare selection lists of the years 1990-91, 1991-92, 1992-93, 1993-94 and 1994-95 was held on 11th and 12th June, 1997 for considering promotion to IPS cadre of Rajasthan on the basis of revision in the seniority list of RPS officers in compliance with the directions dated 12.12.95 of the Hon'ble Apex Court in CA Nos. 4311/95, State of Rajasthan vs. Fateh Chand Soni and CA No.4312 and 4313 of 1994 of private respondents against the High Court order dated 21.9.93 in WP No. 3939/91.

4.1.1 The Selection Committee meeting for preparing the select lists of 1995-96, 1996-97 and 1998 was held on 27.7.98 as per the directions of this Hon'ble Tribunal in its order dated 24.7.98 in OA No.247/98, M.K.Govil Vs. Union of India and Others.

4.1.2 A dispute regarding seniority list of State Police Service (Rajasthan Police Service) was pending in

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the Rajasthan High Court in W.P.No.2812/96 (B.K.Sharma and Ors. Vs. State of Rajasthan). Vide interim order dated 31.7.97, the Hon'ble High Court directed that the appointment made based on the select lists prepared by the Selection Committee in its meeting of June, 97, shall be subject to the result of the WP. Accordingly, the appointment of officers from the select lists of 1990-91 to 1994-95 was made subject to the final decision in WP No.2812/96. The said Writ Petition was finally decided by the Hon'ble High Court on 2.4.1998 with following directions:-

"Review DPC shall be convened by the respondents within a period of 8 weeks from the date of receipt of certified copy of this order which shall draw a fresh seniority list out of the combined category of general as well as SC/ST/BC candidates and promotion to next higher posts to RPS and RAS and to IPS and IAS cadres, respectively shall be made having due regard to the original panel position in strict order of seniority of the petitioners as well as the private respondents in accordance with the rules. The revised seniority list shall be published by the respondents positively within a period of 60 days thereafter"

4.1.3 Against the order of the Hon'ble High Court in WP No.2812/96, an SLP was filed before the Hon'ble Apex Court. The order of appointment of officers to IPS from select lists of 1995-96 to 1998 were, therefore, made subject to the SLP pending before the Supreme Court. The SLP was decided by the Hon'ble Apex Court on 16.9.99.

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4.1.4 A Contempt Petition No.379/99 was filed by Shri R.K.Sood and others in the High Court of Rajasthan for non-compliance of the judgment of High Court in B.K.Sharma's case and the judgment of the Hon'ble Apex Court in the SLP. In the Contempt Petition, the Hon'ble High Court has passed an interim order dated 3.3.2000. The operative portion of the interim order reads as under:-

"Moreover the officers who got promotion under the orders of this court on 31.7.1997, if their promotions are not in accordance with the judgement of this court or of the Supreme Court, have no right to continue on their posts when the promotions were granted to such officers specifically with the stipulations that they shall be subject to the result of the petition and such promotions if prejudice the rights of any of the parties. We do not find that there is any justification for continuation of such officers in the promoted post. Though some Ministerial act for revocation of their promotion may be necessary but that would not mean that till such ministerial act, like issuing notifications etc. is done, they can validly continue on their promotional posts. They have to be deemed to have ceased in the promotional office from the date of the decision of this court or of the Supreme Court if an interim order was passed by the Supreme Court.

So far as preparation of seniority list, we grant 3 months' time to the respondents to comply with the order".

4.1.5 In compliance of above directions of the Hon'ble

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High Court, the Govt. of India denotified 28 RPS officers appointed to the IPS cadre of Rajasthan out of the select list of 1990-91 to 1998 vide notification dated 27.4.2000. The seniority list of RPS officers was also revised by the Govt. of Rajasthan and a proposal was submitted by the State Govt. to the UPSC for convening a Review Selection Committee to review the select list of 1990-91 to 1998 on the basis of the revised seniority list issued by the State Govt.

4.1.6 Accordingly, a meeting of the Review Selection Committee was held on 25/26th July, 2000 to review the select lists of 1990-91 to 1998 in accordance with the directions of the Hon'ble High Court and Hon'ble Apex Court. Thus, when the year-wise lists are made, the zone of consideration, eligibility conditions etc. are worked out as on the crucial date of the relevant year and not on the date on which the committee actually meets. The Review Selection Committee who met to prepare year-wise select lists for 1990-91 to 1998, was not an ordinary Selection Committee meeting convened under the normal provisions of the Promotion Regulations, but was held in pursuance of the directions of the Hon'ble High Court of Rajasthan as stated earlier.

4.1.7 It is settled law that in the cases where the select lists are prepared on year-wise basis, the consequential benefits including appointment to IPS and seniority etc. are given to concerned officers by giving deemed date of appointment to IPS and their seniority in the IPS is fixed accordingly. If the promotee officers are not given notional appointments to the IPS on the basis of inclusion of their names in the year-wise select lists prepared pursuant to the Court directions, they would not

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get the justice in the matter of fixation of their seniority/year of allotment and the very purpose of preparing the year-wise select lists would be defeated. In fact, this stand has been affirmed by the Hon'ble Apex Court in its judgment in Devendra Narayan Singh v. State of Bihar, [(1996) 11 SCC 342]. Reversing the decision of CAT, Patna Bench in the case of D.N.Singh v. Union of India, [(1996) 2 SLJ (CAT) 322 (Pat)], the Apex Court interpreted the Rule 3(3)(b) of the IPS Regulation of Seniority) Rules, 1954 as read with Regulation 5,3, and 9(1) of the IPS (Appointment by Promotion) Regulations, 1955 and has categorically held that the year of allotment of those who were included in the said year select list has to be determined on the basis that they were in the select list of that year though factually the list may have been prepared and approved subsequently. The Hon'ble Apex Court in Syed Khalid Rizvi v. Union of India, 1993 Supp (3) SCC 575, directed the respondents to prepare notional Select Lists for the year for which these were not prepared. The interpretation of the IPS seniority rules by the Hon'ble Apex Court is valid not only for the seniority rules as notified in 1998 but also for the earlier IPS seniority rule. Thus, the seniority of the promotee IPS officers of Rajasthan was drawn up with reference to the year for which the select lists had been prepared in terms of Court direction vide the respondents impugned order dated 20.12.2001.

4.1.8 These very promotee IPS officers (respondent Nos. 3 to 10) were assigned their year of allotment in the IPS in a similar manner earlier also in the year 1999 vide respondents letter dated 7.7.99 (Ann.I). The applicants had represented against this order and after careful

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consideration of the points raised by them in their representation, the respondent has rejected their representations through a detailed speaking order vide order dated 8.9.99 and 19.5.2000 (Ann.II and III). The applicants did not file any OA before the Tribunal against the rejection of their representations whereas it is only now that they have filed OA when the seniority/year of allotment of the private respondents has been fixed in a similar manner. Since the cause of action for the first time arose in the year 1999 but they have filed the OA in 2002, therefore, this OA deserves to be rejected on the ground of delay.

4.2 The official respondent No.2 and private respondent Nos. 3, 7 and 10 have also contested this application. While the private respondent No.7 has taken the plea of limitation, the private respondent No. 3 and 10 have not taken any preliminary objection with regard to limitation. The official respondent No.2 i.e. the State of Rajasthan has not objected to the contention of the applicants that this application is within limitation.

4.3 The official respondent No.2 has submitted that the respondent No.1 will be making appropriate submissions with regard to the issuance of the impugned letter dated 20.12.01. However, it is submitted that since the Promotion Regulations as well as Seniority Rules do not contain specific provisions regarding the assignment of deemed date of appointment to IPS and consequential assignment of the years of allotment on the basis of select lists prepared year-wise for previous years by the Review Selection Committee in its meeting held in one sitting, this being a case of "Casus Omissus", it is within the competency of the competent authority to exercise its

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discretion to assign deemed dates of appointment and consequential deemed years of allotment. In fact, in similar cases, Courts have been giving the benefit of seniority and other consequential benefits flowing from retrospective effect of the deemed date of appointment on the well recognised principle of relate back. Following judgments are quoted in support of their case:-

- a) Amar Kant Choudhary vs. State of Bihar, [1984 (1) SLR 470]
- b) Ashok V. David and M.G. Halappanavar Vs. Union of India & ors. [1996 (4) SLR 11]
- c) Devender Narain Singh & Ors. Vs. State of Bihar and Ors. [1996 (7) SLR 1]
- d) O.S.Singh & Anr. vs. Union of India and Anr., [1995 (5) SLR 626].
- e) V.Rajaiah vs. UPSC and Ors. [1989 (5) SLR 379]
- f) S.N.Pathak vs. UOI [1992 (7) SLR 772]

4.4 The applicants have filed rejoinder to the reply of respondent No.1.

5. Heard the learned counsel for the parties and perused the record.

5.1 The official respondent No.1 and the private respondent No.7 have taken the plea of limitation. The official respondent No.2 i.e. the State of Rajasthan and the private respondents Nos. 3 and 10 have not taken the plea of limitation. During the course of arguments, the learned counsel for the respondent No.1 submitted that the representation of the applicants as forwarded by the State Govt. was disposed of vide their letter dated 19.5.2000 and the present OA has been filed in January, 2002 and,

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therefore, it deserves to be rejected on the ground of delay. The letter dated 19.5.2000 was issued by the respondent No.1 to respondent No.2. Copy of the said letter was not marked to the applicants. There is nothing on record to establish that the respondent No.2 served this letter to the applicants. In fact the respondent No.2 has not taken the plea of limitation. The applicants are aggrieved of the order dated 20.12.01 fixing the allotment years of the private respondents and the seniority. The respondent No.1 have themselves submitted in the reply that the seniority of the promoted IPS officers of Rajasthan was drawn up vide their order dated 20.12.01. In view of above discussions, this case is not barred by limitation.

5.2 The applicants are aggrieved of the order dated 20th December, 2001 whereby the year 1986 has been assigned as the year of allotment to the private respondents as they being the direct recruits of 1987 batch, shall become junior to the private respondents. It is admitted by the learned counsel for the parties during the course of arguments, that if the year of the select list is taken as 2000 instead of 1990-91/1991-92 as taken, the year of allotment of the private respondents will be 1990 and in that event, the private respondents shall be junior to the applicants. Therefore, the issue ~~question to be decided~~ in this OA is, whether the year of the select list shall be 2000 when the review DPC took place, as contended by the applicants, or the year of select list, when based on the vacancies, the private respondents would have been appointed to the IPS, but for the court cases as contended by the respondents.

5.3 The contention of the learned counsel for the applicants is that the action of the respondents in

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preparing the select list of retrospective years and thereafter taking the last date of select list year in which the concerned State Police Officer has been included, as deemed date of their appointment, as is evident from their impugned letter, is illegal being against the statutory rules viz. sub-clause (ii) of the sub-rule (3) of Rule 3 of IPS (Regulation of Seniority) Rules, 1988 which provides that the year of allotment of a promotee officer shall be determined with reference to the year in which the meeting of the Committee was held. There is no provision of deemed date of appointment and consequently the allotment year. He further submitted that as per this statutory provision, the year of allotment is required to be determined with reference to the year 2000 as the meeting of the Selection Committee took place in the year 2000.

In their reply, the official respondent No.2 i.e. the State of Rajasthan has submitted that there is no specific provision in the rules regarding assignment of deemed date of appointment to the IPS and consequential assignment of years of allotment to the appointees to the IPS on the basis of the select list prepared for number of years by the Review Select Committee in its meeting held in one sitting. But it is within the competency of the administrative authorities to assign deemed dates of appointment as well as consequential deemed years of allotment to the officers. It has also been submitted that this being the case of 'casus omissus', it is within the competency of the authorities to exercise the administrative discretion and assign deemed dates of appointment.


It is submitted by the respondents that the

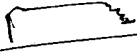
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meeting of the Selection Committee, held on 25/26.7.2000, was convened to review the select list from 1990-91 to 1998 as a consequence to the various court cases and the final orders of the High Court and the Supreme Court which included orders to amend the seniority of State Service. In preparing the year-wise select list, the zone of consideration and eligibility criteria has to be seen with reference to the crucial date of the relevant year under the regulation. Further, if notional appointment is not given including the seniority, the purpose of carrying out the exercise for making year-wise select list will have no meaning. It was further argued by the learned counsel for the respondents that proper interpretation and application of the statutory rules is required to be made. No rule can take care of all exigency. The respondents have relied on various judgments as referred to in the preceeding Para.

5.4 Having considered the material on record and the arguments of the parties, we are of the view that the action of the official respondents in preparing year-wise select list and consequent assignment of year of allotment by reckoning the deemed date of appointment in the IPS as the last day of the year in which name of private respondents find place in the select list, is just and proper requiring no judicial interference. In this view of the matter, we also take guidance from the Hon'ble Apex Court judgment in Devendra Narayan Singh v. State of Bihar, [1996 (7) SLR 1] and O.S.Singh and Anr. vs. Union of India and Anr. reported in [1995 (5) SLR 626].

6. In view of above discussions, this OA is devoid of merit and, therefore, dismissed without any order as to costs.


(M.L. CHAUHAN)
Member (J)


(H.O. GUPTA)
Member (A)