

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Applications Nos. 178 of 1998 & 36 of 1999

Jabalpur, this the 17th day of October, 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member  
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member  
(1) Original Application No. 178 of 1998

Devendra Singh Sengar, I.P.S.,  
Aged about 43 years,  
S/o Shri K.S. Sengar,  
Superintendent of Police,  
Indore.

APPLICANT

(By Advocate - Shri M.K. Verma)

VERSUS

1. Union of India  
Through Secretary  
Department of Personnel  
Public Grievances,  
Government of India,  
North Block  
New Delhi.
2. State of Madhya Pradesh  
Through Secretary  
Department of Home Affairs,  
Government of Madhya Pradesh  
Vallabh Bhawan  
Bhopal.
3. State of Madhya Pradesh  
Through Secretary  
General Administration Department  
Government of Madhya Pradesh  
Bhopal
4. Sudhir Kumar Saxena, I.P.S.  
Superintendent of Police,  
Jabalpur
5. Sanjeev Kumar Singh, I.P.S.  
Superintendent of Police,  
Bhopal.
6. Vijay Yadav, I.P.S.,  
On deputation to Govt. of India  
Through Addl. D.G. (Adm.)  
P.H.Q., Bhopal.
7. Binay Kumar Singh, I.P.S.  
Superintendent of Police  
Khandwa
8. Dr. Vinay Kumar, I.P.S.  
Superintendent of Police  
(Special Police Establishment)  
Lokayukta  
Bhopal

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9. C.V. Muni Raju, I.P.S.,  
A.I.G., P.H.Q.,
10. Pavan Kumar Jain, I.P.S.,  
Superintendent of Police,  
Khargaon
11. Smt. M.R. Aruna, I.P.S.,  
Superintendent of Police,  
Raisen.
12. P.M. Mohan, I.P.S.,  
On deputation to Govt. of India  
Through A.D.G. P.H.Q.  
Bhopal.
13. Swagat Das, I.P.S.,  
On deputation to Govt. of India  
Through A.D.G., P.H.Q.,  
Bhopal.
14. Shailesh Singh, I.P.S.,  
Superintendent of Police  
Chhindwara.
15. Rajendra Kumar Mishra, I.P.S.,  
Commandant, 15th Btn., S.A.F.  
Indore.

RESPONDENTS

(By Advocate - Shri B.da.Silva for official respondents)

(2) Original Application No. 36 of 1999

A.P. Singh aged about  
45 years, son of Shri A.P. Singh  
Superintendent of Police,  
District Sagar,  
R/o Civil Lines, Sagar,  
District Sagar, M.P.

APPLICANT

(By Advocate - Shri M.K. Verma)

VERSUS

1. Union of India,  
Through the Secretary,  
Department of Personnel and  
Training,  
Ministry of Personnel, Public  
Grievances and Pension,  
Govt. of India,  
New Delhi.
2. State of Madhya Pradesh,  
Through the Secretary,  
Department of Home,  
Govt of Madhya Pradesh,  
Vallabh Bhawan,  
Bhopal, M.P.
3. Union Public Service Commission,  
Through its Secretary,  
Dholpur House,  
Shahjehan Road,  
New Delhi.

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4. Shri M.W. Naqvi, IPS,  
Through the Secretary,  
Department of Home,  
Govt. of M.P.  
Vallabh Bhawan,  
Bhopal, M.P.
5. Shri Ashok Awasthi, IPS,  
Through the Secretary, Home  
Department, Govt of M.P. Vallabh  
Bhawan, Bhopal M.P.
6. Shri Vijay Kataria, IPS,  
Through the Secretary,  
Department of Home,  
Govt. of M.P.  
Vallabh Bhawan,  
Bhopal M.P.
7. Shri M.C. Bajaj, IPS,  
Through the Secretary,  
Department of Home,  
Govt of M.P.  
Vallabh Bhawan,  
Bhopal, M.P.
8. Shri B.B. Sharma, IPS,  
Through the Secretary,  
Department of Home,  
Govt of Madhya Pradesh,  
Vallabh Bhawan,  
Bhopal, M.P.

RESPONDENTS

(By Advocate - Shri B.da.Silva for official respondents)

COMMON ORDER

By Anand Kumar Bhatt, Administrative Member -

OA 178/98 (Devendra Singh Sengar) and OA 36/1999 (A.P.Singh) relate to the same issue and, therefore, they are being taken up together by a common order. For the sake of convenience we shall discuss the case no.178/1998, Devendra Singh Senger, which would apply mutatis mutandis to the other case also.

2. The facts of the case as per the applicant in Devendra Singh Senger's case are that the applicant was selected to the State Police Service in the year 1979. <sup>to IPS</sup> He was considered for promotion in the DPC held in the year 1988, where he could not find place in the select list because the deputation reserve was not taken into

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consideration for calculation of vacancies. He states that the same has been <sup>done in</sup> in the case of Indian Forest Service. The DPC did not <sup>met</sup> in the years 1989 and 1990 and the next DPC for appointment by promotion to IPS was held only in the year 1991 where the applicant was selected. The applicant was notified to IPS with effect from 19.7.1991 and he was assigned the seniority of 1987. Further, in the seniority list he was placed below the officers who actually worked under him. The reliefs sought by the applicant are that he should be placed above **Shri Sudhir Kumar Saxena, serial no.144.**

3. In the reply filed on behalf of respondent no.1 by the Ministry of Home Affairs, Govt. of India, a preliminary objection has been taken that as the applicant has not impleaded the Ministry of Home Affairs, his application is not maintainable, and should be dismissed for non-joinder of necessary parties. As regards the facts, it has been averred that the applicant is a promotee IPS officer who was appointed to the IPS in 1991 whereas private respondents 4 to 15 against whom the applicant is seeking seniority were appointed to the IPS in the year 1987 as direct recruit IPS officers i.e. much earlier than the applicant. They have also raised an objection that the O.A. is also barred by limitation. As regards deputation reserve, it has been stated that the vacancies taken into consideration by the DPC was strictly in accordance with the relevant provisions of Indian Police Service (Appointment by Promotion) Regulations, 1955 (for short 'Regulations 1955'). Also, as this grievance relates to the period 1988 and the applicant failed to agitate the same at the appropriate time, his application suffers from delay and laches. It has been further averred that the applicant has been assigned 1987 as his year of allotment as per Rule 3(3)(ii) of IPS (Regulation of Seniority) Rules, 1988 (for short 'Seniority Rules') and has been rightly placed below the junior most directly recruited IPS

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officers of 1987 as per Rule 4 of Seniority Rules.

4. In the reply filed on behalf of respondent no.2, Secretary to Govt. of M.P., Home Department it has been admitted that although the applicant was posted as Addl.S.P., Morena in 1987, which was a cadre post at that time and he was posted to other cadre posts subsequently, he is not eligible for any benefit of seniority on account of this, as he was actually promoted from SPS to IPS in 1991. They have further clarified that the post to be filled up by promotion is 33.3% of senior posts under the State Government and Central Deputation Reserve. They have stated that the Deputation Reserve of 25% of Senior Duty post, is never added for deciding the posts to be filled by promotion for IPS cadre of any State in the country starting from 1954 when these rules and regulations were framed, and the size of the select list in 1988 was made strictly and absolutely in accordance with the provisions of IPS (Cadre)Rules, 1956 and IPS (Fixation of Cadre Strength)Regulations, 1966 as existing in 1988 and, therefore, the question of narrowing down the select list does not arise as claimed by the applicant. The instances quoted by the applicant in relation to Indian Forest Service cannot be made applicable to the Indian Police Service. They have given details of the DRC held on 21.12.1988 where a number of vacancies for promotion of SPS to IPS were 10 and the zone of consideration was of 33 officers. The applicant was at serial no.24 and was classified as 'very good' and he could not come in the first 10 in the seniority ranking. As regards non-holding of selection committee meeting in 1989 and 1990, they have stated that it was not held because of certain administrative reasons.

5. In the oral submissions, the learned counsel for the applicant Shri M.K.Verma has cited the decisions of the Hon'ble Supreme Court in the cases of N.R.Banerji and Syed Khalid Rizvi (1994) 26 ATC 192 where it has been held that selection should be made every year. He stated that the present OA is

not suffering from limitation as the cause of action arose in 1997 when the seniority was given. He has also stated that the posts were available in the years when the DPCs did not meet.

6. From the respondents side Shri B.da.Silva has reiterated the reply given by respondents 1 and 2. He has also stated that in 1991 when he was selected, he did not contest his grievances against the direct recruits of 1987. He has further stated that neither the applicant has sought any relief against the ~~direct & promote the~~ ~~has in - the~~ recruit 1987/IPS officers, nor he pleaded any such IPS officers and as per rules the direct recruits have to find place above him in the year which he has been allotted as per rules.

7. In rebuttal, Shri M.K.Verma has stated that the gradation list was issued by the Police Headquarters, Madhya Pradesh on 16.10.1997 and his representation was rejected only in the year 1998 and, therefore, the present OA is very much within the limitation. He has cited the decisions reported in 1986(2)SCC 157, where the DPC not having been held for 15 years was considered to be bad, and (1997) 9 SCC 287 Union of India Vs.N.R.Banerjee that DPC should be held every year.

8. We have seen the pleadings and records of the case and have heard the counsel on both sides at great length.

9. The main issues are three - (a) whether deputation reserve of senior duty post have to be counted for deciding the post to be filled up by promotion; (b) whether the applicant is entitled to get any benefit because of non-holding of DPC in the years 1989 and 1990; and (c) whether it was right to place his 'juniors' above him in the gradation list.

10. As regards first, we find no reason to disagree with the very clear explanation given by respondent no.2 (in reply to para 4.3 of OA) that deputation reserve ~~at~~ <sup>in</sup> 25% of senior duty post, is never added to decide the post to be filled by promotion of SPS officers to IPS. It has been stated that this is the practice prevalent all over the country and we find no reason to disagree with the same. As regards non-holding of the DPCs in the years 1989 and 1990, the reply is very cryptic of respondent no.2 that it was not held because of administrative reasons. We

have gone deeper into the question. Regulation 5 of IAS (Appointment by Promotion)Regulations, 1955 is as follows-

"5. Preparation of a list of suitable officers- (1) Each Committee shall ordinarily meet every year and propose a list of such numbers of the State Civil Service as are held by them to be suitable for promotion to the Service. The number of members of the State Civil Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under Rule 9 of the recruitment rules. The date and venue of the meeting of the committee to make the selection shall be determined by the commission:

Provided that no meeting of the committee shall be held, and no list for the year in question shall be prepared when

(a) there are no substantive vacancies as on the first day of January of the year in the posts available for the members of the State Civil Service under Rule 9 of the recruitment rules; or

(b) the Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for the members, of the State Civil Service under Rule 9 of the recruitment rules; or

(c) the commission on its own or on a proposal made by either the Central Government or the State Government after considering the facts and circumstances of each case, decides that it is not practicable to hold a meeting of the committee to make the selection to propose a select list.

This rule has been substituted by G.S.R.732(E) dated 31.12.1997 and we find that in IPS (Appointment by Promotion)Regulations, 1955 Regulation 5(1) has also been substituted by new rule by the same G.S.R. Whereas we could not find the said rule in the IPS (Appointment by Promotion)Rules, 1955 in the Ejaz's All India Services Manual, Edition 2001, published by Ashoka Law House, because the amendment has been done by the same GSR it would be safe to assume that the rules and regulations of IAS and IPS are same in this regard. Various reasons have been given for which no select list for the year is prepared. Whereas the respondents have not given any specific reason and they have only stated administrative reason, we do not question the bonafide of the respondents in this regard.



11. As regards the third point raised by the applicant Rules 3 and 4 of the Seniority Rules are as follows-

" 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 direct recruit officer shall be the year following the year in which the competitive examination was held:

Provided that if a direct recruit officer, other than an exempted probationer within the meaning of Cl.(ee) of Rule 2 of the Indian Police Service (Probation) Rules, 1954, who is permitted to join probationary training under Sub-rule (1) of Rule 5 of the Indian Police Service (Probation) Rules, 1954 with the direct recruit officers of subsequent year of allotment, then he shall be assigned that subsequent year as the year of allotment.

(ii) The year of allotment of a promotee officer shall be determined with reference to the year in which the meeting of the Committee to make selection, to prepare the Select List on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him in the State Police Service nor below the rank of a Deputy Superintendent of Police or equivalent, up to the 31st day of December of the year immediately before the year in which the meeting of the Committee to make selection was held to prepare the Select List on the basis of which he was appointed to the Service, in the following manner:-

(a) for the service rendered by him up to twenty one years, he shall be given a weightage of one year for every completed three years of service, subject to a minimum of four years;

(b) he shall also be given a weightage of one year for every completed two years of service beyond the period of twenty years, referred to in sub-clause (a), subject to a maximum of three years.

Explanation-For the purpose of calculation of weightage under this clause, fractions, if any, are to be ignored.

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 that Select List or appointed to the Service on the basis of an earlier Select List.

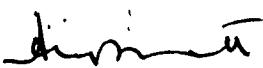
4. Inter-se seniority of the officers.- The inter-se seniority of the officers who are assigned the same year of allotment shall be in the following

order and in each category the inter-se seniority shall be determined in the following manner:-

- (i) Direct recruit officers shall be ranked inter-se in the order of merit as determined in accordance with Rule 10 of the Indian Police Service (Probation) Rules, 1954.
- (ii) Promotee officers shall be ranked inter-se in the order of their dates of appointment to the service.

The respondents have categorically stated that the applicant has been given seniority on the basis of the above rules. A careful perusal of Rules 3 and Rule 4 show that Rule 3 relates to allotment of seniority for the categories of regular recruits and promotees separately whereas Rule 4 relates to inter se seniority separately for the two categories. These rules do not prohibit anywhere the assignment of seniority of promoted officers below the regular recruits. The statement of the respondents in this regard that this is the practice followed every where and the applicant cannot possible claim seniority over regular recruits who were recruited to the service in ~~1987~~ whereas the applicant was recruited to the service in 1991 and he was given notional seniority as per Rule 3(3) is ~~not acceptable~~.

12. In the result, we do not find any merits in these two OAs and accordingly they are dismissed. No costs.

  
(Anand Kumar Bhatt)  
Administrative Member

  
(J.K.Kaushik)  
Judicial Member

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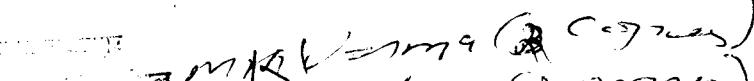
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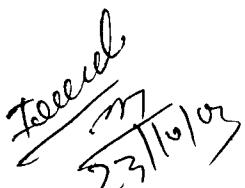
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M.K. Vimala (2 copies)  
  
B. Dasgupta (2 copies)

  
Trupti Ghosh  
23/10/03

  
T. K. Ghosh  
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