

K. Madhavan and Another

Vs

Union of India and Others

Dwarka Nath

Vs

Union of India and Others

Writ Petitions Nos. 9847-48 of 1983 and 1021 of 1986

(Ranganath Misra, M. M. Dutt JJ)

09.10.1987

JUDGMENT

DUTT, J. -

1. These two writ petitions, being Writ Petitions Nos. 9847-48 of 1983, involve a dispute as to seniority between the two petitioners, K. Madhavan and Santunu Sen, on the one hand and respondent 5 O. P. Sharma on the other. It may be recorded at the outset that although the petitioners have also challenged in the writ petitions the seniority of respondent 4, P. C. Srivastava, over the petitioners, at the hearing of the writ petitions the challenge to the seniority of respondent 4 has not been pressed on behalf of the petitioners inasmuch as respondent 4 is to retire from service within about two years from now. We would, accordingly, exclude from our consideration the seniority of respondent 4 which stands confirmed.

2. The two petitioners, Madhavan and Sen, were directly recruited as Deputy Superintendents of Police (DSP) in the Delhi Special Police Establishment (SPE) in the Central Bureau of Investigation (CBI) on July 6, 1963 and August 10, 1963 respectively. Respondent 5, who was appointed to the post of DSP on July 13, 1962 in the Rajasthan State Police, was sent on deputation to CBI as DSP on July 1, 1967. It may be stated at this stage that majority of the officers in the CBI are deputationist. The case of the respondent is that the CBI organisation requires very capable and experienced police officers and, accordingly, such police officers are brought to CBI on deputation from different States and, thereafter, they are generally absorbed in the CBI. We shall presently refer to the recruitment rules of police personnel in the CBI, but before that, we may indicate how the dispute between the parties arose with regard to their respective seniority. While Madhavan and Sen were both confirmed in the post of DSP in the CBI on March 30, 1967, respondent 5 was confirmed as DSP in the Rajasthan State Police on December 1, 1964. The petitioners, Madhavan and Sen, were promoted to the rank of Superintendent of Police (SP) in the CBI with effect from October 21, 1971 (AN) and January 25, 1972 (AN) respectively. Respondent 5 was appointed to the post of SP on October 28, 1972. Respondent 2, the Inspector General of Police, Delhi Special Police Establishment, and Director of CBI published a seniority list of departmental SPs on October 1, 1978. In that seniority list, respondent 5 O. P. Sharma was shown below both the petitioners. Respondent 2 also published another seniority list on October 17, 1981. In that seniority list, the

date of appointment of respondent 5 was mentioned as October 21, 1971 (FN) (Notional) instead of October 28, 1972 and on the basis of such notional date of appointment to the post of SP in CBI, the name of respondent 5 was placed above the petitioner's names in that seniority list. The petitioners felt highly aggrieved by the said seniority list showing them as juniors to respondent 5 O. P. Sharma, on the basis of a national date of appointment with retrospective effect from October 21, 1971 (FN), that is, just before the appointment of Madhavan on October 21, 1971 (AN). The petitioners have challenged the said seniority list.

3. The case of the petitioners is that the deemed or notional date of appointment of respondent 5 with retrospective effect from October 21, 1971 (FN) has been done mala fide with a view to making the petitioners juniors to respondent 5 without any reasonable justification therefore. It is complained that before that deemed or notional date of appointment was made with retrospective effect, the petitioners were not given any opportunity of being heard to their great prejudice and detriment. The seniority of respondent 5 has been challenged by the petitioners on more than one ground including the ground that respondent 5 was not even eligible for appointment as SP in the CBI. The grounds of challenge will be considered by us presently. But, before that we may indicate the stand taken by respondents 1 and 2, the Union of India and the CBI, and the respondent 5 in regard to his appointment to the post of SP, CBI, with retrospective effect from October 21, 1971 (FN).

4. It is not disputed that under the Special Police Establishment (Executive Staff) Recruitment Rules, 1963, hereinafter referred to as '1963 Rules', for the appointment of a deputationist to the post of SP, the minimum qualification required was DSP in the Special Police Establishment with at least eight years' service in the grade, out of which two years should be probationary period in the CBI. It has been stated already that respondent 5 O. P. Sharma became DSP in the Rajasthan State Police on July 13, 1962 and he joined the CBI as DSP on July 10, 1967. According to him, therefore, he was eligible for appointment to the post of SP after eight years of his service as DSP on July 13, 1970. It is also not disputed that under the 1963 Rules, the mode of recruitment was that not exceeding 15 per cent of the sanctioned strength would be filled by promotion and the remaining by transfer on deputation. It is the case of respondents 1, 2 and 5 that the proposal for convening the meeting of the DPC was approved on October 13, 1970, but as two departmental officers were to complete eight years of service and become eligible for being considered for the post of SP in January and March 1971, the meeting of the DPC was postponed on that ground. It is the contention of respondents 1, 2, and 5 that the meeting of the DPC was to held in October 1970, but was arbitrarily postponed without any justification therefor and, accordingly, the case of respondent 5 for appointment to the post of the SP, CBI, could not be considered, although he was fully eligible for the same. The DPC finally met in July 1971. But respondent 5 was graded only 'good', which grading debarred him from getting the appointment. It is the case of respondents 1, 2 and 5 that when the minutes of the DPC went to the Department of Personnel for Presidential approval, the Department of Personnel examined the matter in depth and found that DPC had erroneously graded respondent 5 as 'good'. Consequently, the matter was referred by the Department of Personnel to the Senior Board which met in July 1972 and graded respondent 5 as 'very good' and recommended him for appointment to the post of SP. As noticed already, respondent 5 was appointed to the post of SP in CBI on October 28, 1972.

5. The further case of respondents 1, 2 and 5 is that for no-fault of respondent 5, the DPC was unjustly postponed and as the Senior Board had subsequently selected and recommended respondent 5 for the post of SP in CBI, respondents 1 and 2 appointed respondent 5 as SP with retrospective effect from a deemed date of appointment, that is, from October 21, 1971 (FN) so as to mitigate his

hardship and to do justice to him. An explanation has also been given in the affidavit of respondents 1 and 2 as to why the said date being October 21, 1971 (FN) was selected for the deemed appointment of respondent 5. The explanation is that although his appointment as SP should have been from October 1970 when the meeting of the DPC was originally scheduled to be held but postponed, and in that event, he would have been approved earlier than the two petitioners, yet basically the question for consideration before the government being only inter se seniority of respondent 5 vis-a-vis the petitioners, it was thought proper that ends of justice would be met if respondent 5 was given a limited retrospective date of appointment as SP. The government took note that the delayed appointment of respondent 5 was on account of unjustifiable reasons, and assigned him the seniority over the two petitioners with a deemed date of appointment as October 21, 1971 (FN). That is how the dispute has arisen between the petitioners and respondent 5 over the question of their respective seniority in the rank of SP in the CBI.

6. The petitioners have, in the first instance, challenged that respondent 5 was not even eligible for appointment to the post of SP, CBI. Respondent 5 was a deputationist and under the 1963 Rules that were prevailing at the material time, he was to complete eight years' service in the grade. There has been much controversy over the expression "in the grade". According to the petitioners, the expression should be understood as meaning in the grade of SP in the CBI. In other words, the contention of the petitioners is that respondent 5 should have been for eight years in the CBI as DSP before he would be eligible for appointment to the post of SP in the CBI. As respondent 5 joined the post of DSP in the CBI on deputation on July 1, 1967, he could not be appointed to the post of SP even on October 28, 1972, far less on July 21, 1971 (FN), for on either date, he did not complete eight years of service in the CBI.

We are, however, unable to accept the contention. "Eight years' service in the grade" would mean "eight years' service in the grade of DSP". The 1963 Rules do not provide that the period of eight years should be computed from the date of deputation to the CBI as DSP. In the absence of any such expression, it must be held that the period during when one held the post of DSP in the State Police Service should also be taken into account for computing the period of eight years. The 1963 Rules provide that two years must be spent on probation as DSP in the CBI. The position, therefore, comes to this that of the total period of eight years, two years must be on probation basis in the CBI. An officer may have been in the State Police as DSP for a period of six years and, thereafter, if the joins the CBI on deputation and spends two years on probation, he would be eligible for consideration for appointment to the post of SP. If this view is not taken, no officer would be available to join the CBI on deputation. It has already been noticed that the CBI requires efficient and experienced police officers and if the period spent by police officers in the State Police Service is not taken into account for the purpose of computing the period of eight years, it would be doing injustice to such police officers who join the CBI on deputation. In our view, therefore, there is no substance in the contention of the petitioners that in order to be eligible for appointment to the post of SP in the CBI, one should be in the rank of DSP in the CBI for a period of eight years including a period of two years on probation. Respondent 5 having held the post of DSP for five years in the Rajasthan State Police and more than three years in the CBI, that is to say, over eight years, he was quite eligible for appointment to the post of SP. The two petitioners, Madhavan and Sen, and respondent 5 O. P. Sharma are all now holding the post of DIG. By an order dated October 6, 1983, this Court directed that no selection list would be prepared for the post of DIG in the CBI/SPE, but it would be open to the respondents to make ad hoc appointments which would be subject to the result of the writ petitions. As a result of that order, respondent 5 was promoted to the post of DIG on October 13, 1983 on an ad hoc basis subject to the result of the writ petitions. The petitioners were also appointed DIGs on ad hoc basis by virtue of an interim order of this Court on April 24,

1985. Thus the petitioners and respondent 5 have been in the post of DIG on ad hoc basis. After the laps of time and after the appointment of the petitioners and respondent 5 to the post of DIG, though on ad hoc basis, the real question is the question of their inter se seniority in the post of DIG in the CBI.

7. It has been strenuously urged on behalf of the petitioners at the very outset that respondent 5 was not eligible for being appointed to the post of DIG, CBI. In support of this contention our attention has been drawn to the Central Bureau of Investigation (Deputy Inspector General of Police/Deputy Director) Recruitment Rules, 1975, hereinafter referred to as 'the 1975 Rules', which prescribe the following eligibility requirement for being considered for the appointment to the post of DIG in the CBI :

Superintendent of Police (including Assistant Inspector General of Police/Assistant Director) in the Central Bureau of Investigation with eight years' service in the grade rendered after appointment thereto on a regular basis.

8. It is the contention of the petitioners that as respondent 5 had not rendered eight years of regular service as SP in the CBI, he was not eligible for appointment to the post of DIG. It is submitted that eligibility requirement in the 1975 Rules is very specific inasmuch as it provides eight years of service in the grade after appointment thereto on a regular basis. The expression 'on a regular basis', according to the petitioners, means after absorption of the deputationist in the CBI as SP and, as respondent 5 was absorbed in the rank of SP in the CBI on July 1, 1978, he was not eligible for appointment to the post of DIG on October 13, 1983, that is to say, within less than eight years of his service from the date of absorption. In support of that contention our attention has been drawn on behalf of the petitioners to the Central Bureau of Investigation (Deputy Inspector General of Police/Deputy Director) Recruitment Rules, 1966, hereinafter referred to as 'the 1966 Rules'. Under the 1966 Rules, the eligibility requirement for being considered for appointment to the post of DIG is as follows :

Superintendent of Police (including Assistant Inspector General of Police/Assistant Director) in the Central Bureau of Investigation with not less than eight years' service in the grade.

9. It is submitted that on a comparison of the eligibility clauses in the 1966 and the 1975 Rules, it will be apparent that while under the 1966 Rules it was only eight years' service in the grade which might mean eight years' service in the rank of SP in the CBI whether the deputationist was permanently absorbed or not, under the 1975 Rules it is "eight years' service in the grade rendered after appointment thereto on a regular basis". Accordingly, it is urged that the expression 'on a regular basis'. Accordingly, it is urged that the to say, after permanent absorption of the deputationist in the CBI. Otherwise, there was no necessity for insertion of the words 'on a regular basis' in the eligibility clause of the 1975 Rules for the post of DIG in the CBI. Under the 1984 Rules, it is only "eight years' regular service in the grade". So the entire contention of the petitioners centres round the expression 'on a regular basis'.

10. The 1975 Rules which are relevant for the purpose do not explain what is meant by the expression 'on a regular basis'. The expression has created some ambiguity in the eligibility clause giving rise to this controversy. There can be no doubt that when a person is appointed to a post against a permanent vacancy on probation, his appointment is on a regular basis, but when a person is appointed to a post on a purely temporary or on an ad hoc basis, the appointment is not on a regular basis. The expression 'on a regular basis' in the 1975 Rules cannot, in our opinion, be

interpreted to mean as on absorption in the CBI as SP. The general principle is that in the absence of any specific provision to the contrary, the length of service from the date of appointment to a post should be taken into consideration for the purpose of either seniority in that post or eligibility for the higher post. As no explanation has been given in the 1975 Rules of said expression, we do not think it desirable to deviate from the established principle of computing the length of service for the purpose of seniority or eligibility for the higher post from the date of appointment. In our view, therefore, the expression 'on a regular basis' would mean the appointment to the post on a regular basis in contradistinction to appointment on ad hoc or stopgap or purely temporary basis. Respondent 5, in our opinion, satisfied the eligibility test of the 1975 Rules of consideration for the post of DIG. But, it is not disputed by the parties that the petitioners and respondent 5 have by the lapse of time during the pendency of this litigation, become eligible for appointment to the posts of DIG. Indeed, they are holding the posts of DIG, may be on ad hoc basis, under the interim orders of this Court and there is no chance of their being reverted to the next lower post of SP. The question, therefore, boils down to the seniority of the petitioners, vis-a-vis respondent 5 in the post of DIG. That again will depend upon the decision on the question as to the seniority of the petitioners and respondent 5 in the post of SP.

11. We, therefore, focus our attention to the question of the seniority of the petitioners and respondent 5 in the post of SP in the CBI. It is urged on behalf of the petitioners that the appointment of respondent 5 to the post of SP was in violation of the quota rule. We have already noticed that under the 1963 Rules, the method of recruitment was provided as follows :

- (a) Not exceeding 15 per cent of the sanctioned strength by promotion.
- (b) The remaining by transfer on deputation.

12. There was an amendment with effect from January 15, 1971 and the method of recruitment was prescribed as follows :

- (1) 25 per cent - by promotion failing which by transfer on deputation.
- (2) 75 per cent - by transfer/deputation.

13. The eligibility requirement was DSP in SPE/CBI with at least eight years' service in the grade. A chart has been prepared and filed by the petitioners and annexed to the writ petitions as Annexure XVI. It appears from the chart that on October 28, 1972 on which date respondent 5 was actually appointed on deputation to the post of SP/AD, the total sanctioned posts of SP/AD/AIG were 47.25 per cent of the sanctioned posts was twelve, out of which only seven were filled by direct recruitment and five remained outstanding 75 per cent of the sanctioned strength was thirty-five, to be filled by the appointment of deputationists, but forty deputationists were appointed to the posts of SPs, including the five posts out of the quota for direct recruitment. It is alleged by the petitioners that respondent 5 was appointed to the post of SP in the CBI in one of the said five posts meant to be filled by direct recruits in violation of the quota rule. The chart also contains a submission that the appointment of five deputationists/transferees, including the appointment of respondent 5, as SP on October 28, 1972 was illegal. In other words, it is alleged that respondent 5 was appointed in one of said five posts meant for direct recruits. There is no material whatsoever to suggest that respondent 5 was appointed in one of the five posts in excess of the quota for the deputationists. In the circumstances, we are not inclined to accept such contention without any foundation therefor.

14. The most significant and crucial fact is the appointment of respondent 5 to the post of SP with retrospective effect from a deemed date of appointment, that is, October 21, 1971 (FN). It is strenuously urged on behalf of the petitioners that such deemed appointment with retrospective effect from October 21, 1971 (FN) was wholly illegal and mala fide and should be struck down. The plea of respondents 1, 2 and 5 is that respondent 5 became eligible for appointment to the post of SP in the CBI in July 1970 after he had completed eight years of service in the grade of DSP with two years probation in the CBI. He was, accordingly, eligible for appointment to the post of SP and, indeed, the meeting of the DPC was scheduled to be held in October 1970, but that was arbitrarily postponed. The DPC again met in July 1971, but they had erroneously graded respondent 5 as 'good' and not 'very good', as a result of which he could not be appointed in 1971. He was, however, found to be 'very good' on a review by the Senior Board which recommended the appointment of respondent 5 to the post of SP and he was appointed to the post on October 28, 1972. The complaint of respondents 1, 2 and 5 is that if the DPC had not been arbitrarily and without any reason whatsoever postponed and held its meeting on October 1970, respondent 5 would have got the appointment to the post of SP in 1970 and would in normal course be senior to the petitioners. Thus the sum and substance of the contention of respondents 1, 2 and 5 is the arbitrary cancellation of the meeting of the DPC in October 1970.

15. There can be no doubt that if the meeting of the DPC scheduled to be held is arbitrarily or mala fide cancelled without any reasonable justification therefore to the prejudice of an employee and he is not considered for promotion to a higher post, the government in a suitable case can do justice to such an employee by granting him promotion or appointing him to the higher post for which the DPC was to be held, with retrospective effect so that he is not subjected to a lower position in the seniority list. But, if the cancellation or postponement of the meeting of the DPC is not arbitrary and is supported by good reasons, the employee concerned can have no grievance and the government will not be justified in appointing the employee to the higher post with retrospective effect. An employee may become eligible for a certain, but surely he cannot claim appointment to such post as a matter of right.

16. Let us consider whether the DPC, scheduled to be held in October 1970 was arbitrarily cancelled or not. The learned Additional Solicitor General has handed over to us the photocopy of the notings from the departmental file relating to the postponement of DPC. Paragraph 9 of the note of one O. P. Bansal as follows :

Insofar as the representation of Shri O. P. Sharma is concerned, it has been from the records that in October 1970 a proposal was made by the Administrative Officer, CBI, for convening a meeting of the Selection Board for the consideration a suitability or otherwise of 6 non-IPS deputationist Dy. SPs who had completed 8 years' service in the grade of Dy. Sp and Shri O. P. Sharma was No. 3 among them. It was stated in that note that there were 42 posts of SP and equivalent rank in CBI and that there were 3 vacancies in the grade. It was further stated that none of the non-deputationist Dy. SPs had put in 8 years' service at that time and, as such, they were not eligible for consideration for promotion. As a result of this, all the 3 posts were to be filled by deputationists. It was not stated in that note whether any of the 3 posts fell in the promotion quota, which at that time comprised not exceeding 15 percent of the strength i.e. 6 posts. The proposal for convening a meeting of the Selection Board was approved on October 13, 1970, but on October 15, 1970 the Director, CBI, ordered that the meeting might be held after S/Shri Ramender Singh and Jot Ram, Dy SPs became eligible for promotion. These two effects were to complete 8 years' service as Dy. SP in January and March 1971 respectively. It is, thus, correct that the meeting of the DPC was postponed to allow some non-deputationist Dy. SPs to become ripe for promotion to the grade of SP.

17. Thus, it appears from Paragraph 9 of the note extracted above that three vacancies were to be filled by non-deputationist DSPs, otherwise the question of non-availability of non-deputationist DSPs with the requisite period of service would not have been mentioned. In the counter-affidavit of respondents 1 and 2, it is also stated that at the relevant time no departmental DSP had eight years' service in that grade and, therefore, all the three vacancies then available were required to be filled by deputation of suitable State police officers. It is, therefore, apparent that the three vacancies were meant to be filled by non-deputationist DSPs and not by deputationists, but as non-deputationist DSPs with the requisite period of service were not available, the vacancies were proposed to be filled by the deputationist DSPs. It is true that the meeting of the DPC was to be held on October 13, 1970 but the Director of CBI appears to have considered that as the vacancies were meant for the non-deputationist DSPs and as two of such DSPs would become eligible for promotion in January and March 1971, he postponed the meeting of the DPC scheduled to be held on October 13, 1970. We do not find arbitrariness in the decision of the Director of CBI postponing the meeting of the DPC till after March 1971 when two non-deputationist DSPs would become eligible for promotion. There was, therefore, ample justification for the postponement or cancellation of the meeting of the DPC. Respondent 5 might have been eligible for being considered for appointment to the post of SP in July 1970, but he had no right to claim such consideration when the vacancies were meant for non-deputationist DSPs. In our opinion, therefore, the government had no reasonable justification to contend that the postponement of the DPC was arbitrary and high-handed. In July 1971 also respondent 5 was not found suitable by the DPC. It was only when the senior Board found him suitable in July 1972 and recommended him for appointment to the post of SP that respondent 5 was appointed on October 28, 1972 to the post of SP, CBI. As the foundation of the appointment of respondent 5 to the post of SP with retrospective effect from October 21, 1971 (FN), namely, the postponement of the meeting DPC in October 1970 arbitrarily, is shaken to a great extent, there was no question of any injustice done to respondent 5. The retrospective appointment or promotion to a post should be given most sparingly and on sound reasoning and foundation. In the instant case, we do not find that there was any justification for the appointment of respondent 5 to the post of SP in the CBI with retrospective effect from October 21, 1971 (FN) so as to make him senior to the petitioners.

18. We may now deal with the Writ Petition No. 1021 of 1986. The principal question that is involved in this writ petition is whether the length of service of the petitioner Dwarka Nath in the Border Security Force (BSF) should be taken into account for the purpose of deciding his seniority in the CBI in the rank of SP. On June 14, 1976 the petitioner was regularly promoted to the post of Deputy Commandant in the BSF which, according to him, was equivalent to the grade of SP in the CBI. Respondent 5 was promoted on August 4, 1978 and respondents 6 and 7 were promoted on the same date, that is on July 28, 1978 to the post of SP in the CBI. The petitioner came to join the CBI on deputation as SP on September 29, 1979 and was permanently absorbed in the CBI in the rank of SP on October 28, 1983. Respondents 5 to 7 were confirmed in the post of SP with effect from August 4, 1980. The question that arises is whether in computing the seniority of the petitioner his length of service from June 14, 1976 when he was the Deputy Commandant in the BSF, should be taken into consideration or not. If his service from June 14, 1976 is taken into consideration he would undoubtedly be senior to respondents 5 to 7, who were appointed in 1978.

19. We have already considered the question in the Writ Petitions Nos. 9847-48 of 1983 in respect of the appointment of respondent 5 O. P. Sharma to the post of SP in the CBI. In the connection, it has been decided by us that in computing the requisite period of eight years, the period during which respondent 5 held the post of DSP in the Rajasthan State Police Service should be taken into consideration. In our opinion, the period from June 14, 1976 when the petitioner was promoted to

the post of Deputy Commandant in the BSF up to his joining the CBI on deputation on July 29, 1979, should be taken into consideration for the purpose of deciding his seniority in the CBI in the rank of SP.

20. Paragraph 3 of the Office Memorandum dated December 22, 1959 relied upon by the learned counsel for respondents 3 to 5 does not, in our opinion, at all militate against the view which we have taken. Paragraph 3 provides, inter alia, that permanent officers of each grade shall be ranked senior to person who are officiating in that grade. 'Grade' in Paragraph 3 undoubtedly refers to the grade in respect of which the seniority is to be decided. The petitioner was a permanent officer on June 14, 1976 in the grade of Deputy Commandant which is equivalent to the grade of SP in the CBI. It may be that he was not in the CBI on that date. But, in our view, that will not make any difference. We do not think that the Office Memorandum dated December 22, 1959 stands in the way of counting the seniority of the petitioner with effect from June 14, 1976.

21. We may examine the question from a different point of view. There is not difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as transfer from one government department to another. It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. See *R. S. Makashi v. I. M. Menon* ((1982) 1 SCC 379 : 1982 SCC (L&S) 77); *wing Commander J Kumar v. Union of India* ((1982) 3 SCR 453 : (1982) 2 SCC 116 : 1982 SCC (L&S) 177).

22. In this connection, we may notice significant fact that although in the counter-affidavit the Union of India has opposed the claim of the petitioner that his seniority should be counted from June 14, 1976, at the hearing of the writ petition the learned Additional Solicitor General concedes that the petitioner's seniority should be counted from that date and the said Office Memorandum does not at all support the contention of respondents 3 and 5.

23. The learned counsel for respondents 3 and 5 has, however, placed much reliance upon certain facts which will be stated presently. After the petitioner went on deputation to the CBI and was appointed to the post of SP, on April 5, 1980 the CBI invited options from the non-IPS deputationists for their permanent absorption in the CBI. The petitioner had sent a letter expressing his willingness to be absorbed in the CBI. On April 16, 1980, the Administrative Officer, CBI, sent wireless message to all concerned stating that seniority on permanent absorption in a rank would be counted from the date of permanent absorption and that those who had opted thinking otherwise, would be at liberty to revise their option by April 13, 1980. Again, on September 11, 1980 (September 10, 1980 ?) another circular was issued in which it was re-emphasised that a deputationist who was willing to be absorbed in the CBI, would first be appointed on a regular basis in the CBI. He would be confirmed as and when permanent posts were available. Further, it was stated in the circular that his seniority in the CBI would begin from the date of his regular appointment. In other words, the service rendered from the date of regular appointment. In words, the service rendered from the date of regular appointment only would count for the purpose of

seniority and promotion in the CBI. In the explanatory note regarding determination of inter se seniority, annexed to the said circular, it has been stated that a deputationist officer has no place in the seniority list as long as he is not absorbed (regularly appointed) in the CBI. Relying upon the said circulars and the petitioner's to be absorbed in the CBI, it is submitted on behalf of respondents 3 and 5 that the petitioner's seniority should be counted from the date he was permanently absorbed or regularly appointed in the CBI, that is, with effect from October 4, 1983. On the other hand, it is submitted on behalf of the petitioner that as the said circulars dated April 16, 1980 and September 10, 1980 were found to be not workable, the CBI suspended the same for a further decision by its circular dated October 6, 1981, the relevant portion of which is extracted below :

In response to this office circular No. A-31016/14/80-AD. 1 (DPC) dated September 10, 1980, some of the branches have sent options of some of the offices for absorption in the CBI. Some options are conditional and some have sought some clarification with reference to seniority.

2. The matter is under correspondence with the DP & AR. The branches will be informed as soon as a decision is arrived at. Decision on the options received will be taken after the clarification has been received from DP & AR.

24. No decision has yet been taken by the government. Mr. P. P. Rao learned counsel appearing on behalf of the petitioner, has drawn our attention to the counter-affidavit to the rejoinder in CMP Nos. 5429 and 5430 of 1984 filed in the above Writ Petitions Nos. 9847 and 9848 of 1983, wherein it has been categorically admitted by the Union of India after the issue of the circular dated September 11, 1980, the matter was re-examined by the Director of CBI and found to be unworkable. Thereafter, it was decided to take up the matter with government and no action was taken to implement the said circular. Further, it has been reiterated in the said counter-affidavit that the circular do lay down the correct inter-pretation of recruitment rules, found it unworkable and has not been acted upon even in a single case. The learned Additional Solicitor General has admitted the position that even now the government has not come to any decision as to whether the seniority should be counted from the date of the regular appointment of the deputationists in the CBI, as stated in the circular. In the circumstances, we do not think that there is any merit in the contention of respondents 3 and 5 that in view of the said circular dated September 11, 1980 and also the earlier circular dated April 16, 1980, the petitioner's seniority cannot be counted from June 14, 1976 when he was appointed to the post of Deputy Commandant in the BSF.

25. It is next contended on behalf of respondents 3 and 5 that the petitioners' appointment from BSF to the rank of SP in the CBI on deputation was illegal. Reliance has been placed on the relevant provision in the recruitment rules relating to appointment on deputation, which reads as follows :

Transfer/Deputation - Suitable officers of the State Police Force or officers of the IPS or officers of the Indian Revenue Service or officers holding analogous post in the Central Government department like the Directorate of Enforcement, Department of Customs etc.

26. It is submitted that the other Central Government departments, two of which are illustratively mentioned in the provision extracted above, are only those departments in which statutory inquiries and investigation are conducted by the officers by arrest, search, examination of witness, prosecution of assumed etc. It is contended that the intention of the rule is that only officers of such departments who have such experience would function in the CBI investigation Officers. As the

petitioner had no such experience in the BSF, he clarification has been received from the DP & AR.

27. We are unable to accept the contention. It is true that in the rule two government departments have been mentioned, but that does not mean that only those government departments in which inquiries and investigations are made are contemplated by the rule. Nor does the rule contemplate that only those officers, who had experience of investigation would be appointed to the post in the CBI. Under the rule, such an officer should be a suitable officer and should be holding analogous post in the Central Government department concerned. The petitioner was found to be a suitable officer and at the time of his deputation he was holding the post of Deputy Commandant which, according to the petitioner, is equivalent to the post of SP in the CBI. We are unable to accept the contention or respondents 3 and 5 that the post of Deputy Commandant in the BSF is not equivalent to the post of SP in the CBI. The letter of the Under Secretary to the Government of India dated November 25, 1983 shows on the face of it that the post of Deputy Commandant in the BSF is equivalent to that of SP in the CBI. It has been expressly conceded by the learned Additional Solicitor General that the government accepts the post of the Deputy Commandant in the BSF as equivalent to the post of SP in the CBI. At this stage, we may refer to the letter dated January 24, 1984 of the CBI to the Government of India where in it has been categorically stated inter alia that the petitioner was holding an analogous post in the BSF and was, therefore, eligible to be taken on deputation. Further, it has been stated that he had considerable experience of investigation of criminal cases, and that the government and the UPSC had duly approved the substantive absorption of the petitioner on merit in accordance with the recruitment rules, as in force, in larger public interest. The said letter of the CBI resolves all controversy as to whether the petitioner was holding equivalent post in the CBI or whether he had experience of investigation or whether he was absorbed in the CBI in public interest. There is, therefore, no substance in the contention made on behalf of respondents 3 and 5 that the petitioner's appointment in the CBI was illegal. In view of our decision that the petitioner's seniority should be counted from June 14, 1976 on which date he was regularly promoted to the post of Deputy Commandant in the BSF, the petitioner should be held to be senior to respondents 5 to 7.

28. No other point has been urged on behalf of the parties.

29. In the result, so far as Writ Petitions Nos. 9847 and 9848 of 1983 are concerned, the impugned order dated September 25, 1981, appointing respondent 5 O. P. Sharma with retrospective effect from a national date viz., October 21, 1971 (FN), and the seniority list dated October 17, 1981, showing respondent 5 as senior to the petitioners, are quashed. Let a writ in the nature of certiorari issue in that regard. Further, let a writ in the nature of mandamus issue directing respondents 1 and 2 publish a fresh seniority list showing the petitioners as seniors to respondent 5. The writ petitions are allowed and the rules are made absolute to the extent indicated above.

30. With regard to Writ Petition No. 1021 of 1986, let a writ in the nature of certiorari issue quashing the seniority list, Annexure P/1 to the writ petition, and all subsequent seniority lists of SPs in the CBI in which the petitioner has been shown junior to respondents 5 to 7. Further, let a writ in the nature of mandamus issue commanding respondents 1 and 2 to allot to the petitioner his proper seniority in the post of SP, CBI, by counting his service with effect from June 14, 1976, that is, the date on which he was regularly promoted to the post of Deputy Commandant in the BSF and to issue a fresh seniority list showing him senior to respondents 5 to 7. The writ petition is allowed and the rule is made absolute to the extent indicated above.

31. We, however, make it clear that in Writ Petition No. 1021 of 1986 the issue as to the date of

birth of petitioner is left open and the petitioner would be at liberty to challenge any order, if adverse to him, on that issue.

32. There will, however, be no order as to costs in any of the writ petitions.

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