

Markandey Singh, I. P. S. and Others

Vs

M. L. Bhanot, I. P. S. and Others

Civil Appeals Nos. 1335-36 of 1976

(CJI R.S. Pathak, Sabyasachi Mukharji, S. Natarajan JJ)

04.05.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. These two appeals are connected. These deal with the rectification of year of allotment of absorption of the appellant in the first appeal and respondent in the second one - Shri Markandey Singh (hereinafter called the appellant in the first appeal and respondent in the second appeal) in the Indian Police Service. Shri M. L. Bhanot is the respondent in the first appeal. He is appellant in the second appeal being Civil Appeal No. 1336 of 1976. By the order dated July 21, 1973, Shri Markandey Singh was assigned 1956 as the year of allotment in IPS cadre. Shri Bhanot challenged the said order. The same was quashed by the learned Single Judge of Punjab & Haryana High Court on April 4, 1974. Letters Patent Appeal against the said order was dismissed by the Division Bench of the said High Court on December 9, 1975. The first appeal aforesaid arises from the said decision. In order to appreciate the position, it may be relevant to note that Shri Markandey Singh the appellant in the first appeal joined the U. P. State Service as Deputy Superintendent of Police on November 17, 1950 by passing a competitive examination. Two years later he was confirmed as such. In November 1953, he joined on deputation the Union Territory of Delhi which had at that time no police service of its own. While on deputation in 1958 and again in 1959-60, the appellant had officiated as Superintendent of Police but for administrative reasons was reverted back. In July 1960, Himachal Pradesh Indian Police Service was created and thereafter the Delhi Himachal Pradesh Police Service in March 1961. On December 6, 1961, Shri Singh was again promoted to officiate as Superintendent of Police. During the period of his officiation, his request for being absorbed in the Himachal Pradesh State Police Service was accepted and by an order dated February 7, 1963, he was absorbed in the State Service with effect from November 27, 1962. While he was continuing to officiate in the senior post as aforesaid, On April 30, 1965, he was confirmed in the Union Territory cadre of IPS with effect from May 14, 1964. He was assigned 1958 as the year of allotment. He, however, made representation against the order of allotment in August 1969 to the Central Government claiming the benefit of officiation from December 6, 1961 to May 13, 1963 in the matter of fixation of his year of allotment. On May 14, 1963, the appellant's name had been brought on the select list of the officers to be promoted to the Indian Police Service and he was recruited with effect from the same date. It may be noted that during the proceeding period of officiation as mentioned hereinbefore he was not on the select list. On April 23, 1970, his representation was rejected by the Central Government. He made a second representation on June 23, 1970, Shri Bhanot had appeared in the IPS examination. He was successful and recruited in the Police Service in October 1957. The year of allotment assigned to him was 1957. Shri Bhanot, was allotted the year 1957 on his joining the service by examination and the appellant allotted the year 1958 as mentioned hereinbefore. In November 1962, the respondent, Shri Bhanot was promoted as

Superintendent of Police in the Union Territory of Delhi with effect from May 13, 1961. In November 1966, reorganisation of State of Punjab took place and at that time Shri Bhanot was allotted to the joint IPS cadre of Delhi and Himachal Pradesh. On coming to know in December 1972 about the second representation made by Shri Singh, Shri Bhanot wrote to the Central Government that he having been allotted the year 1957 was senior to Shri Singh and if any change was brought about in the year of allotment of Shri Singh which was 1958, he, the respondent, should be intimated of the reasons so as to enable him to make an effective representation. According to the respondent, which has been accepted by the Division Bench of the High Court of Punjab & Haryana in the impugned judgment, he did not hear anything from the Central Government in spite of the several reminders. On June 21, 1973, the Central Government by its order of the same date gave the benefit of officiation for a period from December 6, 1961 to May 13, 1963 to Shri Singh and accepted his representation and assigned to him 1956 as the year of allotment. In consequences, Shri Singh was placed below one Shri B. P. Marwaha and above Shri Bhanot in the gradation list of Union Territory of IPS. Feeling aggrieved, Shri Bhanot filed the writ petition being Writ Petition No. 12 of 1974 before the High Court. The learned Single Judge allowed the same. He held that Shri Singh being on deputation was not entitled to the benefit of officiation on senior post prior to November 27, 1962 with effect from which he was absorbed in Delhi Himachal Pradesh State Police Service. The representation made by Shri Singh was barred by time.

2. It was further held by the learned Single Judge that acceptance of the second representation of Shri Singh without giving an opportunity to Shri Bhanot was in violation of the principles of natural justice. In the premises the order dated June 21, 1973 was quashed by the learned Single Judge.

3. There were two appeals before the Division Bench - one was filed by Shri Singh against the judgment of the learned Single Judge and the other was filed by the Union of India. Both these appeals were disposed of by the Division Bench by judgment in Letters Patent Appeal No. 231 of 1974 and for the reasons given in Letters Patent Appeal No. 231 of 1974, the appeal by the Union of India was also dismissed and being aggrieved by the said decision, the Union of India has preferred the second appeal herein namely Civil Appeal No. 1336 of 1976.

4. The question involved in these appeals is whether the year of allotment given to the Shri Singh as 1958 was correct or not and whether the order passed by the High Court both of the learned Single Judge which was later upheld by the Division Bench to quash the year of allotment in favour of Shri Singh for the year 1956 was bad or not. This depends upon the interpretation of various rules and provisions. The main question which falls for consideration in these two appeals is whether the service rendered by one in a senior post in the IPS cadre of a particular State while the incumbent was on deputation to the State Police Service of that State from another State was entitled to the benefit for the purpose of working out the year of allotment in accordance with second proviso to Rule 3(3)(b) of the Seniority Rules. We are concerned with the unamended Rule 3(3) of the said Rules. The relevant part of the said rule reads as follows :

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

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

(b) Where the officer is appointed to the service by promotion in accordance with

Rule 9 of the Recruitment Rules, the year of allotment of the juniormost among the officers recruited to the Service in accordance with Rule 7 of these Rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former :

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

Provided further that an officer appointed to the Service after the commencement of these Rules shall be deemed to have officiated continuously in a senior post prior to the date of the inclusion of his name in the Select List prepared in accordance with the requirements of the Indian Police Service (Appointment by Promotion) Regulation framed under Rule 9 of the Recruitment Rules, if the period of such officiation prior to that date is approved by the Central Government in consultation with the Commission.

Explanation 1. - An officer shall be deemed to have officiated continuously in a senior post from a certain date if during the period from that date to the date of his confirmation in the senior grade he continues to hold without any break or reversion a senior post otherwise than as a purely temporary or local arrangement.

Explanation 2. - An officer shall be treated as having officiated in a senior post during any period in respect of which the State Government concerned certifies that he would have so officiated but for his absence on leave or appointment to any special post or any other exceptional circumstances.

5. On behalf of the appellant before us, reliance was placed on the decision of this Court in *Arun Ranjan Mukherjee v. Union of India* [(1972) 3 SCC 146 : 1971 Supp SCR 574 : AIR 1971 SC 1814].

6. It may be mentioned that in 1954 the Central Government, in exercise of the powers vested in it by Section 3 of the All India Services Act, 1951 (hereinafter called the 'said Act') framed certain rules. The Indian Service (Recruitment) Rules (hereinafter called the 'Recruitment Rules'), the Indian Police Service (Cadre) Rules (hereinafter referred to as the 'Cadre Rules') and the Indian Police Service (Regulation of Seniority) Rules (hereinafter referred to as the 'Seniority Rules'). The Indian Police Service (Fixation of Cadre Strength) Regulations, 1955 (hereinafter referred to as the 'Cadre Regulations') were also framed for determining the strength and composition. It is not necessary to refer to the various rules to which the Division Bench in the impugned judgment has made exhaustive reference. It is indisputable that Shri Singh, the appellant herein, was holding a substantive position in the U. P. State Police Service until he was taken over in the joint Police Service of Delhi and Himachal Pradesh in February 1963 with effect from November 27, 1962. He was brought on the select list of officers to be promoted to IPS cadre of the Union territories of Himachal Pradesh and Delhi on May 14, 1963. Prior to that, he had been continuously officiating in a senior post since December 6, 1961. He claimed that he should be given the benefit of that period. This was rejected by the learned Single Judge and this rejection was upheld by the Division Bench

of the High Court. He was on deputation in Delhi-Himachal Pradesh State Police Service. The question is what is the correct position.

7. The first representation that the appellant made for fixing the year of allotment to be given the benefit of continuous officiation on a senior post from December 6, 1961, to May 13, 1963 was rejected by an order dated April 23, 1970. The said order of rejection is Annexure R-4. It stated that in accordance with the orders contained in Letter No. 1/2/62 Delhi IDH(S) dated August 23, 1963, of the Home Ministry, all cadre posts held by non-cadre officers not on the select list were deemed to have been kept in abeyance with effect from September 27, 1961 onwards; and according to the Seniority Rules, the service rendered by an officer prior to his inclusion in the select list could not be counted for seniority unless approved by the Central Government in consultation with the Union Public Service Commission under the second proviso to Rule 3(3)(b) of the Seniority Rules. The requisite approval, it was stated, was not there.

8. In the second representation made by the appellant, the Division Bench noted the fact that Shri Singh had noted in *Mohan Gopal Singh v. Union of India* [1969 SLR 576], the Division Bench of Delhi High Court had quashed the aforesaid letter of the Home Ministry. A perusal of the order dated June 21, 1973 made by the Central Government showed that the representation was accepted but not on the ground urged by him. The reason why the second representation was accepted by the Central Government was that in November 1972, the Union Public Service Commission had approved of the officiation of Shri Singh in the IPS cadre post during the period December 6, 1961, to May 13, 1963 under the second proviso to Rule 3(3)(b) of the Seniority Rules, "as they stood in May 1963". Accordingly, Shri Singh was allowed the year of 1956 and placed before Shri Bhanot.

9. Old Rule 3(3)(b) of the Seniority Rules applicable in this case has been set out hereinbefore. It was urged before the Division Bench that nowhere Rule 3(3)(b) and the second proviso thereto in particular excludes the officiating period of deputation. In this connection reliance was placed on the decision of the Division Bench in the case of *Arun Ranjan Mukherjee v. Union of India* [(1972) 3 SCC 146 : 1971 Supp SCR 574 : AIR 1971 SC 1814]. Inasmuch as good deal of reliance was placed by the Division Bench as well as by the appellant before us on the said decision, it may be mentioned that the appellant in that case joined the Indian Army as a Commandant Officer in 1942. He became a Major in 1945. His services were lent to the State of West Bengal and accordingly on January 10, 1949, he was posted as a commandant of the Special Armed Police Battalion, on a post corresponding to a senior post in the IPS. The said appellant with his consent was appointed to the West Bengal State Police Service on July 1, 1953. On September 8, 1954, the Indian Police Service (Recruitment) Rules, 1954, Indian Police Service (Cadre) Rules, 1954 and the Indian Police (Regulation of Seniority) Rules, 1954 were framed by the Government of India under Section 3 of the All India Services Act 61 of 1951. On June 6, 1955, the Indian Police Service (Appointment by Promotion) Regulations, 1955 were also issued under which 25 per cent of the senior posts were allotted to the Indian Police Service cadre in each State. The appointment of the appellant was outside the quota. On July 31, 1958, the appellant was appointed on probation in the State cadre of West Bengal. In December 1959 he was substantively appointed to a senior post in the Indian Police Service and confirmed thereon with effect from July 21, 1958. In December 1958, the Ministry of Home Affairs conveyed to the Government of West Bengal its decision to fix the pay of the appellant in the senior scale of the Indian Police Service nationally from January 10, 1949, the date from which he held an Indian Police Service cadre post continuously. On January 19, 1960, the Indian Police Service (Seniority of Special Recruits) Regulations, 1960 were framed pursuant to Rule 5-A of the Seniority Rules on October 11, 1960, the Government of India in consultation with the Union Public Service Commission decided to allot to the appellant the year 1948. The year of

allotment was subsequently changed to 1947 on the basis that the officiation of the appellant as well as that of the juniormost direct recruit, in a senior scale did not start before May 19, 1951. The appellant filed a writ petition under Article 226 of the Constitution. The learned Single Judge, allowing the petition, held that the date from which the appellant continuously officiated was January 10, 1949 and that accordingly the year 1943 allotted to D the junior-most direct recruit, should also be allotted to the appellant. The learned Single Judge also held that the first and second proviso to Rule 3(3)(b) of the Seniority Rules were not applicable to the appellant. The Division Bench in appeal agreed with the learned Single Judge, that the date of continuous officiation of the appellant was January 10, 1949. But the High Court thought that the year 1947 allotted to the appellant on the basis of his officiation from May 19, 1951 could not be sustained because the latter date had been held by this Court to be irrelevant in the case of D. R. Nim, IPS v. Union of India [(1967) 2 SCR 325 : AIR 1967 SC 1301 : (1968) 1 LLJ 264]. Nonetheless the year of allotment 1948 assigned to the appellant in the order of October 11, 1960 was sustained because it was on an ad hoc basis. Against the High Court's order the appellant appealed to this court. He urged under the main clause of Rule 3(3)(b) of the Seniority Rules the year 1943 should be allotted to him as the said year had been allotted to D the juniormost direct recruit and that the first proviso to Rule 3(3)(b) did not apply to him as it applied only to those in the joint cadre; and that this Court should deduct the "P" factor from the date of officiation which as held by the High Court was January 10, 1949 and allot to him the year 1943 as the year of allotment. This Court dismissed the appeal and held that D was an Indian Police Officer recruited in 1945. He became a member of the Indian Police Service under sub-rule (1) of Rule 3 of the Indian Police Service (Recruitment) Rules, 1954 on the date when the said Rules came into force in 1954, and was not an officer recruited to the service in accordance with Rule 7 of these Rules. The year of allotment assigned to D was not therefore available to the appellant under the main part of Rule 3(3)(b).

10. This court further held that the first proviso to Rule 3 nowhere referred or even remotely indicated that it was only applicable to the persons in the joint cadre. In fact Rule 2(1) of the Seniority Rules and the words "State cadre" and "joint cadre" had been defined as having the meaning respectively assigned to them in the Indian Police Service (Cadre) Rules, 1954. By reference to Rule 7 of the Cadre Rule it is apparent that what is to be determined is the authority which is to appoint, to the respective cadres i.e., in the case of State cadre it is the State Government and in the case of joint cadre it is the State Government concerned. The first proviso did not refer to any appointment to any cadre it only dealt with regulation of seniority and the reference to State Government concerned is for the purpose of fixing the date of officiation ad hoc in consultation with the Central Government. When there are several State Governments the consultation by the Central Government must necessarily be with the State Government concerned in relation to the officer who was appointed to the cadre of that State. Whether the first proviso applied or the second proviso applied, it was the Central Government that had to determine ad hoc, the year of allotment after approving the period of officiation in consultation with the Public Service Commission. This Court further held that in view of the judgment in Nim case [(1967) 2 SCR 325 : AIR 1967 SC 1301 : (1968) 1 LLJ 264] the order assigning 1947 as the year of allotment to the appellant on the basis of an arbitrary date of officiation namely May 19, 1951 was bad and had been quite properly struck down by the High Court. The High Court however had no power to direct the year 1948 to be fixed as the year of allotment for the determination of the seniority of the appellant on the basis that that was fixed on an ad hoc basis in an earlier occasion by the Government of India. Once the Government of India had on a memorial presented by the appellant decided finally in supersession of its previous decision that his year of allotment was 1947, the previous decision fixed on ad hoc basis could not be revived. It was for the Government of India in consultation with the

Commissioner to determine ad hoc the year of allotment to be assigned to the appellant in relation to the date of his continuous officiation. This court would not trespass upon the jurisdiction of the Government of India to determine ad hoc in consultation with the Commission on a consideration of the relevant materials, the date of the appellant's continuous officiation and assign him a year of allotment. This Court reiterated that it was for the Central Government to examine year of allotment after approving the period of officiation in consultation with the Union Public Service Commission.

11. It may be relevant to mention that this Court noted the observations of the Division Bench judgment of the Calcutta High Court which was under appeal in that case and noted that there was nothing in clause (b) of the said Rules which showed that while officiating in a "senior post", the officer concerned must be an officer belonging substantially to the State Police Service in question and could not be an officer on deputation from some other service. It was urged before the Division Bench that this Court had approved the view of the Calcutta High Court that benefit of the period of deputation should be given to Shri Mukherjee. The Division Bench was unable to accept the position. The Division Bench was of the view that this Court had reiterated that it was relevant material which had to be taken into consideration by the Government of India but it was for government to determine in consultation with the Union Public Service Commission the date of a person's continuous officiating and assign to him a year of allotment and the High Court as such had no such power.

12. The Division Bench was of the view that the learned Single Judge of the High Court was right that this Court had not given any decision whether the period of deputation of Shri Mukherjee in that case before his absorption could be taken into account in assigning the year of allotment to him. The learned Single Judge in chambers as noted by the Division Bench further found support to this view with reference to relevant noting in the file of Shri Mukherjee which was produced before the learned Single Judge. Rule 3(3)(b) of the Seniority Rules and the proviso thereto should not be read in isolation. This rule is in the setting of other rules. The Cadre Rules read with Indian Police Service (Fixation of Cadre Strength) Regulations of 1955 fixed the strength of the Indian Police cadre of the Union territories at a particular figure. Out of them, not more than 25 per cent officers eligible for recruitment to the Out of them, not more than 25 per cent officers eligible for recruitment to the IPS cadre had to be the substantive members of the State (U. T.) Police Service at that time. The scheme as it stood, fixed the strength of the IPS cadre Statewise. Recruitment by promotion thereto could only be from the substantive members of the Police Service of that particular State. So long as Shri Singh remained as a substantive member of the U. P. State Police Service, he should not possibly be promoted to the joint IPS cadre of the Union Territories of Delhi and Himachal Pradesh. He became eligible to his promotion to the Union Territory IPS Cadre only after he had been absorbed in the Delhi Himachal Pradesh State Police Service. Proviso (1) to Rule 3(3)(b) of the Recruitment Rules gave a clear indication that for determining the year of allotment ad hoc the Central Government consulted the State Government concerned. In Explanation 2 again, there was reference to a certificate by the State Government concerned that an officer would have officiated in a senior post but for his absence on leave or appointment to any special post. It is apparent therefore that the State Government is the one, of the Police Service of which the officer concerned is a substantive member. In this case as found by the Division Bench, Shri Singh had not chosen to be absorbed in the Delhi-Himachal Pradesh State Police Service and he had gone back to his parent State of U. P. In case of Shri Singh had not chosen to be absorbed in the Delhi Himachal Pradesh State Police Service and he had gone back to his parent State of U. P., then according to Explanation 2 the U. P. State Government might have issued the certificate to facilitate his promotion to the IPS cadre of the U. P. State. The Promotion Regulations of 1955 laid down the determination of the eligibility of a substantive member of the State Police Service. Thereafter, the names of the eligible

officers were brought on the select list, which were to be approved by the Commission. Appointments by promotion to the IPS cadre are made from the select list. In the event of promotion, but for second proviso the benefit of continuous officiation on a senior post for fixing his year of allotment is given to an officer from the date after his being nominated on the select list. In Explanation 1 of Rule 3(3), there is no mention that deputationist before his absorption in the State Police Service can get the benefit of such officiation. That is the position. Therefore before his absorption, it is not possible to accept the position that Shri Singh was entitled to the benefit of his officiation. The Division Bench so held. We are of the opinion that the Division Bench was right on this aspect of the matter. It may be mentioned that Seniority Rules, 1954, including Rule 3(3)(b) quoted above were amended with effect from April 22, 1967.

13. Before the amendment, the appellant Shri Singh, had been confirmed in the Union territory cadre of Indian Police Service with effect from May 14, 1964 and had been allotted 1958 as the year. The first representation was made by him in August 1969 and the second in June 1970. The second proviso to old seniority Rule 3(3)(b) referred to hereinbefore had laid down that where a promotee had officiated continuously in a senior post prior to the date of inclusion of his name in the select list prepared in accordance with the Promotion Regulations, he could get the benefit of such officiation if approved by the Central Government in consultation with the Commission. The Seniority Rules as amended in 1967, however, did not provide for such approval. Hence, after the amendment of the Seniority Rules, the Central Government was not empowered to grant the approval as aforesaid in favour of Shri Singh in November 1972. This was the submission on behalf of the respondent, Shri Bhanot. The argument was not accepted by the Division Bench because the question of allotment of Shri Singh in accordance with the Seniority Rules ripened before the amendment of 1967. There is no rule vitiating the operation of the old seniority rules. As a matter of fact, the party had proceeded all along in this case on the basis that the old seniority rules applied.

14. In *Government of India v. C. A. Balakrishnan* [(1975) 1 SLR 31] this question was considered. In that case the promotion in question was made in November, 1957. The change in the relevant rules of promotion came in September 1960. This Court affirmed the decision of the High Court and held that in November 1957 the post in question was a selection post and that the basis of seniority-cum-fitness introduced by the amendment rules in September 1960 was not applicable. The question, therefore, was held to be governed by the old rules. The Division Bench held that the second representation made by Shri Singh was barred.

15. As mentioned hereinbefore, in support of the appeal, the appellant submitted that the Division Bench was in error in not following the ratio of the decision in the case of *Arun Ranjan Mukherjee* [(1972) 3 SCC 146 : 1971 Supp SCR 574 : AIR 1971 SC 1814] We are unable to accept this submission. *Arun Ranjan Mukerjee* case [(1972) 3 SCC 146 : 1971 Supp SCR 574 : AIR 1971 SC 1814] proceeded on the basis of the decision of this Court in the case of *D. R. Nim, IPS v. Union of India* [(1967) 2 SCR 325 : AIR 1967 SC 1301 : (1968) 1 LLJ 264]. There under Rule 3 of the Indian Police Service (Regulation of Seniority) Rules, 1954 issued the Section 3(1) of the All India Services Act, 1951, the mode of determining the seniority of officers of the Indian Police Service was laid down. It was provided that the officers were divided into categories : namely, (1) those in the Service at the commencement of the Rules, and (2) those appointed to the Service after the commencement of the Rules. The second category was divided into two sub-categories : namely (a) officers appointed as a result of a competitive examination, and (b) officers appointed by promotion in accordance with Rule 9 of the Recruitment Rules. The year of allotment of an officer which determined his seniority, was determined according to Rule 3(3)(a) or (b) of the present rules. But if

an officer started officiating continuously in a senior post from a date earlier than the date on which any of the officers was recruited to the Service by competition, the year of allotment had to be determined ad hoc by the Central Government under proviso (1) to Rule 3(3)(b) and under proviso (2) to Rule 3(3)(b), the period of officiation before the date of inclusion of the name of an officer in the select list prepared in accordance with the requirements of the Indian Police Service (Appointment by Promotion) Regulations would be counted only if such period was approved by the Central Government in consultation with the Public Service Commission.

16. In that case the appellant was officiating as Superintendent of Police from June 1957 that is from a date earlier than the date of any officer recruited by competition, and was appointed to the Indian Police Service by promotion in 1955 after the commencement of the Seniority Rules. His name was included in the select list in 1956. The government passed an order on August 25, 1955, that officers promoted to the Indian Police Service should be allowed the benefit of their continuous officiation with effect only from May 19, 1951. The appellant challenged the order by a petition under Article 226 before the High Court because the period of his officiating from June 1947 to May 1951 was excluded for the purpose of fixation of his seniority. The High Court dismissed the petition. This Court under appeal held that the impugned order dated August 25, 1955 should be quashed and the Central Government directed to fix the year of allotment and seniority of the appellant according to the law. The date May 19, 1951 in that case was an artificial and arbitrary date having nothing to do with the application of the first and second proviso to Rule 3(3). It has some relevance for the Indian Administrative Service, but why it should be applied to the Indian Police Service was not adequately explained. Under the two provisos, this court held, the Central Government had to determine ad hoc the year of allotment after approving or not approving the period of officiation in consultation with the Public Service Commission taking into consideration all the relevant facts. The Central Government cannot pick out a date and say that a period prior to that date would not be deemed to be approved by the Central Government within the second proviso. In view of the fact that he was officiating for eight years, that he was never reverted and that he was appointed to the post when vacancies fell, it could not be held that the appellant's continuous officiating was a mere temporary or local or stopgap arrangement, within the meaning of Explanation 1 to Rule 3(3)(b).

17. In the instant case, the Central Government had not fixed the date of appellant's absorption in the select list as 1958 out of hat so to say. It had relevance as it appears from the basis of the order of the Central Government. In this case, the appellant who was a deputationist before the absorption in the State Public Police Service could not be entitled to get such officiation. In case Shri Singh had not chosen to be absorbed in the Delhi-Himachal Pradesh State Police Service and he had gone back to his parent State of U. P., then according to Explanation 2, U. P. State Government might have issued the certificate to facilitate his promotion to the IPS cadre of the U. P. State. But so long as Shri Singh remained a substantive member of the U. P. State Police Service, he could not possibly be permitted to join IPS cadre of the Union territories of Delhi and Himachal Pradesh. In accordance with the rules, he became eligible to his promotion to the Union territory IPS cadre only after he had been absorbed in Delhi-Himachal Pradesh Police Service.

18. Reading the rules with which we are concerned which state that certain year should be assigned by the government in consultation with Public Service Commission must be interpreted in the light of the well established rule of construction that if the words of a statute are in themselves precise and unambiguous no more is necessary than to expound these words in their natural and ordinary sense, the words themselves in such a case best declaring the intention of the legislature. See in this connection the observations of this Court in Collector of Customs, Baroda v. Digvijaysinghji

Spinning & Weaving Mills Ltd. [(1962) 1 SCR 896, 899 : AIR 1961 SC 1549 : 1961(2) Cri LJ 720]

19. This Court in *Ram Prakash Khanna v. S. A. F. Abbas* [(1972) 1 SCC 784 : AIR 1972 SC 2350 : (1972) 1 LLJ 490] dealing with the aforesaid rule proviso 2, observed that under the second proviso to Rule 3(3)(b) a promotee could obtain the advantage of officiation continuously in a senior post prior to the inclusion of the name in the select list if the period of such officiation is approved by the Central Government in consultation with the Union Public Service Commission. This Court reiterated that approval as contemplated in Rule 3(3)(b) is a specific approval and is directed to the particular matter mentioned therein as to whether there was approval of the period of officiation prior to the inclusion in the names in the select list. The officiation in a senior post is one of the indispensable ingredients in the application of Rule 3(3)(b). But it must be borne in mind that this was not a *sine qua non*. This Court found on the materials in the appeal before this Court in that case that it could not be held that the Central Government gave any approval in consultation with the Union Public Service Commission to have the benefit of the period claimed by the appellant. In the instant case, before the absorption of the appellant in the Himachal Pradesh - Delhi IPS Cadre, his officiation had not been taken by the Central Government into consideration. We are unable to say that the Central Government had not acted properly.

20. This appeal is not concerned with the assignment of year 1958 to Shri Singh but Rule 16, clause (1)(iii) of the Service Rules provides for certain penalties and one of the penalties, *inter alia*, is the effect of superseding him in promotion to a Selection Post and as such is appealable. We are of the opinion that the High Court was right that appeal does not necessarily lie only against the order imposing penalty and is also open to entertain appeal when the service rule was interpreted to the disadvantage of member of the Service but Rule 17 bars the filing of appeal after the expiry of 45 days. Proviso to the said rule, however, gives discretion to the appellate authority to condone the delay if sufficient cause is shown. Rule 24 of All India Services (Discipline and Appeal) Rules, 1969 provides for review within different periods. Under that rule since Shri Singh could have filed an application for review within one year, in this case remedy of review by Shri Singh had also become barred when the second order was passed. Rule 25 regulates memorials. It reads as follows :

A member of the Service shall be entitled to submit a memorial to the President against any order of the Central Government or the State Government by which he is aggrieved within a period of three years from the date of the passing of such order.

21. It appears that there is provision for appeal in the order of this nature. Failure to prefer an appeal or apply for review was no bar to the submission of memorials to the President. In December 1963 in this case the year of allotment was assigned to Shri Singh. Shri Singh made the first representation in August 1969, after the period of limitation had expired.

22. It was contended, however, on behalf of the appellant relying on the Full Bench decision of the Punjab and Haryana High Court in *Sunder Lal v. State of Punjab* [1970 SLR 59], that in a case of *bona fide* mistake, there was always the power to rectify. It was emphasised that every administrative authority has an inherent right to rectify its own mistakes. So far as fixing the year 1957 was concerned, we are unable to accept the submission. It is doubtful that inherent power can be invoked, if there is no reason for re-fixing the appellant's year of 1957. If belated claims are allowed arbitrarily, an atmosphere of uncertainty would prevail. There should be no sense of uncertainty amongst public service (*sic* servants). Furthermore it is clear that if the fixation of year 1958 allotment is a mistake, the first representation was rejected by the order dated April 23, 1970 which has been set out in *extenso* in the judgment under appeal. There the government's order

reiterates that in accordance with the order contained in the Home Ministry's letter to which reference is made, all cadre posts held by non-cadre officers not on the select list were deemed to have been kept in abeyance with effect from September 27, 1961 onwards. As such Shri Singh could not have claimed that he was officiating in the cadre post prior to coming on the select list. In those circumstances, Shri Singh could not be deemed to have officiated in cadre post during the period December 6, 1961 to May 14, 1963. The order further reiterated that according to the Seniority Rules, the service rendered by an officer prior to inclusion in the select list could not be counted for seniority unless approved by the Central Government in consultation with the Union Public Service Commission. It is clear that the Central Government was of the view that decision taken by it in 1963, fixing the said year of allotment was correct. Good and cogent reasons were given for it. It is true that the Home Ministry's letter referred to in Annexure R-4 has been quashed by the Delhi High Court but the same has no bearing on the correctness of the decision taken by the Central Government in 1963, because at the relevant time the letter was there and the Central Government was bound to act in accordance thereto. The contention of the appellant that there was no period of limitation for the grant of the approval is not relevant. It is therefore clear that there was no scope of the acceptance of second representation. In the said order there is no mention of any mistake.

23. When the first order was made, it may be that it was not necessary to give any notice to Shri Bhanot but when the second order was made it affected adversely Shri Bhanot because he in the meantime having been absorbed in the IPS in 1957. In our opinion it is not that the constitutionality of any provision was challenged as was the case in *A. Janardhana v. Union of India* [(1983) 3 SCC 601 : (1983) 2 SCR 936, 967 : 1983 SCC (L & S) 467 : AIR 1983 SC 769]. In *General Manager, South Central Railway, Secunderabad v. A. V. R. Siddhanti* [(1974) 4 SCC 335 : (1974) 3 SCR 207 : 1974 SCC (L & S) 290 : AIR 1974 SC 1755], it was held that those who would be affected by the grant of the year of seniority need not join as party. But the position here is different. Here Shri Bhanot would be adversely affected and his seniority would be affected and here the change was sought from the government reversing the previous decision and in the meantime Shri Bhanot has acquired a year of allotment. Therefore, in our opinion it should have been done upon notice to Shri Bhanot. In any case, Shri Bhanot has been heard. Our attention was drawn to certain observations of *Administrative Law Cases and Materials*, 2nd edn. by Peter Brett and Peter W. Hogg on the nature of appeal but in the light of the view we have taken, it is not necessary to refer to the said observations.

24. In the aforesaid view of the matter we are of the opinion that the High Court was right in dismissing the writ petition of the appellant herein. We, however, having regard to the facts set out hereinbefore, direct the Central Government that the salary scale of the appellant should be refixed taking into consideration the appellant's service in U. P. and Himachal Pradesh cadre in the senior position as a deputationist.

25. The appeals are, therefore, dismissed with the aforesaid directions without any order as to costs.

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