A SYED KHALID RIZVI AND ORS. ETC.

v.

UNION OF INDIA AND ORS. ETC. ETC.

NOVEMBER 20, 1992

B [A.M. AHMADI, M.M. PUNCHHI AND K. RAMASWAMY, JJ.]

Civil Services : IPS (Regulation of Seniority Rules, 1954/IPS (Appointment by Promotion) Regulations, 1955 : Rules 3(3)(b) and 2(g) Regulation 5—Direct Recruits and promotees from U.P. State Police Service Special C *Grade Deputy Superintendents of Police—Inter-se seniority—Fixation of.*

These matters relate to *inter-se* seniority between the direct recruit I.P.S. Officers and the promotee I.P.S. Officers from the rank of special grade Deputy Superintendents of Police in U.P. State Police Service. The D **claim of the promotee officers for determining their seniority giving them the years of allotment from the respective dates of officiation was rejected by the State Government. Some of the promotees filed Writ Petitions before this Court challenging the validity of Rules 3(3)(b) and 2(g) of I.P.S. (Regulation of Seniority Rules) 1954 and Regulation 5 of the IPS (Appointment and Promotion) Regulations 1955 respectively. This Court directed** E **the Central Government to determine the year of allotment of each of the respondents in accordance with Rule 3(1) and also the question as to whether they were entitled to the benefit of continuous officiation as Superintendents of Police under Rule 3(3)(b) and in the light of decisions of this Court interpreting analogous provisions.**

F

After hearing both the direct recruits and promotees and considering the material on record, the Central Government prepared a fresh seniority list. This was challenged before the Central Administrative Tribunal which directed the Central Government to prepare the seniority G **list afresh. This was challenged again. In accordance with the directions of the Tribunal, the Central Government prepared a fresh seniority list which was successfully challenged again before the Tribunal. In another cases before it also the Tribunal directed the Central Government to prepare the seniority list afresh.**

H **All these appeals by special leave were filed against the various**

orders of the Tribunal. The Writ Petition has been filed before this Court challenging the *inter-se* seniority fixed by the Central Government. A

On the question (1) whether the promotees have been appointed to IPS according to rules (ii) whether their continuous officiation in cadre post would enure to their seniority entitling to the year of allotment from the dates of their initial promotions; (iii) whether their inclusion in the select list and the computation of seniority from the date are conditions of service; and (iv) whether the facts would justify to draw the presumption of deemed relaxation of relevant rules: B

Allowing the appeals and dismissing the writ petition as not maintainable, this Court, C

HELD : 1. Cadre Rules enjoins the State Govt. that only a cadre officer should be appointed to a cadre post. Where the cadre officer is not available then, temporary appointments, by operation of Regulation 8 of the promotion Regulations read with rule 9 of cadre rules, could be resorted to and appointments made by the State Govt. or its delegates to cope up with the administrative exigencies, of the select list officers in the order or even among the select list officers dehors the order. When both cadre officers or select list officers are not available, then only non-select list officers could be temporarily appointed. However, it is mandatory that the State Govt. should report forthwith to the Central Govt. together with the reasons for making such appointments. The condition precedent is that the post shall not last for more than three months; if it exceeds three months then the 'prior concurrence' of the Central Govt., 'is mandatory'. If it lasts more than six months it should be with the consultation of the U.P.S.C., and the Central Govt. should post the UPSC with those facts and should implement the advice so tendered by the UPSC. The State Govt. should act according to the directions of the Central Govt. The compliance of these steps are mandatory to make temporary appointment legitimate and transitory arrangement a legal one. For violation thereof, the Central Govt. is entitled to give directions to the State Govt. to terminate the service of such temporary officer and the State Govt. should abide by such direction and give effect to it. The leeway and liberty given to the State Govt. under Regulation 8 of Promotion Regulations read with Rule 9 of cadre rules is only to cope up with administrative exigencies but it became D E F G H

A a breeding ground to distort the operation of the Rules which should scrupulously be eschewed and avoided. Any appointment made otherwise than in accordance with Regulation 9 of Promotion Regulations read with rule 9 of recruitment Rules is thus not a valid or regular appointment in the eye of law. [200-B-G]

B

2. An officer appointed to the Indian Police Service by promotion from State Services to the Central Services in accordance with Rule 9 of the Recruitment Rules read with Promotion Regulation No. 9, his year of allotment is that of the junior most among the direct recruit officers who officiated continuously in a senior post from a date earlier than the date C of the commencement of such officiation by the former. The continuous officiation of the promotee officers appointed under Rule 9 of the recruitment rules earlier than the date on which the direct recruit officers started officiation, should be determined *ad hoc* by the Central Govt. By operation of *Explanation* 1 the period of continuous officiation of the promotee officer D in the senior post for the purpose of determining his seniority should count only from the date of his inclusion in the Select List or from the date of his continuous officiation in such senior post whichever is later. As a consequence, though the promotee officer continues to officiate earlier to his being brought into the select list, he gets his seniority on his appointment to the senior post from the date on which he was brought into select E list, only from the date of appointment, or continuous officiation without break whichever is later. The entire preceding officiating period earlier than his being brought on the select list should be treated to be fortuitous. By operation of *Exp.2* he counts his continuous officiation in the senior post towards his seniority from the date of his appointment provided he F holds the senior post without any break or reversion otherwise than as a purely temporary or local arrangement. [201-B-E]

3. It is settled law that a promotee Officer appointed temporarily under Regulation 8 of Promotion Regulation and Rule 9 of cadre Rules to G a cadre post does not get his/her continuous officiation towards seniority. Seniority would be counted only from the date on which he/she was brought into the select list by the selection committee in accordance with Recruitment Rules, Promotion Regulations and seniority Rules and was approved by the UPSC, appointed under Rule 9 of Recruitment Rules and Regula- H tion 9 of Promotion Regulations and Rules and has continuously officiated

without break. Seniority would be counted from the date of select list or continuous officiation whichever is latter. He/she is entitled to appointment by the Central Govt. to substantive vacancy under Regulation 9 of Promotion Regulations from that date. The Central Govt. and the U.P.S.C. should approve temporary appointment by an order in writing and also of such officiation. In that event seniority would be counted only from the date, either of his/her inclusion in the select list or from the date of officiating appointment to the cadre post whichever is later. By operation of *Explanation 1* to rule 3(3)(b) of the Seniority Rules his seniority will be counted only from either of the later dates and the necessary effect is that the entire previous period of officiation should be rendered fortuitous and the appointment as *ad-hoc* appointment or by local arrangement.

[208-A-D]

D.R. Nim, I.P.S. v. *Union of India,* [1967] 2 SCR 325; *State of Orissa & Anr.* v. *B.K. Mohapatra,* [1970] 1 SCR 255; *Anil Kumar Choudhary* v. *State of Assam & Ors.,* [1975] 3 SCR 878; *R.P. Khanna & Ors.,* v. *S.A.F. Abbas & Ors.,* [1972] 3 SCR 548; *Amrit Singh & Ors.* v. *Union of India & Ors.,* [1980] 3 SCR 485 and *Union of India, etc.* v. *G.N. Tiwari, K.L. Jain & Ors.,* [1985] Suppl. 3 SCR 744, relied on.

4. Preparation of the select list as per promotion Regulations is a pre-condition for recruitment by promotion. The State Govt. is enjoined to send the select list to the UPSC, which after considering the objections, if any, of the Central Govt. and the State Govt. and the views of the Committee, would approve the list with such modifications as it may deem just and proper. The Central Govt. makes appointment of the promotee officer to the I.P. service in strict conformity with Rule 9 of Recruitment Rules and Regulation 9 of Promotion Regulations in the order of merit and in no case the quota of 33-1/3 per cent to the promotees should be exceeded. The year of allotment under Rule 3 of Seniority Rules to every officer of the I.P.S. is mandatory. [208-G, H; 209-A]

In order to get into the select list, the promotee officer has to fulfil the conditions of the rules of recruitment and Promotion Regulations i.e. he must be brought into the select list satisfying the conditions specified therein and the Seniority Rules. As per Recruitment Rules, merit, ability and suitability are the criteria and seniority will be considered only where

A merit and suitability are approximately equal. Integrity, ability and record of service would furnish the ground to assess the merit of the promotee officer to assign the ranking *inter-se* in the list and appointment by Central Govt. should be in the order as approved by the UPSC and recommended by the State Govt. Bringing the name on the list does not confer any right
B to automatic appointment. The appointment should be made to a substantive vacancy within the quota in the order in the select list unless the predecessor promotee officer in the list opts to forgo the same. Seniority rules thus provide the source or foundation upon which the whole edifice of Indian Police Service has been built upon to assign the year of allotment.
C The scheme of the Rules and Regulations is an integral and continuous whole and any snap in the link would lead to distortion and land up in imbalance in the ratio and upset the smooth working of the scheme frustrating the national integration, the object of the All India Service Act. Moreover, the recruitment by selection would give only right to be considered according to rule and would create no right to appointment. The
D order of appointment by the Central Govt. under Rule 9 of Recruitment rules crystalises the right of a promotee officer into the service. Seniority would be counted only from date of select list or the date of continuous officiation after appointment whichever is later. [209-B-F]

E 5. Due to exigencies of the service, the State Govt. has been empowered under regulation 8 of Promotion Regulations read with rule 9 of cadre rules to appoint select list or non-select officers to man temporary vacancies in cadre posts. So long as cadre officer is available, he/she alone is to be posted to a senior cadre post. In his/her absence the select list
F officer awaiting promotion, must be appointed in the order found in the list. It must be the rule and deviation must be for exceptional reasons and circumstances. Where either the cadre officers or select list officers are not available, then only non-select list officers may be promoted to temporary vacancies which should not be likely to last for more than three months and the State Govt. must strictly comply with the conditions
G specified in the provisos to regulation 8(2) of Promotion Regulations and Rule 9 of cadre rules. In other words, where the vacancy/vacancies continue for more than three months, the prior concurrence of the Central Government is mandatory. If it continues for more than six months prior approval of the Union Public Service Commission is also mandatory. Any
H appointment in violation thereof is not an appointment in accordance with

the law. Such appointments are mere *ad hoc* or local arrangement or fortuitous. [210-B-E] A

6. On appointment under Rule 9 of the Recruitment rules to a substantive vacancy from the select list by the Central Govt. the promotee officer becomes a member of the service. But whereas appointment under B regulation 8 of promotion regulation is in disregard of the rules to cope up with the administrative expediency, be it to a temporary or substantive vacancy, an appointee under Regulation 8 read with Rule 9 of cadre rules is unequal to a direct recruit or one under Regulation 9 of Promotion Regulation read with Rule 9 of Recruitment Rules. So unequals cannot be C treated as equals offending Art, 14 and 16(1) of the Constitution. Mere production of inequality by operation of the rule is not sufficient to treat an appointee under Regulation 8 of Promotion Regulation at par with one under Direct Recruitment or one under rule 9 of Recruitment Rule and Regulation 9 of Promotion Regulations. Getting qualified earlier in point of time or passing the prescribed tests does not by itself clothe with a right D to promotion or entitle to seniority. It would arise only after the select list was prepared on comparative evaluation of the record and assessment of merit, ability and suitability and fixation of *inter se* seniority was made and approved by the UPSC followed by or preceded with an order of appointment under Regulation 9 of Promotion Regulations and Rule 9 of E Recruitment Rules. Persons similarly circumstanced alone are entitled to equal treatment. The rule making authority or the legislature takes into consideration diverse factors to integrate into common cadre the incumbents drawn from different sources. They have better knowledge to adjust those appointees to integrate them into common cadre. Until the officers F are appointed to the Indian Police Service in accordance with the Recruitment Rules and Promotion Regulations, they remain a separate source and a distinct class. Only on due appointment after their fusion into common stream or cadre, there cannot be any invidious discrimination thereafter between the promotees and the direct recruits. The direct recruits and G promotees/officers constitute, thus, different classes. Conditions of recruitment should strictly be complied with in making recruitment by promotion of the Dy. S.P. from a State Police Service holding substantive posts into the Indian Police Service. Any appointment in contravention thereof would negate the scheme of the rules and regulations. Recruitment by promotion in accordance with the Regulation and Rules are conditions H

A of Recruitment and are mandatory and should be complied with.
[211-G, H; 212-A-E]

Direct Recruit Class II Engineering Officers' Association & Ors. v. *State of Maharashtra & Ors.*, [1990] 2 SCR 900; *K.C. Joshi* v. *Union of India*, [1992] Suppl. 1 SCC 272; *A.N. Sehgal & Ors.* v. *Raje Ram Sheoran & Ors.*, B [1992] Suppl. 1 SCC 304 and *Masood Akhtar Khan & Ors.* v. *State of Madhya Pradesh & Ors.*, [1990] 4 SCC 24, referred to.

7. No employee has a right to promotion but he has only right to be considered for promotion according to rules. Chances of promotion are not conditions of service and are defeasible. The eligibility for recruitment C to the Indian Police Service, is a condition of the recruitment and not a condition of service. Accordingly seniority, though, normally an incidence to service, Seniority Rules, Recruitment Rules and Promotion Regulations form part of the conditions of recruitment to the Indian Police Service by promotion, which should be strictly complied with before becoming eligible D for consideration for promotion and are not relaxable. [214-C, D; 215-A-C]

State of Mysore v. *G.N. Purohit*, 1967 SLR 753 and *Ramachandra Shankar Deodhar & Ors.* v. *The State of Maharashtra*, [1974] 2 SCR 216, relied on.

E *State of Punjab* v. *Kailash Nath*, [1989] 1 SCC 321, distinguished.

State of M.P. & Ors. v. *Shardul Singh*, [1970] 3 SCR 302; *I.N. Subba Reddy* v. *Andhra University & Ors. etc.*, [1975] 1 SCR 449; *Mohd. Bhakar* v. *Krishna Reddy*, 1970 S.L.R. 768 and *A.K. Bhatnagar* v. *Union of India*, F [1991] 1 SCC 544, referred to.

8. Rule 3 of the Residuary Rules provides the power to relax rules and regulations in certain cases - Where the Central Govt. is satisfied that the operation of - (i) any rule made or deemed to have been made under the Act, or (ii) any regulation made under any such rule, regulating the G conditions of service of persons appointed to an All India Service "causes undue hardship in any particular case", it may, by order, dispense with or relax the requirements of that rule or regulation, as the case may be, to such an extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a "just and equitable H manner". Rule 3 empowers the Central Govt. to relieve undue hardship

occurred due to unforeseen or unmerited circumstances. The Central Govt. must be satisfied that the operation of the rule or regulation brought about undue hardship to an officer. The condition precedent, therefore, is that there should be an appointment to the service in accordance with rules and by operation of the rule, undue hardship has been caused, that too in an individual case. The Central Govt. on its satisfaction of those conditions, have been empowered to relieve such undue hardship by exercising the power to relax the condition. Conditions of recruitment and conditions of service are distinct and the latter is preceded by an appointment according to Rules. The former cannot be relaxed. The latter too must be in writing that too with the consultation of U.P.S.C.

[215-G, H; 216-A-D]

State of Orissa & Anr. v. *B.K. Mohapatra,* [1970] 1 SCR 255; *Anil Kumar Choudhary* v. *State of Assam & Ors.,* [1975] 3 SCR 878; *R.P. Khanna & Ors.* v. *S.A.F.Abbas & Ors.,* [1972] 3 SCR 548 and *Amrik Singh & Ors.* v. *Union of India & Ors.,* [1980] 3 SCR 485, relied on.

Narender Chadha & Ors. v. *Union of India & Ors.,* [1986] 1 SCR 211, referred to and explained.

9. The appointment by promotion to the Indian Police Service and as a fact to any All India Service and determination of *inter se* seniority bear vital effect at the higher echolons of super time scale of pay and the above. The State Govt. and the Central Govt. should strictly comply with the provisions in making recruitment by promotion from the State Service to the All India Services. If laxity has been given legitimacy and deemed relaxation is extended it would not only upset smooth working of the rules but also undo the prescribed ratio between promotee officers and direct recruits. It would also produce adverse affect at the All India level. Moreover, the concept of All India Services introduced to effectuate the national integration by drawing persons from different regions by direct recruitment into concerned State cadres would be defeated by manipulation National integration would be disturbed and frustrated. Smooth implementation of the rules would be deflected and distortions in service would gain legitimacy and acceptability. While the Central Govt. remains statutory appointing authority the State Govt. gets into saddle and would become *de facto* appointing authority. The junior most and unqualified or unfit would be pushed from back door and pumped up into higher

A echolons, eroding efficiency and honesty. For failure to prepare select list every year, rule 3(3)(b) of the Seniority Rule, Rules 5 and 9 of Recruitment Rules and Regulation 9 of Promotion Regulations have not been broken down and the appointment by local arrangement by the State Govt. under Regulation 8 of the Promotion Regulations and Rule 9 of Cadre Rules are B not valid and legal. The promotee officers are not entitled to count their whole officiating period towards their seniority. [218-B-F]

Union of India v. *Mohan Lal Capoor & Ors.*, [1973] 2 SCC 836 and *A.N. Sehgal & Ors.* v. *Raje Ram Sheoran & Ors.*, [1992] Suppl. 1 SCC 304, relied on.

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Narender Chadha & Ors. v. *Union of India & Ors.*, [1986] 1 SCR 211, referred to.

10. The majority members of the Central Administrative Tribunal D committed the gravest of errors in holding that *Explanation 1* to rule 3(3)(b) of Seniority Rules and the relevant rules were deemed to have been relaxed and the directions given to the Central Govt. to refix the seniority is illegal. However, many of the promotees have since been retired from service after working out notional promotion and monetary benefits, as E this Court did not stay the operation of the tribunal's order, arrears paid should not be recovered from them and promotions already made to some of the promotees and now continuing in the respective offices may not also be recalled. However, the continuing officers should not be entitled to any future promotions on the basis of the directions of the Tribunal, super- seding the claims of the direct recruits until they became eligible in their F turn as per this judgment. The Registry is directed to return the seniority lists produced by the State Govt., which would give notice to the promotees who were included in the notional list of their *inter se* placement of the respective years 1971, 1975, 1976, 1979 and 1980 directing them to submit within a specified time their objections, if any, and the State Govt. would G send the list, the objections if made and all relevant records to the U.P.S.C. marking copies thereof to the Central Govt. The Central Govt. would submit their comments to the U.P.S.C. which would consider them and may accept or modify the list as per the record and would communicate to the Central Govt. and State Govt. Thereafter the Central Govt. would H make necessary appointments on the recommendation by the State Govts.

as per law. The seniority list already approved by the Central Govt. as directed by this Court in the first instance subject to the above modification and for the rest of the years would stand. For others the respective years of allotment shall accordingly be assigned. [219-D-H; 220-A]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 823 of 1989.

From the Judgment and order dated 9.12.1988 of the Central Administrative Tribunal, Allahabad in Registration O.A. No. 626 of 1987.

WITH

Contempt Petition No. 191/91, I.A. No. 1-10/91.

IN

C.A. Nos. 2932, 1801, 2464 & 3165-67 of 1989, 1804-05/88, 1382, 1383 & 3712 of 1987, 1317-18/91, 1802/89, 1/90, 4709-10/90 and 2964/89.

AND

W.P. Nos. 668/91 and C.A. Nos. 4955, 4949 & 4950/92.

P.P. Rao, R.K. Gupta, P.C. Kapur in C.A. Nos. 2932/89, 1801/89, 823/89, 2464/89, 3165-67/89 & 2964/89. A.R. Chaphekar in C.A. No. 1382/87, P. Parmeswaran in C.A. Nos. 1383 & 3712/87, Ms. Rachna Gupta in C.A. Nos. 4709-10/90. Harish N. Salve, U.N. Singh and Vishwajeet Singh in C.A. Nos. 2932, 823, 1317-18, 1/90 & 4950/92. A.K. Goel in C.A. Nos, 2932, 1801 & 2464 of 1989, 1382, 1383 of 1987 and 4949 of 1992. Altaf Ahmad Addl. Solicitor General, V.C. Mahajan, T.C. Sharma, Ms. A. Subhashini and Ms. Sushma Suri for Union of India. C.V.S. Rao in C.A. Nos. 1801/89, 1317-18/91, 1802/89, 1/90. 2964/89 & 4950/92. Pradeep Misra, M.K. Maheshwari, R.K. Jain, Ms. Abha R. Sharma, Ashish Verma, Manoj Goel and R.P. Singh in C.A. Nos. 823/87, 1382/87, 1383/87, 3712/87, 1802/89 & 4955/92. Ashok K. Srivastava in C.A. No. 823/89. Pankaj Kaira in C.A. No. 823/89 & 1383/87, Altaf Ahmad in C.A. Nos. 3165-67/89, Devendra Singh in C.A. Nos. 3165-67 & W.P. No. 668/91. B.B. Singh in C.A. No. 4955/92, Rachna Gupta in C.A. Nos. 3165-67/89, P.K.

A Jain in C.A. No. 4709-10/90, 3165-67/89 & 4949/92, V. Yadav and R.C. Verma for State of U.P., Ms. P.S. Shroff, Ms. S. Sohi, S.S. Shroff for S.A. Shroff & Co. in C.A. No. 1805/88. Surya Kant and T.N. Singh in C.A. No. 823/89 for the appearing parties.

B The Judgment of the Court was delivered by

K. RAMASWAMY, J. Leave granted.

This bunch of 22 appeals and one writ petition raise the traditional tangle of *inter-se* seniority between the India Police Service Direct Recruits C and U.P. State Police Service, Special Grade Deputy Superintendents of Police for short 'Promotees'. It is not necessary to detail myriad facts in all the appeals but shortly stated the facts in Civil Appeal No. 823 of 1989 are sufficient to decide the controversy by a common judgment. The appellants were direct recruits of the years 1970 and 1973 into Indian Police Service D and were allotted to U.P. cadre. The respondents Nos. 3 to 9, Trivedi Kumar Joshi & Others were appointed as Deputy Superintendents of Police between July 12, 1961 to July 7, 1963 in substantive capacity in State Service and were promoted between October 4, 1973 to June 2, 1975 to perform the duties of the cadre posts of Superintendents of Police, con- E tinued to occupy the said posts till they were included in the select list (Respondent No. 3 in 1977, Respondents Nos. 4 to 9 in 1978) and were latter appointed and confirmed in the Indian Police Service w.e.f. various dates between July 29, 1978 to December 6, 1980.

When the *inter-se* seniority list was prepared and published on April F 24, 1977 showing the respondents as juniors to the appellants, they represented to the Govt. of India that since they had continuously officiated on the cadre posts without break from the respective dates of promotion, their entire continuous officiating period should be counted towards seniority in Indian Police Service. They requested to redetermine their seniority giving G them years of allotment from the respective dates of continuous officiation dating back to 1968, 1969 and 1970 to respondents Nos. 3, 4, 5, 6 and 7 to 9 respectively. The State Govt. rejected their claim in 1980. Preceding thereto some of their senior promotees filed writ petition Nos. 4490-4499/80 and 5128-29/80 in this court questioning the validity of Rule 3 H (3)(b) and 2(g) of I.P.S. (Regulation of Seniority Rules, 1954) for short

'Seniority Rules' and Regulation 5 of I.P.S. (Appointment by Promotion) Regulation 1955 for short the 'Promotion Regulations' claiming the same relief. A Bench of three Judges of this Court directed the Central Govt. to determine the year of allotment of each of the respondents in accordance with Rule 3(1) of the Seniority Rules and also the question as to whether they were entitled to the benefit of continuous officiation of the posts of Superintendent of Police under Rule 3(3)(b) of the Seniority Rules in the light of the decisions in *Union of India* v. *G.N. Tiwari,* [1985] Suppl. 3 SCR 747, *Narendra Chadha & Ors.,* v. *Union of India & Ors.,* [1986] 1 SCR 211 and other decisions interpreting the analogus provisions of the All India Services Act, 1951 and the relevant rules and regulations framed thereunder. After giving sufficient opportunity to the promotees and the direct recruits and considering the material, the Central Govt. by Order dated July 1, 1986 fixed the seniority and had given them 1968, 1970 and 1972 as years of allotment respectively the details thereof do not bear relevance for disposal of the appeals. Challenging the correctness thereof Bhupinder Singh and Others filed O.A. No. 583/86 in the Central Administrative Tribunal at Allahabad. When it came up before a bench of two members, the judicial member held that by operation of *Explanation 1* to Rule 3(3)(b) of the Seniority Rules, the promotees are entitled to get seniority from the date of inclusion of their names in the select list. The officiation period has to be counted only from that date. The year of allotment under Rule 3(1) read with Rule 3(3)(b) of the Seniority Rules should be drawn accordingly bringing on notional list for 1971, 1975 and 1976. The administrative member held that by conduct, the Central Govt. must be deemed to have relaxed the requirement of *Explanation 1* to Rule 3(3)(b) of the Seniority Rules as the State Govt. did not prepare the select list for the years 1971, 1975 and 1976 and by non action the rule regulating seniority had been broken down and accordingly directed to prepare the seniority list, counting their continuous officiation from the date of their initial promotions. On reference, the Vice-Chairman agreed with the administrative member and accordingly directed the Govt. of India to prepare the seniority list afresh. This is the subject matter in C.A. No. 1382/87 and Union of India filed C.A.No. 1383/87. The Central Govt., however, considered afresh and fixed seniority again on April 24, 1987 showing them as juniors to the appellants, which was impugned in O.A. No. 676/87 and was allowed. Civil Appeal No. 823/89 arises against it. Union of India filed C.A.No. 1801/89.

A B C D E F G H

A Following that order in the main judgment dated December 12, 1988 in O.A. No. 583 of 1986, the C.A.T. at Allahabad practically reiterated the same view and directed the Central Govt. in all other cases to prepare the seniority list afresh whether they officiated either in the cadre posts or ex-cadre posts. Thus all the appeals are before us by special leave.

B

The admitted facts are that the promotees held their substantive posts as Deputy Superintendents of Police of the U.P. Police Service. They were not included in the select list. Though the State Govt. initially appointed them as Superintendents of Police, obviously for a period of 3 C months, they continued to officiate in cadre posts uninterruptedly. Though the direct recruits contended that the posting of the promotees to the cadre posts was the result of the manipulation at the behest of the State level officers, assuming, without deciding for the purpose of this case, that the promotees were posted to discharge the duties of the cadre posts when the direct recruits went on deputation in excess of the quota and that there D existed dearth of the direct recruits or the suitable officers from the select list to hold the cadre posts. Their promotion to officiate in the cadre posts was by local or *ad-hoc* arrangement. The record does not bear out that the State Govt. had sent any reports to the Central Govt. from time to time with reasons therefor, nor obtained prior concurrence from Central Govt. E to promote the non-select list officers to officiate on the cadre posts. Admittedly the Union Public Service Commission was not consulted when the promotees continued to officiate in the cadre posts for one year and more. There is no express order passed by the Central Govt. under Rule 3 of the Residuary Rules relaxing rule 3(3)(b) of Seniority Rules and F Regulation 5 of Promotion Regulations.

These facts and diverse contentions of the counsel on either side would give rise to the following questions : (i) whether the promotees have been appointed to I.P.S. according to Rules? (ii) whether their continuous G officiation in cadre posts would enure to their seniority entitling to the year of allotment from the dates of their initial promotions; (iii) whether their inclusion in the select list and the computation of seniority from that date are conditions of service; and (iv) whether the facts would justify to draw the presumption of deemed relaxation of relevant rules by rule 3 of the H Residuary Rules?

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The recruitment rules provide the method of recruitment to the Indian Police Service. Rule 2(aa) defines 'direct recruitment' means a person appointed to the service after recruitment under clause (a) of sub-rule (1) of rule 4; rule 2(d) defines 'service' means the Indian Police Service; rule 2(g) defines 'State Police Service' means - in all other cases, the principal police service of a State, a member of which normally holds charge of a sub-division of a district for purposes of police administration etc..... Similar definitions were given in all the rules and it is not necessary to repeat them once over. Rule 3 provides constitution of the I.P. Service; Rule 3(1)(a) and 3(1)(b) are not necessary, hence omitted; Rule 3(1)(c) provides that persons recruited to the Service in accordance with the provisions of these rules are members of the service. Rule 4(1) postulates that recruitment to the service, after the commencement of these rules, shall be by the following methods, namely, (a) by competitive examination; the details are not relevant and (b) by promotion of substantive members of a State Police Service. Sub- rules 2, 3 and 4 are not relevant, hence omitted. Rule 5 prescribes the disqualification for appointment which is not material for the purpose of this case, hence omitted. Rule 6(1) posits that 'all appointments to the service', after the commencement of these rules 'shall be made by the Central Govt.' and 'no such appointment should be made except after recruitment by one of the methods specified in Rule 4'. Rest of the sub-rules are not necessary hence omitted. Rule 7 provides recruitment by competitive examination, the material details thereof are not germane. Rule 9 which is material for the purpose of this case provides thus:- Recruitment by promotion : 9(1) 'The Central Govt. may', on the recommendation of the State Govt. concerned and 'in consultation with the U.P.S.C.', 'recruit to the Service' persons by promotion from amongst the (substantive)members of a State Police Service in accordance with such regulations as the Central Govt. may, after consultation with the State Govt. and the Union Public Service Service Commission, from time to time, made. Sub-rule (2) provides the number of persons recruited under sub-rule (1) in any State or group of State shall not at any time, exceed 33-1/3 per cent of the number of those posts as are shown against items 1 and 2 of the cadre in relation to that state or to the group of states in the schedule to the I.P.S. (Fixation of Cadre Strength) Regulation, 1955. Sub-rule (3) etc. are not necessary hence omitted. Sub-rule (5) provides that not-withstanding anything contained in sub-rule (2), the Central Govt. may promote substantive members of a State Police Service in excess of the normal promotion quota in accordance with such regulations as the Central

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A Govt. may, after consultation with the State Govt. and the Commission, from time to time, made.

A reading of these provisions do indicate that to become a member of the Indian Police Service, by promotion, one must belong to the State Police Service and must hold substantive post in that Service. The appointment to the service should be made by the Central Govt. No such appointment should be made except after 'recruitment' by one of the methods specified in Rule 4 i.e. direct recruitment and by promotion. The recruitment by promotion under Rule 9(1) should be made by the Central Govt. on the recommendation of the State Govt. concerned and the consultation of the U.P.S.C. is mandatory. A person thus recruited by promotion or direct recruitment alone should become a member of the Indian Police Service. The ratio of recruitment of 33-1/3 per cent between the appellants and the respondents has been limited to initial recruitment only.

Regulation 3 of the Promotion Regulations enjoins the State Govt. to constitute the Committee to select the promotees, consisting of the Chairman of the U.P.S.C or its Member; the Chief Secretary. Secretary Home Department; Director General of Police, in his absence Inspector General of Police; a member of the Service not below the rank of Deputy Inspector General of Police; and a nominee of the Govt. of India not below the rank of Joint Secretary, who shall prepare, under Rule 5, a list of suitable officers. Under Rule 5(1) each committee *may 'ordinarily meet at intervals not exceeding one year'* and prepare a list of such members of the State Police Service, as are found *'to be suitable for promotion to the Service'*. The number of members of the State Police Service to be included in the list shall be calculated as the number of substantive vacancies anticipated in the course of the period of 12 months, commencing from the date of preparation of the list, "*in the posts available for them under Rule 9 of the Recruitment Rules*" plus twenty per cent of such number "or two whichever is greater" (emphasis supplied). Under sub-rule (2) of Rule 5 the Committee shall consider for inclusion in the said list, the cases of members of the State Police Service in the order of seniority in that service of such number which is equal to "three times the number" referred to in sub regulation (1). The provisos are not relevant, hence omitted. The member of the State Police Service eligible for inclusion must possess the following qualifications i.e. (i) he is a substantive member in the State Police Service, (ii) he has completed not less than 8 years of continuous

service whether officiating or substantive in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Govt., and (iii) he has not attained the age of 52 years (on the first day, earlier January and now as amended April of the year in which the Committee meets. It has been amended to 54 years as per the latest amendment dated April 5, 1979). If the committee does not meet in the interregnum the age barred officer also may be considered in the committee's next meeting. Sub-rule (3) issues a mandate that the committee shall not consider the member who has attained the age of 52 (54) years as on date. The mechanism for selection and the number of officers to be included are not material for the purpose of the case. Hence it has not been adverted to. The committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit', as the case may be, "on an overall relative assessment of their service record", vide regulation 5(4). The list shall be prepared by including the required number of names in the order specified in sub-regulation 5(4) in the order of merit *inter-se* within each category, i.e. "outstanding etc. shall be in the order of their seniority in the State Police Service. Under regulation 5(6) the list so prepared "shall be reviewed and revised every year". Regulation 6 mandates the State Govt. to forward the select list to the U.P.S.C. for approval, along with the records and remarks of the members, a copy thereof "shall also be forwarded to the Central Govt." who "shall send their observations" on the recommendation of the Committee to the U.P.S.C. Under Regulation 7 "after considering the service records" and observations of the Central Govt, State and the Committee, if the U.P.S.C. considers necessary, it has been empowered to change the order in the list and shall inform the State Govt. of the proposed changes. Thus the U.P.S.C. "may approve the list finally with such modification, if any, as may in the opinion of the U.P.S.C. be just and proper". Under regulation 3 thereof the *"list finally approved by the commission shall form the select list of the promotee officers"*. Regulation 9 provides the appointment of the promotees to the Indian Police Service thus - 9(1) Appointment of members of the State Police Service to the Service (I.P.S.) *"shall be made by the Central Govt. on the recommendation of the State Govt. in the order in which the names of members of the State Police Service appear in the Select List"* (emphasis supplied) for the time being in force. The provisos thereto are not necessary and hence omitted. In *Union of India* v. *Mohan Lal Capoor & Ors.*, [1973] 2 SCC 836 the Select List Officers I.P.S. and I.A.S. continued in the select list from the year 1961-62 and also continued to officiate on the cadre posts from an anterior

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A period. They were dropped from the select list of the year 1968 and were reverted to their substantive posts which was questioned in the High Court and was allowed. On appeal, this Court held that under Regulation 5(3) of the Promotion Regulations the Selection Committee has an unrestricted choice of selection of the best available talent from amongst the eligible candidates determined by reference to merit and suitability. Seniority B would be considered only where merit and ability are nearly equal. The process of selection may involve supersession, which may mean supersession by a junior or even exclusion from the selection. There is "no vested right to promotion or to remain in the seniority list". The word 'promotion' in Rule 9 of the Recruitment Rules would not indicate that promotion C should be on the basis of seniority subject to fitness. Inclusion of a person named in the select list in a year does not give that person a vested right to have his name in the select list in the succeeding years. The select list shall be prepared every year and be reviewed and the revision effected so as to include the most talented, meritorious and suitable officers though D junior to the persons already in the select list.

It would, thus, be clear that the selection committee shall consider the eligibility and suitability of the members of the State Police Service on the basis of merit, ability and suitability. Seniority will be considered only where merit, ability and suitability are approximately equal and it should E prepare the select list of such suitable officers in the order of merit in each category such as "outstanding", etc. and send the select list in order of seniority to the State Govt. who with its comments would forward the same to the U.P.S.C. for approval. The U.P.S.C. again would review the list, if necessary, with prior notice to the State Govt. and revise the order of F names (seniority) in the list which should be final and operative for a period of 12 months. The list should consist of such number plus 20% or two officers whichever is more and of three times the anticipated substantive vacancies in the cadre posts. The appointment to the cadre posts should be made by the Central Govt. in the order in the list on the recommendation of the State Govt. The word "may" in regulation 5 indi- G cates that the Committee ordinarily meets at intervals not exceeding one year. Though the word "may" indicates that it is not mandatory to meet at regular intervals, since preparation of the select list is the foundation for promotion and its omission impinges the legitimate expectation of promotee officers for consideration of their claim for promotion as IPS H officers, the preparation of the select list must be construed to be man-

datory. The committee should, therefore, meet every year and prepare the select list and be reviewed and revised from time to time as exigencies demand. No officer whose name has been entered in the list has a vested right to remain in the list till date of appointment. The list would be liable to shuffle and the name may be excluded from the list on the comparative assessment of merit, ability and suitability based on the anticipated or expected availability of the vacancies within quota etc. The junior may supersede the senior and may be ranked top.

Every person recruited to the service either by direct recruitment or by promotion under Promotion Regulation shall be appointed on probation under Rule 3(1) of the I.P.S. (Probation) Rules 1954 for short 'Probation Rules' for a period of two years unless the Central Govt. grants exemption. Under sub-rule 2 thereof, the probation may be extended for a period of one year and in no case would it exceed three years. During the period of probation, he/she must undergo the prescribed course of training and pass the tests. At the end of the probation period, on its satisfactory completion, the Central Govt. should confirm the probationer into the service.

Rule 8 of Promotion Regulations provides that temporary appointments from the select list to the posts borne on the State Cadre or the Joint Cadre of a group of States, as the case may be, shall be made by the State Govt. in accordance with rule 9 of the Cadre Rules. In making such appointments, the State Govt. shall follow the order in which the names of such officers appeared in the Select List. Rule 8(2) declares that, notwithstanding anything contained in sub-regulation (1), where administrative exigencies so require, a member of the State Police Service whose name was not included in the Select List, or who was not next in the order in that Select List, may subject to the Cadre Rules, be appointed to the cadre post, if the State Govt. is satisfied that (i) the vacancy is not likely to last for more than three months; or (ii) that no suitable cadre officer is available for filling the vacancy : provided that where any such appointment is made in a State, the State Govt. shall forthwith report to the Central Govt. together with the reasons for making the appointment. Provided further that where administrative exigencies so require, such appointments may be continued in a cadre post beyond a period of three months with 'prior concurrence of the Central Govt'. Provided further that where administrative exigencies so require, a member of the State Police Service who is not next in the order in that Select List may, subject to rule 9 of the cadre

A Rules, be appointed to a Cadre post if the State Govt. is satisfied - (i) that the vacancy is not likely to last for more than three months; or (ii) that no suitable Cadre officer is available to fill the vacancy.

Regulation 8 thus empowers the State Govt., on *ad hoc* basis or local B arrangement, to appoint temporarily, due to administrative exigencies, either the persons in the select list in the order of merit or dehors the list even non-select list officer to fill in the short term vacancy which does not likely to last for more than three months. This would be subject to the pre-conditions that no suitable cadre officer was available to occupy the cadre post and followed by a report with reasons thereof sent forthwith to C the Central Govt. In other words, the State Govt. should post cadre officers to cadre posts and only in case of non-availability of cadre officers the select list officers be posted in the order in the select list. This is the rule. Where neither category officers are available, resort can be had to appoint non-select list officers to man the cadre posts. Regulation 8 does not D empower the State Govt. either to tamper with Regulation 9 or to cut down its operation to favour undue weightage either to the select list or non-select list promotee officers. The fine distinction, made out by the counsel for promotees of senior post or cadre post is superfluous. Take for instance even where a cadre officer or select list officer was available for posting, yet if the vacancy does not last more than three months, instead of E disturbing the cadre or select list officer, a nearby non-select list officer may be posted to officiate in the cadre post, even may be in excess of the quota prescribed in the promotion Regulation and recruitment Rules, as the existence of a post within quota is not relevant. Such appointment is, therefore, on *ad-hoc* basis or by local arrangement. In its guise the State F Govt. has no power to make any substantive appointment of the promotees to the cadre posts. The appointment under Regulation 9 and Regulation 8 are, therefore, distinct and different. Under Regulation 9 read with Rule 9 of recruitment rules the Central Govt. is empowered to appoint promotee officer to the substantive vacancies strictly in conformity with the select list. The appointment has reference to the quota and existence of substantive G vacancy within the quota are necessary conditions, though some times quota may be exceeded but it is liable to adjustment. The observance of quota rule is only for initial appointment. An officer so appointed starts officiating in the cadre post and gets his/her seniority from the date of inclusion in the select list or appointment whichever is later. Whereas the H appointment under Regulation 8 is only fortuitous due to administrative

exigencies and such an appointee cannot claim any seniority from the date of initial appointment. The existence of the select list as on that date under Rule 8 has relevance as a source to fall back upon to fill in the vacancies and non-availability of cadre officer/select list officer for being posted. The date of appointment under rule 8 bears no relevance to the non-select list officers for seniority.

Rule 3 of cadre rules adumberates constitution of the cadre and under rule 3(2) the cadre so constituted shall be 'State cadre' or joint cadre, as the case may be. Rule 4 prescribes the strength of the cadre, the details whereof are not material. Rule 5 empowers the Central Govt., in consultation with the State Govt. concerned, to allocate the cadre officers. Rule 7 provides the method of posting the officers to fill in the cadre posts. All appointments to cadre posts shall be made (a) in the case of a State Cadre, by the State Govt.; and (b) in the case of a Joint Cadre, by the State Govt. concerned. Rule 8 provides that, save as otherwise provided in these rules, "every cadre post shall be filled by a cadre officer". Marginal note of Rule 9 open up its vistas to 'temporary appointment of non-cadre officer to cadre post' and thereby forebode the field of operation of Regulation 8 of promotion regulations. Regulation 9 is material for the purpose of this case which reads thus : A cadre post in a State may be filled by a person who is not a cadre officer, if the State Govt. or any of its Heads of Department to whom the State Govt. may delegate its powers of making appointment to cadre posts, is satisfied - (a) that the vacancy is not likely to last for more than three months; and (b) that no suitable cadre officer is available for filling the vacancy, provided that where cadre post is filled by a non-select list officer, or a select list officer who is not next in order in the select list, the State Govt. shall forthwith report the fact to the Central Govt. together with the reasons therefor. (2) Where in any state a person other than a cadre officer is appointed to a cadre post for a period exceeding three months, the State Govt. shall forthwith report the fact to the Central Govt. together with the reasons for making the appointment. Provided that a non-select list officer or a select list officer who is not next in order in the select list, shall be appointed to a cadre post only with the prior concurrence of the Central Govt. (3) On receipt of the report under sub-rule (2) or "otherwise", the Central Govt. may direct that the State Govt. shall terminate the appointment of such person and appoint thereto a cadre officer, and where any direction was so issued, the State Govt. shall accordingly give effect thereto. Under sub-rule (4) where a cadre post is

A likely to be filled by a person who is not a cadre officer for a period exceeding six months, the Central Govt. shall report the full facts to the U.P.S.C. with the reasons for holding that no suitable cadre officer is available for filling the post and may in the light of the advice given by the U.P.S.C. give suitable direction to the State Govt. concerned.

B Cadre Rules, thus, enjoins the State Govt. that only a cadre officer should be appointed to a cadre post. Where the cadre officer is not available then, temporary appointments, by operation of Regulation 8 of the Promotion Regulation read with rule 9 of cadre rules, could be resorted to and appointments are made by the State Govt. or its delegates to cope C up with the administrative exigencies, of the select list officers in the order or even among the select list officers dehors the order. When both cadre officers or select list officers are not available, then only non-select list officers could be temporarily appointed. However, it is mandatory that the State Govt. should report forthwith to the Central Govt. together with the reasons to make such appointments. The condition precedent is that the D post shall not last for more than three months; if it exceeds three months then the 'prior concurrence' of the Central Govt. 'is mandatory'. If it lasts more than six months it should be with the consultation of the U.P.S.C., and the Central Govt. should post the UPSC with those facts and should implement the advice so tendered by the UPSC. The State Govt. should E act according to the directions of the Central Govt. The compliance of these steps are mandatory to make temporary appointment legitimate and transitory arrangement a legal one. For violation thereof, the Central Govt. is entitled to give directions to the State Govt. to terminate the service of such temporary officer and the State Govt. should abide by such direction F and give effect to it. The leeway and liberty given to the State Govt. under Regulation 8 of Promotion Regulations read with Rule 9 of cadre rules is only to cope up with administrative exigencies but it became a breeding ground to distort the operation of the Rules which should scrupulously be eschewed and avoided. Any appointment made otherwise than in accordance with Regulation 9 of Promotion Regulations read with rule 9 of G recruitment Rules is thus not a valid regular appointment in the eye of law. Such temporary appointments would be transient and would be apparent when we glean through Seniority Rules as well.

Rule 3(1) of Seniority Rules adumberates that every officer shall be H assigned the year of allotment in accordance with Seniority Rules. Rule

3(3), which is relevant to this case, declares that the year of allotment of an officer appointed to the Service after the seniority rules came into force, shall be as follows:- (i) the year of allotment of a direct recruit officer shall be the year following the year in which competitive examination was held; (proviso omitted) (ii) officer appointed to the Indian Police Service by promotion in accordance with rule 9 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the Service in accordance with rule 7 of these Rules (direct recruit) who officiated continuously in a senior post from a date earlier than the date of the 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 Govt. in consultation with the State Govt. concerned. (Now these rules were amended in 1987 and 1988). *Explanation 1* posits that in respect of an officer appointed to the Service by promotion in accordance with sub-rule (1) of rule 9 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purpose of determination of his seniority count only from the date of the inclusion of his name in the Select List or from the date of his officiating appointment to such senior post whichever is latter (proviso is omitted). The second explanation says that 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". In other words, the officiating period of *ad hoc* promotion would not count towards seniority. The rest of the provisos are not relevant for the purpose of this case. Hence omitted. Rule 4 determines the *inter-se* seniority of officers of Indian Police Service. The seniority of officers *inter-se* should be determined in accordance with the provisions contained in these rules *ad-hoc* by the Central Govt.

It could, thus, be seen that an officer appointed to the Indian Police Service by promotion from State Services to the Central Services in accordance with Rule 9 of the Recruitment Rules read with Promotion Regulation No. 9, his year of allotment is that of the junior most among the direct recruit officers who officiated continuously in a senior post from a date

A earlier than the date of the commencement of such officiation by the former. The continuous officiation of the promotee officers appointed under Rule 9 of the recruitment rules earlier than the date on which the direct recruit officers started officiation, should be determined *ad hoc* by the Central Govt. By operation of *Explanation 1* the period of continuous B officiation of the promotee officer in the senior post for the purpose of determining his seniority should count only from the date of his inclusion in the Select List or from the date of his continuous officiation in such senior post whichever is latter. As a consequence, though the promotee officer continues to officiate earlier to his being brought into the select list, he gets his seniority on his appointment to the senior post from the date C on which he was brought into select list, only from the date of appointment, or continuous officiation without break whichever is latter. The entire preceding officiating period earlier than his being brought on the select list should be treated to be fortuitous. By operation of *Exp.* 2 he counts his continuous officiation in the senior post towards his seniority from the date D of his appointment provided he holds the senior post without any break or reversion otherwise than as a purely temporary or local arrangement.

In *D.R. Nim, I.P.S.* v. *Union of India,* [1967] 2 SCR 325, the appellant was officiating as Superintendent of Police from June, 1947, namely, from the date earlier than the date of any officer recruited by competitive E examination. After the Seniority Rules came into force, he was appointed to the Indian Police Service by promotion in 1955. His name was included in the Select List in 1956. The Central Govt. passed an order that the officer promoted earlier to the rules came into force should be allowed the benefit of their continuous officiation only with effect from May, 1951. It F was challenged in a writ petition and requested to fix his seniority from June, 1947 counting seniority upto May, 1951, contending that the fixation of the date i.e. May, 1951 was artificial and arbitrary and had no nexus. While considering that contention the Constitution Bench held that the Central Govt. must consider the question of approval of the officiation G period and come to an *ad hoc* decision after considering all the relevant circumstances in consultation with the Union Public Service Commission and the State Govt. concerned and fix the year of allotment. Fixing an artificial date without any reference to the relevant facts was held arbitrary. When the appellant started officiating continuously in a senior post from H a date earlier than the date of any direct recruit officer, his allotment has

to be determined *ad hoc* by the Central Govt. The first proviso applied to those facts and not the second proviso to rule 3(3)(b) of the Seniority Rules. His seniority was fixed from 1947. In *State of Orissa & Anr.* v. *B.K. Mohapatra,* [1970] 1 SCR 255, the respondent was appointed as a Deputy Superintendent of Police in the appellant's state in 1947. He was confirmed in 1950 and had continuously officiated in a senior post from 1951 to 1957. His name was included in the select list considering him to be suitable as "fit for trial list" which was approved by the U.P.S.C. on September 6, 1951 for the year 1952 and 1954. On November 10, 1955, the Selection Committee selected and recommended him for officiating appointment as Superintendent of Police. The list was approved on February 10, 1956. On December 1, 1956 the Central Govt. consulted the U.P.S.C. as to whether this list of November 10, 1955 could be treated as the select list under second proviso to Rule 3(3)(b) of Seniority Rules which was negatived by the U.P.S.C. Again on February 15, 1957 the Selection Committee prepared select list for substantive posts in the I.P.S. and included the respondent's name therein. The Central Govt. decided that the continuous officiation in the senior post on the basis of 'fit for trial' list could not be counted for the purpose of determining his seniority. On July 10, 1957 the respondent was appointed to the I.P.S. and on July 22, 1958, the Central Govt. wrote to the State Govt. that the continuous officiation of the respondent was not approved prior to February 10, 1956, namely, the date on which he was included in 'fit for trial' list and on that basis the year of allotment of 1951 was not given to the respondent under rule 3(3)(b) of seniority rules. The respondent filed the writ petition in the High Court contending that since he was included in the select list of the year 1952-54 as approved by the U.P.S.C., the year of allotment should be 1948 which was the year of allotment of a junior most direct recruit and the choice of February 10, 1956 was discriminatory between him and the other officers. This was found favour with the High Court which allowed the writ petition. On appeal, this court by a bench of three Judges allowed the appeal and held that the object of the second proviso to rule 3(3)(b) was to cut down the period of officiation which could be taken into consideration under rule 3(3)(b). The lists of 1951, 1952 and 1954 *were not select lists for the purpose of substantive appointment but only for the purpose of officiation.* Therefore, 'fit for trial' list could not be deemed to be select list. The officiation was not continuous officiation of the officers in the select list. Only from

A February 15, 1957, the date on which he was brought on the select list could be deemed to be in the select list. *The Central Govt. and U.P.S.C. must approve the officiating period.* While considering the effect of *Explanation 1* this court held that '*Explanation 1* really explain the expression "officiating continuously" occurring in rule 3(3)(b) but it does not mean that where B *Explanation 1* applies the second proviso does not apply. *The object of Explanation 1 is to deal with the problem arising in the case of officer holding appointment as a purely temporary or local arrangement.* (emphasis supplied) "If the second proviso applies as we hold, it was for the Central Govt. to approve or not to approve the period of officiation prior to the date of C inclusion of the petitioner in the select list". Accordingly it was held that the respondent was entitled to his continuous officiation only from the date when he was put in the select list, though he had continuous officiation in the senior post for a long period.

In *Anil Kumar Choudhary* v. *State of Assam & Ors.*, [1975] 3 SCR D 878, the petitioner while holding substantive post in Assam Civil Service, Class I, he was included in the select list in the year 1961 and was functioning in the senior post from the year 1960 till he was included in the select list with a gap of one week in 1966. He claimed seniority from 1960 to 1967. Those posts were not declared equivalent to the cadre posts. E Even some of the posts held by the petitioner were superior to the cadre posts. When he was denied continuous officiation, he filed in this court a writ petition under Art. 32. A Bench of two judges held that, though the petitioner held responsible positions *vis-a-vis* cadre posts, "the formal requirements of rule 3(3)(b) are basic to his *claim for pre-dating his entry* F *into the IAS.*" It is a condition precedent that the officiation must be in a post declared as cadre post by the State Govt. with the approval of the Central Govt. The deemed relaxation was negatived holding that the *'Governments speak and act formally and in solemn writing and not informally'.* The approval of the Central Govt. was also held mandatory. It was further held at p.884 that "Another impediment confronting the unfor- G tunate petitioner is that the proviso to Rule 3(3)(b) requires not merely the State Government's decision regarding the posts being equal to cadre post but such officiation must be with the approval of the Central Govt.; none such is forthcoming. And, indeed, the absence of such approval is the stand of the Central Govt.". Accordingly the writ petition was dismissed. H In *R.P. Khanna & Ors.*, v. *S.A.F. Abbas & Ors. etc.*, [1972] 3 SCR 548, the

appellants were direct recruits and the respondents were promotees. The direct recruits were appointed to the IAS in the year 1949-50. The promotees were initially promoted to the IAS in the year 1955-56. In fixing their *inter se* seniority in terms of seniority rules, the Govt. of India allotted 1948 to the promotees as the year of allotment and placed them below the junior most among the direct recruits of the year 1948. On the representation of the direct recruits that the State Govt. had no power to create cadre post retrospectively and the year of allotment to the promotee was wrong, in September 20, 1967, the Central Govt. tentatively revised the year of allotment and allotted 1950 to some and 1952 to others as year of allotment. That was challenged in the High Court by the promotees and succeeded. On appeal, a 3 Judge Bench of this court held that as per rule 3(3)(b) of IAS. Regulation of Seniority Rules, 1954, the year of allotment of an officer who was appointed to the service by promotion shall be the year of allotment of the junior most among the officer who entered the service by direct recruitment and who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the promotee. The second proviso to the rule laid down that the promotee shall be deemed to have officiated continuously in the senior post prior to the date of inclusion of his name in the select list.

The select list for the promotion of the respondents was finally approved by the U.P.S.C. on December 26, 1955. Rule 3(3)(b) of the Seniority Rules, 1954 speakes of approval by the Central Govt. in consultation with the U.P.S.C. of the period of the offication prior to the date of the inclusion of the names of the promotees in the select list. This 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 is approval of the period of officiation prior to the inclusion of the names in the select list. The Central Govt. did not give any approval in consultation with the U.P.S.C. under rule 3(3)(b).* (emphasis supplied). Therefore, the benefit of the period of officiation prior to the date of the inclusion of their names in the select list was not available. This court further held that "the harmonious construction of the definition of senior post occurring in the 1954 Cadre Rules along with rule 3(3)(b) of the Regulation of Seniority Rules is that promotee will by a legal fiction, obtain advantage of the period of officiation first by the declaration and second by the approval of the Central Govt. in consultation with the U.P.S.C. It is not the declaration but the

A approval which introduced the legal fiction". Construing the *Explanation 1,* this court held that 'the explanation states that in respect of a promotee the period of continuous officiation in a senior post shall, for the purpose of determination of his seniority, is only from the date of the inclusion of his name in the select list, or from the date of his officiating appointment B to such senior post whichever is latter." In *Amrik Singh & Ors.,* v. *Union of India & Ors.,* [1980] 3 SCR 485. Sri Ahluwalia, 4th respondent therein became a Deputy Superintendent of Police by the end of 1956. In 1962 the Central Govt. constituted a common police service for the Union Territory of Delhi and Himachal Pradesh and in 1964 he was absorbed into that C service on a regular basis. In the absence of any direct recruit Sri Ahluwalia was promoted as Superintendent of Police. In 1965 the select list was prepared and he was appointed in October 1965 as Superintendent of Police and he continued to officiate till January, 1971 and he was appointed substantively on January 30, 1971 as Superintendent of Police and was D confirmed. He was given 1965 as the year of allotment on the ground that one Mr. Sahney another promotee officer who was senior to him in the select list was posted to an ex-cadre post, Mr. Ahluwalia contended that he is entitled to 1961 as the year of allotment. The High Court accepted the contention and allowed the writ petition. While dismissing the appeal this court held that the effect of Rule 9 of the Indian Police Service (Cadre) E Rules, 1954 is that, when the cadre post was vacant and no cadre officer was available, a non-cadre officer may fill the vacancy for a period beyond three months if the State Govt. reports to the Central Govt. the reasons therefor and if it was not ordered to be terminated, the Central Govt may permit a non-cadre officer to fill a cadre post for a period exceeding six F months provided that it reports the full facts to the U.P.S.C. and acts responsibly in the light of the advice of the Commission. If no such report by the State Govt. to the Central Govt. was sent and no consultation by the Central Govt. with the Commission was done, by-passing the Public Service Commission be speaks *prima facie* impropriety. In that case there was an G express order passed under rule 3 of the Residuary Rules giving the benefit of 1961 year of allotment to Ahluwalia with the consultation of the U.P.S.C. It was an individual case between two promotees. The ratio reiterates the mandatory duty to comply with the Seniority Rules.

H In *Union of India, etc.* v. *G.N. Tiwari, K.L. Jain & Ors.,* [1985] Suppl.

3 SCR 744, relied on by the Tribunals and by the respondents, the respondent was temporarily appointed to the cadre post (post of Collector) and had continuously officiated from November 10, 1975 till the Central Govt. accorded its approval on October 1, 1976. The promotion was according to the rules and within the quota and no one either direct recruit or promotee officer had been effected. He was appointed to the Indian Administrative Service on Dec. 7, 1976 and was informed that his year of allotment was 1972. He challenged it and contended that his year of allotment should be 1971 and claimed to fix his seniority accordingly. The High Court allowed the writ petition. This court while allowing the appeal held that where a cadre post was likely to be filled by a person who was not a cadre officer for a period exceeding six months, the Central Govt. was required to report the full facts to the U.P.S.C. with the reasons for holding that no suitable officer was available to man the post and may, and in the light of the advice given by the U.P.S.C., give suitable directions to the State Govt concerned in that behalf. At p. 755 this Court held that "where a person other than a cadre officer was appointed to the Service by promotion in accordance with sub-r.(1) of rule 8 of the Recruitment Rules, the year of allotment of the junior-most amongst the officers recruited to the Service in accordance with rule 7 of the Rules who officiated continuously in a senior post from a date earlier than the commencement of such officiation by the promotee, is the determinative factor in the allocation of the year of allotment under rule 3(3)(b) of the Seniority Rules." At p.756 this Court further held that *Explanation 1* to rule 3(3)(b) interdicts that in respect of an officer appointed to the Service by promotion in accordance with sub-r.(1) of rule 8 of the Recruitment Rules, the period of his continuous officiating in a senior post shall, for purposes of determination of his seniority, count only from the date of his inclusion in the select list or from the date of his officiating appointment to such senior post, whichever is later. The second explanation provided that an officer shall be deemed to have officiated continuously in a senior post from a certain date if during the period from the date of his appointment till the date of his confirmation in the senior post he continued to hold without any break or reversion from the seniorpost otherwise than as a purely temporary or local arrangement. In that case since no one was effected by the continuous officiation by the non-cadre officer, this court drew fiction of the deemed approval by the Central Govt. For from helping the promotees the ratio does assist the appellants.

A B C D E F G H

A Thus it is settled law that a promotee Officer appointed temporarily under Regulation 8 of Promotion Regulation and Rule 9 of cadre Rules to a cadre post does not gets his/her continuous officiation towards seniority. Seniority would be counted only from the date on which he/she was brought into the select list by the selection committee in accordance with
B Recruitment Rules, Promotions, Regulations and seniority Rules and was approved by the UPSC, appointed under Rule 9 of Recruitment Rules and regulation 9 of Promotion Regulations and Rules has continuously officiated without break. Seniority would be entitled from the date of select list or continuous officiation whichever is later. He/she is entitled to appointment by the Central Govt. to substantive vacancy under Regulation
C 9 of Promotion Regulations from that date. The Central Govt. and the U.P.S.C. should approve temporary appointment by an order in writing and also of such officiation. In that event seniority would be counted only from the date, either of his/her inclusion in the select list or from the date of officiating appointment to the cadre post whichever is latter. By operation
D of *Explanation 1* to rule 3(3)(b) of the Seniority Rules his seniority will be counted only from either of the latter dates and the necessary effect is that the entire previous period of officiation should be rendered fortuitous and the appointment as *ad-hoc* appointment or by local arrangement.

The question then emerges as to when the promotees stood ap-
E pointed to the cadre/Senior posts? The learned counsel Sri Jain contends that due to inaction in preparing the select lists for the years 1971, 1974 and 1975 and later 1979 & 1980 the promotees lost their right to inclusion in the select list and that, therefore, rules 5 and 9 of the Recruitment Rules read with rule 3(3)(b) of the Seniority Rules have been broken down and
F the Central Govt. must be deemed to have relaxed the above rules by deemed exercise of its power under rule 3 of the Residuary Rules. In this context he argues that the seniority, being a condition of the service, could be relaxed.

G Preparation of the select list as per promotion Regulations is a pre-condition for recruitment by promotion. The State Govt. is enjoined to send the select list to the UPSC, which after considering the objections, if any, of the Central Govt. and the State Govt. and the views of the Committee, would approve the list with such modifications as it may be deemed just and proper. The Central Govt. makes appointment of the promotee
H officer to the I.P. service in strict conformity with Rule 9 of Recruitment

Rules and regulation 9 of Promotion Regulations in the order of merit and in no case the quota of 33-1/3 per cent to the promotees should be exceeded. The year of allotment under Rule 3 of Seniority Rules to every officer of the I.P.S. is mandatory. In order to get into the select list, the promotee officer has to fulfil the conditions of the rules of recruitment and Promotion Regulations i.e. he must be brought into the select list satisfying the conditions specified therein and the Seniority Rules. As per Recruitment Rules, merit, ability and suitability are the criteria and seniority will be considered only where merit and suitability are approximately equal. Integrity, ability and record of service would furnish the ground to assess the merit of the promotee officer to assign the ranking *inter-se* in the list and appointment by Central Govt. should be in the order as approved by the UPSC and recommended by the State Govt. Bringing the name on the list does not confer any right to automatic appointment. The appointment should be made to a substantive vacancy within the quota in the order in the select list unless the predecessor promotee officer in the list opts to forgo the same. Seniority rules thus provide the source or foundation upon which the whole edifice of Indian Police Service has been built upon to assign the year of allotment. The scheme of the Rules and Regulations is an integral and continuous whole and any snap in the link would lead to distortion and land up in imbalance in the ratio and upset the smooth working of the scheme frustrating the national integration, the object of the All India Service Act. Moreover, the recruitment by selection would give only right to be considered according to rule and creates no right to appointment. The order of appointment by the Central Govt. under Rule 9 of Recruitment rules crystalises the right of a promotee officer into the service. Seniority would be counted only from date of select list or the date of continuous officiation after appointment whichever is later.

Rule 3(1) & 3(3)(b) of Seniority Rules, lays down the criteria for assigning the year of allotment that where an Officer has been appointed to the service by promotion under Rule 9 of the Recruitment Rules, his seniority would be determined in the light of *Explanations 1* and 2 thereof. The year of allotment is that of the junior most among the direct recruit officers to the Service in accordance with rule 7 of the Recruitment Rules who has officiated continuously in a senior post from a date earlier than the date of commencement of the officiation by the promotee officer. The concomitant result is that the determination of the seniority has been inter linked with the recruitment of the promotee officer to the Indian Police

A Service. To satisfactorily solve the problem the Recruitment Rules, Promotion Regulations and Seniority Rules *vis-a-vis* the Cadre Rules should be read together.

Due to exigencies of the service, the State Govt. has been empowered under regulation 8 of Promotion Regulations read with rule 9 of cadre rules B to appoint select list or non-select officers to man temporary vacancies in cadre posts. So long as cadre officer is available, he/she alone is to be posted to a senior cadre post. In his/her absence the select list officer awaiting promotion, must be appointed in the order found in the list. It must be the rule and deviation must be for exceptional reasons and C circumstances. Where either the cadre officers or select list officers are not available, then only non-select list officers may be promoted to temporary vacancies which should not be likely to last for more than three months and the State Govt. must strictly comply with the conditions specified in the provisos to regulation 8(2) of Promotion Regulations and Rule 9 of cadre rules. In other words, where the vacancy/vacancies continue for more D than three months, the prior concurrence of the Central Government is mandatory. If it continues for more than six months prior approval of the Union Public Service Commission is also mandatory. Any appointment in violation thereof is not an appointment in accordance with the law. These appointments are mere *ad-hoc* or local arrangement or fortuitous.

E

The question at once arises whether persons appointed under Regulation 8 of promotion Regulation read with Rule 9 of cadre rules would be entitled to count the entire officiating period in the cadre post and if so from what period and to what extent. In *Direct Recruit Class II* F *Engineering Officers' Association & Ors.* v. *State of Maharashtra & Ors.*, [1990] 2 SCR 900, the Constitution Bench held in proposition 'A' that once any one is appointed to a post according to rules his seniority has to be counted from the date of his appointment and not according to the date of confirmation. A corolary of the above rule is that where initial appointment is *ad-hoc* and not according to rules and made as stop-gap arrange- G ment, the officiation in such post cannot be taken into account for considering seniority. Proposition 'B' lays down that if the initial appointment was not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till regularisation of his service the period of officiating service will be counted towards seniority. H The contention raised by the promotees in that case was that since they

were appointed according to rules and had been uninterruptedly officiating in the posts till regularisation they were entitled to count their temporary service towards seniority. On those facts, the Constitution Bench held that the initial appointments were according to rules, and the promotees were entitled to seniority from the date of initial promotion. The propositions should be understood and applied in the light of the facts in each case. Propositions 'A' and 'B' must be read together in the light of the discussion in Paragraph 13 of the judgment.

In *K.C. Joshi* v. *Union of India,* [1992] Suppl. 1 SCC 272, it was held that the Forest Range Officers were not appointed as Asstt. Conservators of Forest as per the Rules and that, therefore, the entire continuous officiating period was not counted towards seniority. The same view was reiterated in *A.N. Sehgal & Ors.,* v. *Raje Ram Sheoran & Ors.,* [1992] Suppl. 1 SCC 304. In that case also contrary to and in excess of the quota rule, the promotions were made and the services of some officers were also regularised. This court held that the appointment to the post according to rules and within the quota was mandatory. The continuous officiation or confirmation would not enure to the benefit of the promotee officers appointed in excess of the quota. In *Masood Akhtar Khan & Ors.,* v. *State of Madhya Pradesh & Ors.,* [1990] 4 SCC 24 it was held that if the initial appointment is not according to rules, the benefit of continuous officiation will not be given.

We find force in the contention of Sri P.P. Rao that unless the promotees were recruited to the Indian Police Service in accordance with the regulations and rules they did not form a class with the direct recruits and unequals cannot be treated as equals. Recruitment to the service is from more than two sources, primarily from direct recruitment and promotion. Unless the promotee officer is appointed to the service in accordance with the rules, he does not become a member of the service. On appointment under Rule 9 of the Recruitment rules to a substantive vacancy from the select list by the Central Govt. the promotee officer becomes a member of the service. But whereas appointment under regulation 8 of promotion regulation is in disregard of the rules to cope up with the administrative expediency, be it to a temporary or substantive vacancy, an appointee under Regulation 8 read with Rule 9 of cadre rules is an unequal to a direct recruit or one under Regulation 9 of Promotion Regulation read with Rule 9 of Recruitment Rules. So unequals cannot be treated as equals offending

A Art. 14 and 16(1) of the Constitution. Mere production of inequality by operation of the rule is not sufficient to treat an appointee under Regulation 8 of Promotion Regulation at par with one under Direct Recruitment or one under rule 9 of Recruitment Rule and Regulation 9 of Promotion Regulations. Getting qualified earlier in point of time or passing the B prescribed tests does not by itself clothe with a right to promotion or entitle to seniority. It would arise only after the select list was prepared on comparative evaluation of the record and assessment of merit, ability and suitability and fixation of *inter se* seniority was made and approved by the UPSC followed by or preceded with an order of appointment under Regulation 9 of Promotion Regulations and Rule 9 of Recruitment Rules. C Persons similarly circumstanced alone are entitled to equal treatment. The rule making authority or the legislature take into consideration diverse factors to integrate into common cadre the incumbents drawn from different sources. They have better knowledge to adjust those appointees to integrate them into common cadre. Until the officers are appointed to the D Indian Police Service in accordance with the recruitment rules and Promotion Regulations, they remain a separate source and a distinct class. Only on due appointment after their fusion into common stream or cadre, there cannot be any invidious discrimination thereafter between the promotees and the direct recruits. The direct recruits and promotees/officers constitute, thus, different classes. Conditions of recruitment should strictly be E complied with in making recruitment by promotion of the Dy. S.P. from a State Police Service holding substantive posts into the Indian Police Service. Any appointment in contravention thereof would negate the scheme of the rules and regulations.

F Fulfilling the conditions of eligibility for consideration for promotion to the Indian Police Service from State Service are conditions of recruitment. Once a promotee has duly been recruited by promotion the conditions thereafter like pay, pension etc. are conditions of service. The compliance of conditions of recruitment are mandatory for appointment by promotion. In *Keshav Chandra Joshi's* case (Supra), the writ petitioners G were Forest Range Officers in U.P. State Forest Subordinate Service. Due to paucity of direct recruit Asstt. Conservators of Forest by the U.P.S.C. the Forest Range officers were temporarily promoted and they continued to officiate as Asstt. Conservators of Forest for a period ranging between 5 to 12 years. They filed a writ petition under Art. 32 contending that they H became senior to the direct recruits who were recruited later on and that

their continuous officiation should be counted towards their seniority. This Court, while repelling the contention, held that appointment to the post in accordance with the rules is a pre-condition and the conditions of rules of recruitment cannot be relaxed and that the promotees get their seniority only from the date of the regular promotion in accordance with the rules and within quota. The entire officiating period was held to be fortuitous. It must, therefore, be held that recruitment by promotion in accordance with the Regulation and Rules are conditions of Recruitment and are mandatory and should be complied with.

The next question is whether the seniority is a condition of service or a part of rules of recruitment? In *State of M.P. & Ors.*, v. *Shardul Singh,* [1970] 3 SCR 302, this Court held that conditions of service means all those conditions which regulate the holding of a post by a person right *from the time of his appointment* (emphasis Supplied) to his retirement and even beyond, in matters like pensions etc. In *I.N. Subba Reddy* v. *Andhra University & Ors.*, [1976] 3 SCR 1013, the same view was reiterated. In *Mohd. Shujat Ali & Ors., etc.* v. *Union of India & Ors., etc.,* [1975] 1 SCR 449 at 468, Constitution Bench held that the rule which confers a right to actual promotion or a right to be considered for promotion is a rule prescribing a condition of the service. In *Mohd. Bhakar* v. *Krishna Reddy,* 1970 S.L.R. 768, another Constitution Bench held that any rule which affects the promotion of a person relates to his condition of service. In *State of Mysore* v. *G.B. Purohit,* C.A. No. 2281 of 1965 dt. 25.1.1967, this Court held that a rule which merely effects chances of promotion cannot be regarded as varying a condition of service. Chances of promotion are not conditions of service. The same view was reiterated in another Constitution Bench judgment in *Ramchandra Shankar Deodhar & Ors.*, v. *The State of Maharashtra,* W.P. No. 299 of 1969 dt. Nov. 12, 1973. No doubt conditions of service may be classified as salary, confirmation, promotion, seniority, tenure or termination of service etc. as held in *State of Punjab* v. *Kailash Nath,* [1989] 1 SCC 321, by a bench of two Judges. But it must be noted the context in which the law therein was laid. The question therein was whether non-prosecution for a grave offence after expiry of four years is a condition of service? While negativing the contention that non-prosecution after expiry of 4 years is not a condition of service, this Court elaborated the subject and the above view was taken. The ratio therein does not have any bearing on the point in issue. Perhaps the question may bear relevance, if an employee was initially recruited into the service according to the Rules

A and Promotion was regulated in the same rules to higher echolons of service. In that arena promotion may be considered to be a condition of service. In *A.K. Bhatnagar* v. *Union of India,* [1991] 1 SCC 544 at 548, this court held that seniority in an incidence of service and where the service rules prescribe the method of its computation it is squarely governed by such rules. In their absence ordinarily the length of service is taken into B account. In that case the direct recruits were made senior to the recruits by regularisation although the appellants were appointed earlier in point of time and uninterruptedly remained in service as temporary appointees alongwith the appellant but later on when recruited by direct recruitment they were held senior to the promotees.

C

No employee has a right to promotion but he has only right to be considered for promotion according to rules. Chances of promotion are not conditions of service and are defeasible. Take an illustration that the Promotion Regulations envisage maintaining integrity and good record by D Dy. S.P. of State Police Service as eligibility condition for inclusion in the select list for recruitment by promotion to Indian Police Service. Inclusion and approval of the name in the select list by the U.P.S.C., after considering the objections if any by the Central Govt. is also a condition precedent. Suppose if 'B', is far junior to 'A' in State Services and 'B' was found more meritorious and suitable and was put in a select list of 1980 and accordingly E 'B' was appointed to the Indian Police Service after following the procedure. 'A' was thereby superseded by 'B'. Two years later 'A' was found fit and suitable in 1984 and was accordingly appointed according to rules. Can 'A' thereafter say that 'B' being far junior to him in State Service, 'A' should become senior to 'B' in the Indian Police Service. The answer is obviously F no because 'B' had stolen a march over 'A' and became senior to 'A'. Here maintaining integrity and good record are conditions of recruitment and seniority is an incidence of service. Take another illustration that the State Service provides rule of reservation to the Scheduled Castes and Scheduled Tribes. 'A' is a general candidate holding No. 1 rank according to the roster as he was most meritorious in the State service among general candidates. G 'B', Scheduled Castes candidate holds No. 3 point in the roster and 'C', Scheduled Tribe holds No. 5 in the roster. Suppose Indian Police Service Recruitment Rules also provides reservation to the Scheduled Castes and Scheduled Tribes as well. By operation of the equality of opportunity by Arts. 14, 16(1), 16(4) and 335 'B' & 'C' were recruited by promotion from H State Services to Central Services and were appointed earlier to 'A' in 1980.

'A', thereafter in the next year was found suitable as a general candidate and was appointed to the Indian Police Service. Candidate thereafter contend that since 'B' & 'C' were appointed by virtue of the reservation, though were less meritorious and juniors to him in the State service and gradation list would not become seniors to him in the cadre as IPS Officer. Undoubtedly 'B' & 'C' by rule of reservation, had stolen a march over 'A' from the State Service. By operation of rule of reservation 'B' and 'C' became Seniors and 'A' became junior in the Central Services. Reservation and roster were conditions of recruitment and seniority was only an incidence of service. The eligibility for recruitment to the Indian Police Service, thus, is a condition of the recruitment and not a condition of service. Accordingly we hold that seniority, though, normally an incidence to service, Seniority Rules, Recruitment Rules and Promotion Regulations form part of the conditions of recruitment to the Indian Police Service by promotion, which should be strictly complied with before becoming eligible for consideration for promotion and are not relaxable.

The next question is whether rule 3(3)(b) of the seniority rules and regulation 5 of Promotion Regulation had collapsed. In support thereof strong reliance was placed by the counsel for promotees on the ratio in *Narender Chadha & Ors.*, v. *Union of India & Ors.*, [1986] 1 SCR 211, The facts therein were that for the Indian Economics and Statistics Service there are two modes of recruitment, namely, direct recruitment and promotion from feeder source. The petitioners therein were promotees from Grade IV service and for well over 15 to 20 years there was no direct recruitment. The promotees continued in the promoted posts, though on *ad-hoc* basis, without reversion. When the later direct recruits claimed seniority over them, this Court in Contempt proceedings to relieve the inequitious results, held that since the recruitment rules given power to the Central Govt. to relax the condition of service, the rule must be deemed to have been relaxed and promotees deemed to have been appointed to the post in accordance with the rules.

Rule 3 of the Residuary Rules provides the power to relax rules and regulations in certain cases - Where the Central Govt. is satisfied that the operation of - (i) any rule made or deemed to have been made under the Act, or (ii) any regulation made under any such rule, regulating the conditions of service of persons appointed to an All India Service "causes undue hardship in any particular case", it may, by order, dispense with or

A relax the requirements of that rule or regulation, as the case may be, to such an extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a "just and equitable manner". Rule 3 empowers the Central Govt. to relieve undue hardship occurred due to unforseen or unmeritted circumstances. The Central Govt. must be satisfied that the operation of the rule or regulation brought about B undue hardship to an officer. The condition precedent, therefore, is that there should be an appointment to the service in accordance with rules and by operation of the rule, undue hardship has been caused, that too in an individual case. the Central Govt. on its satisfaction of those conditions, have been empowered to relieve such undue hardship by exercising the C power to relax the condition. It is already held that conditions of recruitment and conditions of service are distinct and the latter is preceded by an appointment according to Rules. The former cannot be relaxed. The latter too must be in writing that too with the consultation of U.P.S.C. In *Mahapatra* and *Khanna* cases this Court held that approval by the Central D Govt. and U.P.S.C. are mandatory. In *A.K. Chaudhary's* case it was held that requirement of rule 3(3)(b) of Seniority Rules is mandatory. In *Amrik Singh's* case an express order in writing under Rule 3 of Residuary rule is mandatory. In this case neither any representation to relax the rules was made nor any order in writing in this behalf was expressly passed by the Central Govt. The fiction of deeming relaxation would emasculate the E operation of the Rules and Regulations and be fraught with grave imbalances and chain reaction. It is, therefore, difficult to accept the contention that there would be deemed relaxation of the Rules and Regulations.

It is next contended that by non-preparation of the select list, the F promotees had lost their chances of promotion to get into super time scales of pay and so on. Preparation of the annual seniority list is, therefore, mandatory and that by its non-preparation the rules have been collapsed. The argument *ex-facie* is alluring but lost validity on close scrutiny. The contention bears two facets: firstly preparation of the seniority list and G secondly the consequences that flow from the omission to prepare the seniority list. It is already held that the committee shall prepare the seniority list every year and be reviewed and revised from time to time taking into account the expected or anticipated vacancies during the year plus 20 per cent or two vacancies whichever is more. It is already held that wide distinction exists between appointment by direct recruitment and one H under Regulation 9 of Promotion regulation and Rule 9 of Recruitment

Rules on the one hand and under Regulation 8 thereof read with rule 9 of cadre rules on the other hand. Their consequences are also distinct and operate in different areas. Prior approval of the Union Public Service Commission and prior concurrence of the Central Govt. are mandatory for continuance of temporary appointment under Regulation 8 beyond six months and three months respectively together with prompt report sent by the State Govt. supported by reasons therefore. In their absence it is not a valid appointment in the eye of law. Unless an officer is brought on the select list and appointed to a senior cadre post and continuously officiated thereon he does not acquire right to assignment of the year of allotment Eligibility age for consideration was only upto 52 years and presently 54 years. If the list was not prepared though for the succeeding year the age barred officers may be considered but were made to compete with junior officers who may eliminate the senior officer from the zone of consideration. Suppose in 1980 the senior officer was not qualified though the list was made, but in 1981 he could improve and become eligible. Non-preparation of the select list for 1980 disables the officer to improve the chances. In *Sehgal's* case, this Court held that chances of promotion and the aspiration to reach higher echolons of service would enthuse a member of the service to dedicate himself assiduously to the service with deligence, exhigiting expertise, straight forwardness with missionary zeal, self-confidence, honesty and integrity. The absence of chances of promotion would generate frustration and an officer would tend to become corrupt, slowen and a mediocre. Equal opportunity is a fertile resource to augment efficiency of the service. Equal chances of promotion to the direct recruits and the promotees would produce harmony with accountability to proper implementation of government policies. Unless the select list is made annually and reviewed and revised from time to time, the promoted officers would stand to lose their chances of consideration for promotion which would be a legitimate expectation. This Court in *Mohan Lal Capoor's* case held that the committee shall prepare every year the select list and the list must be submitted to the U.P.S.C. by the State Govt. for approval and thereafter appointment shall be made in accordance with the rules. We have, therefore, no hesitation to hold that preparation of the select list every year is mandatory. It would subserve the object of the Act and the rules and afford an equal opportunity to the promotee officers to reach higher echolons of the service. The dereliction of the statutory duty must satisfactorily be accounted for by the State Govt. concerned and this court takes serious note of wanton infraction.

A The question then is whether the failure to prepare the select list could give rise to an inference that rules have been collapsed and the State Govt's local arrangement shall be given legitimacy as regular appointments? After giving our anxious consideration to the end resultants, we find it hard to accept the contention. The reasons are manifold. The B appointment by promotion to the Indian Police Service and as a fact to any All India Service and determination of *inter se* seniority bear vital effect at the higher echolons of super time scale of pay and the above. The State Govt. and the Central Govt. should strictly comply with the provisions in making recruitment by promotion from the State Service to the All India Services. If laxity has been given legitimacy and deemed relaxation is C extended it would not only upset smooth working of the rules but also undo the prescribed ratio between promotees officers and direct recruits. It would also produce adverse effect at the All India level. Moreover, the concept of All India Services introduced to effectuate the national integration by drawing persons from different regions by direct recruitment into D concerned States cadres would be dereated by manipulation National integration would be disturbed and frustrated. Smooth implementation of the rules would be deflected and distortions in service would gain legitimacy and acceptability. While the Central Govt. remain statutory appointing authority the State Govt. gets into saddle and would become *de facto* appointing authority. the junior most and unqualified or unfit would E be pushed in from back door and pumped up into higher echolons, eroding efficiency and honesty. We, therefore, hold that for failure to prepare select list every year, rule 3(3)(b) of the Seniority Rule, Rules 5 and 9 of Recruitment Rules and Regulation 9 of Promotion Regulations have not been broken down and the appointment by local arrangement by the State F Govt. under Regulation 8 of the Promotion Regulations and Rule 9 of Cadre Rules are not valid and legal. The promotee officers are not entitled to count their whole officiating period towards their seniority.

Of course Sri Harish N. Salve contended that the promotees were not unduly favoured by the State Govt. On the facts we need not go into G that question. This Court, pending appeals, directed the State Govt. to prepare the select list on notional basis for the years 1971, 1975, 1976, 1979 and 1980 and to consider the eligibility of the officers as per rule and to submit the report to this court which lists were accordingly prepared and kept in this court. The promotees questioned their correctness. Since it is H a matter of factual verification by the State, the Central Govt. and U.P.S.C.,

this Court cannot undertake to review their legality. Therefore, the handicap, if any, suffered by promotees for that limited periods has now been made good and subject to further verification into the grievance, if any, is now redressed. The special grade posts were created in the scale of pay of the cadre posts held by the promotees. It is seen that under the cadre rules the Central Govt. in consultation with the State Govt. creates the cadre posts and the State Govt. merely recommends. The State Govt. cannot, on its own, create cadre posts and that is not the case on hand. The special grade posts enabled the promotees to remain as Deputy Superintendent of Police drawing the pay, equal to the cadre posts but to no other benefit and they did not cease to be Dy. Superintendent of Police as contended by Sri Gupta.

We accordingly hold that majority members committed the gravest of errors in holding that *Explanation 1* to rule 3(3)(b) of Seniority Rules and the relevant rules were deemed to have been relaxed and the directions given to the Central Govt. to refix the seniority is illegal. However, we emphasise that many of the promotees have since been retired from service after working out notional promotion and monetary benefits, as this Court did not stay the operation of the Tribunal's order. Arrears paid should not be recovered from them and promotions already made to some of the promotees and now continuing in the respective offices may not also be recalled since they have been working for some time past. However, the continuing officers should not be entitled to any future promotions on the basis of the directions of the Tribunal, superseding the claims of the direct recruits until they became eligible in their turn as per this judgment. The Registry is directed to return the seniority lists produced by the State Govt., which would give notice to the promotees who were included in the notional list of their *inter se* placement of the respective years 1971, 1975, 1976, 1979 and 1980 directing them to submit within a specified time their objections, if any, and the State Govt. would send the list, the objections if made all relevant record to the U.P.S.C. marking copies thereof to the Central Govt. The Central Govt. would submit their comments to the U.P.S.C. which would consider them any may accept or modify the list as per the record and would communicate to the Central Govt. and State Govts. Thereafter the Central Govt. would make necessary appointments on the recommendation by the State Govts. as per law. The seniority list already approved by the Central Govt. as directed by this Court in the first instance subject to the above modification and for the rest of the years

A would stand upheld and the Civil Appeals to that extent are allowed and O.As. stand dismissed. For others the respective years of allotment shall accordingly be assigned. The appeals are accordingly allowed with above directions. The Writ Petition is against interim directions of this Court. Pending appeal. It is not maintainable. It is accordingly dismissed. The I.A. Nos. 1 to 10/91 and C.P. No. 191 of 1991 are dismissed. The directions B given by the respective tribunals stand modified. In the circumstances parties would bear their respective costs throughout.

G.N. Appeals allowed.
Petition dismissed.