

(1980) 04 SC CK 0010

In the Supreme Court Of India

Case No : Civil Appeal No. 2112 of 1979

Amrik Singh and Ors

APPELLANT

Vs

Union of India and Ors

RESPONDENT

Date of Decision : 11-04-1980

Acts Referred:

All India Services (Conditions of Service Residuary Matters) Rules, 1960 — Rule 3
Police Service (Cadre) Rules, 1954 — Rule 9
Regulation of Seniority Rules, 1954 — Rule 3(3)

Citation : AIR 1980 SC 1447 : (1980) LabIC 735 : (1980) 3 SCC 393 : (1980) 3 SCR 485

Hon'ble Judges : V. R. Krishna Iyer, J;O. Chinnappa Reddy, J

Bench : Division Bench

Advocate : R.K. Garg and B.P.Singh, for the Appellant; V.M. Tarkunde, Public Prosecutor Juneja and Mukul Mudgal, for the Respondent

Final Decision : Dismissed

Judgement

V.R. Krishna Iyer, J.—Competitive claims to seniority, dependent on the year of allotment in the Indian Police Service, fall for consideration in this appeal by special leave. We have expedited the hearing of the case since keeping officers in an unsettled state may be a factor which impairs their efficiency.

2. One Shri Ahluwalia, a senior member of the Indian Police Service, sought to quash the decision of the Union of India dated 26-6-1976, whereby his year of allotment was fixed as 1965. According to his case, the correct year of allotment should have been 1961. If his plea were granted, the present appellants would be affected by being made junior to him. The rival contentions revolve round a few facts, which we will set out, and a few rules framed under the All India Services Act, 1951, which we will construe. First a rush through the relevant calendar of dates. Concerned, as we are, with the year of allotment of Shri Ahluwalia (respondent No. 4), let us focus on the chronology of events with special reference to him. If his claim were untenable, the appeal must be allowed

and vice-versa.

3. The 4th respondent (Ahluwalia) became a Deputy Superintendent of Police in Himachal Pradesh (which was then a Union Territory) by the end of 1956. In 1962, the Central Government constituted a common police service for the Union Territory of Delhi and Himachal Pradesh called the Delhi and Himachal Pradesh Police Service; and later, in 1964, respondent No. 4 was absorbed into that service on a regular basis. The usual avenue of promotion for a Deputy Superintendent of Police is the post of Superintendent of Police, but Superintendents of Police are borne on the cadre of the Indian Police Service and the exercise which results in the inclusion in the Indian Police Service is governed by the Indian Police Service (Appointment by Promotion) Regulations, 1955 framed u/s 3(4) of the All India Services Act, 1951. The first step is to prepare a Select List from among eligible officers of the State concerned, in the present case, the Union Territories of Delhi and Himachal Pradesh. Sometimes, it happens that although the post of a Superintendent of Police is a cadre post, if no hands are readily available for being posted from the I.P.S. Deputy Superintendent of Police from the Select List is promoted provisionally subject to certain formalities which we will presently consider. The 4th respondent (Ahluwalia) was brought into the Select List in 1965 and later appointed Superintendent of Police in October, 1965 and he worked as Superintendent of Police in one place or other, until December, 1967, and, even thereafter, he continued as Superintendent of Police right down to January 1971 when on. January 30, 1971, he was appointed to the I.P.S. and confirmed as such. The year of allotment was fixed as 1965 but the 4th respondent had a case that the law and justice of the case entitled him to 1961 as year of allotment. So he challenged the Order of the Central Government allotting him the year 1965. The High Court considered the matter with reference to the relevant rules and came to the conclusion that there was merit in the 4th respondent's contention. (He was the petitioner before the High Court). The learned Judges wound up thus :

It is, therefore, evident that the period of officiation of the petitioner during 1-8-1968 to 12-10-1969 could not be considered to be invalid or irregular on any such ground.

We, therefore, conclude that the Government of India wrongly decided that the officiation of the petitioner between the period 1-1-1968- and 12-1-1971 or during the period 1-8-1968 to 12-10-69 could not be considered valid officiation. Rather he was continuously holding a cadre post throughout this period, and the benefit regarding seniority will have to be given for the entire period. The decision being wrong and invalid under the very Rules and Regulations applied by the Government, was subsequently set right by them under Annexure-Y.

The upshot of all that we have stated above is that the petitioner shall be given the benefit of his continuous officiation against a senior post of the entire period from 11-11-1965 to the date of his appointment in the Indian Police Service his year of allotment shall be determined Under Rule 3(3)(b) of the Seniority Rules

keeping in view that he started his continuous officiation from 11-11-1965. In consequence, Annexure-N is quashed to the extent the said Annexure held a view contrary to our decision. It is declared that the petitioner continued and should be deemed to have continued to officiate on a senior duty post of the Indian Police Service with effect from 11-11-65 without any break up to his confirmation in the Indian Police Service. The petitioner's seniority shall be determined accordingly and all consequential benefits of seniority shall be granted to him by the respondents Nos. 1 and 2. The respondent No. 1 shall determine the seniority of the Petitioner in accordance with our observations made above within three months.

4. The Central Government reconsidered the matter even earlier, and, by its Order dated 27-7-1979, refixed the seniority of the 4th respondent by assigning 1961 as his year of allotment. Aggrieved by this development, the appellants have come to this court and contested the reasoning and conclusion of the High Court.

5. A few more facts about the career of the 4th respondent and the developments in the Indian Police service may be narrated before we set out and consider Rules and Regulations and their implications. The 4th respondent Ahluwalia, as stated earlier, was Superintendent of Police from 1965 to 1967, followed by a short period of earned leave, which ended on 25-3-68. From March 26, 1968 he again continued as Superintendent of Police. Meanwhile, an event beyond the control of the parties took place which has a bearing on the ultimate view we take, although only indirectly. On November 1, 1966, the re-organisation of the Punjab State took place which resulted in some areas of Punjab being transferred to the Union Territory of Himachal Pradesh. Consequently, certain officers, including one Shri P.C. Sahney and Shri K. S. Dhaliwal, were brought over from Punjab to Himachal Pradesh. Admittedly, both these officers, Sahney and Dhaliwal, were senior to Ahluwalia, but a key circumstance which, in the submission of the appellants is decisive in their favour deserves mention. It is this Shri Sahney, a senior of Ahluwalia, was holding an Ex-cadre post of Superintendent of Police, C.B.I, under the Ministry of Home Affairs between 7-12-1964 and 6-10-1969. The Joint Select List of the Union Territories of Delhi and Himachal Pradesh Police Service, prepared on 29-4-1967, included the names of Ahluwalia, Sahney and Dhaliwal, the last two being above Ahluwalia. On January 1, 1968, the Central Government created single cadre for all the Union Territories in India and, as a follow-up action, prepared a common Select List for the IPS Cadre on 13-1-1971. Ahluwalia was in the Select List of the Union Territories Cadre so prepared. The story of the Cadre continued in the sense that on 25-1-1971, when Himachal Pradesh acquired full-fledged Statehood, Ahluwalia was allocated, alongwith others, to that State. The Himachal Pradesh State came to have its own Cadre of I.P.S. Officers, in which Ahluwalia became a Member. Thereafter, the question was mooted before Government as to what should be the year of allotment for the 4th respondent (Ahluwalia).

6. Two factors having relevancy to the determination of the issue before us, were highlighted by Shri R.K. Garg, appearing for the appellant. He stated that so long as Shri Sahney was holding an ex-cadre post and was senior to Ahluwalia, the officiation of the latter was not legal and regular and therefore had to be ignored for the purpose of continuity of officiating service. This break was material in fixing the year of allotment. Secondly, he urged that the continuation of a non-cadre officer in a Cadre post beyond 3 months required the State concerned to report to the Central Government this fact and the Central Government in return had to consult and go by the opinion of the Union Public Service Commission. In the present case, Ahluwalia had continued in the Cadre post of Superintendent of Police, without this necessary exercise by the State and the Central Government and "without the approval of the Union Public Service Commission. Thus, the two reasons, briefly, stated above, were lethal to the claims of Ahluwalia and he was bound to be pushed to the year 1965 and could not claim the earlier year of allotment of 1961 awarded to him by the Central Government and the High Court. If the contention put forward by Shri Garg were sound, the conclusion would be inevitable and the appeal must inescapably be allowed. Thus we are thrown back to an examination of the relevant rules in their application to the facts present in this case. Of course, before launching on that essay, we must also mention that the Central Government has a residuary power, in cases of equity and justice, to exempt an officer from the rigour of any rule or regulation.

7. The Rules may now be reproduced before scanning the submissions of either side. It may be treated as common case that not only was Sahney (now retired) senior to Ahluwalia but he was holding an ex-cadre post during the period 1-8-1968 to 12-10-1969. If this period were to be excluded from Ahluwalia's officiation he must fail. It is also beyond dispute that there was no consultation with the U.P.S.C. for the period of officiation beyond 6 months of Shri Ahluwalia in a cadre post. The Union of India had, on one stage, agreed tentatively with Ahluwalia's case but changed its mind and came to the conclusion that there was a break in service between 1-8-1968 and 12-10-1969 for Ahluwalia and, therefore, the benefit of officiation during that period could not be given in fixing the year of allotment Under Rule 3(3)(b) of the Regulation of seniority Rules, 1954. Again Government veered round to the view that 1961 was the correct year of allotment.

8. Now the Statutory Provisions:

7. Select List

(1) The Commission shall consider the list prepared by the committee alongwith the other documents received from the State Government and, unless it considers any change necessary, approve the list.

(2)...

(3) The list as finally approved by the Commission shall form the Select List of the members of the State Police Service.

Under this Rule a Select List was prepared where Ahluwalia was appointed against a Cadre post with effect from 11-11-1965. Regulation 8 may also be read:

8. Appointments to Cadre post from Select List

Appointments of members of the State Police Service from the Select List to posts borne on the State Cadre on the joint Cadre of a group of States, as the case may be, shall be made in accordance with the provisions of Rule 9 of the Cadre Rules. In making such appointments, the State Government shall follow the order in which the names of such officers appear in the Select List.

... .. From this, it is clear, Rule 9 of the Cadre Rules has governing force and so we must excerpt Rule 9 also:

9. Temporary appointment of non-cadre officers to cadre posts

(1) A cadre post in a state may be filled by a person who is not a cadre officer if the State Government is satisfied.

(a) that the vacancy is not likely to last for more than three months, or

(b) that there is no suitable cadre officer available for filling the vacancy.

(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 government shall forthwith report the fact to the Central Government together with the reasons for making the appointment.

(3) On receipt of a report under Sub-rule (2) or otherwise, the Central Government may direct that the State Government shall terminate the appointment of such person and appoint thereto a cadre officer and where any direction is so issued, the state Government shall accordingly give effect thereto.

(4) Where a cadre post is likely to be filled by a person who is not a cadre officer for a PERIOD exceeding six months, the Central Government shall report the full facts to the Union Public Service Commission with the REASONS for holding that no suitable officer is available for filling the post and may in the light of the advice given by the Union Public Service Commission give suitable directions to the State Government concerned.

The critical rule regarding the assignment of year of allotment is Rule 3, which we may now reproduce;

3. Assignment of year of allotment :

(1) Every officer shall be assigned a year of allotment in accordance with the provisions hereinafter contained in this rule.

(2)...

(3) The year of allotment of an officer appointed to the service after the

commencement of these rules, shall be :

(a)...

(b) Where the Officer is appointed to the Service by Promotion in accordance with Rule 9 of the Recruitment Rules, the year of allotment of the Juniormost among the officers recruited to the service in accordance with Rule 7 of these Rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former;

... ... Explanation: 1. 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 later.

Provided that where the name of a State Police Service Officer was included in the Select List in force immediately before the reorganisation of a State and is also included in the first Select List prepared subsequent to the date of such reorganisation, the name of such officer shall be deemed to have been continuously in the Select List with effect from the date of inclusion in the first mentioned Select List.

... ...

Explanation 4 : An officer appointed to the Service in accordance with Sub-rule (i) of Rule 9 of the Recruitment Rules shall be treated as having officiated in a senior post during any period of appointment to a non-cadre post if the State Government has certified within three months of his appointment to the non-cadre post that he would have so officiated but for his appointment, for a period not exceeding one year, and, with the approval of the Central Government, for a further period not exceeding two years, to a non-cadre post under a State Government or the Central Government in a time-scale identical to the time-scale in a senior post.

... ...

There is one more Rule which can play a heroic role in a crisis between equity and legalism. That is, contained in Rule 3 of the All India Services (Conditions of Service-Residuary Matters) Rules 1960 :

3. Power to relax rules and regulations in certain cases :-

Where the Central Government is satisfied that the operation of :

(i) any rule made or deemed to have been made under the All India Services Act, 1951 (61 of 1951), 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 relax the requirements of that rule or regulation, as the case may be, to such extent and subject to such exceptions and conditions as may consider necessary for dealing with the case in a just and equitable manner.

9. In the perspective of the Act and Rules, we may proceed to analyse the submissions and assess their worth. We are not disposed to launch on a prolix investigation or delve into minute details because we are impressed with the justice of the conclusion reached by the High Court and the Central Government in giving to Ahluwalia 1961 as the year of his allotment. It is indubitable that, as a fact, there was continuous officiation by him in a cadre post right down to 1971. There was no fault on his part. There was no illegality so far as we can gather. There was no outwitting at the instance of Ahluwalia, of the claims of any other candidate. The two technical infirmities powerfully pressed, with characteristic vigour, by Shri R.K. Garg do not in the least detract from the effective officiation as Superintendent of Police by Shri Ahluwalia.

10. Let us assume for a moment that the State Government had not reported to the Central Government and that the consultation with the Union Public Service Commission had not been made by the Central Government. Let us further assume that, in a strict view, that was needed. Even so, the Union Territories of Himachal Pradesh and Delhi should have formally told the Home Ministry about the officiation beyond three months by Ahluwalia in a cadre post. This was not done. The real line of distinction between a State and the Union of India might well be blurred a little when it is a Union Territory. Moreover, there is the circumstance that the entire Service was in the melting pot for a few years because the All India Services were being switched from Himachal Pradesh and Delhi into all the Union Territories. Even more; since uncertainty prevailed while the question of a pan of Punjab being tacked on to Himachal Pradesh came to engage the Administration. Amidst these fluctuating factors, the solecism committed by the Union territory of Himachal Pradesh in not having reported to the Central Government about continuing Ahluwalia, beyond 3 months, in a cadre post, was a venial sin for which the candidate was free from blame. Secondly, the argument, based on Sahney, a senior to Ahluwalia, being in a ex - cadre post and therefore, Ahluwalia's service during that period not being regular, also cannot be exaggerated out of proportion. Technically, the C.B.I, posts are ex-cadre posts, but it is a Central Government Department and nothing is suggested that there was something suspicious in Sahney being kept in the C.B.I, to facilitate Ahluwalia's continuance in a Cadre post. Everything in this case is straightforward and, therefore, if there was any administrative lapse, Ahluwalia could not be victimized. Indeed, an unwitting hardship inflicted on a member of the Service under such circumstances can be relieved against by exercise of the residuary power of Central Government Under Rule 3 extracted above. They passed the Order (Annexure X) which we reproduce :

Annexure-'X'

No. 24/16/71-Pers. II (IPS)

Government of India/Bharat Sarkar

Ministry of Home Affairs/Grih Mantralaya

MEMORANDUM

S/Shri P.C. Sahney, K. S. Dhaliwal and V. K. Ahluwalia were appointed the Indian Police Service by Promotion from the State Police Service on 30th January, 1971 and allocated to the Himachal Pradesh Cadre of Service.

2. Prior to their appointment to the Indian Police Service, these officers were holding the following posts.

... .. In accordance with Regulation 8 of IPS (Appointment by Promotion) Regulations, 1955 the Select List officers are to be appointed to the Cadre Post in the order in which their names appear in the Select List. As such in cases where a senior select list officer was not holding a cadre post, the officiation in a cadre post of a junior officer in the Select List was not approved by the Central Government because the appointment of Junior Select List officer to a cadre post was violative of the provisions of Regulation 8 of the Promotion Regulations.

... .. Accordingly, it was decided that the rules may be relaxed to count the period of officiation against ex-cadre posts so as to give benefit of the service rendered by the junior officers in the cadre post for the purpose of seniority. Applying the ratio of the case of U. T. Cadre, the Government of India has come to the conclusion that the appointment of Shri P.C. Sahney in the C.B.I. on deputation basis from 7-12-1964 to 6-10-1969 was made by the Central Government in public interest since Shri Sahney belonged to the U. T. Cadre which was managed by the Central Government. It can, therefore, be said that the question of misuse of provisions of rules and regulations by the State Government in this case does not arise. The certificates that but for his appointment to ex-cadre post in the C.B.I., Shri Sahney would have continued against a cadre post, was to be issued by the Ministry of Home Affairs and the fault, if any, lies with the Central Government and not with any State Government. It has, therefore, been tentatively decided to count the ex-cadre officiations of Shri P.C. Sahney from 7-12-1964 to 6-10-1969 for the purpose of seniority in relaxation of the provisions of the I.P.S. (Regulation of Seniority) Rules, 1954.

... .. In view of the counting of ex-cadre officiation of Shri P.C. Sahney for the period 7-12-64 to 6-10-1969, the Cadre officiation of S/Shri K.S. Dhaliwal and V. K. Ahluwalia prior to 13-10-1969 will not be violative of the provisions of regulation 8 of I.P.S. (Appointment by Promotional Regulations, 1955). It is, therefore, prepared to count the entire cadre officiation of S/Shri K.S. Dhaliwal and V.K. Ahluwalia for the purpose of their seniority. Accordingly, the crucial date in respect of S/Shri K.S. Dhaliwal and V.K. Ahluwalia shall be 28-3-1965 and 11-11-1965 respectively.

... .. Sd/- A. Jayaraman Under Secretary to the Government of India.

11. After full and second consideration, the Central Government passed Annexure 'Y' dated 1-12-1978, whereby Ahluwalia was given the benefit of 1961 as the year of the allotment. The period of officiation of Ahluwalia between 1-8-1968 and 19-10-1969 was approved by the Central Government after consultation with the U.P.S.C. This retrospectively cured the infirmity that existed in Ahluwalia's officiation, beyond 3 months or 6 months, in a cadre post without consultation with the U.P.S.C. The contravention of Regulation 8 was, thus, relieved against.

12. Regulation 7, earlier reproduced, has reference to the Select List, received from, the State, being approved by the Commission. Ahluwalia was in this list and by virtue of that inclusion in the Select List, was posted against a Cadre post with effect from 11-11-1965. Regulation 8 authorises such appointment of the members of the State Police Service. However, Rule 9 of the Indian Police Service (Cadre) Rules 1954 has a crucial impact in regard to temporary appointments of non-cadre officers to Cadre posts. We have earlier extracted the Rule, but in substance, the exercise prescribed by the Rule is that, when the Cadre post is vacant and no Cadre Officer is available. A non-cadre officer may fill the vacancy for a period beyond three months if the State Government reports to the Central Government the reasons therefore and it is not ordered to be terminated. The Central Government may permit a non-Cadre Officer to fill a Cadre post for a period exceeding six months provided it reports the full facts to the U.P.S.C. and acts responsibly in the light of the advice of the Commission. In the present case, no such report by the State . Government to the Central Government was sent, no consultation by the Central Government with the Commission was done. We are agreed that by-passing the Public Service Commission bespeaks prima facie impropriety, but we are not inclined to consider this grievance as destructive of the officiation of Ahluwalia in the special conspectus of facts present here. For one thing, Ahluwalia has nothing to do with the error; for another, no senior of Ahluwalia suffered, thirdly, the Central Government, in exercise of its power to relax the Rules, in good faith and, indeed in equity, did relieve the officer against this violation. That power to relax exists is admitted, although a feeble challenge to its vires was made in passing. When we consider the year of allotment what looms large is Rule 3(iii)(b) Continuous officiation is the decisive factor. Assuming that what is needed is regular officiation and not physical officiation, it is perfectly open for the Central Government to relax any irregularity by relaxing any particular rule or regulation. We have earlier indicated the scope of this power and reproduced the Rule itself. It is not arbitrary because the Rule contains guidelines. Government must be satisfied, not subjectively but objectively, that any rule or regulation affecting the conditions of service of a member of the All India Service causes undue hardship, then the iniquitous consequence thereof may be relieved against by relaxation of the concerned Rule or Regulation; There must be undue hardship and, further the relaxation must promote the dealing with the case "in a just and equitable

manner". These are perfectly sensible guidelines. What is more, there is implicit in the Rule, the compliance with natural justice so that nobody may be adversely affected even by administrative action without hearing. We are unable to see anything unreasonable, capricious or deprivatory of the rights of anyone in this residuary power vested in the Central Government. Indeed, the present case is an excellent illustration of the proper exercise of the power. We are therefore, satisfied that the Central Government was right in invoking its power to relax and regularize the spell of officiation, which was impugned as irregular or illegal. The consequence inevitably follows that the officer Ahluwalia was rightly assigned 1961 as the year of allotment.

13. The appeal fails and is dismissed.