
(1994) 08 CAL CK 0018
In the Calcutta High Court
Case No : C.O. No. 3180 (W) of 1994

Dr. Banipada Saha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-08-1994

Acts Referred:

Administrative Tribunals Act, 1985 — Section 2
Constitution of India, 1950 — Article 14, 16, 226(2), 309
Police Service (Pay) Rules, 1954 — Rule 8
Railway Protection Force Rules, 1987 — Rule 93.3

Citation : (1995) 1 CALLT 337 : 99 CWN 455 : 99 CWN 399

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : Dipankar Gupta, Solicitor General, Saktinath Mukherjee, Pradipta Roy, Saptansu Bose and A.K. Biswas, for the Appellant; Bhaskar Gupta and Sukhendu Banerjee for Respondent Nos. 1, 2, 3, 4 and 6, S.N. Mukherjee for Respondent No. 7 and R.C. Ghose, for the Respondent

Final Decision : Dismissed

Judgement

Gitesh Ranjan Bhattacharjee, J.—The petitioner is a member of the Indian Police Service (I.P.S., for short). He was appointed to the I.P.S. as a direct recruit in 1963 and was allotted to the Orissa Cadre. In November 1990 he was brought on deputation as Chief Security Commissioner-cum-Inspector General, South-Eastern Railway in the Railway Protection Force (R.P.F.) under the Government of India. At present the top post in the R.P.F. is the post of Director General. Since the retirement of the earlier incumbent Shri Raja Shreedharan from the post of the Director General, R.P.F. on 31-3-93 the petitioner has been looking after the current duties of the post of Director General, R.P.F. in addition to his own duties as the Chief Security Commissioner-cum-Inspector General, R.P.F., South-Eastern Railway pending filling up of the post of Director General on regular basis. The petitioner's claim is that being the seniormost Inspector General in the R.P.F. and having served for more than 3 years on deputation in the post of Inspector

General, R.P.F., South-Eastern Railway, he is entitled to be appointed to the post; of Director General on regular basis. But his grievance is that ignoring his claim the Government of India is going to appoint someone else on deputation namely, the respondent No. 7, Shri Kalyan Rudra who is a member of I.P.S. and is at present the Director General of Police, Haryana. In this writ petition the petitioner accordingly prays for revocation of the Government of India's decision, if any, to appoint Shri Kalyan Rudra or any other officer other than the petitioner as Director General R.P.F. on regular basis. In the writ petition the petitioner further prays for a writ in the nature of mandamus commanding the respondents to forthwith appoint the petitioner as Director General, R.P.F. on regular basis. Apart from the Railway Board, the Union of India through the Secretary, Ministry of Railways is also a respondent. The Secretary, Ministry of Home Affairs, Government of India is also a party respondent. Mr. Dipankar Gupta, the learned Solicitor General appeared in this case representing the respondent nos. 1 to 6 including the Ministry of Home Affairs, Ministry of Railways and the Railway Board.

2. The contention of the respondents, in short, is that the petitioner being an I.P.S. officer of 1963 batch does not come up for consideration for appointment to a post of the level of Director General under the Central Government and presently the appointment to the Director General level posts under the Central Government is confined to officers falling within the seniority range of 1959, 1960 and 1961 batches. It is the case of the respondents that the framing of the recruitment rules for the post of Director General, R.P.F. is under process and pending that this post is being filled up by deputation of a suitable I.P.S. officer and it is not a cadre post of I.P.S. when filled up on deputation by an I.P.S. officer the same is treated as deputation to D.G. level post at Centre and it is in the pay scale of Rs. 8000/- (fixed) when held by an I.P.S. officer. It is also the case of the respondents that as per procedure, for the purpose of filling up this post by deputation, a panel of names of suitable I.P.S. officers is obtained from the Ministry of Home Affairs through Department of Personnel & Training and appointment is made on receipt of approval of the Appointments Committee of the Cabinet. While forwarding the recommendations, it is the case of the respondents, the Ministry of Home Affairs considers the suitability of I.P.S. officers available for Central deputation and empanelled to hold D.G/equivalent level posts at the Centre and recommends names of suitable I.P.S. officers to the Ministry of Railways for consideration for appointment to the post of Director General, R.P.F. In paragraph 6 of the vacating application filed by respondents, it is stated that for empanelment for the posts of D.G/ equivalent at the Centre, there is a high level Selection Committee consisting of Cabinet Secretary, Principal Secretary to Prime Minister, Home Secretary and Secretary (personnel) and this Committee considers I.P.S. officers of sufficient seniority for empanelment to D.G/equivalent posts at the Centre and the recommendations of the Selection Committee require approval of the Appointments Committee of the Cabinet. It is also stated therein that till date, officers upto 1961 batch of I.P.S.

have been empanelled for consideration for appointment to the D.G. level posts at the Centre. In paragraph 7 of the said vacating application it is stated by the respondents that prior to the superannuation of Shri Raja Shreedharan on 31-3-93 the Department of Personnel & Training, Government of India was requested by the Ministry of Railways to send a panel of names of suitable I.P.S. officers for consideration for appointment to the post of Director General, R.P.F. and a panel of four officers belonging to 1959 and 1960 batches empanelled to hold D.G/ equivalent level posts at the Centre was considered for appointment to the post of Director General, R.P.F. It is the further contention of the respondents that out of those four officers, Shri R. Ramalingam, an I.P.S. officer of 1960 batch was considered to be suitable for appointment to the post of Director General, R.P.F. on deputation basis, but before a final decision could be reached it transpired that the services of Shri Ramalingam were not available and out of the remaining three, one was also not available while the remaining two officers were not considered suitable in view of their short tenure of service left before superannuation. It is the case of the respondents as pleaded in the said paragraph 7 of the vacating application that thereafter the name of Shri Kalyan Rudra, the respondent No. 7 was included in the panel for consideration of appointment to the post of Director General, R.P.F. It is also stated therein that Shri Kalyan Rudra belongs to 1960 batch of I.P.S. and is senior to the petitioner by 3 years and empanelled to hold D.G/equivalent level post at the Centre. It may be mentioned here that both Shri Kalyan Rudra and the petitioner have been awarded the President's Police Medal, the former in 1987 and the latter in 1993. As per the combined gradation list of I.P.S. officers as on 1-1-93 the name of Shri Kalyan Rudra appears at Sl. No. 55 whereas the name of the petitioner comes at Sl. No. 214, It is the contention of the respondents that in that view of the matter there are 158 officers senior to the petitioner who have a prior and a better claim for consideration for empanelment/appointment to D.G/equivalent level posts at the Centre and out of them there are a number of officers who have experience of working in para-military forces including R.P.F. The petitioner however points out that 33 officers have already retired and 12 others are going to retire soon. Even then there will be not less than 113 officers in between Shri Rudra and the petitioner.

3. It may be mentioned here that the Railway Protection Force has been constituted under the Railway Protection Force Act, 1957 and it has been declared to be an Armed Force of the Union. Prior to 1983 there was only one post of Inspector General, R.P.F. wherein vested the command, supervision and administration of the Force. At that time there were posts of Chief Security officers of the rank of Deputy Inspector General for each zonal railway. In 1983 the post of the Inspector General, R.P.F. was upgraded to the post of Director General and the posts of Chief Security Officer in the rank of Deputy Inspector General were upgraded to the rank of Inspector General for respective zonal railways except a few railways. After 1983 there is one post of Director General of the R.P.F. as the head of the Force and there are 7 posts of Inspector General.

The power of appointment to the post of Director General of the Force and to the posts of Inspector General, Additional Inspector General etc. vests in the Central Government u/s 4 of the R.P.F. Act, 1957. It is the contention of the petitioner that since the creation of the post of Director General in the R.P.F. the same has always been filled up by appointing the seniormost Inspector General working in R.P.F. In paragraph 10 of the writ petition the petitioner has also given the names of the three incumbents to the post of Director General, R.P.F. since 1983 who were all appointed to the post of D.G while they were functioning as the seniormost Inspector General in R.P.F. It is the contention of the respondents that those incumbents to the post of Director General, R.P.F. were appointed to the said post not solely because they were the seniormost Inspector General in the R.P.F. at the relevant time but because they were considered suitable while other officers of sufficient seniority in I.P.S. were also considered along with them. It is also the contention of the respondents that the petitioner being an officer of the 1963 batch the question of considering him for a D.G. level post at the Centre does not arise yet inasmuch as only the officers of 1959, 1960 and 1961 batches are now considered and empanelled for appointment to the D.G. level posts at the Centre and as such the petitioner is not yet eligible for such consideration.

4. It is however the contention of the petitioner in paragraph 16 of his affidavit-in-opposition to the vacating application and also in certain other paragraphs that the officers of the 1963 batch including the petitioner have also been empanelled for appointment to the D.G level posts at the Centre and as such it is not correct to say that the petitioner is not yet eligible on ground of comparative seniority to be considered or empanelled for appointment to D.G level post at the Centre. This contention of the petitioner is however denied by the respondents. It is argued on behalf of the petitioner by Mr. Saktinath Mukherjee that the averment of the petitioner that he also has been included in the panel for appointment to D.G level post at the Centre as contained in paragraphs 13 & 20 of the affidavit-in opposition to the vacating application has not been specifically denied by the respondents. This argument however is not correct. In paragraph 10 of the affidavit-in-reply of the respondents it has been categorically stated with reference to paragraph 13 of the affidavit-in-opposition of the petitioner that the officers of 1959, 1960 and 1961 batches are presently empanelled to hold D.G. or equivalent level posts at the Centre and therefore the question of empanelment of the petitioner to hold D.G. or equivalent level post at the Centre does not arise at all. It is further stated therein that the petitioner is attempting to mislead the court by incorrectly claiming that he is empanelled to hold D.G. level post at the Centre, while as a matter of fact he is not so empanelled. In paragraph 15 of the affidavit-in-reply again it is reiterated by the respondents that the petitioner has not been considered for appointment to the post of D.G. R.P.F. inasmuch as the petitioner has not yet been empanelled to hold D.G. level post at the Centre and hence not eligible for consideration for appointment to the post of D.G. R.P.F. In view of such categorical and emphatic averments there is

absolutely no scope for argument that the respondents have not denied the petitioner's case that he has been empanelled for consideration for appointment to the D.G. level posts. It is the contention of the respondents that the officers of the 1963 batch have been empanelled for appointment to the posts of Additional Director General/equivalent under the Centre and this contention of the respondents has been taken note of by the petitioner in paragraphs 6 & 7(a) of the affidavit-in-reply affirmed by the petitioner. As a matter of fact during the hearing the learned Solicitor General also produced before me an official document in that behalf, being dated 25-3-94. The petitioner's name, I have found, has also been included in the list. Since that list is for empanelment/appointment to the posts of Additional Director General/equivalent at the Centre obviously the proposition advanced on behalf of the petitioner is not tenable and is also not factually correct that his name or for that matter the names of the officers of 1963 batch have been included in the panel for appointment to the D.G. level posts at the Centre. Rather such empanelment of 19 officers which includes the name of the petitioner is for appointment to the posts of additional Director General or equivalent level posts at the Centre.

5. To obviate the effect of the contention of the respondents that the petitioner and certain other officers, numbering 19 in all, belonging to the 1963 batch have been recently empanelled for appointment to the posts of Additional Director General or equivalent under the Centre and not for appointment to D.G. level posts, the petitioner contends that there is no difference between D.G. level posts and Additional D.G. level posts and as a matter of fact some officers of the 1963 batch and even of 1964 batch have already been" appointed to D.G. level posts. In support of his such contention the petitioner has cited certain examples. He refers to the instances of appointment of Shri N.B. Vatsan and Shri K.N. Singh to the posts of Additional Director, Intelligence Bureau under the Government of India. Both the said two I.P.S. officers are of 1963 batch. Both the said Shri Vatsan and Shri Singh are enjoying the pay scale of Rs. 7300-7600/- in the posts of Additional Director, Intelligence Bureau. The learned Advocate for petitioner in this connection refers to the Indian Police Service (Pay) Rules, 1954, particularly to Rule 3(1) thereof which prescribes the different scales of pay for the members of the Indian Police Service. There the pay scale for the post of Director General (D.G.) has been prescribed as "Rs. 7300-100-7600/7600-100-8000/- with effect from the 1st day of January, 1986". It is submitted on behalf of the petitioner that as per the Indian Police Service (Pay) Rules, 1954, particularly rule 3(1) thereof the D.G. level posts include the posts enjoying any of the two pay scales 7300-7600/- and 7600-8000/-. It is his further contention that "since Shri Vatsan and Shri Singh, both belonging to 1963 batch, have been appointed to the posts carrying the pay scale of Rs. 7300-7600/- which according to the pay scales prescribed in Rule 3(1) of the Indian Police Service (Pay) Rules, 1954 is a pay scale for the post of Director General there is no merit in the plea of the respondents that officers of 1963 batch are not yet eligible for appointment to D.G. level posts. It is also

contended that since officers of 1963 batch have already been appointed to D.G. level posts there is absolutely no reason why the petitioner also, being of 1963 batch, should not be considered eligible for appointment to D.G. level posts. In this connection, the petitioner also refers to certain other instances. Shri S. N. Tewari of 1963 batch has recently been appointed to the post of Director General, Civil Defence in the pay scale of Rs. 7300-7600/-. Shri Chamanlal and Shri P. S. Bawa both of 1964 batch are holding the posts of Director General of Police, Nagaland and Director General of Police, Sikkim respectively in the pay scale of Rs. 7300-7600/-. Shri N. N. Sabharwal and Shri D. N. S. Shreevastava, both of 1964 batch are holding the posts of Director General of Police, Jammu & Kashmir and Director General of Police Meghalaya respectively in the pay scale of Rs. 7600-8000-.

6. The learned Solicitor General in this connection submits that the pay scale prescribed in Rule 3(1) of the Indian Police Service (Pay) Rules, 1954 applies to members of the service when holding cadre posts in the State. He further submits that these pay scales do not perforce apply to ex-cadre posts, such as, when an I.P.S. officer is posted on deputation under the Central Government. Some such posts under the Central Government have been mentioned in Schedule III to the Indian Police Service (Pay) Rules, 1954. Rule 8 of the said Rules expressly provides inter alia that any member of the service appointed to hold a post specified in Schedule III shall, for so long as he holds that post, be entitled to draw the pay indicated for that post in the said Schedule. In the said Schedule 13 Central Government organisations have been mentioned including the Intelligence Bureau, Central Bureau of Investigation, Border Security Force, Central Reserve Police Force, Indo-Tibetan Border Police, Central Industrial Security Force, Bureau of Police Research and Development, Railways etc. The Post of the Director General, RPF is also included in the said Schedule. A study of the said Schedule III will reveal that the posts of the head of organisation in respect of those organisations mentioned in Schedule III do not enjoy the same pay or pay scale. As for example, while the Director of Intelligence Bureau, the Director of Central Bureau of Investigation, the Director General of Border Security Force, Director General of Central Reserve Police Force, the Director General of Central Industrial Security Force, the Director General of R.P.F. each enjoys now a fixed pay of Rs. 8000/-, the Director of Sardar Ballav-bhai Patel National Police Academy enjoys a fixed pay of Rs. 7600/- only and the Director General of Indo-Tibetan Border Police and the Director General of Bureau of Police Research and Development as well as the Director General of National Security Guard enjoy the pay scale of Rs. 7600-8000/-. Again, the Director, National Crime Research Bureau enjoys a pay scale of Rs. 5900-6700/-. The above study clearly shows that the nomenclature of the posts does not necessarily indicate the equivalence of the different posts inter se at the top level of the different organisations nor does it afford an index of inter se comparability or equivalence of status of the heads of the different organisations. There is nothing unreasonable and rather it is only reasonable to determine the inter se

comparability or equivalence of status of different posts in different organisations by the pay scales attached to such posts and not by more nomenclature of the posts, particularly where all the posts are created by and functioning under the same Government, namely, the Government of India here. The learned Solicitor General submits that for the purpose of empanelment and appointment of officers for D.G level posts at the Centre the Government of India categorises such posts which carry a pay of Rs. 8000/- fixed or a scale of pay offering Rs. 8000/- as the maximum, namely the scale of Rs. 7600-8000/-. It is submitted by him that only the posts which carry either a fixed pay of Rs. 8000/- or a pay scale of Rs. 7600-8000/- under the Central Government are considered and treated as D.G level posts at the Centre. It is further submitted by him that the posts of the level of Additional Director General under the Central Government carry pay of Rs. 7300-7600/-. To this, the argument of the learned Advocate of the petitioner is that there is no post in the Indian Police Service bearing the nomenclature Additional Director General and this, according to him, is evident from the Government of India, Ministry of Home Affairs letter no. 10011 dated the 20th May, 1994 addressed to all the Chief Secretaries of State Governments wherein the Central Government itself has stated and accepted the position that there is no post of Additional Director General. It is therefore argued by him that the artificial distinction sought to be made by the Central Government between the status of the post of Director General and that of the post of the Additional Director General or equivalent is wholly untenable and misleading. The said letter of the Government of India when read as a whole however leaves no doubt that the same refers to creation of ex-cadre posts of Additional Director General of Police in different States by State Governments in the scale of Rs. 7300-7600/- where the pay scale of the Director General of Police is Rs. 7600-8000/-. This letter also indicates that the pay scales of Rs. 7300-7600/- and Rs. 7600-8000/- for the Director General of Police in States relate to two different types of States. The pay scale of Rs. 7300-7600/- is meant for the post of Director General of Police in smaller States while the pay scale of Rs. 7600-8000/- is for the post of Director General of Police in bigger States. What some of the bigger States were doing was that they were creating posts of Additional Director General of Police in the scale of Rs. 7300-7600/-. That was precisely the thing what was deprecated by the Government of India in the said letter. It was clearly stated by the Government of India in the said letter addressed to all State Governments that having considered all aspects of the matter the Central Government had come to the conclusion that creation of ex-cadre posts of Additional Director General of Police by State Governments was totally unauthorised as it was in violation of IPS (Cadre) Rules, 1954 and that the State Governments were not entitled unilaterally to create ex-cadre posts in any pay scale not provided for in their respective cadre Schedules. The whole object of the said letter was to deprecate and undo the unauthorised creation of ex-cadre posts by State Governments with the nomenclature Additional Director General of Police not provided for in the Rules or under any decision of the Central Government. That however has absolutely no relevance to the question of existence or creation of

posts of Additional Director General or of equivalent status under the Central Government. As we have already seen while the Indian Police Service (Pay) Rules, 1954 does not recognize any post of Additional Director General of Police in the State cadre the same clearly provides for the existence of the posts of Additional Director in the scale of Rs. 7300-7600/- under the Central Government in Schedule III read with Rule 8 of the Indian Police Service (Pay) Rules, 1954. Thus the Rules provide for the existence of Additional Director level posts under the Central Government in Schedule III which are different from the Director level posts at the Centre. It is also to be noticed that in the State cadre of IPS there is no post, not even the post of Director General of Police which carries a fixed pay of Rs. 8000/-. But as we have seen in the Schedule III there are a number of Director level posts under the Central Government carrying a fixed pay of Rs. 8000/-. There is therefore nothing unusual, unreasonable or surprising when the Central Government, for the purpose of empanelment and appointment, administratively categorises the posts carrying the pay of Rs. 8000/- or the pay scale of Rs. 7600-8000/- as D.G level posts at the Centre and posts carrying a comparatively lower level of pay as the Additional D.G level posts at the Centre. There is also nothing wrong or unreasonable if the Central Government empanels senior officers for appointment to D.G level posts at the Centre and comparatively junior officers for appointment to the Additional D.G level posts at the Centre. Once this is understood it will be evident that the selection and appointment of Shri N. V. Vatsan, Shri K. N. Singh and Shri S. N. Tewari, all of 1963 batch, to posts under the Central Government carrying a pay scale of Rs. 7300-7600 which is rightly characterised as an index of Additional D.G level posts, does not lend support to the contention of the petitioner that the officers of 1963 batch have also been appointed to D.G level posts at the Centre.

7. As regards, the contention of the petitioner that Shri Chamanlal and Shri P. S. Bawa, both of 1964 batch, have been appointed as Director General of Police in Nagaland and Sikkim respectively, it is firstly to be noticed that both of them are enjoying a pay scale which is the same as the pay scale of Additional D.G level posts at the Centre as I have already discussed. The post of D.G of Police in a State need not necessarily be equivalent to D.G level posts at the Centre and depending upon the pay scale such a post in the State may be equivalent to an Additional D.G level post at the Centre. Moreover, both Shri Chamanlal and Shri Bawa were brought on deputation from other States to the States of Nagaland and Sikkim respectively as at the relevant time officers of sufficient seniority were not available in the State cadres of Nagaland and Sikkim for appointment to the posts of Director General of Police in those States. Since the instances of Shri Chamanlal and Shri Bawa involve deputation from State to State and not at the Centre these instances do not help the petitioner in this case where it is a question of deputation under the Central Government. The petitioner did not make any grievance at the relevant time as to why Shri Chamanlal and Shri Bawa were sent on deputation to different States and why he was not sent on deputation in any of those States at that time although he was senior to both

Shri Chamanlal and Shri Bawa. The appointment of those two officers on deputation from State to State does not necessarily furnish itself as a factor for consideration when it is a question of deputation to a D.G level post under the Central Government as is the case here, particularly where such posts are lower in the scale of equivalence than the D.G level posts at the Centre by reason of the pay scale attached to such posts. The petitioner has also made a grievance that he is not being considered for the post of Director General, RPF while his juniors Shri M.N. Sabharwal and Shri D.N.S. Shreevastava, both of 1964 batch, have already been appointed to the posts of Director General of Police in Jammu & Kashmir and Meghalaya respectively and both those posts carry the pay scale of Rs. 7600-8000/-. This contention is met by the respondents by stating that promotions in each State take place on the basis of consideration made in respect of officers of the concerned State cadre. That being so, it is quite possible that in some States officers of sufficient seniority judged by the length of service have not yet been promoted while officers having comparatively smaller length of service have got promotion to comparatively higher posts in other States. Promotions in States being a matter confined to the State cadre itself a comparison between the different State cadres in regard to manning of different posts in such States is of no help and relevance to the petitioner's case.

8. The petitioner also relies on the guidelines issued by the Government of India to the different States under No. 16011 dated 4-9-83 which is Annexure-B to the affidavit-in-reply affirmed by the writ petitioner regarding promotion of IPS officers. In paragraph-2 of the said communication it has been stated that in order to ensure uniformity of procedure in the matters of appointment and promotion to various grades in the Indian Police Service in all the State cadres in the country, it would be desirable to adhere to the revised guidelines. It is evident that these guidelines are meant for appointment and promotion in the State cadres of the Indian Police Service and the same do not apply per se to promotion or appointment to the ex-cadre posts under the Central Government. In the said guidelines under the heading "(B) Zone for consideration" it has been laid down that for promotion to the grade of Director General and Inspector General of Police the officers to come in the zone of consideration should have put in 30 years of service in Indian Police Service and should have ordinarily put in 3 years of service in the rank of I.G.P. It is the contention of the petitioner that he has already put in 30 years of service having been appointed in the year 1963 and has also put in 3 years of service in the rank of I.G.P. as he is serving for more than 3 years as the Inspector General of RPF, South-Eastern Railway. It is his contention that the respondents, therefore, cannot exclude him from consideration for appointment to the post of Director General, RPF. As we have already seen, the said guidelines only apply to appointment and promotion in the State cadres and are not applicable perforce to the case of appointment on deputation to posts under the Central Government. The claim of the petitioner that he is eligible for consideration for the post of D.G, RPF in view of the said guidelines is therefore not tenable. In the absence of any prescribed rules or

guidelines applicable to the matter the Central Government is indeed free to choose such modalities and criteria for selection and appointment to any police or para-military force or other organisation under it as is not unreasonable or arbitrary. In challenging any selection or appointment to any service post, it will have to be shown that such selection or appointment is contrary to law or is substantially violative of any prescribed guidelines applicable to the matter or the procedure followed is unreasonable or arbitrary. Subject to what is stated above the Government must be conceded, in the interest of administration, a latitude of choice and discretion in the matter of appointment to top or high level posts. This is so because the Government is presumed to be better aware of the suitability factors for such posts and it is primarily for the Government to decide, in discharge of its responsibility to bear the burden of answerability for the performance of the departments and organisations under its control, as to which aspects of such suitability factors need be given any weightage or need not be given weightage either at all or beyond proportion.

9. The learned Advocate for the petitioner laid great emphasis on his submission that in the matter of selection for appointment to the post of Director General, RPF suitability of the officer is admittedly the principal criterion and that being so the petitioner who has been working for more than 3 years as the Inspector General, RPF should be considered suitable for the post in preference to Shri Kalyan Rudra who has no experience of working in RPF or in any other Armed Force under the Central Government. It is further submitted by the learned Advocate for the petitioner that considering the experience of the officers in the post of the Inspector General RPF all prior incumbents were selected and appointed to the post of Director General, RPF. As regards the suitability of Shri Kalyan Rudra it is submitted that Shri Ramalingam who was originally selected this time for appointment to the post of Director General was junior to Shri Rudra and this indicates that Shri Rudra was not considered suitable initially and that is why his name was not placed in the short panel for consideration of appointment to the post of Director General, RPF. It is however pointed out on behalf of the respondents that the mere fact that a junior was initially considered for appointment to the post of Director General does not necessarily indicate or mean that his seniors were all considered unsuitable for the post. Suitability is very often linked up with the question of comparative suitability. While considering some officers for selection if a junior is preferred to some of his seniors that does not mean that the selected junior is the only suitable person and his seniors are all unsuitable. Even if it is assumed or conceded that out of certain officers a junior is selected on the ground that he is found to be the most suitable candidate for the post that does not necessarily mean that the others senior to him are unsuitable for the post. Judged by the scale of comparative suitability if an officer is considered to be more suitable amongst the suitable officers the criterion of suitability will not be necessarily violated if another suitable officer is later chosen for the post from amongst the suitable seniors when the officer earlier chosen does not become available for some reason or

other. Therefore the mere fact that earlier Shri Ramalingam, an officer junior to Shri Rudra was chosen for the post of Director General, RPF did not necessarily disqualify the senior officer Shri Rudra on ground of suitability test for selection at a later stage when Shri Ramalingam and other officers earlier recommended were found either not available or not acceptable for final selection. It has been argued on behalf of the petitioner that the fact that Shri Raja Shreedharan was initially selected for inclusion in the short panel to the exclusion of Shri Kalyan Rudra who is senior to the former indicates that seniority is not a criterion for selection and appointment to the post and that being so the petitioner should not be excluded on the ground that he is not senior enough for consideration. This is a fallacious contention. Once a panel is prepared for selection for appointment from that panel the Government may select any one from the panel even if he is comparatively junior to some other officers in the panel, but that will not give a right to every junior officer who is not even included in the panel to say that he has to be considered for appointment to the concerned post. He must first come within the zone of consideration but in the present case, as we have seen, the petitioner did not come within such zone. It also cannot be said that by restricting the zone of consideration for empanelment for D.G level posts at the Centre to two or three senior batches of officers the Government has acted unreasonably or arbitrarily, not to speak of acting illegally or of violating any prescribed guidelines applicable to the matter.

10. Again, the question of suitability is a question which may not be necessarily linked up with the question of previous experience in the working of the organisation. While the petitioner has relied upon the previous instances of three incumbents to the post of Director General, RPF who were all appointed to the said post while working as the Inspector General, RPF, the respondents have also cited a number of instances, to be precise, four instances where IPS officers have been appointed as heads of Central Police Organisations without having past experience of working in those organisations and still they worked satisfactorily. Those instances have been mentioned in paragraph 10 of the affidavit-in-reply affirmed by the respondents to the affidavit-in-opposition affirmed by the petitioner in connection with the vacating application. The instances mentioned therein are as follows :

(1) Shri K. V. Ramarao, IPS (AP : 59) has been appointed as Director, Central Bureau of Investigation, carrying a pay of Rs. 8000/-(fixed) w.e.f. 31-7-93.

(2) Shri A.K. Tandon, IPS (GUJ : 61) has been appointed as Director General, National Security Guard w.e.f. 28-4-94.

(3) Shri R.C. Jha, IPS (MP : 61) has been appointed as Director General, Indo-Tibetan Border Police, w.e.f. 15-4-94.

(4) Shri B.J.S. Sial, IPS (UP : 59) was appointed as Director General, National Security Guard, w.e.f. 19-5-92.

These instances illustrate that there is no rule or practice that no one can be

appointed to the top post of a Central Police Organisation unless he has the previous experience of working in such organisation. It has been repeatedly emphasized by the learned Solicitor General that the fact that the prior incumbents to the post of Director General, RPF were appointed to the said post while they were working as Inspector General, RPF was not the outcome of any rule or practice that the Inspector General or for that matter the seniormost Inspector General of the RPF must be appointed to the post of Director General, RPF, but the concerned incumbents who were working as Inspector General in RPF at the relevant time were rather found suitable for the post while considered along with other candidates coming within the zone of consideration. The learned Solicitor General on the basis of records submitted that in 1983 Shri M. D. Dixit, IPS who was an MP cadre officer of 1951 batch was appointed to the post of D.G (Security) in the scale of Rs. 3000/- (fixed) after consideration of a panel of 7 officers of 1950-1951 batches. In 1985 Shri S.P. Banerjee, IPS who was an MP cadre officer of 1954 batch was appointed to the post of D.G (Security) in the scale of Rs. 3000/- (fixed) after consideration of a panel of 6 officers of 1952-1954 batches. In 1988 Shri Raja Shreedharan, IPS who was an MP cadre officer of 1957 batch was appointed to the post of D.G (Security) in the revised scale of Rs. 7,600/- (fixed) after consideration of a panel of 5 officers of 1956-1958 batches. It is to be noted that the post of D.G (Security) of RPF was re-designated as Director General, RPF in 1989 and the scale of pay of the said post was enhanced to Rs. 8000/- only in 1991. A study of the above facts will reveal that in the past also the consideration for appointment to the top post of the RPF was confined to officers belonging to the batches of two or three consecutive years. Therefore there is nothing unusual that this time also the Government of India confined their consideration for appointment to the post of Director General, RPF to the officers of two or three consecutive batches up to 1960 or 1961. The petitioner belongs to 1963 batch and therefore he cannot make a grievance that he should also have been considered along with the officers of 1959, 1960 and 1961 batches.

11. It is also to be noticed that the pay of the post of Director General, RPF was raised from Rs. 7600/- (fixed) to Rs. 8000/- (fixed) in April, 1991 without making any corresponding rise in the pay scale of the Inspector General-cum-Chief Security Officer, RPF which continued to remain the same, namely, Rs. 5900- 6700/- which the petitioner as the seniormost Inspector General of RPF was enjoying at the time when he was asked to look after the current duties of the Director General, RPF as a stop-gap arrangement on retirement of Shri Raja Shreedharan. Such leap of the pay scale of the post of the Director General, RPF raising it to the highest level of pay scales may legitimately and reasonably require the Government to consider the officers of higher seniority for appointment to the said post rather than junior officers in the seniority range of the petitioner. It is also argued by the learned Advocate for the petitioner that it is the practice to send a short panel of officers by the Ministry of Home Affairs to the Ministry of Railways for selection of anyone of such officers for the post by

the Ministry of Railways. It is submitted on behalf of the petitioner that while initially the Ministry of Home Affairs forwarded a panel of four officers including Shri Ramalingam to the Ministry of Railways for selection of one of them for the post yet when none of them could be finally selected the Ministry of Home Affairs forwarded only one name, namely, the name of Shri Kalyan Rudra for the said post instead of sending a fresh panel of officers and this is an unconventional phenomenon which is sought to be explained by the respondents by stating that Shri Kalyan Rudra was later "included" in the panel originally proposed for consideration of appointment to the post. It is submitted by the learned Advocate for the petitioner that the Ministry of Railways objected to the same but they were pressurised by the Ministry of Home Affairs to accept the sole name of Kalyan Rudra forwarded after the original panel failed. It is further submitted on behalf of the petitioner that all these things happened by reason of the influence exercised by Shri Kalyan Rudra for getting himself posted at Delhi where he has his residence. On the other hand, the learned Solicitor General submits that he is appearing in this case for and is representing both the Ministry of Home Affairs and the Ministry of Railways and it is absolutely untrue that the Ministry of Home Affairs exercised any pressure in the matter on the Ministry of Railways for accepting Shri Kalyan Rudra as alleged by the petitioner. He further submits that the very fact that Shri Kalyan Rudra was not initially included in the short panel would rather readily suggest that Shri Rudra has absolutely no hand in the matter of getting his name proposed else he would have been included in the original panel which was forwarded to the Ministry of Railways. It is further submitted by him that when a panel is once forwarded for consideration there is no bar for forwarding one more name later by way of inclusion in the panel when the officers originally named in the panel were not accepted or available for final selection for one reason or the other. In this matter it has however to be appreciated that the question as to how many names are to be forwarded and considered is a matter of concern for the relevant Ministries and if a decision in the matter is taken after some deliberation between the Ministries concerned, the petitioner cannot raise any objection regarding the number of names considered for the purpose, particularly when the petitioner does not come within the seniority range of consideration for the post, he being an officer of 1963 batch while the panel prepared for D.G level posts at the Centre included only officers upto 1961 batch. In the background of the facts and circumstances of the case I find no reason to interfere in the matter and I find that there is nothing unreasonable or arbitrary, not to speak of violation of any rules or guidelines in the Central Government empanelling officers of sufficient seniority upto the batch of 1961 for appointment to D.G level posts at the Centre. Since the Government has chosen to confine its consideration for appointment to the D.G level posts including the post of D.G, RPF at the Centre to certain senior batches, the petitioner cannot claim to be appointed or to be considered for appointment to the said post simply because he has been working in the RPF as the seniormost Director General for more than 3 years although he is junior by at least 2 years to the officers empanelled for D.G level posts at the Centre. As we

have already seen, experience of working in the organisation of posting is not necessarily the criterion or for that matter an overriding criterion for being appointed to the top level post of the organisation. A number of instances in this behalf have been cited by the respondents. Again, as we have seen, it is the respondents' case that there are even many officers senior to the petitioner who have experience of working in the RPF and if such experience would have been an overriding factor for appointment as D.G, RPF even then there are many officers senior to the petitioner with such experience having a better claim than that of the petitioner. That being so, I am of the view that even if the petitioner has any grievance for not being appointed to the post of Director General, RPF or of not being considered for the post in spite of his experience of working in that organisation the same does not confer any legal right or claim on the basis of which he can move the Court for relief.

12. That there is no impropriety or illegality in selecting an officer for the post of D.G, RPF from amongst those empanelled for D.G level posts at the Centre has virtually been conceded by the petitioner when in paragraph 15 of the affidavit-in-opposition affirmed by him on 8th June, 1994 he says that the "material fact is whether the IPS officer has already been empanelled for consideration for appointment to D.G. level posts at the Centre or he is entitled to get the post in accordance with the policy criteria and practice uniformly followed". As we have seen the petitioner is labouring under the mistaken impression that he has also been included in the panel for appointment to the D.G level posts at the Centre when as a matter of fact officers of his batch including him have been included in the panel for appointment to Additional D.G level posts at the Centre and not for D.G level posts. Therefore the claim of the petitioner for appointment to the post of Director General, RPF on the ground of inclusion of his name in the panel is not tenable. As we have also seen there is no policy criterion or practice that the seniormost Inspector General, RPF who has worked in that post for three years must be appointed to the top post of the RPF for that reason alone. We have seen that in the past the seniormost Inspector General RPF was appointed to the top post after being considered along with others when the incumbent concerned fell within the seniority range of the officers considered for the purpose. In the present case, if the petitioner would have come within the seniority range of the officers considered for the purpose in that case the question of considering him for the post along with others would have arisen. But since that is not the case the petitioner cannot make any grievance that instead of appointing him to the top post one Shri Kalyan Rudra who is senior to him by three years is going to be appointed. We have also seen that there have been many appointments in the top posts in organisations under the Central Government where the incumbent concerned had no experience of working in the concerned organisation.

13. It is also contended on behalf of the petitioner that the selection of Shri Kalyan Rudra for the post of D.G, RPF is violative of the provisions of rule 93.3 of the RPF Rules, 1987 which, according to the petitioner, forbids the posting of any RPF officer to his home town. The said Rule 93.3 provides that "no one shall

ordinarily be so posted that his home town falls within 100 kms. of railhead of his posting nor to a place where he holds or acquires immovable property nor he be posted back in the same capacity unless it is considered essential in public interest". It is submitted by the learned Advocate for the petitioner that in view of this rule Shri Kalyan Rudra who has his own house at Delhi cannot be appointed and posted to Delhi as the Director General, RPF. It may be mentioned here that the office of the Director General, RPF is at Delhi. It is on the other hand submitted by the learned Solicitor General that the said Rule 93.3 itself provides flexibility in the matter by using the word "ordinarily" and also by allowing exception in public interest. His main argument on this point however is that the said rule finds place under the general heading "Transfers" and it applies only to transfer from one post to another in the RPF and does not cover the appointment to the post of Director General, RPF. The heading of said Rule 93, "General principles for effecting periodical transfers" also indicates that the provisions contained therein are applicable to periodical transfers of RPF officers from one post to another. It has obviously no application to appointment of the Director General, RPF because there is no scope of transfer of Director General from one post to another within RPF. But the main and the primary question that has to be considered in this case is whether the petitioner is entitled, as a matter of right, to be appointed to the post of Director General, RPF or has he a right to be considered for appointment to that post. For reasons elaborately discussed earlier I have found that the petitioner cannot claim such right at this stage in the background of the facts and circumstances of the case. That being so, the question as to whether the appointment of Shri Kalyan Rudra to the post of Director General, RPF will be violative of the said rule 93.3 of the RPF Rules, 1987 is out of context and merits no consideration.

14. It is contended on behalf of the petitioner that the petitioner submitted representation to the Hon'ble Minister of Railways for his appointment to the post of Director General, RPF but that was not considered. In this connection, the learned Advocate for the petitioner also refers to An-nexure-E to the affidavit-in-reply of the petitioner which is a letter dated 10.6.93 issued by the Railway Board to the petitioner informing that since the Railway Board have already selected an IPS officer eligible to hold the post of D.G at the Centre for filling up the post of Director General, RPF the petitioner's request is not feasible of acceptance. It is submitted by the learned Advocate for the petitioner that the selection referred to in the said letter was the selection of Shri Ramalingam who was however later found to be not available. It is also submitted that the said letter would clearly show that the petitioner's representation was not considered on merit but it was not accepted because another officer (Shri Ramalingam) had already been selected. Since the selection of Shri Ramalingam ultimately failed, it is contended, the petitioner's representation should have been considered before going to select another officer namely Shri Kalyan Rudra. This contention, in my opinion, is of no moment when on the basis of the affidavits in this case I find that the petitioner cannot as a matter of right claim to be considered for the post

of D.G, RPF in the background of the relevant facts and circumstances.

15. Now that I have found that the petitioner's claim has no merit as a matter of right, I would now refer to two other aspects argued at the bar. The first of these arguments is relating to the objection that this Court has no jurisdiction to entertain the writ petition on the ground that the matter would come within the purview the Central Administrative Tribunal (CAT) and the second aspect of the argument relates to the territorial jurisdiction of this Court. The objection that the matter comes under the jurisdiction of the Central Administrative Tribunal is however not acceptable. It is true that the petitioner is an IPS officer but he has been working in the Railway Protection Force which is declared to be an Armed Force of the Union and the Section 2 of the Administrative Tribunals Act, 1985 clearly provides that the provisions of the Act shall not apply to any member of the naval, military or air forces or of any other armed forces of the Union. Since the petitioner in this case claims to be appointed to the post of the Director General, RPF in view of the fact inter alia that he is already working as the Inspector General, RPF for more than 3 years the matter is definitely outside the domain of the Central Administrative Tribunal. That being so, it cannot be said that this Court has no jurisdiction to entertain this writ petition. Regarding territorial jurisdiction it is argued by the learned Solicitor General that the office of the Director General, RPF is located at Delhi and the selecting and appointing authorities are also at Delhi and no part of the cause of action for the writ petition has arisen within the territorial jurisdiction of this Court. On the other hand, it is submitted by Mr. Saktinath Mukherjee, the learned Advocate for the petitioner that since the petitioner is holding also the post of Inspector General, RPF, South-Eastern Railway of which the headquarters is at Calcutta and since the petitioner's claim for appointment or for consideration of his appointment to the post of Director General, RPF is based on acquisition of requisite experience in the post of Inspector General RPF, South-Eastern Railway and since the decision of the Government of India to appoint someone else and not the petitioner in the post of Director General, affects the petitioner at the place of his basic posting at Calcutta, a part of the cause of action therefore arises within the territorial jurisdiction of this Court and as such the writ petition is quite maintainable here. The learned Advocate for the petitioner in this connection refers to several decisions, such as, the decision of the Madras High Court in Veeri Chetliar v. S. T. Officer, Bombay, AIR 1971 Madras 151, the decision of the Bombay High Court in Damomal Kausomal Raisinghani Vs. Union of India and Others, and the decision of this Court in Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another, in support of his argument that where a person is affected by an order or decision of an authority a part of the cause of action arises at the place where the person is so affected. There is no doubt that where an order or decision directly affects a person, it can be said as a matter of broad proposition, that a part of the cause of action arises at the place where the person is so affected. But even then the question remains how and in what manner a person has been affected, if at all, and this has to be

decided in the facts and circumstances of the particular case. The matter will be clear if we look to the decision of the Division Bench of this Court in *Union of India v. Hindustan Aluminium Corporation* (supra). In that case the impugned order fixing the selling price and the retention price of Aluminium was fixed by the Central Government at Delhi and the factory of the petitioner company was located outside West Bengal but the head office was situated at Calcutta. The petitioner company alleged that it suffered losses in business at Calcutta as the direct consequence of the impugned orders. It was held by the Division Bench of this Court that part of the cause of action arose at Calcutta and therefore the Calcutta High Court had territorial jurisdiction to entertain the writ petition. In that connection the Division Bench also considered and distinguished a Single Judge decision of this Court in *Darshanlal Anand Prakash v. Collector Customs and Central Excise, Shillong* 1974 CLJ. 27. In that case the Central Government by a notification classified the tea gardens into five zones for the purpose of levying excise duty at varying rates on tea produced at the gardens according to the zones to which they belonged. The challenge of the petitioners related to the levy of duties of excise on the manufacture and production of tea by the petitioner in the State of Assam. The levy and collection of duties of excise also took place in State of Assam. It was contended on behalf of the petitioner that by reason of the said levy the financial position of the petitioners was adversely affected and such adverse effect was felt by them in Calcutta. The question was whether a part of the cause of action had arisen in Calcutta. In support of the contention that a part of the cause of action arose in Calcutta, it was contended on behalf of the petitioners that as they had to deposit money in the Reserve Bank of India at its Calcutta office for the payment of excise duty it should be held that a part of the cause of action had arisen in Calcutta. It was however held by the Court that such deposit was not payment of excise duty so long as it was not appropriated by the Collector of Customs and such appropriation took place at Assam by the Collector of Customs by debiting current account maintained by the assessee in Assam. There was no averment and no finding in that case that the petitioner had suffered loss in their business in Calcutta as a result of the impugned notification and the learned Judge overruled the contention of the petitioner that the effect of the impugned notification was felt by the petitioner in their places of business including Calcutta. The Division Bench of this Court in *Union of India v. Hindustan Aluminium Corporation* (supra) considered the said Single Judge decision of this Court in *Darshanlal Anand Prakash v. Collector of Customs* and opined that it had been rightly observed by the learned Judge that the effect felt at a place of business of the petitioner by reason of imposition of duty levied on the petitioner's tea, was far too remote and incidental to constitute a part of cause of action and that there was a clear distinction between the effect being felt at place of business and suffering of loss in business by reason of an impugned order of the Government. The position that emerges therefore is that in order to constitute a part of cause of action the effect of the impugned order, notification, decision or action must be a direct one upon the person concerned and not remote. The person concerned must be

affected directly in relation to something which is not merely a psychological or mental feeling except in the type of cases where such feeling itself/ may give rise to a cause of action. The petitioner's service as Inspector General, RPF, South-Eastern Railway is not in any way affected by the decision of the Central Government at Delhi not to appoint the petitioner to the post of Director General, RPF at Delhi. If such decision has affected the petitioner in the form of afflicting or disappointing him such effect is a purely psychological or mental one and such psychological or mental effect does not constitute a part of cause of action in a case of this nature relating to service conditions or service benefits or appointment to service posts. Even assuming that the petitioner has acquired requisite or additional qualification or eligibility for being appointed to the post of Director General by reason of his service in the post of Inspector General, RPF, South-Eastern. Railway, that does not give rise to any part of cause of action in respect of his grievance for being not selected for or appointed to the post of Director General at Delhi. To illustrate this point let us suppose a case where the Central Government held a selection test at Delhi for making appointment to a post at Delhi, the minimum qualification for consideration of such selection being a University degree in any stream. A person who appeared in the test but was not selected cannot certainly file a writ petition at Calcutta on the ground that he obtained the degree from the Calcutta University by studying in some Calcutta college and therefore a part of the cause of action arose within the jurisdiction of the Calcutta High Court. He may have other grounds which may furnish him with a part of cause of action at Calcutta but certainly the mere acquisition of the qualifying degree for consideration of appointment to the post will not afford him a cause of action or part thereof for filing a writ petition in the Court within the territorial jurisdiction of which he acquired such qualification. The petitioner also thus cannot claim that part of cause of action has arisen in Calcutta simply because he has gained experience in RPF by working in Calcutta which experience he thinks qualifies him or gives him a right to claim appointment to the post of D.G. RPF at Delhi. I therefore find that this Court, in the facts and circumstances of the case, has no territorial jurisdiction to entertain the writ petition inasmuch as no part of the cause of action arose within its territorial jurisdiction. Both on merit and on ground of territorial jurisdiction the writ petition therefore must fail and the same is thereby dismissed. All interim orders stand vacated. No costs ordered.