
(1980) 04 SC CK 0003

In the Supreme Court Of India

Case No : Civil Appeal No. 2526 of 1977 and 2413 of 1978 and Writ Petition No"s. 520-524 of 1980

Harjeet Singh Ors.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-04-1980

Acts Referred:

All India Services (Conditions of Service Residuary Matters) Rules, 1960 — Rule 3
All India Services Act, 1951 — Section 2, 2A, 3, 3(1)
Constitution of India, 1950 — Article 14, 16, 226, 312(1), 312(2)
Police

Citation : AIR 1980 SC 1275 : (1980) LabIC 725 : (1980) 2 LLJ 143 : (1980) 3 SCC 205 : (1980) 3 SCR 459

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

Bench : Division Bench

Advocate : Jawahar Lal Gupta, S. Ghose, P.R. Mridul, M.R.Agnihotri and P.C. Bhandari, for the Appellant; H.L. Sibal, R.K. Garg and R.S. Sodhi, for the Respondent

Final Decision : Dismissed

Judgement

O. Chinnappa Reddy, J.—In these appeals we have once again to consider career conscious competing claims to seniority which appear so much to dominate the lives and careers of our Civil Servants that a large bulk of the cases in this Court relate to the resolution of problems arising out of such claims. So much of our time is taken up in discovering the precise facts of these intricate problems that we wonder whether the Constitution of a fact-finding administrative tribunal who should invariably be approached in the first instance will not better serve the cause of successful administration. An administrative tribunal possessing the necessary expertise and familiarity with administrative procedures and rules may be able to deal with the problems in a satisfactory way. At least the facts will be found and the relevant rules will be known. Thereafter aggrieved parties may approach the Courts for further relief within the confines of Articles 226 and 32

of the Constitution.

2. On selection by the Punjab Public Service Commission, B.R. Kapur and Harjeet Singh were directly recruited, in 1951, as Deputy Superintendents of Police in the Punjab Police Service. They are the appellants in CM Appeal Nos. 2413 of 1978 and 2526 of 1977 respectively. B.R. Kapur was senior to Harjeet Singh as Deputy Superintendent of Police. In 1960 both of them were included in the Select List prepared under Regulation 7 of the Indian Police Service (Appointment by Promotion) Regulations 1955. On November 24, 1960, B.R. Kapur was appointed as Assistant Inspector General of Police which post was a cadre post. In May, 1961, B.R. Kapur was appointed as Director of Sports and Youth Programme and Deputy Secretary to Government, Sports Department. The post was a non-cadre post. He held this post upto November 18, 1962 and thereafter he was appointed as Additional Controller of Stores, Punjab which was also a non-cadre post. He continued to hold the post of Additional Controller of Stores till 1965. From July 19, 1965, he was Commandant, 40th Battalion, PAP, J & K, which was a cadre post. He held the post till July 11, 1966, when he took over as Commandant of 25th Battalion, PAP. On the reorganisation of the State of Punjab, he was appointed as Assistant Inspector General of Police, State of Punjab from November 1, 1966. Thereafter he continuously held cadre posts and was finally appointed to the Indian Police Service with effect from September 3, 1969.

3. Shri Harjeet Singh was appointed to officiate as Superintendent of Police in December, 1960. The post was a cadre post. He continued to hold a cadre post till he was appointed to the Indian Police Service with effect from September 3, 1969. After the two officers were appointed to the Indian Police Service the question of assignment of year of allotment and fixation of seniority arose for the consideration of the Government of India. Shri B.R. Kapur was allotted to the year 1963 and placed below Sube Singh and above Shri S.R. Sharma (direct recruits) in the Indian Police Service Gradation List of Punjab. The period of his service as Director of Sports and Youth Programme and as Additional Controller of Stores was not taken into consideration as both the posts were non-cadre posts. His service as Commandant of 25th Battalion was also not taken into account on the ground that the 25th Battalion had been taken over by the Government of India and therefore the post of Commandant of the 25th Battalion was a non-cadre post. He was, therefore, treated as having continuously officiated in a senior cadre post from November 1, 1966 only. On that basis he was allotted to the year 1963. In the case of Harjeet Singh, though admittedly he officiated continuously in a senior cadre post from December, 1960 he was also allotted to the year 1963 and placed below Shri B.R. Kapur on the ground that he ranked below Shri B.R. Kapur in the select list.

4. B.R. Kapur and Harjeet Singh filed Writ Petitions in the High Court of Punjab and Haryana questioning the allotment of the year 1963 to them for the purpose of seniority in the Indian Police Service. The learned Single Judge of the High Court who heard the petitions in the first instance held that there was no reason

at all why Harjeet Singh should not be given the full benefit of his continuous officiation in a senior post. He, therefore, directed the Union and Punjab Governments to redetermine the year of allotment of Harjeet Singh, taking December 17, 1960, as the date from which he continuously officiated in a senior post. It was also directed that proper seniority should be assigned to him in accordance with the year of allotment so determined. In the case of B.R. Kapur it was held that July 29, 1965, should be treated as the date of his continuous officiation in a senior post. It was held that the Government of India and the Government of Punjab had all the time treated the post of Commandant, 25th Battalion as a cadre post and therefore, B.R. Kapur was entitled to have his service in the post of Commandant, 25th Battalion as officiation in a Senior post. A direction was issued that the year of allotment and seniority should be re-determined. It was further directed that before redetermining the seniority of the two officers, the respondents to the Writ Petitions who were direct recruits, should be afforded an opportunity to make their representations.

5. Appeals under Clause 10 of the Letters Patent were filed by the affected direct recruits as also by B.R. Kapur. Before the Division Bench the case took a new turn. It was argued before the Division Bench on behalf of the direct recruits that neither B.R. Kapur nor Harjeet Singh would have ever started officiating in the senior post on the dates from which they officiated or claimed to have officiated in senior posts, if the State Government had not created artificial vacancies by excessive utilisation of the deputation and central reserve' quota in contravention of the Cadre Rules and the Cadre-strength Regulations. It was apparently sought to be argued before the Division Bench that the period of service attributable to over utilisation of 'deputation and central reserve' quota should not be treated as service in a senior post for the purpose of determining the year of allotment of officers promoted to the Indian Police Service. The argument was accepted by the Division Bench and a direction was issued to the Central Government to reconsider the question of year of allotment after taking into consideration the question of over utilisation and its effect. The finding of the learned Single Judge that B.R. Kapur was entitled to have his service as Commandant 25th Battalion as officiation in a senior post was however affirmed.

6. Shri Jawahar Lal Gupta, learned Counsel for Harjeet Singh argued that the service of Harjeet Singh in a senior cadre post was approved by the Government of India and once it was so approved the question whether there was over utilisation of deputation and central reserve quota was irrelevant for the purpose of determining the year of allotment. The only relevant question was whether the appellant had continuously officiated in a senior post and, from what date. Thereafter the year of allotment was to be determined by the simple and mechanical application of Rule 3(3)(b) of the Indian Police Service (Regulation of Seniority) Rules. He further submitted that the circumstance that B.R. Kapur was senior to Harjeet Singh in the Select List was also irrelevant in considering the question of year of [allotment. It was only if both of them were given the same year of allotment that their inter-se seniority in the Select List would become

relevant. Shri Mridul, learned Counsel for B.R. Kapur, argued that the single Judge of the High Court was wrong in excluding the period of service of B.R. Kapur as Director of Sports and as Additional Controller of Stores in determining the year of allotment. He further contended that in any event the case of B.R. Kapur was an appropriate one for the exercise by the Central Government of its power to relax the rules and that this Court should give a direction to the Central Government to relax the rules so as to enable that part of Kapur's service to be treated as service in a senior post.

7. Shri H.L. Sibal, learned Counsel for one of the respondents argued that the number of cadre officers who could be deputed by the Central and State Governments for service elsewhere was limited and fixed by the Indian Police Service (Fixation of Cadre Strength) Regulations. By deputing more cadre officers than authorised by those Regulations and appointing non-cadre officers to artificial vacancies so created in cadre posts, the State Government had adopted a device to enable the officers of the State Police Service to continuously officiate in Senior posts longer than justified. The Cadre Strength Regulations were thereby contravened and the Cadre Rules which provide for the temporary appointment of non-cadre officers to cadre posts circumvented. He submitted that officiating service rendered by a non-cadre officer in a Senior post where the vacancy in the cadre post was the result of over utilisation of the deputation quota could not be taken into account under the Indian Police Service Regulation of Seniority Rules. Shri R.K. Garg, who appeared for the remaining respondents urged that to permit promoted officers to take advantage of the deviation from the Cadre Rules and the Cadre Fixation of Strength Regulations for the purpose of gaining an advantage under the Seniority Rules would be a denial of the equal protection of the laws to the direct recruits who would be affected by such procedure. He also urged that Rule 3 of the Seniority Rules if so interpreted as to take into account officiation against the rules must be held to contravene Articles 14 and 16 of the Constitution.

8. In order to appreciate the rival contentions it is necessary to examine the relevant statutory provisions, rules and regulations.

9. Article 312(1) empowers Parliament to provide, by law, for the creation of All India Services common to the Union and the States. Article 312(2) declares that the services known at the commencement of the Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under Article 312(1).

10. Section 2 of the All India Services Act, 1951 defines an "All India Service" as meaning the service known as the Indian Administrative Service or the service known as the Indian Police Service or any other service specified in Section 2(A). Section 3 enables the Central Government after consultation with the Government of the States concerned to make rules for the regulation of recruitment, and the conditions of service of persons appointed to an All India Service.

11. The Indian Police Service (Cadre) Rules, 1954, made in exercise of the powers conferred by Section 3(1) of the All India Services Act, provide for the Constitution of Cadres and certain connected matters. A Cadre Officer is defined as a member of the Indian Police Service and a Cadre post is defined as any of the posts specified under item 1 of each cadre in the schedule to the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955. Rule 4(1) provides that the strength and composition of a cadre constituted for each State or group of States shall be as determined by Regulations made by the Central Government in consultation with the State Governments. Rule 4(2) requires the Central Government to re-examine the strength and composition of each such cadre at intervals of every three years in consultation with the State Government concerned and to make such alterations as it deems fit. The first proviso to Rule 4(2) expressly stipulates that the power of the Central Government to alter the strength and composition of any cadre at any other time is not affected by Rule 4(2). The second proviso to Rule 4(2) enables the State Government to add, 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 State cadre one or more posts carrying duties or responsibilities of a like nature to a cadre post. Rule 6 authorises the deputation of cadre officers for service under the Central Government or another State Government or under a Company, Association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government or a State Government, a Municipal Corporation or a Local body or an international organisation etc. etc. Rule 8 prescribes "save as otherwise provided in these rules, every cadre post shall be filled by a cadre officer". Rule 9(1) provides for the temporary appointment of a non-cadre officer to a cadre post if the State Government is satisfied that the vacancy is not likely to last for more than three months or if there is no suitable cadre officer available for filling the vacancy. Where a non-cadre officer is appointed to a cadre post for a period exceeding three months the State Government is required forthwith to report the fact to the Central Government together with their reasons for making the appointment. The Central Government may then direct the State Government to terminate the appointment of such person and to appoint a cadre officer to the post, in which case the State Government is bound to give effect to the direction. Where a cadre post is likely to be filled by a non-cadre officer for a period exceeding six months the Central Government is required to report the full facts to the Union Public Service Commission and may thereafter give appropriate directions to the State Government in the light of the advice given by the Union Public Service Commission.

12. Pursuant to the powers conferred by Rule 4(1) of the Indian Police Service Cadre Rules, the Central Government has made the Indian Police Service (Fixation of Cadre Strength) Regulations 1955, determining the strength and composition of the cadres of each of the States. In the schedule the total authorised cadre strength for the State of Punjab is mentioned as 70 consisting

of 34 Senior Posts under the State Government, 14 Senior posts under the Central Government, 7 Deputation Reserve posts, 6 Leave Reserve posts and 7 Junior posts and 4 Training Reserve posts. The thirty four senior posts under the State Government are also particularly specified. Thirty six out of the total of forty eight Senior posts under the Central and State Governments, the deputation Reserve posts, the Leave Reserve posts, the Junior posts and the Training Reserve posts are all stated to be 'direct recruitment posts' while the remaining 12 Senior posts under the Central and State Governments are stated to be "promotion posts". It is necessary to mention here that the thirty four posts specified as "Senior posts under the State Government" are shown as item 1 of the schedule and the fourteen Senior posts under the Central Government are shown as item 2 of the schedule.

13. The Indian Police Service (Recruitment) Rules, 1954 provide for recruitment to the Service (a) by a competitive service and (b) by promotion of substantive members of a State Police Service. Rule 9(1) empowers the Central Government to recruit to the Indian Police Service persons by promotion from amongst the substantive members of the State Police Service in accordance with Regulations made by the Central Government. The recruitment is required to be made on the recommendation of the State Government concerned and in consultation with the Union Public Service Commission. Rule 9(2) provides that the total number of persons recruited by promotion shall not at any time exceed 25% of the number of posts shown against item No, 1 and 2 of the cadre in the schedule to the Indian Police Service (Fixation of Cadre Strength) Regulation. Items 1 and 2, we have already mentioned are Senior posts under the State and the Central Governments.

14. The Indian Police Service (Appointment by Promotion) Regulations 1955, made pursuant to Rule 9(1) of the Indian Police Service Recruitment Rules 1954 prescribes a very elaborate procedure for making appointments by promotion to the Indian Police Service. A Selection Committee is required to be constituted for each State consisting of the Chairman or any other member of the Union Public Service Commission and other members specified in the schedule. In the case of Punjab the other members are the Chief Secretary to the Government of Punjab, the Secretary to the Government of Punjab in the Home Department, the Inspector General of Police and a nominee of the Government of India not below the rank of Joint Secretary. The Selection Committee is required to meet at intervals ordinarily not exceeding one year and to consider the cases of all eligible substantive members of the State Police Service. The Committee is required to prepare a list of such eligible members of the State Police Service who are suitable for promotion to the Indian Police Service. The selection for inclusion in the list is to be based on merit and suitability in all respects with due regard to seniority but the names of the officers included in the list are required to be arranged in order of seniority in the State Police Service. The list prepared by the Selection Committee is then to be forwarded to the Union Public Service Commission by the State Government with all relevant records, the reasons

recorded by the Committee for any proposed supersession of any member of the State Police Service and the observation of the State Government on the recommendation of the Committee. Thereafter the Union Public Service Commission is to consider the list prepared by the Committee and to make any changes considered by them, to be necessary, after informing the State Government of the proposed changes. The list as finally approved by the Commission is to form the Select List of the members of the State Police Service.' All appointments of members of the State Police Service from the Select List to posts borne on the State cadre are to be made in accordance with the provisions of Rule 9 of the Cadre Rules. In making the appointments the State Government is to follow the order in which the names of such officers appear in the Select List except where administrative exigencies require otherwise and the vacancy is not likely to last for more than three months. Appointments of members: to the Indian Police Service are to be made by the Central Government on the recommendation of the State Government in the order in which the names of the members of the State Police Service appear in the Select List for the time being in force.

15. We arrive finally at the Indian Police Service (Regulation of Seniority) Rules 1954. Rule 3 provides that every officer shall be assigned a year of allotment in accordance with the provisions of that rule. Rule 3(3)(b) prescribes that the year of allotment of an officer who is appointed to the service by promotion in accordance with Rule 9 of the Recruitment rules, shall be the year of allotment of the junior most among the officers recruited by competitive examination who officiated continuously in a Senior post from a date earlier than the date of commencement of such officiation by the officer appointed to the service by promotion. 'Senior post' was originally defined as a post included and specified under item 1 of the cadre of each State in the Schedule to the Indian Police Service (Fixation of Cadre Strength) Regulation and as including posts declared by the State Government as equivalent to such posts. The definition was amended with effect from April 22, 1967 and the present definition does not include posts declared equivalent by the State Government to cadre posts.

16. Rule 4(1) provides that the seniority of officers inter-se shall be determined in accordance with the provisions of the rules. Rule 4(4) provides that the Seniority of officers who are assigned the same year of allotment shall be in the order of the dates on which they started officiating continuously in the Senior post, but in the case of Officers appointed to the service by promotion, the dates of officiation shall be the same as the dates taken into account for the purpose of assignment of year of allotment Under Rule 3(3). Where the dates of commencement of continuous officiation in a Senior post of more than one Officer appointed to the service by promotion is the same their seniority inter-se shall be in the order of their dates of appointment to the service and where the date of appointment is also the same it shall be in the order in which their names are arranged on the date of their appointment to the service in the Select List.

17. These are the Statutory provisions, Rules and Regulations with which we are concerned in the present appeals. What are primarily in question are the year of allotment and the Seniority of the two officers, Harjeet Singh and B.R. Kapur. So, therefore, our primary concern is with the Indian Police Service (Regulation of Seniority) Rules, 1954. Rule 3(3)(b) as well as Rule 4(4) throw up the date of continuous officiation of an officer in a cadre post as the most important factor both for the purpose of assignment of year of allotment and for the purpose of assignment of seniority. For the purpose of assignment of year of allotment the date of continuous officiation in a senior post is the only relevant factor while for the purpose of assignment of seniority, first, the date of continuous officiation in a senior post is the only relevant factor while for the if the date of commencement of continuous officiation in a Senior post of more than one officer is the same and, finally, the order in the Select List if the date of appointment is also the same, are the several relevant factors in that order. Thus the order in the Select List is irrelevant for the purpose of determining the year of allotment and is relevant in determining the seniority, only if the year of allotment of the Officers is the same and their date of appointment is also the same. Since the order in the Select List is dependent on the seniority in the State Service, it follows that seniority in the State Police Service is irrelevant for the purpose of determining the year of allotment and is relevant for the purpose of determining the seniority only if the year of allotment and the date of appointment of two or more officers are the same. It must, therefore, necessarily follow that an officer who is junior to another in the State Police Service but, who starts continuous officiation in a Senior post from a date earlier than the other, may frog-leap and gain Seniority by the consequential assignment of an earlier year of allotment. There is nothing in the Indian Police Service (Regulation of Seniority) Rules, which has the effect of depriving an officer the benefit of continuous officiation on the ground that some one senior to him in the State Police Service did not so continuously officiate. Nor are we able to discover any other rule in the innumerable Rules and Regulations governing the recruitment, appointment and Regulation of Seniority of officers of the Indian Police Service which is designed to deprive an officer, the benefit of continuous officiation in a Senior post.

18. One of the submissions made to us by the respondents was that the Select List having been prepared on grounds of merit and ability, the order in which officers were ranked in the Select List should not be disturbed after they were actually promoted to the Indian Police Service. This submission is without substance. Though under the Indian Police Service (Appointment by Promotion) Regulations, the Select List is prepared on the basis of merit and ability, the order in which officers are placed in the Select List is according to seniority in the State Police Service and not according to merit and ability. Merit and ability are considered for the purpose of inclusion in the Select List but thereafter seniority in the State Police Service takes over and the names of Officers are arranged in the order of that seniority. We, are, therefore, satisfied that the benefit of continuous officiation in a Senior post cannot be denied to an officer appointed to

the Indian Police Service merely on the ground that an officer senior to him in the State Police Service did not so continuously officiate.

19. It is, however, true that under Regulation 8 of the Indian Police Service (Appointment by Promotion) Regulations, appointments to cadre posts from among non-cadre officers should be made according to the order in which the names of such officers appear in the Select List. A deviation from the order is permissible if administrative exigencies require it and if the vacancy is not likely to last for more than three months. Of course, the Regulation does not license uninhibited deviation to favour individual non-cadre officers. If that is done the deviation is liable to challenge. But where there is no such allegation, there is no reason why a junior non-cadre officer should lose the benefit of his continuous officiation in a cadre post merely because a non-cadre officer senior to him in the Select List did not continuously officiate likewise. In such a situation, it would be for the Government of India to consider whether the relevant rules may not be so relaxed as to enable such non-cadre officer to add his officiation in a non-cadre post to his officiation in a cadre post, regard being had to the circumstances under which the officer had to work in a non-cadre post while his junior in the Select List was made to fill the cadre post. But, surely, it cannot work to the prejudice of the junior officer in the Select List so as to nullify the actual, continuous, officiating service rendered by him. In the present case there is no allegation, that B.R. Kapur was appointed to the non-cadre posts of Director of Sports and Additional Controller of Stores with a view to favour Harjeet Singh.

20. Now, the question for consideration is whether non-cadre officers are to be denied the benefit of continuous officiation in senior post merely because cadre officers were appointed on deputation elsewhere in excess of the number of posts specified against 'Deputation Reserve' in the schedule to the Cadre Fixation of Strength Regulation. We are unable to discover any provision in the Seniority Rules, Recruitment Rules, Cadre Rules or the Cadre Regulations which would lead to such a consequence. To begin with it has to be borne in mind that the Fixation of Cadre Strength Regulations are made in exercise of the powers conferred on the Central Government by Rule 4(1) of the Cadre Rules and are, therefore, subordinate to the Cadre rules even as rules made in exercise of powers conferred by a Statute are necessarily subordinate to the Statute. Rule 6 of the Cadre Rules provides for the deputation of Cadre Officers and Rule 9 of the same rules provides for the temporary appointment of non-cadre officers to cadre posts. In making appointments of non-cadre officers to cadre posts the rule prescribes the fulfilment of certain conditions. It is not disputed that the conditions prescribed by Rule 9 of the Cadre Rules were fulfilled. That the conditions were fulfilled is also apparent from the very impugned order. If non-cadre officers are appointed to cadre posts in accordance with Rule 9 of the Cadre Rules, is there any justification for denying the non-cadre officer the benefit of officiation in the cadre post on the ground that more cadre officers than the number specified in the Fixation of Cadre Strength Regulations had been deputed for service elsewhere ? It is not disputed that the deputation of

cadre officers was in accordance with Rule 6 of the Cadre Rules. True, Rule 4(1) of the Cadre Rule enables the Central Government to make Regulations determining the strength and composition of the Cadre of each State. It is also true that a definite number of posts is specified against 'Deputation Reserve' in the schedule to the Fixation of Cadre Strength Regulations. But if owing to the situational demands and exigencies of the administration the number is exceeded and the State Government is compelled to utilise the services of experienced non-cadre officers to fill cadre posts in strict compliance with the Cadre Rules, we see no reason to hold that the service rendered by the non-cadre officers in such posts should be ignored.

21. On the other hand we think that the Fixation of Cadre Strength Regulations made Under Rule 4 of the Cadre Rules do not over-ride the Recruitment Rule, the remaining Cadre Rules and the Seniority Rules so as to render invalid any service rendered by a non-cadre officer in a cadre post on the mere ground of breach of the Fixation of Cadre Strength Regulations, when there has been strict compliance with Rule 9 of the Cadre Rules. We think that fixation of Cadre strength is the exclusive concern of the Central and the State Governments and the Regulations are made for their convenience and better relationship. Excessive utilisation of 'Deputation or Central Reserve' is a matter for adjustment and controversy between the Central and the State Governments and is of no concern to any member of the Service. For example no cadre officer who is asked to fill a deputation post can refuse to join the post on the ground that the 'Deputation Reserve' has already been exceeded. The Regulations are not intended to and do not confer any right on any member of the Service, unlike some other Rules which do confer or create rights in the members of the Services. Among other Rules, for instance, Rule 9(2) of the Recruitment Rules stipulates that the total number of persons recruited by promotion shall not at any time exceed 25% of the posts shown against item Nos. 1 and 2 of the cadre in the schedule to the Fixation of Cadre Strength Regulations. Now, if at a point of time this limit is exceeded, direct recruits may have a just cause for complaint and it may perhaps be held that to the extent of the excess the appointments by promotion are invalid and confer no rights of seniority over direct recruits. But, as we said, the Fixation of Strength Regulation confer no rights on members of the Service and a mere breach of the Regulation furnishes no cause of action to any member of the service on the ground that, his seniority is affected in some round about way We may add that there is no suggestion that Rule 9(2) of the Recruitment Rules was contravened.

22. It was brought to our notice that several Senior cadre officers had to be deputed to organise Battalions of the Punjab Armed Police which came to be formed after the Chinese aggression in 1962 and at the time of the Indo-Pakistan War in 1965. It was in the vacancies caused by their deputation that Senior officers of the State Police Services were appointed to cadre posts. Under Rule 6 (A) (2) of the Indian Police Service Recruitment Rules a direct recruit in the junior time scale of pay can be appointed to a post in the Senior time scale of

pay if having regard to his length of service, experience and performance he is found to be suitable for appointment to a post in the Senior time scale of pay. It appears that, at that time, in Punjab, there was no direct recruit in the Junior time scale of pay who possessed experience of atleast four years who could be thought of for appointment in the Senior post. The State Government, therefore, had no option except to appoint experienced and suitable non-cadre officers to cadre posts. It was also brought to our notice that no cadre officer who had been so deputed suffered in any manner in the matter of his career.

23. It was repeatedly suggested that the State Governments were generally in the habit of adopting stratagem of sending cadre officer on deputation in excess of the Deputation Reserve in order to enable Officers of the State Services to officiate in cadre posts so as to further enable them to get the benefit of such continuous officiation when finally appointed to an All India Service. Whatever truth there may be in the suggestion it has to be remembered firstly that the appointment of non-cadre officers to cadre posts is subject to the directions of the Central Government who may terminate such appointment. The Central Government too is bound to- obtain the advice of the Union Public Service Commission if the appointment is to extend beyond six months. Next, it has also to be borne in mind that non-cadre officers of proven merit only are appointed to cadre posts. They are appointed to cadre posts if they are already in the Select List and the appointments also are made in accordance with the order in which they are placed in the Select List. We have earlier mentioned how the Select List itself is prepared under the Indian Police Service Recruitment Rules after following an elaborate procedure involving a thorough examination of various levels, of the merit of the officers of the State Police Service. A State officer whose name appears on the Select List may expect to be appointed to a Cadre post and to be promoted to the Indian Police Service at any time thereafter according to vacancy position. A direct recruit who ordinarily comes into the picture years after a State Officer's name appears on the Select List cannot have any real grievance that the promoted officer is given an anterior date for the purpose of seniority since such date can never be earlier than the date from which the junior most direct recruit continuously officiated in a Senior post prior to the commencement of the continuous officiation of the promoted officer.

24. We are also unable to appreciate the submission of Shri R.K. Garg that every departure from a rule, which departure gives certain advantages to one group of civil servants as against another necessarily involves an encroachment of the Fundamental Rights guaranteed by Articles 14 and 16 of the Constitution. The proposition is widely stated, far fetched in relation to the facts of the instant case and not supported by AIR 1977 251 (SC) on which Shri Garg relied. In Chauhan's case the Court was considering the effect of the breach of a 'Quota' rule fixing the proportion of 'direct recruits' and 'promotees'. In the present case, as already noticed by us, there is no allegation of breach of the 'quota' rule embodied in Rule 9(2) of the Recruitment Rules. The Fixation of Cadre Strength Regulations cannot be interpreted as comprising any 'Quota' rule. The consequential

submission of Shri Garg that Rule 3(3)(b), if so interpreted as to take into account officiation in contravention of the rules, offends Articles 14 and 16 of the Constitution, therefore, loses all force particularly in view of what we have said about the true nature of the Fixation of Cadre Strength Regulations. We also notice that the vires of Rule 3(3)(b) of the Indian Administrative Service (Regulation of Seniority) Rules which is in similar terms as Rule 3(3)(b) of the Indian Police Service (Regulation of Seniority) Rules was upheld by a Constitution Bench of this Court in *A.P. Sharma v. Union of India*. 1968 Ser. L.R 582

25. In the light of our foregoing discussion we hold that the 'over utilisation' of 'Deputation and Central Reserve' does not affect the questions of assignment of the year of allotment and the seniority of the appellants. The concurrent finding of the learned single judge and the Division Bench that Kapur's service as Commandant, P.A.P. Battalion No. 25 was service in a Senior post was not challenged before us. Shri Mridul argued that the records reveal that Kapur's appointment to the posts of Director of Sports and Additional Controller of Stores was because of his exceptional ability and, therefore, those posts must be treated as cadre posts. In any event, he suggested that we should invite the Government of India to suitably relax the rules so as to enable Kapur's service as Director of Sports and Additional Controller of Stores to be reckoned as service in cadre posts. We cannot of course hold Kapur's service in non-cadre posts as service in cadre posts. Nor can we give the direction sought by Shri Mridul. It is of course open to Kapur to invoke the power of the Government of India to relax the rules and it is for the Government to take a just decision in the matter. We have no advice to offer.

26. Both the Civil Appeals are allowed, the Judgment of the Division Bench is set aside and the judgment of the Single Judge is restored. Writ Petition Nos. 520-524 have been filed by some of the direct recruits questioning the vires of Rule 3(3)(b) of the Indian Police Service (Regulation of Seniority) Rules and Rule 3 of the All India Services (Conditions of Service-Residuary Matter) Rules, 1960 which vests in the Government of India the power to relax. We have upheld the validity of Rule 3(3)(b) of the Indian Police Service (Regulation of Seniority) Rules and the question of the vires of Rule 3 of the All India Service (Conditions of Service residuary matters) rules does not arise at present. The Writ Petitions are also dismissed.