

(1981) 11 SHI CK 0017

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 72 of 1974

Parkash Chand Sharma

APPELLANT

Vs

Union of India (UOI) Ors.

RESPONDENT

Date of Decision : 25-11-1981

Acts Referred:

Administrative Service (Appointment by Promotion) Regulations, 1955 — Regulation 5, 5(4), 7, 7(3), 7(4)
Administrative Service (Cadre) Rules, 1954 — Rule 2, 4(1), 4(2), 9
Administrative Service (Recruitment) Rules, 1954 — Rule 7, 8, 8(1)
Administrative Service (Regulation of Seniority) Rules, 1954 — Rule 3, 3(3)
Fundamental Rules — Rule 105

Citation : (1981) 10 ILR HP 614

Hon'ble Judges : V.D. Misra, C.J

Bench : Single Bench

Advocate : Pratima Malhotra, for the Appellant; Inder Singh, General, for the Respondent

Final Decision : Allowed

Judgement

V.D. Misra, C.J.—The Petitioner, who is an I.A.S. Officer, seeks a direction to the Union of India for assigning him an appropriate place in the Civil List by being declared senior to Respondents Nos. 5 to 33.

2. The Petitioner joined Punjab Civil Service in 1949 after successfully competing in a competitive examination held for that purpose. In the year, 1962 the name of the Petitioner was brought on the Select List of the members of the State Civil Service in terms of Regulation 7(3) of the Indian Administrative Service (Appointment by Promotion) Regulation, 1955. On 5th September, 1962, he was appointed as Deputy Secretary to the Government of Punjab in Development Department. He worked as such till 7th April, 1963. From 8th April, 1963 to 2nd December, 1964, he worked as Deputy Development Panchayat Commissioner and Deputy Secretary of Development and Panchayats, Government of Punjab. From 3rd December, 1964 to 14th June, 1966, the Petitioner worked as Manager,

Morinda Co-operative Sugar Mills Ltd., District Ambala. He proceeded on leave from 15th June, 1966 to 30th August, 1966. The Government of Punjab issued a certificate of continued officiation in the senior scale of I.A.S. of Foreign Service on 17th October, 1966, certifying that: "but for proceeding on foreign service as General Manager, Co-operative Sugar Mills, Morinda, Shri. P.C. Sharma would have continued to officiate in the senior scale of the I.A.S. during the period from 3rd December, 1964 to 14th June, 1966" (Annexure-A). The Governor of Punjab certified that "but for proceeding on leave Shri. P.C. Sharma would have continued to officiate in the senior scale of I.A.S." (Annexure-B). From 1st September, 1966 to 31st October, 1966, the Petitioner worked as Deputy Director, Education (Administration), Punjab.

3. On 1st November, 1966, under the Punjab Re-organisation Act, new State of Haryana, smaller State of Punjab, and Union Territory of Chandigarh were created. The Central Government in exercise of its powers under the Punjab Reorganisation Act allotted the Petitioner to the Union Territory of Himachal Pradesh with effect from 1st November, 1966. The then Administrator of the Union Territory of Himachal Pradesh issued an office order, dated 17th October, 1966, appointing the Petitioner in the senior scale of I.A.S. cadre post of Director of Panchayats with additional charge of the post of Registrar, Co-operative Societies, with effect from 1st November, 1966 (Annexure-C). This order describes the Petitioner as a Select List Officer of Punjab who has been allotted to Delhi-Himachal Pradesh Cadre. On 28th October, 1966, another order was passed by the Administrator of Himachal Pradesh directing the previous order to be held in abeyance (Annexure-D). On 30th October, 1966, the Petitioner was informed that the Chief Secretary of Himachal Pradesh had posted the Petitioner as Sub-Divisional Officer, Nalagarh (Annexure-E). The Petitioner sent a telegram protesting against the appointment as amounting to reduction in rank, pay and seniority since about 30 other Select List Officers junior to him, who were allotted to Haryana and Punjab, had been given appointments in senior scales of I.A.S. (Annexure-F). By an order, dated 3rd November, 1966, the Administrator of Himachal Pradesh in supersession of the earlier order directed "the posting of Shri. P.C. Sharma, a Select List Officer of the Punjab Civil Service, as Director of Welfare, Himachal Pradesh with immediate effect" (Annexure-G). The Petitioner relinquished his charge on 31st October, 1966, and joined as Director of Welfare on 5th November, 1966, at Simla. From 26th April, 1967 to 26th June, 1971, the Petitioner worked as Director of Panchayats. Both these posts held by the Petitioner are cadre posts in the I.A.S. The Petitioner was appointed regularly to the service of I.A.S. by an order, dated 11th February, 1971. He was "allotted to the year 1967" under Clause (b) of Sub-rule (3) of the Indian Administrative Service (Regulation of Seniority) Rules. The Petitioner claims that he has been continuously on the Select List of I.A.S. with effect from 15th September, 1963, and has been continuously officiating in the senior scale of I.A.S. and, therefore, he is entitled to be allotted the year 1957 or 1958. The Petitioner made a representation against the year of allotment but it was rejected.

4. The Union of India in its reply do not admit that Deputy Secretary to the Government, Deputy Development Panchayat Commissioner, and the Deputy Secretary to the Government, Development and Panchayats, Manager, Morinda Co-operative Sugar Mills and Deputy Director Education (Administration) are senior posts in the State cadre. It is admitted that the name of the Petitioner remained on the Select List of composite Punjab from 9th April, 1962, till the State of Punjab was trifurcated. It is stated that the Select List lapsed on 1st November, 1966, when the Petitioner was transferred to the New Delhi and Himachal Pradesh cadre. It is admitted that the name of the Petitioner was included in the Select List of the Delhi and Himachal Pradesh cadre in the year 1967 which was approved by the Union Public Service Commission on 29th April, 1967. It is stated that the Delhi-Himachal Pradesh cadre ceased to exist on 31st December, 1967, and new Union Territory cadre was constituted with effect from 1st January, 1968, when the Select List of Delhi-Himachal Pradesh cadre lapsed. There after a fresh Select List for the Union Territory cadre was approved with effect from 13th January, 1971, and the Petitioner's name was borne on that list.

5. The only question which arises for determination is whether the Petitioner officiated against or in any of the senior cadre posts of I.A.S. upto 13th February, 1971. It is not disputed before me that the Petitioner was in the Select List of Punjab cadre upto 31st October, 1966. It is, however, contended that this list ceased to exist after the trifurcation of the erstwhile State of Punjab. Again it is not disputed that the Petitioner's name was on the Select List of the Delhi-Himachal Pradesh cadre with effect from 27th April, 1967 to 31st December, 1967. It is submitted that on 1st January, 1968, the list ceased to exist and there was no list upto 13th January, 1971.

6. The learned Counsel for the parties agree that the decision in the case depends on the interpretation of Rule 3 - Indian Administrative Service (Regulation of Seniority) Rules, 1954. It relates to the assignment of year of allotment. The relevant part of the rule is as under:

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

(a) x x x x x x x

(b) where the officer is appointed to the Service by promotion in accordance with Sub-rule (1) of Rule 8 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the Service in accordance with Rule 7 of those rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former:

Provided that the year of allotment of an officer appointed to the Service in accordance with Sub-rule (1) of Rule 8 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officer recruited to the Service in accordance with Rule 7 of those Rules so started officiating, shall be determined ad hoc by the Central

Government in consultation with the State Government concerned:

Explanation 1.-In respect of an officer appointed to the Service by promotion in accordance with Sub-rule (1) of Rule 8 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purposes of determination of his seniority, count only from the date of the inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post, whichever is later:

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

Explanation 4.-An officer appointed to the service in accordance with Sub-rule (1) of Rule 8 of the Recruitment Rules shall be treated as having officiated in a senior post during any period of appointment to a non-cadre post if the State Government has certified within three months of his appointment to the non-cadre post that he would have so officiated but for his appointment, for a period not exceeding one year, and, with the approval of the Central Government, for a further period not exceeding two years, to a non-cadre post under a State Government or the Central Government in a time-scale identical to the time-scale of a senior post:

The term "senior post" has been defined by Rule 2(g) thus:

(g) "Senior post" means a post included and specified under item 1 of the cadre of each State in the Schedule Service to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955 and includes-

A post included in the number of posts specified in items 2 and 5 of the said cadre, and a post temporarily added to the cadre under the second proviso to Sub-rule 2 of Rule 4 of the Indian Administrative Service (Cadre) Rules, 1954, when held on senior scale of pay, by an officer recruited to the Service in accordance with Rule 7 of the Recruitment rules;

The definition before its amendment on 22nd April, 1967, read thus:

Senior post means a post included under item 1 of each Schedule to the Indian Administrative (Fixation of Cadre Strength) Regulations, 1955, framed under Sub-rule (1) of Rule 4 of Indian- Administrative Service (Cadre) Rules, 1954, or any post declared, equivalent thereto by the State Government concerned.

Since we are concerned with period prior to amendment in respect to "senior post" the amended definition will not be helpful.

7. The proviso to Explanation I was added vide notification dated 18th March, with effect from 1st November, 1966. Mr. Inder Singh contends that the Central

Government had no power to make regulations with retrospective effect. I need not go into this question since the question whether the proviso could be said to be operative between 1st November, 1966 and 18th March, 1969, is immaterial for the purpose of deciding the present case. The question of assigning of year of allotment only arises after a person has been appointed to the service. The Petitioner was appointed to the service in 1971 whereas the proviso was notified in the Gazette on 18th March, 1969. The Petitioner would, therefore, be entitled to have the advantage of this proviso. The Petitioner would have the right to include the period from 1st November, 1966 to 27th April, 1967, when the first list was prepared for the territories of Delhi and Himachal Pradesh.

8. Regulation 5 of the Indian Administrative Service (Appointment by promotion) Regulations, 1955, relates to the preparation of a list of suitable officers. Sub-regulation (1) lays down that each Committee ordinarily may at an interval not exceeding one year prepare a list of such members of the State Civil Service as are held by them to be suitable for service. It is, therefore, obvious that once a list is prepared it will continue till the next Committee meets and prepares a new list. Sub-regulation (6) provides that the list so prepared shall be revised and reviewed every year. It makes abundantly clear that the list once prepared never ceases or lapses and continues till it is reviewed and revised. It is further clarified by Sub-regulation (4) of Regulation 7, which deals with the Select List, that "the Select List shall ordinarily be in force until its review and revision, effected under Sub-regulation (4) of Regulation 5, is approved under Sub-regulation (1) or, as the case may be, finally approved under Sub-regulation (2)."

9. A similar question arose before a Division Bench of this Court in *V.K. Ahuwalia v. Union of India* and Ors. ILR 1979 H.P. 179. The Petitioner in that case was a member of the Indian Police Service and was appointed to the service by promotion. His name was borne on the Select List right upto 31st December, 1967, when the Select List meant for Himachal Pradesh and Delhi became defunct. It was contended by the State that till the preparation of new Select List in the Union Territory cadre the Petitioner could not be said to be on the Select List. It may be noticed that the relevant provisions of the Indian Administrative Service and Indian Police Service are exactly the same. The Bench concluded:

We, therefore, conclude that the Government of India wrongly decided that the officiation of the Petitioner between the period 1st January, 1968 to 12th January, 1971 or during the period 1st August, 1968 to 12th October, 1969 could not be considered valid officiation. Rather he was continuously holding a cadre post throughout this period, and the benefit regarding seniority will have to be given for the entire period. The decision being wrong and invalid under the very Rules and Regulations applied by the Government was subsequently set right by them under Annexure-Y.

10. Mr. Inder Singh has drawn my attention to the fact that in that case the Government of India had granted the necessary relaxation under the relevant rule of the Indian Police Service (Regulation of Seniority) Rules, 1954. I find that

this relaxation was not granted in favour of the Petitioner Shri. Ahluwalia but was done in respect of the other three officers S/Shri. J.S. Dulat, P.C. Sahney, and K.S. Dhaliwalas is apparent from Annexure A-1 reproduced in that judgment. In any case the Government considered the period between 1st January, 1969 and 12th October, 1969 void in the service of Ahluwalia. As is apparent from the judgment of the Bench extracted above, the Bench came to its own decision, without taking into consideration any relaxation of the rules, that Ahluwalia was continuously holding a cadre post throughout the period and that the decision of the Government to the contrary was invalid under the Rules and Regulations. It is also apparent that the Government later on corrected their decision by issuing another order. In view of this decision it cannot be said that the Petitioner in the present case was not continuously on the Select List till the new Union Territory Select List was announced.

11. I may at this stage add that my attention has been drawn to the fact that the case of Shri. Ahluwalia was taken to the Supreme Court in appeal by one of the Respondents, Amrik Singh, and the judgment of the Supreme Court is reported as Shri. Amrik Singh and Others Vs. Union of India (UOI) and Others, . It is true that the Supreme Court rejected the appeal on the ground that the Government had validly relaxed the rules and had also consulted the Union Public Service Commission for retrospective regularisation of officiation of Ahluwalia. However, there is nothing in the Supreme Court judgment to show that the conclusion arrived at by the Bench of this Court by interpreting the rules and regulations was disapproved.

12. As regards the question of continuous officiation, the only question raised before me is that the Petitioner cannot be said to have officiated between 1st to 3rd November, 1966, when he was posted by the then Administrator of Himachal Pradesh as Sub-Divisional Officer (Civil), Nalagarh. Mr. Inder Singh contends that the Petitioner could be appointed as Sub-Divisional Officer since he was not member of the Indian Administrative Service and continued to be a member of the State Civil Service. I am afraid I cannot agree. After having been selected for appointment to I.A.S. by promotion under Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954, and put on the Select List he had achieved a right for being considered and appointed for officiation against a senior post of the I.A.S. cadre till he was appointed to the I.A.S. He had in fact been officiating continuously ever since his name was put on the Select List. It may be remembered that Select List is, prepared in accordance with the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. Regulation 7, already referred to, relates to the preparation of the Select List. It is true that the name of a person could be removed from the Select List under the second proviso of Sub-regulation (4) of Regulation 7. But this could only be done in the event of a grave lapse in the conduct or performance of duties and by a special review at the instance of the State Government. This proviso reads:

Provided further that in the event of a grave lapse in the conduct or performance

of duties on the part of any member of the State Civil Service included in the Select List, a special review of the Select List may be made at any time at the instance of the State Government and the Commission may, if it so thinks fit, remove the name of such members of the State Civil Service from the Select List.

13. Now, Regulation 8 relates to the appointment to the cadre posts from the Select List. It reads:

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

14. The right of officiation against a senior post till his appointment in the Indian Administrative Service which had accrued to the Petitioner on his name being put on the Select List could not be taken away except under the rules governing the Service. It is not the case of the Union of India that this right was ever taken away. The Administrator of Himachal Pradesh had, therefore, no jurisdiction to take away this right and refuse to appoint the Petitioner to a senior post and direct his appointment as Sub-Divisional Officer (Civil), Nalagarh. The facts already stated show that to begin with the Administrator did appoint the Petitioner against a senior post vide Annexure-C but this order was put in abeyance on 28th October, 1966, vide Annexure-D and thereafter an order of appointment, vide Annexure-E dated 30th October, 1966, was made. Apparently the Administrator realised his mistake on the representation Annexure-F made by the Petitioner and directed the posting of the Petitioner against a senior post vide Annexure-G. The order dated 30th October, 1966, (Annexure-E) being illegal and without jurisdiction has thus to be ignored.

15. The matter may be looked at from another point of view. The Petitioner was entitled to joining time under Fundamental Rule 105 after leaving charge on 31st October, 1966. He joined as Director of Welfare, Himachal Pradesh, a senior post, on 5th November, 1966. Even on this score he cannot be said to have any break in the continuous officiation.

16. I may now record that the State has not raised the question of the break in Petitioner's service because of his appointment as Sub-Divisional Officer (Civil), Nalagarh. It may be noticed that Annexure-N to the writ petition which is a letter dated 14th February, 1974, from Shri. A.K. Goswami, Joint Secretary to the Government of Himachal Pradesh, to the Petitioner in answer to the representation made by him against the fixation of his seniority, the only reason given for rejecting his representation is that the Petitioner's name had not remained continuously on the Select List. I would not, therefore, allow this question to be raised for the first time during the course of arguments.

17. I may also records that Mr. Inder Singh made a feeble attempt to show that the various posts held by the Petitioner in the State of Punjab after his name was

put on the Select List were not cadre (senior) posts. I may point out that in Annexure-R2 to the affidavit filed by the Union of India the Petitioner is shown to have held the cadre posts continuously from 5th November, 1966 to 2nd June, 1971. He is also shown to have held non-cadre posts between 5th September, 1962 to 31st October, 1966. It may also be noticed that in paragraph 3 of the reply on merits the affidavit of the Union of India admits that all the posts shown as non-cadre posts to which the Petitioner was appointed are senior posts in the State Cadre.

18. My attention has also been invited to the Indian Administrative Service (Cadre) Rules, 1954. Rule 2(b) defines "cadre post" as "any of the posts specified under item I of each cadre in the schedule to the Indian Administrative Service (Fixation of Cadre Strength), Regulations, 1955". Rule 4(2) requires the Central Government "at the interval of every three years, re-examine the strength and composition of each such cadre in consultation with the State Government or the State Governments concerned and may make such alterations therein as it deems fit." The Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955, show the posts borne on and the strength and composition of the cadre of the Indian Administrative Service of various States in the Schedule to the Regulations. These stand published in the All India Services Manual (2nd Edition) corrected upto 1st August, 1969, issued by the Government of India, Ministry of Home Affairs. On page 391 of this Manual the composition of the cadre and the posts borne on and the strength relating to Punjab is shown. The posts of Deputy Secretaries to the Government as well as posts of Deputy Commissioners are shown as senior posts under the Government. Their respective strength is 18 and 11. The Petitioner between 5th September, 1962 to 2nd December, 1964 was holding the post of Deputy Secretary to the Government in addition to the other post. Mr. Inder Singh has placed before me a copy of the notification No. 6/8/63-IAS(I), dated 11th February, 1963, making amendments in the I.A.S. (Fixation of Cadre Strength) Regulations, 1955. For the State of Punjab senior posts under the State Government were increased to 81 and the strength of the posts of Deputy Secretaries to the Government was increased to 20. Since after every three years the strength is revised, the subsequent amendments have not been brought to my notice. As already stated, the position as in 1969 is contained in the Manual referred to above. In the foot-notes references have been made to various amendments of 1966 and 1967.

19. From the notification, dated 11th February, 1963, placed before me, it is clear that Deputy Secretary, Development, is a senior post under the Government of Punjab. The Petitioner was, as already stated, appointed as Deputy Secretary, Development, to Government of Punjab between the period from 8th April, 1963 to 2nd December, 1964.

20. For the period between 3rd December, 1964 to 14th June, 1966 spent as Manager, Morinda Co-operative Sugar Mills, a certificate of continued officiation

in the senior scale of LA.S. of Foreign Service in respect of the Petitioner was issued by the Government of Punjab on 17th October, 1966, (Annexure-A) certifying that but for proceeding on Foreign Service the Petitioner would have continued to officiate in the senior scale of I.A.S. Similarly for the period of leave the certificate Annexure B was duly issued. It may be noticed that under second proviso to Sub-rule (2) of Rule 4 of Indian Administrative Service (Cadre) Rules, 1954, "the State Government concerned may 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 or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts."

21. It is true that the post of Manager, Morinda Co operative Sugar Mills, was a non-cadre post. The Petitioner was, therefore, on foreign service between 3rd December, 1964 to 14th June, 1966. However, under Explanation-4 to Sub-rule (3) of Rule 3 of the Indian Administrative Service (Regulation of Seniority) Rules, 1954, the State Government could certify that the Petitioner would have so officiated but for his appointment to a non-cadre post under the State Government in a time scale identical to the time scale of a senior post. The requisite certificate was indeed duly issued by the State Government. This is Annexure-A. The Petitioner was on leave between 15th June, 1966 to 30th August, 1966. The requisite certificate for this period is Annexure-B. The Petitioner would, therefore, have to be treated as having officiated in a senior post under the aforementioned Explanation-4. The validity of Annexures A and B is not disputed before me.

22. As regards the period spent by the Petitioner as Deputy Director Education (Administration) between 1st September, 1966 to 31st October, 1966 it is admitted by the Union of India that this post "is remunerated in the senior scale of the service." The only reason advanced for not considering it as a senior post is stated to be that this post is not included in item I of the Cadre Schedule of Punjab. I have already pointed out that in this case I am concerned with the definition of "senior post" before its amendment on 22nd April, 1967. It was, therefore, necessary for the Union of India to show that this post was not a senior post in terms of old definition. It is only under the new definition as it stands today that the senior post has been defined to mean a post which is included and specified under item I of Cadre Schedule of each State.

23. The result is that I find that the Petitioner's name was borne on the Select List continuously and that he was also officiating against or in the senior cadre posts of I.A.S. upto 13th February, 1971. The petition is, therefore, allowed and Respondent No. 1 is directed to re-assign the year of allotment to the Petitioner keeping in view the fact that the name of the Petitioner was continuously borne on the Select List and he was continuously officiating against or in the senior cadre post of I.A.S. The Petitioner will have his costs from Respondent No. 1. Lawyer's fee Rs. 300.