

(1976) 08 PAT CK 0006

In the Patna High Court

Case No : C.W.J.C. No's. 476, 477 and 600 of 1971

Sachchidanandan Srivastava and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 30-08-1976

Acts Referred:

Citation : (1977) 25 BLJR 118

Hon'ble Judges : S.K. Choudhary, J;H.L. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Choudhury, J.—These three writ applications have been heard together and are being disposed of by this judgment as the points involved are identical in all the cases. The main points for determination in these cases are as to whether the year of allotment of each of the petitioners has been correctly determined and they are legal and valid. The petitioners have in the writ applications submitted that the year of allotment which has been determined as 1953, should be 1950 which was the year of allotment determined for respondents 3 to 9 who are direct recruits in the Indian Police Service Cadre. It may be stated here that the petitioners in each of the writ applications are promotees to the I.P.S. Cadre from their State service. Sri Sachidanand Srivastava (Petitioner in C.W.J.C. 476 of 1971) and Sri Ram Narain Singh (Petitioner in C.W.J.C. 477 of 1971) were appointed as Deputy Superintendent of Police on the 29th of July, 1948 whereas Sri Nityanand Singh (petitioner in C.W.J.C. 600 of 1971) was similarly appointed on the 30th of July, 1948. All the aforesaid three petitioners were promoted to officiate in the senior scale of the Indian Police Service by Government Notification dated the 26th May, 1954 (Annexure "1") and have begun to officiate in the said posts from June, 1954. It is also not disputed that all the petitioners officiated till they were substantively appointed in the I.P.S. Cadre. It may be stated here that Sri Sachidanand Srivastava, Sri Ram Narain Singh and Sri Nityanand Singh were substantively appointed on 2.3.1961, 29.7.1961 and

15.11.1959 respectively.

2. On the 27th May, 1954 the Government of India issued a letter addressed to the Chief Secretaries of the Governments of all Part A States on the subject "Indian Civil Administrative/Indian Police Cadres-Non-cadre officers holding Cadre posts reference to the U.P.S.C. "Directing them to make reference to Union Public Service Commission for advice on the suitability or otherwise of the officers concerned who may already have held or are likely to hold cadre posts for a period of more than six months. It is also stated therein that this reference is required to be made under the provisions of the Draft Indian Administrative Service/Indian Police Service (Cadre) Rules which will be promulgated shortly. A copy of the said letter is made Annexure "2" to the writ applications. The State Government on receipt of the aforesaid letter (Annexure "2") replied under letter dated the 6th December, 1954 to the Government of India. Ministry of Home Affairs (Annexure "3") that all the non-cadre police officers of the State holding senior cadre posts were already in the approved list of officers having held Senior I.P.S. posts or equivalent posts except the three petitioners and one Mr. A.R. Ansari. In that letter the State Government further requested that the advice of the Indian Public Service Commission may kindly be obtained on the suitability of the three petitioners to continue to officiate in the senior cadre. It appears that thereafter Government of India wrote to the State Government in their letter dated the 23rd December, 1954 (Annexure 3(A) which is a reply to the letter Annexure "3" stated above informing that under Rule 9(4) of the Indian Police Service (Cadre) Rules, 1954 (hereinafter called the Cadre Rules) Government of India is required to report the full facts to the Union Public Service Commission with reasons for holding that no suitable officer was available for filling the posts. Accordingly request was made to the State Government to send the full facts relating to the cases of the three officers named in Annexure "4" together with reasons for holding that no suitable cadre officer was available for filling the posts as well as for supersession if any, of other State Police Officers involved in the promotion of the three officers. Therefore a letter was written by the Government of India to the Union Public Service Commission on the 24th of March, 1955 (Annexure 3/B) requesting the Commissioner to advise on the suitability or otherwise of the three petitioners to officiate in the cadre posts of I.P.S. Cadre of Bihar and communicate the same to the Ministry at an early date. Along with the said letter was forwarded copies of letters, Annexure "3" Annexure "3A" and another letter dated the 19th February, 1955 (Copy of which has been made annexure to any of the writ applications). The Union Public Service Commission thereafter on the 19th April, 1955, wrote a letter to the Ministry of Home Affairs, New Delhi (Annexure 4) after referring to the letter (Annexure 3/B) informing that the Commission has examined the case of non-cadre officers who have been allowed to join the post of the Indian Police Service Cadre of the Government of Bihar and has agreed to the continuance of the petitioners to an officiating capacity posts in the Indian Police Service Cadre. Annexure 4A is a copy of Annexure "4" sent to A.I.G. on 31.5.1955. On the 6th

June, 1955 Indian Police Service (Appointment by Promotion) Regulations, 1955 (hereinafter called "the Regulations") came into force under the said Regulations some time in November, 1955 a Committee was appointed which considered by case of the three petitioners and others and recommended that they may continue to hold I.P.S. Cadre Posts in an officiating capacity and may be placed in "Fit for Trial List" which was approved by the Commission on the 15th February, 1956 with the said note "Fit for Trial". Under Regulation 5 of the aforesaid Regulations the committee, which is constituted under Regulation 3 has to prepare a list of such members of the State Police Service as satisfy the conditions specified in Regulation 4 and are held by the Committee to be suitable for promotion in the service. Under Regulation 6 a list is prepared in accordance with Regulation 5 and forwarded to the Commission by the State Government along with the record of all the members of the State Police Service included in that list. Then the said list which is forwarded to the Commission by the Committee is approved under Regulation 7 and the list as finally approved by the Commission becomes the "Select list" of the members of the State Police Service.

3. In June 1958 a select list was accordingly prepared and communicated to the Government of India on the 24th June, 1958 in which the names of the petitioner of the three writ applications were included. Thereafter the petitioners were substantively appointed with effect from the respective dates already mentioned above and have been assigned the year 1953 as the year of allotment as required under the second proviso of Sub-rule (3) of the Indian Police Service (Regulation of Seniority) Rules 1954 (hereinafter called the "Seniority Rules").

4. Being aggrieved by the aforesaid assignment of the year of allotment the petitioners submitted memorials to the President of India, New Delhi (copy of each of such memorials has been marked as Annexure 5 to each of the writ applications). It appears that these memorials were sent through the State Government on the 19th September, 1968 and were rejected and the said order of rejection was communicated by letter dated 22nd January, 1969 (Annexure "6" to each of the Writ application. Thereafter fresh memorials were again sent by the petitioners on the 10th September, 1970 but they were also rejected and the said rejection was communicated by the Chief Secretary, Government of Bihar by a letter dated the 5th December, 1970 (Annexure "7"). There the present writ applications have been filed.

5. Several counter affidavits have been filed by different respondents. The facts are not very much in dispute except that the Union of India respondent No. 2 in its counter affidavit has refuted the allegations of the petitioners that there was no approval of the period of officiation of the petitioners as required under the second proviso to Rule 3(3)(b) of the Seniority Rules. Other respondents have also supported this fact. It is further stated in the said counter-affidavits that the approvals as mentioned in Annexure "4" to the writ application are approvals given by the Union Public Service Commission under Rule 9 of the Indian Police

Service (Cadres), Rules 1971 (briefly called "cadre Rules"). In all the counter-affidavits the respondents have supported the assignment of the year of allotment "1973" allotted to the petitioners legal and correct and alleged that it cannot be "1970" as claimed by them. The Union of India (respondent No. (2) in its counter-affidavit has annexed a copy the letter dated the 7th May, 1967 issued by the Ministry of Home Affairs to all the Chief Secretaries on all Part A states on the subject Indian Administrative Service Indian Police Service Seniority-Fit for Trial list-Officiation of State Civil/Police Service officers-Treatment of-(Annexure "1") wherein it is stated that the Union Public Service Commission who were consulted in this respect have advised that any officiation of the State Civil Service/State Police Service officers included in the "fit for trial list" should not be taken into account to determine their seniority in the Indian Administrative Service/Indian Police Service. It further stated that Government of India have accordingly decided that wherever such lists have been prepared in some States, the officiation the senior posts of the State Civil Service/State Police Service included in the fit for trial's list cannot be counted for the purpose of determining the seniority or such officers under the Indian Administrative Service/Indian Police Service (Regulation of Seniority Rules, 1954.

6. Strong objection was taken by Mr. B.C. Ghose to the effect that none of that counter-affidavits should be looked into as they were not filed Sin time. It is true that none of the counter affidavits in any of the three writ applications was filed within time (but a statement was made at the Bar that in all the counter-affidavits except the one fled by respondent No. 9 reasons for the delay has been explained; but the Union of India, respondent No. 2 however has explained the delay in filing the counter-affidavit by filing a separate petition, Respondents No. 2, 3, 5 and 7 have also explained the delay in their respective counter-affidavits while respondent No. 9 filed his counter affidavit within seven days of the date of appearance fixed in the notice received by Mr. Shree Nath Singh learned Counsel appearing on behalf of the respondent No. 3 in order to bring the controversy at rest has contended that it will not be necessary to refer to any of the counter-affidavits and the matter can be decided on the facts which ate not in dispute. He pointed out that even if the additional fact pleaded in the counter-affidavits that there was no approval given to the period of officiation as claimed by the petitioners is ignored still it is for the petitioners to show that there was an approval granted by the Central Government in consultation with the commission as required under the second proviso to Rule 3(3) of the Seniority Rules and is therefore entitled to consideration for that period while allotting the year of allotment. He also pointed out that it will not be necessary even to refer to Annexure "I" to the counter-affidavit of respondent No. 2 which is a letter dated the 7th May, 1975 issued by Government of India to all the State Governments as the relevant portion of this letter too is quoted in paragraph 11 in the case of State of Orissa and Another Vs. B.K. Mohapatra, . It is stated that in order to decide the main question raised by learned Counsel for the petitioners it will not be necessary to refer to the several counter-affidavits filed by parties, I may

state here that the reasons given for the delay in filing the counter-affidavit have not been controverted by the petitioners. On the facts and in the circumstances of the case, I think it will not be proper to discard the counter-affidavits from consideration, for whatever they are worth. However while deciding the point I intend not to refer as far as possible to any of the counter-affidavit and will decide the question raised on the admitted facts.

7. Now I shall discuss the main contention raised by Mr. B.C. Ghosh that the year of allotment should have been 1950 and not 1953 as allotted. It is not disputed at the Bar that while determining this question, the provision which will apply is the second proviso to Rule 3(3) of the "Seniority Rules". As each of the sub-rules of Rule 3 has been referred to at the bar by both sides it will be relevant to read the same here as it existed at the relevant time which is as follows:

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

(2) The year of allotment of an officer in a service at the commencement of these rules shall be the same as has been assigned to him or may be assigned to him by the Central Government in accordance with the orders and instructions in force immediately before the commencement of these rules.

Provided that where the year of allotment of an officer appointed in accordance with Rule 9 of the Recruitment Rules has not been determined prior to the commencement of these Rules, his year of allotment shall be determined in accordance with the provision in Clause (b) of Sub-rule (3) of this rule and for this purpose such officer shall be deemed to have officiated in a senior post if and for the period for which he was approved for such officiation by the Central Government in consultation with the Commission.

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

(a) Where the officer is appointed to the service on the results of a competitive examination, the year following the year in which such examination was held.

(b) Where the officer is appointed to the service by promotion in accordance with Rule 9 of the Recruitment Rules, the year of allotment of the 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 Rule 9 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officers recruited to the Service, in accordance with Rule 7 of those Rules, so started officiating shall be determined adhoc by the Central Government in consultation with the State Government concerned:

Provided further that an officer appointed to the service after the commencement of these rules in accordance with Rule 9 of the Recruitment rules shall be deemed to have officiated continuously in a senior post prior to the date of the conclusion of his name in the Select list prepared in accordance with the recruitments of the Indian Police Service (Appointment by Promotion) Regulations framed under Rule 9 of the Recruitment Rules, if the period of such officiation prior to that date is approved by the Central Government in consultation with the commission.

Explanation 1.--An officer shall be deemed to have officiated continuously in a senior post from a certain date if during the period from that date to the date of his confirmation in the senior grade he continues to hold without any break or reversion as senior post otherwise than as a purely temporary or local arrangement.

Explanation 2.--An officer shall be treated as having officiated in a post during any period in respect of which the State Government concerned certifies that he would so officiate but for his absence on leave or appointment to any special post or appointment to any special post or any other exceptional circumstances.

The scope and frame work of this rule has been very clearly indicated in D.R. Nim, I.P.S. Vs. Union of India (UOI), , and I will do better if I quote the said portion from the aforesaid decision. While dealing with the said rule it is stated in D.R. Nim's which is as follows:

Sub-rule (1) clearly makes Rule 3 the controlling rule for the purpose of assignment of the year of allotment. The rule then divides officers into two categories (1) an officer in Indian Police Service at the commencement of the Rules, and (2) an officer appointed to the Indian Police Service after the commencement of the Rule. We are concerned with the second category as the appellant was appointed to the Indian Police Service in 1955. The second category is again divided into two sub-categories (a) officer appointed in the service as a result of a competitive examination, and (b) officer appointed to the service by promotion in accordance with Rule 9 of the Recruitment Rules. As the appellant was appointed to the Service by promotion, we are concerned with the second sub-category. The formula adopted works out as follows : first find out the year of allotment of the junior most among the officers recruited to the service by competition, who officiated continuously in a senior post from a date earlier than the date of commencement of officiation of the appellant. We may again mention that the appellant started officiating as Superintendent of Police of June 25, 1947. But, according to the first proviso, if the appellant started officiating continuously in a senior post from a date earlier than the date of any officer recruited by competition his allotment had to be determined adhoc by the Central Government. According to the facts of this case, the first proviso applies and not the test provided in Rule 3(3)(b) of the Seniority Rules. The second proviso limits the operation of the first proviso by dividing the officiating period into two classes : first, a period before the date of inclusion of an officer in the

Select List, and secondly, the period after that date. The first period can only be counted if such period is approved by the Central Government in consultation with the commission.

8. D.R. Nim's case was referred elaborately on behalf of both parties at the Bar for the principles laid down therein. That was a case where, applying the Government order dated 25th August, 1955 the period of officiation of the appellant (D.R. Nim) from 25th June, 1947 to 19th May, 1951 was excluded from the purposes of assigning the year of allotment to him. It is this Government Order which was challenged by Nim. It was admittedly a case covered by the first proviso Rule 3(3) of the seniority Rules. In this case the appellant was appointed in the Uttar Pradesh Police Service as a result of competitive examination held in 1938. He was thereafter appointed as officiating Superintendent of police with effect from 25th June, 1947. He continued to officiate on that post till he was appointed to the Indian Police Service against the promotion quota of the I.P.S. Cadre of Uttar Pradesh with effect from 22nd October, 1955. It appears that in the meantime various rules and regulations were issued by the Central Government governing the Indian Police Service u/s 3(1) of the All India Service Act (Act LXI/1951). The "Select List" including the appellants' name was prepared in 1956. For determining the year of allotment of the appellant Nim, the Government order dated the 25th August, 1955 by which 19th May, 1951 was fixed as the date from which officiation period was ordered to be counted, was applied. The said Government order stated that the Government of India with the concurrence of the commission decided that the State Civil Service Officers who were officiating prior to 19th May, 1951 but had been appointed to the Indian Administrative Service after that date should for the purpose of fixation of seniority, be allowed the benefit of their continuous officiation in the senior posts with effect from 19th May, 1951. It was further decided that the decision would also apply to the State Police officers promoted to the Indian police Service after 19th May, 1951. After discussion of the relevant provisions of the Seniority Rules their Lordships of the Supreme Court held that the impugned order of the Government dated the 25th August, 1955 was arbitrary and had no rational basis therefore invalid and accordingly the same was struck down. While discussing the second proviso to Rule 3 Their Lordships stated as follows:

It appears to us that under the second proviso to Rule 3(3) the period of officiation of a particular officer has to be considered and approved or disapproved by the Central Government in consultation with the Commission considering all the relevant facts. The Central Government cannot pick out a date from a hat--and that is what it seems to have done in this case--and say that a period prior to that date would not be deemed to be approved by the Central Government within the proviso.

The rest of the relevant portion I have already quoted above, just after the relevant Rule 3.

9. Reliance was also placed by Mr. Basudeva Prasad, learned Counsel appearing

on behalf of respondents Nos. 7, 8 & 9 in the case of State of Orissa and Anr. v. Binod Kishore Mahapatra (supra). In this case the respondent Mahapatra was appointed as Deputy Superintendent of Police in the State of Orissa on the 1st January, 1950. On 30th April, 1951 the State Government wrote to the Secretary, Union Public Commission for holding a meeting of a committee to be constituted under Rule 2 of the Draft Rules sometime in June, 1951 with a view to prepare a select list. It appears that a select list was prepared by the committee and the respondent's name was fifth in Part II of the list under the heading "List of officers fit for trial" to promotion posts. Thereafter again on 21st August, 1952 another list was prepared in which his name was shown under the heading "fit for trial list". His name also appeared in a similar list on November, 1955 the first meeting of the Select Committee was held in accordance with Regulation 3 of "the Regulation" and the name of the petitioner was recommended for officiating appointment in the I.P.S. On the 10th February, 1956 the Union Public Service Commission approved of the said recommendation, thereafter on the 15th February, 1957 the respondent with others was put in the Select list for substantive appointment in the Indian Police Service. Applying the second proviso to Rule 3(3) of the seniority Rules and ignoring the period of officiation for which his name was put in the "fit for trial list" he was assigned the year of allotment as 1951. The contention was that the said year of allotment as 1951. The contention was that the said year of allotment was wrong and it should be 1948. While deciding the point at issue it approved the Nim's case (supra) and further held that the list prepared in 1951, 1952 and 1954 cannot be deemed to be treated as select list within the meaning of second proviso to Rule 3(3) to the Seniority Rules. Their Lordships held that the select list which was prepared by the committee on the 15th February, 1957 was the Select List which could be taken into consideration while fixing the year of allotment of the respondent. While discussing the point regarding approval of the officiation period their Lordships have specifically stated in paragraph 13 of the Judgment as follows:

At any rate the approval of the Government of India has to be accorded after the appointment to I. P. Section and before.

10. Besides the aforesaid two cases discussed in detail referred to at the Bar, Mr. Shri Nath Singh, learned Counsel appearing for respondent No. 3, in course of his argument also drew our attention to the case of R.P. Khanna and Others Vs. S.A.F. Abbas and Others, etc., , in which Nim's case and Mahapatra case have been discussed and followed. Learned Counsel drew our attention from that to a portion of paragraph 23, therein it has been stated as follows;

The use of the word "deemed" in Rules 3(3) of the Regulation of Seniority Rules indicated that the Government has the power to make a retrospective declaration because it is only after the promotion that there is only occasion whether the period of officiation prior to the promotion will be counted for the purpose of seniority.

11. In support of the contention that by applying the second proviso to Rule 3(3) of the "Seniority Rules" the petitioner's year of allotment would be 1950, strong reliance was placed by Mr. Ghosh in the case of *R. Lal v. Union of India and Ors.* ILR 51 Pat 605. He placed the whole case in extenso before us and contended that the said case has full application to the facts of the present case and no distinction can be drawn from that case with the present one. It is therefore necessary to deal with this case in some detail to find out if the contention of Mr. Ghosh is correct. This reported judgment has disposed of two writ applications, one preferred by Shri R. Lal and the other by Shri Chatterji. They were appointed as direct recruits on 24th August, 1948. After having joined as probationers they were confirmed in the service as Additional Superintendent of Police on 15th September, 1949. Thereafter they were promoted to officiate in the Senior post as Superintendent of Police. Shri Lal was confirmed on 12th November, 1957 with effect from 17th February, 1951, whereas Shri Chatterji was confirmed on the same date with effect from 7th March, 1951. Respondents No. 9 to 11 were promotees. Respondent No. 7 Shri Wali Ahmad was initially appointed in the State Police Service on 1st July, 1940 and started officiating in the senior scale of Police service on 16th August, 1947 and thereafter substantively appointed to the service on 1st of February, 1955, Respondent No. 8 Shri Y.N. Jha was appointed on 6th April, 1941 and started officiating in the senior scale on 18th August, 1947 and was substantively appointed on 22nd October, 1955. Respondents Nos. 9, 10 and 11 were similarly appointed on the 5th April, 1943, 8th February 1945 and 20th February, 1945 respectively. They started officiating in the senior scale on 20th August, 1947, 3rd April, 1948 and 13th May, 1948 respectively and were ultimately substantively appointed on 22nd October, 1955, 31st December, 1956 and 25th May, 1957. After the decision of *Nim's* case (supra) by the Supreme Court, the year of allotment of respondents 7 to 11 was corrected after disposing of the objections filed by several officers and they were re-assigned fresh years of allotment. The year of allotment which was assigned to respondents 7 and 8 was 1942 and respondent No. 9, 1943 and respondents Nos. 10 and 11, 1945. The two petitioners Shri Lal and Shri Chatterji being aggrieved by the aforesaid years of allotment to the promotee respondents who were placed above the direct recruits, filed two writ applications in the High Court.

12. It would be found from aforesaid facts that it was clearly a case covered by first proviso to Rule 3(3) as none of the direct recruits started officiating earlier than any of the promotee-respondents. Under that proviso determination ad hoc by applying P-factor was made in assigning the year of allotment to the promotee-respondents. It appears from the judgment that after *Nim's* case (supra), was decided by the Supreme Court the Government of India after consulting the Union Public Service Commission approved the whole period of officiation of the promotee-respondents and re-determined their year of allotment under the first proviso to Rule 3(3) and assigned to their respective year of allotment aforesaid. Their Lordships have held that the rules which would

be applicable for determination of the seniority were the rules which were prevalent at the time of their appointment to the service and not at the time when the order fixing the year of allotment was made or the seniority determined. On reading the judgment as a whole it appears that there is no dispute in that case that the entire period of officiation of the promotee respondents 7 to 11 in the senior post were approved by the Government of India in consultation with the Union Public Service Commission after the determination of Nim's case (supra) by the Supreme Court. Their Lordships have stated in the judgment at page 621 which is as follows:

...But after Nim's case Government of India revised their decision and came to the conclusion that the entire period from which they started officiating in their respective senior post has to be counted for the purposes of determination of their year of allotment in accordance with the first proviso and after having approved that period in consultation with the Union Public Service Commission they have re-determined the year of allotment of respondents 7 to 11 in accordance with the said period under the first proviso to Clause (b) of Rule 3(3).

After having approved the entire period of officiation of respondents 7 of 11 in senior post their respective year of allotment has been fixed adhoc in the sense that in terms Clause (b) did not apply to such a case and there was no specific provision in the Seniority Rules except the first proviso to Clause (b) which could govern the case.

At this stage I would do better if I quote a short paragraph namely paragraph 13 of the said report which runs thus:

Again coming to the third point urged by learned Counsel for the petitioners, I am constrained to observe that I cannot exactly follow bow the learned Counsel submitted that the case of respondents stood outside the first proviso. If under the second proviso the Central Government in consultation with the Union Public Service Commission approved their entire period of officiation from start to the end, plainly their cases for determination of the year of allotment came under the first proviso and not the main provision contained in Clause (b).

Thus it is apparent that in R Lal's case (supra) there was no dispute about approval of the officiation period and that it has been clearly indicated by their Lordships that the said case was fully covered under the first proviso to Rule 3(3) for determination of the seniority between the promotee-respondents and the petitioners of that case. Hence in my opinion that case has no application to the present case and I am unable to accept the contention of Mr. Ghose that the said case has full application to the present case.

13. Keeping the aforesaid principles laid down in the case discussed above I now proceed to decide as to whether the three petitioners of the present writ applications have succeeded in proving that they are entitled to the benefits of their period of officiation which can be accorded only if it is shown that there has been approval of the period of officiation as required under the second proviso to

Rule 3(3) of the Seniority Rules. It is also clear from the decisions of the highest authority discussed above that such approval has to be shown to have been accorded only after the appointment of the petitioners of the I.P.S. and not before.

14. Mr. Ghose strenuously contended that there has been approval of the period of officiation under the second proviso to Rule 3(3) by Government of India as evidenced by Annexure "4". I have already indicated above while stating the admitted facts that Annexure "4" is a copy of the letter dated the 19.4.1955 issued by the Union Public Service Commission to the Ministry of Home Affairs, New Delhi in which reference has been made specifically to the letter dated the 24th March, 1955 (Annexure 3/B) which shows that the Commission accorded to the continuance of three petitioners named therein to hold in officiating capacity, posts in Indian Police Service Cadre. This letter, according to Mr. Ghose, is conclusive on the point that the Union Public Service Commission gave approval as required under the rule. It has been conceded by Mr. Ghose that except this letter there is no other letter to show that any other kind of approval was accorded by the Government of India in consultation with the Public Service Commission with regard to the officiating period of the petitioners. I will indicate here and now that this letter shows that the commission has accorded approval to the continuance of the three petitioners in their officiating capacity to hold posts in the Indian Police Service Cadre. This letter was issued much before the petitioners were included in the Select List prepared in accordance with law by the committee appointed under the Regulations of 1955. According to the decision in Mahapatra's case (supra) the approval as required under the second proviso to Rule 3(3) is to be accorded only after the appointment of I.P.S. and not before. This annexure therefore by no stretch of imagination can be said to be the aforesaid approval. This view is also fortified by the letter (Annexure 3/B) which has reference in the said annexure, namely, Annexure "4". Turning back to Annexure 3/B it would be found that it is a letter issued by the Government of India dated the 23rd March, 1955 to the Secretary, Union Public Service Commission under which a request was made to advise on the suitability or otherwise of the three petitioners to officiate in the cadre post of the Indian Police Service. This letter again has reference to Annexure 3 and 3/A, Annexure 3/A is a letter dated 23rd December, 1954 from the Government of India to the State Governments which clearly has reference to Rule 9(4) of the Indian Police Service cadre Rules, 1954 under which Government of India was required in the case of Cadre posts to report the full facts to the Union Public Service Commission relating to the cases of three petitioners and as such by that letter request was made "that full facts relating to the cases of the three officers mentioned in your letter together with the reasons for holding that no suitable candidate is available for filling the post as well as for supersession, if any, of the other State Police officers involved in the promotion of the three officers may kindly be supplied to the Ministry at an early date". Annexure 3, which is referred to in the letter Annexure 3/B, is a letter dated the 6th December, 1954 issued by

the State Government to the Government of India. This letter merely shows that all non-cadre Police Officers of the State holding senior cadre posts or equivalent cadre posts were already on the approved list of the officers fit to hold Senior I.P.S. posts or equivalent posts except the three petitioners and some other officers mentioned therein. Thus on a discussion of the aforesaid annexure also it is felt that Annexure "4" to which strong reliance was placed by Mr. Ghose in support of his contention that the Government of India accorded approval of the officiation period in consultation with the Union Public Service Commission as required under law, was issued by the Union Public Service Commission at the request of the Ministry of Home Affairs and can at best be considered to be an advice given by the Union Public Service Commission under Sub-rule (4) of Rule 9 of the "Cadre Rules" 1954. The contention of Mr. Ghose that approval was accorded under Annexure 4 as required under the second proviso to Rule 3(3) of the Seniority Rules has therefore no substance and accordingly I reject the said contention. I therefore hold that the petitioners have miserably failed to show that their officiation period were approved by Government of India in consultation with the Union Public Service Commission as required under the second proviso to Rule (3) of the Seniority Rules.

15. It may be stated here that it was agreed at the Bar that if the petitioners were not entitled to the benefits of their officiation period then there has been no mistake made in the assignment of the year of allotment to the petitioners.

16. It was faintly argued by the learned Counsel appearing for the petitioners that in the present case Indian Police Officers (Regulation of Seniority Rules) published in the gazette of India dated the 13th February, 1930 will apply. He relied upon Rule 4(a) of the said rules which runs as follows:

4. (a) An Indian Police Officer substantially appointed to a superior post shall take rank in order of seniority above.

(b) Any promoted officer who was promoted to a superior post or who began to officiate continuously in a superior post at a date subsequent to the date on which the Indian Police Officer (or any officer junior to him in the Indian Police) began to officiate continuously in a superior post.

This contention is against the main contention raised by the petitioners in their respective writ applications as well as in the memorandum filed by them against their assignment or the year of allotment. The stand taken by them is that their cases are covered under the second proviso to Rule 3(3) of the Seniority Rules. I have already indicated above that in R. Lal's case (*supra*) it has already been decided that the rule which would be applicable is the rule which was in force at the time when a person is appointed to the substantive post of I. P, Section cadre and not at the time when the order fixing the year of allotment is made. Admittedly the petitioners in C.W.J.C. 476 and 600 were appointed in the I.P.S. Cadre on 2nd March, 1961, 29th July, 1961 and 15th November, 1959 respectively and therefore the contention of Mr. Ghose that the aforesaid rule

published in the year 1930 would govern the present case has no substance.

17. Mr. Shree Nath Singh after having fully argued the cases on merits, as his last point raised the objection that the petitioners have moved this Court after a long lapse of time. They submitted memorials after a lapse of six years in the cases of the petitioners of C.W.J.C. 476 and 477 and eight years in the case of the petitioner of C.W.J.C. 600 challenging the year of allotment which was assigned to them at the time of their substantive appointment to the I.P.S. Cadre Post. He further pointed out that when first memorial was rejected in January, 1969 a second memorial was submitted in May, 1970 which was again rejected in December, 1970 and the rejection order was communicated in February, 1971 (vide Annexure 7). Thereafter the petitioners have chosen to move this Court. In the circumstances, he contended that on this ground alone the writ application should be dismissed. In support of this contention learned Counsel cited several decisions of the Supreme Court for showing that Supreme Court, even in the case where a person was late in approaching the Court by three years, rejected the writ application. He further argued that there was no justification for filing a second memorandum after the decision of the Nim's case and to make further delay in approaching the Court when clearly Nim's case (supra) which is a case covered by the first proviso to Rule 3(3) of the Seniority Rules has no application to the present case. Mr. Ghose on the other hand contended that there was no delay in approaching the Court as the Central Government themselves have revised the year of allotment assigned to different officers after the decision of Nim's case and thus the petitioners in R. Lal's case approached the High Court after the decision of the said Nim's case where interference has been made. He further contended that the interpreting of law was not very clear till the Nim's case was decided by the Supreme Court and therefore it cannot be held that there has been laches in waiting till the decision of Nim's case. According to the learned Counsel, after the decision of Nim's case the petitioners were entitled to file the second memorandum and rejection of the same the petitioners have moved this Court as early as possible. Mr. Shree Nath Singh however on the other hand point out that in Nim's case Government order dated 5th August, 1955 was declared null and void and therefore all cases in which seniority was fixed in accordance with the said Government order were revised and new year of allotment was assigned to these persons. Thus there was justification for interference by Patna High Court in R. Lal's case (supra) which was also a case covered by the first proviso to Rule 3(3). In R. Lal's case Government of India after the decision of Nim's case themselves intended to revise the seniority list which was prepared on the basis of the aforesaid Government order which was struck down in Nim's case and therefore directed the state Government to inform the direct recruits who may be affected by such revision to file representation. Accordingly Sri Lal and Shri Chatterji filed representation which were rejected and thereafter they filed their writ applications. Be that as it may, it is not necessary to express any opinion on this point one way or the other as I have already decided the main point canvassed at the bar against the

petitioners. I therefore do not propose to decide this point either in favour or against the petitioners.

18. In the result, the writ applications have no merit and they are accordingly dismissed. In the circumstances of the case I would however make no order as to costs.