

(2022) 09 CHH CK 0060
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 4595 Of 2022

State Of Chhattisgarh

APPELLANT

Vs

Mukesh Gupta Director General

RESPONDENT

Date of Decision : 28-09-2022

Acts Referred:

Indian Police Service (Cadre) Rules, 1954 — Rule 3(2)(ii), 4, 4(1), 4(2), 8, 8(3), 11(1), 11(7)
Indian Police Service (Pay) Rules, 2007 — Rule 3, 3(2)(ii), 11, 11(1), 11(7)
Indian Police Service (Pay) Rules, 2016 — Section 3, 12(1), 12(7)
All India Services Act, 1951 — Section 3(1)

Citation : (2022) 09 CHH CK 0060

Hon'ble Judges : Arup Kumar Goswami, CJ;Deepak Kumar Tiwari, J

Bench : Division Bench

Advocate : Mukul Rohatgi, Jitendra Pali, A. K. Behra, Malay Shrivastava, Ramakant Mishra, Anmol Sharma

Final Decision : Allowed

Judgement

1. Heard Mr. Mukul Rohatgi, learned senior counsel assisted by Mr. Jitendra Pali, learned Deputy Advocate General, appearing for the petitioners. Also heard Mr. A. K. Behra, learned senior counsel assisted by Mr. Malay Shrivastava, learned counsel, appearing for applicant/respondent No.1 and Mr. Ramakant Mishra, learned Assistant Solicitor General for Union of India along with Ms. Anmol Sharma, learned Central Government Counsel, appearing for respondent No.2.

2. This writ petition is filed against an order dated 12.04.2022 passed by the Central Administrative Tribunal, Jabalpur Bench, for short, 'the CAT', in Original Application, for short, 'OA', No. 200-564/2020, whereby the CAT granted conditional relief to the applicant / respondent No.1 herein as follows :

"XIV. Thus in view of the aforesaid circumstances the OA succeeds. Consequently, the respondents order dated 26.09.2019 is quashed and set aside. Thereby, we declare that the promotion granted to the applicant vide order dated

06.10.2018 would continue to be valid and having held so, we direct the respondents to grant consequential benefits as are permissible under the extant rules and laws. Time calendered to implement the judgment is 3 months from the date of receipt of this order. With the above direction, the OA is allowed to the extent indicated, with no order as to costs. However, we hasten to add that judgment delivered is subject to the final outcome of the verdict of the Hon'ble Supreme Court in the SLP referred to in the MA 503/2022. With the above direction, the MA stands disposed."

3. The OA was filed by the present respondent No. 1 against the petitioners herein i.e. the State of Chhattisgarh, through the Chief Secretary and the Director General of Police, who were respondents No. 1 and 3, respectively, in the OA, along with two others. Notice was not sent to respondent No.4 in the OA and accordingly, in this petition also, notice is not issued to respondent No.3 herein, who was respondent No.4 in OA.

4. By order dated 04.07.2012, while suspending the order of the CAT by way of an interim order, this Court had observed that an attempt would be made to dispose of the writ petition at the admission stage and accordingly, on the request of learned senior counsel for the parties, the writ petition is taken up for final disposal at the admission stage.

5. The case presented in the OA may, briefly, be noticed;

(i) The applicant before the CAT is an IPS Officer of the 1998 batch of the erstwhile undivided Madhya Pradesh cadre and after reorganization of the State of Madhya Pradesh into two different States, namely, Madhya Pradesh and Chhattisgarh, the applicant was allocated to the Chhattisgarh cadre. While holding the post of Chief of Intelligence and Head of Economic Offences Wing and Anti Corruption Bureau of the State of Chhattisgarh, he had lodged first information report (for short, FIR) in three very sensitive cases in which charge-sheet was filed before the competent criminal court. One case was known as 'Irrigation Scam', another one as 'Nagrik Apoorti Scam' or 'NAAN Scam' and the third case was against the respondent No. 4 in the OA. He was awarded President's Police Medal for Gallantry in the year 1996 as well as in the year 2011 because of his exemplary work.

(ii) In the year 2017, there were four permanent/regular posts of Director General of Police (DGP). In exercise of powers under the proviso to Rule 4(2) of the Indian Police Service (Cadre) Rules, 1954 (for short, Rules of 1954), the Government of Chhattisgarh created three temporary posts of DGP for a period of two years starting from 01.01.2018 to 31.12.2019 by order dated 27.12.2017 and accordingly, a proposal was sent to the Ministry of Home Affairs, Government of India, though no consent is required for creation of such temporary posts. A regular Departmental Promotion Committee (for short, DPC) meeting was held and by order dated 06.10.2018, three Additional DGPs (for short, ADGP) including the applicant were promoted as DGP, on regular basis.

Though the Government of India did not concur for creation of three additional posts, the same had no effect on creation of three additional temporary posts. The applicant, however, continued to hold the post of Chief of Intelligence and Head of Economic Offence Wing and Anti Corruption Bureau.

(iii) In the State Assembly elections that was held in the month of November, 2018, there was a change of guard and a different political party came to power and the respondent No. 4 became the Chief Minister, and on the very first date, i.e. on 17.12.2018, the applicant was transferred out without any posting. On 03.01.2019, the Investigating Officer of the Naan Scam was suspended and on 07.02.2019, an FIR, being FIR No. 6/2019, came to be registered against the applicant with the allegation that he had illegally intercepted telephone calls in the Naan Scam investigation. Thereafter, on 09.02.2019, the applicant was suspended. A second FIR, being FIR No. 7/2019, was lodged on 11.02.2019 with the allegation that the applicant had illegally intercepted the telephone calls in Irrigation Scam. On 06.03.2019, a charge-sheet was issued in a departmental proceeding on the same charges as in FIR Nos. 6/2019 and 7/2019. By order dated 18.04.2019, the High Court gave interim stay against the arrest of the applicant in the two FIRs registered against him and thereafter, on 17.06.2019, a third FIR, being FIR No. 605/2019, was registered. On 12.07.2019, the CAT, in OA No. 200/566/2019, passed an interim order directing the respondents therein not to keep any date of enquiry till 05.08.2019, which order, is being continued from time to time. The applicant filed Writ Petition (Cr) No. 230/2019 before the Hon'ble Supreme Court in August, 2019, stating that he had been constantly and continuously harassed by the State and on 02.09.2019, the Hon'ble Supreme Court stayed investigation in all the three FIRs. It is alleged that after passing of the order by the Hon'ble Supreme Court, the phones of the applicant, his two daughters, driver, maid servant, sister and brother-in-law were tapped. On 24.09.2019, the State Cabinet, without there being any agenda on the subject, decided to withdraw/cancel the promotion order dated 06.10.2018 whereby three officers including the applicant were promoted as DGP. However, neither the decision of the Cabinet of Chhattisgarh nor any consequential order withdrawing the promotion had been served upon the applicant. The applicant came to know about the said decision from the news item published by the Directorate of Publicity, Government of Chhattisgarh. In view of the aforesaid news report, he filed an interlocutory application before the Hon'ble Supreme Court to demonstrate bias and prejudice against him. The Hon'ble Supreme Court, in WP(Cr) No. 230/2019, by order dated 25.10.2019, directed that phone tapping be stopped forthwith and that the applicant shall not be arrested. By another order dated 04.11.2019, the investigation that was started against the counsel of the applicant was also stayed by the Hon'ble Supreme Court. A fourth FIR, being FIR No. 18/2020, came to be registered on 05.05.2020 against the applicant, father of the applicant and a lady Doctor. The Hon'ble Supreme Court, by order dated 25.06.2020, stayed the investigation in FIR No. 18/2020. A second disciplinary proceeding was initiated on 14.08.2020 against the applicant on the

allegation that the applicant had solemnized 'Gandharva Vivah' on 01.06.1999 and a daughter was born out of such marriage, despite being already married.

(iv) Challenging the said communication dated 14.08.2020, the applicant alongwith his daughter filed WP (C) No. 1128/2020 before the Hon'ble Supreme Court. On 09.10.2020, the Hon'ble Supreme Court in WP(C) No. 1128/2020, passed an interim order that no disciplinary proceedings shall take place in pursuance of the communication dated 14. 08.2020.

(v) On 12.09.2020, the applicant had come to learn from the local news reports that a DPC had been held for promotion to the post of DGP and the name of the applicant had been put in a sealed cover. He received a speed post letter on 21.09.2020 from the standing counsel for the State of Chhattisgarh in the CAT, wherein a caveat application dated 17.09.2020 along with a copy of an order dated 12.09.2020 were enclosed. By the said order dated 12.09.2020, two IPS officers of the 1988 batch alongwith one officer of the 1989 batch were promoted as Special DGP.

6. The case of the applicant is that he was promoted as DGP on 6.10.2018 on regular basis and as on 01.12.2019, his position was within the first four permanent cadre posts of the DGPs and thus, accommodated against one of the four permanent cadre posts. Further case is that the order dated 12.09.2020 has also not been served upon him and that though by the letter dated 12.09.2020 he was not reverted to any lower post, it appears that by inference, the State wanted to construe the order dated 12.09.2020 as reversion order in respect of the applicant. From the order dated 12.09.2020, which was enclosed with the caveat, it transpired that two officers, who were earlier promoted along with the applicant as DGP, were again sought to be promoted as DGP in addition to one more officer, who, being of 1989 batch, was junior to the applicant.

7. On the basis of the above factual matrix, the applicant made the following prayers before the CAT:

"a. Call for the records of the case.

b. Direct the Respondents to produce the order, if any, to cancel/withdraw the promotion of the applicant as DG (or to revert the applicant from the post of DG) and on such production quash and set aside the same.

c. Declare that the promotion of the applicant as DG vide order dated 06.10.2018 is lawful and valid and continues to be valid.

d. Direct the respondents to give all consequential benefits to the applicant.

e. Pass any other order/direction which this Hon'ble Tribunal thinks proper in the facts and circumstances of the case.

f. Direct the respondents to pay the cost of the litigation to the applicant."

8. By way of interim relief, the applicant prayed for a direction to the

respondents to maintain the status of the applicant as DGP based on his promotion order dated 06.10.2018.

9. The CAT by an order dated 15.12.2021 had rejected the preliminary objection raised by the petitioners regarding maintainability of the OA. The aforesaid order was assailed by the present petitioners by filing a writ petition before this Court, registered as WPS No. 1035 of 2022, and the same was dismissed by this Court by an order dated 14.03.2022.

10. It appears that the aforesaid order of this Court dated 14.03.2022 was put to challenge by filing a Special Leave Petition (SLP) vide Diary No.8757 of 2022. The petitioners have not stated about outcome of the said SLP.

11. While reiterating that the OA was not maintainable, in the return filed before the CAT, it is stated that the applicant was suspended by an order dated 09.02.2019 and a memorandum of charge was issued to him on 06.03.2019. Another memorandum of charge was issued to him by an order dated 10.07.2019 for further violation of Service Rules. The appellant had instituted OA No. 566 of 2019 challenging the order of suspension and departmental proceeding. The applicant, while serving as Superintendent of Police, Ujjain, in the year 2000 prior to formation of State of Chhattisgarh, had also committed certain acts, for which displeasure was recorded by the Disciplinary Authority on 29.08.2000.

12. It is stated that the State of Chhattisgarh decided to create three posts in the rank of Special Director General / Director General (Ex-Cadre) in the pay-matrix of level 16 (Rs.205400-224400) and accordingly, letter dated 04.12.2017 was issued for getting concurrence from Ministry of Home Affairs, Government of India, which is mandatory, for filling up the posts. Though by letter dated 11.12.2017, referring to a memorandum dated 22.01.2015, the Government of India refused to grant concurrence, three posts were created in the rank of Special Director General / Director General (Ex-Cadre) post for a temporary period of two years starting from 01.01.2018 to 31.12.2019 in the pay-matrix of level 16 and at the same time, a fresh proposal was sent by the State to the Ministry of Home Affairs for concurrence of Government of India. The applicant was promoted vide letter dated 06.10.2018 on temporary basis and, not on regular basis, to a temporary post along with two other officers to the post of Special Director General (Ex-Cadre) post awaiting concurrence from Government of India. It is stated that in a reply to a DO letter dated 16.12.2017 of the Chief Minister to a proposal for creating three posts of Director General, concurrence was denied vide a DO letter dated 12.01.2018 issued by the Union Home Minister. Again, the Government of India denied concurrence, as would be evident from letter dated 12.10.2018. While denying the allegation of bias on account of the applicant's proximity to the earlier dispensation, it is stated that transfer orders were issued for effective administration of the State and in public interest.

13. While denying the allegation of the applicant that the order withdrawing his promotion had not been served upon him, it is stated that by order dated 26.09.2019, temporary promotions granted earlier vide order dated 06.10.2018 was withdrawn with regard to all the three officers including the applicant due to refusal to grant concurrence by the Government of India. Subsequent thereto, two other officers had joined their posts after passing of the said order. It is stated that after the applicant was promoted on 06.10.2018, his pay was fixed at Rs.2,24,400/- vide order dated 05.04.2019 and subsequently, with withdrawal of the promotion order dated 26.09.2019, pay was revised vide orders dated 08.12.2020 and 15.01.2021.

14. The CAT noted that the crux of the dispute is the withdrawal of the promotion of the applicant as DGP granted to him on 06.10.2018. Dealing with the contention advanced on behalf of the petitioners that the applicant had not challenged the withdrawal order dated 26.09.2019 after it was supplied to him along with reply statement dated 01.10.2022 and thus, the OA is not maintainable, it was observed by the CAT that after placing of the order dated 26.09.2019, the same becomes a part of the Court proceeding and it is for the CAT to access as to whether a challenge is required given the contours of the case and having regard to the entire breadth of the dispute. The CAT opined that non-challenge of the order lacks relevance as a prayer was specifically made in prayer 'b' for direction to produce the said order and to quash the same on production. Thus, the submission advanced was held to be without any merit.

15. The CAT observed that the applicant was found fit along with two others for promotion on regular posts by regular DPC, which met on 06.10.2018 and thus, the applicant was promoted on regular basis after evaluating his performance to the post of DGP against one of the three temporary posts created and thereby rejected the contention of the petitioners that the applicant had been temporarily promoted. Reliance was also placed on a memorandum dated 15.01.1999 of the Ministry of Home Affairs to hold that once an officer is empanelled in the promotion panel, he has to be accommodated in the promoted post as and when the vacancies arise. Accordingly, contention advanced on behalf of the petitioners that no right will flow to the applicant while occupying the post of DGP, which according to the petitioners, was on temporary basis, was repelled. It was also observed that if there was no post available, then it was expected of the petitioners to keep the applicant in the approved promotion panel. While temporary posts were available up to 31.12.2019 and regular posts from 01.12.2019 onwards, there was no justification for withdrawing the promotion effected by the order dated 26.09.2019. Accordingly, contention of the petitioners that the applicant had no vested right to continue in a temporary post though promoted was rejected. It was observed that the applicant being among the top four senior officers, the applicant could have been accommodated against one of the four posts of DGP, which are regularly sanctioned and vacant as on 01.12.2019. However, the rank of the applicant had been altered without giving an opportunity of being heard and therefore, the order dated 26.09.2019 was

held to have been vitiated for violation of the principles of natural justice as the said order had grave civil consequences. It was observed that while disposing of the WPS No. 1035 of 2022, the High Court had held that the order of withdrawal of promotion had not been served on the applicant and on that basis, the CAT concluded that the order dated 26.09.2019 could not be treated as an order of withdrawal of the promotion granted to the applicant as DGP vide order dated 06.10.2018, as an order can not be given effect to unless the same is served upon the affected person.

16. The contention advanced on behalf of the petitioners that in view of the letter dated 12.01.2018 received from Government of India, whereby request for concurrence for creation of three extra cadre posts as sought for by the State by its letter dated 16.12.2017 at DGP level was not granted, it was necessary to withdraw the promotions granted on 06.10.2018, the CAT held that communication dated 12.01.2018 is an executive order and the same cannot over-ride Rule 4(2) of the Rules of 1954. With reference to a letter dated 12.10.2018 of the Ministry of Home Affairs, it was observed by the CAT that there was no direction to withdraw promotion granted to the applicant and two others, but only an observation was made that the promotions could be in excess of the sanctioned strength. It was held that, in any view of the matter, when the State Government has been empowered to create post in the cadre of DGP for a period of two years without the concurrence of the Central Government in terms of Rule 4(2) of the Rules of 1954, such letters or memos cannot over-ride statutory rule and the purported reason for withdrawal of the promotion order on the basis of the same holds no water. In that connection, the CAT also noted that there is a prevailing practice of creating temporary posts in the cadre of DGP by the Chhattisgarh State Government on multiple occasions. It was observed by the CAT, taking note of the sequence of events such as registration of FIRs, suspension, institution of disciplinary proceedings after change of guard, coupled with the fact that there was judicial intervention on many occasions, did tacitly contributed to the withdrawal of the promotion order granted on 06.10.2018 though it could have been continued up to 31.12.2019 and the applicant would have been eligible for promotion to one of the four regularly sanctioned posts of DGP by 01.12.2019.

17. With regard to the holding of DPC on 12.09.2020 to promote two officers, who were promoted along with the applicant in 2018, and another junior officer by placing the case of the applicant in a sealed cover, it was held that without the demotion of the applicant having been done by way of a disciplinary process, the demotion lacks legal sanctity and the order of promotion of 06.10.2018 has not been lawfully modified as the promotion was regular and the posts, whether temporary or regular, were available to accommodate the applicant in the post of DGP by 01.12.2019.

18. Mr. Mukul Rohatgi, learned senior counsel, appearing for the petitioners submits that the CAT was not correct in its interpretation of Rule 4(2) of the

Rules of 1954. He has submitted that creation of ex-cadre post / additional post under Rules of 1954 requires concurrence of the Central Government. He submits that the CAT had considered Rule 4(2) of the Rules of 1954 in isolation without considering Rule 8(3) of the Rules of 1954 as well as Rule 3(2)(ii) and Rule 11(7) of the Indian Police Service (Pay) Rules, 2007 (for short, 'IPS Pay Rules of 2007'). He contends that a harmonious reading of these Rules will demonstrate without any doubt that for creation of an ex-cadre post, concurrence of the Central Government is a must. He further submits that the State had mooted proposal for creating additional posts and in anticipation of grant of concurrence, three additional posts were created and the applicant as well as two others had been appointed by order dated 06.10.2018. However, subsequently, having regard to the communications issued by the Central Government, decision was rightly taken to withdraw the order dated 06.10.2018. The applicant has no vested right to continue in a post for creation of which there was no required concurrence from the Central Government. Learned senior counsel has drawn the attention of the Court to letter dated 11.12.2017 issued by the Under Secretary, Government of India to the Chief Secretary, Government of Chhattisgarh, letter dated 16.12.2017 issued by the Chief Minister to Home Minister, Government of India, letter dated 27.12.2017 issued by the Secretary Home (Police) Department to the Secretary, Government of India, Ministry of Home Affairs, letter dated 12.01.2018 issued by the Home Minister, Government of India to the Chief Minister, letter dated 17.01.2018 issued by the Under Secretary to Government of India to the Chief Secretary, Government of Chhattisgarh, letter dated 12.10.2018 issued by the Under Secretary to Government of India to the Chief Secretary, Government of Chhattisgarh. He has also drawn the attention of the Court to a memorandum dated 20.01.2015. He has submitted that conclusion of the CAT that the applicant was promoted on regular basis to the post of DGP is not sustainable in law.

19. Mr. A.K. Behra, learned senior counsel for the applicant submits that though arguments are advanced by Mr. Rohatgi on Rule 8(3) of the Rules of 1954, Rule 3(2)(ii) and Rules 11(7) of the IPS Pay Rules of 2007, the same were neither pleaded nor argued before the CAT. He has submitted that the petitioners had filed two counter-affidavits before the CAT and in none of those affidavits, the aforesaid Rules were mentioned and/or adverted to. Therefore, this Court may not consider new points raised in the writ petition. In order to buttress his contention he has placed reliance in the case of State of Bihar & Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh & Others, reported in (2005) 9 SCC 129. He has submitted that 2nd proviso to Rule 4(2) of the Rules of 1954 empowers the State Government to add one or more posts carrying duties or responsibilities of a like nature to cadre post without any concurrence or approval of the Central Government. It is submitted that once the State Government exercised power under 2nd proviso to Rule 4(2) of the Rules of 1954 to create additional posts, by legal fiction, such posts are deemed to be included in the Schedule to IPS (Fixation of Cadre Strength) Regulations, 1955 (for short, 'the Regulations of

1955') and the question of taking prior approval of Central Government would arise only if the State wants to appoint any officer in excess of the number specified for concerned State in item No.5 of the Regulations of 1955, which is not the case in hand. It is submitted that the applicant was promoted to a post under the control of the State of Chhattisgarh and the three posts were not reckoned against State Deputation Reserve and therefore, the conditions precedent for application of Rule 11(7) of the IPS Pay Rules of 2007 was not satisfied. With regard to Rule 3(2)(ii) of the IPS Pay Rules of 2007, it is submitted that the aforesaid Rule has to be read with Rule 11(1) of the IPS Pay Rules of 2007 as otherwise 2nd proviso to Rule 4(2) of the Rules of 1954 as well as Rule 11(1) of the IPS Pay Rules of 2007 would be rendered otiose. He has submitted that so read, Rule 3(2)(ii) can be said to operate only in respect of posts under the control of Central Government. That apart, Rule 3 deals with pay-bands and grade-pay and the same cannot be construed to take away the power of the State Government under Rule 4(2) of the Rules of 1954 and thrust of the Rule 3(2)(ii) of the IPS Pay Rules of 2007 has to be confined only to availability of vacancies in these grades. Reliance is placed in decisions of the Hon'ble Supreme Court in Rao Shiv Bahadur Singh & Another Vs. State of Vindhya Pradesh, reported in AIR 1953 SC 394, Nathi Devi Vs. Radha Devi Gupta, reported in (2005) 2 SCC 271, Mohammad Ali Khan Vs. Commissioner of Wealth Tax, New Delhi, reported in (1997) 3 SCC 511 and Shadi Singh Vs. Rakha, reported in (1992) 3 SCC 55.

20. As no return was filed before the CAT, Mr. Mishra offers no comments.

21. A letter dated 04.12.2017 was issued by the Secretary, Home (Police) Government of Chhattisgarh to the Secretary, Ministry of Home Affairs, Government of India on the subject of concurrence to the availability of 03 posts of DGP as on 01.01.2018 (concurrence to the availability of vacancies). In the said letter, amongst others, it is stated that at the relevant time, 04 officers were posted in the State in the level of DGP. While one Shri A.N. Upadhyay was holding the Cadre post of DGP, Shri Girdhari Nayak was holding the post of Director General, Home Guard, which is an ex-cadre post. While Shri M.W. Ansari was holding the ex-cadre post of Director General-cum-Director, Public Prosecution, Shri D.M. Awasthi was holding the cadre post of Director General of Training. Shri M.W. Ansari was due to retire on 31.12.2017 and as such, on and from 01.01.2018, three officers at the level of DGP would be working in the State. It is also stated that as on 01.01.2018, Shri Sanjay Pillai, Shri R.K. Viz, Shri Mukesh Gupta (the applicant) and Shri Ravi Sinha (posted on Central deputation), who are all of the year 1988 batch, would be eligible for promotion at the DGP level pay-scale. It is stated therein that keeping in view the need of State, the State Government under Rule 4(2) of the Rules of 1954 created 03 ex-cadre posts of DGP in the pay-scale of Rs. 2,05,200/- - 2,24,400/- for the period from 01.01.2018 to 31.12.2019. With the creation of these posts, 06 posts at the level of DGP would be available from 01.01.2018 and in view of the availability of the posts, promotion to the said posts was being considered. Accordingly,

concurrence to the availability of vacancies under provisions of Rules of 1954 in respect of the said 03 posts was sought for.

22. In response to the said letter, the Under Secretary, Government of India, Ministry of Home Affairs sent letter dated 11.12.2017 to the Chief Secretary, Government of Chhattisgarh, which reads as follows :

"To,

The Chief Secretary,

Government of Chhattisgarh,

Raipur.

(Kind Attn.: Shri D.K. Mathur, Deputy

Secretary to Government)

Sub:- Concurrence of the Central Government over vacancies in the various grades of Chhattisgarh Cadre of IPS under Rule 3(2)(ii) and (iii) of IPS (Pay) Rules, 2007.

Sir,

I am directed to refer to State Government's letter No. 01-10/2017/2-Home/IPS dated 04.12.2017 in which the State Government sought concurrence of the Central Government over 03 extra ex-cadre posts created by them in the DG grade of Chhattisgarh Cadre of IPS under Rule 4(2) of the IPS (Cadre) Rules, 1954.

2. Attention of the State Government is drawn to DoP&T's clarification vide OM dated 20.01.2015 that the provisions of Rule 4(2) of IAS Cadre Rules, 1954 cannot be used for creating a post at the Apex level. As such, the State Government is requested to forward their proposal for seeking concurrence of the Central Government for creation of extra ex-cadre posts at DG level as required under rule 11(7) of the IPS (Pay) Rules, 2007, for further examination in this Ministry.

3. This issues with the approval of the competent authority."

23. A perusal of the said letter would go to show that the State Government was requested to forward proposal for seeking concurrence of the Central Government for creation of extra ex-cadre posts at the level of DGP as required under Rule 11(7) of the IPS Pay Rules of 2007 for further examination in the Ministry.

24. On 27.12.2017, Under Secretary, Home (Police), Government of Chhattisgarh, wrote a letter to the DGP, Chhattisgarh on the subject of approval for creation of 03 non-cadre posts of Director General. Relevant extract of the said letter reads as follows :

"...The State Government hereby grants approval for creating following 03 non-cadres posts of Director General at Pay Scale Rs.02,05,400/- - 02,24,400/- Pay Matrix Level-16, temporarily, for the period from 01.01.2018 to 31.12.2019.

(1) Director General, State Economic Offence Investigation Bureau

(2) Director General-cum-Director of Public Prosecution.

(3) Special Director General, C.I.D., Police Headquarters, Raipur.

2/ The expenditure on the said post shall be debitable under the item Demand-03, Main Head-2044-Police, (001)-Direction and Administration, 01-Salary Allowances etc. of State Headquarters.

3/ For the said approval, concurrence has been given by the Finance Department Outward Letter F-2017-02-01515/B-1/VI./Four dated 27.12.17...."

25. It also appears that on the very same date, Secretary, Home (Police), Government of Chhattisgarh, in reference to the letter dated 11.12.2017 of the Under Secretary, Government of India, Ministry of Home Affairs and the letter earlier issued by him on 04.12.2017, had issued a letter to the Secretary, Ministry of Home Affairs, Government of India. The only material difference between the letter dated 04.12.2017 and the letter dated 27.12.2017 is that while request in the letter dated 27.12.2017 was made for grant of concurrence of the availability of aforesaid 03 vacancies under IPS Pay Rules of 2007, in the letter dated 04.12.2017, concurrence was sought under the Rules of 1954.

26. A DO letter dated 16.12.2017 was also sent by the Chief Minister to the Home Minister, Government of India seeking approval for operation of 03 extra ex-cadre posts of Director General. In response thereto, the Home Minister, by his letter dated 12.01.2018, responded as follows :

"Please refer to your D.O. No. 4236/VIP/2017 dated 16.12.2017 seeking approval of this Ministry for operation of three extra ex-cadre posts at Director General (DG) level.

2. You would appreciate that the Cadre strength of your state was reviewed recently in the year 2017, as per the IPS (Cadre) Rules, 1954. The number of posts at DG level was increased from 1 to 2 vide DoP&T's notification dated 19.05.2017. Thus, the State Government can operate 4 posts at DG level (2 SDP + 2 SDR).

3. The proposal for operation of extra ex-cadre posts at DG level has been examined and it is found that the proposed number of posts at DG level will make the structure top heavy without any adequate functional justification. It is, therefore, felt that operation of 04 posts in all at DG level, in the Chhattisgarh Cadre of IPS seems to be adequate.

With regards,"

27. It will be appropriate to refer to another letter dated 17.01.2018 issued by

the Under Secretary to the Government of India addressed to the Chief Secretary, Government of Chhattisgarh. The relevant extract of the letter dated 17.01.2018 reads as follows :

"..... Further vide letter dated 4th December, 2017,

Govt. of Chhattisgarh requested concurrence for operation of 3 additional SDR posts in DG grade under IPS (cadre) Rule, 1954.

2. The above proposals have been considered in the Ministry in terms of the relevant Rules. With regard to the operation of additional posts in DG grade a letter dated 12.01.2018 (copy enclosed) from Hon'ble Home Minister to Chief Minister has been issued conveying that the State Govt. can operate only 4 posts (2 SDP + 2 SDR) at DG level, as the existing rules allows for operation of 4 posts at DG level only. The proposals of the State Government to concur for additional 3 DG level ex-cadre has not been concurred....."

28. At this juncture, it will be relevant to take note of Rule 4 of the Rules of 1954. It reads as follows:

"4. Strength of Cadres. – 4(1) The strength and composition of each of the cadres constituted under rule 3 shall be determined by regulations made by the Central Government in consultation with the State Governments in this behalf and until such regulations are made, shall be as in force immediately before the commencement of these rules.

4(2) The Central Government shall, at the interval of every five 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 :

Provided that nothing in this sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any other time :

Provided further that State Government concerned may add for a period not exceeding two years 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."

29. Rule 8 of the Rules of 1954 reads as follows:

"8. Cadre and ex-cadre posts to be filled by cadre officers. – 8(1) Save as otherwise provided in these rules every cadre post shall be filled by a cadre officer.

8(2) A Cadre officer shall not hold an ex-cadre post in excess of the number specified for the concerned State under item 5 of the Schedule to the India Police Service (Fixation of Cadre Strength) Regulations, 1955.

8(3) The State Government may, with the prior approval of the Central

Government, appoint a cadre officer to hold an ex-cadre post in excess of the number specified for the concerned State in item 5 of the Schedule to the India Police Service (Fixation of Cadre Strength) Regulations, 1955 and, for so long as the approval of the Central Government remains in force, the said ex-cadre post shall be deemed to be an addition to the number specified in item 5 of the said Schedule.”

30. It will be appropriate to take note of Rule 3(2)(ii), Rule 11(1) and Rule 11(7) of the IPS Pay Rules, 2007. They read as under:

“3(2)(ii). Appointment of a member of the Service in the scales of Selection Grade and above shall be subject to availability of vacancies in these grades and for this purpose, it shall be mandatory upon the State Cadre or the Joint Cadre Authorities, as the case may be, to seek prior concurrence of the Central Government on the number of available vacancies in each grade.”

xxx xxx xxx

“11. Pay of members of the Service appointed to posts not included in Schedule II. -

11(1) No member of the Service shall be appointed to a post other than a post specified in Schedule II, unless the State Government concerned in respect of posts under its control, or the Central Government in respect of posts under its control, as the case may be, make a declaration that the said post is equivalent in status and responsibility to a post specified in the said Schedule.

xxx xxx xxx

“11(7) At no point of time the number of members of the Service appointed to hold posts, other than cadre posts referred to in sub-rule (1) and sub-rule (4), which carry the scale of pay of Rs.75500 – (annual increment @3%) - 80000 per mensem and which are reckoned against the State Deputation Reserve, shall except with the prior approval of the Central Government, exceed the number of cadre posts at that level of pay in a State cadre or in a Joint cadre as the case may be.”

31. In *Rao Shiv Bahadur Singh (supra)*, it is laid down that it is incumbent of the Court to avoid a construction, if reasonably permissible to the language, which would render a part of the statute devoid of any meaning or application.

32. In *Nathi Devi (supra)*, the Hon'ble Supreme Court held that in interpreting a statute, effort should be made to give effect to each and every word used by the legislature. The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors.

33. In *Mohammad Ali Khan (supra)*, the Hon'ble Supreme Court held that the

intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. Obviously the aforesaid rules of construction is subject to exceptions. Just as it is not permissible to add words or to fill in a gap or lacuna, similarly it is of universal application that effort should be made to give meaning to each and every word used by the legislature.

34. In *Shadi Singh* (supra), the Hon'ble Supreme Court held that all the provisions should harmoniously be read together to give effect to them and should not be rendered otiose or surplusage.

35. Though arguments were advanced, amongst others, with reference to IPS Pay Rules of 2007, it is noticed that in exercise of powers conferred by Section 3(1) of the All India Services Act, 1951 (61 of 1951) and in supersession of the IPS Pay Rules of 2007, except as respects things done or omitted to be done before such supersession, the Central Government, after consultation with the Government of the States concerned, had made the Indian Police Service (Pay) Rules, 2016 (for short, IPS Pay Rules of 2016). Even at the time when the writ petition was moved on 04.07.2022, reliance was placed by the petitioners on IPS Pay Rules of 2007. In the written submission also, submitted by the applicant, reference is made to IPS Pay Rules of 2007. In paragraph 8.14 of the writ petition, however, there is a reference to the IPS Pay Rules of 2016.

36. We have examined the IPS Pay Rules of 2016 to see as to whether identical provisions of IPS Pay Rules of 2007 on which arguments were advanced, are also present in the IPS Pay Rules of 2016. It appears that Rule 11(1) of the IPS Pay Rules of 2007 is more or less identical with Rule 12(1) of the IPS Pay Rules of 2016 save and except substitution of the words "said schedule" appearing in IPS Pay Rules of 2007 with the words "Schedule II" in IPS Pay Rules of 2016. A comparison of Rule 12(7) of IPS Pay Rules of 2016 with Rule 11(7) of the IPS Pay Rules of 2007, would go to show that Rule 12(7) of IPS Pay Rules of 2016 is not *pari materia* with Rule 11(7) of the IPS Pay Rules of 2007. Rule 12(7) of IPS Pay Rules of 2016 reads as follows:

"(7) At no point of time the number of members of the Service appointed to hold posts, other than cadre posts referred to in sub-rule (1) and sub-rule (4), which carry the pay at Level 16 and which are reckoned against the State Deputation Reserve, shall except with the prior approval of the Central Government, exceed the number of cadre posts at that level of pay in a State cadre or as the case may be in a Joint cadre."

37. Rule 3(2)(ii) of IPS Pay Rules of 2016 reads as follows:

"3(2)(ii). Appointment of a member of the Service in the Level of Selection Grade and above shall be subject to availability of vacancies in these grades and for this purpose, it shall be mandatory upon the State Cadres or the Joint Cadre

Authorities, as the case may be, to seek prior concurrence of the Central Government on the number of available vacancies in each grade. Any appointment made without obtaining prior concurrence of Government of India shall be liable for cancellation.”

38. While Rule 3 in IPS Pay Rules of 2007 begins with the expression “pay-bands and grade pays”, Rule 3 of the IPS (Pay) Rules, 2016 begins with the expression “levels in pay-matrix and appointment in these levels”. Thus, Rule 3 of the IPS (Pay) Rules, 2016 deals with appointment in the levels of pay-matrix. A comparison of the above with Rule 3(2) (ii) of IPS Pay Rules of 2007 would go to show that an additional sentence, namely, “any appointment made without obtaining prior concurrence of Government of India shall be liable for cancellation” has been added in the IPS Pay Rules of 2016.

39. In exercise of powers conferred by Section 3(1) of the All India Services Act, 1951, read with Rule 4(1) and (2) of the Rules of 1954, the Central Government, in consultation with the Government of Chhattisgarh, amended the Regulations of 1955 vide Notification dated 19.05.2017. Authorised strength was fixed at 142 with 78 Senior Duty Post (SDP). One cadre post of DGP, Chhattisgarh and another post of DGP, Training and Director State Police Academy were notified. 07 additional DGP posts were also notified as cadre post. Prior to the issuance of the said Notification, total authorised strength for Chhattisgarh was 103. The segregation of total authorised strength was fixed by the Notification dated 19.05.2017, as follows :

1. Total Senior Duty Posts – 78
2. Central Deputation Reserved not exceeding 40% of item 1 above –31
3. State Deputation Reserve not exceeding 25% of item 1 above – 19
4. Training Reserve not exceeding 3.5% of item 1 above – 2
5. Leave Reserve and Junior Posts Reserve not exceeding 16.5% of Item 1 above – 12
6. Posts to be filled by promotion under Rule 9 of the Indian Police Service (Recruitment) Rules, 1954 not exceeding 33 1/3% of Item, 1,2,3 & 4 above – 43
7. Posts to be filled up by Direct Recruitment (Items 1+2+3+4+5+6) – 99

40. By another Notification dated 19.05.2017, in exercise of powers conferred by Section 3(1) of the All India Services Act, 1951, read with Rule 4(1) and (2) of the Rules of 1954, the Central Government, in consultation with the Government of Chhattisgarh, amended the Indian Police Service (Pay) Rules, 2016, for short, IPS Pay Rules of 2016. Pay of DGP, Chhattisgarh was fixed at level 17 in the pay-matrix, that of Director General of Police, Training and Director State Police Academy at level 16 in the pay-matrix and pay of the ADGPs was fixed at level 15 in the pay-matrix.

41. A perusal of the meeting of the Screening Committee held on 06.10.2018 would go to show that three ex-cadre posts were held to be vacant to be filled up by promotion and on the basis of available ACRs and after examination of the record and evaluation, three officers, namely, Mr. Sanjay Pillai, Mr. R.K.Vij and Mr. Mukesh Gupta, were held to be fit for regular promotion to the grade/pay-scale of DGP and accordingly, recommendation was made for grant of grade/pay-scale. On the basis of the said recommendation, on that very date, in terms of clause 3(2)(ii) of the Indian Police Service (Pay) Rules, 2007 (for short, the IPS Pay Rules of 2007), the above three officers of 1988 batch recommended by the Screening Committee were promoted temporarily until further orders on the posts mentioned in column No. 4 in the Special Director General of Police pay-scale, Schedule III, Pay Matrix Level 16, Rs. 02,05,400-02,24,400/-. The said order dated 06.10.2018 also states that as per Rule 11 of the Rules of 2007, the designation and responsibility of the ex-cadre posts of Special Director General, Planning and Technical Services, Police Head Quarter, Raipur and Director General, State Economic Offences Investigation Bureau and A.C.B., Raipur was declared to be equivalent to the post of Special Director General of the Indian Police Service.

42. After the order of promotion was issued on 06.10.2018, a letter dated 12.10.2018 was issued by the Under Secretary to the Government of India to the Chief Secretary, Government of Chhattisgarh, which reads as follows:

"No. 11012/11/2017-IPS-I Government of India/Bharat Sarkar Ministry of Home Affairs/Grih Mantralaya North Block, New Delhi

Date, the 12th October, 2018

To,

The Chief Secretary,

Government of Chhattisgarh,

Raipur.

{Kind Attn:.. Sh. D.K.Mathur, Deputy Secretary to Government}

Sub: - Concurrence of the Central Government over vacancies in DG grade of Chhattisgarh Cadre of IPS-regarding

Sir,

I am directed to refer to the subject and to say that vide this Ministry's D.O. letter of even No. dated 12.01.2018 (copy enclosed) from Hon'ble Union Home Minister to Chief Minister, Chhattisgarh it was intimated that "the State Government can operate 04 posts at DG level (02 SDP+02 SDR). The proposed number of extra ex-cadre posts at DG level will make the structure top heavy without any adequate additional justification. The operation of 04 posts in all at DG level, in the Chhattisgarh cadre of IPS seems to be adequate."

2. Recently, there is reports in the newspapers that the State Government has issued order on 6th October, 2018 for promotion of 03 IPS officers of the state i.e. Sh. Sanjay Pillay, Sh. R.K. Viz and Sh. Mukesh Gupta as Directors General (DG). This appears to be in excess of the sanctioned strength of 04 DGs (02 SDP+02SDR).

3. It is requested that the factual position in this regard including number of DG level posts being operated presently in the State Government may be immediately. This may be treated as most urgent.

Yours faithfully

Sd/- Illegible

(Ajay Kumar Singh)

Under Secretary to the Government of India

Tel. 23094517

Copy to:

The Accountant General (A&E), Chhattisgarh, Raipur for information.

Sd/- Illegible

(Ajay Kumar Singh)

Under Secretary to the Government of India"

43. It will be relevant to reproduce the order dated 26.09.2019 by which the order of creation of three ex-cadre post dated 27.12.2017 and the order of promotion dated 06.10.2018 were cancelled. The same reads as follows:

"Government of Chhattisgarh

Home (Police) Department

Mantralaya

Mahanadi Bhawan,

Naya Raipur, Atal Nagar, Raipur

:-Order:-

Raipur, Date - 26/09/2019

No. F1-10/2017/two-home/IPS : The State Government, under Indian Police Service (Cadre) Rules 1954, Rule 4 Sub-Rule 02, created, 3 Ex-Cadre post of Director General / Special Director General, in the pay scale under Schedule III pay matrix level-16, Rs. 02,05,400 - 02,24,400/-, and decided to fill them by promotion, after concurrence of the Home Ministry, Government of India, for which letter of even number dated 04/12/2017 was written for concurrence of

availability of the 3 vacant post of Director General.

2. The Government of India, Home Ministry vide its letter No. 11012/2017-IPS-1 dated 11/12/2017 has informed that the Government of India, Department of Personnel and Training vide its office memo dated 20/01/2015, has issued a clarification that additional posts at Apex level cannot be created.

3. On the proposal re-sent by the Director General for granting of concurrence for availability of the above three posts of Director General vide letter dated 27.12.2017 of the Department under the Indian Police Service (Pay) Rules, 2007, the Ministry of Home, Government of India, vide its letter dated 17.01.2018 has expressed its disagreement and it has been written that for the State of Chhattisgarh, two cadre posts at the level of Director General is approved, therefore, at the Director General level, total 04 posts (02 SDP + 02 SDR) may be functional.

4. Even then, on the 03 Ex-Cadre posts created of Director General level, the following officers of the Indian Police Services were promoted by Department's order dated 06/10/2018 :-

1. Shri Sanjay Pilley (IPS-1988)

2. Shri R.K. Viz (IPS-1988)

3. Shri Mukesh Gupta (IPS-1988)

5. On the above promotion order, Govt. of India, Home Ministry, vide its letter dated 12/10/2018 has again written that it is more than the sanctioned limit of 04 posts (02 SDP + 02 SDR) of Director General.

6. At the time of creation of the posts, it was decided that the three ex-cadre posts at Director General level, will be filled up only after receiving of the written approval from the Government of India. The Government of India, Home Ministry has also not given concurrence for availability of the 03 ex-cadre posts created by the State Government for promotion.

7. Therefore, in light of the above facts, the order of the State Government for creation of 03 ex-cadre posts of the pay-scale of the Director General/Special Director General level vide order No. 1-10/2017/Two-Home/IPS, dated 27.12.2017 and the promotions made on the said posts vide the promotion order No. F1-05/2018/Two-Home/IPS dated 06.10.2018, have been decided to be cancelled.

8. Accordingly, the State Government hereby cancels the Department's Order No. F1-05/2018/Two-Home/IPS dated 06.10.2018 and demotes Shri Sanjay Pillai (IPS-1988), Shri R.K. Viz (IPS-1988) and Shri Mukesh Gupta (IPS-1988) from the post of Director General, pay scale Schedule III, pay matrix level-16 Rs. 02,05,400 - 02,24,400/-, to Addl. Director General pay scale (pay matrix level-15 Rs. 01,82,200 - 02,24,100/-) to the post of the pay-scale of Additional Director General (Pay Matrix Level 15, Rs. 01,82,200 - 02,24,100) with

immediate effect.

9. The decision in relation to pay and allowances for the period of promotion shall be taken separately.

By order and in the name of the Governor

of Chhattisgarh

Sd/- Illegible

Mukund Gajbhiye

Deputy Secretary

Govt. of Chhattisgarh

Home (Police) Department

Endt. No. F-1-10/2017/Two-home/IPS Raipur, Dated-26-Sept-2019

Copy :-

1. Secretary, Govt. of India, Home Ministry, North Block, New Delhi
2. Chief Secretary, Hon'ble Chief Minister, Government of Chhattisgarh, Raipur.
3. Secretary, Government of Chhattisgarh, Finance Department, Mantraya, Mahanadi Bhawan, Raipur.
4. Secretary, Hon'ble Governor, Rajbhawan, Chhattisgarh, Raipur.
5. Director General of Police, Chhattisgarh, Police Headquarter, Raipur.
6. Special Director General, Vigilance, Police Headquarter, Raipur.
7. Additional Director General (Admn) Police Headquarter, Raipur.
8. Accountant General, Chhattisgarh, Raipur."

44. In Bihar Rajya M.S.E.S.K.K. Mahasangh (supra) validity and authenticity of the two orders dated 01.02.1988 and 18.12.1989 were not read before the High Court. The Hon'ble Supreme Court at the first instance considered it appropriate that an independent enquiry is required to be made through a High Power Commission so as to identify alleged bogus appointees in various affiliated colleges who sneaked into the services of the erstwhile affiliated colleges in connivance with the authorities of the various colleges and universities of the State and accordingly, had constituted a one-member Enquiry Commission to go into the various controversies and disputes with regard to the absorption of employees of the erstwhile affiliated colleges in the services of the converted constituent colleges. Validity and authenticity of the aforesaid two orders dated 01.02.1988 and 18.12.1989 were raised before the Commission for the first time and it is in that background, the Supreme Court declined to go into such question.

45. Mr. Behra is correct in submitting that there was no pleading in the return filed by the State with regard to Rule 8(3) of the Rules of 1954 as well as Rule 3(2)(ii) and Rule 11(7) of the IPS Pay Rules of 2007. It is also not the case presented before this Court that any argument was advanced in respect of the aforesaid Rules before the CAT.

46. We, however, do not entirely agree with the submission of Mr. Behra that in absence of any plea with regard to provisions as noticed above before the CAT and as no argument was also advanced to that effect, we should not look into the provisions raised for the first time before this Court. We are of the opinion that a fundamental question of law, even if raised for the first time before the High Court, the same may be gone into. Having said that, we find that the IPS Pay Rules of 2007, on which much of the arguments have been advanced, has been superseded by the IPS Pay Rules of 2016. No arguments have been advanced with regard to IPS (Pay) Rules, 2016. As indicated earlier, we have noticed difference in the provisions of the two IPS Pay Rules. Rule 8(3) of the Rules of 1954 which takes note of Item No. 5 of the Regulations of 1955, has a factual basis, which is absent in the instant case. In the aforesaid background, we do not feel it appropriate to venture to interpret the provisions of the Rules of IPS Pay Rules of 2007 and IPS (Pay) Rules, 2016 as also to record any conclusion and finding on the inter-play of the Rules referred to.

47. It is not correct, as stated by the CAT that while disposing of WPS No. 1035 of 2022, this Court has recorded a finding that the order of withdrawal of promotion has not been served on the applicant. In the context of the preliminary objection raised towards maintainability of the OA, what was observed by this Court was that while it may be true that the letter dated 26.09.2019 was sent, but there is no conclusive material to demonstrate that the same has been served upon the applicant and that despite service of such letter, a false plea has been taken by the applicant.

48. Materials on record demonstrate that initially, vide letter dated 4.12.2017, concurrence to the availability of three vacant posts was sought for under the Rules of 1954. Thereafter, by letter dated 11.12.2017, the State Government was requested to forward the proposal for seeking concurrence of the Central Government for creation of extra ex-cadre posts at DG level as required under Rule 11(7) of the IPS Pay Rules of 2007 for further examination in the ministry. It is seen that even in that letter coming into force of IPS Pay Rules of 2016 was overlooked. While the letter dated 27.12.2017 was issued seeking concurrence of the Central Government under Rule 11(7) of the IPS Pay Rules of 2007 for concurrence to the availability of three ex-cadre posts created, on that very date, approval of the three ex-cadre posts was granted by the State Government. Both the letters emanated from the same Home (Police) Department. The letter dated 12.01.2018 of the Home Minister in no unmistakable terms indicated that the proposed number of posts sought to be created at the DGP level was without any functional justification and that apart, the State Government can operate only 04

posts at DGP level. The letter dated 17.01.2018 categorically stated that the proposal of the State Government to concur for additional 03 DG level ex-cadre posts has not been concurred. Thus, it is seen that though the State Government had sought for concurrence for additional 03 DG level ex-cadre posts, the same had not been concurred. There is no material on record indicating that any communication was sent to the Central Government that request for concurrence was wrongly sought for and that the State is competent in terms of proviso to Rule 4(2) of the Rules of 1954 to add posts for a period not exceeding two years and also to appoint officers to such posts. It has also not been disputed by the State Government that it can operate more than 04 posts at DGP level. When categorically the prayer for concurrence for additional 03 DG level ex-cadre posts have been denied by letter dated 17.01.2018, without any further correspondence by the State Government, contesting the above, it is not understood how the Screening Committee could be convened for consideration of promotion on regular basis to the said 03 posts and how based on recommendation of the Screening Committee, three officers including the applicant could be promoted to such posts. When concurrence for filling of the posts had not been granted, we do not agree with the observation of the Screening Committee and the CAT that three ex-cadre posts are vacant to be filled up by promoting the officers, either temporarily or on a regular basis.

49. At no point of time, a stand was taken by the State Government that seeking concurrence was not necessary and that it is proceeding to make appointments in such posts created by it. While a positive direction of the Central Government, refusing grant of concurrence was in force, the State proceeded to make appointments to the said ex-cadre posts on 06.10.2018. We are of the opinion that in the factual matrix as presented before us with regard to the communications in between the State and the Center, appointment in such posts was wholly uncalled for. What cannot also be lost sight of the fact is that cadre strength was also enhanced in consultation with the State Government only about seven months back, i.e. on 19.05.2017, for which the Home Minister, Union of India, had also observed that creation of ex-cadre post as proposed by the State would make the structure top heavy.

50. The CAT proceeded to hold that executive instructions do not override the statutory empowerment under Rule 4(2) of the Rules of 1954 to create post. While it may be conceded that the State is competent to add for a period not exceeding two years 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, Rule 4(2), ex-facie, does not provide that in such created post, promotion can be effected. Creation of post and appointment, needless to say, are two different aspects.

51. What is striking in this case is the manner in which the State Government effected promotion to the ex-cadre posts created. It was the State Government which had initiated the process of seeking for concurrence of availability of

vacancies. It defies rational and logic as to how having sought concurrence by letter dated 27.12.2017, the State Government could create 03 additional posts of DGP on that very day itself. It is also noticed that subsequently, by letters dated 12.01.2018 and 12.10.2018, the Central Government in categorical terms, declined concurrence as sought for by the State Government.

52. Perusal of the letter dated 12.10.2018 would go to show that the State respondents did not even bother to intimate the Central Government about promotion granted and it is only from the newspapers reports, the central Government came to know about the order of promotion dated 06.10.2018 and therefore, to ascertain the factual position, request was made to the State Government to inform the number of DGP level posts operated.

53. In the light of the above background, the State had cancelled the order of creation of three ex-cadre posts dated 27.12.2017 and the order of promotion dated 06.10.2018. The CAT had not adverted to these aspects of the matter and without considering the import and effect of the communications which have been referred to hereinabove, on an interpretation of Rule 4(2) of the Rules of 1954, directed that the promotion granted to the applicant on 06.10.2018 would continue to be valid. In any case, the period of the ex-cadre posts created, even otherwise, would have expired on 31.12.2019 and therefore, the promotion could not have been continued on such ex-cadre post, at any rate, beyond 31.12.2019. It is not a case where an officer having been promoted in a cadre post had been demoted to a lower post. There is no inherent right to continue in an ex-cadre post, creation of which itself was not in tune with the process initiated by the State Government and therefore, if the State, later on, rectifies the same, no fault can be attributed to the State for taking such a step. Contentions advanced alleging violation of principles of natural justice and bias as set up by the applicant, in the attending facts and circumstances, in our considered opinion, is mis-conceived.

54. It is also seen that the Central Government, vide letter dated 10.02.2020, had conveyed concurrence of the Central Government in terms of Rule 12(7) of the IPS Pay Rules of 2016 in respect of filling up of three retirement vacancies in the grade of DGP. On the basis thereof, the Screening Committee meeting for promotion to the post of DGP was held on 14.08.2020 in which the case of the applicant for promotion was kept in a sealed cover.

55. In view of the above discussion, the order of the CAT dated 12.04.2022 is set aside. Resultantly, the writ petition is allowed. However, as observed by the CAT, this judgment is subject to the decision of the Hon'ble Supreme Court in the SLP filed against the order of this Court dated 14.03.2022 in WPS No. 1035 of 2022 whereby this Court had rejected the preliminary objection of the petitioners regarding maintainability of the OA filed by the applicant.