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D. R. NIM, I. P. S.

v.

UNION OF INDIA

January 5, 1967

B [K. SUBBA RAO, C.J., J. C. SHAH, S. M. SIKRI, V. RAMASWAMI AND C.A. VAIDIALINGAM, JJ.]

Civil Service—Indian Police Service (Regulation of Seniority) Rules, 1954, r. 3—Officer appointed by promotion—Seniority, how determined.

Under r. 3 of the Indian Police Service (Regulation of Seniority) Rules, 1954, issued under s. 3(1) of the All India Services Act, 1951, C the mode of determining the seniority of officers of the Indian Police Service is as follows: The officers are divided into categories: (1) those in the Service at the commencement of the Rules, and (2) those appointed to the Service after the commencement of the Rules. The second category is divided into two sub-categories: (a) officers appointed as a result of a competitive examination, and (b) officers appointed by promotion in accordance with r. 9 of the Recruitment Rules. The year of allotment of an officer which determines his seniority, is determined D according to r. 3(3)(a) or (b). But if an officer started officiating continuously in a senior post from a date earlier than the date on which any of the officers was recruited to the Service by competition, the year of allotment had to be determined *ad hoc* by the Central Government, under proviso (1) to r. 3(3)(b), and under proviso (2) to r. 3(3)(b) the period of officiation before the date of inclusion of the name of an officer in the Select List prepared in accordance with the requirements E of the Indian Police Service (Appointment by Promotion) Regulations. would be counted, only if such period was approved by the Central Government in consultation with the Public Service Commission.

The appellant was officiating as Superintendent of Police from June 1947, that is from a date earlier than the date of any officer recruited by competition, and was appointed to the Indian Police Service by promotion in 1955 after the commencement of the Seniority Rules. His name was included in the Select List in 1956. The Government passed an F order on 25th August 1955, that officers promoted to the Indian Police Service should be allowed the benefit of their continuous officiation with effect only from 19th May 1951. The appellant challenged the order by a petition under Art. 226, because the period of his officiation from June 1947 to May 1951 has excluded for the purpose of fixation of his seniority. The High Court dismissed the petition.

In appeal to this Court,

G HELD: The impugned order dated 25th August 1955 should be quashed and the Central Government directed to fix the year of allotment and seniority of the appellant according to law.

The date 19th May 1951, was an artificial and arbitrary date having nothing to do with the application of the first and the second provisos to r. 3(3). It has some relevance for the Indian Administrative Service, but why it should be applied to the Indian Police Service was not ade- H quately explained. Under the two provisos, the Central Government had to determine *ad hoc* the year of allotment after approving or not approving the period of officiation in consultation with the Public Service Commission taking into consideration all the relevant facts. The Central

Government cannot pick out a date and say that a period prior to that date would not be deemed to be approved by the Central Government within the second proviso. [331 B, E-G] A

(2) In view of the facts that he was officiating for eight years, that he had never been reverted and that he was appointed to the post when vacancies fell, it could not be held that the appellant's continuous officiation a mere temporary or local or stop-gap arrangement, within the meaning of Explanation 1 to r. 3(3)(b). [332 G] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 371 of 1965.

Appeal by special leave from the judgment and order dated December 8, 1961 of the Punjab High Court Circuit Bench at Delhi in Civil Writ No. 507-D of 1961.

B. P. L. Iyengar, B. Dutta, O. C. Mathur and *Ravinder Narain*, for the appellant. C

N. S. Bindra, R. Ganapathy Iyer and *R. S. Sachthey*, for the respondent.

Basudev Prasad, K. Rajendra Chaudhuri and *K.R. Chaudhuri*, for the intervener. D

The Judgment of the Court was delivered by

Sikri, J. This appeal by special leave is directed against the judgment of the Circuit Bench of the Punjab High Court at Delhi, dismissing *in limine* the petition under art. 226 of the Constitution filed by the appellant, D. R. Nim. The appellant had impugned in this petition an order dated August 25, 1955, passed by the Government of India, (Ministry of Home Affairs)—hereinafter referred to as the impugned order—as being contrary to law and art. 14 of the Constitution. E

The relevant facts for the determination of the validity of the impugned order are as follows: The appellant was appointed to the U.P. Police Service as a result of a competitive examination held in 1938. In course of time he was appointed officiating Superintendent of Police with effect from June 25, 1947. He continued to officiate till he was appointed to the Indian Police Service against the promotion quota of the Indian Police Service Cadre of Uttar Pradesh with effect from October 22, 1955. By the time he was appointed to the Indian Police Service various Rules and Regulations governing the Indian Police Service had been issued by the Central Government in exercise of the powers conferred by sub-s. (1) of s. 3 of the All India Services Act (LXI of 1951). We are concerned particularly with the Indian Police Service (Regulation of Seniority) Rules, 1954, hereinafter referred to as the Seniority Rules. The seniority of the appellant has to be determined under these Seniority Rules. The first thing to be done under the Seniority Rules is to determine the year of allotment of the appellant. The F G H

A appellant claims that a wrong year of allotment has been given to him by the application of the impugned order, which, according to him, is a void order. Rule 3, which deals with the assignment of the year of allotment reads as follows:

"3. Assignment of Year of Allotment.-(1) Every officer
B 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 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
C 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
D 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 only 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
E 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
F 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:

G Provided that the year of appointment 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 *ad hoc* by the Central Government in consulta-
H tion with the State Government concerned ;

Provided further that an officer appointed to the Service after the commencement of these Rules in accor-

dance with rule 9 of the Recruitment Rules shall be deemed to have officiated continuously in a senior post prior to the date of the inclusion of his name in the Select List prepared in accordance with the requirements 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 senior post during any period in respect of which the State Government concerned certifies that he would have so officiated but for his absence on leave or appointment to any special post of any other exceptional circumstance."

Sub-rule (1) clearly makes Rule 3 the Controlling Rule for the purposes of assignment of the year of allotment. The Rule then divides officers into two categories: (1) an officer in the Indian Police Service at the commencement of the Rules, and (2) an officer appointed to the Indian Police Service after the commencement of the Rules. 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 to 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 on 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 *ad hoc* 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

A 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. The appellant's name was included in the Select List of 1956. Therefore, in the case of the appellant, the period prior to 1956 had to be approved by the B Central Government in consultation with the Commission.

We may here notice Explanation 1 to Rule 3, because the Government of India also say that the appellant officiated continuously as a temporary or local arrangement. We will deal with this aspect later, but for the time being we assume that there is no force in the Government of India's contention and the Explanation C does not apply to the facts of the present case. Therefore, according to the Rule the Central Government had to determine *ad hoc* the year of allotment after approving or not approving the period of officiation of the appellant before 1956. The Government of India say that they determined this by issuing the impugned order, the relevant part of which reads as follows:

D "The Government of India have now decided with the concurrence of the Commission that the State Civil Service Officers who were officiating prior to 19th May, 1951, but have been appointed to the Indian Administrative Service after that date should, for purposes of fixation of seniority, be allowed the benefit of their continuous officiation E in senior posts with effect from the 19th May, 1951. The same decision will also apply in the case of State Police Officers promoted to the Indian Police Service after the 19th May, 1951."

The result of this decision, as far as the appellant is concerned, is that the period of officiation as Superintendent of Police from F June 25, 1947 to May 19, 1951, is excluded for the purpose of fixation of seniority. Why the date May 19, 1951, was chosen is explained by the Government of India in the following terms in paras 8 and 9 of the affidavit dated May 15, 1966:

"8. While recruitment to the Service through these diverse unconventional sources was being made over the years, the G question of fixation of seniority and year of allotment was subseqently considered and instructions were issued *vide* Shri R. C. Dutt's letter No. 1/18/51-AIS dated 22nd June, 1951 prescribing the detailed procedure as to how the seniority and the year of allotment of each officer and for each category of recruitment should be fixed. The H said letter finds mention in the appeal paper book at pages 45—49. It can be said that with the issue of this letter the position regarding principles for the fixation of seniority and year of allotment of officers that had been recruited to

the Services prior to this date had been finalised and stabilised. A

9. At this stage, it was noticed that there still were some State Police Service Officers who had not qualified at the various recruitments made for the Service in previous years and continued to hold senior posts on account of paucity of officers. It was further realised that if, for determination of seniority and year of allotment, the principle of date of continuous officiation is applied in such cases such State Police Service Officers who had been rejected on earlier occasions would on eventual absorption into the Service through the regular promotion quota become entitled to higher seniority and year of allotment than those who had been selected in preference to them at the time of the promotions made and the Special Recruitment held in earlier years. This would have been a very anomalous position for those selected on such occasions who would have found themselves junior to those who had been rejected at the time of such selection. In consultation with States and with the Union Public Service Commission, it was, therefore, decided that in the case of State Police Service Officers appointed to the Service after 19th May, 1951, their officiation prior to this date would not count for purposes of seniority and year of allotment. In other words, all such officiation prior to this date would be regarded as fortuitous. It was also felt that since 19th May, 1951 was the date on which the Gradation List for all the earlier persons recruited to the Service had been finalised and issued in a somewhat stable stage, this may be a crucial date, and officiation prior to which could be regarded as fortuitous. It may be mentioned that this date refers to the finalisation of the Gradation List for the I.A.S. but since the same principles were extended to the I.P.S. as well, it was decided to retain this as the crucial date. It may be reiterated that this decision was taken after consultation with the State Governments and the U.P.S.C. I would say that there is no arbitrariness in this matter and that this was done after consulting all concerned and after evolving a sound principle which would be consistent with the view that those who had been selected for recruitment on earlier occasions should not, by application of a principle, become junior to those who on such occasions had been rejected. I may also mention that the said date had been uniformly applied to all officers in this category." B C D E F G H

It would be noticed that the date, May 19, 1951, to begin with had nothing to do with the finlisation of the Gradation List of the Indian Police Service because it was a date which had

A reference to the finalisation of the Gradation List for the I.A.S. Further this date does not seem to have much relevance to the question of avoiding the anomalous position mentioned in para 9 of the affidavit, reproduced above. This date was apparently chosen for the I.A.S. because on this date the Gradation List for all the earlier persons recruited to the Service had been finalised and B issued in a somewhat stable stage. But why should this date be applied to the Indian Police Service has not been adequately explained. Mr. B. R. L. Iyengar, the learned counsel for the appellant, strongly urges that selection of May 19, 1951, as a crucial date for classifying people is arbitrary and irrational. We agree with him in this respect. It further appears from the affidavit of Mr. D. K. C Guha, Deputy Secretary to the Government of India, Ministry of Home Affairs, dated December 9, 1966, that "the Government of India have recently decided in consultation with the Ministry of Law that the Ministry of Home Affairs letter No. 2/32/51-AIS, dated the 25th August, 1955, will not be applicable to those SCS/ SPS officers, who were appointed to IAS/IPS prior to the promulgation of IAS/IPS (Regulation of Seniority) Rules, 1954, and the date D of the issue of the above letter if their earlier continuous officiation was approved by the Ministry of Home Affairs and Union Public Service Commission." It further appears that "in the case of Shri C. S. Prasad also, an IPS officer of Bihar, a decision has been taken to give the benefit of full continuous officiation in senior posts and to revise his year of allotment accordingly." But, it is E stated that "as Shri Nim was appointed to IPS on the 22nd October, 1955, *i.e.* after the promulgation of IPS (Regulation of Seniority) Rules, 1954, and after the issue of letter dated 25-8-1955, his case does not fall even under this category." The above statement of the case of the Government further shows that the date, May 19, 1951 was an artificial and arbitrary date having nothing to do with the F application of the first and the second provisos to Rule 3(3). 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 G prior to that date would not be deemed to be approved by the Central Government within the second proviso.

Mr. Iyengar had contended before us that on a proper construction of the rules, the entire period of officiation in a senior post has to be counted towards the seniority of the appellant. H We have already discussed this point above and, in our opinion, there is no force in this contention. As we have said, the Central Government must consider the question of approval of the officiation period and come to an *ad hoc* decision after considering

all the relevant circumstances in consultation with the State Government concerned and fix the year of allotment. A

The next point Mr. Iyengar raised was that the letter dated August 25, 1955, was without any legal authority and was contrary to rules. It seems to us that the fixing of an artificial date, like May 19, 1951, as the date prior to which period of officiation would not be deemed to be approved by the Central Government B is contrary to Rule 3.

The last point which Mr. Iyengar raised was that the appellant for no valid reason has been treated unequally among his equals. It is not necessary to decide this point because the appeal has to be accepted on the ground that the selection of May 19, 1951, as a crucial date for classifying people is arbitrary and contrary to C Rule 3.

We had earlier left open the point raised by the Government of India that the appellant's continuous officiation was a temporary or local arrangement within Explanation 1 to Rule 3. This is sought to be sustained by the following statement in the affidavit dated March 15, 1966: D

> "When vacancies could not be filled up even by this method, recruitment from the open market was resorted to. All officers thus recruited to the Service were initially appointed in the Junior Scale of the I.P.S. The result was that there were some senior posts that had to be filled and some State Police Service Officers who had not been selected E to the Service through any of the above recruitment methods were, in view of the existing paucity of officers, allowed to officiate on senior posts as a stop-gap arrangement. I say that all such State Police Service Officers who were officiating on senior posts due to shortage of officers were primarily those who had been considered for absorption into the I.P.S. under the Promotion Quota or under F the Emergency Recruitment but had not been found fit for such absorption."

This statement is denied by the appellant. We agree with him that such a stop-gap arrangement cannot last for eight years and it has not been shown that the appellant was appointed temporarily in place of some persons as subsequently he has never G been reverted. Further the fact that he was appointed to the post at the time when vacancies fell negatives that it was merely a temporary arrangement.

In the result we accept the appeal, quash the impugned order dated August 25, 1955, and direct the Central Government to fix the year of allotment and seniority of the appellant in accordance H with this judgment and the law. The respondent will pay costs of the appellant in this appeal.

V.P.S. *Appeal allowed.*