

Markandey Singh, I.P.S., & Ors vs M.L. Bhanot, I.P.S., & Ors on 4 May, 1988

Equivalent citations: 1988 SCR (3) 847, 1988 SCC (3) 539, AIRONLINE 1988 SC 11, 1988 (3) SCC 539, (1988) 2 LAB LN 941, (1988) 2 JT 509, (1988) 2 JT 509 (SC), (1992) 2 CRICJ 523, (1992) 3 ALLCRILR 730, (1992) 3 CRIMES 540, (1992) 3 CURCRIR 362, (1992) 5 JT 596 (SC), 1992 CRILR(SC MAH GUJ) 643, 1992 UJ(SC) 2 738, (1993) 1 RECCRIR 87, (1993) EASTCRIC 24, 1993 SCC (CRI) 796, 1993 SCC (SUPP) 2 755, AIRONLINE 1988 SC 264

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, R.S. Pathak

PETITIONER:

MARKANDEY SINGH, I.P.S., & ORS.

Vs.

RESPONDENT:

M.L. BHANOT, I.P.S., & ORS.

DATE OF JUDGMENT 04/05/1988

BENCH:

MUKHARJI, SABYASACHI (J)

BENCH:

MUKHARJI, SABYASACHI (J)

PATHAK, R.S. (CJ)

NATRAJAN, S. (J)

CITATION:

1988 SCR (3) 847

1988 SCC (3) 539

JT 1988 (2) 509

1988 SCALE (1) 855

ACT:

Indian Police Service (Regulation of Seniority) Rules-
Challenging order of High Court in matter of rectification
of year of allotment of absorption in Indian Police Service,
quashing order of allotment of year in I.P.S. Cadre, passed
by Central Government-Whether benefit of officiation on
senior post in I.P.S. cadre of a State while on deputation
to State Police Service of that State from another State, in
matter of fixation of year of allotment could be claimed
under proviso to rule 3(3) (b) of.

HEADNOTE:

Shri Markandey Singh, the appellant in the first appeal had joined the U.P. State Service as Deputy Superintendent of Police by passing a competitive examination. In November, 1953, he joined on deputation the Union Territory of Delhi which at that time had no police service of its own. While on deputation and again in 1959-60, he officiated as Superintendent of Police but was reverted back for administrative reasons. In July, 1960, Himachal Pradesh Indian Police Service was created and thereafter, the Delhi-Himachal Pradesh Police Service, in March 1961. On 6th December, 1961, Shri Singh was again promoted to officiate as Superintendent of Police. During the period of his officiation, his request for being absorbed in the Himachal Pradesh State Police Service was accepted and he was absorbed in the State Service with effect from 27th November, 1962. He was confirmed in the Union Territory Cadre of I.P.S. with effect from 14th May, 1964. He was assigned 1958 as the year of allotment. He made a representation against the order of allotment to the Central Government, claiming the benefit of officiation from 6th December, 1961 to 13th May, 1963 in the matter of fixation of his year of allotment. The Central Government rejected the representation by order dt. 23rd April, 1970, which stated that in accordance with the orders contained in letter NO. 1/2/62 Delhi IDH(S) dated 23.8.1963 of the Home Ministry, all cadre posts held by non-cadre officers not on the Select List were deemed to have been kept in abeyance with effect from 27th September, 1961 onwards, and according to the seniority rules, the service rendered by an officer prior to his inclusion in the Select List could not be counted for seniority

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unless approved by the Central Government in consultation with the Union Public Service Commission under the Second Proviso to rule 3(3)(b) of the Seniority Rules. The requisite approval was not there.

Shri Singh made a second representation on 23rd June, 1970. The Central Government by order dt. 21st June, 1973, accepted the second representation, gave the benefit of officiation in question and assigned to him 1956 as the year of allotment. The reason why the second representation was accepted was that in November, 1972, the Union Public Service Commission had approved of the officiation of Shri Singh in the I.P.S. cadre for the relevant period under the second proviso to rule 3(3)(b) of the Seniority Rules "as they stood in May, 1963." In consequence, he was placed above Shri M.L. Bhanot, respondent, in the gradation list of Union Territory of I.P.S.

Feeling aggrieved by the order of the Central Government, Shri Bhanot filed a writ petition before the High Court. A Single Judge allowed the same, and quashed the

order dt. 21st June, 1973. Against the judgment of the Single Judge, two appeals were filed before the Division Bench of the High Court—one by Shri Singh, and the second, by the Union of India. Both the appeals were dismissed by the Division Bench. Aggrieved by the decision of the High Court, Shri Singh and the Union of India filed these two appeals for relief in this Court.

Dismissing the appeals with directions, the Court,

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HELD: The question involved in the appeals was whether the year of allotment given to Shri Singh as 1958 was correct or not and whether the order of the High Court, quashing the year of allotment given to Shri Singh as 1956 was bad or not. This depended upon the interpretation of the various rules and provisions and the determination of the question whether an officer was entitled to the benefit of the service rendered by him in a senior post in the I.P.S. cadre of a particular State while he was on deputation to the State Police Service of that State from another State, for the purpose of working out the year of allotment in accordance with the second proviso to unamended rule 3(3)(b) of the Indian Police Service (Regulation of Seniority) Rules (The 'Seniority Rules'). [855D-F]

Rule 3(3)(b) of the Seniority Rules and the provisos thereto should not be read in isolation. This rule is in the setting of other rules. The Indian Police Service (Cadre) Rules (The 'Cadre Rules') read with the Indian Police Service (Fixation of Cadre Strength) Regulations of 1955

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fixed the strength of the Indian Police cadre of the Union Territories at a particular figure. Out of them not more than 25% officers eligible for recruitment to the I.P.S. cadre had to be substantive members of the State (U.P.) Police Service at that time. The scheme, as it stood, fixed the strength of the I.P.S. cadre State-wise. Recruitment by promotion thereto could only be from the substantive members of the Police Service of that particular State. So long as Shri Singh remained as a substantive member of the U.P. State Police Service, he could not possibly be promoted to the joint I.P.S. Cadre of the Union Territories of Delhi and Himachal Pradesh. He became eligible to his promotion to the Union Territory, I.P.S. cadre only after he had been absorbed in the Delhi-Himachal Pradesh State Police Service. Proviso (1) to Rule 3(3)(b) of the Recruitment Rules gives a clear indication that for determining the year of allotment ad hoc the Central Government consulted the State Government concerned. In Explanation (2) again there is a reference to a certificate by the State Government concerned that an officer would have officiated in a senior post but for his absence on leave or appointment to any special post. It is apparent, therefore, that the State Government is the Government of the Police Service of which the officer concerned is a substantive member. In this case, as found by

the Division Bench of the High Court, Shri Singh had not chosen to be absorbed in the Delhi-Himachal Pradesh State Police Service and he had gone back to his parent State of U.P. In case Shri Singh had not chosen to be absorbed in the Delhi-Himachal Pradesh State Service and had gone back to his parent State of U.P., then according to the Explanation (2), the U.P. State Government might have issued the certificate to facilitate his promotion to the I.P.S. Cadre of the U.P. State. The Promotion Regulations of 1955 laid down the determination of the eligibility of a substantive member of the State Police Service. Thereafter, the names of the eligible officers were brought on the Select List, who were to be approved by the Public Service Commission. Appointments by promotion to the I.P.S. cadre are made from the Select List. In the event of promotion, but for the second proviso, the benefit of continuous officiation on a senior post for fixing his year of allotment is given to an officer from the date after his being nominated on the State List. In Explanation (1) of rule 3(3), there is no mention that deputationist before his absorption in the State Police Service can get the benefit of such officiation. Therefore, it was not possible to accept the position that before his absorption Shri Singh was entitled to the benefit of his officiation. The Division Bench of the High Court so held. The Division Bench was right on this aspect of the matter. [861D-H;862A-D]

The Seniority Rules 1954 including rule 3(3)(b) were amended with

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effect from 22nd April, 1967. Before the amendment, the appellant Shri Singh had been confirmed in the Union Territory cadre of the Indian Police Service with effect from 14th May, 1964, and had been allotted 1958 as the year. The question of allotment of Shri Singh in accordance with the Seniority Rules had ripened before the amendment of 1967. There is no rule vitiating the operation of the old seniority rules. Reliance was placed by the appellant Shri Singh on the decision of this Court in Arun Ranjan Mukharjee v. Union of India & Ors., [1971] Suppl. S.C.R. 574-A.I.R. 1971 S.C. 1814, and the appellant submitted that Division Bench was in error in not following the ratio of the decision in that case. The Court could not accept this submission. [862D-E;863C]

In this case, the Central Government had not fixed the date of appellant's absorption in the Select List as 1958 out of the hat, so to say. It had relevance as it appeared from the basis of the order of the Central Government. The appellant, who was a deputationist before the absorption in the State Police Service could not be entitled to get such officiation. In case, Shri Singh had not chosen to be absorbed in the Delhi-Himachal Pradesh State Police Service and had gone back to his parent State of U.P., then, according to explanation (2) the U.P. State Government might

have issued the certificate to facilitate his promotion to the I.P.S. cadre of the U.P. State. But so long as Shri Singh remained a substantive member of the U.P. State Police Service, he could not possibly be permitted to join I.P.S. cadre of the Union Territories of Delhi and Himachal Pradesh. In accordance with the rules, he became eligible to his promotion to the Union Territory I.P.S. cadre only after he had been absorbed in the Delhi-Himachal Pradesh Police Service. [864F-H]

The rules with which the Court was concerned, which state that certain year should be assigned by the Government in consultation with the Public Service Commission, must be interpreted in the light of the well-established rule of construction that if the words of a statute are in themselves precise and unambiguous no more is necessary than to expound these words in their natural and ordinary sense, the words themselves in such a case best declaring the intention of the legislature. See in this connection the observations of this Court in *The Collector of Customs, Baroda v. Digvijaysinhji Spinning & Weaving Mills Ltd.*, [1962] 1 SCR 896, 899. [865A-B]

The officiation in a senior post is one of the indispensable ingredients in the application of rule 3(3)(b). But it must be borne in mind that this was not a sine qua non. In this case, before the absorption of

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the appellant in the Himachal Pradesh-Delhi I.P.S. cadre, his officiation had not been taken by the Central Government into consideration. The Court could not say that the Central Government had not acted properly. [865E-F]

This appeal was not concerned with the assignment of year 1958 to Shri Singh but rule 16, clause (1)(iii) of the Service Rules provides for certain penalties and one of the penalties, inter alia, is the effect of superseding him in promotion to a selection post and such is appealable. The High Court was right that appeal does not necessarily lie only against the order imposing penalty and it is also open to entertain appeal when the service rule was interpreted to the disadvantage of member of the service but rule 17 bars the filing of appeal after the expiry of 45 days. Proviso to the said rule, however, gives discretion to the appellate authority to condone the delay if sufficient cause is shown. Rule 24 of All India Services (Discipline and Appeal) Rules 1969 provides for review within different periods. Under that rule since Shri Singh could have filed an application for review within one year, in this case remedy of review by Shri Singh had also become barred when the second order was passed. [865G-H;866A-B]

It appeared that there is provision for appeal in the order of this nature. Failure to prefer an appeal or apply for review was no bar to the submission of memorials to the President. In December, 1963, in this case, the year of allotment was assigned to Shri Singh. Shri Singh made the

first representation in August, 1969, after the period of limitation had expired. It was contended by the appellant relying on the full Bench decision of the Punjab & Haryana High Court in *Sunder Lal & Ors. v. The State of Punjab*, [1970] SLR 59 that in a case of bona fide mistake, there was always the power to rectify. It was emphasized that every Administrative authority has an inherent right to rectify its own mistakes. It was doubtful that inherent power could be invoked if there was no reason for re-fixing the appellant's year. If belated claims are allowed arbitrarily, an atmosphere of uncertainty would prevail. There should be no sense of uncertainty among public service. Furthermore, it was clear that if the fixation of year 1958 was a mistake, the first representation was rejected with the order dated 23rd April, 1970. There, the Government's order reiterated that in accordance with the order contained in the Home Ministry's letter to which reference was made, all cadre posts held by the non-cadre officers not on Select List were deemed to have been kept in abeyance with effect from 27th September, 1961, onwards. As such Shri Singh could not have claimed that he had been officiating in the cadre post prior to coming on the Select List. In

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those circumstances, Shri Singh could not be deemed to have officiated in cadre post during the period 6th December, 1961 to 14th May, 1963. The Central Government was of the view that the decision taken by it in 1963, fixing the year of allotment was correct. It is true that Home Ministry's letter referred to in Annexure-R 4, had been quashed by the High Court but the same had no bearing on the correctness of the decision taken by the Central Government in 1963, because at the relevant time, the letter was there and the Central Government was bound to act in accordance therewith. The contention of the appellant that there was no period of limitation for the grant of the approval was not relevant. It was, therefore, clear that there was no scope of acceptance of the second representation. In the said order, there was no mention of any mistake. [866C-H;867A-C]

When the second order was made, it affected Shri Bhanot adversely because he in the meantime had been absorbed in the I.P.S. in 1957. It was not that the constitutionality of any provision was challenged as was the case in *A. Janardhana v. Union of India & Ors.*, [1983] 2 S.C.R. 936, 967. In this case, seniority of Shri Bhanot would be adversely affected as he had acquired a year of allotment. In the opinion of the Court, it should have been done upon notice to Shri Bhanot. [867C-E]

The High Court was right in dismissing the writ petition of the appellant. Having regard to the facts of the case, the Central Government was directed to re-fix the salary scale of the appellant, taking into consideration the appellant's service in U.P. and Himachal Pradesh cadre in the senior position as a deputationist. [867G]

Arun Ranjan Mukherjee v. Union of India & Ors., [1971] Suppl. S.C.R. 574-A.I.R. 1971 SC 1814; Madan Gopal Singh v. Union of India, [1969] S.L.R. 576; D.R. Nim, I.P.S. v. Union of India, [1967] 2 S.C.R. 325; Government of India and Anr. v. C.A. Balakrishnana & Ors., [1975] 1 S.L.R. 31; The Collector of Customs, Baroda v. Digvijaysinhji Spinning & Weaving Mills Ltd., [1962] 1 S.C.R. 896, 899; Ram Prakash Khanna & Ors., etc. v. S.A.F. Abbas & Ors., etc., AIR 1972 SC 2350; Sunder Lal & Ors. v. The State of Punjab, [1970] SLR 59; A. Janardhana v. Union of India & Ors., [1983] 2 SCR 936, 967 and General Manager, South Central Railway Secundrabad & Anr., etc. v. A.V.R. Siddhanti & Ors., etc., [1974] 3 SCR 207, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1335-36 of 1976.

From the Judgment and Order dated 9.12.75 of the Punjab & Haryana High Court in L.P.A. Nos. 231 and 267 of 1974.

Markandey Singh, Appellant-in-person, in CA. No. 1335 of 1976 and Respondent-in-person in CA. No. 1336 of 1976.

Girish Chandra, C.V. Subba Rao and K.S. Guruswamy for the appellants in CA. No. 1336 of 1976.

V.C. Mahajan, for the Respondent In 1335 of 1976. The Judgment of the Court was delivered by SBYASACHI MUKHARJI, J. These two appeals are connected. These deal with the rectification of year of allotment of absorption of the appellant in the first appeal and respondent in the second one-Shri Markandey Singh (hereinafter called the appellant in the first appeal and respondent in the second appeal) in the Indian Police Service. Shri M.L. Bhanot is the respondent in the first appeal. He is appellant in the second appeal being Civil Appeal No. 1336 of 1976. By the order dated 21st July, 1973, Shri Markandey Singh was assigned 1956 as the year of allotment in I.P.S. cadre. Shri Bhanot challenged the said order. The same was quashed by the learned single judge of Punjab & Haryana High Court on 4th April, 1974. Letters Patent Appeal against the said order was dismissed by the Division Bench of the said High Court on 9th December, 1975. The first appeal aforesaid arises from the said decision. In order to appreciate the position, it may be relevant to note that Shri Markandey Singh the appellant in the first appeal joined the U.P. State Service as Deputy Superintendent of Police on 17th November, 1950 by passing a competitive examination. Two years later he was confirmed as such. In November, 1953, he joined on deputation the Union Territory of Delhi which had at that time no police service of its own. While on deputation in 1958 and again in 1959-60, the appellant had officiated as Superintendent of Police but for administrative reasons was reverted back. In July, 1960, Himachal Pradesh Indian Police Service was created and thereafter the Delhi Himachal Pradesh Police Service in March, 1961. On 6th December, 1961, Shri Singh was again promoted to officiate as Superintendent of Police. During the period of his officiation, his

request for being absorbed in the Himachal Pradesh State Police Service was accepted and by an order dated 7th February, 1963, he was absorbed in the State Service with effect from 27th November, 1962. While he was continuing to officiate in the senior post as aforesaid, on 30th April, 1965, he was confirmed in the Union Territory Cadre of I.P.S. with effect from 14th May, 1964. He was assigned 1958 as the year of allotment. He, however, made representation against the order of allotment in August, 1969 to the Central Government claiming the benefit of officiation from 6th December, 1961 to 13th May, 1963 in the matter of fixation of his year of allotment. On 14th May, 1963, the appellant's name had been brought on the select list of the officers to be promoted to the Indian Police Service and he was recruited with effect from the same date. It may be noted that during the preceding period of officiation as mentioned hereinbefore he was not on the select list. On 23rd April, 1970, his representation was rejected by the Central Government. He made a second representation on 23rd June, 1970. Shri Bhanot had appeared in the I.P.S. Examination. He was successful and recruited in the Police Service in October, 1957. The year of allotment assigned to him was 1957. Shri Bhanot, was allotted the year 1957 on his joining the service by examination and the appellant allotted the year 1958 as mentioned hereinbefore. In November, 1962, the respondent, Shri Bhanot was promoted as Superintendent of Police in the Union Territory of Delhi with effect from 13th May, 1961. In November, 1966, reorganisation of State of Punjab took place and at that time Shri Bhanot was allotted to the joint I.P.S. Cadre of Delhi and Himachal Pradesh. On coming to know in December, 1972 about the second representation made by Shri Singh, Shri Bhanot wrote to the Central Government that he having been allotted the year 1957 was senior to Shri Singh and if any change was brought about in the year of allotment of Shri Singh which was 1958, he, the respondent, should be intimated of the reasons so as to enable him to make an effective representation. According to the respondent, which has been accepted by the Division Bench of the High Court of Punjab & Haryana in the impugned judgment, he did not hear anything from the Central Government in spite of the several reminders. On 21st June, 1973, the Central Government by its order of the same date gave the benefit of officiation for a period from 6th December, 1961 to 13th May, 1963 to Shri Singh and accepted his representation and assigned to him 1956 as the year of allotment. In consequence, Shri Singh was placed below one Shri B.P. Marwaha and above Shri Bhanot in the gradation list of Union Territory of I.P.S. Feeling aggrieved, Shri Bhanot filed the writ petition being Writ Petition No. 12 of 1974 before the High Court. The learned single judge allowed the same. He held that Shri Singh being on deputation was not entitled to the benefit of officiation on senior post prior to 27th November, 1962 with effect from which he was absorbed in Delhi Himachal Pradesh State Police Service. The representation made by Shri Singh was barred by time.

It was further held by the learned single judge that acceptance of the second representation of Shri Singh without giving an opportunity to Shri Bhanot was in violation of the principles of natural justice. In the premises the order dated 21st June, 1973 was quashed by the learned single judge.

There were two appeals before the Division Bench-one was filed by Shri Singh against the judgment of the learned single judge and the other was filed by the Union of India. Both these appeals were disposed of by the Division Bench by judgment in Letters Patent Appeal No. 231 of 1974 and for the reasons given in Letters Patent Appeal No. 231 of 1974, the appeal by the Union of India was also dismissed and being aggrieved by the said decision, the Union of India has preferred the second appeal herein namely Civil Appeal No. 1336 of 1976.

The question involved in these appeals is whether the year of allotment given to Shri Singh as 1958 was correct or not and whether the order passed by the High Court both of the learned single judge which was later upheld by the Division Bench to quash the year of allotment in favour of Shri Singh for the year 1956 was bad or not. This depends upon the interpretation of various rules and provisions. The main question which falls for consideration in these two appeals is whether the service rendered by one in a senior post in the I.P.S. Cadre of a particular State while the incumbent was on deputation to the State Police Service of that State from another State was entitled to the benefit for the purpose of working out the year of allotment in accordance with second proviso to rule 3(3)(b) of the Seniority Rules. We are concerned with the unamended rule 3(3) of the said Rules. The relevant part of the said rule reads as follows:

"3(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 result 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 shall be deemed to have officiated continuously in 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) Regulation 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 a senior post otherwise than as a purely temporary to 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 or any other exceptional circumstances."

On behalf of the appellant before us, reliance was placed on the decision of this Court in Arun Ranjan Mukherjee v. Union of India & Ors., [1971] Suppl. S.C.R. 574-A.I.R. 1971 S.C. 1814.

It may be mentioned that in 1954 the Central Government, in exercise of the powers vested in it by section 3 of the All India Services Act, 1951 (hereinafter called the 'said Act') framed certain rules. The Indian Service (Recruitment) Rules (hereinafter called the 'Recruitment Rules'), the Indian Police Service (Cadre) Rules (hereinafter referred to as the 'Cadre') and the Indian Police Service (Regulation of Seniority) Rules (hereinafter referred to as the 'Seniority Rules'). The Indian Police Service (Fixation of Cadre Strength) Regulations, 1955 (hereinafter referred to as the 'Cadre Regulations') were also framed for determining the strength and composition. It is not necessary to refer to the various rules to which the Division Bench in the impugned judgment has made exhaustive reference. It is indisputable that Shri Singh, the appellant herein, was holding a substantive position in the U.P. State Police Service until he was taken over in the joint Police Service of Delhi and Himachal Pradesh in February, 1963, with effect from 27th November, 1962. He was brought on the select list of officers to be promoted to I.P.S. cadre of the Union Territories of Himachal Pradesh and Delhi on 14th May, 1963. Prior to that, he had been continuously officiating in a senior post since 6th December, 1961. He claimed that he should be given the benefit of that period. This was rejected by the learned single judge and this rejection was upheld by the Division Bench of the High Court. He was on deputation in Delhi-Himachal Pradesh State Police Service. The question is what is the correct position.

The first representation that the appellant made for fixing the year of allotment to be given the benefit of continuous officiation on a senior post from 6th December, 1961, to 13th May, 1963 was rejected by an order dated 23rd April, 1970. The said order of rejection is Annexure R. 4. It stated that in accordance with the orders contained in Letter No. 1/2/62 Delhi IDH(S) dated 23.8.1963, of the Home Ministry, all cadre posts held by non-cadre officers not on the Select List were deemed to have been kept in abeyance with effect from 27th September, 1961 onwards; and according to the Seniority Rules, the service rendered by an officer prior to his inclusion in the Select List could not be counted for seniority unless approved by the Central Government in consultation with the Union Public Service Commission under the Second proviso to rule 3(3)(b) of the Seniority Rules. The requisite approval, it was stated, was not there.

In the second representation made by the appellant, the Division Bench noted the fact that Shri Singh had noted in Madan Gopal Singh v. Union of India, [1969] S.L.R. 576 the Division Bench of Delhi High Court had quashed the aforesaid letter of the Home Ministry. A perusal of the order dated 21st June, 1973 made by the Central Government showed that the representation was accepted but not on the ground urged by him. The reason why the second representation was accepted by the Central Government was that in November, 1972, the Union Public Service Commission had approved of the officiation of Shri Singh in the I.P.S. cadre post during the period 6th December, 1961 to 13th May, 1963 under the second proviso to rule 3(3)(b) of the Seniority Rules, "as they stood in May, 1963". Accordingly, Shri Singh was allowed the year of 1956 and placed above Shri Bhanot.

Old rule 3(3)(b) of the Seniority Rules applicable in this case has been set out hereinbefore. It was urged before the Division Bench that nowhere rule 3(3)(b) and the second proviso thereto in particular excludes the officiating period of deputation. In this connection reliance was placed on the decision of the Division Bench in the case of Arun Ranjan Mukherjee v. Union of India and others (supra). In as much as good deal of reliance was placed by the Division Bench as well as by the appellant before us on the said decision. It may be mentioned that the appellant in that case joined the Indian Army as a Commandant Officer in 1942. He became a Major in 1945. His services were lent to the state of West Bengal and accordingly on 10th January, 1949, he was posted as a Commandant of the Special Armed Police Battalion, a post corresponding to a senior post in the I.P.S. The said appellant with his consent was appointed to the West Bengal State Police Service on 1st July, 1953. On 8th September, 1954, the Indian Police Service (Recruitment) Rules, 1954, Indian Police Service (Cadre) Rules, 1954 and the Indian Police (Regulation of Seniority) Rules, 1954 were framed by the Government of India under section 3 of the All India Services Act 61 of 1951. On 6th June, 1955, the Indian Police Service (Appointment by Promotion) Regulations, 1955 were also issued under which 25% of the senior posts were allotted to the Indian Police Service cadre in each State. The appointment of the appellant was outside the quota. On 31st July, 1958, the appellant was appointed on probation in the State cadre of West Bengal. In December, 1959 he was substantively appointed to a senior post in the Indian Police Service and confirmed thereon with effect from 21st July, 1958. In December, 1958, the Ministry of Home Affairs conveyed to the Government of West Bengal its decision to fix the pay of the appellant in the senior scale of the Indian Police Service notionally from 10th January, 1949, the date from which he held an Indian Police Service Cadre post continuously. On 19th January, 1960, the Indian Police Service (Seniority of Special Recruits) Regulations 1960 were framed pursuant to rule 5-A of the Seniority Rules on 11th October, 1960, the Government of India in consultation with the Union Public Service Commission decided to allot to the appellant the year 1948. The year of allotment was subsequently changed to 1947 on the basis that the officiation of the appellant as well as that of the junior most direct recruit, in a senior scale did not start before 19th May, 1951. The appellant filed a writ petition under Article 226 of the Constitution. The learned single judge, allowing the petition, held that the date from which the appellant continuously officiated was 10th January, 1949 and that accordingly the year 1943 allotted to D the Junior-most direct recruit, should also be allotted to the appellant. The learned Single Judge also held that the first and second proviso to rule 3(3)(b) of the Seniority Rules were not applicable to the appellant. The Division Bench in appeal agreed with the learned single judge, that the date of continuous officiation of the appellant was 10th January, 1949. But the High Court thought that the year 1947 allotted to the appellant on the basis of his officiation from 19th May, 1951 could not be sustained because the latter date had been held by this Court to be irrelevant in the case of D.R. Nim, I.P.S. v. Union of India, [1967] 2 SCR 325. Non-the-less the year of allotment 1948 assigned to the appellant in the order of 11th October, 1960 was sustained because it was on an ad hoc basis. Against the High Court's order the appellant appealed to this Court. He urged under the main clause of rule 3(3)(b) of the Seniority Rules the year 1943 should be allotted to him as the said year had been allotted to D the junior most direct recruit and that the first proviso to rule 3(3)(b) did not apply to him as it applied only to those in the joint cadre; and that this Court should deduct the 'P' factor from the date of officiation which as held by the High Court was 10th January, 1949 and allot to him the year 1943 as the year of allotment. This Court dismissed the appeal and held that D was an Indian Police Officer recruited in 1945. He became a member of the Indian Police

Service under sub-rule(1) of rule 3 of the Indian Police Service (Recruitment) Rules, 1954 on the date when the said Rules came into force in 1954, and was not an officer recruited to the service in accordance with rule 7 of those Rules. The year of allotment assigned to D was not therefore available to the appellant under the main part of rule 3(3)(b).

This Court further held that the first proviso to rule 3 nowhere referred or even remotely indicated that it was only applicable to the persons in the joint cadre. In fact rule 2(1) of the Seniority Rules and the words "State cadre"

and "joint cadre" had been defined as having the meaning respectively assigned to them in the Indian Police Service (Cadre) Rules, 1954. By reference to rule 7 of the Cadre Rule it is apparent that what is to be determined is the authority which is to appoint, to the respective cadres i.e. in the case of State Cadre it is the State Government and in the case of Joint Cadre it is the State Government concerned.

The first proviso did not refer to any appointment to any cadre it only dealt with Regulation of Seniority and the reference to State Government concerned is for the purpose of fixing the date of officiation ad hoc in consultation with the Central Government. When there are several State Governments the consultation by the Central Government must necessarily be with the State Government concerned in relation to the officer who was appointed to the cadre of that State. Whether the first proviso applied or the second proviso applied, it was the Central Government that had to determine ad hoc, the year of allotment after approving the period of officiation in consultation with the Public Service Commission. This Court further held that in view of the judgment in Nim's case (supra) the order assigning 1947 as the year of allotment to the appellant on the basis of an arbitrary date of officiation namely 19th May, 1951 was bad and had been quite properly struck down by the High Court. The High Court however had no power to direct the year 1948 to be fixed as the year of allotment for the determination of the seniority of the appellant on the basis that that was fixed on an ad hoc basis in an earlier occasion by the Government of India. Once the Government of India had on a memorial presented by the Appellant decided finally in supersession of its previous decision that his year of allotment was 1947, the previous decision fixed on ad hoc basis could not be revived. It was for the Government of India in consultation with the Commissioner to determine ad hoc the year of allotment to be assigned to the appellant in relation to the date of his continuous officiation. This Court would not trespass upon the jurisdiction of the Government of India to determine ad hoc in consultation with the Commission on a consideration of the relevant materials, the date of the appellant's continuous officiation and assign him a year of allotment. This Court reiterated that it was for the Central Government to examine year of allotment after approving the period of officiation in consultation with the Union Public Service Commission.

It may be relevant to mention that this Court noted the observations of the Division Bench judgment of the Calcutta High Court which was under appeal in that case and noted that there was nothing in clause (b) of the said Rules which showed that while officiating in a "senior post", the officer concerned must be an officer belonging substantially to the State Police Service in question and could not be an officer on deputation from some other service. It was urged before the Division Bench that this Court had approved the view of the Calcutta High Court that benefit of the period of

deputation should be given to Shri Mukherjee. The Division Bench was unable to accept the position. The Division Bench was of the view that this Court had reiterated that it was relevant material which had to be taken into consideration by the Government of India but it was for Government to determine in consultation with the Union Public Service Commission the date of a person's continuous officiation and assign to him a year of allotment and the High Court as such had no such power.

The Division Bench was of the view that the learned single judge of the High Court was right that this Court had not given any decision whether the period of deputation of Shri Mukherjee in that case before his absorption could be taken into account in assigning the year of allotment to him. The learned single judge in Chambers as noted by the Division Bench further found support to this view with reference to relevant noting in the file of Shri Mukherjee which was produced before the learned single judge. Rule 3(3)(b) of the Seniority Rules and the provisos thereto should not be read in isolation. This rule is in the setting of other rules. The Cadre rules read with Indian Police Service (Fixation of Cadre Strength) Regulations of 1955 fixed the strength of the Indian Police cadre of the Union Territories a particular figure. Out of them, not more than 25% officers eligible for recruitment to the I.P.S. cadre had to be the substantive members of the State (U.T.) Police Service at that time. The scheme as it stood, fixed the strength of the I.P.S. cadre State-wise. Recruitment by promotion thereto could only be from the substantive members of the Police Service of that particular State. So long as Shri Singh remained as a substantive member of the U.P. State Police Service, he could not possibly be promoted to the joint I.P.S. cadre of the Union Territories of Delhi and Himachal Pradesh. He became eligible to his promotion to the Union Territory I.P.S. Cadre only after he had been absorbed in the Delhi Himachal Pradesh State Police Service. Proviso (1) to Rule 3(3)(b) of the Recruitment Rules gave a clear indication that for determining the year of allotment ad hoc the Central Government consulted the State Government concerned. In Explanation (2) again, there was reference to a certificate by the State Government concerned that an officer would have officiated in a senior post but for his absence on leave or appointment to any special post. It is apparent therefore that the State Government is the one, of the Police Service of which the Officer concerned is a substantive member. In this case as found by the Division Bench, Shri Singh had not chosen to be absorbed in the Delhi Himachal Pradesh State Police Service and he had gone back to his parent State of U.P. In case Shri Singh had not chosen to be absorbed in the Delhi Himachal Pradesh State Police Service and he had gone back to his parent State of U.P., then according to Explanation (2) the U.P. State Government might have issued the certificate to facilitate his promotion to the I.P.S. cadre of the U.P. State. The Promotion Regulation of 1955 laid down the determination of the eligibility of a substantive member of the State Police Service. Thereafter, the names of the eligible officers were brought on the Select List, which were to be approved by the commission. Appointments by promotion to the I.P.S. cadre are made from the Select List. In the event of promotion, but for second proviso the benefit of continuous officiation on a senior post for fixing his year of allotment is given to an officer from the date after his being nominated on the Select List. In Explanation (1) of rule 3(3), there is no mention that deputationist before his absorption in the State Police Service can get the benefit of such officiation. That is the position. Therefore before his absorption, it is not possible to accept the position that Shri Singh was entitled to the benefit of his officiation. The Division Bench so held. We are of the opinion that the Division Bench was right on this aspect of the matter. It may be mentioned that Seniority Rules 1954

including rule 3(3)(b) quoted above were amended with effect from 22nd April, 1967.

Before the amendment, the appellant Shri Singh, had been confirmed in the Union Territory cadre of Indian Police Service with effect from 14th May, 1964 and had been allotted 1958 as the year. The first representation was made by him in August, 1969 and the second in June, 1970. The second proviso to old seniority rule 3(3)(b) referred to hereinbefore had laid down that where a promotee had officiated continuously in a senior post prior to the date of inclusion of his name in the Select List prepared in accordance with the Promotion Regulations, he could get the benefit of such officiation if approved by the Central Government in consultation with the Commission. The Seniority Rules as amended in 1967, however, did not provide for such approval. Hence, after the amendment of the Seniority Rules, the Central Government was not empowered to grant the approval as aforesaid in favour of Shri Singh in November, 1972. This was the submission on behalf of the respondent, Shri Bhanot. The argument was not accepted by the Division Bench because the question of allotment of Shri Singh in accordance with the Seniority Rules ripened before the amendment of 1967. There is no rule vitiating the operation of the old seniority rules. As a matter of fact, the party had proceeded all along in this case on the basis that the old seniority rules applied.

In *Government of India and Anr. v. C.A. Balakrishnan and Ors.*, [1975] 1 SLR 31 this question was considered. In that case the promotion in question was made in November, 1957. The change in the relevant rules of promotion came in September, 1960. This Court affirmed the decision of the High Court and held that in November, 1957 the post in question was a selection post and that the basis of seniority-cum-fitness introduced by the amendment rules in September, 1960 was not applicable. The question, therefore, was held to be governed by the old rules. The Division Bench held that the second representation made by Shri Singh was barred.

As mentioned hereinbefore, in support of the appeal, the appellant submitted that the Division Bench was in error in not following the ratio of the decision in the case of *Arun Ranjan Mukherjee* (supra). We are unable to accept this submission. *Arun Ranjan Mukherjee*'s case proceeded on the basis of the decision of this Court in the case of *D.R. Nim, I.P.S.v. Union of India* (supra). There under rule 3 of the Indian Police Service (Regulation of Seniority) Rules, 1954 issued under section 3(1) of the All India Services Act, 1951, the mode of determining the seniority of officers of the Indian Police Service was laid down. It was provided that the officers were divided into categories: namely, (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 was divided into two sub-categories: namely, (a) officers appointed as a result of a competitive examination, and (b) officers appointed by promotion in accordance with rule 9 of the Recruitment Rules. The year of allotment of an officer which determined his seniority, was determined according to rule 3(3)(a) or

(b) of the present rules. 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 rule 3(3)(b) and under proviso (2) to rule 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 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.

In that case the appellant was officiating as Superintendent of Police from June, 1957 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 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 Article 226 before the High Court because the period of his officiation from June, 1947 to May, 1951 was excluded for the purpose of fixation of his seniority. The High Court dismissed the petition. This Court under appeal held that 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 the law. The date 19th May, 1951 in that case was an artificial and arbitrary date having nothing to do with the application of the first and second proviso to rule 3(3). It has some relevance for the Indian Administrative Service, but why it should be applied to the Indian Police Service was not adequately explained. Under the two provisos, this Court held, 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. In view of the fact that he was officiating for eight years, that he was never 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 rule 3(3)(b).

In the instant case, the Central Government had not fixed the date of appellant's absorption in the Select List as 1958 out of the hat so to say. It had relevance as it appears from the basis of the order of the Central Government. In this case, the appellant who was a deputationist before the absorption in the State Public Service could not be entitled to get such officiation. In case Shri Singh had not chosen to be absorbed in the Delhi Himachal Pradesh State Police Service and he had gone back to his parent State of U.P., then according to explanation (2), U.P. State Government might have issued the certificate to facilitate his promotion to the I.P.S. cadre of the U.P. State. But so long as Shri Singh remained a substantive member of the U.P. State Police Service, he could not possibly be permitted to join I.P.S. cadre of the Union Territories of Delhi and Himachal Pradesh. In accordance with the rules, he became eligible to his promotion to the Union Territory I.P.S. cadre only after he had been absorbed in Delhi Himachal Pradesh Police Service.

Reading the rules with which we are concerned which state that certain year should be assigned by the Government in consultation with Public Service Commission must be interpreted in the light of the well-established rule of construction that if the words of a statute are in themselves precise and unambiguous no more is necessary than to expound these words in their natural and ordinary sense, the words themselves in such a case best declaring the intention of the legislature. See in this connection the observations of this Court in *The Collector of Customs, Baroda v. Digvijaysinhji Spinning & Weaving Mills Ltd.*, [1962] 1 SCR 896 at 899.

This Court in *Ram Prakash Khanna and others etc. v. S.A.F. Abbas and others etc.*, AIR 1972 SC 2350 dealing with the aforesaid rule proviso 2, observed that under the second proviso to Rule 3(3)(b) a promotee could obtain the advantage of officiation continuously in a senior post prior to the inclusion of the name in the Select List if the period of such officiation is approved by the Central Government in consultation with the Union Public Service Commission. This Court reiterated that approval as contemplated in Rule 3(3)(b) is a specific approval and is directed to the particular matter mentioned therein as to whether there was approval of the period of officiation prior to the inclusion in the names in the select list. The officiation in a senior post is one of the indispensable ingredients in the application of rule 3(3)(b). But it must be borne in mind that this was not a *sine qua non*. This Court found on the materials in the appeal before this Court in that case that it could not be held that the Central Government gave any approval in consultation with the Union Public Service Commission to have the benefit of the period claimed by the appellant. In the instant case, before the absorption of the appellant in the Himachal Pradesh-Delhi, I.P.S. Cadre, his officiation had not been taken by the Central Government into consideration. We are unable to say that the Central Government had not acted properly.

This appeal is not concerned with the assignment of year 1958 to Shri Singh but rule 16 clause (1)(iii) of the Service Rules provides for certain penalties and one of the penalties, *inter alia*, is the effect of superseding him in promotion to a Selection Post and as such is appealable. We are of the opinion that the High Court was right that appeal does not necessarily lie only against the order imposing penalty and is also open to entertain appeal when the service rule was interpreted to the disadvantage of member of the service but rule 17 bars the filing of appeal after the expiry of 45 days. Proviso to the said rule, however, gives discretion to the appellate authority to condone the delay if sufficient cause is shown. Rule 24 of All India Services (Discipline and Appeal) Rules, 1969 provides for review within different periods. Under that rule since Shri Singh could have filed an application for review within one year, in this case remedy of review by Shri Singh had also become barred when the second order was passed. Rule 25 regulates memorials. It reads as follows:

"A member of the Service shall be entitled to submit a memorial to the President against any order of the Central Government or the State Government by which he is aggrieved within a period of three years from the date of the passing of such order.

It appears that there is provision for appeal in the order of this nature. Failure to prefer an appeal or apply for review was no bar to the submission of memorials to the President. In December, 1963 in this case the year of allotment was assigned to Shri Singh. Shri Singh made the first representation in August, 1969, after the period of limitation had expired.

It was contended, however, on behalf of the appellant relying on the Full Bench decision of the Punjab and Haryana High Court in *Sunder Lal and others v. The State of Punjab*, [1970] SLR 59 that in a case of bona fide mistake, there was always the power to rectify. It was emphasised that every administrative authority has an inherent right to rectify its own mistakes. So far as fixing the year 1957 was concerned, we are unable to accept the submission. It is doubtful that inherent power

can be invoked, if there is no reason for refixing the appellant's year of 1957. If belated claims are allowed arbitrarily, an atmosphere of uncertainty would prevail. There should be no sense of uncertainty among public service. Furthermore it is clear that if the fixation of year 1958 allotment is a mistake, the first representation was rejected with the order dated 23rd April, 1970 which has been set out in extenso in the judgment under appeal. There the Government's order reiterates that in accordance with the order contained in the Home Ministry's letter to which reference is made, all cadre posts held by non-cadre officers not on the Select List were deemed to have been kept in abeyance with effect from 27th September, 1961 onwards. As such Shri Singh could not have claimed that he was officiating in the cadre post prior to coming on the Select List. In those circumstances, Shri Singh could not be deemed to have officiated in cadre post during the period 6th December, 1961 to 14th May, 1963. The order further reiterated that according to the seniority rules, the service rendered by an officer prior to inclusion in the Select List could not be counted for seniority unless approved by the Central Government in consultation with the Union Public Service Commission. It is clear that the Central Government was of the view that decision taken by it in 1963, fixing the said year of allotment was correct. Good and cogent reasons were given for it. It is true that the Home Ministry's letter referred to in annexure R-4 has been quashed by the Delhi High Court but the same has no bearing on the correctness of the decision taken by the Central Government in 1963, because at the relevant time the letter was there and the Central Government was bound to act in accordance thereto. The contention of the appellant that there was no period of limitation for the grant of the approval is not relevant. It is therefore clear that there was no scope of the acceptance of second representation. In the said order there is no mention of any mistake.

When the first order was made, it may be that it was not necessary to give any notice to Shri Bhanot but when the second order was made it affected adversely Shri Bhanot because he in the meantime having been absorbed in the I.P.S. in 1957. In our opinion it is not that the constitutionality of any provision was challenged as was the case in *A. Janardhana v. Union of India and Others*, [1983] 2 SCR 936 at 967 and in *General Manager, South Central Railway Secundrabad and Anr. etc. v. A.V.R. Siddhanti and Ors. etc.*, [1974] 3 SCR 207, it was held that those would be affected by the grant of the year of seniority need not join as party. But the position here is different. Here Shri Bhanot would be adversely affected and his seniority would be affected and here the change was sought from the Government reversing the previous decision and in the meantime Shri Bhanot has acquired a year of allotment. Therefore, in our opinion it should have been done upon notice to Shri Bhanot. In any case, Shri Bhanot has been heard. Our attention was drawn to certain observations of *Administrative Law Cases & Materials*, second edition by Peter Brett and Peter W. Hogg on the nature of appeal and in the light of the view we have taken, it is not necessary to refer to the said observations.

In the aforesaid view of the matter we are of the opinion that the High Court was right in dismissing the writ petition of the appellant herein. We, however, having regard to the facts set out hereinbefore, direct the Central Government that the salary scale of the appellant should be refixed taking into consideration the appellant's service in U.P. and Himachal Pradesh cadre in the senior position as a deputationist.

The appeals are, therefore, dismissed with the aforesaid directions without any order as to costs.

S.L.

Appeals dismissed.