

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WRIT PETITION(CIVIL) NO. 3062/2016 & CM No.12957/2016**

Reserved on : 27th May, 2016
Date of Decision : 12th August, 2016

UNION OF INDIA Petitioner

Through: Mr. Ravi Prakash, CGSC with
Mr. Aditya Dewan, Advocate

Versus

R.A. SANJEEV & ORS Respondents

Through: Ms. Jyoti Singh, Senior Advocate
with Mr. Amandeep Joshi, Advocate
Mr. Shatrajit Banerji, Ms. Shruti
Parasa, Mr. R.A. Iyer, Advocates for
respondent No.12
Mr. Naresh Kaushik & Ms. Joymoti
Mize, Advocates for UPSC.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J.

The Union of India, by this writ petition, impugns the order dated 29th May, 2015 passed by the Principal Bench of the Central Administrative Tribunal, New Delhi, whereby OA No.2982/2012 filed by respondent Nos.1 to 11 herein has been allowed. The impugned order holds that the select list for the calendar year 2010 would be in accord and as per the

unamended Rule 3 of the Indian Police Service (Regulation of Seniority) Rules, 1988 ('Rules 1988' for short). The amended Rule 3 would be applicable and effective from 18th April, 2012, the date when the said amendment was published in the Gazette.

2. The respondents herein are officers who were recruited to Delhi, Andaman and Nicobar Island Police Service (DANIPS) between the years 1986 and 1992. They were promoted as Junior Administrative Grade-II in due course of time, as per the service Rules applicable to DANIPS officers.

3. Rule 3 of the 1988 Rules, prior to its amendment with effect from 18th April, 2012 was as under:

"3. Assignment of year of allotment. - 3(1) Every officer shall be assigned a year of allotment in accordance with the provisions hereinafter contained in these rules.

3(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 rules, orders and instructions in force immediately before the commencement of these rules.

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

(i) The year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held:

(ii) The year of appointment of a promotee officer shall be determined with reference to the year for which the meeting of the Committee to make selection, to prepare the Select List on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him in the State Police Service not below the rank of a Deputy Superintendent of Police or equivalent,

upto the 31st day of December of the year immediately before the year for which the meeting of the Committee to make selection was held to prepare the select list on the basis of which he was appointed to the Service, in the following manner:-

(a) for the service rendered by him upto twenty one years, he shall be given a weightage of one year for every completed three years of service, subject to a minimum of four years:

(b) He shall also be given a weightage of one year for every completed two years of service beyond the period of twenty one, years, referred to in sub-clause (a), subject to a maximum of three years.

Explanation: For the purpose of calculation of weightage under this clause, fractions, if any, are to be ignored.

Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to the service on the basis of an earlier select list."

Every officer appointed to the service is to be assigned a year of allotment in accordance with the provisions of Rule 3 of the 1988 Rules. Sub-rule (2) of Rule 3 states that allotment year of an officer "in service" on the date of the commencement of the 1988 Rules, shall be the same as has been assigned to him or may have been assigned to him by the Central Government in accordance with the rules, orders, and instructions in force immediately before the commencement of these Rules. Sub-rule (2) is not applicable in the present case. Sub-rule (3) of 1988 Rules states that in the case of direct recruit officers, the year of allotment of an officer appointed after the commencement of the Rules shall be the year following the year in which the competitive examination was held. In case of promotee officers,

the year of allotment shall be determined with reference to the year for which the meeting of the Committee to make selection, to prepare the select list on the basis of which he was appointed to the service, was held. To qualify, such candidate should have rendered continuous service at the rank not be below the rank of Deputy Superintendent of Police or equivalent in the said police service as on 31st December of the year immediately before year in which the meeting of the Committee to make the select list is held. Sub-clause (a) and (b) of sub-rule 3(3) relates to weightage of the service rendered by a promotee officer in the State Police Service. The weightage determines the year of allotment in the Indian Police Service. The greater the weightage, the earlier is the year of allotment and therefore higher the seniority. The weightage formula or criterion entitles the State Police Service officers to partial benefit by way of counting past service in the State Police Service on absorption and encadrement in the Indian Police Service. For service rendered up to 21 years, the State Police Officer is given weightage of one year for every completed three years of service, subject to a minimum of four years. For a period of service beyond 21 years, the State officer has to be given weightage of one year service for every completed two years of service after 21 years, subject to a maximum of three years. There is also an explanation to the proviso which states that for the purpose of weightage under this clause, fractions, if any, have to be ignored.

4. The impugned order passed by the Tribunal records that there was no *lis* or dispute between the petitioner and the respondents on the issue that the service rendered by an officer of DAINIPS constitutes 'approved service' as defined in the National Capital Territory of Delhi, Andaman &

Nicobar Island, Lakshadweep, Daman & Diu and Dadar & Nagar Haveli Police Rules, 1998 or as per the amended National Capital Territory of Delhi, Andaman & Nicobar Island, Andaman & Nicobar Island, Lakshadweep, Daman & Diu and Dadar & Nagar Haveli (Police Rules), 2003. As per the said Rules, the term ‘approved service’ in relation to any grade means the period or periods of regular service rendered in that grade, including the period of absence, during which the officer would have held a post on regular basis in that grade, but for the officer being on leave or otherwise not being available to hold such post from the 1st day of July of the year in which the examination was held and the officer was directly appointed in that grade. In the case of promotion, as per Rule 2 (n) of the 1998 Rules and Rule 2(e) of the 2003 Rules, the “approved service” would be counted from the date recruitment was made on regular basis in the promotional grade.

5. The following chart, therefore, sets out the undisputed factual position:

Name of the officer	Date of Birth	Year of appearance in Civil Services Examination	Date of joining DANIPS	Approved service counted for grant of JAG-I & JAG-II	Year of Select List
1	2	3	4	5	6
R.A.Sanjeev	03.02.1963	1988	01.04.1990	01.07. 1989	2010
Prem Nath	10.02.1963	1988	31.03.1990	01.07. 1989	2010
Parwaiz Ahmed	10.11.1963	1989	15.05.1991	01.07. 1990	2010
Ishwar Singh	03.01.1961	1989	14.05.1991	01.07. 1990	2010
Dheeraj Kumar	03.06.1966	1989	15.05.1991	01.07. 1990	2010
Brija Kishore Singh	05.05.1962	1987	30.04.1989	.01.07.1988	2010

Prabhakar	12.08.1959	1984	30.04.1986	01.07.1985	2010
Rupinder Kumar	15.05.1962	1984	26.06.1986	01.07.1985	2010
Kamal Kant Vyas	14.01.1958	1985	29.04.1987	01.07.1986	2010
Omvir Singh	30.06.1965	1984	01.07.1987	01.07.1985	2010
Bhairon Singh Gujjar	02.07.1958	1990	15.05.1992	01.07.1991	2010

6. The year of the select list, as noticed below, was earlier a matter of debate. The Punjab & Haryana High Court, in CWP No.15798/2010 titled ***Praveen Kumar versus U.P.S.C. and Ors.***, decided on 1st February, 2010, had examined the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 and held:

“21. We find substantive support to the aforesaid submission in unnumbered proviso to Regulation 5(1). According to the aforesaid proviso if no meeting of the Committee could be held during a year then whenever the Committee meets again, the select list has to be prepared separately for each year during which the Committee could not meet as on December 31st of each year. The aforesaid proviso is consistent with the definition of expression 'year' in Regulation 2(1)(1). Therefore, the vacancies for the year 2006 i.e. from 01.01.2006 to 31.12.2006 have to be determined as on December 31st of that year. The select list, which has been erroneously styled as 'Select List of 2007', in fact, is the select list for the year 2006. Therefore, the age of the petitioner has to be determined as on 01.01.2006. Accordingly, he would be eligible.

22. It is true that for the vacancies of the year 2006, the Committee would meet in the year 2007. It does not follow that if meeting of the Committee is held in 2007 then it would alter the eligibility in so far age of a candidate is concerned, which is provided by Regulation 5(3). The effect of any contrary interpretation would be that the officers like the petitioners would be deprived of entering the zone of consideration without

any fault of theirs. For example, the petitioner would not be eligible in respect of the vacancies, which have arisen in January 2006 although he was not yet 54 years of age nor he would be eligible for vacancies of the year 2007 because he would cross 54 years of age. The consideration of all eligible candidates annually in respect of vacancies which have arisen during that year is to avoid any such anomaly. It is also to facilitate the work of the Committee so that all vacancies of that year are considered in one meeting instead of holding a meeting for every single vacancy and then determining eligibility.

23. To better understand, another hypothetical situation could be considered. Let us assume that the date of birth of an officer is December 31, 1952. As on 01.01.2006, he would be less than 54 years of age but on 01.01.2007 he would certainly cross the age of 54 years. Therefore, if the reasoning adopted by the Tribunal and the respondents is applied then such an officer would never enter the zone of consideration for the vacancies of year 2006.

24. The intention of the framers of the Regulations further become discernible from the reading of un-amended Regulations, which have linked the age of 54 years to the 1st of April of the year of meeting. The framers of the Regulations must have found that the year of meeting has no relationship for determination of the age of eligibility as it was wholly fortuitous. Therefore, to keep the eligibility intact in respect of the year for which the select list is prepared, amendment has been incorporated in the year 2000 and an effort has been made to link the age of eligibility to the occurrence of vacancies and to de-link the same from the year of meeting. If we construe the Regulation 5(3) to mean that age has to be determined by reference to the year of meeting then the mischief which is sought to remedied would perpetuate and amendment would lose its object. The aspirations of a brilliant and meritorious officer working in the State cannot be defeated by any arbitrary method of fixing the age of eligibility, which has got nothing to do with the basic principles of service jurisprudence, namely, occurrence of vacancy. Therefore, we find that the Tribunal has committed a grave error by

presuming that the age of eligibility has to be determined in respect of the year when the Committee is supposed to meet, which is wholly unsustainable.”

7. The Union of India had filed a special leave to appeal against the said judgment but the same was dismissed. Subsequent thereto, the Union of India issued Office Memorandum No.12012/99/09-AIS (1) dated 25th August, 2010 and has accepted the decision in **Praveen Kumar** (supra) and given the following directions:

“3. Against the above-mentioned orders of the Hon'ble High Court, this Department had filed SLP No. 14002 of 2010 before the Hon'ble Supreme Court, which has been dismissed, vide order dated 31st May 2010.

4. In view of above, the order of the Hon'ble High Court has become absolute. Accordingly, the following decisions have been taken by the competent authority:-

(i) The said order would be implemented w.e.f . 1st February 2010, i.e. date of the High Court order.

(ii) Wherever meetings of the Selection Committee in respect of any All India Service have not been held or meetings have been held but minutes of the meeting have not been approved by the Commission, the same will be held in accordance with the interpretation of Regulations given by Hon'ble High Court and confirmed by Hon'ble Supreme Court.

(iii) Where meetings have already been held and minutes have been approved the same will not be opened unless and until there is a specific direction from a Court of Law.

(iv) The eligibility of State Service officers in cases of Review Selection Committee meeting would be reckoned on the basis of Regulations/interpretation prevailing in that year unless otherwise directed by a Court of Law.

(v) Select List will henceforth be styled coinciding with the year of vacancies. In case there are two overlapping Select Lists for a particular year the same-will-be distinguished by

styling the Select List of that year (correspondent to the year in which vacancies have arisen) and the other select list will be named by adding 'A' to that year.”

A reading of the aforesaid quotation, including the directions, would elucidate that the order of the High Court in the case of **Praveen Kumar** (supra) had become absolute and the Union of India had decided to implement the said order with effect from 1st February, 2010, i.e., from the date of the High Court judgment. Wherever meetings of the Selection Committee for the All India Service had not been held or the meetings had been held but Minutes of the Meeting had not been approved by the Commission, the same would be held in accordance with the interpretation of the Regulations by the High Court in the case of **Praveen Kumar** (supra).

8. It is an accepted case that, in the present case, clause (ii) of paragraph 4 of the Office Memorandum would apply because the meeting of the Select Committee was not held till 1st February, 2010. As sequitur and logically, it follows that the respondents were eligible and have to be considered by the Selection Committee as on 1st January, 2010, i.e., the year in which they had become eligible for appointment to the Indian Police Service.

9. The respondents in the present case were given the benefit of the judgment in the case of **Praveen Kumar** (supra) vide notification dated 16th December, 2011. The notification specifically records that the President was pleased to appoint the present respondents, who were members of the Union Territory Police Force, to the Indian Police Service on probation and allocate them the Union Territory segment of the Joint AGMU Cadre under

sub-rule (1) of Rule 5 of the Indian Police Service (Cadre) Rules, 1954. The appointments were to take effect from the date of issue of this notification. Thus, it is not debatable that the respondents became members and were encadred in the Indian Police Service Cadre on 16th December, 2011. As per the respondents and as held by the Tribunal, in terms of Rule 3 of the 1988 Rules, the respondents were entitled to weightage of past service in the State Police Force as per the original Rule 3 as was applicable and in force on 16th December, 2011, and not on the basis of the amended Rule which came into effect 'on 18th April, 2012. This is the precise issue and challenge before us.

10. Before elucidating upon the legal issue, we would like to exposit the notification dated 18th April, 2012 issued in exercise of power under sub-section (1) of Section 3 of the All India Services Act, 1951. The notification had amended the 1988 Rules by way of the Indian Police Service (Regulation of Seniority) Amendment Rules, 2012. Sub-clause (2) of Rule 1 of the Rules specifically notes and states that the Amended Rules would come into force on the date of their publication in the Official Gazette. Thus, the amended Rules were not made retrospective and were to apply prospectively from the date of notification, i.e. 18th April, 2012. Specific amendments were made in Rule 3, in sub-rule (3) of clause (ii), quoted above. The expression/words “immediately before the year” was deleted and sub-clauses (a) and (b) were substituted. The amended clause (ii) of sub-rule (3) of Rule 3 would read as under:-

“3(3) The year of allotment of an officer appointed to the service after the commencement of

these rules shall be as follows: -

(ii) The year of appointment of a promotee officer shall be determined with reference to the 4 year for which the meeting of the Committee to make selection, to prepare the Select List on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him in the State Police Service not below the rank of a Deputy Superintendent of Police or equivalent, upto the 31st day of December of the year immediately before the year for which the meeting of the Committee to make selection was held to prepare the select list on the basis of which he was appointed to the Service, in the following manner:-

*"(a) for the service rendered by him upto twelve years, he shall be given a weightage of one year for every completed four years of service, subject to a minimum of three years;
(b) for the service rendered by him beyond 12 years, as referred to in sub-clause (a) and upto 21 years, he shall be given a weightage of one year for every completed three years of service;
(c) for the service rendered by him beyond 21 years, as referred to in sub-clause (b), he shall be given a weightage of one year for every completed two years of service, subject to a maximum of three years".*

The amended sub-rule would show that significant changes were made for computing the weightage of past service for allocation year of appointment. Sub-clause (c) was introduced. As per the new sub-clauses (a) to (c), weightage would be given on the basis of the service rendered in the State Police Service up to 12 years; beyond 12 years and up to 21 years; and beyond 21 years. For service up to 12 years, weightage will be given for one year on every four years of completed service, subject to a minimum of

three years. Under clause (b), service rendered beyond 12 years and up to 21 years, weightage will be one year for each completed year of service and for service rendered after 21 years, weightage will be one year for each completed two years of service, subject to a maximum of three years. We, at this stage, again record that the question of weightage is relevant because the appointment in the Indian Police Service gets ante-dated, depending upon the weightage. The aforesaid new Rule substantially changed and modified the weightage formula, viz., the pre-amendment Rule 3(3) clauses (a) and (b).

11. The effect of Notification dated 18th April, 2012 is that an entirely new criterion or formula of weightage has been prescribed. It is, no doubt, true and correct that the new weightage criterion can be traced and connected to the judgment of the Punjab & Haryana High Court in **Praveen Kumar** (supra), for the said judgment had the effect of giving benefit to the State Civil Service Officers of about one year and correspondingly the weightage given to them would mean that their appointments in the Indian Administrative Service or Indian Police Service would get pre-dated in some cases. The effect of the Notification dated 18th April, 2012 has, to some extent, reduced the weightage of past service under the unamended clauses (a) and (b) to sub-rule (3) to Clause-2. We also record that the validity of the Notification dated 18th April, 2012 and the amendment to the 1988 Rules is not under challenge before us. Indeed, the petitioner, i.e., the Union of India, cannot make a challenge and question their Rules.

12. The respondents were inducted in the Indian Police Service vide notification dated 16th December, 2011 and the appointments had taken place with effect from the said date. The amended sub-rule (3) to Rule 3

came into force subsequently on 18th April, 2012. Notwithstanding the power to make retrospective amendment under Sub-Section 1A to Section 3 of the All India Services Act, 1951, the Central Government, which had framed the amended Rules in consultation with the Governments of the States concerned, had not made the amended Rules retrospective. The amendment notification and the Rule as amended did not state and stipulate retrospective application or specify that the amended provision would be applicable from an earlier date or a date other than that of publication. No such inference is possible, in view and in terms of the express language. It was directed that the amended Rules would come into force on the date of their publication in the Official Gazette i.e. 18th April, 2012. In these circumstances, we are of the opinion that the Tribunal was right in holding that amended sub-rule (3) to Rule 3 of the 1988 Rules; effective from 18th April, 2012 would not be applicable.

13. The view, which we have taken, finds support from the judgment of the Supreme Court in ***Indian Administrative Service (SCS) Association, U.P.***, (1993) Supp (1) SCC 730. The IAS (Regulation of Seniority) Rules, 1954 were repealed and replaced by IAS (Regulation of Seniority) Rules, 1987, which came into force from 6th November, 1987. Subsequently, on the basis of suggestions or comments from State Governments, the Central Government in exercise of power under sub-section (1) to Section 3 of the All-India Services Act, 1951 amended Rule 3(3) of the 1987 Rules, which were published in the Gazette of India on 3rd February, 1989. The amended Rule stipulated that for determination of seniority of a promotee officer in assigning the year of allotment, service rendered in State Civil Service upto twelve years as Deputy Collector or equivalent post,

weightage of four years would be given and further benefit of one year weightage for every completed three years of service beyond twelve years subject to maximum weightage of five years would be given. The weightage would be computed from the year of appointment of the officer to the service. It was held that seniority is an incidence of service and is variable and defeasible by operation of law. The first amendment Rules made operative prospectively from 3rd February, 1989 had incorporated a proviso to stipulate that an officer shall not be assigned year of allotment earlier than the year of allotment assigned to the officer senior to him in the select list or appointed on the basis of an earlier select list. In this case, the officers appointed/promoted to the Indian Administrative Service prior to the introduction of 1987 Rules on 6th November, 1987 had prayed for similar treatment as those appointed post 6th November, 1987. It was held that no statute shall be so construed so as to have retrospective operation, unless its language is such as plainly to require such construction. The legislature, as its policy, gives effect to the statute or statutory rule from a specified time or from the date of its publication in the State Gazette. When the statutory amendment is clear and expressive, words cannot be interpolated. Referring to the proviso, it was stated that the aim of the same was to ensure that the State service senior officers, who had a varied length of service do not become juniors to those, who were appointed under the 1987 Seniority Rules or after the first amendment Rules came into force. It was also intended not to let an endless chain reaction occur to unsettle the settled position in seniority. In the facts of the said case, the benefit of full weightage under the amended Rules was cut down and applied in varied degrees to the officers promoted during the transitional

period to prevent unjust results and to met out justice. In this context, reference was made to Constitution Bench decision in *State of Jammu and Kashmir versus T.N. Khosa and Others*, (1974) 1 SCC 19 and *J. Kumar versus Union of India*, (1982) 2 SCC 116 to observe that amended Rules varying the conditions of service would operate in future and govern the future rights of existing personnel. Section 3(1A) of the All-India Services Act, 1951 had conferred power on the Union to make rules with retrospective effect from a date not earlier than the date of commencement of the Act with one restriction that no retrospective effect shall be given to any rules so as to prejudicially affect the interest of any person to whom such rules may apply. Drawing a distinction between right and interest, it was observed that an officer, though has no vested right to seniority, he does have an interest in the seniority acquired by working out the rules governing the same. Furthermore, when there are rules that prescribe the method of computation, seniority is squarely governed by such rules.

14. Reference can also be made to the decision of the Supreme Court in *Union of India versus S.S. Uppal and Another* (1996) 2 SCC 168, a decision relied on by the Tribunal. In the said case, S.S. Uppal was appointed to the Indian Administrative Service on 15th February, 1989 and the year of allotment was fixed as 1985 after taking into consideration the revised weightage formula, which had come into force on 3rd February, 1989. The question arose whether the weightage formula enforced prior to 3rd February, 1989 could be applied, in which case S.S Uppal should have been assigned 1983 as the year of allotment. Accepting the case of the Union of India that the amended weightage formula would be applicable, it was held:-

“12. We are of the view that the question of seniority of Uppal, Respondent 1, has to be determined by the rules in force on the date of his appointment to IAS. The fixation of seniority in the IAS follows appointment to the service. The Year of Allotment in the IAS will have to be determined according to the provisions of seniority rules which are in force at the time of his appointment. The date of occurrence of vacancy has really no relevance for the purpose of fixation of seniority in the IAS. The fixation of seniority is done only after an officer is appointed to IAS. The Central Government is competent to amend the seniority rules from time to time keeping in view the exigencies of administration.

It was also observed:-

“17. This case again does not throw any light on the controversy raised before us. Uppal was being taken into Administrative Service. He was actually inducted into the service on 15-2-1989. The rules which were in force on that day for determination of seniority will clearly apply to his case. It is true that Uppal's name was included in a panel drawn up sometime in August 1988. But mere inclusion of his name in the panel did not confer upon him any right to automatic appointment to the IAS. Nor can it be said that he was to be treated as to have been appointed from the date when a suitable post fell vacant. It has been stated in the affidavit filed before the Tribunal by Shri Hari Singh, Under Secretary to the Government of India that although a vacancy had arisen on 1-2-1989, the proposal for appointment of Uppal to IAS was received from the State Government only on 14-2-1989. The seniority of an officer appointed into the IAS is determined according to the seniority rules applicable on the date of appointment to the IAS. Weightage in

seniority cannot be given retrospective effect unless it was specifically provided in the rule in force at the material time. In the case of *Shankarsan Dash v. Union of India* [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95 : JT (1991) 2 SC 380] it was pointed out by this Court that the existence of vacancies did not give any legal right to a selected candidate.”

The significance and importance of this decision is that the year of induction in the Administrative Service was held to be determinative. We have followed the same test.

15. In *P. Mohan Reddy versus E.A.A. Charles & Ors.* (2001) 4 SCC 433, there was *inter se* dispute in the cadre of Sub-Tehsildars between direct recruits and promotees. After referring to the decisions in *Union of India versus M. Ravi Varma*, (1972) 1 SCC 379, *D.P. Sharma versus Union of India*, 1989 Supp (1) SCC 244, Constitution Bench decision in *B.S. Yadav versus State of Haryana*, 1980 Supp SCC 524, *P.D. Aggarwal versus State of U.P.* (1987) 3 SCC 622 and *Gaya Baksh Yadav versus Union of India* (1996) 4 SCC 23, and distinguishing the judgments in the case of *State of J & K versus Triloki Nath Khosa* (1974) 1 SCC 19 and *S.S. Bhola versus S.S. Sardana*, (1997) 8 SCC 522, it was held:-

“12.....A conspectus of the aforesaid decision, therefore, unequivocally indicates that the seniority of an employee in the cadre is required to be determined in accordance with the Rules in force unless the subsequent amendment is expressly given retrospective effect, and even though an employee does not have a vested right to have any particular position in the gradation list, but he does possess a right to get his

seniority determined in accordance with the Rules in force when he was recruited and that right should not be interfered with unless the rule-making authority by virtue of amending the Rules makes it applicable to all the existing employees in the cadre, notwithstanding the fact that their seniority had already been determined under the pre-existing rule.”

This judgment also makes extensive reference to facts and decision in the case of *Wing Commander J. Kumar versus Union of India*, (1982) 2 SCC 116 and also *K.V. Subba Rao versus Government of Andhra Pradesh*, (1988) 2 SCC 201 and holds that:-

“17. A conspectus of the aforesaid decisions of this Court would indicate that even though an employee cannot claim to have a vested right to have a particular position in any grade, but all the same he has the right of his seniority being determined in accordance with the Rules which remained in force at the time when he was borne in the cadre. The question of re-determination of the seniority in the cadre on the basis of any amended criteria or rules would arise only when the amendment in question is given a retrospective effect. If the retrospectivity of the Rule is assailed by any person then the court would be entitled to examine the same and decide the matter in accordance with the law. If the retrospectivity of the Rule is ultimately struck down, necessarily the question of redrawing of the seniority list under the amended provisions would not arise, but if, however, the retrospectivity is upheld by a court then the seniority could be redrawn in accordance with the amended provisions of the employees who are still in the cadre and not those who have already got promotion to some other cadre by that date. Further, a particular rule of seniority having been

considered by the Court and some directions in relation thereto having been given, that direction has to be followed in the matter of drawing up of the seniority list until and unless a valid rule by the rule-making authority comes into existence and requires otherwise, as was done in *Bola case* [(1997) 8 SCC 522]. It may be further stated that if any rule or administrative instruction mandates drawing up of seniority list or determination of inter se seniority within any specified period then the same must be adhered to unless any valid reason is indicated for non-compliance with the same.

18. When we examine the present case from the aforesaid principles we have no doubt in our mind that, in view of the judgment of this Court in *Subba Rao case* [(1988) 2 SCC 201 : 1988 SCC (L&S) 506 : (1988) 7 ATC 94] , seniority of Deputy Tahsildars appointed between the dates 10-4-1980 till September 1992 is required to be determined in accordance with the pre-amended rules (*sic* and not in accordance with the Rules) which came into existence in September 1992, and even if factually such seniority has not been drawn up then the same has to be drawn up in accordance with the criteria indicated in the pre-amended rules and not according to the amended rules, which came into existence in September 1992, as has been held by the High Court in the impugned judgment. The High Court, therefore, was clearly in error and the said judgment of the High Court is thus set aside. The Tribunal was fully justified in dismissing the OAs filed by the promotee Deputy Tahsildars. In the premises, as aforesaid, the civil appeals by the direct recruits are allowed and the OAs filed by the promotees before the Administrative Tribunal stand dismissed.

16. In the light of the aforesaid discussion, we find that the Tribunal was right in holding that the weightage formula applicable in the case of the respondents would be as per the unamended sub-rule (3) to Rule 3, which was in force on the date when the respondents were appointed to the Indian Police Service on 16th December, 2011. The weightage formula introduced by the amended Rules, which was given effect from 18th April, 2012, would not be applicable to the case of the respondents as the respondents had already been appointed in the IPS earlier in point of time, i.e. on 16th December, 2011. The extant rule, as applicable in the year in which the respondents were appointed in the Indian Police Service, would determine the weightage for past service to be given to the respondents.

17. Learned counsel for the petitioner submitted that if we accept the plea of the respondents, it would result in iniquitous results, for the respondents would be entitled to weightage benefits but the same would be available to those who join after 18th April, 2012. This is correct, but this is also the natural consequence and effect when an amendment to the weightage formula is made. The petitioners' concerns, we feel, are somewhat misplaced as the benefit of weightage formula would be only available to a limited number of candidates/officers, who were selected and appointed prior to 18th April, 2012. The first proviso to sub-rule (3) to Rule 3 would, to a large extent, negate the apprehension and concern of the petitioners. The said proviso stipulates that an appointee, who has gained weightage in 3(3) (ii) shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to service on the basis of an earlier select list. The respondents, therefore, cannot claim entitlement of year of allotment to the

service prior to the last selected candidate in the earlier select list i.e. select list of 2009. The impugned decision would not, in any manner, undo or override the effect and mandate of the proviso.

18. In view of the aforesaid discussion, and subject to the clarification made in paragraph 17 above, we do not find any merit in the present writ petition and the same is dismissed. No order as to costs.

AUGUST 12th, 2016
tp/ssn

(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE