

LETTERS PATENT APPEAL

Before R. S. Narula, Chief Justice and Prem Chand Jain, J.

B. R. KAPUR—Appellant

versus

UNION OF INDIA ETC., Respondents.

Letters Patent Appeal No. 609 of 1973.

May 17, 1975.

Indian Police Service (Regulation of Seniority) Rules 1954—Rules 2(g), 3(3) (b) and 4—Indian Police Service (Cadre) Rules 1954—Rules 2, 4, 8 and 9—Indian Police Service (Fixation of Cadre Strength) Regulations 1955—Indian Police Service (Recruitment) Rules 1954—Rules 2 and 9(1)—Indian Police Service (Appointment by Promotion) Regulations 1955—Regulations 2, 5(3), 8 and 9—All India Services Act (LXI of 1951)—Sections 3(1) and (4)—Officer appointed to the Service by promotion—Year of allotment—determination of—Stated—Deputation and Central Reserve quota—Whether can be over-utilised by a State Government without a change in cadre strength—State Government over-utilising this quota and making select list Officers to officiate against those vacancies—Select list Officers—Whether can take benefit of such period of officiation for determining their year of allotment—Rule 3(3) (b) of the Seniority Rules—Whether to be read independently of other Rules and Regulations.

Held, that from a bare reading of sub-rule 3 of Rule 3 of the Indian Police Service (Regulation of Seniority) Rules 1954 it is apparent that an Officer appointed to the Indian Police Service by promotion has to be assigned the year of allotment of the junior most among Officers recruited directly by competition as provided under rule 7 of the Indian Police Service (Recruitment) Rules 1954, who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the promotee. In nut shell it means that the date from which an officer on the select list has continuously officiated on a cadre post specified under item No. 1 of the cadre of each State without any break till his substantive appointment to the Indian Police Service, determines his year of allotment.

(Para 15)

Held that it is under the Indian Police Service (Cadre) Rules 1954 and the Indian Police Service (Fixation of Cadre Strength) Regulations 1955 that the strength and composition of the cadre has its origin and if cadre officers are available then select list officers cannot be appointed to a cadre post and that a select list officer as such has no vested right to be so appointed. In this situation, it is not

permissible for the State Government to send I.P.S. Officers to man posts available in Central or the Deputation Reserve quota over and above the quota fixed for the States and thereby create vacancies in senior posts under itself and to fill those vacancies from out of the select list officers. The purpose of deputation reserve is to provide a cushion to the State Government for meeting its temporary and unforeseen demand of cadre officers for manning such cadre posts which are required temporarily for short periods. The cadre strength has been fixed under the Cadre Strength Regulations and it is not an idle formality which can be given a go-by at the sweet will of the State Government. The State Government is not competent to increase the number of posts against items Nos. 2 and 5 of the Cadre schedule without the prior sanction of the Central Government under rule 4(2) or the proviso thereto. If such a power is deemed to exist, then the object of the Cadre Rules and Cadre Strength Regulations would be defeated. For the proper functioning of the service and in order to avoid any strained relations between the direct recruits and the select list officers, the State Government cannot over-utilise the Central and deputation reserve quota without first getting raised the strength and composition of the cadre in accordance with law.

(Para 50)

Held that the Central Government has to see continuous officiation in a senior post for determining the year of allotment and the benefit of this continuous officiation can be claimed if the officiation is proper and legal, that is, in accordance with law. An officer cannot claim the benefit of continuous officiation for determination of his year of allotment if he under the law could not be made to officiate but for the unjustifiable act of the State Government which is against the Cadre Rules and Cadre Strength Regulations. If legally there could be no continuous officiation in a senior post but for the act of over-utilisation, which is unjustified, then certainly such an officiation cannot be taken into consideration while determining the year of allotment. Thus where the State Government over-utilises the deputation and Central Reserve quota thereby creating a vacancy in a cadre post and makes the select list officers to officiate against such vacancies, the period of such officiation by the select list officers cannot be taken into account while determining their year of allotment.

(Paras 52 and 53)

Held that for the proper functioning of the service, strict compliance with all the rules and regulations is needed. If one rule is read in isolation and independent of the other rules and regulations, then startling and confusing results are likely to follow. If for determining the year of allotment no other provision has to be looked into and only the provisions of rule 3(3) (b) of the seniority rules have to be adverted to, then the

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provisions of other relevant rules and regulations would become nugatory. While framing rules and regulations nothing has been left to speculation. Thus rule 3(3) (b) of the Seniority Rules is to be read harmoniously with all other rules and regulations governing the service and not independent of them.

(Para 56)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Bal Raj Tuli passed in C.W. No. 52 of 1972 on 16th July, 1973.

J. N. Kaushal, Advocate, M. R. Agnihotri, Advocate, for the Petitioner.

H. L. Sibal, Advocate with Kuldip Singh and R. C. Setia, Advocates, for Respondent No. 1.

Anand Swaroop, Advocate with R. S. Mittal, and K. S. Chaudhary, Advocates, for Respondents 7 to 17.

Mohinder Jit Singh Sethi, Advocate, for Respondent Nos. 2 and 3.

JUDGMENT

Jain, J.—(1) This judgment and order of mine would dispose of—

- (i) L.P.As. 609, 634, 659 and 672 of 1973, which arise out of the judgment of a learned Single Judge of this Court, dated 16th July, 1973, in Civil Writ No. 52 of 1972, filed by B. R. Kapur ;
- (ii) L.P.As. 633, 671 and 694 of 1973, arising out of the same order of the learned Single Judge of this Court given in Civil Writ No. 1959 of 1971, filed by Harjit Singh; and
- (iii) Civil Writ No. 3396 of 1973 filed by Sukhpal Singh,

as common question of law and fact, arises in all these appeals and the writ petition.

(2) B. R. Kapur, (hereinafter referred to as the appellant filed a writ petition which was partly allowed with the result that for the relief which was not granted, B. R. Kapur has filed L.P.A. 609 of 1973, while the Union of India, State of Punjab and one J. S.

Anand have filed L.P.As. 634, 672 and 659 of 1973 respectively against the relief which was granted by the learned Single Judge to the appellant (B. R. Kapur). The other writ petition (Civil Writ No. 1959 of 1971), which was filed by Harjit Singh, was allowed in its entirety and against that decision of the learned Single Judge, three Letters Patent appeals, i.e., L.P.As. 633, 671 and 694 of 1973, have been filed by Union of India, State of Punjab and J. S. Anand, respectively.

(3) Sukhpal Singh has filed Civil Writ No. 3396 of 1973 praying for the same relief as was claimed by B. R. Kapur and Harjit Singh. This petition was ordered to be heard by a Division Bench along with the Letters Patent appeals, referred to above.

(4) Although detailed facts have been given in the judgment of the learned Single Judge, yet in order to decide the controversy raised before us in the appeals filed against the decision given in the writ petition filed by B. R. Kapur, certain salient features of that case may be noticed.

(5) The appellant (B. R. Kapur) joined as officiating Deputy Superintendent of Police on 2nd April, 1951, on the basis of selection made by competitive examination held by the Punjab Public Service Commission. He was appointed as a probationer and was confirmed on successful completion of the probationary period of two years in April, 1953. His name was brought on the Select List prepared under the Indian Police Service (Appointment by Promotion) Regulations, 1955, in September, 1960. He was appointed as Assistant Inspector-General of Police, which was a senior post in the cadre of Indian Police Service and was equivalent to the rank of the Superintendent of Police, by order dated 24th November, 1960. He took over charge of that post on 30th November, 1960. In May, 1961, Government of Punjab created a new post of Director of Sports and Youth Programme and Deputy Secretary to Government, Punjab, Sports Department. The appellant was appointed to that post which he held till November, 1962, in which month he was appointed Additional Controller of Stores, Punjab, by the Punjab Government. On 19th July, 1965, he was informed that on return from leave he had been posted as Commandant, 40th Battalion, P.A.P., J. & K., and he should proceed there immediately to take over charge of his duties within the maximum joining time admissible from the date his leave expired. He took over charge of that post on 29th July,

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1965. He was transferred from the post of Commandant, P.A.P., 40th Battalion, to the post of Commandant, P.A.P., Battalion No. 25, Ajnala, and he took charge of the new post on 12th July, 1966. He relinquished the charge of that post on 24th October, 1966, but was considered to have held that post till 31st October, 1966, i.e., the eve of the reorganisation of the State of Punjab. After re-organisation, he was allocated to the new State of Punjab and was posted as Assistant Inspector-General of Police (Traffic), Punjab, which was a senior post, on 1st November, 1966. By notification, dated 6th December, 1969, issued by the Government of India, Ministry of Home Affairs, the appellant was appointed to the Indian Police Service in a substantive capacity against a vacancy in the senior post shown in item 3 of the cadre schedule with effect from 3rd September, 1969. Thereafter, the question of assigning the year of allotment to the appellant and fixation of his seniority in the Indian Police Service arose. He was informed by memorandum, dated 2nd/3rd February, 1971, that the Government of India had assigned to him 1963 as the year of allotment consequent upon his appointment to the Indian Police Service and he had been placed below Sube Singh and above S. R. Sharma in the I.P.S. Gradation List. On receipt of this information, the appellant, by his letter, dated 8th February, 1971, requested the Inspector-General of Police, Punjab, to supply him the basis of fixation of his seniority. In reply to that letter, the appellant was sent a copy of the letter from the Cabinet Secretariat, Department of Personnel, Government of India addressed to the Chief Secretary to Government of Punjab, Home (Police) Department, Chandigarh, dated 11th January, 1971, in which (with regard to the appellant) it was stated as under :—

“He was included in the select list for the first time in 1960. He had been on a cadre post continuously only from 29th July, 1965. His officiation in cadre post was not approved for the period from 29th July, 1965 to 31st October, 1966 in view of our letter No. 10/13/65-AIS (I), dated 5th April, 1966. His officiation from 1st November, 1966 was approved,—*vide* our letter No. 38/9/66-AIS (III), dated 13th August, 1968. Hence his services from 1st November, 1966 can be counted for the purpose of seniority. Shri Sube Singh (RR-1963) is the junior-most direct recruit who started officiating in the senior cadre posts from a date earlier than 1st November, 1966. Therefore, under rule 3(3) (b) of the I.P.S. (Regulation of Seniority)

Rules, 1954, Shri Balraj Kapur may be allotted to the year 1963. Under rule 4(4) of the same rules, he may be placed below Shri Sube Singh (RR-1963) and above Shri S. R. Sharma (RR-1964) in the I.P.S. Gradation List of Punjab."

(6) By letter No. 2/13/69-AIS (III), dated 23rd March, 1971, Government of India, Cabinet Secretariat (Department of Personnel) approved the officiating appointment of the appellant in the Indian Police Service Cadre post for the period from 29th July, 1965, to 1st July, 1966.

(7) It may be stated at this stage that, as was observed by the learned Single Judge, it is apparent from the correspondence between the Punjab Government and the Government of India and the stand taken in their written statements, that the officiating service of the appellant on the post of Commandant, 25th Battalion, P.A.P., from 2nd July, 1966, to 31st October, 1966, was not approved as that Battalion had been taken over by the Government of India with effect from 1st March, 1966, and that post was considered to have been removed from the cadre strength of the State of Punjab and that the service of the appellant for that period was, therefore, considered to have been under the Government of India and not on a cadre post under the Punjab Government.

(8) On 19th May, 1971, the appellant submitted a representation to the Inspector-General of Police, Punjab, Chandigarh, requesting to take up the matter with the concerned quarters for the inclusion of the period 2nd July, 1965 to 31st October, 1966, in the approval granted,—*vide* Government of India, Cabinet Secretariat (Department of Personnel) letter No. 2/13/69-AIS (III), dated 23rd March, 1971, addressed to the Chief Secretary to the Government of Punjab on which he was informed by the Inspector-General of Police,—*vide* letter dated 25th August, 1971, that "since the matter is *sub-judice* your representation has been filed".

(9) By order, dated 10th November, 1971, Gurbhagat Singh, respondent No. 4, and S. S. Palta, respondent No. 5, were promoted as Deputy Inspector-General (Security), Punjab, Chandigarh, and Additional Deputy Inspector-General, Jullundur Range, respectively. The appellant feeling aggrieved against the assignment of the year of allotment and consequent fixation of his seniority in the Indian

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Police Service and the promotion of respondents Nos. 4 and 5, who, according to him were junior to him, filed Civil Writ No. 52 of 1972 claiming the following reliefs:—

- (i) The quashing of the order of the Government of India assigning 1963 as the year of allotment to the petitioner and the order dated August 25, 1971, filing his representation without deciding it ;
- (ii) quashing of the order dated November 10, 1971, promoting respondents 4 and 5 as Deputy Inspector-Generals of Police ;
- (iii) declaration that the petitioner continued or should be deemed to have continued on a cadre post from the year 1960 to 1969 ;
- (iv) issuance of a writ of *mandamus* directing respondents 1 and 2 to declare the post of Director of Sports and Youth Programme and Deputy Secretary to Government, Punjab, as well as the post of Additional Controller of Stores as a post equivalent to a senior post, that is, cadre post;
- (v) declaring the provisions of rule 2(g) of the Seniority Rules as *ultra vires* the Constitution of India and, therefore, null and void and inoperative in law ;
- (vi) an order to respondents 1 and 2 to adjust the seniority of the petitioner on the basis of the petitioner's year of allotment being 1955 ;
- (vii) direction to respondents 1 and 2 to fix the petitioner's seniority afresh and grant him all further and consequential benefits on the basis of the correct year of allotment and on the basis of the fact that the petitioner continued on a cadre post from the year 1960 to 1969 ; and
- (viii) prohibiting respondents 1 and 2 from making any further promotion to Selection Grade or D.I.G. from amongst the respondents till the decision of the writ petition".

The petition was contested on behalf of the respondents.

(10) The main point that arose for determination before the learned Single Judge in the case and on which all the reliefs were dependent, was whether the year 1963 as the year of allotment had been correctly assigned to the appellant or not. The appellant had claimed that he was entitled to 1955 as the year of allotment on the basis that from 30th November, 1960, he should be considered to have held a senior post continuously till his substantive appointment to the Indian Police Service as defined in rule 2(g) of the Indian Police Service (Regulation of Seniority) Rules, 1954 (hereinafter referred to as the Seniority Rules).

(11) The learned Single Judge, after considering the arguments advanced on either side in the light of the relevant rules, held as follows :—

- (i) that the appellant could not be deemed to have continuously officiated in a senior post between May, 1961, and 28th July, 1965, during which period he held the post of Director of Sports and Deputy Secretary to Government, Punjab, and Additional Controller of Stores, which posts were not admittedly senior posts as defined in rule 2(g) of the Seniority Rules as amended in 1960;
- (ii) that not having held a senior post during that period, the appellant could not claim continuous officiation in a senior post prior to 29th July, 1965, as contemplated in rule 3(3) (b) of the Seniority Rules;
- (iii) that the holding of an equivalent or a higher post was no more of any significance as what was required was continuous officiation in a post included in or specified under item 1 of the cadre of the State ;
- (iv) that the appellant continued to hold the post of Commandant, 40th Battalion and 25th Battalion, P.A.P., from 29th July, 1965 to 31st October, 1966, as admitted by the Union of India as well as the Punjab Government, and, therefore, his continuous officiation in a senior post started with effect from 29th July, 1965, and continued uninterrupted till he was appointed to the I.P.S. with effect from 3rd September, 1969, and that he was entitled to have his

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seniority determined as if his continuous officiation in a senior post started on 29th July, 1965 ;

- (v) that it was not due to any *mala fide* intentions of the Inspector-General of Police that the posts of Director of Sports and Youth Programmes and the Additional Controller of Stores were not declared equivalent to a cadre post, but it was due to the lapse of time and the amendment of the definition of 'senior post' in rule 2(g) with effect from 22nd April, 1967 ;
- (vi) that the rule as in force on 3rd September, 1969, applied and thereafter no retrospective declaration of equation of posts could be made by the Government of Punjab ;
- (vii) that the 'next below rule' did not apply in the case of the appellant because after his name was brought on the select list, he had been appointed to a cadre post on 30th November, 1960, and his juniors were appointed to the cadre posts thereafter ;
- (viii) that the seniority of the appellant had to be fixed under rule 2(g) of the Seniority Rules after assigning the year of allotment in accordance with rule 3(3) (b) of the said Rules and the year of allotment had to be assigned by taking 29th July, 1965, as the date from which the appellant's continuous officiation against a senior post, as defined in rule 2(g) of the Rules, commenced and continued uninterrupted till he was appointed to the Service with effect from 3rd September, 1969 ;
- (ix) that the promotion of respondents Nos. 4 and 5 could not be quashed ; and
- (x) that there was no substance in the plea, raised by the appellant that the provisions of rule 2(g) of the Seniority Rules should be declared as *ultra vires* Articles 14 and 16 of the Constitution of India.

(12) Mr. J. N. Kaushal, Senior Advocate, learned counsel for the appellant, levelled his main attack against the finding of the

learned Single Judge that the appellant could not be deemed to have continuously officiated in a senior post between May, 1961, and 28th July, 1965, during which period he held the posts of Director of Sports and Deputy Secretary to Government, Punjab, and Additional Controller of Stores, which posts were not senior posts as defined in rule 2(g) of the Seniority Rules as amended in 1960. According to the learned counsel, the period of officiation on the said posts should have been counted towards the year of allotment as these posts were equivalent to cadre posts. It was also contended by the learned counsel that even now the State Government could declare those posts which were held by the appellant, equivalent to the cadre posts and a direction in this respect, in the circumstances of the case, should be issued to the State Government to do the needful. This contention of the learned counsel was substantiated by him by urging that for the period for which the appellant officiated on those two posts, the power of declaration could be exercised under the old rule 2(g) and to that extent the power under the said rule would be deemed to have been protected. In support of his contention strong reliance was placed on the decision of their Lordships of the Supreme Court in *Ram Prakash Khanna and others v. S.A.F. Abbas and others*, (1).

(13) After giving my thoughtful consideration to the entire matter, I am of the view that there is no force in the contention of the learned counsel for the appellant. Rule 2(g) of the Seniority Rules, as originally framed in 1954, reads as follows :—

“ ‘Senior Post’ means a post included under item 1 of each Schedule to the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955, framed under sub-rule (1) of rule 4 of the Indian Police Service (Cadre) Rules, 1954, or any post declared equivalent thereto by the State Government concerned.”

This definition of ‘senior post’ was amended with effect from 22nd April, 1967,—*vide* Government of India, Ministry of Home Affairs, Notification No. 27/47/64-AIS (III) (B), dated 17th April, 1967, so as to read as under :—

“2(g) ‘Senior Post’ means a post included and specified under item 1 of the cadre of each State in the Schedule to the

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Indian Police Service (Fixation of Cadre Strength) Regulations, 1955, and includes a post included in the number of posts specified in items 2 and 5 of the said cadre, and a post temporarily added to the cadre under the second proviso to sub-rule (2) of rule 4 of the Indian Police Service (Cadre) Rules, 1954, when held on senior scale of pay, by an officer recruited to the Service in accordance with rule 7 of the Recruitment Rules."

(14) The appellant was appointed to the Indian Police Service with effect from 3rd September, 1969, and his seniority has to be determined in accordance with the Seniority Rules as then in force. The provision for the assignment of the year of allotment to every officer of the Indian Police Service is provided in rule 3 of the Seniority Rules and sub-rule (3) thereof deals with the assignment of the year of allotment to an officer appointed to the Service after the commencement of these rules and so far as relevant reads as under :—

"3. *Assignment of year of allotment.*

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|-----|---|--|---|--|---|--|---|
| (1) | * | | * | | * | | * |
| (2) | * | | * | | * | | * |

(3) The year of allotment of an officer appointed to the Service after the commencement of these rules shall be—

- (a) where the officer is appointed to the Service on the results of a competitive examination, the year following the year in which such examination was held ;
- (b) where the officer is appointed to the Service by promotion in accordance with rule 9 of the Recruitment Rules, the year of allotment of the junior most among the officers recruited to the Service in accordance with rule 7 of those rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former ;

Provided that the year of allotment of an officer appointed to the Service in accordance with rule 9 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officers recruited to the Service in accordance with rule 7 of those rules so started officiating, shall be determined *ad hoc* by the Central Government in consultation with the State Government concerned :

Explanation 1—In respect of an officer appointed to the Service by promotion in accordance with sub-rule (1) of rule 9 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purposes of determination of his seniority, count only from the date of the inclusion of his name in the Select List or from the date of his officiating appointment to such senior post, whichever is later.

Provided that where the name of a State Police Service Officer was included in the Select List in force immediately before the re-organisation of the State and is also included in the first Select List prepared subsequent to the date of such reorganisation, the name of such officer shall be deemed to have been continuously in the Select List with effect from the date of inclusion in the first mentioned Select List.

Explanation 2.—An officer shall be deemed to have officiated continuously in a senior post from a certain date if during the period from that 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 or local arrangement.

Explanation 3.—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 training."

(15) From the bare reading of the aforesaid provision it is apparent that an officer, like the appellant, appointed to the Indian

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Police Service by promotion, has to be assigned the year of allotment of the junior-most among the officers recruited directly by competition as provided in rule 7 of the Recruitment Rules, who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the promotee. In nutshell it means that the date from which an officer on the Select List has continuously officiated on a cadre post specified under item 1 of the cadre of each State without any break till his substantive appointment to the Indian Police Service, determines his year of allotment. It is on the basis of the aforesaid rule that it has to be determined as to from which date the continuous officiation of the appellant in a senior post commenced.

(16) It may be observed at the outset that before the learned Single Judge, the stand of the appellant was that his officiation in a senior post started with effect from 30th November, 1960, that is, on the date on which he took charge of the post of Assistant Inspector-General of Police, admittedly a post specified under item 1 of the Cadre, but the same was negated as it was found by the learned Single Judge that the appellant was appointed as Director of Sports and Deputy Secretary to Government, Punjab, Sports Department, in May, 1961, and thereafter as Additional Controller of Stores in November, 1962, which posts were not senior posts, according to the definition given in rule 2(g) of the Seniority Rules, whether amended or unamended. This finding of the learned Single Judge was not challenged before us and, as earlier observed, the argument advanced by Mr. J. N. Kaushal, was that the Punjab Government be now directed to declare those posts (that is, the post of Director of Sports and Deputy Secretary to Government, Punjab, and that of Additional Controller of Stores against which the appellant was appointed in May, 1961, and November, 1962, respectively) equivalent to the senior posts and the Government of India be directed to approve of the service of the appellant on those posts so as to entitle him to continuous officiation in a senior post. The argument, though ingenious, is neither plausible nor convincing. The question of assignment of the year of allotment and fixation of seniority in the Indian Police Service with regard to the appellant arose only when he became a member of that Service on 3rd September, 1969, and prior thereto there was no question of any year of allotment being assigned to him or his seniority being fixed in the Indian Police Service. The assignment of the year of allotment and

fixation of seniority have to be determined in accordance with the rules in force at the time an officer is appointed to the Service. According to the definition of 'senior post' on 3rd September, 1969, there was no power with the State Government to declare any post as equivalent to a senior post if it had not been so declared prior to the amendment of the rule. There is absolutely no justification in the contention of Mr. Kaushal that for the period for which the appellant officiated, the power of declaration could be exercised under the old rule and to that extent the power under the old rule would be deemed to have been protected. It may be observed that the submission of the learned counsel is based on the ground that the officiation of which benefit was being claimed, was during the period when the old rule was in force. But that fact does not make any difference as it was in 1969 that the appellant became member of the Service, and it was thereafter that the question of assignment of the year of allotment and fixation of seniority arose. I fail to understand how the question that arose for determination in 1969 could be decided under the defunct rule.

(17) Further to judgment in *Ram Parkash Khanna's case* (supra) on which great reliance was placed by the learned counsel, is not at all applicable to the facts of the present case nor does it help in substantiating the contention of the learned counsel for the appellant. In that case, the year of allotment assigned to the members of the State Civil Service, who were appointed to the I.A.S. in 1955 and 1956, was challenged by the direct recruits. For them the definition of 'Senior Post' was as contained in the unamended rule 2(g) of the Indian Administrative Service (Regulation of Seniority) Rules, 1954. The promotees in that case were assigned 1948 as the year of allotment by the Government of India on 3rd September, 1958, and the direct recruits thereafter made a representation against that decision which was on 13th January, 1965, forwarded by the State of Bihar to the Government of India. On 4th January, 1966, the Government of India took a tentative decision to allow the representation of direct recruits on the ground that the previous decision was on wrong facts and on wrong interpretation. On 14th April, 1967, the State of Bihar represented to the Government of India to reject the representation of the direct recruits on the ground that the facts alleged by them were wrong. On 20th September, 1967, the Government of India, however, allowed the representation of the direct recruits and revised the seniority of the promotees, some of whom were assigned 1950 as the year of allotment while some others were assigned 1952 as the year of allotment. The promotees impeached that order in a

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writ petition principally on the ground that the Government of India was wrong in holding that it was not competent to the State of Bihar to make a retrospective declaration of a post as equivalent to a cadre post. They succeeded in the High Court. The order dated 20th September, 1967, was quashed by the High Court and a direction was issued that the promotees would continue to hold the year of allotment assigned to them in the year 1958. Ram Parkash Khanna and others obtained a certificate and preferred an appeal in the Supreme Court. After considering the matter at some length, their Lordships of the Supreme Court observed in para 13 of the report as under :—

“The scheme of the Indian Administrative Service (Regulation of Seniority) Rules, 1954, is that every officer shall be assigned a year of allotment in accordance with the provisions contained therein. The present appeals raise the question of the year of allotment of the promotees who were promoted to the Service, after the commencement of the Rules, in the years 1955 and 1956. Therefore, rule 3(3)(b) applies to the case of the promotees *vis-a-vis*, the direct recruits.”

(18) Their Lordships then referred to the two decisions in *D. R. Nim v. Union of India*, (2) and *State of Orissa v. B. K. Mohapatra* (3), wherein rule 3(3)(b) of the Seniority Rules had been considered and observed (para 15)—

“The rulings of this Court hold that a promotee can 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. The officiation in a senior post is one of the indispensable ingredients in the application of rule 3(3)(b). A senior post as defined in the Regulation of Seniority Rules means a post included and specified under Item 1 of the cadre of the State or any post declared equivalent thereto by the State Government concerned. It may be stated here that the definition of senior post

(2) (1967) 2 S.C.R. 235.

(3) (1970) 1 S.C.R. 255.

underwent change in the year 1967 by notification No. 27/47/64-AIS (III) A, dated 17th April, 1967, and the new definition of senior post came into effect on 22nd April, 1967. The present appeals are governed by the definition of senior post prior to the year 1967. The important words in the relevant definition of the senior post are 'any post declared equivalent thereto by the State Government'.

(19) From the observations reproduced above it is clear that the case before their Lordships of the Supreme Court was governed by the definition of 'senior post' prior to the amendment made in the year 1967. This fact is further clear from the observations of their Lordships made in para 21 at page 2355 of the report, which read as under :—

“ * * * * *

* * * * * To hold that a promotee could not get the benefit of officiation unless the post was declared as equivalent to a senior cadre post before the promotee was appointed to officiate might defeat the policy of the Government. A promotee may be officiating continuously for a long period and his name may be included in the select list after some time. Again, a person who officiates continuously for long time may thereafter be not included in the select list. Such a person might deprive a person who would otherwise be found suitable for appointment by promotion after similar officiation in a similar post. It is only when the State Government finds that it is desirable to declare the post equivalent to a senior post *inter alia* by reason of the efficiency of the person which has entitled him to promotion that the consequential necessity arises for giving him that senior post by requisite declaration of a senior post. A retrospective declaration therefore is in the scheme of things practical as well as reasonable.”

(20) The aforesaid observations show that the case before their Lordships dealt with a situation where the promotee occupied the post earlier and the same was declared senior post thereafter and it was in that situation that their Lordships held that the

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retrospective declaration was in the scheme of things practical as well as reasonable. But in the instant case support cannot be derived from the decision in *Ram Prakash Khanna's case* to substantiate the contention that at the time when the assignment of the year of allotment and fixation of seniority had to be determined, the rules then in force be not looked into and that the case be determined by applying the old rules. In this view of the matter, the contention of Mr. Kaushal is devoid of any force and merits rejection.

(21) It was next contended by Mr. Kaushal that since there was a violation of regulation 8 of the Promotion Regulations inasmuch as junior persons were allowed to occupy senior posts, the appellant should have been given the benefit of promotion under the 'next below rule'. A similar contention was raised before the learned Single Judge and the same was rejected by observing thus :

"The learned counsel for the petitioner has then submitted that since the petitioner was sent on deputation to the Sports Department and thereafter he continued in the Industries Department, he should have been allowed the benefit of promotion under the 'next below rule'. The submission is that his juniors, Sarvshri Harjit Singh and Sukhpal Singh, continued to officiate in a cadre post in the Police Department which post he would have occupied if he had not been sent on deputation and, therefore, he should be deemed to have continued in a cadre post even during the period he was serving as Director of Sports and Additional Controller of Stores. The 'next below rule' does not apply in the case of the petitioner because after his name was brought on the select list, he had been appointed to a cadre post on November 30, 1960, and his juniors were appointed to the cadre posts thereafter. Of his own accord, as pointed out above, he left the cadre post and accepted the post of Director of Sports. There was, therefore, no question of his juniors having been promoted in his absence. In this view of the matter, the *ratio decidendi* of the decisions in *State of Mysore v. M. H. Bellary*, (4) *Ram Lal Aggarwal v. The State of Punjab and others*, (5) and

(4) (1964) 7 S.C. 471.

(5) 1968 S.L.R. 800.

State of Mysore and another v. P. N. Najundiah and another, (6) is of no avail to the petitioner.”

(22) Mr. Kaushal could not point out any infirmity in the aforesaid finding of the learned Judge and hence no useful purpose would be served to dilate any further on this aspect of the matter.

(23) No other point was urged by Mr. J. N. Kaushal.

(24) This brings us to the appeals (L.P.As. 634,672 and 659 of 1973) filed by the Union of India, State of Punjab and J. S. Anand against the judgment in B. R. Kapur's case. In these appeals the main arguments were advanced by Shri H. L. Sibal, Senior Advocate, which were adopted by Mr. Anand Swaroop, Senior Advocate, and Mr. M. S. Sethi.

(25) The main contention raised in the aforesaid three appeals by Mr. H. L. Sibal was that the period, that is, from 12th July, 1965, to 31st October, 1966, when the 25th Battalion, P.A.P. was taken over by the Union of India, the continuous officiation of B. R. Kapur was broken and as such while determining the seniority, the period up to 31st October, 1966, could not legally be taken into consideration. After giving our thoughtful consideration to the entire matter, we find ourselves unable to agree with this contention of Mr. Sibal. By raising the aforesaid contention, surprisingly enough, entirely a different case is being set up during the course of arguments as would be apparent from the admission made in the impugned order, dated 11th January, 1971, annexure 'B' to the petition and the pleadings of the parties to which reference is being made presently. In the impugned order, while dealing with the case of B. R. Kapur, it has been specifically stated that "he had been on a cadre post continuously only from 29th July, 1965". In view of this admission, as earlier observed, we find it most unreasonable that an argument could legitimately be advanced that B. R. Kapur did not hold a cadre post for the period when he was the Commandant, 25th Battalion. Now reference may be made to the relevant pleadings. On this aspect of the matter, the averments of the petitioner (B. R. Kapur) find place in paras 23 and 24 of his writ petition which read as under :—

“23. From the orders of transfer, it will be noticed that there was no indication that the post of Commandant,

25th Battalion was not that of the P.A.P. It was only long time after he had handed over the charge of the said post that the petitioner learnt that the 25th Battalion P.A.P. had been converted into a Battalion of the Border Security Force (hereinafter to be referred B.S.F.), under the charge of the Government of India in the month of March, 1966. The petitioner was thus kept completely in the dark at the time of his transfer to the post of Commandant 25th Battalion, P.A.P. and even subsequent thereto that it was an ex-cadre post. So far as the petitioner is aware, no notification was issued by the Government prior to his taking over as Commandant, 25th Battalion, P.A.P. or during the period of his posting as such that this Battalion had been converted into a Battalion of B.S.F. under the charge of the Central Government and/or the post of the Commandant had been decadred or that it was under the control of the Central Government.

24. The petitioner states that the post of Commandant, 25th Battalion, P.A.P. being borne on the I.P.S. cadre of the Punjab State, strength of which was fixed by the Central Government in exercise of powers under the I.P.S. (Fixation of Cadre Strength) Regulations, could not be decadred without a specific amendment to this effect and without issuing a statutory notification. As a matter of fact, the State Government in the periodical statement (commonly known as the Cadre Return) regarding the cadre strength of Punjab and the officers holding the Cadre (Senior) post during the period the petitioner remained Commandant, 25th Battalion, P.A.P., had shown this post as a cadre (senior) post and held by the petitioner. The petitioner submits that the Government is not entitled to take the plea that the petitioner did not hold the senior post in the cadre, while he was holding the post of Commandant, 25th Battalion, P.A.P. The respondents Nos. 1 and 2 be ordered to produce the original record containing the aforesaid periodical statement."

(26) In the written statement filed on behalf of the State by the Inspector General of Police, the reply to the aforesaid averments is to the following effect :—

- "23. Admitted. The eight P.A.P. Battalions on the Punjab Border including Battalion No. 25 in which the petitioner

had been posted, had been transferred to the Border Security Force, with effect from 1st March, 1966. The old numbers of the Battalions were kept for sometime as fresh numbers of the Battalions were to be issued to the personnel and entered in the books by the Border Security Force.

24. The State Government had issued orders on 19th August, 1966 for the reduction of the posts of 8 Superintendents of Police (Commandants) of the 8 P.A.P. Battalions on the Punjab Border (Annexure R-3/F). In view of this letter, the Government of India do not seem to have issued a separate notification for the reduction of 8 posts of Superintendents of Police from the I.P.S. Cadre. It is admitted that the post of Commandant, 25th Battalion, P.A.P., was being shown as borne on the I.P.S. Cadre till 31st October, 1966."

(27) From these averments it is clear that even the State of Punjab has admitted in an unequivocal terms that the post of Commandant, 25th Battalion, P.A.P., was being shown as borne on the I.P.S. Cadre till 31st October, 1966. The matter did not rest here. Even after the taking over of the 25th Battalion, the posting and transfer orders were being issued by the Inspector General of Police and the Governor of Punjab as is evident from annexures 'R' and 'S' attached to the writ petition. Further B. R. Kapur relinquished charge of the office of Commandant, 25th Battalion, on 24th October, 1966, with reference to D.O. letter No. 26379-B, dated 18th October, 1966, of the Inspector General of Police, Punjab, and Joint Secretary to Government, Home (Police) Department, Chandigarh, as is evident from annexure 'T'. It has, therefore, to be assumed that both the Central Government and the Punjab Government considered B. R. Kapur to be occupying a post in the I.P.S. cadre of the State of Punjab during the period he served as Commandant of 25th Battalion, P.A.P. Moreover, no notification was issued by the Central Government taking out the post of Commandant, 25th Battalion, P.A.P. from the I.P.S. Cadre of the State of Punjab and after a very long correspondence and after obtaining full information on the point, the Central Government in its letter, dated 11th January, 1971, as earlier observed, stated that B. R. Kapur had been occupying a cadre post continuously only from 29th July, 1965 though his officiation in the post was not approved for the

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period from 29th July, 1965, to 31st October, 1966. Later, by a letter, dated 23rd March, 1971, B. R. Kapur's officiation from 29th July, 1965 to 1st July, 1966, was approved but not the service from 2nd July, 1966 to 31st October, 1966, on the plea that the post of Commandant, 25th Battalion, P.A.P., which he held during that period, was not a cadre post under the State of Punjab, otherwise there was no difference in his service as Commandant, 40th Battalion and Commandant, 25th Battalion. In these circumstances we have the least hesitation in holding that the learned counsel is not justified in contending that the taking over of the 25th Battalion by the Central Government was complete for all intents and purposes and that B. R. Kapur was not holding a senior post under the State of Punjab.

(28) An additional argument was sought to be raised by Shri Anand Swaroop, learned counsel for J. S. Anand, that the private respondents could not be made to suffer for the acts of the two Governments and that the admission of the Central Government or Punjab Government was not binding on the said respondents. According to the learned counsel, independently it had to be determined if the taking over of the 25th Battalion by the Central Government was complete or not and in case the taking over was complete, then it could not be held that B. R. Kapur was holding a senior post under the State of Punjab while he was holding the post of Commandant, 25th Battalion, P.A.P. We are unable to agree with this contention of the learned counsel as even on facts we are not satisfied that there was a complete taking over of the 25th Battalion by the Central Government so as to take away the post of Commandant, 25th Battalion, from the senior posts under the Punjab State. Our attention was drawn to the correspondence which showed that the financial control over the personnel of the 25th Battalion was that of the Central Government. That may be so. But in view of the correspondence and the circumstances narrated above, it cannot be held that the post of Commandant, 25th Battalion, was taken out from the I.P.S. cadre of the State of Punjab. The Central Government itself treated that post as cadre post and now to hold otherwise would be doing great injustice to B. R. Kapur who was always given to understand that he was holding a cadre post under the State of Punjab. Thus viewed from any angle, the period during which he held the post of the Commandant of the 25th Battalion too has to be taken into consideration while determining the seniority.

(29) It was further sought to be argued by Mr. Sibal that the main issue in the case that required determination was whether the State Government could over-utilise the Central Reserve and Deputation quota and thereby create an artificial vacancy and make the Select List officers to officiate against those vacancies and, consequently, give them advantage over the I.P.S. officers, but I do not propose to advert to this aspect of the matter at this stage as the same is being dealt with at length in the appeals filed against Harjit Singh.

(30) The civil miscellaneous applications Nos. 9205 and 9208 of 1974 have been filed in L.P.A. No. 634 of 1973. C.M. 9205 of 1974 has been filed under section 151, Civil Procedure Code, praying that the production of the certified copies of Annexures 'P-1' and 'P-2' may be dispensed with, while C.M. 9208 of 1974 has been filed under Order 41 rule 27, read with section 151, Civil Procedure Code, requesting that the copies of the aforesaid two documents may be received in evidence. These applications are similar to the ones which have been filed in L.P.A. 633 of 1973 preferred by Union of India against Harjit Singh. In that appeal an order has been passed on those miscellaneous applications and that order be read as an order having been passed in C.Ms. 9205 and 9208 of 1974 also.

(31) In this appeal, C.M. 234 of 1975 was filed towards the close of the arguments, under section 5 of the Indian Limitation Act read with section 151 of the Code of Civil Procedure, for the extension of the period of limitation. Notice of this application was given to the learned counsel for the respondents who did not contest this application. Moreover, this application deserves to be allowed for the reasons recorded in the judgment of Harjit Singh's case, on the applications made on similar grounds. Accordingly this application is allowed and the delay in filing the L.P.A. is condoned.

(32) This brings me to the case of Harjit Singh respondents whose Civil Writ No. 1959 of 1971 was allowed and against which decision Letters Patent Appeals Nos. 633, 671 and 694 of 1973 have been filed by Union of India, State of Punjab and J. S. Anand, respectively. The facts of the said case read as under :

(33) Harjit Singh was selected as direct recruit in the State Police Service in April, 1951, and after successful completion of his period of probation, he was confirmed in that post in April, 1953.

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His name was included in the Select List in 1960 along with the names of B. R. Kapur and some others. He was promoted to officiate as Superintendent of Police in a cadre post in December, 1960, and he assumed charge of his duties on 17th December, 1960. Since then he continued to hold the cadre post till he was appointed substantively to the I.P.S. with effect from 3rd September, 1969, along with B. R. Kapur and others. He was, however, assigned 1963 as the year of allotment on the ground that he had all along been junior to B. R. Kapur and could not be made senior to him by the assignment of an earlier year of allotment. Consequently, his service on the cadre post prior to 1st November, 1966, was not approved by letter, dated 11th January, 1971, so that he should not get seniority above B. R. Kapur. It is that decision of the Government of India, dated 11th January, 1971, which was challenged by Harjit Singh by filing Civil Writ No. 1959 of 1971. As earlier observed, the said writ petition was allowed by the learned Single Judge and a direction was issued that the Union of India and the Punjab Government shall determine Harjit Singh's year of allotment taking 17th December, 1960, as the date from which his continuous officiation in a senior post started and that he held that post till he was substantively appointed to the Service and in accordance with the year of allotment thus determined, he should be assigned proper seniority under rule 4 of the Seniority Rules.

(34) Before I deal with the merits of the controversy, Civil Miscellaneous Nos. 183 of 1975 in L.P.A. 633 of 1973 and Civil Miscellaneous No. 184 of 1975 in L.P.A. 671 of 1973, filed on behalf of Harjit Singh respondent under section 151, Civil Procedure Code, and Civil Miscellaneous Nos. 9204 and 9203 of 1974 (in L.P.A. 633 of 1973) filed on behalf of the Union of India may be disposed of. The first two miscellaneous applications were filed by Harjit Singh when the arguments on merits were about to conclude on the ground that the Letters Patent appeals against the judgment and order of the learned Single Judge were not filed in accordance with law and the same being incompetent should be dismissed as barred by limitation. This objection of the learned counsel was based on a Full Bench decision of this Court *Mahant Bikram Dass v. The Financial Commissioner, etc.* (7). What was sought to be argued by Mr. Gupta, learned counsel for the respondent, was that the Letters Patent appeals would be deemed to have been filed on the day when three complete

paper-books, as required by rule 2, Chapter 2-C, High Court Rules and Orders, Volume V, were filed. In the application it has also been alleged that certain documents which formed part of the writ petition, were not made part of the appeals and that fact too made the appeals incompetent. Notice of the two applications was given to the learned counsel for the Union of India who filed reply in the shape of Civil Miscellaneous No. 207 of 1975 under section 5 of the Limitation Act read with section 151, Civil Procedure Code, for condonation of delay in filing the Letters Patent Appeal, in which detailed facts controverting the pleas taken in the applications have been stated.

(35) After hearing the learned counsel for the parties at great length, we are of the view that, in the circumstances and on the facts of the case in hand, sufficient ground has been made out for condonation of delay. In *Amar Nath and others v. Mul Raj and others*, a Full Bench of this Court has held that the practice of this Court since the last many years has been to entertain the Letters Patent appeals without the complete sets of the paper-books and that in respect of any appeal filed before the publication of the earlier Full Bench judgment in *Mahant Bikram Dass's case* in contravention of rule 2 of Chapter 2-C of the High Court Rules and Orders, Volume V, the said previous practice by itself would be a sufficient ground to condone the delay in refileing the Letters Patent appeal with complete sets of paper books after the expiry of the period of limitation. In view of that decision of the Full Bench the main ground of attack for getting the appeals dismissed as barred by limitation falls through.

(36) Faced with this situation it was sought to be argued by Mr. Gupta that the paper-book in Letters Patent Appeal No. 671 of 1973 filed by the State of Punjab was still incomplete as some documents, details of which have been given in para 3 of Civil Miscellaneous No. 184 of 1975, have not been made part of the paper-book though some formed part of the paper-book of the writ petition. Again, in the circumstances of the case, we are unable to agree with this contention of the learned counsel. The point in all the appeals is common and we are not inclined to dismiss the appeal of the State of Punjab merely on the ground that some miscellaneous applications were not made part of the paper-book. It may be observed that

(8) LPA 397/71 decided on 28th February, 1975.

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stress was being laid on this objection in order to have an easy victory on the ground that in case the appeal filed by the State of Punjab is dismissed because of being incompetent, then the judgment of the learned Single Judge would become final with the result that all the other appeals against that judgment too may be required to be dismissed. For this contention benefit was sought to be taken of the decision of their Lordships of the Supreme Court in *Sheodan Singh v. Duryao Kanwar*, (9). In our view that decision is not at all applicable to the facts of the case in hand. Moreover, we have exercised our discretion in favour of the State of Punjab in holding that, in the peculiar circumstances of this case, the non-filing of the copies of the miscellaneous applications has not resulted in making the appeal incomplete. In this view of the matter, the applications filed by Harjit Singh respondent are dismissed while the applications filed by the appellants for condonation of delay are allowed.

(37) Before I deal with the merits of the controversy on the basis of the contentions advanced before us at the Bar by the learned counsel for the parties, I deem it proper to reproduce the findings of the learned Single Judge, which read as under :—

- (i) That the Government of India is under a wrong impression that the appointment of an officer from the Select List on a cadre post for a period exceeding six months requires the approval of the Government of India;
- (ii) That the Government of India and the Union Public Service Commission did not point out to the Punjab Government that it was not right in its view that an I.P.S. officer with less than four years' service was not a suitable officer to hold the cadre posts which were being held by the 17 officers from the Select List;
- (iii) That all that the Government of India stated was "till suitable cadre officers become available" which must have led the Punjab Government to believe that suitable cadre officers meant direct recruits (I.P.S. officers) of more than four years' standing ;
- (iv) That from the trend of the letters it was clear that the Government of India always left it to the Punjab Government to decide whether a suitable cadre officer had

become available for holding the post on which a Select List officer was officiating and it was never pointed out that direct recruits of less than four years' standing could also be considered as suitable officers to man those posts ;

- (v) That the Government of India had agreed to the continuous officiation of Sarvshri B. R. Kapur, Harjit Singh and Sukhpal Singh in the cadre posts without questioning that a cadre officer of less than four years' standing was available and was not being appointed ;
- (vi) That on the interpretation of the Rules, as they existed on September 3, 1969, Shri Harjit Singh could not be deprived of the benefit of rule 3(3) (b) of the Seniority Rules merely because his senior Shri B. R. Kapur began continuous officiation in a cadre post later than him although appointed earlier but abandoned it to take up another non-cadre post ;
- (vii) That it was not an absolute rule that later appointees to a Service must rank below those who had been appointed earlier ;
- (viii) That in case of officers on the Select List, the seniority, in fact, will count from the date such an officer started continuous officiation in a cadre post without break or reversion till he was appointed to the Service; and such a date may be different in cases of different officers but that did not mean that rule 3(3) (b) should not be applied to a case squarely falling within its ambit simply because a senior officer started continuous officiation in a cadre post later than his junior on the Select List ;
- (ix) That Harjit Singh's continuous officiation in the cadre post lasted for nearly nine years before he was substantively appointed to the I.P.S. and in his case it could not be said that all that period of service was temporary or by way of local arrangement ;
- (x) That no objection was ever raised to Harjit Singh's continuous officiation in a cadre post throughout the period of nearly nine years and his continuous appointment in that

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post was from time to time agreed to by the Central Government ;

- (xi) That on the ground that Punjab Government had over-utilised the deputation and the Central reserve quotas, Harjit Singh could not be refused the proper year of allotment ;
- (xii) That in the case of Harjit Singh, the date of commencement of continuous officiation in a senior post as defined in rule 2(g) of the Seniority Rules is to be taken as 'December 17, 1960, and not November 1, 1966, and, therefore, he is entitled to be assigned the year of allotment in accordance with that date under rule 3(3) (b) of the Seniority Rules and thereafter his seniority has to be determined under rule 4 of the Seniority Rules irrespective of the year of allotment assigned to Shri B. R. Kapur ;
- (xiii) That he cannot be refused the proper year of allotment on the ground that the Punjab Government had over-utilised deputation and the Central reserve quotas and had favoured some members of the State Police Service.

(38) While challenging the correctness of the aforesaid findings of the learned Single Judge, Mr. H. L. Sibal, Senior Advocate, whose contentions were adopted by Mr. Anand Swaroop, Senior Advocate, and Mr. M. S. Sethi, learned counsel appearing for the State of Punjab, submitted that the main issue in the case that required determination was whether the State Government could over-utilise the deputation and Central reserve quota and thereby create an artificial vacancy and make the select list officers to officiate against those vacancies and, consequently, give them advantage over the I.P.S. officers. What was sought to be argued by Mr. Sibal was that under the Cadre Strength Regulations, the cadre strength was fixed, that the cadre strength so fixed could be changed only by following the procedure laid down in rule 4 of the Cadre Rules, that the senior posts under the Central Government and the posts of deputation reserve could be manned only by the I.P.S. officers, that the strength of the cadre for these two categories was 14 and 7, that only 14 and 7 officers, respectively, could be sent to man such posts, that the State Government instead of adhering to the cadre strength over-utilised the same with the result that for manning senior posts

under the State Government suitable I.P.S. officers were not available and, therefore, the officers from the Select list were posted against the cadre posts and were allowed to officiate, that in this manner an artificial vacancy was created by over-utilising the deputation and Central reserve quota and that the select list officers were permitted to officiate against the vacancies thereby giving them advantage over the I.P.S. officers. It was further contended by Mr. Sibal that it was not the grouse that the select list officers were made to officiate against the cadre posts as I.P.S. officers having more than four years' experience were not available. The learned counsel conceded that in order to run the administration the executive decision taken in this respect, that I.P.S. officers of less than four years' standing should not be permitted to man the cadre posts, was justified, but that action in no way affected the real issue as the I.P.S. officers were adversely affected only when the State Government over-utilised the deputation and Central Reserve quotas. According to Mr. Sibal, the learned Single Judge decided this particular issue from a perspective which had no relevancy or bearing on the issue and that on the real question of over-utilisation, the matter was not fully gone into and was left undecided by observing, "that may or may not be so, but for that reason Shri Harjit Singh petitioner cannot be made to suffer. No objection was ever raised to his continuous officiation in a cadre throughout the period of nearly 9 years and his continuous appointment in that post from time to time agreed to by the Central Government. He cannot be refused the proper year of allotment on this ground". Mr. Sibal, during the course of arguments, even went to this length that in case there is over-utilisation, then the period of officiation would not be deemed to be proper and the officer would not legally be entitled to the benefit of that period for the purpose of determining his year of allotment. In nutshell the contention of Mr. Sibal was that in no case there could be over-utilisation without first making amendment in the strength of the cadre in accordance with law and whenever there was over-utilisation without first making amendment in the strength of the cadre, then the select list officers were not entitled to the benefit of the period of officiation for determining their year of allotment. It was also argued that the provisions of all the rules and regulations, referred to above, had to be read in a manner so as to achieve harmonious results and not independent of each other which could result in creating an anomaly and thereby frustrate the object intended to be achieved by the framers of the rules and regulations.

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(39) The matter was also agitated, though from another angle, by Mr. Kuldip Singh. What was sought to be argued by him was that under rule 9 of the Recruitment Rules, the Central Government may, on the recommendation of the State Government concerned and in consultation with the Commission, recruit to the Service persons by promotion from amongst the (substantive) members of a State Police Service in accordance with such regulations as the Central Government may, after consultation with the State Government and the Commission, from time to time make. Under regulations 8 and 9 of the Promotion Regulations, procedure is prescribed for making appointments to the cadre posts from the select list and to the Service from the select list. According to these two regulations seniority in the select list was to be followed. According to Mr. Kuldip Singh, the rules had to be interpreted in a harmonious manner, the seniority in the select list was to be reflected at all stages, that is, even while determining the year of allotment and if this principle is also kept in mind then Harjit Singh who was junior to B. R. Kapur in the select list, could not get an earlier year of allotment as he had officiated on the cadre posts for a longer period than B. R. Kapoor.

(40) On the other hand, it was contended by Mr. Gupta that rule 3(3) (b) of the Seniority Rules had to be read independently of the Cadre Rules or Promotion Regulations, that the Cadre Rules or Promotion Regulations could not be adverted to for interpreting the import of rule 3(3) (b) of the Seniority Rules that what had to be seen under rule 3(3) (b) was whether the appointment had been made by the competent authority and whether it had been made in accordance with the order in which the names appeared in the select list, that when these two conditions were satisfied, the procedure laid down in rule 3(3) (b) for determining the year of allotment had to be followed, that there was no warrant for the proposition that rule 3(3) (b) of the Seniority Rules was circumscribed by the condition that the person who was senior in the select list and had been appointed to the service, should also get always a year of allotment earlier to the persons who were junior to him in the select list and who had come in service after him, that the framers of the Rules or Regulations had never intended to take into consideration the provisions of the Cadre Rules or Promotion Regulations while determining the year of allotment, that all the Rules and Regulations had been to be read independently and the question of harmonising each other did

not arise if it was not so intended by the framers and that the question of over-utilisation had no relevancy for the purpose of determining the year of allotment and that is why while determining the year of allotment of Harjit Singh and Sukhpal Singh the only reason that weighed with Government of India was that they being junior to B. R. Kapur in the Select List, could not be assigned an year of allotment earlier to B. R. Kapur. It was also submitted by the learned counsel that even if the contention of Mr. Sibal, in abstract, was accepted to be correct, then also on the present file there was no material to show as to, at what point of time Harjit Singh and others held the senior posts as a result of the over-utilisation. It was also sought to be argued by Mr. J. L. Gupta that the Central Government was a party to the decision taken by the State Government for sending officers on deputation, that the officiation of the Select List officers was approved by the Central Government and that in such a situation, the Central Government was estopped from agitating that the State Government had no power to over-utilise the deputation and Central Reserve quota.

(41) On the respective contentions of the learned counsel for the parties, the first question that requires determination is whether the State Government has power to over-utilise the deputation and Central Reserve quota without there being a change in the cadre strength in accordance with the procedure laid down in rule 4 of the Cadre Rules. This question has been posed so as to decide in principle as to what is the jurisdiction of the State Government for sending cadre officers on deputation over and above the quota and thereby create vacancies to be filled by the Select List officers.

(42) In order to reach at a correct conclusion it is essential to clear certain field and for that purpose it would be necessary to make reference to the relevant provisions of the rules and regulations to which our attention was drawn during the course of arguments. The Central Government in exercise of the powers conferred by subsection (1) of section 3 of the All India Services Act, 1951 (No. LXI of 1951), after consultation with the Governments of the States concerned, framed the Indian Police Service (Cadre) Rules, 1954 (hereinafter referred to as the Cadre Rules). In rule 2, which gives definitions, 'cadre officer' has been defined to mean a member of the Indian Police Service and the 'Cadre post' means any of the posts specified under item I of each Cadre in the schedule to the Indian

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Police Service (Fixation of Cadre Strength) Regulations, 1955. Rule 4 provides the strength of cadres and is in the following terms :—

- (1) The strength and composition of each of the cadres constituted under rule 3 shall be as determined by regulations made by the Central Government in consultation with the State Governments in this behalf and until such regulations are made shall be as in force immediately before the commencement of these rules.
- (2) The Central Government shall, at intervals of every three years, re-examine the strength and composition of each such Cadre in consultation with the State Government or the State Governments concerned and may make such alterations therein as it deems fit:

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

Provided further that the State Government concerned may add for a period not exceeding one year and with the approval of the Central Government for a further period not exceeding two years to a State or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts.”

Rule 8 provides that save as otherwise provided in these rules, every cadre post shall be filled by a cadre officer. Rule 9 talks of temporary appointment of non-cadre officers to cadre posts and is to the following effect:—

- “(1) A cadre post in a State may be filled by a person who is not a cadre officer if the State Government is satisfied—
 - (a) that the vacancy is not likely to last for more than three months; or
 - (b) that there is no suitable cadre officer available for filling the vacancy.
- (2) Where in any State, a person other than a cadre officer is appointed to a cadre post for a period exceeding three months the State Government shall forthwith report the fact to the Central Government together with the reasons for making the appointment.
- (3) On receipt of a report under sub-rule (2) or otherwise, the Central Government may direct that the State Government shall terminate

the appointment of such person and appoint thereto a cadre officer and where any direction is so issued, the State Government shall accordingly give effect thereto.

- (4) Where a cadre post is likely to be filled by a person who is not a cadre officer for a period exceeding six months, the Central Government shall report the full facts to the Union Public Service Commission with the reasons for holding that no suitable officer is available for filling the post and may in the light of the advice given by the Union Public Service Commission give suitable directions to the State Government concerned."

(43) In pursuance of sub-rule (1) of rule 4 of the Cadre Rules, the Central Government in consultation with the Governments of the States concerned, made the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955 (hereinafter called the Cadre Strength Regulations). These Cadre Strength Regulations provided the posts borne on, and the strength and composition of the cadre of the Indian Police Service of the various States and to these Regulations a schedule has been appended showing the posts borne on and the strength and composition of the cadre of each State. For the State of Punjab the schedule, under item No. 1, shows the strength of the senior posts under the State Government as 34, at item No. 2 the strength of the senior posts under the Central Government as 14 and at item No. 5 Deputation Reserve at 20 per cent of the 34 above as 7. (Reference has been made to items Nos. 1, 2 and 5 as the same are the only relevant items for our purposes).

(44) In exercise of the powers conferred by sub-section (4) of section 3 of the All India Services Act, 1951 (LXI of 1951), the Central Government, after consultation with the Government of the States concerned, framed the Indian Police Service (Recruitment) Rules, 1954, hereinafter referred to as the Recruitment Rules. In rule 2, which gives definitions, 'direct recruit' has been defined to mean 'a person appointed to the Service after recruitment under clause (a) of sub-rule (1) of rule 4 and 'Service' has been defined to mean the Indian Police Service. Rule 4 prescribes the method of recruitment to the Service. Rule 9 lays down the procedure for recruitment by promotion and sub-rule (1) of this rule, which is relevant for our purposes, is as under :—

"The Central Government may, on the recommendation of the State Government concerned and in consultation with

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the Commission, recruit to the Service persons by promotion from amongst the substantive members of a State Police Service in accordance with such regulations as the Central Government may, after consultation with the State Government and the Commission, from time to time, make."

(4) In pursuance of sub-rule (1) of rule 9 of the Recruitment Rules, the Central Government, in consultation with the State Government and the Union Public Service Commission, made the Indian Police Service (Appointment by Promotion) Regulations, 1955, hereinafter referred to as the Promotion Regulations. Regulation 2 gives the definitions and 'Cadre officer' has been defined to mean a member of the Service, while 'Cadre post' has been defined to mean any of the posts specified as such in the regulations made under sub-rule (1) of rule 4 of the Cadre Rules. 'Cadre Rules' means the Indian Police Service (Cadre) Rules, 1954. Regulation 5 talks of the procedure as to how a list of the suitable officers is to be prepared. Sub-regulation (3) and the proviso to this sub-regulation read as under :—

"The names of the officers included in the list shall be arranged in order of seniority in the State Police Service :

Provided that any junior officer, who in the opinion of the Committee is of exceptional merit and suitability may be assigned a place in the list higher than that of officers senior to him."

Regulation 8 makes provision for the appointment of persons to cadre posts from the Select List and is in the following terms:—

"Appointments of members of the State Police Service from the Select List to posts borne on the State Cadre or the joint Cadre of a group of States, as the case may be, shall be made in accordance with the provisions of rule 9 of the Cadre Rules. In making such appointments, the State Government shall follow the order in which the names of such officers appear in the Select List:

Provided that where administrative exigencies so require, a member of the State Police Service whose name is not included in the Select List or, who is not next in order in that Select List, may, subject to the aforesaid provisions:

of the Cadre Rules, be appointed to cadre post if the State Government is satisfied—

- (i) that the vacancy is not likely to last for more than three months; or
- (ii) that there is no suitable cadre officer available for filling the vacancy.”

(46) In exercise of the powers conferred by sub-section (1) of section 3 of the All India Services Act, 1951. (LXI of 1951), the Central Government, after consultation with the Governments of the States concerned, has framed Indian Police Service (Regulation of Seniority) Rules, 1954, hereinafter referred to as the Seniority Rules, and ‘senior post’ has been defined in rule 2(g) and its definition has been reproduced in the earlier part of the judgment dealing with B. R. Kapur’s case.

(47) The procedure for assigning a year of allotment is provided in rule 3 and the relevant portion of the same with which we are concerned has already been reproduced in the earlier part of the judgment.

(48) Rule 4 provides the procedure for determining the seniority of officers *inter se*.

(49) From the perusal of these elaborate rules and regulations, it is abundantly clear that the same were framed to constitute an efficient and strong Police Service Cadre and have to be read together and not independent of each other. It has to be borne in mind that the members of the Indian Police Service are the steel framework of the Administration. The smooth and sound administration of the country depends on the sense of security and stability of officers. Their service must be completely free from the fear or threat of any arbitrary act of the authorities. These rules and regulations are intended both to secure the efficient service and to provide a safeguard for the protection of the members of the Indian Police Service and are so framed that to achieve that object, they have to be necessarily followed and acted upon as a whole.

(50) It would bear repetition to briefly give the substance of the various relevant provisions and their resultant effect on the decision of the real controversy. Under rule 4 of the Cadre Rules it is provided that there shall be constituted for a State or group of States an independent Indian Police Service cadre. Under rule 4, as it would be apparent from its bare reading, it has been provided that the strength and composition of each of the cadres constituted under

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rule 3 shall be as determined by regulations made by the Central Government in consultation with the State Governments in this behalf and until such regulations are made shall be as in force immediately before the commencement of the Cadre Rules. The Central Government has made Cadre strength Regulations and in the schedule attached to it, the strength and composition of the cadre has been specified. The senior posts as notified in the schedule of each State cadre have been divided into three main categories, viz., (a) senior posts under the State Government; (b) Central deputation quota and (c) Deputation reserve. The composition and strength of the cadre is required to be re-examined under sub-rule (2) of rule 4 at intervals of every three years. However, under the first proviso, the Central Government is invested with the powers to alter the strength and composition of any cadre at any other time while under the second proviso the State Government may add for a period not exceeding one year (and with the approval of the Central Government for a further period not exceeding two years) to a State or joint cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts. Thus, obviously it is under the Cadre Rule and the Cadre Strength Regulations that the strength and composition of the cadre has its origin and it is not disputed that if the Cadre Officers are available then a select list officer cannot be appointed to a cadre post and that a select list officer as such has no vested right to be appointed to a cadre post. In this situation, it is not permissible for the State Government to send I.P.S. officers to man posts available in the Central or the Deputation Reserve quota over and above the quota fixed for the States and thereby create vacancies in senior posts under itself and to fill those vacancies from out of the select list officers. The purpose of deputation reserve is to provide a cushion to the State Government for meeting its temporary and unforeseen demand of cadre officers for manning such cadre posts, which are required temporarily for short periods. The Cadre Strength has been fixed under the Cadre Strength Regulations and, in my opinion, it is not an idle formality which can be given a go-by at the sweet will of the State Government. The State Government is not competent to increase the number of posts against items Nos. 2 and 5 of the cadre schedule without the prior sanction of the Central Government under rule 4(2) or the proviso thereto. If such a power is deemed to exist, then the object of the Cadre Rules and Cadre Strength Regulations would be defeated. For the proper functioning of the service and in order to avoid any strained relations between the direct recruits

and the select list officers, the State Government should not over-utilise the Central and deputation reserve quota without first getting raised the strength and composition of the cadre in accordance with law.

(51) It was contended by Mr. Gupta that when the officers were sent to man the post of the Central deputation quota over and above the quota fixed, no objection was taken by the Central Government nor was the State Government told that it could not send more officers on deputation than the prescribed strength. Factually this contention of the learned counsel does not appear to be correct. However, in our view there can be no estoppel against the operation and effect of the mandatory provisions of the rules and regulations. If a particular act is done against the provisions of the statute, then the same would not confer any benefit on the officers who would not have been entitled to that benefit otherwise.

(52) Mr. Gupta further argued that while determining the year of allotment, the Central Government was to look only to rule 3(3)(b) of the Seniority Rules and if the conditions mentioned therein were satisfied then no other factor could be taken into consideration. We are afraid, we find ourselves unable to agree with the submission of Mr. Gupta. The benefit of continuous officiation in a 'senior post' can be claimed if the officiation is proper and legal, i.e. in accordance with law. How can an officer claim benefit of officiation for determination of his year of allotment if he under the law could not be made to officiate but for the unjustifiable act of the State Government which was against the Cadre Rules and Cadre Strength Regulations? For the proposition that for determining the year of allotment resort could only be had to rule 3(3)(b) of the Seniority Rules, Mr. Gupta submitted that rule 3(1) of the Seniority Rules, opens with the words "every officer shall be assigned year of allotment in accordance with the provisions hereinafter contained in this rule", that if any other consideration was to weigh while determining the year of allotment, then the result that would ensue, would be to read something else in rule 3, which has not been so mentioned therein, that if the Legislature had intended to take into consideration the provisions of the Promotion Regulations or Cadre Rules while determining the year of allotment, the language used in rule 3(1) would not have been in the wording in which it is couched, that the words 'hereinafter contained in this rule' are very significant and that sub-rule (1) clearly makes rule 3 the controlling rule for the purpose of assigning the year of allotment as has been held

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by their Lordships of the Supreme Court in *D. R. Nim, I.P.S. v. Union of India*, (10).

(53) So far as the proposition of law enunciated by their Lordships of the Supreme Court in *D. R. Nim's case* (supra) is concerned, there is no quarrel but that by itself does not help the respondents. As earlier observed, the Central Government has to see continuous officiation in a senior post and if legally there could be no continuous officiation in a senior post, but for the act of over-utilisation, which was unjustified, then certainly it would be futile to suggest that such an officiation could be taken into consideration while determining the year of allotment.

(54) We are certainly not oblivious of the ugly situation in which the respondents or the select list officers are likely to be placed for no fault of theirs, but on the true and correct interpretation of the rules and regulations, we find no escape from the conclusion at which we have arrived.

(55) The Government of India have on and off clarified certain fundamentals regarding the management of the All India Services Cadre and at this stage I would like to reproduce certain instructions, which were issued by the Government in that behalf. The said instructions appear at page 744 of All India Services Manual, (Second Edition), issued by the Government of India, Ministry of Home Affairs and read as under :—

“1.3 The senior posts as notified in the schedule of each State cadre were divided into three main categories, viz :—

- (a) Senior posts under the State Government ;
- (b) Central Deputation Quota ;
- (c) Deputation reserve.

The other categories and reserves, such as leave and training reserves and the junior posts are ancillary to the three main categories described above.

1.5. The Central Deputation Quota fixes the share of the Government of India out of the State cadre for the various requirements of the Centre. By and large this quota may be taken to be the limit of deputation to the Government of India.

1.6. The Deputation Reserve is intended to provide a cushion to the State Government for its temporary and unforeseen demands of cadre officers for manning such ex-cadre posts which are required temporarily for short periods and

which do not qualify for inclusion in the IAS cadre. The very name suggests that it is intended to cover short-term needs; long-term posts being brought into the cadre as soon as it is known that they would continue over a period of time.

- 1.7. Select Lists are intended to provide a ready list of screened State Service Officers who can be appointed to vacancies that may occur in the promotion quota during a particular year. It can also be utilised to fill short-term vacancies and to meet any minor emergency requirements on a temporary basis. It has never been intended to become a parallel cadre for manning long-term vacancies either in the cadre or in ex-cadre equivalent posts.
- 1.8. If the cadre strength is adequately fixed keeping in view the normal rate of growth of the cadre and the requirements of the Plan etc. and if recruitment to the cadre has been on an adequate scale, the need for filling cadre posts by Select List Officers should rarely arise. There should be no long-term ex-cadre posts. If there are any, they ought to go into the cadre. For short-term ex-cadre posts, the deputation reserve in the cadre should be adequate. If there is an imbalance between the number of the ex-cadre posts and the deputation reserve, then it can be redressed either by reducing the number of ex-cadre posts or increasing the deputation reserve.
- 1.10. The adequacy of recruitment rate for the All-India Services is vital to the proper functioning and management of Government. Two measures are needed to ensure this. The first is the prompt encadrement of new posts likely to last over an extended period and the second is to assess future needs in advance on the basis of the past experience and the future plans. A failure in either of the two requirements will affect the adequacy of the cadre strength thus leading to strains and stresses which some of the States are facing today.
- 1.11. Once the cadre strength has been determined at the triennial review which can be made more frequent if required the rate of annual recruitment must be adequate to fill up all the posts within two or three years. In some of the States the recruitment rate has been rather low with the result that gaps continue in the cadre for years and longer Select

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Lists are required to meet the cadre shortages. This has two fold disadvantages; it affects the seniority of the direct recruits and the State Service Officers develop hopes and expectations beyond those provided for in the scheme of the All-India Services."

(56) Even from these instructions, the intention of the Government of India is crystal clear and the view which we have taken also finds full support. For the proper functioning of the services, the strict compliance with all the rules and the regulations is needed. If one rule is read in isolation and independent of the other rules and regulations, then startling and confusing results are likely to follow. If we accept the contention of Mr. Gupta that for determining the year of allotment no other provision has to be looked into and only the provisions of rule 3(3)(b) of the Seniority Rules have to be adverted to, then the provisions of the other relevant rules and regulations would become nugatory. While framing the rules and regulations nothing has been left to speculation. If the State Governments find that more persons are required to be sent on deputation than the fixed quota, then there can always be a demand for the raising of the strength of the cadre. The difficulty arises when there is haphazard working without applying mind to the provisions of the rules and the regulations which have been framed for carrying out the proper functioning of the service, as has actually happened in the instant case.

(57) It may be observed that it was never contended that I.P.S. Officers who had less than four years service should be allowed to man senior posts under the State Government. In that respect, an administrative decision was taken by the State Government not to permit an I.P.S. Officer to man a senior post in the State if he possesses less than four years service and that decision apparently seems to be justified as the same has been arrived at keeping in view the exigency of service. Mr. Sibal did not challenge this decision of the State Government and if, because of this decision, any select list officer has been allowed to man a senior post, then he is entitled to the benefit of such an officiation if it fulfils the pre-requisites of rule 3(3)(b) provided it is not a case of over-utilisation.

(58) Having arrived at the aforesaid conclusion on the larger issue, the next thing is to find out its effect on the facts of the cases in hand. The principal contention of Mr. Sibal was that the respondents could not have been made to officiate on 'senior posts' but for the fact that State Government over-utilised the Central and

deputation reserve quota and that such officiation of the respondents should be completely ignored. In order to lend strength to this contention of his, Mr. Sibal made reference to Civil Miscellaneous No. 9204 of 1974, filed under Order 41, rule 27, read with section 151, Civil Procedure Code, for permission to bring additional documents, annexures P-1 and P-2, on the record. From annexure P-1, it was sought to be proved that the respondents were made to officiate on 'senior posts' by over-utilising the Central and deputation reserve quota. During the course of arguments copies of some letters were also produced. On the other hand Mr. Gupta strongly opposed the admission of the additional evidence and *inter alia* submitted that on the present file there was no material to arrive at a definite conclusion that the respondents officiated in the 'senior posts' as a result of over-utilisation.

(59) After giving my thoughtful consideration to the entire matter, I am of the opinion that it would not be feasible to decide this controversy on the present material and it would not be just and equitable to allow the additional evidence at this stage. However, as the Central Government has not considered the aspect of over-utilisation and its effect in determining the year of allotment which was necessary for the Government to have adverted to, I deem it proper that the whole matter may be sent back to the Central Government for redeciding the same in the light of the observations and conclusions arrived at and fully discussed in the earlier part of the judgment. In this situation it would be unnecessary to go into the other points raised by the learned counsel for the parties or discussed by the learned Single Judge as the same will have to be gone into again by the Central Government while deciding the issue of the assignment of the year of allotment.

(60) For the reasons recorded above, L.P.A. 609 of 1973, filed by B. R. Kapur, is dismissed, while L.P.As. Nos. 634, 659, 672, 633, 671 and 694 of 1973 are allowed and the Central Government is directed to redecide the question of the assignment of the year of allotment in the light of the observations made in this judgment after affording adequate opportunity of hearing to all the I.P.S. officers whose seniority is likely to be affected by the final order to be passed in pursuance of this judgment. For the same reasons, Civil Writ No. 3396 of 1973 filed by Sukhpal Singh also stands disposed of. In the circumstances of the case, I make no order as to costs.

R. S. Narula, C. J.—I agree.