

S.L. CHANDRAKISHORE SINGH ETC. ETC.

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v.

STATE OF MANIPUR AND ORS. ETC. ETC.

OCTOBER 1, 1999

[S. SAGHIR AHMAD AND R.P. SETHI, JJ.]

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Service Law :

Manipur Police Service Rules, 1965—Rules 24, 5(1)(b), 14, 15 and 16—Seniority—Determination of—Length of service—Reckoning of—Officiating promotion under R. 24—Subsequent promotion order under R. 5(1)(b) r/w R.16—Fixation of seniority—Period of service rendered on officiating appointment—Non-consideration of—Held, unless there is a contrary rule, service rendered on probation or officiating capacity cannot be ignored—No substantive difference between the list prepared under R. 24 and the one prepared under R. 14 and R. 16 since both have been prepared on the basis of merit—No justification for issuing promotion order under R. 5(1)(b) r/w R.16—Officiating appointment directed to be treated as regular and seniority to be refixed accordingly—Delhi and Andaman and Nicobar Island Police Service Rules, 1971—Constitution of India, 1950 Article 309.

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Delhi and Andaman and Nicobar Island Police Service Rules, 1971—Manipur Police Service Rules, 1965—Held, are in pari materia.

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The issue involved in the present appeals was whether the period of service rendered by a person on probation or officiating appointment could be counted towards his seniority. Appellant-police officers were promoted to the post of Manipur Police Service Grade II in officiating capacity under Rule 24 of Manipur Police Service Rules, 1965. Subsequently, another order was issued purporting to re-appoint the appellants on promotion in terms of Rule 5(1)(b) r/w rule 16 of the Rules. Services rendered by appellants in officiating capacity was not taken into consideration while preparing the seniority list. On challenge before High Court, Single Judge held that the Delhi and Andaman and Nicobar Island Police Service Rules, 1971 were in *pari materia* with Manipur Police Service Rules and relying upon the judgment of this Court in *Bhatia's* case directed the respondent State to treat the date of officiating appointments of appellants as regular appointments and to refix the seniority accord-

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A ingly. However, on appeal, Full Bench of High Court held that the Delhi and Andaman and Nicobar Island Police Service Rules were in *pari materia* with Manipur Police Service Rules; thus it set aside the order of Single Judge on the ground that the judgment of this Court in *Bhatia's* case was not applicable to the facts and circumstances of the case. Hence the present appeals.

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Disposing of the appeals, the Court

C HELD : 1.1. It is well settled that even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. [343-B-C-D]

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E 1.2. Thus, in the instant case, the period of service rendered by the appellants in officiating capacity should be treated as regular service and their seniority should be refixed accordingly. [344-D]

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G.P. Doval & Anr. v. Chief Secretary, Government of U.P. & Ors., [1984] 4 SCC 329, relied on.

F 1.3. No rule in terms of Article 309 is shown to have been made by the respondent Government which provides that appointment to a post would necessarily be on probation for a period of two years. It is true that Government by Executive orders made under constitutional provisions has the power to regulate the recruitment and the condition of service but no such Government Order can alter or amend the existing rules on the subject. In the 1965 Rules no period of probation was prescribed for the post of G Inspectors of Police. Thus, the appointment of the appellants was to be treated as substantive appointment in the absence of a rule to the contrary.

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[342-D; E; F]

H 2. The Delhi and Andaman and Nicobar Island Police Service Rules, 1971 are in *pari materia* with Manipur Police Service Rules, 1965 and the judgment of this Court in *Bhatia's* case is squarely applicable to the facts

and circumstances of the present case. In *Bhatia's* case, this Court after referring to sub-rules (3) and (4) of Rules 14, 15 and 24 of Delhi and Andaman and Nicobar Island Police Service Rules found that there was no difference in substance between the list prepared as contemplated by Rules 14 and 15 and the one visualised by Rule 24. The selectees under Rule 24 were held to be standing at par with the selectees under Rule 14 of the Rules. Similarly, in the instant case also once the appellant had been appointed to the service in terms of Rule 24 of the Rules, it was presumed that his name had been included in the list after compliance of the provisions of sub-rules (3) and (4) of Rules 14 and 15 of the Manipur Police Service Rules, there being no difference in substance between the list prepared as contemplated under Rules 14 and 16 on the one hand and as visualised under Rule 24 on the other. The proceedings of the DPC clearly and unambiguously indicate that all eligible police officers were considered for officiating appointment in terms of Rule 24 against available short term vacancies. It has further to be noticed that the selection was based upon merit and suitability and the DPC had kept in mind sub-rules (2) and (3) and Rules 14 and 15 of the Rules while preparing the list on merits. Thus, promotion made after compliance of Rules 14 and 15 is contemplated to be a selection in terms of Rule 5(1)(b) of the Rules. The respondent-State, therefore, was not justified in re-appointing, on promotion, the officers mentioned in the Government Order dated 16th August, 1989 to the Manipur Police Service (Junior Grade) with effect from that date.

[330-D; 343-G; 335-G-H; 336-A; 339-B; C; D]

Union of India & Anr. v. Harish Chander Bhatia & Ors., [1995] 2 SCC 48, relied on.

Baleshwar Dass & Ors. v. State of U.P. & Ors., [1980] 4 SCC 226 and *N. Suresh Nathan & Anr. v. Union of India & Ors.*, [1992] Suppl. 1 SCC 584, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5664 of 1999 Etc. Etc.

From the Judgment and Order dated 14.9.98 of the Gauhati High Court in W.A. No. 565 of 1997 (Gau) 162 of 1997 Imph.

H. Nabh Kr. Singh, A.S. Nambiar, Ashok Kumar Sharma, G.D. Gupta, Suresh C. Gupta, Ms. Rekha Pandey, P.K. Manohar, B.P. Sahu, K.

A Nobin Singh, K.K. Gupta for the appearing parties.

The Judgment of the Court was delivered by

SETHI, J. Leave granted.

B In all these appeals the point of law sought to be determined is regarding the principle governing the determination of seniority of the persons belonging to Manipur Police Service governed by Manipur Police Service Rules (hereinafter referred to as 'MPS Rules'). It has to be determined as to whether or not the police officers belonging to the service who had continuous, uninterrupted, meritorious officiating service are entitled to the benefit to be counted the same towards their seniority. The ambit and scope of the judgment of this Court in *Union of India & Anr. v. Harish Chander Bhatia & Ors.*, [1995] 2 SCC 48 needs also to be ascertained. The rival contentions are required to be adjudicated on comparative study of the Delhi and Andman and Nicobar Island Police Service Rules, 1971 (hereinafter referred to as 'DANI Rules') and the MPS Rules.

Brief fact of the case, as extracted from SLP (C) No. 18221/98 filed by Shri L. Chandrakishore Singh are that the appellant herein joined the Manipur Police as Sub-inspector on the recommendation of the Manipur Public Service Commission and was confirmed to the post on 16.6.1976. Vide order No. 13(1)/9/79- H(PT) dated 3rd June, 1980 (Annexure P-1) the Government of Manipur appointed 31 Sub-inspectors of Police, including the appellants, as Inspectors of Police on promotion in the scale of pay of Rs. 488-25-518-EB-25-749-EB-38-958 plus other allowances as admissible under the Rules with effect from 3rd June, 1980 *on regular basis*, until further orders (emphasis supplied). Vide order No. 3/12/83-MPS/DF(i) dated 12th October, 1983 (Annexure P-2) the Government of Manipur in exercise of the powers conferred under Rule 24 of the MPS Rules, 1965 appointed the appellant along with 27 others, in the order of their merit, to the Manipur Police Service in officiating capacity in the pay-scale of Rs. 900-40-1220-EB-50-1720 with immediate effect, until further orders. Order No. 13(1)/4/79-H(i) dated 16.9.1989 shows that on the recommendation of the DPC held on 14.1.1985, the Governor of Manipur was pleased to confirm the appellant and others as Inspectors of Police in the Manipur Police Department with effect from 14.1.1985 i.e., the date on which the DPC recommended for confirmation, until further orders. However, vide

order No. 3/12/83-MPS/DP (PT-I) dated 16.8.1989 the respondent-Government issued an order, purported to be under Rule 5(1)(b) read with Rule 16 of the Manipur Police Service Rules, 1965, appointing on promotion the officers mentioned therein including the appellant, in order of their seniority to Manipur Police (Junior Grade) in the pay-scale of Rs. 2000-60-2300-EB-75-3200 with immediate effect. The tentative seniority list of the MPS officers as on 22nd September, 1998 showed the appellant's name at Sr. No. 72 allegedly even below the direct recruits (MPS Grade-II) of the year 1988. He submitted his objections to the tentative seniority list on 26th December, 1989. However, the seniority list issued on 30th March, 1990 showed his name at Sl. No. 71, still below the direct recruits (MPS Grade-II) of 1988 batch. Feeling aggrieved of his placement in the seniority, the appellant filed writ petition being Civil Rule No. 166 of 1990 before the Gauhati High Court for a direction to regularise his officiating appointment to MPS Grade-II with effect from 12.10.1983 by revising/quashing/modifying the aforesaid appointment order dated 16.8.1989 insofar as it related to him. He reserved his right to challenge the seniority list of the MPS. The writ petition is stated to have been disposed of by the Division Bench of Gauhati High Court, Imphal Bench giving directions that the appellant shall be given the benefit of regularisation from the date of his officiating appointment provided the same was continuous. The appellant again filed a Civil Writ bearing No. 60/91 seeking *inter alia* a direction to consider him for promotion to the next higher post of Additional Superintendent of Police/Deputy Commandants of Manipur Rifles. During the pendency of the aforesaid writ petition, the respondent-Government filed an application for modification of its order dated 20th August, 1980 passed in C.R. No. 166/90 which was subsequently registered as Civil Review No. 13/96. The appellant filed another writ petition bearing Civil Rule No. 307/92 for quashing the order of the Manipur Government dated 16.9.1985 and seeking a direction for his confirmation as Inspector of Police. While disposing of the aforesaid writ petition on 11.12.1992 the Gauhati High Court directed the Government either to confirm the appellant as Inspector of Police with effect from 3.6.1980 or from the date when his juniors were confirmed. The High Court directed the deletion of the words "until further orders" mentioned in his regular appointment order dated 3rd June, 1980 (Annexure P-1). It is admitted that the aforesaid judgment was not appealed against. On 21st May, 1996 Civil Review No. 13/96 was disposed of by a Division Bench by setting aside the order dated

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- A 20th August, 1990 passed in Civil Rule No. 166 of 1990. The said Civil Rule No. 166/90 was restored to the file and the appellant was directed to implead all those officers above him in the seniority list of MPS Grade-II, who were likely to be affected adversely in case if reliefs as prayed for by him were granted. The said writ petition was disposed of by a Single Judge of the High Court on 18.9.1997 allowing the same with directions to the respondent Government to treat the date of officiating appointment of the appellant to the MPS Grade-II as the date of his regular appointment. Not satisfied with the aforesaid judgment the private respondents filed Writ Appeal No. 162/97 which was referred to a larger Bench by formulating three points for decision vide order dated 13.5.1998. The Full Bench vide the impugned order in these appeals set aside the order of the learned Single Judge and dismissed the writ petition being Civil Rule No. 166/90.

- The appellant N. Bijoy Singh in SLP (C) No. 17310/98 was appointed as an Inspector along with others including the appellant L. Chandrakishore Singh vide order dated 3rd June, 1980 (Annexure P-1). Under the MPS Rules, the meeting of the Selection Committee for relevant posts was held on 24th March, 1987. The Committee recommended the aforesaid appellant as an officiating appointee solely on the ground of shortage of substantive vacant posts at the relevant time but in anticipation of the future substantive vacancies which were likely to arise within the stipulated period as conceived under Rule 14 of the Rules. Vide order dated 16th July, 1987, issued under Rule 24 of the Rules, the said appellant along with others was appointed on officiating basis to the Manipur Police Service (Junior Grade) in the pay- scale of Rs.900-40-1220-EB-50-1720 with effect from the date on which they took over the charge of the post (Annexure P-3). However, vide order dated 16th August, 1989 purported to have been issued under Rule 5(1)(b) read with Rule 16 of the Rules, the appellant along with others was appointed, on promotion, in order of merit to the Manipur Police Service (Junior Grade) in the pay-scale of Rs. 2000-60-2300-EB-75-3200 with immediate effect. Vide order dated 28th October, 1991 issued in exercise of powers vested in the Government under Rule 23, the appellant along with others was confirmed to Manipur Police Service Grade- II with effect from 16.8.1991. Feeling aggrieved Shri N. Bijoy Singh filed writ petition bearing CR No. 415/94 in the Gauhati High Court praying for seniority from the date of his officiating appointment along with consequential benefits. His petition was dismissed on 5.7.1995

on the ground that he was not entitled to the seniority from the date of his officiating appointment. He filed a review petition seeking clarification which was also dismissed on 18.6.1997. Writ Appeal No. 101/97 preferred by him before the Division Bench of the High Court was referred to a larger Bench along with writ appeal filed against the judgment of the learned Single Judge in *L. Chandrakishore Singh's* case. The larger Bench dismissed the appeal vide the impugned order holding him not entitled to the benefit of seniority from the date of his officiating appointment or from the availability of first substantive vacant post after the aforesaid selection.

Smt. Vandana Karki and others who were respondents in the writ petition filed by Shri L. Chandrakishore Singh have filed SLP (C) No. 4870/99 alleging that the High Court was not right in interpreting eligibility criteria laid down under Rule 14(1) read with Rule 5(1)(b) of the Rules and effective dates of confirmation to the post of Inspector of Police. It is contended that the High Court erred in holding that the MPS Service Rules were *pari materia* with DANI Rules. It is submitted that the High Court was not right in holding that the words "substantively borne on the cadre of Inspector of Police" appearing in Rule 5(1)(b) of MPS Rules could not mean the inspector of police whose probation to the post had been confirmed. It could not be held that the confirmation to the post of Inspector of Police be taken as eligibility criteria for promotion to MPS Grade-II. It is contended that the High Court failed to appreciate that since the inception of service, the Government of Manipur had all along been interpreting the words "substantively borne on the cadre of Inspector of Police" appearing under Rule 5(1)(b) of the Rules as the Inspector of Police confirmed to the post and as such confirmed inspectors alone were considered to be eligible for promotion to MPS Grade-II. There was no justification to disturb the consistent practice of 30 years and to unsettle many settled matters in the service. The respondent No. 1, namely, Shri L. Chandrakishore Singh is contended to be not eligible for promotion to MPS Grade-II on regular basis till 14.1.1985, i.e., the date of his confirmation to the post of Inspector of Police and thus could not be promoted to MPS Grade-II when he was allowed to officiate as MPS Grade-II officer vide orders dated 12.10.1983 from the list prepared under Rule 24 of the Rules. The High Court is further stated to have erred in overruling the decision of a Division Bench dated 11.4.1997 passed in Writ Appeal Nos. 365/94 and 55/94 as the aforesaid judgments are stated to have been approved and confirmed by this Court by dismissing the SLP (C) Nos.

A 12904-12905 of 1997. Leave is prayed to appeal from the final judgment of the Full Bench and prayer is made for passing such other and further orders as are deemed proper.

B Shri H. Nabh Kumar Singh, Senior Advocate, appearing for the appellant has vehemently argued that after holding the MPS Rules as synonymous to the DANI Rules, the Full Bench of the High Court was not justified in not applying the law laid down by this Court in *Union of India & Anr. v. Harish Chander Bhatia & Ors.*, [1995] 2 SCC 48. It is contended that after the judgment dated 11.12.1992 of the High Court in Civil Rule No. 307/92, the respondent-State was estopped from arguing that the appointment of the appellant was temporary which disentitled him from getting the benefit of length of service on the basis of the aforesaid order. He has submitted that the learned Single Judge who decided the Civil Rule 166 of 1990 on 18.9.1997 had rightly held that since the DANI Rules were in *pari materia* of MPS Rules, the judgment of the Apex Court in *Bhatia's* case (supra) was squarely applicable in the facts and circumstances of the case. He has referred to various observations made in favour of the appellant and assailed the conclusions arrived at by the Full Bench on the ground of not applying the relevant rules and the pronouncements made by this Court.

E Shri A.S. Nambiar, Senior Advocate for the respondents has submitted that the appointment of the appellant as Inspector of Police initially being on probation for two years, the same could not be treated as substantive appointment for the purposes of determining the seniority. He has tried to distinguish the DANI and MPS Rules to show that the initial appointment of the appellant as Inspector and subsequent confirmation entitled him benefit of seniority only with effect from the 16th August, 1989. According to him the learned Single Judge had committed mistake in allowing the appeal filed by Shri L. Chandrakishore Singh.

G The Rules were made by the President of India in exercise of powers conferred under Article 309 of the Constitution of India on 29th March, 1965. Rule 3 provides that there shall be constituted a Central Police Service to be known as Manipur Police Service, the posts of which shall be central civil posts Class II gazetted. The authorised permanent strength of H the service and the post shall be such as specified in the Schedule attached

to the Rules. The Central Government or the Administrator, subject to such conditions and limitations, as may be prescribed by the Central Government in this behalf, may, by order, create duty for such period as may be specified therein. Rule 5 which deals with method of recruitment provides :

“Method of Recruitment : (1) Save as provided in rule 17, appointment to the service shall be made by the following method namely:

(a) 50 per cent of the substantive vacancies which occur from time to time in the authorised permanent strength of M.P.S. (Junior Grade) shall be filled in by direct recruitment in the manner specified in Part IV of these rules; and

(b) the remaining 50 percent of such substantive vacancies shall be filled up by selection in the manner specified in part V of these rules from amongst officers who are substantively borne on the cadre of Inspector of Police, Inspector of Police (Legal) and Subedar/Sub-Major of Manipur Rifles employed under the State of Manipur;

Provided that nothing in the case of a person who had been appointed to a post, which post is subsequently declared as duty post, he shall be deemed to have always been appointed to a duty post from the date on which he was so appointed.

Provided further that nothing in this rule shall preclude the Governor from holding a vacancy in abeyance, or filling it on an officiating basis in accordance with the provisions of Part VIII of these rules”

(2) If the exigencies of service so requires, the administrator may, in consultation with the commission, vary the percentage of vacancies to be filled by each method specified in sub-rules (1).”

Part V provides for recruitment by selection. Rule 13 mandates that :

“Recruitment under clause (b) of sub-rule (1) of Rule 5 shall be

A made on the recommendation of the Selection Committee (hereinafter referred to as the Committee) consisting of –

Chairman

(i) The Chairman or a Member of the Commission;

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Members

(ii) a nominee of the Ministry of Home Affairs not below the rank of Deputy Secretary;

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(iii) the Chief Secretary to the Government of Manipur; and

(iv) an officer of the rank of Inspector General of Police to be nominated by the Ministry of Home Affairs.”

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The Committee is required to consider, from time to time, the cases of officers eligible under clause (b) of sub-rule (1) of Rule 5 who have served in their respective cadres for not less than two years and prepare a list of officer recommended taking into the account the actual vacancies at the time of selection and those likely to occur during a year. The selection for inclusion in the list has to be based on merit and suitability in all respects

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for appointment to the service with due regard to seniority. The names of the persons included in the list are required to be appointed in order of merit. The list so prepared is to be forwarded by the Committee to the Governor which shall be approved by him after taking into account the changes, if any, proposed by the Public Service Commission. Such list shall

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ordinarily be in force until a fresh list is prepared for the purpose in accordance with these rules. According to Rule 16 appointments to the service are to be made in order of merit in the list referred to in Sub-rule (4) of Rule 15 with due regard to the proportion specified in Rule 5 and subject to sub-rule (2) of Rule 16. Selection for officiating appointments have to be made under Rule 24 which provides :

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“Selection for officiating appointments : If at any time the Administrator is of the opinion that the number of officers available in the list referred to in sub-rule (4) of Rule 15 for appointment to duty posts is not adequate having regard to the vacancies in such posts, he may direct the Committee to consider the cases of

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officers who had officiated for a period of not less than three years in any of the cadres mentioned in clause (b) of sub-rule (1) of rule 5 and prepare a separate list of officers selected. The selection for inclusion in the list shall be based on merit and suitability in all respects for officiating appointments to duty posts with due regard to seniority. The provisions of sub-rules (2) and (3) of Rule 14 and 15 shall apply *mutatis mutandis* in the preparation of the list under this rule.”

Rule 25 provides :

“Officiating appointment to specified post + any temporary post carrying the same designation as that post + any other post declared as duty post : (1) If a member of the service is not available for holding a duty post, the posts may be filled on an officiating basis :

- (a) By the appointment of an officer included in the list referred to in sub-rule (4) of Rule 15 or
- (b) If no such officer is available by the appointment of an officer included in the list prepared under Rule 24.

(2) Notwithstanding anything contained in these Rules, if the exigencies of service so require, a duty post for which a member of the service is not available, may, after consultation with the commission, be filled on an officiating basis by the appointment of an officer belonging to any State Police Service on deputation for such periods ordinarily not exceeding three years as the Administrator may consider necessary.

(3) Notwithstanding anything contained in these rules, where appointment to a duty post is to be made purely as a local arrangement for a *period of not exceeding six months*, such appointment may be made by the Administrator from persons who are included in the list prepared under sub-rule (2) of rule 15 or rule 24 or who are eligible for inclusion in such a list. (Emphasis supplied).

The Full Bench after extensively dealing with the DANI Rules in paras 10 to 13 of its judgment rightly concluded :

A “Judicial decision given to the areas advanced in one statute does not afford a guide, but construction of the same areas in another statute unless statutes are *pari-materia* legislation. In the instant case, it is an admitted fact that both the Rules were framed by the Central Government and even after adoption of the MPS Rules by the State of Manipur, no major change has been made in the provisions of Rules 5, 14, 15, 24 and 25 of the MPS Rules. The minor modifications which have been made in the MPS Rules does not materially affect the provisions of the Rules or it does not change the basic structure of the MPS Rules. Since both the rules were framed by the Central Government, there is no difficulty to hold that the intention of Central Government is same in both the Rules. Therefore, we have no hesitation to hold that the DANI Rules is in *pari-materia* with the MPS Rules. The first part of Question No. 3 is answered accordingly.”

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D While dealing with the case of the appellant, the Full Bench found that he had not been substantively promoted to the post of Inspector of Police on 3.6.1980 because of qualified words ‘until further orders’ appearing in the aforesaid order. It was observed :

E “Appointment with the condition of ‘until further orders’ is purely on a temporary capacity subject to further order made in this behalf by the competent authority. Regular appointment in a cadre or post should not allow with the qualifying words, ‘until further orders’. If the appointment is made until further orders, it cannot be said to be a regular appointment. Consequently, we are of the opinion that the petitioner’s appointment in the post of Inspector of Police cannot be termed as a regular appointment.”

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It appears that before arriving at such a conclusion the Bench did not notice the earlier decision of the High Court in Civil Rule No. 307 of 1992 wherein it was specifically held :

G “As the petitioner was appointed on officiating basis, it therefore follows that the appointment was against a permanent post and he cannot be kept on officiating basis for such a long period without confirmation. That apart, as the petitioner was appointed according to rules on officiating basis, the word ‘until further orders’ is absolutely superfluous and, therefore, these words are set aside.

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In the result, it is directed that the petitioner shall be confirmed in the post of Inspector of Police either from the date of initial appointment or from the date when officers junior to him were confirmed. I may refer to the decision of the Division Bench of this Court in *Durgadas Purkayastha v. Guahati High Court*, (1988) GLR 6. Relying on the decision of the Apex Court in *S.B. Patwardhan v. State of Maharashtra*, AIR (1977) SC 2051, it held that confirmation is one of inglorious and uncertainty of the Government service depending neither on the efficiency of the incumbent nor availability of substantive vacancies.”

It is conceded before us that the said judgment was not appealed against and was allowed to become final. It is, however, contended that as the respondents were not made party in the said writ petition, the verdict did not bind them. The argument has to be noticed for only being rejected inasmuch as the petitioner therein was aggrieved by the order which affected him alone and he had impleaded the State of Manipur as party respondents who, according to him, had added superfluous words ‘until further orders’ in his order of promotion.

The record of proceedings of the DPC held on 9.9.1983 for consideration of promotion to the MPS Grade-II in the Police Department, Manipur shows that there existed 29 substantive/regular vacancies in the MPS Grade-II out of which 14 belonging to direct recruits and 15 to the promotees. Out of 15 posts of promotion 5 posts were reserved for ST only and no reservation for SC. It was further reported by the Government that there were another 28 short term vacancies (both direct and promotion quota together) in MPS Grade-II. The DPC considered to fill up those short term vacancies on officiating basis under Rule 24 of the MPS Rules by giving promotion from amongst the eligible officers in the feeder list. For selection of 15 officers for appointment by promotion all eligible officers were considered. On the basis of assessment made and on perusal of their comparative merit and suitability, the Committee recommended officers including Shri L. Chandrakishore Singh in order of merit for appointment on officiating basis to the post of MPS Grade-II. The name of the appellant L. Chandrakishore Singh was at Sl. No. 2 in the merit list prepared by the DPC. The Proceedings of the DPC clearly and unambiguously indicate that all eligible police officers were considered for officiating appointment in terms of Rule 24 against available short term

A vacancies. It has further to be noticed that the selection was based upon merit and suitability and the DPC had kept in mind sub-rules (2) and (3) of Rules 14 and 15 of the Rules while preparing the list on merits. It has further to be noticed that the appointment to the duty post was not made as a local arrangement as contemplated by sub-rule (3) or Rule 25 of the Rules. We find that the learned Single Judge while disposing of Civil Rule 166/90 had rightly held :

C “Since the DANI rules are in *pari materia* of Manipur Service Rules, the judgment and order of the Apex Court in *Union of India and Another, Appellants v. Harish Chander Bhatia and Others* (supra) shall be squarely applicable in the facts of the case at hand. On this score alone, this petition has succeeded. In my view, therefore, it may not be necessary to advert to the other points urged by the parties.

D This apart, in *Direct Recruit Class-II Engineering Officers' Association, Appellants v. State of Maharashtra and Others, Respondents*, [1990] 2 SCC 715, the Constitution Bench of the Apex Court held in paragraph 47 'A' as under :

E “(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.”

F As already said, petitioner was appointed to the Manipur Police Service (Junior) with effect from 12.10.1983 in accordance with Rules.

G For the reasons aforesaid, this writ petition is allowed with a direction to the respondents to treat the date of officiating appointment of the petitioner as the date of his regular appointment and refix his seniority in terms of the direction, consequently, the seniority list published under Rule 28 of the rules by Notification dated 30.3.1990 (Annexure 7) and the impugned order dated 16.8.1989 (Annexure 3) are hereby set aside in so far as petitioner is concerned.

H This Court in *Bhatia's* case (supra) considered the scope of DANI Rules

which we have found are *pari materia* the MPS Rules and held :

“4. From the above, it is clear that for a person to be appointed under sub-rule (1) of Rule 25, he has to be an officer whose name is included in the list referred to in sub-rule (4) of Rule 15 or one prepared under Rule 24. Insofar as sub-rule(3) is concerned, this requirement is not to be satisfied, and further, appointment under that sub-rule cannot exceed six months and is made as a local arrangement. The respondents are those whose names found place in the list prepared under Rule 24 and their appointments not having been made purely as a local arrangement for a period not exceeding six months, we have no difficulty in upholding the view of the Central Administrative Tribunal, Principal Bench whose judgment has been impugned in this appeal, that respondents were appointed under sub-rule (1).

(5) There is no serious dispute to this position even by learned Additional Solicitor General, Shri Tulsi, who has appeared for the appellants. His first real contention is that despite the appointments being under sub-rule (1), the respondents cannot be taken to have been appointed to the Service and as such the direction of the Tribunal to treat them as permanent appointees instead of as officiating hands, is not in consonance with what has been provided in the Rules. Shri Tulsi submits that appointment to the Service can be made only as visualised by Rule 16 and this can be of those whose names find place in the list referred in sub-rule (4) of Rule 15. The respondents not being such incumbents, they cannot be treated as permanent appointee to the Service.

6. This submission would not be correct if heart of the matter is looked into. To put it differently, the submission is not correct in substance, but is so only in form. We have taken this view because an examination of Rule 24 shows that the list prepared as required by that rule, has also to satisfy the requirements of provisions of sub-rules (3) and (4) of Rules 14 and 15. This shows that the incumbents whose names find place in the list prepared as contemplated by Rule 24 are also those who have been duly selected and consultation with the Commission has also been made and the list prepared has been forwarded to the Central Government as

A well for its doing the needful. There is thus no difference in
 substance between the list prepared, as contemplated by Rule 14
 read with Rule 15, and the one visualised by Rule 24. So, there
 appears to be no justifiable reason to regard Rule 24 selectees as
 B in any way inferior to Rule 14 selectees. According to us, they
 stand almost at par. It is because of this that clauses (a) and (b)
 of sub-rule (1) of Rule 25 have virtually made no distinction
 between these two categories of incumbents.

7. Shri Tulsi, however, contends that Rule 25 visualises officiating
 C appointment and not permanent; and that appointment is required
 to be made when a member of the Service is not available. Though
 this is so, but the facts of the present case would show that though
 the appointments were stated to be officiating these continued for
 a very long period, which in the case of Respondent 1 was of about
 D 12 years as he came to be appointed under Rule 25 on 6.11.1972
 and was fixed permanently in the slot meant for promotees on
 28.7.1984. An officiating appointment for over a decade cannot be
 treated as fleeting appointment with no service benefits to be given.
 Any other view would very seriously prejudice such a service-
 holder who, even after having rendered service equal to those of
 E permanent appointees for a long period, and that too for proper
 functioning of the Service, would be denied the benefit of the same
 for no cogent reasons. Any other view is bound to have a
 demoralising effect in the Service as a whole. As the appointments
 under Rule 25 are also to duty posts, which may form part of the
 strength of Service because what has been stated in Rule 4(3), we
 F are of the view that justice of the case and the need to preserve
 the efficient functioning of the Service would require to treat the
 appointments of the respondents as permanent, despite their
 having been first appointment on officiating basis.”

G We are of the firm opinion that the Full Bench was not correct in holding
 that the judgment in *Bhatia's* case was inapplicable to the facts and
 circumstances of the matter pending before it. Vide the impugned judg-
 ment the High Court tried to make an artificial distinction of the case from
 the facts of the *Bhatia's* case with reference to Article 142 of the Constitu-
 H tion with observations :

"But, inspite of this small difference the Hon'ble Supreme Court has given the relief to the respondents of *Harish Chandra Bhatia's* case and it appears to us that for making a complete justice to the respondents who have rendered 12 years of officiating service, the Apex Court has passed the order for regularising the officiating service of the respondents by invoking the provisions of Article 142 of the Constitution."

A perusal of the judgment in *Bhatia's* case has not persuaded us to agree with the findings of the High Court. After referring to Sub-rules (3) and (4) of Rules 14, 15 and 24, the Court found that there was no difference in substance between the list prepared as contemplated by Rules 14 and 15 and the one visualised by Rule 24. The selectees under Rule 24 were held to be standing at par with the selectees under Rule 14 of the Rules. The reference to 12 years of service of the respondent therein was in the context to emphasize that the appointment was not under Rule 25 being local arrangement for specified period vide sub-rule (3) of Rule 25. As the appointment of the appellants could not be held to be under Rule 25, the verdict in *Bhatia's* case had to be accepted by treating the appointment of a person to the service under Rule 24 of the Rules.

The reliance of the learned counsel for the respondents upon the judgment in *Baleshwar Dass & Ors v. State of U.P. & Ors.*, [1980] 4 SCC 226 does not in any way advance the case of his clients inasmuch as in that case the Court considered the scope of United Provinces Service of Engineers Class II, Irrigation Branch Rules, 1936 and by specific reference to Rules 3(b) and 4 held that a cadre post can be permanent or temporary and if an Engineer is appointed substantively to a temporary or permanent post he becomes a member of the service. The touchstone then, is the substantive capacity of the appointment. The Court further held that the substantive capacity refers to the capacity in which a person holds the post and not necessarily to the nature or character of the post. Even appointment to a temporary post for long duration would be sufficient to hold that such person was holding the post in substantive capacity. A person shall be held to be holding a post in a substantive capacity when he is found to be not holding the post for a definite period. The Court observed :

"To approximate to the official diction used in this connection, we

- A may well say that a person is said to hold a post in a substantive capacity when he holds it for an indefinite period especially of long duration in contradistinction to a person who holds it for a definite or temporary period or holds it on probation/subject to confirmation.”
- B The Respondent-State has submitted that since the enforcement of the MPS Rules in 1965, the State Government has been construing the words “substantively borne on the cadre of the inspector of police” appearing in Rule 5(1)(b) as confirmed Inspector of Police and till an Inspector of Police of probationary period is not confirmed to the post he has not been
- C considered for promotion to the MPS Grade-II on regular basis. It is contended that under this consistent practice for about 34 years, the State Government has been considering only the cases of the confirmed Inspectors of Police for promotion to MPS Grade- II on regular basis as the policy of the State Government is to promote only the confirmed Inspectors of Police and not promote the probationary Inspectors of Police. It is
- D contended that in the light of the judgment of this Court in *N. Suresh Nathan & Anr. v. Union of India & Ors.*, [1992] Supp. 1, SCC 584, such a practice should be held to be in consonance with the long standing practice in the Department. We feel the reliance on this case is also misplaced. In that case the dispute was whether a diploma holder Junior Engineer who
- E obtained the degree while in service became eligible for appointment as Assistant Engineer by promotion on completion of three years of service including therein the period of service prior to obtaining the degree or the three years service as a degree holder for the purpose to be reckoned from the date of obtaining the degree. The diploma holders contended that they
- F were entitled to include the earlier period and were eligible for promotion in the category on obtaining a degree if the total period of service is three years inclusive of earlier period. The degree-holders contested this position and contended to the contrary. According to the degree-holders these were two distinct categories, the first being of degree-holders with three years service in the grade as degree-holders, the period of three years being
- G subsequent to the date of obtaining the degree as in the case of Junior Engineers who joined the service with a degree; and the other category was of diploma holders with six years experience. The diploma-holders went to the Central Administrative Tribunal and their contention was accepted. In appeal the order of the Tribunal was set aside mainly on the
- H ground that there existed sufficient material including the admission of the

diploma-holders that the practice followed in the Department for long time was that in case of diploma-holder Junior Engineers who had obtained the degree during service, the period of three years service in the grade for eligibility for promotion as degree-holders commenced from the date of obtaining the degree and the earlier period of service as diploma-holders was not counted for that purpose. The Union Public Service Commission was found to be having similar view. The Court held that if the past practice was based on one of the possible constructions which could be made under the rules, then upsetting the same at a later stage was not appropriate. After referring to Rules 7 and 11 of the Recruitment Rules, the Court found :

“The entire scheme, therefore, does indicate that the period of three years’ service in the grade required for degree-holders according to Rule 11 as the qualification for promotion in that category must mean three years’ service in the grade as a degree-holder and, therefore, that period of three years can commence only from the date of obtaining the degree and not earlier. The service in the grade as a diploma-holder prior to obtaining the degree cannot be counted as service in the grade with a degree for the purpose of three years’ service as a degree-holder. The only question before us is of the construction of the provision and not of the validity thereof and, therefore, we are only required to construe the meaning of the provision. In our opinion, the contention of the appellants degree-holders that the rules must be construed to mean that the three years’ service in the grade of a degree-holder for the purpose of Rule 11 is three years from the date of obtaining the degree is quite tenable and commends to us being in conformity with the past practice followed consistently.”

The position in the instant case is totally different. After the judgment in *Bhatia’s* case, we are of the opinion that no other construction of the Rules is possible. When the Rules are clear and do not create any doubt, the adoption of a contrary practice cannot be made a basis for depriving the employees in the service of their entitlement under the Rules which are clear, specific and unambiguous.

The Full bench of the High Court referred to Government Order

- A dated 28th July, 1997, claimed to have been issued under Article 309 of the Constitution which was held to prescribe that officers appointed on direct recruitment and also by promotion were to be on probation for a period of two years. The aforesaid Government order has not been shown to us for the purpose of ascertaining its scope and ambit and the authority besides the purpose for which it is claimed to have been issued.
- B Article 309 of the Constitution authorises the appropriate Legislature to regulate the recruitment and condition of service of persons appointed to public service and post in connection with the affairs of the Union or of a State. The President and the Governor of a State have been authorised to make or provide for making of rules regulating the recruitment and the condition
- C of service of persons appointed to such services and posts and until provision in that behalf is made by or under an Act of the appropriate legislature under the Article and any rule so made shall have effect subject to the provisions of the said Act. The proviso to Article 309 is a transitional provision empowering the Executive to make rules relating to the matters
- D specified therein until the appropriate Legislatures legislate on the subject. Any rule made under this Article has to remain in force for the purposes specified therein. No rule in terms of Article 309 is shown to have been made by the respondent Government to provide regarding the appointment to a post to be necessarily on probation for a period of two years. It is true that Government by Executive orders made under constitutional provisions
- E has the power to regulate the recruitment and the condition of service but no such Government Order can alter or amend the existing rules on the subject. It is conceded before us that in the 1965 Rules no period of probation was prescribed for the post of Inspectors of Police. The High Court was, therefore, not justified in relying upon the earlier office order
- F to hold that the appointment of the appellant as Inspector of Police was deemed to be on probation for a period of two years as the appellant had admittedly been appointed after following of the procedure prescribed in the Recruitment Rules. His appointment was to be treated as substantive appointment in the absence of a rule to the contrary. The order dated 3rd June, 1980 when read in the light of the judgment of the High Court dated
- G 11.12.1992 in C.R. No. 307 of 1992 cannot be construed to mean that the appellant was not substantively promoted as Inspector of Police with effect from 30th June, 1980.

- H Seniority itself based upon length of service is an acquired right of an employee which entitles him to be considered for further promotion. It

is generally regulated by Service Rules. Such rules normally provide for determined seniority with reference to the date of appointment to the class, category and grade to which the appointment is made. It is determined only on the basis of the length of service. Such length of service may be on the basis of the difference of continuous officiation or on the basis of the difference of substantive appointment in the cadre or grade or service which may be reckoned from the date of confirmation on the basis of regularisation.

It is now well settled that even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. In this regard we fortify our view by the judgment of this Court in *G.P. Doval & Anr. v. Chief Secretary, Government of U.P. & Ors.*, [1984] 4 SCC 329.

In the light of what we have noted hereinabove, it is apparent that the order impugned in the High Court dated 16th August, 1989 (Annexure P-5) was issued by the Government under a mistaken belief by completely ignoring the mandate of Rule 24 and the verdict of this Court in *Bhatia's* case. Once the appellant had been appointed to the service in terms of Rule 24 of the Rules, it was presumed that his name had been included in the list after compliance of the provisions of sub-rules (3) and (4) of Rules 14 and 15 of the MPS Rules, there being no difference in substance between the list prepared as contemplated under Rules 14 and 16 on the one hand and as visualised under Rule 24 on the other. Promotion made after compliance of Rules 14 and 15 is contemplated to be a selection in terms of Rule 5(1)(b) of the Rules. The Respondent-State, therefore, was not justified in re-appointing, on promotion, the officers mentioned in the Government Order dated 16th August, 1989 to the Manipur Police Service (Junior Grade) with effect from that date.

Seen from any angle, we are of the opinion that the learned Single

- A Judge of the High Court had rightly allowed the writ petition filed by the appellant vide Annexure P-10 dated 18.9.1997 and issued appropriate directions. The Full Bench of the High Court wrongly set aside the judgment of the learned Single Judge by wrongly interpreting the provisions of the law applicable in the case and ignoring the judgment in *Bhatia's* case which squarely covers the matters so far as the interpretation of the MPS
- B Rules were concerned. The judgment impugned in these appeals is based upon conflicting and contradictory conclusions arrived at by the Full Bench. The assumptions and presumptions drawn are neither based upon the relevant rules or supported by any judicial verdict of this Court.
- C Under the circumstances, the appeals arising out of SLP (C) Nos. 18221/98 and 17310/98 filed by L. Chandrakishore Singh and N. Bijoy Singh are allowed by setting aside the judgment of the Full Bench. The writ petitions filed by the appellants are allowed. The respondents are directed to treat the officiating appointments of the appellants as the date of their regular appointment and re-fix their seniority in terms of the observations
- D made in this judgment. Fresh seniority list shall be prepared in the light of our directions alongwith the consequential benefits under the law to the persons who are found to be senior. The appeal arising out of SLP (C) 4870/99 filed by Smt. Vandana Karki & Ors. shall stand dismissed. The appellants L. Chandrakishore Singh and N. Bijoy Singh are held entitled
- E to costs of Rs. 10,000 each to be paid by the Respondent State.

S.V.K.

C.A. No. 5664/1999 & 5663/1999 - Allowed.

C.A. No. 5665/1999 - Dismissed.