

## CIVIL MISCELLANEOUS

*Before S. B. Capoor and Shamsher Bahadur, JJ.*

GURDEV SINGH GILL AND OTHERS,—*Petitioners*  
*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

**Civil Writ No. 2301 of 1966**

January 9, 1968

*All-India Services Act (LXI of 1951)—S. 3—Indian Administrative Service (Recruitment) Rules (1954)—Rules 4, 5, 6, 6-A, 7 and 9—Indian Administrative Service (Appointment by promotion) Regulations (1955)—Regulations 3, 4, 5 and 7—Indian Administrative Service (Cadre) Rules (1954)—Rules 4 and 9—Indian Administrative Service (Pay) Rules (1954)—Rules 4 and 9—Schedule III—Indian Administrative Service (Regulation of Seniority) Rules (1954)—Rules 2 and 3—Constitution of India (1950)—Article 311—Inclusion of a person in the Select list—Whether entitles him to be appointed to Indian Administrative Service as of right—“Cadre officer”—Meaning of—Officers in select list—Whether entitled to be called Cadre officers—“Recruitment” and “appointment”—Distinction between—Rule 9 of Cadre Rules—Whether ultra vires Rule 8 of Recruitment Rules—Ex-cadre posts and claim to senior time scale pay—Members of select list—Whether have preferential right over direct recruits—Reduction in rank—When effected.*

*Held*, that the mere inclusion of a person in the select list does not entitle him as a matter of right to be appointed a member of the Indian Administrative Service. The plain construction of the Indian Administrative Service (Recruitment) Rules, 1954, and Indian Administrative Service (Pay) Rules, 1954, lead to the inevitable conclusion that the appointment in the Indian Administrative Service of a promoted officer is distinct and separate from his mere enlistment in the Select List or even his officiation either in a cadre or an ex-cadre post of the senior scale. A cadre officer is defined under the various Rules and Regulations to mean “a member of Indian Administrative Service” and until his appointment under rule 6 of the Recruitment Rules by the Central Government a person in the Select List cannot be considered to be a member of the Indian Administrative Service to entitle him to be called a “cadre officer”.

(Para 19)

*Held*, that it is only when a member of the State Civil Service is permanently appointed in the Indian Administrative Service that sub-rules (3) and (4) of rule 4 of the Indian Administrative (Recruitment) Rules, 1954 will come into operation.

(Para 21)

*Held*, that recruitment is just an initial process which may lead to an eventual appointment in the Service but the two concepts of recruitment and appointments are separate and apart and the clear line of distinction between them has been

made manifest by the various rules, one of which is rule 9 of the Cadre Rules which provides for temporary appointment of non-cadre officers to cadre posts.

(Para 23)

*Held*, that under regulation 8 of the Indian Administrative service (Appointment by Promotion) Regulations, 1955, the appointments to cadre posts from the Select List are to be made in accordance with rule 9 of the Cadre Rules. The whole process of ultimate selection is inter-linked by the Recruitment Rules, Promotion Regulation and the Cadre Rules and it cannot be said that rule 9 of the Cadre Rules is in any way derogatory of the Recruitment Rules or the Promotion Regulations, and hence rule 9 of cadre rules is not *ultra vires* rule 8 of the Recruitment Rules.

(Para 23)

*Held*, that the members of the State Civil Service have no preferential right over the direct recruits regarding appointments to the ex-cadre posts. The Government of India no doubt had deprecated the practice of creation of ex-cadre posts and have repeatedly advised the State Governments to resort to triennial review contemplated by the Cadre Rules to make provision for the extra posts carrying responsibilities of the cadre-posts on account of the expanding socio-economic requirements of the country. There is no rule which might justify the inference that the members on the Select List have a preferential right over the direct recruits to the cadre posts. Ex-cadre posts are essentially temporary in nature and the Civil Service Officers having been allowed to officiate in these posts cannot be said to have received any substantive right to hold posts in the Indian Administrative service. There is also nothing in the Service Rules to suggest that the officers on the Select List have a better claim to appointments in the senior time-scale of the Service than the direct recruits and persons who have been recruited by competitive examinations may technically claim appointments to senior posts after their probation period has ended, they being cadre officers. The State service officers become cadre officers only after their appointments in substantive capacity in the senior scale of the Indian Administrative Service, till such time they cannot claim parity with the direct recruits. No fetter is placed on the power of the State Government to appoint a direct recruit in the senior time-scale of pay of the Indian Administrative Service.

(Paras 6, 24 and 25)

*Held*, that the test for determining whether a person has been reduced in rank to attract the provisions of Article 311 is whether he had a legal right to a post from which he has been reduced and if any evil consequences flow from such an order. If no right to hold a post vested in any official, it cannot be said that his reversion orders had resulted in any evil consequences.

(Para 27)

*Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order of the respondent No. 1 sending the*

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*petitioners on leave and reverting them and to restore the petitioners to their appointments to senior duty posts with all benefits accruing to them from the date of their reversion to the date of restoration to the post.*

J. N. KAUSHAL, SENIOR ADVOCATE, WITH R. SACHAR, S. K. JAIN, J. L. GUPTA, M. R. AGNIHOTRI AND HARBHAGWAN SINGH, ADVOCATES, for the Petitioners.

NIREN DE for the U.O.I., WITH B. R. TULI, SENIOR ADVOCATE and S. S. MAHAJAN, GOPAL SINGH, ADVOCATE-GENERAL (PB.) AND M. S. PUNNU, ADVOCATE, for Punjab State; C. D. DEWAN, ADVOCATE-GENERAL (HARYANA) for Haryana State.

H. L. SIBAL SENIOR ADVOCATE WITH R. K. CHHIBAR AND S. C. SIBAL, ADVOCATES for private respondents.

### ORDER

SHAMSHER BAHADUR, J.—This is a petition under Articles 226 and 227 of the Constitution of India by Shri Gurdev Singh Gill and eleven other officers for quashing the orders passed by the State of Punjab (hereinafter referred to as the first respondent) reverting them from the posts held by them in an officiating capacity in the cadre and ex-cadre posts of the senior scale of the Indian Administrative Service to their substantive ranks in the State Civil Service from which they were promoted. The first respondent has been represented before us by the Advocates-General of Punjab and Haryana to which States the petitioners have been allocated after the reorganisation; petitioners Nos. 1, 2, 4, 5 and 11 now being in the State of Punjab and the remaining seven in the State of Haryana. The second respondent is the Union of India which has been represented before us by Mr. De, the Solicitor-General.

(2) As it is the case of the petitioners that the orders of reversion passed on various dates in the years 1965 and 1966 were unjust, actuated by *mala fides* and contrary to the spirit, if not the letter, of the statutory rules, it would be well to set out in briefest outline the extracts of the various rules and regulations pertaining to the subject-matter of controversy. It is on the construction of these rules that the decision of this petition must turn.

(3) The All-India Services Act, 1951, provides for the constitution of All-India Services including the Indian Administrative Service, and under sub-section (1) of section 3 of this Act—

“The Central Government may, after consultation with the Governments of the States concerned, make rules for the regulation of recruitment, and the conditions of service of persons appointed, to an All-India Service”.

(4) A bunch of rules and regulations have been framed in pursuance of sub-section (1) of section 3 of this Act and mention may first be made of the Indian Administrative Service (Recruitment) Rules, 1954 (hereinafter referred to, wherever necessary, as Recruitment Rules). 'Service' under the Rules, which is defined as the 'Indian Administrative Service' is constituted, under sub-rule (1) of rule 3 of:—

- “(a) members of the Indian Civil Services, not permanently allotted to the judiciary;
- (b) members of the Indian Civil Service permanently allotted to the judiciary who have been holding executive posts from the date of the commencement of the Constitution and who may be declared by the Central Government to be members of the Service in consultation with the State Government;
- (c) persons who, at the commencement of these rules, are holding substantively listed posts, other than posts in the judiciary;
- (d) persons recruited to the Service before the commencement of these rules; and
- (e) persons recruited to the Service in accordance with the provisions of these rules”.

(5) It is common ground that in this petition we are concerned only with category (e) which consists of persons recruited to the Service under the Recruitment Rules. Rule 4 deals with the various methods of recruitment to Service and sub-rule (1) is to this effect:

- (1) Recruitment to the Service, after the commencement of these rules, shall be by the following methods, namely:—
  - (a) by a competitive examination;
  - (aa) by selection of persons from among released Emergency Commissioned Officers and Short Service Commissioned Officer, commissioned in the Armed Forces of the Union after the 1st November, 1962;
  - (b) by promotion of substantive members of a State Civil Service;

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- (c) by selection, in special cases from among persons who hold in a substantive capacity gazetted posts in connection with the affairs of a State and who are not members of a State Civil Service.

Rule 5 deals with disqualifications for appointment to the Service, sub-rule (2) being to this effect:—

“No person who has more than one wife living shall be eligible for appointment to the Service.”

Sub-rule (1) of rule 6 says that:—

“All appointments to the Service after the commencement of these rules shall be made by the Central Government and no such appointment shall be made except after recruitment by one of the methods specified in rule 4.”

Sub-rule (2) says that:—

“The initial appointments of persons recruited to the Service under clause (a) of sub-rule (1) of rule 4 shall be in the junior time-scale of pay.”

Sub-rule (3) is to this effect:—

“The initial appointments of persons recruited to the Service under clause (b) or clause (c) of sub-rule (1) of rule 4 in accordance with the provisions of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, or the Indian Administrative Service (Appointment by Selection) Regulations, 1956, as the case may be, shall be in the senior time-scale of pay.”

Rule 6-A, which was introduced on 13th September, 1966, makes a provision for appointments of direct recruits to posts in the senior time-scale of pay. It would be well to reproduce the three sub-rules of this rule:—

- (1) Appointments of direct recruits to posts in the senior time-scale of pay shall be made by the State Government concerned.
- (2) A direct recruit in the junior time-scale of pay shall be appointed to a post in the senior time-scale of pay if, having regard to his length of service, experience, and performance in the junior time-scale of pay, the State

Government is satisfied that he is suitable for appointment to a post in the senior time-scale of pay.

- (3) Notwithstanding anything contained in sub-rule (2), the State Government may appoint a direct recruit at any time to a post in the senior time-scale of pay as a purely temporary or local arrangement."

(6) No fetter is thus placed on the power of the State Government to appoint a direct recruit in the senior time-scale of pay of the Indian Administrative Service. Rule 7 deals with recruitment by competitive examination, while rule 7-A deals with recruitment by selection of persons from among released Emergency Commissioned Officers and Short Service Commissioned Officers commissioned in the Armed Forces of the Union after the 1st November, 1962. Rule 8, which deals with recruitment by promotion or selection for appointment to State and Joint Cadre, reads thus:—

- "(1) The Central Government may, on the recommendations of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make, recruit to the Service persons by promotion from amongst the substantive members of a State Civil Service."

Sub-rule (2) provides similarly for recruitment of persons of gazetted rank who are not members of the State Civil Service. Rule 9 lays the limit of persons who are to be recruited under rule 8 and is to this effect:—

- "(1) The number of persons recruited under rule 8 in any State or group of States shall not, at any time, exceed 25 per cent of the number of those posts as are shown against items 1 and 2 of the cadre in relation to that State or to the group of States, in the Schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955:

Provided that the number of persons recruited under sub-rule (2) of rule 3 shall not at any time exceed 15 per cent of the total number of posts calculated in the manner laid down in sub-rule (3) for filling up by such promotion and selection."

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**sub-rule (3) deals with the determination of percentage specified in sub-rule (1) and need not be reproduced. Any question relating to the interpretation of these Rules under rule 10 "shall be referred to the Central Government whose decision thereon shall be final". It may be mentioned that this is the common feature in the interpretation of all the Rules which would come for discussion.**

(7) The next set of rules are the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter called the Promotion Regulations) framed in pursuance of sub-rule (1) of rule 8 of the Recruitment Rules. These regulations relate to the promotion of officers of the State Civil Service, to which the petitioners belong, and provide for the constitution of a committee which is to make selection (regulation 3), conditions of eligibility for promotion (regulation 4), preparation of a list of suitable officers (regulations 5) and the preparation of the Select List (regulation 7), for the purpose of appointments of these persons as 'cadre officers' who are defined to mean members of the Indian Administrative Service to 'cadre posts' of the Indian Administrative Service which broadly speaking are the senior time-scale posts of this Service specified under item 1 of the Schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955. The Committee is to meet at intervals ordinarily not exceeding one year and consider the cases of all substantive members of the State Civil Service who have completed not less than eight years of continuous service. The names of all the eligible persons are submitted to the Committee which prepares a list of such members of the State Civil Service as are found to be suitable for promotion to the Indian Administrative Service. Regulation 5 says that:—

"The number of members of the State Civil Service included in the list shall not be more than twice the number of substantive vacancies anticipated in the course of the period of twelve months commencing from the date of the preparation of the list in the posts available for them under rule 9 of the Recruitment Rules or 10 per cent, of the senior duty posts borne on the cadre of the State or group of States whichever is greater."

(8) The selection for inclusion in such a list, under sub-regulation (2) of regulation 5 "shall be based on merit and suitability in all respects with due regard to seniority. The names of such officers are to be arranged in the order of seniority in the State Civil Service,

and under sub-regulation (4) "the list so prepared shall be reviewed and revised every year" and under sub-regulation (5) "if in the process of selection, review or revision it is proposed to supersede any member of the State Civil Service, the Committee shall record its reasons for the proposed supersession". The list prepared by the Committee is submitted to the Union Public Service Commission (hereinafter referred to as the Commission) for consideration and under regulation 7 "the list as finally approved by the Commission shall form the Select List of the members of the State Civil Service" and under sub-regulation (4) "the Select List shall ordinarily be in force until its review and revision, effected under sub-regulation (4) of regulation 5, is approved under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2)". There is a proviso to regulation 7 (4) which says that:—

"Provided that in the event of a grave lapse in the conduct or performance of duties on the part of any member of the State Civil Service included in the Select List, a special review of the Select List may be made at any time at the instance of the State Government and the Commission may, if it so thinks fit, remove the name of such members of the State Civil Service from the Select List."

(9) Regulation 8 provides for appointment of members of the State Civil Service from the Select List to the Indian Administrative Service cadre in accordance with the provisions of rule 9 of the Cadre Rules, to which reference would shortly be made, and appointments have to be made in the order in which the names of such officers appear in the Select List. Under the proviso to this regulation the State Government is authorised "where administrative exigencies so require" to appoint a member of the State Civil Service whose name is not included in the Select List to a cadre post if the vacancy is not likely to last more than three months or when there is no suitable cadre officer available for filling the vacancy. Under sub-regulation (1) of regulation 9:—

"Appointments of members of the State Civil Service to the Service shall be made by the Central Government on the recommendation of the State Government in the order in which the names of members of the State Civil Service appear in the Select List for the time being in force."

Sub-regulation (2) says that:—

"It shall not ordinarily be necessary to consult the Commission before such appointments are made, unless during the



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period intervening between the inclusion of the name of a member of the State Civil Service in the Select List and the date of the proposed appointment there occurs any deterioration in the work of the member of the State Civil Service, which, in the opinion of the State Government, is such as to render him unsuitable for appointment to the Service." .

(10) The Indian Administrative Service (Cadre) Rules, 1954 (hereinafter referred to as the Cadre Rules), specify the 'cadre posts' with which we are concerned in this petition and item 1 in the Schedule describes the senior posts under the State which in the cases of Punjab and Haryana are 61 and 47, respectively.

Rule 3 provides for the constitution of Cadres which are grouped as 'State Cadre' and 'Joint Cadre'. The strength of Cadres, under rule 4, is to be determined by regulations made by the Central Government in consultation with the State Government and under sub-rule (2) the Central Government has to hold a triennial review to re-examine the strength and composition of the Cadre. Under the second proviso to sub-rule (2) of rule 4:—

"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." .

(11) This proviso empowers the State Government to make temporary additions to the cadre for temporary periods specified therein. These are the ex-cadre posts about which very elaborate arguments have been addressed by the counsel at the Bar. Rule 9 provides for temporary appointments of non-cadre officers to cadre posts and is to this 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) \* \* \* \* \*

(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 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 Commission give suitable direction to the State Government concerned.”.

(12) The Indian Administrative Service (Pay) Rules, 1954 (hereinafter called the Pay Rules) prescribe the time-scale of pay both in the junior and the senior scales. While the initial pay of a direct recruit shall be fixed at the minimum of the junior time-scale, which is Rs. 400 “the initial pay of a promoted officer who prior to the date of his appointment to the Indian Administrative Service had not held a cadre post in an officiating capacity shall be fixed in accordance with the principles laid down in Section I of Schedule II”—*vide* sub-rule (3) of rule 4. Sub-rule (5) of rule 4 says:—

“The initial pay of an officer of a State Civil Service who has been appointed to hold a cadre post in an officiating capacity in accordance with rule 9 of the Indian Administrative Service (Cadre) Rules, 1954, shall be fixed in the manner specified in Section III of Schedule II.”.

(13) Schedule III of the Pay Rules enumerates the various posts which carry the pay in the senior time-scale of the Indian Administrative Service and under sub-rule (1) of rule 9 of these Rules:—

“No member of the Service shall be appointed to a post other than a post specified in Schedule III, unless the State Government concerned in respect of posts under its control, or the Central Government in respect of posts under its control, as the case may be, make a declaration that the said post is equivalent in status and responsibility to a post in the said Schedule.”

and sub-rule (4) makes reference to the ex-cadre posts in these words:—

“Notwithstanding anything contained in this rule, the State Government concerned in respect of any posts under its

control, or the Central Government in respect of any posts under its control, may, for sufficient reasons to be recorded in writing, where equation is not possible, appoint any member of the Service to any such post without making a declaration that the said post is equivalent in status and responsibility to a post specified in Schedule III”.

(14) The last Rules, with which we are concerned, are the Indian Administrative Service (Regulation of Seniority) Rules, 1954 (hereinafter referred to as the Seniority Rules). Clause (g) of rule 2 defines “senior post” to mean “a post included and specified under item I of the cadre of each State in the Schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955”, and also such posts are included in the senior time-scale. Seniority is determined by assignment of year of allotment under rule 3. Under clause (b) of sub-rule (3):—

“Where the officer is appointed to the Service by promotion in accordance with sub-rule (1) of rule 8 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.”

(15) Under Explanation 1 to this sub-rule it is provided:—

“In respect of an officer appointed to the Service by promotion in accordance with sub-rule (1) of rule 8 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”.

(16) In the background of these Rules the facts on which there is no dispute may first be set out. All the petitioners except Harbel Singh and Kulwant Singh, were placed on the Select List which became effective from 21st December, 1963. Harbel Singh's name in the List occurred in November, 1962, and became effective from 11th December, 1962, as also that of Kulwant Singh. Some of them were

appointed to officiate in senior posts from the end of 1963 and the others in the early months of 1964. Some time in the middle of 1966, the petitioners were on leave which they say they were compelled to avail of by the pressure exercised on them by the State Government. All the petitioners were appointed, or according to their allegations reverted, to their substantive posts in the State Civil Service in the closing months of 1966.

(17) It has been contended by Mr. Jagan Nath Kaushal, the learned counsel for the petitioners, that the petitioners having been brought on the Select List must be deemed to have been recruited in the Indian Administrative Service of which they became members on their first appointments to the senior posts, having acquired the status of cadre officers. It is further submitted by him that these petitioners were appointed to what have been described as 'senior duty posts' (now called 'senior posts' after the notification of 28th of June, 1966), in a regular way and not as a temporary or stop-gap arrangement. The petitioners, according to Mr. Kaushal, have a right to hold the posts to which they have been appointed in the senior scale of the Service. It is next submitted by Mr. Kaushal that the direct recruits in the Service have been preferred for appointment to the senior cadre and ex-cadre posts in contravention of the Rules. An allegation of *mala fides* has been made on the ground that the reversions of the petitioners were occasioned by representation made by the I.C.S./I.A.S. Association which kept on clamouring for the appointments of direct recruits in the senior posts. Finally, it is contended that the petitioners have been reverted in violation of Articles 311, 14 and 16 of the Constitution.

(18) It is argued by Mr. Kaushal that the petitioners on being brought on the Select List had been recruited under clause (b) of sub-rule (1) of rule 4 of the Recruitment Rules and the appointment by the Central Government under rule 6 was a mere formality. It is his submission that whereas a direct recruit is taken in the Service after having passed the competitive examination under clause (a) of sub-rule (1) of rule 4, a member of the State Civil Service acquires a status as a member of the Indian Administrative Service by his promotion under clause (b). It is his submission that the word "recruitment" is synonymous with "appointment" and though the petitioners may not have been appointed by the Central Government under rule 6 they still continue to remain as members of the Indian Administrative Service. Rule 4, in the submission of the counsel, speak of method of recruitment to the Service and when the direct

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recruits by competition become members of the Service the same privilege cannot be denied to the petitioners who have been recruited by the method enumerated in clause (b) of sub-rule (1) of rule 4.

(19) It is to be observed that sub-rule (1) of rule 8 of the Recruitment Rules provides for promotion of the members of the State Civil Service to the Indian Administrative Service and under the Promotion Regulations a Committee under the Chairmanship of member of the Commission has been appointed to make a list of suitable officers who are eligible for promotion. What is of importance to note is that the List so prepared is subject to an annual review and even in the case of a grave lapse in the conduct or performance of duties a person may be dropped from it even earlier under the proviso to sub-regulation (4) of regulation 7. The Select List is further to consist of more than the required number of expected vacancies in the Indian Administrative Service. Indeed, it is the case of the State Government that the Select List of 1963 was unusually heavy and more than the required number had been included in it. It is further clear from regulations 5 and 7 that persons who are on the Select List today may be dropped in the List which is to be prepared in the following year. How it can then acceptably be urged that the inclusion of a person in the Select List entitles him as a matter of right to be appointed a member of the Indian Administrative Service? The argument advanced by Mr. Kaushal also breaks down when we consider that under sub-rule (3) of rule 4 of the Pay Rules it is recognised that a cadre officer, before his appointment to the Indian Administrative Service may not have held a cadre post in an officiating capacity. In other words, even when a promoted officer has started officiating in a cadre post he is not considered to have been appointed to the Indian Administrative Service under rule 6 of the Recruitment Rules. Therefore, the plain construction of the Rules leads to the inevitable conclusion that the appointment in the Indian Administrative Service of a promoted officer is distinct and separate from his mere enlistment in the Select List or even his officiation either in a cadre or an ex-cadre post of the senior-scale. The argument of Mr. Kaushal that the petitioners have become cadre officers merely by their being brought on the Select List or even by their appointments to officiating posts in the senior time-scale cannot be sustained. A cadre officer is defined under the various Rules and Regulations to mean "a member of the Indian Administrative Service" and it seems to us that until his appointment under rule 6 of the Recruitment Rules by the Central Government a person in the Select List,

like the petitioners, cannot be considered to be a member of the Indian Administrative Service to entitle him to be called a "cadre officer". The limit of recruitment of State Civil Service personnel to the Service is laid down by rule 9 of the Recruitment Rules which says that:—

- (1) The number of persons recruited under rule 3 in any State or group of States shall not, at any time, exceed 25 per cent of the number of those posts as are shown against items 1 and 2 of the cadre in relation to that State.

(20) It is not the case of the petitioners that this limit of 25 per cent has been departed from. The appointments to the Service from the Select List cannot exceed the limits of 25 per cent and if the contention of the learned counsel for the petitioners is to prevail, all the officers in the Select List, which is subject to annual variation and consists of twice the number of persons likely to be required for absorption in the Service would have to be given the senior posts and this would be far in excess of the sanctioned strength. As pointed out in the written statement of the Union of India, there were in all 81 cadre posts in the State of Punjab prior to re-organisation on 1st of November, 1966, and the number of senior posts shown under the Central Government against item 2 of the Cadre Schedule was 32. The number of ex-cadre posts under item 5 of the Cadre Schedule would be 20 per cent of the number of posts under items 1 and 2 and that is 13. In the new State of Punjab, the number of senior posts under the State Government is 61 and the number of such posts under the Central Government is 24, making a total of 85. Now, the posts which are to be filled by promotion and selection in accordance with rule 8 of the Recruitment Rules is 25 per cent of this total, namely, 21, and this is the number shown under item 3 of the Schedule to Cadre Rules with respect to Punjab. The balance of 64 posts are to be filled by those who are directly recruited to the Service. The deputation reserve @ 20 per cent of these posts which comes to 13 represents the ex-cadre posts. Likewise, in Haryana, the senior posts under item 1 of the Schedule are 47, while under item 2 relating to the senior posts under the Central Government the number is 19, making a total of 66. The posts to be filled by promotion under the Recruitment Rules are 16 in all @ 25 per cent of the total of 66. The deputation reserve is 20 per cent. Both in Haryana and Punjab the promoted officers exceed the authorised strength of 16 and 21, respectively. It is an essential wing of the case of the petitioners that they rank in parity

with direct recruits once they are taken on the Select List. Support is sought from the provisions of the Pay and Seniority Rules. So far as the Pay Rules are concerned, the direct recruits start on the senior-scale under rule 3 from Rs. 900 and, as is stated therein, they are to start on this pay from "6th year or under". The words "6th year or under" cannot be construed to restrict the right of the direct recruits to hold appointments in the senior time-scale after the completion of six years' service. According to the written statement filed on behalf of the Union of India, the words have been interpreted by the Central Government to mean that the direct recruits have a right to be appointed to senior posts even in the first year of their service provided they are confirmed after the requisite period of probation though normally promotion does not take place earlier than three or four years' service. All that the phrase "6th year or under" means is that a direct recruit appointed in the senior time-scale will continue to get Rs. 900 till the time he has completed six years' service. Rule 6A of the Recruitment Rules inserted on 13th September, 1966 makes clear that the right of direct recruits to appointment in senior time-scale is not restricted by length of service in the junior time-scale but is governed by experience, performance and suitability. On the other hand, sub-rule (5) of rule 4 relating to the case of the petitioners says that:—

"The initial pay of an officer of a State Civil Service who has been appointed to hold a cadre post in an officiating capacity in accordance with rule 9 of the Indian Administrative Service (Cadre) Rules, 1954, shall be fixed in the manner specified in Section III of Schedule II."

(21) It is only when a member of the State Civil Service is permanently appointed in the Indian Administrative Service that sub-rules (3) and (4) of rule 4 will come into operation. It cannot be said, therefore, that the Pay Rules are included in the Select List and the direct recruits so far as their appointments in the senior time-scale are concerned.

(22) Nor is there any substance in the suggestion made by the petitioners that an enquiry having been made from them on 13th of January, 1964, about the number of living wives they had, it must be inferred that they had been appointed to the Indian Administrative Service. It is no doubt true that under sub-rule (2) of rule 5 of the Recruitment Rules, a person having more than one wife shall not be eligible for appointment to the Service, but a mere

enquiry on this matter cannot lead to the inference that an appointment had actually been made. It has been asserted in the written statement that "in practice an enquiry is made in advance on the inclusion of the name of the officer in the Select List in order to avoid delay at the time of making the substantive appointments."

(23) The second submission of Mr. Kaushal that the appointments of the petitioners were not made as temporary or stop-gap arrangement, does not find any support in the Rules. Rule 8 of the Recruitment Rules, from its tenor and content, is only permissive as sub-rule (1) merely says that 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 the State Civil Service. Recruitment is just an initial process which may lead to an eventual appointment in the Service but the two concepts of recruitment and appointment are separate and apart and the clear line of distinction between them has been made manifest by the various rules, one of which is rule 9 of the Cadre Rules which provides for temporary appointment of non-cadre officers to cadre posts. It is the linchpin of the respondents' case that the petitioners in the first instance were appointed under this rule which is concerned essentially with temporary and stop-gap appointments. The contention of Mr. Kaushal that this rule is *ultra-vires* of rule 8 of the Recruitment Rules does not appear to be tenable. The Central Government is authorised to make recruitment of officers of the State Civil Service into the Service and regulations may be made in pursuance thereof. Under the Promotion Regulations, the process of preparation of a list of suitable officers culminates in a Select List which however, is subject to yearly fluctuations and variations as has been set out in detail. Under regulation 9, appointments in the Service are to be made by the Central Government from amongst those whose names appear in the Select List for the time being in force. It is worthy of note that under regulation 8 of the appointments to cadre posts from the Select List are to be made in accordance with rule 9 of the Cadre Rules. The whole process of ultimate selection is inter-linked by the Recruitment Rules, Promotion Regulations and the Cadre Rules and it cannot be said that rule 9 of the Cadre Rules is in any way derogatory of the Recruitment Rules or the Promotion Regulations. Sub-rules (3), (4) and (5) of rule 4 of the Pay Rules also indicate that the first appointments of the members on the Select List are made under rule 9 of the Cadre Rules. The inclusion of a person in the Select List in other words confers



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no right, much less a vested right, to be appointed to the Indian Administrative Service. The position adopted by the petitioners that they can be dropped out from the Select List only on account of some grave lapse is not sustainable. The proviso to sub-regulation (4) of regulation 7 is confined only to special cases and does not in any way affect the powers of annual review or revision by the Committee.

(24) Regarding the appointments to the ex-cadre posts, it is submitted by Mr. Kaushal that the petitioners have a preferential right over the direct recruits. This submission finds no support from the Rules themselves. The Government of India no doubt had deprecated the practice of creation of ex-cadre posts and have repeatedly advised the State Government to resort to triennial review contemplated by the Cadre Rules to make provision for the extra posts carrying responsibilities of the cadre-posts on account of the expanding socio-economic requirements of the country. Actually, the tendency now is to reduce the number of ex-cadre posts and according to the affidavit of the Chief Secretary to Haryana Government, there are no ex-cadre posts in that State at all. Mr. De has very strongly contended, and in our opinion correctly, that strictly speaking it is only the members of the Service who are entitled to posts which are not actually borne on the cadre strength of the senior time-scale. It is qua the petitioners that the posts are ex-cadre as they still are members of the State Civil Service. In any event, there is no rule which might justify the inference that the members on the Select List have a preferential right over the direct recruits to the cadre posts. The plea of the petitioners that as they had not been permitted to draw the special pay of Rs. 150 per mensem they cease to be members of the State Civil Service when officiating in the senior time-scale of the Indian Administrative Service is untenable. It is clear from Annexure G that it is only where "a P.C.S. Officer, not yet eligible for appointment to a post in the senior scale of the Indian Administrative Service is appointed to such a post for administrative convenience," that he should be paid a special pay of Rs. 150 per mensem. The petitioners had been allowed to officiate in the posts which are not borne on the Indian Administrative Service cadre though carrying the same responsibilities and certified as such under the Pay Rules. It would also be seen that the special pay of Rs. 150 is available only to those persons who are not yet eligible for appointment to a post in the senior scale of the Indian Administrative Service. The allowance of Rs. 150 is paid in addition to the substantive pay in the State Civil Service.

(25) What are described as ex-cadre posts are essentially temporary in nature and the petitioners having been allowed to officiate in these posts cannot be said to have received any substantive right to hold posts in the Indian Administrative Service. It is not denied that after the petitioners had been appointed to their substantive posts in the State Civil Service there was some fresh thinking with regard to the ex-cadre posts. According to the Union of India, the cadre officers were holding ex-cadre posts in excess of the number of posts shown against item 5 of the Cadre Rules (deputation reserve). Strictly speaking, the ex-cadre posts should be confined to the number of posts which can be held under the heading 'deputation reserve'. The whole matter has now been regularised by inclusion of a number of such posts as cadre posts in item 1 of the Schedule and the cadre strength of the Punjab after re-organisation has been revised and a number of ex-cadre posts have been included in the cadre and the deputation reserve has also consequently been increased. The State of Punjab, according to para 33 of the written statement, now carries no ex-cadre posts. This process of rationalisation in respect of what have been described by the petitioners as "ex-cadre posts" really removes the substratum of their case. It may be that the petitioners' expectations have not been fulfilled in the sense that they might have continued to officiate in the senior posts if the past practice had been followed, but it is impossible to say that any legitimate hopes had been deliberately thwarted by design and the suggestion that the State Government had been actuated by *mala fide* does not find support from the material which has been placed on record. Frustrated hopes do not necessarily indicate a conclusion that the rules leading to such a result are void or unconstitutional as has been contended for in respect of rule 9 of the Cadre Rules. It is not denied that the I.C.S./I.A.S. Association had been pressing for a larger share of direct recruits in the senior scale appointments but there is no proof that the respondents' decisions have been influenced by this consideration. There has been a progressive increase in the direct recruits in the last ten years and this appears to be the foundation of the petitioners' grievance as of necessity their own chances of promotion have gradually suffered a decline. There is, however, nothing in the Service Rules to suggest that the officers on the Select List have a better claim to appointments in the senior time-scale of the Service than the direct recruits and, to reiterate, persons who have been recruited by competitive examinations may technically claim appointments to senior posts soon after their probation period has ended, they being cadre officers. The petitioners become cadre officers

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only after their appointments in substantive capacity in the senior scale of the Indian Administrative Service. Till such time they cannot claim parity with the direct recruits.

(26) It has been denied that the petitioners were compelled to go on leave. On the other hand, it has been suggested that the grant of leave to the petitioners was in their own interests as they would have drawn more pay while on leave than they would have received while posted to their substantive posts in the State Civil Service.

(27) It is lastly contended that the orders of posting of the petitioners to their substantive posts in the State Civil Service violate the provisions of Article 311 as they have virtually been reverted without show-cause notices. As laid down by the Supreme Court in *Parshotam Lal Dhingra v. Union of India* (1), the test for determining whether a person has been reduced in rank to attract the provisions of Article 311 is whether he had a legal right to a post from which he has been reduced and if any evil consequences flow from such an order. Now, it is to be seen whether the petitioners had any legal right to the posts to which they were appointed? The petitioners had not been substantively appointed to the Indian Administrative Service and they had been holding officiating appointments in posts which had been declared equivalent to cadre posts. It may be that some direct recruits who were cadre officers replaced the petitioners and in some cases ex-cadre posts were abolished. Their was, however, no deprivation of any right which came to be vested in the petitioners; the appointments were not made in contravention of any rules nor was there any denial of an existing right in breach of statutory rules. If no right to hold a post vested in any of the petitioners, it cannot be said that their reversion orders had resulted in any evil consequences of the nature envisaged in *Dhingra's* case. The Seniority Rules, the Pay Rules, the Recruitment Rules and the Cadre Rules, all indicate that the petitioners have not in any way been punished. Their seniority, if they are appointed in the Indian Administrative Service, is to be governed under clause (b) of sub-rule (3) of rule 3 of the Seniority Rules. It may be that if they had continued to officiate in the higher appointments they might have attained senior positions at the time of confirmation, as compared to some of the direct recruits who are now to be ahead of them. However unfortunate this may be, there is nothing contrary to, or in

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(1) A.I.R. 1958 S.C. 36.

breach of, the statutory rules. As held in the *Divisional Personnel Officer, Southern Railway, Mysore v. S. Raghavendrachar* (2), "the Government has a right to consider the suitability of the person to hold the position to which he had been appointed to officiate and it is entitled for that purpose to make inquiries about his suitability. Losing some places in the seniority list is not tantamount to reduction in rank." Strictly speaking, the petitioners had attained no ranks in the Service and consequently the question of their seniority *qua* the direct recruits who are now officiating in senior posts cannot conceivably arise. It was stated at the Bar by Mr. Tuli that Gurdev Singh Gill, the first petitioner, was at No. 67 in the Select List of 1953 which consisted of 75 persons. Amarjit Singh, O. P. Bhardwaj, P. L. Kapur, R. C. Aggarwal, Thakar Das, Pritam Singh Chaudhry, Rajinder Singh, Balmukand, Karta Krishan, Harbel Singh and Kulwant Singh were at Nos. 73, 74, 75, 72, 71, 70, 69, 66, 64, 62 and 61, respectively. They were replaced either by persons who were senior to them on the Select List or by direct recruits. In some cases the posts which they were holding were actually abolished. It has further been stated at the Bar that none of the petitioners allotted to Haryana is now on the Select List. In Punjab the new Select List is still in the course of preparation but the counsel stated on instructions that such of the petitioners as are allotted to that State are not proposed to be included in the Select List. The reason for the exclusion of the petitioners from the current Select List is not a reflection on their competence but it has been stated both in the written statement and at the Bar that the List of 1963 was unusually heavy and out of all proportion to the requirements of the situation. This had led to the considerable curtailing of the Select List which now in the case of Haryana consists of 16 persons in all and in Punjab of 20. The current Select List merely provides a recruiting ground for the Indian Administrative Service in respect of members of the State Civil Service. There is nothing sacrosanct about this List which is transitory and keeps on fluctuating. It was held by a Division Bench of Dular and Kapur, JJ., in *Shambhu Dayal Gupta v. The Union of India* (3), that "if on revision or review as provided in Regulation 5(4) the number of officers on the Select List exceeds the required number, the names of officers below that number will have to be deleted from the list for that year and may be brought back as soon as the exigencies of the situation so permit. It is not correct to suggest that the

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(2) A.I.R. 1966 S.C. 1529.

(3) I.L.R. (1967) 1 Punj. and Hry. 490.

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name of an officer borne on the Select List can never be removed except in the event of a grave lapse on the part of the member in the conduct or performance of duties, as expressed in the proviso to regulation 7. The said proviso deals with only "a special review of the Select List" and when considered in the light of the requirements of regulation 5 must mean a special review other than the review and revision required to be made every year under sub-regulation (4) of regulation 5". None of the petitioners now being on the Select List or holding a post in the senior time-scale of the Indian Administrative Service, it is not strictly necessary to go into the merits of the controversy on account of the situation as it prevails today, but because of the importance of the issues raised in this petition and the pressure of the counsels arguments we have thought it necessary to examine their validity in some detail.

(28) In the result, this petition fails and is dismissed. In the circumstances, there would be no order as to costs.

S. B. CAPOOR, J.—I agree.

R.N.M.

APPELLATE CIVIL

*Before Tek Chand, J.*

CHANDER KANTA ALIAS CHANDER WATI,—*Appellant*

*versus*

DIAL CHAND,—*Respondent*

**F.A.O. 21-M of 1966**

March 1, 1968

*Hindu Marriage Act (XXV of 1955)—S. 9—Petition for restitution of conjugal rights by husband—Requirements for grant of such application—Indecent and false accusation hurled upon the wife—Whether affords reasonable excuse for her to decline to live with her husband—Evidence Act (I of 1872)—S. 8—Wife making complaints of maltreatment and cruelty against her husband in letters to her brother—Such letters—Whether admissible.*