CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No 2002/1997

New Delhi, this 5th day of May, 1999

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member(A)

Smt. Achala Moulik, IAS
w/o Mohandas Moses
Chairman
Bangalore Development Authority
Kumara Park West, Bangalore-20 .. Applicant

(By Shri Arun Jaitely, Sr. Counsel with Shri Praveen Khattar, Advocate)

versus

Union of India, through

1. Cabinet Secretary
   Rashtrapati Bhavan
   New Delhi

2. Secretary
   Department of Personnel & Training
   North Block, New Delhi .. Respondents

(Shri Vaidyanathan, ASG with Shri R.P.Aggarwal, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

Questions of law that fall for determination in this Original Application are as under:

(i) Whether recommendations made by Special Committee of Secretaries (SCS for short) headed by Cabinet Secretary as per procedure laid down and approved by one of the Members of the Appointments Committee of the Cabinet (ACC for short) can be ignored and overruled by another Member <u>without assigning any valid ground?;</u> (ii) whether the orders given by the senior most Member of the ACC disagreeing with the proposal agreed to by a junior member would have the effect of nullifying the

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recommendations and the issue could be held to have been decided in the background of provisions contained in "The Central Staffing Scheme" of January, 1996 issued by DoPT/GOI? and (iii) whether applicant's plea "to grant such other suitable reliefs as this Hon'ble Tribunal deems fit" as in para 8(e) is legally sustainable and could be allowed when the other important relief claimed stands dismissed by an earlier order of this Tribunal?

2. Before we examine the legal issues aforementioned, we consider it apposite to bring out relevant details under a few major heads since they have vital bearing in determining the fate of this case. These are:

(i) Procedures meant for selection of officers of the rank of Additional Secretary/Secretary to the Government of India or equivalent;

(ii) Some undisputed background facts based on records made available to us;

(iii) legal grounds advanced by the applicant in support of her claims; and

(iv) objections raised by respondents.

3. Selection for inclusion in the panel of officers adjudged suitable for appointment to the post of Additional Secretary or Special Secretary/ Secretary to the Government of India and posts equivalent thereto is approved by ACC, on the basis of proposals submitted by SCS. The brief details of the scheme that facilitate preparation of panel for

Secretary/Special Secretary/Secretary equivalent posts are available in para 14 of the Central Staffing Scheme. The same is reproduced below:

> "14. Selection for inclusion on the panel of officers adjudged suitable for appointment to the posts of Additional Secretary or Special Secretary/Secretary to the Government of India and posts equivalent thereto, will be approved by the ACC on the basis of proposals submitted by the Cabinet Secretary. In this task, the Cabinet Secretary may be assisted by a Special Committee of Secretaries for drawing up prposals for the consideration of ACC. As far as possible, panels of suitable officers will be drawn up on an annual basis considering all officers of a particular year of allotment from one service together as a group. Inclusion in such panels willbe through the process of strict selection and evaluation of such qualities as merit, competence, leadership and a flair for participating in the policy-making process. Posts at these levels at the Centre filled according tothe Central Staffing Scheme are not tobe considered as posts for the betterment of promotion prospects of any service. The needs of the Central Government would be the paramount consideration. While due regard would be given to seniority, filling up of any specific posts would be based on merit, competence and the specific suitability of the officers for a particular vacancy in the Central Government".

4. Facts admitted by both the parties are as under:

(a) On the basis of procedure aforementioned, applicant's name was considered by SCS in April-May/1995 and her name was recommended on 31.5.95 by the Cabinet Secretary on behalf of SCS for empanelment for holding non-Secretariat post equivalent to Secretary alongwith 5 others. This was approved by the

Home Minister on 27.6.95 but rejected by the Hon'ble Prime Minister by an order in July, 1995.

(b) Applicant had originally filed this application in Bangalore Bench of this Tribunal but the same was transferred, despite applicant's protest, by an order of the Chairman dated 12.8.97 in PT 182/92 for reasons recorded therein. Applicant apprehended delays in deciding the fate of the OA pursuant to proposal transferring the case to Principal Bench/ New Delhi.

(c) Applicant had also filed MA 149/97 on 2.6.97 seeking amendment in para 8(a) of her OA by adding the words "equivalent post" after the word "Secretary" at two places as well as in para 8(c) after the word "Secretary to GOI". By an order dated 11.6.97, the aforesaid MA containing the prayer for amendment of the original OA in the manner aforesaid was disallowed by the Bangalore Bench of the Tribunal.

(d) By an order dated 2.6.97 the name of Respondent No.3 (Shri B.P. Singh, formerly Home Secretary/GOI) was deleted from the array of parties.

(e) By filing MA 495/96 on 13.12.96, applicant sought permission to recall the order by which three more officials (namely S.S.Boparai, K.Baksi and N.P. Singh) were ordered to be deleted as party-respondents as per para 12 in the rejoinder in MA 495/96.

(f) Applicant's case was reviewed subsequently by ACC on three occasions namely on 9/18.7.96, 21.8.1997 and on 16.10.1998 but in none of them applicant's name was considered favourably for promotion to any of the posts she has been claiming for reasons recorded by the SCS.

(g) In view of the position at sub-para (f) aforementioned, the legal issues described in para 1 are to be adjudicated but only with reference to procedures applied in applicant's case for selection in 1995.

5. We shall now elaborate the grounds on which the applicant has staked her claim for empanelment of her name to the post of Secretary to GOI or equivalent.

Applicant, a 1964-Batch IAS officer of Karnataka Cadre, claims to have brought out dynamism, dedication amongst employees of different ranks in all the organisations served by her including the last one in Archeological Sruvey of India (ASI for short). Applicant also claims to

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have been credited with "Outstanding" Confidential Reports right from 1990-91 to 1994-95 -- the relevant years for the purpose of consideration for promotion. As per provisions in para 14 of the Central Staffing Scheme, the SCS unanimously recommmended inclusion of her name in the panel of 1995 for holding the post of Secretary/GOI or equivalent. On learning that despite categorical recommendations of SCS and unqualified approval of the Home Minister she had not been included in the panel, applicant made A-3 representation to the Cabinet Secretary on 25.1.96. A-3 was followed by A-5 and A-6 representations dated 29.2.96 and 20.5.96 respectively. A-6 representation was in the background of information from a reliable source that her name was ultimately deleted when the papers were processed in the office of the Prime Minister. Applicant would contend that there were no justifiable grounds to delete her name ignoring the unanimous recommendations of SCS as well as Hon'ble Home Minister based on proper assessment of the qualifications and merits of the applicant. Shri Arun Jetly, learned senior advocate, appearing on behalf of the applicant, argued strenuously that the decision making process at the level of Hon'ble Prime Minister of India has been vitiated and such a decision is not only unfair and arbitrary but also appears to have been based on extraneous considerations.

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6. By drawing support from the judgement of the Hon'ble Supreme Court in the case of **UOI Vs. Mohan Lal Capoor & Ors (1973) 2 SCC 836**, learned senior counsel argued it was incumbent on the Selection Committee (ACC) to have stated the reasons in a manner which would disclose as to why applicant's case was rejected. Reasons are the links between the materials on which certain conclusions are based and the actual conclusion. They bring out how the mind has been applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. Reasons are intended to reveal the nexus between the facts considered and conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable.

7. To add strength to his contentions, the learned counsel contended that it is now well settled position of law arising out of judicial pronouncements in the cases of **E.P.Rayappa V. State of Tamil Nadu (1974) 2 SCR 348 and Maneka Gandhi V. UOI (1978) 1 SCC 248** that Article 14 ensures protection against arbitrariness in State Action and equality of treatment. These articles stipulate that State action must not be arbitrary and must be based on some rational and relevant principle which is non-discriminatory; it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality.

8. Citing from judgements of the apex court in the Constitutional Bench case of **Delhi Transport Corporation Vs. DTC Mazdoor Congress & Ors. 1991 Supp (1) SCC 600**, learned counsel reiterated that the principles of natural justice is an integral part of the guarantee of equality assured by Article 14. Article 14 read with Article 16(1) accords right to an equality or an equal treatment consistent with the principles of natural justice. Any law made or action taken by the employer, corporate statutory or instrumentality under Article 12 must act fairly, justly and reasonably. Right to fair treatment is an essential inbuilt of natural justice. Whenever there is arbitrariness in State Action -- whether it be of the legislature or of the executive or of an authority under Article 12, Articles 14 and 21 spring into action and strike down such an action. Applicant's case is badly hit by these principles, the learned senior advocate contended.

9. Placing reliance on the judicial pronouncements in **Maharashtra State Board of Secondary & Higher Secondary Education V. K.S.Gandhi & Ors. (1991) 2 SCC 716**, it was pointed out that reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. They also exclude the chances to reach arbitrary, whimsical or capricious decision or conclusion. In an administrative decision, the order itself may not contain reasons. It may not be the requirement of

the rules, but at the least, the records should disclose reasons. If the appellate or revisional authority disagrees, the reasons must be contained in the order under challenge. The recording of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record. It also aids the appellate or revisional authority or the supervisory jurisdiction of the High Court under Article 226 or the appellate jurisdiction of the Supreme Court under Article 136 to see whether the authority concerned acted fairly and reasonably to render justice to the aggrieved person.

10. The case of **Asha Kaul (Mrs.) & Anr. Vs. State of J&K & Ors. (1993) 2 SCC 573** was quoted to support applicant's case that Government cannot "pick and choose" candidates out of a select list. Article 323 is relevant on the nature of the power of the Government in such matters. It is not open to the Government to approve a part of the list and disapprove the balance and that too without reasons. And that is exactly what has happened in the applicant's case herein. On the strength of judgement of the apex court in the case of Dr. **H.Mukherjee Vs. UOI & Ors. 1994 Supp 1 SCC 250,** it has been further argued that recording of reasons on the file is sufficient in such matters and it is not necessary that the reasons have to be communicated to the affected person. The main plank of applicant's attack is on the basis of decisions of the apex court in the case of **UOI &**

Ors. Vs. N.P.Dhamania & Ors. 1995 Supp 1 SCC wherein it has been held that it is open to ACC alone which is the appointing authority to differ from the recommendations of the DPC. The ACC has, however, to record reasons for so differing to ward off any attack of arbitrariness. These reasons need not be communicated to the officer concerned. In that case the apex court held that the appointing authority shall consult the UPSC once again by making reference back to them indicating the reasons for making a departure from the panel recommended by the Commission and also forward the material on which it has reached the conclusion for not appointing the respondents therein and obtain their views before taking final decision in the matter.

11. The learned counsel drew our attention to the orders of the Hon'ble Supreme Court in the case of **Shri Swaran Singh Vs. State of UP & Ors. (1998) 4 SCC 75** to say that arbitrary action is not beyond judiciary review. He also took us through the details of yet another case decided by the apex court in **Hindalco Industries Ltd. Vs. UOI & Ors. (1994) 2 SCC 594** in support of his views that Administrative Tribunals are not bound by the technicalities of the pleas raised by the respondents and can grant relief to which an employee is otherwise legally entitled after considering the facts and circumstances of the case even if such a relief has not been precisely claimed.

12. Shri Vaidyanathan, learned Additional Solicitor General, arguing on behalf of the respondents opposed the claims of the applicant on the following grounds:

The OA is not maintainable for nonjoinder of parties and that nothing survives for adjudication at the moment. This is because the applicant has not been found fit for appointment as Secretary to GOI. That apart, the Bangalore Bench of this Tribunal, while dealing with MA 149/97, has dismissed her prayer for reliefs in terms of consideration for Secretary equivalent post and since that was not allowed nothing survives now. The applicant has not alleged malafides against any individual respondent. Applicant's case has been reviewed as many as three times at the appropriate level but could not considered for empanelment as claimed.

13. Learned ASG argued that the law in respect of judicial review of selection for appointment to a particular post is now well settled by the decision of the Supreme Court in the case of **Dalpat Abasaheb Solunke V. Dr. B.S. Mahajan (1990) 1 SCC 305.** It has been held therein that "it is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the

duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc." The applicant has not made any such claim.

14. The ASG further contended that merely because the minutes of the ACC did not contain reasons for non-selection of the applicant does not mean that there has been no consideration of merits and suitability of the candidate and as a result the selection is vitiated. In holding this view, the learned ASG drew our attention to the decision of the apex court in the case of **UOI & Anr. Vs. Samar Singh & Ors. (1996) L&S SCC 555.** In this case, the apex court have had the opportunity of examining some identical issues as raised in this application. Respondent therein had brought out atleast two similar issues such as juniors being empanelled overlooking seniority and merit of seniors and non-inclusion of the respondent therein in the panel because of extraneous considerations. Setting aside the Tribunal's order, their Lordships in this case held as under:

> "We are unable to hold that since the performance of the respondent after his promotion as Additional Secretary had been found to be excellent and outsstanding, the non-inclusion of his name from the panel by the Special

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Committee must lead to the inference that there was no proper consideration of the merit and suitability of the respondent for empanelment by the Special Committee."

15. Respondents also came up with the decision of the apex court in the case of **Major Gen. I.P.S.Dewan V. UOI & Ors. (1995) 3 SCC 383.** Therein, it was held that the principle that administrative orders affecting the rights of the citizen should contain reasons therefor cannot be extended to matters of selection and unless rules so required, selection committee/selection board is not obliged to record reasons as to why they are not selecting a particular person and/or why they are selecting a particular person. Learned ASG submitted that one has right to be considered for promotion but appointment or promotion to a selection post cannot be claimed as a matter of right. The following cases were cited in support of ASG's stand: **Sant Ram Sharma V. State of Rajasthan & Anr; (1968) I, SLR 111, Guman Singh & Ors. V. State of Rajasthan & Ors., (1971) 2 SCC 452, Mir Ghulam Hussan & Ors. V. UOI & Ors. (1973) 4 SCC 135 Dvnl. Personnel Officer, Southern Rly. Mysore V. S.Raghavendrachar (1966) 3 SLR 106, N.P.Mathur & Ors. V. State of Bihar & Ors.AIR 1972 (FB) 93.** It was also submitted that the ratios in Dhamania's case, arising out of Article 320(3) of the Constitution, will not be applicable in this case.

16. We shall now examine the legal issues, as set out in para 1, in seriatim. In order to satisfy our conscience that ACC had given due consideration to the recommendations made by SCS, we called for the relevant file on which ACC took its decision and satisfied ourselves that it had declined to include the name of the applicant for empanelment for the post of Secretary or its equivalent for the year 1995.

17. Respondents have submitted that "the case of the applicant alongwith other IAS officers of 1964-Batch was considered by SCS consisting of Cabinet Secretary, Principal Secretary to PM, Home Secretary and Secretary (Personnel) for inclusion of applicant's name in the panel for appointment to the post of Secretary or equivalent at the centre in 1995. However, keeping in view her service records, experience, leadership ability, conceptualisation and potential to hold general management position, her name was not included in the panel". We find this submission of the answering respondents dated 26.9.96 is not borne on facts. Applicant's name was approved by SCS in its initial metings held on 27.4.95, 16.5.95 and 19.5.95 only "for holding the posts of non-Secretariat posts, equivalent to Secretary" alongwith 5 others. Out of the six 1964-batch IAS Officers approved for Secretary-equivalent posts, the applicant was at Sl.No.6. While summerising the recommendations of SCS, the Cabinet Secretary in para 7 of his note dated 31.5.95 had

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specifically mentioned that "Smt. Achala Moulik has been recommended for empanelment for the post of Secretary-equivalent". Further, the said recommendation of SCS was also duly endorsed on 27.6.95 by the Home Minister — one of the two members of the ACC in the present case.

Approval of Hon'ble PM was received by the Cabinet Secretary on 18.7.95 in the following manner:-:

"Prime Minister's office

"Prime Minister has approved the recommendations of the Special Committee of Secretaries, except in the case of Smt. Achala Moulik"

.....
.....

Sd/-
Joint Secretary to PM
17.7.95"

It is therefore obvious that the counter reply of the answering respondents (R-1 and R-2) dated 26.9.96 is partially incorrect and misleading. This is particularly so when the applicant's name was left for review vide orders dated 17.6.96.

18. Since the order rejecting applicant's candidature was given by no less than the Hon'ble Prime Minister, we asked the learned ASG to indicate whether action of the Prime Minister, while dealing with matters relating to appointments could be taken as administrative/executive one or otherwise. We also wanted the learned ASG to clarify if such orders, passed at the highest

executive level in the country, are subject to judicial review. It was conceded that approval of such appointments/proposals is totally an executive function of the Prime Minister carried out on the aid and advice of SCS headed by Cabinet Secretary and that such orders are subject to judicial review. We may further add that the learned ASG did not urge that the decision of the ACC is protected from judicial scrutiny on account of Article 74(2) of the Constitution.

19. The order dated 17.7.95 simply mentions that recommendation given by the SCS has been approved except in the case of Smt. Achala Moulik. On the face of it, it is evident that five out of six recommended by SCS for purpose of empanelement to Secretary-equivalent posts has been approved deleting the name of the applicant only. All the six recommended by SCS belonged to 1964-Batch and were equal in respect of their status and claims for Secretary-equivalent posts as approved by SCS as well as Hon'ble Minister. In the absence of any supporting details, we are of the considered view that orders bear the stamp of "**Pick & Choose**". We are not able to assess that the record of the officer or any other subsequent developments were such as to justify non-inclusion of her name in the panel at the stage of PMO in preference to those five selected.

20. Members of public service are entitled to just and reasonable treatment by means of protection conferred upon them by Articles 14 and 16 of the Constitution which are available to them throughout their service career. It was incumbent on the part of the Committee to have stated the reasons as to why applicant's case has been ingored favouring others placed equally. Recording of reasons was only a visible safeguard against injustice and arbitrariness in making selections partiocularly in the facts and circumstances of the present case. If that had been done, facts on service records of the officer considered by the ACC would have been corelated to the conclusion reached. Some materials/facts might have certainly reflected or formed the base behind the decision on 17.7.95. Recording of reasons could have disclosed how mind was applied. There is no inkling as to what prompted the Prime Minister in dropping applicant's name alone out of six.

21. There could be a situation where some developments might have taken place after the recommendations were sent by SCS to Home Minister. It was only because of such a situation that in the case of Dr.H Mukherjee (supra), the ACC declined to accept the recommendations of the UPSC since some adverse remarks in the confidential report of the candidate for the year 1987 came to ACC's knowledge subsequently. We do not find that there has been any development of that kind in the instant case.

22. The substance of the order and the effect thereof have to be looked into. We are not in doubt that the orders of PMO dated 17.7.95 has adversely affected the applicant herein. The issue before us is whether such an order, overlooking the recommendation by other members of the ACC, could be given without recording reasons. Learned ASG referred to the case of Dr.H.Mukherjkee (supra) to advance his contention that reasons need not be given in such cases. This is a 3-Judge Bench judgement of the apex court. Similarly, we get different, if not confusing, pictures as regards principles to be followed in such a situation when one goes through cases in Maharashtra State Board and IPS Dewan's (supra) decided by the Hon'ble Supreme Court. In such a situation, the position of law on the subject as enunciated in Constitutional Bench judgements are required to be relied upon, preferably those of later ones. Four such Constitutional Bench case-laws, touching upon the issue before us, are of vital importance. They are: **Shamsher Singh Vs. State of Punjab & Anr., AIR 1974 SC 2192, Maru Ram V. UOI (1981) 1 SCC 107, S.N. Mukherjee (supra) and Delhi Transport Corporation (supra).**

23. Thus, in the case of S.N. Mukherjee (supra), the Constitution Bench of the apex court surveyed the entire case laws in this regard. We need not burden this order with all those details. Suffice it to say that their Lordships in this case held that except in cases where the requirement has been

dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision. In para 36 of the judgement it was further held that recording of reasons excludes chances of arbitrariness and ensures degree of fairness in the process of decision making. During the course of oral arguments, we wanted to know from the learned ASG if recording of reasons in the present case was called for in the background of Constitutional Bench judgement of the apex court in the case of S.N.Mukherjee (supra). Learned ASG submitted that the ratio arrived at in this case will not be applicable since their Lordships were examining issues arising out of a court-martial case under the respondent-Ministry of Defence. We are unable to accept such a view for two reasons. Firstly, if the reasons were to be recorded even in a court-martial case, the need for recording such reasons will be all the more necessary in non-defence related areas. Secondly, need for recording of reasons is necessary in cases where an adverse order is passed at the original stage. If any authority is needed for this proposition, it is available in para 36 of Mukherjee's case (supra). We find that SCS in its minutes dated 16.10.98 had taken note of applicant's allegation that her case "was not approved by the PM for no explicit reasons".

24. In the case of **Padfield & Ors. V. Minister of Agriculture, Fisheries and Food & Ors. (1968) All England Law Reports**,694 the Minister of Agriculture declined to refer the complaints of milk producers to the Committee of Investigations. Having lost the case before the court of Appeal, the appellants (George Padfield, G.L. Brook and Henry Steven etc.) filed an appeal before the House of Lords. It was argued that the Minister is not bound to give any reasons for refusing to refer the complaint to the Committee and that if he gives no reasons, his decision cannot be questioned. It would also be very unfortunate if giving reasons were to put the Minister in a worst position. Lord Reid of the House of Lords did not agree with the proposition that a decision cannot be questioned if no reasons are given. It has been held therein that "If it is the Minister's duty not to act so as to frustrate the policy and objects of the Act of 1958 and if it were to appear from all the circumstances of the case that that has been the effect of the Minister's refusal, then it appears to us that the court must be entitled to act". Lord Upjohn agreeing with Lord Reid allowed the appeal and held that, "a decision of the Minister stands on quite a different basis; he is a public officer charged by Parliament with the discharge of a public discretion affecting Her Majesty's subjects; if he does not give any reason for his decision it may be, if circumstances warrant it, that a court may be at liberty to come to the

conclusion that he had no good reason for reaching that conclusion". The same situation prevails here.

25. We find almost reaffirmation of aforesaid English Legal Convention in our system as well. Thus, in the Constitutional Bench judgement of the apex court in the case of Delhi Transport Corporation (supra), it was held that "There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fantacies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however, high they may be. There is only a complacent presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it"

The net effect of the aforesaid judgements is that in a system governed by rule of law, executives, however, highly placed they are, cannot approximate themselves to oracles or arrogate to themselves ordinances. We find a legal finality in

such matters in "Judicial Review of Administrative Actions" by Prof. S A de Smith (2nd edition page 64-76). It is mentioned there that cases where valuable rights of individual are affected by a decision of administrative authorities, even in the course of carrying out a scheme embodying a policy (Central Staffing Scheme in our case) may have to be decided quasi-judicially. In other words, basic norms of judicial actions are applicable in such matters.

In the background of the detailed discussions hereinabove, our answer to the first question of law will be that except in cases where requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial function will be required to record reasons for its decision. Our views in this respect get direct support from the decision of the apex court in the case of **State Bank of Bikaner & Jaipur & Ors. Vs. P.G.Grover (1995) 6 SCC 279,** which has referred to S.N.Mukherjee's case as well.

26. We shall now examine the second issue as to what happens when there is difference of opinion amongst the members of ACC. In answering this question, we would refer to the judgement of the Hon'ble High Court of Delhi in the case of **W.R.Kidwai Vs. UOI & Ors. 1998 LAB I.C.2464.** In that case, the petitioner had filed a public interest litigation challenging the appointment of

Respondent No.4 to the post of Chairman-cum-Managing Director (CMD for short) in Minerals & Metals Trading Corporation (MMTC for short). The post fell vacant in May, 1997 and ACC papers were processed accordingly. PESB had put R-3 at Sl.No.1 and R-4 at Sl.No.2 respectively in the panel meant for consideration of ACC. Of the four Members of ACC, two of them namely Commerce Minister and Minister for Personnel did not approve the proposal for appointment of R-4. Commerce Minister was in favour of scrapping of the panel and was also of the view that R-4 was prima facie guilty of irregular handling of certain MMTC deals. Cabinet Secretary and the Home Minister were in favour of R-3, whereas the Prime Minister decided that R-3 was not eligible and R-4 was fit to be appointed to the post.

27. While deciding the case, the High Court agreed with the submissions of learned Attorney General that neither any set procedure has been provided nor in the very nature of things it is practicable or possible to provide any hard and fast procedure as to how meetings of ACC shall take place and the manner in which members of the ACC should consider matter falling within the purview of ACC. The fact that ACC need not have any such set procedure for considering the matters placed before it does not mean that there should be no consideration by ACC. Matters required to be decided by ACC have to be considered by members of the ACC alone. Even if there is no set or laid down procedure for ACC but

it cannot be held that let there be no meeting of mind of the members of the ACC. There has tobe meeting of mind to have meaningful consideration. They have to be at **ad idem.** When the Prime Minister decided neither to accept the viewpoint of Commerce Minister or the Minister for Personnel, or that of Home Minister, the matter does not go back or brought to the notice of either of the Ministers nor it was suggested that the file necessarily must go back. In a given case there may be a meaningful consideration or meeting of mind even by telephonic conversation. In that case nothing had happened of that kind as in the applicant's case herein. The High Court also held that Government of India (Transaction of Business) Rules, 1961 does not contemplate that there may not be even meeting of the mind of the Members. The High Court was of the view that there has to be meaningful consideration by members of the ACC when the Government of India (Transaction of Business) Rules, 1961 provide that ACC shall have the power to consider and to take a decision on the matter referred to it. The decision cannot be said to have been arrived at when each member gives separate opinion. The case of the applicant before us is identical with the problem faced by the Hon'ble Delhi High Court. After the Home Minister decided the issue in favour of the applicant herein, the former does not know as to what is the viewpoint or decision of the Prime Minister. It is thus evident that at no stage there was meeting of mind between the members of the ACC. When there is difference, disagreement

and divergent view amongst the Members of the ACC, there has to be some discussion or some consideration of each others viewpoint before any decision in the eyes of law can be arrived at. In other words, it cannot be said that the decision of the ACC has been taken when one of the Members differs from another. The Hon'ble High Court even held that "absence of meeting of mind of members of the ACC would show arbitrariness". The High Court has brought out the two rival contentions — PM having supremacy and/or being first amongst equals — in such matters in para 25 of the judgement. We are not, however, required to go into that aspect since that is not the issue before us. For the reasons recorded therein, the High Court held that R-4 should not be appointed as CMD/MMTC and that ACC was directed to reconsider the panel preparped by PESB. We are in respectful agreement with the decisions arrived at by the High Court. The same situation is before us and we are of the firm view that applicant's case, on all fours, is covered by the facts and circumstances of Kidwai's case decided by Delhi High Court on 18.3.98. Our answer to the second issue, therefore, is in the negative.

28. We shall now examine the third question as regards legality of applicant's plea for "suitable relief" and Tribunal's authority to grant the same. Learned ASG for reasons recorded in para 12 of this order argued that nothing survives in the present

OA and the Tribunal cannot provide reliefs not sought for or which have been otherwise held to be impermissible.

The position of law in this respect has been settled by the apex court in the case of **Hindalco Industries Ltd. V. UOI (1994) 2 SCC 594.** We reproduce the relevant portion of law enunciated by the apex court:

> "It is settled law that it is no longer necessary to specifically ask for general or other relief apart from the specific relief asked for. Such a relief may always be given to the same extent as if it has been asked for provided that it is not inconsistent with that specific claim raised in the pleadings. The court must have regard for all the relief and look at the substance of the matter and not its forms. It is equally settled law that grant of declaring relief is always one of discretion and the court is not bound to grant the relief merely because it is lawful to do so. Based on the facts and circumstances, the court may on sound and reasonable judicial principles grant such declaration as the facts and circumstances may so warrant. Exercise of discretion is not arbitrary. If the relief asked for is as of right, something is included in his cause of action and if he establishes his cause of action, the court perhaps has been left with no discretion to refuse the same. But when it is not as of right, then it is one of the exercise of discretion by the court. In that event the court may in given circumstances grant which includes 'may refuse' the relief. It is one of exercising judicious discretion by the court. The Tribunal, while keeping justice, equity and good conscience at the back of its mind, may when compelling equities of the case oblige them, shape the relief consistent with the facts and circumstances established in the given cause of action. Any uniform rigid rule, if be laid, it itself turns out to be arbitrary. If the Tribunal thinks just, relevant and germane, after taking all the facts and circumstances into

consideration, would mould the relief in exercising its discretionary power and equally would avoid injustice".

29. There lies a distinction between administrative authorities exercising discretionary jurisdiction and the court or the quasi-judicial Tribunal deciding lis. In the latter case discretion have been given to the court or Tribunal to mould auxiliary relief. Discretion, however, has to be exercised with circumspection and consistent with justice, equity and good conscience keeping always in view the given facts and circumstances of the case. As stated earlier, if the Tribunal feels that relief may be just and equitable, it is always open to it to grant the same which includes power to refuse such grants as well. We find that the applicant's MA 149/97 seeking amendments in the relief caluse was dismised on 11.6.97. In the penultimate paragraph, the Tribunal ordered that "though we are not going to the merits of the case at this stage but this argument would suggest that the applicant should disclose necessary avermments as a foundation or basis to show how she is aggrieved by the action of the respondents to enable her to claim reliefs sought for by this amendment". It was a case of dismissal based on technical grounds of there being no corresponding specific averment in the OA. Details at pages 8.9 of the OA filed on 15.7.96 gives, however, a different picture. Besides not being admittedly based on merits, we find that the Bangalore Bench of the Tribunal did not have the material facts placed before it. Firstly, based on records made

available to us we find that the Bangalore Bench was not informed that the respondents were under obligation to conduct a review of applicant's case in the manner as ordered by PM on 17.6.96. Alternatively, if the respondents had disclosed how they had really conducted the first review on 9/18.7.96 in applicant's case, the decision of the said Bench would have possibly taken a different turn instead of dismissing the MA only on technical grounds. Secondly, we are not sure if Bangalore Bench was informed that even if an officer is initially not considered fit for holding the post of Secretary/GOI, he/she does not get debarred for consideration for ever. There are cases, even including one belonging to 1964-Batch, where an officer empanelled on first consideration exclusively for "Secretary-equivalent" posts has been found fit subsequently to hold posts of Secretary/GOI and has been allowed accordingly. Learned ASG's presumption that once an officer is found unfit for Secretary/GOI, he/she is unfit for ever is factually incorrect. In the background of the merits, facts and circumstances of the case and on reckoning the omnibus clause at para 8(e), we are of the considered view that applicant's case deserves granting of necessary relief.

30. Before we part with the case, it is also necessary to bring out relevant facts/information covering the nature of reviews undertaken to re-consider applicant's eligibility for consideration of promotion. Following a

representation from the applicant, the then Cabinet Secretary submitted a note to PM on 5.6.96 explaining in details the merits of applicant's case. This was, however, not procesed through Home Minister. PMO's order therein was received as under:

> "PRIME MINISTER - **has desired that the case of Smt. Achala Moulik, IAS (KN:64), should be left for review in the normal course by the Special Committee of Secretaries.**
>
> **Sd/-**
> **Joint Secretary to PM**
> **17.6.1996"**

We have gone through the selection proceedings/records pertaining to all the three reviews undertaken. As mentioned before, the 1st and 2nd reviews took place on 9/18.7.96 and on 21.8.97 respectively. We find no mention of the name of the applicant either in the minutes of SCS or in the attached note of Cabinet Secretariat in these two separate review selections. No doubt officers of both 1963 and 1964-Batches have been considered but applicant's name did not figure separaptely in the first two meetings for the purpose of review as ordered by PM on 17.6.96. Considerations of officers of different batches proceeded under the normal parameters/norms being followed by respondents. In other words, the learned ASG was not correct in asserting that the applicant's was reviewed thrice. The real review took place only once. It was only in the 3rd review meeting on 16.10.98 that applicant's name

figured against agenda item No.4. The SCS also brought on record the PM's orders dated 17.6.96 and 15.7.98 (for holding special review for applicant) and the matter got examined on the lines as desired by PM. For reasons rightly recorded in this third review meeting of SCS only that the applicant's case could not be considered favourably.

31. We find that in the aforesaid last review meeting on 16.10.98 those present included, amongst others, the former Home Secretary (Shri B.P. Singh). There was nothing wrong in that. However, in the interest of fairplay and justice, Shri Singh should have himself disassociated in sharing his view with reference to agenda item No.4 — and that too in respect of Mrs. Achala Moulik, IAS (KN 64) only — and not for Shri U. Ghosh, IAS (J&K 67). This is because Shri Singh in his self defence had earlier on 16.8.96 submitted detailed counter as Respondent No.3 opposing applicant's original claims. Answring respondents, in fact, relied upon these documents heavily, though R-3 was taken away from the array of parties later on. All these, however, do not render any legal assistance to the applicant since she has not challenged any of the post-95 selection/review proceedings.

32. To sum up, applicant has suffered an injustice at the hands of the respondents in respect of consideration for promotion to a Secretary-equivalent post in 1995. For reasons recorded in paras 17 to 30, applicant's claim for the

aforementioned post succeeds on merits but only with reference to proceedings held in 1995. For reasons mentioned in para 31, applicant shall have no claim for consideration of such posts after 1995.

33. In the result, this OA is partly allowed with the following directions:

(i) The SCS shall re-submit the applicant's case to ACC for reconsideration of her promotion for Secretary-equivalent posts as of 1995 only, alongwith orders/ documents/details touching upon her case;

(ii) Since the scheme stipulates "left over of two years" as a pre-condition before an officer could be considered for such promotions by ACC and since the applicant is not at fault for the delays, she shall be provided with necessary relaxation in respect of the aforementioned pre-condition for the purpose of placing her case before ACC for its decision in respect of item (i) above;

(iii) In case ACC considers applicant's case favourably, she will be entitled to have her seniority in Secretary-equivalent post counted from the date an officer junior to her had joined such a post as well as all other consequential benefits.

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No arrears of salary and allowances shall, however, be paid for the period since she has not physically shouldered responsibilities of a higher post;

(iv) Our orders in sub-paras (i) and (ii) in this para shall be complied with within a period of three months from the date of receipt of a certified copy of this order;

(v) There shall be no order as to costs.

(S.P. Biswas)
Member(A)

5.5.99
(T.N. Bhat)
Member(J)

/gtv/