

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No.435/2016

Reserved on :19.03.2021
Pronounced on:26.03.2021

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Bharat Lal Meena son of Shri Meetha Lal Meena, aged around 52 years, resident of Village and Post Baglaie, Tehsil Wazirpur, District Sawai Madhopur (Rajasthan). Presently posted as Superintendent of Police, Law & Order, PHQ, Jaipur.

...Applicant.

(By Advocate: Shri Amit Mathur)

Versus

1. The Union of India through its Secretary, Ministry of Personnel, Public Grievances and Pension, Government of India, New Delhi.
2. The Union of India Home Secretary, Ministry of Home Affairs, North Block, New Delhi.
3. The State of Rajasthan through its Chief Secretary, State Secretariat, Jaipur.
4. The Additional Chief Secretary, Department of Home, Government of Rajasthan, State Secretariat, Jaipur.
5. The Secretary, Department of Personnel, Government of Rajasthan, State Secretariat, Jaipur.
6. The Chairman, UPSC, Dholpur House, New Delhi.
7. Rajesh Kumar Sharma, IPS, through Director General of Police, Police Commissionerate, Jaipur.
8. Shiv Lal Joshi, IPS, through Director General of Police, Police Commissionerate, Jaipur.

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...Respondents.

(By Advocate: Shri N.C.Goyal for respondent No.1
Shri Amit Kumar Gupta for respondent No.2
Shri V.D.Sharma for respondent Nos.3 to 5
Shri D.C.Sharma for respondent No.6
Shri Abhishek Sharma for respondent No.7
None for respondent No.8

ORDER

Per: Dinesh Sharma, Member (A):

The uncontroverted facts of this OA can be briefly summarised as follows:

The applicant was promoted to the Indian Police Service (IPS) from the Rajasthan Police Service (RPS) by a decision dated 28.06.2013, against the vacancies of the year 2009 (Select List 2009-A). This Tribunal, in another OA (OA No.767/2013 by Rohit Mahajan and Others) directed the respondents to review the appointments made from RPS to IPS in 2013, by holding a review screening committee on the basis of a revised seniority list of RPS officers. In a Writ Petition before the Hon'ble High Court of Jaipur, by one Shri V.K. Gaur, the Hon'ble High Court granted an interim order restraining consideration of the applicant by the screening committee on the basis of such revised seniority list (Annexure A/8). The applicant states that the State Government's special appeal before the D.B

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against this interim order was lying in defect while his own request for vacating interim order was not heard due to pendency of the special appeal of the State Government. In the meanwhile, the respondents have convened the meeting of the review screening committee. Following this meeting, orders dated 23.06.2016, notifying the appointments of members of RPS to the IPS against vacancies of the years 2005 to 2014 (Annexure A/2), and a new select list for the year 2015 (Annexure A/1) have been issued. The applicant has challenged these orders since his name does not find a place in any of these lists. He pleads that his name was not considered due to an incorrect interpretation of the interim order of the Hon'ble High Court. The interim order only restrained consideration of his name as per the revised seniority list. Not considering his name even against the unrevised list, promoting officers who are unquestionably junior to him, and reverting him back to the RPS which is not possible after his having worked in the IPS for years (during which his lien period of 3 years with the RPS was over), is wrong. He has sought the relief of permanent injunction against the respondents from deleting his name from the Civil List of the IPS and to allow him to continue as a member of IPS.

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2. The official respondents (The Govt of India, the State Government and the UPSC) have not materially differed with the facts narrated above. It is stated in their replies that there is no provision of conducting review screening committee for promotion of State Police Service officers to the IPS. However, the Government has done so in this case, and also in other cases, on direction from Courts/Tribunal. The screening committee was convened for considering the revised seniority list only [as per the Tribunal orders in Rohit Mahajan case, (supra)] and hence there was no question of considering promotion of the applicant from any other, unrevised, list as claimed by the applicant. The interim order of the Hon'ble High Court restrained the screening committee from considering the applicant's case, and hence they could not consider his name in the meeting held in the year 2016, following the Tribunal's direction.

3. Two other officers (Rajesh Kumar Sharma and Shiv Lal Joshi), selected as per the lists at Annexures A1 and A/2, requested for impleading them as parties, as any decision in this matter may adversely affect them. The request was allowed and they were joined as Respondent Nos. 7 and 8 respectively. They did not file any written statement. One of

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these, Shri Rajesh Kumar Sharma later died and the request for impleading his LRs was allowed.

4. We were further informed, through M.A.No.127/2021 by Respondent Nos. 3 to 5 (State Government) to take certain documents (MA/1 to MA/9) on record, which was allowed. Annexure MA/1 to MA/5 are decisions of the Hon'ble High Court in SB Civil Writ Petition No.4154/2014 and DB Special Appeal Writ No.1511/2019 of V.K.Gaur and Other decisions of the Hon'ble High Court in related appeals of the State Government and the applicant against the interim order. The sum effect of these decisions is that there is now no stay against the consideration of the applicant for promotion from RPS to IPS. Annexure MA/6 is a copy of the charge memo, dated 23.03.2018, issued against the applicant for alleged misconduct during 2014. Annexure MA/7 is a copy of stay by Hon'ble High Court of Rajasthan, Jaipur, against proceeding further with this charge sheet. Annexures MA/8 and MA/9 are copies of Indian Police Service (Appointment by Promotion) Regulations, 1955 and GOI decisions below Rule 5 of IPS (Appointment by Promotion) Regulations, respectively. The additional affidavit filed along with these documents states that the meeting of the Review Selection Committee which met on 30.12.2019 recommended inclusion of the name of the applicant at S.

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No.0B, below the name of Shri Satya Narain Khinchi (S. No 0A) and above the name of Shri Satyaveer Singh (S.No.1) in the Select List of 2009-A. This was provisional, subject to his clearance in the disciplinary proceeding pending against him.

5. The matter was heard on 19.03.2021. The learned counsel for the applicant argued that the only reason why the applicant has been kept out of IPS is the interim order of the Hon'ble High Court in V.K.Gaur's case. That case has been finally decided with the Hon'ble High Court finding no merit in the claims made by the petitioner (Shri V.K. Gaur) in that case and the interim order has been vacated. The applicant is, therefore, entitled to restitution and for undoing the damage caused to him due to that interim order. His inclusion in the IPS cannot be deferred on grounds of alleged pendency of a charge-sheet against him which relates to a period after his inclusion in the IPS and is stayed by the Hon'ble High Court. The counsel produced judgment of Hon'ble Supreme Court in **South Eastern Coalfields Ltd. vs State of MP and Ors** AIR 2003 SC 4482 in support of his contention for restitution. The learned counsel for the respondent State Government argued that the Government has already considered the case of the applicant after the vacation of stay by the Hon'ble High Court. Quoting the regulations relating to such promotions, the learned counsel

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justified provisional inclusion of his name in the select list of every year, subsequently, till the matter, pertaining to which a charge sheet was given, is over. The learned counsel also argued that the applicant cannot challenge the correctness of this action (of keeping his name in a provisional select list till the disciplinary action is over) in the present OA, since it is a fresh matter and is beyond the reliefs sought in this OA. The counsel produced judgment of Hon'ble Supreme Court in **Gurpreet Singh Bhullar and Another vs. Union of India & Others** in support of his argument that the Charge sheet does not have to be a Charge framed by a court of law.

6. We have gone through the pleadings and heard the arguments. The crux of the matter is that the applicant was promoted to the IPS, following a decision in 2013, against vacancies of 2009. A decision of the Tribunal in Rohit Mahajan case (to take into consideration a revised seniority list of RPS officers) ordered review of that decision by a review screening committee. The Review Screening Committee could not consider the applicant's name because of an interim stay of the Hon'ble High Court in another matter (V.K. Gaur's case, challenging, *inter alia*, earlier promotion of the applicant to the selection scale of the RPS). This resulted in applicant's reversion to the RPS, in the year 2016, since his name did not figure in any of the select lists

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(from 2005 to 2015). The V.K. Gaur's case was finally dismissed in 2019 and stay vacated. The committee that met on 30.12.2019, considered the applicant's case after the vacation of the stay. It provisionally included his name in the select list of 2009-A (at its original place where the screening committee of 2013 had put him). However, he could not be promoted because of a charge sheet issued against him (which remains stayed by the Hon'ble High Court). The same situation prevails now as his name is being put in every successive years select list provisionally but no promotion is given on ground of a pending disciplinary action in which charge sheet has been served.

7. Our first and the most natural reaction to the undisputed facts narrated above is to shrug and state that the respondents have done what they could have done under the rules. They conducted the review screening committee in the year 2016 since this Tribunal had asked them to do. They did not consider the applicant's name since the Hon'ble High Court restrained them from doing so (leaving apart the issue of misinterpretation of the High Court order). Now they are considering the name of the applicant but cannot proceed because the rules prohibit moving ahead when a charge-sheet is pending. The applicant could very well challenge this but that would be a

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new cause of action. Under these circumstances, we cannot do anything other than to express our helplessness to issue any direction to the respondents and dismiss this OA.

8. Doing so, as stated above, might be legally and technically correct. However, looking at this matter from a broader perspective, we can see that a person has suffered unintended and unfavourable consequences due to the combined effect of a final order of this Tribunal (in Rohit Mahajan case) and the interim order of the Hon'ble High Court (in VK Gaur's case). In such a situation, where an injury is caused directly due to our and the Hon'ble High Court's intervention, expressing inability to act will be seen as the failing of the judicial system. This would also clearly amount to shirking from our duty for restitution, which is very succinctly described in the decision cited by the learned counsel for the applicant. Though the facts and circumstances of this case are very different from the facts of the OA before us, as far as the principle of restitution is concerned, the ratio of that decision fits exactly on the issue involved in this case. We are quoting here, the most relevant portions of this judgment, from paragraphs 25 to 27 of that judgment:

"25. The principle of restitution has been statutorily recognized in Section 144 of the Code

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of Civil Procedure, 1908. Section 144 of the C.P.C. speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the Court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of final decision going against the party successful at the interim stage. Unless otherwise ordered by the Court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution would far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party, who has gained by the interim order of the Court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed. There is nothing, wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed."

26. Section 144 of the Code of Civil Procedure, 1908 is not the fountain source of restitution; it is rather a statutory recognition of a pre-existing rule of justice, equity and fair play. That is why it is often held that even away from Section 144, the Court has inherent jurisdiction to order restitution so as to do complete justice between the parties. In **Jai Berham vs. Kedar Nath Marwari** (1922) 49 LA. 351, their Lordships of the Privy council said: "It is the duty of the Court under Section 144 of the Civil Procedure Code to place the parties in the position which they would

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have occupied but for such decree or such part thereof as has been varied or reversed. Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved. Cairns, L.C., said in *Rodger v. Comptoir d'Escompte de Paris*, (1871) L.R. 3 P.C.: "One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors and when the expression, the act of the Court is used, it does not mean merely the act of the primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole from the lowest court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case". This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it, *A.A. Nadar vs. S.P.Rathinasami* *A.A. Nadar vs. S.P.Rathinasami* (1971) 1 MLJ 220. In the exercise of such inherent power, the Courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.

27. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the 'act of the court' embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the Court; the test is whether on account of an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise corned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the set of such party. (emphasis added)"

9. The underlined portion above leaves us in no doubt about our duty to ensure "restitution" in the present case.

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Here, a party has suffered serious loss which it would not have suffered but for an interim order of the Hon'ble High Court, which was not held sustained in the end. To ensure that the justice is done, we must see what would have happened if that interim orders were not passed. The most logical answer to that question is that if the review screening committee held in 2016 to reviews cases from 2005 to 2014 on the basis of a revised seniority list- was not restrained by the High Court's interim order, the applicant's name would have also found a place in the 2009-A select list at annexure A/2 of this OA. There was no pending charge sheet against the applicant in the year 2016 and thus he would have also continued to be in the IPS, like the rest of the other selectees of 2009A, who were, without exception, continued in the IPS. This is precisely what the applicant has prayed for in his OA. Hence, though no specific claim for restitution is made (as the final orders of the Hon'ble High Court had not been passed at the time of filing this OA), it is not beyond the scope of reliefs prayed by him in the OA.

10. There could be an argument that for all these reasons, we should again ask for a further meeting of the review screening committee that was held in 2016 following our decision in Rohit Mahajan case, to consider the case of the applicant. We do not think it is necessary to do so since that

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meeting was called, not as per any rule, but only as per our decision in the Rohit Mahajan case. The limited scope of that committee was not to re-judge the fitness of the officers for promotion but to revise the yearwise select list (from 2005 to 2014) on the basis of a revised seniority list of RPS officers. The respondents have not questioned the placement of the applicant in the 2009-A select list in the year 2013 and the screening committee meeting held in 2019 has confirmed this by placing him again in the same year (2009-A) panel. Hence, asking the respondents to convene a meeting again to do what they would have most certainly done if the Hon'ble High Court order was not there, is, in our opinion, a futile exercise.

11. For all these reasons, we allow this OA and direct the respondents to treat the applicant as included in the Notification issued on 03.06.2016 (Annexure A/2) as a selectee of 2009-A, above the name of Shri Satyaveer Singh. This is the place where he was placed in the year 2013 and was also provisionally selected to be placed at when the committee considered his name after the stay was vacated, in the year 2019. Needless to mention, this would not cause any prejudice to any other selectee, requiring their names to be struck off the list, on account of this inclusion. Consequentially, the reversion of the applicant to

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the RPS is also set aside. There would, however, be no claim for IPS salaries/allowances etc. for the period for which he has not worked in the IPS. This period will be taken into consideration only notionally, for determining his pay and allowances prospectively. The OA is disposed of accordingly. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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