

# CENTRAL ADMINISTRATIVE TRIBUNAL

## AHMEDABAD BENCH

C.P./62/2001

IN  
**O.A.NO.** 580 of 1993  
~~**T.A.NO.**~~

DATE OF DECISION 28/01/2002

Mr. K.H.Das \_\_\_\_\_ Petitioner

Mr. M.S.Kariel \_\_\_\_\_ Advocate for the Petitioner [s]  
 Versus

U.O.I. & Ors. \_\_\_\_\_ Respondent

Mr. M.S.Rao, for R.2 &  
Mr. Paresh Upadhyay for R.1 \_\_\_\_\_ Advocate for the Respondent [s]

**CORAM**

The Hon'ble Mr. A.S.SANGHVI : MEMBER (J)

The Hon'ble Mr. G.C.SRIVASTAVA : MEMBER (A)

**JUDGMENT**

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

Shri K.H. Das  
Supdt. of Police (Computer)  
State Crime Record Bureau,  
Gandhinagar.

PETITIONER  
( ORIGINAL APPLICANT )

ADVOCATE : Mr. M.S. Kariel

V/s.

1. Shri V.V.S. Ramasunnarao  
Addl. Chief Secretary,  
Home Department,  
Sachivalaya,  
Gandhinagar.
2. Shri Kamal Pandey  
Secretary of Home Affairs,  
Union of India,  
North Block,  
New Delhi.

OPPONENTS  
( ORIGINAL RESPONDENTS )

ADVOCATE : MR. M.S. RAO for respondent no.2 &  
MR. Paresh Upadhyay for resp. 1

ORAL ORDER  
C.P./62/2001 IN O.A./580/1993

DATE : 28/01/2002

PER HON'BLE MR. A.S. SANGHVI : MEMBER (J)

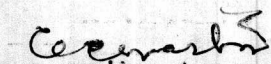
Heard Mr. Kariel, learned counsel for the applicant and Mr. Jadeja on behalf of Mr. Paresh Upadhyay, learned counsel for respondent no.-1 and Mr. M.S. Rao, learned counsel for respondent no.2.

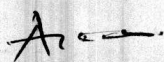
2. This Contempt application is moved by the applicant complaining about the non compliance of the order passed in O.A./580/1993. While disposing of the O.A. we had directed the respondent no.1, State Govt.

Contd.....

to forward the name of the applicant to the Union Government for consideration of conferment of IPS upon him in pursuance to his selection in 1984 and inclusion of his name in the select list of IPS.

3. Now Mr. Rao counsel for respondent no.-2 has made available the copy of the notification dated 12<sup>th</sup> January 2002 which clearly indicates that the applicant has been promoted as I.P.S. from the year of 1985. We find that the orders passed in the O.A. are complied with and hence C.P. becomes infructuous. No contempt therefore survives and hence C.P. is disposed of as infructuous. No costs. Alleged contemners are discharged.

  
( G.C. Srivastava )  
Member (A)

  
( A.S. Sanghvi )  
Member (J)

CMJ/

(See, Rule, 114 )

CA/TA/RA/CP/62/2001 in CA/580/93

APPLICANT(S)

U. O. I. & Ors

RESPONDENT(S)

[illegible]

Signature of S.O.(J)

~~5/02~~

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Dealing Hand

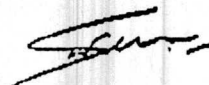
No.I-14013/53/2001-IPS.I  
Government of India/BharatSarkar  
Ministry of Home Affairs/Grih Mantralaya  
...

New Delhi, the      January, 2002.

**NOTIFICATION**

**21 JAN 2002**

In pursuance of CAT, Ahmedabad Bench's Judgement and Order dated 7.6.2001 in OA No. 580 of 1993 and in exercise of the powers conferred by sub-rule (1) of rule 9 of the Indian Police Service (Recruitment) Rules, 1954, read with sub-regulation (1) of regulation 9 of the Indian Police Service (Appointment by Promotion) Regulations, 1955, the President is pleased to appoint Shri K.H. Das, a State Police Service officer of Gujarat, to the Indian Police Service on probation and to allocate him to the Cadre of Gujarat under sub-rule (1) of the rule 9 of the Indian Police Service (Cadre) Rules, 1954. The appointment will take effect from the date of issue of this Notification.



(S.P. Verma)

Under Secretary to the Govt. of India

Tel: 301 1527

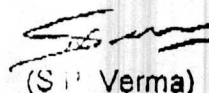
No. I-14013/53/2001-IPS. I

New Delhi, the      January, 2002

**Copy forwarded to:**

**21 JAN 2002**

1. The Chief Secretary, Government of Gujarat, Home Department, Sachivalaya, Gandhinagar. (Attn. Shri Ashok Manek, Joint Secretary, Home Deptt.) with one spare copy for onward transmission to the officer concerned. Shri K.H. Das was included at S. No. 5 in the 1984 Select List of SPS Officers of Gujarat for promotion to the IPS Cadre. Accordingly for the purpose of fixation of Inter-se-seniority and determination of year of allotment, his deemed date of appointment by promotion to IPS will be 18.9.1985 i.e. the date from which his Immediate junior in the 1984 Select List namely Shri R.N. Shinde was appointed to the Service. It is requested that necessary proposal, in the prescribed proforma, for fixation of seniority of Shri K.H. Das may please be furnished to this Ministry at the earliest.
2. The Accountant General, Gujarat, Gandhinagar.
3. The Secretary, Union Public Service Commission, Dholpur House, New Delhi (Attn. Shri G.C. Yadav, Asstt. Director-AIS)
4. The DG & IGP, Gujarat, Gandhinagar.
5. IPS.II/IPS.III/IPS.IV/Computer Cell/ACR Cell/Dealing Hand-Civil List.



(S.P. Verma)

Under Secretary to the Govt. of India

Tel. No. 301 1527

CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH, AHMEDABAD

CP/ST/5416  
Dairy No. 199

C.P. (Civil/Criminal) 199-2001

Between

Mr. K.H. Das Petitioner(s)

By

Mr. M.S. Kazi  
( Name of the counsel, if any )

And

Mr. V.V.S. Ramasubbiah Respondent(s)  
Chief Sec. Home Dept.

By

( Name of the counsel, if any )

Subject : Contempt (No. 1) Department: Home (No. 2)

REPORT OF THE SCRUTINY OF CONTEMPT OF COURT PETITION (CIVIL/CRIMINAL)

1. Whether the name (including as far as possible, the name of father/mother/husband), age, occupation and address of the petitioner(s) and the respondent(s) are given? 47

Note : Where respondent is an officer, his name, designation and office address alone are enough. 47

2. Whether the parties impleaded as petitioner(s) and respondent(s) are proper? 47

Note : In case of Civil Contempt for disobeying the order of the Tribunal, it is the party in whose favour the direction is issued that can be impleaded as petitioner and the party against whom the direction is issued can be impleaded as the respondent. 47

(b) In case of Criminal Contempt, the party who is alleged to have committed contempt that can be impleaded as respondent. 47

3. Nature of the Contempt (Civil or Criminal) and the provisions of the Act invoked? CIVIL

4. (a) Date of alleged Contempt: 7-6-2001  
(b) Date of filing of the Contempt Petition:  
(c) Whether the petition is barred by limitation under Section 20 of the Contempt of Court Act, 1971? 18-10-01 No

5 (A) Whether the grounds and material facts constituting the alleged contempt are given? 4A

(b) Whether the grounds and facts alleged in the petition are divided into paragraphs and numbered. 40

(c) Whether the petition is accompanied by supporting documents or certified/photostat (attested) copies of the original thereof? 40

(d) If the petitioner relies upon any other document(s) in his possession, whether copy of such document(s) is/are filed along with the petition? 40

(e) Whether the petition and its annexures have been filed in a paper-book form and duly indexed and paginated? 40

(f) Whether three complete sets of the paper-books have been filed? 40

(g) Whether equal number of extra copies of paper-books have been filed in case there are more respondents than one? 40

6. Whether the nature of the order sought from the Tribunal is stated? 40

7. Whether the petition is supported by an affidavit sworn to by the petitioner verifying the facts relied upon? 400

Note: No affidavit is required if the motion is by Attorney General/Solicitor General/Additional Solicitor General. 40

8. Whether the petitioner or his Advocate have signed the petition indicating the place and date? 40

9. In case of Civil Contempt whether the petition is accompanied by Certified copy of the judgment/decree/order writ undertaking alleged to have been disobeyed by the alleged contemner? 40

10. (a) In case of Criminal Contempt, not covered by Section 14 of the Contempt of Courts Act, whether the petitioner has produced General/Solicitor General/Additional Solicitor General? 40

(b) If a not whether the petition contains the reasons thereof? 40

11. Whether the petitioner had previously made a contempt petition on the same facts? If so, have the following been furnished: 40

(a) Number of the Petition N.A

(b) Whether the petition is pending? No

(c) If disposed of, nature/result of the disposal with date: N.A

12. Whether the draft charges are enclosed in a separate sheet? No

\* Contempt committed in the presence of hearing of the Member (s) -

FOR ATTENTION :

Orders on the administrative side have to be obtained from the Chairman/Vice Chairman or Member designated in case of action for criminal contempt, as required by Rule 7 (ii) before placing for preliminary hearing.

Mo

This c.p has not been found in order.

Section Officer

Deputy Registrar

Registrar

✓ (1) Ventilation is incomplete

✓ (2) Affidavit not used

✓ (3) Death charge not filed

4 ✓ (4) V.P not used

(5) Application not signed by Adv

(6) ~~State court not used~~

Notified per 41

25/10

25/10

25/10

2/11

Adj to 3/12

9/11

P.T.O

objection removed by  
adv. today. if approved  
we may register this  
C-1 & place for order

JS

28-11

  
~~D. R. (S)~~

con/54/01

BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL,  
AHMEDABAD BENCH.

CONTEMPT PETITION NO. 62 OF 2001.

IN

ORIGINAL APPLICATION NO. 580 OF 1993.

BETWEEN :-

1. SHRI K.H. DAS  
SUPDT. OF POLICE (COMPUTER)  
PETITIONER  
(ORIGINAL APPLICANT)

VERSUS.

1. SHRI V.V.S. RAMASUBBARAO  
ADDL. CHIEF SECRETARY, HOME DEPARTMENT,  
AND ORS.  
OPPONENTS  
(ORIGINAL RESPONDENTS)

INDEX

SR. No.	annexure	particulars	page No.
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1.	---	Memo of petition	1-9
2.	"A-1"	Copy of order dtd. 7.6.2001.	<del>7-25</del> 10-28.

PLACE: AHMEDABAD.  
DATE: /10/2001.

(.....)  
ADVOCATE FOR THE PETITIONER.

M.S. K9790  
18-10  
1  
By Registrar C.A.T.B.  
Ahmedabad

BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL,  
AHMEDABAD BENCH.

CONTEMPT PETITION NO. *62* OF 2001.

IN

ORIGINAL APPLICATION NO. 580 OF 1993.

**BETWEEN :-**

1. SHRI K.H DAS  
SUPDT. OF POLICE (COMPUTER)  
STATE CRIME RECORD BUREAU,  
GANDHINAGAR.

PETITIONER  
(ORIGINAL APPLICANT)

**VERSUS.**

1. SHRI V.V.S. RAMASUBBARAO  
ADDL. CHIEF SECRETARY,  
HOME DEPARTMENT,  
SACHIVALAYA, GANDHINAGAR.
2. *Shri Kamal Pandey*  
SECRETARY,  
MINISTRY OF HOME AFFAIRS,  
UNION OF INDIA,  
NORTH BLOCK, NEW DELHI.

OPPONENTS  
(ORIGINAL RESPONDENTS)

**APPLICATION UNDER THE PROVISIONS  
OF CONTEMPT OF COURTS ACT, 1971.**

1. The petitioner is original applicant in O.A No.  
580 of 1993 whereas the respondents herein are the original

*P. Karip*

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respondents. This contempt application is preferred by the petitioner herein against the respondent for having not complied with the decision of this Honourable Tribunal dtd. 7.6.2001.

2. The petitioner states that, in O.A. No. 580 of 1993, vide judgment dtd. 7.6.2001, this Honourable Tribunal, has directed that; "We accordingly allow the OA partly and direct the respondent No.1, the State Government to forward the name of the applicant to Union of India for considering him for confirmation of IPS upon him in pursuance of his selection and inclusion of his name in 1984, select list of IPS. This exercise be carried out within one month of the receipt of the copy of this order by the State Government." Annexed hereto and marked as **annexure "A-1"** is the copy of the judgment dtd. 7.6.2001 of this Honourable Tribunal.

3. The petitioner states that, the Honourable Tribunal has pronounced the judgment in IOA No. 580 of 1993, on 7.6.2001, The petitioner states that, the respondents, particularly the respondent no. 1, has received the copy of the judgment of this Honourable Tribunal dtd. 7.6.2001 somewhere in first week of July, 2001, though he does not know the exact date. The petitioner therefore, states that, as this contempt petition is filed in the month of October,

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therefore, there is no question that the respondent No.1 has carried out the exercise as directed by this Honourable Tribunal within a period of 1 month from the date of receipt of the copy of the order of this Honourable Tribunal passed in OA No. 580 of 1993.

4. The petitioner further states that the respondent have not filed any appeal before the Honourable High court of Gujarat. The petitioner therefore, in this set of circumstances, submits before this Honourable Tribunal that, the respondent No.1, has deliberately and willfully flouted the direction of this Honourable Tribunal passed in OA No. 580 of 93.

5. The petitioner submits that the respondent No.1 is under an obligation and duty bound to respect and comply with the judgment of this Hon.Tribunal, that if the respondent was aggrieved with the order of this Hon'ble Tribunal, then, it was open to him to approach any appropriate forum or court and seek appropriate remedy. Having not approached the Hon. High Court, in appeal, the respondent No.1 is duty bound to carry out the direction of

*T. S. Karim*

4

Honourable Tribunal, the respondent No.1 has deliberately and willfully flouted the order of this Honourable Tribunal, and therefore, it is most respectfully submitted that this Honourable Tribunal may be pleased to initiate appropriate proceedings under the Contempt of Courts' Act, 1971 for having the deliberate and willful disobedience of the order of this Honourable Tribunal.

6. The present petitioner states and submits that, he has not preferred any other appeal application or petition with regard to the same subject matter, either in this court or in any other courts of India including the Supreme Court of India, except this application before this Honourable Court.

7. The present petitioner states and submits that he has no other equally efficacious alternative remedy with him, save and except to approach this Honourable Court, by way of filing this application under the contempt of Courts Act.

8. The present petitioner further states and submits that, he has approached before this Honourable Tribunal as expeditiously as the circumstances permitted to him.

T. S. Karim

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9. Looking to the facts and circumstances, mentioned hereinabove, the present petitioner humbly prays this Honourable Tribunal that;

A) this Honourable Court may be pleased to allow this petition;

B) Be pleased to initiate the contempt proceedings against the respondent herein under the Contempt of Courts' Act, 1971, and/or be pleased to punish the respondent No.1, under the said Act.

C) Be pleased to further direct the respondent authorities to forthwith comply with the direction issued by this Honourable Tribunal in OA No. 580 of 1993.

D) Further be pleased to award the exemplary cost for this petition.

E) Grant such other and further reliefs as may be deemed fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS AND JUSTICE, YOUR APPLICANT SHALL IN DUTY BOUND PRAY FOR EVER.

AHMEDABAD.

DATE: 17/10/2001.

(*T. K. Jain*)  
ADVOCATE FOR THE PETITIONER

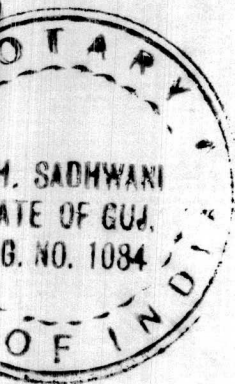
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VERIFICATION

I, Kantilal Das S/o Harilal Das, aged 55 years,  
working as Supdt. of Police, (Computer) in the state Crime  
Bureau, Gandhinagar, do hereby verify that the contents of  
para 1... to 4... are true to my personal knowledge and  
para 5... to 8... I believe to be true and on legal  
advice and I have not suppressed any material facts of the  
case. Para 9 is the prayer clause.

[Signature]  
DEPONENT

[Signature]  
Identified by me.  
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BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL,  
AHMEDABAD BENCH.

CONTEMPT PETITION NO. 94.54 OF 2001.

IN

ORIGINAL APPLICATION NO. 580 OF 1993.

1. SHRI K.H DAS  
SUPDT. OF POLICE(COMPUTER)

PETITIONER  
(ORIGINAL APPLICANT)

VERSUS.

1. SHRI V.V.S. RAMASUBBARAO  
ADDL. CHIEF SECRETARY, HOME DEPARTMENT,  
AND ORS.

OPPONENTS  
(ORIGINAL RESPONDENTS)

AFFIDAVIT

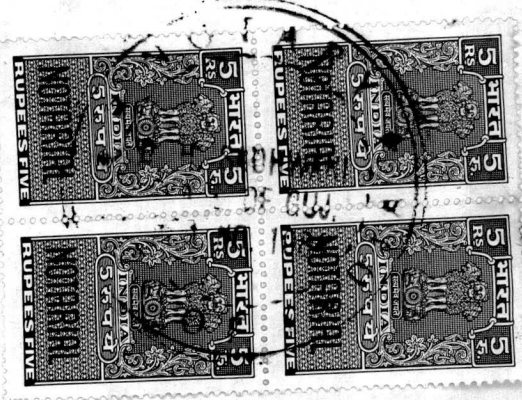
I, Kantilal das, S/o Shri. Havilal Das aged 55  
at present working as Supdt. of Police, in the State Crime  
Record Bureau, Gandhinagar, do hereby solemnly state on oath  
that what has been stated by me hereinabove are true and  
correct to the best of my knowledge and information and  
belief.

Solemnly affirmed at Ahmedabad on this 7<sup>th</sup> day of  
November 2001.

K. H. Das  
DEPONENT

Identified by me.

T. B. Kacip  
(Attorney)



C. NO. 10886/2001  
SOLEMNLY AFFIRMED  
BEFORE ME  
Sadhvani  
M. SADHWANI NOTARY  
7-11-2001

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BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL,  
AHMEDABAD BENCH.

CONTEMPT PETITION NO. <sup>St. 54</sup> OF 2001.

IN

ORIGINAL APPLICATION NO. 580 OF 1993.

1. SHRI K.H DAS  
SUPDT. OF POLICE (COMPUTER)

PETITIONER  
(ORIGINAL APPLICANT)

**VERSUS.**

1. SHRI V.V.S. RAMASUBBARAO  
ADDL. CHIEF SECRETARY, HOME DEPARTMENT,  
AND ORS.

OPPONENTS  
(ORIGINAL RESPONDENTS)

**DRAFT CHARGES**

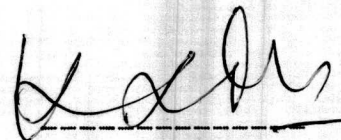
The petitioner had preferred original application No. 580 of 1993, challenging the action of the respondent in not recommending the names of the petitioner to the Union Government for consideration of conferment of IPS pursuant to his selection and conclusion in the select list of 1984.

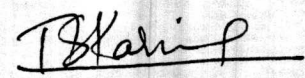
The Honourable Central Admn. Tribunal, Ahmedabad Bench vide judgment dtd. 7.6.2001, have directed the respondents to forward the names of the applicants to the Union Government for consideration of conferment of IPS pursuant to his selection and inclusion in the select list of 1984.

The Honourable Tribunal had directed the State Government to carry out the said exercise within one month of receipt of the copy of the order of the Honourable Tribunal. The copy of the order of the Honourable Tribunal has been received by the State Government in the first week of July, 2001 and till date, no action has been taken by the respondents.

Place: Ahmedabad.

Date: 7/11/2001.

  
Petitioner

  
Advocate for  
Petitioner

Annex A''

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**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH**

**O.A 580 of 1993**

**Date of Decision : 07.06.2001**

Mr. K. H. Das : Petitioner (s)

Mr. B.P. Tanna, A.L. Sharma & : Advocate for the petitioner [s]  
Mr. N. S. Kariel

Versus

Union of India & Ors. : Respondent(s)

Mr. M. S. Rao for R-2 & : Advocate for the Respondent [s]  
Mr. Paresh Upadhyay

**CORAM :**

**THE HON'BLE MR. A. S. SANGHVI** : MEMBER [J]

**THE HON'BLE MR. G.C. SRIVASTAVA** : MEMBER [A]

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*T. Kar*  
Advocate

Mr. K. H. Das,  
Deputy Superintendent of Police,  
W. Rly., Head Quarters,  
Baroda.

- Applicant -

**Advocate : Mr. B. P. Tanna, Mr. A. L. Sharma &  
Mr. N. S. Kariel**

Versus

1. State of Gujarat,  
To be served through,  
Addl. Chief Secretary,  
Home Department,  
Sachivalaya, Gandhinagar.
2. Union of India,  
To be served through  
Secretary,  
Ministry of Home Affairs,  
North Block, New Delhi.

- Respondents -

**Advocate : Mr. M. S. Rao for R-2 &  
Mr. Paresh Upadhyay**

**JUDGMENT  
O.A 580 of 1993**

**Date : 07/06/2001**

Per Hon'ble Shri. A. S. Sanghvi : Member (J).

Heard Mr. B. P. Tanna, Mr. N. S. Kariel with Mr. A. L. Sharma  
for the applicant and Mr. Paresh Upadhyay for the respondent no. 1  
and Mr. M. S. Rao for respondent no.2.

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*T. Kariel*  
Advocate

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- 3 -

2. This litigation has a chequered history. The applicant who was directly recruited as Dy. SP in the State Police Service and had become eligible for consideration for promotion to IPS was not recommended for consideration for promotion to IPS by the State Government on the ground of contemplation of the inquiry against him. The applicant therefore moved the Hon'ble High Court by filing special CA No. 5340/92. The Hon'ble High Court was pleased to issue rule and granted interim relief but the same had been challenged by the State Government before the Division Bench by way of letters Patent Appeal and a grievance was raised before the Division Bench that looking to the nature of the relief sought by the present applicant, the Central Administrative Tribunal was the appropriate forum and not the Hon'ble High Court. The Division Bench vide order dated 20.10.1992 held that the High Court cannot entertain the present lis which had to go only before the Tribunal under the Act. The liberty was given to the applicant to pursue the process before the Tribunal under the Act. Consequently the applicant preferred the O.A 580 of 93 but instead of filing the same petition before the High Court he had added a prayer of quashing and setting aside his reversion by the State Government. Since this prayer of quashing and setting aside his reversion pertained only to State Government service, the Tribunal by order dated 12.1.99 dismissed the O.A holding that the Tribunal had no jurisdiction to entertain the pleas regarding the State Government services. The

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T. B. Karim  
Advocate

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applicant therefore approached the Hon'ble High Court by way of Special CA No. 6260 of 99 which came to be decided by the Hon'ble High Court vide order dated 14.6.2000. The Hon'ble High Court has been pleased to direct the CAT A'bad Bench to dispose of the matter on merits in accordance with law holding that the Tribunal was competent to decide the issues involved in this O.A. This order of the Hon'ble High Court was challenged by the applicant before the Supreme Court by way of Special Leave Appeal (Civil) 14221/2000, but the Supreme Court vide its order dated 18.9.2000 held that the order of the High Court was proper and there was no reason for interference.

3. The case of the applicant is that his name figures in the select list prepared in the year 1983 as well as in the year 1984 for promotion to IPS but the State Government had not forwarded his name to the Central Government on the pretext of contemplation of an inquiry against him. The names of the other officers in the select list were forwarded to the Central Govt. in the month of March 1985, while on that day, though no inquiry was pending against him, the name of the applicant was not forwarded. The applicant was suspended on 8.10.1985 and departmental inquiry was started against him. The applicant has contended that the date on which the names of the other officers in the select list were forwarded to the Central Government, he was neither suspended

TRUE COPY  
T. Skaria  
Advocate

# 14

- 5 -

nor any inquiry was pending against him and hence the action of the State Govt. not to forward his name in the year 1985 was arbitrary, illegal and unreasonable. He has also alleged that there was inordinate delay in completion of the inquiry against him and ultimately he was awarded a minor penalty of censure in that inquiry. The applicant was by order dated 19.4.84 promoted as DSP and was posted at A'bad and Gandhinagar. He was however reverted as Dy. SP with effect from 25.12.1985 after he was suspended on dated 8.10.1985, from the service. He has challenged his reversion by the State Govt. on the ground that this amounted to punishment even prior to the issuance of the charge sheet on him. According to him the charge sheet was served on him in the month of December 1985 while the reversion order was passed w.e.f. 25.12.85. The applicant had unsuccessfully challenged his suspension and also the delay in conducting the departmental inquiry before the High Court and had ultimately went to the Supreme Court also. The inquiry was finally concluded by the disciplinary authority by imposing punishment of censure on him on dated 6.4.92. The applicant has now contended that since the punishment of censure is imposed on him, the State Govt. ought to have recommended his name to the Central Govt. for conferment of the IPS rank w.e.f. 1984 and more particularly w.e.f. the date his junior was conferred with the rank of IPS. He has alleged that he has been victimised because he belongs to SC and

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T. B. Kar  
Advocate

even though he has been eligible for promotion his claim has been ignored by the respondents and he has not been considered for conferment of the IPS rank. He has therefore prayed that the respondent no.1, State Govt. be directed to forward his name to the Union Govt. for conferring IPS upon him in pursuance to his selection in 1984 and has also prayed that his reversion from the post of DSP to Dy. SP be quashed and set aside with all consequential benefits.

4. The respondents have resisted this O.A. The respondent no.1 State Govt. has filed its reply through the Under Secretary while the respondent no.2 Central Govt. has not filed any reply. The respondent no. 1 in his reply has contended inter alia that the applicant was considered for IPS select list prepared by the selection Committee for the year 1983 and was promoted to the ex-cadre post of DSP from 1984. He was suspended from the ex-cadre post of DSP on 9.10.85 because of contemplated inquiry against him. The charges leveled against the applicant were of moral turpitude and vile character and considering these charges his name was dropped from the select list of IPS by the Selection Committee on 26.12.85. He was therefore subsequently reverted to the post of Dy. SP from 26.12.85 while he was under suspension. It is also contended that though his name was included in the select list prepared by the Selection Committee which had met on

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J.B. Karim  
Advocate

10.12.84 his name was not recommended for the appointment to the post of IPS on account of his suspension and on account of the pending inquiry. It is further contended that the applicant was visited upon the punishment of censure in the inquiry held against him and the applicant has accepted this punishment without any dispute. The State Govt. has maintained that since the applicant is not exonerated in the inquiry and the punishment of censure is inflicted upon him, he is not eligible to be considered for promotion to IPS. They have denied that the Govt. wants to harass and or to victimise or discriminate against the applicant and have contended that the applicant is not entitled to any of the reliefs prayed.

5. At the out set Mr. M. S. Rao, learned advocate appearing for the respondent no.2 Union Govt. has pointed out that since the relief prayed for by the applicant pertains to his promotion to IPS cadre, the non-joinder of UPSC as a party in this O.A is fatal to this O.A. According to Mr. Rao, UPSC has a major role to play in selecting the officers for nominations to IPS and under the regulation 7 of the IPS (Appointment by Promotion) regulations 1955 the Commissioner has been given powers to make changes in the list or to approve or disapprove any candidate. This regulation also envisages that the select list will become final only when it is finally approved by the Commissioner. According to Mr. Rao, the function of the State Govt. is only to prepare a select list of the

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T. S. Rao  
Advocate

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eligible officers and to forward the same to the UPSC. The State Govt. cannot confer the promotion of IPS on any of the officers unless and until the list is approved by the UPSC. Since the UPSC is not a party in this O.A the relief prayed for, by the applicant regarding his promotion cannot be granted. He has also raised the question of limitation contending that the cause of action for filing such a O.A had arisen in the year 1984-85 when the name of the applicant was not included in the select list sent to the UPSC by the State Govt. and since this O.A is filed in the year 1993, the same is obviously barred by limitation.

6. Mr. Kariel, learned advocate appearing for the applicant has however submitted that the applicant is seeking directions against the State Govt. to send his name to the UPSC on the basis of the 1984 select list, as now the inquiry proceedings against the applicant have finally come to an end and the applicant has been awarded punishment of censure which cannot be considered to be an impediment in his being promoted to IPS. He has further submitted that the applicant was found suitable to be included in the select list in the year 1983 as well as 1984 but for the reasons best known to the State Govt. the select list was not forwarded to the Central Government in the year 1984 and when the same was forwarded in March 1985 the name of the applicant was dropped from the select list. According to him on the day his name was

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T. B. Kariel  
Advocate

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dropped from the select list, there was no inquiry pending against the applicant nor the applicant was suspended from the service and hence the action of the State Govt. to drop his name from the select list was clearly illegal and untenable. Now that he has been practically exonerated of all the charges against him by imposition of minor punishment of censure, the respondent no.1 may be directed to send the name of the applicant to the Union Govt. for approving, as if there was no inquiry against him and as if he was never suspended and as if he has continued in the select list of 1984. According to him it is a settled position of law that every employee has a fundamental right to be considered for promotion and since the applicant has not been considered for promotion without any substantial reason, the State Govt. is required to be directed to consider him for promotion to the IPS. Contending that dropping the name of the applicant from the select list was an act of victimisation and harassment to the applicant, Mr. Kariel has submitted that if his name had been even included in the select list of 1985 the same would have been continued uptill now on provisional basis as the regulation provides for such a contingency. According to him this is a clear case of victimisation and hence the applicant should be given the relief as prayed for.

7. Mr. Paresh Upadhyay, learned advocate for the State Govt. on the other hand has submitted that the State Govt. is not the

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T. Kariel  
Advocate

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authority to appoint any officer to IPS cadre. It is only a recommending authority. According to him when the State Govt. found that the charges of moral turpitude and vile character were leveled against him and the inquiry was contemplated by the State Govt. in this charges, the name of the applicant was dropped from the select list. According to him the charges were not found to be baseless and the applicant has not been completely exonerated. He has been found guilty of the charges against him but the quantum of punishment may not be the reflection of the gravity of the charges as the same depends upon several other factors. The inquiry report according to Mr. Upadhyay has justified the action of the State Govt. in not recommending the name of the applicant for inclusion to the select list of IPS. According to him the applicant has nowhere challenged the validity of the select list uptill now and hence now the State Govt. cannot be directed to recommend the name of the applicant for the year 1984-85.

8. We have carefully considered the rival contentions. It is an un-controverted fact that the name of the applicant was included in the select list for the year 1983-84 but for some reasons that select list could not be sent to the Central Govt. for approval. The selection committee thereafter again met in December 1984 and all the six names including the name of the applicant were considered by the selection committee and at that time also the name of the

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T. Khan  
Advocate

applicant was included in the select list. However this select list also could not be sent to the Central Govt. till March 1985 and when in March 1985 the select list was sent to the Central Govt. the name of the applicant was dropped from that select list. Since the name of the applicant was not forwarded to the Central Govt., no question of considering his name even on provisional basis by the UPSC or the Central Govt. arises. According to the respondent no.1, State Govt., his name was not forwarded to the Central Govt. as an inquiry in the charges of moral turpitude and vile character was contemplated against the applicant. The act of the State Govt. in dropping the name of the applicant from the select list on the ground of contemplated inquiry is not in consonance with the provisions of sub regulation 5 of regulation 5 of the IPS (Appointment by Promotion) regulation 1955. The proviso to this sub regulation 5 enjoins upon the State Govt. to include the name of such officers in the list and to treat the same as provisional if any proceedings are contemplated or pending against him or any thing adverse against him had come to the notice of the State Govt. The State Govt. has, instead of treating the name of the applicant as provisional in the list, in view of the contemplated departmental inquiries against him, just dropped the name of the applicant from the list, thereby depriving the applicant from being considered for promotion to the post of IPS subsequently. It is quite obvious that this has been done by the State Govt. in complete disregard to the

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*P. K. Singh*  
Advocate

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proviso to sub regulation 5 of regulation 5. Under the circumstances, there is no other alternative but to hold the action of the State Govt. in not including the name of the applicant in the select list of the officers for IPS cadre as arbitrary, illegal and unreasonable. Once he was selected by the competent Selection Committee, it was not open to the State Govt. to drop his name from the select list on the ground of contemplated inquiry or pending inquiry. It can be seen that in March 1985 when his name was removed from the select list, the applicant was yet not suspended and was not even charge sheeted. He was suspended on dated 9.10.1985 and was charge sheeted in the year 1986. Hence on the date on which his name was removed from the select list prepared by the selection committee he was not facing any inquiry or was not suspended. If anything adverse had come to the notice of the State Govt., then the State Govt. could have included his name in the select list provisionally but his name could not have been removed from the select list. It would have been altogether a different situation if the selection committee had not found the applicant fit to be included in the select list, but once the selection committee had selected him, the applicant could not have <sup>been</sup> deprived of his right of being considered for promotion to IPS cadre by removal of his name from the select list. The action of the removal of the name of the applicant from the select list on the part of the State Govt., being clearly against the provisions of the statutory

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T. Karip  
Advocate

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regulations was ab initio illegal and void and therefore the applicant is justified in asking for direction against the State Govt. to forward his name as a selected candidate of 1984 select list for consideration of the UPSC as well as Central Govt. for appointment to the IPS cadre.

9. In the case of UOI Vs. Dr. Mrs. Sudha Sadhan reported in 1993 (5) SLR 473, the Supreme Court referring to the decision in the case of UOI and Ors. Vs. K. V. Janakiraman 1991 (4) SCC 109 has reiterated that if on the date of the consideration by the committee for promotion, the person is neither under suspension nor any departmental proceedings have been initiated against him, his name has to be brought on the select list if he is otherwise found suitable for promotion. It is further observed by the Supreme Court that the regulation of the departmental promotion committee can be placed in a sealed cover only if on the date of the consideration of the name for the promotion, the departmental proceedings had been initiated or were pending or on its conclusion final orders had not been passed by the appropriate authority.

10. In the instant case the question of sealed cover procedure does not arise as the regulations provide for including the name of an officer provisionally in the list if anything adverse is noted against him or if an inquiry is contemplated or pending against him. The



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T. Karis  
Advocate

State Govt. has however not adopted this procedure. In the case of Delhi Jal Board Vs. Mahindra Singh, reported in AIR 2000 SC 2767, the Supreme Court has laid down that, 'the right to be considered by the departmental promotion committee is a fundamental right guaranteed under article 16 of the Constitution of India provided a person is eligible and he is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry but the findings of the disciplinary inquiry exonerating the officer is to be given effect to from the date on which the charges are framed. If the disciplinary inquiry ended in his favor it is as if the officer had not been subjected to any disciplinary authority. The sealed cover procedure was envisaged under the rules to give benefit of any assessment made by the departmental promotion committee in favor of such an inquiry if he had been found fit for the promotion and if he was later exonerated in the disciplinary inquiry which was pending at the time when the DPC made.'

11. In the case of the State police officers to be considered for appointment by promotion to IPS the sealed cover procedure is replaced by treating the name of the officer as provisional if any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Govt.



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T. K. K. S.  
Advocate

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Dropping the name of the selected State Police Officer from the select list will effectively deprive the benefit of the proviso to sub regulation 4 of regulation 7 to the concerned officer and thereby cause great prejudice to him. Interestingly in the affidavit of P.C. Gupta, Dy. Secretary to the Govt. of Gujarat, filed before the Hon'ble High Court in the special CA No. 5709/85 in October 1985 following statement was made in para 3:-

*"The Indian Police Service (Appointment by Promotion) Regulations, 1955 which are made in pursuance of sub-rule (1) of rule 9 of the Indian Police Service (Recruitment) rules, 1954 provide for appointment of officers in the State Police Service to a cadre post i.e. a post in the Indian police service cadre. The said regulations provide for preparation of a select list for the aforesaid purpose. Name of the petitioner is on such select list. However, he is yet not nominated to the Indian Police Service. Further in view of the facts and circumstances, narrated herein above, the State Govt. has also informed the Central Govt. that it has decided not to propose the petitioner for appointment on Indian Police SERVICE but one post will be kept reserved for him. I say that such reservation will continue so long as the name of the petitioner is on the select list."*

12. Obviously the statement made in this affidavit by the then Dy. Secretary does not reflect the correct position. It is an uncontroverted position so far this O.A is concerned that the name of the applicant was dropped from the select list when it was sent to the Central Govt., though it was included in the select list when select list was prepared. It is also not in dispute that for subsequent years the name of the applicant did not figure in the select list at all and therefore the question of keeping one post reserved for the

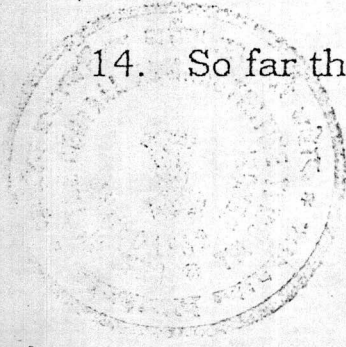
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T. S. Kaini  
Advocate

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applicant did not arise. His name would have been continued to be shown on the select list for subsequent years if, it had been shown in the select list of 1984 even provisionally. However since the name was dropped and not forwarded in the select list of 1984 the applicant did not stand any chance for consideration for promotion to IPS cadre.

13. This has regrettably caused an injustice to the applicant. Now that the inquiry against the applicant is over and though he has not been completely exonerated from the charges leveled against him, he has however been imposed a minor penalty of censure. The State Govt's own GR dated 23.9.81 provides that a minor penalty of censure awarded or proposed to be awarded to the Govt. servant need not to be taken into account while considering his case for promotion. Hence the punishment imposed of censure is not an impediment in considering the applicant for promotion to IPS. The State Govt. is therefore under an obligation to forward the name of the applicant to the Central Govt. along with necessary certificate etc., as required under the regulations, treating the same as part of the select list of 1984. It will be for the UPSC and the Central Govt. to consider whether the applicant is suitable for promotion to IPS cadre.

14. So far the question of reversion is concerned the same should



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not detain us any more. The applicant was promoted on temporary basis to the ex cadre post of the DSP by the State Govt. and on the suspension of the applicant he was reverted back to the State cadre post i.e. that of Dy. S.P. There is no illegality or irregularity involved in such reversion. The applicant was temporarily promoted and appointed by the State Govt. as Additional DSP as his name was included in the select list. However once it was found that he could not have been appointed to the said ex cadre post of IPS, the State Govt. was justified in reverting him back to the post he was holding as the State Govt. had no powers to appoint him to IPS cadre substantively. The applicant had not acquired any right to hold such a post and he cannot be continued in preference to a select list officer who may be placed above him by subsequent selection committee. Hence there is nothing irregular or illegal in reverting the applicant to the post of Dy. S.P.

15. Though it was tried to be submitted that the O.A is barred by limitation, delay and laches none of these contentions are found to be raised in the pleadings. In any case, the record discloses that the applicant has been litigating since 1985 challenging his non-promotion, suspension, inquiry etc. and these litigations having nexus with the cause of action of the present O.A also, it cannot be said that the present O.A is barred by limitation or delay and laches. Furthermore, in the case of Abdul Culta Manji Vs. State of

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*B. Karim*  
Advocate

Gujarat reported in (2000) 1 GLH 621, the Gujarat High Court has laid down that in view of the fact that the discrimination meted out to the teachers in private affiliated Law Colleges have been found to be unjustified by the apex court as well as by this Court and therefore the petitioners have a good case on merits. This court would not be inclined to dismiss the petition on the ground of delay alone more particularly when that aspect is taken care of while moulding the relief by not awarding any interest on the arrears of pension till the date of the filing of the petition.

16. The ratio of this decision is very much applicable to the facts of the instant case and therefore we are not inclined to reject this O.A on the jejune ground of delay, latches and limitation.

17. In view of the foregoing discussion we find that the O.A deserves to be partly allowed and the respondent no. 1, State Govt. will have to be directed to forward the name of the applicant to the Union Govt. for consideration of conferment of IPS upon him in pursuance to his selection in 1984 and inclusion of his name in the select list of 1984. Rest of the reliefs prayed for by the applicant cannot be granted and they stand rejected. We accordingly allow the O.A partly, and direct the respondent no.1, State Govt. to forward the name of the applicant to Union of India for considering him for conferment of IPS upon him in pursuance of his selection

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and inclusion of his name in 1984 select list of IPS. This exercise be carried out within one month of the receipt of copy of this order by the State Govt. The O.A stands disposed of with the above direction with no order as to costs.

sd/-  
(G. C. Srivastava)  
Member (A)

Prepared by  
मिलाने वाला  
Compared by  
सदि प्रतिनिधि  
True Copy

sd/-  
(A. S. Sanghvi)  
Member (J)

Mb

पुनर्विचार  
Section Officer (J),  
केन्द्रीय प्रशासनिक न्यायालय  
Central Administrative Tribunal  
महाराष्ट्र शाखा, न्यायापीठ,  
Ahmedabad Bench

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Advocate

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11111 of 2001

STATE OF GUJARAT  
Versus  
K.H. DAS

Appearance:

MRS MANISHA LAVKUMAR, AGP for Petitioner

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI  
and  
MR.JUSTICE D.H.WAGHELA

Date of Order: 27/11/2001

ORAL ORDER

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. Heard learned A.G.P. Mrs. Manisha Lavkumar on the question of admission of this writ petition under Article 227 of the Constitution of India which is preferred against the order of the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad, dated 7.6.2001 in O.A. No.580 of 1993.

#. After hearing the arguments advanced on behalf of the State against the order of the Tribunal, from the operative part of the order, we find that directions were issued to the State Government to forward name of the respondent-employee to the Union of India for considering him for conferment of IPS upon him in pursuance to his selection in 1984 and inclusion of his name in the select list of 1984. The penultimate part of the order directs that this exercise of considering him should be carried out within one month of the receipt of copy of the order.

#. Admittedly, the present petition has been filed much after the period of one month from the date of impugned order. The direction made to the State Government is only to forward the name of the respondent-employee to the Union of India for consideration of his case by it for conferment of IPS. In our opinion, therefore, at this stage, after six months, it would not be proper for us to interfere with the order of the Tribunal and the

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petition deserves to be rejected only on this ground.

#. The learned A.G.P. then argues that the Tribunal has issued directions to the Central Government for consideration of his case for IPS cadre by holding that he ought to have been included provisionally in 1984 Select List of IPS because at that time, he was facing inquiry which has ended in only imposing minor penalty of censure. It is then submitted that in the last part of the order, the Tribunal has issued directions assuming as if his name was included in 1984 Select List.

#. If the entire order of the Tribunal is read from paragraph-12, we find no difficulty in understanding the final directions issued in paragraph-17 by the Tribunal. The Tribunal has taken note of the fact that instead of Sealed Cover procedure for employees who are facing inquiry, their names are required to be shown provisionally in the select list and it is only on that basis that directions have been issued for consideration of respondent-employee.

#. For the aforesaid reasons, we refuse to interfere with the order of the Tribunal and reject the petition summarily.

(D.M.Dharmadhikari, C.J.)

(D.H.Waghela, J.)

(sunil)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

....

CONTEMPT PETITION NO. 62 OF 2001

IN

ORIGINAL APPLICATION NO. 580 OF 1993

SHRI K.H. DAS

:

APPLICANT

Versus

SHRI V.V.S. RAMASUBBA RAO,  
ADDL. CHIEF SECRETARY, GANDHINAGAR  
AND ANOTHER

:

RESPONDENTS

AFFIDAVIT IN REPLY OF RESPONDENT NO. 2

✓  
M.S. Ru  
22/11  
I, **KAMAL PANDE**, working as Secretary to the Government of India, Ministry of Home Affairs, New Delhi, do hereby on solemn affirmation state and submit as under in reply to the Contempt Petition No. 62 of 2001 filed by the Original Applicant in OA No. 580/93.

1. I say and submit that I have read the copy of the aforesaid Contempt Petition and understood the contents thereof. I deny and do not admit what has been stated in the contempt petition. I further say and submit that I have not committed any contempt, as alleged or otherwise, with regard to the directions issued by this Hon'ble Tribunal in its Judgement dated 7.6.2001 in OA No. 580/93. I most respectfully say and submit that I hold this Hon'ble Tribunal in the highest esteem and that at no point of time I have deliberately or inadvertently disobeyed any order of this Hon'ble Tribunal nor do I have any such intention.



Copy sent  
to Mr. N. K. Nishit  
on 22.11.02  
[Signature]

[Signature]  
(KAMAL PANDE)  
Home Secretary  
Government of India  
New Delhi.

2. On a close reading of this Hon'ble Tribunal's aforesaid judgement as a whole, it will be kindly appreciated that the directions issued therein was solely to the State Government which was arrayed as the Respondent No. 1 in the OA No. 580/93. There was no direction whatsoever that can be said to have been issued against the Union of India which was impleaded as Respondent No. 2 in the said OA. It is also noteworthy that the applicant in his original application had also not sought any direction or relief against the Union of India. As per the directions of this Hon'ble Tribunal, the State Government was required to forward the name of the applicant to Union of India for considering him for conferment of IPS upon him in pursuance of his selection and inclusion of his name in 1984 Select List of IPS. Only thereafter, as was rightly observed by this Hon'ble Tribunal in para 13 of its judgement, it will be open for the UPSC and the Central Government to consider whether the applicant is suitable for promotion to IPS Cadre. Thus, it will be kindly appreciated that until and unless the State Government furnishes its recommendations to the Central Government, it will not be possible for the Central Government to take further appropriate action in the matter. Therefore, in the absence of any specific direction against the Union of India in the judgement dated 7.6.2001 in OA No. 580/93, the alleged non-compliance on the part of the State Government to forward the applicant's name to the Union of India, within the specified time, cannot, in any view of the matter, be construed as non-compliance by this respondent of the direction issued by this Hon'ble Tribunal in its aforesaid judgement. **Under these circumstances, I most respectfully say and submit that I have been unnecessarily impleaded as a party by name in the present contempt proceedings.**



3. I, therefore, pray that this Hon'ble Tribunal may be graciously pleased to discharge me from the present contempt proceedings.

x   
(KAMAL PANDE)  
Home Secretary  
Government of India  
New Delhi,

4. Without any prejudice to my aforesaid submissions, I most respectfully say and submit that the present contempt petition deserves to be dismissed purely on the following technical ground also. In this context, it will be kindly appreciated that the State Government being aggrieved by the aforesaid judgement of this Hon'ble Tribunal rendered in OA No. 580/93 had filed a writ petition being Special Civil Application No. 11111 of 2001 before the Hon'ble High Court of Gujarat at Ahmedabad. In the said writ proceedings, the Hon'ble High Court of Gujarat by its order dated 27.11.2001, refusing to interfere with the order of this Hon'ble Tribunal, was pleased to reject the said writ petition. Thus, in view of the aforesaid development, the judgement of this Hon'ble Tribunal rendered on 7.6.2001 in OA No. 580/93 stands "duly merged" with the order dated 27.11.2001 passed by the Hon'ble High Court of Gujarat. In my respectful submission, even though the applicant might have filed the present contempt petition prior to the aforesaid Hon'ble High Court's order dated 27.11.2001, yet in view of the subsequent merger of the judgement of this Hon'ble tribunal with the Hon'ble High Court's order aforesaid, the present contempt petition filed before this Hon'ble Tribunal is not sustainable in law on the ground of operation of the "**Doctrine of Merger**". Shortly stated, the appropriate forum in the facts and circumstances of the present case, can only be the Hon'ble High Court of Gujarat at Ahmedabad. This is of course without prejudice to my contention that I have not flouted any order of this Hon'ble Tribunal.



Station: New Delhi  
Dated: 18.01.2002

\*

(KAMAL PANDE)

(KAMAL PANDE)  
Home Secretary  
Government of India  
New Delhi.

Through

(Mallari S Rao)

Addl. Central Govt. Standing Counsel

## AFFIDAVIT

I, Kamal Pande, serving as Secretary to the Government of India, Ministry of Home Affairs, New Delhi, do hereby solemnly swear and declare that what has been stated in paras 1 to 3 hereinabove are true and correct to the best of my knowledge, information and belief and I believe the same to be true and the contents of para 4 are based on the legal advice of my Counsel. I have not suppressed any material fact.

SOLEMNLY AFFIRMED AT NEW DELHI ON THIS 18<sup>th</sup> DAY OF JANUARY, 2002.

*Intervenor*

x *Kamal Pande*

**DEPONENT**

(KAMAL PANDE)  
Home Secretary  
Government of India  
New Delhi,



Certified that the deponent  
Shri Kamal Pande  
S/o Shri Home Secretary  
Ministry of Home Affairs  
Government of India  
identified by Shri [Signature]  
has solemnly affirmed before me at New  
Delhi on 18/1/02 that the contents  
of the affidavit which has been read over  
and explained to him are true & correct  
to his knowledge.  
[Signature]  
Oath Commissioner, New Delhi.