

Central Administrative Tribunal Lucknow Bench Lucknow.

O.A. No: 519/2005

This, the 22nd day of Feb, 2007.

Hon'ble Mr. Justice Khem Karan, Vice Chairman,
Hon'ble Mr. A. K. Singh, Member(A)

Mrs. Chandra Nigam aged about 57 years wife of Shri Ratan Singh, resident of C-24, Butler Palace, Lucknow and presently posted as Registrar, Firms Societies and Chits, Uttar Pradesh, Vikash Deep, 22, Station Road, Lucknow.

Applicant.

By Advocate : Sri S.C. Dhasmana

Versus

1. Union of India, through the Secretary, Department of Personnel, Public Grievance and Pension, Government of India, North Block, New Delhi.
2. Union Public Service Commission, Dolphar House, Shahajahan Road, New Delhi through its Secretary.
3. State of U.P. through its Chief Secretary to the Government of U.P., Civil Secretariat, Lucknow.
4. The Principal Secretary (Appointments), U.P. Government, Civil Secretariat, Lucknow.

..... Respondents.

By Advocate: Shri Veer Raghav for Sunil Sharma for Respondent No. 1
Shri A.K. Chatuvedi for Respondent No. 2
Shri Manoj Kumar Dubey for Shri Sudeep Seth for R.No.3 & 4.

ORDER

Hon'ble Shri A.K. Singh , Member (A)

Original Application No. 519 of 2005 has been filed by the applicant Mrs. Chandra Nigam (address given in the O.A.) against non-consideration of her case for promotion to the Indian Administrative Service (I.A.S.) Cadre for which, according to her she was suitable to be considered.

2. The applicant submits that after having been declared successful in the U.P. Civil Service (Executive Branch) Examinations conducted by the U.P. Public Service Commission in the year 1973, she was appointed as Dy. Collector (Trainee) and posted at Allahabad vide order dated 15.5.1974 and she remained posted there upto 15.7.1978. She was confirmed in the Provincial Civil Service w.e.f. 1.7.1976 vide order dated 1.7.1976 of the State Government. Thereafter, the applicant was transferred and posted in different capacities such as Dy. Administrator, Khadi & Village Industry Board,

Secretary/ Additional Secretary, Kanpur Development Authority, Additional District Magistrate, Kanpur, General Manager, Handloom, Kanpur, Secretary, Housing and Rural Housing Board, Lucknow, Chief Development Officer, Hamirpur, Vice Chairman, Unnao Shuklaganj Development Authority, Unnao, Special Secretary, Women and Child Welfare, Revenue Excise, Co-operative since 25.10.1993 till 30.9.2003. Thereafter, the applicant was transferred on 30.9.2003 and posted as Registrar, Firms, Societies and Chits, Uttar Pradesh, Lucknow and she has been working on the aforesaid post till date. The main submissions of the applicant in this O.A. are:-

- i) The applicant fulfills the criteria of 8 years of continuous service in the post of Dy. Collector as per para 5(2) of the I.A.S. (Appointment by Promotion) Regulation, 1955;
- ii) The non consideration of her case for promotion to the cadre of Indian Administrative Service, even though she possessed an excellent Annual Confidential Reports combined with unblemished record of service and excellent performance, is clearly illegal, arbitrary, discriminatory, unfair and unjust and is violative of Article 14 and 16 of the Constitution of India;
- iii) There is no departmental enquiry also pending against her. She also never faced any departmental enquiry or proceedings against her throughout her career.
- iv) There is nothing against the applicant which can be treated as a bar for promotion to the IAS cadre from the PCS cadre.
- v) As she is rated as one of the more sincere and dedicated officer in the State Government, all the entries in her ACRs are outstanding;
- vi) The applicant also submits that it is well established principle of law that on promotion, all previous adverse entries lose their adverse/bad effect.
- vii) In her case also, on her promotion, the previous entries relating to the year 1995 to 1996 became meaningless on account of promotion to Senior positions before the year 2000 when she became eligible to be considered for promotion to the cadre of IAS. Moreover, the aforesaid entries were expunged long back vide order dated 14.3.2002. The applicant has also


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cited the judgment of the Apex Court rendered in Jayata Prasad's case. It has been held that once a person is promoted in the higher grade/post, the adverse remarks stood washed out. This applies to her case. Hence, any adverse entry in her ACR should be deemed to have already been washed out when promotions were ordered by the State Government in her favour.

viii) In spite of fulfilling all the requirements for promotion to the cadre of I.A.S., she has been superseded. Many other incumbents for such promotion like Chandra Prakash I, Udai Pratap Singh II and Sri Sachidanand Dubey were granted promotion to IAS cadre in spite of disciplinary proceedings pending against them.

ix) In case of one Smt. Kusum Sharma, who is placed at Sl. No. 67 of the gradation list, Hon'ble High Court has directed the respondents to consider her case, on the ground of parity, to the IAS cadre. Similar direction to the respondents can also be issued in the case of the applicant who is also similarly placed.

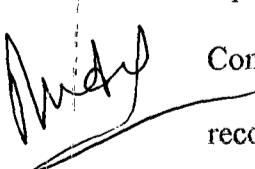
x) She also submits that the case of the applicant could not be considered for promotion to the IAS cadre against vacancies existing in the year 2000 as her name was not sent for consideration to UPSC by the State Government. She accordingly, prays for a direction to the respondents to consider her case for promotion against the vacancies in the IAS cadre pertaining to the year 2000.

3. Respondents on their part have opposed the Original Application. They submit that a Selection Committee consisting of Chairman or a Member of the UPSC and which also includes officers of the level of Chief Secretary of the concerned State and other Senior officers is vested with the authority to consider and recommend the name of suitable candidates for promotion to the IAS cadre from the list of eligible candidates from (provincial service), which is sent to UPSC by the State Government. In accordance with Para 5 (4) of IAS (appointment by promotion) regulations 1955, the selection committee has to prepare a select list, after categorizing and accordingly classifying the eligible officers in the zone of consideration as "Outstanding", "Very Good", "Good" or



"Unfit" as the case may be. Grading of eligible officers into the above mentioned categories is determined on an overall assessment of their service records. The Selection Committee, thereafter, prepares a list which includes the required number of names first from amongst the officers who are classified as "Outstanding" and then from amongst similarly classified as "Very Good" and thereafter from amongst similarly classified as "Good" and the order of names within each category is maintained in the order of their respective inter-se seniority in the State Civil Service, as per para 5(5) of the I.A.S. (Appointment by Promotion) Regulations, 1955.

4. As per uniform and consistent procedure and practices followed by the Union Public Service Commission, the Selection Committee examines the service records of each of the eligible officers, with special reference to the performance of officers for the years preceding the year for which the select list is being prepared. The Selection Committee also deliberates on the quality of the officer as indicated in the various columns recorded by the reporting/reviewing officer/ accepting authority in the ACRs for different years and then after detailed deliberations and discussions, finally arrives at a classification to be assigned to each eligible officer in accordance with the provisions of the aforesaid I.A.S. (Appointment by Promotion) Regulations, 1955. The selection committee also reviews and determines the overall grading recorded in the ACRs to ensure that this is not inconsistent with the grading/remarks, under various parameters or attributes recorded in the respective ACRs. They also submit that it can be possible that overall grading assigned to an officer by the Selection Committee may be different from over all ACR grading of the officer. Respondents also submit that the grading given by reporting/reviewing officers in the ACRs reflects the merit of the officer reported upon in isolation whereas the classification made by the Selection Committee is based on a logical and in-depth examination of service records of the incumbent as reflected in the various columns of his ACRs. The Selection Committee also takes into account the orders of appreciation for meritorious work done by concerned officer, if any. Similarly, it also



keeps in view the orders wherein penalties or any adverse remarks are communicated to the officers which, even after due consideration of his representation, have not been completely expunged.

5. The Selection Committee makes such assessments in a fair and objective manner. The procedure adopted by the Selection Committee in preparing the select list is uniformly and consistently applied for all States and cadres for induction of the State Service Officer into All India Services. The Selection Committee undertakes such a detailed exercise with a view to ensure objectiveness and fairness in selection. Respondents further submit that they have applied the above mentioned criteria while considering the case of the applicant.

6. Respondents further submit that Selection Committee which met on 28/29.12.2004 and 19.1.2005 had duly considered the case of the applicant Smt. Chandra Nigam, who was placed at Sl.No. 7 of the eligibility list for the year 2001 and Sl.No. 3 in the eligibility list for the year 2002. The applicant was assessed as 'Good' for both the years on the basis of an overall assessment of her service records by the committee in accordance with para 5(4) of IAS (Appointment by Promotion) Regulations, 1955. On the basis of this assessment, her name could not be included in any of the select lists as officers having higher grading were available for inclusion in the select list for 2001 and 2002.

7. At the time of oral hearing, the Counsel for respondents, namely Union Public Service Commission informed the Court, that the case of the applicant Smt. Chandra Nigam was also considered for promotion to the IAS cadre against vacancies arising in the year 2000 by the Selection Committee on 28 / 29th December 2004 at 11.00 Hrs. Her name appears at Sl. No. 17 of the eligibility list for such consideration. In view of the above, the respondents submit that the O.A. No. 519 of 2005 is devoid of merit and deserves to be dismissed.

8. Both the applicant as well as respondents were heard through their respective counsels on 31.1.2007. Shri S.C.Dhasmana appeared for the applicant.

Shri A.K. Chaturvedi appeared for the U.P.S.C., Sri Veer Raghav brief holder for Shri Sunil Sharma appeared for the Respondent No. 1 and Sri Manoj Kumar Dubey brief holder for Sri Sudeep Seth appeared for respondent No. 3 and 4. The applicant and respondents were heard through their respective counsels on 31.1.2007. In their oral submissions, they only reiterated the submissions as above.

9. Counsel for the State Government submits that the name of the applicant was duly forwarded by the State Government for consideration for promotion to the IAS cadre and her case was duly considered by the UPSC. Shri A.K. Chaturvedi, counsel for UPSC also confirmed this fact.

10. We have carefully considered the submissions made on behalf of the applicant as well as by the respondents across the bar and have also perused the records of the case. We find that the case of the applicant was duly forwarded to the UPSC by the State Government for consideration for promotion to the IAS cadre in accordance with IAS (Appointment by Promotion) Regulations, 1955 and her case was duly considered by the Selection Committee on 28.12.2004. The applicant's name appears at Sl. No. 17 of the eligibility list in F.No.6/20/2004-AIS. The applicant has been graded as 'Good' and accordingly her name could not be included in the select list for promotion in the IAS cadre as officers having higher grading were available for inclusion in the select list of 2000 for promotion to IAS cadre. The relevant findings of the Selection Committee for the year 2000 are recorded in UPSC's File No. 6/20/2004-AIS. In all 37 candidates were considered for promotion. The overall gradings of these 37 candidates made by the UPSC, on the basis of their assessment is reproduced below. The name of the applicant appears at Sl. No. 17 of the Eligibility list:-

ANNEXURE

CONFIDENTIAL
No F.6/20(1)/2004-AIS

<u>S.No.</u>	<u>Name of Officer (S/Shri)</u>	<u>Date of Birth</u>	<u>Overall Grading</u>
1.	Shiv Pratap Singh-1	01.08.49	Unfit
2.	Sant Lal(SC)	01.06.47	Good

3.	Shyam Shanker Tripathi	30.06.48	Good
4.	Har Pal Singh	11.12.44	Unfit
5.	Ram Surat	20.09.49	Good
6.	Umesh Kumar Mittal	01.07.48	Very Good
7.	Dayal Singh Nath (SC)	10.04.47	Very Good
8.	Ram Surat Dubey	01.11.49	Very Good
9.	Chanar Ram (SC)	07.01.46	Very Good
10.	Girdhari Dhal (SC)	10.12.46	Very Good
11.	S.V.S. Saxena	15.07.47	Very Good
12.	Dr. Vishram Singh Yadav	01.02.46	Good
13.	M.A. Siddiqui	10.01.46	Very Good
14.	D.N. Dubey	15.01.49	Very Good
15.	R.N. Tripathi	18.02.49	Very Good
16.	G.K. Tandon	07.01.49	Very Good
17.	Smt. Chandra Nigam	01.09.48	Good
18.	A.K. Duggal	24.10.48	Very Good
19.	Smt. Deepika Duggal	08.11.50	Very Good
20.	Dashrath Narayan	02.01.46	Very Good
21.	Bdalbhadra Nath Dixit	10.10.48	Very Good
22.	Rajeev Chandra	13.07.51	Very Good
23.	Jai Prakash	08.10.46	Very Good
24.	Smt. Alka Srivastava	17.03.51	Very Good
25.	Data Deen Pasi(SC)	15.06.49	Good
26.	P.D. Srivas(SC)	10.02.47	Very Good
27.	Mishri Lal(SC)	22.09.48	Unfit
28.	H.S. Yadav	16.01.50	Very Good
29.	V.N. Agarwal	01.09.48	Very Good
30.	S.N. Mishra	05.09.47	Very Good
31.	K.S. Dariyal	02.04.46	Good
32.	O.P.N. Singh	06.07.52	Very Good
33.	M.S. Raizada	14.11.52	Good

34.	Dileep Sahay	19.09.49	Very Good
35.	S.K. Sharma	01.08.50.	Very Good
36.	Dr. M. L. Dwivedi	03.04.48	Good
37.	Dr. S.N. Pathak.	01.02.49.	Very Good.

The officer was considered as per court directions.

11. It is clear from the record that the name of the applicant could not be included in the select list for the year 2000 as officers having higher grading were available for inclusion in the select list for the year 2000.

12. Similarly, from the records, we also find that the selection Committee which met on 28th/29th December, 2004 at 11.00 Hrs. had also considered the case of the applicant for promotion to the IAS cadre but as she was graded 'Good' and as persons having higher grading were available for inclusion in the select list of 2001, her name could not be included in it. The eligibility list of 2001 along with over all grading of eligible officers made by UPSC is reproduced hereunder. The name of the applicant appears at Sl. No. 7 of the aforesaid list.

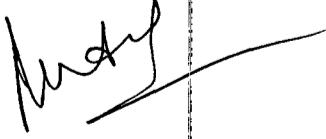
ANNEXURE-1

ELIGIBILITY LIST OF 2001.

CONFIDENTIAL
No. F.6/20/2004-AIS

<u>S.No.</u>	<u>Name of Officer (S/Shri)</u>	<u>Date of Birth</u>	<u>Overall Grading</u>
1.	Shiv Pratap Singh-I	01.08.1949	Unfit
2.	Sant Lal(SC)	01.06.1947	Good
3.	S.S. Tripathi	30.06.1948	Good
4.	Ram Surat	20.09.1949	Good
5.	Surendra Veer Singh Saxena	15.07.1947	Very Good
6.	Prabhu Dayal Srivas(SC)	10.02.1947	Very Good
7.	Smt. Chandra Nigam	01.09.1948	Good
8.	Balbhadra Nath Dixit	10.10.1948	Very Good
9.	Smt. Alka Srivastava	17.03.1951	Very Good
10.	Datadeen Pasi (SC)	15.06.1949	Unfit
11.	Mishri Lal(SC)	22.09.1948	Good

12.	Heeramani Singh Yadav	16.01.1950	Very Good
13.	Vishambhar Nath Agrawal	01.09.1948	Very Good
14.	Satyendra Nath Mishra	05.09.1947	Very Good
15.	Om Prakash Narayan	06.07.1952	Very Good
16.	Ranjeet Singh Pankaj(SC)	13.10.1949	Very Good
17.	Madhusudan Swaroop Raizada	14.11.1952	Very Good
18.	Dileep Sahay	19.09.1949	Good
19.	Shravan Kumar Sharma	01.08.1950	Very Good
20.	Dr. Munni Dlal Dwivedi	03.04.1948	Good
21.	Dr. Sachchida Nand Pdathak	01.02.1949	Very Good
22.	Dr. Ramesh Chandra Dua	10.06.1947	Very Good
23.	Ram Sajeevan(SC)	07.01.1948	Very Good
24.	Ajay Kumar Upadhyay	30.03.1952	Very Good
25.	Jai Prakash-II	05.07.1948	Very Good
26.	Pramod Kumar Srivastava	23.07.1952	Good
27.	Rakesh Kumar Goal	15.09.1951	Very Good
28.	Shrawan Kumar Upadhyay	02.07.1950	Very Good
29.	Dr. Rajendra Prasad Pandey	25.06.1947	Very Good
30.	Rajeshwar Prasad Singh	15.12.1948	Very Good
31.	Smt. Anita Chatterji	01.01.1951	Good
32.	Rama Shankar Sharma	01.12.1947	Good
33.	Dr. Jitendra Bihari Singha	01.10.1951	Very Good
34.	Tirath Raj Tripathi	05.01.1951	Very Good
34A.	Smt. Kusum Sharma	03.06.1952	Very Good
35.	Muktesh Mohan Mishra	16.08.1950	Very Good
36.	Umesh Chandra Tiwari.	12.01.1949	Very Good


The officer at Sl. No. 34A has been included in addition to the normal zone of consideration as she has obtained interim stay from the Court against her allocation to the State of Uttarakhand.

13. We also find that the applicant's case was also considered for promotion against promotional quota in the IAS cadre of the State for the

year 2002. Her name appears at Sl. No. 3 of the eligibility list for the aforesaid year. The applicant had been graded as 'Good' by the Selection Committee and hence her name could not be included in the select list for the year 2002 as other officers having higher grading of 'Very Good' were available for inclusion in the select list for the year 2002. The eligibility list of 2002 is available in UPSC's file No. F.6/20/2004-AIS. Grading shown in respect of each individual officers is reproduced here below. The name of the applicant appears at Sl. No. 3 of the aforesaid list.

ANNEXURE-1
ELIGIBILITY LIST OF 2002

CONFIDENTIAL
No. F.6/20/2004-AIS

<u>S.No.</u>	<u>Name of Officer (S/Shri)</u>	<u>Date of Birth</u>	<u>Overall Grading</u>
1.	Shiv Pratap Singh-I	01.08.1949	Unfit
2.	Ram Surat	20.09.1949	Good
2A.	Surendra Veer Singh Saxena	15.07.1947	Very Good
<u>3.</u>	<u>Smt. Chandra Nigam</u>	<u>01.09.1948</u>	<u>Good</u>
4.	Datadeen Pasi (SC)	15.06.1949	Very Good
5.	Mishri Lal(SC)	22.09.1948	Good
6.	Dileep Sahay	19.09.1949	Very Good
7.	Dr. Munni Lal Dwivedi	03.04.1948	Unfit
8.	Ram Sajeevan(SC)	07.01.1948	Very Good
9.	Ajay Kumar Upadhyay	30.03.1952	Very Good
10.	Jai Prakash-II	05.07.1948	Very Good
11.	Pramod Kumar Srivastava	23.07.1952	Good
12.	Rakesh Kumar Goal	15.09.1951	Very Good
13.	Shrawan Kumar Upadhyay	02.07.1950	Very Good
14.	Rajeshwar Prasad Singh-I	5.12.1948	Very Good
15.	Smt. Anita Chatterji	01.01.1951	Very Good
16.	Dr. Jitendra Buhari Sinha	01.10.1951	Very Good
17.	Tirath Raj Tripathi	05.01.1951	Very Good

17A.	Smt. Kusum Sharma	03.06.1952	Good
18.	Muktesh Mohan Mishra	16.08.1950	Very Good
19.	Umesh Chandra Tiwari	12.01.1949	Very Good
20.	Shri Pati (SC)	10.12.1948	Very Good
21.	Pragyan Ram Mishra	27.09.1952	Very Good
22.	Yaghveer Singh Chauhan	01.07.1948	Very Good
23.	Rama Shankar Sahu	26.06.1950	Very Good
24.	Shashi Kant Sharma	21.04.1950	Very Good
25.	Balwant Singh Chaubhan	21.03.1953	Very Good
26.	Chandra Prakash-I	10.10.1949	Very Good
27.	Chob Singh Verma	25.01.1952	Very Good
28.	Jai Prakash Mishra	01.01.1950	Very Good
29.	Satyaveer Singh Aria	07.08.1948	Very Good
30.	Madhukar Dwivedi	01.07.1952	Very Good
31.	Rajendra Prasad	12.10.1949	Very Good
32.	Sudhir Saxena	04.03.1950	Very Good
33.	Pawan Kumar	02.10.1950	Very Good

The Officer at 2A was considered in addition to normal zone as per seconda proviso to Regulation 5(%) of the IAS (appointment by Promotion) Regulation, 1955.

The Officer at S. No. 17 A has been included in addition to the normal zone of consideration, as she has obtained interim stay from the Court against her allocation to the State of Uttarakhand.

In all, 33 officers were considered for promotion to the IAS cadre by the Selection Committee against vacancies arising during the year 2002.

14. As regards the averment made by the applicant that she has not received any adverse remarks in her entire service career and that adverse remarks recorded in her Annual Confidential Report for the year 1995-96 were duly expunged. Hence there is absolutely no justification for the Selection Committee to ignore her case for promotion to the IAS cadre. We are of the opinion that absence of adverse remarks is not the sole criterion for assessing an officer while considering her/his case for promotion to the IAS cadre. We rely in this regard on the decision of the Apex Court in

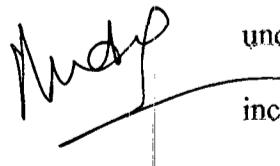


Gulam Hussain Vs. UOI and Others (Reported in 1971-SC-1138). The relevant extract of the judgment is reproduced below:-

"Promotion is made on the basis of the positive merit. Absence of adverse remarks in the confidential report is no criterion of the quality of an officer."

15. On perusal of the record, we also find that since adverse remarks for the year 1995-96 were already expunged by the State Government, the same were not taken into consideration to arrive at any negative finding in regard to the applicant. The appreciation certificates received by her, are available in her ACR folders and the Selection Committee had perused the same while recording their assessment for the years 2000, 2001 and 2002. It is on record that the case of the applicant was not considered for the year 2003 and 2004 as she had attained the age of 54 years as on 1.1.2003 and therefore, was not eligible for consideration for promotion to I.A.S. cadre as per para 5(3) of IAS (Appointment by Promotion) Regulations, 1955.

16. As regards the cases of Chandra Prakash I, Udai Pratap Singh II and Sachidanand Dubey, respondent No.2 have affirmed as per para 11.3 of their Counter affidavit dated 21.3.2006 that they were included provisionally in the select list subject to clearance of disciplinary proceedings pending against them/ grant of integrity certificate by the State Government/ Expunction of adverse remarks by the State Government. Subsequent to the approval of the Select List for the years 2001 to 2004, the State Government had intimated that the disciplinary proceedings pending against Chandra Prakash I, Udai Pratap Singh II and Sachidanand Dubey were concluded and the officers exonerated. Accordingly, the Commission made their inclusion as unconditional and final in the Select List of 2003 wherein they had been included provisionally subject to their clearance in the departmental enquiry pending against them. The Govt. of India, thereafter, appointed them to IAS vide Notification dated 16.5.2005.



17. We are however, of the considered opinion that if these three incumbents were facing disciplinary proceedings after issue of a charge sheet, their name should not have been included in the select list either on a

provisional basis or otherwise. In all such cases as per rules, where disciplinary proceedings are in process after the issue of charge sheet, the names of the delinquent employee, after assessment of their suitability/fitness for promotion, are to be kept under sealed cover. In these cases also, identical procedure should have been adopted and followed. Even as per judgment of the Apex Court in the case of **K.V. Jankiraman and Others Vs. UOI and others (Reported in AIR 1991 SC 2010)**, the Apex Court had held that "Sealed cover procedure can be adopted only after a regular charge sheet has been issued to the employee concerned and it is only after the date of issue of charge sheet that disciplinary proceedings can be taken to have been initiated. Hence, inclusion of these officers in the provisional select list for selection to the cadre of IAS even when the disciplinary proceedings were pending against them and there were adverse remarks in the relevant ACRs before the selection Committee, the Committee was not justified in overlooking these aspects under any circumstances. Moreover, the State Government had also not issued Integrity Certificates in respect of these officers as has been affirmed by respondent No.2 in para 11.3 of their counter affidavit dated 21.3.2006, the process of selection of these incumbents, clearly appears dubious and irregular. We are unable to appreciate such an undue hurry on the part of the Selection Committee to recommend promotion of these officers to IAS cadre. As Respondent No.2 Presided over the Selection Committee, they have naturally to share a larger portion of the blame. It is thus clear from the record that the decision of the Selection Committee in so far as these officers are concerned was wholly irregular and in violation of rules as well as settled principles of law as enunciated by the Apex Court in the case of **Jankiraman and others Vs. Union of India and others (AIR 1991 SC 2010)** and various other pronouncement on the subject. We will like to draw the attention of the Chairman, UPSC and the Union of India to these irregularities and to direct them to take effective steps to ensure that irregularities of this type do not take place in future.

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18. On our part, we will not like to interfere with the aforesaid decision of the respondents as these three officers have not been impleaded as necessary parties in the O.A. Moreover, once the Selection process is complete, right or wrong, and the State Government has closed the inquiry, expunged the adverse remarks and also released the Integrity certificate in their favour, there is nothing left for us to interfere at this stage. Moreover, the case of the applicant has also not suffered in consequence of their promotion. As such, we will not like to say anything more than this in this matter.

19. Coming to the case of this applicant, we find that the entire process of selection of eligible State Civil Service Officers promotion to the IAS cadre appears to be by and large fair. The Committee did not consider the case of Smt. Kusum Sharma for promotion to the IAS cadre for the year 2001, 2002, 2003 and 2004 respectively. Smt. Kusum Sharma was assessed by the Committee as 'Very Good' for the year 2001 while she was assessed as 'Good' for the years 2002, 2003 and 2004. On the basis of this assessment of the selection Committee, her name could not be included in any of the select lists as the officers having higher grading or of equal grading but senior to her were available for inclusion in the Select Lists for the years 2001, 2002, 2003 and 2004, she could not find a place in the select list..

20. As regards the aspect of seniority, we are of the opinion that selections to All India Service should be made primarily on the basis of merit and seniority has to play only a secondary role. We also find that the law also provides for the same. An element of supersession is to inherent in the law relating to appointment of State Civil Service Officers to the IAS cadre. Para 5(5) of IAS (Appointment by Promotion) Regulations, 1955 provides for classifying the eligible State Civil Service Officers included in the zone of consideration as 'Outstanding' Very Good' then 'Good' and 'Unfit' as the case may be, on overall assessment of the service records of each eligible officer by the Selection Committee. Hence, the points relating to seniority raised by the applicant in the O.A. does not hold any water. The point of law in this regard is also settled by the Apex Court in the case of **R.S. Dass Vs. Union**

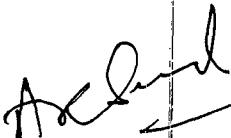


of India and others (Reported in AIR 1987 SC 593). The Hon'ble Apex Court had held as under:-

"The amended provisions of Regulation 5 have curtailed and restricted the role of seniority in the process of selection as it has given priority to merit. Now, the Committee is required to categorize the eligible officers in four different categories viz. 'Outstanding', 'Very Good', 'Good' or 'Unfit' on overall relative assessment of their service records. After categorization is made, the committee has to arrange the names of the officers in the Select List in accordance with the procedure laid down in Regulation 5(5). In arranging the names in the Select List, the Committee has to follow the inter-se-seniority of officers within each category. If there are five officers, who fall within 'Outstanding' category, their names shall be arranged in the order of their inter-se-seniority in the State Civil Service. The same principle is followed in arranging the list from amongst the officers falling in the category of 'Very Good' and 'Good'. Similarly if a junior officer's name finds place in the category of 'Outstanding' he would be placed higher in the select list in preference to a senior officer finding place in the 'Very Good' or 'Good' category. In this process, a junior officer having higher grading would supersede his seniors. This cannot be helped, where selection is made on merit alone for promotion to a higher service, selection of an officer, though junior in service in preference to senior does not strictly amount to super-session."

21. We also find that the grading of the applicant as 'Good' by the Selection Committee is by and large supported by the entries recorded in her annual confidential reports during the course of her service in the P.C.S. cadre. Moreover, it is not proper for a Tribunal or a Court to hear appeals over the decisions of the Selection Committee. The Tribunal also cannot substitute its decision for the findings of the DPC unless the same are malafide, arbitrary or perverse. In the case of **State of Madhya Pradesh Vs. Shri Srikant Chapekhar (Reported in JT 1992 (5) SC 638)**. The Hon'ble Apex

Court held as under:-

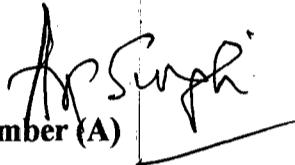

"We are of the view that the Tribunal fell into patent error in substituting itself for the DPC. The remarks in the Annual confidential report are based on the assessment of the work and conduct of the official/ officer concerned for a period of one year. The Tribunal was wholly unjustified in reaching the conclusion that the remarks were vague and of general nature. In any case, the Tribunal outstepped its jurisdiction in reaching the conclusion that the adverse remarks were not sufficient to deny the respondent his promotion to the post of Dy. Director. It is not the function of the Tribunal to assess the service record of a Government servant, and order his promotion on that basis. It is for the DPC to evaluate the same and make recommendations based on such evaluation. This court has repeatedly held that in a case where the Court/ Tribunal comes to the conclusion that a person was considered for promotion or the consideration was illegal, then the only direction which can be given is to reconsider his case in accordance with law. It is not within the competence of the Tribunal, in

the fact of the present case, to have ordered deemed promotion of the respondents."

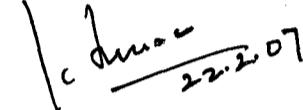
22. In the case of Nutan Arvind Vs. Union of India and others (Reported in 1996) 2 Supreme Court Cases, 488 , the Hon'ble Supreme Court have reiterated the same view.

"When a high level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority."

23. On the basis of the above, we do not find any merit in the O.A. 519 of 2005 and accordingly dismiss the same without any order as to costs.


Member (A)

HLS/-


Vice Chairman

22.2.07