IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 3rd day of August, 2005

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR.M.K.MISRA, MEMBER (ADMINISTRATIVE)

OA No. 322/2001
With MAs No.480/2002 and 573/2002

Nar Hari Sharma s/o Shri Vishnu Dutt Sharma, aged about 56 years, resident of 2/9, Gandhi Nagar, Jaipur, presently posted as Special Secretary to the Government, Government of Rajasthan, Education Department, Jaipur.

.. Applicant

(By the applicant present in person)

Versus

1. Union of India through
   The Under Secretary,
   Department of Personnel and
   Training, Ministry of Personnel,
   Public Grievances and Pensions,
   New Delhi.

2. The State of Rajasthan through
   The Secretary, Department of Personnel
   Secretariat, Bhagwan Das Road,
   Jaipur.

3. Shri S.S.Rajvi,
   IAS, through the
   Secretary, Department of
   Personnel, Secretariat,
   Bhagwan Das Road, Jaipur.

4. The Union Public Service Commission
   Through its Chairman,
   Dholpur House,
   New Delhi.

.. Respondents

By Advocate: Mr. U.D.Sharma for respondent No.2
Mr. Rakesh Jain proxy counsel to
Mr. Sanjay Pareek, for respondent No.4
None for other respondents

OA No.329/2001
With MA No.574/2002

M.K.Khanna s/o Shri N.R.Khanna, aged about 56 years, r/o C-41, Malviya Nagar, Jaipur

.. Applicant

(By Advocate: Mr. Rajendra Vaish)

Versus

1. Union of India through the Under Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, New Delhi.

2. State of Rajasthan through The Secretary, Department of Personnel, Secretariat, Bhagwan Das Road, Jaipur.

3. Shri S.S.Rajvi, IAS - through the Secretary, Department of Personnel, Secretariat, Bhagwan Das Road, Jaipur.

4. Union Public Service Commission through the Secretary, Dholpur House, Shahjahan Road, New Delhi.

.. Respondents

By Advocate: Shri U.D.Sharma for respondent No.2
Shri Rakesh Jain, proxy counsel to
Shri Sanjay Pareek, for respondent No.4
None present for other respondents

ORDER (ORAL)

By this common order, we propose to dispose of these two OAs in which similar controversy has been raised.

2. Applicants S/Shri Nar Hari Sharma and M.K.Khanna originally members of the Rajasthan Administrative Service were selected and approved for promotion from State cadre to Indian Administrative Service pursuant to the recommendations of the Selection committee constituted for the purpose under the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. They were given 1984 as the year of allotment. One Shri S.S.Rajvi who was aggrieved on account of non-inclusion of his name in the select list filed a Writ Petition No. 2481/97 before the High Court of Rajasthan. The said Writ Petition was disposed of by order dated 23.4.99. In the process of implementation of the order of the Hon'ble High Court in favour of Shri S.S.Rajvi, a notice dated 5.7.2001 was served on the applicants to show cause why their year of allotment determined as 1984 should not be revised to 1987 and why they should not be placed below Shri S.S.Rajvi in the gradation list of IAS cadre of Rajasthan. It may also be relevant to submit that both the applicants have also submitted detailed representation separately to the Secretary, Department of Personnel and Training, New Delhi. Those

representations were pending when these OAs were filed by these applicants. However, pursuant to the directions issued by this Tribunal vide order dated 13.3.2002, the representations of the applicants were decided vide order dated 16th May, 2002 which were subsequently challenged by the applicants by filing amended OA. It is these orders which are under challenge in these OAs. It may also be relevant to submit here that besides the relief of the applicants that their seniority should not be disturbed and the cases of all the officers who were in the zone of consideration in the year 1992 should be reviewed and not only the case of Shri S.S.Rajvi in isolation, the applicant in OA No.322/2001 namely, Shri Nar Hari Sharma, has sought additional relief to the extent that the respondents should not have clubbed the vacancies while preparing the select list and the select list should have been prepared year-wise for the year 1991-92, 1992-93 and 1993-94.

3. Notice of these applications were given to the respondents. Respondents have filed reply. In the reply, it has been stated that when the select list for the year 1991-92 was prepared there was no provision in the IAS (Appointment by Promotion) Regulations, 1955 for making year-wise select lists. This provision has been made after making amendment to these regulations vide notification No. 14015/27/99-

AIS(I)-A dated 25.7.2000. It is further stated that the Hon'ble Tribunal in their judgment dated 23.5.2000 in OA No.35/94, Ranjeet Singh Gathala vs. Union of India and ors had directed preparation of separate lists for 1991-92, 1992-93 and 1993-94. This has been challenged in the High Court of Judicature for Rajasthan, Jaipur Bench in DB CWP No. 2996/2000 by Shri J.L.Modi. The Hon'ble High Court has stayed operation of Hon'ble Tribunal's judgment vide their order dated 5.7.2000. Thus, according to the respondents, it is not correct to say that any illegality was committed by clubbing of the vacancies at the time of preparation of select list for the year 1991-92.

3.1 As regards the second issue regarding change in the seniority list and assigning of the year of allotment from 1984 to 1987 and also that cases of all officers who were in the zone of consideration in the year 1992 should be reviewed not only the case of Shri S.S.Rajvi, the respondents have stated that the review of the case of Shri S.S.Rajvi for his inclusion in the select list in the year 1991-92 was undertaken under the directions contained in the judgment dated 23.4.99. It is further stated that Shri S.S.Rajvi has approached the Hon'ble High Court for redressal of his grievance regarding assessment of his confidential reports and obtained suitable directions from the Hon'ble high Court and in case the present applicants

were having the same grievance, they ought to have approached the competent court of law in this regard. It is further stated that it was consequent upon the direction of the Hon'ble High Court, a meeting of the Review Selection Committee was held on 28.9.2000, the proceedings of which were approved by the UPSC. In this select list, Shri S.S.Rajvi was included at Sl.No.1. Taking into account that the officers at subsequent position in the select list were promoted to IAS w.e.f. 13.5.1992, Shri S.S.Rajvi is also deemed to be promoted on that date. In terms of the provisions of the seniority rules, Shri Rajvi is to be assigned 1987 as his year of allotment. It is further stated that in terms of provisions of these rules an officer junior to Shri Rajvi cannot be assigned an earlier year of allotment. It is further stated that amongst the officers promoted to the Rajasthan Cadre of IAS on the basis of the select list aforesaid, only two officers i.e. applicants here in these OAs remained in service. These officers had earlier allotted 1984 as the year of allotment. It was with a view to revise their year of allotment as 1987 that a show cause notice dated 15.7.2001 was issued to them. It is further stated that there is no provision under the rules for reviewing the recommendations made by the Selection Committee. However, it only on the court directions Review Selection Committee reviewed the case of Shri S.S.Rajvi upto the year 1990-91 afresh

and on the basis of overall relative assessment of his service record and after deliberating on the quality of the officer assessed him as 'outstanding' and placed him at Sl.No. 1 in the select list of 1991-92. It is further stated that the question of review/reconsideration for change of year of allotment from 1992 to any other year is also sub-judice before the Rajasthan High court in DB CWP No.2896 of 2000, J.L.Modi and Anr. vs. UOI and ors.

4. We have hard the learned counsel for the parties and gone through the material placed on record.

4.1 According to us, the matter in controversy which is being sought to be raised in these OAs is pending before the Hon'ble High Court of Judicature for Rajasthan, Jaipur Bench in DB CWP No. 2996 of 2000 filed by Shri J.L.Modi,. It is also brought to our notice that both these applicants have also been considered for promotion to Super Time Scale of IAS and have been granted Super Time Scale earlier to Shri S.S.Rajvi. It is further brought to our notice that one of the applicant is going to retire on 31st August, 2005 whereas the other is going to retire on 31st December, 2005. Thus, according to us, pendency of these OAs till decision to be rendered by the Hon'ble High Court in the case of J.L.Modi (supra) will not serve any purpose more particularly when the

applicants are going to retire immediately in near future.

4.2 In view of what has been stated above, as the issues raised by the applicants in these OAs are directly linked with the decision to be rendered by Hon'ble High Court in DB CWP No. 2896 of 2000 filed by Shri J.L.Modi and the applicants are aggrieved by the change of seniority list and assigning of year of allotment from 1984 to 1987 as a result of Review DPC undertaken by the respondents pursuant to the order dated 23.4.1999 passed by the Hon'ble High Court in CWP No.2481 of 1997 filed by Shri Rajvi, under these circumstances, it was permissible for the applicants to seek similar relief from the Hon'ble High Court rather than to approach this Tribunal for setting aside the impugned orders issued consequent upon the implementation of Hon'ble High Court direction in Rajvi's case. As already stated above, since no prejudicial order has been passed against the applicants so far and they have also been allowed Super Time Scale of IAS and in view of the fact that both the applicants are going to retire after few months, we are of the view that ends of justice will be met, if direction is given to the respondents not to pass any order prejudicial to the interest of the applicants hereinafter till the decision to be rendered by the Hon'ble High Court in DB CWP No.2896 of 2000 filed by Shri J.L.Modi, which decision will

have direct bearing on the applicants and it will be open for the respondents to deal with the cases of both the applicants in the light of decision which will be rendered by the Hon'ble High Court in the CWP filed by Shri J.L. Modi (supra).

5. With these observations, both the OAs shall stand disposed of with no order as to costs.

6. MA No.480/2002 for amendment in cause title is allowed and it shall stand disposed of accordingly.

7. In view of the order passed in these OAs, no order is required to be passed in MA No.573/2002 and 574/2002 which shall stand disposed of accordingly.

(M.K.MISRA)
Member (A)

(M.L.CHAUHAN)
Member (J)

R/