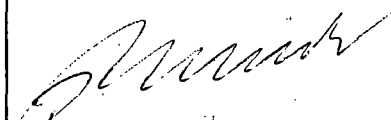



31/10/07

Mr. Vinendra Bakhaj Counsel for applicant
 Mr. N.C. Goyal
 Mr. Shantanu Sharma proxy counsel for
 Mr. Sanjay Parvek Counsel for Respond No 2.
 Mr. Kunal Rawat, Senior Standing Counsel for
 Respond No 1.
 Mr. V.D. Sharma Counsel for Respond No 3.

Arguments heard


Order reserved


 (J.P. Shukla)
 Administrative Member


 (M.L. Chauhan)
 Judicial Member

02/11/2007

order pronounced today
 in the open court by
 the aforesaid Bench


 02/11/2007
 (C.O.)

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.391/2003 with MA No.355/2003.

Jaipur, this the 2nd day of November, 2007.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. J. P. Shukla, Administrative Member.

M. L. Gupta
S/o Shri Banwari Lal Gupta,
Aged about 55 years,
R/o 24, Kirti Nagar,
New Sanganer Road,
Sodala, Jaipur.

... Applicant

By Advocate : Shri Virendra Lodha & Shri N. C. Goyal.

Vs.

1. Union of India
Through the Secretary to the Government,
Ministry of Personnel, Public Grievances and
Pension, Department of Personnel & Training,
Govt. of India, North Block,
New Delhi.
2. Union Public Service Commission
Through its Secretary, Dholpur House,
Shahjahan Road, New Delhi.
3. The State of Rajasthan
Through the Secretary,
Department of Personnel,
Government of Rajasthan, Secretariat,
Jaipur.

... Respondents.

By Advocate : Shri Kunal Rawat for Respondent No.1.
Shri Shantanu Sharma proxy counsel for
Shri Sanjay Pareek for Respondent No.2.
Shri V. D. Sharma for Respondent No.3.

: O R D E R :

Per Hon'ble Mr. M. L. Chauhan, Judicial Member.

The applicant is a State Civil Service Officer, belonging to Govt. of Rajasthan, who has filed this OA thereby praying that directions may be given to the respondents to consider the case of the applicant for appointment by promotion to the IAS against the vacancies of 1992, 1993 and 1995 as his juniors were considered/promoted to IAS. The case of the applicant for his reconsideration against the aforesaid vacancies is based on the fact that vide order dated 25.01.2000 (Annexure A/1), he was granted selection scale of RAS against the vacancies of 1988-89 on the basis of merit and it was further mentioned in that order that he shall be placed below Shri A. K. Bhandari in the seniority list and his name shall stand excluded from the list of selection scale officers pertaining to the year 1991-1992. It is further pleaded that consequent upon granted selection scale of RAS against the vacancies of 1988-89, his name figured above the name of S/s Shanker Lal Verma, Shri Babu Lal, Shri Naringa Ram Yadav, Shri Ram Prasad and others in the seniority list issued by the Department of Personnel, Government of Rajasthan vide order dated 11.09.2001 (Annexure A/2) and these persons were considered/recommended and promoted to the IAS in the year 1993-95. The applicant has further contended that he has also made representationsto the authorities on

19.09.2001 (Annexure A/6), 19.02.2003 (Annexure A/7) and representation dated 20.02.2003 (Annexure A/8), but of no avail. It is further stated that consequent upon incorporating his name just below Shri A. K. Bhandari in the seniority list, it was boundant duty caste upon the respondents to have convened the meeting of Review Selection Committee for the purpose of consideration of the candidature of the applicant for appointment by way of promotion to IAS from the date persons junior to him have been given promotion, but no steps have been taken. Ultimately, the applicant has no option but to file the present OA.

2. The applicant has also filed an application for condonation of delay thereby stating that he was pursuing the remedy before the authorities concerned under bonafide believe that his case would be reviewed in the light of order dated 25.01.2000 (Annexure A/1) and after having partly implemented the said order by placing the applicant below Shri A. K. Bhandari, the respondents ought to have convened the meeting of Review Selection Committee for the purpose of consideration of candidature of the applicant for appointment by way of promotion to IAS from the date persons junior to him have been given promotion, but no steps were taken. It is on these facts, the applicant has filed this OA thereby praying that the respondents may be directed to consider the case of the applicant for appointment by way of promotion to

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IAS against the vacancies of 1992, 1993 and 1995 as his juniors were considered/promoted to IAS in these years.

3. The Respondent No.1, Union of India, has not filed any reply. The respondent No.2, UPSC, has filed separate reply and Respondents No.3, i.e. the State of Rajasthan, has also filed reply. The facts as stated above have not been disputed. The State of Rajasthan, Respondent No.3, has raised preliminary objection to the effect that the applicant has not impleaded various officers whose names have been mentioned by him in Para 1 and Sub Paras (4), (5) and (9) of Para 4 of the application by claiming that he being senior to them should be given promotion to the IAS. Thus according to Respondent No.3, the present OA suffers from the vice of non joinder of the necessary as well as the proper parties and is required to be rejected. The Respondent No.3 has also stated that this application is barred by limitation. According to ^{Respondent} ~~him~~ ^{No.3}, the cause of action has accrued in favour of the applicant on 25.01.2000, whereas the present application has been filed in September 2003 after the expiry of one year prescribed under Section 21 of the Administrative Tribunals Act, 1985. According to Respondent No.3, even the representation filed by the applicant on 19.09.2001 (Annexure A/6) requesting for convening the Review Selection Committee for the year 1992 for consideration of his case in respect of the Select list prepared by the Selection Committee which had met on 23rd, 24th and 25th

March, 1992. According to Respondent No.3 this representation was only in respect of the Select list of 1992 and not for 1993 and 1995. According to respondents, though the seniority of the applicant was revised vide order dated 25.1.2000 (Annexure A/1), he submitted first representation after more than one and half year. It is further stated that after a lapse of about one year and 5 months he submitted another representation on 19.02.2003 (Annexure A/7) followed by another representation dated 20.02.2003 (Annexure A/8). According to respondents such representations will not extend the period of limitation.

4. On merit, it has been stated that the so called persons who have been promoted were admittedly senior to the applicant prior to 25.1.2000 on the basis of seniority lists which were operative at the relevant time when the meetings of the Selection Committee had been held earlier in 1992, 1993 and 1995 and the applicant was not coming within the zone of consideration. As such, he could not be promoted. It is stated that earlier the applicant has filed OA No.160/1998 staking his claim for consideration of his case pertaining to the Select Lists of 1993 and 1995, which was dismissed on 1.3.2000. As regards his present claim for consideration of his case for promotion on the basis of order dated 25.01.2000, respondents have taken the following stand in Para 7 of

the reply, the relevant portion of which is reproduced herein under :-

"7. As regards his present claim for consideration of his case for promotion on the basis of the order dated 25.1.2000, it is submitted that the said claim is barred by limitation and delay, as submitted above. It is further submitted that even on merits as regards his claim for consideration in respect of the 1992 Select-list, it is relevant to submit that the 1992 Select-list was prepared in respect of the 27 vacancies out of 83 officers placed in the zone of consideration and the name of the last person placed in the said Select-list was at S. No.43 of the list of eligible candidates on the basis of the grading given by the Selection Committee and even if the case of the applicant is reconsidered by placing him in the zone of consideration wherein his name might be placed at Sl. No.79-A, above Shri Shanker Lal, the chance of his being selected is nil. Thus, it will be a case of futile exercise of convening the meeting of the Review Selection Committee for the purpose of reviewing his case for the 1992 Select-List. As regards the Select lists of 1993 and 1995, a decision has already been taken by the Central Government in consultation with the Union Public Service Commission that since the very basis of the seniority on which the 1993-1995 Select lists were prepared have undergone a substantial change, the entire Select-lists for the years 1993 and 1995 required to be rescinded in the light of the revised seniority position assigned to all the State Civil Service Officers and the Selection Committees reconvened for preparing the 1993 and 1995 Select-lists afresh against the vacancies for which they were prepared and utilized during the relevant periods. This decision has been reflected in Para 3 of the Memorandum dated 17.9.1997 issued by the Department of Personnel and Training, a copy whereof has also been annexed by the applicant as a Annexure (Pages 55-56 of the OA) to his representation dated 19.02.2003, Annexure A/7. It is submitted that on the basis of this position, the UPSC had also not agreed to the reference made by the State Government to the Commission for convening a meeting of the Review Selection Committee for reviewing the Select List of 1993-94 and 1994-95 in the case of Shri H. C. Sharma and Shri A. K. Bhandari and the Commission observed that the said proposal to review the said Select list in piece meal was not in order and the State Government was requested to send another self contained proposal along with the published the seniority list of the RAS for the consideration by the Commission. A copy of the aforesaid letter

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No.6/16/1998-AIS dated 5.8.2003 sent by the commission to the State Government is annexed herewith and marked as Annexure R-3/1. Thus, the matter of undertaking the review of the Select lists of 1993 and 1995 is pending for the active consideration before the concerned authorities. In this connection, it is also relevant to submit that on account of the various litigations among the RAS officers pertaining to the seniority the entire matter is still sub judice before the Hon'ble Supreme Court inasmuch as the Special Leave Petition filed by the State Government against the order of the Division Bench of the Hon'ble Rajasthan High Court dated 12.9.2001 is pending for consideration before the Hon'ble Supreme Court. It is, therefore, submitted that the claim of the applicant for consideration for the said Select lists of 1993 and 1995 does not deserve consideration."

5. The stand taken by the Respondent No.2 i.e. UPSC, is that the Review Selection Committee was convened on 27.01.2000 to review the Select List prepared on 26.10.1993 and 23.01.1995 but the Select list could not be finalized as the Review Selection Committee observed that the seniority list has not been finalized in accordance with the prescribed procedure by circulation amongst the officers concerned and duly notified after seeking the objections, if any, from the individuals. Accordingly, the meeting was postponed and it was further observed to reconvene the same after the list is finalized. In para 6.5 of the reply affidavit, it has been stated that there were orders passed by the Hon'ble High Court of Rajasthan restraining the respondents from convening the meeting of the Review Selection Committee before 27.07.2000 and also that in CWP No.2519/2000 the Hon'ble High Court of Judicature at Jodhpur Bench has also granted the stay order dated 18.10.2000 staying the

operation of the CAT Judgment dated 15.05.2000 regarding revision of seniority ^{- and matter} was also pending before the Hon'ble Supreme Court. As most of the issues in these Court cases/orders relate to seniority of SCS officers, as such, the review proceedings for the year 1993-94 could not be conducted. The UPSC, Respondent No.2, in para 7 of the reply affidavit, has made the following observations :-

"7. The Deponent submits that subsequently the Govt. of Rajasthan vide their letter dated 30.06.2003 forwarded a proposal for convening a meeting of the Review Selection Committee to review the cases of S/Shri H. C. Sharma and A. K. Bhandari for inclusion of their names in the Select List of 1993-94 and 1994-95 for promotion to the IAS cadre of Rajasthan. The proposal of the state Government was examined and it was observed that in view of the affidavit filed by the DOP&T before the Hon'ble Tribunal, the meeting of the Review Selection Committee is required to be reconvened in continuation of its meeting held on 27.01.2000. The govt. of Rajasthan was, therefore, in Commission's letter dated 22.07.2003 requested to forward a published seniority list of SCS officers and records of other SCS Officers whose seniority has undergone a change after the meetings of the Selection Committee held in the year 1993 and 1995, so that the Commission could reconvene the meeting of the Review Selection Committee to review the select list of 1993-94 and 1994-95 at the earliest. The case of the applicant Sh. M. L. Gupta would also be considered in the Review to be done on the basis of the revised seniority list of SCS officers in accordance with the rules and regulations."

It is further submitted that subsequently, the Commission vide their letter dated 5.8.2003 has again requested the Government of Rajasthan to forward the published seniority lists of officers and self contained proposal for review of the Select List of 1993-94 and

1994-95, so that the Commission could reconvene the meeting of the Selection Committee at the earliest. This was followed up with several reminders. Thus, according to the UPSC, the Review Selection Committee can only be held after a complete self contained proposal along with published seniority list of State Civil Officers is sent by Govt. of Rajasthan.

6. We have heard the learned counsel for the parties and gone through the material placed on record.

7. Firstly, we would like to deal with the preliminary objections raised by the State of Rajasthan i.e. Respondent No.3 in the reply affidavit. The first objection raised by Respondent No.3 is regarding non joinder of necessary party. At the outset, it may be stated that this objection raised by Respondent No.3 deserves outright rejection. As can be seen from the facts as stated above, the applicant is only asking for reconsideration of his candidature by holding a review DPC for promotion to IAS against the vacancies of 1992, 1993 and 1995. He is not challenging any order thereby praying for quashing of the same which may adversely affect the parties. Thus, according to us, the objection raised by Respondent No.3 deserves outright rejection. Learned Counsel for Respondent No.3 has placed reliance on the decision of the Apex Court in the case of Udit Narain vs. Board of Revenue, Bihar & Ors.,

reported in AIR 1963 SC 786, That was a case where the appellant want to quash the order thereby praying for issuance of writ of certiorari whereas it is a case for issuance of writ of mandamus thereby praying for consideration of his case in the light of order Annexure A/1, which order has been passed by the State of Rajasthan whereby the seniority and benefits of selection grade has been extended to the applicant. Since the applicant has only prayed for his right of consideration based on the order issued by Respondent No.3, as such, Respondent No.3 is precluded from raising this objection and it is not sure whether the applicant whose name figures at such lower place at the eligibility list as prepared by the Respondent No.3 will be surely inducted in the Select List of 1992. Thus, according to us this objection is without basis.

7.1 As regards the second objection of filing of application after the period of limitation of one year prescribed under Section 21 of the Administrative Tribunals Act, 1985, we are of the view that the State of Rajasthan, Respondent No.3, should be precluded from taking such type of objection. Once the benefit was extended to the applicant by passing order Annexure A/1, it was boundant duty of Respondent No.3 to honour its own order by sending proposal for review of the Select List for the aforesaid period to the Commission to enable it to reconvene the meeting of Selection Committee. That

apart, it has come on record, as can be seen from the reply affidavit filed by Respondent No.2 that though the meeting of Review Selection Committee was convened on 27.01.2000 and 27.07.2000 but the same could not be finalized as the State Government of Rajasthan in their letter dated 20.07.2000 has stated that there are other orders of the Hon'ble High Court restraining from convening the meeting of Review Selection Committee and also that the matter regarding seniority was pending before the Hon'ble Supreme Court. As such, the seniority list could not be finalized. Once the State of Rajasthan is writing to the Commission that the meeting of the Review Selection Committee ^{may not be} convened and also that the matter of seniority list is under dispute, how the Respondent No.3 can take objection regarding limitation when the published seniority list has not been finalized? That apart, Respondent No.3 in its reply affidavit in Para 7, relevant portion of which has been quoted above and underlined ~~it~~ ^u has stated that as regards the Select lists of 1993 and 1995, a decision has already been taken by the Central Government in consultation with the Union Public Service Commission that since the very basis of the seniority on which the 1993-1995 Select lists were prepared have undergone a substantial change, the entire Select-lists for the years 1993 and 1995 required to be rescinded in the light of the revised seniority position assigned to all the State Civil Service Officers and the Selection Committees reconvened for preparing the 1993

and 1995 Select-lists afresh against the vacancies for which they were prepared and utilized during the relevant periods. In the context of such decision Respondent No.3 has in the same para also stated that the matter of undertaking the review of the Select lists of 1993 and 1995 is pending for the active consideration before the concerned authorities. In view of the stand taken by the Govt. of Rajasthan when the matter is still under active consideration, it was not open for the Respondent No.3 to take objection of limitation in order to defeat the legitimate claim of the applicant on the ground that the same is time barred and also that affected persons have not been impleaded as party. Thus, Respondent No.3 is precluded from raising such type of objection on account of their conduct. The case law cited by the Learned Counsel for Respondent No.3 on the point of limitation need not to be noticed in view of positive stand taken by the Respondent No.3 in the reply that the matter pertaining to year 1993-95 is under active consideration. Accordingly, such objection of Respondent No.3 is hereby rejected and the MA No.355/2003, filed by the applicant for condonation of delay is allowed.

8. Now let us examine the matter on merit. As already stated above, the claim of the applicant is regarding appointment by promotion to the IAS against the vacancies of 1992, 1993 and 1995 as his juniors were considered and promoted to the IAS in these years. So far as the stand

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taken by the State of Rajasthan regarding convening of Review DPC for the year 1992, as can be seen from Para 7 of the reply affidavit which has been reproduced above, is that even if the case of the applicant is considered by placing him in the zone of consideration wherein the name of the applicant might be placed at Sl. No.79-A above Shri Shanker Lal, the chances of his being selected is Nil. According to us, such a stand taken by the respondents requires outright rejection. As can be seen from Para 7 of the reply affidavit, as reproduced above, it is evident that 1992 Select list was prepared in respect of 27 vacancies and 83 officers were placed in the zone of consideration. The name of the applicant as per their own showing ^{in ought to have} figured at Sl. No.79-A, as such, it was not permissible for Respondent No.3 to contend that even if his name was to be forwarded to the Union public Service Commission for consideration, his chances for consideration by convening the meeting of Review Selection Committee would be Nil. That was not the function of Respondent No.3. Once the applicant was in the zone of consideration, it is for Respondent No.2 to decide whether the applicant could have been promoted to the IAS against the vacancies of the year 1992. Thus, according to us, the applicant has made out a case for the grant of relief, so far as, his consideration against the vacancies of the year 1992 is concerned by convening meeting of Review Selection Committee. As regards the Select list of 1993 and 1995, the stand taken by the

Respondent No.3 and Respondent No.2 is that the meeting of the said Review Committee cannot be convened on account of non finalization of published seniority list as the very basis of seniority list on which 1993-95 Select List was prepared ^{was} undergone a substantial change and entire Select List is required to be resinded in the light of revised seniority list. The UPSC has categorically stated that they would convene a meeting of Review Selection Committee to review the Select List of 1993-1994 and 1994-1995 on receipt of complete proposal including the published seniority list of SCS Officers from the State of Rajasthan and for that purpose UPSC has taken up the matter with the Government of Rajasthan vide letter dated 22.7.2003 and by sending reminders subsequently.

9. At this stage, it may be noticed that when the matter was listed on 19.01.2004, this Tribunal has asked the Learned Counsel for Respondent No.3 to seek instructions as within what time the final seniority list will be finalized pursuant to provisional seniority list dated 27.11.2003. Respondent No.3 has filed additional affidavit wherein it was stated that there are about 67 representations pending for consideration and in Para 6 of the additional affidavit it was categorically stated that "the said seniority list is likely to be finalized within a period of about four months. However, it is

submitted that the answering respondent is proceeding to consider the said representations with due urgency with a view to finalizing the same as early as possible". As already stated above, this was the stand taken by the respondents in the additional affidavit which was filed on 27.01.2004. We are ~~not~~ constraint to observe that seniority list has not been finalized so far. Even when the matter was listed on 21.11.2006, Learned Counsel for Respondent No.3 has assured this Tribunal that the seniority list shall be finalized within a period of three weeks. When the matter was listed on 25.10.2007, Learned Counsel for Respondent No.3 was directed to ascertain and apprise the Bench about the latest position of the matter and the case was adjourned to 31.10.2007. Today, Learned Counsel for Respondent No.3 submitted before the Bench that the seniority list has not been finalized so far and the matter is under consideration and the same will be finalized shortly.

10. On our pointed question whether there has been stay operating regarding non finalization of seniority, Learned Counsel for the applicant stated that there is no stay granted by the Hon'ble Court regarding non finalization of the seniority but the matter regarding promotion/seniority of the RAS officers is pending before the Hon'ble High Court. The fact remains that even after assurance given by Respondent No.3 in its additional affidavit dated 27.01.2004 that seniority list will be

finalized within four months, the same has not been finalized even after a lapse of about more than 3 and a half years. Learned Counsel for the applicant submits that his client is going to retire on superannuation within a period of 9 months and has prayed that it is a case where directions may be given to the respondents to consider the case of the applicant for the purpose of appointment by promotion against the vacancies of 1992, 1993 and 1995 expeditiously by convening the meeting of Review Selection Committee.

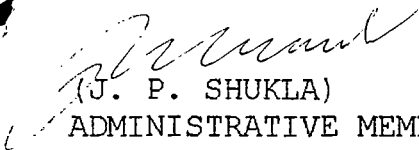
11. We have given due consideration to the submissions made by the learned counsel for the parties. There is considerable force in the submissions made by the learned counsel for the applicant. As already stated above, the applicant has made out a case for his consideration for appointment by promotion to the IAS against the vacancies of the year 1992 on the basis of the eligibility list of the candidates prepared by Respondent No.3 whereby against 27 vacancies, 83 officers were placed in the zone of consideration and the name of the applicant would have figured at Sl. No.79-A above Shri shanker Lal. It was not open for Respondent No.3 to reject the claim of the applicant solely on the ground that his chances of being selected was Nil and it will be a futile exercise for convening the meeting of Review Selection Committee for his selection to the 1992 Select list. Accordingly, Respondent No.3 is directed to send self contained


proposal for review of Select List of 1992-1993 on the basis of eligibility list of 83 candidates prepared by the State of Rajasthan on the basis of which selection for appointment by promotion to IAS against the vacancies of 1992 were made by incorporating the name of the applicant at appropriate place. Such exercise shall be done by the State of Rajasthan within a period of one month from the date of receipt of the copy of the judgment. Respondent No.2 is directed to reconvene the meeting of Review Selection Committee to review the Select List of 1992-93 within a period of two months from the date of receipt of self contained proposal from the State of Rajasthan i.e. Respondent No.3.

12. Regarding consideration of the case of the applicant for appointment by promotion to IAS against the vacancies arising in the year 1993-94 and 1994-95, in view of the stand taken by the respondents that entire Select List is required to be resinded as per decision taken by the Central Government in consultation with UPSC, the Respondent No.3 is directed to publish the final seniority list of State Civil Officers within a period of 6 weeks from today and forward a complete self contained proposal along with the published seniority list of State Civil Officers to Respondent No.2 in order to enable Respondent No.2 to reconvene the meeting of Review Selection Committee to review the Select List prepared on 26.10.1993 and 23.01.1995 and in case the name of the

applicant falls in the zone of consideration, in that eventuality, the UPSC shall reconsider the matter by reconvening the meeting of Review Selection Committee as expeditiously as possible and in any case not later than 3 months from the date of receipt of such proposal.

13. With these observations, the OA is disposed of in the above terms.


(J. P. SHUKLA)
ADMINISTRATIVE MEMBER


(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C.