

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No. 39 of 2006

Jabalpur this the 1st day of May, 2006.

**Hon'ble Dr.G.C.Srivastava,Vice Chairman
Hon'ble Mrs. Meera Chhibber, Judicial Member**

1. State Administrative Service Association Chhattisgarh
Through its Secretary Anil Tuteja, S/o Late H.L.Tuteja,
Aged about 43 years, Deputy Secretary, Govt. of
Chhattisgarh, DKS Bhawan, Raipur.
2. U.K.Agrawal, S/o Mahabir Prasad Agrawal, Aged about 43
years, Additional Collector, Rajnandgaon, R/o E-11,
RK Nagar, Rajnandgaon (CG) **-Applicants**

(By Advocate – Shri S.Paul)

V E R S U S

1. Union of India, through its Secretary, Ministry of Personnel,
Public Grievances and Pension, Deptt. of Personnel &
Training, North Block, New Delhi.
2. The State of Chhattisgarh through its Principal Secretary,
(General Administration Deptt.) DKS Bhawan, Raipur.
3. The Union Public Service Commission through its
Secretary, Dhaulpur House, Shahjahan Road, New Delhi..
4. J.Minj, son of Late K.Minj, Aged above 52 years,
Joint Secretary, General Administration Department,
State of Chhattisgarh, Raipur.
5. S.K.Jaiswal, son of Shri L.B.Jaiswal, aged about 46 years,
Additional Collector, Raipur (C.G.).
6. Ashok Agarwal, Son of Late K.L.Agarwal, Aged about 48
years, Mission Director, Rajeev Gandhi Shiksha Mission,
Raipur(C.G.) **- Respondents**

(Respondent No.1 by Advocate– Shri A.P.Khare ;
Respondent No.2 by Advocate – Shri Ajay Ojha;
Respondent No.3 by Advocate – Shri S.P.Singh); and
Respondents 4 to 6 by Sr.Advocate Shri Rajendra Tiwari
along with Shri Anoop Mishra,Advocate)

(Signature)

O R D E R

By Dr.G.C.Srivastava, Vice Chairman.-

This is an application filed jointly by State Administrative Service Association Chhattisgarh (Applicant No.1) and UK Agrawal (Applicant No.2) against the Union of India (Ministry of Personnel, Public Grievances and Pension) (Respondent No.1), State of Chhattisgarh (General Administration Department) (Respondent No.2) and the Union Public Service Commission (Respondent No.3) seeking the following relief:-

(i) Summon the entire relevant records from the respondents for its kind perusal.

(ii) Set aside/struck down the notification dated 12.1.2004 and the entry No.5 of notification dated 12.1.2004 whereby the 'Leave Reserve Post' and 'Jr. Post Reserve' are clubbed together. Consequently command the respondents to bifurcate the aforesaid entries in two different heads as directed by full bench in O.A.No.778/2002.

(iii) Impugned notification dated 12.1.2004 be declared unconstitutional to the extent it provides the entire 'Leave Reserve Posts' for direct recruit I.A.S. Officers. Consequently, the said entry be quashed and also the entry under head-7 of the said notification which completely provides the "Leave Reserve Posts" for direct recruit Officers.

(iv) Accordingly, the respondents be directed to suitably change/ amend/ modify or alter the aforesaid notification to ensure that the "Leave Reserve Posts" be provided to promotee SCS Officer as well, as per the full bench judgment (supra).

(v) Respondents be directed to complete the aforesaid exercise within a stipulated time as deemed fit by this Hon'ble Tribunal.

(vi) The Respondents be directed to hold a DPC/ review DPC after completing the aforesaid exercise to fill up the vacancies of I.A.S. as on 1.1.2005 in state of C.G.

(vii) Any other order/orders, which this Hon'ble Court deems, fit proper may kindly be passed.

(viii) Cost of the petition may also kindly be awarded".

2. As is clear from above, the target of this application is the Indian Administrative Service (Fixation of Cadre Strength) Amendment Regulations, 2004 (Annexure A/1), issued by respondent no.1 through notification no. 11031/6/02-AIS-II-A on the 12th January 2004, whereby the total authorized strength of the Indian Administrative Service (for short 'IAS') in the State of Chhattisgarh has been fixed at 138 including 41 posts to be filled by promotion (vide sl. no.6 of para 2 of the notification). The said regulations also inter alia provide that 16.5 per cent of the senior duty posts shall form the leave reserve and junior posts reserve (vide sl. no.5 of para 2 of the notification) and that this reserve, which comes to 12, is not taken into account, while calculating the number of posts to be filled by promotion (this being "not exceeding 33.3 per cent" of the total of senior duty posts, central deputation reserve, state deputation reserve and training reserve). The main ground on which this notification has been assailed is that it is not in conformity with the directions given in the full bench judgment of this Tribunal on the 24th October 2005 in O.A. No. 778/2002 (annexure A/7). In the said O.A., in which a similar notification issued in respect of the State of Madhya Pradesh was called in question, the Tribunal, while allowing the O.A., gave the following directions to the respondents, the Union of India (Ministry of Personnel, Public Grievances and Pension) and the State of Madhya Pradesh (vide para 24 of the said order):-

"...Respondents are directed to bifurcate the number of leave reserve and junior duty reserve posts from them^(sic) 6 of the notification dated 21.10.2000. They are further directed to keep the leave reserve posts under a separate head and include the same in item-5 for calculating the number of posts to be filled by promotion of the State Civil Service Officers to the I.A.S. against the quota of 33-1/3 %"

3. The contention of the applicants is that the aforesaid judgment squarely covers the present case and is a judgment in rem; hence, the respondent no.1 ought to have amended the impugned notification so as to show the 'leave reserve' and 'junior posts reserve' separately and working out the promotion quota after taking the 'leave reserve' posts into account. Another issue

that has been brought out by the applicants in their application is that, although 15 posts of the promotion quota were lying vacant as on the 1st January 2005, the selection committee/DPC, which met on the 28th December 2005 to make its recommendations for filling up the promotion quota posts, drew the zone of consideration taking only 13 vacancies into account, and, without fulfilling the statutory requirements mandated under the Indian Administrative Service (Appointment by Selection) Regulations, 1997, the respondents reserved two posts of the promotion quota for non-state civil service officers. ^(non-SCS) Aggrieved by these actions of the respondents, the applicant no.1 submitted a representation to the respondents on the 14th January, 2006 (annexure A/8) and also approached this Tribunal seeking not only the relief mentioned in the opening paragraph of this judgment, but also an interim relief in terms of a direction to the respondents to either maintain the status quo during the pendency of the O.A., or alternatively, not to issue appointment/promotion order pursuant to the DPC held on the 28th December, 2005. After hearing the learned counsel of the applicants on the 17th January, 2006, this Tribunal issued directions to the respondents to maintain the status quo as on date.

4. Aggrieved by the interim relief granted by this Tribunal, ^(SCS) three officers of the State Civil Service, J. Minj, S. K. Jaiswal and Ashok Agarwal, who hope to get selected through the DPC held on the 28th December 2005, submitted M.A. No, 58/06 on the 23rd January, 2006 claiming the right to intervene on the ground that any relief granted to the applicants will be to the detriment of the interveners. They also prayed for vacation of the stay through M.A.No.59/06 of even date on the ground that the stay order may delay the process of the promotion and thereby cause hardship to the interveners. This Tribunal heard the learned counsel of the interveners along with the counsel of the applicants and the respondents on the 25th January, 2006 and allowed the MA no.58/06 directing that the three interveners be arrayed as respondent nos. 4 to 6. In respect of the prayer for vacation of the stay order, this Tribunal, after bestowing careful consideration to various aspects, modified its order dated the 17th January, 2006 to

the limited extent that the respondents were restrained from issuing any notification appointing any State Civil Service Officer in the IAS cadre of the State of Chhattisgarh, but could undertake all other processes.

5. The respondent no.1 in its counter reply opposed the relief sought by the applicants on the ground that the question of including 'leave reserve' for calculation of promotion quota was considered by this Tribunal in TA No.81/86 (K.K.Goswami and another Vs.Union of India and others) decided on 9.6.1987 and it was held that "leave reserve cannot be counted for computing the promotion quota". It was further submitted by the respondent no.1 that the order of this Tribunal has become final with the dismissal of the SLP by the Hon'ble Supreme Court in SLP© No.3464/95 dated 24.8.1995. It was also averred that increasing the promotion quota further would not be in public interest as continuous increase in the promotion quota may result in erosion in the standard of All India Services and would disturb the healthy balance of 50:50 of insiders and outsiders in the cadre. It was further submitted that it has been the normal procedure in the Central Government to provide the leave reserve in the lowest appropriate grade, and that is why the leave reserve is clubbed with junior posts reserve. With regard to the directions of this Tribunal in OA No. 778/2002(supra), the respondent in its reply submitted that the Government of India is "currently examining the judgment..... for obtaining legal views for its implementation and appealing in Hon'ble High Court".

6. The respondent No.2 has stated in its reply that recruitment to the Indian Administrative Service is done in three ways as per Rule 4 of the Indian Administrative Service (Recruitment) Rules, 1954. These are: (a) by a competitive examination; (b) by promotion of a substantive member of a State Civil Service; and (c) by selection, in special cases from among persons, who hold in a substantive capacity gazetted posts in connection with the affairs of a State and who are not members of a State Civil Service. This Rule further provides that "the method or methods of recruitment to be adopted for the purpose of filling up any particular vacancy

or vacancies as may be required to be filled during any particular period of recruitment shall be determined by the Central Government in consultation with the Union Public Service Commission and the State Government concerned", and further "the number of persons to be recruited by each method shall be determined on each occasion by the Central Government in consultation with the State Government concerned". It has further been stated by the respondent that there are two different regulations viz. IAS (Appointment by Selection) Regulations, 1997 and IAS (Appointment by Promotion) Regulations, 1955 by which the appointments by selection and promotion respectively are governed. In accordance with these provisions, it was decided that out of 15 vacancies available as on 1.1.2005, 13 will be filled up by promotion and 2 through selection of non-State Civil Service Officers. The respondent has, therefore, averred that it is not correct to say that 15 posts were to be filled up by promotion of SCS officers. Since the rules and regulations governing appointments through promotion and through selection are totally independent of each other, both the recruitment process cannot be completed by convening only one DPC. While a DPC was convened to make recommendations regarding promotion of SCS officers to IAS, at the same time the process to fill up 2 vacancies through selection was initiated by issuing a letter to all the departments on 1.8.2005 asking them to recommend ^{the} names for considering promotion to IAS, as a result of which 32 names were recommended by various departments, out of which 10 names were short-listed by the screening committee headed by the Chief Secretary. With regard to the direction of this Tribunal in OA 778/2002(supra), the respondent submitted that the vacancies to be filled up were determined as on 1.1.2005, while the judgment in the said OA was pronounced on 24.10.2005 and even if the notification under challenge is amended on the basis of these directions, it will have a prospective effect only.

7. We have heard the arguments advanced by the counsel for the applicants and respondents including interveners arrayed as respondents.

8. The arguments advanced by the learned counsel for the applicants is two-pronged. On the one hand, he has assailed the impugned notification so far as the fixation of promotion quota is concerned and on the other he has challenged consideration of only 13 vacancies by the DPC. The learned counsel for the applicants argued at length in favour of splitting the leave reserve and junior posts reserve, so as to take the leave reserve into account while calculating the promotion quota. Admittedly, the Full Bench of this Tribunal has examined this issue in OA 778/2002 vide its order dated 24.10.2005 in the context of State of Madhya Pradesh and issued direction to split the leave reserve and junior ~~day~~ posts reserve and include the former in calculation for determining the promotion quota. The fixation of cadre strength for different States has been done under the IAS (Fixation of Cadre Strength) Regulations, 1955, and the schedule attached to these Regulations give details of the cadre strength of each State (like the one that forms part of the impugned notification in respect of Chhattisgarh). A perusal of the schedules shows that the details in respect of each State are on similar lines. Hence, it has rightly been contended by the learned counsel for the applicants that the judgment given in OA 778/2002 has to be treated as judgment in rem and should be made applicable to all the States including Chhattisgarh. It is, however, clear from the written submissions made by the respondent no.1 that these directions have not been implemented as yet and the Government of India is still examining it with a view to decide whether the order need to be appealed against, in the Hon'ble High Court. That being the case, the learned counsel for the applicants argued that this judgment having been pronounced on a legal issue should relate back to the date of the original notification, unless a cut off date is prescribed. Accordingly, in his view, the respondents were under a legal obligation to act in accordance with these directions and amend the impugned notification which otherwise deserve to be quashed.

9. The learned counsel for the respondents ~~1~~ argued that the directions of the Full Bench run contrary to the decision of this Tribunal in the case of K.K.Goswami (supra), which has attained

finality, as the SLP filed by the Government against this order has also been dismissed. It is seen that the views of this Tribunal in K.K.Goswami's case were considered by the Full Bench and it arrived at its findings after considering the preliminary objection raised by the counsel that the order in the case of K.K.Goswami having attained finality should hold the field for all times to go. It was held by the Full Bench that the objection on this ground was not sustainable in law and "the contention of the respondents that dismissal of the Special Leave Petition by the Apex Court has disabled the applicants to seek the relief is untenable".

10. Although the learned counsel for the applicants argued at length justifying amendment in the break-up details of the cadre strength as it exists on date, it goes without saying that the full bench of this Tribunal, having given its decision on this issue, it does not need any further consideration by us. We are, therefore, of the view that the directions issued by the Full Bench in respect of splitting the leave reserve ~~posts~~ and junior posts reserve in the context of State of Madhya Pradesh is equally applicable to the State of Chhattisgarh. We have no doubt in our mind that as and when Government of India implements these directions in respect of the State of Madhya Pradesh, it will also be made equally applicable to all other States including Chhattisgarh.

11. The next question that is to be settled in respect of the implementation of the directions of this Tribunal in OA 778/2002 (supra) is about its relevance to the impugned notification. Admittedly, the impugned notification was issued on 12th January, 2004, whereas the directions by this Tribunal in OA 778/2002 were issued on the 24th October, 2005. In the said OA this Tribunal has not laid down any time limit within which these directions are to be complied with. The learned counsel for the applicants submitted that "it is settled in law that when a judgment is pronounced on a legal issue it relates back to the date of provision unless courts prescribe a cut off date". On the basis of this submission, the learned counsel for the applicants argued that the

respondents were under a legal obligation to amend the impugned notification giving it retrospective effect. The learned counsel appears to be of the view that this amendment should take effect from the date the original notification came into effect. It is an admitted fact that no amendments have been carried out by the respondent no.1 in the notification that was issued in respect of the cadre strength of the State of Madhya Pradesh which formed the subject matter of OA 778/2002. Understandably, no amendment has been carried out in respect of the notification for the State of Chhattisgarh either. The learned counsel for the respondents contended that even if the impugned notification is amended in terms of the directions of this Tribunal in OA 778/2002, the amended notification can have prospective effect only. This contention of the respondents finds support from the view expressed by the Apex Court in **J.Kumar Vs. Union of India**, AIR 1982 SC 1064, where a statutory rule governing seniority was under challenge. The Apex Court held that when a statutory rule is issued in respect of a service, the said rule would govern the personnel in the service with effect from the date of its promulgation and in so far giving effect to the rule in future, there is no element of retro-activity involved. In the present case, the notification, fixing the IAS cadre strength of the State of Chhattisgarh, was issued on 12.1.2004 and no amendment in it has been carried out so far by the competent authority i.e. the Union of India. It has also not yet decided about the future course of action to be followed in the wake of directions given by this Tribunal in OA 778/2002 for effecting amendment in a similar notification issued in respect of the State of Madhya Pradesh. It is not surprising as the amendment of the notification will require firstly a decision regarding the ratio in which the two components, viz. leave reserve and junior posts reserve have to be split and then perhaps concurrence of a majority of States, which is a time consuming exercise. But certainly, as and when the impugned notification is amended, recruitment will have to be made taking these amendments into account. There is no justification in demanding that the vacancies which relate to the year 2004 as

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worked out on the 1st January, 2005, should be filled up on the basis of amendments which might be carried out in respect of the cadre strength in the distant ^{or near} future. We, therefore, hold that the vacancies which arose in 2004 as calculated on the 1st January, 2005 have to be filled up on the basis of the impugned notification which has been in force at that point of time, and is even now a valid notification specifying the manner in which the promotion quota is to be calculated.

12. The other issue that has been raised by the applicants is that the number of posts which are to be filled up by promoting the State Civil Service Officers have not been calculated correctly. It ^{not} ~~has been~~ disputed by either parties that the number of vacancies in the promotion quota as on 1.1.2005 is 15. The contention of the learned counsel for the applicants is that all these 15 posts are required be filled up by promoting suitable officers of the State Civil Service. Opposing this, the respondents have submitted that only 13 posts are to be filled up by promotion of State Civil Service Officers and the remaining two posts, are to be filled up by selection from suitable non-State Civil Service Officers. The learned counsel for the applicants alleged that the respondents have earmarked these two posts out of the promotion quota with a view to filling them up with their 'blue-eyed persons' as this earmarking has been done without fulfilling the necessary statutory requirements. In support of his allegation, he submitted that non-State Civil Service Officers cannot be considered for the purpose of induction in IAS unless they fulfill the following requirements as per Regulation 4 of the IAS (Appointment by Selection) Regulations, 1997:

- (i) The officers should be of outstanding merit and ability.
- (ii) The officer is holding Gazetted post in a substantive capacity.
- (iii) Officer should not have attained 54 years of age as on 1st January of the year in which the decision is taken to propose the name of the selection committee.

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(iv) Should have completed not less than 8 years of continuous service as on 1st January of the year in the State for any post declared equivalent to the post of Deputy Collector in the State Civil Services". (emphasis added)

In addition, Rule 8(2) of the IAS (Recruitment)Rules,1954 provides as under :

"The Central Government may, in special circumstances and on the recommendation of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Government and the Commission, from time to time, may recruit to the Service any person of outstanding ability and merit serving in connection with the affairs of the State who is not a member of the State Civil Service of that State but who holds a gazetted post in a substantive capacity".

The learned counsel for the applicants argued that no such special circumstances as indicated in the beginning of the Rule 8(2) above, exist in the State of Chhattisgarh to warrant filling up of IAS posts from non-State Civil Service Officers, and no declaration as required under Regulation 4 above, has been made by the Government regarding equivalence of posts with those of the Deputy Collectors. Added to these contentions, he stated that there are no eligible non-State Civil Service officers who could be considered for selection to the IAS. Controverting these arguments, the learned counsel for the respondents stated that the State Government of Chhattisgarh has already got a list of 32 officers, who fulfill these eligibility criteria and 10 of them have already been short-listed by a Screening Committee headed by the Chief Secretary of the State. This is a transparent process and the allegation that the posts have been earmarked for 'blue eyed persons' is ill-founded. The respondents have also denied that the aforementioned two posts out of 15 posts, are required to be filled up by promotion of State Civil Service Officers. Referring to Rule 4 of the IAS (Recruitment) Rules, 1954, the learned counsel for the respondents submitted that the promotion quota posts are required to be filled up by two methods, viz. by promotion of State Civil Service officers as well as by selection of eligible non-State Civil Service officers. This is further confirmed by the provisions of



Rule 9 of the IAS (Recruitment) Rules,1954 which lays down that vacancies not exceeding 15% of the total number of persons to be appointed against promotee quota can be filled up by non-State Civil Service officers. It was also submitted that since the rules governing the appointment by selection and promotion are under two different Regulations, i.e. IAS (Appointment by Selection)Regulations,1997 and IAS (Appointment by Promotion)Regulations,1955, the selections can be made separately by different DPCs/ Selection Committees. It was further argued by the learned counsel for the respondents that Chhattisgarh being a new State is already short of IAS officers and the process of recruitment to IAS by promotion/ selection needs to be expedited and, therefore, the recruitment process should not be stalled, awaiting amendment to the impugned notification.

13. We have carefully considered the arguments advanced by both the parties regarding the manner in which the vacancies under the promotion quota are required to be filled up. Nowhere in the impugned notification, it is mentioned that the promotion quota is to be filled up solely by promoting State Civil Service officers. It is to be noticed that the rules cited above specifically provide that vacancies are to be filled in three ways, either by direct recruitment; or by promotion of SCS officers; or by selection of non-SCS officers. Since the impugned notification has divided all the cadre posts, recruitment-wise, only in two categories, viz. posts to be filled by direct recruitment and posts to be filled by promotion and Rule 9(1) read with Rule 8 of the IAS (Recruitment)Rules,1954 has split the promotion quota between those to be filled by promotion of State Civil Service Officers, and those by selection from amongst the non-State Civil Service officers, there can be no doubt that the promotion quota as indicated in the impugned notification is to be filled up in two ways i.e. by promotion of State Civil Service officers and by selection from amongst the non-State Civil Service officers. It has also been provided in Rule 9(1) that the total number of posts to be filled up by promotion and selection shall not exceed 33-1/3 per

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cent of the number of senior posts under the State Government, Central deputation reserve, State deputation reserve, and training reserve and further not more than 15 per cent of the number of persons recruited in this manner shall be recruited through selection from amongst non-State Civil Service officers. Since the respondents have calculated that the number of vacancies existing in the promotion quota as on 1.1.2005 totalled to 15, they have rightly decided that 15 per cent of this (ignoring the fraction in accordance with the explanation added to Rule 9) shall be filled up by selection from amongst non-State Civil Service Officers. The contention of the applicants that no non-SCS officers are eligible for promotion to IAS cannot be accepted in view of the fact that a selection process has already been initiated and suitable officers have already been short-listed. Another argument advanced by the learned counsel for the applicants was that first the respondents should have found out whether eligible non-SCS officers are available in the State before earmarking two posts to be filled up through selection. This, to our mind, would mean putting the cart before the horse.

14. The argument of the learned counsel for the applicants that no special circumstances exist in the State of Chhattisgarh to warrant selection of non-State Civil Service Officers for the IAS is not based on a proper assessment of ground realities. Indian Administrative Service is considered to be the premier civil service of the country and its officers are required to man various organizations, governmental and semi-governmental, dealing with diverse activities. The purpose of inducting officers from different fields of activities is to enrich the Service with the presence of persons who have excelled in different fields of activities. Moreover, such induction from non-SCS officers boosts the morale of officers manning other services in the State. These circumstances exist in all the States of the country, more so in the State of Chhattisgarh, which is a nascent State requiring special consideration in the matters of governance.

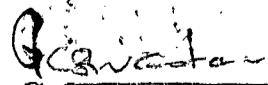
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15. The learned counsel for the applicants cited the orders passed by this Tribunal in OAs Nos.597/98, 514/1998 and 80/1999, whereby selection of some non-SCS officers for the IAS was set aside vide order dated 27.2.2004. The said order does not help the present applicants in as much as the selection was quashed because of non-fulfillment of the requirements laid down for such selection. This judgment does not preclude the respondents from initiating the selection process in respect of other vacancies. We accordingly hold that the respondents have correctly decided that 13 vacancies of the promotion quota shall be filled up through promotion of State Civil Service Officers and two vacancies shall be filled up by selection from amongst non-SCS officers. It would, however, be necessary for the respondents to fulfill all the requirements that are laid down in the IAS (Recruitment) Rules,1954 and IAS (Appointment by Selection)Regulations,1997 before convening the selection committee to consider recruitment through selection from amongst non-SCS officers.

16. To sum up, we hold that the respondents have rightly decided, in respect of the vacancies existing as on 1.1.2005, to fill up 13 vacancies through promotion of State Civil Service Officers and two through selection from amongst non-State Civil Service Officers in terms of the provisions laid down in the impugned notification. The applicants have not made out any case to warrant quashing of the impugned notification as at present.

17. In the result, the Original Application is dismissed and the interim order of stay passed earlier in this OA on 25.1.2006 regarding issuing of notification appointing the applicants as well as any other State Civil Service Officers of Chhattisgarh into IAS, is vacated. No order as to costs.


 (Mrs. Meera Chhibber)
 Judicial Member


 (Dr. G.C. Srivastava)
 Vice Chairman