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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Applications No.168 & 223 of 2006

Jabalpur this the 7th day of December, 2006.

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member

(1) Original Application No.168 of 2006

Anoop Singh, aged about 49 years, S/o Shri Sajjan Singh, working as Administrator, Ban Sagar Project, Rewa, residing at Govind Niwas, Civil Lines, Rewa (M.P.).

-Applicant

(By Advocate-Shri Anil Khare with Shri Ansudhar Singh)

V E R S U S

1. Union of India through its Secretary, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, North Block, New Delhi.
2. Union Public Service Commission, Through its Secretary, Dhaulpur House, Shahjahan Road, New Delhi.
3. State of M.P. through Principal Secretary, Department of General Administration, Vallabh Bhawan, Bhopal M.P.
4. K.P.Rahi S/o late Shri B.R.Rahi, Aged 48 years, Chief Executive Officer, Bhopal Development Authority, Bhopal, M.P.
5. Santosh Mishra, S/o Shri V.P.Mishra, Aged 48 years, Deputy Administrator Capital Project and Deputy Secretary Housing Environment M.P. Government.

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6. Kedar Sharma S/o Shri Rajkumar Sharma, Aged 47 years, E-3, Civil Lines Dewas Distt. Dewas, C.E.O. Office of Zila Panchayat, Dewas, M.P.

-Respondents

(By Advocates- Shri S.K.Mishra on behalf of Shri A.P.Khare for respondent-UOI, Shri S.P.Singh for respondent-UPSC Shri Rohit Arya,Sr.Advocate with Shri Shekhar Sharma for respondents 4 to 6)

(2) Original Application No.223 of 2006

Anand Jain, aged about 45 years, S/o Shri Shantilalji Jain, Presently working as Additional Collector, Indore, residing at E-4, Radio Colony, Residential Area, Indore (M.P.)

-Applicant

(By Advocate-Shri Anil Khare)

VERSUS

1. Union of India through its Secretary, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, North Block, New Delhi.
2. Union Public Service Commission, Through its Secretary, Dhaulpur House, Shahjahan Road, New Delhi.
3. State of M.P. through Principal Secretary, Department of General Administration, Vallabh Bhawan, Bhopal M.P.

-Respondents

(By Advocate- Shri S.K.Mishra on behalf of Shri A.P.Khare for respondent-UOI)

COMMON ORDER

By Dr.G.C.Srivastava,VC.-

These two Original Applications based on same facts and seeking identical relief are being disposed of by this common order.

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2. The applicants in these two OAs are members of the Madhya Pradesh State Administrative Service (for short 'MP SAS'). By means of these OAs, the applicants have sought for the following main relief:-

- (iii) To direct the respondents to reconsider the list of suitable officers for promotion to Indian Administrative Services on the basis of seniority from the date of promotion as additional collector under the state administrative services or in the alternative direct the committee to reconsider the case of the applicant on the basis of the seniority from the date of promotion as additional collector.
- (iv) To direct the respondent no.2 to consider the case of the applicant for being promoted to the Indian Administrative Services after assigning him seniority from the date of the promotion as additional collector.
- (v) In case the applicant is found fit to promote him to the Indian Administrative Services and to assign him seniority w.e.f. the date on which his juniors to the post of additional collector were promoted to the Indian Administrative Services.
- (vi) To direct the respondents to consider the promotion to the I.A.S. from the State Civil Service on the basis of order passed in O.A. No.778/02 and to take into account leave reserve vacancies in terms of the directions issued by this Hon'ble Tribunal. In the alternative to quash the list of suitable officers.

In OA 168/2006 the applicant has also prayed for the following relief-

- "(ii) To quash the order dt. 23.12.2005 and also the order dt. 26.12.2005 (Annexure A/1 & A/2 respectively) passed by the respondents no.1&2 by a writ in the nature of certiorari.

Subsequently, there were applications from three officers of the MP SAS for intervention in OA 168/2006. These applications were allowed and the interveners were impleaded as respondents. An interim order was also passed on 6.4.2006 in OA 168/2006





restraining the respondents from issuing any notification appointing the MP SAS officers into Indian Administrative Service (for short 'IAS') against vacancies pertaining to the year 2005.

3. The applicants claim consideration for induction in the IAS on the following grounds:-

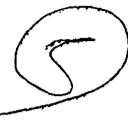
(i) Their seniority in the MP SAS should be based on their seniority as Additional Collector and not on the basis of the date of confirmation as Deputy Collector.

(ii) In view of the judgment rendered by this Tribunal on 24.10.2005 in O.A.No.778/2002 (**M.P. Administrative Service Association through Shri Kavindra Kiyawat & another Vs. Union of India and another**), the zone of consideration should have been prepared by taking the leave reserve vacancies into consideration for working out the promotion quota.

(iii) The constitution of the selection committee for the induction of SAS officers into IAS was not in accordance with law.

4. It may be mentioned that Shri Anoop Singh, applicant in OA No.168/2006, had submitted a representation on 6.12.2005 requesting the State Government to include his name in the zone of consideration for induction into the IAS of MP cadre for the year 2005. Immediately after submitting the representation, Shri Anoop Singh filed a writ petition no.15845 of 2005 (S) on 7.12.2005 in the High Court of MP and it was disposed of on 15.12.2005 with a direction to the respondents to decide the representation of the applicant before commencement of the DPC. Through this representation, Shri Anoop Singh claimed that his seniority for the purpose of zone of consideration for induction in the IAS should be determined on the basis of his seniority as Additional Collector





and not in accordance with the date of confirmation as Deputy Collector. This representation was rejected by the Government of Madhya Pradesh through order dated 23.12.2005 mainly on the ground that the seniority in the gradation list of the SAS has been determined in accordance with the provisions as contained in Rule 12 of the Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961 and names of officers in the zone of consideration for preparation of select list of 2005 for promotion to the IAS of MP cadre have been included in accordance with their seniority in the gradation list of MP SAS. The applicant Shri Anoop Singh has challenged this order of MP Government also through this OA. He has also challenged a similar order passed by the UPSC on 26.12.2005 (annexure A-2) whereby a similar representation addressed by the applicant to the UPSC was disposed of mainly on the ground that the issues related solely to the State Government and UPSC had nothing more to add over the findings of the State Government as brought out in its order dated 23.12.2005.

5. Separate replies have been filed by respondents nos.1 and 3 as well as by the interveners.

6. Respondent no.3 i.e. State of MP stated in its reply that the seniority of the members of the SAS is determined on the basis of provisions contained in MP Civil Services (General Conditions of Services)Rules,1961. As per these provisions, seniority of directly recruited officers is counted with effect from the date of confirmation in service. The seniority of the applicants has been correctly determined on the basis of this provision irrespective of the date of their appointment as Additional Collector. The zone of





consideration for induction into IAS was accordingly prepared based on this seniority. The respondent also denied the allegation that the committee that prepared the zone of consideration was not properly constituted. Regarding the applicability of the decision of this Tribunal in OA 778/2002 (supra), the respondent's contention is that the aforesaid judgment was rendered by the Tribunal on 24.10.2005 and although the meeting of the DPC was held on 27.12.2005, this judgment was not applicable in this case, as the vacancies to be filled up through this DPC were to be as in January, 2005.

7. Respondent no.1 i.e. Union of India, stated in its reply that the judgment of this Tribunal in OA 778/2002 has been assailed in appeal along with a stay application before the High Court and, therefore, this judgment has not yet attained finality. It was also averred that the process for appointment of SAS to the IAS under IAS (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as 'the Promotion Regulations') is initiated by the State Government with determination of yearwise vacancies and once the vacancies are determined, the State Government is required to make available the relevant service records of eligible SAS officers, who fall within the zone of consideration, to the UPSC. The role of the Union of India in finalizing the selection is restricted to the functional requirement of nominating two Joint Secretary level officers as its representatives. After the select list is approved by the UPSC, the appointment of those SAS officers, who are included unconditionally in the select list, is notified by the Govt. of India.



9. Applicant Shri Anoop Singh in his rejoinder reiterated his stand that the seniority has to be determined on the basis of the seniority as Additional Collector and not merely on the basis of the date of confirmation as Deputy Collector.

10. We have heard the arguments of the learned counsel of parties and carefully perused the pleadings available on record.

11. The thrust of the argument of the applicants is that their seniority for the purpose of consideration for the select list for the IAS should be reckoned with reference to their seniority as Additional Collector and not as Deputy Collector in the MP SAS. Admittedly, induction from the State Civil Service (for short 'SCS') into the IAS is done in accordance with the provisions laid down in the Promotion Regulations. A selection committee is constituted for this purpose under Regulation 3 of the Promotion Regulations and this selection committee prepares a list of such members of the SCS as are held by them to be suitable for promotion to the IAS. The number of members of the SAS to be included in the list depends upon the number of vacancies as on the 1st day of January of the year in which the meeting is held. For this purpose, the zone of consideration is equal to three times the number of vacancies. Regulation 5(2) of the Promotion Regulations specifically provides that in the zone of consideration the members of the SCS shall be included in the order of seniority in that service provided such a member of the SCS has completed at least 8 years of continuous service whether officiating or

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substantive in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government. So far as the seniority of the members of the MP SAS is concerned, Rule 23 of the Madhya Pradesh State (Administrative Service) Classification, Recruitment and Conditions of Service Rules, 1975 provides that "seniority of persons appointed to the service shall be regulated in accordance with the provisions of rule 12 of the Madhya Pradesh Civil Service (General Conditions of Service) Rules, 1961". Rule 12 of the MP Civil Services (General Conditions of Service) Rules, 1961 is reproduced below:

"12. Seniority.- The seniority of the members of a service or a distinct branch or group of posts of that service shall be determined in accordance with the following principles, viz.-

a) Direct recruits.- (i) The seniority of a directly recruited Government servant appointed on probation shall count during his probation from the date of his appointment.

Provided that if more than one person have been selected for appointment on probation at the same time, the inter se seniority of the persons so selected shall be according to the order of merit in which they were recommended for appointment by the Commission in those cases where the appointments are made after consulting the Commission, and according to the order of merit determined by the appointing authority at the time of selection in other cases.

(ii) The same order of inter se seniority shall be maintained on the confirmation of the normal period of probation. If, however, the period of any direct recruits is extended, the appointing authority shall determine whether he should be assigned the same seniority as would have been confirmed on the expiry of the normal period of probation or whether he should be assigned a lower seniority.

....."

Admittedly, at present seniority of the members of the SAS is determined in the service with reference to the date of their confirmation. It is this practice that the applicants are challenging in this OA and the claim that since they were promoted to higher






posts earlier than some of those who were confirmed before them, their seniority should be reckoned with reference to the date of promotion to a higher post. In support of their contention, the applicants have cited the case of **State of Rajasthan Vs. Fateh Chand Soni**, (1996)1 SCC 562 in which it was held that a person selected and appointed to the selection scale in an earlier selection would be senior to a person who, although senior to him in the senior scale, was appointed to the selection grade as a result of the subsequent selection. The learned counsel for the applicants also argued vehemently on the issue of seniority and tried to establish that the rule/practice by which seniority is determined on the basis of date of confirmation in the service is legally not sustainable. Respondent no.1 has clearly mentioned in its return that determination of seniority is a matter which is entirely within the jurisdiction of the State Government, and Union of India is only concerned with the provisions of the Promotion Regulations which clearly lay down that the zone of consideration shall comprise members of the SCS in the order of seniority in that Service. Admittedly, the zone of consideration has been prepared on the basis of seniority as determined under the provisions of aforesaid Rule 12 of the MP Civil Services (General Conditions of Service) Rules, 1961. It is not for this Tribunal to go into the legality or otherwise of these rules which lie squarely within the jurisdiction of the State Government. In view of this, we are not inclined to accept the contention of the applicants that their seniority in the SCS has not been determined properly and correctly by the State Government, as a valid ground for challenging the zone of consideration before us.



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12. The second contention of the applicants is that the committee which considered the list of suitable officers was not constituted in accordance with Regulation 3 of the Promotion Regulations. As per Regulation 3, the committee is to be headed by the Chairman or a Member of the UPSC with the following as members: (i) Chief Secretary to the Govt.of Madhya Pradesh; (ii) President Board of Revenue; (iii) two senior most Commissioners of Division and (iv) two nominees of the Govt.of India not below the rank of Joint Secretary. The contention of the applicants is that instead of Shri Surendra Nath, who is the senior most IAS officer belonging to 1960 batch, Shri Ajit Raizada, belonging to 1970 batch of IAS was the member of the committee and, therefore, the constitution of the committee was not in accordance with law. In its reply, respondent no.3 has stated that as on the date of the meeting of the DPC Shri Surendra Nath had not been promoted to the Chief Secretary's grade whereas Shri Ajit Raizada was promoted in the grade of Chief Secretary vide order dated 19.5.2004. Consequently, he was inducted as a member of the selection committee. This submission has not been controverted by the applicants in their rejoinder. Moreover, as laid down by the apex court in **Union of India Vs. Somasundaram**, (1989) 1 SCC 175 : 1989 SCC (L&S) 150 even absence of any of the members of the DPC other than the Chairman does not render the proceedings of the DPC invalid provided the majority of the members constituting the DPC are present in the meeting. No allegation to the effect that the selection committee did not have the required quorum has been made by the applicants. Accordingly, we do not find any substance in this contention of the applicant.

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13. The last contention of the applicant is that the whole exercise pertaining to the promotion of the SCS officer to the IAS is vitiated because it has been done without complying with the directions of this Tribunal in OA No.778/2002. In the aforesaid OA, a Full Bench of this Tribunal passed an order on 24.10.2005 directing the respondents therein to bifurcate the number of leave reserve and junior duty reserve post in the cadre strength and keep; the leave reserve under a separate head and include the same for calculating the promotion quota. In its reply, respondent no.1 has submitted that this order of the Tribunal has not attained finality as it has been appealed against in the High Court. Respondent no.3 has controverted the contention of the applicant on the ground that the meeting of the selection committee was held on 27.12.2005 for filling up vacancies existing as on 1.1.2005 and since the aforesaid judgment of the Tribunal came much after 1.1.2005, this decision which has prospective applicability, is not relevant to the impugned selection. We find this argument of respondent no.3 absolutely valid and hold that the judgment of the aforesaid OA has no relevance to the impugned selection.

14. In view of the above discussion, we find that no ground has been brought out by the applicants warranting our interference with the selection process for induction of MP SAS officers into the IAS of MP cadre for the vacancies as on 1.1.2005. Accordingly, both these OAs are dismissed and the interim order passed on 6.4.2006 in OA 168/2006 is vacated. No costs.

[Signature]
 (A.K.Gaur)
 Judicial Member

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 (Dr.G.C.Srivastava)
 Vice Chairman

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पूर्णकाल शं ओ/न्या.....जबलपुर, दि.....

प्रतिलिपि ओ/न्ये शिरो:-

(1) सचिव, अध्यक्ष विधानसभा एवं एसोसिएशन, जबलपुर
(2) आवेदन की/प्राप्ति/कु..... को धार्यराज
(3) प्रदाता की/प्राप्ति/कु..... को कानूनी
(4) गंधारा, एस.एस.ए, जबलपुर आदि
सूचना एवं आवश्यक कार्यक्रमी

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D.P. Jagt. ०२०८ ०२
M. Kandee ०२०८ ०२
Rohit ०२०८ ०१

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