

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH.

Original Application No. 6 of 2005

Jabalpur, this the 31st day of March, 2005.

**Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member**

**Surendranath, IAS (1968 Batch Officer of
Madhya Pradesh Cadre), S/o. Shri Indrajeet
Gupta, aged about 58 years, presently posted as
Chairman, Madhya Pradesh Housing Board, Bhopal
and R/o. 100/23, 1464 Quarters, Bhopal (MP).**

Applicant

(By Advocate – Shri S.K. Rao)

V E R S U S

- 1. State of Madhya Pradesh, through its
Chief Secretary, Government of Madhya
Pradesh, Vallabh Bhawan, Bhopal (MP).**
- 2. Union of India, through Secretary,
Department of Personnel and Training,
North Block, New Delhi.**

Respondents

**(By Advocate – Shri Om Namdeo for respondent No. 1 and Shri M.
Chourasia for respondent No. 2)**

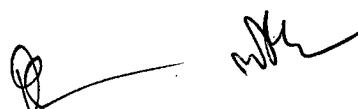
O R D E R

By Madan Mohan, Judicial Member –

**By filing this Original Application, the applicant has sought the
following main reliefs :-**

**“ii) quash the recommendations of the DPC held in October,
2004 orders passed by the State Government on the aforesaid
recommendations and also the communication dated 5.11.2004
(Annexure A-2),**

**iii) to direct the State Government to reconvene the DPC to
promote a fresh DPC in accordance with Para 2 of Annexure-II
“General Guidelines for Promotion etc. and functioning of
Screening Committee”, “Frequency at which committees
should meet” and Para 8 “Preparation of year wise panels where
the committee has not met for number of years” (Annexure A-
9). In particular the State Government should be directed to**



restrict the scrutiny of the record of the service of the applicant to the records which would have been available had the committee met at the appropriate time."

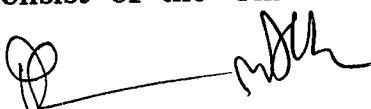
2. The brief facts of the case are that the applicant was initially appointed on 2nd July, 1968 in the M.P. cadre of Indian Administrative Service. He has served in various capacities in the State Government as well as Government of India. Before his repatriation to the State cadre, he was working as Additional Secretary in the Department of Justice. After repatriation he was appointed as Agriculture Production Commissioner, Government of Madhya Pradesh and is presently holding the post of Chairman, Madhya Pradesh Housing Board at Bhopal. The applicant has submitted that while he was on deputation to the Government of India, one senior officer Smt. Sashi Jain, IAS (belonging to the same batch as ^{that} of the applicant i.e. 1968 batch) and two other junior officers Dr. J.L. Bose IAS (1969 batch) and Dr. Ajit Raizada, (1970 batch) were promoted to the equivalent grade of Chief Secretary vide orders dated 4th February, 2004 and 19.5.2004 superseding the applicant. It is further submitted by the applicant that while he was on deputation to the Government of India his ACR pertaining to the period from 1st April, 1996 to 30th June, 1996 was treated as average and on his representation, the Government of India vide letter dated 24.7.2002 treated the said ACR of the applicant as 'nonest'. During his tenure as Additional Secretary to the Government of India in March, 2000 to May, 2004 his ACRs for the years 2000-01 and 2001-02 were recorded. His first ACR was graded as 'Very Good', and second as 'Average'. The applicant made representation against the average remarks recorded in the CR but he did not receive ^{against} any reply. The applicant again submitted his representation ^{against} the average remarks. When he could not get any reply on his representation he filed OA No. 2491/2002 before the Principal Bench of the Tribunal, New Delhi and prayed for expunging ^{against} the adverse remarks and for considering him for empanelment to the post of Secretary to the Government of India. The Tribunal dismissed the OA




vide order dated 10th October, 2003. The applicant preferred a Writ Petition No. (C) 7001/2003 challenging the order of the Tribunal, before the Hon'ble High Court of Delhi. The Hon'ble High Court vide its order dated 30th January, 2004 directed that the ACR for the year 2001-02 grading the applicant as 'Average' shall not be taken into consideration for any promotion within his own cadre till further orders. The interim order passed by the Hon'ble High Court of Delhi dated 30th January, 2004 is still in force and the matter is not yet finally decided. The applicant's case for promotion was required to be considered by the DPC held on 30th January, 2004. However, the case of the applicant was not considered by the DPC/selection committee and certain IAS officers of 1969 and 1970 batch were promoted to the equivalent grade of Chief Secretary. The applicant submitted his representation to the Chief Secretary, Government of Madhya Pradesh vide letter dated 17th April, 2004 (Annexure A-8). He also approached the Jabalpur Bench of the Tribunal by filing OA No. 761/2004 for redressal of his grievances. The Tribunal vide its order dated 29th September, 2004 in OA No. 761/2004 directed the respondents to reconvene the DPC for consideration of the case of the applicant in the light of the directions given by the Hon'ble Delhi High Court and take appropriate decision with regard to the further promotion of the applicant. According to the guidelines issued by the Government of India with regard to the promotion to the various grades of the IAS issued vide circular dated 28th March, 2000 (Annexure A-9) the promotion in the grade of Chief Secretary has to be strictly made as per the prescribed procedure laid down for this purpose which reads as under :

"Promotion in the cadre of Chief Secretary :

The zone of consideration for promotion in the grade would consist of all the members of service who have completed 30 years of service. Appointment in this grade would be made from amongst the officers thus cleared at any time during the relevant year and subject to the provisions of Rule 9(7) of IAS Pay Rules, 1954. The Screening Committee for this purpose shall consist of the Chief Secretary concerned, one officer



working in this grade in the cadre and another officer of the cadre serving in the Government of India in the same grade."

According to Para 2 of Annexure-II of the said guidelines, the DPCs should be convened on a pre-determined date e.g. 1st of May or June every year for filling up the existing as well as the anticipated vacancies well in advance of the expiry of the previous panel. According to the applicant, the said guidelines have not been strictly followed in constituting the committee and convening the DPC. His grievance is that the junior officers to the applicant were made members of the DPC who were interested in retaining their monopoly over the senior-most posts. The directions given by the Tribunal on 29.9.2004 in OA No. 761/2004 were not implemented in its true spirit. After the meeting of the selection committee the applicant was informed vide impugned order dated 5.11.2004 (Annexure A-2) that "after considering the recommendation of the DPC (screening committee), the State Government has decided not to promote you (the applicant) to the grade of Chief Secretary". The applicant has contended that in terms of instructions contained in paragraph 8 of Annexure-II to Annexure A-9 yearwise panels should have been prepared in respect of vacancies available in the years 2002 and 2003 though the DPC which was held belatedly in 2004. He has further contended that there are 3 cadre and 3 ex-cadre Chief Secretary level posts in the State Government. In the first half of 2004, six Chief Secretary level officers were actually in posting. In 2002 only four out of these six posts were filled up and the remaining two posts were vacant in the year 2002. Moreover, as per the applicant he is at the verge of the retirement and in terms of the interim directions of the Hon'ble High Court dated 30.1.2004 in WP No. 2001/2003 and also of the Government of India order dated 24th July, 2002 (Annexure A-6) his ACRs for the part period of years 1996-97 i.e. from 1.4.1996 to 30.6.1996 and 2001-02 were not to be considered by the DPC for his promotion to the Chief Secretary's level post. The applicant's apprehension is that these orders/directions were ignored and the

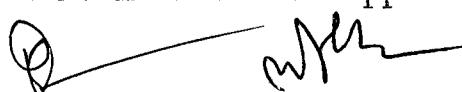


applicant's case was delayed and was not considered in the years when the vacancies arose and were anticipated, so that certain junior officers can supersede. As per paragraph 25 of the said notification Annexure A-9 "if an officer has not been included in the panel for promotion to any of the grades, the detailed reasons for his supersession may be recorded in writing. Such officers would be eligible for reconsideration after earning two more reports, except in the case of promotion in the grade of Chief Secretary, in which case an officer would be eligible for reconsideration after earning only one more report". It is submitted by the applicant that while communicating their decision vide letter dated 5.11.2004 (Annexure A-2) detailed reasons for the supersession of the applicant have not been given or recorded. Hence, this Original Application is filed.

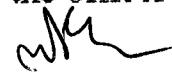
3. The respondents in their reply have stated that the main contention of the applicant in this Original Application is that in compliance of the order dated 29th September, 2004 passed by the Tribunal in OA No. 761/2004, the answering respondents convened the DPC which consisted of the officers junior to him and considered his case for promotion to the Chief Secretary grade. This DPC found the applicant unfit and after considering the recommendations of the committee, the State Government decided not to promote him and the decision of the respondents was communicated to the applicant vide letter dated 5th November, 2004 (Annexure A-2). It is also stated by the respondents that in compliance with the order dated 29th September, 2004 passed by the Tribunal in OA No. 761/2004 the meeting of the screening committee was convened on 1.11.2004. The committee on the basis of the over all assessment of the applicant's record found him unfit for promotion to the Chief Secretary grade. The respondents accepting the recommendations of the Committee, decided not to promote him and the same was communicated to him on 5th November, 2004. While considering the case of the applicant the committee also ignored the ACR of the applicant for the year

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2001-02 as per the direction of the Hon'ble High Court of Delhi. The committee which considered the case of the applicant was duly constituted as per the provisions contained in para VI (relating to promotion in the grade of Chief Secretary) of Annexure-I of the letter dated 28th March, 2000 issued by the Government of India, and there is no illegality in the constitution of the committee. All the 3 officers of the committee are senior to the applicant by virtue of their being in the higher scale. The screening committee meeting was held on 30th January, 2004 to consider the cases of IAS officer on 1968 to 1971 batches. With regard to the applicant, the committee noticed that the ACRs for 2000-01 and subsequent year were subjudice, hence decided to defer the consideration. The interim order of the Hon'ble High Court of Delhi dated 30th January, 2004, was not received till the deliberations were going on in the meeting of 30th January, 2004. As per the aforesaid guidelines of Government of India, the screening committee meeting can be held only when substantive or anticipated vacancies are available. The respondents have further stated that in ^{point of} regard to Chief Secretary's grade, at no time, the number of members of the service appointed to hold post in this grade other than cadre posts should exceed the number of cadre posts in a State cadre. Prior to 18.12.2003, there were only 2 cadre posts in the CS grade in the State ~~cadre~~ and four officers were posted in terms of the provisions of the Rule 9(7) of IAS (Pay) Rules and as such there was no vacancy to hold the screening committee meeting during the years 2001 and 2002. It is only in the year 2003 when Government of India, vide notification dated 18th December, 2003 increased the cadre posts in the CS grade from 2 to 3, vacancies could be available. It would be evident from the fact that one IAS officer Smt. Sashi Jain who was applicant's batchmate and senior to him could be considered for this grade in the screening committee meeting held on 30th January, 2004. In view of this question, of the applicant's consideration for CS grade during the years 2001 and 2002 did not arise. The respondents have further stated that the contention of the applicant to the extent that his



name was considered by the DPC which met on 30th January, 2004 and deferred the decision due to the ACRs of 2000-01 and 2001-02 being subjudice is acceptable but they have denied that the committee ignored the directions given by the Tribunal. They have, however, submitted that the interim order passed in the Writ Petition on 30.1.2004 by the Hon'ble High Court could not be available when the DPC itself was held on the same date. It is further submitted by the respondents that while considering the name of the applicant the committee took the notice of all the relevant aspects and assessed the record. The reasons have been recorded in the minutes of the committee. The contents of the ACRs and the proceedings of the committee being of confidential nature cannot be revealed to the applicant. However, the record of proceedings to the selection committee will be placed before the Tribunal as and when asked for. They have further submitted that the screening committee is a duly constituted high powered body as per the guidelines issued by the Government of India in this respect and the decision of the committee is not open to challenge, in view of the various pronouncements of the Hon'ble Supreme Court. To support their contention the respondents have relied upon the judgments of the Hon'ble Supreme Court in the case of Nutan Arvind Vs. Union of India and Others, 1996(2) SCC 488, The State of Madhya Pradesh Vs. Shrikant Chapekar, JT 1992(5) SC 633, Dalpat Abasaheb Solunke Vs. B.S. Mahajan, AIR 1990 SC 434 and in the case of Smt. Anil Katiyar Vs. Union of India and others, 1997 (1) SLR 153. In view of the above, the decision of the screening committee which was held as per directions of this Tribunal, is not open to challenge and the applicant has no authority to approach the same forum which has already decided his OA. It is also submitted by the respondents that while considering his case on 1.11.2004, the ACR upto 2003-04 were seen by the screening committee. In this context the provision of para 25 of Annexure-II of the guidelines issued by the Government of India vide letter dated 28th March, 2000 provides that "if the officer has not been

included in the panel for promotion to the CS grade, he would be eligible for reconsideration after earning one more report". Since his ACR up to 2003-04 were seen by the screening committee in its meeting dated 1.11.2004 the applicant will now be eligible only after earning the ACR for 2004-05 which will become due after 31st March, 2005. In view of these facts mentioned above the application is devoid of merit and deserves to be dismissed.

4. Heard the learned counsel for the parties and carefully perused the pleadings and records.

5. The grievance of the applicant is that he has not been considered by the screening committee for promotion to the post of Chief Secretary's grade in accordance with the directions given by the Tribunal in OA No. 761/2004 and also in accordance with the provisions/instructions issued by the Government of India. His main apprehension is that the ACR for the period from 1st April, 1996 to 30th June, 1996 which has been declared as 'nons' and the ACR for the year 2001-2002 grading the applicant as 'average' which was to be ignored by the screening committee as per direction of the Hon'ble Delhi High Court have been taken into consideration by the screening committee while considering him for promotion to the post of Chief Secretary's grade. He has also contended that the persons who were members of the selection committee were in fact junior to him. The DPC has not met on the scheduled dates as prescribed in the guidelines. He was eligible for consideration for appointment to the grade of Chief Secretary before 2004 for which he was not considered by the screening committee constituted by the Government of Madhya Pradesh. He has also alleged that detailed reasons have not been recorded while ignoring his claim for promotion to the next higher grade of CS grade.

JM

6. We have very carefully gone through the ACR dossier of the applicant as well as the proceedings of the screening committees/DPCs held on 14.7.2004 and 1.11.2004.

7. We find that the applicant was first considered for promotion to Chief Secretary's grade by the screening committee which met on 30.1.2004 but the committee had decided to defer the case of the applicant for promotion to Chief Secretary's grade till the final decision of the Hon'ble High Court of Delhi in the writ petition filed by the applicant. However, the Hon'ble High Court of Delhi vide its order dated 30.1.2004 in CM No.12164/2003 and CW No.7001/2003 has passed the following order :

"we deem it appropriate to direct as an interim measure that the ACR for 2001-2002 grading petitioner 'Average' shall not be taken in regard for any consideration to be accorded to him for any promotion within his own cadre till further orders from this court"

Since the screening committee was convened on 30.1.2004 to consider the promotion of the applicant to the Chief Secretary's grade and the interim order of the Hon'ble Delhi High Court not to take into consideration the 'average' grading of the applicant for the year 2001-2002 for his promotion, was also passed on the same date, the screening committee could not have taken into account the interim direction given by the Hon'ble High Court of Delhi while taking a decision to defer the case of the applicant. Thereafter, the case of the applicant has been considered by the screening committee which met on 14.7.2004 and we find that the said screening committee had again deferred the applicant's case for promotion to the Chief Secretary's grade on the ground that the applicant's Confidential report for the year 1996-97 has not been written, ~~and~~ ^{further} the committee has decided that his confidential reports for the part period of year 2002-2003 i.e.



view that the review committee which met on 1.11.2004 was not required to fix its own/new norms for selection and ought to have followed the same norms/ criteria fixed by the screening committee ^{on} ~~on~~ ^{commenced on} 30.1.2004 with a view to maintain uniformity in the selection in respect of all the candidates. After making their own assessment, the review screening committee/DPC found the applicant as unfit for promotion.

10. We also find that a chart had also been prepared showing the grading obtained by the applicant in his confidential reports during the period from 1992-93 to 2003-2004. The said chart has been kept at page 218 of Govt. of M.P. GAD file No.E1/247/2004/1/5. According to the said chart, the applicant has been graded outstanding for the years 1992-93, 1995-96, 1997-98, 1998-99, 1999-2000. However, he has been graded as 'average' for the part period from 4/02 to 15.10.2002 and Good+ for the part period from 16.10.2002 to 31.3.2003. It is probably because of the CR for the year 2002-2003, the screening committee has not found him fit for the said promotion.

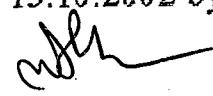
11. We also find that from the charts referred to above prepared for the screening committees which met on 1.11.2004 as well as on 14.7.2004 the applicant's confidential report for the period from April 1996 to June 1996 has been treated as 'nons' and removed from his CR dossier. The CR for the remaining period from July 1996 to March, 1997 was not available which means that the confidential report for the whole year of 1996-97 could not have been considered. As per the interim direction of the Hon'ble Delhi High Court the confidential report for the year 2001-2002 which was 'average' was also not required to be considered for his promotion. Since the committee had decided to consider the last 10 confidential reports of all the candidates, in the case of the applicant only 8 confidential



reports were available during the relevant period from 1993-94 to 2002-2003.

12. We also find that in terms of the directions issued by the DOPT and contained in para 6.2.1 relating to 'evaluation of confidential reports', of Chapter 54 – Promotions, of Swamy's compilation on Establishment and Administration, "the DPC should consider CRs for equal number of years in respect of all officers considered for promotion subject to (c) below." The said sub-clause (c) of the aforesaid instructions stipulates that "where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question". Therefore, in terms of these instructions, the screening committee which met on 1.11.2004 was required to consider the confidential reports of last 10 years in respect of all the candidates including the applicant. Since two confidential reports i.e. for the years 1996-97 and 2001-2002 of the applicants were not available for consideration, the screening committee ought to have considered the preceding two confidential reports of the applicant i.e. for the years 1991-92 and 1992-93. We find that the CR for the year 1992-93 has been taken into consideration by the screening committee which met on 1.11.2004 but the CR of the applicant for the year 1991-92 has not been taken into consideration. We also find that in the confidential report for the year 1994-95 the applicant has been graded as 'outstanding' whereas in the chart (in file no.E1/247/2004/1/5) which was placed before the screening committee of 1.11.2004, the applicant has been shown as 'very good' only. On the other hand, the chart prepared for the earlier screening committee which met on 14.7.2004 also shows the applicant's grading as 'outstanding' for the year 1994-95.

13. We also find that the applicant has been graded as 'average' for the part period from April,2002 to 15.10.2002 by the reporting officer



16. We are aware of the law laid down by the Hon'ble Supreme Court that the Tribunal/ Courts should not substitute itself for the Selection Committee and make selection, also cannot sit over the assessment made by the Selection Committee as an appellate authority, unless the selection is found to be vitiated by malafides or arbitrariness. In the instant case, looking to the aforementioned facts we are of the considered view that the proceedings of the review screening committee which met on 1.11.2004 to consider the case of the applicant for his promotion to Chief Secretary's grade as on 30.1.2004 are vitiated being malafide and highly arbitrary.

17. Considering the overall facts as mentioned above and also the fact that the screening committee/DPC itself in its meeting held on 30.1.2004 has fixed the criteria that out of 10 confidential reports, five should be of 'outstanding' category, we find that out of 10 confidential reports of the applicant for the relevant period from 1991-92 to 2002-2003, he has obtained six 'outstanding' reports and the remaining CRs are of 'very good' category except the one which is of 'Good+' category for the part period from 16.10.2002 to 31.3.2003. In view of these facts, we do not find any justification for the screening committee which met on 1.11.2004 to assess the applicant as unfit for promotion to the Chief Secretary's grade. Before we may part, at the cost of repetition, we may observe that the applicant ought to have been considered for promotion to the C.S.



grade in terms of the criteria laid down by the DPC itself in its meeting held on 30.1.2004.

8. In the conspectus of the aforesaid facts and circumstances of the case, this Original Application is allowed and the recommendations of the DPC which met on 1.11.2004 for considering the case of the applicant for promotion to the Chief Secretary Grade is quashed and set aside. The respondents are directed to convene a review DPC to consider the case of the applicant as on 30.1.2004, keeping in view the observations made above, within a period of one month from the date of receipt of a copy of this order. If the applicant is found fit for the promotion from the date his immediate junior was promoted and said promotion, he shall be granted all the consequential benefits including arrears of pay and allowances. No costs.

(Madan Mohan)
Judicial Member


M.P.Singh)
Vice Chairman

“SA”

पूछांकन से और/वा. जबलपुर, दि.
प्रतिलिपि अच्छे हितः—

- सचिव, उच्च न्यायालय बार एसोसिएशन, जबलपुर
- (2) आदेदक श्री/भ्रीमती/कु. S.K.Rao के काउंसल
- (3) प्रत्यर्थी श्री/भ्रीमती/कु. Om Nomashree, ते काउंसल
- (4) अधिकारी, केगारा, जबलपुर

सूचना एवं अवश्यक कार्यक्रम

31-3-05

लेखन दिनांक

Issued
On 1-4-05
By B