

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR
BENCH, JABALPUR

Original Applications Nos.284 and 285 of 2004

Jabalpur, this the 29th day of March, 2005.

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

(1) **Original Application No. 284 of 2004**

1. M.P. Administrative Service Association
Through; Shri Kavindra Kiyawat
Aged about 42 years
S/o Shri H.C. Kiyawat
Working as General Secretary
M.P. Administrative Service Association
F-93/23, Tulsi Nagar, Bhopal
2. Rameshwar Gupta
Aged about 53 years
S/o Late Shri Nand Kishore Gupta
Working as Addl. Collector
Indore.
D-2/1, Narmada Colony
Scheme No.78, Vijay Nagar
Indore – 10, M.P.

Applicants.

(By Advocate – Shri S.Paul with Shri V. Agrawal)

VERSUS

1. Union of India
Through : The Secretary, Govt. of India,
Ministry of Personnel, Public Grievances & Pension
(Department of Personnel & Training)
North Block, New Delhi.
2. State of Madhya Pradesh
Through : The Principal Secretary
Govt of Madhya Pradesh
General Administration Department
Mantralaya, Bhopal (M.P.)

Respondents

(By Advocate – Shri Om Namdeo)

(2) Original Application No. 285 of 2004.

- 1 M.P. Administrative Service Association
Through; Shri Kavindra Kiyawat
Aged about 42 years
S/o Shri H.C. Kiyawat
Working as General Secretary
M.P. Administrative Service Association
F-93/23, Tulsi Nagar, Bhopal
2. Rameshwar Gupta
Aged about 53 years
S/o Late Shri Nand Kishore Gupta
Working as Addl. Collector
Indore.
D-2/1, Narmada Colony
Scheme No.78, Vijay Nagar
Indore – 10, M.P.

Applicants.

(By Advocate – Shri S.Paul with Shri V.Agrawal)

VERSUS

1. Union of India
Through : The Secretary, Govt. of India,
Ministry of Personnel, Public Grievances & Pension
(Department of Personnel & Training)
North Block, New Delhi.
2. State of Madhya Pradesh
Through : The Principal Secretary
Govt of Madhya Pradesh
General Administration Department
Mantralaya, Bhopal (M.P.)
Respondents

(By Advocate – Shri Om Namdeo)

COMMON(O R D E R)By M.P. Singh, Vice Chairman –


Since the issue involved in both the OAs is common and the facts and the grounds raised are identical, for the sake of convenience these OAs are being disposed of by this common order.

2. By filing the Original Application No. 284 of 2004 the applicants have sought the following main reliefs :-

- 8.1.1. Respondent No.1 may be directed to stop further intake of direct recruits into IAS Cadre of M.P. until their number is reduced to 206 which is the permissible upper limit.
- 8.1.2. As against the permissible limit of 90 fixed by Annexure A-1, only 81 Officers who have been appointed to IAS through the process of promotion/selection are in position in the State of MP which is apparent from the list Annexure A-7 which has been prepared from the gradation list Annexure A-3. Therefore the respondents be directed to fill up the backlog of promotion quota expeditiously.
- 8.1.3. Respondents be directed to appropriately increase the promotion quota from 90 to 102 which is 33 1/3% so as to proportionately match with the number of direct recruits in accordance with the provisions of Rules 8 & 9 of the IAS(Recruitment) Rules 1954.

2.1 By filing the Original Application No. 285 of 2004 the applicants have sought the following main reliefs :-

- “8.1.1 The notification Annexure A-1 may be quashed as being violative of the provisions of Rules 4 & 11 of the IAS(Cadre) Rules, 1954.
- 8.1.2 The Respondents be directed to undertake review of the IAS Cadre Strength of MP and to encadre the ex-cadre posts as detailed in Annexure A-14.
- 8.1.3 Respondent No.2 be directed to discontinue the arrangement of giving charge of more than one post which is in violation of the provisions of Rule 11 of the IAS(Cadre) Rules, 1954.



8.1.4 Such posts, which cannot be made part of the cadre of Indian Administrative Service should be ordered to be abolished or made parts of state Cadres.

8.1.5 The respondents be directed to work out correctly and properly the following category of posts:

- (i) Senior Posts under the State Government
- (ii) Central Deputation Reserve
- (iii) State Deputation Reserve
- (iv) Training Reserve, after complying with the orders as prayed for above.

8.1.6 The Respondents be directed to calculate & re-fix the number of posts to be filled up by promotion and selection under Rule 8 and 9 of the IAS(Recruitment) Rules, 1954(Annexure A-9 & A-10) which according to these applicants comes to 146.

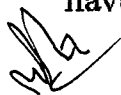
8.1.7 The Respondents be directed to calculate the vacancy position of the posts to be filled up by promotion and selection on the basis of the correct figure of 146 and take immediate action to convene a meeting of the committee to prepare a list of State Administrative Service Officers for filling up the existing vacant posts in the promotion quota for which the zone of consideration should be based on the vacancy position so recalculated .

8.1.8 The respondents be directed not to hold any DPC for recommending name of SAS and Non-SAS Officers for appointment to IAS through the process of promotion or selection until the completion of the steps as per the reliefs sought for above.

3. In OA No. 284/2004, the facts in brief , as stated by the applicants are that the applicant no.1 is a registered society and it is a representative body of the State Administrative Service Officers(for short 'SAS Officers'). The applicant no.2 is a senior member of the cadre of SAS, who is directly affected by over-saturation of quota of direct recruits to Indian Administrative Service (for short 'IAS'), as a result of which his induction to IAS out of the promotion quota is in danger. As per the applicants, a notification dated

18.12.2003(Annexure-A-1) has been issued by the respondent no.1 in pursuance of sub-rule (2) of Rule 4 of the IAS (Cadre) Rules, 1954. The applicants have stated that as against the quota of 206 for direct recruits, as many as 233 direct recruits are in position in the State of Madhya Pradesh, with the result that the quota of the members to be appointed through the process of promotion/selection has actually got reduced to 90 instead of 102, which is contrary to the provisions of the statutory rules. As against the permissible limit of 90 fixed vide notification dated 18.12.2003, only 81 officers who have been appointed to IAS through the process of promotion/selection are in position in the State of M.P. The main grievance of the applicants is that there are only 81 officers, who have been appointed to the IAS, and therefore, the respondents be directed to fill up the backlog of promotion quota expeditiously. It is further submitted by them that the respondents be also directed to appropriately increase the promotion quota from 90 to 102 which is 33 1/3% so as to proportionately match with the number of direct recruits in accordance with the provisions of Rules 8 and 9 of the IAS(Recruitment) Rules, 1954.

4. In O.A. 285/2004, the facts in brief, as stated by the applicants are that the applicant no.1 is a registered society and it is a representative body of the SAS Officers. The applicant no.2 is a senior and confirmed member of the SAS, who is eligible for promotion to the IAS. It is submitted by the applicants that although the applicant no.2 has completed more than 18 years of service, he will not be considered for promotion because the promotion quota has been artificially kept low at 90 and thus the vacancies available during the year 2003 will be only 6 for which applicant no.2 does not come within the zone of consideration. If the cadre strength is increased to 439, by encadring the ex-cadre post, the number of the vacancies will be sufficiently large enough to include applicant no.2 and other similarly placed persons in the zone of consideration. The applicants have further stated that at present, the total number of IAS officers



working in the State of MP is 315 including two officers, namely, Shri Suhel Akhtar and Shri Sameer Khare, who are on deputation from other States. Out of afore-mentioned 315 officers 100 officers are working on ex-cadre and temporary posts as per particulars given in Annexure-A-14. All these ex-cadre and temporary posts are in existence for more than two years and should have been encadred and shown as senior posts under the State Government in accordance with the provisions of IAS(Cadre) Rules, 1954. The applicants have contended that all these posts have to be necessarily encadred as per the provisions of rules, but they are artificially being kept out of the authorized cadre strength in utter violation of the provisions of the IAS(Cadre) Rules, 1954. They have further contended that with the encadrement of the ex-cadre posts, the authorized cadre strength of IAS for Madhya Pradesh should be as under-

(i)	Senior posts under the State Government	-261
(ii)	Central Deputation Reserve @ 40% of item (i)	-104
(iii)	State Deputation Reserve @ 25% of item (i)	- 65
(iv)	Training Reserve @ 3.5% of item (i)	- 9

Total - 439

5. The applicants have further contended that as per Rule 9(1) of the IAS (Recruitment) Rules, 1954, as amended, the quota for promotion and selection under Rule 8 of the IAS (Recruitment) Rules, 1954, as amended, will be 33 1/3% of 439 i.e. 146 as against which the promotion quota is 90 which, at present is artificially being kept low in order to provide accelerated promotional opportunities to the directly recruited officers at the cost of SAS officers. The applicants have contended that in the notification dated 18.12.2003(Annexure-A-1), which has been issued as a result of the periodical review of the strength of the IAS cadre of the State of Madhya Pradesh, the ex-cadre posts have been left untouched. In addition to the ex-cadre posts, there are certain number of cadre posts, which are being manned by the cadre officers of the IAS by singly holding more than one charge,

dismissed by the Hon'ble Supreme Court vide order dated 24.8.1995. In implementation of the said judgment, the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955, the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955 and the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966 were amended vide Notification, dated 31.12.1997 (Annexure -II). With the above amendment, the composition of the IAS cadre is as under :-

- (1) Senior Duty Posts
- (2) Central Deputation Reserve @ 40% of item 1 above
- (3) State Deputation Reserve @ 25% of item 1 above
- (4) Training Reserve @ 3.5% of item 1 above
- (5) Leave Reserve and Junior Posts Reserve @ 16.5% of item 1 above.
- (6) Posts to be filled by promotion under Rule 8 of the Indian Administrative Service (Recruitment) Rules, not exceeding 33.3% of item 1.2.3 & 4 above.
- (7) Posts to be filled up by Direct Recruitment (items 1+2+3+4+5-6).

8. The respondents have stated that by giving effect to the judgment of this Tribunal "would have resulted in a total increase of 275 promotion posts in the IAS, 152 promotion posts in the IPS and 200 promotion posts in the IFS and also a corresponding decrease in the direct recruitment quota. It was not possible to physically dislocate the then existing 275 direct recruits in IAS, 152 in IPS and 200 in IFS and also create the requisite number of posts on grounds of administrative expediency and exigency. It was therefore decided to divert the vacancies arising due to the number of direct recruitment retirements, resignations, deaths etc. to the promotion quota, in addition to their normal entitlements in the promotion quota till such time these cadres would fully reach the level. To completely stop direct recruitment would also result in a situation where after a few

years there might be a total vacuum in the form of gaps running to a period of 2 to 4 years. It was, therefore, decided to reduce the proposed direct recruitment quota in respect of all the three All India Services by 1.5% for the next 5 years with marginal variations in respect of cadres, which may have special features/problems. However, in 1998 the retirement of All India Services(AIS) officers was pushed to 60 years from 58 years, partly as a result of which the anticipated attrition did not take place and the direct recruits continued to be in excess in all but very few states".

9. The respondents have stated that the matter was, therefore, re-examined in consultation with the Ministry of Home Affairs (MHA), the cadre controlling authority in respect of IPS Officers, and Ministry of Environment and Forests(MoEF), the cadre controlling authority in respect of IFS Officers. All the State Governments were also requested to furnish their demand for officers to be appointed through Civil Service Examination, 2002-2007 in the IAS. It was observed that, as a result of implementing the judgment in the case of Shri K.K. Goswami, recruitment to the IAS through the Civil Service Examination(CSE) was reduced substantially and kept at a level below 60. In fact, through CSE 1997 and CSE 1998, 55 officers were recruited in each of the two years whilst through CSE 2001, 59 officers had been recruited in ^{the} each year. Through the five CSEs(1997-2001) 284 officers were recruited during 1998-2002 to the IAS. During this period of 5 years, 1998-2002, 246 DR officers retired. The retirement of DR officers would have been higher but for the fact that following Fifth Pay Commission, the retirement age was increased from 58 to 60. While reduction in DR quota intake during the five CSEs for the period 1998-2002, has corrected substantially the balance between the DR quota and the promotion/selection quota on an All India Basis, the problem of excess strength in certain State cadres and deficits in some State cadres still persists. As against the authorized posts of 3582 in all the Cadres of IAS, 3596 officers(i.e.

only 14 officers more than the sanctioned strength) were in position as on 1.1.2004. In the promotion quota, during the same period, 1194 officers were in position as against the authorized 1577 posts. The reduced DR intake, however, which has continued for over five years is posing difficulties in some States in manning District level posts which are normally held by the younger officers. Cadre management in the State cadres, is, therefore, becoming difficult especially in those cadres where there are large deficits. The respondents have invited the attention of the Tribunal to the judgment of the Hon'ble Supreme Court in W.P.Civil No.613/1994 dated 19.4.2000 which has laid down the basic guidelines in this regard.(Annexure III). The following policy decision was taken with the approval of Dy Prime Minister and circulated vide O.M. No. 29018/9/2001-AIS II, dated 6th/9th June, 2003(Annexure -IV) :-

- a) As regards IAS, 85 vacancies should be filled per year by direct recruitment during the years 2003-2007.
- b) Special attention would be paid to the number of direct recruits superannuating between 2002-07 and care taken to see that the number of direct recruits requested would not exceed this number except in cases of previous excessive gap and net deficit.
- c) Demand for zero recruitment year would not be accepted.
- d) The requirements of officers for middle management levels specially the number of districts and officers required for district postings would be kept as one of the main parameters for the exercise for finalizing number of direct recruits.
- e) Recruitment levels being considered also take into account the demand received from the States for the period 2002-07. The needs of states with sizeable negative cadre gap like the North East; the newer states like Chattisgarh with their specific problems, cadre gaps and demand projections; and deficit states like Gujrat should be considered for additional sanction of direct recruits as per their demand.
- f) Corresponding weightage could be considered to be given for states with large excess in cadre gap and downsizing of direct recruits considered as per their request. Excessive cadre gap should imply commensurate reduction in recruitment level.

- g) Care would be taken to ensure that very large or small batches do not occur in order to facilitate better cadre management in the future.
- h) Overall recruitment in no case should be more than an additional 50-75 per cent of the current levels of recruitment and that precipitate increase in recruitment levels is not desirable.

10. The respondents have contended that out of 90 posts, 80 officers are in position as on 1.1.2004 (SCS & non-SCS put together). Six vacancies to be filled by promotion (SCS and Non-SCS put together) were determined for the year 2003 but the meeting of the Selection Committee for the year 2003 has not been held. Further, four vacancies to be filled by promotion have been determined for the year 2004. After filling up the 10 vacancies (6+4), the promotion quota of 90 will be completed. As regards non-SCS vacancies, 14 non-SCS officers are in position against 13 posts. The Government of Madhya Pradesh has been requested to take further necessary action in the matter. From the above facts it is clear that the ratio between the direct recruits and the promotee officers in the IAS is not commensurate with the authorized posts as the promotion posts were increased with effect from 1.1.1998 and the respondents had taken a decision to curtail the direct recruitment quota which was subsequently reviewed. The earnest efforts of the respondent are to bring the direct recruits well as promotee officers to the level of the authorized strength. In view of the above facts, the respondents have submitted that the present Original Applications are liable to be dismissed.

11. We have given careful consideration to the arguments advanced on behalf of both the parties and have also gone through the pleadings available on record.

12. The main grievance of the applicants in both the Original Applications is that the promotion quota be increased by en-cadring the ex-cadre posts into the IAS so as to reduce the stagnation in the

cadre of SAS officers. The applicants have stated that these cadre posts have been continued for a long time and the direct recruit IAS officers are manning these posts. Even one officer is holding more than one posts.

13. The learned counsel for the respondents has contended that as a result of the judgment in K.K.Goswami's case (supra) the posts in the promotion quota have been increased. It is also stated by him that as a result of the said judgment, the direct recruits are in excess in their authorized quota but since they are physically present, it is not possible to dislocate them as it will create problem of the cadre management. At the same time, it is not possible to stop the direct recruitment to IAS which will pose a total vacuum in the form of gaps running to a period of 2 to 4 years. However, efforts are being made to reduce the direct recruitment so as to bring them at the authorized quota. However, this process has been further slow ~~down~~ because of increase in the retirement age from 58 to 60 years. The respondents in their reply have also stated that there are 10 vacancies in the promotion quota as there are 80 officers in position against the authorized strength of 90. Six vacancies were to be filled up in the year 2003, and four vacancies in the year 2004 but for certain reasons, the meetings of the Selection Committee could not ~~have been~~ ^{held} held. The respondents have further submitted that one post of the promotion quota has been filled up by appointing the officers under the selection quota. In other words, as against the authorized quota of 13 in selection quota, 14 persons have been appointed. However, the respondents have submitted that this anomaly of less number of officers in the promotion quota and excess number of officers in the direct recruit quota will be removed in due course of time. Apart from it the issue relating to encadrement of ex-cadre posts which ~~have been~~ ^{has} existed for a long time has been considered and dealt at length by the Hon'ble Supreme Court in Writ Petition (Civil) No.613 of 1994 Tamil Nadu Administrative Service Officers Association & Another Vs.

ML

Union of India and others, and vide their judgment dated 19.4.2000 (AIR 2000 SC 1898) their lordships have held in para 17 as under :-

“the Cadre Regulations and the Recruitment Rules require the Central Government to follow a particular procedure and make necessary consultations before fixing or re-fixing the cadre strength. In such a situation, issuance of a mandamus to increase the cadre strength or to encadre a particular post merely on the basis of long existence of these posts would be inappropriate”.

However, we find that their lordships in para 27 have further observed as under:-

“this, however, does not mean that there is no obligation on the part of the Central Government to consider the requirement of encadring the ex-cadre/temporary posts which are existing in those States in regard to which the complaint is made. It is to be noticed that that a large number of posts exclusion of which would make sufficient impact on the quota fixed under Rule 9 of the Recruitment Rules are **in existence for periods extending even over two decades**. We are also told that many of these posts are statutorily required to be filled up by the members of the IAS, but for reasons not known, these posts are not being made permanent. It is possible that these posts which, on the face of it, are in contravention of the cadre rules, are created by the concerned States for reasons other than the administrative exigencies and it is also possible that the Central Government which has the primary responsibility of making the cadre reviews, has not applied its mind to the real necessity of encadring these posts”.

In para 28 their lordships have further observed as under :-

“Though prima facie we have accepted the explanation given by the Union of India still we find such posts are being continued by the States concerned even till date. We have not found any reason either in the pleadings or in the arguments addressed on behalf of the Union of India why it has not taken any steps to direct the State Governments concerned to abolish these posts if not required to be encadred. Therefore, we find it necessary to direct the Union of India to consider in consultation with the State Government concerned, as

required in the Cadre Rules, review the necessity of either to encadring these ex-cadre/temporary posts or not and take such other necessary steps. In this process the Central Government shall bear in mind the existence of these posts for the last so many years and if it is so satisfied and finds it necessary in the interest of justice to encadre these posts, it may do so with retrospective date so that officers promoted consequent to such encadrement would have the benefit of the seniority from such date, bearing, of course, in mind the possible conflict that may arise in fixation of inter se seniority and take appropriate decisions in this regard so as to avoid any further disharmony in the service”.

Thereafter, in the concluding para 34 their lordships have held as under :-

“We, however, make it clear while disposing of these petitions that it is open to the petitioners to file a detailed representation to the Central Government, giving all the particulars of the post which they consider are fit to be encadred and special reasons why they should be encadred with a retrospective date and on such representation being made, the Central Government will consider these representations in consultation with the State Government concerned, and take appropriate decisions in this regard, preferably within six months from the receipt of those representations. The petitions and appeal are disposed of accordingly”.

14. In the instant case also we find that there are number of cadre posts as on 1st July, 2003 as detailed in Annexure A-16 which are being manned by cadre officers by singly holding charge of more than one post. The applicants have also contended that the total number of IAS officers belonging to the Madhya Pradesh cadre is 315. Out of these, 100 officers are working on ex-cadre and temporary posts as per particulars given in Annexure A-14 to OA No. 285/2004. All these ex-cadre and temporary posts are in existence for more than two years. The applicants have contended that these posts have artificially been kept out of the authorised cadre strength in utter violation of the provisions of Indian Administrative Service (Cadre) Rules, 1954. In paragraph 4.6 of OA No. 285/2004 the applicants have stated that with the encadrement of the ex-cadre posts as detailed in Annexure A-

15 the authorised cadre strength of IAS for Madhya Pradesh would be as follows :

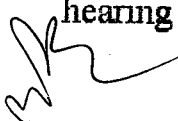
(i)	Senior Posts under the State Government	261
(ii)	Central Deputation Reserve @ 40% of item	
	No. (i)	104
(iii)	State Deputation Reserve @ 25% of item	
	No. (i)	65
(iv)	Training Reserve @ 3.5% of item No. (i)	9

	Total	439

It is further contended by the applicants that the impugned notification dated 18.12.2003 (Annexure A-1) has been issued as a result of the periodical review of the strength of the IAS cadre of the State of Madhya Pradesh. In this notification the ex-cadre posts have been left untouched. There are as many as 50 posts (as mentioned in Annexure A-16 to OA No. 285/2004), not being manned independently. It is further alleged by the applicants that the combined effect of the cadre officers manning ex-cadre posts and also holding more than one posts singly is that the Annexure A-1 does not reflect the optimum cadre strength correctly with the result that the posts which ought to have been ear-marked for promotion quota are being manned by direct recruited IAS officers. This has adverse effect on the interests of State Administrative Services officers who have very limited chances of promotion. These facts stated by the applicants in the Original Applications have not been controverted by the respondents in their replies. Earlier OA No. 4/2002 was filed by the applicants which was disposed of vide order dated 21st March, 2002 at the admission stage itself by directing the respondents in terms of the order dated 13th December, 1995 passed by the Chandigarh Bench" of the Tribunal in

OA No. 264-HP/1993. We find from Annexure A-16 that many of the officers are holding charge of more than one post and since these posts are also continued for more than 2 years the respondents while issuing notification dated 18th December, 2003 should have taken a view with regard to these ex-cadre posts in the light of the direction given by the Hon'ble Supreme Court in the case of Tamil Nadu Administrative Service Officers Association (supra) as reproduced in paragraph 13 above, as to whether these posts are to be encadred or are to be abolished, as they have been continuing from quite some time. But it seems that the respondents have failed in their duties despite the fact that a specific direction was given by the Tribunal on 21st March, 2002 in OA No. 4/2002.

15. In view of the aforesaid discussions we dispose of the Original Applications in terms of the aforesaid decision of the Hon'ble Supreme Court with an observation that it is open to the applicants to file a detailed representation to the Central Government giving all the particulars of the posts which they consider are fit to be encadred and special reasons why they should be encadred with a retrospective date and on such representation being made, the respondent Central Government is directed to consider the issue afresh in consultation with the State Government and examine the question whether the ex-cadre posts under the State Deputation reserved posts and other temporary posts which have been in existence for a number of years and are likely to continue indefinitely should be abolished or should form a cadre of the State of Madhya Pradesh. The Central Government in particular shall see to it that the duty cast upon it under the recruitment rules, cadre rules and the fixation of cadre strength regulations is performed in letter and spirit of the aforesaid rules and the instructions issued by the Government itself from time to time. The respondents are further directed that the representative of the State Administrative Services should also be given an opportunity of hearing before the decision is taken by the Government with regard to



the encadrement of the post. The entire exercise should be completed within a period of six months/and the decision taken thereon shall also be communicated to the representative of the applicants' association. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

Rkv.

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

पत्तिलिपि अग्रे बिल:-

- (1) सचिव, उच्च न्यायालय एवं प्रशासन, जबलपुर
 (2) आवेदक श्री/श्रीमती/शु.....के काउंसल श्री S. Paul, (28/4/05)
 (3) प्रत्यक्षी श्री/श्रीमती/शु.....के काउंसल श्री Om Nandoo (20/4/05)
 (4) बांधपाल, को.प्र.ज., जबलपुर न्यायाधीश
 सूचना एवं आवश्यक कार्यवाही हेतु

30-3-05

उप रजिस्ट्रार

Issued
On 30.03.05
SS