

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH

Original Application No. 311 of 2004

Jabalpur, this the 21st day of March, 2005

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

M.K.Dixit
S/o Late Baburam Pujari
Working as Administrative Member &
President, Board of Revenue,
M.P.Gwalior
R/o 12-B, Gandhi Road
Gwalior – 474 002.

Applicant

(By advocate Applicant in person)

Versus

1. State Government of M.P. through
Its Chief Secretary
Mantralaya, Vallabha Bhawan
Bhopal – 462 004.
2. Union of India through
Seceretary
Government of India
Ministry of Personnel
P.G.& Pensions
North Block
New Delhi.
3. Accountant General
M.P.& Chhattisgarh
Lekha Bhawan
Jhansi Road
Gwalior – 474 002.
4. Shri Arun Kumar Gupta
C-15, Shivajinagar
Bhopal – 462 016.
5. Smt.Binoo Sen
C-1/25, Bapa Nagar
New Delhi – 110 003.

6. Shri Aditya Vijai Singh
C-2/23 Char Imli
Bhopal.

7. Shri N.K.Narad
C-II/127, Moti Bagh-I
New Delhi.

Respondents.

(By advocate Shri Om Namdeo)

ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following main reliefs:

- (i) The minutes/recommendations of the First Review Screening Committee dated 10.10.03 and decision of the State Government of M.P. thereon be quashed.
- (ii) The minutes/recommendations of the Second Review Screening Committee dated 30.1.2004 (pertaining to the applicant) and the decision of the State Government of M.P. thereon be quashed.
- (iii) To review judicially the ACRs of the applicant .
- (iv) To grant the relief of promotion with consequential benefits to the applicant from the date of promotion of his junior to the Chief Secretary grade.
- (v) To direct convening of a review screening committee.
- (vi) To order consequential benefits including payment of arrears of salary and allowances, if the applicant is declared 'fit' for promotion from the date of promotion to his junior in Chief Secretary grade.
- (vii) Direct respondent No.3 to fix pay and pensionary benefits of the applicant arising out of the result of this application.

2. The brief facts of the case are that the applicant is a directly recruited IAS officer of 1967 batch, allocated to the M.P.Cadre. The State Govt. of M.P. (respondent No.1) placed the applicant under suspension on 23.9.91 and ordered a departmental inquiry on 1.11.91 for inquiring into two charges against the applicant. The suspension order was revoked by the State Government on 16.12.92. The departmental proceedings came to



an end on 24.9.2002 when the State Government cancelled the penalty of reduction in rank that had been imposed on the applicant vide its order dated 29.4.1998. The Tribunal quashed this penalty order dated 29.4.98 vide its order dated 31.8.2001 in OA No.380/98 filed by the applicant. Respondents 1 & 2 filed a writ petition before the Hon'ble High Court of M.P. and the High Court quashed the directions of the Tribunal contained in paras 19.1 and 19.2 of its order dated 31.8.2001. A copy of the order dated 15.5.02 of the Hon'ble High Court is filed as Annexure A3. In pursuance of the aforesaid order of the High Court, the State Government of M.P. ordered cancellation of penalty order as stated above. The inter se seniority of IAS officers of the M.P. cadre as on 1.7.2003 shows the name of the applicant at Sl.No.4. As the applicant faced disciplinary proceedings during the period 23.9.91 to 24.9.02 and he was exonerated only on 24.9.02, he was not considered for promotion for the post of Principal Secretary on 12.1.94 and for the post of Chief Secretary on 2.11.2001. The case of the applicant was also not kept in sealed cover as per rules. Since the case of the applicant was not considered on the due dates, he requested the State Government on 25.9.02 to consider his case for missed promotions from due dates with consequential benefits. In May 2003, the case of the applicant for promotion to the rank of Principal Secretary w.e.f. 12.1.94 was considered by a Review Screening Committee consisting of the following IAS officers:

1. Shri Arun Kumar Gupta, 1967 batch
2. Shri Aditya Vijai Singh, 1967 batch
3. Smt.Shashi Jain, 1968 batch

The applicant lodged his protest through identical letters dated 21.5.03 addressed both to the Chief Secretary as well as the then Chief Minister of M.P. All the three officers constituting the Review Screening Committee were junior to the applicant. On 11.7.2003, the State Government issued orders granting to the applicant notional promotion to the rank of Principal Secretary w.e.f. 12.1.94. A representation of the applicant for payment of arrears is still pending with the State Government. After getting the aforesaid promotion the applicant

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represented to the State Government that he should be considered for promotion to the Chief Secretary grade since IAS officers of the 1967 batch were considered and given promotion to the Chief Secretary grade w.e.f.2.11.01. The applicant learned that a review Screening Committee was held sometime in September/October 2003 to assess the suitability of the applicant to the Chief Secretary grade. The first screening Committee that held its meeting on 10.10.2003 to adjudge the suitability of the applicant to the Chief Secretary grade consisted of the following IAS officers:

1. Shri Arun Kumar Gupta, 1967 batch
2. Smt, Binoo Sen, 1967 batch
3. Shri Aditya Vijai Singh, 1967 batch.

The all the above officers were junior to the applicant. The applicant immediately submitted his representation on 2.1.2004. Four IAS officers were already in receipt of the Chief Secretary Grade in MP on 10.10.2003. The junior most officiating IAS officer in the Chief Secretary grade on 10.10.2003 was Shri Aditya Vijai Singh, who happened to be the Chairman of the First Review Screening Committee meting dated 10.10.2003 which is against law. The second Review Screening Committee that held its meeting on 30.1.2004 also consisted of junior officers to the applicant. Both the first and second Review Screening Committees knew that para 7.2 of the guidelines (Annexure A4) said that there would be no benchmark for assessing the suitability of officers for promotions. However, they adopted a benchmark in the case of the applicant which was discriminatory and far more rigorous than the one which was adopted by the screening committee which declared S/Shri S.K.Sood and Dharmendra Nath (IAS officers of 1965 batch) fit for the Chief Secretary grade. The first and second review screening committees failed to take note of the principle that watering down of remarks by the reviewing and accepting authorities without recording reasons or without giving specific reasons has to be ignored. In OA No.113/2000 filed by the applicant, the Tribunal nullified the ACRs for the period 1.4.93 to 31.3.94 and 1.4.94 to 31.3.95. There were no adverse remarks in the ACRs of the

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applicant when the Review Screening Committees considered his case for promotion on 10.10.2003 and 30.1.2004. The first and second review screening committees had, in violation of the guidelines, in fact set up such a benchmark. Setting up of such a benchmark was done by the review screening committees of respondent No.1. Both the screening committees acted unfairly in taking into consideration those entries in the ACRs of the applicant, which were below the benchmark for promotion but had not been communicated to the applicant. The committees looked into those entries which pertained to the period prior to 12.1.1994. Hence this OA is filed.

3. Heard the learned counsel for both parties. It is argued on behalf of the applicant that since the applicant faced disciplinary proceedings during the period from 23.9.91 to 24.9.02, the case of the applicant was not kept under sealed cover, as legally required. The applicant was exonerated vide order dated 24.9.02 with the cancellation of the penalty order. Hence he was not considered for the post of Principal Chief Secretary and Chief Secretary, which became due from 12.1.94 and 2.11.2001 respectively and further argued that the review screening committee consisted of 3 IAS officers, namely Shri Arun Kumar Gupta, Shri Aditya Vijai Singh and Smt. Shashi Jain. All these officers who faced a conflict between their interest and duty should not have adjudged the applicant and the aforesaid officers were junior to the applicant. The applicant submitted a representation dated 21.5.03. The applicant was granted notional promotion to the rank of Principal Secretary w.e.f. 12.1.94. A representation of the applicant for payment of arrears was not disposed of. Again his case for promotion to the rank of Chief Secretary was considered by the officers who were junior to the applicant, which was apparently illegal and against law. The respondents have never communicated to the applicant any adverse ACRs and no notice was given nor any opportunity for improvement was given. Without communicating any facts to the applicant, the entries in his ACR were recorded, which is against law. The committees looked into those entries

only, which pertained to the period prior to 12.1.1994 i.e the date of promotion of the applicant to the post of Principal Secretary. The screening committees gave weight to remarks of the distant past and ignored the later. Hence the whole action of the respondents is against law and the OA deserves to be allowed.

4. In reply, the learned counsel for the respondents argued that no sealed cover procedure was in existence for Principal Secretary grade prior to 28.3.2000. Hence the question of keeping the recommendations in the sealed cover did not arise. The case of the applicant for promotion to Principal Secretary grade w.e.f.12.1.94 was considered by the review screening committee on 9.1.2003 and he was promoted notionally to this grade w.e.f.12.1.94. The screening committee was constituted as per guidelines of DoPT issued on 28.3.2000. The representation of the applicant regarding grant of back wages was duly considered by the State Government in the light of the above provisions and rejected and the applicant was suitably informed. The committee did not find him fit for promotion as his record was not upto the mark. The directions of the Tribunal given in OA 113/2000 were duly followed by the review screening committee which met on 9.1.03 and the committee as per the directions of the Tribunal ignored the ACRs of the applicant for the year 1993-94 and 1994-95. Promotion to Principal Secretary grade and Chief Secretary grade cannot be kept at par. The Chief Secretary grade is the topmost grade in the hierarchy of the bureaucracy of the State and criteria for this grade cannot be the same as was adopted for lower grade by the committee. As per provisions contained in AIS(CR) Rules, 1970, only such remarks are communicated to the officer concerned which are adverse in nature. There is no provision under the rules to communicate down graded remarks which are positive. Hence the respondents have neither committed any irregularity or illegality in not considering the case of the applicant. Hence the OA deserves to be dismissed.



5. After hearing the applicant and the learned counsel for the respondents and on careful perusal of the records, we find that the DPC has considered the case of the applicant only for grant of the Chief Secretary grade as on 9.10.2001. We also find that in terms of the orders of the Tribunal the applicant has been granted the rank of Principal Secretary with effect from 12.1.1994 vide order dated 11.7.2003. We have seen the complete ACR dossiers of the applicant with specific reference to the latest CRs of the applicant. We find that in the year 1997 the applicant has been graded as outstanding, in the year 1998 the applicant has been graded as good, for the year 1999 the applicant has been graded as very good and in the year 2000 he has been graded as very good. During the latest preceding 3 years he has been continuously graded as outstanding by the reporting officer. However, during the year 2001-02 the accepting authority has down graded the ACR of the applicant from outstanding to Very good without assigning any reason. The Hon'ble Supreme Court in the case of U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, (1996) 2 SCC 363 has held that "As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All that is required by the authority recording confidentially in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice". In the instant case we have seen the ACR of the applicant for the year 2001-02 and find that no reason for the change is mentioned by the accepting authority while downgrading the ACR of the applicant from outstanding to very good.

5.1 We further find that the DPC has not given any reason while declaring the applicant as unfit for promotion.

They have simply stated that the committee has examined the whole record of the applicant and found that he is not suitable for promotion to the grade of Chief Secretary. The State Government vide their note placed at file No. E1/177/2003/5 at page Nos. 46 & 47 have stated that the Tribunal has passed an order dated 5.3.2000 in OA No. 113/2000 holding that the ACRs of the applicant for the year 1993-94 and 1994-95 should be treated as not written and therefore the committee should ignore the ACRs of these years. Consider^{hence} the over all facts into consideration the applicant has been promoted in the year 1994 and in terms of the orders of the Tribunal the ACR of the applicant for the year 1993-94 and 1994-95 were ignored.

5.2 Further it is surprising to note that the persons who were selected for the Chief Secretary grade on 9.10.2001 namely Shri A.V. Singh, Shri A.K. Gupta and Smt. Benu Sen were made the members of the review DPC which met on 10.10.01 to review the case of the applicant. In this review DPC which met on 10.10.2003 the case of the applicant was required to be reviewed as on 9.10.2001 in comparison with the officers who were selected as on 9.10.2001. It means that the persons who were selected on 9.10.2001 were not required to sit in the DPC which met on 10.10.2003. In this view of the matter the findings of the review DPC which met on 10.10.2003 are required to be quashed and set aside. In this regard we may refer to the observations of the Hon'ble Supreme Court in the case of Badrinath Vs. Government of Tamil Nadu and others, 2001 SCC (L&S) 13. Para 79 is extracted below :

"79. It may be noticed that where a statute or a statutory rule constitutes a designated authority to take administrative or judicial decisions and where the person concerned is disqualified to take decision on the principle of likelihood of bias, the law (in certain circumstances explained below) makes an exception in the situation and the said person is entitled to take a decision notwithstanding his disqualification for otherwise no decision can be taken by anybody on the issue and public interest will suffer. But the position in the present case is that there is no statute or statutory rule compelling

ing the Chief Secretary to be a member of the Screening Committee. If the Committee is constituted under an administrative order and a member is disqualified in a given situation vis-a-vis a particular candidate whose promotion is in question, there can be no difficulty in his "recusing" himself and requesting another senior officer to be substituted in his place in the Committee. Alternatively, when there are three members in the Committee, the disqualified member could leave it to the other two - to take a decision. In case, however, they differ, then the authority which constituted the Committee, could be requested to nominate a third member. These principles are well settled and we shall refer to them."

5.3 Accordingly, in view of the aforesaid finding of the Hon'ble Supreme Court, in the instant case it was appropriate on the part of the members of the review DPC which met on 10.10.2003, that they should have recused themselves and requested another senior officers to be substituted in their place in the committee. As this has not been done, the minutes of the review DPC which met on 10.10.03 are vitiated and are liable to be quashed and set aside.

5.4 As regards the minutes of the DPC which met on 30.1.2004, we find that in the said meeting also the aforementioned Shri A.K. Gupta a junior officer to the applicant was also one of the member of the DPC. We further find that in this meeting the committee has fixed the criteria that, out of 10 ACRs of the officers, atleast 5 ACRs should of outstanding grade, whereas in the meeting which met on 9.10.2001 there was no such criteria fixed by the members of the DPC. Though it is the prerogative of the DPC to fix the criteria but the criteria being fixed by the DPC for a particular post should be on a rational basis. It is not so in this case. We also find that in the instructions reproduced in the ACR folders it has been specifically mentioned that "the officer reported upon, the reporting authority, the reviewing authority and the accepting authority should, therefore, undertake the duty of filling out the form with a high sense of responsibility".

(11)

In the instant case the accepting authority has failed to undertake the duty of filling out the form in respect of the applicant with a high sense of responsibility as no reasons have been recorded by him while downgrading the ACR of the applicant. Therefore, the remarks recorded by the accepting authority in respect of the applicant for the year 2001-02 are not sustainable.

6. In the result the Original Application is allowed. The minutes/recommendations of the first review screening committee dated 10.10.2003 and the decision of the Government of Madhya Pradesh thereon, as well as the minutes/recommendations of the second review screening committee dated 30.1.2004 (pertaining to the applicant) and the decision of the State Government thereon, are quashed and set aside. The respondents are directed to convene a meeting of the DPC to review the minutes of the DPC which met on 9.10.2001 and if the applicant is found fit for promotion to the grade of Chief Secretary, he may be promoted from the date his junior was promoted to the said grade and thereafter grant him all the consequential benefits flowing from the said promotion. The respondents are further directed to comply with the aforesaid direction within a period of three months from the date of receipt of a copy of this order.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

पूरांकन सं ओ/न्या... जवतपुर, दि...

- प्रतिलिपि जारी किया:-
- (1) सचिव, उच्च न्यायालय एवं एग्रेसिवेशन, जवतपुर
 - (2) आवेदक श्री/श्रीमती/श्री...
 - (3) प्रत्यक्षी श्री/श्रीमती/श्री...
 - (4) बांधपाल, को.प्र.अ., जवतपुर न्यायाधीश सूचना एवं आवश्यक कार्यवाही हेतु

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Issued
on 22.3.05
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Sanjay Bakshi
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