

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 352 of 2004

Jabalpur, this the 29th day of September, 2005

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

Ajeet Singh Choudhary, aged about 52
Years, S/o. Shri S.P. Choudhary,
By occupation Commandant,
Batalion No. 34, SAF, Dhar. Applicant

(By Advocate – Shri D.K. Dixit)

Versus

1. Union of India, through the Secretary,
Ministry of Home Affairs, North Block,
New Delhi.
2. State of Madhya Pradesh, through the
the Secretary, Department of Home (Police),
Mantralaya, Bhopal.
3. Union of Public Service Commission,
Through its Secretary,
Dholpur House, New Delhi.
4. Shri A.K. Singh, IPS,
Superintendent of Police, Sehore. Respondents


(By Advocate – None)

ORDER

By M.P. Singh, Vice Chairman –

By filing this Original Application the applicant has claimed the following main reliefs :

“(ii) to command the respondents No. 1, 2, 3 to appoint the petitioner in IPS with effect from 7.3.97 i.e. earlier to the appointment of the respondent No. 4 and to grant the year 1992 as



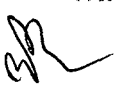
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year of allotment to him fixing his seniority in the cadre with all consequential benefits,

(iii) to command the respondents No. 1, 2, 3 to grant the applicant his due seniority after his appointment in IPS on 7.3.97 alongwith the arrears of salary and allowances permissible to him."

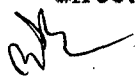
2. The brief facts of the case are that the applicant is a State Police Service officer of 1981 batch of Madhya Pradesh. He was appointed as Deputy Superintendent of Police vide order dated 30th May, 1981 on probation of two years and the applicant was entitled for confirmation with effect from 15th June, 1983, but he was confirmed by the respondent No. 2 with effect from 1st April, 1987 vide order dated 7th December, 1993. On account of late confirmation the applicant was assigned much lower seniority than what was due to him. Aggrieved by the aforesaid depressed seniority the applicant has preferred a Writ Petition before the Hon'ble High Court of Madhya Pradesh which was transferred to the State Administrative Tribunal and was registered as TA No. 1197/1988. The same was allowed by the State Administrative Tribunal vide order dated 2nd December, 1997 with a direction to the State Government to treat the applicant as confirmed with effect from 15th June, 1983. The aforesaid direction of the State Administrative Tribunal was not complied with by the State Government for quite some time. In the meantime several direct recruits of 1981, 1982 and 1983 batches of the State Police Service who were junior to the applicant were placed above the applicant in the gradation list. In this gradation list, the respondent No. 4 i.e. Shri A.K. Singh is placed at serial No. 42.

2.1 The appointment to Indian Police Service by promotion is governed by Indian Police Service (Appointment by Promotion) Regulation, 1955. The regulation 5 provides for preparation of list of suitable officers of the State Police Service with 8 years service^{who} are eligible for promotion to the Indian Police Service (in short IPS). A meeting of the selection committee was convened in March - April, 1996 for considering the State Police



Service officers for appointment to the IPS against 10 vacancies. On account of having been assigned depressed seniority i.e. serial No. 119 the applicant did not come within the zone of consideration as on 2.4.1998. The applicant immediately made a representation on 27.7.1998. Since there was no response from the State Government he approached the Central Administrative Tribunal by filing OA No. 667/1999. The Tribunal vide its order dated 10th January, 2003 disposed off the application with certain directions that the respondents should consider the case of the applicant for promotion to IPS from the date his junior has been promoted. Meanwhile during the pendency of the application the applicant was promoted to the IPS vide notification dated 15th February, 2000. Thereafter vide order dated 19th June, 2000 the seniority was accorded to the applicant giving him 1994 as the year of allotment. According to the applicant he was not considered for promotion in the year 1995-96 and 1996-97 i.e. when his juniors were promoted. Thereafter the applicant has been served with a memo dated 13th February, 2004, wherein it was mentioned that the name of the applicant was considered by review DPC for his inclusion in the select list of 1995-96 and 1996-97 but could not be included due to statutory limits on the size of the select list. According to the applicant this order is totally vague, illegal and malafide. Hence, this Original Application is filed.

3. The respondent No. 3 Union Public Service Commission has filed their reply and has stated that the applicant had filed OA No. 1197/88 before the Madhya Pradesh State Administrative Tribunal, Bhopal praying for confirmation on the post of Dy. Superintendent of Police with effect from 19.6.1983 with consequential benefits of pay fixation and seniority. The Tribunal vide its order dated 2nd December, 1997 allowed the Original Application filed by the applicant and directed the respondents to consider his case for confirmation in the post of Dy. Superintendent of Police as on 15th June, 1983. In compliance to the direction given by the Madhya Pradesh State Administrative Tribunal, the



Government of Madhya Pradesh vide order dated 1st August, 1998 modified the date of confirmation of the applicant from 1.4.1987 to 15.6.1983 and consequently his seniority was re-fixed below the name of Shri G.D. Lakhani (Sl. No. 17) and above Shri Ved Prakash Sharma (Sl. No. 18) in the seniority list of State Police Service officers as on 1.4.1997. Thereafter the applicant has filed OA No. 667/1999 in the Jabalpur Bench of the Central Administrative Tribunal praying for a direction to consider him for the select lists of 1996-97 on the basis of the revised seniority in the State Police Service. The Tribunal vide order dated 10.1.2003 disposed of the Original Application with the directions that "(T)he respondent No. 2 is directed to take steps for initiation of consideration of the applicant for promotion to the IPS from the SPS from the date his junior has been promoted to the IPS. The respondent No. 2 may ensure that the directions are complied within a period of 6 months from today. In case the Selection Committee finds the applicant suitable for promotion to the IPS in the year 1996 from the date when his juniors were promoted to IPS he may be allowed all consequential benefits within the said period of 6 months". The Union Public Service Commission has not been impleaded in the array of respondents in OA No. 667/1999. However, in pursuance of the order dated 10.1.2003 the State Government vide their letter dated 19th August, 2003 forwarded a proposal to the UPSC to convene a review selection committee meeting to consider the case of the applicant for inclusion of his name in the select lists of 1995-96 and 1996-97. The State Government informed that the applicant is a directly recruited Dy. Superintendent of Police of 1981 batch. The State Government further informed that Shri Akhilesh Kumar Soni has been appointed to the IPS from the select list of 1995-96 and Shri Vidhya Sagar Singh has expired on 3rd December, 1993. Therefore vide order dated 1.8.1998 the State Government fixed the seniority of the applicant in the 1997 seniority list below the name of Shri G.D. Lakhani and above Shri Ved Prakash Sharma. The name of the applicant could not find a place in the select list of 1998 that was prepared by the committee on 30.11.1998

due to the statutory limit on the size of the select list. The applicant's name was however included at Sl. No. 4 of the select list of 1999 prepared by the committee that met on 4th August, 1999 and he was accordingly appointed to IPS from the select list of 1999.

3.1 During the year 1995-96 for preparing a select list of 6 persons, the zone of consideration was 18 and the selection committee which met on 18th March, 1996 considered the name of Shri Akhilesh Kumar Singh at serial No. 18. Further, during the year 1996-97 the name of Shri G. D. Lakhani and Shri Ved Prakash Sharma were considered by the selection committee that met on 21st March, 1997 at serial No. 12 and 13 respectively in the eligibility list. Since the applicant Shri Ajeet Singh Choudhary was immediate junior to Shri G.D. Lakhani and senior to Shri Akhilesh Kumar Singh and Shri Ved Prakash Sharma, he was also required to be considered for inclusion in the select lists of 1995-96 and 1996-97 as per his revised inter-se position in the respective eligibility lists. As the applicant had already been considered for the select lists of 1998 and 1999 as per his revised seniority, the selection committee did not review his consideration for these selection lists. In pursuance of the orders of this Tribunal dated 10.1.2003 passed in OA No. 667/1999 and the facts and circumstances mentioned above, the review selection committee met on 10.9.2003 to reconsider the case of the applicant for inclusion of his name in the select lists of 1995-96 and 1996-97. The review selection committee considered the name of the applicant in accordance with the revised seniority at serial No. 17-A below the name of Shri G.D. Lakhani and above the name of Shri Akhilesh Kumar Singh in the eligibility list. The committee on an overall assessment of his performance as reflected under various columns of the ACRs up to the year 1994-95 assed him as 'very good'. However, on the basis of this assessment the name of the applicant could not be included in the select list of 1995-96 due to the statutory limit on the size of the select list. Accordingly, the committee did not recommend any change in the select

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list of 1995-96 earlier prepared on 18.3.1996. It is further submitted that the last SPS officer who obtained a 'very good' grading and had been earlier included in the select list was Shri Annaram Ghormare ^{For the select list year 1996-97} the size of which was 12, the committee then considered the name of the applicant at Sl. No. 12-A below the name of Shri G.D. Lakhani and above the name of Shri Ved Prakash Sharma in the eligibility list for inclusion in the select list of 1996-97. On an overall assessment of his performance as reflected under various columns of the ACRs upto the year 1995-96, the committee assessed him as 'very good'. However, on the basis of this assessment the name of the applicant could not be included in the select list due to the statutory limit on the size of the select list. Accordingly, the committee did not recommend any change in the select list of 1995-96 earlier prepared on 21.3.1997. The last SPS officer who obtained a 'very good' grading and had been earlier included in the select list was Shri M. P. Choudhary. In view of the facts mentioned above the Tribunal may dismiss the present Original Application.

4. The private respondent No. 4 and the respondent No. 1 Union of India have also filed the replies more or less on the same grounds. However, the respondent No. 1 in their reply have stated that with regard to the contention of the applicant for placing his case similar to that of Shri A.K. Soni, it is submitted that a selection committee meeting was convened on 12th February, 1991 to prepare a select list of 1990-91 for promotion to the IPS cadre of the Madhya Pradesh. Shri A.K. Soni was considered at serial No. 27 in the eligibility list. However, on an overall relative assessment of his service records he could not be included in the select list due to the statutory limit on the size of the select list. Subsequently, in pursuance of the order dated 11th January, 1996 of the Madhya Pradesh State Administrative Tribunal, Jabalpur in OA No. 2309/1991 filed by Shri Soni the State Government vide order dated 3.2.1996 revised the date of confirmation of Shri Soni as 12.8.1980 and refixed his seniority in the seniority list above Shri I.S. Chauhan, Shri I.S.

Chauhan was assessed by the selection committee of 12.2.1991 and was included in the select list of 1990-91 at Sl. No. 7. Shri Chauhan was appointed to the IPS vide notification dated 14.11.1991, Shri Soni then filed an OA No. 873/1998 in this Tribunal with the prayer to reconsider his seniority in IPS over and above Shri I.S. Chauhan. The Tribunal directed the applicant to send a fresh representation alongwith copy of the order dated 19.8.2000 passed in OA No. 634/2000, to respondent No. 1 with the copy to the respondent No. 3 within a fortnight from this date, and further directed respondent No. 1 to dispose his representation within 2 months from the date of receipt of the same.

5. The State Government vide their letter dated 15th January, 2001 forwarded a proposal to the UPSC to consider the case of Shri A.K. Soni for inclusion in the select list of 1990-91 on the basis of his revised seniority, in pursuance of the direction given by the Tribunal. The State Government also intimated that the name of Shri A.K. Soni would figure at Sl. No. 11-B in the eligibility list of 1990-91 below Shri M.P. Diwedi at Sl. No. 11-A and above Shri I.S. Chauhan at Sl. No. 12. In this connection the commission observed that Shri A.K. Soni had already been considered by the same selection committee of 12.2.1991 for the year 1990-91 in which his immediate junior Shri I.S. Chauhan was considered and also appointed to the IPS. After assessing the case of Shri Soni, under changed circumstances, the commission advised that as there is no change in the basic records placed before the selection committee except for the change in the seniority position of Shri A.K. Soni in the State Police Service, the assessments made by the selection committee of 12.2.1991 in respect of Shri Soni would remain unchanged. However, based on the revised seniority of Shri Soni his name would find a place in the select list of 1990-91 at Sl. No. 6-B below Shri M.P. Diwedi and above Shri I.S. Chauhan. Shri I.S. Chauhan, immediate junior to Shri Soni in 1990-91 select list had been appointed to IPS on 14.11.1991. Hence, in terms of regulation 9(1) of Appointment by promotion regulations based on the

recommendations of the State Government and on the basis of inclusion of his name at Sl. No. 6-B in the select list of 1990-91, Shri Soni was given deemed date of appointment from 14.11.1991 and consequential seniority as 1987 vide Government of India's letter dated 22.5.2001. ^{mdt} The respondent-UOI have further stated that whereas Shri A.K. Soni could ~~not~~ find a place in the select list of 1990-91 after his seniority in SPS being revised on the basis of the grading given to him by selection committee, the applicant could not find a place in the select list of 1995-96, 1996-97 in the similar circumstances due to the lower grading given to him by the selection committee.

6. The State Government i.e. respondent No. 2 has not filed any reply.

7. None is present for the respondents. Since it is a case of 2004, we proceed to dispose of this Original Application by invoking the provisions of Rule 16 of CAT (Procedure) Rules, 1987. Heard the learned counsel for the applicant.

8. During the course of argument the learned counsel for the applicant has drawn our attention to ~~words~~ the order issued by the Ministry of Home Affairs at Annexure A-9 and stated that in a similar case of Shri A.K. Soni who was also left out for induction into IPS due to depression of his seniority in the State Police Service, the UPSC vide letter dated 23.4.2001 have advised to include the name of Shri Soni in the select list of 1990-91 at serial No. 6-B i.e. below Shri M.P. Dwivedi and above Shri I.S. Chauhan in pursuance with the direction of this Tribunal dated 23rd October, 2000 passed in OA No. 873/1998 filed by Shri A.K. Soni. No meeting of review selection committee was held and Shri Soni was given all benefits including seniority in IPS and correct year of allotment. Consequent upon antedating appointment to IPS from 9.7.1996 to 14.11.1991, the year of allotment of Shri Soni was also revised and refixed as 1987 and ^{he is} was placed below Shri M.P. Dwivedi and above Shri I.S. Chauhan. Therefore, the applicant has sought direction that similar treatment be also given to him as was given in the case of Shri A.K. Soni

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with all consequential benefits including seniority in IPS and correct year of allotment with regard to his immediate junior i.e. respondent No. 4.

9. We have given careful consideration to the rival contentions made on behalf of the parties and we find that the undisputed facts of the case are that the applicant is a State Police Service Officer of 1981 batch. He was confirmed only in the year 1987 vide order dated 7.12.1993. Due to his late confirmation his seniority in the State Police Service was depressed. Later on vide an order dated 1.8.1998 the applicant was confirmed with effect from 15.6.1983 instead of 1.4.1987. But at this stage certain officers of 1981, 1982 and 1983 batch direct recruits of the State Police Service who were junior to the applicant were placed above the applicant in the gradation list. The respondent No. 4 who was the immediate junior to the applicant in the State Police Service also became senior to him. The applicant has contended that the case of Shri A.K. Soni is similar to his case. When Shri Soni was placed below Shri I. S. Chauhan, he has filed an Original Application No. 873/1998, wherein the Tribunal has directed him to send a fresh representation, with further direction to the respondents to consider and dispose of the same. While complying the order of the Tribunal the UPSC advised to include the name of Shri A.K. Soni in the select list of 1990-91 at Sl. No. 6-B below Shri M.P. Dwivedi and above Shri I.S. Chouhan. The year of allotment of Shri Soni was also refixed to 1987. The learned counsel for the applicant has therefore, submitted that the applicant should also be granted the same benefit by giving the seniority ~~right~~ from the date his immediate junior was given without holding the meeting of the review selection committee. The contention of the learned counsel for the applicant that Shri A.K. Soni was granted seniority without holding the meeting of the review selection committee is wrong and is rejected as in that case a proposal was sent by the State Government to the Union Public Service Commission for holding the meeting of the review selection committee. The respondents Union of India in paragraph 23 of their reply has clearly stated that the




State Government vide their letter dated 15.1.2001 forwarded a proposal to the Union Public Service Commission to consider the case of Shri A.K. Soni for inclusion in the select list of 1991 on the basis of his revised seniority in pursuance of the directions of this Tribunal.

10. We find that in the case of the applicant when the review selection committee was held for inclusion of his name in the select list of 1995-96 and 1996-97 he could not be included because of the statutory limit on the size of the select list as there were only 5 posts. The immediate junior to the applicant i.e. respondent No. 4 was included in the select list because he has been graded as 'outstanding', whereas the applicant was graded as 'very good' only. We have gone through the CRs of the applicant as well as of the private respondent for the last five years prior to the date of convening of the meeting of the selection committee in March, 1996 i.e. for the years 1990-91, 1991-92, 1992-93, 1993-94, 1994-95. We find that all the 5 CRs of the private respondent are outstanding, whereas the three CRs of applicant for the same relevant period are 'very good' and two are 'outstanding'. These two 'outstanding' CRs of the applicant have not been reviewed/accepted by the competent authority. Therefore, we find that the selection committee has rightly graded the applicant as 'very good' and the private respondent No. 4 as 'outstanding'. As per regulation 5 of the IPS (Appointment by Promotion) Regulation, 1955, the officers who are graded as 'outstanding' are placed above those who are graded as 'very good' and accordingly the private respondent No. 4 was included in the select panel. Hence, we do not find any ground to interfere in the matter and the Original Application is liable to be dismissed.

11. Accordingly, in view of the above, the Original Application is dismissed with no order as to costs.


(Madan Mohan)
Judicial Member
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(M.P. Singh)
Vice Chairman