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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR
BENCH, JABALPUR

Original Applications Nos. 410, 412, 413 and 414 of 2004

Jabalpur, this the 20th day of May, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman

Hon'ble Mr. Madan Mohan, Judicial Member

(1) Original Application No. 410 of 2004

Dr. Madhu Khare
S/o Shri K.K. Khare
DOB - 30.03.1959
Additional Collector
R/o Civil Lines
Khandwa

Applicant

(By Advocate - Shri S.Paul)

V E R S U S

1. Union of India,
Through its Secretary,
Ministry of Personnel,
Public Grievances and Pensions.
Department of Personnel and Training.
New Delhi.
2. Union Public Service Commission,
Through its Secretary,
Dhaulpur House
New Delhi.
3. Government of M.P.
Through its Principal Secretary,
General Administration Department
(IAS Establishment)
Vallabh Bhavan
Bhopal.
4. Shri R.K. Mathur IAS
C/o Principal Secretary
General Administration Department
(IAS Establishment),
Vallabh Bhavan
Bhopal.

5. Shri B.K. Vyas(IAS)
C/o Principal Secretary,
General Administration Department
(IAS Establishment)
Vallabh Bhavan,
Bhopal.

6. Shri M.S. Bhilala IAS
Through its Principal Secretary,
General Administration Department
(IAS Establishment)
Vallabh Bhavan,
Bhopal.

7. Shri A.K. Rai IAS
Through its Principal Secretary,
General Administration Department
(IAS Establishment)
Vallabh Bhavan,
Bhopal.

Respondents

(By Advocate – Shri S.P. Singh for respondents Nos 1 & 2
Shri Om Namdeo for respondent No.3
Shri P.K. Singh for respondent No.4)

(2) Original Application No. 412 of 2004

Dr. Madhu Khare,
Aged about 45 years
W/o Shri K.K. Khare,
Presently Additional Collector
Khandwa(M.P.)

Applicant

(By Advocate – Shri S.Nagu)

V E R S U S

1. Union of India,
Through Secretary,
Ministry of Personnel,
Public Grievances and Pensions.
Department of Personnel and Training.
New Delhi.

2. State of Madhya Pradesh,
Through Principal Secretary,
General Administration Deptt.
(IAS Establishment)
Vallabh Bhawan-Mantralaya, Bhopal.



3. Shri Rajaram Batham,
Joint Collector,
Through Principal Secretary,
General Administration Deptt.
(IAS Establishment)
Vallabh Bhawan-Mantralaya,
Bhopal.
4. Vijay Anand Kureel, IAS
Through Principal Secretary,
General Administration Deptt.
(IAS Establishment)
Vallabh Bhawan-Mantralaya,
Bhopal.
5. Smt. Raj Kumary Khanna, IAS
Through Principal Secretary,
General Administration Deptt.
(IAS Establishment)
Vallabh Bhawan-Mantralaya,
Bhopal.
6. Shri G.K. Saraswat, IAS,
Through Principal Secretary,
General Administration Deptt.
(IAS Establishment)
Vallabh Bhawan-Mantralaya,
Bhopal.
7. Shri Shivanand Dubey, IAS,
Through Principal Secretary,
General Administration Deptt.
(IAS Establishment)
Vallabh Bhawan-Mantralaya,
Bhopal.
8. Union Public Service Commission
Through its Secretary,
Dholpur House, Shah
Jahan Road, New Delhi.

Respondents

(By Advocate – Shri S.P. Singh for respondents Nos 1 & 8
Shri Om Namdeo for respondent No.2)



(3) Original Application No. 413 of 2004

Krishna Kumar Khare,
 S/o Shri U.S. Khare
 Date of birth 24.4.1958,
 Additional Collector, Khandwa,
 R/o Civil Lines,
 Khandwa(M.P.)

Applicant

(By Advocate – Shri S.Paul)

V E R S U S

1. Union of India,
 Through its Secretary,
 Ministry of Personnel,
 Public Grievances and Pensions.
 Department of Personnel and Training.
 New Delhi.
2. Union Public Service Commission
 Through its Secretary,
 Dholpur House, Shah
 Jahan Road, New Delhi.
3. Government of Madhya Pradesh,
 Through its Principal Secretary,
 General Administration Deptt.
 (IAS Establishment)
 Vallabh Bhawan-Mantralaya,
 Bhopal.
4. Shri Ajat Shatru Shrivastava, IAS
 C/o Principal Secretary,
 General Administration Department,
 (IAS Establishment)
 Vallabh Bhawan,
 Bhopal.
5. Shri Vijay Anand Kureel, IAS
 C/o Principal Secretary,
 General Administration Department,
 (IAS Establishment)
 Vallabh Bhawan,
 Bhopal.



6. Smt. Raj Kumari Khanna,
C/o Principal Secretary,
General Administration Department,
(IAS Establishment)
Vallabh Bhawan,
Bhopal.
7. Shri G.K. Saraswat
C/o Principal Secretary,
General Administration Department,
(IAS Establishment)
Vallabh Bhawan,
Bhopal.
8. Shri Shivanand Dubey
C/o Principal Secretary,
General Administration Department,
(IAS Establishment)
Vallabh Bhawan,
Bhopal.

(By Advocate – Shri S.P. Singh for respondents Nos. 1 & 2
Shri Om Namdeo for respondent No.3)

(4) Original Application No. 414 of 004

Krishna Kumar Khare,
S/o Shri U.S. Khare
Date of birth 24.4.1958,
Additional Collector, Khandwa,
R/o Civil Lines,
Khandwa(M.P.)

Applicant

(By Advocate – Shri S.Paul)

V E R S U S

1. Union of India,
Through its Secretary,
Ministry of Personnel,
Public Grievances and Pensions.
Department of Personnel and Training.
New Delhi.



2. Union Public Service Commission
Through its Secretary,
Dholpur House, Shah
Jahan Road, New Delhi.
3. Government of Madhya Pradesh,
Through its Principal Secretary,
General Administration Deptt.
(IAS Establishment)
Vallabh Bhawan-Mantralaya,
Bhopal.
4. Shri Raj Kumar Mathur, IAS,
C/o Principal Secretary,
General Administration Department,
(IAS Establishment)
Vallabh Bhawan,
Bhopal.
5. Shri Bharat Kumar Vyas, IAS
C/o Principal Secretary,
General Administration Department,
(IAS Establishment)
Vallabh Bhawan,
Bhopal.
6. Shri M.S. Bhilala,
C/o Principal Secretary,
General Administration Department,
(IAS Establishment)
Vallabh Bhawan,
Bhopal.
7. Shri Ashok Kumar Rai
C/o Principal Secretary,
General Administration Department,
(IAS Establishment)
Vallabh Bhawan,
Bhopal.

(By Advocate – Shri S.P. Singh for respondents Nos 1 & 2
Shri Om Namdeo for respondent No.3
Shri P.K. Singh for respondent No.4)



Common (O R D E R)

By M.P. Singh, Vice Chairman –

As the facts, law and relief claimed by the applicants in all four OAs Nos 410, 412, 413 and 414 of 2004 are identical, therefore, We proceed to dispose of all these OAs by passing a common order.

2. By filing the Original Applications Nos 410 and 412 of 2004 the applicant Dr. Madhu Khare has sought the following main reliefs:-

OA 410/04

“(ii) Upon holding that the non-selection of the applicant by the impugned DPC on the basis of downgrading is arbitrary and illegal, command the respondents to consider the applicant for grant of IAS from the date the private respondents have been granted (1.1.2001).

(iii) That the downgrading of ACR of the applicant by the DPC or by authorities be quashed and, if necessary, set aside the impugned order dated 17th April, 2003 Annexure A/1 to the extent it relates to applicant and the private respondents.

(iv) On selection as IAS from the date juniors have been given, the respondents be commanded to provide all consequential benefits to the applicant including seniority, pay-scale and all other service benefits arising thereto;”

OA 412/04

“8.2 The Hon’ble Tribunal be pleased to hold that in the year 1997-98 the applicant should be graded as outstanding on the strength of the remark of the Commissioner, Revenue Division. And also on the strength of the law laid down by the Apex Court in the case of UP Jal Nigam V/s Prabhat Chandra Reported in 1996 Vol. 2 SCC page 636.

8.3 The Hon’ble Tribunal be pleased to direct the respondent to hold the Review Selection Committee for the year 2002 for appointment to IAS by promotion by treating the ACR of 1997-98 as outstanding.

8.4 The Hon’ble Tribunal be further pleased to quash the down graded remarks of very good of the year 1997-98 and treat the 1997-98 ACR to be outstanding in line with the consistently outstanding record of the applicant.

8.5 The respondents may be directed to appoint the applicant to the IAS by promotion by placing her name in the select list of 2002 between Shri Ajat Shatru Shrivastava and Vijay Anand Kureel on the strength of her outstanding grading, and grant her



all consequential benefits i.e. seniority pay fixation arrears of salary etc.

8.6 The Hon'ble Tribunal be further pleased to direct the official respondents to produced for its perusal the relevant records including the minutes of the selection committee of 2002, the ACR dossiers of the applicant and as well as the private respondents and ACR grading comparative chart prepared by the selection committee of 2000.

8.7 The Hon'ble Tribunal be pleased to declare that the action of downgradation of 1997-1998 ACR of the applicant leading to her supersession to the IAS from the select list of 2002 is void unlawful and arbitrary and therefore liable to be struck down by issuance of appropriate writ, order, direction".

3. By filing the Original Applications Nos 413 and 414 of 2004 the applicant Krishna Kumar Khare has sought the following main reliefs :-

OA 413/04

"(ii) Upon holding that the non-selection of the applicant by the impugned DPC on the basis of downgrading is arbitrary and illegal, command the respondents to consider the applicant for grant of IAS from the date the private respondents have been granted (1.1.2002).

(iii) That the downgrading of ACR of the applicant by the DPC be quashed and, if necessary, set aside the impugned order dated 17th April, 2003 Annexure A/1 to the extent it relates to applicant and the private respondents.


(iv) On selection as IAS from the date juniors have been given, the respondents be commanded to provide all consequential benefits to the applicant including seniority, pay-scale and all other service benefits arising thereto;"

OA 414/04

"(ii) Upon holding that the non-selection of the applicant by the impugned DPC on the basis of downgrading is arbitrary and illegal, command the respondents to consider the applicant for grant of IAS from the date the private respondents have been granted (1.1.2001).

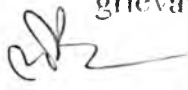
(iii) That the downgrading of ACR of the applicant by the DPC be quashed and, if necessary, set aside the impugned order dated 17th April, 2003 Annexure A/1 to the extent it relates to applicant and the private respondents.

(iv) On selection as IAS from the date juniors have been given, the respondents be commanded to provide all consequential benefits to the applicant including seniority, pay-scale and all other service benefits arising thereto;"



4. The brief facts of the case as stated by the applicant Dr. Madhu Khare in OAs 410 & 412 of 2004, are that she had been appointed to the Madhya Pradesh State Administrative Service on 1.6.1982 and she has rendered about 22 years of highly meritorious and unblemished service. She was selected as a Joint Collector on completion of six years service, and after completion of 10 years of service, she became Additional Collector w.e.f. 1.1.1993. She was also granted the Senior Selection Grade and posted as Additional Collector w.e.f. 1.1.1999. As per Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as the 'Promotion Regulations'), she is eligible for promotion to Indian Administrative Service (for short 'IAS'). The applicant has claimed that she has been graded as outstanding by all her superior officers. The grievance of the applicant is that some of the officers, who were never promoted as even Joint Collector and even DE proceedings were initiated against them were promoted to the IAS, whereas the ACR grading of the applicant has been downgraded from 'outstanding' to 'very good' by the Selection Committee. Since the applicant has not been promoted to the IAS, she has filed the aforesaid Original Applications 410 & 412 of 2004, claiming the aforementioned reliefs.

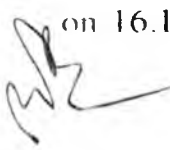
5. The brief facts of the case as stated by the applicant Shri Krishna Kumar Khare in OAs. 413 & 414 of 2004, are that he is a 1982 batch officer of Madhya Pradesh State Administrative Services. He was selected as a Joint Collector on completion of six years service, and on completion of 10 years of service, he became Additional Collector w.e.f. 1.1.1993. He was also granted the Super Selection Grade and posted as Additional Collector w.e.f. 1.1.1999. As per the Promotion Regulations, he is eligible for promotion to IAS and he also got outstanding gradings in his ACRs at every level. The grievance of the applicant is that some of the officers, who were



never promoted as even Joint Collector and even DE proceedings were initiated against them were promoted to the IAS on the basis of the recommendations of the Selection Committee which met on 16.12.2002, whereas the ACR grading of the applicant has been downgraded from 'outstanding' to 'very good' by the Selection Committee. Since the applicant has not been promoted to the IAS, he has filed the aforesaid Original Applications 413 & 414 of 2004, claiming the aforementioned reliefs.

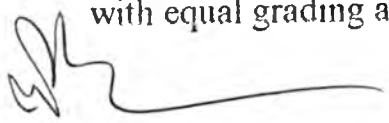
6. The respondents-Union Public Service Commission (for short 'UPSC') in their somewhat similar replies filed in the aforementioned OAs, have contended that in accordance with the provisions of Regulation 5(4) of the Promotion Regulations, a Selection Committee consisting of the Chairman/Member of the UPSC, duly classifies the State Civil Service (for short 'SCS') officers included in the zone of consideration as 'outstanding', 'very good', 'good', or 'unfit', as the case may be, on an overall relative assessment of their service records. Thereafter, as per the provisions of Regulation 5(5) of the Promotion Regulations, the Selection Committee prepares a list of suitable officers by including the required number of names first from the officers finally classified as 'outstanding', then from amongst those similarly classified as 'very good', and thereafter from amongst those similarly classified as 'good', and the order of names within each category is maintained in the order of their respective inter-se seniority in the SCS.

6.1 The respondent-UPSC, in their reply, have further submitted that as per the provisions of the Promotion Regulations, as amended on 25.7.2000, the year-wise select lists for the years 2001 and 2002 were required to be prepared for the vacancies determined by the Government of India. Thus, a Selection Committee meeting was held on 16.12.2002 to prepare the year-wise select lists of 2001 and 2002



for promotion of SCS officers to the IAS of Madhya Pradesh cadre. For the select list of the year 2001, for 8 vacancies determined by the Govt. of India, the zone of consideration was to comprise of 24 officers, being thrice the number of vacancies. The names of the applicants Dr.Madhu Khare and Shri Krishna Kumar Khare were considered at serial nos.19 and 21 respectively in the eligibility list and on an overall assessment of their service records, the Selection Committee graded them as 'very good'. The selection committee also graded respondents 5 to 7, namely, S/Shri Bharat Kumar Vyas, M.S.Bhilala(ST) and Ashok Kumar Rai(SC) (in OA414/04) as 'very good'. Respondent no.4 Shri Raj Kumar Mathur (in OA 414/04) was graded as 'outstanding' and his name was included in the Select List of 2001 at serial no.5. The names of afore-mentioned respondents 5 to 7 were also included in the Select List of 2001 at serial nos.6,7 & 8 respectively. The names of the applicants could, however, not be included in the Select List of 2001 due to the statutory limit on the size of the Select List as officers who were senior to the applicants with equal grading and officers with better grading only were included in the Select List as per the provisions of Regulation 5 of the Promotion Regulations.

6.2 For the select list of the year 2002, for 6 vacancies determined by the Govt. of India, the zone of consideration was to comprise of 18 officers, being thrice the number of vacancies. The names of the applicants Dr.Madhu Khare and Shri Krishna Kumar Khare were considered at serial nos.12 and 14 respectively in the eligibility list and on an overall assessment of their service records, the Selection Committee graded them as 'very good'. On the basis of this assessment, the names of the applicants could, however, not be included in the Select List of 2002 due to the statutory limit on the size of the Select List as officers who were senior to the applicants with equal grading and officers with better grading only were included

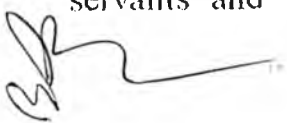


in the Select List as per the provisions of Regulation 5 of the Promotion Regulations.

7. The respondent-Union of India have not filed their reply and the respondent-State of Madhya Pradesh have filed their replies somewhat mentioning the same facts as narrated by the respondent-UPSC.

8. We have heard the learned counsel for the parties at a great length.

9. During the course of arguments, the learned counsel for the applicants has taken several grounds including the ground that the applicants have been promoted from the post of Dy. Collector as Joint Collector and thereafter as Additional Collector in their turn because of their excellent record of service, whereas some of the private respondents who were not even found fit for their promotion in the SCS have also been graded as 'very good' along with the applicant and have been included in the select list. The learned counsel for the applicants has also contended that the respondent-UPSC while filing their reply in another O.A.No.370 of 1997 in the case of Hiralal Trivedi Vs. Union of India and others, have stated that for making an overall relative assessment, the selection committee as per practice followed in the UPSC examines the service records of each of the eligible officers, with special reference to the performance of the officers during the last five years (preceding the years in which the Selection Committee meets). The learned counsel has contended that the present applicants have also been assessed as 'outstanding' during the last five years by three different authorities i.e. reporting, reviewing and accepting authorities. He has further contended that the CR is a basic input for assessing the suitability of the Government servants and the selection committee cannot reach to a different

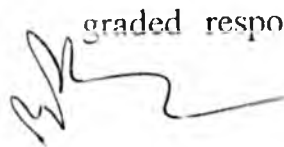


conclusion other than the one recorded by three different independent authorities.

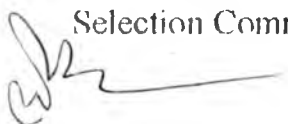
10. On the other hand, the learned counsel for the respondents has stated that the whole CR dossier is required to be assessed and over all view is taken. In the case of some of the private-respondents against whom the applicants are making allegations, the learned counsel has contended that although there was some charge sheet, but subsequently they were completely exonerated. Their overall performance has also been assessed as 'very good' and they being senior to the applicants, their names have been included in the select list. The names of the applicants could, however, not be included in the Select Lists of 2001 and 2002 due to the statutory limit on the size of the Select List as officers who were senior to the applicants with equal grading and officers with better grading only were included in the Select List.

11. The question for consideration is whether the applicants could be assessed by the Selection Committee as 'outstanding' and included in the select lists for the years 2001 and 2002.

12. We have carefully gone through the minutes of the Selection Committee which met on 16.12.2002 for preparing the yearwise lists of such members of SCS of Madhya Pradesh as are suitable for promotion to the IAS during the years 2001 and 2002. We find that for the Select List of 2001, for 8 vacancies the respondents have rightly considered 24 officers in the zone of consideration. The names of the applicants Dr. Madhu Khare and Shri Krishna Kumar Khare were considered at serial nos. 19 and 21 respectively in the eligibility list and on an overall assessment of their service records, the Selection Committee graded them as 'very good'. The selection committee also graded respondents 5 to 7, namely, S/Shri Bharat Kumar Vyas,



M.S.Bhilala(ST) and Ashok Kumar Rai(SC) (in OA414/04) as 'very good'. Respondent no.4 Shri Raj Kumar Mathur (in OA 414/04), who was junior to the applicants, was graded as 'outstanding' and his name was included in the Select List of 2001 at serial no.5. The names of afore-mentioned respondents 5 to 7 were also included in the Select List of 2001 at serial nos.6,7 & 8 respectively. Thus, we find that the names of the applicants could not be included in the Select List of 2001 due to the statutory limit on the size of the Select List as officers who were senior to the applicants with equal grading and officers with better grading only were included in these Select Lists. We also find that in the select list of 2001, only one junior, namely, Shri Raj Kumar Mathur, has superseded the applicants because of his overall grading as 'outstanding'. We have compared the ACRs of the applicants with those of Shri Raj Kumar Mathur, who was junior to the applicants, and has superseded them. We find that Shri Raj Kumar Mathur has been given outstanding reports consistently right from 1990. During the aforesaid period the applicant Dr.Madhu Khare has been graded as very good except for the part period of 1996-97 and for 1999-2000 and 2000-2001 for which she has been graded as 'outstanding', and for the year 2000-2001, the 'outstanding' grading given by the reporting officer has not been confirmed by the reviewing officer. We also find that the remarks in the confidential report of Shri Raj Kumar Mathur have been recorded at much higher level including the Chief Secretary and Minister whereas in the case of the applicant Dr.Madhu Khare her ACRs have been recorded upto the level Principal Secretary only. As regards the other applicant Shri Khare, we find that he has been rated as almost very good throughout his service career except in the reports for the period from 1994-95 to 1999-2000 for which he has been rated as outstanding and for the year 2000-2001 the outstanding grading given by the Reporting Officer has not been confirmed by the Reviewing Officer. We, therefore, do not find any ground to interfere with the assessment arrived at by the Selection Committee while preparing the select list of the year 2001.



13. As regards the Select List of 2002, we find that there were 6 vacancies and the zone of consideration was of 18 officers. The names of the applicants Dr. Madhu Khare and Shri Krishna Kumar Khare were considered at serial nos. 12 and 14 respectively in the eligibility list and on an overall assessment of their service records, the Selection Committee graded them as 'very good'. We find that only one officer, namely, Shri Ajatshatru Srivastava, who was senior to the applicants has been assessed as 'outstanding' and since he was senior to the applicants and his record is outstanding, the applicants should not have any grievance against him. We have already analyzed the ACR dossiers of the applicants as stated above, and we, therefore, find that the applicants have rightly been graded as 'very good' in the list prepared by the Selection Committee for the year 2002.


14. As regards the arguments of the learned counsel for the applicants that the private respondents S/Shri Bhilala, A.K. Rai and R.R. Batham, have not been considered for promotion as Joint Collector in time and there were disciplinary proceedings against them, still they have been included in the select lists, whereas the applicants whose record of service was excellent throughout their service and have been promoted to the rank of Joint Collector and Additional Collector in time and they (applicants) have also been selected for foreign assignment because of excellent record, have not been included in the select lists, we find that the aforementioned grounds taken by the learned counsel are not very relevant. What is relevant for consideration is whether the applicant's interest has been adversely affected by their supersession. We find that the applicants have been superseded by only one junior Shri Raj Kumar Mathur in the select list of 2001. As stated above we have compared the record of service of the applicants Shri Khare, Smt. Khare and Shri Mathur and we find that Shri Mathur has been rated as outstanding throughout his service career whereas in the case of the applicants they have been given almost very good reports throughout their service career except the outstanding grading given to them for the period mentioned in para 12 above. As regards the inclusion of S/Shri Bhilala, A.K. Rai and


R.R.Batham are concerned, we find that they have been graded as very good and outstanding for the relevant period. Leave aside these facts, these private-respondents were much senior to both the applicants and have rightly been graded as 'very good' and included in the select list for the relevant period by the Selection Committee.

15. As regards the other contention of the learned counsel for the applicants that only five years latest ACRs are required to be seen by the Selection Committee for assessing the suitability of the officers for including their names in the select list, we are of considered view that the same is not correct and is accordingly rejected. The Selection Committee is required to assess the over all records with particular emphasis to the latest ACRs. We have seen the complete ACR dossiers of both the applicants and we do not find that the applicants have been consistently graded as 'outstanding' and, therefore, they cannot be graded as 'outstanding' and included in the Select List merely on the basis of last five years' ACRs.

16 Thus, in view of the aforesaid facts and conspectus of the case, we do not find any merit in these Original Applications.

17. In the result, all the aforementioned Original Applications are dismissed, however, without any order as to costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

Rkv