

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT AT INDORE

Original Application No. 761 of 2004

Indore, this the 29th day of September, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri A.S. Sanghvi, Judicial Member

Surendranath (1968 Batch IAS Officer of
Madhya Pradesh Cadre), S/o. Shri Indrajeet
Gupta, aged about 58 years, presently
posted as Agriculture Production Commissioner,
Madhya Pradesh, R/o. 100/23, 1464 Quarters,
Bhopal (MP). ... Applicant

(By Advocate - Shri G.P. Kekre on behalf of Shri S.K. Rao)

V e r s u s

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

(By Advocate - Ms. Seema Sharma on behalf of Shri Om
Namdeo)

O R D E R (Oral)

By A.S. Sanghvi, Judicial Member -

Heard the learned counsel for both the parties.

2. The applicant who is a 1968 Batch IAS officer, has approached this Tribunal with a grievance that though he is senior most IAS officer he is being ignored for promotion to the post of Chief Secretary and is also not being considered for promotion to the post of Additional Chief Secretary. It is the grievance of the applicant that the DPC which was held on 30th January, 2004 had not considered his case for further promotion to the post of Additional Chief Secretary. According to him, in his ACR for 2001-2002 he was graded as 'Average' and against that grading of 'Average' he has already approached the Hon'ble High Court of Delhi and the Hon'ble High Court of Delhi has passed the interim orders directing the

respondents that the ACR for the year 2001-2002 grading the applicant 'Average' shall not be taken in regard for any consideration to be accorded to him for any promotion within his own cadre till further orders. According to the applicant inspite of the direction from the Hon'ble Delhi High Court in CM 12164/2003 & CW 7001/2003, dated 30th January, 2004, his case was not considered by the DPC for further promotion and as such the respondents are required to be directed to reconsider his case in the light of the direction given by the Hon'ble Delhi High Court.

3. Mr. Girish Kekre, the learned counsel for the applicant has submitted that the applicant ^{is} ~~has~~ confining his case only to the extent of his consideration by the review DPC for further promotion to the post of Additional Chief Secretary or any equivalent post in that cadre.

According to Mr. Kekre the applicant has no knowledge that the DPC has considered the applicant for further promotion but it deferred the decision in view of the matter being subjudice. The learned counsel for the State Government has shown us the minutes of the DPC dated 30th January, 2004 which clearly ^{indicate} ~~included~~ that the name of the applicant was duly considered by the DPC for further promotion but the DPC had deferred the decision in his case, in view of the case being subjudice. The relevant observations of the DPC are as under :

"7-" समिति ने पाया कि श्री सुरेन्द्र नाथ §68§ के वर्ष 2000-2001 तथा बाद के वर्षों के गोपनीय प्रतिवेदन सबज्यूडिस है : "The case of Shri Surendra Nath for promotion may be considered on the basis of ACRs whose validity is not subjudice or the consideration of the case may be deferred". अतएव समिति ने उनके मामले में न्यायालय के अंतिम निर्णय तक विचार स्थगित (defer) रखने का निर्णय लिया ।"

4. These minutes of the DPC clearly indicate that the decision so far the applicant's case was concerned was deferred by the DPC and no finding is given by the DPC so far his suitability for further promotion was concerned. It appears that the DPC was not aware about the directions given by the Hon'ble Delhi High Court, as the directions were given by the Hon'ble Delhi High Court on the same day i.e. 30th January, 2004 when the DPC met. Now that the directions of the Hon'ble Delhi High Court are available and these directions have clarified the position so far the ACRs of the applicant were concerned, it cannot be now again said that the matter is ~~not~~ subjudice any more. Hence, the DPC is now required to be directed to re-consider the case of the applicant in the light of the directions given by the Hon'ble Delhi High Court in CM 12164/2003 & CW 7001/2003, dated 30th January, 2004. We may reproduce the relevant observations of the Hon'ble Delhi High Court for the benefit of all concerned and they are as under :

"Notwithstanding the merit of the rival contentions, whether the two impugned ACRs were to be expunged in the light of the Supreme Court Judgment in Jal Nigam's case, we feel that the consideration to be accorded to the petitioner in his own cadre for any higher post at this stage was likely to be affected by the ACR for 2001-2002, grading him "Average". We also feel convinced that if this ACR was eventually expunged for whatever reason, he would not be compensated for the fall out it would have on his consideration for his career progression at this stage.

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

5. These directions clearly suggest that the DPC is required to re-consider the case of the applicant ignoring the ACR for 2001-2002 grading him as 'Average' and consider his case on the basis of all other available Since ACRs as per rules. ~~the~~ DPC has deferred the decision so

far the case of the applicant is concerned it has become necessary, in view of the directions given by the Hon'ble Delhi High Court, to direct convention of the review DPC to re-consider the case of the applicant and take appropriate decision as per the rules.

6. We, therefore, dispose of this Original Application with the direction to the respondents to re-convene the DPC for considering the case of the applicant in the light of the Hon'ble Delhi High Court's direction and take appropriate decision so far the case of the applicant for further promotion is concerned. This exercise shall be carried out within two months from the date of receipt of a copy of this order.

7. Accordingly, the Original Application stands disposed of with no order as to costs.

A.S.
(A.S. Sanghvi)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA" Copy to:

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U/sri GP Kekre, SK Rao, counsel for
applicant, High Court of MP Jabalpur.

Miss Seema Sharma, Council
for State of MP. Bhopal.
Indore

Received copy of
to Applicant
A. S. Khan
Dy. Secy