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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 820 of 2004

Jabalpur, this the 16th day of September, 2005

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

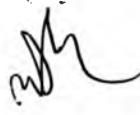
1. B.K. Agrawal, S/o. Shri K.L. Agrawal,
Aged about 54 years, Working as Joint
Secretary to Governor, Raj Bhawan,
Bhopal.
2. A. Minj, S/o. Late V. Minj,
Aged about 54 years, Working as
Registrar, Pt. Revishankar Shukla
University, Raipur. Applicants

(By Advocate – None)

V e r s u s

1. Union of India, through the Secretary,
Government 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.
3. State of Chhattisgarh, through the Principal
Secretary, Govt. of Chhattisgarh, General
Administration Department, D.K. Bhawan,
Raipur. Respondents

(By Advocate – Shri P. Shankaran for respondent No. 1 and none for
other respondents)



ORDER (Oral)

By M.P. Singh, Vice Chairman –

By filing this Original Application the applicants have claimed the following main reliefs :

“8.1.1 Rule 5(3) of Regulations 1955 be declared as Ultra-virus and respondents be directed to amend the Rule 5(3) so to increase the cut off age to 56 years with a further direction to consider the petitioners in the DPC of 2004,

8.1.2 Respondents be directed to hold joint DPC for the years 2000 & 2001 and promote officers of the State Administrative Service if the Chhattisgarh in the ratio of 26.33%. Consequentially, the junior officers who have already been promoted to the cadre of IAS based on the DPC of the years 2000 and 2001 be removed from the cadre.”

2. The brief facts of the case are that the applicants are State Administrative Officers of Chhattisgarh. The applicants are eligible for appointment to Indian Administrative Service (in short 'IAS'), as per the IAS (Appointment by Promotion), Regulations. The applicants were earlier working in the undivided state of Madhya Pradesh. After bifurcation of Madhya Pradesh into two states, they have been allocated and are working in the State of Chhattisgarh. The grievance of the applicants is that they have made representation to the Union of India and the State Government drawing their attention towards the anomaly of not holding joint DPC for promotion to the cadre of IAS for the years 2000 and 2001, but no action whatsoever has been taken by the respondents. According to the applicants, the State of Madhya Pradesh has apportioned all the posts which had fallen vacant due to retirement of IAS officers who were promoted from the cadre of the State Administrative service to the IAS and who retired in the year 2000. According to them, the posts which had fallen vacant due to retirement of officers promoted from the State Administrative Service, have not been distributed to the State of Chhattisgarh in proportion of 26.23% decided by the State Re-organization Committee. This action of the respondents is irregular,



illegal and malafide. By not distributing the vacant posts in proportion which became available due to retirement of the officers from the State Administrative Service, the interest of the applicants has adversely been affected. Hence, this Original Application.

3. The respondent No. 1 Union of India, Department of Personnel and Training have filed their return. They have stated that the process of appointment of State Civil Services officers to the IAS under the provisions of IAS (Appointment by Promotion) Regulations, 1955 is initiated by the State Government with determination of year-wise vacancies. Once the vacancies are determined, the State Government is required to make available the relevant service records of eligible State Civil service officers who fall within the zone of consideration to the Union Public Service Commission. The Commission convenes a meeting of the selection committee. The role of Union of India in finalizing the selection is restricted to the functional requirement of nominating two Joint Secretary level officers as its representatives. After the select list is approved by the Union Public Service Commission, only thereafter the appointments of those State Civil Service officers who are included unconditionally in the select list are notified by Government of India. The Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India administers the provisions contained in the IAS (Appointment by Promotion) Regulations, 1955 and is, therefore, concerned with the application in the matter of recruitment to the Civil service from amongst State Civil Service officers and interpretation of any of the statutory provisions laid down in the said regulations as the cadre controlling authority in respect of the IAS. The State Government and the UPSC are primarily concerned with reference to the case for consideration of the applicants for promotion to the IAS.

3.1 As regards the contention of the applicants that regulation 5(3) of the IAS (Appointment by Promotion) Regulation, 1955 may be declared as

ultra virus, the respondents submitted that the upper age ceiling in the eligibility criteria for consideration of State Civil Service officers for promotion to all India services is not entirely dependent upon the retirement age ^{in 2} of all India Services under the Central Government. The retirement age in the state service is also relevant factor for the purpose. In the Government of Kerala and Nagaland the retirement age for the State Government servants is 55 and 57 years respectively. Most of the State Governments too are continuing with the retirement age of 58 years with regard to State Government servants. The Central Government as the cadre controlling authority for all India services is interested in obtaining the services of the promoted officers for a reasonably long period after their induction into the all India service. Therefore any proposal for raising the upper age ceiling in the eligibility criteria will scuttle this benefit and will be against the interest of the cadre management of three all India services. Hence, the Government has decided as a matter of policy not to enhance the age of State Civil Service officers from 54 years for their promotion to IAS. According to the respondents the Tribunal in its order dated 1st April, 2005 in OA No. 779/2002 filed by MP Administrative Services Officers Association and another Vs. Union of India and the State Government of Madhya Pradesh has already examined the validity of Regulation 5(1) of the IAS (Appointment by Promotion) Regulations, 1955. In this case the reliance was ^{placed &} ~~laid~~ on the judgment of the Hon'ble Supreme Court dated 19th April, 2000 in the case of Tamil Nadu Administrative Service Officers Association. The Hon'ble Supreme Court observed with regard to the contention of the applicants that certain facts were not brought to the notice of the Hon'ble Supreme Court that the Government has always powers to relax the provisions and also have the power to review their policy.

4. The other respondents i.e. the State of Chhattisgarh and State of Madhya Pradesh have not filed any reply in this case. None is present for

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the applicants and respondents State of Chhattisgarh and State of Madhya Pradesh. Thus, we invoke the provisions of Rule 15 & 16 of CAT (Procedure) Rules, 1987. Heard the learned counsel for the respondent-Union of India.

5. We have given careful consideration to the rival contentions. The applicants who are members of the State Civil Service of the State of Chhattisgarh have sought relief seeking directions to declare Rule 5(3) of Regulations, 1955 as ultra virus and direct the respondents to amend rule 5(3) so as to increase the cut of age to 56 years with further direction to the respondents to consider the applicants in the DPC of 2004. We find that from the reply filed by the Union of India in this case, as a matter of policy they have taken a decision not to enhance the age of State Civil Service officers from 54 years for their promotion to IAS. Since the increase and decrease in the age is within the domain and function of the executive and ~~a~~ a policy decision is already taken by the Government, then the Courts/Tribunals cannot interfere in the matter and direct the respondents to increase the age from 54 to 56 for the purpose of eligibility for induction into IAS. We do not find any arbitrariness in the decision taken by the respondents and therefore the prayer of the applicant to declare Rule 5(3) of Regulations, 1955 as ultra virus is not tenable and is accordingly, rejected. Moreover, the validity of the rule has already been upheld by the Hon'ble Supreme Court. As regards the other prayer of the applicants i.e. regarding holding of joint DPC for the years 2000 and 2001 and promote the officers of the State Administrative Service of the Chhattisgarh in the ratio of 26.23%, we find that this court cannot give any such direction to hold joint DPC as on 1st November, 2000 and 2001 as the State of Madhya Pradesh was bifurcated and two States namely Madhya Pradesh and Chhattisgarh came into existence. The cadre of all India Service officers and State Administrative service officers has also been bifurcated and therefore different selection committees are required to be held independently to select officers of State Civil Services for

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induction to IAS. This prayer also is not sustainable and is accordingly, rejected. As regards their promotion in the year 2004, we find that the applicants have failed to make out a case.

6. Therefore for the reasons recorded above, we do not find any ground to interfere in the matter. Accordingly, the Original Application is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
परिचालित करने वाला:-

- (1) सचिव, उच्च न्यायालय, जबलपुर
- (2) अध्यक्ष, न्यायाधीश, जबलपुर
- (3) प्रत्यक्षी, न्यायाधीश, जबलपुर
- (4) वायसचान्, उच्च न्यायालय, जबलपुर

सूचना एवं आवश्यक कार्यवाही हेतु
उप रजिस्ट्रार

Santosh Tiwari
B.N. Bhatnagar
P. Shankar
an. Nand Lal
B.N.M.

Issued
30/9/05

आपके जमाने आदेश है।
उप रजिस्ट्रार

Re Issued
on 19.10.05

उप रजिस्ट्रार

DY. REGISTRAR

केन्द्रीय प्रशासनिक अधिकरण

CENTRAL ADMINISTRATIVE TRIBUNAL

जबलपुर बेंच, जबलपुर

JABALPUR BENCH, JABALPUR