

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Applications No 887 of 2004

Jabalpur, this the 16th day of September, 2005.

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

1. M.P. State Administrative Service Association
Through Shri Kavindra Kiyawat son Shri H.C. Kiyawat,
aged about 45 years, Working as its General Secretary,
F-93/23, Tulsi Nagar, Bhopal.
2. Shri A.K. Singh, aged about 48 years,
Son of Late Shri C.P. Singh, Working as General Manager,
M.P. Road Transport Corporation, Habibganj,
Bhopal. **-Applicants**

(By Advocate – Shri S.Paul)

V E R S U S

1. Union of India through the Secretary, Ministry of
Personnel, Grievance and Pension (Department
of Personnel and Training) North Block, New Delhi.
2. Union Public Service Commission through its Secretary,
Dholpur House, Shahjehan Road, New Delhi.
3. State of Madhya Pradesh through the Additional
Chief Secretary, General Administration Department,
Mantralaya, Vallabh Bhawan, Bhopal.
4. Shri Subhash Jain, IAS, working as Deputy Secretary to
Government of M.P., Commerce and Industry Department,
Mantralaya Vallabh Bhawan, Bhopal.
5. Shri D.P. Ahirwar, IAS, working as Deputy Secretary to
Government of M.P., Jail Department, Mantralaya,
Vallabh Bhawan, Bhopal. **-Respondents**

(By Advocate – Shri K.N. Pethia for respondents 1 and 2
Shri Om Namdeo for respondent No.3
Shri M.K. Verma for respondent No.4
Shri Manoj Sharma for respondent No.5)

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ORDER**By M.P. Singh, Vice Chairman –**

By filing this Original Application, the applicants have sought the following main reliefs :-

“8.1. The appointment of Respondents Subhash Jain and D.P. Ahirwar to the IAS may be quashed and the Notification, Annexure A-4, may be declared null and void ab initio.

8.2 Consequent upon the declaration of the appointment of the Respondents to the I.A.S as null and void, the two consequential vacancies in the promotion quota be diverted to be made available for promotion of SCS officers to the IAS.

2. The brief facts of the case are that the applicant No.1 is a Society registered with the Registrar, Firms and Society, M.P and is a representative body of the State Civil Service(for short ‘SCS’) officers. The applicant No.2 is an officer of the SCS, who is aggrieved by his non-induction to the Indian Administrative Service (for short ‘IAS’).

2.1 The main grievance of the applicants is that the appointment of private respondents Nos. 4 and 5 has not been made in accordance with IAS (Appointment by Selection) Regulations, 1997 (hereinafter referred to as ‘the Selection Regulations’). As per Regulation 4 of the Selection Regulations, the State Government shall consider the case of a person not belonging to the SCS but serving in connection with the affairs of the State, who is of outstanding merit and ability, holds a Gazetted post in a substantive capacity; and has completed not less than 8 years of continuous service under the State Government on the first day of January of the year in which his case is being considered in any post which has been declared equivalent to the post of Deputy Collector in the State Civil Service. The main ground taken by the applicants is that the diversion to the extent of 15% vacancies could normally be made only when suitable officers of SCS are not available or not considered fit for promotion to the IAS, and that the

Non-SCS officers to be considered for appointment to IAS by promotion should be of outstanding merit and ability and should have completed not less than 8 years of continuous service, in a post, which has been declared equivalent to the post of Deputy Collector in the SCS. According to the applicants selection and appointment of private respondents Nos 4 and 5 has been made in utter violation of above mentioned conditions laid down in the Selection Regulations. Hence, this OA.

3. The private respondent No4 has filed his reply in which he has stated that the applicants have no locus-standi to question the quota of 15% in respect of Non-SCS officers which has been upheld by this Tribunal in OA No.597/1998. He has also stated that he is a person having outstanding service career and has received appreciation from all his superiors. This is evident from the fact that his name was sponsored by the State Tax Department to be considered for induction into IAS in response to circular letter sent by the General Administration Department to all departments for sponsoring the names of officers who have outstanding merit and ability. According to him, he was having all the requisite qualifications to be considered against non-SCS quota of 15%. The State Government has explained the special circumstances, in their reply before this Tribunal in its written arguments filed in OA 597/1998. In that written arguments, the State Government has specifically narrated the selection procedure followed by them in four steps including determination of special circumstances in public interest, consideration of persons of outstanding ability and the applicant-association cannot question the quota meant for non-State Civil Service Officers, as that quota can not be utilized for their induction into IAS. In support of his argument that there exists a separate quota of 15% for non-SCS officers, the private-respondent has relied upon the decision of the Hon'ble Supreme Court in the case of **P.M.Bayas Vs.Union of India and others**, AIR 1998 SC 3124.



4. We have heard the learned counsel of parties and carefully perused the pleadings.

5. Shri M.K.Verma, learned counsel for private-respondent no.4 has argued that there is a separate quota of 15% for induction of non-SCS officers into IAS and the vacancies earmarked for non-SCS officers cannot be utilized for induction of SCS officers. Therefore, the SCS officers do not have any locus standi and the respondent no.4 is fully qualified and the State Government, Union of India and UPSC have made the selection of private-respondent no.4 in accordance with the provisions of rules and, therefore, there is no violation of any rules and regulations in making selection and OA is without any merit.

6. On the other hand, the learned counsel for the applicants has submitted that this case is covered by the decision of this Tribunal in the case of M.P.Administrative Service Association & anr. Vs. Union of India and others, O.A.No.597/1998 & two other connected cases, decided by a common order dated 27.2.2004 (copy placed on record as Annexure-A-1). He has also submitted that since in that case the appointment of private-respondents 4 & 5 had been quashed by the Tribunal, similarly the selection of the present private-respondents be also quashed and set aside.

7. We have given careful consideration to the rival contentions. We find that in the aforesaid OA 597/98 one of the relief claimed by the applicants was "to quash the appointment given to respondents no.4 and 5". Similar relief is also claimed in the present OA. Among other reliefs, the applicants in this OA have also challenged the vires of various rules and regulations. We find that the Tribunal has already upheld the validity of these rules.

8. In para 21 of the order dated 27.2.2004 passed in aforesaid OA 597/98 the Tribunal has held as under :-

"21 In the DPC held in the month of August, 1999, at least one Non-SCS officer, who was considered for induction into IAS, was very junior. He is Shri N.S. Bhatnagar, who was

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initially appointed as an Assistant in the M.P. Secretariat and who was promoted out of turn much to the heart burn of other Under-Secretaries, to the post of Deputy Secretary in the year 1995, while the Deputy Collectors who were considered for promotion to the IAS in the same DPC were far senior in all respects, namely, length of service, salary, work experience etc. Similarly, vide Union of India's notification dated 26.12.2000, two non SCs officers, namely, Subhash Jain & D.P. Ahirwar have been inducted into IAS, both of them have lesser length of service than SCS officers, who were considered by the same DPC. Under the provisions of the above mentioned Rules, recruitment to IAS from amongst Non-SCS officers can be made only in "special circumstances" and from person of outstanding ability and merit, in special cases which are to be determined each year. More often, officers, who are senior, are not inducted into IAS because their relative low merit is not found sufficiently high. Thus enough safeguards have been provided for ensuring fair play in the IAS (Appointment by Promotion) Regulations, 1955.

We find that the two non SCS officers, namely, Subhash Jain & D.P. Ahirwar referred in para 21 above, are private-respondents nos.4 and 5 in the present O.A.

8.1 In paragraphs 26 to 29 of the order dated 27.2.2004 passed in aforesaid OA 597/98 the Tribunal has held as under :-

"26 We do not find that the post held by Sh. A.K. Bhatt has been declared equivalent to the post of Deputy Collector in the State Civil Service. The meaning of the word "declare" as per Black's dictionary is as under :

"To make known, manifest, or clear. To signify, to show in any manner either by words or acts. To publish; to utter; to announce clearly some opinion or resolution. To solemnly assert a fact before witnesses e.g. where a testator declares a paper signed by him to be his last will and testament."

27. Admittedly, there is no declaration as prescribed under the said rules. The underlying idea in framing the said Rules is to "declare" that any person adversely affected can challenge the legality and validity of the selection of the officers who have been considered under non-SCS quota. In case of SCS officers, the aggrieved persons who are in the seniority list, can challenge the legality and validity of the selection. Since there is no strict compliance of Regulations 3 and 4 of the said

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regulations, the selection and then appointment of respondents Nos 4 & 5 made by the official respondents is illegal, bad in law & contrary to rules and regulations.

28. The applicants have challenged the validity of the OM No. F-14015/1/98-AIS(I) dated 11.2.1998 (Annexure-A-7). The said OM is issued by the DOP&T to the 3rd respondent i.e. State Government in pursuance to the amendment to IAS (Fixation of Cadre Strength) Regulations, 1955; IAS (Appointment by Promotion) Regulations, 1955 and IAS (Appointment by Selection) Regulations, 1997. The same comes into force with effect from 1.1.1998.

29. In the result, for the reasons assigned above, the relief claimed in OA 597/98 to declare that Rule 8 (2) of the IAS (Recruitment) Rules, 1954, proviso to Rule 9(1) of IAS (Recruitment) Rules, 1954 and Regulation 4 of the IAS (Appointment by Selection) Regulations as ultra vires of the Constitution of India, the same is rejected.

29.1 Relief 8.5-A in OA 597/98 is allowed to the extent that selection of respondents Nos.4 and 5 (in OA 597/98) i.e. non-SCS officers is quashed and set aside. It is held that the appointment by selection to the cadre of IAS was to be made from amongst the non-SCS officers on the basis of provisions of Rules and regulations and in accordance with law. The respondents are directed to convene a meeting of review selection committee to consider the claim of the applicants for inclusion into IAS and if they are found suitable, they may be granted consequential benefits in accordance with rules & law. The OA 597 of 1998 is, therefore partly allowed."

9. We are informed that the aforesaid order of this Tribunal has been challenged by the private respondents before the Hon'ble High Court of M.P. by filing Writ Petition Nos.1648 & 1649 of 2004.

10. During the course of arguments the learned counsel for the applicants has submitted that this Tribunal has to give its finding in the present case, even if in the covered matter (OA.No.597/98) a writ petition is filed and stay has been granted by the Hon'ble High Court. In this context he has relied on the decisions of **K.I.Thomas and others Vs. Union of India and others**, (1993)25 ATC 789 decided by Ernakulam Bench of this Tribunal, wherein it has been held that

“the stay granted against the judgment sought to be relied in the present case imply that the consequences of that judgment stand stayed so far as the parties thereto are concerned but it can still be followed as precedent. In this context, the learned counsel has further relied on the decision in the case of **Mohd Muzafar Vs. Employees State Insurance Corporation**, (1997) 35 ATC 368 decided by Allahabad Bench of the Tribunal.

11. On the other hand, the learned counsel for the private-respondent has submitted that since a higher Court is ceased of the matter and there is already a stay in the similar matter, therefore, this Court should dispose of this OA finally with the direction that the outcome of the decision of the pending Writ Petitions before Hon'ble High Court will be applicable in this case. In this context he has relied upon the decision of this Tribunal in the case of **Shalendra Saxena Vs. Union of India and others**, O.A.No.814/2002 decided on 15.7.2004 wherein this Tribunal has disposed of the said OA “with a direction to respondents that whatever be the outcome of the judgment of the Hon'ble High Court of Madhya Pradesh in W.P.No.4031/03, the same will be applicable to the present O.A.”. The learned counsel has also relied on another decision of this Tribunal in the case of **S.P.Mishra Vs. Union of India and another**, O.A.No.372/2002 decided on 16.2.2004, wherein this Tribunal has disposed of the said OA with a direction to the respondents to consider the case of the applicant for grant of relief in accordance with the order to be passed by the Hon'ble High Court in WP.

12. After considering all pros and cons of the matter, we are of the considered view that the present OA is fully covered by the judgment in OA No.597/1998. It is, therefore, disposed of in the following terms:

“In the result, the OA is allowed to the extent that selection of private respondent No.4 and 5 i.e. non-SCS officers is quashed and set aside. The respondents are directed to convene a



meeting of the review selection committee for filling up the two consequential vacancies. However, this order is subject to the final decision of the Hon'ble High Court in the aforementioned writ petitions.No costs".


(Madan Mohan)
Judicial Member

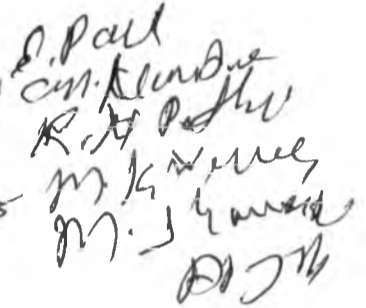

(M.P. Singh)
Vice Chairman

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पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....
पत्तिलिपि अजे रित:-

- (1) सचिव, उच्च न्यायालय वार एसोसिएशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल
- (3) प्रत्यायी श्री/श्रीमती/कु.....के काउंसल
- (4) वंशपाल, कं प्र.अ., जबलपुर न्यायपीठ
सूचना एवं आवश्यक कार्यवाही हेतु

16-9-05
उप रजिस्ट्रार


S. Pall
M. K. Singh
R. K. Singh
M. K. Singh
M. J. Singh
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