

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 759 of 2001

Bilaspur, this 9th day of July 2004

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

D.C. Pandey S/o late Shri Pyarelal  
Pandey aged about 54 years by  
occupation Dy. Secretary Revenue,  
Mantralaya, Raipur(C.G)

APPLICANTS

(By Advocate - Shri D.K. Dixit)

VERSUS

1. Union of India through the  
Secretary Ministry of Personnel  
Public Grievance and Pension,  
New Delhi.
  2. State of M.P. through the  
Secretary,  
Department of General Administration  
Mantralaya, Bhopal
  3. State of Chhatisgarh through the  
Secretary, Department of General  
Administration, Mantralaya,  
Raipur.
  4. Union Public Service Commission,  
Dhoulpur House Shahjahan Road,  
New Delhi through it's Secretary.
  5. Ajatshatru Shrivastava, S/o  
Shri R.B. Lal Shrivastava,  
aged 45 years, By occupation  
Dy Secretary, Public Health  
Engineering Department,  
Mantralaya, Bhopal(M.P.)
  6. Manish Shrivastava, S/o Shri L.K.  
Shrivastava, aged about 46 years,  
By occupation - Chief Administrative  
Officer, M.P. Housing Board,  
Bhopal, M.P.
  7. Ram Kinkar Gupta S/o Shri Gupta,  
aged about 52 years, By occupation  
Chief Executive Officer, Indore  
Development Authority, Indore.
  8. Dwarka Das Agrawal, S/o Late Shri  
R.K. Agrawal, Aged about 47 years,  
By occupation - Dy Secretary,  
Commercial Tax Department,  
Mantralaya, Bhopal, M.P.
  9. Raj Kumar Mathur S/o late Shri  
R.N. Mathur, aged about 47 years  
By occupation - Dy Secretary,  
Tribal Welfare Department,  
Mantralaya, Bhopal(M.P.)
- nk*

10. Vijay Anand Kureal, Chief Executive Officer  
Zila Panchayat Satna.
11. B.K.Vyas, S/o late Dy.N.A.Vyas, aged about  
51 years, By occupation Additional Collector,  
Neemuch.
12. M.S.Bhilala, S/o Shri Bapushingh Bhilala,  
aged about 54 years. By occupation Additional  
Collector, Ujjain

- RESPONDENTS

(By Advocate - Shri B.da.Silva for respondents 1 & 4  
Shri Om Namdeo for respondent No.2  
None for respondent 3  
Miss S.Dixit for intervenors)

O R D E R

By M.P.Singh, Vice Chairman -

By filing this OA, the applicant has sought the  
following main relief :-

"(ii) To command the respondents to consider the name  
of the applicant for promotion in IAS to be  
considered by the Selection Committee to be held  
in the State of M.P. and Chhattisgarh at any  
time for considering the vacancies of the year  
2000 and to promote him accordingly with all  
consequential benefits."

2. The brief facts of the case are that the applicant  
was a Member of the State Civil Service of undivided State of  
Madhya Pradesh since 1981. Consequent to the bifurcation of  
the State of Madhya Pradesh into Madhya Pradesh and Chhattisgarh  
from November, 2000, he was first placed in the tentative list  
of State Civil Service officers (for short 'SCS Officer') of  
Madhya Pradesh, who were to be transferred to Chhattisgarh.  
Thereafter he was finally allocated to the State of  
Chhattisgarh as an SCS officer, where he would be deemed to  
be in position since November, 2000 when the Chhattisgarh State  
was carved out from Madhya Pradesh.

2.1 The applicant was eligible for promotion to the  
Indian Administrative Service (for short 'IAS') under IAS  
(Appointment by Promotion) Regulations, 1955. He was considered  
for promotion for filling up the promotion quota vacancies in  
MP cadre of IAS for the years 1999 and 2000 along with other  
SCS officers, who were in the zone of consideration. The  
applicant, however, could not be included in any of the select  
list for these years because of the statutory limit on the  
size of the select list, which is equal to the number of

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vacancies determined to be filled up every year as per Regulation 5(1) of the Promotion Regulations.

2.2 The applicant has been transferred to the State of Chhattisgarh on his own request subsequent to the bifurcation of Madhya Pradesh. As per the provisions of Regulation 5(1) of the Promotion Regulations, vacancies to be filled up in the promotion quota of IAS are first to be determined by the Central Government in consultation with the State Government concerned as on 1st January of the year in which the select lists are to be prepared depending upon the number of vacancies which arose due to retirements or for some other reasons in the cadre in the previous year. After carving out of a separate cadre of the IAS of State of Chhattisgarh in November, 2000, no retirements of promotee officers allocated to Chhattisgarh cadre took place till 31st December, 2000 and hence there was no vacancy required to be filled up in the promotion quota in that cadre for the year 2001. There was thus no question to consider the applicant against any vacancy in promotion quota in the cadre for the year 2001. Likewise, no other SCS officer allocated to Chhattisgarh State has been considered for promotion to the IAS for the year 2001. The applicant could not be considered against the vacancies determined to be filled up for 2002 as he had crossed the age of 54 years as on 1.1.2002 under Regulation 5(3) of the Promotion Regulations. Because of his non-selection to IAS, the applicant has moved this OA claiming the afore-mentioned relief.

3. The Tribunal while considering the interim relief sought for by the applicant had passed an interim order on 24.1.2003 to ensure that the applicant is considered for promotion to the IAS subject to final outcome of the OA and it was also directed that the recommendations of the Selection Committee in respect of the applicant shall be kept in the sealed cover till the end of this case.

4. Heard the learned counsel of parties.



5. The learned counsel for the applicant has stated that the applicant was allocated to the State of Chhattisgarh with effect from 1.11.2000 provisionally. He was finally allocated to the State of Chhattisgarh only in August, 2002. During the period from 1.1.2000 to 31st October, 2000, certain vacancies had arisen which were required to be filled up under Promotion Regulations. The applicant has been allocated to State of Chhattisgarh on 1st November, 2000 and the selection committee was required to be held on 1st January, 2001. As per Regulation 5(3) of the Promotion Regulations, the vacancies as existed as on 1st January shall be taken into consideration by the Commission for considering the State Civil Service Officers for promotion to IAS. As on 1st January, 2001, no vacancy was available in the State of Chhattisgarh under promotion quota whereas a few vacancies were available in the State of Madhya Pradesh under the promotion quota. Even before the bifurcation of the State of M.P. i.e. 1.11.2000, a few vacancies under promotion quota had already arisen. Therefore, the applicant could have been considered against those vacancies in the promotion quota of State of Madhya Pradesh. The learned counsel has also submitted that as per Section 69 of the M.P. Reorganisation Act, 2000 (extract filed at Annexure-A-10) the service conditions of the applicant could not have been varied to his disadvantage. In the present case, the applicant has been put to a disadvantage inasmuch as he has not been considered against the vacancies of Madhya Pradesh cadre which arose before 1st November, 2000 and also the fact that his juniors have been considered and promoted to the IAS cadre of M.P. Thus great injustice has been done to him which needs to be rectified.

6. On the other hand, the learned counsel for the respondents Shri B.da.Silva has stated that the applicant himself has opted for allocation to the State of Chhattisgarh. As per his option, he was allocated to the State of Chhattisgarh. Although his allocation was made provisional with effect from 1.11.2000, but he had severed all connections from the State of Madhya Pradesh from that date. Ever since, he has been continuously working in the State of Chhattisgarh and he has

never made any representation or raised any grievance against his allocation to the State of Chhattisgarh. He has also stated that the final allocation made in respect of SCS officers in August, 2002 has been made effective from the retrospective date i.e. 1.11.2000. Therefore, the applicant has to be considered against the promotion quota vacancies for the State of Chhattisgarh after 1.11.2000, as he has severed all connections from the State of Madhya Pradesh from that date.

7. We have given careful consideration to the rival contentions raised on behalf of the parties.

8. We find that the applicant who was a Member of the State Civil Service of Madhya Pradesh has given his option for his allocation to the State of Chhattisgarh. He was provisionally allocated to the State of Chhattisgarh from 1.11.2000 & final order was issued in Aug. 2002 making it effective from 1.11.2000. There were no vacancies in the State of Chhattisgarh to be filled up by promotion of SCS officers to IAS in the year 2001. Though, there were some vacancies in promotion quota to be filled up in the year 2002, the applicant could not be considered for promotion to the IAS cadre of the State of Chhattisgarh as he had crossed the age of 54 years on 1.1.2002. Therefore, the question for consideration before us is whether the applicant who was provisionally allocated to the State of Chhattisgarh from 1.11.2000 could be considered for promotion against the vacancies of the IAS cadre of Madhya Pradesh for the year 2001? We find that the applicant was provisionally allocated to the State of Chhattisgarh w.e.f. 1.11.2000, however, the final orders were issued in August, 2002 which were made effective from 1.11.2000. In the year 2001, there were no vacancies under promotion quota for promotion of SCS officers to IAS in the State of Chhattisgarh. We find that the applicant has consciously given his option for allocation to the State of Chhattisgarh. According to the provisions of Section 68 of M.P. Reorganisation Act, 2000, officers of the State Administrative Service of the parent State were

allocated to the respective successor States in accordance with the guidelines laid down by the Government of India in consultation with both the successor States i.e. State of M.P. and State of Chhattisgarh. Officers were given an opportunity to submit their options indicating which successor State they wished to be allocated. The applicant gave his option for the successor State of Chhattisgarh on 20.9.2000 (Annexure-R-2/1). The Government of India first provisionally allocated the applicant to the successor State of Chhattisgarh w.e.f.1.11.2000 on the basis of his written option. It is also seen that on the date of creation of the successor States i.e. 1.11.2000, the applicant was serving in the area falling in the State of Chhattisgarh. The applicant was given an opportunity to present his grievance, if any, against the provisional allocation to a Committee constituted by the Government of India under the Chairmanship of Shri N.B.Lohani. The applicant never made any representation to the Lohani Committee against the provisional allocation to the successor State of Chhattisgarh, because this provisional allocation was solely based on his own option and home district-Bilaspur, located in the territory of the successor State of Chhattisgarh. Thereafter, a tentative final allocation of the SAS officers to the successor States was made, thereby allocating the applicant to the successor State of Chhattisgarh, and also provided<sup>ing</sup> him an opportunity to submit his grievance, if any, to the Lohani Committee against this tentative final allocation. The applicant did not submit any representation to the Lohani Committee against his tentative final allocation to the successor State of Chhattisgarh. The Lohani Committee, after considering all the objections and representations made by the SAS officers against the tentative final allocation submitted its report to the Government of India. The Government of India, in consultation with, and with the consent of, both the successor States, made the final allocation of all the SAS officers to the respective successor States in accordance with guidelines. The final allocation was made vide Government of India's order dated 9.8.2002.

2000 to consider the State Administrative Service officers for promotion to IAS. The name of the applicant was considered by those committees, but his name could not be included in the select list for both these years. Thereafter, no meeting of the Selection Committee was held till the final allocation of the SAS officers was made by the Government of India. We find that since the applicant did not agitate or made any representation against his allocation to the State of Chhattisgarh, he cannot at this stage come with the plea that he was only tentatively allocated to the State of Chhattisgarh and, therefore, should be considered for promotion to IAS cadre of Madhya Pradesh <sup>as on 1st January</sup> ~~for the year~~ 2001.

11. As regards the contention of the applicant that as per Section 69 ibid his conditions of service cannot be varied to his disadvantage except with the previous approval of the State Government, we find that the applicant himself has opted for the State of Chhattisgarh and he has not made any grievance before the Lohani Committee against his allocation to the State of Chhattisgarh. It is just a co-incidence that there was no vacancy to be filled up in promotion quota in Chhattisgarh cadre of IAS during the year 2001. Had there been any vacancy in that year, the applicant would have been considered along with other eligible officers. The vacancies occurring in this cadre for the year 2002 are again of no relief to the applicant as he has crossed the age of 54 years on 1.1.2002 whereby he becomes ineligible to be considered for promotion to IAS. He is as such debarred by the relevant provisions contained in the Promotion Regulations for such consideration. The same would have and might have happened in cases of other SCS officers also if they have been similarly placed.

12. We also find that in case the request of the applicant for considering him in the promotion quota of IAS cadre of MP for the year 2001 is accepted, it will mean that an officer allocated to the cadre of Chhattisgarh and physically working in Chhattisgarh; and being paid from the funds of that State,

will be allowed to take advantage of being included in the Select list of IAS of MP cadre for the year 2001. Thus, this request of the applicant is without any merit and will also create administrative problems as well as for the purpose of financial accounting. Thus, we are of the considered view that once the applicant has been finally allocated to State of Chhattisgarh w.e.f. 1.11.2000 he is not entitled for consideration of his case for promotion to IAS cadre of MP while preparing the select list for the year 2001.

13. In view of the foregoing, we do not find any merit in this Original Application and the same is accordingly dismissed. The interim orders passed earlier in this OA stand vacated. In the facts and circumstances of the case, the parties are directed to bear their own costs.

(Madan Mohan)  
Judicial Member

(M.P. Singh)  
Vice Chairman

rkv.

पुनर्विचार से निवेदन  
पृष्ठवर्ग से ओ/ज्या..... जयलपुर, दि.....

(1) सिलिलिपि अर्जित:-

(1) सुचिद, उज्जैन नगरपालिका नगर एजेन्सिएशन, जयलपुर

(2) आवेदन श्री/श्रीमती/श्री/.....के काउंसल

(3) प्रत्यक्ष श्री/श्रीमती/श्री/.....के काउंसल

(4) बंधुभाऊ, के.प्र.अ. जयलपुर न्यायपीठ

सूचना एवं आवश्यक कार्यवाही हेतु

1. Begumdar  
16.7.89

DK Dixit

To. dailu

Our Member

Miss. S. Dixit

Manoj Sharma

Issued  
on 19.7.89  
SS