

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 772 of 2002

Jabalpur, this the 15th day of September, 2004

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

S.C. Pathak, IAS retired aged 62 years,
S/o. Late Shri B.L. Pathak, E-3/234,
Arera Colony, Bhopal (MP). ... Applicant

(By Advocate - Shri S. Nagu)

V e r s u s

1. The Union of India, through the Secretary, Ministry of Personnel Training and Administrative Reforms, North Block, New Delhi.
2. The State of Madhya Pradesh, through the Chief Secretary, Government of Madhya Pradesh, Mantralaya, Bhopal (MP).
3. K.S. Sharma, Ex-Chief Secretary, Govt. of Madhya Pradesh, E-5/6, Mahavir Nagar, Arera Colony, Bhopal (MP).
4. Sanjay Joshi, IAS (1983), Director, Ministry of Petroleum & Natural Gas, R. No. 209, B Wing, Shastri Bhavan, New Delhi.
5. Union Public Service Commission, through it's Secretary, Shahjahan Road, New Delhi. ... Respondents

(By Advocate - Shri Om Namdeo for respondents Nos. 2 & 3,
Shri P. Shankaran for respondents Nos. 1 & 5)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has claimed the following main reliefs :

"a) to direct the respondents to consider the applicant for notional promotion by review DPC along-with all other direct recruit officers of 1982 batch to the selection and supertime scale of IAS in compliance of its order dated 13.2.2001 on the basis of his assessment of performance given by him for his ACR's and he be paid increased retiral benefits,

c) to grant all consequential benefits to the applicant, flowing out of the relief sought supra,

(Signature)

e) to declare that all those ACRs containing gradings below the bench mark are liable to be ignored as having been recorded without affording any opportunity and thus are liable to be ignored while considering the applicant through a review selection committee for grant of selection grade and supertime scale retrospectively."

2. The brief facts of the case are that the applicant is a member of the Indian Administrative Service having been appointed on 22.9.1986. He was assigned 1982 as the year of allotment and had an unblemished service record except for a disciplinary proceeding initiated just on the verge of his promotion vide charge sheet dated 10.9.1999 relating to a 15 years old incident of 1984-85, which was challenged by him in OA No. 646/99 and the said OA was decided in his favour. The direct recruit IAS officers who harbour gross prejudices against the promoted officers, results in discriminatory treatment to them at every step after their promotion to the IAS after a long and meritorious service in the State Administrative Service. The applicant was victimised and not promoted to selection and supertime grades along with the direct recruits and his numerous representations were ignored and left deliberately unanswered to keep him in the dark. To prevent his promotions the respondents cooked up a malafide and discriminatory disciplinary enquiry which was quashed by the Central Administrative Tribunal in OA No. 646/1999 and ordered the respondents to grant the applicant his due promotions notionally by holding a review DPC within six months and it promoted allow him the increased benefits. The applicant requested the respondents vide his several letters to implement the above orders of the Tribunal, but he was not informed of any action taken till the impugned letter date 4.1.2002 has been passed informing him that the review DPC had already been held on 6.8.2001. The applicant was not informed anything about the results of the review DPC but

he came to know from the daily news paper, that he was not found fit for promotion. The applicant pointed out the excellent position of his achievement of targets to the respondents. In the face of the unrebutted facts and figures merely finding him unsuitable on the basis of any vague uncommunicated remarks of any reviewing or accepting authority for his ACR would be quite untenable and grossly unjust. The CRS of the applicant does not seem to have been written according to the instructions and the respondents over-looked the meritorious performance of the applicant over these years. The respondent No. 3 was highly prejudiced against the applicant. A number of officers junior, in batch as well as within the 1982 batch have been awarded selection grade and super-time scale. The applicant has been intentionally denied award of these higher scales. The consideration by the review DPC of the case of the applicant, as alleged by the respondents, is a farce and a mere lip service to the directions of the Tribunal contained in order dated 13.2.2001 in OA No. 646/1999. The applicant apprehends that his ACRs which were considered by the review selection committee were downgraded purposely to downplay the applicant. No opportunity has been afforded to the applicant before this down gradation ^{it} as it undermines the service profile making/ inconsistent with the consistently outstanding services rendered by the applicant in the past. Hence, this original Application.

3. Heard the learned counsel for the applicant and the respondents and also perused the records carefully.

4. It is argued on behalf of the applicant that the respondents cooked up a malafide and discriminatory disciplinary enquiry against the applicant. The applicant filed OA No. 646/1999 which was decided on 13.2.2001 and



whereby the disciplinary enquiry against the applicant was ordered to be quashed and further ordered that grant the applicant his due promotions notionally by holding a review DPC and also if promoted allow him the increased benefits. The direct recruit IAS officers have gross prejudice against the promoted IAS officers and they always made discriminatory treatment with the applicant at every step. In compliance of the order passed by the Tribunal on 13.2.2001, a review DPC was held but it has not taken a proper decision and also not duly considered the excellent service record of the applicant. He also apprehends that his ACRs which were considered by the review selection committee were downgraded purposely to downplay the applicant. No opportunity has been afforded to the applicant before this down gradation. Hence, the applicant is entitled for the reliefs claimed.

5. It is argued on behalf of the respondents in reply that the applicant has himself admitted that he was informed of holding of DPC by the respondents on 6.8.01 i.e. within the time limit prescribed by the Tribunal. The orders of the Tribunal have been complied with by the respondents. The applicant was duly considered from time to time for selection grade but was not found fit to be promoted to the selection grade on the basis of overall assessment of his record and ACR gradings as per criteria and bench mark fixed by the various DPCs. Since he was not granted the selection grade, the question of considering him for further promotion to supertime scale does not arise. The review DPC consisting the them Chief Secretary and two senior officers of Principal Secretary grade met on 6.8.2001 and duly considered the case of the applicant for grant of selection grade. The committee adopted the same criteria and norms which the earlier

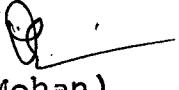
committees had adopted. As the applicant's overall assessment of record and bench mark were not upto the standard fixed by the Committee, hence he could not be found fit for promotion. The applicant has not made out any case to establish that the DPC has erred in procedure or otherwise. Our attention is drawn towards the judgment of the Hon'ble Supreme Court in the case of Smt. Nutan Arvind Vs. Union of India & Anr., 1996(1) SLR 774, in which it is held that "Promotion-Confidential report- Departmental Promotion Committee (DPC) a high level committee-Court cannot sit over the assessment made by the DPC as an appellate authority-whether or not an officer was competent to write the confidential is for the DPC to decide and call for report from the proper officer, if necessary-No interference." The applicant's allegation of discrimination is absolutely false and baseless. Hence, the OA is liable to be dismissed.

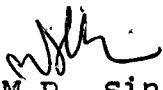
6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that this Tribunal has earlier in OA No. 646/1999 vide order dated 13-2-2001 has quashed the departmental enquiry proceedings pending against the applicant and further directed the respondents to grant the due promotion to the applicant notionally by holding a review DPC within a period of six months from the date of the order and if promoted, then allow him the increased benefits. In compliance with this order a review DPC was held on 8.6.2001. we have also perused the documents produced on behalf of the respondents regarding the selection committee proceedings as well as the CR dossiers of the applicant. we also find that the Hon'ble High Court of Madhya Pradesh has also upheld the earlier order of the Tribunal passed on 13.2.2001 vide order dated 15th January, 2002 in WP No. 3431/2001. we



further find that the review DPC held on 8.6.2001 and after considering the service record and other documents, the applicant was not found fit for his promotion. This committee consisted of the then Chief Secretary of M.P. Government, Managing Director of State Minerals Corporation (Rajya Khanij Nigam) and the Principal Secretary of Home Department of Government of M.P. They are all senior most officers and they have considered the case of the applicant in compliance with the orders of the Tribunal dated 13.2.2001. No illegality or irregularity has been committed by the respondents while reviewing the case of the applicant for his promotion. The judgment cited by the respondents in the case of Smt. Nutan Arvind (supra) clearly provides that the Departmental Promotion Committee is a high level committee and the courts cannot sit over the assessment made by the DPC as an appellate authority.

7. In view of the aforesaid, we are of the considered opinion that the applicant has failed to prove his case and this original Application is liable to be dismissed as having no merits. Accordingly, the original Application is dismissed. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

"SA"

प्रांकन सं ओ/न्या..... जबलपुर, दि.....
प्रतिलिपि अचो दिन:—
(1) सचिव, उच्च न्यायालय बार एसोसिएशन, जबलपुर
(2) आवेदक श्री/श्रीमती/कु..... के काउंसल
(3) फर्मर्याडी श्री/श्रीमती/कु..... के काउंसल
(4) विधायक, के प्र.अ., जबलपुर न्यायपीठ
सूचना एवं आवश्यक कार्यवाही हेतु

Shri S. Nagu. HC 23/14/2001
Shri Om B. Gandeo HC 33/1
Shri P. Shalcanan

*Issued
On 29/9/04*

उमा रमिस्ट्रार