

Central Administrative Tribunal, Jabalpur Bench, Jabalpur

Original Application No 778 of 2002

Bhopal, this the 18th day of March 2005.

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

1. M.P. Administrative Service Association
through Shri Kavindra Kiyawat,
aged about 40 years,
S/o Shri H.C. Kiyawat,
General Secretary,
M.P. Administrative Service Association,
F-93/23, Tulsi Nagar,
Bhopal.
 2. Yogendra Sharma,
aged about 47 years,
S/o Late Shri S.R.Shastri,
Working as Joint Director,
Food and Drugs Administration,
Indra Hills, Bhopal
- Applicants.

(By Advocate – Shri S.Paul with Shri V.Agrawal)

VERSUS

1. Union of India
Through the Secretary, Govt. of India
Ministry of Personnel, Public Grievance & Pension
(Department of Personnel & Training)
North Block,
New Delhi.
 2. State of Madhya Pradesh
through Principal Secretary, Govt. of
Madhya Pradesh,
General Administration, Department
Mantralaya, Bhopal.
- Respondents.

(By Advocate – Shri Om Namdeo and Shri P.Shankaran)



ORDER

By M.P.Singh, Vice Chairman -

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

“8.1.1 The respondents be directed to bifurcate the number of leave reserve and junior duty reserve post, the number of which as per Annexure A-1, as on today is 26.

8.1.2 The respondents be directed to increase the number of posts to be filled up by promotion etc. from the existing 90 to an appropriate number which should contain 33 1/3% posts of leave reserve quota as per the preceding relief clause.

8.1.5 Item No.5 in the notification, Annexure A-1 which excludes taking into account the “leave reserve” for calculating the number of posts to be filled up by promotion may be ordered to be amended so as to include “leave reserve” therein and the number of posts to be filled up by promotion may be ordered to be included proportionately.

8.1.6. In Rule 9(1) of the Indian Administrative service Recruitment Rules, 1954(as amended) the words “leave reserve” may be ordered to be included after the words “State Deputation Reserve”, so as to clarify that in the quota means for promotion of the State Civil Service Officers to the IAS 33 1/3% of the “leave reserve” posts shall also be included.

8.1.7 The respondents be directed to bifurcate the number of leave reserve and junior duty reserve post, the number of which as per Annexure A-1 as on today is 26.

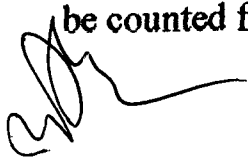
8.1.8 The respondents be directed to increase the number of posts to be filled up by promotion etc. from the existing 90 to an appropriate number which should include 33 1/3% of “leave reserve” quota as per the preceding relief clause.

2. The brief facts of the case are that the applicant no.1 is a registered society and it is a representative body of State Civil Service Officers (for short 'SCS officers'). The applicant no.2 is a senior and confirmed member of the SCS, who is eligible for promotion to the Indian Administrative Service (for short 'IAS') as per the provisions of Rules 8 and 9 of the IAS (Recruitment) Rules, 1954, as amended from time to time. The applicant no.2 has completed more than 19 years of service and he and many other

members of the MP SCS have not been considered for promotion because the promotion quota has been artificially kept at low at 90. According to the applicants, the 'Leave Reserve' quota should be directly linked with the Senior Posts, and the promotion quota for SCS officers should also include 33-1/3% post of Leave Reserve quota, which will proportionately increase the total number of posts to be filled up by promotion and selection. The 'Leave Reserve' and 'Junior Posts Reserve' taken together have been fixed at 16.5% of the Senior Posts vide Annexure-A-1 and the number has been fixed at 26. At no point of time, the number of IAS officers occupying Junior Posts in MP has exceeded 11 and, thus, remaining 15 posts are being occupied by the directly recruited members of the cadre of IAS, thus artificially increasing their quota from 206 to 221. In fact, as on today 223 directly recruited member of the IAS cadre are occupying senior duty posts as against the prescribed number of 206. The applicant no.1 has submitted a representation to the respondents 1 and 2 vide Annexures-A6 and A-7, but they have failed to take any notice of the same. Hence the applicants have approached this Tribunal by claiming the afore-mentioned reliefs.

3. The respondents in their reply have submitted that the provisions in the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955, the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955, and the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966 as existed before 1.1.1998, provided that the promotion quota should not exceed 33 1/3% of items 1 and 2 i.e. Senior Duty Posts and Central Deputation Reserve. The question of including Leave, Training and Junior Posts Reserve for computation of the promotion was considered by this Tribunal in the case of K.K.Goswami Vs. Union of India and another, 1987 (4) SLJ (CAT) 194 wherein the Tribunal has observed as under:-

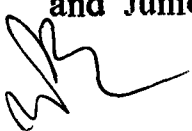
As regards the question of computing item 6 i.e. Leave reserve of 20 posts under the Schedule (which is 11% of item 4 i.e. 181 posts) in our view no cogent case has been made by the petitioners for reckoning this towards promotion quota. Moreover, this item is also not covered under rule 2(g) of the Seniority Rules, 1968 cited by the petitioners themselves. As mentioned earlier it is not also necessary that leave reserve cannot comprise of junior scale posts. Therefore, the contention of the respondents is correct that leave reserve cannot be counted for computing the promotion quota."



The respondents have submitted that the aforesaid order of the Tribunal has become final with the dismissal of the SLP by the Hon'ble Supreme Court in SLP(C) No.3464/95 dated 24.8.1995 and, therefore, in implementation of the said judgment the Cadre Rules of all the three All India Services, viz. Indian Administrative Service, Indian Police Service, and Indian Forest Service were amended vide Notifications No. 11033/15/95-AIS(II)-A, dated the 31st December 1997 and No. 11033/15/95-AIS(II)-C, dated the 31st December 1997(Annexure-II) by including the posts under the Training Reserve, which is 3.5% of the Senior Duty posts, for computing the promotion quota. The respondents^{in para 5 of their reply} have stated that with the above amendment, the Total Authorized Strength of the Cadre consists of the following components -

- (1) Senior Duty Posts
- (2) Central Deputation Reserve @ 40% of item 1 above.
- (3) State Deputation Reserve @ 25% of item 1 above.
- (4) Training Reserve @ 3.5% of item 1 above
- (5) Leave Reserve and Junior Posts Reserve @ 16.5% of item 1 above
- (6) Posts to be filled by promotion under rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954, not exceeding 33.3% of item 1,2,3 & 4 above
- (7) Posts to be filled up by Direct Recruitment (items 1+2+3+4+5-6).

3.1 The respondents have further stated that under the present scheme of appointment by promotion to All India Services, the promotee Officers are given a minimum of 4 years of weightage in seniority. Promotee Officers are appointed against Senior Scale of IAS. The officers appointed by the Competitive Examination are appointed against the Junior Scale but they become eligible for promotion to the Senior Scale in 4 years. The Leave, and Junior Posts Reserve is reckoned against the junior most scale of pay. Therefore, the Promotee Officers cannot have a claim against them. The scheme of the All India Service envisages a healthy balance of insiders and outsiders in the cadre. In pursuance of this principle recruitment is made maintaining a ratio of 50:50 of insiders and outsiders. If the Leave Reserve and Junior Post Reserve are taken into consideration for calculating the



promotion quota, it would disturb the balance between insiders and outsiders. The respondents have also submitted that the members of the All India Services are recruited for holding the senior most posts in the Centre and the State Governments. The highest standard for this purpose is best maintained by the recruitment through the competitive examinations where the recruitment is on merit. While a part of the recruitment is made by promotion from State Civil Services/Non State Civil Services for the purpose of strengthening the services with more experienced officers, continuous increase in the promotion quota may result in erosion in the standard of the All India Services. This would not be in the public interest in view of the fact that the members of the all India Services are required to hold the positions of very high responsibility. It would, therefore, not be justified to allow an increase of the promotion quota to any extent other than what has been finally decided by this Tribunalⁱⁿ the case of K.K. Goswami (supra) for Indian Forest Service and which has become final with the dismissal of the SLP as stated above. The number of more direct recruit officers in the State than the authorized sanctioned strength has also a direct bearing to the judgment of the Tribunal in the case of Shri K.K. Goswami (supra). The respondents have also contended that the applicants have also raised this issue in another OA No.285 of 2004.

3.2 The respondents have contended that giving effect to the judgment of this Tribunal "would have resulted in a total increase of 275 promotion posts in the IAS, 152 promotion posts in the IPS and 200 promotion posts in the IFS and also a corresponding decrease in the direct recruitment quota. It was not possible to physically dislocate the then existing 275 direct recruits in IAS, 152 in IPS and 200 in IFS and also create the requisite number of posts on grounds of administrative expediency and exigency. It was therefore decided to divert the vacancies arising due to the number of direct recruitment, retirements, resignations, deaths etc. to the promotion quota, in addition to their normal entitlements in the promotion quota till such time these cadres would fully reach the levels. To completely stop direct recruitment would also result in a situation where after a few years there



might be a total vacuum in the form of gaps running to a period of 2 to 4 years. It was, therefore, decided to reduce the proposed direct recruitment quota in respect of all the three All India Services by 1.5% for the next 5 years with marginal variations in respect of cadres, which may have special features/problems”.

3.3 The respondents have further submitted that in 1998 the retirement of All India Services(AIS) officers was pushed to 60 years from 58 years, partly as a result of which the anticipated attrition did not take place and the direct recruits continued to be in excess in all but very few States. The matter was therefore re-examined in consultation with the Ministry of Home Affairs (MHA), the cadre controlling authority in respect of IPS Officers, and Ministry of Environment and Forests (MoEF), the cadre controlling authority in respect of IFS Officers. All the State Governments were also requested to furnish their demand for officers to be appointed through Civil Services Examination, 2002-2007 in the IAS. It was observed that, as a result of implementing the judgment in the case of Shri K.K.Goswami,(supra), recruitment to the IAS through the Civil Service Examination(CSE) was reduced substantially and kept at a level below 60. In fact, through CSE 1997 and CSE 1998, 55 officers were recruited in each of the two years whilst through CSE 2001, 59 officers had been recruited in each year. Through the five CSEs (1997-2001) 284 officers were recruited during 1998-2002 to the IAS. During this period of 5 years, 1998-2002, 246 DR officers retired. The retirement of DR officers would have been higher but for the fact that following Fifth Pay Commission; the retirement age was increased from 58 to 60. While reduction in DR quota intake during the five CSEs for the period 1998-2002, has corrected substantially the balance between the DR quota and the promotion/selection quota on an All India Basis, the problem of excess strength in certain State cadres and deficits in some State cadres still persists. As against the authorized posts of 3582 in all the Cadres of IAS, 3596 officers (i. e. only 14 officers more than the sanctioned strength) were in position as on 1.1.2004. In the promotion quota, during the same period, 1194 officers were in position as against the authorized 1577 posts. The



reduced DR intake, however, which has continued for over five years is posing difficulties in some State in manning District level posts which are normally held by the younger officers. Cadre management in the State cadres is, therefore, becoming difficult especially in those cadres where there are large deficits.


3.4 The respondents have drawn our attention to the judgement of the Hon'ble Supreme Court in the case of Tamil Nadu Administrative Service Officers Association and another Vs. Union of India and others, W.P. Civil No.613/1994 decided on 19/4/2000, which has laid down the following basic guidelines in this regard(Annexure-III) :-

"The Petitioners have no right to demand creation of new posts or the encadrement of posts merely by virtue of some posts having been in existence for the long time.

The enhancement of the cadre strength has to be done only after being satisfied that it is necessary in the interest of the State concerned. If such encadrement takes place, nobody can stake a claim to promotion to posts. The right to promotion will arise only from the date of retirement and the petitioners cannot claim retrospective seniority as a matter of right.

However, notwithstanding the above, the Central Government has a responsibility to consider whether it is necessary or not to encadre long existing ex-cadre-temporary posts. The Central Government is directed to consider in consultation with the State Government the necessity to either encadre these posts or not and take such other necessary steps. In this process, the Central Government shall bear in mind the existence of these posts for the last so many years and if it is so satisfied and finds it necessary in the interest of justice to encadre these posts, it may do so with retrospective date so that officers promoted consequent to such encadrement would have the benefit of the seniority from such date, bearing of course, in mind the possible conflict that may arise in fixation of inter se seniority and take appropriate decisions in this regard so as to avoid any further disharmony in the service.

It is a well-settled principle in service jurisprudence that even when there is a vacancy, the State is not bound to fill up such vacancy nor is there any corresponding right vested in an eligible employee to demand that such post be filled up. This is because the decision to fill up a vacancy or not vests with the employer who for good reasons; be



it administrative, economical or policy, decide not to fill up such posts.

We notice that as per the statutory provisions, the encadring of posts can be done only on certain fact-situations existing and further it will have to be done on a review to be conducted by the Central Government in consultation with the State Governments and on being satisfied that an enhancement in the cadre strength or encadring of certain posts is necessary in the administrative interest of the States concerned. Until such encadrement takes place, nobody including the petitioners could stake a claim to consider their case for promotion those ex-cadre posts. Therefore, such right to be considered for promotion, in our considered view, would arise only from the date of encadrement which having been done with effect from 1998 only, we do not think that as a matter of right the petitioners are entitled for retrospective seniority”.

3.5 The respondents have stated that following policy decision was taken with the approval of Dy. Prime Minister and circulated vide OM No.29018/9/2001-AIS II, dated 6th/9th June, 2003(Annexure IV).

- a) As regards IAS, 85 vacancies should be filled per year by direct recruitment during the years 2003-2007.
- b) Special attention would be paid to the number of direct recruits superannuating between 2002-07 and care taken to see that the number of direct recruits requested would not exceed this number except in cases of previous excessive gap and net deficit.
- c) Demand for zero recruitment year would not be accepted.
- d) The requirements of officers for middle management levels specially the number of districts and officers required for district postings would be kept as one of the main parameters for the exercise for finalizing number of direct recruits.
- e) Recruitment levels being considered also take into account the demand received from the States for the period 2002-07. The needs of states with sizeable negative cadre gap like the North-East; the newer states like Chattisgarh with their specific problems cadre gaps and demand projections; and deficit states like Gujarat should be considered for additional sanction of direct recruits as per their demand.
- f) Corresponding weightage could be considered to be given for states with large excess in cadre gap and downsizing of direct recruits considered as per their request. Excessive cadre gap



should imply commensurate reduction in recruitment level.

- g) Care would ~~to~~ be taken to ensure that very large or small batches do not occur in order to facilitate better cadre management in the future.
- h) Over all recruitment in no case should be more than an additional 50-75 per cent of the current levels of recruitment and that a precipitated increase in recruitment levels is not desirable.

3.6 The respondents have further contended that out of 90 posts, 80 officers are in position as on 1.1.2004 (SCS & non-SCS put together). Six vacancies to be filled by promotion (SCS and Non-SCS put together) were determined for the year 2003 but the meeting of the Selection Committee for the year 2003 has not been held. Further, four vacancies to be filled by promotion have been determined for the year 2004. After filling up the 10 vacancies (6+4), the promotion quota of 90 will be completed. As regards non-SCS vacancies, 14 non-SCS officers are in position against 13 posts. The Government of Madhya Pradesh has been requested to take further necessary action in the matter. In view of these averments, the respondents have prayed that the Original Application is liable to be dismissed.

4. We have heard the learned counsel of both the parties.

5. The learned counsel for the applicants has stated that the issue relating to the inclusion of the post under 'Leave Reserve' and 'Junior Post Reserve' under item No. 5 (Para 3 above) has been dealt with by this Tribunal in the case of K.K. Goswami (supra) but the full facts could not be brought to the notice of the Tribunal and the said issue was not considered in the right perspective. The Hon'ble Supreme Court also did not consider this issue while disposing of the SLP filed against this judgment of the Tribunal as the same was not ^{specifically} brought to their notice during the course of the arguments. He has also submitted that this issue has also not been considered by the Hon'ble Supreme Court in the case of Tamil Nadu Administrative Service Officers Association and another (supra). According to him, the issue before the Hon'ble Supreme Court in the said WP was of encadring/abolishing the ex-cadre posts which existed for a long time and in case they are encadred the seniority ^{to be given} from the retrospective date. On perusal of

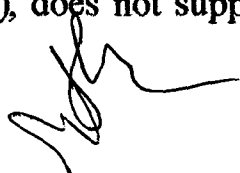


the judgment of the Hon'ble Supreme Court we find that the following issues
 were raised before their lordships:-

1. Should the temporary and ex-cadre posts that are in existence in the concerned State Government service be directed to be encadred in the IAS cadre strength of the States concerned?
2. Are the petitioners entitled in law to demand that the encadrement of posts should be effective from the original date of creation of posts or at least from the date of filing of the respective petitions?
3. Are the amendments brought about to Regulation 5(1) of the IAS (Appointment by Promotion) Regulations, 1955 ultra vires and liable to be struck down?"

6. On the other hand the learned counsel for the respondents has submitted that although the issue might have not been specifically dealt with by the Hon'ble Supreme Court in the case of Tamil Nadu Administrative Service Officers Association (supra), however, the same have been discussed by the Tribunal in the case of K.K.Goswami (supra) and and same have been rejected, therefore, this Tribunal again cannot dealt with the very same issue.

7. We have given careful consideration to the rival contentions and also have gone through the judgment of this Tribunal in the case of K.K.Goswami (supra) as well as the judgment of the Hon'ble Supreme Court in the case of Tamil Nadu Administrative Service Officers Association (supra). We find that the issue before the Hon'ble Supreme Court were (i) Should the temporary and ex-cadre posts that are in existence in the concerned State Government service be directed to be encadred in the IAS cadre strength of the States concerned? Are the petitioners entitled in law to demand that the encadrement of posts should be effective from the original date of creation of posts or at least from the date of filing of the respective petitions?; and are the amendments brought about to Regulation 5(1) of the IAS (Appointment by Promotion) Regulations, 1955 ultra vires and liable to be struck down?" whereas in the present O.A., the applicants main relief is to take into account the 'Leave Reserve' for calculating the number of posts to be filled up by promotion. Therefore, the judgment cited by the learned counsel for the respondents in the case of Tamil Nadu Administrative Service Officers Association (supra), does not support their case. On the other hand we find



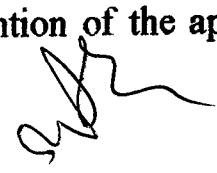
that the Hon'ble Supreme Court while disposing of this writ petition, have observed as under -

“Under Rule 8(1) of the Recruitment Rules, provision is made for recruitment to the IAS by the Central Government by promotion of substantive members of the State Civil Service. The number of posts so permitted to be filled from the State Service is regulated under Rule 9 of said Rules which has fixed a quota of not exceeding 33 1/3% of the number of posts as are shown against Items 1 and 2 of the cadre in relation to the State concerned as fixed under the Cadre Regulations (After the amendment of 1997 the posts enumerated under Items 5 and part of Item 6 are also to be counted for the purpose of fixing the quota of 33 1/3%).”

8. We have gone through the notification dated 31st December, 1997 amending the IAS (Fixation of Cadre Strength) Regulations, 1995. That notification is called as the IAS (Fixation of Cadre Strength) Regulations, 1997. Item 6 referred to above is regarding 'Leave Reserve' and 'Junior Posts Reserve' @ 16.5% of Item 1 above. The main grievance of the applicants in this OA is to include the 'Leave Reserve' under item no.6 for the purpose of fixing the quota of 33 1/3%. In this regard, we have also gone through the judgment of K.K.Goswami(supra) and we find that the Tribunal has observed as under:-

As regards the question of computing item 6 i.e. Leave reserve of 20 posts under the Schedule (which is 11% of item 4 i.e. 181 posts) in our view no cogent case has been made by the petitioners for reckoning this towards promotion quota. Moreover, this item is also not covered under rule 2(g) of the Seniority Rules, 1968 cited by the petitioners themselves. As mentioned earlier it is not also necessary that leave reserve cannot comprise of junior scale posts. Therefore, the contention of the respondents is correct that leave reserve cannot be counted for computing the promotion quota.”

9. We find that the Tribunal has mainly based ^{its findings &} ~~his find~~ on the basis of Rule 2(g) of the Seniority Rules, 1968. In the present O. A. the applicants ^{and included in item 6 (as per para 3 above)} have prayed that the Leave Reserve should be bifurcated from item 5 ^{which} states 'Posts to be filled by promotion and selection under Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954 not exceeding 33 1/3% of Items 1,2,3 and 4 above'. We find that this issue was not placed before the Tribunal and, therefore, it was not considered. Thus, we find substance in the contention of the applicants that the vacancies against the



leave reserve should be bifurcated from item no.5 and should be included as a separate item against the senior duty post. This item should be included along with items 1, 2, 3 and 4 for the purposes of deciding the promotion quota of 33 1/3%. Moreover, the facts mentioned by the applicants that the leave reserve and junior posts taken together have been fixed at 16.5% of the senior duty posts and the number has been fixed at 26, and further that at no point of time the number of IAS officers occupying the junior post in Madhya Pradesh has exceeded 11 and thus the remaining 15 posts are being kept by directly recruited members of the cadre of IAS thus artificially increasing their quota from 206 to 221, has not been denied by the respondents.

10. In view of this, we are of the considered view that since it is an important issue which will have a far reaching implications is to be considered by a larger bench. Accordingly, we direct the Registry of this Tribunal to make a reference to the Hon'ble Chairman for constitution of a larger Bench to decide the issue raised in this Original Application.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

rkv.

पृथक् सं ओ/न्या.....जबलपुर, दि.....
प्रतिनिधि अन्य पक्ष --

- (1) सचिव, उच्च न्यायालय एवं दायित्व, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल S. Paul P.V. & Co
- (3) प्रत्यर्थी श्री/श्रीमती/कु.....के काउंसल M. K. Pandey P.V. & Co
- (4) मध्यपाल, के.प.अ., जबलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु P. K. Pandey P.V. & Co

24-3-05
उप रजिस्ट्रार

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