

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR
BENCH, JABALPUR

Original Application No. 779 of 2002

Jabalpur, this the 1st day of ^{April} ~~March~~, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Ms. Sadhna Srivastava, 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
Idgah Hills,
Bhopal.

Applicants

(By Advocate – Shri S. Paul)

V E R S U S

1. Union of India
Through the Secretary, Govt. of India,
Ministry of Personnel,
Public Grievances & 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 P. Shankaran on behalf of respondent No. 1 and
none for respondent No. 2)



ORDER

By M.P. Singh, Vice Chairman –

By filing this Original Application, the applicant has sought the following main reliefs :-

“8.1.1 The amending provisions as Annexure A-1, that is Regulation 5(1) *ibid* may be quashed and Respondents be direct to restore the earlier provision as contained in Annexure A-2.

The amending provisions as Annexure A-1 that is Regulation 5(1) *ibid* may be quashed and Respondents be directed to restore the earlier provisions as contained in Annexure A-9 copy annexed herewith because the amendments Annexure A-8 result in adverse discrimination and are violative of the provisions of Article 16 of the Constitution of India”.

2. The brief facts of the case as stated by the applicants are that the applicant No. 1 is a Society registered with the Registrar, Firms and Societies, MP and is a representative body of State Civil Service Officers. The applicant No. 2 is a member of the State Administrative Service. All State Civil Service Officers who have completed 8 years of service are eligible for appointment to the IAS under the promotion quota. The applicant No. 2 and many other members of Madhya Pradesh Administrative Service Association are not being considered for promotion because the posts in the promotion quota which fall vacant during the course of the year in which the DPC is held are not being permitted to be filled up as a consequence of the amended provisions in the rules. Such posts are being filled up by promoting directly recruited IAS officers in excess of the quota prescribed for them, Rule 5(1) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, prior to this amendment ^{with 2} as follows :

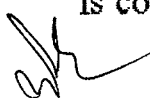
“5(1) Preparation of a list of suitable officers : Each committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Civil Service as are held by them to be suitable for promotion to the service. The number of members of the State Civil Service to be included in the list shall be calculated as the number of substantive

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vacancies anticipated in the course of the period of 12 months, commencing from the date of preparation of the list, in the post available for them under Rule 9 of the Recruitment Rules plus twenty percent of such number or two, which ever is greater.”

This rule has been amended and the amended provision has been brought into force with effect from 31st December, 1997. As a result of implementation of this amendment, the number of directly recruited officers has exceeded the quota fixed for them in every State. In the State of Madhya Pradesh it has increased by 28 (234-206) by encroaching upon the promotion quota. No reasons whatsoever have been assigned for making the impugned amendment and the only reason appears to be is to reduce the effective promotion quota for State Civil Service Officers which was increased from 25% to 33%. According to the applicants this amended provision is discriminatory and is adverse to the interest of the State Civil Service Officers. Hence, this Original Application is filed.

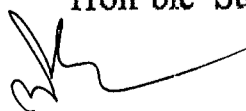
3. The respondents in their reply have stated that the validity of Regulation 5(1) of the Promotion Regulations was also challenged by Tamil Nadu Administrative Service Officers' Association and the matter was taken up before the Supreme Court of India. The apex court in case of WP (C) Nos. 671/94, 83/98, 197/98 and CA No. 2733/2000 @ SLP(C) No. 7823/96 in its judgment dated 19.4.2000 observed that the changes have been brought out to avoid the delay in making the selections as in the then existing rules, it was extremely difficult to ascertain with certainty/finality the number of anticipated vacancies since the State Government have the power to give an extension of service upto six months beyond the date of retirement to a number of officers. The respondents further submitted that many a times such anticipated vacancies did not fructify and a State Civil Service Officer included in the Select List could not be sure of his appointment and this ultimately lead to a plethora of litigations. It was with this view to avoid such difficulties that preparation of Select List is confined to the vacancies available as on the first day of January of



the year concerned. They also stated that the Hon'ble Judges of the Hon'ble Supreme Court ^{had 2} carefully gone through the pleadings of the petitioners and the respondents in this regard and they did not find any arbitrariness in the amendments. It was further observed that this is a matter of policy which will be uniformly applicable after the amendments. Further vacancies which are not filled up in one year will automatically get forwarded to the next year if they become actual vacancies by then. Hence, the challenge of the petitioners that this amendment is arbitrary and violative of Article 14 of the Constitution of India could not be accepted. The validity to the amendment of the Promotion Regulations as it exists today under Regulation 5(1) has therefore been upheld by the Apex Court.

4. Heard both the parties and perused the records and pleadings. During the course of arguments the learned counsel for the ^{respondents} applicants ² has stated that the issue relating to the validity of the amended provision has already been upheld by the Hon'ble Supreme Court. He further submitted that the validity of the regulation 5(1) of Promotion Regulations was also challenged by the Tamil Nadu Administrative Service Officers' Association and the matter was taken up before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court in WP(C) Nos. 613/94, 671/94, 83/98, 197/98 and CA No. 2733/2000 @ SLP(C) 7823/96 vide judgment dated 19.4.2000, AIR 2000 SC 1898 observed that the changes have been brought out to avoid the delay in making the selections as in the then existing rules, it was extremely difficult to ascertain with certainty/finality the number of anticipated vacancies since the State Government have the power to give an extension of service upto six months beyond the date of retirement to a number of officers.

5. On the other hand the learned counsel for the applicants has stated that although the amended provision has been considered by the Hon'ble Supreme Court in the case of Tamil Nadu Administrative



Service Officers' Association, certain facts were not brought to the notice of the Hon'ble Supreme Court viz. (i) in terms of OM dated 13th May, 1998 of Ministry of Personnel, Public Grievances & Pensions "[T]here shall be complete ban on extension in service beyond the age of superannuation except in the case of medical and scientific specialists; and (ii) the respondents should have followed the following formula as evolved by the Ministry of Home Affairs for filling up the vacancies in DR quota of IPS for the next 10 years, starting from 2003:

"In the first 5 years, if there is a cadre gap between the direct recruitment quota and the direct recruits in position, the recruitment should be 1.5% of the direct recruitment quota plus the average annual retirements subject to a maximum of 80 in the case of IPS. For other services, the number so arrived at"

6. We have given careful consideration to the rival contentions and we find that the issue relating to the validity of the regulation 5(1) has already been considered by the Hon'ble Apex Court in the case of Tamil Nadu Administrative Service Officers' Association (supra) vide judgment dated 19th April, 2000. The relevant portion of this judgment is extracted below :

"29. This leaves us now to consider the challenge made to the constitutional amendments effected in Regulation 5(1) of the Appointment by Promotion Regulations. The petitioners in this regard contend that under the old provision, the Selection Committee was required to calculate the anticipated substantive vacancies for preparation of select list which is now being changed to vacancies not exceeding the substantive vacancies as on the first day of January of the year in which the meeting is held. They contend that by this change in procedure large number of vacancies which should have been available for selection of promotees will be left out. They state that there is always considerable delay in completing the process of promotion by selection and this delay will be further extended by virtue of the amendments and consequently the promotion of the petitioners will get delayed and some of them may even lose the chance of getting selected to the IAS. They say that the unamended provisions were in existence for decades and there was no need for effecting this amendment.

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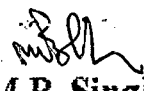
30. In reply thereto, the respondents contend that these changes have been brought about to avoid the delay in making the selections. They say by the existing Rules, it was extremely difficult to ascertain with certainty/finality the number of anticipated vacancies since the State Governments had the power to give extension of service up to 6 months beyond the date of retirement to a number of IAS officers. It is also stated that many a time such anticipated vacancies did not fructify and a State civil service officer included in the select list could not be sure of his appointment and this ultimately led to a plethora of litigation. It is with a view to avoid such difficulties that preparation of select list is confined to the vacancies available as on the first day of January of the year concerned. We have carefully gone through the pleadings of the petitioners and the respondents in this regard and we do not find any arbitrariness in this amendment".

Since the issue has already been decided by the Hon'ble Supreme Court, in the above referred case, this Original Application is now without any merit and is liable to be dismissed. Moreover, the contention of the applicants that certain facts were not brought to the notice of the Hon'ble Supreme Court referred to above in paragraph 5 of this order are not tenable as the Government has always powers to relax these provisions and also have the powers to review their policy.

7. In view of the aforesaid discussion made above, we do not find any merit in this Original Application and the same is accordingly, dismissed with no order as to costs.


(Ms. Sadhna Srivastava)

Judicial Member


(M.P. Singh)

Vice Chairman

पृष्ठांकन सं ओ/नं.जबलपुर, दि.....
प्रतिलिपि जलपोषण विभाग

- (1) सचिव, जल संचयन विभाग, जलपोषण, जबलपुर
(2) उपसचिव, जल संचयन विभाग, जलपोषण, जबलपुर के कार्यालय S. Paul DVM
(3) प्रमुख, जल संचयन विभाग, जलपोषण, जबलपुर के कार्यालय P. Shankar DVM
(4) अध्यक्ष, जल संचयन विभाग, जलपोषण, जबलपुर के कार्यालय M.P. Singh
सचिव (जल संचयन विभाग) के लिये 6-4-05
उप रजिस्ट्रार

"SA"

Issued
On 6.4.05
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IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH JABALPUR

O.A.NO. **779**..... OF 2002

PETITIONER :- M.P. Administrative Service Association and others

V/S

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APPLICATION UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNALS ACT.1985

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JABALPUR
DATED 28.10.2002

K. W. Singh

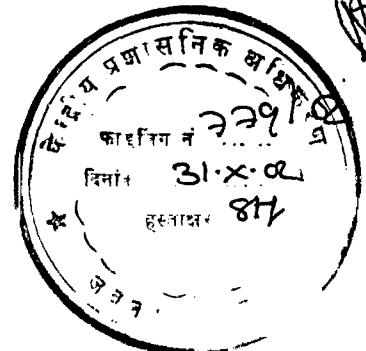
COUNSEL FOR THE PETITIONERS

FOR USE IN THE TRIBUNAL'S OFFICE

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RECEPTION



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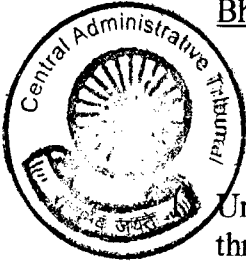
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