

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 1065 of 2000

Jabalpur, this the 14th day of June 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. A.S. Sanghvi, Judicial Member

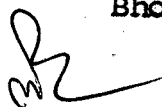
D.S. Chauhan,
aged about 59 years,
S/o Shri Yaswant Singh Chauhan,
Additional Commissioner,
Bhopal Division, Bhopal(MP)
R/o G-2/231, Gulmohar Colony,
Bharat Nagar,
Bhopal(M.P.)

APPLICANT

(By Advocate - Shri S. Nagu)

VERSUS

1. Union of India,
through the Secretary,
Ministry of Personnel, Public
Grievances and Pensions,
Department of Personnel &
Training, Government of India
North Block,
New Delhi.
2. State of Madhya Pradesh,
through the Secretary,
General Administration Deptt.
Govt. of Madhya Pradesh,
Vallabh Bhawan,
Bhopal(MP)
3. Sanjay Joshi, IAS
Managing Director,
M.P. State Handicraft
Development Corporation,
Bhopal(MP)
4. Ajay Singh, IAS
Commissioner,
Tribal Development,
Madhya Pradesh,
Bhopal(MP)



: 2 :

5. N.K. Aswal, IAS
Commissioner,
Bilaspur Division,
Bilaspur(MP)
6. B.S. Shrivastava, IAS
Commissioner,
Rewa Division,
Rewa(MP)
7. S.C. Pandia, IAS
Secretary,
Shheduled Tribe and Scheduled
Caste Welfare Department
Madhya Pradesh,
Bhopal(MP)
8. D.P. Dubey, IAS
Commissioner,
Public Instructions,
Madhya Pradesh,
Bhopal(MP)
9. V.C. Rawat, IAS
Secretary,
State Election Commission,
Madhya Pradesh,
Bhopal(MP)
10. M.A. Khan, IAS
Commissioner,
Urban Administration,
Madhya Pradesh,
Bhopal(MP)
11. C.P. Bhargava, IAS
Managing Director,
Leather Department
Corporation
Madhya Pradesh,
Bhopal(MP)

RESPONDENTS

(By Advocate - Shri P. Shankaran for official respondents
Shri Om Namdeo for respondent No.2
None for private respondents)



O R D E R

By M.P.Singh, Vice Chairman -

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

"(1) to quash the order dated 1.4.98(A-3) to the extent it grants the Selection Grade to the applicant w.e.f. 1.4.97

(ii) to direct the respondents to award Selection Grade to the applicant w.e.f. Feb/Mar 1996.

(iii) to quash the memo dated 23.12.99(A-5) rejecting the representation of the applicant, as being void, illegal and arbitrary

(iv) to quash the supersession orders dated 14.6.2000 and 17.7.2000(A-6 & A-7) by which the respondents No.3 to 11 have been awarded the Selection Grade to the detriment of the applicant as being void, illegal and arbitrary.

(v) to direct the official respondents to grant the Super Time Scale to the applicant w.e.f. the date his juniors(respondents No.3 to 11) have been awarded the Selection Grade i.e. 14.6.2000."

2. The brief facts of the case are that the applicant ~~was appointed~~ to the Indian Administrative Service (for short 'IAS') by promotion from the M.P.State Civil Service, and was assigned 1982 as the year of allotment. In accordance with the proviso to clause(2-A) ~~of~~ Rule 3 of the IAS(Pay)Rules,1954, a Member of the IAS becomes eligible for appointment to the Selection Grade when he enters the 14th year of his service calculated from the year of allotment. The applicant became eligible for award of the Selection Grade of IAS in 1995. In the year 1995, there was some disciplinary proceedings going on against him on the basis ~~of~~ the charge-sheet dated 20.9.1994 issued under Rule 10 ~~of~~ the All India Services (for short 'AIS') (Discipline & Appeal) Rules,1969. A DPC on 24.7.1995 was convened/for considering award of Selection Grade, to the IAS officers of 1982 year of allotment and also to the IAS officers of earlier year of allotment. In the said DPC the case the applicant was considered, however, the

W.R.

:: 4 ::

Screening Committee

recommendations of the ~~DE~~, in respect of him, were kept in the sealed cover because of the pendency of the aforesaid DE proceedings. His case was again considered by the Screening Committee ~~DE~~ which met on 28.6.1996 for grant of Selection Grade, however, his consideration was postponed due to non-availability of confidential reports. On 13.6.1997 the applicant was again considered for grant of Selection Grade but he was found unfit by the Screening Committee. On 02.03.1998, his case was again considered by the Screening Committee and he was recommended for grant of Selection Grade. Accordingly, vide order dated 1.4.1998 (Annexure-A-3) the applicant was granted Selection Grade w.e.f. 1.7.1997. The applicant became due for grant of Super Time Scale in 1998 on completion of 16 years of service in IAS. His case was considered by the Screening Committee which met on 21.10.1998 for grant of Super Time Scale, but he was not found suitable. Hence he has filed this OA.

3. Heard the learned counsel for the parties. The learned counsel for the applicant has submitted that the record of the applicant has been outstanding throughout. He has also submitted that the applicant was awarded only a minor penalty of 'censure' which does not have any currency but only a one time punishment. The applicant should, therefore, have been considered and promoted to the Selection Grade in the year 1995 itself. He has also submitted that the screening committees which met on 13.6.1997 and 02.03.1998 for grant of Selection Grade to the applicant have considered the same set of CRs. In 1997, he was found unfit but in 1998 he was found fit.

4. On the other hand the learned counsel for the respondents states that the applicant has been considered by the screening committee but he was not found fit for promotion to the post of Selection Grade in the year 1997 and for Super Time Scale in the year 1998. He has also

mf

submitted that the applicant has been imposed the punishment of 'censure' in the DE proceedings pending against him, and on the basis of over-all performance the DPC which met in 1997 did not found him fit for promotion.

5. We have considered the rival contentions. The learned counsel for the respondents has also produced the ACR dossier of the applicant and also of private respondents Nos. 3, 6, 7, 8, 9, 10 & 11, and also produced the copies of the minutes of the selection proceedings in which the applicant was considered for Selection Grade as well as Super Time Scale.

6. We have perused the records and we find that the applicant was appointed to IAS by promotion from MP State Civil Service, and was assigned 1982 year of allotment. As per Rule 3(2-A) ibid he was due for grant of Selection Grade in 1995 when he entered the 14th year of his service in IAS calculated from his year of allotment. He was considered for grant of Selection Grade in the year 1995 but due to pendency of the DE against him, the recommendations of the Screening Committee in respect of him were kept in the sealed cover. Thereafter, his case was considered in the year 1996, but due to non-availability of CRs, the consideration was postponed. He was again considered in the year 1997 but was found unfit. However, in 1998 he was again considered and was found fit and was recommended for grant of Selection Grade with retrospective effect from ^{July 81} April, 1997. In 1998, he was also considered for grant of Super Time Scale but was found not fit by the Screening Committee. In the meantime number of officers junior to him and even officers of 1983 batch had superseded the applicant.

7. We have also perused the ACR dossier of the applicant and found that except his ACR for the period ending Mar. 92 and Part period of the year 1988-89, the applicant has been rated consistently 'very good' / 'outstanding'. In the year 1988-89 though the applicant has been rated as 'very good', he was communicated some


WZ

adverse remarks which were also partly expunged. We find that for the first time the applicant was considered for grant of Selection Grade in the year 1995 but could not be granted the same because of the pendency of DE proceedings, and the recommendations of the Screening Committee, in respect of him, were kept in the sealed cover as required under the rules. Further, we find that the applicant was rightly not granted the promotion to the Selection Grade on the basis of recommendations of the Screening Committee which met in the year 1995 as the recommendations of the Screening Committee of 1995 could not have been acted upon. His case was required to be considered by the next Screening Committee. The next Screening Committee had considered his case on 28.6.1996 but his consideration was postponed because of non-availability of his ACRs. We find that when the applicant was considered on 28.6.1996, 13.6.1997 and 2.3.1998 for grant of Selection Grade, there was no much difference in his overall gradings, as he has been rated consistently either as 'very good' or 'outstanding', and the Bench mark fixed by the Screening Committee was only 'very good'. However, the Screening Committee which met on 13.6.1997 had found the applicant unfit for grant of Selection Grade, whereas the next Screening Committee which met after 8 months on 2.3.1998 has found the applicant fit for grant of Selection Grade with effect from ^{July} April 1997, on the basis of same records i.e. the ACRs upto the year ending March 1997. In this view of the matter, the recommendations of the Screening Committee which met on 13.6.1997 for grant of Selection Grade are not justifiable in respect of the applicant. We also find that the applicant was ^{with} ~~not~~ considered for Selection Grade in the year 1996 but his selection could not be finalised due to non-availability of CRs. This was not due to the fault of the applicant and he should not be made to suffer on this account. Therefore, his case was required to be considered again with reference to his appointment in Selection Grade in the year 1996 as soon as his CR have become available with the respondents.

WZ

8. As regards grant of Super Time Scale to the applicant we find that the applicant was due for grant of Super Time Scale in 1998 on completion of 16 years of service. His case was considered by the Screening Committee which met on 21.10.1998 but the Committee did not find him fit for grant of Super Time Scale on the following grounds - (i) he has been imposed the penalty of 'censure' vide order dated 19.2.1996; (ii) he has been rated as 'good' in his ACRs for the years 1991-92, 1988-89, 1980-81 (first half); 1979-80, 1978-79, 1976-77 and 1974-75; and he has also been rated as fair in his ACR for the year 1977-78; and (iii) there are still some adverse remarks in his ACR for the year 1988-89.

8.1 We have carefully perused the ACR dossier of the applicant. We find that the ACR of the applicant for the year 1980-81 has been written in three parts. In the 1st part from April, 1980 to 12.8.1980 the Reporting Officer has graded him as 'outstanding', whereas the Reviewing Officer has graded him 'good' without assigning any reason for the downgradation of the CR of the applicant. According to the instructions issued, down-gradation of the CRs cannot be done without assigning any reasons. The other part of his ACR is for the period from 12.8.1980 to 11.11.1980 in which he has been graded as 'very Good' by the Reporting Officer but again the Reviewing Officer has down-graded his ACR from 'very good' to 'good' without assigning any reason. The 3rd part of his ACR for 1980-81 is of 21.11.1980 to 31.3.1981 in which he has been graded as 'outstanding' and has also been assessed as fit for promotion to IAS and to be tried as Collector. In view of the above, the CR of the applicant for the year 1980-81 could not have been considered as 'good' by the Screening Committee, which met on 21.10.1998. Again in the year 1978-79, the ACR has been recorded in two parts. In the 1st part from 1.4.1978 to 4.10.1978 the applicant has been rated as 'very good' and in the 2nd part from 13.10.78 to 31.3.1979 he has been rated as good. Therefore, the CR of




the applicant for the year 1978-79 could also not have been considered as 'good' by the Screening Committee. This itself shows that the Screening Committee has not been objective in its assessment while considering the CRs of the applicant.

8.2 We also find that as the applicant has been appointed to the IAS by way of promotion from the State Civil Service and granted 1982 as the year of allotment, therefore, for grant of Super Time Scale in the IAS, the ^{i.e. from 1982} ACRs earned by him after induction into the IAS/ought to have been considered, as the CRs earned by him in the State Civil Service had no relevance, as he was not member of this service. However, we find that the Screening Committee ^{also} which met on 21.10.1998 had/considered the ACRs of the applicant which relate to the period when he was in the State Civil Service.

8.3 Further more, normally only five years ACRs preceding to the year of holding of the Screening Committee are considered/taken into consideration for assessing the suitability of the officer for further promotion. We find from the ACRs of the applicant that after induction into IAS he has been consistently graded as 'outstanding' or 'very good' except for the period ending March, 1992 ^{from 1981-1982 to 1997-1998} and for the part period of 1988-89. Thus, out of 17 ACRs/ ^{and 1988-89} only 1 1/2 ACRs of the applicant were good and remaining 15 1/2 ACRs were outstanding/very good. The Bench mark fixed ^{which met on 21.10.1998} by the Screening Committee /for grant of Super Time Scale was 'very good'. Therefore, the overall performance of the applicant could not have been rated as 'good'.

8.4 We have also compared the ACRs of the applicant with one of his juniors, namely, Shri B.S. Shrivastava- an IAS officer of 1983 year of allotment (who had been graded selection grade w.e.f. 1.7.1996 and Super Time Scale from 14.6.2000). We find that by any stretch of imagination or standard, the record of the applicant cannot be assessed

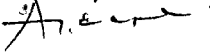


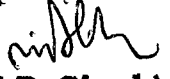
as inferior if not better to that of Shri Shrivastava. We find that the said Shri Shrivastava has also been awarded 'good' reports and even adverse remarks were also recorded in his ACR after his induction into IAS. Therefore, we again find that the assessment of the Screening Committee has not been objective but it shows arbitrariness on the part of the Members of the Screening Committee.

8.5 We also find that the decision of the Screening Committee which met on 21.10.1998 is based mainly on the old and stale entries in the service record of the applicant which had lost all efficacy and force particularly because of the promotions of the applicant to IAS in the year 1982 and thereafter in the Selection Grade of IAS with effect from April, 1997. The Hon'ble Supreme Court in the case of **D.Ramaswami Vs. State of Tamil Nadu, 1982 SCC (L&S) 115** has held that "when there is nothing in the present conduct casting any doubt on the wisdom of the promotion, there is no justification for needless digging into the past. In the said case their Lordships have further observed that "the basis of the adverse entry was knocked out by the government order in November, 1974 and the effect of the entry was blotted out by the promotion of the appellant as Deputy Commissioner, which is a selection post". As observed above out of 17 ACRs from 1981-82 to 1997-98 the applicant has been awarded 'very good'/'outstanding' grade in 15^{1/2} ACRs and in only 1^{1/2} ACR he has been rated as 'good'. Therefore, denial of the Super Time Scale to the applicant just because of old and stale entries/ACRs of the applicant pertaining to State Civil Service is also not justified in view of the aforesaid ruling of the Hon'ble Supreme Court. However, during the course of the arguments, the learned counsel for the applicant has given up the reliefs prayed in para 8.1 to 8.4 in view of the relief prayed for, being multiple reliefs and has restricted himself to the reliefs claimed in para 8.5 and 8.6. In view of this position, though we find that the applicant was not awarded the selection grade at the right time, we restrain ourselves only to the question of the award of Super Time Scale to the applicant.



9. In the result, the O.A. is partly allowed and the respondents are directed to convene fresh review committee for considering the case of the applicant for grant of Super Time Scale from the due date and if he is found suitable and fit for the grant of Super Time Scale, the same be granted to him with all consequential benefits including arrears of salary as well as arrears of retiral benefits. We further direct the respondents to comply with the aforesaid direction within a period of 4 months from the date of communication of this order. No costs.


(A.S. Sanghvi)
Member (J)


(M.P. Singh)
Vice Chairman

rkv./KSB.

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

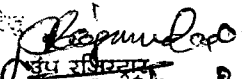
स तिलिपि अको फिल:-

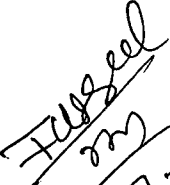
- (1) सचिव, उच्च न्यायालय उच्च एडमिनिस्ट्रेशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/पु.....के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/पु.....के काउंसल
- (4) वंशपाल, संप्रदाय, जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु

S. Nagh.

P. Shankaran.


12.6.04


17.6.04