

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.278/2000

Jabalpur, this the 6th day of May, 2004

Hon'ble Shri M.P.Singh, Vice - Chairman
Hon'ble Shri Madan Mohan, Member (J)

1. Chandras Dubey s/o Sh. Raja Prasad Dubey, aged about 44 years, presently working as Deputy Secretary to Chief Minister, Govt. of M.P., Bhopal.
2. Arun Kochhar s/o late vijay Singhji Kochhar, aged about 42 years, present working as Special Assistant to Minister for Panchayat, Rural Development & Tourism, Bhopal.
3. G.S.Mishra, aged 43 years, presently working as M.D., AKVN, Raipur (MP).
4. J.N.Malpani, s/o Sh. P.D.Malpani, aged about 43 years, presenting working as Special Assistant, Minister for Veterinary & Fisheries, Bhopal.
5. A.S.Srivastava s/o Sh. Rambihari Lal Srivastava, aged about 42 years, presently working as Additional Director, N.V.D.A., Indore (MP).
6. R.K.Pathak, aged about 49 years, presently working as Secretary, Board of Secondary Education, Bhopal.
7. Maneesh Srivastava s/o Sh.Lalit Srivastava, aged about 43 years, presently working as Secretary, Seed Corporation, Bhopal.

...Applicants

(By Advocate: Shri S.Ganguly for Shri M.Sharma)

-versus-

1. Union of India through Secretary, Department of Personnel, Public Grievances & Pension (Personnel & Training), New Delhi.
2. State of Madhya Pradesh through Principal Secretary, General Administration, Department, Mantralaya, Vallabh Bhawan, Bhopal.
3. Union Public Service Commission through Secretary, New Delhi.



4. Surendra Kumar Kehri,
Chief Executive Officer,
Zila Panchayat,
Dindori (MP).
5. M.S. Bilala,
Additional Collector,
Ujjain (MP).
6. Hari Singh Sekhawat,
Chief Executive Officer,
CFO Jila Panchayat,
Shajapur (MP).
7. Hiralal Trivedi,
Deputy Secretary,
General Administration Department,
Bhopal.
8. Shiv Charan Arya,
Additional Collector,
Sagar (MP).
9. Smt. Anju Singh Beghel,
Deputy Secretary,
Tribal Welfare Deptt.,
Vallabh Bhawan, Bhopal.
10. Jabbar Dhakwala,
Joint Director (Health)
Satpura Bhawan, Bhopal.
11. Ganesh Prasad Tiwari,
Additional Collector,
Bhopal.
12. S.B.Singh,
Chief Executive Officer,
Zila Panchayat, Badwani,
Distt. Badwani (MP).
13. Dr. B.S.Aaant,
C.E.O. Zila Panchayat,
Bhind.
14. K.S.Marani,
General Manager,
M.P.State Road Transport Corporation,
Bhopal.
15. Manohar Pandey,
Joint Commissioner,
Development, Vindhyaachal Bhawan,
Bhopal.
16. S.K.Tiwari,
Controller,
Weights & Measurements,
Maida Mill Road,
Bhopal.
17. Mr. Veena Ghanekar,
Deputy Secretary (Revenue)
Vallabh Bhawan, Bhopal.

... Respondents

(By Advocate: Sh. B.da.Silva for R-1, Sh. Om Namdeo, for R-2
Sh. Harshit Patel for Sh. S.C.Sharma for R-3,
Sh. N.Nagrath for R-7, R-11 and R-14 and
Sh. P .Shankaran for R-15 and none for other
respondents).

O R D E R

By Madan Mohan, Member (Judicial):

By filing the present original Application, the applicants have sought the following main reliefs:-

- i) send for the entire records from respondents nos. 1, 2 and 3 pertaining to the impugned selection, original C.Rs of all the candidates, minutes and complete records of the Selection Committee for its kind perusal.
- ii) to quash and set aside the impugned Selection, promotion of the respondent no. 4 to 17 and the notification dated 11.1.2000 No. 14015/1/99-AIS(I) dated 13.1.2000.
- iii) to command the respondents no. 1 to 3 to reconsider the candidates including the applicants and thereafter, promote them to IAS with all consequential benefits and seniority etc.

2. The brief facts of the case are that the applicants are the members of State Civil Services and presently serving in different posts under the State Government. Their service record throughout, the service career has been outstanding. The respondents no. 4 to 17 are also the members of State Civil Service. Except that they are seniors to the applicants in terms of merit as reflected by the service records thereof inferior in performance, work and conduct as adjudged in their respective confidential reports. While the applicants have been found fit and accordingly sanctioned as Senior Selection Grade in due course of time w.e.f. 1.1.1999, the respondents S.K.Kehri, M.S. Bilala, Hari Singh Shekhawat, Shiv Charan Arya, Jabbar Dhakwala, Dr. B.S. Anant despite their long seniority and service, have not yet been found fit for grant of Selection Grade in the meeting held on March, 1999, just preceding the impugned selection. Regulation 3 of the Indian Administrative Service (Appointment by Promotion) Regulation, 1955 provides for constitution of the Committee to make selection consisting the Chairman of the Commission or any other member and other members as specified in the corresponding entry of column no. 3 of the Schedule. Schedule to the Regulation in relation to Madhya Pradesh specifies



Chief Secretary to the Government of M.P., President Board of Revenue, two senior-most Commissioners of Division and two nominees of the Govt. of India not below the rank of Joint Secretary, to be the other members of the Selection Committee. By virtue of Regulation 3(2), the Chairman or member of the Commission shall preside over all meetings of the Committee at which he is present.

2.1 Respondents no. 4 to 17 who were constantly considered and yet not being included in the Select List for promotion on the basis of their unsatisfactory or relatively inferior service record, have challenged their non-promotion by means of original Applications before this Hon'ble Tribunal in a bunch of cases. In the course of hearing of those applications, the Tribunal had an occasion to summon their service record for perusal and after doing so, an opinion was formed that on the strength of the service records of such respondents, the Selection Committee did not commit any error in not including their names in the Select List and thereby upheld their non-promotion. The O.A.s were dismissed vide order dated 25.6.1998.

2.2 As the vacancies existed, the Selection Committee as per Regulation 3 was required to meet for the purposes of consideration of eligible and suitable members of the State Civil Services in the month of August, 1999. On the scheduled date, the Chief Secretary, Govt. of Madhya Pradesh could not participate in the meeting on account of sudden illness, which was duly informed. The Selection Committee met and considered the case. Even though per-force of Regulation 3(3), the absence of the Chief Secretary as a Member of the Committee ipso-facto would not invalidate the proceeding of the Selection Committee, but by virtue of the reasons of his absence and the object behind the nomination of the Chief Secretary in the Committee, who by reason of his knowledge and information, about the work performance and the conduct of the absence occupies a distinguished and distinct position in the Committee



to assist the Members to fairly and objectively consider the cases and make proper and adequate briefing as regards the informations required, it was expected of the Committee to defer the meeting, instead of hurrying through it, particularly when there was no compelling urgency and the process could not be waited. The confidential reports of the applicants for the last ten years would reveal that the applicants have been officers with great distinction, who have been consistently rated outstanding in performance by different officers and their records have also been unblemished. There was no material on which the Committee could have arrived at an independent and new decision. The Committee also did not record any reason to show as to why and how they ignored the assessment in CRs and substituted their own. Thus, the whole process adopted is unjust, arbitrary and unfair. It suffers from malice in law. On the other hand, the CRs of the respondents which were liable to be rated as inferior as compared to the applicants, have been up-graded without any basis and in particular after their disclosure and verdict of the Tribunal in past cases. The superior merit of the applicants is ignored by the Selection Committee.

2.3 The applicants submitted representations dated 12.8.99 (A/5) in continuation to respondents no. 1 to 3 ventilating their serious grievance, the very propriety, legality of the Selection held. From the perusal of the Notifications dated 11.1.2000 and 13.1.2000 (Annexures A/6 and A/7), it is interesting as well as important to observe that a note has been appended against Shri M.S.Bilal, respondent no. 5, to list the effect that his name has been included in the/provisionally subject to clearance of criminal proceeding pending against him and grant of integrity certificate by the State Government. It is submitted by the applicants that the Selection Committee has completely discarded the criteria of Selection and has made the same on wholly extraneous and arbitrary consideration. Hence, this original application.



3. Heard the learned counsel for the applicants and and of official respondents as well as learned counsel for the private respondents No. 7, 11, 14 and 15. We have perused the pleadings and other material on record.

4. It is argued on behalf of the applicants that on perusal of Annexure A-6 i.e. Notification dated 11.1.2000, it is revealed that the name at serial no. 2 (M.S.Bilala(ST)) has been included in the list provisionally subject to clearance of disciplinary criminal proceedings pending against him and grant of integrity certificate by the State Government. It is further revealed that the name at serial no. 5 (Shiv Charan Arya(SC) i.e. respondent no. 8, has also been included in the list provisionally subject to expunction of adverse remarks and grant of intergrity certificate by the State Government. The same is the case of B.S. Anant(SC) i.e. respondent no. 13. It is argued that instead of adverse remarks, the Selection Committee ignoring the rules and bye-laws included the names of the above three respondents.

Learned counsel has drawn our attention towards Annexure A/2 to show that the performance of the applicants for the last ten years has been outstanding. He has further drawn our attention towards Annexure A/3 in which the performance of the respondents is shown. It is argued that the respondents Sh. S.K.Kehri, Jabbar Dhakwala and B.S.Anant were not selected by the earlier DPCs while against the respondents, namely, M.S.Bilala, Hari Singh Shekhawat, criminal cases are shown to be pending against them. Learned counsel also invited our attention towards Annexure A-5 to show that the applicants and one other Sh. Ajatshatru Srivastava had submitted their representation dated 12.8.1999 against the decision of the Selection Committee and argued that Chief Secretary of the State Govt. of Madhya Pradesh did not attend the meeting of the Selection Committee due to his sudden illness and he was the best authority of the State Government to know the merits and demerits of each officer of the State and there was no

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urgency in holding the meeting immediately. The said meeting of the Selection Committee could have been postponed but the same was held in absence of the Chief Secretary. But according to rules, the Chief Secretary is also one of the members of the Selection Committee. Hence, the decision taken by the Selection Committee on 3.8.1999 is absolutely arbitrary, illegal and against the rules.

5. In reply, learned counsel for the respondents argued that three persons, namely, M.S.Bilala, Shiv Charan Arya and B.S.Anant who were provisionally considered inspite of some adverse remarks entered in their CRs were not finally selected as is evident from the Notification dated 13.1.2000 (ANNEXURE A-7). Hence no irregularity has been committed by the respondents in holding the Selection Committee meeting. Moreover the argument advanced by the applicant's' counsel that if the Chief Secretary of the State of Madhya Pradesh was absent on this alone ground the meeting should have been postponed because the Selection Committee comprised with six persons, is not correct. Hence, the validation of the Constitution of the Selection Committee cannot be questioned and the decision taken by it was in accordance with rules and law.

6. We have heard the learned counsel for the parties and perused the record of this O.A., ACRs and service records pertaining to applicants as well as respondents no. 4 to 17. As regards the validity of the constitution of the Selection Committee, the applicants themselves have written in their O.A. in para no. 6.8 that the absence of the Chief Secretary as a Member of the Committee ipso-facto would not invalidate the proceeding of the Selection Committee. It appears that the applicants admit that the constitution of the Committee was valid but they have mentioned in this para because of the absence of the Chief Secretary the meeting of the Selection Committee should have been postponed as there was no urgency. Our attention was also drawn towards the judgement of the

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Hon'ble Supreme Court rendered in the case of Durgadevi & Anr. vs. State of Himachal Pradesh & Ors. in which it is held as under:

"In the first instance, as would be seen from the perusal of the impugned order, the selection of the appellants has been quashed by the Tribunal by itself scrutinising the comparative merits of the candidates and fitness for the post as if the Tribunal was sitting as an appellate authority over the Selection Committee. The Selection of the candidates was not quashed on any other ground. The Tribunal fell in error in arrogating to itself the power to judge the comparative merits of the candidates and consider the fitness and suitability for appointment. That was the function of the Selection Committee. The observations of this Court in Daipat Abasaheb Solunke case are squarely attracted to the facts of the present case. The order of the Tribunal under the circumstances cannot be sustained. The appeal succeeds and is allowed. The impugned order dated 10.12.1992 is quashed and the matter is permitted to the Tribunal for fresh disposal on other points in accordance with the law after hearing the parties."

We have also perused the judgement rendered in O.A. No. 364/97 including 11 other OAs decided on 25.6.1998. It is held in para 27 of the said judgement that "we are afraid we cannot sit over the assessment made by a duly constituted Selection Committee and quash the selection by scrutinising comparative merits of the candidates as held by the Hon'ble Supreme Court in the case of Durga Devi & Anr. vs. State of H.P. & Ors. (supra). All the connected OAs were dismissed.

7. Considering all the facts and circumstances of the case and in compliance of the ruling of the Hon'ble Supreme Court, referred to above, this Tribunal has to consider as to whether the constitution of the Selection Committee was valid or not. If it is observed that it was not validly constituted Selection Committee only then other facts would have been considered. In the facts and circumstances of the case, we are of the opinion that the constitution of the Selection Committee was perfectly valid and there was absolutely no irregularity or illegality committed by the respondents in the constitution of the Selection Committee. Hence, in view of the directions of the Hon'ble Supreme Court in the case of Durgadevi & Ors. vs. State of H.P. & Ors. (supra) this Tribunal cannot sit over as an appellate court over the assessment made by a

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duly constituted Selection Committee and quash the selection by scrutinising itself comparative merits of the candidates.

8. In view of the above discussions, we are of the considered view that the present Original Application does not have any merit and deserves to be dismissed. The same is accordingly dismissed with no order as to costs.

(Madan Mohan)
Member (J)

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(M.P. Singh)
Vice Chairman

पूँजीन सं. ओ/न्या.....जबलपुर, दि.....
चलितियि ८/८/६४ दिन:-

(1) शर्मा, राम रामानन्द शर्मा (रामेश्वर), जबलपुर
(2) शर्मा, राम शर्मा (रामेश्वर), जबलपुर M. Sharma, Ad.
(3) शर्मा, राम शर्मा (रामेश्वर), जबलपुर B. da Silva, Ad.
(4) शर्मा, राम शर्मा (रामेश्वर), जबलपुर S.C. Sharma, Ad.
सूबना एवं उपकारक कार्यकारी देव
उप राजस्तान P. Sharma, Ad.
11/5/64
Om Nanded, Ad.

Filed
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11-5-64