

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 597/1998
Original Application No. 514/1998
Original Application No. 80/1999

Jabalpur, this the 17th day of February, 2004

HON'BLE SHRI M.P.SINGH, VICE CHAIRMAN
HON'BLE SHRI G.SHANTHAPPA, MEMBER (J)

OA No. 597/1999

1. M.F.Administrative Service Association through
Shri Kavindra Kiyawat s/o Sh. H.C.Kiyawat,
Working as its General Secretary,
M.P.Administrative Service Association,
F-93/23, Tulsi Nagar,
Bhopal.
2. Hira Lal Trivedi,
s/o late Sh. Shivaji Ram Trivedi,
Deputy Secretary,
General Administration Department,
Government of Madhya Pradesh,
Vallabh Bhawan, Bhopal
and
R/o E-100/29, Shivaji Nagar,
Bhopal.

...Applicants

-versus-

1. Union of India through
Secretary,
Ministry of Personnel/Grievance & Pension
Department of Personnel & Training,
North Block,
New Delhi.
2. The Union Public Service Commission through
Secretary,
Dholpur House, Shahjahan Road,
New Delhi.
3. The State of Madhya Pradesh through
Additional Chief Secretary,
General Administration Department,
Mantralaya, Vallabh Bhawan,
Bhopal.
4. Shri Rakesh Shrivastava,
Chief Executive Officer,
Zila Panchayat office,
Indore (MP).
5. Shri A.K.Bhatt,
O.S.D. Office of Collector,
Khandwa (MP).

...Respondents

OA NO. 514/1998

1. Hira Lal Trivedi s/o late Shivaji Ram Trivedi,
Deputy Secretary,
General Administration Department,
Government of Madhya Pradesh, Vallabh Bhawan,
Bhopal (MP)
and
R/o E-100/29, Shivaji Nagar,
Bhopal (MP). ...Applicant

-versus-

1. Union of India through
Secretary,
Min. of Personnel/Grievances & Pension,
Deptt. of Personnel & Training,
North Block,
New Delhi.
2. The Union Public Service Commission through
Secretary,
Dholpur House, Shahjahan Road,
New Delhi.
3. The State of Madhya Pradesh through
Additional Chief Secretary,
General Administration Department, Mantralaya,
Vallabh Bhawan,
Bhopal (MP).
4. Shri Rajni Kanta Gupta,
Deputy Commissioner (Revenue),
Commissioner Office,
Indore.
5. Shri S.K.Behar,
Project Administrator,
The Lok Shakti Project,
Raigarh(MP).
6. Shri A.K.Pandey,
Deputy Secretary,
Govt. of Madhya Pradesh,
Tribal Welfare Department, Mantralaya,
Bhopal.
7. Shri S.N.Dharva,
Additional Commissioner,
Tribal Welfare Department,
Satpuda Bhawan,
Bhopal.
8. Shri J.P.Tiwari,
Chief Executive Officer,
Zila Panchayat,
Mandla.
9. Shri V.K.Singh,
Chief Executive Officer,
Zila Panchayat,
Vidisha.



10. Shri Vinod Kumar Katela,
Additional Collector,
Bilaspur.
11. Shri H.S. Shekhawat,
Chief Executive Officer,
Zila Panchayat,
Satna (MP).

... Respondents.

OA NO. 80/1999

R.S. Pandey s/o late Sh. G.R. Pandey,
Director,
Public Instruction,
Gautam Nagar,
Bhopal (MP).
and
R/o E-114/24, Shivaji Nagar,
Bhopal (MP).

... Applicant

-Versus-

1. Union of India through
Secretary,
Ministry of Personnel, Public Grievances
& Pension, Deptt. of Personnel & Training,
North Block,
New Delhi.
2. The Union Public Service Commission
Through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi.
3. The State of Madhya Pradesh through
Additional Chief Secretary,
General Administration Department,
Vallabh Bhawan,
Bhopal (MP).
4. Hari Singh Shekhawat,
Chief Executive Officer,
Zila Panchayat, Shahapur (MP).
5. Shri S.N. Dhruv,
Additional Commissioner,
Tribal Welfare Department,
Satpuda Bhawan,
Bhopal (MP).
6. Shri J.P. Tiwari,
Chief Executive Officer,
Zila Panchayat,
Mandla (MP).
7. Shri V.K. Singh,
Chief Executive Officer,
Zila Panchayat,
Vidisha (MP).



8. Shri Vinod Kumar Katela,
Additional Collector,
District Bilaspur (MP).

...Respondents

Appearances: Shri Rajendra Tiwari, Senior Advocate with
Shri D.Panjwani,
counsel for applicants in all the OAs.

Shri B.da.Silva for the Union of India &
U.P.S.C. in all the O.As.

Shri K.C.Ghildiyal for the State of Madhya
Pradesh in all the OAs.

Sr. Advocate
Shri Ravindra Shrivastava/with Sh. Manoj
Sharma, counsel for the private respondents
in all the O.As.

O R D E R

By G.Shanthappa, Judicial Member-

Since the issue involved in all the above cases
is common and the facts and the grounds raised are
identical, for the sake of convenience, these O.As are
being disposed of by this common order.

2. O.A. No. 597/1998 will be treated as a leading
case, in which the applicants have claimed the

reliefs, to declare the following provisions of the IAS
(Recruitment) Rules, 1954 as ultra vires of the Constitution

8.1 Rule 8(2) which states that "The Central
Government may, in special circumstances and
on the recommendation of the State Government
concerned and in consultation with the Commission
and in accordance with such regulations as the
Central Government may, after consultation with
the State Governments and the Commission, from
time to time, make, recruit to the Service any
person of outstanding ability and merit serving
in connection with the affairs of the State who
is not a member of the State Civil Service or
that State (but who holds a gazetted post in a
substantive capacity).

8.2 Proviso to Rule 9(1) which states that
the number of persons recruited under sub_rule
(2) of rule 8 shall not at any time exceed
fifteen per cent of the number of persons
recruited under Rule 8.



8.3 To declare Regulation 4 of the Indian Administrative Service (Appointment by Selection) Regulations, 1997 as ultra-vires which reads as under;

State Government to send proposals for consideration of the Committee:-

- (1) the State Government shall consider the case of a person not belonging to the State Civil Service but serving in connection with the affairs of the State, who:-
 - i) is of outstanding merit and ability; and
 - ii) holds a gazetted post in a substantive capacity; and
 - iii) has completed not less than 8 years of continuous service under the State Government on the first day of January of the year in which his case is being considered in any post which has been declared equivalent to the post of Deputy Collector in the State Civil Service and propose the person for consideration of the Committee. The number of persons proposed for consideration of the Committee shall not exceed five times the number of vacancies proposed to be filled during the year;

provided also that the State Government shall not consider the case of a person who, having been included in an earlier select list, has not been appointed by the Central Government in accordance with the provisions of Regulation 9 of these Regulations.

8.4 To quash the Govt. of India Memorandum(A/7);

8.5 To order that no appointment by selection to the cadre of IAS shall be made from amongst the non-State Civil Service officers on the basis of the provisions of Rules and Regulations impugned in this O.A., whose name/names have been recommended by the DPC held on 29.7.1998 and 30.7.1998.

8.5-A To quash the appointment given to respondents no. 4 and 5 being contrary to the provisions of I.A.S. (Appointment by Selection) Regulations 1997;

To command the respondents nos. 1, 2 & 3 to frame guidelines and parameters for short-listing the non-State Civil Service officers for purposes of appointment by selection in accordance with the IAS (Appointment by Selection) Regulations, 1997 before any name is sponsored for such selection and they should refrain from making any appointment to IAS by selection from amongst non-State Civil Service officers until such guidelines are framed and notified.

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2.1 The reliefs claimed in OA No. 514/1998 are as under:-

- i) To quash Annexures A/11, A/12, A/13 and A/16 entirely.
- ii) To command the respondents to hold the Selection Committee for all the 16 increased vacancies in the promotion quota in the year 1998;
- iii) To command the respondents to hold the Selection Committee atleast for 6 vacancies for the year 1998.
- iv) To restrain the respondents from holding a Selection Committee only for 2 posts for the year 1998.

2.2 The reliefs claimed in OA No. 80/1999 are as under:-

- i) To quash the Annexures A-11, A-12, A-13 and A-16, entirely.
- ii) To command the respondents to hold a review D.P.C. for the petitioner in the background of the year 1998 and place him in the select list in place of respondent no. 4.
- iii) To quash the entire minutes of the Selection Committee and command the respondents to hold the meeting of the Selection Committee again for 6 posts for the year 1998 or in the alternative atleast for 3 posts in the same way;
- iv) To restrain the respondents from carrying forward one post of the year 1998 (which has remained vacant because of non-notification of respondent No. 4) to the year 1999.

3. The brief facts of the case in OA No. 597/1998 are that the the first applicant is an Association and the second applicant is one of the Members of the first applicant. The second applicant is a senior Member of the State Administrative Service who is eligible for promotion to the IAS in accordance with the provisions contained in the Indian Administrative Service (Recruitment) Rules, 1954; Indian Administrative Service (Recruitment) Amendment Rules, 1997 and also IAS (Appointment by Selection) ~~Regulations~~ Regulations, 1997.



3.1 The number of vacancies for the promotion quota existing as on 1.1.1998 was 19, out of which 6 were proposed to be filled up during that ~~year~~ year. out of these 6 vacancies, one was ~~legally being~~ reserved for non-State Civil Service officers ~~in general and applicant no. 2 in particular are being curtailed.~~

3.2 According to the seniority list of the State Civil Service officers, the following officers were coming within the zone of consideration for promotion:-

Sl.No.	Name	Sl.No.in the seniority list as on 1.4.98
1.	Shri Surendra Kumar Kehari	26
2.	Shri Bharat Kumar Vyas	37
3.	Shri M.S.Bhilala	40
4.	Shri Hari Singh Shekhawat	43
5.	Shri Vinod Kumar Ketela	44
6.	Shri Ram Suchit Pandey	56

out of six posts proposed to be filled up from the promotion quota three have already been filled up on the basis of expired select list of the preceeding year 1997, thereby reducing the number of posts available for promotion during 1998 to 3 only. In O.A. No. 514/98, the second applicant has challenged the filling up ~~of the selection~~ of the said three posts on the basis of expired select list. The further relief in the said O.A. is curtailment of filling up of vacancies from 19 to 6. In the present O.A., the challenge is to earmarking of one post for non-State Civil Service officers with the result that the number of effective vacancies available for State Civil Service officers is reduced to two only as against the entitlement of three. The immediate effect of this illegal action is of depriving applicant no. 2 ^{to} from being within the zone of consideration for promotion in the IAS. If the third vacancy was not earmarked for non-State Civil Service officer, the size of zone would have been 9 and

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applicant no. 2 will be at Sl.No. 7, in the zone by virtue of his seniority. He would, therefore, be the immediate sufferer and victim of the arbitrary action with the result that he would not even be considered for promotion to the IAS. He was within the zones of consideration in the year 1996 and 1997 and after becoming senior by two years he is now being excluded from the zone solely because of the arbitrary application of arbitrary rules whose vires is being challenged .

3.3 Rule 8(2) of the Indian Administrative Service (Recruitment) Rules, 1954 and Rule 9(1) of the Indian Administrative Service (Recruitment) Amendment Rules, 1997 are being reproduced herein below:

" 8(2) The Central Government may, in special circumstances and on the recommendation of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make, recruit to the service any person of outstanding ability and merit serving in connection with the affairs of the State who is not a Member of the State Civil Service or that State (but who holds a gazetted post in a substantive capacity)."

"9(1) The number of persons recruited under Rule 8 in any State or group of States shall not, at any time, exceed 33 1/3 per cent of the number of senior posts under the State Government, Central deputation reserve, State deputation reserve and the training reserve in relation to that State or to the group of States, in the Schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955;

Provided that the number of persons recruited under sub-rule (2) of rule 8 shall not at any time exceed fifteen percent of the number of persons recruited under rule 8.

Explanation: For the purpose of calculation of the posts under this sub-rule, fractions, if any, are to be ignored."

3.4 The non-State Civil Service officers are appointed to the IAS in accordance with the procedure contained in the Regulation entitled "Indian Administrative Service (Appointment by Selection) Regulations,



of the said Regulations
1997. Regulations 3 and 4 /which are relevant for the
purpose of this O.A., are reproduced as under:-

"3. Determination of vacancies to be filled:-

The Central Government shall, in consultation with the State Government concerned, determine the number of vacancies for which recruitment may be made under these regulations each year. The number of vacancies shall not exceed the number of substantive vacancies, as on the first day of January of the year in which the meeting of the Committee to make the selection, is held.

4. State Government to send proposals for consideration of the Committee:- (i) The State Government shall consider the case of a person not belonging to the State Civil Service but serving in connection with the affairs of the State who;

- (i) is of outstanding merit and ability; and
- (ii) holds a Gazetted post in a substantive capacity; and
- (iii) has completed not less than 8 years of continuous service under the State Government on the first day of January of the year in which his case is being considered in any post which has been declared equivalent to the post of Deputy Collector in the State Civil Service and propose the person for consideration of the Committee. The number of persons proposed for consideration of the Committee shall not exceed five times the number of vacancies proposed to be filled up during the year;

Provided that the State Government shall not consider the case of a person who has attained the age of 54 years on the first day of January of the year in which the decision is taken to propose the names for the consideration of the Committee;

also

Provided/that the State Government shall not consider the case of a person who, having been included in an earlier select list, has not been appointed by provisions of regulation 9 of these regulation."

which

3.5 There is no mechanism/has been evolved or prescribed for adjudging the outstanding merit and ability of a non-State Civil Service officer for being selected and considered for appointment to the IAS. No post has been declared equivalent to the post of Deputy Collector by the State Government. Legally non-State Civil

the Central Government
in accordance with the

not
Service Officer can/be considered for promotion to the
I.A.S.

4. The brief facts of the case in O.A. No. 514/1998 are that the applicant(who is second applicant in OA Public Service No. 597/1998) appeared in the/~~ex~~amination held in 1977 and appointed as a Probationary Deputy Collector w.e.f. 29.5.1979 by the Government of Madhya Pradesh. He worked in various capacities for a period of eight years and he was given senior scale with effect from 30.5.1987. As per rules, he is entitled for Selection Grade after completion of ten years i.e. in the year 1989, He was given selection grade from 1.7.1990 as soon as the post became available. He has/ that he is entitled to the post of Additional Collector or Deputy Secretary.

4.1 Government of India framed regulations called "The IAS (Appointment by promotion) Regulations, 1955, The IAS (Recruitment) Rules, 1954, the IAS (Appointment Regulations, by Selection)/1997. The Central Government amended the Rules of 1954 and also Regulations, 1955 by its notification dated 31.12.1997 and made the amendments applicable with effect from 1.1.1998.

4.2 Prior to the said amendment of Regulations, 1955, the word "year" was defined as the period commencing from 1st of April and ending on 31st of March of the subsequent year. By the amendment made in the Regulations, the word "year" has been given a different definition. "year" means a period commencing from the 1st/^{day} of January and ending on 31st day of December of the same year. Amended Regulations of 1955 and the Rules of 1954 have come into force w.e.f. 1.1.1998.

4.3 The applicant has already been considered in 1996 for the promotion by the Screening Committee constituted under Regulation 3 of the Regulations, 1955.

Since the number of posts were less, the name of the applicant could not be brought on¹the select list and his case was considered by the Screening Committee in the year 1997 because of 'degrading' in the ACR, he could not find place in the select list of 1997.

4.4 According to the seniority list of Civil Service Officers, the applicant is at sl. no. 58. The officers who have crossed 54 years of age have been selected in the IAS, the said selection is against the IAS (Recruitment) Rules, 1954; and also the amended Rules, of 1954 by notification dated 31.12.1997; and also IAS (Appointment by Promotion) Regulations, 1955. The said ^{in 1954 Rules was} amendment/brought into operation w.e.f. 1.1.1998. A ^{with} ~~said~~ notification was issued in the Madhya Pradesh ^{notifying} Gazette dated 5.12.1997, the select list prepared by ^{which} the Selection Committee at its meeting held on 20.3.1997, was approved by the Union Public Service Commission on 16.6.1997.

5. The facts of the case in OA No. 80/1999 are that the applicant was selected for the post of Deputy Collector by direct recruitment and was appointed w.e.f. 19.4.1979. He was given senior scale w.e.f. 9.4.1987 and selection grade of Deputy Collector on 1.7.1990. According to the seniority list of State Administrative Service, he was at serial no. 56. He was in the zone of consideration for appointment by promotion to the IAS cadre by the Selection Committee appointed under the IAS (Appointment by Promotion) Regulations, 1955. All persons, who cross the age limit of 54 years do not remain eligible for consideration. Applicant has completed 54 years of age as on 18.1.1998. The Selection Committee met on 29.7.1998, and on the date of the Selection Committee the applicant was eligible for consideration for selection to the IAS cadre. Earlier

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in the year 1996 his name was in the wait list. Due to paucity of posts, he could not be appointed in the year 1996. For subsequent years i.e. 1997 his service record was "VERY GOOD", in that year "OUTSTANDING" were taken, the name of the applicant could not be placed in the select list. According to the said seniority list, the persons above the applicant have either crossed 54 years of age or have been selected in the IAS cadre in the previous years.

5.1 In the year 1997 there were 12 substantive anticipated vacancies notified. Under the regulations, prior to the amendment, the zone of consideration was of 42 officers, One vacancy was occupied by one Shri C.L. Adme on the basis of the orders of this Tribunal. He was given appointment to the IAS Cadre from 1998. On the basis of select list, as approved by the UPSC, 11 names were included in the main list and 2 persons were in the wait list. Accordingly, 13 names were published.

5.2 According to the notification, cadre strength of IAS officers in Madhya Pradesh was 377, out of which 282 for direct recruitment and 95 for appointment by promotion. Central Government has published the notification to the effect that vacancies to be filled by promotion were increased from 95 to 114. The total cadre/ strength remained 377. There was an increase of 19 posts for promotion quota. In accordance with the provisions of Rule 18 read with Rule 9 of the Rules, 1954, 15% posts to be are/given to the officers under selection quota out of promotion quota. Out of increased 19 posts, 3 would be given away to the officers other than Civil Service officers. There is an increase by 16 posts for the State Civil officers.



5.3 Under the amended rules, no anticipated substantive vacancies occurred prior to 1st January of the year in which the meeting of the Selection Committee was scheduled to ~~be~~ take place. From 1.1.1998 to 31.12.1998 there will be no substantive vacancies available for selection by the said Committee for appointment by promotion because the vacancies upto 31.12.1997 were already filled up as approved on 16.6.1997. The last vacancy which became available for the year 1997 had occurred on 31.12.1997 and, therefore, became available for being filled up from amongst the officers whose names were contained in the said approved list. One Shri R.K.Gupta (respondent no. 4 in OA No. 514/1998) who is at serial no. 8 (eight) has been appointed to the I.A.S.Cadre under the notification dated 23.1.1998. Prior to that, the applicant had submitted his representation, pointing out that no appointment should be made after expiry of 31.12.1997. Subsequently, Shri Surendra Kumar Behar and Arun Kumar Pandey (i.e. respondents nos. 5 & 6 in OA No. 514/1998) respectively were appointed as per Annexure A/12 and A/13 against the vacancies occurred upto 31.1.1998. It is mentioned in para 2 of the order at Annexure A/13 that increase in the promotion posts is to be given effect in a phased manner, which means, the promotion quota would consist of vacancies as on 31.12.1997 plus 1/3rd of the net increase in the maximum promotion quota as on 1.1.1998. Hence the appointment of the respondent no. 6 vide A/13 is contrary to the provisions of Regulations of 1955. In the case of OA No. 80/99, there were 12 anticipated vacancies notified under the Regulations prior to amendment, one of these posts was given to Sh. C.L. Adme who succeeded in O.A. filed in the year 1997 and was given appointment to the I.A.S. cadre from 1998.



Thus the select list contained 11 names and two names were selected and placed in the waiting list. It is clear from the notification dated 5.12.1997, which contains 13 names for that year. Among the list for zone of consideration, six persons were considered, they are at serial no. 4,5,6,7,8 & 9. The applicant (in OA 80/99) is at serial no. 6 included in the list. The persons in the zone of consideration were:

- | | |
|---|--------------|
| 1. Shri S.K.Kehri | - |
| 2. Bharat Kumar Vyas | Not selected |
| 3. Shri M.S. Bhilala | Not selected |
| 4. Shri Hari Singh Shekhawat (bad record) | |
| 5. Shri V.K.Katela | - |
| 6. R.S.Pandey | Applicant |

5.4 The said wait list was dropped otherwise the applicant would have been in the waiting list. On the applicant's service basis of the record, it was expected that the said Shri V.K.Katela (Respondent No. 8) and the applicant would be placed in the select list. However, when the respondent no. 1 issued notification in favour of V.K.Katela as per Annexure A-1 dated 28.09.1998, the applicant made enquiries and learnt that inspite of deficiencies, the respondent no. 4 was included in the panel and was placed above Shri V.K.Katela and thus, the applicant was excluded from the select list that could not happen. Either full information in regard to respondent no. 4 was not placed before the Selection Committee or that extraordinary favour was shown to him to place him in the select list. However, the State Government realising that the service record of respondent no. 4 was not Good, did not issue the necessary integrity certificate and, therefore, the respondent no. 4 could not be notified. Only one Shri V.K. Katela was notified vide Annexure A-1. Since there was no wait list, the applicant has no chance of being notified in the vacancy inspite of having a 'VERY GOOD' service record althrough. The applicant is, therefore, challenging the selection list of the year

1998 and the selection of the respondent no. 4 and his placement therein. He is also challenging the reduction of the number of vacancies in the manner ^{said} above/wherein the respondents no. 5 to 7 were appointed. The applicant is also challenging the circular dated 11.2.1998 (A/13).

5.5 The Government of Madhya Pradesh has filled the vacancy occurred on 31.12.1997 under notification dated 23.1.1998 (A/11). By subsequent notification dated 11.2.1998 S/Shri Surendra Kumar Kehri and Shri Arun Kumar Pandey (respondent no. 5 & 6 in OA No. 514/98) were appointed against the vacancies occurred upto 31.1.1998. It is mentioned in para 2 of the order at Annexure A-13 that the increase in the promotion is to be given effect in phased manner which means the promotion quota would consist of vacancies as on 31.12.1997 plus 1/3rd of the net increase in the maximum promotion quota as on 1.1.1998. Hence the appointment of respondent no. 6 is contrary to the provisions of Regulations, 1955. The Govt. of Madhya Pradesh has filled the vacancy occurred on 31.12.1997 by appointing Shri R.K.Gupta vide order dated 23.1.1998 (A/11). By subsequent notification appointing Shri Surinder Kumar Kehri. The vacancies occurred upto 1998 have been filled in from the select list of 1997, when it had become inoperative for all practical purposes on the expiry of 31.12.1997. The said vacancy could have been used for Shri S.N.Dhruv (respondent no. 7). From 1/3rd ^{of} increase ^{the year} i.e. 5 posts remained for being filled up ending/1998, The State Government appointed three persons i.e. respondents nos. 7 to 9. The vacancy which ^{was to} occur ^{on} 28.2.1998 could not be available because the State Government granted extension of 3 months to Shri B.K.Ramole, by order dated 20.2.1998, who retired ~~on 27.5.1998~~ w.e.f.

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31.5.1998 vide order dated 27.5.1998.

5.6 The Central Government has issued a notification on the recommendations of the State Government with regard to respondents nos. 7 to 9 by notification dated 24.3.1998 (A/16). Earlier to the said notification, the applicant had given a Legal notice to the State Government. According to the applicant, officers will now be taken into consideration by the Selection Committee which is likely to be met only for two posts of 1998. The said officers are Shri S.N.Dhruv, Shri J.P.Tiwari, Shri S.K.Kehri and Shri V.K.Singh. The list of 1997 became inoperative on the expiry of 31.12.1997. If it was so, there would have been six vacancies before the Selection Committee to consider the zone of consideration from three times the number of vacancies i.e. 18 and the applicant, who is at sl. no. 10 amongst the eligible officers to be considered in 1998, would have been included in the zone of consideration. The impugned orders challenged in this O.A. are coming in the way of promotion of IAS cadre hence the applicant is challenging the impugned orders on the grounds urged in the O.A.

6. Respondent no. 1 in O.A. No. 597/1998 has filed its reply stating that the recruitment by selection from among Non-State Civil Service (For short, NSCS) officers to the IAS, State Cadre is made pursuant to the statutory provisions contained in Rule 4(1)(c) of the IAS (Recruitment) Rules, 1954 (hereinafter called 'Recruitment Rules') read with Rule 8(2) of the Recruitment Rules and the IAS (appointment by selection) Regulations, 1997 (hereinafter referred to as 'Selection Regulations') framed pursuant thereto. The vires of the

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said provisions have been upheld by the Hon'ble Supreme Court in P.M.Bayas vs. UOI (1993 (3) SCC 319) and later in T.Sham Bhatt vs. UOI (1994 (5) SC 165). The ceiling for recruitment from among Non-SCS officers is prescribed by the proviso to Rule 9(1) of the Recruitment Rules. A combined reading of the said provisions, provides gist of recruitment by selection from among Non-SCS officers in the State Governments for appointment to the IAS as under:-

- i) That the number of posts that could be filled by promotion and selection under Rule 8 is subject to the overall ceiling of 33-1/3% of the number of Senior Duty Post (SDP) in the State Government. Central Deputation Reserve (CDR), State Deputation Reserve (SDR) and Training Reserve (TR);
- ii) That such posts that could be filled by selection under Rule 8(2) from Non-State Civil Service officers are carved out of the overall promotion posts as above and is subject to a maximum ceiling of 15% thereof;
- iii) That recruitment by selection from among Non-SCS officers may be made by the State Govt. in the existence of "special cases" and "special circumstances" in the State Government in terms of the judgement of the Supreme Court in P.M.Bayas vs. UOI (1993 (3) SCC 319) case and not merely when suitable State Civil Service officers are not available;
- iv) The eligibility conditions for non-SCS officers considered for appointment to the IAS by selection should be in accordance with the provisions laid down in the selection Regulations.



6.1 The recruitment by selection from among NSCS officers may be made upto a maximum of 15% of the posts that could be filled by promotion in terms of Rule 9(1). The State Government concerned has to take a decision in the matter as to the availability of officers of outstanding merit and ability in service not belonging to SCS during the year and make proposals for recruitment from this category to the Central Government, which in turn takes a decision and determine the vacancies subject to prescribed ceiling, in exercise of the powers conferred by Rule 4(2)(b) of the Recruitment Rules. The recruitment is made against the existing vacancies as on 1st January of the year in which the meeting is convened. The consideration zone is prepared by the State Government upto 5 times the number of vacancies and forwarded to the Commission to be placed before the Selection Committee to be convened by the respondent Union Public Service Commission (hereinafter referred to as UPSC) for this purpose. The Committee makes the selection on perusal of the Annual Confidential Reports of the officers concerned, besides personally interviewing them.

6.2 After the selection is carried out by the Selection Committee as above, the observations on the recommendations of the Selection Committee is forwarded to the UPSC by the State Govt. and the Central Govt., which finally approves the select list. Respondent is required to notify the appointment of the selected officers against the existing vacancies within a period of sixty days. The said exercise was undertaken due to amendments of Rule 9(1) of the Recruitment Rules to the effect that the promotion quota will include, in addition to the components of Senior Duty Posts (SDP) & Central Deputation Reserve (CDR), additional components of State Deputation Reserve (SDR) and Training Reserve (TR)



in the composition of the cadre, which was not the case earlier. As a result, the number of promotion posts increased while a corresponding number of posts in the direct recruitment component decreased.

6.3 In the case of Madhya Pradesh, the number of posts that could be filled by promotion and selection remained as 95 as on 31.12.1997 and by amendments to the IAS (Fixation of Cadre Strength) Regulations, 1955, the number of posts that could be filled by promotion and selection was increased to 114 from 1.1.1998 enabling a total increase of 19 posts. In terms of the policy of phased intake against the additional posts indicated above, the recruitment to the State IAS Cadre by promotion and selection was subject to the ceiling of 101 (86 from SCS and 15 from Non-SCS) during 1998, 107 posts (91 from SCS and 16 from Non-SCS) during 1999 and 114 posts (97 from SCS and 17 from Non-SCS) during 2000 in all. During the year 1998, the State Govt. reported that the number of officers in the State IAS Cadre in position appointed from SCS and Non-SCS after completing action on previous select lists upto the year 1996-97 select list were 84 and 14 respectively. In view of this, the vacancies for recruitment by promotion and selection from among State Civil Service and Non-State Civil Service officers respectively to the IAS. M.P. Cadre from 1998 select list was determined as 2 and 1 respectively and conveyed to the State Govt. and UPSC accordingly.

6.4 The Selection Committee meeting for Madhya Pradesh was conducted on 29.7.1998. The recommendations of the Selection Committee for SCS and Non-SCS were approved by the UPSC on 18.9.1998 and 23.10.1998 respectively. The approved select lists were published and notified by the Central Government. The recruitment during 1999 was subject to the ceiling of $107+6 = 113$



(97 by promotion from SCS and 16 by selection from Non-SCS). In the same manner, during 2000, the recruitment by promotion will be subject to ceiling of 120 in all (102 by promotion and 18 by selection). The number of officers in position in 1998 in the State IAS Cadre was reported to be 84 appointed by promotion and 14 appointed by selection. As the ceiling on recruitment by promotion and selection during 1998 was 86 and 15 respectively, this respondent determined that one post may be filled by selection and two posts may be filled by promotion from SCS officers during 1998. Therefore, the respondent denied that one vacancy was reserved for Non-SCS in order to curtail the chances of promotion of SCS officers during 1998.

6.5 The method of recruitment to the service as mentioned by the applicant is denied. As per Rule 4(1)(c) of the Recruitment Rules, the recruitment by selection from amongst the SCS officers may be made by the State Government in the existence of "special cases" and "special circumstances" in the State Government in terms of the judgement of Hon'ble Supreme Court in P.M. Bayas's case (supra) and not merely when suitable State Civil Service officers are not available. The eligibility conditions for Non-SCS officers considered for appointment to the IAS by selection should be in accordance with the provisions laid down in the Selection Regulations. The State Government is to screen those cases of Non-SCS officers nominated from different departments of the State Government with officers of outstanding merit and ability and prepare a panel comprising the consideration zone for being placed before the Selection Committee for the State to carry out the selection in terms of the Selection Regulations. In that respect, the instructions were issued by this respondent vide letter No. (1)11/16/71-

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AIS(I) dated 6.4.1972, (2) 14015/39/81-AIS(I) dated 30th July, 1982 as per Annexure R-1 and Annexure R-2, respectively.

6.6 The State Government is concerned in regard to declaration of posts in the Non-SCS as equivalent to the post of Deputy Collector. The recruitment to the State IAS Cadre from the channel of Non-SCS has been preferred by the State Government from time to time, which could not have been made without complying with the provisions of the statute, which is ensured by the respondent UPSC at the time of convening the selection committee every year. In terms of the Selection Regulations, the Non-SCS officers to be eligible for being considered for appointment to IAS should be:

- (1) of outstanding merit and ability;
- (2) who hold Gazetted post in a substantive capacity;
- (3) should not have attained 54 years of age as on the 1st January of the year in which the decision is taken to propose the names of the Selection Committee; and
- (4) should have completed not less than 8 years of continuous service as on 1st January of the year in the State Government in any post declared equivalent to the post of Deputy Collector in the State Civil Service.

The State Government forwards the consideration zone to the UPSC who specifies the fulfilment of eligibility conditions before considering the officers. The applicant may be put to strict proof to substantiate the allegation made by him in this regard.

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6.7 To consider the "special circumstances", it is the prerogative of the State to ensure the existence of "special circumstances" as per Rule 8(2) of the Recruitment Rules while proposing the recruitment ^{officers} from amongst Non-SCS/for promotion to IAS. Accordingly, the rights of the applicants under Articles 14 & 16 of the Constitution of India have not been violated.

7. Respondent no. 3 i.e. the State Govt. has filed its reply denying the averments made in the O.A. The State Govt. has denied that no mechanism has been evolved for adjudging outstanding merit and ability of Non-SCS officers. Every year, the G.A.D. requests various departments of the State Govt. to nominate their eligible and willing officers, with a proven outstanding record for consideration for being included in the panel for consideration of the selection committee. The ACR dossiers and other relevant records of the officers nominated by various departments are thoroughly screened by a high level Internal Screening Committee (I.S.C.) of the State Government which is chaired by the Chief Secretary himself. Out of the large number of nominations received, the I.S.C. prepares and shortlists panel which is restricted to five times the number of vacancies in the Non-SCS quota in that particular year. If vacancy in the Non-SCS quota is one (as is often the case) only five officers of outstanding merit and ability are chosen by the I.S.C. out of their much larger number of nominations which are received. The recommendation of the I.S.C. are considered at the highest level in the State Government and only when they are so approved, are sent to the U.P.S.C. for being placed before the Selection Committee. While recommending the officers, it is ensured that the officers recommended



have completed 8 years of service in a capacity which is at least equivalent to that of Deputy Collector. Many a times, recommended officers have served this minimum tenure in a capacity higher than that of the Deputy Collector. After their appointments, they are not immediately sent for training^{but are posted} for a period of six months as an O.S.D., under an experienced Collector.

7.1 Regarding the case of "special circumstances" used in Rule 8(2) applies strictly speaking, to the Central Government rather than the State Government while the role of the State Government is restricted only to making recommendations and it is the Central Government which may in special circumstances and on the recommendation of the State Govt. recruit Non-SCS officers to the IAS. The "special circumstances" ^{as} / envisaged under Rule 8(2) of the Recruitment Rules are reproduced as under:-

"1. Need to cast the net wider than the State Civil Service, while selecting persons from State Services for induction into the I.A.S. This need is well established both because (a) it is not necessary that the best officers in State Govt, Services must belong only to the State Civil Services; and

(b) if choice were to be restricted to the SCS officers only, it would amount to unreasonable discrimination against such of the Non-SCS officers who may have qualifications and attributes similar to those in SCS but who would get excluded merely because they chose to join some other State Service in preference to the SCS.

2. The possibility of officers of outstanding merits and ability being available outside the SCS whose services to IAS Cadre should not be deprived of merely because such officers are not the members of one particular service viz. the SCS."

7.2 The State Government, in view of its above reply, has prayed for dismissal of the O.A.

8. The private respondents/intervenors have intervened themselves by filing an MA No. 767 /2000 for their impleadment. The said MA was allowed and they were directed to be impleaded as parties.



8.1 The intervenors have also contended in their reply that their appointment to the IAS Cadre is fully in accordance with IAS Recruitment Rules, 1954 as amended upto date, as well as IAS (Appointment by Selection) Regulations, 1956 as amended upto date and the Central Government has completed the process of appointment fully in accordance with the law and the principles decided by the Hon'ble Supreme Court in the decision (1) P.M. Bayas vs. Union of India & Anr. in Civil Appeal No. 1414 of 1993 and (2) T. Shambhat vs. Union of India & Ors. (Civil Appeal No. 1106 of 1994) decided on 27th July, 1994. They have also denied the averments made in the O.A. They have mentioned that in the "special circumstances" the selection as a "special case" of the persons who have established their outstanding merit and ability, can be made. The Central Government, being the appointing authority to the IAS has to be finally satisfied about the existence of the "special circumstances" as a condition precedent for making special recruitment. ~~As per~~ Rule 8(2) of the Regulation 3(1) and 3(4-A) of the Selection ~~and~~ Recruitment Rules and Regulations together makes it further clear that the process of selection has to be initiated by the State Government and as such it is for the State Government in the first instance to be satisfied regarding the existence of the "special circumstances".

8.2 ~~As per the law laid down by~~ The Hon'ble Supreme Court in the matter of T. Sham Bhatt vs. Union of India & Ors (Supra) has also dealt with the question of equivalence, in which the Hon'ble Supreme Court has observed as under:-

"Equivalence between officers in Non-SCS and officers in SCS is based on the nature of posts held by them, the scale of pay carried by the posts and duties and responsibilities involve in relations to the posts. Class-II officers of Non-SCS are subordinates to Class-I



officers in SCS while Class II officers in SCS are subordinates to Class I officers in SCS, admits of no controversy"

It is further observed in the same judgement as under:-

"19.....The IAS Recruitment Rules, as is specifically pointed out by us already, envisage selection for appointment to IAS, from non-SCS officers who held posts comparable in importance and responsibilities to that of the post of Deputy Collector and above in SCS, that is, from Non-SCS Class-I officers, and not from Non-SCS officers who held posts of Assistant Regional Transport Officer or Senior Inspector of Motor Vehicles in Transport Departments of a State, which were far inferior to that of the posts of Deputy Collectors in State Civil Services, such as posts of Tehsildars or Deputy Tehsildars..."

8.3 The applicants belong to SCS and their promotion to IAS Cadre is governed under Rule 8'1) of the Recruitment Rules read with ~~Promotion~~ Regulations as amended upto date. The post of Deputy Collector is Class-II post in the State Administrative Service Recruitment Rules, 1975 in the pay scale of Rs. 2200-4000/- ^{Intervenor/}. When the second ^{he} applicant was considered for selection to IAS cadre in the year 1999/ was holding the substantive cadre as Joint Director of Industries which is a Senior Class-I post as defined under M.P. State Industries (Gazetted) Service Recruitment Rules, 1985.

8.4 The State Government has come out with the 1992 Notification in which they have specified as to on what other posts of other departments of the State, the Deputy Collectors, officers of the State Civil Service can be posted. In the case of Industries Deptt., they have been posted on the post of Deputy Director/ Land Acquisition Officer (which is defined as a Class II Officers post in terms of M.P. State Industries Service Recruitment Rules, 1985). The private respondents are ^{of Industries} also Deputy Directors/ (Class-I) since August, 1987. The

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selection process of these private respondents was made in accordance with the rules and there is no violation of any kind of rules including the existence of "special circumstances" at the stage of making appointment under Regulations 3(4) and 3(4-A). Accordingly, the O.A. is liable to be dismissed.

9. The stand taken by respondent no. 1 in their reply to OA No. 514/1998 is the same as has been taken in OA No. 597/1998. Some relevant facts are being clarified by the respondents in this O.A. to the effect that in the year 1996-97 the Selection Committee for Madhya Pradesh met on 29.3.1997 to prepare the ^{select} list towards filling up of 11 vacancies during the period of 12 months from that date. In terms of Regulation 5(1) of the Selection Regulations, 13 officers were included in the select list. The officers at sl. 12 & 13 formed the wait list part of the select list and were eligible to be considered for promotion to IAS against unforeseen/fortuitous vacancies occurring in the promotion quota of the State IAS Cadre during the period of 12 months from the date of preparation of select list in terms of GOI Circular No. 14015/54/95-AIS(I) dated 12.1.1996 (Annexure R/1). The officers upto serial no. 7 of the 1996-97 select list were considered for promotion to IAS on the recommendations of the State Government under Regulation 9(1) of the Promotion Regulations and appointed to IAS upto 31st December, 1997.

9.1 As per the amendment to the IAS (Recruitment) Rules, 1954 ~~and Regulations, 1955, IAS (Appointment by~~ ^{Selection) Regulations, 1956} and the IAS (Fixation of Cadre Strength) Regulations, 1955 as on 31.12.1997, the number of posts that could be filled by promotion and selection in the IAS, Madhya Pradesh Cadre was raised from 95 to 114. There was no certainty/finality on the

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number of vacancies. The State Governments have power to give extension of service upto 6 months beyond the date of superannuation to a member of the IAS. As the select list was prepared for anticipated vacancies, many a time the vacancies could not materialise and a State Service officer included in the select list could not be sure of his appointment to the service in his turn in the order of select list. Delays in the matter of sending recommendations for appointment to the select list officers and their appointment by the Central Government led to litigations. The date of the appointment to service was, therefore, the essential criterion for this purpose. Where the appointment of a select list officer to IAS was delayed due to belated recommendations of the State Government in his case to the Central Government long after occurrence of the vacancies, the promotee officers had to suffer in the matter of fixation of year of allotment/seniority in the IAS and there were frequent representations to the Central Government in this regard. As per amended Rule 4(2) of IAS(Recruitment) Rules, 1954, the effect of amendment is that the Central Government has a mandate to determine the number of vacancies for which recruitment may be made to the IAS by direct recruitment and by promotion every year, for conveying the same to the UPSC which has to prepare the select list for recruitment upto the number of vacancies so determined in accordance with the Promotion Regulations. The definition of the term "year" has been mentioned in the said amended rules, the "year" commences from 1st day of January to 31st December of the same year. Regulation 5(1) of the Promotion Regulations envisages that the number of vacancies for which recruitment may be made by promotion as determined by the Central Government shall not exceed the number of

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substantive vacancies in the promotion posts as on 1st January of the year in which the meeting is held.

9.2 In the instant case, the wait listed officers in the current year 1996-97 select list were eligible to be considered for appointment to the IAS against the additional vacancies that came into force from 1.1.1998 in the light of the clarification in GOI Circular dated 12.1.1996. The increased posts in the promotion quota were not newly created posts but were only posts meant to be eventually transferred from the direct recruitment quota. The State Govt. was further advised to send proposals for recruitment to IAS by promotion and selection during 1998 in such a manner, limiting the recruitment in 1998 with the total number of vacancies filled up by promotion not to exceed 86 and 15 respectively, after complete utilisation of the 1996-97 select list.

9.3 Infact the number of posts that were specified in the promotion quota by amendments dated 31.12.1997 w.e.f. 1.1.1998 could not be expected to be occupied by the promotee officers overnight for the simple reason that many of the additional posts were infact held by incumbent ^{of} direct recruitment officers who cannot be wished away. The realisation of the increased strength of the quota, therefore, could be achieved only by process of attrition, with further retirements, resignation, deaths and Cadre Review etc.

10. The respondent no. 1 has also filed an additional reply in OA No. 514/1998 stating that a select list of 13 officers was prepared by the selection committee and out of these 13 vacancies, 11 vacancies were anticipated vacancies till 19/28.3.1998 as the 2 additional officers were wait-listed as per rules then in force. Out of 13 officers listed, 9 were appointed till 31.12.97 against the nine vacancies that arose and available till 31.12.1997. Details of the 2 vacancies anticipated to

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arise from 1.1.1998 to 19/28.3.1998, or the details of all 11 vacancies anticipated to arise during next 12 months from the date of meeting of the selection committee to be furnished.

10.1 The Central Government invoked the above mentioned statutory provisions in order to fill up the additional posts in the promotion quota in a phased manner over a period of three years and accordingly in respect of the IAS M.P.Cadre it was decided that out of the 19 additional posts enabled in the promotion quota, 6 posts could be filled during 1998, 6 more posts during 1999 and 7 remaining posts during 2000 and in the result, the maximum strength of promotion quota enabled in the Cadre Strength Regulations could be fully realized by the year 2000. Accordingly the total number of posts in IAS M.P. Cadre that could be filled by promotion and selection during the year 1998, 1999 and 2000 was worked out as under:-

<u>YEAR</u>	<u>PROMOTION</u>	<u>SELECTION</u>	<u>TOTAL</u>
1998	86	15	101
1999	91	16	107
2000	97	17	114

The number of posts that could be filled by promotion and selection from SCS and Non-SCS during 1998 based on the existing vacancies as on 1.1.1998 was subject to the ceiling of 86 by promotion and 15 by selection in all. The appointments notified on the recommendations of the State Government from the 1996-97 select list against the 13 slots of the 1996-97 select list are as under:-

<u>Sl.No.</u>	<u>Name of the Officer</u> <u>S/Shri</u>	<u>Date of appoint-</u> <u>ment.</u>
1.	Dinesh Kumar Shrivastava	11.7.1997
2.	K.MGautam	08.09.1997
3.	L.N.Suryavanshi	08.09.1997
4.	Omish Mundara	08.09.1997

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5.	Pradeep Kumar Khare	08.09.1997
6.	Ravindra Kumar Pastore	29.10.1997
7.	Smt. Seema Sharma	03.12.1997
8.	Rajnikant Gupta	23.01.1998
9.	Surendra Kumar Behar	11.02.1998
10.	Arun Kumar Pandey	11.02.1998
11.	S.N.Dhruva	24.03.1998
12.	Janardhan Prasad Tiwari	24.03.1998
13.	V.K.Singh	24.03.1998

10.2 It was observed that the officers unconditionally included in the 1996-97 select list and not promoted as on 31.12.1997 were entitled to be considered for appointment against the additional vacancies enabled in the promotion quota, in view of the fact that the 1996-97 select list in which their names were included remained in force in terms of Regulation 7(4) of the Promotion Regulations as it stood and applicable to their case and the additional posts occurred during such validity period of the select list. The amendments dated 1.1.1998 did not in any way expressly or impliedly prejudice the rights of the persons already approved for recruitment under the Principal Regulations as it stood on 31.12.1997 for appointment to IAS from the 1996-97 select list against vacancies that became available in the promotion quota for being filled in. In view of this, the remaining unconditionally included officers of 1996-97 list were advised to be considered for appointment against the additional vacancies enabled in the promotion quota and determined for induction during 1998 as the immediate charge on these posts in the first instance out of the six vacancies that were released to be filled in during 1998 in terms of the decision to fill up the additional posts in a phased manner over three years, 3 posts were filled by considering appointment of the officers at sl.no. 11 to 13 of the 1996-97 select list. on the recommendations of the State Government the appointment of the three officers to IAS were notified on 24.03.1998. out of the remaining three posts, two posts were determined to be filled by promotion

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from SCS and one by selection from Non-SCS during 1998. The Non-retirement of Shri ^{K.}B. Ramole on the date he was due to retire on account of extension of service by three months therefore did not materially affect the operation of the 1996-97 select list in view of the above.

10.3 The ceiling on posts to be filled by promotion and selection thus kept at 86 and 15 respectively, the incumbency in the State IAS Cadre on the eve of recruitment during 1998 was ascertained as 84 persons appointed by promotion from SCS and 14 persons appointed by selection from Non-SCS. It was, therefore, determined that recruitment may be made to the State IAS Cadre by promotion upto 2 posts from SCS and upto 1 post by selection from Non-SCS during 1998 and the State Govt. and the UPSC were advised accordingly by GOI letter dated 4.5.1998.


10.4 During the year 1998 the cadre review of the IAS Madhya Pradesh Cadre was taken up under Rule 4(2) of the IAS (Cadre) Rules, 1954 and by Notification dated 16.3.1998, the authorised cadre strength of the IAS M.P. Cadre was increased and the promotion quota was increased with 6 additional posts as a result. As the 6 additional posts in the promotion quota were newly created in addition to the existing strength and did not require to be transferred from elsewhere (which was the case with the 31.12.1997 revision), these 6 additional posts formed the additional existing vacancies as on 1.1.1999, for the purpose of recruitment during 1999. In the circumstances the maximum number of posts that could be filled by promotion and selection during 1999 was computed as under:-

By promotion	: 97
By Selection	: 16
Total	: <u>113</u>

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10.5 On the eve of commencement of recruitment for the year 1999, the State Government reported incumbency of 82 officers appointed by promotion and 15 officers appointed by selection from Non-State Civil Service, in position. Thus, the number of vacancies for recruitment during 1999 was determined by the Central Government as 15 (97-82) posts by promotion and 1(16-15) post by selection during 1999.


10.6 In reply to Para 2(f) it is further submitted that the Respondent Government of Madhya Pradesh is substantively concerned in regard to the information regarding the occurrence of vacancies in the promotion quota due to retirement of Shri B.K. Ramole in the year 1998. As far as this Respondent is concerned, as already submitted the 1996-97 select list was prepared taking into account the anticipated vacancies in the promotion quota over a period of 12 months from 20.3.1997, which included the vacancy of Shri B.K. Ramole anticipated on 28.2.1997 in terms of Regulation 5(1) of the Promotion Regulations as it stood and applicable on 20.3.1997. However, since Shri Ramole was given extension of service beyond 28.2.1997 the 11th slot in the 1996-97 select list could not have been filled by promotion against that vacancy. However, since Shri S.N.Dhruva stood unconditionally included at S.No.11 of the 1996-97 select list and the additional vacancies released from the promotion quota on 1.1.98 occurred during the validity period of the select list of 1996-97, he was to be considered for appointment against one of the vacancies along-with the wait-listed officers at S.No.12 and 13 of the list. As regards the vacancy that actually arose on 31-5.1998, on retirement of Shri B.K. Ramole on expiry of extension of service, it turned out to be an existing vacancy as on 1.1.1999 for the purpose of recruitment by promotion from the 1999



select list for Madhya Pradesh, in terms of the amended Promotion Regulations. In the circumstances the reply to the query raised in this para by this Tribunal is that this vacancy, as the existing vacancy as on 1.1.1999, was included for preparation of the select list of 1999 in terms of Regulation 5(1) of Promotion Regulations, as amended on 31.12.1997.

11. In pursuance to the reply filed by respondent no.1 in OA No. 514/1998, the State Govt. i.e. respondent no. 3 has avered that they have acted in accordance with the instructions issued by the Central Government from time to time, no independent decision has been taken by the State Govt. in respect of filling in the vacancies which had occurred at respective time. The vacancy which was to occur on 28.2.1998 could not become available because the State Government granted extension of three months to Shri B.K.Ramole, Collector, Tikamgarh by an order dated 20.2.1998. The extension is within the power of the State Govt. under the proviso to Rule 16 of All India Service (DCRB) Rules, 1958. Said Shri Ramole was retired after attaining the age of 58 years on public grounds. The said extension shall be recorded on the public ground and there was no malafide intention.

12. Respondent no. 1 has filed its reply in OA No. 80/1999 taking the grounds as has already been taken in the above O.As. The relevant reply to this O.A. is that ~~the respondents~~ S/Shri R.K. Gupta, S.K.Behar, A.K.Pandey, S.N.Dhurva, J.P.Tiwari, & V.K.Singh, SCS officers were included at sl. no. 8 to 13 of the 1996-97 select list prepared by the Selection Committee for M.P., which met on 29.3.1997 towards filling up of vacancies anticipated over a period of 12 months from that date. In terms of the policy of filling up of the promotion posts envisaged by the



Circular letter dated 11.2.1998, the recruitment by promotion and selection to the State IAS Cadre during 1998 was subject to the ceiling of 101 posts in all (86 by promotion and 15 by selection). The said officers at sl. no. 8 to 11 of the 1996-97 select list recruited against the anticipated vacancies of 1997-98, as also, the two officers at serial no. 12 and 13 of the list had the legitimate expectation to be considered for promotion to IAS against the vacancies that occurred in the promotion quota during the 12 months period from the date of preparation of the select list in terms of the provisions by which they were included in the select list, approved by the UPSC on 12.06.1997. ^{It was provided that} the said officers may be considered for appointment against the accrued vacancies and the additional vacancies as the immediate charge, before taking up the process of preparation of the 1998 select list. on the recommendations of the respondent Government of M.P., these five officers were considered and appointed to the IAS against 5 vacancies by impugned Notifications dated 23.1.1998, 11.2.1998 and 24.3.1998, ~~respectively.~~

12.1 Determination of vacancies for recruitment by drawing up of 1998 select list, as against the ceiling of 86 posts by promotion, the State Govt. reported that 84 officers were in position and as against the ceiling of 15 posts by selection, it was reported that 14 officers from Non-SCS category were in position. The Government of India determined the vacancies for recruitment by promotion and selection from the 1998 select list as 2 posts and 1 post, respectively. Accordingly, Govt. of India issued the letter dated 1.5.1998. Respondent no. 8 i.e. V.K. Katela was unconditionally included at sl.no.2 in the 1998 select list prepared by the Selection

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Committee in its meeting held on 29.7.1998 and he was appointed to IAS under Notification dated 28.9.1998. Respondent no. 4 was provisionally included at sl. no. 1 of that select list subject to grant of integrity certificate by the State Government and there was no appointment to the service though one post was kept reserved for him till the expiry of validity period of the select list.

12.2 The appointment of respondents no. 5 to 8 to IAS is in conformity with the provisions of the applicable statutory rules and regulations that prevailed during the relevant period.

13. The respondent no. 2 i.e. UPSC has also filed its reply in OA No. 80/1999 adopting the reply filed by the first respondent in all the OAS. However, it has submitted that in accordance with the provisions of Regulation 5(4) of the ^{Promotion} Regulations, the Selection Committee finally classified the eligible officers included in the zone of consideration as 'outstanding', 'Very Good', 'Good', or 'Unfit' as the case may be, on an overall relative assessment of their service records. Under Regulation 5(5) ^{of the said Regulations} the Selection Committee prepares a select list by including the required number of names first from amongst the officers finally classified as 'outstanding', then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category is maintained in the order of their respective seniority in the State Civil Service. The Selection Committee also keeps in view order awarding penalties or any adverse remarks communicated to the officer, which, even after due consideration of his representation have not been completely expunged.

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13.1 In this respect, the Selection Committee meeting for preparing the select list of 1998 was held on 29.7.1998. The applicant Shri R.S.Pandey was considered at sl. no. 6 in the eligibility list, on the basis of overall assessment of his service records, he was assessed as 'Very Good'. The officers at sl. no. 1,2 and 3 were assessed as 'Good', 'Good' and 'Unfit' respectively and the officers at sl. no.4 (H.S.Shekhawat), 5 (V.K.Katela) and 6 (the applicant) were all assessed as 'Very Good'. Due to non-submission of integrity certificate of Shri H.S. Shekhawat by the State Govt., he was included in the select list of 1998 provisionally subject to furnishing of Integrity Certificate by the State Govt. The applicant, who is at sl.no. 6 could not be included in the select list due to statutory limit on the size of the select list., hence the case of the applicant was not considered.

14. Respondent no. 3 i.e. State of Madhya Pradesh in reply to OA No. 80/1999 has adopted the reply already filed in other two OAs.

15. The applicants have filed the rejoinders to the respective replies of the respondents. The applicants have also distinguished the judgements of Hon'ble Supreme Court, referred to above, on the facts of the present OAs. The contention of the applicants is that the nominations of the non-SCS officers for being considered for promotion to the IAS is done by different departments of the State Government who have no uniform criteria for such nominations. There is no uniformity in writing ACRs in different departments. Thus there is no uniform yardstick so as to decide the basic minimum requirement for non-SCS officers for being sponsored for consideration for

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promotion to the IAS. The specific contention of the applicants in the rejoinder is that the State Government's stand is diametrically opposite to that of the Union of India. The Union of India have categorically stated that determination of the "special circumstances" is done by the State Government. But the State Government has said that the determination of "special circumstances" is done by the Union of India. This contradictory stand of two respondents proves that the "special circumstances" are undeterminable. As per the statements made by the official respondents, it appears that under Rule 8(2) "special circumstances" has not been considered by either of the Governments. On this averment made by the official respondents, it is clearly admitted that as per rules "special circumstances" and "special case" have not been decided. Hence, the selection of the private respondents is illegal, against the law and contrary to rules & regulations and the same are liable to be quashed and set aside.

15.1 One of the private respondents, who was a Senior Class I officer of Non-SCS ^{treated} ~~was~~ as superior compared to the Deputy Collector (which is Class-II post ^{under} ~~of~~ State Civil Service ^{under} ~~the~~ Service Rules governing the State of Madhya Pradesh) under the Madhya Pradesh Industries Service Recruitment Rules. As per the said Rules, private respondent is holding the post of Joint Director Industries which is a Class-I post carrying the pay scale of Rs. 1150-1500/-. But there is no declaration by the State Government that the post held by the private respondent is equivalent to the post of Deputy Collector as defined in the Recruitment Rules. Hence, on this ground also, the selection of the private respondents are liable to be quashed and set aside.

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Sh. R. Tiwari, Sr. Advocate

16. We have heard ~~Shri B. Da. Silva~~ appearing for the applicants; Shri B. Da. Silva counsel for respondents No. 1 & 2; Shri K. C. Ghildiyal, counsel for respondent no. 3 and **Sr. Advocate** Shri Ravindra Shrivastava with Shri Manoj Sharma, counsel for private respondents and have perused the pleadings and other material available on record apart from the various judgements relied upon by the either sides.

17. The method of recruitment from amongst Non-SCS to IAS is provided under Rule 4 (1)(c) of IAS (Recruitment) Rules, 1954. The 3rd respondent i.e. State Government has prepared the **list of officers** list for consideration of the Selection Committee. The officers nominated by various departments are screened and shortlisted by High Level Internal Screening Committee. The short list panel is restricted to five times the number of vacancies in the Non-SCS quota in that particular year. In the instant case, one vacancy arose in the year 1997 in the Non-SCS quota, only 5 officers of 'outstanding' merit were chosen by the I.C.C. While recommending the said panel, the State Government has to make out the case for 'special circumstances' under Rule 8(2) of the IAS (Recruitment) Rules, 1954. The admitted fact is that neither the Central Govt. nor the State Govt. has made out a case. In para 7 of the reply of the State Govt. it is stated that under Rule 8(2) of the said Rules, it is the role of Central Govt. to make out a case for 'special circumstances' while in para 5.11 of the reply of Central Govt., it is stated that 'it is the prerogative of the State Govt. to ensure the existence of 'special circumstances' as per Rule 8(2) of the Recruitment Rules while proposing recruitment from

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among Non-SCS officers for appointment to IAS". The directives issued by the Hon'ble Supreme Court in P.M. Bayas case (supra) and the Rule 8(2) of the Recruitment Rules have not been complied with by either of the Govts. The relevant paras of the judgement in P.M. Bayas case are extracted as under:-

"9. We may examine the scheme of the Rules and Regulations. Rule 4(1) of the Rules provide four sources of recruitment to the IAS. The competitive examination and by promotion of substantive members of the State Civil Service are the two main sources of recruitment. Rule 4(1)(c) provides recruitment to IAS "by selection in special cases from among persons, who hold in a substantive capacity gazetted posts in connection with the affairs of a State and who are not members of the State Civil Service". "In special cases from among persons" means the selection as special cases of the persons who have established their outstanding merit and ability while serving the State. Members of the State Civil Service who are not 'outstanding' but are only 'good' and 'very good' are also eligible to be considered for appointment to IAS but under Rule 8(2) of the Rules, it is only an 'outstanding' officer who is eligible. It is the outstanding merit and ability which makes him a 'special case' in terms of Rule 8(2) of the Rules. Rule 8(2) of the Rules read with Regulation 3 of the Regulations lays down the procedure for making the special selection provided under Rule 4(1)(c) of the Rules. The Central Government, being the appointing authority to the IAS, has to be finally satisfied about the existence of the "special circumstances" as a condition precedent for making special recruitment. The "special circumstances" are to be spelled out from Rule 8(2) of the Rules read with Regulation 3 of the Regulations. Rule 8(2) which talks of "outstanding ability and merit" when read with Regulation 3(1) and 3(4-A) of the Regulations makes it clear that the "special circumstances" required to be seen are (i) the existence of officers with 12 years of continuous service in a gazetted post under the State Government - other than State Civil officers - who are of outstanding merit and ability and (ii) the satisfaction of the State Government that in public interest, it is necessary to consider such officers for promotion to the IAS.

10. Reading Rule 8(2) and the Regulations together it is further clear that the process of selection has to be initiated by the State Government and as such it is for the "State Govt. in the first instance to be satisfied regarding the existence of the "special circumstances" as culled out by us in the above para.

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11. It is the State Government which proposes the names of suitable officers under the Regulations for appointment by selection to the I.A.S. The proposals of the State Government are considered by the Selection Committee and its recommendations are placed before the State Government. Thereafter the State Government sends the recommendations alongwith its observations, if any, to the Union Public Service Commission for approval. When finally approved by the Commission the appointments are made by the Central Govt. Regulation 3(4-A) further provides that the Central Government may not appoint any person if it is of the opinion that, during the period intervening between the final approval by the Commission and the date of proposed appointment, there occurs any deterioration in the work of such officer or there is any other ground which renders him unsuitable for appointment or it is necessary and expedient so to do in public interest. It is, thus, obvious that the "special circumstances" as required under the Rules and the Regulations have to be seen by the State Government. The Central Government being the appointing authority has to finally approve the State Government's proposals which reach the Central Government through the process of selection."

According to Rule 4(1)(c) of IAS (Recruitment) Rules, 1954 the method of recruitment to the service is by selection in special cases followed by selection in "special circumstances" from among persons, who hold in a substantive capacity gazetted posts in connection with the affairs of a State and who are not members of State Civil Service..

18. There should exist "special circumstances" for recruiting persons and the State Government decides "special circumstances necessitating the appointment by selection of officers to the IAS from amongst non-SCS officers. The State Govt. reports the "special circumstances" to the Central Govt. which considers the same and intimates its decision about the same as per Rule 8(2) of IAS (Recruitment) Rules, 1954 as extracted in para 2 above. The final authority is the Central Government. The Non-SCS officers to be considered for appointment by selection to the IAS should hold posts, which have been declared as equivalent to the Deputy Collectors and they should have completed at least 8 years service on a gazetted post. Officers being considered for appointment by selection to the IAS should be of outstanding merit and ability. A decision is also required to be taken as to how many posts are required to be filled up through this process of appointment by selection to the I.A.S. This exercise is to be

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carried out for each and every year depending upon the existence of "special circumstances" and requirements. In certain years the special circumstances may not exist at all, and in such years, all the available vacancies in promotion quota ^{may} go to SCS officers.

19. Where Non-SCS officers fulfilling the above-mentioned conditions are not available, the vacancies should be filled by promoting suitable SCS officers, as they cannot be carried forward for the next year because there is no separate quota for appointment by selection of Non-SCS officers. Every year a fresh decision is to be taken as regards the number of posts to be filled up through the process of selection of non SCS officers for promotion to the IAS. This means that every year it has to be determined as to from what service and for what special purpose the selection is to be made. This too has not been done. The respondents have failed to demonstrate that the process of determination of special circumstances and declaration of equivalence of Non-SCS officers with Deputy Collectors was ever made.

20. The first respondent and the third respondent have side-tracked the above issues and, as submitted above, it has not been demonstrated by the respondents that the process of determination of special circumstances and declaration of equivalence of Non-SCS posts to that of Deputy Collectors was ever made. It is obvious that they have taken a mutually contradictory stand, the explanation for which has not come from the Union of India and the State Government. The fact of the matter is that the special circumstances have not been decided ~~by~~ by the Union Government or the State Government under the said Rules. The conditions of special circumstances have totally been ignored. It is vaguely stated that Non-SCS officers who were recommended for promotion to the IAS have served the minimum tenure of eight years in a post equivalent to that of the Deputy Collector. It is thus clear ~~it~~ that even as per the averments of the State Government ~~it~~ has

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so far not declared equivalence of post held by Non-SCS officers to that of the Deputy Collectors. Even the formal order has not been issued.

21. In the DPC held in the month of August, 1999, at least one Non-SCS officer, who was considered for induction into I.A.S., was very junior. He is Shri N.S. Bhatnagar, who was initially appointed as an Assistant in the M.P. Secretariat and who was promoted out of turn, much to the heart-burn of other Under-Secretaries, to the post of Deputy Secretary in the year 1995, while the Deputy Collectors who were considered for promotion to the IAS in the same DPC were far senior in all respects, namely, length of service, salary, work experience etc. Similarly, vide Union of India's notification dated 26.12.2000, two non SCS officers, namely, Subhash Jain & D.P. Ahirwar have been inducted into IAS, both of ~~them~~ have lesser length of service than SCS officers, who were considered by the same DPC. Under the provisions of the above mentioned Rules, recruitment to IAS from amongst Non-SCS officers can be made only in "special circumstances" and from persons of outstanding ability and merit, in special cases which are to be determined each ~~and every~~ year. More often, ~~that too~~, officers, who are senior, are not inducted into IAS because their relative low merit is not found sufficiently high. Thus enough safeguards have been provided for ensuring fair play in the IAS (Appointment by Promotion) Regulations, 1955

22. It is pertinent to note that certain officers in Non-SCS have never faced PSC or any kind of competitive examination at the time of their entry into State Service. During the pendency of the Original Application, private respondents Shri R.K. Shrivastava and Shri A.K. Bhatt ^{been} have/inducted into the I.A.S. through the process of selection from amongst Non-SCS officers. As has been

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demonstrated / proved above, the selection and appointment of the respondents are contrary to the provisions of the Rules and Regulations. In view of the judgements of the Hon'ble Supreme Court rendered in the matter of T.Shambhat Vs. Union of India (Supra) and P.M.Bayas vs. Union of India & Others (Supra), the official respondents have not followed the strict compliance of the directions of the Hon'ble Supreme Court to determine the special circumstances.

23. Even the guidelines issued by the Union of India to the State Governments for preparation of proposal for SCM for promotion to IAS has not been followed. The State Government has to follow the Regulation 4 of the IAS (Appointment by Selection) Regulations, 1997 in strict sense.

24. The State Government i.e. respondent no. 3 has produced the document MA-1 i.e. letter no. E-1/39/2000/5/1 dated 20.6.2003. The said letter was issued on the basis of the letter dated 10.6.2003 in which it is certified that the post of Assistant Director of Industries in the scale of Rs. 425-900(pre-revised) which Shri Arun Kumar Bhatt was holding from 5.11.1980 was equivalent to the post of Class-II Deputy Collector (SCS) in duties and responsibilities as would be evident from the pay scale schedule notified. According to the schedule enclosed, the pay scale of Rs. 425-900 is classified as Class-II. The service particulars as ~~xxx~~ given in the letter dated 18.7.2003 issued by the DOP&T, New Delhi (Annexure MA-2) are as follows:

Sl.no. as per select list	Name	Date of appoint- ment.	Date of appoint ment to SCS	Comp- leted yrs. till 31.12. 1998.	Weight- age admi ssible wrt. 2001	YOI enti tled	YOI Assi gned
1.	Shri A.K.Bhatt	20.10.99	5.11.80	18	6	1993	1993

For considering equivalence,

25. The pay scale is not the only criterion but it is one of the ingredients to declare that the post held by Non-SCS officers is equivalent to that of the Deputy Collector. The State Government has taken the contention in

their reply that while recommending the names under non-SCS quota, it is ensured that the officers recommended have completed eight years of service in a capacity which is at least equivalent to that of the Deputy Collector. It only shows that there is no declaration of equivalency. Para 19 of the judgment of Hon'ble Supreme Court in T. Shambhat's case (supra) is relevant, which is reproduced below :

"19.....
The IAS Recruitment Rules, as is specifically pointed out by us already, envisage selection for appointment to Indian Administrative Service from non-State Civil Service officers who held posts comparable in importance and responsibility to that of the posts of Deputy Collectors and above in State Civil Service, that is, from non-State Civil Service Class I officers and not from non-State Civil Service officers who held posts of Assistant Regional Transport Officers or Senior Inspector of Motor Vehicles in Transport, Department of a State which were far inferior to that of the posts of Deputy Collectors in State Civil Service, such as, posts of Tehsildars or Deputy Tehsildars. If that be so, it cannot admit of any doubt that the Central Government which had made Regulation 2 of the IAS Second Amendment Regulations to make eligible for selection and appointment to the Indian Administrative Service from non-State Civil Service Class II officers has done so clearly exceeding the parameters or authority conferred upon it in the matter by Rule 8(2) of the IAS Recruitment Rules itself. This circumstance and factual reality in itself is sufficient to expose and demolish the myth that non-State Civil Service ~~officers~~ Class II officers were brought into the pool of non-State Civil Service officers by the IAS Second Amendment Regulations by classifying them as officers belonging to common class along with non-State Civil Service Class I Officers, for achieving the object of the IAS Recruitment Rules - the object of selecting the officers of outstanding ability and merit for appointment to Indian Administrative Service. Even otherwise, when in the service set-up of non-State Civil Service, non-State Civil Service Class II officers are unequals when compared with non-State Civil Service Class I officers, in important matters such as nature of posts held by them, duties and responsibilities to be discharged by them in such posts, scales of pay carried by such posts, it is difficult to comprehend how they can be put in a common class for judging their comparative ability and merit in their respective job performances in the context of their suitability for appointment to the Indian Administrative Service. What has been done by the IAS Second Amendment Regulations, if could be illustrated, is the same as pooling together a Senior Collector in State Civil Service and a Deputy Tehsildar in State Civil Service and make them a common class State Civil Service officers and ask the State Government to recommend the cases of either of them for appointment to Indian Administrative Service. No doubt, doing of such a thing by the Central Government appears to have been attempted, although later on,

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fortunately, given up obviously realising that such thing if done could have the effect of demoralising Class I officers in State Civil Service, since the same was bound to go against the accepted notions that it is only senior State Civil Service officers who could be considered for appointment to Indian Administrative Service and not officers in the lower rung. Hence, the classification of officers brought about by Regulation 2 of the IAS Second Amendment Regulations, ^{is} ex facie arbitrary, unreasonable and discriminatory and violates Articles 14 and 16 of the Constitution. Again Rule 6 of the IAS Recruitment Rules, when making it clear that initial appointments to be made to Indian Administrative Service from both officers of State Civil Service and non-State Civil Service on senior time-scale of pay and not junior time-scale of pay on which persons directly recruited for that service would be appointed, demonstrates unequivocally that Class I officers in State Civil Service and in non-State Civil Service already in senior scales of pay or in closer scales of pay and not Class II officers in State Civil Service and in non-State Civil Service, drawing salaries falling below junior scales of pay, classification done under Regulation 2 of the IAS Second Amendment Regulations to provide eligibility to non-State Civil Service Class II officers cannot but be arbitrary and unreasonable as would attract the inhibition of Articles 14 and 16 of the Constitution."

26. We do not find that the post held by Sh. A.K. Bhatt has been declared equivalent to the post of Deputy Collector in the State Civil Service. The meaning of the word "declare" as per Black's dictionary is as under :

"To make known, manifest, or clear. To signify, to show in any manner either by words or acts. To publish; to utter; to announce clearly some opinion or resolution. To solemnly assert a fact before witnesses as where a testator declares a paper signed by him to be his last will and testament."

27. Admittedly, there is no declaration as prescribed under the said rules. The underlying idea in framing the said Rules is to "declare" that any person adversely affected can challenge the legality and validity of the selection of the officers who have been considered under non-SCS quota. In case of SCS officers, the aggrieved persons who are in the seniority list, can challenge the legality and validity of the selection. Since there is no strict compliance of Regulations 3 and 4 of the said regulations, the selection and then appointment of respondents nos. 4 & 5 made by the official respondents is illegal, bad in law & contrary to rules and regulations.

28. The applicants have challenged the validity of the OM No. F-14015/1/98-AIS(I) dated 11.2.1998 (Annexure A-7). The said OM is issued by the DOP&T to the 3rd respondent i.e. State Government in pursuance to the amendment to IAS (Fixation of Cadre Strength) Regulations, 1955, ~~and~~ IAS (Appointment by Promotion) Regulations, 1955 and IAS (Appointment by Selection) Regulations, 1997. The same comes into force with effect from 1.1.1998.

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29. In the result, for the reasons assigned above, the relief claimed in OA 597/98 to declare that Rule 8(2) of the IAS (Recruitment) Rules, 1954, proviso to Rule 9(1) of IAS (Recruitment) Rules, 1954 and Regulation 4 of the IAS (Appointment by Selection) Regulations as ultra vires, of the Constitution of India, the same is rejected.

29.1 Relief 8.5-A in OA 597/98 is allowed to the extent ^{that} the selection of respondents nos. 4 and 5 (in OA 597/98) i.e. non-SCS officers is quashed and set aside. It is held that the appointment by selection to the cadre of IAS ^{was to be} shall be made from amongst the non-SCS officers on the basis of provisions of rules and regulations and in accordance with law. The respondents are directed to convene a ^{meeting of} review selection committee to consider the claim of the applicants for inclusion into IAS and if they are found suitable, they may be granted consequential benefits in accordance with rules & law. The OA 597 of 1998 is, therefore, partly allowed.

29.2 Since the leading OA 597/98 is partly allowed, the other two OAs i.e. OA.No.514/1998 and OA 80/1999 are accordingly disposed of.

29.3 The Registry is directed to place a copy of this order in all the files of the above OAs.

29.4 In the facts and circumstances of the case, the parties are directed to bear their own costs, in all the OAs.

(G. Shanthappa)
Judicial Member

(M.P. Singh)
Vice Chairman

Issued
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25.3.04

पुस्तक सं ओ/न्या..... जयलपुर, दि.....
प्रतिनिधि अयोध्या

- (1) सचिव, उच्च न्यायालय जयलपुर
- (2) आवेदक श्री/श्रीमती/शु.....के कार्यालय R. Tiwari, Adm. 3 sel
- (3) प्रत्यक्षी श्री/श्रीमती/शु.....के कार्यालय B. danlra, Adm. 3 sel
- (4) संयोजक, कोषा, जयलपुर न्यायाधीश Kc Chidyal, Adm. 3 sel
- सूचना एवं आवश्यक कार्यवाही हेतु R. Shrivastava, Adm. 3 sel

(Signature)
अप न्यायालय
25/3/04
AFR, PB