

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

Original Application No.591/2005

Date of Decision: 01.6.2006

Virendra Bahadur Singh
Shri R.N.Mathur

... Applicant
... Advocate for
Applicant

Versus

Union of India & Ors.
Shri Bhanwar Bagri

... Respondents
... Advocate for
Respondent No.1

Shri V.S.Gurjar

... Advocate for
Respondents
No.2 to 4

CORAM:

HON'BLE MR.V.K.MAJOTRA, VICE CHAIRMAN
HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDL)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes.
2. To be referred to the Reporter or not ? Yes.
3. Whether their Lordship wish to see the fair copy of the Judgement? Yes.
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes.

(M.L.CHAUHAN)
MEMBER (J)

V.K.Majotra
(V.K.MAJOTRA)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Date of Decision: 1st June, 2006

ORIGINAL APPLICATION NO. 591/2005

CORAM :

HON'BLE MR.V.K.MAJOTRA, VICE CHAIRMAN
HON'BLE MR.M.L.CHAUHAN, MEMBER (J)

Shri Virendra Bahadur Singh,
s/o late Rai Saheb Shri R.D.Singh ji,
DG's Residence Opposite Vishwakarma
Industrial Area, Jaipur.
Presently posted as Director General,
Civil Defence & Commandant General
Home Guards, Rajasthan, Jaipur.

By Advocate : Shri R.N.Mathur

... Applicant

Versus

1. Union of India
Through Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

By Advocate : Shri Bhanwar Bagri

2. Chief Secretary,
Government of Rajasthan,
Jaipur.

3. State of Rajasthan through
Secretary DOP,
Government of Rajasthan,
Jaipur.

4. Shri A.S.Gill, IPS,
Director General of Police,
C/o Police Hqrs.,
Rajasthan, Jaipur.

By Advocate : Shri V.S.Gurjar

... Respondents

ORDER

PER HON'BLE MR.V.K.MAJOTRA

W

By virtue of this OA the applicant has assailed appointment of respondent No.4, Shri A.S.Gill, on the cadre post of DG&IGP Rajasthan vide Ann.A/1 dated 12.4.2005. The applicant has also challenged the legality and validity of the initial appointment of respondent No.4 to the post of DG&IGP Rajasthan on December 01, 2004. The applicant has sought following relief :

- "(A) That the order dated 12.4.2005 by which respondent No.4 was promoted on the post of DG & IGP may be set aside and quashed.
- (B) That the selection proceedings by way of note sheets dated 12.4.2005 may be held to be incredible mechanism and quashed.
- (C) That the respondent State may be directed to appoint applicant on the post of DG & IGP as the only rightful claimant on 30.10.2004.
- (D) Any other order as this Hon'ble CAT may deem fit and proper in the circumstances of this case."

2. It has been stated on behalf of the applicant that on 30.10.2004, before the retirement of Shri V.K.Hansukha and Shri B.S.Rathore, there were only three posts of DG rank in Rajasthan viz: DG&IGP, DG ACB and Director General Civil Defence & Commandant General Home Guards. The fourth post of Director, State Crime Record Bureau (SCRB, for short) was not a DG rank post, but a cadre post in DIG's rank only. In May, 2003 this post was wrongly upgraded to the rank of DG as the State Government does not have the powers to upgrade a post; it can only create an ex-cadre post or

keep a cadre post in abeyance. Also the post of Director SCRB cannot be considered a DG rank post having been equated with DIG's rank only as per Ann.A/2 dated 1.8.2003, which is a copy of the cadre list. Vide Ann.A/3 dated 16.5.2005 Government of India did not accede to the proposal of the Government of Rajasthan for creation of the post of DG SCRB from 21.7.2000 at the level of DG flouting action of State Government in creation of such a post being violative of the second proviso of Rule-4(2) of the IPS (Cadre) Rules, 1954 with Rule-9(7) of the IPS (Pay) Rules, 1954. In this backdrop, the State Government abolished the post of DG SCRB from May, 2005. Thus, it has been averred on behalf of the applicant that on 30.10.2004 there were only three posts of DG rank on which only Shri Arun Duggar, the senior-most officer of 1969 batch, could have been promoted to the rank of DG and posted on the ex-cadre post and the applicant and Shri S.S.Darbari, being the seniormost officers in DG rank after retirement of Shri V.K.Hansukha and Shri B.S.Rathore, should have been posted to the two cadre posts of DG&IGP Rajasthan and DG Civil Defence & Commandant General Home Guards. Consequently, Shri S.N.Jairath could not have been promoted to the rank of DG at all and in any case even if the State Government created any ex-cadre post for him, he certainly could not have been posted to a cadre post of DG&IGP Rajasthan.

3. The applicant is an Indian Police Service (IPS) Officer of 1968 batch. He had been holding the post of Director SCRB in the pay scale of DG (which post was in the grade of DIG as per recruitment rules but was subsequently



upgraded and redesignated as DG SCRB w.e.f. 30.10.2004). He was eligible for appointment to the post of DG&IGP Rajasthan. He has challenged the promotion of respondent No.4 to the post of DG and simultaneously DG&IGP on 31.10.2004 on the retirement of Shri V.K.Hansukha, DG&IGP Rajasthan.

4. Earlier also, the applicant had challenged the appointment of respondent No.4 on the post of DG&IGP through OA 468/2004. The said OA was allowed on 4.3.2005 observing that the applicant had a preferential right atleast of consideration for the cadre post of DG&IGP Rajasthan. The following directions were made:

"Accordingly, impugned order dated 30.11.2004 (Ann.A/1) is quashed. The respondent No.2 is directed to effect consideration of the case of the applicant alongwith those holding posts in the grade of DG for posting him to the post of DG and IGP which has fallen vacant on account of retirement of Shri S.N.Jairath within a period of 15 days from today. It is further clarified that since the post of DG and IGP is a functional post and being head of the Police Department, it would not be in the public interest to keep this post vacant. Admittedly, the applicant is also not the senior most DG who could be appointed on adhoc basis till regular posting was not made against the post of DG and IGP. As per civil list Shri S.S.Darbari who is presently holding the post of DG Civil Defence and Commandant General Home Guard, is the senior most DG and he has not made any grievance regarding his posting to the post of DG and IGP. As such in the totality of circumstances of the case, we are of the view that respondent No.4 may continue to hold the post for a period of 15 days from today or till the respondents adopt credible mechanism in the light of the law laid down by the Apex Court in the case of

Manas Kumar (supra), and observation made above, whichever is earlier."

5. Tribunal's aforesaid orders were carried in appeal before the Hon'ble High Court of Judicature for Rajasthan at Jaipur, Bench Jaipur, in Writ Petition No.1817/2005 - State of Rajasthan & Anr. v. Central Administrative Trinunal & Ors. During the pendency of the said writ petition, the State Government reconsidered the matter and appointed Shri A.S.Gill as DG&IGP Rajasthan on finding him the most suitable officer for such appointment on 12.4.2005. The High Court found that the directions of the Tribunal had been complied with by the respondents, and disposed of the writ petition on 5.9.2005 as virtually having become infructuous.

6. In professing claim of the applicant, learned counsel for the applicant submitted the following :-

i) The post of DG SCRB used to be a cadre post in DIG rank. Such equivalence was subsequently confirmed by Government of India orders dated 16.5.2005 (Ann.A/3) and as such this post could not have been upgraded to DG's rank. Creation of the post of Director SCRB in DG's rank contrary to the provisions of Rule-9(7) of the IPS (Pay) Rules, 1954 and Rule-4(2) of the IPS (Cadre) Rules, 1954 illegally expanded the zone of consideration for promotion to the post of DG&IGP. If this post had not been created, respondent No.4, who was the junior most, could not

4

have been considered and promoted to the post of DG at all. As such, he was ineligible for consideration for promotion to the post of DG and subsequent posting of DG&IGP. On rejection of the proposal of the State Government for creation of the post of DG SCRB vide Ann.A/3 dated 16.5.2005 respondents are stated to have abolished this post w.e.f. May, 2006 whereafter the applicant, who had been holding that post till recently, has been appointed on cadre post of DG Civil Defence & Commandant General Home Guards.

ii) The respondents have not adopted a credible mechanism for considering the cases of the eligible officers for the cadre post of DG&IGP Rajasthan. They have not made any detailed comparison of past records (ACRs, assignments and achievements) of the eligible officers. The respondents ought to have constituted a screening committee as per direction of the Hon'ble Supreme Court in the case of **Vineet Narain & Ors. v. Union of India & Anr.**, JT 1997 (10) SC 247. This committee should have comprised Home Secretary, Chief Secretary, Home Minister & Chief Minister. The so-called consideration of the eligible officers by the State Government has been an empty formality not amounting to an effective consideration of the comparative merit. The State Government has also violated the observations made in the case of **State of W.B. & Ors. v. Manas Kumar Chakraborty & Ors.**, (2003) 2 SCC 604.

lb

The learned counsel further pointed out that Government of India vide Ann.A/7 dated 15.1.99 laid down principles regarding promotion/ posting of members of IPS in the State Cadre. He contended that as per these instructions the State Government ought to have constituted a screening committee consisting of Chief Secretary, one non-IPS Office of the rank of Chief Secretary and working in the State Government, Director General of Police and an additional member in case there is a senior officer available who is holding independent charge of Home Secretary and is in the frank of Addl. Chief Secretary or Chief Secretary.

iii) Ann.A/1 dated 12.4.2005 are the notes put up by Secretary DOP and Chief Secretary. ~~while~~ Secretary DOP on 12.4.2005 has merely stated the requirement of a view to be taken in posting one of the four eligible officers as DG&IGP Rajasthan. The Chief Secretary has expressed his view as follows: "upon examination of the past records of all the four officers Shri A.S.Gill would be the most suitable officer for appointment on the post of DG&IGP Rajasthan". The Chief Minister has agreed to the proposal of the Chief Secretary stating; "Shri A.S.Gill is the most suitable among the eligible officers for posting as DG&IGP Rajasthan". Such consideration is a mere formality as parameters enunciated in the cases of Manas Kumar Chakraborty and Vineet Narain

(supra) have not been followed. In this connection, reliance has also been placed on the following : **Ram Chander v. Union of India & Ors.** - (1986)3 SCC 103, and **Narinder Mohan Arya v. United India Insurance Co. Ltd. & Ors.** - JT 2006 (4) SC 404. Learned counsel maintained that the respondents have not assigned any reasons for finding respondent No.4 as the most suitable person for appointment on the post of DG&IGP. He contended that there has been a total non-application of mind in the so-called consideration of eligible officers for appointment on the post of DG&IGP Rajasthan.

7. Shri V.S.Gurjar, learned counsel for respondents No.2 to 4, submitted as follows :-

i) In the earlier OA (No.468/2004) and Writ Petition No.1817/2005 the applicant had not raised the issue of eligibility of respondent No.4 (Shri A.S.Gill) for appointment on the post of DG&IGP Rajasthan. Thus, the applicant cannot be allowed to rake up the question of eligibility of Shri A.S.Gill in the present proceedings. The Tribunal had directed reconsideration of the candidature of all the four DGs for appointment to the post of DG&IGP Rajasthan. The High Court in its decision held that directions of the Tribunal have been complied with when even in the second round the Chief Secretary and the Hon'ble Chief Minister have expressed the view that they have highest confidence in Shri

A.S.Gill and that he is the most suitable person to be appointed as DG&IGP Rajasthan.

ii) The Central Administrative Tribunal as also the Hon'ble High Court have held that the post of DG&IGP is not a promotional post. The judgments relied upon on behalf of the applicant as also the instructions of the Government of India do not envisage constitution of a screening committee for appointing an eligible officer as DG&IGP. It is not necessary to have consulted the Home Secretary and the Home Minister when on the basis of the records, case has been re-examined by the Chief Secretary and the Chief Minister has concurred with the recommendations of the Chief Secretary to the effect that respondent No.4 is the most suitable officer for appointment in the post of DG&IGP Rajasthan. Suitability of Shri A.S.Gill has been based on the test of credibility and level of confidence. This constitutes sufficient reasons for the finding of "the most suitable" favouring Shri A.S.Gill. The consideration bestowed by the State Authorities was not a mere formality and it was not necessary to record any further reasons than what had been recorded for selection of Shri A.S.Gill for posting as DG&IGP Rajasthan.

iii) The learned counsel expressed that the contention raised on behalf of the applicant in respect of the application of the cases of Ram Chander & Narinder Mohan

Arya (Supra) to the facts of the present case is not well founded. Those cases related to disciplinary proceedings and are distinguishable.

8. Shri Bhanwar Bagri, learned counsel for respondent No.1, submitted that two posts at the level of DGP had been provided as cadre posts for the Rajasthan Cadre of the IPS as per Government of India notification dated 1.8.2003. As per Rule-9(7) of the IPS (Pay) Rules, 1954, Government of Rajasthan is empowered to create two ex-cadre posts against the two sanctioned cadre posts. Thus, in all, the Government of Rajasthan can operate four posts at DGP level. As per provisions of second proviso to Rule-4(2) of the IPS (Cadre) Rules, 1954, in addition to the above four posts the Government of Rajasthan can add more posts temporarily to the cadre at any level. One of the basic conditions which needs to be fulfilled before creation of any post under this proviso is that the post proposed to be created should be equal in status, duties and responsibilities to a post which already exists in the cadre (cadre post). He admitted that Rajasthan Government had proposed creation of a temporary post of DG SCRB, which was not agreed to by the Government of India vide Ann.A/3 dated 16.5.2005.

9. In rejoinder to the contentions made on behalf of the respondents, learned counsel for the applicant submitted that in Ann.A/1 dated 12.4.2005 the Chief Secretary had expressed only an opinion about the suitability of Shri A.S.Gill for appointment on the post of DG&IGP

Rajasthan. He had not stated any findings on his suitability, credibility and level of confidence in him by the State Government. In the selection in question, the Chief Secretary and the Chief Minister should have assigned detailed reasons for suitability of Shri A.S.Gill for the post in question. It is necessary to detail reasons even in ordinary administrative orders while reconsideration of suitability of candidates for appointment on the post of DG&IGP is far more serious than issuing an ordinary administrative order.

10. We have considered respective contentions of the parties, the material on record and the cited case law.

11. First of all, exception has been taken on behalf of the applicant to eligibility of respondents No.4, Shri A.S.Gill, for consideration for appointment on the post of DG&IGP Rajasthan. It has been contended that ex-cadre post of Director SCRB was created wrongly with retrospective effect vide Government order dated 9.7.2003 from 19.5.2003 to 29.2.2004. In fact, it was a DIG rank post only. Even this post of the DG was available upto 28.8.2005 after the proposal of the State Government was flawed by Government of India vide Ann.A/3 dated 16.5.2005 stating that at the time of creation of temporary post of DG SCRB on 21.7.2000 there was no post existing at the level of DG in the list of senior duty posts. It has been maintained on behalf of the applicant that if the post of DG SCRB is excluded, Shri A.S.Gill, who was the junior most officer in the rank of ADG, will not be

within the zone of consideration for the post of DG. As such, he is ineligible for consideration for appointment to the post of DG&IGP. In this connection, the respondents have pointed out that applicant had not raised issue of eligibility of Shri A.S.Gill for promotion to the post of DG even in the earlier OA (No.468/2004). The Central Administrative Tribunal as also the Hon'ble High Court did not find any fault with the eligibility of Shri A.S.Gill for consideration for appointment on the post of DG&IGP.

12. The Tribunal as well as Hon'ble High Court have held that posting from the post of DG to the post of DG&IGP is not a promotion. All four posts of DG carry the same pay scale and same status. Selection to the post of DG&IGP must be done through 'credible mechanism'. The Government is competent to post any officer on the aforesaid post of DG&IGP in whom it has full confidence. The promotion granted to Shri A.S.Gill was not set aside by the Central Administrative Tribunal. In the earlier OA, the applicant had preferred his superior claim over Shri A.S.Gill. He had not questioned the eligibility of Shri A.S.Gill for consideration for appointment on the post of DG&IGP. In the present OA, an attempt has been made to make out a fresh case against the eligibility of Shri A.S.Gill for appointment on the post of DG&IGP. Taking such a plea at this stage of litigation is impermissible. Thus, in our view, eligibility of Shri A.S.Gill for consideration for appointment on the post of DG&IGP has to be held to be in order.

13. The next issue falling for our consideration is whether proper consideration has been accorded to all the eligible candidates for appointment to the post of DG&IGP. It has been contended on behalf of the applicant that State Government ought to have constituted a screening committee for the purpose which should have considered the ACRs, performance on previous assignments and achievements of the eligible officers. Learned counsel for the applicant contended that Home Secretary and Home Minister ought to have been associated with the selection process. The Chief Secretary had merely expressed his opinion on the suitability of respondent No.4. There was no comparative assessment of the suitability of the eligible officers by the screening committee. The process of selection had been a mere ^{empty} ~~formality~~ in which there was neither any application of mind nor were the reasons stated for selection of respondent No.4 and rejection of other candidates. On the other hand, learned counsel for the respondents had stated that it was not necessary to constitute a committee for posting of eligible candidates on the post of DG&IGP. Sufficient reasons had been assigned by the Chief Secretary as also the Chief Minister for suitability of respondent NO.4 for appointment on the post of DG&IGP Rajasthan. It was not necessary to detail reasons for such decision.

14. In **Manas Kumar Chakraborty** (supra) the following law has been laid down by the Apex Court :

"23. The respondent placed heavy reliance on the judgement of this Court in Vineet Narain and the observations made in para 60 of the said judgement. In the first place, Vineet Narain was a case in which the question was whether the jurisdiction of the Central Bureau of Investigation could be amended or curtailed by executive instructions issued by what was called "Single Directive". With regard to officers at the decision-making level, the executive circular prohibited CBI from investigation unless clearance was taken from the Central Government. While quashing the said circular as wholly opposed to the provisions of the Delhi Special Police Establishment Act, as also the rule of law in general, this Court laid down detailed guidelines as to how CBI, Central Vigilance Commission, Enforcement Directorate and prosecution agencies attached thereto should function. Incidentally, it also noticed the situation of rampant executive interference in the matter of police functioning in the States. With a view to ensure that the police agencies were not subjected to executive and political interference, the observations were made in para 60 that every State should set up a "credible mechanism" for selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also of all police officers of the rank of Superintendent of Police and above. We do not think that the judgment in Vineet Narain requires that the mechanism which was put in place by this Court in that case should necessarily be reproduced in other States. While there is no doubt that selection to the post of DG&IGP or similar sensitive post must be done through a "credible mechanism", we are unable to accept the contention of the respondent that the process of selection by which the second respondent was selected was not credible in any manner. The process of selection based on suitability was set in motion by the Home Secretary, and further seems to have been effectively considered by the Chief Secretary and the Chief Minister (who was also the Home Minister) and all three authorities had opined that the second respondent was more suited for the post of

DG& IGP. Nothing has been shown to us that there was any bias or deficiency in the process by which the second respondent was selected for the post of DG&IGP. The only grievance which appears to have been ventilated by the first respondent throughout is that the second respondent was ineligible to be posted as DG&IGP. This grievance, in our view, has no substance."

In **Vineet Narain** (supra) the following observations were made by the Apex Court :

"65. In view of the problem in the States being even more acute, as elaborately discussed in the Report of the National Police Commission (1979), there is urgent need for the State Governments also to set up credible mechanism for selection of the Police Chief in the States. The Central Government must pursue the matter with the State Governments and ensure that a similar mechanism, as indicated above, is set up in each State for the selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendent of Police and above. It is shocking to hear, a matter of common knowledge, that in some States the tenure of a Superintendent of Police is on an average only a few months and transfers are made for whimsical reasons. Apart from demoralising the police force, it has also the adverse effect of politicizing the personnel. It is, therefore, essential that prompt measures are taken by the Central Government within the ambit of their constitutional powers in the federation to impress upon the State Governments that such a practice is alien to the envisaged constitutional machinery. The situation described in the National Police Commission's Report (1979) was alarming and it has become much worse by now. The desperation of the Union Home Minister in his letters to the State Governments, placed before us at the hearing, reveal a distressing situation which must be cured, if the rule of law is to prevail. No action within the constitutional scheme

found necessary to remedy the situation is too stringent in these circumstances."

In the light of the aforesaid judgments, learned counsel for the applicant maintained that respondents did not constitute the requisite screening committee for the purpose nor was proper consideration accorded to the candidature of eligible personnel.

15. Learned counsel for the applicant also relied upon **Ram Chander** and **Narinder Mohan Arya** (supra) to the effect that in the selection of respondent No.4 for appointment on the post of DG&IGP there has been no application of mind nor were any reasons stated for considering him the most suitable person in whom the State Government reposed full confidence.

16. The learned counsel for the respondents, on the other hand, stated that for posting of respondent No.4 on the post of DG&IGP it was not necessary to constitute a formal screening committee and that proper consideration had been accorded to candidature of all eligible candidates but respondent No.4 was found to be the most suitable in whom the State Government reposed full confidence. It was not found necessary to state more detailed reasons than what had been stated by the Chief Secretary and Chief Minister while taking the decision in question. The learned counsel stated that Ram Chander and Narinder Mohan Arya (supra) are not applicable to the facts of the present case.

17. In **Vineet Narain** (supra) the Hon'ble Apex Court had laid down detailed guidelines how

VN

CBI, Central Vigilance Commission, Enforcement Directorate and prosecution agencies attached thereto should function with a view to ensure freedom for Police Agencies to cooperate. It was observed that the State should set up credible mechanism for selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendent of Police and above. In the case of **Manas Kumar Chakraborty** (supra), too, it was held that a credible mechanism has to be there for selection for the post of DG&IGP. It was found that in the selection of respondent No.4 the State Government had adopted a credible mechanism. In the present case, Secretary DOP vide his note dated 12.4.2005 had referred to the observations of the Hon'ble Apex Court in the case of Manas Kumar Chakraborty as also of this Tribunal, as follows :

"The post of DG and IGP being a post of very sensitive nature, can only be filled by an incumbent in whom the State Government must necessarily have the highest confidence. We are therefore unable to accept the contention... that deployment of an incumbent, in such a post can go only by seniority. Merit in the nature of past record, the credibility and confidence which one is able to command with the Government of the State must play a dominant role in selection of an incumbent to such a post.

Thus we are of the view that the post of DG and IGP is not a promotional post and the Government is competent to post any officer on the aforesaid post of DG and IGP in whom it has full confidence."

He pointed out that S/Shri S.S.Darbari, V.B.Singh, Arun Duggar and A.S.Gill are

lb

eligible for consideration for posting of one of them as DG&IGP. The Chief Secretary and the Chief Minister recorded the following minutes:

8. Paras 1-6/N may kindly be perused.

9. Upon examination of the past record of all the four officers listed above, and from the angle of credibility and level of confidence to be reposed in them by the State Government, I am of the view that Shri A.S.Gill would be the most suitable officer for appointment on the post of DG and IGP, Rajasthan.

10. It is, therefore, proposed that Shri A.S.Gill may be posted as DGP and IGP, Rajasthan.

11. For kind approval.

(Anil Vaish)
Chief Secretary

C.M. (u/c)

I agree. Shri A.S.Gill is the most suitable among the eligible officers for posting as DG and IGP of Rajasthan.

Sd.
CM"

18. The case of Ram Chander (supra) related to removal from service of the appellant in disciplinary proceedings under Railway Servants (Discipline & Appeal) Rules, 1968. It was held that under Rule-22(2) and 18(ii) of the said rules, the appellate authority must afford opportunity of hearing and pass a reasoned order. It was also held that the word 'consider' has different shades of meaning and must in Rule-22(2) in the context in which it appears mean an objective consideration by the Railway Board after due application of mind

which implies giving of reasons for its decision.

19. The case of Narinder Mohan Arya (supra) again deals with termination of service on allegation of misconduct by an employee. It was held that the order of appellate authority demonstrates total non-application of mind. It was observed that the expression 'consider' in the context of the rules would mean that the appellate authority was required to see whether the procedure laid down in the rules was complied with. In the present case, the observations made in the cases of Narinder Mohan Arya and Ram Chander are not strictly applicable. Those related to disciplinary proceedings in which the consideration by the appellate authority was clarified to mean application of mind and assignment of reasons for the decision.

20. In the present case, it has already been held that Shri A.S.Gill was eligible for consideration for appointment on the post of DG&IGP. The applicant has stated that post of DG SCRB could not have been created at all and ultimately proposal of the State Government in that respect was turned down by Government of India. Thus, respondent No.4, Shri A.S.Gill, could not have been selected as DG and consequently could not have been appointed to the post of DG&IGP. If contention of the applicant is accepted, he was ~~himself~~ ^{ineligible} for selection on the post of DG as he was the first person to be appointed on that post in the year 2000. Be that as it may, ~~the applicant~~ ^{Shri Gill} has been held to be eligible for appointment on the

post of DG&IGP by the Tribunal as also the Hon'ble High Court. Appointment on the post of DG&IGP involves the question of posting of an eligible DG alone. For selection on the post of DG, certainly there has to be a screening committee in the light of the decision of the Apex Court in the case of Vineet Narain (supra). The present case did not involve the appointment by a regular screening committee. It has been stated on behalf of the applicant that Home Secretary and Home Minister ought to have been involved in the process of selection for the post of DG&IGP. It is not disputed that the related records of the eligible officers are available with the Home Department. However, it is also not pointed out that they had not ^{been} ~~made~~ available to the Secretary DOP. The Secretary DOP on 12.4.2005 recorded a detailed note about the history of the case, related decisions of the courts and stated that State Government had to take a view for posting one of the four eligible officers as DG&IGP Rajasthan. The Chief Secretary on perusal of the detailed note recorded by the Secretary DOP, stated that from the angle of credibility and level of confidence to be reposed in the incumbent by the State Government upon examination of the past record of all the four officers, he was of the view that Shri A.S.Gill would be the most suitable officer for appointment on the post of DG&IGP Rajasthan. He, thus, proposed that Shri A.S.Gill be posted as DG&IGP. The Chief Minister agreeing with the Chief Secretary recorded that Shri A.S.Gill is the most suitable among all eligible officers for posting as DG&IGP Rajasthan. Basically it was

not a case of selection for the post of DG. For that respondent No.4 had already been considered and selected. His selection as such had not been set aside by any court. It was merely a case of posting of a DG on the post of DG&IGP. It has not been established in what manner any prejudice has been caused to the applicant by non-association of Home Secretary and the Home Minister in the process of taking decision for posting on the post of DG&IGP. The Secretary DOP, Chief Secretary and the Chief Minister have considered the related decisions of the Courts and eligibility and seniority of the existing Directors General. The Chief Secretary has stated to have examined the past records of all the four officers and expressed his opinion from the angle of credibility and level of confidence to be reposed in the incumbent by the State Government. He expressed the view that Shri A.S.Gill was the most suitable officer for appointment on the post of DG&IGP Rajasthan. The Chief Minister agreed with the Chief Secretary and found that Shri A.S.Gill is the most suitable among the eligible officers for posting as DG&IGP Rajasthan. In our view, this is well nigh impossible to draw up a comparative statement among the eligible officers in respect of credibility, level of confidence and suitability of officers for posting on the post of DG&IGP. This has to be a subjective satisfaction of the executive, i.e. the Chief Minister in the present case. The requirement of detailed reasons, as contended by the learned counsel for the applicant and also stipulated in the case law cited by him, would be necessary for selection

on the post of DG but not for the issue of posting of an existing eligible DG on the post of DG&IGP.

21. Ann.A/7 dated 15.1.99 relied upon on behalf of the applicant relates to principles regarding promotion/posting of member of IPS in the State Cadre. It stipulates constitution of screening committee for promotion to the grade of DG etc. and requires that it should consist of Chief Secretary, one non-IPS Officer of the rank of Chief Secretary and working in the State Government, Director General of Police and an additional member in case there is a senior officer available who is holding independent charge of Home Secretary. This screening committee is relevant only for promotion to the grade of Director General. These instructions do not envisage constitution of screening committee for the purpose of posting of a Director General on the post of DG&IGP. Thus, in our view, consideration of four eligible DGPs for posting on the post of DG&IGP by Secretary DOP, Chief Secretary and Chief Minister vide Ann.A/3 dated 16.5.2005 is quite in order and further that sufficient reasons have been recorded from the angle of credibility, level of confidence and suitability for appointment of Shri A.S.Gill on the post of DG&IGP Rajasthan from amongst the four eligible DsGP.

21. In result, in our considered view, directions of the Tribunal contained in order dated 30.11.2004, passed in OA 468/2004, for considering the case of the applicant alongwith other eligible officers holding the grade of DG

for posting on the post of DG&IGP have been complied with vide Ann.A/1 dated 12.4.2005. We do not find any infirmity in such consideration and finding of Shri A.S.Gill as the most suitable among the eligible officers for posting as DG&IGP Rajasthan. Accordingly, this OA is liable to fail and is dismissed being without merit.


(M.L.CHAUHAN)

MEMBER (J)


(V.K.MAJOTRA) 1.6.06
VICE CHAIRMAN

vk