

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 12th day of December, 2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL).
HON'BLE MR. J.P.SHUKLA, MEMBER (ADMINISTRATIVE)

1. ORIGINAL APPLICATION No 451/2006.

Dr. Kalyan Sahai Sharma,
aged about 53 years,
s/o Shri Ganga Sahai Sharma
r/o B-362, 10-B Scheme,
Gopalpura Bypass, Jaipur,
presently serving as Joint Director
Agriculture (Entomology),
Directorate of Horticulture,
Pant Krishi Bhawan, Jaipur
Rajasthan.

.. Applicant

(By Advocate: Mr. P.P.Mathur)

Versus

1. Union of India through the Secretary, Ministry of Personnel, Public Grievances and Pensions, Government of India, Department of Personnel and Training, North Block, New Delhi.
2. Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi.
3. State of Rajasthan through Chief Secretary, Government Secretariat, Jaipur.
4. Secretary, Department of Personnel (A-1), Government of Rajasthan, Government Secretariat, Jaipur.

.. Respondents

(By Advocate: Mr. Kunal Rawat and Mr. V.D.Sharma)

2. ORIGINAL APPLICATION No 452/2006.

Dr. Bhupendra Kumar Meghwal,
Aged about 52 years,
s/o late Shri Bheru Lal Meghwal,
r/o 12-A Ambavgarh, Opposite Jatwadi,
New Bridge, Udaipur,

Presently serving as
District Tuberculosis Officer,
Jaipur.

.. Applicant

(By Advocate: Mr. P.P.Mathur)

Versus

1. Union of India through the Secretary, Ministry of Personnel, Public Grievances and Pensions, Government of India, Department of Personnel and Training, North Block, New Delhi.
2. Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi.
3. State of Rajasthan through Chief Secretary, Government Secretariat, Jaipur.
4. Secretary, Department of Personnel (A-1), Government of Rajasthan, Government Secretariat, Jaipur.

.. Respondents

(By Advocate: Mr. Kunal Rawat and Mr. V.D.Sharma)

3. ORIGINAL APPLICATION No 453/2006.

Laxmi Chand Jain
aged about 48 years,
s/o Shri Guman Mal Jain,
r/o F/I/65, Bajaj Nagar apartments,
Bajaj Nagar, Jaipur,
presently serving as
Joint Director (Industries),
WTO Cell Secretariat,
Jaipur.

.. Applicant

(By Advocate: Mr. P.P.Mathur)

Versus

1. Union of India through the Secretary, Ministry of Personnel, Public Grievances and Pensions, Government of India, Department of Personnel and Training, North Block, New Delhi.
2. Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi.
3. State of Rajasthan Through Chief Secretary, Government Secretariat, Jaipur.

4. Secretary, Department of Personnel (A-1),
Government of Rajasthan, Government Secretariat,
Jaipur.

.. Respondents

(By Advocate: Mr. Kunal Rawat and Mr. V.D.Sharma)

ORDER (ORAL)

By this common order, we proposed to dispose of the aforementioned OAs. For the purpose of convenience, the facts as mentioned in OA No. 451/2006, Dr. Kalyan Sahai Sharma, are being referred to as in all these OAs the controversy is same and the grounds on which relief is sought are also same.

2. Briefly stated facts of the case are that the applicants are State Government employees holding the posts equivalent to Deputy Collector in the State Civil Service in terms of Rule 4 of Indian Administrative Service (Appointment by Selection) Regulations, 1997 (hereinafter referred to as Regulations of 1997. It is stated that they are entitled to consideration for sending proposal to the Union Public Service Commission (UPSC for short) for the purpose of consideration and selection to the post of Indian Administrative Service (IAS for short). In sum and substance, case of the applicants in these OAs is that the State Government for the purpose of sending a list of candidates to the UPSC has not

framed/adopted any guidelines and such list is being prepared at the instance of higher officials and Ministers who tend to exercise their influence on the entire exercise without following any guidelines and such names are being sent on the basis of pick and choose method. In support of this contention the applicant has stated that in the past also one Shri Mahaveer Prasad Swami filed a Writ Petition titled S.B. Civil Writ Petition No. 6478/2005, Mahaveer Prasad Swami vs. State of Rajasthan before the Hon'ble Rajasthan High Court thereby pointing out pick and choose in the entire exercise by the State Government of Rajasthan in proposing names to the Committee. It is further pleaded that taking cognizance of state of affairs and lack of guidelines the Hon'ble High Court issued notice to the respondents thereby restraining the State Government from sending the list prepared containing the proposed names for the year 2005-2006 vide interim order dated 17.8.2006. It is further pleaded that even when the matter was pending final hearing the State Government finalized the list for the year 2006-2007 and the news was published in the newspaper (Dainik Bhaskar) to this effect on 27.11.2007. It is further pleaded that presumably name of Shri Mahaveer Prasad has been included and he got the tip. The said Writ Petition was withdrawn by the petitioner therein on 28.11.2006. The applicant has placed a copy of the newspaper report as Ann.1. It

is further pleaded that since the applicant apprehends foul play in the entire exercise and that name of the applicant has not been included in the list by adopting pick and choose method, though his name has been recommended by the Head of the Department and he has meritorious record. It is further pleaded that the applicant and many similarly placed persons believe that the State Government and other respondents would disclose some guidelines if any or at least frame it before the names are sent for vacancies for the year 2006-2007. However, nothing of that sort was done. It is on the basis of these facts, the applicant has filed this OA thereby praying for the following reliefs:-

"a. Direct the respondents to lay down fair and equitable norms and criterion for inclusion of the name in the propose list to be recommended by the State Government for consideration for promotion to the IAS under the Regulations of 1997.

b. Direct the respondents to consider the name of the applicant and place his name in the proposed list to be sent for consideration for appointment in IAS under the regulations of 1997 and

c. If during the pendency of this OA any list or names are sent by the respondents State of Rajasthan as proposal to UPSC as per regulation 4 of the Regulations of 1997, the same may be quashed and set aside.

d. Direct the respondents No.3 to quash and set aside the list of proposed names said to be prepared under regulation 4 for vacancies for the year 2006-2007 in the IAS as per provisions of Regulations of 1997 as pointed out in the newspaper report of Dainik Bhaskar.

e. Costs of and incidental to the Original Application may be awarded in favour of the applicant."

3. When the matter was listed for admission on 1.12.2006, this Tribunal while issuing notices passed the following order:-

"The grievance of the applicant is that the State Government has prepared a list of the persons belonging to Civil Services in violation of rule 4 of 1997 Regulations for the vacancies for the year 2006-2007 in the IAS in an arbitrary manner without any guidelines. The apprehension of the applicant is that he being a meritorious person, his name has been wrongly ignored whereas persons less meritorious have been included in the list to be forwarded to the UPSC for consideration and selection to the post of IAS. In order to decide the controversy and the fact that the meeting of the UPSC is likely to be held shortly, the respondents are directed to file reply to the interim prayer of the applicant within seven days. In case the reply is not filed within seven days, this Tribunal shall consider to grant ex-parte stay thereby directing the State Government and the UPSC not to act upon the list so prepared by the State Government."

4. Respondent Nos. 3 and 4 have filed reply. In the reply the stand taken by the respondents is that the application is not maintainable at all as there is no impugned order against which applicant(s) is aggrieved in the Original Application. It is further stated that the present OA is based only on presumption and there is no factual foundation of the averments made in the OA. In fact the applicant has filed the present OA on the basis of a news item published in daily Dainik Bhaskar dated 27.11.2006 (Ann.A-1). It is thus pleaded that no Petition/OA can be filed and maintained merely on the basis of newspaper report which is only an unverified version based on hearsay and inadmissible in evidence. For that purpose, reliance has been placed by the respondents to the decision of the Apex court in the case of Laxmi Raj Shetty vs. State of Tamilnadu, AIR 1988 SC 1274 whereby it has been held that a statement of fact contained in a newspaper is merely hearsay and, therefore, inadmissible in evidence in the absence of

the maker of the statement appearing in court and deposing to have perceived the fact reported. The respondents have also placed reliance on the decision of the Rajasthan High Court in the case of Ratan Lal vs. State of Rajasthan, 1994 (1) WLC (Raj.) 679 and also another decision of the Hon'ble Supreme Court in the case of Dr. B.Singh vs. Union of India and ors, (2004) 3 SCC 363 whereby in para 3, the Apex Court has held that it is too much to attribute authenticity or credibility to any information or fact merely because it found publication in a news-paper or journal or magazine or any other form of communication, as although it is gospel truth. It need to reiteration that news paper report per se do not constitute legally acceptable evidence. Regarding the procedure to be adopted for preparation of list in accordance with Rule 4 of Regulations of 1997, it has been stated that to prepare a panel of names of officers for appointment to the IAS cadre by selection from Non State Civil Service quota, the names of non-State Civil Service officers recommended by various administrative departments are considered by a committee constitute by the State Government, which consists of senior officers. It is further stated that it was only upon close scrutiny of the service record and their outstanding merit and ability, the committee consisting of Additional Chief Secretary and Development Commissioner, Principal Secretary to the

Government, Home Civil Defence, Home Guard, Jail and Transport, Rajasthan Jaipur and Principal Secretary to Government, Rural Development and Panchayat Raj, Rajasthan, that their names are placed in the panel. Thereafter recommendations of the committee are placed before the State Government which shall forward the same to the UPSC for approval. It is, therefore, emphatically denied that the panel is prepared on the basis of pick and choose method. The respondents have categorically denied that guidelines for preparing such panel are in any manner arbitrary and discriminatory. According to respondents, in all there is four vacancies in the IAS cadre by selection from non-State Civil Service quota for the year 2005 and 2006 and, therefore, in terms of Rule 4(i)(iii) of Regulations of 1997 a panel of 20 officers is required to be prepared being five times the number of vacancies proposed to be filled during the year and the matter is under consideration of the State Government. Regarding filing of the Writ Petition by one Shri Mahaveer Prasad Swami and thereafter withdrawing the same, it is stated that the said Writ Petition was pertaining to selection process for the vacancies of the year 2005 which process came to an end on 31.12.2005 and the said Writ Petition has already been withdrawn by Shri Mahaveer Prasad on 28.11.2006. Thus, according to the respondents, the said stay is not applicable for the vacancies of the

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year 2006-2007. As regards the criteria adopted by the Committee for considering non-SCS officers as equivalent to the post of Deputy Collector, the respondents have stated that with the approval of the competent authority following criteria was adopted - "Any State Service Officer who has completed 10 years of actual and continuous regular service in the respective State Service" were treated as equivalent to the post of Deputy Collector. It is further stated that in terms of the aforesaid criteria every State Service Officer who possesses outstanding record, would be eligible for promotion to IAS after completion of 18 years in the State Service i.e. 10 years to become equivalent to the post of Deputy Collector and further 8 years to become eligible for promotion to IAS. It is further stated that based upon the aforesaid criteria and on the objective comparative assessment of the entire service career and upon close scrutiny of the entire service record of the concerned officer as also their outstanding merit and ability, recommend inclusion of name of suitable officers in the panel and there is no question of any foul play and unfairness.

5. When the matter was taken up for admission today, the learned counsel for the applicants was apprised of the fact that in view of the specific stand taken by the respondents it may not be possible to grant

mandatory stay to the applicants, upon which, the learned counsel for the applicants submitted that he is prepared to argue these cases on the basis of material placed on record as according to him, in case the stay is not granted by this Tribunal, these OAs would become infructuous as their cases shall not be considered by the UPSC. Accordingly, we have proceeded to decide these OAs finally instead of confining these to the interim prayer as according to us, the point raised by the applicants in the OAs has been dealt by the respondents in the interim reply. Further, we are of the view that it will be wastage of court's time to keep the matter pending and to consider the case of the applicants only on the point of interim prayer especially when the learned counsel for the applicants has argued that the matter may be finally disposed of in case stay is not granted to the applicants. Thus, we have proceeded to decide the matter on merit.

6. As can be seen from the pleadings as set out by the applicants in these OAs, the grievance of the applicants is that the respondents have not laid down any fair and equitable norms and criteria for inclusion of names in the proposed list to be recommended by the State Government for consideration for promotion to the IAS from non State Civil Service officers in terms of Rule 4 of Regulations of 1997 and thus, the applicants have prayed that direction may be

given to the respondents to lay down fair and equitable norms and criteria for that purpose. We are of the view that no such mandamus can be issued to the respondents in the facts and circumstances of these cases, inasmuch as, the criteria for selection has already been stipulated in Rule 4 of the Regulations of 1997 which, inter alia, states that the State Government shall send proposal for consideration of the Committee - (i) from those persons belonging to Non-State Civil service who has outstanding merit and ability, (ii) holds a Gazetted post in a substantive capacity and 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 respondents have categorically stated that as per the criteria adopted and approved by the competent authority for considering non-State Civil Service officer equivalent to the post of Deputy Collector, the Non-State Civil service officers who has completed 10 year of actual and continuous service in the respective State Service has been treated to be equivalent to that of Deputy Collector in the State Civil Service. The applicants have not said a word about the criteria adopted by the respondents for the purpose of treating the Non-State

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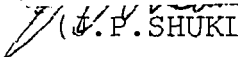
Civil service officers who have completed 10 years of service as equivalent to that of Deputy Collector. The respondents have further categorically stated that in terms of rule 4 of the Regulations of 1997, persons who have completed not less than 8 years of continuous service were eligible to be considered for the purpose of preparing list for promotion to IAS. Thus, according to the respondents every State Service officer who possesses outstanding record would be eligible for promotion to IAS after completion of 18 years in the State service i.e. 10 years to become equivalent to the post of Deputy collector and further 8 years to become eligible for promotion to IAS. The respondents have also categorically stated that it was based on the objective comparative assessment of the entire service career and upon close scrutiny of the entire service record of the concerned officer as also their outstanding merit and ability that the names of the suitable officers in the panel are recommended by the high powered committee and there is no question of any foul play and unfairness as alleged by the applicants. This part of averment has remained unchallenged. Simply by making vague averments in the OA that the respondents have not followed any criteria, norms or equitable guidelines and has resorted to pick and choose method cannot be accepted on the face of the stand taken by the respondents in the reply. Rule 4 of the Regulations of 1997 prescribe

and lays down that the Committee shall prepare a list of persons of outstanding merit and ability and also that the respondents have laid down a criteria that the State Service officers who have completed 10 years of regular and continuous service shall be treated equivalent to the post of Deputy Collector, we fail to understand what more criteria was required to be adopted by the Committee. Further, the panel has to be prepared by the Committee based on objective comparative assessment of the entire service career and upon close scrutiny of the entire service record of the concerned officer and it is not open for this tribunal to sit in appeal on such assessment so made by the Committee when the applicants have not given specific instance to show that the Committee has prepared the list in unfair, arbitrary and discriminatory manner on the basis of pick and choos method by giving instances of such officials who were less meritorious. Simply because the stay was granted by the Hon'ble High Court in the case of Mahaveer Prasad which stay pertains to the selection process for the vacancies in the year 2005 and subsequently the Writ Petition was withdrawn by Shri Mahaveer Prasad will not form basis for granting similar relief to the applicants for another selection which pertains to the year 2006-2007. The contention of the learned counsel for the applicant that the challenge made by

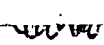
Shri Mahaveer Prasad before the Hon'ble High Court was

on the same grounds as that in the present OAs, as such, stay should be granted by this Tribunal, cannot be accepted for more than one reason. Firstly but for vague averments, there is nothing on record to suggest that the grounds taken by Shri Mahaveer Prasad before the Hon'ble High Court was the same as raised by the applicants in these OAs. That apart, it appears that the challenge before the Hon'ble High Court must have been founded on some other basis, inasmuch as, it is settled position that challenge regarding service matter and recruitment/selection to All India Service it is this Tribunal which has to be approached at the first instance and such claim cannot be raised directly before the Hon'ble High Court. This is what the Apex Court held in the case of L.Chandra Kumar vs. Union of India, AIR 1997 SC 1125. Be that as it may, since the Writ Petition stands withdrawn and simply because interim stay was granted by the Hon'ble High Court, as such this Tribunal should also grant interim stay, such plea cannot be accepted as the Apex Court has categorically held that interim stay is not binding and the court can pass two different order on same facts which is not discriminatory and will not have binding effect. In this regard reference can be held on the decision of the Apex Court in the case of Empire Industries Ltd. and ors. vs. Union of India and ors. AIR 1986 SC page 662.

7. For the foregoing reasons, we are of the view that there is no substance in these OAs, which are accordingly dismissed with no order as to costs.

 (J.P. SHUKLA)

Administrative Member

 (M.L. CHAUHAN)

Judicial Member

R/