

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00789/2014

Jabalpur, this Thursday, the 6th day of September, 2018

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Ashish Saxena
S/o Shri I.D. Saxena
Aged about 52 years
R/o E-9 Fortune Enclave
Kolar Road, Bhopal (M.P.) 462001 **-Applicant**

(By Advocate –**Shri Manoj Sharma**)

V e r s u s

1. Union of India, through its Secretary
Ministry of Personnel Public Grievance
& pension (Department of Personnel & Training)
Government of India, North Block
New Delhi 110067

2. State of Madhya Pradesh,
Through its Principal Secretary
General Administration Department (personal)
Mantralya Vallabh Bhawan
Bhopal (M.P.) 462001

3. Union Public Service Commission
Through its Secretary Dholpur House
Sahajanaab Road, New Delhi 110067

- Respondents

(By Advocate –Shri D.S. Baghel for respondent No.1, Shri J.P. Shukla proxy counsel for Shri Vijay Pandey for respondent No.2 and Shri S.P. Singh for respondent No.3)

(Date of reserving the order:-16.08.2018)

O R D E R**By Navin Tandon, AM:-**

Being aggrieved by the action of the respondent-department, the applicant has filed this Original Application for not conducting review DPC for considering his case for promotion to the IAS cadre of Madhya Pradesh as against the select list of 2011.

2. The brief facts of the case are that the applicant is a State Civil Service Officer of 1988 batch and presently holding the substantive post of Deputy Administrator Capital Project Administration Bhopal (M.P.).

2.1 The respondent No.1 has issued a gazette notification dated 08.10.2013 and in consultation with the UPSC has issued a select list of 2010 and 2011 against the vacancies arising between 01.10.2010 to 31.12.2010 and 01.01.2011 to 31.12.2011 (Annexure A-1) respectively.

2.2 The applicant's name has been considered against the select list of 2011 for induction into IAS Cadre as per the minutes of meeting of the Selection Committee held on 14.09.2013 (Annexure A-4). However, due to penalty of withholding of one increment without cumulative effect w.e.f. from 01.07.2010 to 30.06.2011, his overall relative assessment for the year 2011 was found 'Unfit' by the Selection Committee.

2.3 The applicant thereafter preferred a revision petition dated 20.06.2012 was kept in abeyance for a long time and vide order dated 12.08.2014 (Annexure A-5) the revisionary authority has quashed the punishment imposed upon the applicant.

2.4 The applicant has been granted Senior Scale of Pay w.e.f.01.05.2013 vide General Administration Department (GAD) dated 02.08.2013 (Annexure A-6).

2.5 The applicant thereafter preferred a detailed representation dated 28.08.2014 (Annexure A-8) to respondent No.1 for convening review DPC as against the selection Committee Meeting dated 14.09.2013 for considering the case of State Civil Service for induction into IAS Cadre as against the select list of 2010 and 2011.

3. The applicant in this Original Application has prayed for the following reliefs:-

“8. Relief sought:

It is, therefore, prayed that this Hon'ble Court may kindly be pleased to:-

8(i) Summon the entire relevant record from the respondents, for its kind perusal;

8(ii) Command the respondents to forthwith convene a review DPC for considering the case of the applicant for induction into IAS cadre of Madhya Pradesh as against the select list of 2011;

8(iii) Consequently, command the respondent to suitably amend the select list of 2011 and the notification dated 8th

October, 2013 read with 17th October, 2013 inducting applicants name in appropriate place with all consequential benefit arising thereto;

8(iv) Any other order/orders, which this Hon'ble Court deems, fit proper;

8(v) Cost of the petition may also kindly be awarded."

4. The respondent No.2 (State of Madhya Pradesh) in his reply submitted that the State Government has only forwarded the ACR dossiers and other relevant material which in turn has to be assessed by the respondents Nos.1 and 3. The respondent No.2 has already been forwarded a proposal dated 09.12.2014 (Annexure R-2/1) to the UPSC for further action.

4.1 The respondent No.3 (Union Public Service Commission) in its reply submitted that the penalty imposed by the respondents on 03.04.2010 has not been set aside by the reviewing authority on the date of the meeting of the Selection Committee held on 14.09.2013. The said penalty has been set aside by the Reviewing Authority vide order dated 12.08.2014. There is no provision in the Promotion Regulations for review of the Select List which has been approved by the Commission and acted upon by the Government of India, Department of Personnel and Training.

4.2 It has been further stated that the applicant was graded as 'Unfit' and Shri Ravindra Singh was graded as 'Very Good' based on overall assessment of the service records, therefore he could not

be included in the Select List 2011. This was in accordance with Regulations 5(4) and 5(5) of the Promotion Regulations which are as under:-

“5(4) The Selection Committee shall classify the eligible officers as ‘Outstanding’, ‘Very Good’, ‘Good’ and ‘Unfit’ as the case may be on an overall relative assessment of their service records.

5(5) The List shall be prepared 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 shall be in the order of their seniority in the State Civil Service.”

4.3. It is further submitted by the respondent that the State Government has already been informed vide UPSC letter dated 21.01.2015 that it is not possible to hold the Review Selection Committee meeting as there is no enabling provision in the Promotion Regulations for review of the Select List.

5. The applicant in his rejoinder has relied upon the order passed by this Tribunal in O.A. No.352/2011 (***Ram Chandra Panwar vs. Union of India and others***) dated 04.07.2013 (Annexure RJ-1) directing the respondents to convene review DPC for considering promotion of the applicant.

5.1 It has been further submitted by the applicant that his case falls within the category for the review DPC to rectify the mistake or any error or fact which has not been brought in the eyes of the

DPC at time of proceedings, in that case a Review DPC has to be convened.

5.2 The applicant further placed reliance on the catena of judgments in the cases of ***R.K. Singh vs. State of U.P. and others*** 1991 Supp (2) SCC 126 and ***Gopi Chand Vishnoi vs. State of U.P. and another*** (2006) 9 SCC 694.

6. Heard the learned counsel for both the parties and perused the pleadings and documents annexed therewith.

7. On perusal of notification dated 17.10.2013 (annexure A-3) applicant's name did not find place in the Select list of 2011. It is seen that the penalty of withholding one increment without cumulative effect w.e.f.01.07.2010 to 30.06.2011 was imposed upon the applicant vide order dated 03.04.2010, which has been quashed by the revisionary authority on 12.08.2014. On going through the reply of respondent No.3 (UPSC), it is clear that in the meeting of the Selection Committee held on 14.09.2013 for promotion of members of the State Civil Service of Madhya Pradesh to the Indian Administrative Service against the vacancies of 2010 and 2011, the reason for the applicant to be found unfit in the assessment for the year 2011 was the said penalty. This penalty was set aside by the revisionary authority on 12.08.2014.

8. Further it has been stated by the applicant that he has been granted Senior Scale of Pay w.e.f.01.05.2013 vide General Administration Department (GAD) dated 02.08.2013 (Annexure A-6) and the benchmark for grant of senior Scale of Pay is 'Very Good', which clearly shows that the applicant's entire CR dossiers are 'very good'

9. On perusal of the Government of Madhya Pradesh, GAD's letter dated 09.12.2014 (Annexure R-2/1) addressed to Secretary, Union Public Service Commission (UPSC), it has been stated as under:-

"The Promotion Regulations do not provide for suo-motu review of the Select List already prepared, approved by the Commission and acted upon by the Central Govt. However, sometimes, on specific directions of the competent courts, the Select List are required to be reviewed. While convening Review SCMs in compliance with the directions of courts on account of revision of seniority or to rectify some procedural irregularity that crept in the proceedings of the original Selection Committee, if the officer has already been considered by the earlier Selection Committee, in the first instance the State Government may be requested to indicate whether there is any material change in the relevant record of the concerned officer after consideration of his case by the initial Committee for promotion to the Indian Administrative Service/Indian Police Service/Indian Forest Service. In the event the State Government certifies that there is no material change in the service records of the officer in the relevant years, the Review Committee may not change the grading of the officer already assigned by the earlier Committee. In exceptional circumstances, in case the Selection Committee recommends any change in the grading, specific reasons for the change should be appropriately recorded by the Review Committed in the minutes.

10. It is further stated in the aforesaid letter that the case of applicant may be considered in the review selection committee meeting held on 14.09.2013.

11. In the instant case, the Selection Committee held on 14.09.2013 did not find applicant fit for the promotion to the IAS cadre as the applicant was imposed with the penalty which was later on quashed by the revisionary authority. The same has been brought to the notice of the material change in the relevant record of the applicant to the UPSC vide letter dated 09.12.2014 ibid.

12. Accordingly, this Original Application is allowed. Respondents are directed to convene a review DPC for considering the applicant's case for induction into IAS cadre of Madhya Pradesh as against the Select list of 2011 and if found suitable, the applicant to be promoted inducting his name in appropriate place in the said Select List of 2011, with all consequential benefits. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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