
(1993) 07 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.P. No. 1102 of 1991

Daulat Singh and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-07-1993

Acts Referred:

Administrative Tribunals Act, 1985 — Section 10, 10(2), 11, 13, 14
Constitution of India, 1950 — Article 124, 136, 14, 15, 16
Industrial Disputes Act, 1947 — Section 9
Penal Code, 1860 (IPC) — Section 21

Citation : (1993) J LJ 589 : (1993) 2 MPJR 113

Hon'ble Judges : V.S. Kokje, J; M.W. Deo, J

Bench : Division Bench

Advocate : Madhu Bhatia, for the Appellant; A.K. Chitale and S.M. Dagaonkar for Respondent No. 1 and N.C. Jain, General and S.K. Nigam, Government Advocate for Respondent No. 2 and R.S. Garg and S. Kulshreshtha and 5 and S.S. Pawar and S.S. Samvatsar, for the Respondent

Final Decision : Allowed

Judgement

V.S. Kokje, J.

Three persons serving in the Police Department of the State of Madhya Pradesh as Inspectors have filed this petition praying for a writ, direction or order calling upon Respondents - Union of India, State of Madhya Pradesh and five other persons to show the authority under which Respondent No. 3 to 6 are working as Members and Respondent 7 is working as Vice-chairman of the State Administrative Tribunal constituted under the Administrative Tribunal Act, 1985. A declaration has also been sought to the effect that the constitution of the State Administrative Tribunal is illegal. There is also a prayer for grant of such relief as is deemed fit under the circumstances by this Court.

The Petitioners contend that Respondents No. 3, 4, 5 and 6 are claiming to be the duly appointed Members of the State Administrative Tribunal (hereinafter

referred to as the "Tribunal") and Respondent No. 7 is claiming to be duly appointed as it's Vice-Chairman. The Petitioners contend that Respondents No. 3 to 7 have not been validly appointed in as much as their appointments are in utter violation of the directions of the Supreme Court given in the case of Sampat Kumar v. Union of India and Ors. AIR 1987 SC 386 : 1987 SCC 124). The Petitioners contend that the Supreme Court in Sampat Kumar's case (supra) has held that selection for appointment to the post of Members and Vice-Chairman of the State Administrative Tribunals, except those of sitting or retired Judges of the High Court, have to be made by a High-Power Committee headed by a sitting Judge of the High Court appointed by the Chief Justice of the State. According to the Petitioners, in the aforesaid case it was also held that so long as provisions are not made for appointment through a High-Power Committee as per directions of the Supreme Court, the constitution of the Tribunal shall be open to challenge. The Petitioners contend that these directions were not followed and the selection of Respondents No. 3 to 7 was not made by a High Power Committee headed by a sitting Judge of the High Court appointed by the Chief Justice and, therefore, the appointments are void, illegal and invalid and consequently, the constitution of the Tribunal is also illegal.

All the Respondents except Union of India had filed their returns. Despite a long lapse of time the Union of India did not file a return but, was however represented by a Senior Counsel at the hearing of the case. The Learned Advocate General appearing for State of Madhya Pradesh has made available to us the record of the State relating to the appointments. The record of the Union of India was also made available to us by the Learned Counsel appearing for it. Some applications for permission to intervene were also filed and all the Interveners were permitted to make their submissions at the time of final hearing of the case. Only one of them, Shri S.K. Shrivastava, a Petitioner in a similar case filed at Jabalpur, since transferred to Indore, was present and heard at the time of final hearing of the case. Arguments at length were advanced on several dates of hearing by Kumari Madhu Bhatia for the Petitioners, Shri A.K. Chitale, Senior Advocate appearing with Shri S.M. Dagaonkar for the Union of India - Respondent No. 1, Shri N.C. Jain, the Learned Advocate General with Shri S.K. Nigam, Government Advocate for the State of Madhya Pradesh - Respondent No. 2, Shri R.S. Garg for Respondent No. 3, Shri S. Kulshreshtha for Respondents No. 4 and 5, Shri S.S. Pawar for Respondent No. 6 and Shri G.M. Chaphekar, Senior Advocate with Shri S.S. Samvatsar for Respondent No. 7.

The Petitioners contention at the hearing was that the majority view expressed in the original judgment of Sampat Kumar, reported in AIR 1987 SC 386, in Paragraph 20 has laid down that selection for the post of Vice-Chairman and Members to be appointed to the Administrative Tribunals, excepting in case of sitting Judges or retired Judges of the High Court, has to be made by a High-Power Committee with a sitting Judge of the Supreme Court to be nominated by the Chief Justice of India as it's Chairman. It was further contended that though Shri Bhagwati, C.J. has in paragraph 6 of the judgment observed that the

appointment of the Chairman, Vice-Chairman and Members may also be made by the concerned Government after consultation with the Chief Justice of India, he has also agreed with the majority view expressed by Ranganath Misra, J. that the selection be made by a high-power selection committee. According to the Learned Counsel for the Petitioners in such a situation the majority view expressed by Ranganath Misra, J. (as his Lordship then was) has to be given effect to and since the selection of the Respondents No. 3 to 7 is not in accordance with the procedure laid down by the majority judgment in Sampat Kumar's case, the appointments are bad in law and have to be set-aside. It was also contended that the procedure of selection adopted by the Respondents was also arbitrary and unfair. Instead of selection the appointments are made by nomination without considering all eligible and available candidates so that the best amongst them could be selected. This, according to the Petitioners has violated the safe-guard against possibility of selection of inferior candidates to the exclusion of the best available. It was, therefore, contended that the appointments were liable to be set-aside.

On behalf of the Respondents preliminary objection as to the jurisdiction of this Court to deal with the case as also as regards locus-standi of the Petitioners have been raised. It was also contended that the petition is vague and general and is actuated by an ulterior motive and is not a public interest litigation. It has also been contended that the case, in all propriety, should be left to be decided by the Supreme Court as the members and Vice-Chairman of the Tribunal enjoy status of a judge of a High Court and it would not be proper that cognizance is taken by this Court of the case challenging their appointments. It was further contended that a writ of quo- warranto must fail as soon as it is shown that an appointment order in accordance with the provisions of law exists in favour of the Respondents whose appointments are sought to be challenged. It was also contended that the question of validity of appointments is so inextricably interlinked with the question of vires of the provisions of the Administrative Tribunals Act, 1985 (hereinafter referred to as the "Act") that without holding the Act to be illegal the petition cannot be allowed. It was further submitted that the individual Respondents cannot be made to suffer even if the appointments are found technically to be against the observations of the Supreme Court made in Sampat Kumar's case, (supra).

On merits it was contended that the observations of the Supreme Court in Sampat Kumar's case (supra) have little value as precedent as they do not qualify to be taken as the ratio decidendi of the case. According to the Respondents the observations were merely advisory in character and unless the law was amended to bring it in conformity with the observations, it was not binding on the State or the Union Governments to comply with the observations and at any rate, compliance with the observations could not be enforced through Courts of law indirectly by invalidating appointments made in contravention of the observations. It was contended that the appointments not being in contravention of the letter of the law, the Act cannot be quashed merely because

they have not been made in accordance with the said observations in Sampat Kumar's case (supra). It was also contended that when the Chief Justice of India has put the seal of his approval over the appointments, the selection could be said to be by the Chief Justice himself and it cannot be said that the appointments were in ignorance or in violation of the observations of the Supreme Court as regards the selection to be by a high-power committee.

From the pleadings and the arguments, the following points emerge for consideration and we propose to deal with them in the following order.

(1) Preliminary objections:

(i) Bar of jurisdiction u/s 28 of the Administrative Tribunals Act, 1985;

(ii) Propriety of the High Court entertaining this petition in respect of appointments of Vice-Chairman / members of a Court / Tribunal of co-ordinate jurisdiction;

(iii) Locus standi of the Petitioners.

(2) Scope of a petition for issue of a writ of quo warranto.

(3) Position and import of observations of the Supreme Court in Sampat Kumar's case - Effect of non-compliance.

(4) Validity of the procedure actually adopted in making the appointments of Respondents No. 3 to 7.

(5) Relief.

(1) Preliminary objections

(i) Bar of jurisdiction u/s 28 of the Administrative Tribunals Act, 1985.

The objection as to jurisdiction is based on the provisions of the Act. Shri A.K. Chitle appearing for the Union of India referred to Sections 9(2), 28, 31 and 33 of the Act in an effort to convince us that the Respondents No. 3 to 7 are holders of civil posts under the Central Government and, therefore, their cases will be cognizable by Central Administrative Tribunal set-up by the Union of India and this Court shall have no jurisdiction to deal with their cases. Shri N.C. Jain, the Learned Advocate General for the State of Madhya Pradesh also took the same stand referring to Article 217 of the Constitution of India in addition to the provisions of the Act. Shri G.M. Chaphekar, the learned Counsel appearing for Shri R.P. Kapoor - Respondent No. 7 also contended that the subject matter of the petition is a "service matter" cognizable by Central Administrative Tribunal as the Respondents No. 3 to 7 held "civil posts" under the Union.

To appreciate the arguments it is necessary to reproduce relevant provisions of the Act. They are reproduced hereunder:

3. Definition. - In this Act, unless the context otherwise requires,--

(k) "Post" means a post within or outside India.

(p) "Service" means service within or outside India.

(q) "Service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation (or society) owned or controlled by the Government, as respects -

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation ;

(iii) leave of any kind ;

(iv) disciplinary matters ; or

(v) any other matter whatsoever.

Jurisdiction, powers and authority of the Central Administrative Tribunal.-

(1) save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts (except the Supreme Court (xx) in relation to -

(a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian ;

(b) all service matters concerning -

(i) a member of any all India service ; or

(ii) a person [not being a member of an All India service or a person referred to in clause(c)] appointed to any civil post under the Union ; or

(iii) a civilian [not being a member of an All-India service or a person referred to in Clause (c)] appointed to any defence services or a post connected with defence.

and pertaining to the service of such member, persons or civilian, inconnection with the affairs of the Union or any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation (or society) owned or controlled by the Government.

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in Sub-clause (ii) or Sub-clause (iii) or Clause (b), being a person whose services have

been placed by a State Government or any local or other authority or any corporation (or society) or other body, at the disposal of the Central Government for such appointment. (Explanation.-For the removal of doubts, it is hereby declared that references to "Union" in this Sub-section shall be construed as including references also to a Union Territory.)

Exclusion of jurisdiction of Courts except the Supreme Court under Article 136 of the Constitution.-

On and from the date from which any jurisdiction, powers authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service" or post or service matters concerning members of any service or persons appointed to any service or post, no Courts except--

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

Members and staff of Tribunal to be public servants.-

The chairman, Vice Chairman and other members and the Officers and other employees provided u/s 13 to a Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

Act to have overriding effect. --

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

An analysis of Sub-section (1) of Section 14 of the Act would show that the Central Administrative Tribunal shall have jurisdiction in relation to recruitment and matters concerning recruitment to any All India Service or to any civil service of the Union or a Civil Post Under the union. The Central Administrative Tribunal shall also have jurisdiction in relation to all service matters concerning members of an All India Service or a person not being member of an All India service or a person referred to in Clause (c) appointed to any civil service of Union or civil post under the Union or a civilian not being a member of All India service, if the matter pertains to service of such member, person or civilian in connection with the affairs of the Union or of any State or of any local authority within the territory of India or under the control of the Government of India or of any Corporation or Society owned or controlled by the Government of India. For the Central Administrative Tribunal to have jurisdiction over the subject matter of this case, it will have to be shown that members and Vice-Chairman of the

Administrative Tribunal set-up under the Act are members of an All India Service or they have been appointed to any civil service under the Union or that they hold a civil post under the Union. It is not in dispute that the Respondents No. 3 to 7 are not members of any All India service. It is also clear that there is no civil service constituted by the Union of India to which Respondents No. 3 to 7 could be said to have been appointed. What therefore remains to be seen is whether they hold a civil post under the Union. Similarly, if Clause (b) of Section 14(1) of the Act has to be applied to the present case it will have to be shown that the subject matter of this petition is a "service matter" concerning a person who is appointed to a "civil post" under the Union.

The definition of "service matters" reproduced hereinabove makes it clear that it means all matters relating to the conditions of service of persons in connection with the affairs of the Union in respect of remuneration, pension and retirement benefits, tenure, confirmation, seniority, promotion, reversion, premature retirement and superannuation, leave, disciplinary matters, etc. The expression "any other matter whatsoever" used in Clause (v) of the aforesaid definition obviously will have to be construed ejusdem generis and would not include appointment. Recruitment to a service or appointment to a post will therefore obviously not be a "service matter" and therefore Clause (b) of Sub-section (1) of Section 14 of the Act will have no application of the present case. It appears that because "service matters" do not include matters regarding recruitment or appointment, the legislature has provided a separate heading for dealing with cases of recruitment and appointment by enacting Clause (a) of Sub-section (1) of Section 14 of the Act. We have, therefore, to concentrate on the question as to whether Respondents No. 3 to 7 are holding a "civil post" under the Union.

In the State of Assam and Others Vs. Shri Kanak Chandra Dutta, the question before the Supreme Court was whether a mauzadar in the Assam valley held a "civil post" under the State of Assam. Examining the duties and responsibilities as also the powers enjoyed by a mauzadar, the Supreme Court held that a Mauzadar was a public servant whose primary duty was to collect land revenue and other Government dues with the collection of which he is entrusted. He was responsible for the collection of various taxes. While dealing with the question in paragraph 9 of its judgment the Supreme Court observed that there is no formal definition of "post" and "civil post" in the Constitution. It would be useful to extract the relevant observations in paragraphs No. 9 and 10 of the decision hereunder:

9. There is no formal definition of "post" and "civil post". The sense in which they are used in the services Chapter of part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Article 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State, (see marginal note to Article 311). In Article 311, a member of a civil service of the Union or an All-India service or a civil service of a State is

mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State, (see the marginal notes to" Article 309, 310 and 311). The heading and the sub-heading of part XIV and chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person said to be holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

In the context of Article 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds "office" during the pleasure of the Governor of the State, except as expressly provided by the Constitution, see Article 310. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Article 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post.

It is clear that the Supreme Court has not laid down any hard and fast rule for determining whether a particular employment is a "post". It has categorically observed that it is a question of fact in each case whether relationship of master and servant is established between the State and the alleged holder of a post. It has also been observed clearly that a post is an employment but every employment is not a post. We will, therefore, have to examine in the light of the observations of the Supreme Court in the aforesaid ruling as to whether appointment to the post of member / Vice-Chairman of the Tribunal could be said to be an appointment to a civil post.

This brings us to the provisions regarding establishment of Tribunals and appointment to the post of Chairman, Vice-Chairman and members thereof. Section 4 Sub-section (2) provides for establishment of a State Administrative Tribunal. It reads as under:

4. Establishment of Administrative Tribunals.-

(1) ...

(2) The Central Government may, on receipt of a request in this behalf from any State Government, establish, by notification, an Administrative Tribunal for the State to be known as the.... (name of the State) Administrative Tribunal to exercise the jurisdiction, powers and authority conferred on the Administrative Tribunal for the State by or under this Act.

The composition of the Tribunal is provided by Section 5(1) which reads as under:

5. Composition of Tribunal and Benches thereof-

(1) Each Tribunal shall consist of a Chairman and such number of Vice-Chairman (and judicial and Administrative members) as the appropriate Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Tribunal may be exercised by benches thereof.

Section 8 of the Act provides for term of office of Chairman, Vice-Chairman and members which reads as under:

8. Term of office.- The Chairman, Vice-Chairman or other member shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for re-appointment for Anr. term of five years:

Provided that no Chairman, Vice-Chairman or other member shall hold office as such after he has attained,--

(a) in the case of the Chairman or Vice-Chairman, the age of sixty-five years, and

(b) in the case of any other member, the age of sixty-two years.

Section 9 of the Act provides for resignation and removal of the Chairman,

Vice-Chairman and other members of the Tribunal. It reads as under:

9. Resignation and removal.-

(1) The Chairman, Vice-Chairman or other member may, by notice in writing under his hand addressed to the President, resign his office:

Provided that the Chairman, Vice-Chairman or other member shall, unless he is permitted by the President to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Chairman, Vice-Chairman or any other member shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairman, Vice-Chairman or other member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairman, Vice-chair-man or other member referred to in Sub-section (2).

Section 10 of the Act provides for salaries and allowances and other terms and conditions of service of Chairman, Vice-Chairman and other members. It reads as under:

10. Salaries and allowances and other terms and conditions of service of Chairman, Vice-Chairman and other members.--

The salaries and allowances payable to, and the other term and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairman, Vice-Chairman and other members shall be such as may be prescribed by the Central Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman, Vice-Chairman or other member shall be varied to his disadvantage after his appointment.

Section 11 of the Act puts certain restrictions on holding of offices by the Chairman, Vice-Chairman and members of the Tribunal after ceasing to be such Chairman, Vice-Chairman and the members.

A perusal of the aforesaid provisions show that individually there is no power or function given to the Vice-Chairman or member of a Tribunal. They are expected to discharge functions of the Tribunal under the Act and apart from that they are not expected to render any service. The appointment is clearly to a statutory post and not to a civil or executive post. After the appointment no control over the appointees is left with the Union of India whether directly or through President of India. There is a fixed tenure upto a certain age limit. The removal of the Chairman, Vice-Chairman-or any other member could only be by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which the Chairman, Vice-Chairman or the member against whom action is being taken has been informed of charges against him and given a reasonable opportunity of being heard in respect of those charges. The procedure for such an inquiry has also to be regulated by rules by the Central Government. Thus, action for removal can also be taken only under the provisions of the Act. The salaries, allowances and other terms and conditions of service have also to be prescribed by the Central Government u/s 10 of the Act. The necessary concomitants of a "service" or a "post" under the Union or the State are, therefore, clearly absent in the case of appointment as Vice- Chairman or member of Administrative Tribunal under the Act. The relationship of master and servant is clearly absent in the appointment to the post of member / Vice-Chairman of the Tribunal. There is no direct supervisory control vested in the State Government over the incumbents of these high offices. The State does not also have a free hand in the selection and appointment to these posts.

In a Division Bench decision of this Court, in *Vijay Singh Jadhon v. State of M.P. and Ors.* 1989 MPLJ 255) interpretation of words "appointed", "civil service", and "civil post" came up for consideration. It was a case in which the question for consideration was whether a casually employed person could be said to be holding a civil post under the State. In the facts and circumstances of that case, the Court took the view that the casual labourers do not hold civil posts under the State. In *Union of India and others Vs. Deep Chand Pandey and another*, the narrow view taken by the High Court has been set-aside and the casual labourers employed by the State have been taken to be governed by the provisions of the Act. However, the Supreme Court has not again gone into the question of what is a "civil post" in the aforesaid judgment. For the reasons already stated we are of the opinion that the appointment as member / Vice-Chairman of the Tribunal is not to a civil post either under the State or the Union as indeed it cannot be if the Tribunal has to be proper substitute of the High Court.

We therefore, hold that the posts of Vice-Chairman and members of the Tribunal are not civil posts under the Union or the State and, therefore, Central Administrative Tribunal or the State Administrative Tribunal itself shall have no jurisdiction over the subject matter of an appointment to these posts. The objections on this count are, therefore, rejected. Consequently, bar of jurisdiction u/s 28 of the Act will have no application in this case. The case is cognizable by this Court.

(ii) Propriety of the High Court entertaining this petition in respect of appointments of Vice-Chairman I Members of a Court/ Tribunal of coordinate jurisdiction.

Another preliminary objection raised is as to the propriety of this Court sitting in judgment over the appointments to the posts of members/Vice-Chairman of the Tribunal which according to the Respondents, exercises a parallel jurisdiction to that of this Court and the members Vice-Chairman of the Tribunal enjoy the same status as that of a Judge of a High Court. According to the Respondents it is extremely improper for a Court of co-ordinate, parallel jurisdiction to examine the validity of appointments to the posts of members Vice-Chairman of the Tribunal. In support of the arguments a Full Bench decision of the Patna High Court in *In Re: Babul Chandra Mitra*, was cited. The question before the Full Bench was whether the High Court could issue a writ against itself. It was argued before the Court that Article 226 of the Constitution is couched in wide terms and the High Court has jurisdiction to issue to "any person or authority" a direction or order or writ for enforcement of any fundamental right. The Court held that the High Court cannot issue a writ or order directly to itself to quash an order made by itself. The following observations in Paragraph No. 6 of the judgment contain the gist of the decision.Paragraph No. 6 reads as under:

It cannot surely be right to say that High Court can issue a writ or order directly to itself to quash an order made by itself. It is immaterial whether in making the order, the High Court acts in a judicial or administrative role. Under Article

226(1) the High Court shall have power to "issue" to any person or authority directions, orders or writs. It is apparent that a writ cannot be issued by the High Court to itself for the process involves rather the absurd position that it calls upon the Judges to show cause to themselves why they should not be directed to quash something they themselves have determined. It is also manifest on principle that a Judge is without jurisdiction to issue a writ or order to Anr. Judge of Co-ordinate jurisdiction and power to compel performance of duties. The very nomenclature of the writs - "mandamus, certiorari, prohibition" implies superior power - the power of a superior authority to compel an official or an inferior tribunal to act in a certain manner. The same reason which prohibits an inferior Court from controlling the conduct of a superior- tribunal applies in equally cogent manner to the effort of one Judge to compel the action of Anr. Judge of Co-ordinate jurisdiction and power. It is manifest in the present case that this Bench has no jurisdiction to issue any writ or direction or order to the High Court requiring it to enrol the Petitioner as advocate or even to reconsider his application for enrolment.

The case in hand is clearly distinguishable on facts. In the case before the Patna High Court writ was sought from the High Court against itself. It is not a case here. High Court and the Tribunal are two distinct Institutions. It would be wrong to suggest that Tribunal is a Court of co-ordinate jurisdiction to that of the High Court. The areas of operation of these two Institutions are quite different and mutually exclusive. The jurisdiction vested in the High Court and the Courts subordinate thereto as regards service matters in respect of services under the Government and some semi-Government bodies has been taken away from the High Court and the Courts subordinate thereto and vested in the Tribunal. The High Court is thus totally divested of the jurisdiction over cases which can be filed before the Tribunal. The Tribunal has replaced the High Court and the Courts subordinate thereto only in "service matters" of Government servants and servants of certain semi-Government bodies. Beyond the matters entrusted to them by the Act, the Tribunals under that Act have absolutely no jurisdiction over any other matter. This is not, therefore, a case of exercising of co-ordinate and parallel jurisdiction. A co-ordinate jurisdiction envisages a concurrent exercise of jurisdiction over the same subject matter by a parallel Court. This is not the situation here. The Full Bench of the Patna High Court (supra) has, therefore, no application to the facts of the present case. Moreover, various Courts have since been taking the view that administrative action of the High Court can be subjected to the judicial review of the same Court under Article 226 of the Constitution of India. See *Himansu Kumar Bose Vs. Jyoti Prokash Mitter*, Cf. *Pradyot v. Chief Justice* (1955) 2 SCR 31], *Devsahayam v. State of Madras* AIR 1958 Mad. 63; *Abul Khair and Others Vs. Hon'ble Chief Justice, High Court of Judicature at Allahabad and Others*, , *In Re: Mr. Hayles, Editor of "The Mail" and Another*, , *Gordon v. Venugopal* (1958) ILLJ 300 (Mad.), *Pramatha Nath Mitter and Others Vs. Hon'ble The Chief Justice of the High Court at Calcutta in the State of West Bengal and Others*,

That brings us to the cases cited on the point as to whether Tribunals under the Administrative Tribunals Act are equivalent in status to the High Court and the Members/Vice-Chairman of the Tribunals under the Act enjoy the same status which is enjoyed by a Judge of a High Court. The argument that the Tribunals enjoy the same status that of the High Court essentially stems from the decision of the Supreme Court in *S.P. Sampat Kumar v. Union of India and Ors.* AIR 1987 SC 386). In the aforesaid case Bhagwati, C.J. at the end of Para 2 of his judgment observed as follows:

Parliament can certainly, without in any way violating the basic structure doctrine, set up effective alternative institutional mechanisms or arrangements for judicial review. The basic and essential feature of judicial review cannot be dispensed with but it would be within the competence of Parliament to amend the Constitution so as to substitute in place of the High Court, Anr. alternative institutional mechanism or arrangement for judicial review, provided it is not less efficacious than the High Court. Then, instead of the High Court, it would be Anr. institutional mechanism or authority which would be exercising the power of judicial review with a view to enforcing the constitutional limitations and maintaining the Rule of Law. Therefore, if any constitutional amendment made by Parliament takes away from the High Court the power of judicial review in any particular area and vests it in any other institutional mechanism or authority, it would not be violative of the basic structure doctrine, so long as the essential condition is fulfilled, namely, that the alternative institutional mechanism or authority set up by the Parliamentary amendment is no less effective than the High Court.

In paragraph No. 3 he observed as follows:

Consequently, the impugned Act excluding the jurisdiction of the High Court under Articles 226 and 227 in respect of service matters and vesting such jurisdiction in the Administrative Tribunal can pass the test of constitutionality as being within the ambit and coverage of Clause (2)(d) of Article 323A, only if it can be shown that the Administrative Tribunal set up under the impugned Act is equally efficacious as the High Court, so far as the power of judicial review over service matter is concerned.

Again in Paragraph No. 6 he observed as follows:

The Constitution makers have made anxious provision to secure total independence of the judiciary from executive pressure or influence. Obviously, therefore, if the Administrative Tribunal is created in substitution of the High Court and the jurisdiction of the High Court under Articles 226 and 227 is taken away and vested in the Administrative Tribunal, the same independence from possibility of executive pressure or influence must also be ensured to the Chairman, Vice-Chairman and members of the Administrative Tribunal. Or else the Administrative Tribunal would cease to be an equally effective and efficacious substitute for the High Court and the provisions of the impugned Act would be

rendered invalid.

Ranganath Misra, J. in his judgment has also observed as follows:

It has not been disputed before us - and perhaps could not have been - that the Tribunal under the scheme of the Act would take over a part of the existing backlog and a share of the normal load of the High Courts. The Tribunal has been contemplated as a substitute and not as supplemental to the High Court in the scheme of administration of justice. To provide the Tribunal as an additional forum from where parties could go to the High Court would certainly have been a retrograde step considering the situation and circumstances to meet which the innovation has been brought about.

Again in Paragraph No. 16 Ranganath Misra, J. has observed as follows:

What, however, has to be kept in view is that the Tribunal should be a real substitute of the High Court - not only in form and de jure but in content and de facto. As was pointed out in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, the alternative arrangement has to be effective and efficient as also capable of upholding the constitutional limitations. Article 16 of the Constitution guarantees equality of opportunity in matters of public employment. Article 15 bars discrimination on ground of religion, race, caste, sex or place of birth. The touchstone of equality enshrined in Article 14 is the greatest of guarantees for the citizen. Centring around these articles in the Constitution a service jurisprudence has already grown in this country. Under Sections 14 and 15 of the Act all the powers of the Courts except those of this Court in regard to matters specified therein vest in the Tribunal - either Central or State. Thus the Tribunal is the substitute of the High Court and is entitled to exercise the powers thereof.

All that the aforesaid observations show is that a substitute of the High Court so far as the jurisdiction conferred by the Act has been created in the shape of the Tribunal. A Court of concurrent jurisdiction has not been created under the Act. This gives support to the view taken by us that the Full Bench decision of the Patna High Court (*supra*) does not apply to the present case. Another decision cited in support of the contention was a decision of the Supreme Court in *J.B. Chopra and Ors. v. Union of India and Ors.* MR 1989 SC 357 This decision only reiterates the view taken by the Supreme Court in *Sampat Kumar's* case (*supra*). It holds that the Administrative Tribunals set-up u/s 4 of the Act are not *sundaemental* to but are substitutes of the High Court.

Decision of the Supreme Court in *Union of India (UOI) Vs. Parma Nanda*, has been cited in support of the contention that the Tribunals have the same status as that of the High Court. In Paragraph 15 of this decision it has been observed that the powers of the High Court under Article 226 in so far as they are exercisable in relation to the "service matters" stand conferred on the Tribunals established under the Act. At the end of Paragraph 18 of this decision, it has been observed that the Tribunal is just a substitute to the Civil Court and the

High Court. Another decision referred to by the learned Counsel of one of the Respondents is a decision of the Supreme Court in *Shri Amulya Chandra Kalita v. Union of India and Ors.* JT 1990 (1) SC 558. The case only reiterates the position of law as laid down in *Sampat Kumar's* case (supra).

As against this in *M.B. Majumdar Vs. Union of India*, the Supreme Court had occasion to consider the question of equivalence of status of the Members/Vice-Chairman of the Tribunals vis-a-vis Judges of a High Court. Paragraph 8 of this judgment is a complete answer to the argument that Members/Vice-Chairman of the Tribunal have been held to be equivalent in status to that of the Judges of a High Court in *Sampat Kumar's* case (supra). We reproduce Paragraph No. 8 hereunder:

The sheet-anchor of Petitioner's case is the decision of this Court in *Sampat Kumar's* case AIR 1987 SC 386 (supra). We will presently show that the decision in *Sampat Kumar's* case (supra) does not support the Petitioner's claim in this petition. It is significant to note that the age of superannuation of High Court Judges is 62 years while that of the Chairman and Vice-Chairman of the Tribunal is 65 years and of any other member is 62 years. No attempt has been made on behalf of the Petitioner to justify the fixation of age of superannuation of the Chairman and the Vice-Chairman as 65 years if they are to be equated with the Chief Justice and sitting Judges of the High Court who retire at the age of 62 years only. In respect of the age of superannuation, the Members of the Tribunal are at par with the Chief Justice and the Judges of the High Court. Obviously, it is for this reason that an attempt was made to claim the equality with the Vice-Chairman of the Tribunal who gets Rs. 8,000/- p.m. as pay like a High Court Judge but retires at the higher age of 65 years. This disparity itself indicates that the Chairman, Vice-Chairman and Members of the Tribunal are not equated with the Chief Justice and Judges of the High Court for all purposes which, in substance, is the foundation of the petition.

It was further observed in Paragraph No. 12 of the decision as under:

In the first place the assumption in the argument on behalf of the Petitioner that the Tribunal is equated with the High Court is fallacious. It is not only the service matters required earlier to be adjudicated by the High Court but also those by the subordinate Courts which are now to be adjudicated by the Administrative Tribunals. That apart, Article 323A itself clearly contemplates that the Administrative Tribunals constituted thereunder are distinct from the High Courts and it is the law enacted by the Parliament providing for establishment of an Administrative Tribunal which is to provide for all matters relating to the jurisdiction, powers, procedure and all supplemental, incidental and consequential matters relating to the Administrative Tribunal.

Paragraphs No. 17 and 18 of the decision clinch the issue and are, therefore, reproduced hereunder:

17. Considerable emphasis was laid on behalf of the Petitioner on *S.P. Sampat*

Kumar's case AIR 1987 SC 386) (supra) to contend that the Tribunals constituted under Article 323A have been equated with the High Courts. It is sufficient to say that in Sampat Kumar (supra), the question before us in the present petition did not arise for consideration and the observation therein cannot be torn out of context. On the contrary, certain observations in para 22 of that judgment indicate that the retiring age of 62 years or 65 years, for the Members, Chairman and Vice-Chairman was treated to be in accord with the pattern of the enactment on the basis that the Members and Chairman or Vice-Chairman, were in different categories. Equation of the Tribunal with the High Court therein was only as the forum for adjudication of disputes relating to service matters and not for all purposes such as the one arising for decision in the present case. We are unable to accept that the decision of this Court in S.P. Sampat Kumar (supra) supports the contention before us in this petition.

As a result of the aforesaid discussion, we have no hesitation in holding that the equality claimed by the Members of the Administrative Tribunal with the Judges of the High Courts or even the Vice-Chairman of the Tribunal in the matter of pay and age of superannuation does not exist being contrary to the pattern and scheme of the parent statute establishing the Tribunal and, therefore, the very foundation for the argument of discrimination being non-existent the petition must fail.

As a result of the aforesaid discussion we conclude that there is no force in the argument that Tribunals set-up under the Act enjoy status equal to that of the High Court or that they are Courts of Co-ordinate jurisdiction. There is, therefore, no question of any impropriety in the High Court entertaining and deciding a case challenging the appointments to Members/Vice-Chairman of the Tribunal. Claim to equality of status with the High Court is really without any basis in view of the plain fact that the Tribunals are creatures of an Act of Parliament and not of the Constitution. A Tribunal can simply be abolished by repeal of the Administrative Tribunals Act, 1985 or even perhaps, by revocation of the notification establishing the Tribunal. In contrast, the Institution of the High Court being a basic feature of the Constitution of India cannot be abolished even in exercise of Parliament's power to amend the Constitution. This basic difference is sufficient to demonstrate the difference in the status of the High Court and the Tribunals constituted under the Act. The essential sovereign function of administration of justice continues to vest in the main-stream judiciary consisting of the High Court and the Courts subordinate thereto. Only a part of the jurisdiction of these Courts, comparatively of lesser importance has been taken over to lighten the burden of the High Courts and the Civil Courts and has been vested in the Tribunals constituted under the Act. This divesting and vesting of jurisdiction in service matters cannot be taken as complete substitution of main-stream judiciary by the Tribunals so as to elevate the Tribunals to the level of the High Court. Moreover, the Tribunals are substitutes as much of the Civil Courts as they are of the High Courts in service matters of Government servants. Can it be said, therefore, that while hearing a case which

was cognizable by the High Court prior to establishment of the Tribunal, the Tribunal has the status of a High Court and while hearing a case which was cognizable by a civil Court subordinate to the High Court prior to establishment of the Tribunal, the Tribunal has the status of a Civil Court? The argument of equivalence in status on the basis of transfer of jurisdiction is, therefore, fallacious. The fact of the matter is that only the jurisdiction to hear service matters earlier vested in the High Court and the civil Courts has now been transferred exclusively to the Tribunals. This transfer of jurisdiction does not automatically confer on the Tribunal the status of the High Court and on its Members/Vice-Chairman status of Judges of the High Court. There is, therefore, no question of any impropriety in this court entertaining this petition.

(iii) Locus standi of the Petitioners

The next preliminary objection is that the Petitioners have no locus standi in the matter as they are mere busy-bodies challenging the appointments with an ulterior motive in the garb of a public interest litigation. It is also contended that such a challenge could be made only by a person who is directly affected in the sense that the chances of selection to the same post of such a person are affected. It is also argued that for the purpose of a writ of quo warranto the scope of locus standi is still narrower. A decision of the Supreme Court in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, was cited in support of the contention that only a person who has a legal right to enforce can apply under Article 226 of the Constitution of India. It was contended relying on the aforesaid ruling that it is implicit in the exercise of the extra-ordinary jurisdiction that the relief asked for must be one to enforce a legal right and the existence of a right is the foundation of the exercise of jurisdiction of the High Court under Article 226. It was pointed out that the decision further observed that the legal right that can be enforced under Article 226 must ordinarily be the right of the Petitioner himself who complains of infraction of such right and approaches the Court for relief and the right that can be enforced under Article 226 also should ordinarily be the personal or individual right of the Petitioner himself. However, this ruling does not lay down a principle of universal application. The use of the word "ordinarily" shows that there can be exceptions to the general rule. The case itself cites two exceptions viz. Writs of habeas corpus and quo- warranto.

Another case cited on the point is the decision of the Supreme Court in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, It was reiterated by the Supreme Court in this decision relying on *Calcutta Gas Company's* case (supra), that a Petitioner who seeks to file an application under Article 226 of the Constitution should "ordinarily" be one who has a personal or individual right in the subject matter of the petition. The decision itself observed that in exceptional cases, as the expression "ordinarily" indicates, a person who has been prejudicially affected by an Act or omission of an authority can file a writ petition even though he has no proprietary or even fiduciary interest in the

subject matter thereof. This decision, therefore, also does not come in the way of the Petitioners.

As regards the question of locus-standi in a petition for issue of writ of quowarranto it was contended that the scope for maintaining a petition by a person not directly affected is narrower. A decision of the Calcutta High Court in *Ashgar Ally v. Dr. Birendra Nath Dey* AIR 1945 32 Cal 249] has been cited at the bar but it is of not much help because the main challenge in that case was on the ground of delay rather than on the ground of locus-standi. Actually at column 2 page 249 of the report it is clearly stated that right of the relator to bring the proceedings was not questioned.

The next case cited on the point is a decision of Kerala High Court in *Alex Beets Vs. M.A. Urmese and Another*, The Court has laid down the principle in the case that a challenge to a particular appointment as contravening Article 16 of the Constitution cannot be urged by one who was not and is not an aspirant to the post. Obviously, in a petition complaining of violation of the fundamental right under Article 16 of the Constitution which guarantees equality of opportunity in the matter of public employment, a person whose fundamental right under Article 16 is violated can only be heard. No one can maintain a petition that some-body else was not treated equally in the matter of employment and was discriminated against. In this case, the challenge is not by persons who were aspirants to the posts themselves but by persons whose cases can be or are to be or likely to be heard by the concerned Respondents and the complaint is that the concerned Respondents have not been validly appointed. The decision is clearly distinguishable on facts.

The decision of Delhi High Court in *S.C. Malik v. P.P. Sharma* AIR 1982 Delhi 83 is also in a case where infringement of fundamental right under Article 16 was under challenge and, therefore, the Court observed that there can be hardly any quarrel with the proposition that the question of breach of fundamental right can only be raised by a person who is adversely affected by denial of equality of opportunity. In that case, the Petitioner was an advocate who had challenged the appointment of Respondent to the post of Registrar of Delhi High Court. Obviously, the Petitioner had not claimed any denial of equality to himself. This case also is distinguishable on facts so far as the question of locus-standi is concerned.

On the other hand, in *Dineshwar Prasad Vs. State of Bihar and Others*, the Petitioner who was a member of the Legislative Assembly from Sahar Constituency where there was no housing board had challenged the appointment of Respondent/Superintending Engineer, Ranchi and the objection raised was that the Petitioner had no locus-standi as he was not a member of the Legislative Assembly from Ranchi. The Court held that no doubt that the Petitioner has been elected from Anr. constituency but as a member of the Legislative Assembly he had a right to challenge the action of the Government which according to him was not legal. The Court ruled that even an ordinary citizen can come to the

Court in order to challenge the authority of a person holding a public office.

In *G.D. Karkare v. T.L. Shevde and Ors.* AIR 1952 Nag 330 challenge was to the appointment to the post of Advocate General the Court observed that though the office of the Advocate General is a very high Office held by virtue of an appointment made under the Constitution but that does not and cannot mean that the validity of such an appointment is placed beyond challenge. There is no provision in the Constitution prohibiting the High Court from enquiring into the legality of the appointment of the Advocate General. In the absence of any prohibition express or implied the Court is bound to consider the question of legality of any appointment purporting to be made under the law if such a question is properly raised before it. On the locus-standi of a private person to challenge the appointment of an Advocate General, the Court observed that in proceedings for a writ of quo-warranto the applicant does not seek to enforce any right of his as such nor does he complain of any non-performance of duty towards him. What is in question is the right of the non-applicant to hold the office and an order that is passed is an order ousting him from that office. There is no reason to refuse a citizen under a democratic republican Constitution to move for a writ of quo-warranto for testing the validity of a high appointment under the Constitution. The Office of the Advocate General is of a public nature. From every point of view it is a matter of grave public concern that the legality of the appointment to a high office under the Constitution is not left in doubt.

In our opinion in *S.P. Gupta Vs. President of India and Others*, the law relating to locus-standi has been crystalized. This was a case in which practising lawyers had challenged transfer of High Court Judges and had brought before the Court important questions relating to conditions of service and standards of judiciary. It was observed by the Supreme Court in this decision that where there is undoubtedly public injury by the Act or omission of the State or public Authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission. It was further observed by the Supreme Court that there can be no doubt that the practising lawyers have a vital interest in the independence of the judiciary and if any unconstitutional and illegal action is taken by the State or any public Authority which has the effect of impairing the independence of the judiciary, they would certainly be interested in challenging the constitutionality or legality of such action. The lawyers have clearly a concern deeper than that of a busy body and they cannot be told off at the gates.

Applying the aforesaid tests in the present case what we find is that the Petitioners are actually litigants whose cases were or are pending before the Tribunal, appointment to the posts of members/Vice-Chairman of which are under challenge. It is beyond comprehension that when the lawyers can be said to be concerned with conditions of service of the judiciary how can the litigants said to be strangers to the question of validity of appointment to the posts of

members/Vice-Chairman of a Tribunal before whom they have to litigate? If, the lawyers cannot be told off the gates in such cases, the litigants most certainly cannot be shut out. After all, the litigants are the persons bound to be affected by the decisions rendered by the Tribunal. If, their lawyers have a sufficient interest in matters relating to conditions of service of the judiciary, the litigants must be taken to have a greater interest in the same. The Petitioners have come to this Court complaining that despite the directions/observations of the Supreme Court, the Union of India and the State Government have not cared to see that the selection to the posts of Members / Vice-Chairman of the Tribunal is done in such a manner that the Tribunal could be a proper and adequate substitute of the High Court so that the litigants before it could repose faith in it just in the manner in which they had been reposing faith in the High Court. If, for canvassing such a grievance a Government servant whose right to approach the High Court and the Civil Courts has been taken away by the Act does not have sufficient interest, then who else could have it? In our opinion, such a petition is clearly maintainable at the instance of a Government servant who may or may not presently have a pending litigation before the Tribunal. The very fact that such a person is a Government servant whose right to approach the High Court and the Civil Courts has been taken away under the Act should be sufficient to conclude that he shall have sufficient interest in ensuring that he is offered as a substitute forum of judicial Review is a real substitute of the High Court. Moreover, when the petition is to enforce the dictum of the Supreme Court in respect of the standard of the Administrative Tribunal and the quality of its Members / Vice-Chairman, there should be no doubt that a Government servant has sufficient interest in the matter and he can maintain such a petition.

Moreover, in *Rajendra Kumar v. State of M.P. and Ors.* MR 1957 M.P. 60 : 1957 J LJ 170 a single bench of this Court has held that for the issue of a writ of quo-warranto no special kind of interest in the relator is needed nor is it necessary that any of his specific legal right is infringed. It is enough for its issue that the relator is a member of the public and acts bona fide and is not a mere pawn in the game having been set-up by Ors. . It is in the interest of the public that the legal position with respect to the alleged usurpation of an important public office should be judicially cleared and this can be done at the instance of any, member of the public. We respectfully agree with the view taken by the Single Bench in the aforesaid case. The same view is taken in *Ramjilal v. State* 1979 J LJ 397 D.B.

(2) Scope of a petition for issue of a writ of quo- warranto.

It was further argued that the petition is plainly for the issue of a writ of quo-warranto and not for any other writ and, therefore, the petition must fail as soon as a formal authority to hold the post is shown. It is contended that question of motive behind issue of order of appointment cannot be gone into in a petition for issue of a writ of quo- warranto. Let us now examine the case law cited in support of this contention. In *The University of Mysore v. C.D. Govinda Rao and Anr.* MR 1965 SC 491 the Supreme Court considered the nature of the writ of

quo-warranto and conditions to be satisfied for issue of it. The case arose out of a petition praying for a writ of quo-warranto calling upon the incumbent of the post of Reserch Reader in English in the Central College, Bangalore to show cause as to under what authority he was holding the post. It was contended that the appointment of the Respondent was illegal in the face of the prescribed qualifications. The Petitioner wanted to be appointed in place of the Respondent and a direction to this effect was also sought in the petition. Paragraph 7 of the judgment contains the discussion on the point and it would be useful to reproduce it hereunder:

(7) As Halsbury has observed:

An information in the nature of a quo-warranto took the place of the obsolete writ of quo-warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined." Broadly stated, the quo-warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo-warranto ousts him from that office. In other words, the procedure of quo-warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the Courts to issue writ of quo- warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo- warranto, he must satisfy the Court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.

The learned Counsel for the Respondent have laid great stress on demonstration of violation of statutory provisions as a condition precedent to issue of a writ of quo-warranto. The argument is that the appointments of the Respondents No. 3 to 7 have not been alleged or shown to be in violation of any of the provisions of the Administrative Tribunals Act and therefore, a writ of quo-warranto cannot be issued. It is contended that the Act, as it stands at present, does not require the selection to the post of Members / Vice-Chairman by High Power Selection Committee as observed by the Supreme Court in Sampat Kumar's case. Because

of this, no violation of any statutory provision can be claimed in making the appointments and consequently, the appointments cannot be called in question by filing a petition for issue of a writ of quo-warranto.

In *Statesman (Private) Ltd. Vs. H.R. Deb and Others*, in paragraph 10 of their judgment it is observed as follows:

The High Court in a quo-warranto proceeding should be slow to pronounce upon the matter unless there is a clear infringement of the law. If a station master were appointed we can readily question the appointment but when a person exercising judicial functions is appointed one cannot be too astute to say that the person does not hold a judicial office when it must at least be conceded that he holds an office of some kind. Nor does the argument that magistrates will claim to be appointed judges of the High Court need detain us.

Again the emphasis laid by the learned Counsel for the Respondents is on the words "Unless there is a clear infringement of the law". It appears that the observations have been made in the context of Section 9 of the Industrial Disputes Act, 1947 which was the law involved in that case. Section 9 gave finality to the orders of appropriate Government appointing any person as the Chairman or any other member of a Board or Court or as the Presiding Officer of a Labour Court, Tribunal or National Tribunal under the Industrial Disputes Act, 1947. It was categorically declared in the section that no such order of appointment shall be called in question in any manner. Obviously, there is no parallel provision in the Act and, therefore, the case before us is distinguishable on facts from the aforesaid decision.

The next case cited on the point is a Full Bench decision of the Delhi High Court in *P.L. Lakhanpal Vs. A.N. Ray and Others*. It has been observed in this case that the scope of the powers of the High Court to issue a writ of quo-warranto under Article 226 of the Constitution is not wider than it is in England and Courts in this country have followed the principles including the limitations which have been well established in England. It is further observed that the Court, will not issue a futile writ of quo-warranto if the alleged irregularity or defect in appointment of the holder of Office is curable by his immediate reappointment. This decision has perhaps been cited as an authority for the proposition that the Respondents No. 3 to 7 being eligible for appointment to the post as they held the statutory qualifications, they could be reappointed to the post and therefore, the issue of the writ would be futile. In Paragraph 18 of the judgment it has been observed that if in an information in the nature of quo-warranto the holder of an Office suffers from such personal disqualification, which has not been removed or is irremovable, a writ of quo-warranto must follow. The argument is that since the Respondents No. 3 to 7 held the qualifications required for the posts, a writ of quo-warranto cannot be issued against them or if issued, on their showing that they had the essential qualifications prescribed for holding the post the writ must fail. The case before the Delhi High Court was in respect of the appointment to the post of Chief Justice of India and not a selection post as under the Act. By

any reasoning the post of the Chief Justice of India cannot be equated with the post of a Member/Vice-Chairman of an Administrative Tribunal. The post of the Chief Justice of India is a Constitutional post provided for by Article 124 of the Constitution of India. It is not a post for which selection is made from hundreds of qualified persons by any standard process provided by any statute. The considerations are entirely different and there cannot be any parallel drawn between the appointment to the post of Chief Justice of India and that to the posts of Members/Vice-Chairman of the Tribunals.

In *Mohi Chandra v. Secretary, Local Self Government of Assam and Anr.* (AIR 1953 Assam 12) relying on a passage in Halsbury's Law of England, it was observed that an information in the nature of quo-warranto is not issued as a matter of course, and when a relator applies for an information, it is in the discretion of the Court to refuse or grant it according to the facts and circumstances of the case. The Court can and will inquire into the conduct and motives of such relator and the Court may in its discretion decline to grant a quo-warranto information where it would be vexatious to do so, or where an information would be futile in its results. It was further observed that on the aforesaid principles, the Court will not grant leave to a relator to file a quo-warranto information as a matter of course simply because a reasonable doubt as to the legal validity of the title is shown, but the Court will take into consideration the consequences which would be likely to follow should the information be granted and also, all the circumstances of the application. Relying on these observations it was contended that the Petitioners are not entitled to grant of the relief of issue of a writ of quo-warranto because granting the relief would mean bringing the working of the Tribunal to a stand-still causing grave and irreparable injury to the interests of thousands of Government servants. In our opinion, the ruling does not take the Respondents case any further. Firstly, as we already observed the Petitioners cannot be categorised as relators. They have a direct interest in maintaining the high standard of the Tribunal through a proper method of selection of its Members / Vice-Chairman. Secondly, in the circumstances of the case, the consequences cannot be looked into. If we do that, that will be putting a premium on lawlessness. Grant of immunity from challenge to such appointment to high Office on the ground that the consequences of setting- aside such appointments would be far-reaching would not be in the larger public interest.

In *K.J. Joseph Vs. Hon"ble Justice, K. Sukumaran and Others*, a writ of quo-warranto was sought against a sitting Judge of Kerala High Court. It was not disputed that the appointment was legal, valid but the contention was that had all the facts and circumstances concerning the Judge relevant for considering him for the appointment been properly valued and appreciated by the appointing authority, he would not have been made a Judge of the High Court. In support of the contention the Petitioner relied upon certain facts which had happened long prior to the appointment of the Judge and of which there was no factual foundation. The Court held that a petition based on such surmises and wild

allegations of which the Petitioner had no personal knowledge was liable to be quashed. It was further observed that in proceedings for issue of a writ of quo-warranto the High Court has no jurisdiction or power to examine and explore the mind of the appointing authority. The facts entering into the mind of the appointing authority in appointing a particular person were not relevant consideration in a proceeding for a writ of quo-warranto. The main question before the Court in such a case is the title of the person to hold the office. The question to be determined is whether the Respondent concerned is a usurper.

In *A. Ramachandran v. A. Alagiriswami*, Government pleader High Court, Madras and Anr. (AIR 1961 Madras 450) a writ of quo-warranto was sought against person occupying office of Government pleader in Madras High Court. The Court observed that quo-warranto is generally regarded as an appropriate and adequate remedy to determine the right or title to a public office and oust an incumbent who has unlawfully usurped or intruded into such office or is unlawfully holding the same. The proceeding in quo-warranto against a public officer is for the purpose of determining whether he is entitled to hold the office and discharge its function. The office of Government pleader was held to be a public office amenable to a writ of quo-warranto. The Respondent in that case was appointed Government pleader immediately on his retirement from the Madras State Higher Judicial service. The appointment was challenged on the ground of malafides. It was also contended that he did not qualify to hold the post. The Court held that the intention of the Rule was that where a selection was made from amongst Advocates the selected candidate should have been a person really practising at the Bar as distinct from one whose name is merely on the rolls of the High Court. The Court also found that there was a technical compliance, a rigidly formal compliance with the rules and the Respondent became a practising Advocate in the strictest and narrowest sense of that phrase. The Court, therefore, held that the Government exercised their power under the rules to facilitate the preferment of the Respondent by fraudulent use of power. It was also observed that where an appointment is made unmindful of legitimate considerations and primarily only to advance the interest in life of the person appointed, that would not be an honest exercise of the power. Ultimately, however, the writ of quo-warranto was not granted on the ground that the rules under which the appointment was made had no statutory force but only declaration by the government of their intention and line of conduct in the matter of appointment of Government pleaders. The Court thought that in such situation the only safe-guard must be the sense of responsibility, the respect for propriety, the regard for decorum and the obligation to behave fairly and beyond all else, to behave honestly which must actuate and bind the holders of every public office of whatever consequence. Against unhappy adventures, in the dispensation of Government patronage, Courts could give no worthwhile relief. The corrective must be applied in the first instance, by those in administrative or operational control, and ultimately by a resentful and uncompromising public opinion. Jagadisan, J. in his separate concurring opinion observed in paragraph 118 of the

judgment as follows:

I am of opinion that questions of alleged motive and purpose supposed to constitute the background for the order of appointment of the first Respondent are wholly foreign to the scope of the present proceedings before us. As observed by Lord Denning in his Hamlyn Lectures on Freedom under the Law:

No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do; and will not do things that they ought to do.

Acts of favouritism by way of backdoor appointment and deviations from fair play and justice are not uncommon features in the administration of any Government, in any country. But the jurisdiction of the Courts is not the role of a sentinel of the *qui vive* to guard against the vagaries of the State executive. Prerogative writs which this Court can issue under the terms of Article 226 of the Constitution have got their strict limits which have to be adhered to.

The province of this Court in a quo-warranto proceeding is to determine whether there has been usurpation of a public office and not to search the conscience of the appointing authority to ascertain his motive. If (sic) therefore not necessary for me to say anything more than that the impugned order of the appointment of the first Respondent has not transgressed any rule, regulation or law to afford a foundation for the issue of relief in a quo-warranto proceeding.

In *S.C. Malik v. P.P. Sharma* AIR 1982 Delhi 83) a Division Bench of the Delhi High Court relying on *P.L. Lakhanpal Vs. A.N. Ray and Others*, it was held that a writ of quo-warranto is a writ of technical nature which merely asks the question as to whether there was a warrant of appointment for holding the office and the question of malafides was completely irrelevant to the matter. In *In Re: Sm. Ranu Sengupta and Others*, a single bench of the Calcutta High Court held that the prayer for the issue of a quo-warranto must fail if statutory authority for holding the post and assumption of office is established. For the purposes of a writ of quo-warranto it is not necessary to investigate the legality or validity of the provisions of the statute under which the assumption of office is made. Such investigation may be made for the purposes of issuing writ of the *Mendamus* and *Certiorari*. In *Alex Beets Vs. M.A. Urmese and Another*,) it was held that a motion for a writ of quo-warranto cannot succeed even though the appointment is violative of Article 16 of the Constitution. Because possession of a public office under a Government order is not usurpation of office in which case alone quo-warranto lies. A petition for issue of *Certiorari* or prohibition may be maintained in such a situation but not a petition for quo-warranto. In *Deneshwar Prasad v. State of Bihar and Ors.* (AIR 1984 Patna 13) a Division Bench of the Patna High Court has observed that the basic conditions for issue of a writ of quo-warranto are that the office must be public, it must have been created by Statute or Constitution itself, it must be of a substantive character and that the holder of the office must not be legally qualified to hold the office or to remain in the office

or he has not been appointed in accordance with law.

When we consider the case in hand in the light of aforesaid case law, we find that the petition is essentially for judicial intervention to control executive action in the matter of making appointments to the posts of Members / Vice-Chairman of the Tribunal which undoubtedly are public offices. The Petitioners have alleged that the Respondents No. 3 to 7 are not entitled to the posts they are holding as they have been selected without following the proper process of selection resulting in the Government servants, including the Petitioners, not getting the best among the available persons holding the qualifications prescribed for the posts as Members / Vice-Chairman of the Tribunal to decide their cases. It is in this context that it has to be decided whether the Respondents No. 3 to 7 can be called usurpers of the office. In the narrow sense of the word a person who can show ostensible authority to hold a post or a person who holds the qualifications prescribed for the post may not be called a "usurper". But, when it is alleged that a person is occupying a post because of his selection through an unfair method of selection or through the process of "pick and choose" alone, when the appointment to the post must be made through a fair and unimpeachable process so that the best among available can be selected, there is no reason why such a person cannot be equated with a usurper of the office if not called a usurper. Moreover, when such appointments are made in the face of clearly contra-indicative observations of the Supreme Court as regards the process to be followed, whether the observations are binding or not, it cannot be said that the appointments are immune from challenge in proceedings for issue of a writ of quo-warranto. The observations of the Supreme Court in *Statesmen v. H.R. Deb* (supra) do not limit the application of the case to that of a Station Master being appointed as a Judge. If, for maintenance of the high standard of the Tribunals, its Members and Vice-Chairman have to be appointed through a fair and equitable process of appointment as recommended, if not prescribed, by the Supreme Court and the appointments are made in utter violation of this recommendation the situation is not very much better than that of appointing a Station Master as a Judge. In such matters no general rule of universal application, no cut and dry straight-jacket formula, can be evolved and, therefore, in each case it will have to be decided on the facts of that case whether an incumbent of an office can be treated as a usurper and whether the appointment would be amenable to quo-warranto jurisdiction. In these circumstances, we are of the firm opinion that in the cases like the present one, a writ of quo-warranto can be issued against a person holding a high public office like that of a Member / Vice-Chairman of the Tribunal, if it is shown that his appointment was not preceded by a fair and equitable process of selection but is a result of an arbitrary manner of selection amounting to following the policy of pick and choose.

(3) Position and import of observations of the Supreme Court in *Sampat Kumar's* case-Effect of non-compliance.

Let us now examine the various judgments and orders of the Supreme Court in Sampat Kumar's case. The main judgment is reported in S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others, An interim order passed in this case was reported in S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others, Three orders on review applications arising from the main judgment are reported in the Supplementary Volume of Supreme Court cases of the year 1987 on pages 734 to 735 [1987 SCC (supply) 734-735]. The vires of the administrative Tribunal Act, 1985 was challenged in the main case before the Supreme Court. The main challenge was to the abolition of the jurisdiction of the Supreme Court under Article 32 and that of the High Courts under Articles 226 and 227 of the Constitution of India in respect of specified service disputes. It was also contended that unless facilities for presentation of applications and hearing thereof were provided at all the places where High Courts sit by establishing benches of the Tribunal the parties and their lawyers would be adversely affected. By an interim order dated 31-10-1985 (supra) the Supreme Court made provisions to meet the working difficulties. At the hearing of the case, the learned Attorney General on behalf of the Central Government assured the Court that steps would be taken early to amend the law so as to save the jurisdiction under Article 32, remove other minor anomalies and set-up a Bench of the Tribunal at the seat of every High Court. By the Administrative Tribunals (Amendment) Ordinance, 1986, these amendments were brought about and by the time the case came up for final hearing before the Supreme Court an Act of Parliament had replaced the ordinance. Because of these subsequent events most of the original grounds of attack did not survive and the contentions which remained before the Court were summarised in the leading judgment rendered by Ranganath Misra, J. at page 135 and 136 of the main judgment in S.P. Sampat Kumar's case (supra) as follows:

- (1) Judicial review is a fundamental aspect of the basic structure of our Constitution and bar of the jurisdiction of the High Court under Articles 226 and 227 as contained in Section 28 of the Act cannot be sustained ;
- (2) Even if the bar of jurisdiction is upheld, the Tribunal being a substitute of the High Court, its constitution and set up should be such that it would in fact function as such substitute and become an institution in which the parties could repose faith and trust;
- (3) Benches of the Tribunal should not only be established at the seat of every High Court but should be available at every place where the High Court have permanent benches;
- (4) So far as Tribunals set up or to be set up by the Central or the State Governments are concerned, they should have no jurisdiction in respect of employees of the Supreme Court or members of the subordinate judiciary and employees working in such establishments inasmuch as exercise of jurisdiction of the Tribunal would interfere with the control absolutely vested in the respective High Court in regard to the judicial and other subordinate officers under Article

235 of the Constitution.

Points No. 3 and 4 above did not survive for consideration because later on the Learned Attorney General after obtaining instructions from Central Government filed a memorandum to the effect that suitable amendments would be incorporated in the Act providing for Benches of the Tribunal at the seat of every High Court and at the places where High Courts have permanent Benches and steps would be taken to amend the Act to exclude Officers and servants in the employment of the Supreme Court and High Court and staff of the sub-ordinate judiciary from the purview of the Act. Thus, points for decisions were only points No. 1 and 2. The Supreme Court held that the bar of jurisdiction of the High Court under Articles 226 and 227 could be sustained if the Constitution and set-up of the Tribunal is such that it would in fact function as a proper substitute of the High Court, and become an Institution in which the parties could repose faith and trust.

In the leading judgment Ranganath Misra, J. has observed in paras 16 and 17 as follows:

16. What, however, has to be kept in view is that the Tribunal should be a real substitute for the High Court- not only in form and de jure but in content and de facto. As was pointed out in *Minerva Mills*, the alternative arrangement has to be effective and efficient as also capable of upholding the constitutional limitations. Article 16 of the Constitution guarantees equality of opportunity in matters of public employment. Article 15 bars discrimination on grounds of religion, race, caste, sex or place of birth. The touch-stone of equality enshrined in Article 14 is the greatest of guarantees for the citizen. Centring around these Articles in the Constitution a service jurisprudence has already grown in this country. Under Sections 14 and 15 of the Act all the powers of the Courts except those of this Court in regard to matters specified therein vest in the Tribunal - either Central or State. Thus, the Tribunal is the substitute of the High Court and is entitled to exercise the powers thereof.

The High Courts have been functioning over a century and a quarter and until the Federal Court was established under the Government of India Act, 1935, used to be the highest Court within their respective jurisdiction subject to an appeal to the Privy Council in a limited category of cases. In this long period of about six scores of years, the High Courts have played their role effectively, efficiently as also satisfactorily. The litigant in this country has seasoned himself to look up to the High Court as the unfailing protector of his person, property and honour. The institution has served its purpose very well and the common man has thus come to repose great confidence therein. Disciplined, independent and trained judges well versed in law and working with all openness in an unattached and objective manner have ensured dispensation of justice over the years. Aggrieved people approach the Court - the social mechanism to act as the arbiter - not under legal obligation but under the belief and faith that justice shall be done to them and the State's authorities would implement the decision of the Court. It is,

therefore, of paramount importance that the substitute institution - the Tribunal - must be a worthy successor of the High Court in all respects, that is exactly what this Court intended to convey when it spoke of an alternative mechanism in Minerva Mills case.

In para 20 of the leading judgment as regards the appointment to the post of Vice-Chairman and members, the following observations were made:

We do not want to say anything about Vice-Chairman and Members dealt with in Sub-sections (2), (3) or (3-A) because so far as their selection is concerned, we are of the view that such selection when it is not of a sitting Judge or retired Judge of a High Court should be done by a high-powered committee with a sitting Judge of the Supreme Court to be nominated by the Chief Justice of India as its Chairman. This will ensure selection of proper and competent people to man these high offices of trust and help to build up reputation and acceptability. Once the qualifications indicated for appointment of Chairman are adopted and the manner of selection of Vice-Chairman and Members is followed, we are inclined to think that the manning of the Tribunal would be proper and conducive to appropriate functioning. We do not propose to strike down the prescriptions containing different requirements but would commend to the Central Government to take prompt steps to bring the provisions in accord with what we have indicated. We must state that unless the same be done, the Constitution of the Tribunal as a substitute of the High Court would be open to challenge. We hasten to add that our judgment shall operate prospectively and would not affect appointments already made to the offices of Vice-chairman and member - both administrative and judicial.

P.N. Bhagwati, C.J. wrote a separate but concurring judgment. The following excerpts from his judgment deserve reproduction hereunder:

2. It is undoubtedly true that my judgment in Minerva Mills Ltd. case was a minority judgment but so far as this aspect is concerned, the majority Judges also took the same view and held that judicial review is a basic and essential feature of the Constitution and it cannot be abrogated without affecting the basic structure of the Constitution and it is equally clear from the same decision that though judicial review cannot be all together abrogated by Parliament by amending the Constitution in exercise of its constituent power, Parliament can certainly, without in any way violating the basic structure doctrine, set up effective alternative institutional mechanisms or arrangements for judicial review. The basic and essential feature of judicial review cannot be dispensed with but it would be within the competence of Parliament to amend the Constitution so as to substitute in place of the High Court, Anr. alternative institutional mechanism or arrangement for judicial review, provided it is no less efficacious than the High Court. Then instead of the High Court, it would be Anr. institutional mechanism or authority which would be exercising the power of judicial review with a view to enforcing the constitutional limitations and maintaining the Rule of Law. Therefore, if any constitutional amendment made by Parliament takes away from

the High Court the power of judicial review in any particular area and vests it in any other institutional mechanism or authority, it would not be violative of the basic structure doctrine, so long as the essential condition is fulfilled, namely, that the alternative institutional mechanism or authority set up by the Parliamentary amendment is no less effective than the High Court.

It is clear from the discussion in the preceding paragraph that this constitutional amendment authorising exclusion of the jurisdiction of the High Court under Articles 226 and 227 postulates for its validity that the law made under Clause (1) of Article 323A excluding the jurisdiction of the High Court under Articles 226 and 227 must provide for an effective alternative institutional mechanism or authority for judicial review. If this constitutional amendment were to permit a law made under Clause (1) of Article 323A to exclude the jurisdiction of the High Court under Articles 226 and 227 without setting up an effective alternative institutional mechanism or arrangement for judicial review, it would be violative of the basic structure doctrine and hence outside the constituent power of Parliament. It must, therefore, be read as implicit in this Constitutional amendment that the law excluding the jurisdiction of the High Court under Articles 226 and 227 permissible under it must not leave a void but it must set up Anr. effective institutional mechanism or authority and vest the power of judicial review in it. Consequently, the impugned Act excluding the jurisdiction of the High Court under Articles 226 and 227 in respect of service matters and vesting such jurisdiction in the Administrative Tribunal can pass the test of constitutionality as being within the ambit and coverage of Clause (2)(d) of Article 323A, only if it can be shown that the Administrative Tribunal setup under the impugned Act is equally efficacious as the High Court, so far as the power of judicial review over service matters is concerned. We must, therefore, address ourselves to the question whether the Administrative Tribunal established under the impugned Act can be regarded as equally effective and efficacious in exercising the power of judicial review as the High Court acting under Articles 226 and 227 of the Constitution.

It is necessary to bear in mind that service matters which are removed from the jurisdiction of the High Court under Articles 226 and 227 of the Constitution and entrusted to the Administrative Tribunal set up under the impugned Act for adjudication involve questions of interpretation and applicability of Articles 14, 15, 16 and 311 in quite a large number of cases. These questions require for their determination not only judicial approach but also knowledge and expertise in this particular branch of constitutional law. It is necessary that those who adjudicate upon these questions should have same modicum of legal training and judicial experience because we find that some of these questions are so difficult and complex that they baffle the minds of even trained judges in the High Courts and the Supreme Court.

We cannot afford to forget that it is the High Court which is being supplanted by the Administrative Tribunal and it must be so manned as to inspire confidence in

the public mind that it is a highly competent and expert mechanism with judicial approach and objectivity.

The Constitution-makers have made anxious provision to secure total independence of the judiciary from executive pressure or influence. Obviously, therefore, if the Administrative Tribunal is created in substitution of the High Court and the jurisdiction of the High Court under Articles 226 and 227 is taken away and vested in the Administrative Tribunal, the same independence from possibility of executive pressure or influence must also be ensured to the Chairman, Vice-Chairman and Members of the Administrative Tribunal. Or else the Administrative Tribunal would cease to be an equally effective and efficacious substitute for the High Court and the provisions of the impugned Act would be rendered invalid. I am, therefore, of the view that the appointment of Chairman, Vice-Chairman and Administrative Members should be made by the concerned Government only after consultation with the Chief Justice of India and such consultation must be meaningful and effective and ordinarily the recommendation of the Chief Justice of India must be accepted "unless there are cogent reasons, in which event the reasons must be disclosed to the Chief Justice of India and his response must be invited to such reasons. There is also Anr. alternative which may be adopted by the Government for making appointments of Chairman, Vice-Chairman and Members and that may be by setting up a High Powered Selection Committee headed by the Chief Justice of India or a sitting Judge of the Supreme Court or concerned High Court nominated by the Chief Justice of India. Both these modes of appointment will ensure selection of proper and competent persons to man the Administrative Tribunal and give it prestige and reputation which would inspire confidence in the public mind in regard to the competence, objectivity and impartiality of those manning the Administrative Tribunal. If either of these two modes of appointment is adopted, it would save the impugned Act from invalidation. Otherwise, it will be outside the scope of the power conferred on Parliament under Article 323A. I would, however, hasten to add that this judgment will operate only prospectively and will not invalidate appointments already made to the Administrative Tribunal. But if any appointments of Vice-Chairman or administrative members are to be made hereafter, the same shall be made by the Government in accordance with either of the aforesaid two modes of appointment.

A plain reading of these two judgments shows that the leading judgment of Ranganath Misra, J. prescribes the one and only mode of selection of Vice-Chairman and members of the Administrative Tribunal, who are not sitting Judges or retired Judges of the High Court, as selection by a High Power Committee with a sitting Judge of the Supreme Court to be nominated by the Chief Justice of India as its Chairman. The concurring judgment of P.N. Bhagwati, C.J. prescribes an alternative to the mode suggested by Ranganath Misra, J. in as much as P.N. Bhagwati, C.J. holds that the selection could be either in the manner suggested by Ranganath Misra, J. or after a meaningful and effective consultation with the Chief Justice of India in which ordinarily the

recommendations of the Chief Justice of India should be binding on the Government. Reading the reports of the Judgments in the All India Reporter, we were under an impression that the leading judgment of Ranganath Misra, J. expressed the majority view whereas the concurring judgment of P.N. Bhagwati, C.J. expressed the minority view. However, it was pointed out to us at the hearing that the report of the judgment in Supreme Court cases shows that both the judgments have been signed by all the five Judges. Moreover, at the end of the report of the judgment in the Supreme Court cases we also find the concurring opinion of Khalid, Oza and Dutt, JJ. in the following words:

We have read both the judgments just delivered -- the main judgment of learned Brother Ranganath Misra and the other of Hon'ble the Chief justice. We agree with both.

It was vehemently argued on behalf of the Respondents that as all the Judges have signed the two judgments and as the three Judges have concurred with both Ranganath Misra, J. and P.N. Bhagwati, C.J. it has to be taken that both the modes of selection indicated by Bhagwati, C.J. were approved by all the five Judges and the appointments of Respondents No. 4 to 7 were valid having been made with the consultation of the Chief Justice of India. We need not embark on the unnecessary exercise of finding out the true meaning of the Judgments and their combined effect as fortunately for us the matter was subjected to review thrice and in the first review judgment reported in 1987 (Supply) SCC 734 a five-judge bench of the Supreme Court resolved the problem in para 1 of its order as under:

1. In these petitions for review the learned Attorney General of India urges that certain observations and conclusions expressed in the individual Judgments of Bhagwati, C.J. and one of us (Ranganath Misra, J.) appear to conflict with each other and prays that clarification be made. In the first place, he has drawn our attention to the observations of Bhagwati, C.J. where the learned Chief Justice has taken the view that one of the two alternative options was open to the Government while appointing the Chairman, a Vice-Chairman and Administrative members of the Administrative Tribunal. The learned Chief Justice said that the appointment of Chairman, Vice-Chairman and members of the Administrative Tribunal should be made by the concerned Government only after consultation with the Chief Justice of India. The alternative suggestion is that a High Powered Selection Committee should be appointed headed by the Chief Justice of India or a sitting Judge of the Supreme Court or the concerned High Court to be nominated by the Chief Justice of India. In his judgment our brother Ranganath Misra, J. has opted for the latter alternative. Having considered the matter carefully, we are of opinion that in the case of recruitment to the Central Administrative Tribunal the appropriate course would be to appoint a High powered Selection Committee headed by a sitting judge of the Supreme Court to be nominated by the Chief Justice of India, while in the case of recruitment to the State Administrative Tribunals, the High Powered Selection Committee should

be headed by a sitting judge of the High Court to be nominated by the Chief Justice of the High Court concerned.

It is thus clear now, that the Supreme Court wanted the selection to the post of Members / Vice-Chairman of the State Administrative Tribunal to be done only by a High Powered Selection Committee headed by a sitting Judge of the High Court nominated by Chief Justice of the High Court concerned. It is also clear from the aforesaid review order that the Union of India had agreed to implement the directive and the learned Attorney General prayed for extension of time upto 31st July, 1987 for introducing legislation to give effect to the observations made by the Court in the aforesaid cases and the time was accordingly granted. By the second and Third review orders printed in the Supreme Court cases at page 737 further extension of time was sought and granted by the Supreme Court firstly up to 31st October, 1987 and then up to 31st January, 1988. We have not been informed as to what happened thereafter except the amendment which have been incorporated in Act, up till now.

A decision of the Supreme Court in *Lakshmi Shanker Srivastava Vs. State (Delhi Administration)*,) was cited at the bar for the proposition that a judgment which was delivered on the basis of concession of the parties does not have any value as a precedent. Relying on observations of the Supreme Court in para 11 of the judgment to the effect that when a judgment proceeds on concession and not on any analysis or examination of the relevant provisions, it does not help as a precedent. It was contended relying on this decision that the judgment in *Sampat-Kumar's* case proceeded on the concession made by the Learned Attorney General in as much as the Learned Attorney General undertook on behalf of the Central Government to introduce appropriate legislation for bringing the Act in consonance with the observations made by the Supreme Court in the judgment. A bare reading of the main judgment in *Sampat Kumar's* case shows that it is based on a detailed analysis and examination of the relevant provisions and has not been rendered on concession. Actually, the concession part is separable from the main analytical part of the judgment. The learned Attorney General had not conceded anything at all on the merits of the case but had persuaded the Court to believe that the Government of India undertook to carry out the amendments suggested by the Supreme Court in the Act. Obviously, this was done to save the Act from being declared ultra-vires. What was promised by the Learned Attorney General was removal of defects in the Act pointed out by the Supreme Court after analysis and examination of the Act and actually there was no concession made on behalf of the Central Government on the constitutional invalidity of the Act. The ruling, therefore, has no application to the facts of this case.

It was then argued that in *Sampat Kumar's* case the Supreme Court has not struck down the legislation as ultra-vires and, therefore, whatever the Supreme Court had said about the process of selection is merely a passing observation which cannot be enforced against the Respondents. Reliance was placed on a

decision of the Supreme Court in *Rajeswar Prasad Misra v. The State of West Bengal and Anr.* AIR 1965 SC 1887. In para 8 of this judgment the Supreme Court has observed that no doubt, the law declared by the Supreme Court binds the Court in India but it should always be remembered that the Supreme Court does not enact but only decides. The observations are of no application to the present case because, as we have seen above, the judgments in Sampat Kumar's cases have clearly declared the legal position and the observations made by the Court in those judgments cannot be said to be casual or passing observations.

Another decision of the Supreme Court cited in an effort to support the proposition that observations in Sampat Kumar's cases cannot be used as precedents is a decision of the Supreme Court in *Prakash Amichand Shah Vs. State of Gujarat and Others*, The Court observed in para 26 of this judgment that a decision ordinarily is a decision on the case before the Court while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Hence, while applying the decision to a later case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. In our opinion this case also does not help the Respondents as the true principle laid down in Sampat Kumar's case (*supra*) undoubtedly is that appointments to the posts of Members / Vice-Chairman of Tribunal have to be through selection by a High Power Committee headed by a sitting Judge of the High Court concerned nominated by the Chief Justice in order to provide for a proper substitute for the High Court failing which the ouster of Jurisdiction of the High Court would be unconstitutional.

A decision of the Supreme Court in *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, was then cited as an authority for the proposition that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It is not a profitable task to extract a sentence here and there from a judgment and to build upon it. Examining Sampat Kumar's case in the light of this decision, it is obvious that what is decided by the Supreme Court in that judgment in clear terms is that for the Administrative Tribunals to be a proper substitute of the High Court, it is necessary that the members and Vice-Chairman are selected by the process laid down in the judgment. We should not confuse the relief granted with the decision given. Many a time the Courts lay down law in clearest terms but do not grant relief on the basis of their decisions in that particular case for some special reasons. It cannot be said in such cases that because the relief was not granted nothing has been decided by the Court. This decision also does not come in the way of the Petitioners.

In *Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs.*, the Supreme Court observed that a prior decision of the Court on identical facts and law binds the Court on the same points in a later case. Only in exceptional instances, whereby obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedent. It should be a glaring case, an obtrusive omission. It was further observed that certainty of the law, consistency of rulings and comity of Courts-all flowering from the same principle- converge to the conclusion that a decision once rendered must later bind like cases. The Court further observed where the Appellants got the benefits like reduced security deposit and consolidation for purposes of printing and hearing of the appeals, on their representation to the Court that the points arising in all the appeals were common and the disposal of one would govern the rest and accordingly one of the appeals was heard at length and decided adversely to the Appellants, it was held that the rest of the appeals must fail in limine and no principle of judgment per incuriam could salvage the case. It was finally observed that a litigant cannot play fast and loose with the Court. His word to the Court is as good as his bond and the Court must, without more ado, negative the present shift in stand by an astute discovery of a plea that the earlier judgment was rendered per incuriam. Applying these observations to the case in hand we find that the Respondent / Union of India had avoided relevant provisions of the Act being declared ultra-vires by representing to the Court that the required amendments will be incorporated in the Act. They cannot now be heard to say that Supreme Court has not decided anything in *Sampat Kumar's* case and has not declared the statute ultra-vires. The decision is very clear and only implementation of under-taking on the part of Central Government remains.

In *Deena alias Deen Dayal and Others Vs. Union of India (UOI) and Others*, the Supreme Court observed that any case, even a locus classicus, is an authority for what it decides. It is permissible to extend the ratio of a decision to cases involving identical situations, factual and legal but care must be taken to see that this is not done mechanically, that is, without a close examination of the rationale of the decision which is cited as precedent.

In *Ambica Quarry Works v. State of Gujarat and Ors.*, (1987) 1 SCC 213 it was observed that a ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it.

In *S.P. Gupta Vs. President of India and Others*, it was observed that what is binding on the Court in a subsequent case is not the conclusion arrived at in a previous decision but the ratio of that decision, for it is the ratio which as a precedent and not the conclusion.

In *The Regional Manager and Another Vs. Pawan Kumar Dubey*, it was observed that it is the rule deducible from the application of law to the facts and

circumstances of the case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.

In *Ganga Sugar Corporation Ltd. and Others Vs. State of Uttar Pradesh and Others*, it is observed by the Supreme Court that enlightened litigative policy in the country must accept as final the pronouncements by a Constitution Bench of the Supreme Court unless the subject be of such fundamental importance to national life or the reasoning is so plainly erroneous in the light of later thought that it is wiser to be ultimately right rather than to be consistently wrong. Stare decisis is not a ritual of convenience but a rule with limited exceptions. Pronouncements by Constitution Benches should not be treated so cavalierly as to be revised frequently. The decisions of the Supreme Court cannot be devalued to brief ephemerality. In the same judgment in para 6 it was observed that the decisions of the Supreme Court are decisional between litigants but are declaratory for nation.

In *Municipal Committee, Amritsar Vs. Hazara Singh*, it has been observed that even obiter dictum of the Supreme Court should be accepted as binding. But statements on matters other than law have no binding force. Since on facts no two cases are similar, Supreme Court's decisions which are essentially on questions of fact cannot be relied upon as precedents for decision of other cases.

In *Anil Kumar Neotia and Others Vs. Union of India (UOI) and Others*, it was observed in para 18 relying on decision of the Supreme Court in *T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others*, that the binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided.

In *Raval and Co. Vs. K.G. Ramachandran and Others*, it was observed in para 15 that any general observations in earlier cases should be confined to the facts of those cases. They cannot apply in interpreting the provisions of an Act unless the Court has applied its mind to and analysed the provisions of that particular Act.

In *Gopal Upadhyaya and Others Vs. Union of India (UOI) and Others*, it was observed that when a question is answered expressly or by necessary implication by Supreme Court the answer cannot be ignored by referring to the decisions appealed against and holding that the real question that must be considered to have been answered was something else. What the judges expressly decided or what they must be considered to have decided by necessary implication by reference to the facts stated by the Judges themselves are what constitute precedents.

In *Maj. Genl. A.S. Gauraya and Another Vs. S.N. Thakur and Another*, it was held that the judgment of the Supreme Court cannot be by-passed by a Sessions Judge observing that it was a sort of legislation by the Parliament. Binding nature

of the law declared by the Supreme Court cannot be over-looked by subordinate Courts.

In *G.K. Dudani and Others Vs. S.D. Sharma and Others*, it was held that the High Court should take the words in the judgment of the Supreme Court in the sense in which they were used and apply to the facts before it.

In *Additional District Magistrate, Jabalpur Vs. Shivakant Shukla*, the Supreme Court observed as follows:

While considering the observations of a high judicial authority like the Supreme Court, the greatest possible care must be taken to relate the observations of a judge to the precise issues before him and to confine such observations, even though expressed in broad terms, in the general compass of the question before him, unless he makes it clear that he intended his remarks to have a wider ambit. It is not possible for judges always to express their judgments so as to exclude entirely the risk that in some subsequent case their language may be misapplied and any attempt at such perfection of expression can only lead to the opposite result of uncertainty and even obscurity as regards the case in hand.

In *M/s. Star Diamond Co. India v. Union of India and Ors.* AIR 1987 SC 179 it was held that Supreme Court decisions laying down position in law are laws binding on all irrespective of whether they were parties to the case decided or not.

When we examine the Supreme Court decisions in *Sampat Kumar's* case (supra) in the light of the above case law it becomes very clear that the ratio decidendi of the case is that the power of judicial review can be taken away from the High Court only on condition that the alternate forum provided for the judicial review has to be equal in status to the High Court. It has also been categorically laid down that such equivalence in status of the Tribunal with the High Court cannot be ensured except by providing for selection of Members / Vice-Chairman Of the Tribunal by a High Powered Selection Committee presided over by a Judge of the Supreme Court nominated by the Chief Justice of India in case of the Central Administrative Tribunal and by a Judge of the High Court appointed by Chief justice of the State in case of State Administrative Tribunal. It does not matter whether the relief claimed by the Petitioners was granted by the Court in that case or not. The law has been clearly laid down and the reason for not granting the relief of declaration of the offending provisions of the Act to be ultra-vires is also clear from the decision. The Learned Attorney General of India gave an assurance to the Court on behalf of the Government of India that steps to incorporate necessary amendments in the Act to bring it in conformity with the views expressed by the Court would be taken and if relying on that assurance the Court did not declare the law to be ultra-vires it cannot be said that the conclusions and directions about the method of selection and the quality of appointees are wiped out. The conclusions are clearly drawn after close scrutiny and in depth analysis of the provisions of the Act and the Constitution of India and are therefore the law laid down by the Supreme Court and are binding on all

Courts in India. We have, therefore, no hesitation in holding that if after the decision in Sampat Kumar's case (supra) the selection of Members/Vice-Chairman of Tribunal is not made by a High Power Selection Committee as per the decision of the Supreme Court in Sampat Kumar's case, they would be illegal, void and inoperative. After saving the Act from being declared ultra-vires by making a solemn representation through the Attorney General to the Supreme Court of India that necessary corrective measures would be taken, it is not open to Union of India to canvass before this Court that it was not necessary to follow the procedure laid down by the Supreme Court as it was not the law laid down and that the law as it stands does not require such a procedure to be followed. This will amount to playing fraud on the Apex Court.

A feable attempt was made on behalf of the Respondents to suggest that as the Chief Justice of India has approved the appointments, the selection may be taken to have been made by a High Power One Member Committee of the Chief Justice himself. The argument has no force. Approval of the Chief Justice of India obtained without complying with a decision of a five Judge Bench of the Supreme Court would be of no consequence and would not render the selection valid. Approval granted on administrative side by the Chief Justice of India cannot be used to dilute or defeat a decision rendered on judicial side by the Constitution Bench of the Supreme Court of India.

(4) Validity of the procedure actually adopted in making the appointments of Respondents No. 3 to 7.

Let us now examine the factual position regarding the impugned appointments and the procedure that was actually followed by the State Government as well as the Central Government in clearing the appointments. Original record in this respect has been made available to us by both the Governments. In the State Government file proposal for appointments to the posts of Administrative Members and Judicial Members was first initiated by Shri Rajendra Pal Kapoor, the Respondent No. 7, who was then the Chief Secretary to the Government of Madhya Pradesh. In the note put up by him to the Chief Minister, it was stated that the Supreme Court had fixed 6th March, 1991 as the outer limit for establishing a Bench of the Administrative Tribunal at Gwalior and as the appointment orders were to be issued by Government of India it would be proper to send proposals in this respect to the Central Government as soon as possible. Shri Rajendra Pal Kapoor suggested that the Chief Minister may make selection from the list of persons appended as Flag "C". In the file there is no separate list as flag "C" but name of Shri S.S. Lamba, IPS, the then Director General State Economic Offences Investigation Bureau, Shri P.M. Rajwade, IFS, Retired Conservator-in-Chief Forest and Shri N.N. Virmani, IPS, Retired Director of Prosecution were suggested in the note itself for appointment as Administrative Members and names of Kum. Prabha Sharma, District and Sessions Judge, Shri R.K. Sharma, (Sr.) District and Sessions Judge and Shri R.K. Sharma (Sr.) District and Session Judge were suggested for the posts of Judicial Members. The

confidential rolls of these Officers were said to be appended. It is noteworthy that in this note itself Shri Rajendra Pal Kapoor- Respondent No. 7 the then Chief Secretary of the State Government who was ultimately appointed Vice-Chairman of the Tribunal, had himself suggested that proposals for appointment to the post of Vice-Chairman may be sent at a later date. On 18-2-1991 the Chief Minister signed a typed order which appears to be typed on the same type writer on which the Chief Secretary's note has been typed. He directed steps to be taken for the appointment of Shri N.N. Virmani / Respondent No. 3 as Administrative member for the Bhopal Bench, Shri G.S. Patel, then Secretary, Law Department, Government of Madhya Pradesh who was to have retired on 31-7-1991 as Judicial member for the Bhopal Bench. Shri S.S. Lamba-Respondent No. 6 was selected for appointment as Administrative Member, Gwalior Bench. The name of an advocate was also approved by the Chief Minister for the post of Judicial Member at Gwalior Bench. Shri P.M. Rajwade was selected for appointment as Administrative Member at the Indore Bench. It was directed that orders of his Excellency the Governor be obtained according to the Rules.

The file was received back by Shri Rajendrapal Kapoor - Respondent No. 7 as Chief Secretary on 19-2-1991. He marked it to the Secretary, General Administration Department (GAD) who sent it to the Secretary to the Governor on 21-2-1991. The Governor granted his approval on 22-2-1991. On 23-2-1991 the file was received by the Secretary, GAD and he directed that the proposal be sent to Government of India on that day itself. However, he changed his mind and ordered that proposals only for the Gwalior Bench be sent to the Government of India and accordingly they appear to have been sent on 23-2-1991. On 27-2-1991 Secretary, GAD ordered that proposals for appointments in Bhopal and Indore Benches be also sent to Government of India. This was complied with on 28-2-1991.

On 6-3-1991 the Secretary, GAD put up a note proposing steps to be taken for filling in vacancy of a judicial members at Indore Bench and vacancy of a Judicial and Administrative member at the Jabalpur Bench. On the same day the file was put up before Shri Rajendrapal Kapoor- Respondent No. 7 then Chief Secretary, Government of Madhya Pradesh. He only wrote "discuss" (f) on the file on 6-3-1991 itself and sent back the file to Secretary, GAD. After having discussed the matter with Shri Rajendrapal Kapoor, the Secretary, GAD wrote a long note on 23- 3-1991. In this note after stating the position as to the posts of Judicial and Administrative members in the Benches and at the seat of the tribunal, a proposal for appointing a Vice-Chairman was introduced in a subtle way in the following words:

Pawfd v/;{k in ds fy, mPp U;k;ky; ds ,d lsokjr U;k;k/kh? dk uke izLrkfor fd;k x;k gS] lkekU;r% mik/;{k ds in ij iz?kldh; lnL; dh fu;qfDr gksuh pkfg,A ?s" 6 inkSa esa ls 3 U;kf;d ,oa 3 iz?klfud gks ldrs gSaA lkekU;r% tc v/;{k U;kf;d gksrk gS] rks mik/;{k ds in ij iz?klfud lnL; dh fu;qfDr gksrh gSA bls vykok mik/;{k ds in ij fu;qfDr gsrq igys Hkh ,d iz?klfud lnL; dh fu;qfDr gksrh gSA bls vykok mik/;{k ds

in ij fu;qfDr gsrq igys Hkh ,d iz?klfud vf/kdkjh] ?Jh ,e- ,l- flagnso? dks euksuhr fd;k x;k FkkA vHkh mik/;{k dk in fjDr gS] ftlds fy, vyx ls izLrko izLrqr fd;k tk ldrk gSA

77-A. Not only that this suggestion was introduced but it was also mooted that the Vice-Chairman be appointed at the Bhopal Bench. The relevant extracts from the notes are as under:

Hkksiky [k.MihB esa mik/;{k esa mik/;{k dh fu;qfDrA tSlk fd ?ij crk;k x;k gS] mik/;{k dh fu;qfDr ds ckjs esa dqN le; ckn fopkj fd;k tk ldrk gSA og blfy, Hkh gS fd igys bl in ij fu;qDr Jh ,e- ,l- flagnso }kjk fnYyh mPp U;k;ky; esa ,d ;kfpdk nk;j dh xbZ gSA bl izdj.k eas lquokbZ 24-5-91 dks fu;r gSA blds ckn mik/;{k dh fu;qfDr ds ckjs esa fcpkj fd;k tkuk mfpr gksxkA

After having thus introduced the topic of appointment to the post of Vice-Chairman and having suggested the shifting of the post of Vice-Chairman to the Bhopal Bench, the matter was suggested to be deferred and only steps for filling in one vacancy of Judicial Member was proposed. With this note the file was again put up before the Respondent No. 7- Shri Rajendrapal Kapoor the then Chief Secretary. He only wrote that proposal for shifting the post of Administrative Member from Bhopal to Jabalpur be sent to Government of India by "Telex" and the file be put up before the Chief Minister for Ex-post-facto sanction. This note was put up on 5-4-1991. In this note also the anxiety to get a vacancy created at Bhopal so that the Vice-Chairman could be appointed at Bhopal is obvious.

On 10-4-1991 the Secretary, GAD again put up a note confirming that proposal for shifting the post of Administrative Member at Bhopal to the Main Seat at Jabalpur had been sent to the Government of India. It was then stated that a vacancy in the post of Vice-Chairman existed for which proposal had not been sent to the Government of India. Qualifications for the post were enumerated and it was again stated that the post of Vice-Chairman had been created for Bhopal Bench and name of a sitting Judge of the High Court had already been proposed for the post of Chairman. Ordinarily when Chairman is from Judicial side the Vice-Chairman should be from Administrative side and thus one Administrative post of Vice-Chairman was vacant. Without naming anyone it was stated at the end of the note that file was being put up for orders of the Chief Minister for appointment on the post of Vice-Chairman. The Secretary, GAD put up the" aforesaid note to the Chief Secretary. Shri Rajendrapal Kapoor-Respondent No. 7 as Chief Secretary put up the note on 11-4-1991 for orders to the Chief Minister. The Chief Minister on 27-4-1991 signed the following typed order on the file:

eSa le{krk gwa fd mik/;{k} jkT; iz?klfud vf/kdj.k] Hkksiky [k.MihB ds in ij Jh vkj-ih- diwj] eq[; lfpo ?tks dqN eghuksa esa lsokfuo`?k gksus tk jgks gSa? dh fu;qfDr mfpr gksxhA bl fo"k; esa fu;ekuqlkj vkxkeh dk;Zokgh djsaA

lhg@&

27-4-91

?lqUnjyky iVok?

Lfpo] lkekU; iz?klu foHkkx

?Jh feJk?

The file was marked back to the Secretary, GAD. The Secretary, GAD endorsed it to the Secretary to his Excellency the Governor for approval on 29-4-1991 and the Governor's approval was granted on 30-4-1991 and the file again came back to the Secretary, GAD. On 3-5-1991 Secretary, GAD sent a letter to Smt. Krishna Singh, Joint Secretary, Government of India proposing the name of Shri Rajendrapal Kapoor, the then Chief Secretary for appointment to the post of Vice-Chairman. It was stated in the letter that the proposal had been approved by H.E. the Governor. Bio data of Shri Rajendrapal Kapoor and his CR dossier was also said to be enclosed. In the end it was requested that approval of H.E. the President of India be obtained.

After issue of the letter to the Government of India on 3.5.1991 the Secretary, GAD called back the file and it appears that it was put before him on 3-5-1991 itself. However, he wrote a note on 20-5-1991 recording that after the orders of the Chief Minister, approval of the Governor had also been obtained but in the mean-while the Government of India had taken a decision to constitute a Selection Committee for selection of candidates for appointment as Vice-Chairman and Members of the Administrative Tribunals. The Committee would consist of Hon'ble the Chief Justice, Madhya Pradesh High Court, Chief Secretary and Law Secretary. It was also recorded that according to Government of India's directive selection has also to be done by the Selection Committee. It was then suggested that even though approval of the Governor had been obtained, it would be proper to obtain approval from the Selection Committee. It was then stated in this note that as the name of the Chief Secretary has been proposed for the post of Vice-Chairman it would not be proper for him to associate with the Selection Committee. Therefore, the matter was to be considered by the other two members of the Selection Committee, Hon'ble the Chief Justice and the Law Secretary. In the last it was directed that the note prepared for the purpose be sent to the Law Secretary. Office Note is reproduced hereunder:

izdj.k esa ekuuh; eq[;ea=h th ds vuqeksnu ds mijkUr egkefge jkT;iky egksn; ds vksns? Hkh izIr fd;s tk pqds gS] ijUrq blh chp Hkkjr ljdkj us ;g fu.kZ; fy; gS fd iz? klfud vf/kdj.k ds mik/;{k ,oa lnL;ksa ds p;u gsrq ,d p;u lfefr xBr dh tk,A p;u lfer esa fuEukuqlkj lnL; gksaxks %&

?1? mPp U;k;ky; ds eq[; U;k;kf/kifr

?2? eq[; lfpo ,oa

?3? fof/k lfpo

2- Hkkjr ljdkj ds funsZ?ksa ds vuqlkj p;u lfefr }kjk fd;k tkuk gSA vr% ;|fi l izdj.k esa egkefge jkT;iky egksn; dk vuqeksnu izkIr gks pqdk gS fQj Hkh p;u lfefr dk vuqeksnu izkIr fd;k tkuk mfpr gksxkA

3- pwafd mik/;{k ds in ds fy, eq[; lfpo egksn; dk uke Hkh izLrkfor gSA vr% p;u lfefr ls mudk lEc) gksuk mfpr ugha gksxkA vr% p;u lfefr ds vU; nks lnL; ?e?% mPp U;k;ky; ds eq[; U;k;kf/kifr ,oa fof/k lfpo ds uke ij fopkj djus ds fy, izLrko fd;k tk,xkA rnkuqlkj p;u lfefr ds fopkj gsrq uksV cuk;k x;k gS] tks fof/k lfpo dh vksj Hkstk tk,A

lgh@&

?,l- ds- feJk?

Lfop] lke- iz- fo-

20-5-91

On 21-5-1991 the Secretary, GAD wrote in his hand on the file that the note was handed over to the Law Secretary, Shri G.S. Patel - Respondent No. 5 personally and he was requested to expedite the matter looking to the pendency of the Court cases. He wrote as follows:

vkt fof/k lfpo Jh iVsy dks O;fDrxr :i ls p;u lfefr ds fy, uksV fn;kA muls fuosnu fd;k gS fd U;k;ky;hu izdj.kksa dks ns[krs gq, blesa ?h?kzrk djsaA

lgh@&

?,l- ds- feJk?

lfpo] lk- izk- fo-

----- 92

Immediately thereafter on 21-5-1991 itself the Secretary, GAD again wrote a note stating that recommendations of the Selection Committee were received and the letter dictated be sent to Government of India. The note reads as under:

p;u lfefr dh vuq?alk izkIr gqbZA d`i;k fy[kk;k x;k i= Hkkjr ljdkj dks HkstsA ? vk;qDr ds ek/;e ls?

lgh@&

21-5-91

?,l- ds- feJk?

Lfop] lk- iz- fo-

The letter was accordingly dispatched on the same day i.e. on 21- 5-1991. It is necessary to reproduce the letter dated 21-5-1991 also for a proper appreciation of the representation made by the State Government to the Central Government:

xksiuH;

v)Z ?kldh; i= ?- ,Q&,&4&33&@89@vkbZ lh vkbZ

,l- ds- feJk

lfpo

e/; izns? ?klu

lkekU; iz?klu foHkkx

Hkksiky] fnukad 21 ebZ] 1991

fiz;]

jkT; iz?klfud vf/kdj.k esa mik/;{k dh fu;qfDr ds laca/k esa Hkkjr ljdkj dks Hksts tkus okys izLrko ds ckjs esa vki ls ppkZ gqbZ FkhA Hkkjr ljdkj }kjk pkgs vuqlkj bl ij ds fy, p;u lfefr dh vuq?alk izkIr dj yh xbZ gSA la;qDr lfpo] dkfeZd iz?klfud lq/kkj ,oa izf?{k.k foHkkx] Hkkjr ljdkj dks Hksts tkus okys i= dh izfr vkids voyksdukFkZ layxz gSA

----- 93

2- bl i= ds lkFk Jhefr flag dks lacksf/kr ewy i= Hkh Hkst jgk gwa tks mUgsa fHktokus dk d"V djsaA

Hkonh;

lgh@&

21-5-91

?,l-ds-feJk?

Jh ts- ,u- dkSy]

fo?s"k vk;qDr]

e/; izns? Hkou]

ch&8] LVsV ,Eiksfj;e dkEiysDI

ckck [kMxflag ekxZ

ubZ fnYyh

On the record there is a note dated 16-5-1991 prepared by the Secretary, GAD. It is endorsed to Secretary, Law Department. Probably, this is the note which is referred to by the Secretary, GAD in his note dated 20-5-1991 reproduced above. In this separate note which was prepared for being placed before the Committee consisting of Hon"ble the Chief Justice and the Law Secretary, for the first time, it was stated that the State Government had considered the names of Shri K.C.S. Acharya, Ex- Chief Secretary, Government of Madhya Pradesh, Shri Inshwar Das, Ex-Director General Administrative Academy along with the name of Shri Rajendra Pal Kapoor then Chief Secretary (Respondent No. 7). It would be

necessary to reproduce the entire note hereunder to appreciate the representation made to the Hon"ble the Chief Justice for whose consumption the note was prepared:

fo"k;% jkT; iz?klfud vf/kdj.k esa mik/;{k dh fu;qfDr ds laca/k esaA

jkT; iz?klfud vf/kdj.k esa vHkh mik/;{k dk in fjDr gSA bl chp Hkkjr ljdkj }kjk vf/kdj.k ds mik/;{k ,oa lnL;ksa dh p;u laca/kh fif?;k esa dqN ifjorZu fd;k x;k gSA vc bl gsrq jkT; Lrj ij ,d p;u lfefr dk xBu fd;k x;k gSA p;u lfefr fd vuq?alk ds vk/kkj ij gh] jkT; ?klu vc Hkkjr ljdkj dks izLrko Hkst ldrk gSA p;u lfefr ds xBu laca/kh Hkkjr ljdkj ds funsZ? dh izfr layxz gSA lfefr esa fuEu lnL; gS%&

?1? mPp U;k;ky; ds ekuuh; eq[; U;k;kf/kifr

?2? eq[; lfpo]

?3? lfpo] fof/k foHkkx

2- jkT; iz?klfud vf/kdj.k esa mik/;{k dh fu;qfDr gsrq jkT; ?klu us Jh vkj- ih- diwj] eq[; lfpo dks uke izLrkfor fd;k FkkA Hkkjr ljdkj }kjk izLrko ij p;u lfefr dh vuq?alk izkIr djus dks dgk x;k gSA gkykafd mijksDr izLrko ij egkefge jkT;iky egksn; dk vuqeksnu izkIr gks pqdk Fkk] fQj Hkh pwafrd Hkkjr ljdkj }kjk bhl izLrko ij Hkh p;u lfefr dh vuq?alk izkIr djus dk vxzgz fd;k x;k gS] izLrko p;u lfefr ds fopkjFkZ vkids ikl Hkstk tk jgk gSA

3- bl laca/k esa ;g mYys[k djuk pkgwaxk fd mik/;{k ds p;u gsrq jkT; ?klu }kjk fuEu O;fDr;ksa ds uke ij fopkj fd;k x;k Fkk%&

?1? Jh ds- lh- ,l- vkpk;Z] HkwriwoZ eq[; lfpo] e- iz- ?klu

?2? Mk- bZ"ojnkl] HkwriwoZ egkfunsd] iz?klu vdkneh

?3? Jh vkj- ih- diwj] orZeku eq[; lfpo] e- iz- ?klu

jkT; ?klu }kjk buesa ls fjdkMZ ,oa vuqHko ds vk/kkj ij Jh vkj- ih- diwj dks bl in ds fy, lcls T;knk mi;qDr ik;k x;k gSA

4- tSlk fd df.Mdk ?1? esa crk;k x;k gS fd p;u lfefr ds eq[; lfpo Hkh lnL; gSaAijUrq pwafrd mUgha ds uke ij fopkj fd;k tkuk gS blfy, lfefr esa og lnL; ugha jg ldrs gSaA vr% lfefr ds ?s"k lnL;] tks mPp U;k;ky; ds ekuuh; eq[; U;k;kf/kifr ,oa lfpo] fof/k foHkkx gS] d`i;k izLrko ij fopkj dj viuh vuq?alk ?h?kzfr?h?kz nsA

5- vkils fuosnu gS fd d`i;k ekuuh; eq[; U;k;kf?kifr egksnk; dh vuq?alk Hkh vki gh izkIr dj lwfpr djus dk d"V djsaA vkidks Lie.k gksxk fd jkT; iz?klfud vf/kdj.k dh LFkkiuk ?h?kz djus ds laca/k esa loksZPp U;k;ky; esa ,oa mPp U;k;ky; esa dbZ izdj.k yafcr gSA ,d izdj.k eas loksZPp U;k;ky; ds funsZ?kuqlkj vf/kdj.k dk xBu 11 ebZ 1991 rd gksuk pkfg, FkkA blesa oSals Hkh foyEc gks pqdk gSA vr% lfefr dh vuq?alk ;Fkk?h?kz Hkstatus dh d`ik djsaA

lgh@&

? ,l- ds- feJk?

Lfop] lk- iz- fo-

16-5-91

Lfpo]

e/; izns? ?klu

fof/k foHkkx]

Shri G.S. Patal-Respondent No. 5 who was then the Secretary to the Law Department took special pains to take this note personally to Patna where the Hon"ble Chief Justice had gone in the vacation of the High Court. It appears that after reaching Patna Shri Patel came to know that the Hon"ble the Chief Justice had gone to his village 225 kms. away from Patna and Shri G.S. Patel followed him there and obtained his approval. On the basis of the note dated 16-5-1991 of the Secretary, GAD Shri Patel - Respondent No. 5 the then Law Secretary wrote a note dated 16-5- 1991 in his own hand. Curiously, he himself certified in the note to have had the experience of working with Shri Rajendrapal Kapoor, Chief Secretary as Secretary to Law Department and on this basis he recommended the appointment of Shri Rajendrapal Kapoor to the post of Vice-Chairman. The note written by Shri Patel in his own hand is reproduced here under:

iwoZ esa ?klu Lrj ij ?1? esa Jh ds- ,l- vkpk;Z] HkwriwoZ eq[;lfpo] e- iz- ?klu ?2? MkDVj bZ?ojnkl] HkwriwoZ egkfun?kd] iz?klu vdkneh ,oa ?3? Jh vkj- ih- diwj orZeku eq[;lfpo] e- iz- ?klu ds ukeksa ij fopkj fd;k tkdj Jh vkj- ih- diwj dh fu;qfDr dh vuq?alk dh xbZ Fkh ftldk vuqeksnku egkefge jkT;iky e- iz- }kjk Hkh fd;k x;k Fkka

2- blh chp dsUnz ?klu us iz?klfud vkns? }kjk ,d lfefr dk xBu fd;k gS tSlk fd lfpo] lk- iz- fo- dh Vhi ls Li"V gSA

3- eq{ks Lo;a Jh diwj ds lkFk dk;Z djus dk ,d o"kZ ls vf/kd le; dk vuqHko gSA eq>s fof/k foHkkx esa dk;Z djus dk lkr o"kZ dk vuqHko gS rkFkk esa Jh vkj- lh- diwj dks mijksDr in ij fu;qfDr gsrq loksZPp ekurk gwaA ekuh; eq[; U;k;f?kifr egksn;] mudh fu;qfDr dh vuq?lk dk vuqeksnu djuk pkfg,A Hkfo"; ds fy, tks p;u izf?;k dk lq>ko ekuuh; eq[; U;k;kf?kifr nsxsa mlh vuq;i izf?;k fu/kkZfjr dh tk;sxhA

lgh@&

16-5-91

?th- ,l- iVsy?

Lfpo] fof/k foHkkx?

Lfpo] fof/k foHkkx

ekuuh; eq[; U;k;kf?kifr egksn;

He then put up the file before the Hon"ble Chief Justice for approval of the recommendations. The Hon"ble Chief Justice only wrote "approved" and signed the note on 19-5-1991. Below this, on 21-5-1991, Shri G.S. Patel, the then Law Secretary wrote a note narrating the troubles he had taken in obtaining the approval of Hon"ble the Chief Justice. The note is reproduced hereunder:

lfpo] lkekU; iz?klu foHkkx dh Vhi ds vuqlkj eSaus viuh Vhi izLrq dh rFkk ekuuh; eq[; U;k;kf?kifr egksn; dk vuqeksnu bl Vhi ij vko";d Fkka os xzh"ekodk? esa iVuk ls djhc 225 fdyksehVj nwj muds fuokl ij FksA eSa rFkk vfrfjDr jftLV?kj Jh Jaxkjiqjs nksuksa ;g uLrh ysdj muds fuokl ij x, rFkk mUgksaus fu;qfDr ds laca/k eas viuh lgefz O;Dr dhA vr,o lfpo] lkekU; iz?klu foHkkx d`i;k vkxkeh dk;Zokgh vfr?h/kz djus dk d"V djsaA

iVuk ls ekuuh; eq[; U;k;kf/kifr egksn; ds fuokl LFkku rd tkus ds fy, ,d dkj fcgkj ? klu us miyC/k djkbZ FkhA laiw.kZ uksV?hV dh ,d Nk;k izfr ekuuh; eq[; U;k;kf? kifr egksn; mPp U;k;ky;] e- iz- dks jftLV?kj] mPp U;k;ky; ds ek;/e ls Hkkstuk mfpr jgsxk rFkk ,d izfr fof/k foHkkx dks Hkh Hksth tkos rkfd vkxkeh dk;Zokgh esa lqwerk jgsaA

,d O;kf;d InL; dk ij fjDr gS o ,d dk in vfr?h?kz 30 twu dks fjDr gksus okyk gS vr,o lfpo] lkekU; iz?klu foHkkx d`i;k bl laca/k es vfr?kh?kz dk;Zokgh djus dk d"V djsaA lgh@&

?th- ,l- iVsy?

fof/k lfpo] ,oa InL; p;u lgefz

21-5-91

Jh ,l- ds- feJk

Lfpo]

lkekU; iz?klu foHkkx

At this stage the anxiety of Shri G.S. Patel, the then Law Secretary whose name had already been proposed for appointment as Judicial member is exposed in the last paragraph of the aforesaid note where he, quite out of context, refers to vacancy in a post of Judicial member and requests the Secretary, GAD to take immediate action in the matter. Appointments to the Administrative Tribunal were not the direct concern of the Law Department and, therefore, it is obvious that Shri G.S. Patel - Respondent No. 5 was anxious about his own appointment and had not written that in his capacity as Law Secretary. It is also clear that on that day he was knowing that the selection had to be made by a selection committee but even then wanted the action to be taken immediately.

One curious feature of the note sheets in this regard is that while in the regular file a short note has been put on 20-5- 1991 and it is written in the hand of then secretary, GAD that on 21-5-1991 the aforesaid note was handed over to the Law Secretary, Shri G.S. Patel and it is also written in the hand of the Secretary,

GAD on 21-5-1991 itself that the recommendations of the Selection Committee were received and on the same day a letter forwarding the proposal for the appointment of Shri Rajendrapal Kapoor - Respondent No. 7, was sent to the Central Government, (to Smt. Krishna Singh, Joint Secretary to government of India, Department of personnel and Training) actually, the note handed over to Shri G.S. Patel, the Law Secretary was dated 16-5-1991 and was conspicuously different in its contents. For the first time without any foundation in the regular file at all, it was stated in this note that the State Government had considered the names of Shri K.C.S. Acharya, Ex-Chief Secretary and Dr. Ishwardas, Ex-Director General, Administrative Academy along with the name of Shri Rajendrapal Kapoor the then Chief Secretary. It has also been stated in this note that the State Government had on the basis of record and experience found Shri Rajendrapal Kapoor to be the most suitable candidate amongst the aforesaid three. We are constrained to observe that this was a patent falsehood as in the Government file there is absolutely no evidence of the names of Shri K.C.S. Acharya and Dr. Ishwardas or anyone else having been considered also with the name of Shri Rajendrapal Kapoor - Respondent No. 7 at any time by any Authority as candidates for the post of vice-Chairman. The Government file clearly discloses that Shri Rajendrapal Kapoor - Respondent No. 7 was the only person in view and there was no question of any selection from amongst a number of candidates. It appears that the Chief Minister was led to believe that it was his prerogative to make appointments by nomination of a suitable person and he nominated Shri Rajendrapal Kapoor. There is nothing on record to show that the Chief Minister was asked to make a selection from a number of available candidates. It is apparent from the record that Shri Rajendrapal Kapoor-Respondent No. 7 abused his position as Chief Secretary to the Government to get himself appointed as the Vice-Chairman and Shri S.K. Mishra the then Secretary, GAD and Shri G.S. Patel-Respondent No. 5 the then Law Secretary actively helped him in achieving this object.

The letter dated 21-5-1991 sent to the Government of India forwarding the proposal is also a classic example of deliberate misleading and misrepresentation. It contains a positive assertion that the matter regarding selection of Vice-Chairman of M.P. State Administrative Tribunal was placed before the Selection Committee and as his name was to be considered Shri Rajendrapal Kapoor did not participate in the proceedings of Selection Committee. This is not borne out by record which on the contrary shows that no meeting of the Selection Committee was ever held and Shri Rajendrapal Kapoor was associated with the selection right from the beginning. In fact there was no selection committee constituted at all. The Chief Justice was not apprised at any time about there being a member of Selection Committee which had to select a suitable candidate from amongst several available candidates. The Chief Justice, therefore, "approved" and not selected the candidate. He was also not told that Shri G.S. Patel the other selector was also himself a candidate for Anr. post subject to the same selection committee. Even the order of the Government of

India constituting the selection committee was not shown to the Chief Justice. It was thus a case of clear deliberate, motivated misrepresentation almost fraudulent in nature. Had it not been so, both Shri R.P. Kapoor and Shri G.S. Patel would have disclosed their interest and requested for constitution of an impartial selection committee manned by other Officers.

Let us now see as to how the matter was dealt with in the Government of India. On 28-2-91 the Desk Officer(AT) in the Department of personnel and Training (AT Division) initiated the process by stating that Government of Madhya Pradesh have recommended the names for appointment in SAT. In this note only the name of Shri S.S. Lamba, IPS, Retired/Respondent No. 6 appeared with two Ors. , with whom we are not concerned here. It was stated that the proposal to appoint Shri Lamba was approved by Government of Madhya Pradesh and he along with other persons were eligible for appointment under the Act. The appointment was being suggested for SAT Bench at Gwalior. In the end the note stated as follows:

Secretary (P) may kindly obtain approval of Cabinet Secretary / Prime Minister to the above proposal of the State Government for appointment of Shri S.S. Lamba as Member(A) in SAT. Thereafter formal reference will be sent to the Chief Justice of India for concurrence.

However, the aforesaid note does not appear to have been put up to Director AT/ JS(AT). On 8-3-91 again proposals were put up. This time along with the name of Shri S.S. Lamba for member (A) names of Dr. N.N. Virmani, IPS (Retired)-Respondent No. 3 for member (A), Shri P.M. Rajwade, I.F.S. (Retired)--Respondent No. 4 for Member (A) and Shri G.S. Patel, Member M.P. Judicial Service, Law Secretary, Government of Madhya Pradesh for Member (Judicial) were also put up. In para 3 of the note it was stated that the State Government had mentioned that the proposals were approved by the Government of Madhya Pradesh and all the persons were eligible for appointments as per the Act. Bio data /CR extracts / dossiers of the officers recommended were placed along with note. The file was submitted for taking approval of Secretary (P) / Cabinet Secretary / PMO.

The file was then put up through the Director, AT to Smt. Krishna Singh, Joint Secretary (AT). She added in her note that Government of India had been given to understand that since a Court case had been filed with regard to the post of Vice- Chairman, SAT, no proposal was sent for appointment for the post. She then forwarded the file to Secretary (P) for getting approval of Cabinet Secretary / Prime Minister. On 10-4-1991 Prime Minister's approval was obtained on the file and on 15-4-1991 the file was sent to the Chief Justice of India with the following request:

Hon"ble Chief Justice is requested to kindly concur in the proposal for the appointment of Chairman, Members (A) and Members (J) in the M.P. Administrative Tribunal. This may kindly be given priority in view of directions of

the Hon''ble Supreme Court on 9-4-91 in W.P. No. 497/90 Shailendra Kumar Gangrade and Anr. v. Union of India and Ors. for making appointment in SAT, M.P. within 4 weeks'' time.

The Chief Justice of India approved the appointment of Shri S.S. Lamba, Respondent No. 6, Dr. N.N. Virmani-Respondent No. 3, Shri G.S. Patel-Respondent No. 5 and Shri P.M. Rajwade-Respondent No. 4 on 18-4-1991. However, the Chief Justice of India observed as follows:

I do not think appointments should be made in the manner proposed - with reference to the different places. All those who are cleared should be appointed as Chairman and Members of the State Administrative Tribunal and their places of sitting should be kept to the Chairman - as in the case in other Tribunals.

On 22-4-1991, the matter was referred to the Appointments Committee of the Cabinet (ACC) for approval. The Cabinet Secretary noted that the Prime Minister had already approved the names, concurrence of the Chief Justice of India had been obtained, hence the file was put up for the approval of the Deputy Prime Minister and the Minister for Agriculture and Tourism. On 27-4-1991 the Deputy Prime Minister and Minister for Agriculture and Tourism accorded his approval. On 1-5-1991, Smt. Krishna Singh, Joint Secretary handed over offers of appointment in respect of Shri S.S. Lamba - Respondent No. 6, Dr. N.N. Virmani - Respondent No. 3, Shri P.M. Rajwade-Respondent No. 4 and Shri G.S. Patel-Respondent No. 5 to Shri J.N. Kaul, Resident Commissioner, Government of Madhya Pradesh, New Delhi for being transmitted to Shri Rajendrapal Kapoor-Respondent No. 7 then Chief Secretary, Government of Madhya Pradesh requesting him to deliver these letters to the concerned persons and to intimate their acceptance at an early date. Resident Commissioner was requested to send the papers through Special Courier to the Chief Secretary and a D.O. addressed by Smt. Krishna Singh to Shri Rajendrapal Kapoor was also enclosed with this. There is nothing on the files of both the Government to show as to when these offers were actually delivered to Shri S.S. Lamba - Respondent No. 6, Shri P.M. Rajwade-Respondent No. 4, Dr. N.N. Virmani- Respondent No. 3 and Shri G.S. Patel-Respondent No. 5 . However, letters of acceptance written by all of them are dated 23-5-1991 from which it can be inferred that the offers must have been handed over to the concerned persons one or two days prior to 23-5-1991. From the note dated 21-5-1991 put up by Shri G.S. Patel as Law Secretary in the State Government file requesting for expeditious processing of appointment of Judicial Member shows that till 21-5-1991 at least he was definitely in the dark about the fact that actually an offer letter addressed to him had already been despatched by the Government of India. This shows that the Chief Secretary, Shri Rajendrapal Kapoor who must have had in his possession letters of offers sent by the Government of India through the Resident Commissioner of Madhya Pradesh on 1-5- 1991 through Special Courier did not deliver them to Shri S.S. Lamba-Respondent No. 6, Shri PM Rajwade-Respondent No. 4, Dr. N.N. Virmani-Respondent No. 3 and Shri G.S. Patel-Respondent No. 5 till his name was cleared

for the post of Vice-Chairman. It is clear that Shri Rajendrapal Kapoor did so in order to get his own name processed and cleared by Shri G.S. Patel, the Law Secretary by keeping the carrot dangling before him and giving him an impression that Rajendra Pal Kapoor could help him in getting the appointment by using his good Offices or at least by not putting a spoke in the wheel. After the letters of acceptance of offers dated 23-5-1991 reached the Government of India formal orders of appointment were issued on 27-5-1991.

As already observed, the offers of appointment for the Respondents No. 3 to 6 were sent by the Government of India to the Government of Madhya Pradesh through Special Courier on 1-5-1991. Meanwhile, on 27-4-1991 recommendation of the name of Shri Rajendrapal Kapoor, Chief Secretary for the post of Vice-Chairman had already been obtained from the Chief Minister and was got approved from his Excellency the Governor on 30-4-1991. A letter dated 3-5-1991 was addressed by the Secretary, GAD to Smt. Krishna Singh, Joint Secretary to the Government of India forwarding the proposal to appoint Shri Rajendrapal Kapoor, Chief Secretary to the post of Vice-Chairman. It is clear from this letter that bio-date and information about Shri Rajendrapal Kapoor only was sent to the Government of India and it was not even mentioned that any other person was considered along with him at any stage for being selected for the post of Vice-Chairman. This letter was dealt with in the Central Government file on 10-5-1991. In his note dated 10-5-1991 the Under Secretary mentioned that in the meanwhile, the Central Government had constituted formal Selection Committee for the appointment of Vice-Chairman and Members both in CAT and SAT and therefore, it would be proper to refer the proposal to the Selection Committee of the concerned State Government. On 14-5-1991 the Joint Secretary approved the proposal and a draft letter was put up for approval on 23-5-1991. However, on 27-5-1991 Smt. Krishna Singh recorded that Resident Commissioner of Madhya Pradesh rang her up to say that Shri Rajendrapal Kapoor's name had been cleared by the Committee and forwarded to the Central Government. It would be necessary to reproduce the office notes from 10-5-1991 to 27-5-1991. They are reproduced hereunder:

Department of Personnel & Training

(A.T. Division)

The Government of Madhya Pradesh have sent us a proposal recommending the name of Shri R.P. Kapoor, Chief Secretary, Madhya Pradesh for the post of vice-Chairman, Madhya Pradesh Administrative Tribunal at Bhopal Bench. Bio-Data / C.R. of Shri Kapoor is at flags "A" and "B".

The post of Vice-Chairman, SAT, MP is vacant after the order of appointment of Shri M.S. Singh Deo as Vice-Chairman, SAT was cancelled. Shri Singh Deo has filed a writ petition in Delhi High Court against this cancellation order which is pending before the High Court.

Meanwhile, the Central Government has constituted informal Selection

Committee for the appointment of Vice-Chairman and Members both in Central Administrative Tribunal and State Administrative Tribunal. The order were issued on 15-4-1991. The composition of Selection Committee for SAT includes Chief Justice of concerned High Court, Chief Secretary of the State Government concerned and Secretary (Law) of the concerned State. The recommendation of the Selection Committee is to be processed and forwarded to the Central Government for taking further necessary action in consultation with the Chief Justice of India obtaining approval of the Appointments Committee of the Cabinet.

It would, thus, be proper if this proposal is referred to the Selection Committee of the concerned State Government i.e. M.P. for its recommendations. We may write back to the State Government informing them on the above lines. Draft is for approval. It may be mentioned that offers of appointments for Chairman and other Members (A)/(J) have been cleared and issued. However, we are waiting for receipt of acceptance of the offer from persons selected.

Sd/- (S.M. Sahariar) Under Secretary (S) 10/5/91

Dir.(AT) Proposal made in para 4 of the above note is for consideration.

Sd/ 14-5-91

JS(AT)

Notes above may kindly be seen.

We may request the State Govt. to obtain the recommendation of the Selection Committee with regard to the proposal for appointment of the VC, SAT Bhopal.

Sd/- (Smt. Krishna Singh) Joint Secretary (AT) 14-5-91

Secretary(P) JS(AT)

Sd/- 21-5-1991

Reference note on previous page.

A draft from JS(AT) to Shri S.K. Mishra, Secretary, GAD is put for approval.

Sd/- (S. Kumar) Director (AT) 23-5-1991

JS(AT)

Resident Commr. M.P. rang me up today to say that Shri Kapoor's name has been cleared by the Committee (at the State Level) and forwarded to us. This may kindly be re-checked before we issue the proposed letter.

Sd/- (Smt. Krishna Singh) 27-5-1991

The letter dated 21-5-1991 written by the State Government to the Central Government recommending the name of Shri Rajendrapal Kapoor for being appointed as Vice-Chairman was processed in the Central Government on 31-5-1991. In the note prepared by the Desk Officer it was stated that name of

Shri Rajendrapal Kapoor had been approved by the Selection Committee which considered three names for the post of Vice-Chairman viz. that of Shri R.P. Kapoor, Shri K.C.S. Acharya and Dr. Ishwardas and the Committee approved Shri Rajendrapal Kapoor's name for the post of Vice-Chairman. The note also stated that approval of Governor of Madhya Pradesh was obtained to the proposal. The file was then put up for approval of Cabinet Secretary / Prime Minister. It is noteworthy that the statement that three candidates were considered, was clearly based on the note dated 16-5-1991 separately prepared by the Secretary, GAD, a copy of which was enclosed along with letter dated 21-5-1991. Curiously, even the letter dated 21-5-1991 does not mention that three names were considered as already pointed out earlier. Even the file of the State Government does not show that at any time name of any other person than Shri Rajendrapal Kapoor was considered at any level by any Authority. On the basis of this note a comprehensive note was prepared by the Secretary (Personnal) which was put up for approval before Cabinet Secretary/Prime Minister. It would be useful to reproduce this note which would give the correct idea as to what was the representation made to the Prime Minister and to the Chief Justice of India:

No. A.11013/44/86-AT(Pt.)

Department of Personnel & Training.

Subject: Appointment of Shri R.P. Kapoor IAS (Retd.) presently Chief Secretary, Government of Madhya Pradesh as Vice-Chairman of the M.P. State Administrative Tribunal.

After obtaining approval of Chief Justice of India and ACC we have already appointed Justice Shri P.C. Pathak as Chairman and S/Shri S.S. Lamba, IPS (Retd.), Dr. N.N. Virmani, IPS (Retd.) and P.N. Rajwade, IFOS (Retd.) as Members (A) and G.S. Patel, Secretary (Law) of the Legislative Department of the Govt. of M.P. as Member (J) have already been appointed in the M.P. State Administrative Tribunal.

Now Govt. of M.P. has proposed the name of Shri R.P. Kapoor, IAS presently Chief Secretary, Govt. of M.P. for being appointed as Vice-Chairman of the M.P. State Administrative Tribunal. The post of Vice-Chairman of the SAT was initially created in Jabalpur main branch in 1986 and has subsequently been transferred to the Bhopal Bench of the Tribunal in 1989. It has also been stated that the Selection Committee constituted under this Department's order No. 11013/54/80-AT dated 15.4.1991 for the purpose of selection of Vice-Chairman and Members, considered 3 names namely, Shri K.C.S. Acharya, Ex-Chief Secretary, Govt. of M.P., Dr. Ishwar Das, Ex-Director General, Administrative Academy, M.P. and Shri R.P. Kapoor, present Chief Secretary, Govt. of M.P. for the post of Vice-Chairman in the M.P. State Administrative Tribunal. The Committee has approved Shri R.P. Kapoor's name for the post of Vice-Chairman. Earlier Govt. of M.P. has intimated that the proposal had also been approved by the

excellency of Governor of M.P.

Bio-Data of Shri R.P. Kapoor and service particulars is placed at Flag "A".

Cabinet Secretary/Prime Minister may kindly approve the proposal of the Govt. of M.P. to appoint Shri R.P. Kapoor, IAS (Retd.) presently Chief Secretary of the Govt. of M.P. as Vice- Chairman of the M.P. State Administrative Tribunal.

After approval by P.M., the concurrence of CJI will be taken for the proposal.

Sd/- (M. Dandapani) Secretary (Personnel)] 6.6.1991

Cabinet Secretary Prime Minister

The Cabinet Secretary approved the aforesaid note on 7.6.1991 and forwarded it to the Prime Minister. On 18.6.1991 a note was put by Director, PMO that Prime Minister had approved the proposal. Though, we very much doubt the propriety and validity of recording approval of the Prime Minister by any one else howsoever highly placed, we assume that the Prime Minister had in fact approved the proposal to appoint Shri Kapoor as Vice-Chairman. The file was then sent of Hon"ble the Chief Justice of India on 28.6.1991. The note submitted to Hon"ble Chief Justice of India and the record of his opinion on it are essential to be reproduced here. They are being reproduced hereunder:

No. A.11013/44/86-AT(Pt.)

Department of Personnel & Training.

Subject: Appointment of Shri R.P. Kapoor IAS (Retd.) presently Chief Secretary, Government of Madhya Pradesh as Vice-Chairman of the M.P. State Administrative Tribunal.

M.P. Administrative Tribunal had been set up under the A.T. Act, 1985 w.e.f. 2nd August, 1988 to adjudicate or try disputes or complaints with respect to service matters of employees of the State of M.P. The post of Vice-Chairman, CAT is vacant. The post was initially created in Jabalpur main branch in 1986 and has subsequently been transferred to Bhopal Bench of the Tribunal in 1989.

Government of M.P. have recommended the name of Shri R.P. Kapoor, IAS presently Chief Secretary, M.P. for being appointed as Vice-Chairman of M.P. Administrative Tribunal. The State Government has intimated that the Selection Committee constituted for the purpose of selection for the post of Vice-Chairman and Members of SAT has considered three names, namely, Shri K.C.S. Acharya, Ex-Chief Secretary, Govt. of M.P., Dr. Ishwar Das, Ex-Director General, Administrative Academy, M.P. and Shri R.P. Kapoor, present Chief Secretary, Govt. of M.P. The Committee has approved Shri R.P. Kapoor's name for the post of Vice-Chairman. The proposal has also the approval of Governor of M.P.

Bio-Data of Shri R.P. Kapoor and Service particulars is placed at Flag "A".

It is requested that the Hon"ble Chief Justice of India may kindly concur in the proposal to appoint Shri R.P. Kapoor, I.A.S. for the post of Vice-Chairman, M.P. Administrative Tribunal.

Sd/- (M. Dandapani) Secretary (P) 28.6.1991

Hon"ble Chief Justice (India) 5, Krishna Menon Marg.

The entire file may be sent. On principle, I do not agree that an administrative officer should out right be appointed as Vice- Chairman.

Sd/- 5.7.1991

Obviously, the entire file was not made available to Hon"ble the Chief Justice of India.

On 18.7.1991 the Under Secretary (S) recorded a note wherein he proposed that file of the Government of Madhya Pradesh be called and sent to the Chief Justice of India and the Central Government file and approval of the Prime Minister may not be forwarded to the Chief Justice of India as the matter related to appointment as Vice-Chairman in the State Administrative Tribunal. Thereafter on 25.7.1991 only the State Government file was forwarded to the Chief Justice of India. On 28.7.1991 the Chief Justice of India recorded his inability to accept the recommendation on the ground that the spirit of Sampat Kumar's decision was that an Administrative Officer may not directly be appointed as Vice-Chairman. The file was returned to the Government of India on 30.7.1991. However, the Chief Justice of India called back the file and recorded a note on 5.8.1991 approving the appointment. The note of the Secretary (P) dated 25.7.1991, the opinions recorded by the Chief Justice of India on 28.7.1991 are reproduced hereunder:

No. A.I1013/44/86-AT(Pt.)

Government of India

Department of Personnel & Training.

Subject: Appointment of Shri R.P. Kapoor IAS (Retd.) presently Chief Secretary, Government of Madhya Pradesh as Vice-Chairman of the M.P. State Administrative Tribunal.

Reference observations of Hon"ble Chief Justice of India on previous page with regard to appointment of Shri R.P. Kapoor, IAS, Chief Secretary, Government of Madhya Pradesh for the post of Vice-Chairman in M.P. State Administrative Tribunal.

As desired the relevant file bearing No. F.A. 4-33/89/I(i) of the Government of M.P. containing notes from pages 1-23 and correspondence from pages 1-47 is sent herewith for perusal of the Chief Justice of India. Bio-data and C.R. Dossier

of Shri R.P. Kapoor are also enclosed along with a brief note highlighting the various important assignments he has held during his career.

It is requested that the Hon''ble Chief Justice of India may kindly concur in the proposal of the Suite Government to appoint Shri R.P. Kapoor, as Vice-Chairman in M.P. Stale Administrative Tribunal.

Sd/- (M. Dandpani) Secretary (P) 25.7.1991

Hon''ble Chief Justice of India, 5. Krishna Menon Marg, New Delhi.

I have looked into the papers available in this file. Mr. Kapoor has held many key positions in his 36 yrs. long service career and has earned many good entries in his C.R. He has also held some quasi-judicial posts intermittently.

The post of Vice-Chairman should, however, not be filled up by administrative officer directly. The spirit of Sampat Kumar''s decision leads to that position. There can be no objection to administrative members being promoted as Vice-Chairman.

I regret my inability to accept the recommondation.

Sd/- Chief Justice of India 28.7.1991

After I had recorded my opinion and sent back the file, I requested that the file may be sent back to me. That is how it has been placed again.

Mr. Kapoor satisfies the requirements of the Act for appointment as Vice-Chairman. I find that the question whether an administrative officer''s direct appointment as Vice-Chairman would be in order is still pending clarification on the judicial side.

In such circumstances, his appointment be cleared.

Sd/- Chief Justice of India 5.8.1991

We enquired from the learned Counsel appearing for Respondents about the stage of fate of the case in which the point as to whether an administrative officer''s direct appointment as Vice-Chairman would be in order was pending clarification on judicial side. Unfortunately, none of the parties was able to place any information about it before us.

On 22.8.1991 the approval of the Appointments Committee of the Cabinet for the appointment of Shri Rajendra Pal Kapoor as the Vice-Chairman of the SAT was obtained. Ultimately, an offer was made to Shri Rajendra Pal Kapoor on 23.8.1991 and on his accepting it on 27.8.1991 an order of appointment was issued on 28.8.1991.

One more important factor remains to be dealt with and that is relating to the policy taken by Government of India to constitute Selection Committee for the purpose of selection of Members/Vice-Chairman of SAT and administrative

instructions issued in that behalf. On 30.4.1991 Smt. Krishna Singh, Joint Secretary wrote a D.O. to the Resident Commissioner, Government of Madhya Pradesh in Delhi bringing to his notice that the Central Government had decided that there shall be a Selection Committee for selection of Vice-Chairman and Members of the State Administrative Tribunal for the State and the Selection Committee shall consist of the Chief Justice of the High Court of the State, Chief Secretary of the State and Secretary (Law) of the State. She enclosed with her letter dated 30.4.1991 a copy of the D.O. letter dated 19.4.1991 which was addressed to the Chief Secretary of some States including the State of Madhya Pradesh as also a copy of the order dated 15.4.1991 constituting the Selection Committee which was sent to the Chief Secretaries along with DO letter dated 19.4.1991. The D.O. dated 19.4.1991 and the order dated 15.4.1991 deserve to be reproduced hereunder:

D.O. No. A.11013/54/90-AT April 19, 1991.

Dear Shri

You are aware that at present your Government have been sending proposals for appointment of Chairman, Vice-Chairman and Members (Administrative) and (Judicial) for SAT in respect of your State under Administrative Tribunal Act, 1985 and Central Government for processing the proposals for appointment in consultation with Hon"ble Chief Justice of India. In this connection reference is invited to Sections 6 and 7 of the Administrative Tribunal Act, 85 for the purpose of more fair selection of Vice-Chairman and Members of SAT for your State it has been decided that there shall be a Selection Committee of the concerned State Government consisting of:

- (i) Chief Justice of the High Court of the concerned State.
- (ii) Chief Secretary of the concerned State Government.
- (iii) Secretary (Law) of the concerned State Government.

I enclose herewith a copy of the order constituting the Selection Committee. It will be observed that Chairman of the SAT will be outside the purview of this Selection Committee. The order will take effect from 15.4.91. The recommendations in respect of future vacancies in the Administrative Tribunal of your State will be made by the Selection Committee.

With regards.

Yours sincerely, Sd/- (Smt. Krishna Singh)

Sh. V.P. Rama Rao, Chief Secretary, Govt. of A.P., Hyderabad - 500,001

Sh. H.K. Prabhakara Rao, Chief Secy., Govt. of Karnataka, Bangalore - 560,001

Sh. R.P. Kapoor, Chief Secy., Govt. of Madhya Pradesh, Bhopal - 462,004

Sh. K.B. Srinivasan, Chief Secy., Govt. of Maharashtra, Bombay -400,033

Sh. R.K. Mishra, Chief Secy., Govt. of Orissa, Bhubancswar-754,014

Sh. T.V. Antony, Chief Secy., Govt. of Tamil Nadu, Madras - 600,009.

Sh. M.S. Mukharajee, Chief Secretary, Govt. of Himachal Pradesh, Shimla-171,002.

...

No. A. 11013/54/90-AT Government of India Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training. New Delhi, the 15th April, 1991.

ORDER

Subject: Procedure for appointment of Vice-Chairman and Members of State Administrative Tribunal.

For the purpose of selection of Vice-Chairman and Members of the concerned State Administrative Tribunal it has been decided that there shall be a selection committee of the concerned State Government consisting of:

Chief Justice of the High Court of the concerned State.

Chief Secretary of the concerned State Government.

Secretary (Law) of the concerned State Government.

(2) The Selection Committee shall recommend persons for appointment as Vice-Chairman and Members from amongst the persons on list of the candidates prepared by Chief Secretary/Secretary, GAD or Personnel Department of the State Government, after writing to various cadre controlling authority of the State.

(3) The State Government shall after taking into consideration recommendations of the Selection Committee make a list of persons selected and send the same with its recommendations, to the Central Government who will after consultation with the Chief Justice of India in accordance with provisions of Section 6(7) of the Administrative Tribunal Act, 1985 appoint Vice- Chairman/Members of the State Administrative Tribunal of the concerned State Government.

(4) The Selection Committee of the concerned State Government may devise its own procedure or lay guidelines for inviting applications as also for selection of Vice-Chairman and Members of the State Administrative Tribunal of the concerned State Government.

Sd/- (Smt. Krishna Singh) Joint Secretary (AT)

Copy of the DO letter dated 19.4.1991 enclosed with the DO letter dated 30.4.1991 clearly shows that it was addressed to Shri Rajendra Pal Kapoor, Chief Secretary of Madhya Pradesh also. This D.O. letter must have been received by Shri Rajendra Pal Kapoor in the month of April 1991 itself. When the Chief

Minister recommended his name on 27.4.1991 and the approval of the Governor was obtained on 30.4.1991. Shri Rajendra Pal Kapoor must have already had knowledge of the Constitution of the Selection Committee by the Central Government. However, it appears that he kept this information to himself and did not share it with anyone else including the Secretary GAD and allowed the file to be processed in violation of the circular and in fact goaded and egged on his subordinates to expedite the matter. Curiously, the photocopy of D.O. letter dated 30.4.1991 addressed to Shri J.N. Kaul, Resident Commissioner Government of Madhya Pradesh, Delhi by Smt. Krishna Singh bears the initials of Shri Rajendra Pal Kapoor dated 20.5.1991 and he has endorsed the letter to Secretary, GAD as important. However, he has not said a word about what happened to D.O. letter dated 19th April, 1991 addressed to him by Smt. Krishna Singh, Joint Secretary, Government of India. It is thus clear that having full knowledge of constitution of the Committee, Shri Rajendra Pal Kapoor allowed the recommendation of his name to be processed and expedited taking care that he does not himself write anything in the file and getting every thing done through the Secretary, GAD. Having had knowledge of the changed policy of Government of India to have selections made through a selection Committee it was expected of Shri Rajendra Kapoor as Chief Secretary of the State to have apprised the Secretary, GAD and the Chief Minister requesting for constitution of the Committee. In fact no such step was taken. If, this had been done by Shri Rajendra Pal Kapoor, the Chief Minister who had no role under the new set-up had not recommended his name on 27.4.1991 in the face of Government of India's order dated 15.4.1991.

The order dated 15.4.1991 constituting the Selection Committee clearly appears to have been issued by the Central Government pursuant to directions of the Supreme Court in Sampat Kumar's case. Instead of amending the law, the Central Government chose to do the same thing by issuing an administrative order. However, in this administrative order also the directions of the Supreme Court in Sampat Kumar's case were not fully complied with. The Supreme Court had recommended the selections to be made by a High Power Committee headed by a Sitting Judge of the High Court nominated by the Chief Justice of the High Court. Instead the Chief Justice himself was made a Member of the Committee and was not even formally declared to be its Chairman. A High Power Committee headed by the Chief Justice of the High Court or a Sitting Judge of the High Court should include Members of the same level as that of a Judge of the High Court. Moreover, such Members should not be eligible for appointment themselves. The Chief Secretary of the State and the Secretary (Law) of the concerned State may be eligible themselves and as the present case demonstrates may be actively interested in their own selection themselves. Such a Committee cannot be said to be a High Power Committee as envisaged by the Supreme Court in Sampat Kumar's case (supra).

Not only that the appointment of Respondent No. 3 to 7 were not even put before such a selection committee but the procedure prescribed for selection was

also not followed. The list of candidates to be prepared by the Chief Secretary / Secretary GAD of the State Government after writing to various Cadre Controlling Authority of the State was not prepared. The State Government had to consider the recommendations of the Selection Committee and not to recommend persons for approval to the Selection Committee. The Selection Committee had to devise its own procedure or lay down guide lines for inviting applications and selection of Vice-Chairman and Members of the Administrative Tribunals. All these provisions of the circular were observed only in their breach in the appointment of Respondent No. 3 to 7 in the present case. The order dated 15.4.1991 had come into effect immediately on the same day. No appointment after 15.4.1991 could have been made in violation of the order dated 15.4.1991. Only the appointment already made before 15.4.1991 could be said to be outside the purview of the circular. Though, it is an executive order, it had to be uniformly observed and it was not permissible for the State or the Central Government to comply with the procedure prescribed or not to comply with it at its own sweet will. After 15.4.1991 any selection or appointment made to the post of Vice-Chairman or Members of the Administrative Tribunal in violation of the procedure prescribed by the order dated 15.4.1991 would be arbitrary and discriminatory. Such a selection would, therefore, be invalid and void.

The Central Government took the approval of the Chief Justice of India to the appointment of Respondents No. 3 to 6 on 18.4.1991 without disclosing to him that on 15.4.1991 an order had been issued by the Government of India constituting Selection Committee for the purpose. The approval of the Deputy Prime Minister obtained on 22.4.1991 and the Prime Minister's approval prior to 15.4.1991 was taken to be valid without referring back the case to the Prime Minister in the changed circumstances after 15.4.1991. The offers of appointment were issued to Respondents No. 3 to 6 on 1.5.1991 and their appointments were made on 27.5.1991. Thus, the appointments were made in violation of the order dated 15.4.1991 without even caring to consider the effect of order dated 15.4.1991 on the proposals pending on 15.4.1991. The Authorities who had to form the opinion on the appointments were not told at all that in the mean-while the order dated 15.4.1991 had been issued by the Government of India.

So far as the appointment of Respondent No. 7/Shri Rajendra Pal Kapoor is concerned, he himself had put up the file before the Chief Minister on 11.4.1991. The Chief Minister recommended the name of Shri Rajendra Pal Kapoor himself on 27.4.1991 on which date, as already observed, Shri Rajendra Pal Kapoor had knowledge of order dated 15.4.1991 issued by the Government of India. He did not take any steps to bring this to the notice of Secretary, GAD or the Chief Minister and allowed the file to be processed taking care that he himself does not come into the picture directly. Under the order dated 15.4.1991 Shri Rajendra Pal Kapoor and Shri G.S. Patel were ex-Officio the Members of the Committee constituted under the order by the Central Government. Apart from Shri

Rajendra Pal Kapoor, Respondent No. 7, Shri G.S. Patel - Respondent No. 5 had definitely knowledge of the constitution of the Committee on 18.5.1991 before he proceeded to Patna to obtain the approval of the Chief Justice to the appointment of Shri Rajendra Pal Kapoor. It was his duty as Law Secretary to advise the Government that he himself being ex-Officio Members of the Committee and Shri Rajendra Pal Kapoor also being an ex-Officio Members of the Committee, it would not be proper for them to associate themselves with the selection process being candidates in the selection. He should have known that Committee functions by holding meetings and not by one Member putting up notes for the approval of any other Member. He should also have known that every Committee has to have a Chairman or a Convener. He should have advised the Government to convene a meeting of the Committee and to put up proposals in accordance with order dated 15.4.1991 before it. Instead, he joined in the efforts to keep the Government of Madhya Pradesh, the Chief Minister and the Governor in the dark about the real state of affairs. He in the most brazen manner recommended Shri Rajendra Pal Kapoor for appointment as Vice-Chairman knowing fully well that he himself was a candidate for being appointed as a Member of the same Tribunal for which he was recommending Shri Rajendra Pal Kapoor's name for the post of Vice-Chairman. He had also the audacity to state that he had seen the work of Shri Rajendra Pal Kapoor as Chief Secretary for a year and he found him to be a fit person for appointment as Vice-Chairman. When the fact was that Shri G.S. Patel was himself working as Law Secretary under Shri Rajendra Pal Kapoor, the Chief Secretary, even on the day on which he was writing the recommendation for his superior. Not only this, without verifying himself from the record or may be, even after having seen the record he falsely represented to the Hon'ble the Chief Justice that the Government had considered the names of Shri K.T.S. Acharya and Dr. Ishwardas also while recommending Shri Rajendra Pal Kapoor for the appointment. It appears that Hon'ble the Chief Justice was never apprised of the order dated 15.4.1991 issued by the Government of India and he was led to believe by Shri G.S. Patel, the Law Secretary, who was a Member of the Higher Judicial Service on deputation to the State Government, that the selection was to be done by the State Government and only approval of the Chief Justice was necessary. The anxiety and over zealousness of Shri G.S. Patel in running about like a courier and going all the way to Patna to trouble the Hon'ble the Chief Justice who was on vacation there and not finding him there to go to the village where he had gone some 250 kms. away from Patna borrowing a car from Bihar Government can be explained only on the ground that he was deeply interested in the clearance of the appointment of Shri Rajendrapal Kapoor who, it appears, was in a position to influence the chances of selection of Shri G.S. Patel for the post of Member of the Tribunal or atleast had been successful in conveying that impression to Shri G.S. Patel.

The whole thing presents a very dismal picture of highly placed beauracrats, totally blinded by their self-interest, angling for bounties of post -retirement

appointments to high statutory offices of status and profit, brazenly abandoning all norms and standards of decency, behaviour and conduct their life time association with public Administrative or Judicial service was expected to have inculcated in them. It is persons like these who indelibly tarish the image of beauracracy and in fact, the entire administration and greatly contribute towards loss of faith in the fairness and impartiality of the administration. If the selection is not saved from such evil influence it would be futile to expect selection of the best from amongst the available candidates.

Conclusion:

For the aforesaid reasons we hold that:

- (i) Bar of jurisdiction u/s 28 of the Administrative Tribunals Act, 1985 does not apply to a petition challenging appointments to the posts of Member/Vice-Chairman of the State Administrative Tribunal and such petition is cognizable by the High Court;
- (ii) There is no impropriety in the High Court entertaining a petition challenging the appointments to the posts of Members/Vice-Chairman of the State Administrative Tribunal;
- (iii) The Petitioners who are Government Servants have locus standi to file a petition challenging the appointments of Member/Vice-Chairman of the State Administrative Tribunal;
- (iv) A writ of quo-warranto can be issued under the circumstances of the case;
- (v) Observations made by the Supreme Court in Sampat Kumar's case as regards procedure for selection of candidates to be appointed as Member/Vice-Chairman of SAT are of binding nature and the Central and State Governments are obliged to follow them in order to ensure element of judicial independence to achieve valid constitutional substitute of part of jurisdiction of High Court by the Tribunal;
- (vi) Non-compliance with the procedure set-out by the Supreme Court in Sampat Kumar's case vitiates the appointments rendering them invalid and illegal;
- (vii) Non-compliance of procedure prescribed by Government of India order dated 15.4.1991 has rendered the selection of Respondents No. 3 to 7 illegal, arbitrary and discriminatory;
- (viii) The procedure actually followed in the appointments of Respondents No. 3 to 7 was extremely arbitrary and discriminatory and, therefore, the appointments of Respondents No. 3 to 7 are liable to be set-aside; and
- (ix) The appointments of Respondents No. 3 to 7 are result of murky self motivated machinations vitiated by bias and as such liable to be set-aside.

This brings us to the question of relief which can and should be granted in the circumstances of this case. It has been contended on behalf of the Respondents

No. 3 to 7 that they cannot be personally held responsible for whatever lapses the Respondents No. 1 and 2-might have committed in the process of selection or appointment. It is contended that the candidates appointed cannot be punished for fault in process of selection or appointment. So far as Shri Rajendrapal Kapoor-Respondent No. 7 and Shri G.S. Patel-Respondent No. 5 are concerned, the argument does not lie in their mouth. They were the chief architect of their own fraudulent appointments. They have been positively found guilty of misdemeanour and of being directly responsible for getting themselves illegally appointed. So far as regards Respondents No. 3, 4 and 6 also no sympathy or compassion can be entertained. Firstly, because in the appointments to such high Offices in the Tribunal the importance of which has been emphasised and high lighted by the Supreme Court in Sampat Kumar's case (supra) conferring on it status of a substitute of the High Court, such considerations are out of place. The standard and the quality of the appointees to such Tribunals has to be jealously guarded and considerations of sympathy or compassion have not to be allowed to be brought in. Secondly, Respondents No. 3, 4 and 6 are all Retired Government Servants who had completed their normal tenure of service before being appointed to their posts. They have already played their innings and it is not a case where their appointments have resulted in their altering their positions irretrievably to their detriment by resigning from the previous job or turning down the offers for other jobs. If the high standard of the Tribunal is to be maintained, compromise on the quality of the appointees on compassionate or sympathetic grounds or on grounds of expediency or exigency cannot be allowed.

It has also been vehemently argued that a writ of quo-warranto cannot be issued in the circumstances of the case and no other writ could be issued because of vague and general pleadings. Apart from the fact that it has been held that a writ of quo-warranto can be issued in the circumstances of this case, this Court always has the power to mould the relief to suit a particular situation in the interest of justice. In Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, it has been observed by the Supreme Court that there is a wide discretion in the matter of framing the writs to suit the exigencies of the particular cases and the petition cannot be thrown out simply on the ground that the proper writ or direction has not been prayed for. The same view has been expressed in Hari Raj Singh Vs. Sanchalak Panchayat Raj, U.P. Govt., Lucknow and Others, and Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others,

The petition is, therefore, allowed with costs. The appointments of Respondents No. 3 to 6 as Members of the SAT, Madhya Pradesh and the appointment of Respondent No. 7 as Vice-Chairman of SAT, Madhya Pradesh are declared illegal and invalid and are hereby quashed. It is for the Respondents No. 1 and 2 to decide upon taking disciplinary action against Respondents No. 5 and 7 as also against Shri S.K. Mishra the then Secretary GAD for their role in securing these illegal appointments. It is for officers like these that provisions have been made permitting initiation of disciplinary action even after retirement in certain cases.

The Respondents No. 1 and 2 shall pay the costs of this case to the Petitioners. Costs quantified at Rs. 2,500/-, Security, if any, be refunded to the Petitioners.