

(2006) 07 MP CK 0101
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3690 of 2002

State of M.P.

APPELLANT

Vs

Hari Singh Shekhawat and others

RESPONDENT

Date of Decision : 31-07-2006

Acts Referred:

Administrative Service (Appointment by Promotion) Regulations, 1955 — Regulation 7(4)

Citation : (2007) 1 MPLJ 345

Hon'ble Judges : Ravi Shankar Jha, J;A.K. Mishra, J

Bench : Division Bench

Advocate : P.N. Dubey, Dy. A.G, for the Appellant; Sheel Nagu, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Jha, J.

The State of Madhya Pradesh being aggrieved by order dated 21-12-2001 passed by the Central Administrative Tribunal, Jabalpur (in short "the Tribunal") in OA No. 363/99 has filed this petition being aggrieved by the directions issued by the Tribunal to the State and the Union of India to notify the Respondent to the Indian Administrative Service from the date his junior was notified in the year 1998 with all consequential benefits.

The only ground on which the Petitioner has assailed the impugned order of the Tribunal is that the directions issued by the Tribunal could not have been issued in view of the fact that the Respondent whose name was included provisionally in the select list was not made "unconditional" by the commission within 60 days in terms of the first proviso to Regulation 7(4) of the Indian Administrative Services (Appointment by Promotion) Regulation, 1955.

The brief facts which emerge from a perusal of the records and which are necessary for adjudicating the issue raised by the Petitioner are that the

Respondent while working as Deputy Collector was considered for grant of I.A.S. Grade from amongst the State Administrative Services Officers by the D.P.C. which was held on 28th and 29th July, 1998 at Bhopal. He was found fit for award of I.A.S. He was kept at Serial No. 1 of the select list prepared by the D.P.C. while his junior, Respondent No. 4, was kept at Serial No. 2. However, while the name of Respondent No. 4 was notified for promotion to the I.A.S., the Petitioner's name was not notified on the ground that an inquiry was pending against him in respect of some matters which related to an incident which took place long back and for which a charge-sheet was issued on 15-9-1998. On coming to know of the issuance of the charge-sheet, the Respondent approached the Board of Revenue against the order passed by the Commissioner which was made the basis of the charge-sheet by filing a revision petition which was allowed on 10-2-1999. The Petitioner immediately filed an application before the Petitioners bringing this fact to their knowledge and requesting them to notify his name as per the select list. However, the Respondents sat over the matter and ultimately pass a positive order in favour of Respondent No. 1 only on 5-7-1999 withdrawing the charge-sheet however the Petitioner's name was not notified by the Respondent.

Being aggrieved by this fact, the Respondent No. 1 approached the Tribunal alleging that the very initiation of the departmental proceedings and the particular time at which it was initiated and ultimately dropped on the face of it demonstrated that it had been initiated only with the mala fide intention of depriving the Respondent of his legitimate right and to give undue favour to Respondent No. 4. The claim of Respondent No. 1 was resisted on the ground that his name could not be notified due to pendency of the departmental inquiry and by the time the inquiry was dropped, the validity of the select list expired on 31-12-1998. It was also submitted that the fitness certificate could not be issued due to pendency of the departmental inquiry, as a result of which, the Respondent's name could not be made unconditional and final within the validity period of the list. It is pertinent to note the fact that Respondent No. 1 was again selected in the subsequent D.P.C. and was notified to the I.A.S. on 13-1-2000 and that the Tribunal had passed an interim order to keep one promotional post of the select list of the year 1998 vacant.

The Tribunal by the impugned order has allowed the petition filed by Respondent No. 1 relying upon the instructions issued by the Government of India dated 25-6-1970 which deals with the situation where departmental proceedings are pending against an empanelled officer whose name has been included in the select list. The Tribunal has also observed that the peculiar time at which the departmental proceedings were initiated in respect of an incident which occurred in 1984 and the unexplained delay in taking a decision on the Respondent's representation and frustrating his selection by not adhering to the instructions dated 25-6-1970 issued by the Government of India was arbitrary and discriminatory as the Petitioners could not be permitted to frustrate the selection of the Respondent by adopting such a methodology, especially when his name

was cleared as the charge-sheet was quashed and the charges withdrawn.

We have carefully perused the impugned order of the Tribunal as well as the reasons given by it and we are of the considered opinion that it does not suffer from any perversity, material irregularity or manifest illegality. The order has been passed after due consideration of all the contentions raised by the Petitioner as well as the provisions of the Promotion Regulations and the instructions issued by the Government of India. Under the circumstances, we do not find any merit in the issues raised by the Petitioners and accordingly dismiss the petition. There shall be no order as to costs.