

Before Hemant Gupta and Mohinder Pal, JJ.

KARAM SINGH,—Petitioner

versus

**CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH
BENCH, CHANDIGARH AND OTHERS,—Respondents**

C.W.P. No. 6022 of 2006

1st February, 2008

Constitution of India, 1950—Art.226—State Government recommending names of ineligible candidates for consideration for appointment to I.A.S.—Tribunal ordering stay of selection process—High Court staying order of Tribunal—Commission seeking permission to proceed with selection after deleting names of ineligible officers—High Court directing Tribunal to decide application—State Government seeking to replace ineligible candidates with other four candidates—Commission not permitting to substitute ineligible candidates with new recommendees and interviewing only three of them on strength of interim order passed by Tribunal—Petitioner failing to approach Tribunal—Reasoning by Tribunal that petitioner was aware of date of interview as his colleagues from same department are competing against him is wholly misconceived—No communication of date of interview to petitioner by State Government or Commission—Petition allowed, recommendation and appointment of respondent No. 7 quashed.

Held, that the petitioner was neither called for assessment by the Selection Committee on 24th April, 2004 nor any notice was given to the petitioner. It has come on record that the recommendation and the notification of appointment of respondent No. 7 were subject to the decision of various cases pending and the original application filed by said respondent No. 7. The said application has been dismissed as withdrawn. As a normal rule, interim order passed during the pendency of the list stands merged with the final order. Therefore, the interim order of consideration of respondent No. 7 by the Selection Committee without adjudication of the claim of respondent No. 7 will not be

operative after the dismissal of the petition. However, it is apparent from the record and a fact which is not disputed is that the suitability of the petitioner eligible candidate in terms of the order passed by the Tribunal has not been adjudicated upon.

(Para 26)

Further held, that petitioner and respondent No. 7 have been found to be eligible for consideration by the Selection Committee for the purposes of Select List only by virtue of the impugned order passed by the Tribunal. The Commission has not permitted the State of Punjab to substitute the names of four ineligible officers with new recommendees as it was to be decided by the Tribunal. On 20th September, 2004, when respondent No. 7 withdrew his O.A., there was no adjudication of the eligibility of the said respondent. Therefore, the recommendation of the name of respondent No. 7 without considering the claim of the petitioner is wholly unjustified and cannot be sustained in law.

(Para 28)

Further held, that the finding recorded by the Tribunal is that the petitioner was aware of the date of the interview as 24th April, 2004 and also knew that his colleagues from the same department are competing against him and still he has not approached the Court for getting interim relief. The said reasoning given by the Tribunal is wholly misconceived. Though the petitioner was communicated the date of interview on 16th February, 2004 by the Punjab Government but there was no communication by the Commission or Punjab Government to interview the petitioner on 24th April, 2004. As per the averments in the reply filed, on that date, Selection Committee could not transact any business due to difference of opinion on the list of officers to be considered. From the reply filed by the Commission, it is evident that the State Government sought fixation at the meeting of the Selection Committee,—*vide* its letter dated 12th April, 2004. Thus, it is evident that even on 12th April, 2004 the State Government was not aware of the date fixed. Thereafter, the petitioner has not been informed of the date of consideration by the Commission or State Government. If respondent No. 7 or two of the other candidates have come to know

about the meeting of the Selection Committee and have approached the Tribunal, on that basis knowledge of the meeting cannot be attributed to the petitioner. The fact that other candidates approached the Tribunal and not the petitioner, in fact, shows the lack of knowledge of the meeting. Even otherwise, on the basis of assumption, surmises and conjectures, the knowledge of date of meeting cannot be attributed to the petitioner.

(Para 29)

Ashwani Prashar, Advocate *for the petitioner.*

Suvir Sehgal, Addl. Advocate General, Punjab *for respondent No. 3.*

N. S. Virk, Advocate *for respondent No. 4*

Rajiv Atma Ram, Senior Advocate with B. N. S. Sharma,
Advocate *for respondent No. 7.*

Akshay Bhan, Advocate *for respondent No. 8.*

HEMANT GUPTA, J.

(1) The challenge in the present writ petition is to the order passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter to be referred as “the Tribunal”) on 3rd February, 2006, Annexure P-15, whereby the original application filed by the petitioner under Section 19 of the Administrative Tribunal Act, 1985, was dismissed.

(2) The dispute in the present writ petition is of two vacancies of the year 1999 out of Non-State Civil Service Cadre of the Punjab State Government to the Indian Administrative Services (hereinafter to be referred as “the I.A.S.”) in terms of Rule 4(2)(b) of the I.A.S. (Recruitment) Rules read with Regulation 3 of the I.A.S. (Appointment by Selection) Regulation 1997 (hereinafter to be referred as “the Regulations”).

(3) Though initially, there was some controversy in respect of said two vacancies, as the one falling each in the year 1998 and 1999 or the two vacancies falling in the year 1999, but the said dispute no

longer survive as it is admitted that two vacancies against which the State Government made recommendation for appointment to I.A.S. on 7th/8th October, 1999 were of the year 1999.

(4) The petitioner was appointed as Assistant Registrar of Co-operative Societies, Punjab in pursuance of his selection by the Punjab Public Service Commission in the year 1979. He was promoted as Deputy Registrar, Co-operative Societies, Punjab, on 30th September, 1988, a Class I post. He was further promoted as Joint Registrar, Co-operative Societies, Punjab in July, 1993 and as Additional Registrar in March, 2001. It is thus, the claim of the petitioner that he has rendered more than 10 years of service as on 1st January, 1999 and was 47 years of age and, thus, eligible for appointment to the cadre of I.A.S.

(5) It is the case of the petitioner that on 25th June, 1999, a proposal was made by the Government of Punjab to consider the cases of suitable non-State officers for appointment to the I.A.S. The State Government recommended 10 names for consideration for appointment against the two vacancies. The name of neither the petitioner nor of respondent No. 7 was recommended. In the list of candidates recommended, there were four names who were ineligible as per petitioner as such candidates did not have the requisite experience of 8 years on Class-I post, or had attained the age of 54 years.

(6) The recommendations made by the State Government became subject matter of challenge in Original Application No. 210/CH of 1999 at the instance of Punjab State Civil Service (Executive Branch) Officers Association. In the said original application, on 12th November, 1999, the Tribunal passed an order of stay of selection process. The application for vacation of stay was also declined on 23rd December, 1999. The said order became subject matter of challenge in Civil Writ Petition No. 945-CAT of 2000 before this Court. This Court stayed the operation of the order passed by the Tribunal on 12th November, 1999 and 23rd December, 1999. The Commission has filed a Miscellaneous Application in the above-said writ petition praying for allowing the Commission to proceed with the selection in accordance with the Selection Regulations for the year 2002 after deleting the ineligible officers. The writ petition was allowed on 21st April, 2003 and application disposed of when the following operative order was passed.

“In the result, the writ petitions are allowed. The impugned orders are quashed. The Tribunal is directed to decide the original applications within a period of four months from the date of receipt of copy of this order. Before parting with the case, we deem it proper to observe that even though this Court had stayed operation of the impugned orders as early as on 6th March, 2000, the State Government and the Commission have not finalized the selection for recruitment to I.A.S. from amongst non-State Civil Service Officers. In response to the directive given by us, Shri Salil Sagar, Additional Advocate General, Punjab, after seeking instructions from the competent authority, gave out that within 3 weeks, the State Government will send all the relevant papers, data along with appropriate proposal to the Commission for selection of non-State Civil Service Officers for recruitment to I.A.S. Shri Ajay Lamba stated that the Commission will finalize the process of selection and made the recommendations within next 6 weeks. It is, however, made clear that the appointments, if any, made hereinafter on the basis of selection impugned before the Tribunal shall remain “stayed” subject to the final decision of the original applications and this fact shall be incorporated in the order of appointment”.

(7) At this stage, it may be noticed that the word “stayed” mentioned in the inverted comma in the above said order was ordered to be deleted on 3rd July, 2004 in review application by the State Government. Resultantly, the selection process could continue but the appointments were subject to final decision of the original application pending before the Tribunal.

(8) This Court on 23rd January, 2004, on Civil Misc. No. 27173 of 2003 filed by the State of Punjab observed to the following effect :—

“... and are *prima facie* convinced that the concerned officials of the State Government and Union Public Service Commission have deliberately flouted the undertaking given

to the Court by their respective Advocates on 21st April, 2003 to finalise the process of selection for recruitment to Indian Administrative Service from among non State Civil Service Officers.

It is unfortunate that the officers who were eligible and entitled to be considered for promotion as early as in 1999 have not got their dues as per the rules and attempts are being made both by the State Government and the Union Public Service Commission to frustrate their rights”.

(9) Consequent to the orders dated 21st April, 2003 and the aforesaid order of 23rd January, 2004, the Commission requested the State Government to send the relevant papers, data along with appropriate proposal to the Commission. The State Government,— *vide* letter dated 29th January, 2004 requested the Commission to convene the Selection Committee at the earliest in compliance with the directions of this Court while inviting reference to letter dated 7th October, 1999 whereby original proposal for the year 1999 consisting of 10 officers was sent.

(10) Sarv Shri Jarnail Singh, Gursharan Singh Wasson, D. S. Cheema and G. S. Randhawa invoked the jurisdiction of the Tribunal by separate applications with the prayer that they be called for interview for selection to the I.A.S. by the Selection Committee on 16th February, 2004. The Tribunal, on the basis of letter of the Commission dated 12th February, 2004, Annexure P-2, wherein it was indicated that all the 10 officers originally proposed by the State Government in 1999 were being called for interview and assessment, dismissed the applications on 13th February, 2004.

(11) On 12th February, 2004, the State Government decided to replace four ineligible candidates, namely, Sarv Shri Jarnail Singh, G. S. Wasson, D. S. Cheema and G. S. Randhawa by the following non-State Civil Service Officers :—

1. Shri V. N. Mathur
2. Shri Harbhajan Singh
3. Shri V. K. Sharma
4. Shri K. S. Palane

The said communication of the State Government dated 12th February, 2004 was received by the Commission on 13rd February, 2004 i.e., before the scheduled date of meeting of the Selection Committee on 16th February, 2004. The Selection Committee which met on 16th February, 2004 could not transact any business due to difference in opinion on the list of officers to be considered.

(12) Thereafter, the State Government,—*vide* letter dated 12th April, 2004 requested the Commission to fix the meeting of the Selection Committee. The meeting of the Selection Committee was fixed for 24th April, 2004 to consider the non-State Civil Service Officers recommended by the State Government through letter dated 7th/8th October, 1999 to prepare the Select List of 1999 for appointment of non-State Civil Services to the I.A.S. Cadre of Punjab.

(13) It may be noticed at this stage that it was the stand of the Commission that the candidates who have been recommended by the State Government in the year 1999 are required to be considered by the Tribunal interms of the directions of this Court in CWP No. 945-CAT of 2000. The Commission was not considering the recommendations of four candidates made by the State Government, including the petitioner and respondent No. 7, as that eligible candidates to be considered by the Selection Committee for preparing the Select List.

(14) However, before the Selection Committee meeting on 24th April, 2004, three original applications were filed by the candidates whose names were recommended by the State Government on 12th February, 2004, namely, Sarvshri V. N. Mathur, Harbhajan Singh and V. K. Sharma. The Tribunal directed the Commission to allow the said applicants to participate in the selection to the I.A.S. scheduled for 24th April, 2004 on provisional basis,—*vide* order dated 23rd April, 2004. The respondent was further directed to go ahead with the process of selection but not actually appoint the persons on the basis of such selections till further orders. On the basis of said interim order passed by the Tribunal, the Selection Committee considered three officers in addition to 10 officers recommended by the State Government.

(15) It is the case of the petitioner that he had no knowledge of the meeting of the Selection Committee fixed for 24th April, 2004 and, therefore, he could not invoke the jurisdiction of the Tribunal and obtain interim order as has been done by the other similarly situated applicants. It is further contended that the petitioner has never been communicated any date of meeting of the Selection Committee as was done for the meeting of 16th February, 2004 by the State Government,— *vide* letter dated 13th February, 2004, Annexure P-7. It is further contended that the question whether the petitioner and other three candidates could replace four ineligible candidates for consideration for appointment by the Selection Committee was not accepted by the Commission. Such fact is evident from the minutes of the Selection Committee appended as Annexure R7/1 and the reply filed by the Commission to the writ petition filed before this Court. On 24th April, 2004, the Selection Committee recommended the names of respondents No. 7 and 8. The relevant extract of the minutes of the said meeting reads as under :—

“7.1 The Committee were also informed that subsequently the Government of Punjab in their letter dated 12th February, 2004 (received on 13th February, 2004), i.e., before the meeting of the Selection Committee on 16th February, 2004, stated that out of the panel of 10 Non-S.C.S. Officers, four officers namely Sarvshri Jarnail Singh, G. S. Wason, D. S. Cheema and G. S. Randhawa were declared ineligible and accordingly the State Government had withdrawn their recommendations,—*vide* letter dated 22nd July, 2002. *Vide* their aforesaid letter dated 12th February, 2001, the State Government decided to replace these four ineligible by the following Non-S.C.S. Officer :—

- (i) Shri V. N. Mathur,
- (ii) Shri Harbhajan Singh,
- (iii) Shri V. K. Sharma,
- (iv) Shri K. S. Palani.

7.2 Due to a difference in opinion on the list of officers to be considered, the Selection Committee could not transact any business on 16th February, 2004.

8. The committee were further informed that the State Government,—*vide* their letter dated 12th April, 2004 requested the Commission to fix the meeting of the Selection Committee in compliance with the orders of the Hon'ble High Court dated 21st April, 2000 in CWP No. 945/CAT/2000. Accordingly, this Committee has met today to consider the Non-S.C.S. Officers recommended by the State Government,—*vide* their letter dated 7th/8th October, 1999 to prepare the Select List of 1999 for appointment of Non-S.C.S. Officers to the I.A.S. Cadre of Punjab.
- 9.1 The Committee were informed that as the selections are being done for the year 1999 in pursuance to Court orders, the eligibility of the Non-S.C.S. Officers would need to be reckoned as on 1st January, 1999 for the qualifying service, etc. in accordance with the rules and regulations. The committee were informed that the Commission examines the proposal of the State Government on the eligibility of officers before being placed before the Committee. It was also informed that the State Government on 17th August, 2001 had issued an order declaring posts to be equivalent to that of a Deputy Collector for the purposes of the Selection Regulations.
- 9.2 The Committee was informed that in pursuance of the judgment of the Hon'ble High Court dated 21st April, 2003 in CWP No. 945/CAT/2000, the issue of eligibility of the Non-S.C.S. Officers is to be adjudicated upon in the Hon'ble CAT in the OAs pending before it on the matter, and thus the issue of eligibility of the Non-S.C.S. Officers proposed by the State Government vis-a-vis the order of the State Government dated 17th August, 2001 and the provisions of the Regulations is not being addressed at this juncture.
- 9.3 Further, in view of the orders of the Hon'ble CAT dated 13th February, 2004 in OANo. 105/CH/2004 and 106/CH/2004 and 10th March, 2004 in OA No. 27/PB/2004, all the

officers listed in the State Government letter dated 7th October, 1999 have to be considered by the Committee. It was also informed that out of these 10 officers, one officer Shri Brij Mohan Mahajan, has since retired from the State Service.

- 9.4 The Committee were also informed that the Commission have received a copy of the common interim order dated 23rd April, 2004 of the Hon'ble CAT, Chandigarh Bench passed in the OA No. 373/CH/2004 (V. K. Sharma *versus* UOI and Others) and OA No. 374/CH/2004 (V. N. Mathur and Harbhajan Singh *versus* UOI and Others). The Hon'ble Tribunal have directed the U.P.S.C. to allow the applicants to participate in the selection to I.A.S. scheduled on 24th April, 2004 on a provisional basis. Further, the respondents have been directed to go ahead with the process of selection but may not actually appoint the persons on the basis of such selections till further orders. The Committee were informed that the three (03) applicants *viz.* V. K. Sharma, V. N. Mathur and Harbhajan Singh in the aforesaid OAs are required to be considered in addition to the 10 officers recommended by the State Government,—*vide* their letter dated 7th October, 1999. Consideration of these officers would be subject to the outcome of these O.As.

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11. The Selection Committee examined the service records of the 10 officers mentioned in Para-2 above and also interviewed them. On the basis of the assessment of the service records and performance in the interview, the Committee selected the following two officers for appointment to the I.A.S. and placed their names in the following order :—

Sr. No.	Name (Sarvshri)	Date of Birth
1	V. K. Sharma	10th Febuary, 1955
2	Dharamjit Singh Grewal	1st January, 1955

12. Due to shortage of time, the State Government could not furnish the information regarding the latest position of disciplinary/criminal proceedings, if any, pending against the officers considered by the Selection Committee their integrity certificate duly signed by the Chief Secretary. These recommendations of the Selection Committee will be further subject to the furnishing of the information by the State Govt.
13. In pursuance of the orders of the Hon'ble High Court, dated 21st April, 2003, the appointment if any made hereinafter on the basis of selection impugned before the Tribunal shall remain stayed subject to the final decision of the original application and this fact shall be incorporated in the order of appointment. Thus the above selections are subject to the outcome of the following cases :—
 - (i) O.A. No. 210/CH/1999 filed by the Punjab Civil Services Officers' Association.
 - (ii) O.A. No. 1044/CH/1999 filed by Shri Harkesh Singh Sidhu.
 - (iii) O.A. No. 1204/PB/1999 filed by Shri Sukhcharan Singh Barar.
 - (iv) O.A. No. 371/CH/2004 (V.K. Sharma)
 - (v) O.A. No. 374/CH/2004 (V.N. Mathur & Harbhajan Singh)"

(16) A perusal of the said minutes would show that the Commission has considered 10 names recommended by the State Government,—*vide* letter, dated 7th/8th October, 1999 and left the issue of eligibility of non-State Civil Service Officers to be adjudicated upon by the Tribunal. Thus, the issue of ineligibility of non-State Civil Service officers proposed by the State Government was not examined. Still further, the Selection Committee considered the three replaced candidates subject to the outcome of the original application filed by them.

(17) At this stage, it may be noticed that after the recommendations were made by the Commission, an application was

filed before this Court for modification of the order passed on 21st April 2003. On such application, word “stayed” was deleted on 3rd July, 2004. After the word “stayed” was deleted, the Commission notified the recommendations on 20th September, 2004,—*vide* Annexure P-1. Consequent to publication of the notification recommending the name of respondent No. 7 for appointment to I.A.S., the said respondent withdrew his application (OA No. 373/CH/2004), whereas two other candidates, namely, Shri V.N. Mathur and Shri Harbhajan Singh withdrew the application on 20th September, 2004. The order, dated 20th September, 2004 reads as under :—

“In connected O.A. No. 373/CH/2004, it has been stated at the Bar that after considering a number of candidates, Shri V.K. Sharma and Shri D.S. Grewal have been placed on the panel of selected candidates by the U.P.S.C. for appointment to I.A.S. from non-State Civil Service category. In the present case two applicants namely Shri V.K. Mathur and Shri Harbhajan Singh had prayed for order/direction to respondent No. 2 to forward thier names for consideration and appointment to I.A.S. from amongst the officers who are not members of State Civil Service. In compliance to interlocutory orders, dated 23rd Apil, 2004. Both these applicants were duly considered through an interview by the U.P.S.C. but were not placed on the panel of selected candidate. In our opinion, they have been duly considered as per the prayer made in this O.A. Present O.A. has been rendered infructuous by their such consideration by the U.P.S.C. They will be at liberty to challenge the selection of the candidates placed on the persons who have appointed to I.A.S. on the basis of interview held on 24th April, 2004”.

(18) The petitioner, a replaced candidate, at this stage invoked the jurisdiction of the Tribunal, *inter alia*, on the ground that the selection process is illegal as the petitioner has not been called for assessment even though he was recommended by the State Government.

(19) The learned Tribunal on the basis of respective contentions framed as many as following 8 questions said to be arising for consideration of the Tribunal :—

- (i) Whether there were two vacancies for non-SCS officers induction into I.A.S. for the year 1999 or one vacancy each for the years 1998 and 1999 ?
- (ii) Whether the four persons, declared to be ineligible by the U.P.S.C., namely Shri Jarnail Singh (applicant), Shri G.S. Wason, Shri D.S. Cheema and Shri G.S. Randhawa, were eligible in terms of Recruitment Rules and Appointment Regulations and where any Court of Law ever declared them as eligible ?
- (iii) Whether the State Government was bound to substitute the ineligible officers by eligible officers, whose names had already been sent in the other list, sent by the respective departments, who could not fall within the short-listed names in October, 1999 ?
- (iv) What is the legal effect of withdrawal of O.A. filed by the present respondent Shri V.K. Sharma ?
- (v) Whether withdrawal of O.A. by Shri V.K. Sharma can have the effect of conceding to the eligibility of the four persons mentioned above, and whether it can operate as *res judicata* for the present proceedings?
- (vi) Whether non-consideration of the name of Shri K.S. Palne, vitiates the entire selection ?
- (vii) Whether the selection was based on some criteria consistent with the provisions of law ?
- (viii) Whether appointment of private respondents, Shri V.K. Sharma and Shri D.S. Grewal is legal and valid ?

(20) There is no subsisting controversy in respect of question No.1. However, in respect of question No. 2, the finding recorded by the Tribunal that Sarv Shri Jarnail Singh, G.S. Wason and G.S. Randhawa

were ineligible in terms of the recruitment rules for appointment is also no longer in dispute. In respect of question No. 3, the Tribunal found that the State Government was bound to substitute ineligible officers by eligible officers i.e., petitioner, respondent No. 7, V.N. Mathur and Harbhajan Singh.

(21) Therefore, on the basis of such undisputed facts, the learned counsel for the petitioner has vehemently argued that the question of eligibility of four recommendees was finally settled by the Tribunal *vide* order impugned in the present petition. In the said order itself, it was found that the State Government was bound to substitute ineligible officers with eligible officers i.e., inclusive of petitioner and respondent No. 7. Therefore, it was incumbent upon the Commission to assess the suitability of the replaced candidates i.e., the petitioner, respondent No. 7, V.N. Mathur and Harbhajan Singh. It is further contended that the petitioner was not called for interview to assess the suitability by the Selection Committee on 24th April, 2004, therefore, the entire selection process is vitiated. It is further contended that once Sarv Shri V.K. Sharma, V.N. Mathur and Harbhajan Singh were assessed by the Selection Committee in pursuance of the interim order passed in the application filed by them and once they have withdrawn their original application, their consideration by the Selection Commission falls to the ground as it was only by virtue of the interim order passed by the Tribunal, their suitability was assessed. Since there is no adjudication on the rights of Shri V.K. Sharma in his original application filed, therefore, Shri V.K. Sharma could not be empanelled. Even the recommendations of the Selection Committee are subject to pending application which is evident from the minutes of the Selection Committee and the notification Annexure P-1.

(22) Learned counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court in **South Eastern Coalfields Limited versus State of M.P. and others (1)** to contend that the interim order comes to an end with the decision of the main petition and, therefore, respondent No. 7 could not be recommended for appointment and permitted to continue as a member of the Indian Administrative Services.

(1) (2003) 8 S.C.C. 648

(23) On behalf of Punjab State, Shri Suvir Sehgal, learned Additional Advocate General, Punjab, stated that it was on 12th February, 2004 for the first time the Punjab Government recommended the names of petitioner, respondent No. 7 and two other candidates for consideration of the Commission for the purposes of preparing Select List for appointment to I.A.S. On the other hand, Shri Virk, learned counsel for the Commission, stated that the Commission has followed the directions and the orders passed by this Court and the Tribunal from time to time and, therefore, there is no illegality in the selection process.

(24) However, on behalf of respondent No. 7, it was vehemently argued that the petitioner was aware of the selection process and was aware the date of interview as 24th April, 2004 fixed by the Selection Committee. Two of the Additional Registrars working the Co-operation Department had invoked the jurisdiction of the Tribunal before the meeting of the Selection Committee could be held. Since the petitioner has slept over his right and not invoked the jurisdiction of the Tribunal at the relevant time, the petitioner cannot claim any right of consideration at this stage. Reliance was placed upon **Shiv Shankar and others versus Board of Directors, UPSRTC and another, (2)** to contend that dismissal of original application as infructuous will not affect the rights of the petitioner when on the basis of interim order, he was selected. Learned counsel for the respondent also relied upon **Harshendra Choubisa and others versus State of Rajasthan and others, (3)** that the selection of respondent No. 7 be not interfered with.

(25) Having heard learned counsel for the parties at some length, the undisputed facts are that for the two vacancies of the year 1999, the State Government recommended 10 names. Out of the said names, four candidates were not eligible in the opinion of the Commission initially. The State Government sought to replace such four candidates with another four candidates, including petitioner and respondent No. 7. The Commission has not considered the replaced candidates as eligible candidates and interviewed three of them on the strength of the interim order passed by the Tribunal. It was only by virtue of the order

(2) 1995 Suppl. (2) S.C.C. 726

(3) AIR 2002 S.C. 2897

passed by the Tribunal on 3rd February, 2006, it was found that such four ineligible candidates could be replaced by the eligible candidates, including petitioner and respondent No. 7.

(26) The question which arises is whether non consideration of petitioner by the Selection Committee in its meeting on 24th April, 2004 vitiates the entire selection as respondent No. 7 has been recommended for appointment on the strength of the interim order passed by the Tribunal. The petitioner was neither called for assessment by the Selection Committee on 24th April, 2004 nor any notice was given to the petitioner. It has come on record that the recommendation and the notification of appointment of respondent No. 7 were subject to the decision of various cases pending and the original application filed by said respondent No. 7. The said application has been dismissed as withdrawn. As a normal rule, interim order passed during the pendency of the lis stands merged with the final order. Therefore, the interim order of consideration of respondent No. 7 by the Selection Committee without adjudication of the claim of respondent No. 7 will not be operative after the dismissal of the petition. However, it is apparent from the record and a fact which is not disputed is that the suitability of the petitioner eligible candidate in terms of the order passed by the Tribunal has not adjudicated upon. In fact, in **Shiv Shankar's case (supra)**, the Hon'ble Supreme Court felt that, in fact, by virtue of an interim order, the writ petition has been allowed. Therefore, the order of absorption cannot be as an interim order. But in the present case, the recommendations of Selection Committee and the subsequent notification is subject to the decision of application filed by respondent No. 7. He has chosen to withdraw application. Therefore, the judgment relied upon is not of any help to respondent No. 7 herein.

(27) In **Harshendra Choubisa's case (supra)**, Hon'ble Supreme Court was dealing with the impact of the judgment of the High Court whether the effect of the High Court judgment has to be given prospectively. It was also found that the entire selection cannot be set aside when the effective parties are not being impleaded. A reading of the judgment does not lead to an inference the selection of respondent

No. 7 should be protected till the time the Commission reconsider the suitability as the parties have to be given level playing field to enable the Commission to assess their suitability. The petitioner and respondent No. 7 are on the same footing having been replaced candidates and, therefore, it will be neither legal nor equitable to permit respondent No. 7 to continue as a member of IAS. It may be noticed that respondent No. 8 was one of the eligible candidates, whose names were originally recommended, and, therefore, his recommendation and appointment need not be necessarily set aside at this stage.

(28) Petitioner and respondent No. 7 have been found to be eligible for consideration by the Selection Committee for the purposes of Select List only by virtue of the impugned order passed by the Tribunal. The Commission has not permitted the State of Punjab to substitute the names of four ineligible officers with new recommendees as it was to be decided by the Tribunal. On 20th September, 2004, when respondent No. 7 withdrew his O.A. No. 373/CH/2004, there was no adjudication of the eligibility of the said respondent. Therefore, the recommendation of the name of respondent No. 7 without considering the claim of the petitioner is wholly unjustified and cannot be sustained in law. It may be noticed that the recommendations of the Commission were made subject to the decision of the Original Application No. 210/CH/1997 which was pending at that time, though the same has been dismissed on 26th August, 2004.

(29) The finding recorded by the Tribunal is that the petitioner was aware of the date of the interview as 24th April, 2004 and also knew that his colleagues from the same department are competing against him and still he has not approached the Court for getting interim relief. The said reasoning given by the Tribunal is wholly misconceived. Though the petitioner was communicated the date of interview on 16th February, 2004 by the Punjab Government but there was no communication by the Commission or Punjab Government to interview the petitioner on 24th April, 2004. As per the averments in the reply filed, on that date, Selection Committee could not transact any business due to difference of opinion on the list of officers to

be considered. From the reply filed by the Commission, it is evident that the State Government sought fixation of the meeting of the Selection Committee,—*vide* its letter dated 12th April, 2004. Thus, it is evident that even on 12th April, 2004, the State Government was not aware of the date fixed. Thereafter, the petitioner has not been informed of the date of consideration by the Commission or State Government. If respondent No. 7 or two of the other candidates have come to know about the meeting of the Selection Committee and have approached the Tribunal, on that basis knowledge of the meeting cannot be attributed to the petitioner. The fact that other candidates approached the Tribunal and not the petitioner, in fact, shows the lack of knowledge of the meeting. Even otherwise, on the basis of assumption, surmises and conjectures, the knowledge of date of meeting cannot be attributed to the petitioner.

(30) In view of the above, the finding recorded by the Tribunal in Para No. 27 of the order dated 3rd February, 2006 is set aside. The recommendations of the Selection Committee recommending the name of respondent No. 7 and appointment of respondent No. 7 on the basis of notification Annexure P-1 are also quashed. However, in respect of recommendation and appointment of respondent No. 8, we give liberty to the Commission to consider and assess the comparative suitability of all the ten candidates, including petitioner, respondent No. 7 and other eligible candidates as per the finding recorded by the Tribunal. If the Commission on the basis of comparative assessment finds that respondent No. 8 is not to be empanelled in the Select List, his recommendation and appointment shall also stand annulled and set aside. The Commission is directed to complete the process, preferably within a period of three months from today.

(31) The writ petition stands disposed of accordingly without any order as to costs.

R.N.R.