

Kerala High Court
Kerala High Court
James K.Joseph vs Government Of India on 18 February, 2009
IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 16915 of 2005(L)

1. JAMES K.JOSEPH,

... Petitioner

Vs

1. GOVERNMENT OF INDIA,

... Respondent

For Petitioner :SRI.P.A.AHAMMED

For Respondent :SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR The Hon'ble MR. Justice
P.N.RAVINDRAN

Dated :18/02/2009

O R D E R

C.R.

P.N.Ravindran, J.

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W.P.(C) No.16915 of 2005

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Dated this the 18th day of February, 2009.

JUDGMENT

In this Writ Petition, the petitioner seeks a writ in the nature of mandamus commanding the first respondent to appoint him as Administrative Member in the Central Administrative Tribunal, Ernakulam Bench. The brief facts of the case are as follows:

2. The petitioner was a member of the Indian Audit and Accounts Service. During the period from 1988 to 1995 he was the Accountant General for the State of Maharashtra, the State of Tamil Nadu and the State of Kerala. Later, during the period 1995-1996 he was Joint Secretary in the Ministry of Personnel of the Government of India. While the petitioner was holding office as Joint Secretary (Establishment) in the Ministry of Personnel of the Government of India, he took voluntary retirement from service. Thereafter, he had also served as the Managing Director of the Kerala State Industrial Development Corporation and the Kerala State Road Transport Corporation.

3. Three vacancies of Administrative Member in the Central Administrative Tribunal (hereinafter referred to as the CAT for short) WP(C) 16915/05 -: 2 :-

arose during the period from 1.1.2004 to 30.6.2004. The Government of India notified the vacancies and invited applications from eligible candidates. The petitioner applied for appointment as Administrative Member in the CAT by submitting Ext.P1 application dated 23.8.2004 to the Joint Secretary (Administration), Ministry of Personnel, Government of India. The petitioner states that the post of Accountant General is a post equated to the post of Joint Secretary to Government of India and that only civil servants, who are consistent and outstanding in their performance are posted as Joint Secretary to Government of India. According to him, he had 8 years of experience in the category of Joint Secretary and was therefore eligible and qualified to be appointed as Administrative Member in the CAT.

4. The Selection Committee constituted by the Government of India in terms of Order No.A-1013/54/90-At dated 15.4.1991 and 23.4.1991 considered the applications received from various candidates and recommended the names of the petitioner and Sri.N.Ramakrishnan, IAS for appointment as Administrative Members in the CAT. Sri.N.Ramakrishnan, IAS was appointed as Administrative Member in the CAT, Ernakulam Bench. Since the petitioner was not appointed, he filed this Writ Petition on 6.6.2005, joining the Government of India represented by the Secretary, Ministry of Personnel as the sole respondent, contending that as the Selection Committee has recommended his name, the action of the Government of India in WP(C) 16915/05 -: 3 :-

denying appointment to him is arbitrary and discriminatory and violative of the fundamental rights guaranteed to him under Articles 14 and 16 of the Constitution of India. He has further contended that two vacancies of Administrative Members existed in the CAT, Ernakulam Bench, that Sri.N.Ramakrishnan IAS, one among the two persons recommended by the Selection Committee for appointment against the said vacancies was appointed and that as per the norms, the Government of India is bound to appoint him as Administrative Member in the CAT, Ernakulam Bench. The petitioner has in the Writ Petition placed reliance on the decision of the High Court of Himachal Pradesh in *Kali Das Batish v. Union of India & others - 2005(1) SLR 412* and the decisions of the Apex Court in *Maneka Gandhi v. Union of India - AIR 1978 S.C. 597*, *E.P. Royappa v. State of Tamil Nadu - 1974 (1) SLR 497 SC* and *Ramana Dayaram Shetty v. The International Airport Authority of India - AIR 1979 S.C. 1628* relied on by the High Court of Himachal Pradesh in support of his contentions. In the Writ Petition as filed, the petitioner had prayed for a writ in the nature of mandamus commanding the Government of India to appoint him as Administrative Member in the CAT, Ernakulam Bench. After the Writ Petition was filed, Smt.Sathi Nair, the additional second respondent in the Writ Petition was appointed as Vice Chairman of the CAT by Ext.R2(a) order dated 22.10.2003 and posted in the Chennai Bench. Later, by Ext.R2(b) order dated 3.6.2005, she was transferred to the Ernakulam Bench. The petitioner thereupon filed I.A.No.93 of 2006 WP(C) 16915/05 -: 4 :-

to implead her as the additional second respondent in the Writ Petition and I.A.No.2831 of 2006 to amend the Writ Petition by incorporating a prayer to quash the appointment of the additional second respondent as Administrative Member of the CAT, Ernakulam Bench. Both the applications have been allowed.

5. The first respondent has filed a counter affidavit denying and disputing petitioner's averment that the Selection Committee had recommended him along with Sri.N.Ramakrishnan, IAS for appointment as Administrative Member in the CAT, Ernakulam Bench. The first respondent has also raised a contention that the Writ Petition is based on surmises and conjectures and that the allegations in the Writ Petition are baseless and are not tenable. It is also stated that the Union of India has filed an appeal before the Apex Court, challenging the correctness of the decision of the High Court of Himachal Pradesh in *Kali Das Batish v. Union of India & others - 2005(1) SLR 412*, that the judgment of the High Court of Himachal Pradesh has been stayed by the Apex Court and that a final verdict in the matter is awaited.

6. The petitioner has filed a reply affidavit dated 3.7.2005 and an additional reply affidavit dated 16.7.2008. In the reply affidavit dated 3.7.2005, the petitioner has stated that he had applied to the Central Public Information Officer (Administrative Tribunal) to disclose the reason for which he was denied appointment, that in Ext.P4 letter dated 22.11.2005 the Central Public Information Officer (Administrative WP(C) 16915/05 -: 5 :-

Tribunal) informed him that the Selection Committee had not finally recommended him for appointment as Administrative Member in the CAT, that as the answer contained in Ext.P4 was vague, he had sent Ext.P5 letter dated 23.8.2006 to the Central Public Information Officer (Administrative Tribunal) requesting him to give the specific reason for denying him appointment, that in Ext.P6 reply dated 8.9.2006, the Central Public Information Officer (Administrative Tribunal) informed him that he was initially recommended by the Selection Committee for appointment as Administrative Member, that after receipt of the verification report on his character and antecedents, the matter was resubmitted for consideration by the Selection Committee and that as the report was adverse to him, the Selection Committee withdrew their earlier recommendation to appoint him and that the recommendation of the Selection Committee to withdraw their earlier recommendation to appoint him as Administrative Member was concurred with by the Honourable the Chief Justice of India and approved by the appointing authority. The petitioner has further stated in the reply affidavit dated 3.7.2005 that though he had submitted Ext.P7 appeal against Ext.P6, it was turned down by Ext.P8, that he thereupon submitted Ext.P9 appeal to the Central Information Commission and that till date, the appeal has not been disposed of or the information sought made available to him under the Right to Information Act, 2005.

7. In the additional reply affidavit dated 16.7.2008, the petitioner WP(C) 16915/05 -: 6 :-

has averred that though the report of the Intelligence Bureau was not furnished to him, it was furnished to Sri. Ram Kishore Prasad, an Advocate practising in the High Court of Jharkhand who was also denied appointment as Judicial Member of the CAT. A copy of the letter sent by the Central Public Information Officer (Administrative Tribunal) to Sri.Ram Kishore Prasad together with the relevant portions of the files is produced and marked as Ext.P10. In Ext.P10, it is stated that while the petitioner was the Accountant General of Kerala, he had to face an enquiry in connection with the recruitment of contingency staff from among the relatives of Class IV staff in the office of the Accountant General and that as the report of enquiry was not favourable to him, he proceeded on voluntary retirement. The petitioner submits that there is no truth in the allegations levelled against him in Ext.P10 and that the report submitted by the Intelligence Bureau was false. He relies on Ext.P13 letter dated 26.6.2008 sent by the Central Public Information Officer in the Office of the Comptroller & Auditor General of India to contend that no enquiry whatsoever was held in connection with the recruitment of contingency staff in the office of the Accountant General of Kerala and that the report submitted by the Intelligence Bureau was one engineered by Sri.K.J.Alphonse, IAS, with whom he was not on good terms. The petitioner also submits that as the Managing Trustee of Resurgent Educational and Charitable Trust he had sacked its Director Sri.K.J.Roy, brother of Sri.K.J.Alphonse, IAS for indulging in corrupt WP(C) 16915/05 -: 7 :-

practices and that it infuriated and prompted Sri.K.J.Alphonse to engineer the submission of a false report by the Intelligence Bureau.

8. I have heard Sri.S.Kalyanam, the learned Senior Advocate appearing for the petitioner, Sri.P.Parameswaran Nair, the learned Assistant Solicitor General of India appearing for the first respondent and Sri.S.Radhakrishnan Nair, the learned counsel appearing for the additional second respondent. The learned Senior Advocate appearing for the petitioner, relying on Ext.P13 letter submitted that the information which led to the petitioner's disqualification, is not correct and that the Intelligence Bureau had at the instigation of Sri.K.J.Alphonse, IAS, filed a false report as regards the petitioner's character and antecedents on extraneous considerations and without verifying the facts, solely with a view to deny him appointment as Administrative Member in the CAT. The learned Senior Advocate appearing for the petitioner contended that as it is now

evident that the note submitted by the Joint Secretary did not reflect the true state of affairs and as Ext.P13 proves that there was no enquiry against the petitioner as reported by the Intelligence Bureau, the Government of India is bound to reconsider its earlier decision and to appoint the petitioner as Administrative Member of the CAT. The learned Senior Advocate contended that it was at the intervention of Sri.K.J.Alphonse, IAS, who is named in Ext.P10 itself that a false report about the character and antecedents of the petitioner was submitted by the Intelligence WP(C) 16915/05 -: 8 :-

Bureau and that as no enquiry as reported by the Intelligence Bureau was ever held against the petitioner, the injustice meted out to the petitioner has to be remedied by this Court. He contended that as the decision taken by the first respondent not to appoint the petitioner was prompted by a mistaken belief as regards the existence of a non-existing fact or circumstance, the decision is unreasonable and that such a decision which is based on reasons of fact which did not exist has therefore to be held to be an abuse of power. The learned Senior Advocate appearing for the petitioner, relying on the decisions of the Apex Court in *State of Madhya Pradesh and another v. Bhailal Bhai and others* - A.I.R. 1964 S.C. 1006, *S.R. Venkataraman v. Union of India and another* - A.I.R. 1979 S.C. 49, *R.S.Mittal v. Union of India* - 1995 Supp (2) S.C.C. 230 and *Dr.A.K. Doshi v. Union of India* - (2001) 4 S.C.C. 43 contended that as the petitioner has demonstrated that the report submitted by the Intelligence Bureau was based on a non-existing fact, the decision taken by the first respondent not to appoint him, is liable to be set aside and the petitioner is entitled to be appointed.

9. Per contra, the learned Assistant Solicitor General appearing the first respondent contended that as the Selection Committee chaired by a Sitting Judge of the Honourable the Supreme Court of India had withdrawn their earlier recommendation to appoint the petitioner and as the Honourable the Chief Justice of India had concurred with the decision of the Selection Committee and the appointing authority had accepted it, WP(C) 16915/05 -: 9 :-

the petitioner cannot challenge his non-selection and seek a writ in the nature of mandamus commanding the Government of India to appoint him as Administrative Member in the CAT. He also relied on the decision of the Apex Court in *Union of India & others v. Kali Das Batish and another* - A.I.R. 2006 S.C. 789 to contend that the decision taken by the Selection Committee to withdraw their earlier recommendation and the decision taken by the appointing authority not to appoint the petitioner are not justiciable and that this Court cannot therefore exercise the power of judicial review and issue a writ in the nature of mandamus commanding the first respondent to appoint the petitioner as Administrative Member in the CAT. The learned counsel appearing for the additional second respondent submitted that the second respondent has ceased to hold office and that the relief prayed for against the second respondent has become infructuous by efflux of time.

10. I have considered the submissions made at the Bar by the learned counsel appearing on either side. Shorn off details, the petitioner's contention is that the Selection Committee which had initially recommended him for appointment as Administrative Member in the CAT withdrew their recommendation on the basis of a false report filed by the Intelligence Bureau which was furnished to them by the Joint Secretary (AT) along with Ext.P10 note and therefore the petitioner is entitled to be appointed as Administrative Member in the CAT. Since the controversy centres round the correctness of the statements in Ext.P10, the relevant WP(C) 16915/05 -: 10 :-

portions thereof are extracted below:

"Joint Secretary (AT)

In its meeting held on 11.10.04, the Selection

Committee for Vice-Chairman/Members of the Central Administrative Tribunal, recommended three persons for appointment as Administrative Member and three persons for appointment as Judicial Member. The Committee also recommended one candidate to be placed on the Waiting List for Administrative Member and

one candidate to be placed on the Waiting List for Judicial Member.

2. After seeking approval of MOS (PP) and concurrence of the Chief Justice of India, proposals for the appointment of three Judicial Members and one Waiting List Judicial Member and for the appointment of two Administrative Members and one Waiting List Administrative Member have been forwarded to the ACC. One case of Administrative Member has been under process because a reference was made to the Intelligence Bureau.

3. The IB inquiry process is normally used only in the cases of Members of the Bar who are being considered for posting as Judicial Members. Such IB inquiry is not asked for in the cases of Administrative Members, or of officers of the Judicial Services being considered for Judicial Member because all such persons would have a service record, ACRs etc. The case of Shri James K. Joseph, IA & AS (Retd) was however referred to the IB because Shri. Joseph had taken voluntary retirement from service in May, 1996. WP(C) 16915/05 -: 11 :-

Given the long period that elapsed from his retirement and the absence of vigilance status, ACR dossier, etc. orders of MOS (PP) were obtained in 18.10.04 and the case referred to IB.

4. The IB's comments have been received in note of 17.12.04. The report makes mixed reading. There are references to Shri Joseph's association with the BJP, though having retired from Government service, Shri James K. Joseph is free to take part in political activities. There is also a reference to an ongoing feud between him and Shri.K.J.Alphonse, IAS, on a matter related to the Resurgent Kerala Educational and Charitable Trust, Trivandrum. It should be noted that we have independently received various documents from Shri K.J. Alphonse related to the same matter. It should also be noted that while the complaints against Shri.James K.Joseph are serious, Shri. K.J. Alphonse himself is highly controversial and no judgment can be passed in the matter without a better knowledge of the facts.

5. There is yet another issue mentioned in the IB report which is probably more serious. It is stated that during his posting as Accountant General, Kerala, Shri. Joseph had faced an inquiry in connection with recruitment of some contingency staff from amongst relatives of Class IV staff of the AG Office. The IB report clearly states that the inquiry report in the matter was unfavourable and that Shri.Joseph had consequently proceeded on voluntary retirement.

6. In my view, this is a fairly serious complaint. We do WP(C) 16915/05 -: 12 :-

not have details of inquiry report with us, but I do not also think it is worthwhile to make inquiries from the AG's office at this stage. Given the information revealed by the IB report, it seems fairly clear that Shri.James K. Joseph's general reputation is somewhat controversial. In the circumstances, it is recommended that we do not accept the recommendation of the Selection Committee. It should be made clear that the facts brought out by IB were not brought to the attention of the Selection Committee which had before it only a simple CV of Shri. James K. Joseph.

7. We may accordingly seek orders of MOS(PP) to

reject the recommendation of the Selection Committee. Since the proposal to appoint the two other Admn. Member and a Waiting List candidate is already in ACC, there should be no difficulty about filling the vacancy with the Waiting List candidate."

11. The pleadings and the materials on record disclose that the Selection Committee that met on 11.10.2004 had recommended the name of the petitioner for appointment as Administrative Member of the CAT, that as the petitioner had retired from service in May, 1996 his case was referred to the intelligence Bureau for verification of character and antecedents and that the Intelligence Bureau had in its note dated 17.12.2004 reported that while the petitioner was the Accountant General of Kerala, he had faced an enquiry in

connection with the recruitment of contingency staff from amongst the relatives of Class IV WP(C) 16915/05 -: 13 :-

staff of the Accountant General's office, that the report of enquiry was unfavourable to the petitioner and consequently he proceeded on voluntary retirement. After the report of the Intelligence Bureau was received, the Joint Secretary (AT) prepared the note evidenced by Ext.P10 which I have extracted above on 24.12.2004. Thereafter, as can be seen from Ext.P6, the file was placed before the Selection Committee as directed by the Honourable the Chief Justice of India and in view of the report submitted by the Intelligence Bureau, the Selection Committee withdrew their earlier recommendation to appoint the petitioner as Administrative Member of the CAT. Ext.P6 also discloses that the recommendation of the Selection Committee to withdraw their earlier recommendation to appoint the petitioner as Administrative Member in the CAT, was concurred with by the Honourable the Chief Justice of India and approved by the appointing authority. It is in this background that this Court has to consider whether the petitioner is entitled to seek a writ in the nature of mandamus commanding the first respondent to appoint him as Administrative Member in the CAT.

12. I shall now refer to the decisions of the Apex Court relied on by the learned Senior Advocate appearing for the petitioner. In *State of Madhya Pradesh and another v. Bhailal Bhai and others* (supra) a Constitution Bench of the Apex Court considered the question whether the High Court has power under Article 226 of the Constitution to order refund of tax which was illegally collected. It was held that if a right has WP(C) 16915/05 -: 14 :-

been infringed - whether fundamental right or statutory right - and the aggrieved party comes to the court for enforcement of the right, it will not be giving complete relief if the court merely declares the existence of such right or the fact that the existing right has been infringed. The Apex Court also held that where there has been only a threat to infringe the right, an order commanding the Government or other statutory authority not to take the action contemplated would be sufficient and that where the right has been actually invaded, the High Courts have the power to give consequential reliefs for the purpose of enforcement of fundamental rights and statutory rights. In S.R. Venkataraman v. Union of India and another (supra), the Apex Court was dealing with the case of a public servant ordered to be retired prematurely in public interest. Taking note of the admitted fact that there was nothing on record which would justify an order prematurely retiring the appellant from service, the Apex Court held that when a public body is prompted by a mistaken belief in the existence of a non-existing fact or circumstance, there would be an error of fact and that what is done under a mistaken belief, might almost be said to have been done in bad faith. It was held that an administrative order which is based on reasons of fact which do not exist must therefore be held to be infected with an abuse of power.

13. In R.S. Mittal v. Union of India (supra), the Apex Court while considering the question whether the Appointments Committee of the Cabinet was entitled to deviate from the recommendation made by the WP(C) 16915/05 -: 15 :-

Selection Board, held that though a person on the select panel has no vested right to be appointed to the post for which he has been selected, the appointing authority cannot ignore the select panel or act on its whims. It was held that when a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then there is no justification to ignore him for appointment and that there has to be a justifiable reason to decline to appoint a person, who is on the select panel. On the facts of the case, the Apex Court held that no reason whatsoever, not to talk of a justifiable reason has been given as to why the appointments were not offered to the candidates recommended by the Selection Board and accordingly directed the recommendations of the Selection Board to be placed before the Appointments Committee of the Cabinet. In Dr. A.K. Doshi v. Union of India (supra), the Apex Court considered the question whether it was open to the Appointments Committee of the Cabinet to rely on materials which had not been placed before the Selection Committee to deny appointments to candidates recommended by the Selection Committee. The Apex Court held that after the Selection Committee which makes the selection recommends one or more names for appointment, the recommendation along with the materials considered by the Selection

Committee should be placed before the Appointments Committee without further addition or alteration and that if in an exceptional case the Appointments Committee feels that certain WP(C) 16915/05 -: 16 :-

material which was not available to be considered by the Selection Committee has come into existence in the meantime and the material is relevant for the purpose of appointment, then the matter should be placed before the Appointments Committee with the additional material for its consideration. The Apex Court held that the action of the Appointments Committee in not appointing candidates recommended by the Selection Committee and in appointing a person in the reserve panel, amounted to interference with the process of selection and that the Appointments Committee has attempted to set at naught the selection.

14. An issue similar to the one involved in the case on hand arose before the Apex Court in Union of India and others v. Kali Das Batish and another (supra), referred to and relied on by the learned Assistant Solicitor General appearing for the first respondent. The Government of India had invited applications to fill up 7 vacancies of Judicial Members and 3 vacancies of Administrative Members in the CAT for the period from 1.7.2001 to 31.12.2001. Sri.Kali Das Batish and Sri.Ram Kishore Prasad, two practicing Advocates applied for appointment as Judicial Members in the CAT. The Selection Committee chaired by a Sitting Judge of the Apex Court that met on 18.7.2001, considered the names of 121 persons for selection to the aforesaid vacancies and recommended the names of 7 persons including Sri.Kali Das Batish and Sri.Ram Kishore Prasad for appointment as Judicial Members of the CAT. In accordance WP(C) 16915/05 -: 17 :-

with the established procedure, their antecedents were got verified through the Intelligence Bureau. The report of the Intelligence Bureau was not favourable to Sri.Kali Das Batish and Sri.Ram Kishore Prasad and therefore the Government of India decided that it would not be desirable to appoint them as Judicial Members of the CAT. The Government also proposed to appoint two among the candidates in the waiting list in the place of Sri.Kali Das Batish and Sri.Ram Kishore Prasad. The concurrence of the Honourable the Chief Justice of India was thereupon sought. The Honourable the Chief Justice of India concurred with the proposal of the Government of India and therefore, Sri.Kali Das Batish and Sri.Ram Kishore Prasad were not appointed.

15. Sri.Ram Kishore Prasad thereupon filed a Writ Petition in the High Court of Jharkhand challenging the action of the Union of India in not appointing him as Judicial Member and also sought a direction to the Central Government to appoint him as he was included in the select list. The High Court of Jharkhand held that the mere inclusion of the name of a candidate in the select list does not confer on him a right to be appointed to the post and that in the matter of appointment to a Judicial post, the appointing authority had not only the right, but also a duty to verify the character and antecedents of the candidates on the basis of the report and inputs from the Intelligence Bureau and that it was open to the appointing authority not to appoint any person included in the list prepared by the Selection Committee. The High Court of WP(C) 16915/05 -: 18 :-

Jharkhand also held that exclusion of the name of Sri.Ram Kishore Prasad on the basis of the report of the Intelligence Bureau, which was made available to the Honourable the Chief Justice of India and whose concurrence to the proposal was obtained by the Government of India after apprising the Honourable the Chief Justice of India of all the relevant facts, left no scope for judicial review. The Writ Petition was accordingly dismissed. Though Sri.Ram Kishore Prasad attempted to seek a review of the judgment, the review petition was also dismissed. He thereupon moved the Apex Court in appeal.

16. Sri.Kali Das Batish had also likewise filed a Writ Petition in the High Court of Himachal Pradesh. The High Court of Himachal Pradesh proceeded to examine the correctness of the report submitted by the Intelligence Bureau and held that the report submitted by the Intelligence Bureau as regards his performance as a Lawyer, was without substance. The High Court of Himachal Pradesh held that as the ground on which the petitioner was denied appointment has been proved to be non-est, he is entitled to have his case considered afresh without reference to the report submitted by the Intelligence Bureau. The Writ Petition was accordingly

allowed and the Government of India was directed to consider his case afresh and to appoint him against vacancies if any available or against the next arising vacancy [vide *Kali Das Batish v. Union of India and others* - 2005(1) SLR 412.] The Union of India challenged the judgment of the High Court of Himachal Pradesh in the WP(C) 16915/05 -: 19 :-

Apex Court joining Sri.Kali Das Batish and Sri.Ram Kishore Prasad as respondents in the appeal. The appeals filed by Sri.Ram Kishore Prasad and Union of India were heard together by the Apex Court. It was argued on behalf of Union of India before the Apex Court that the High Court of Himachal Pradesh exceeded its power of judicial review and erred in interfering with the decision of the Union of India and the appointing authority not to appoint Sri.Kali Das Batish as Judicial Member of the CAT. It was argued that the High Court of Himachal Pradesh failed to bear in mind the fact that the proposal to appoint the candidates along with all the relevant papers including the report of the Intelligence Bureau had been forwarded to the Honourable the Chief Justice of India for his concurrence and that the Honourable the Chief Justice of India had after consideration of all the materials concurred with the proposal of the Government of India to appoint candidates other than Sri.Kali Das Batish and Sri.Ram Kishore Prasad as indicated in the proposal submitted by the Government of India. Accepting the contentions of the Union of India, the Apex Court in Union of India and others v. Kali Das Batish and another (supra) held as follows:

"10. The Union of India has challenged the judgment of the High Court of Himachal Pradesh in CWP No.812/2003 by its Civil Appeal No.6663/2004 in which K.D. Batish and Ram Kishore Prasad are the First and Second Respondents, respectively. Ram Kishore Prasad was a Respondent in the writ petition before the Himachal Pradesh High Court and, WP(C) 16915/05 -: 20 :-

therefore, appears to have been made a Respondent in this case also.

11. The learned Solicitor General made a frontal attack on the judgment of the High Court of Himachal Pradesh contending that the High Court has far exceeded its powers of judicial review and grievously erred in interfering with the decision of the Union of India and the appointing authority not to appoint the First and Second Respondents to the posts of Judicial Members of the CAT, after obtaining the concurrence of the Chief Justice of India. He also contends that the High Court erred in adopting the extraordinary procedure of calling for an affidavit of the Registrar General to be filed on the basis of instructions obtained from Justice Khurana of the same High Court to be used as substantive evidence in the decision of the said writ petition, though the High Court itself was aware that it was an "unusual procedure."

12. The learned Solicitor General further contends that the High Court singularly failed to keep in mind the scope of Sections 6 and 7 of the Act, that along with the proposal for appointment of the candidates all the relevant papers, including the IB report, had been forwarded to the Chief Justice of India for his concurrence, and that, after consideration of all the material, the Chief Justice of India had concurred with the proposal of the Government of India for the appointment of the candidates as indicated in the proposal.

13. There is merit in the submissions of the Ld.

Solicitor General. It appears that the High Court has acted in the matter as if dealing with an appointment made by an executive officer. It must be remembered that, the CAT is a WP(C) 16915/05 -: 21 :-

Tribunal constituted under Article 323-A of the Constitution and is expected to have the same jurisdiction as that of a High Court. Consequently, Parliament has taken great care to enact, vide Sections 6 and 7 of the Act, that no appointment of a person possessing the qualifications prescribed in the Act as a Member shall be made, except after consultation with the Chief Justice of India. The consultation with the Chief Justice of India is neither a routine matter, nor an idle formality. It must be remembered that, a member of an Administrative Tribunal like the CAT exercises vast judicial powers, and such member must be ensured absolute judicial independence, free from influences of any kind likely to interfere with independent judicial

functioning or militate thereagainst. It is for this reason, that a policy decision had been taken by the Government of India that while considering Members of the Bar for appointment to such a post, their antecedents have to be verified by the IB. The antecedents would include various facts, like association with anti-social elements, unlawful organizations, political affiliations, integrity of conduct and moral uprightness. All these factors have necessarily to be verified before a decision is taken by the appointing authority to appoint a candidate to a sensitive post like Member of the CAT. In Delhi Administration v. Sushil Kumar this Court emphasized that even for the appointment of a Constable in Police Services, verification of character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Even if such candidate was found physically fit, had passed the written test and interview and was provisionally selected, if on WP(C) 16915/05 -: 22 :-

account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable, the view taken by the appointing authority could not be said to be unwarranted, nor could it be interdicted in judicial review. These are observations made in the case of a Constable, they would apply with greater vigour in the case of appointment of a Judicial Member of the CAT. It is for this precise reason, that sub-section (7) to Section 6 of the Act requires that, the appointment of a Member of the CAT cannot be made "except after

consultation with the Chief Justice of India". This consultation should, of course, be an effective consultation after all necessary papers are laid before the Chief Justice of India, and is the virtual guarantee for appointment of absolutely suitable candidates to the post.

14. Unfortunately, the High Court seems to have

proceeded on the footing that the appointment was being made on its own by the Central Government and that there was an irregular procedure followed by the Secretary by giving undue importance to the IB report. It was most irregular on the part of the High Court to have sat in appeal over the issues raised in the IB report and attempted to disprove it by taking affidavits and the oral statement of the Advocate General at the Bar. We strongly disapprove of such action on the part of the High Court, particularly when it was pointed out to the High Court that, along with the proposals made by the Government, the Minister of State had

specifically directed for submission of the IB report to the Chief Justice of India for seeking his concurrence, and that this was done. We note with regret that the High Court virtually sat in appeal, not only over the decision taken by the WP(C) 16915/05 -: 23 :-

Government of India, but also over the decision taken by the Chief Justice of India, which it discarded by a side wind. In our view, the High Court seriously erred in doing so. Even assuming that the Secretary of the concerned department of the Government of India had not apprised himself of all necessary facts, one cannot assume or impute to a high constitutional authority, like the Chief Justice of India, such procedural or substantive error. The argument made at the Bar that the Chief Justice of India might not have been supplied with the necessary inputs has no merit. If Parliament has reposed faith in the Chief Justice of India as the paterfamilias of the judicial hierarchy in this Country, it is not open for anyone to contend that the Chief Justice of India might have given his concurrence without application of mind or without calling for the necessary inputs. The argument, to say the least, deserves summary dismissal."

17. In Union of India and others v. Kali Das Batish and another (supra) the Apex Court held that it is not open to the High Court to sit in appeal not only over the decision of the Government of India, but also the decision taken by the Honourable the Chief Justice of India by attempting to disprove the issues raised by the Intelligence Bureau. The Apex Court approved the reasoning of the High Court of Jharkhand that when the decision to appoint or not to appoint a candidate as Judicial Member of the CAT has been made with the concurrence of the Honourable the Chief Justice of India, there is no scope for judicial review. The Apex Court also cautioned that the courts exercising the WP(C) 16915/05 -: 24 :-

power of judicial review shall keep in mind the recognised limit, albeit self-recognised, to the exercise of such power, which was highlighted by the Apex Court in K. Ashok Reddy v. The Government of India and others - (1994) 2 SCC 303. In K. Ashok Reddy v. The Government of India and others (supra) the Apex Court accepted the principle that reviewability of discretionary power would depend on the subject matter and held that the transfer of a Judge of the High Court based on the recommendation of the Chief Justice of India would be immune from judicial review as there is "an inbuilt check against arbitrariness and bias indicating absence of need for judicial review on those grounds." The Apex Court in Union of India and others v. Kali Das Batish and another (supra) also held that the mere inclusion of the name of a candidate in the select list gives him no right to be appointed and that if there was no right, there could be no occasion to maintain a writ petition for the enforcement of a non-existing right.

18. The issue raised in the case on hand is in my opinion, covered against the petitioner by the decision of the Apex Court in Union of India and others v. Kali Das Batish and another (supra). The pleadings and the materials in the case on hand disclose that though the Selection Committee had initially recommended the name of the petitioner for appointment as Administrative Member of the CAT, after the report from the Intelligence Bureau which contained adverse remarks about him was received, the matter was placed before the Honourable the Chief Justice WP(C) 16915/05 -: 25 :-

of India, who in turn, placed the matter before the Selection Committee. The Selection Committee considered the matter and decided to withdraw their earlier recommendation. The Honourable the Chief Justice of India concurred with the decision of the Selection Committee to withdraw their earlier recommendation and the appointing authority also concurred with it. The petitioner was therefore not appointed though Sri.N. Ramakrishnan, IAS whose name was also recommended by the Selection Committee was appointed as Administrative Member in the CAT, Ernakulam Bench. The attempt made by the petitioner in this Writ Petition is to demonstrate that the report submitted by the Intelligence Bureau was not factually correct and that it was engineered by Sri.K.J.Alphonse with whom he was not on good terms. The petitioner relies on Ext.P13 to contend that no enquiry was held against him as reported by the Intelligence Bureau while he was the Accountant General of Kerala. The Apex Court has in Union of India and others v. Kali Das Batish and another (supra) held that the High Court exercising the power of judicial review cannot sit in appeal over the report submitted by the Intelligence Bureau, attempt to disprove it and in that process sit in appeal over the decision taken by the Honourable the Chief Justice of India as regards the choice of candidates selected for appointment as Judicial Members of the CAT. Therefore, this Court cannot entertain the petitioner's plea and hold as requested by him that as the Selection Committee had withdrawn their earlier recommendation based on the WP(C) 16915/05 -: 26 :-

report submitted by the Intelligence Bureau, which the petitioner attempts to prove was false, the decision taken by the Government of India not to appoint him is arbitrary and is liable to be invalidated.

19. The Selection Committee headed by the Honourable Mr. Justice K.G.Balakrishnan, presently the Chief Justice of India, had after the report of the Intelligence Bureau on the petitioner's character and antecedents was placed before them along with the relevant files, reconsidered the matter and decided to withdraw their earlier recommendation to appoint him as Administrative Member of the CAT. The Honourable the Chief Justice of India concurred with the decision of the Selection Committee and this was accepted by the appointing authority also. As held by the Apex Court in Union of India and others v. Kali Das Batish and another (supra) the consultation with the Honourable the Chief Justice of India mandated in Sections 6 and 7 of the Administrative Tribunals Act, 1985 is not an empty formality, but one intended to ensure that only suitable candidates are selected for appointment as Members of the CAT. As held by the Apex Court in K. Ashok Reddy v. Government of India and others (supra) the consultation with the Honourable the Chief Justice of India is "an inbuilt check against arbitrariness and bias," indicating the absence of need for judicial review on those grounds. Further, the Apex Court has in National Institute of Mental Health and Neuro Sciences v. Dr. K.Kalyana Raman - A.I.R. 1992 S.C. 1806 held that the function of a WP(C) 16915/05 -: 27 :-

Selection Committee is neither judicial nor adjudicatory, but purely administrative and that they are not required to record reasons for the selection or non selection of a candidate in the absence of any rule or regulation requiring them to do so. No provision requiring the Selection Committee to record reasons for not selecting candidates seeking appointment as Members of the CAT was brought to my notice. Therefore, the Selection Committee was not bound to record reasons for not selecting the petitioner, though they had before the report of the Intelligence Bureau was received, recommended his name for appointment as Administrative Member. This Court exercising the power of judicial review cannot therefore, as held by the Apex Court, sit in appeal over the decision of the Selection Committee or of the Honourable the Chief Justice of India who approved it, substitute its own decision and invalidate the decision of the Government of India. It is also now well settled by a series of decisions of the Apex Court including the decision in Union of India and others v. Kali Das Batish and another (supra) that the mere inclusion of a candidate in the select list does not confer on him a right to be appointed and that if there was no right, there could be no occasion to maintain a writ petition for the enforcement of a non-existing right. Therefore, the petitioner cannot, in my considered opinion, assail the decision taken by the Government of India not to appoint him as Administrative Member of the CAT. For the reasons stated above, I hold that the petitioner is not WP(C) 16915/05 -: 28 :-

entitled to the reliefs prayed for in this Writ Petition. The Writ Petition fails and is accordingly dismissed. No costs.

P.N.Ravindran,

Judge.

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The Apex Court has in Union of India and others v. Kali Das Batish and another (supra) held that this Court exercising the power of judicial review cannot sit in appeal over the report submitted by the Intelligence Bureau, attempt to disprove it and proceed on the basis that the Honourable the Chief Justice of India or the Chairman and Members of the Selection Committee would not have applied their mind before taking the decision not to appoint the petitioner. Further, as held by the Apex Court in a series of decisions, the mere inclusion of a candidate in the select list does not confer on him a right to be appointed. As the selection of the petitioner was subject to verification of his character and antecedents and as the Selection Committee had on receipt of the report of the Intelligence Bureau and the notings in Ext.P10 file, decided to withdraw their earlier recommendation, the petitioner, who did not have a right to be appointed cannot in my opinion, question the decision taken by the competent authorities not to appoint him as Judicial Member of the CAT. The petitioner does not, in my opinion, have the right to seek a writ in the nature of mandamus commanding the first respondent to appoint him as Administrative Member of the CAT. Add see para 14

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Add para 17

Add page 25

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Add see before para 12

The learned Senior Advocate appearing for the petitioner contends that the Joint Secretary had made the notings in the file referred to above to the effect that the complaint that the petitioner had faced with an

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enquiry in connection with the recruitment of contingency staff from among the relatives of Class IV staff of the Accountant General's office while he was Accountant General of Kerala and that the enquiry report was unfavourable to the petitioner and therefore he proceeded on voluntary retirement is a serious complaint and that though the details of the report are not available, it is not worthwhile to make enquiries from the Accountant General's office at this stage and that from the IB report, it seems fairly clear that the petitioner's general reputation is somewhat controversial. The learned Senior Advocate for the petitioner submits that it was the said adverse report which persuaded the Selection Committee to reconsider its earlier decision and that as it has been established that there was no enquiry at all, the Government of India is bound to reconsider its stand and place the matter before the Selection Committee afresh. The learned counsel appearing for the respondents on the other hand contend relying on the decision of the Apex Court in Union of India and others v. Kali Dass Batish and another (supra) that the decision of the Selection Committee is not justifiable and this Court cannot exercise a judicial review and issue a writ in the nature of mandamus commanding the Government of India to reconsider its decision de hors the report of the IB.

7. From the pleadings and materials on record, it is evident that the Joint Secretary to Government of India rejected the recommendation of the Selection Committee based on the report of the IB that any enquiry
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held against the petitioner while he was the Accountant General of Kerala that enquiry report was unfavourable to him and therefore, he had proceeded on voluntary retirement. Though the petitioner has positively averred that the notings evidenced by Ext.P10 is false and that no enquiry was ever held, the first respondent has not chosen to controvert the said fact. Ext.P13 establishes beyond doubt that no enquiry whatsoever was held against the petitioner in connection with the recruitment of contingency staff while he was the Accountant General of Kerala. The notings in Ext.P10 file placed before the Selection Committee were brought to the notice of the Selection Committee as directed by the Honourable the Chief Justice of India and the Selection Committee on going through the notings evidenced by Ext.P10 decided to withdraw the recommendation to appoint the petitioner as Administrative Member in the CAT. The Honourable the Chief Justice of India concurred with the decision of the Selection Committee to withdraw its earlier decision and this was accepted by the appointing authority, namely, the Government of India. It is now very clear that the report submitted by the IB is reflected the true state of affairs and that the Joint Secretary was misled the notings submitted in Ext.P10 which led to the present dispute. The pleadings and materials on record establish that the notings evidenced by Ext.P10 were made by the Joint Secretary based on incorrect information furnished to him by the IB. Then the question is whether instead of the said fact, this Court can exercise judicial review and direct
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the first respondent to reconsider its decision. The learned counsel appearing for the respondents relied on the decision of the Apex Court in Union of India and other v. Kali Dass Batish and another (supra) to contend that this Court cannot exercise power of judicial review even if it is shown that the report submitted by the IB was false or was not based on any cogent material. The Apex Court considered the scope of judicial review in the matter of appointment of the Administrative Member in the CAT made in consultation with the Honourable the Chief Justice of India. 7 vacancies of Judicial Members and 3 vacancies of Administrative Members in the CAT arose during the period from 1.7.2001 to 31.12.2001. Notifications were invited to fill up the said vacancies. Sri.Kali Dass Batish and Sri.Ram Kishore Prasad had also applied for appointment to the post of Judicial Member in the CAT. The Selection Committee chaired by the Honourable the Chief Justice of India met on 18.7.2001 and considered the names of 121 candidates including Sri.Kali Dass and Sri.Ram Kishore Prasad. The Selection Committee recommended the names of 7 persons for appointment as Judicial Members and 3 persons for appointment as Administrative Members. A waiting list of equal number of candidates was also prepared. The names of Sri.Kali Dass and Sri.Ram Kishore Prasad were serial Nos.1 and 6 in the main list of candidates recommended for appointment as Judicial Members. The names of all the candidates included in the main list and the waiting list were sent to the IB for verification of character and
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antecedents. On receipt of the report from the IB, the Director (Administrative Tribunal), Ministry of Personnel, Public Grievances and Pensions noted in the file certain adverse remarks about Sri.Kali Dass Batish. The files thereafter forwarded to the Honourable the Chief Justice of India, who concurred with the Joint Secretary vide confidential memorandum dated 6.11.2001. Sri.Kali Dass Batish and Sri.Ram Kishore Prasad were not appointed. They moved the High Courts of Himachal Pradesh and Jharkhand. The High Court of Jharkhand dismissed the Writ Petition filed by Sri.Ram Kishore Prasad holding that mere inclusion of the name of a candidate in the select list gave him no right to be appointed and that exclusion of his name on the basis of the IB report received which was made available to the Honourable the Chief Justice of India and whose concurrence was obtained by the Government of India after apprising the Honourable the Chief Justice of India of all the relevant facts, left no scope for judicial review. The Writ Petition filed by Sri.Kali Dass Batish was allowed by the High Court of Himachal Pradesh. Sri.Ram Kishore Prasad moved the Apex Court in appeal. The Union of India also moved the Apex Court challenging the correctness of the decision of the High Court of Himachal Pradesh. Both the appeals were heard together. The Apex Court thereupon held disapproving the action of the High Court of Himachal Pradesh as follows.

The Apex Cort held that it was irregular on the part of the High Court to WP(C) 16915/05 -: 36 :-

have sat in appeal over the issues raised in the IB report and attempted to disprove it and that the High Court was in error in sitting appeal over the decision of the Honourable the Chief Justice of India.. The Apex Court repelled the argument that the Honourable the Chief Justice of India might not have been supplied with the necessary inputs and that it is not open for anyone to contend that the Honourable the Chief Justice might have given concurrence without application of mind or without calling for the necessary inputs. The Apex Court also held that mere inclusion of a candidate's name in the selection list does not give him a right to be appointed and that there is no occasion to maintain a Writ Petition for enforcement of a non-existing right. I am afraid that the notings in Ext.P10 might not be fully correct. As held by the Apex Court, this Court cannot presume that the Honourable Chief Justice of India might not have been supplied with necessary inputs and that the Honourable Chief Justice of India might have given concurrence without calling for the necessary inputs. Judicial discipline commands that the principle laid down by the Apex Court is followed. For the reasons stated above, I hold that the reliefs sought for in this Writ Petition cannot be granted. The Writ Petition fails and is accordingly dismissed. No costs.

P.N.Ravindran,

Judge.

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WP(C) 16915/05 -: 37 :-

3. According to the petitioner, the post of Accountant General is a post equivalent to the post of Joint Secretary of the Government of India and Civil Servants who are consistent and outstanding in their performance are posted as Joint Secretaries in the various Department of the Government of India. He contends that as the post of Accountant General is a post equivalent to the post of Joint Secretary of the Government of India, he has 8 years experience in the category of Joint Secretary and is therefore eligible and qualified to be appointed as Administrative Member of the Administrative Tribunal constituted under the Administrative Tribunals Act, 1985, hereinafter referred to as the WP(C) 16915/05 -: 38 :-

"Act" for short, and that the Government of India had by a notification invited applications from eligible candidates to fill up three vacancies of Administrative Members in the CAT. One among the vacancies was in the CAT, Ernakulam Bench. Pursuant to the notification issued by the Government of India, the petitioner

submitted Ext.P1 application dated 23.8.2004. The guidelines regarding the constitution of the Selection Committee and the procedure to be adopted by the Selection Committee for selection of Vice Chairman and members of the CAT have been laid down by the Department of Personnel, Government of India in order No.A-1013/54/90-At dated 15.4.1991 and 23.4.1991. As per the said Government order, the Selection Committee is required to be chaired by a Sitting Judge of the Honourable the Supreme Court of India, nominated by the Honourable the Chief Justice of India. The Selection Committee also consists of (1) Secretary, Ministry of Law and Justice (Department of Legal Affairs), (2) Secretary, Ministry of Personnel and (3) Chairman of the CAT. The appointment of Judicial and Administrative Members of the CAT is to be made by the Central Government after taking into consideration the recommendation of the Selection Committee in consultation with the Honourable the Chief Justice of India. The petitioner states that the Selection Committee constituted in the year 2004 was headed by the Honourable the Chief Justice Mr. Justice K.G. Balakrishnan (as His Lordship then was) and that the Selection Committee recommended his name along with that of WP(C) 16915/05 -: 39 :-

Sri.N.Ramakrishnan, IAS for appointment against two vacancies of Administrative Members in the CAT, Ernakulam Bench. The petitioner further states that though he had a impeccable track in his carrier, he was not appointed though Sri.N.Ramakrishnan, IAS was appointed as Administrative Member in the CAT, Ernakulam Bench. He thereupon filed this Writ Petition on 6.6.2005 with the Government of India represented by the Secretary, Ministry of Personnel as the respondent contending that the Selection Committee failed to appoint him as Administrative Member though the Selection Committee headed by the Honourable the Chief Justice Mr. Justice K.G. Balakrishnan has included his name in the select list. He contended that the action of the Government of India in not appointing him as Administrative Member is arbitrary and violative of his fundamental rights guaranteed under Articles 14 and 16 of the Constitution. He had also prayed for a writ in the nature of mandamus commending the respondent/ Government of India to appoint him as Administrative Member in the CAT. In the Writ Petition, the petitioner had also prayed for an interim order staying the appointment to the remaining vacancy of Administrative Member in the CAT, Ernakulam Bench. The additional second respondent was thereafter appointed as Administrative Member and Vice Chairman of the CAT, Ernakulam Bench. The petitioner thereupon filed I.A.No.93 of 2006 to implead the additional second respondent as a party to this Writ Petition. He also filed I.A.No.2831 of 2006 to amend the Writ Petition by incorporating a WP(C) 16915/05 -: 40 :-

prayer to quash the appointment of the additional second respondent. In the Writ Petition, the petitioner also relied on the decision of Himachal Pradesh in Kali Dass Batish v. Union of India and others - 2005(1) SLR 412 to contend that the Government of India is bound to appoint candidates recommended by the Selection Committee.

4. The first respondent filed a counter affidavit contending inter alia that the claim of the petitioner that he was selected for appointment as Administrative Member in the CAT, Ernakulam Bench is a speculative argument and that the correctness of the decision of the Himachal Pradesh in Kali Dass Batish v. Union of India (supra) has been held against, that the Apex Court ceased the matter and that the petitioner is not entitled to any reliefs prayed for in the Writ Petition. Further, vacancies were related to the period from 1.1.2004 to 30.6.2004 and the petitioner has no case that the vacancies were not filled up and the petitioner cannot seek a writ in the nature of mandamus commanding the first respondent to appoint him as Administrative Member in the CAT, Ernakulam Bench. Therefore, even if the report submitted by the Intelligence Bureau to the effect that there was no enquiry against the petitioner while he was Accountant General of Kerala and that the finding of the Intelligence Bureau which adversely affected the petitioner is shown to be false. This Court cannot presume that the Honourable the Chief Justice of India or the Chairman and Members of WP(C) 16915/05 -: 41 :-

the Selection Committee would not have been supplied necessary inputs and that they would have given their concurrence to the proposal of the Union of India without application of mind.

10. Per contra, the learned Assistant Solicitor General of India appearing for the Government of India submitted that the decision taken by the Selection Committee to withdraw their earlier recommendation and the decision taken by the appointing authority not to appoint the petitioner are not justiciable and that this Court cannot exercise the power of judicial review and issue a writ in the nature of mandamus commanding the Government of India to reconsider its earlier decision and appoint the petitioner.

and after a report was obtained from the Intelligence Bureau, the Director (AT), Ministry of Personnel, Public Grievances and Pensions noted in the file three adverse remarks about Sri.Kali Dass Batish. The Director (AT) however expressed the opinion that since Sri.Kali Dass Batish had been recommended by the Selection Committee headed by a Judge of the Honourable the Supreme Court, the benefit of doubt had to be given to him and the adverse reports about his performance as a Government Pleader must be treated as counter balanced by the recommendations of the Selection Committee headed by a Sitting Judge of the Honourable the Supreme Court. The Joint Secretary (AT&A), Ministry of Personnel and Training also made certain notings in the file WP(C) 16915/05 -: 42 :-

where inter alia he stated that Sri.Kali Dass Batish has strong political affiliations, that he appears to be of average caliber and that there is nothing adverse against his character and integrity. On 30.10.2001, the Secretary (Personnel) made a noting on the file that Sri.Kali Dass Batish need not be appointed. Thereafter, as directed by the Minister of State, Personnel and Public Grievances and Pensions the file was placed before the Honourable the Chief Justice of India along with all necessary papers including the report of the Intelligence Bureau.

The Joint Secretary who made the notings in Ext.P10 which I have extracted above, had noted that though the details of the report of enquiry are not available, it would not be worthwhile to make enquiries with the Accountant General's office at that stage and that given the information revealed by the Intelligence Bureau report, it is clear that the petitioner's general reputation is somewhat controversial. The Joint Secretary therefore recommended that the recommendation of the Selection Committee may not be accepted since the facts brought out by the Intelligence Bureau were not brought to the attention of the Selection Committee which had before them only a simple CV of the petitioner. The matter then went back to the Honourable the Chief Justice of India together with the relevant files which included the report of the Intelligence Bureau and the notings referred to in Ext.P10. The Honourable the Chief Justice of India placed the matter before the WP(C) 16915/05 -: 43 :-

Selection Committee and the Selection Committee resolved to withdraw their earlier recommendation to appoint the petitioner.

20. As noticed by the Apex Court in Union of India and others v. Kali Das Batish and another (supra), this Court cannot proceed on the basis that the Honourable the Chief Justice of India or the Chairman and Members of the Selection Committee would have proceeded to act without application of mind.

Add para 16

Add para 12

I shall now refer to the decisions of the Apex Court relied on by the learned Senior Advocate appearing for the petitioner. Add para 14

, referred to and relied on by the learned counsel appearing for the first WP(C) 16915/05 -: 44 :-

respondent.