

(19)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.115/2003

with

O.A. NO.2042/2002 ✓

New Delhi this the 2nd day of May, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

O.A. No. 115/2003

Jai Paul Singh Dahiya
S/o late Shri Singh Ram,
Aged 55 years
R/o Managing Director's residence,
The Kaithal Co-operative Sugar Mills Ltd.,
Kaithal, Haryana. ... Applicant

(By Shri G.D. Gupta, Sr. Advocate with Shri A.K.
Behera and Shri Kalyan Dutt, Advocates)

vs.

1. Union of India,
Through the Secretary,
Ministry of Personnel, Public Grievances
and Pensions,
Department of Personnel & Training,
North Block, New Delhi-1
2. Union Public Service Commission,
Through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi-11.
3. Government of Haryana,
Through its Chief Secretary,
Haryana Secretariat,
Chandigarh Respondents

(By Shri M.M. Sudan, Advocate for Union of India
Shri Surya Kant Sharma, Sr. Counsel with
Shri Sunder Khatri and Shri Neeraj K. Jain,
Advocates for State of Haryana
Shri S.K. Mishra, Sr. Counsel with Shri Anuj
Rajput, Counsel for the UPSC)

O.A. No. 2042/2002

J.D. Naharwal, HCS
Son of Shri Sarupa Ram,

R/o Flat No.109,
HOPE Apartments,
Sector-15, Part-II,
Gurgaon, Haryana

....Applicant
cant

(By Shri G.D. Gupta, Sr. Counsel with Shri S.D.
Raturi)

vs.

1. Union of India,
Through the Secretary to
Government of India,
Ministry of Personnel, Public Grievances
and Pensions,
Department of Personnel & Training,
New Delhi
2. Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi through its Secretary
3. State of Haryana
through Chief Secretary to
Government of Haryana
Chandigarh
4. Shri Yudhvir Singh Khyalia, HCS
(Under suspension)
C/o Chief Secretary to
Govt. of Haryana,
Chandigarh
5. Smt. Neelam P. Kasni, IAS
Addl. Deputy Commissioner,
Ambala, Haryana

....Respondents

(By Shri M.M. Sudan, Advocate for Union of India
Shri Surya Kant Sharma, Sr. Counsel with
Shri Sunder Khatri and Shri Neeraj K. Jain,
Advocates for State of Haryana
Shri M.K. Bhardwaj, proxy for Shri A.K.
Bhardwaj, Counsel for the UPSC
Shri Romesh Gautam, Advocate for private
respondents)

O R D E R

Justice V.S. Aggarwal:-

In exercise of powers conferred by sub section
(1) to Section 3 of the All India Services Act,
1951, the Central Government after consultation
with the Government of States had framed the Indian

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Administrative Service (Recruitment) Rules, 1954. (for short, "the Recruitment Rules of 1954") Under Rule 4 of the abovesaid Rules, recruitment to the Indian Administrative Service has to be made by the following methods:-

- (a) by a competitive examination
- (b) by promotion of a substantive member of a State Civil Service
- (c) by selection, in special cases from among persons, who hold in a substantive capacity gazetted posts in connection with the affairs of a State and who are not members of a State Civil Service.

2. The present dispute pertains to the controversy arising out of the purported selection of persons who are alleged to be holding in substantive capacity, gazetted posts in connection with the affairs of a State and who are not members of a State Civil Service. Rule 8 of the Recruitment Rules of 1954 reads as under:-

"8. Recruitment by promotion or selection for appointment to State and Joint Cadre:- (1) The Central Government may, on the recommendations of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make, recruit to the Service persons by promotion from amongst the [substantive] members of a State Civil Service.

8(2) The Central Government may, in special circumstances and on the recommendation of the State Government concerned and in consultation with the Commission and in accordance with such

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regulations as the Central Government may, after consultation with the State Government and the Commission, from time to time, make, recruit to the Service any person of outstanding ability and merit serving in connection with the affairs of the State who is not a member of the State Civil Service of that State [but who holds a gazetted post in a substantive capacity].

8(3)(a). Where a vacancy occurs in a State Cadre which is to be filled under the provision of this rule, the vacancy shall be filled up by promotion of a member of the State Civil Service or, as the case may be, by selection of any other officer serving in connection with the affairs of that State.

(b) Where a vacancy occurs in a Joint Cadre which is to be filled under the provision of this rule, the vacancy shall, subject to any agreement in this behalf, be filled by promotion of a member of the State Civil Service of any of the States constituting the group of as the case may be, by selection of any other officer serving in connection with the affairs of any such State(s)."

Under sub-rule (2) to Rule 8 of the abovesaid Rules, the Central Government in special circumstances on the recommendation of the State Government, in consultation with the Commission and in accordance with the regulations can make recruitment to the Indian Administrative Service. The rule further provides that the person concerned should be of outstanding ability and merit serving in connection with the affairs of the State who is not a member of the State Civil Service but who holds a gazetted post in a substantive capacity.

3. Vide notification of 27.9.1996 issued by the Government of India (Ministry of Personnel, Public Grievances & Pensions), the cadre strength

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pertaining to the State of Haryana had been fixed. In terms of Rule 8 of the Recruitment Rules of 1954, 64 posts have been reserved to be filled up by promotion on basis of selection already referred to above.

4. The Indian Administrative Service (Appointment by Promotion) Regulations, 1955, (for short, "the Regulations of 1955") have been framed and therein the expression "year" has been defined to mean the period commencing on the first day of January and ending 31st day of December of the same year. Rule 5 of the Regulations of 1955 refers to the preparation of a list of suitable officers pertaining to State Civil Services and reads:-

"5. Preparation of list of suitable officers. (1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Civil Service as are held by them to be suitable for promotion to the Service. The number of members of the State Civil Service to be included in the list shall be determined by the Central Government in consultation with the State govt. concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the post available for them under Rule 9 of the Recruitment rules. The date and venue of the meeting of the Committee to make the selection shall be determined by the Commission.

Provided that no meeting of the Committee shall be held, and no list for the year in question shall be prepared when,

5(1)(a) there are no substantive vacancies as on the first day of January of

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the year in the posts available for the members of the State Civil Service under Rule 9 of Recruitment rules;

or

5(1)(b) the Central Govt. in consultation with the State Govt. decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for the members of the State Civil Service under Rule 9 or the Recruitment Rules;

Provided further there where no meeting of the Committee could be held during a year for any reason other than the provided for in the first proviso, as and when the Committee meets again, the select list shall be prepared separately for each year during which committee could not meet, as on the 31st December of each year.

Explanation: In case of Joint cadres, a separate select list shall be prepared in respect of each State Civil Service, the size of each select list being determined in the manner indicated above.

5(2) The Committee shall consider for inclusion to the said list, the cases of members of the state Civil Services in the order of a seniority in that service of a number which is equal to three times the number referred in sub-regulation (1).

Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times the maximum permissible size of select list and in such a case the committee shall consider all the eligible officers:

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulation (3) shall be excluded.

Provided also that the committee shall not consider the case of a number of a State Civil Service officers unless, on the first day of January of the year for which the select list is prepared, he is substantive in the State Civil Services and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Collector

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or in any post or posts declared equivalent thereto by the State Government.

5(3) The Committee shall not consider the cases of the members of the State Civil Service who have attained the age of 54 years on the first day of January of the year for which the select list is prepared.

Provided that a member of the State Civil Service whose name appeared in the select list in-force immediately before the date of the meeting of the Committee shall be considered for inclusion in the fresh list to be prepared by the Committee even if he has in the meanwhile attained the age of 54 years.

Provided further that a member of the State Civil Service who has attained the age of 54 years on the first day of January of the year for which select list is prepared shall be considered by the Committee, if he was eligible for consideration on the first day of the January of the year or of any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the committee was held during such preceding year under item(6) of the proviso to sub-regulation(1).

5.(3A) The committee shall not consider the case of such member of the State Civil Service who had been included in an earlier select list and:

(a) had expressed his unwillingness for appointment to the State under regulation 9:

Provided that he shall be considered for inclusion in the select list, if before the commencement of the year, he applies in writing, to the State Government expressing his willingness to be considered for appointment to the service.

(b) was not appointed to the service by the Central Government under regulation 10.

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

5(5) The list shall be prepared by including the required number of names first from amongst the officers finally classified as 'outstanding' then from amongst those similarly classified as 'Very Good' and

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thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in the order of their seniority in the State Civil Service.

Provided that the name of an officer so included in the list shall be treated as provisional, if the State Government, withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal, are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

Provided further that while preparing year wise select lists for more than one year pursuant to the second proviso to sub-regulation 1, the officer included provisionally in any of the select list so prepared, shall be considered for inclusion in the select list of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis, such inclusion shall be in addition to the normal size of the select list determined by the Central Govt. for such year.

Explanation: I. The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a court, as the case may be.

Explanation: II The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the service shall be treated as having come to the notice of the State only if the details of the same have been communicated to the Central Govt. and the Central Govt. is satisfied that the details furnished by the State Govt. have a bearing on the suitability of the officer and investigation thereof is essential."

5. At this stage, it is relevant to mention that in exercise of powers conferred by Section 3 of the All India Services Act, 1951 and in pursuance of sub-rule (2) of Rule 8 of the Recruitment Rules of 1954, the Indian Administrative Service (Appointment by Selection)

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Regulations, 1997 (for short, "the Regulations of 1997") have been framed. The Indian Administrative Service (Appointment by Selection) Regulations, 1956 have been superseded. It specifically prescribes that the words and expressions used in the Regulations of 1997 and not defined but defined in the Recruitment Rules of 1954 and the Regulations of 1955 shall have the meanings respectively assigned to them in those Rules and Regulations. Under Regulation 3 of the Regulations of 1997, the Central Government shall in consultation with the State Government determine the number of vacancies for which recruitment may be made under these regulations. It specifically prescribes that the number of vacancies have not to exceed the number of substantive vacancies as on the first day of January of the year in which the meeting of the Committee to make the selection is held. Regulation 4 of the Regulations of 1997 reads as under:-

"4. State Government to send proposals for consideration of the committee:- (1) The State Government shall consider the case of a person not belonging to the State Civil Service but serving in connection with the affairs of the State who,

(i) is of outstanding merit and ability; and

(ii) holds a Gazetted post in a substantive capacity; and

(iii) has completed not less than 8 years of continuous Service under the State Government on the First day of January of

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the year in which his case is being considered in any post which has been declared equivalent to the post of Deputy Collector in the State Civil Service and propose the person for consideration of the Committee. The number of persons proposed for consideration of the committee shall not exceed five times the number of vacancies proposed to be filled during the year.

Provided that the State Government shall not consider the case of a person who has attained the age of 54 years on the first day of January of the year in which the decision is taken to propose the names for the consideration of the committee:

Provided also that the State Government shall not consider the case of a person who, having been included in an earlier Select List, has not been appointed by the Central Government in accordance with the provisions of regulation 9 of these regulations."

Perusal of the same clearly shows that a departure has been made in case of a person not belonging to the State Civil Service but serving in connection with the affairs of the State. His case can be considered (i) if he is of outstanding merit and ability and (ii) holds a gazetted post in a substantive capacity (iii) has completed not less than 8 years of continuous service under the State Government on the first day of January of the year in which his case is being considered in any post which has been declared equivalent to the post of Deputy Collector in the State Civil Service. The provisos pertaining to the age etc. are not relevant for the purpose of the present controversy.

6. Regulation 5 of the Regulations of 1997 further prescribes that the Committee has to meet

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every year to consider the proposal of the State Government under Regulation 4 and recommend the names of the persons not exceeding the number of vacancies to be filled under Regulation 3 for appointment to the Service in accordance with their service record and personal interview. The proviso to Regulation 5 is of importance in the controversy before us and reads as under:-

"Provided that no meeting of the committee shall be held and no list for the year in question shall be prepared, when

(a) There are no substantive vacancies as on the first day of January of the year in the posts available for recruitment of persons under sub-rule (2) to rule 8 read with proviso to sub-rule (1) to rule 9 of the recruitment rules; or

(b) The Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for recruitment under sub-rules (2) of rule 8 read with proviso to sub-rule (1) to rule 9 of the recruitment rules; or

(c) The Commission, either on its own or on a proposal made by the Central Government or the State Government, considers that it is not practicable to hold a meeting of the Committee during the year, in the facts and circumstances of each case.

Explanation:- In case of Joint Cadres, a separate select list shall be prepared in respect of each constituent having a State Civil Service.

Consultation with the Commission:- The recommendations of the committee made under regulation 5 shall be placed before the state Government concerned which shall forward the same to the commission for approval along with.

i) The confidential records of the officer concerned: and

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ii) The observation, if any, of the state government and the recommendation of the committee.

2. The State Government, shall also forward the recommendations of the Committee and its observations, if any, to the Central Government. The Central Govt. shall forward their observations, if any, on the recommendations of the Committee, to the Commission."

7. It is the aforesaid rules which require consideration in the facts of the two original applications namely, OA No.2042/2002 and OA No.115/2003 which we propose to decide by this common order.

8. In OA No.2042/2002, the applicant (J.D.Naharwal) seeks quashing of the decision to fill up two vacancies of the Indian Administrative Service (Haryana) cadre from amongst non-State Civil Service Officers during the year 2001 and the decision to carry forward the two vacancies of 2001 to the year of 2002. He seeks a further direction to include all the four vacancies in the the year 2001 for preparation of select list of 2001 for appointment to the Indian Administrative Service by promotion from amongst the eligible State Civil Service Officers and to hold a review Departmental Promotion Committee meeting to consider the applicant along with other eligible State Civil Service officers.

9. Applicant (J.D.Naharwal) is a member of the State Civil Service and had joined the State

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Civil Service of Haryana (Executive Branch) in September 1983. He is also an aspirant to be included in the Indian Administrative Service from the quota of the State Civil Service. According to the applicant, there were four vacancies that had arisen in the year 2001. Two vacancies were considered to be filled up from the State Civil Service officers and two from non-State Civil Service officers. The Union Public Service Commission in accordance with Regulation 5 (1) (c) of the Regulations of 1997 had declared that it was not practicable to hold a meeting of the Committee during the year in the facts and circumstances of that case and after such a declaration had been issued, the two vacancies meant for non-State Civil Service Officers should revert to the State Civil Service and, therefore, a review Departmental Promotion Committee meeting in this regard should be held. He further urges that all this was tailor-made arrangement to take specified non-State Civil Service officers and otherwise also the order issued on 14.12.2001 whereby certain officers who were in the non-State Civil Service cadre had been equated to the post of Deputy Collector does not meet the provisions of law and the rules and also the decision of the Supreme Court. It is on these broad facts that the reliefs already referred to above are being claimed.

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10. In OA No.115/2003 filed by Shri Jai Paul Singh Dahiya, the facts are somewhat similar. Shri Jai Paul Singh Dahiya is also a member of the State Civil Service. His grievance pertains to the meeting of the selection committee for considering non-State Civil Service officers for promotion by selection to the Indian Administrative Service held on 9.1.2002. He also seeks that vacancies meant to be filled by non-State Civil Service Officers cannot be carried forward to subsequent years if the meeting of the Departmental Promotion Committee was not held during the year of the vacancy. In identical terms, he seeks that the decision in this regard should be set aside and the applicant should also be considered for promotion to the Indian Administrative Service.

11. Like Shri J.D.Naharwal, his grievance pertains on almost on same facts for the subsequent years because he contends that no meeting of the selection committee was held for promotion of non-State Civil Service officers for the year 2002 and also the orders issued by virtue of which certain posts of non-State Civil Service have been equated with that of the Deputy Collector is invalid. Other facts need not be repeated herein.

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12. Both the applications have been contested by all the respondents.

13. On behalf of the applicants, it had been urged that the orders so passed whereby certain posts of non-State Civil Service officers have been equated with the post of Deputy Collector are invalid and, therefore, they require to be set aside. In this regard, reliance was being placed on a decision of the Supreme Court in the case of **T. Sham Bhat v. Union of India and another**, 1994(4) SLR 598. The controversy in the case of T. Sham Bhat was pertaining to selection of non-State Civil Service Class-I officers to the Indian Administrative Service. The Supreme Court had concluded that the order passed equating the service was invalid and Regulation 2 of the Indian Administrative Service Second Amendment Regulations which classified non-State Civil Service Class-I officers and non-State Civil Service Class-II officers belonging to one class of non-State Civil Service was not valid. The findings of the Supreme Court ultimately were:-

"No doubt, doing of such a thing by the Central Government appears to have been attempted, although later on, fortunately, given up obviously realising that such thing, if done, could have the effect of demoralizing Class-I Officers in State Civil Service, since the same was bound to go against the accepted notions that it is only senior State Civil Service Officers who could be considered for appointment to Indian Administrative Service and not officers in the lower rung. Hence, the

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classification of officers brought about by Regulation 2 of the IAS Second Amendment Regulations, is ex-facie, arbitrary, unreasonable and discriminatory and violates Articles 14 and 16 of the Constitution. Again Rule 6 of the IAS Recruitment Rules, when by making it clear that initial appointments to be made to Indian Administrative Service from both officers of State Civil Service and non-State Civil Service on senior time scale of pay and not junior time scale of pay on which persons directly recruited for that service would be appointed, demonstrates unequivocally that Class I officers, in State Civil Service and in non-State Civil Service already in senior scales of pay or in closer scales of pay and not Class-II officers in State Civil Service and in non-State Civil Service, drawing salaries falling below junior scales of pay, classification done under Regulation 2 of the IAS Second Amendment Regulations to provide eligibility to non-State Civil Service Class II officers cannot but be arbitrary and unreasonable, as would attract the inhibition of Articles 14 and 16 of the Constitution."

It is clear that the decision in the case of T. Sham Bhat (supra) was confined to the peculiar circumstances therein. The classification had been held to be unreasonable and discriminatory.

14. It is not so in the present case.

15. In the case of J.D. Naharwal, the Government of Haryana had passed an order and the ultimate part of the same reads:-

"2. In fulfilment of the requirements of the above provisions and also in order to meet the eligibility conditions with regard to the recommendations made in respect of the Non-SCS officers, in exercise of the power conferred by sub-regulation (iii) of Regulation 4(1) of the Indian Administrative Service (Appointment by Selection) Regulations, 1997, the following posts are hereby declared equivalent to the post of Deputy Collector in State Service for the

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limited purpose as specified in Regulation
ibid:-

- (i) District Food & Supplies
Controllers.
- (ii) District Revenue officers.
- (iii) Excise & Taxation Officers.
- (iv) General Manager, District
Industries Centres.
- (v) Executive Engineers of all the
three Public Works Department (B&R
Branch, Irrigation Branch, Public
Health Branch).
- (vi) Executive Engineer (Panchayati
Raj Department)
- (vii) District Town Planners
- (viii) Senior Architects and
- (ix) Other such posts which carry
Senior Scale of HCS which is
Rs.10000-325-13900 in the State.
However, these shall exclude
officers from (1) State Police
Service (2) State Forest Service
(3) Judicial Service (1) All
Boards/Corporations and other
autonomous bodies which are not
under the definition of Government
Departments."

In the case of Jai Paul Singh Dahiya, a similar
order had been passed on 9.4.2002, the operative
part of which reads:-

"2. In fulfilment of the requirements
of the above provision and also in order to
meet the eligibility conditions with regard
to the recommendations made in respect of
the Non-State Civil Service Officers and in
exercise of the powers conferred by clause
(iii) of sub-regulation(i) of Regulation 4
of the Indian Administrative Service
(Appointment by Selection) Regulation 1997
and in supersession of Haryana Government,
Service Department order dated the 14th
December, 2001 published in Haryana
Government Gazette Extraordinary dated the
14th December, 2001, the Governor of
Haryana hereby declares all such posts in
the State which carry atleast senior scale

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of HCS i.e. Rs.10000-325-13900 (pre-revised scale of Rs.3000-100-3500-125-4500) equivalent to the post of Deputy Collector in the State Civil Service for the limited purpose as specified in Regulation ibid. However, these shall exclude officers from:-

- i) State Police Service
- ii) State Forest Service
- iii) Haryana Civil Service(Judicial Branch)
- iv) And all Boards Corporations and other autonomous bodies which are not covered in the definition of Government Departments. "

We have already referred to the relevant rules on the subject. Vide notification of 31.12.1997, the Regulations of 1997 were framed whereby the non-State Civil Service officers can be considered who are serving in connection with the affairs of the State who are of outstanding merit and ability and hold gazetted posts in a substantive capacity and had completed not less than 8 years of continuous service under the State Government on the first day of January of the year in which their cases are being considered in any post which had been declared equivalent to the post of Deputy Collector in the State Civil Service. These are the basic requirements in this regard. So far as equation of the posts is concerned, the same has to be considered in terms of the Regulation of 1997. In normal circumstances unless the equation of the posts so made is totally arbitrary, unconscionable, mala fide or for any other reason smacks of unfairness, this Tribunal would not be competent to interfere. Otherwise, it would be within the

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domain of the State Government to consider the relevant requirement of the regulations to declare certain posts equivalent to the post of Deputy Collector of the State for the purpose referred to above. If certain posts have been considered more so when they are equivalent in the scale of the State Civil Service to Deputy Collector then in the absence of it being so shown that they suffer from the vice referred to above, it will not be appropriate for this Tribunal to interfere. For this reason, the said contention which was put forward with great vehemence must be rejected.

16. The main argument as already referred to above in this regard was in terms that for the year in which the selections had to be made, the process of selection for non-State Civil Service officers had not been effected and, therefore, the post should be reverted back to the State Civil Service cadre.

17. We have already referred to above that the term "year" means the period commencing on the first day of January and ending on the 31st December of the same year. The Regulations of 1955 prescribe that no meeting of the Committee shall be held and no list for the year shall be prepared if substantive vacancies do not exist or the Central Government in consultation with the State

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Government decides that no recruitment shall be made during the year to the substantive vacancies. But it is mandatory that the select has to be prepared separately for each year from the date the Committee could not meet as on the 31st December of each year. To this extent, there is little controversy. The Supreme Court in the case of **P.M. Bayas v. Union of India and ors.**, (1993) 3 SCC 319 was considering the Recruitment Rules of 1954 particularly the expression "in special cases from among persons" in Rule 4(1)(c) of the said Rules and the expression "in special circumstances" in Rule 8(2) of the said Rules. The relevant rules were interpreted and it was held:-

"9. We may examine the scheme of the Rules and Regulations. Rule 4(1) of the Rules provides four sources of recruitment to the IAS. The competitive examination and by promotion of substantive members of the State Civil Service are the two main sources of recruitment. Rule 4(1)(c) provides recruitment to IAS "by selection, in special cases from among persons, who hold in a substantive capacity gazetted posts in connection with the affairs of a State and who are not members of the State Civil Service". "In special cases from among persons" means the selection as special cases of the persons who have established their outstanding merit and ability while serving the State. Members of the State Civil Service who are not 'outstanding' but are only 'good' and 'very good' are also eligible to be considered for appointment to IAS but under Rule 8(2) of the Rules, it is only an 'outstanding' officer who is eligible. It is the outstanding merit and ability which makes him a 'special case' in terms of Rule 8(2) of the Rules. Rule 8(2) of the Rules read with Regulation 3 of the Regulations lays down the procedure for making the special selection provided under Rule 4(1) of the Rules. The Central Government, being the appointing authority

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to the IAS, has to be finally satisfied about the existence of the "special circumstances" as a condition precedent for making special recruitment. The "special circumstances" are to be spelled out from Rule 8(2) of the Rules read with Regulation 3 of the Regulations. Rule 8(2) which talks of "outstanding ability and merit" when read with Regulation 3(1) and 3(4-A) of the Regulations makes it clear that the "special circumstances" required to be seen are (i) the existence of officers with 12 years of continuous service in a gazetted post under the State Government - other than State Civil Officers - who are of outstanding merit and ability and (ii) the satisfaction of the State Government that, in public interest, it is necessary to consider such officers for promotion to the IAS."

18. Similarly in the case of **Union of India & Ors. v. Vipinchandra Hiralal Shah**, JT 1996 (9) S.C.686, the controversy was about the failure of the selection committee to meet during a particular year to prepare the select list for promotion to the Indian Administrative Service. The Supreme Court held that if for any reason the selection committee is not able to meet during a particular year, the committee when it meets next, should while making the selection, prepare a separate list for each year keeping in view the number of vacancies in that year. In paragraph 11, the findings returned were:-

"11. It must, therefore, be held that in view of the provisions contained in Regulation 5, unless there is a good reason for not doing so, the Selection Committee is required to meet every year for the purpose of making the selection from amongst State Civil Service officers who fulfil the conditions regarding eligibility on the first day of the January of the year in which the committee meets and fall within the zone of consideration as prescribed in clause (2) of Regulation 5. The failure on the part of the Selection Committee to meet during a particular year would not dispense

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with the requirement of preparing the Select List for that year. If for any reason the Selection Committee is not able to meet during a particular year, the Committee when it meets next, should, while making the selection, prepare a separate list for each year keeping in view the number of vacancies in that year after considering the State Civil Service officers who were eligible and fall within the zone of consideration for selection in that year."

19. From the aforesaid decisions, it is clear that the clubbing of vacancies per year is not permissible. As a general rule, the promotion to the Indian Administrative Service has to be made from the State Civil Service officers and the persons not belonging to the State Civil Service come as an exception. They can only be taken into service as per their fixed quota but subject to their satisfying the necessary norms which we have already referred to above and require no repetition.

20. The Regulations of 1997 explicitly deals with this controversy. At the risk of repetition, we mention that term "year" means the period commencing on the first day of January and ending on 31st December of the same year. Rule 4 of the Regulations of 1997 specifically deals with the cases of persons not belonging to the State Civil Service but serving in connection with the affairs of the State.

21. Regulation 5 refers to the preparation of a list of suitable officers by the committee.

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Necessarily, the selection of suitable officers has to be made and meeting held for the year in question but an important aspect of the same is that no meeting of the committee has to be held and no list of any non-State Civil Service officers is to be prepared if there are no substantive vacancies and the Commission declares that it is not practicable to hold a meeting of the committee during that year. This declaration of the Union Public Service Commission is a very important act because once such a declaration is issued, no meeting should be held to fill up the vacancies from the non-State Civil Service officers. In the case of J.D.Naharwal, our attention has been drawn towards an order issued by the Union Public Service dated 9.1.2002 which reads:-

"I am directed to refer to the subject mentioned above and to say that a proposal for convening the Selection Committee meeting for selection of Non-SCS Officers for appointment to the IAS of Haryana Cadre during the year 2001 was received from the Govt. of Haryana on 26.12.2001. The Govt. of India had determined the number of vacancies available for Non-SCS officers as 2(two). The State Govt. had recommended the names of four officers against the two vacancies.

2. Since the proposal of the State Govt. was incomplete, a letter was issued on 27.12.2001 requesting the State Govt. to furnish the deficient information and records. They were also requested to furnish some more names since a maximum of 10 officers could be considered against two vacancies. The State Govt. vide their Fax message dated 27.12.2001 & 28.12.2001 furnished some of the deficient information and records. However, the clarification

/s/ Ag

furnished by them regarding the eligibility of some of the officers was not complete. The proposal of the State Govt. having been received in the Commission's office only a few days before the end of the year, the deficiencies could not be made good by the State Govt. within the stipulated time. As per the provisions of the IAS (Appointment by selection) Regulations, 1997, the Select List for the year 2001 for appointment of Non-SCS officers was to be prepared latest by 31.12.2001. In the circumstances explained above, the meeting of the selection Committee for preparation of a Select List of Non-SCS Officers (IAS-Haryana Cadre) could not be held during the year 2001.

3. Accordingly, in exercise of the powers conferred by clause (c) of Regulation 5(1) of the IAS (Appointment by Selection) Regulations, 1997, the Commission declare that it was not practicable to hold the meeting of the Selection Committee for selection of Non-SCS officers for appointment to the IAS of Haryana cadre during the year 2001."

In other words, the Union Public Service Commission specifically declared that it was not practicable to hold the meeting of the selection committee for selection of of non-State Civil Service officers for appointment to the Indian Administrative Service of Haryana cadre during the year 2001.

22. Can we say that this declaration by the Union Public Service Commission is meaningless? The answer would be that it is meaningful. The purpose of making such a provision is obvious. Once such a declaration is issued, the right of consideration by the non-State Civil Service officers is lost. The exercise if any is, therefore, in futility. This is for the added reason that the

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primary right for consideration is that of the State Civil Service Officers and consideration of non-State Civil Service officers is an exception. There is no provision to carry forward the said vacancies for the non-State Civil Service officers. It cannot be so carried forward particularly when such a declaration as referred to above had been issued. The clubbing of vacancies otherwise is not permitted.

23. On behalf of the State of Haryana, reliance is being placed on a decision of the Supreme Court in the case **Tamil Nadu Administrative Service Officers Association and another v. Union of India and others**, (2000) 5 SCC 728. The learned Advocate General relied upon para 32 of the judgement which reads as under:-

"32. We think that this is a matter of policy which will be uniformly applicable after the amendments. Further, vacancies which are not filled up in one year will automatically get carried forward to the next year if they become actual vacancies by then. Therefore, the challenge of the petitioners that this amendment is arbitrary and violative of Article 14 of the Constitution, cannot be accepted."

However, the Supreme Court therein was not considering the question of a matter where declaration by the Union Public Service Commission had been issued. Therefore, the said decision can be of no use for the applicants and would be distinguishable. In the case of J.D.Naharwal such

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a declaration had been issued. ... Otherwise issuing of the declaration by the Union Public Service Commission would become superfluous. The facts before the Supreme Court were different.

24. On behalf of the State of Haryana, it was further pointed eloquently by the learned Advocate General that firstly decision is taken to fill up the vacancy and thereafter the selection process starts but once a decision is taken and the meeting is held within a year with respect to non-State Civil Service Officers in that event, the question of carry forward of vacancies in face of the declaration by the Union Public Service Commission will not arise.

25. It is unfortunate that a different stand is being taken by the State of Haryana. In fact, the letter of 13.12.2000 written by the Ministry of Personnel, Public Grievances and Pensions addressed to the Chief Secretary, Government of Haryana states otherwise and supports the applicants' view which reads:-

"I am directed to refer to the communications from the Govt. of India 1st and 2nd cited and the State Government response thereto third cited regarding determining the vacancies for recruitment by promotion to the State IAS cadre during the year 1998, 1999 and 2000 as for posts for each year and to say as follows:

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2. In view of the position explained by the State Government, in slight modification of para 4 of the letter 1st cited, it has been decided that recruitment by promotion from among the State Civil Service officer of Haryana to IAS Haryana Cadre may be considered upto 2 posts during 1998, upto 4 posts during 1999 and upto 4 posts during 2000.

3. In terms of the provisions contained in the selection regulations, the decision in regard to the recruitment from this channel is to be taken during the calendar year itself and there is no provision for carry over of vacancies or preparation of year-wise select lists in the subsequent year. In view of the proposal of the State Government to defer recruitment by selection from Non-SCS during the year, in terms of the provisions contained in Rule 4(2) (b) of the IAS (Recruitment) Rules, 1954, read with the provisions contained in Regulation 3 of the IAS (Appointment by Selection) Regulations, 1997, it has been decided that the number of posts against which recruitment may be considered to IAS Haryana cadre from among Non-State Civil Service Officers of Haryana during 2000 is NIL."

In other words, it was stated that there is no provision for carrying forward of vacancies to the subsequent years. We find ourselves in agreement with the same keeping in view the rules on the subject and, therefore, it must be held that two vacancies regarding which declaration was given under Regulation 5 of the Regulations of 1997, the respondents cannot carry forward the vacancies and in the case of J.D. Naharwal, they would revert back to the same year to State Civil Service Officers.

26. In the case of Jai Paul Singh Dahiya, the position is different. Herein, there is no

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declaration issued by the Union Public Service Commission under Regulation 5 of the Regulations referred to above. The meeting in this regard had started and had just spilled over for selection of non-State Civil Service Officers. When the declaration had not been issued by the Union Public Service Commission in the case of Jai Paul Singh Dahiya, it cannot be termed that the selection, if any, that had been made would suffer from the same vice as in the case of J.D.Naharwal.

27. For the reasons given above, OA No.115/2003 in the case of Jai Paul Singh Dahiya must fail and is dismissed.

28. OA No.2042/2002 in the case of J.D.Naharwal is allowed and it is directed that:-

- (a) the decision to fill up the vacancies in the Indian Administrative Service of Haryana Cadre from amongst non-State Civil Service Officers during the year 2001 is quashed;
- (b) the decision to carry forward two vacancies earmarked for non-State Civil Service officers is also quashed;

LS Ag

(c) the vacancies, if any would revert back to the State Civil Service officers eligible for the year 2001; and

(d) a review Departmental Promotion Committee should be held to prepare the revised list of the remaining eligible State Civil Service officers who may be within the zone of consideration.

This exercise should be completed preferably within a period of four months from the date of receipt of a certified copy of this order. No costs.

(V.K. Majotra)
Member (A)

/sns/

(V.S. Aggarwal)
Chairman

Attested,

M. M. Pandey
06/5/03

(M. M. PANDEY)
S.O. (Judl. I)

Dismissed in default

Final Draft

No. 25113-W /DHC/WRITS/D-RKP/2010

Dated 30-08-10

From

The Registrar General
High Court of Delhi
New Delhi

To

1. The Principal Registrar, Central Administrative Tribunal, Principal Bench, Copernicus Marg, New Delhi.
2. Neelam P. Kasni, W/o Sh. Pradeep Kasni, Additional Deputy Commissioner, Panchkula (Haryana).

Petition against the order dated 25.2.2003 passed by ^{Shri} V.S. Aggarwal in O.A. 115/03 with O.A. 2042/2002.

WRIT PETITION (CIVIL) NO. 621/2004

Neelam P. Kasni

Vs.

Sh. J.D. Naharwal & ors.

Sir,

.....Petitioner/s

.....Respondent/s

In continuation of this Court's letter No. 32152-56/W dated 19.11.07, I am directed to forward herewith for information and immediate compliance/necessary action a copy of order dated 3.8.2010 passed by Hon'ble **Division Bench** of this Court in the above noted case alongwith a copy of Memo of Parties.

Please acknowledge receipt.

Yours faithfully

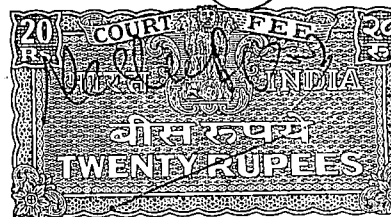
Admin. Officer Judl./Asstt. Registrar (Writs)
for Registrar General

AB/20.8.10

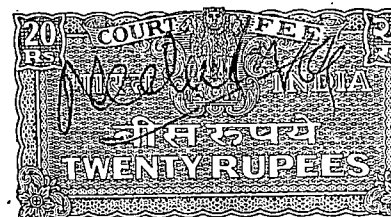
IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY CIVIL WRIT JURISDICTION)

WPC/1
NO. 621/04 OF 2004

CIVIL WRIT PETITION



MEMO OF PARTIES

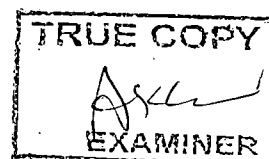
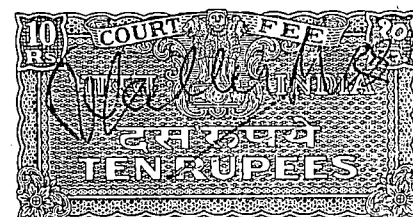


1. NEELAM P. KASNI
W/o Shri Pradeep Kasni
Additional Deputy Commissioner
Panchkula (Haryana)


.....PETITIONER

VERSUS

1. Shri J.D. Naharwal, HCS
R/o Flat No.109, Hope Apartments,
Sector 15, Part II, Gurgaon (Haryana).
2. Union of India through
Secretary, Deptt. of Personnel & Training,
North Block, New Delhi.
3. Union Public Service Commission,
Through Secretary,
Dholpur House, Shahjahan Road, New Delhi.
4. State of Haryana
Through Chief Secretary,
Government of Haryana, Chandigarh.
5. Shri Yudhvir Singh Khayalia
HCS (Under Suspension)
c/o Chief Secretary to the
Government of Haryana, Chandigarh.



....RESPONDENTS


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Advocate

Counsel for the Petitioner

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New Delhi - 110014

Phones

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New Delhi:

Dated: 14.1.2004

\$~R-27

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 621/2004

NEELAM PRADEEP KASNI

..... Petitioner

Through: None

versus

J.D.NAHARWAL & ORS.

..... Respondents

Through: Mr.G.D.Gupta, Sr. Advocate with
Mr.S.K.Sinha, Advocate for R-1

Mr.Atul Nanda, Advocate for R-2

Mr.Naresh Kaushik, Advocate with
Ms.Aditi Gupta, Ms.Amita Kalkal &
Ms.Jaymoti Mazi, Advocate for R-3

Mr.Yashpal Rangi, Advocate with
Mr.Manjit Singh, Advocate for R-4

None for R-5

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

ORDER

03.08.2010

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1. Since none appears for the petitioner we dismiss the writ petition for non-prosecution but while so doing take on record the statement made by Mr.G.D.Gupta, Senior Advocate under instructions from the respondent who is present in Court to the effect that the respondent would not predicate any seniority over the petitioner if the impugned judgment in the instant writ petition is implemented.

2. We note that the first respondent was the applicant in OA No.2042/2002 and has succeeded before the Tribunal. We may additionally note that the petitioner is in any case senior to respondent No.1.

3. The writ petition is dismissed in default and on account of non-prosecution.

sd/-
PRADEEP NANDRAJOG, J.

sd/-
MOOL CHAND GARG, J.

AUGUST 03, 2010
mm

