



**Central Administrative Tribunal
Principal Bench**

OA No. 3704/2019

New Delhi this the 24th day of December, 2019

Hon'ble Mr. Pradeep Kumar, Member (A)

Bhagwanti Jethwani
Wife of Dr. J.N. Jethwani
Resident of 6C Nursery,
Talwandi, Kota-324005
Age-58, Group-A
Des-RAS (Rev.) ...Applicant

(By Advocate : Sh. Abhinash Kumar Mishra)

Versus

1. Union of India
Through its Secretary
Ministry of Personnel, Public
Grievances and Pension,
Department of Personnel and Training
North Block, New Delhi-110001
2. State of Rajasthan
Through it's Chief Secretary,
Rajasthan Secretariat
Jaipur, Rajasthan
3. Secretary,
Department of Personnel
Government of Rajasthan
Rajasthan Secretariat
Jaipur, Rajasthan
4. Union Public Service Commission,
Through it's Secretary,
Dholpur House,
Shahjahan Road,
New Delhi-110011 ...Respondents

(By advocate : Dr. L C Singhi –R-1)



O R D E R (Oral)

1.0. The applicant herein is an officer of Rajasthan Administrative Service (RAS) of 1989 Batch, commonly known as State Civil Service (SCS). The officers of SCS have channel of promotion to the cadre of IAS officers in terms of IAS (Appointment by promotion) Regulations, 1955. The RAS Officers (State Civil Services) have a right to seek promotion to the IAS cadre.

It is pertinent to note here that for appointment to IAS, there is another method of appointment also which is known as IAS (Appointment by Selection) Regulation, 1997. These rules are for the non-RAS Officers (Non-SCS officers) who are outstanding, and they can also be considered for which certain specific quota is fixed for appointment to IAS, which is by way of selection.

For the year 2017, there were 17 vacancies out of which 15 were for SCS officers and 2 for Non-SCS officers.

2.0. In the instant OA, the State Govt. of Rajasthan prepared a zone of consideration for 2 posts meant for non-SCS Officers of certain special abilities to be considered by the DPC (which is held by UPSC) for selection to IAS, and forwarded their profiles to Central Govt. vide letter Dt. 9.1.18. Due to certain reasons, this DPC could not meet within the time stipulated



and accordingly, none of the officers could be considered and no recommendation could be made by the DPC for appointment to IAS by way of selection from amongst non-SCS officers.

3.0. It is pertinent to note here that the applicant herein had initially approached the Tribunal in OA No. 3699/2018 which was decided vide orders dated 13th August, 2019. The plea made by the applicant in that OA was that no special circumstances existed for consideration of non-SCS officers for appointment to IAS by way of selection. These pleas were not upheld and the OA was dismissed.

4.0. The applicant has now preferred the instant OA in respect of same selection, pleading that once the officers of non-SCS cadre are not appointed to IAS by way of selection, the two vacancies earmarked for non-SCS in that year, are required to be redirected back to SCS officer's quota and if such redirection of the vacancies is ordered, then her case is likely to be considered for appointment to IAS in that year as she is next in list of SCS officers.

The applicant also pleads that the recruitment rules for appointment by promotion for SCS officers specified that even if DPCs are held belated, selection panel is required to be prepared by the DPC year-wise.



The applicant also pleads that the recruitment rules for IAS (Appointment by Selection) for non-SCS officers do not have a provision for holding year wise DPCs. The applicant also relies upon a judgment by the Hon'ble High Court of Delhi in WP (C) No. 6474/2003 (**UOI vs. J.D. Naharwal**) wherein decision to this effect was pronounced on 11.8.2010. In para 14 of this judgment, certain observations made by the Tribunal in another similar case were considered and the decision of CAT for redirection of unfilled quota of Non-SCS vacancies to SCS quota, was upheld by the Hon'ble High Court. While passing this judgment, the Tribunal had relied upon a judgment by Hon'ble Apex Court in Vipin Chandra Hiralal Shah, JT 1996 (9) SC 686.

5.0. Matter has been heard at length at admission stage. It is noted that the Tribunal's directions which have been upheld by the Hon'ble High Court (para 4 supra), were in a different back ground.

The back ground of this judgment is that a list of non-SCS officers for appointment to IAS by way of selection, was made by the relevant State Govt. (Haryana) on 26.12.2001. However, the requisite information submitted by State Govt. to UPSC was found to be deficient. The UPSC, before holding the DPC, requested the State Govt. on 27.12.2001 to submit the deficient information. This information was supplied to UPSC



on 28.12.2001 but was still incomplete. Actually, only few days were left before end of year when the DPC for the year was required to sit.

Under these circumstances, the DPC could not be held during the year and UPSC took a conscious decision and issued an order on 9.1.2002 to the effect that it was not practicable to hold the DPC meeting during the year 2001. Under such circumstances, the two vacancies meant for non-SCS officers were redirected to the quota of SCS officers.

It is only in the circumstance when information was deficient that the UPSC asked for removal of deficiencies and thereafter even though the information was supplied by the Govt. of Haryana, still it was incomplete and the UPSC took a view that the DPC could not be held.

6.0. The applicant has pleaded that in the instant case also, the DPC for non-SCS officers of State of Rajasthan, could not be held. Accordingly, vacancies meant for non-SCS officers are now required to be redirected to the quota meant for SCS officers.

In the instant case however such similarity is not there. There is no such declaration by the UPSC and the applicant did not produce any such document.

7.0 Therefore, what comes out is that the zone of consideration for Non-SCS officers was prepared by the



relevant authorities. However, the DPC was not held. Reasons for same are neither known nor brought out by applicant.

Under such circumstances, this Tribunal is of the considered view that it would be grave injustice to the non-SCS officers who are included in zone of consideration, if their case is not even considered and their quota is redirected to that of SCS officers.

8.0. Further, in the case of Union of India & Ors. Vs. Vipinchandra Hiralal Shah, JT 1996 (9) S.C. 686, which has been quoted by Hon'ble High Court (para 4 supra), 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 had held that if for any reason the selection committee is not able to meet during a particular year, the committee when it meets next, while making the selection, should 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, 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 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 Services officers who were eligible and fall within the zone of consideration for selection in that year."

(Emphasis supplied)

8.1. The question of preparation of select list by DPC was also gone into by Hon'ble Apex Court in another case.

8.2. The need for holding DPCs timely and how to process the promotions if there is delay in holding the DPCs, was adjudicated by Hon'ble Apex Court in **Union of India vs. N.R. Banerjee**, AIR 1997 SC 3761. In this case, certain vacancies were likely to arise in the Financial Year 1994-95. A proposal for filling up the ensuing vacancies in Ordnance Factory Board was sent to the Ministry on 22.12.1993. The ACRs of the eligible candidates were approved on 16.08.1994 and the DPC was held on 15.03.1995 to fill up the four vacancies which were likely to arise in the year 1994-95. The Tribunal, however, directed the Government to ignore the ACRs for the year 1994. It also directed the DPC to be constituted as on 01.04.1994. This was challenged by the Government before the Supreme Court and it was contended that crucial date for DPC should be April or May, 1995, because the DPC will have to

consider the ACRs for the year, 1994. Rejecting the contention, the Supreme Court, *inter alia*, held as under:



"..... Though, *prima facie*, we are impressed with the arguments of Shri Altaf Ahmed, on deeper probe and on going through the procedure laid by the Ministry of Personnel and Training, we find no force in the contention. Preparation of the action plan for consideration by the D.P.C. of the respective claims of the officers within the Zone and thereafter for setting in motion the preparation of penal on year wise basis is elaborately mentioned. In case of their failure to do so, what further procedure is required to be followed is also indicated in the rules. It thereby manifests the intention of the rule-maker that the appellant- Government should estimate the anticipated vacancies, regular vacancies and also vacancies arising thereafter due to various contingencies and it should also get the A.C.Rs. prepared and approved. It is also made clear that the D.P.C. should sit on regular basis to consider the cases of the eligible candidates within the zone of consideration. The object is clear that the Government should keep the panel ready in advance so that the vacancies arising soon thereafter may be filled up from amongst the approved candidates whose names appear in the panel. In that behalf, it is seen that in the guidelines issued by the Government in Part I of clause (49) dealing with Functions and Composition of Departmental promotion Committee etc. necessary guidelines have been enumerated. It envisages that a post is filled upon by promotion where the Recruitment Rules so provide. In making promotions, it should be ensured that suitability of the candidates for promotion is considered in an objective and impartial manner. In other words, the consideration of the candidate is not clouded by any other extraneous considerations like caste, creed, colour, sect, religion or region. In consideration of claims, merit alone should enter into objective and impartial assessments.....

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Part II of the guidelines relating to the frequency of meeting of the D.P.C. Para 3.1 indicates that the D.P.Cs should be convened at regular annual intervals to draw panels which could be utilised for making promotions against the vacancies occurring during the course of a year.....

D.P.Cs. should be convened every year, if necessary, on a fixed date, i.e. 1st of April or May, in the middle of the para, by way of amendment brought on May 13, 1995, it postulates that very often action for holding D.P.C. meeting is initiated after the vacancy has arisen. This results in undue delay in filling up of vacancies and causes dissatisfaction among



those who are eligible for promotion. It may be indicated that regular meeting of D.P.C. should be held every year for each category of posts so that approved select panel is available in advance for making promotions against vacancies arising every year. Under para 3.2, the requirement of convening annual meetings of the D.P.C. should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmations during the year in question. It would, thus, be seen that D.P.C.s. are required to sit every year, regularly on or before 1st April or 1st May of the year to fill up the vacancies likely to arise in the year for being filled up. The required material should be collected in advance and merit list finalised by the appointing authorities and placed before the D.P.C.s. for consideration. This requirement can be dispensed with only after a certificate is issued by the appointing authority that there are no vacancies to be filled by promotion, or that no officers are due for confirmation, during the year in question.

Part III deals with preparatory action plan for consideration for promotion. Para 4.1 reads as under;

"It is essential that the number of vacancies in respect of which a panel is to be prepared by a DPC should be estimated as accurately as possible. For this purpose, the vacancies to be taken into account should be the clear vacancies arising in a post/grade/service due to death, retirement, resignation, regular long term promotion and deputation or from creation of additional posts on a long term. As regards vacancies arising out of deputation, only those cases of deputation for periods exceeding one year should be taken into account, due note, however, being kept also of the number of the deputationists likely to return to the cadre and who have to be provided for. Purely short term vacancies created as a result of officers proceeding on leave, or on deputation for a shorter period, training etc., should not be taken into account for the purpose of preparation of a panel. **In cases where there has been delay in holding DPCs for a year or more, vacancies should be indicated year- wise separately."**

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..... It is true that filling up of the posts are for clear or anticipated vacancies arising in the year. It is settled law that mere inclusion of one's name in the list does not confer any right in him/her to appointment. It is not incumbent that all posts may be filled up. But the authority must act reasonably, fairly and in public interest and omission thereof should not be arbitrary.....

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.... The preparation and finalisation of the yearly panel, unless duly certified by the appointing authority that no vacancy would arise or no suitable candidate was available, is a mandatory requirement. **If the annual panel could not be prepared for any justifiable reason, year wise panel of all the eligible candidates within the zone of consideration for filling up the vacancies each year should be prepared and appointment made in accordance therewith....”**

(emphasis supplied)

9.0. In the instant case, the relevant rules in para 5 & 9 of IAS (Appointment by Selection) Regulation-2013 are reproduced below :-

“5. Preparation of a list of suitable officers.

Every year on the basis of the method as enumerated in regulation 6, the Commission shall finalize the names of the persons, not exceeding the number of vacancies to be filled under regulation 3, for appointment to the service. The suitability of a person for appointment to the service shall be determined by common written examination (550 marks) scrutiny of service records (250) marks and interview (200 marks):-

- (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-rule (2) to 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 conduct the selection 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.”

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9. Power of the Central Government not to appoint in certain cases. Notwithstanding anything contained in these regulations, the Central Government may not appoint any person whose name appears in the Select List, if it is of the opinion that it is necessary or expedient so to do in the public interest.

Provided that no such decision shall be taken by the Central Government without consulting the Union Public service Commission and without recording the reason therefore."

The rule position thus, indicates only certain circumstances when appointment by selection may not take place. This means that in other circumstances, selection is required to be processed. There is nothing brought out by applicant that the conditions set out in Rules are attracted in instant case and non-holding of DPC was warranted due to these reasons.

10.0 The applicant's counsel pleaded that in the impugned order dated 9.1.2019, the Govt. of Rajasthan has made following observations :-

"For the Select List year 2017 two vacancies were determined by the DoPT, Govt. vide their letter No. 14015/19/2018-AIS(1) dated 04.01.2018. Due to some unavoidable reasons the Selection Committee Meeting could not be held during 2018. There is no provisions of year-wise Select Lists in respect of appointment by selection on Non-SCS officers. The process of selection of Non-SCS officers terminates at the end of the calendar year succeeding the vacancy year. If the Selection Committee Meeting could not be held by the end of that calendar year, the vacancy ceases to exist for Non SCS Officers and, thereafter for that particular year, no Meeting is possible."

In this connection, Tribunal is of the considered view that it would be miscarriage of justice if non-SCS officers in the zone



of consideration, are to be denied the opportunity of even consideration, for no fault of theirs and especially so if condition prescribed in relevant rules are not satisfied (Para 9 supra) and more so in keeping with the ratio of Apex Court judgments (Para 8.2 supra).

11. However, if the relevant authorities namely the UPSC makes a conscious declaration about the result of DPC or as to why the DPC was not held, the situation may be different.

The Tribunal however adds that even in such a such situation, the justiciability of such a declaration may need to be examined if aggrieved parties question the said declaration and redirection of vacancies as a consequence thereof.

12.0 In view of the foregoing, there is no merit in the OA. The same is dismissed for want of merit. No costs

(Pradeep Kumar)
Member (A)

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