



**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA No.4589/2017
MA No. 4745/2017**

New Delhi this the 18th day of November, 2020

**Hon'ble Justice Mr. L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Azimul Haque
Group 'A'
Aged about 51 years,
S/o Late Shri M.M. Haque
R/o Flat No. 10, Delhi Govt. Officers Flats
47-Rajpur Road, Civil Lines,
Delhi-110054

Presently working as:-

Secretary
Personnel, Training & Administrative Reforms
Govt. of Arunachal Pradesh

.....Applicant

(By Advocate: Ms. Jagriti Singh)

Versus

1. Union of India,
through Secretary,
Ministry of Home Affairs,
Govt. of India, North Block, New Delhi.
2. The Secretary,
Department of Personnel & Training
Ministry of Personnel, Public Grievances & Pensions,
Govt. of India, North Block, New Delhi
3. The Chairman
Union Public Service Commission
Dhaulpur House, Shahjahan Road, New Delhi.

.....Respondents

(By Advocate: Shri R.V. Sinha with Shri Amit Sinha for R-3)



ORDER (Oral)

Hon'ble Mr. A.K. Bishnoi, Member (A):

Briefly the facts of the case are as follows:

The applicant is an officer belonging to Delhi, Andaman & Nicobar Islands Civil Services (hereinafter referred as 'DANICS') of the 1990 batch. For induction into the Arunachal-Goa-Mizoram-Union Territories (AGMUT) cadre of the IAS, the Selection Committee Meeting (SCM) was held on 29.12.2014 for the years 2011, 2012 and 2013. There were 07 vacancies for the year 2011, 05 for 2012 and another 05 for 2013. Separate panels for zone of consideration for each of the three years were drawn and the name of the applicant was also considered. However, he was not selected for the vacancies of these years. Later, in another SCM the applicant was considered for the vacancies that arose in the year 2014 and he was selected.

2. The applicant has filed the present OA seeking the following reliefs:-

- “(i) To direct the respondents to conduct the Review SCM for the years 2011, 2012 & 2013 after carrying forward the unfilled vacancy of 2011 to the year 2012 and re-determining the vacancies of promotion quota of UT segment of AGMUT cadre for the years 2012 and 2013,
- (ii) To promote the applicant to IAS cadre against the vacancy year 2013 after redetermination of vacancies for the promotion,



- (iii) To direct the respondents to fix the seniority of the applicant from 2013 in IAS cadre after promoting him against the vacancy of 2013,
- (iv) To direct the respondents to grant all other benefits accrued after his promotion since 2013,
- (v) To allow the original application with cost of the litigation.
- (vi) To pass such other and further order which their Lordships of this Hon'ble Tribunal fit and proper in existing terms and circumstances of the case."

3. It is the contention of the applicant that for the vacancies of the year 2011, out of the 07 officers who were selected, one namely, Shri P.C. Jain expressed his unwillingness to be inducted into the IAS and one other officer was provisionally selected. In view of this, as per the applicant, vacancy relating to Shri P.C. Jain who had expressed his unwillingness to join and was selected against the vacancy for the year 2011 should have been carried over to the year 2012. As a consequence, one of the officers selected against the vacancies of 2013 could have been selected against the vacancies so enhanced against the vacancies for the year 2012. Consequently, the applicant whose name was in the list and just below the last selected candidate for the vacancy year 2013 would have been selected against that year namely, 2013. In this context, he has referred to IAS (Appointment by Promotion) Regulation 1955 and certain OMs of Department of Personnel & Training.



4. In essence, these Regulations are to the effect that the vacancies shall be determined on a year to year basis and that in the event of vacancies of any year remaining unfilled, they shall automatically stand transferred to the next year and in that event the SCM need not take place again. Such vacancies can be filled up on the basis of the outcome of the SCM held for that particular year.

5. Counter replies have been filed on behalf of the Respondents as also rejoinders to them.

6. We have heard Ms. Jagriti Singh, learned counsel appearing on behalf of the applicant and Shri R.V. Sinha, learned counsel appearing on behalf of Respondent No.3

7. Ms. Jagriti Singh, learned counsel appearing on behalf of the applicant further explaining the submissions made in the OA vehemently contended that because of the unwillingness of one of the officers recommended for selection against the vacancy year 2011, in view of the OM of DoPT dated 15.09.2017, one vacancy should have been carried over to the next year namely, 2012. As a result one of the officers recommended for selection against the vacancy year 2013 could have been selected for the vacancy year 2012. As a consequence, the applicant could have got selected for the vacancy year 2013 since his name figured just below that of the last selected candidate for that year.



8. Shri R.V. Sinha, learned counsel expounded on the submissions made in the counter affidavits filed by the respondents. He argued that SCMs for the vacancy years mentioned above could not be held each year owing to the pendency of certain litigations. As a result, the SCM was held for all the three years together. However, as required under the Regulations, vacancies were determined for each year separately and the names of the officers in the zones of consideration were also considered for each year separately. Recommendations too, accordingly, were made year-wise. The name of the applicant was considered duly following the laid down procedure. However as the name of the applicant could not figure in the merit for the years concerned he could not be selected against the vacancies of these years.

9. It was further argued that the provision relating to the carrying forward of unfilled vacancy of a particular year was applied to the situation when one or more vacancies remained unfilled for a particular year. In the present instance such was not the case. The number of names recommended each year were equal to the number of vacancies for that year.

10. On the issue of one of the selected candidates against the vacancies of 2011 expressing his unwillingness to accept, it was argued that as per the existing provisions, after the recommendation of SCM are made, any officer recommended for selection may express his unwillingness before the expiry of the validity of SCM recommendation. In such a situation the officer



may revoke his unwillingness before the next SCM in which case, his name would be considered in such subsequent meeting. In the present instance since the SCMs were held for all the three years on the same day 29.12.2014, though each year was considered separately, Shri P.C. Jain had the opportunity to express his unwillingness before the expiry of the validity of the 29.12.2014SCM recommendations. Further, he could revoke his unwillingness before the meeting held subsequent to the meeting held in December 2014. As such the dynamic shifting of vacancies as contended by the applicant could not legally take place.

11. We have carefully gone through the pleadings on record as also the arguments advanced by the learned counsels on both sides.

12. The provisions relating to shifting of unfilled vacancies to the next year referred to in the DoPT OM dated 15.09.2017 are extracted below:-

“2. The promotion Regulations envisage annual preparation of Select Lists. Under the normal circumstances, all the unfilled vacancies out of Select List for a particular year are carried forward for preparing the Select List of the next year. The determination of vacancies is effected by the Central Government in consultation with the State Government concerned.

3. The Promotion Regulations also stipulate that in case it is not possible to prepare Select List for a particular year as the meeting of the Selection Committee is not held during that year, in that case as and when the Selection Committee meets, it shall prepare year-wise Select Lists, and vacancies for each Select List Year shall be again determined by the



Central Government in consultation with the State Government.

4. **It has been observed, while preparing year-wise Select Lists, that the number of officers to be included in the Select List of a particular year, in a State, was less than the number of vacancies determined.** However, the Selection Committee could not carry forward the unfilled vacancies to the Select List of the next year. It is observed that this would be against the principles of recruitment wherein the immediate charge of any unfilled vacancy(ies) for a particular year would be for the officer(s) considered for immediately next year.

5. In view of above, it is hereby clarified that **in case of a situation arising as above**, the Selection Committee shall have inherent power to dynamically determine the vacancies for preparing the Select List of the subsequent year by carrying forward the unfilled vacancies from the previous year and adding it to the already determined vacancies for the subsequent year. There would be no need to re-convene the Selection Committee Meeting and recommendations of the Selection Committee can be suitably modified accordingly.”

(Emphasis supplied)

13. From a plain reading of the provisions extracted above, it is quite clear that the situation contemplated is one in which the number of candidates found suitable for recommendation for a particular year falls short of the number of vacancies for that particular year. It is only in such case that the unfilled vacancies would stand transferred to the subsequent year. The apparent purpose behind this is that the procedure should be less cumbersome and the SCMs need not be convened again and again. In the present instance no vacancy for the year 2011 remained unfilled as recommendations were made with the number of



officers being equal to the number of vacancies for that year. The abovementioned provision, therefore, was not attracted.

14. Consequently the unwillingness of one of the recommended candidates to accept his induction into the IAS could have any effect only in the SCM meetings held subsequent to the SCM meeting of 2014 and not on the recommendations made in the said meeting itself. It could have been a different situation if the vacancies for separate years were to be clubbed together. However, the law is very clear on the subject, i.e., vacancies for each of the year have to be considered separately.

15. As regards the judgments cited by the applicant he has been unable to draw our attention to any proposition of law which supports his case.

16. In view of the above, we find no merit in the contentions made by the applicant. The OA is accordingly dismissed.

Pending MA, if any, shall stand disposed of.

There shall be no order as to costs.

(A. K. Bishnoi) (Justice L. Narasimha Reddy)
Member (A) Chairman

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