

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.297 OF 2004  
ALLAHABAD THIS THE 26TH DAY OF OCTOBER,2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

HON'BLE MRS. ROLI SRIVASTAVA, MEMBER-A

Krishna Kant Shukla,  
S/o Late Shri Dep Sharan Shukla,  
Joint Development Commissioner,  
Meerut, A-2 D.M. Compound,  
Meerut.

.....Applicant

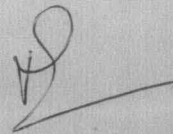
( By Advocate Shri P.K. Khare &  
Shri Nigamendra Shukla)

Versus

1. State of U.P. through Chief Secretary,  
Lucknow.
2. Union of India,  
through Secretary,  
Department of Personnel and Training,  
New Delhi.
3. Union of Public Service Commission,  
through its Secretary, New Delhi.

.....Respondents

( By Advocate Shri K.P. Singh, Sri V.V. Mishra  
& Shri S. Chaturvedi.)



O R D E R

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

By this O.A. applicant has sought the following reliefs:-

"(i) to issue an order or direction in the nature of mandamus commanding the opposite parties to consider the case of the promotion of the applicant for the recruitment year 2004 as to start from January 1, 2004.

(ii) to issue an order or direction in the nature of mandamus commanding the opposite parties to consider the case of the promotion of the applicant to the IAS in the recruitment year 2005 in the event it is not practicable for any reason whatever to make selection in the recruitment year 2004, ignoring the age bar of 54 years incorporated in Regulation 5(3) of the IAS (Appointment by Promotion) Regulations, 1955.

(iii) to issue any order or direction in the nature of mandamus declaring the existing Regulation 5(3) of the IAS (Appointment by Promotion) Regulation, 1955 as illegal and ultra vires for not being in consonance with the enhancement of age of retirement to 60 years from 58 years.

(iv) to issue any other such order or direction which the Court may deem fit and proper under the circumstances of the case.

(v) To ~~xx~~ award cost to the applicant."

2. Grievance of applicant in this case is that he belongs to 1976 Batch of Uttar Pradesh Civil Service and joined on 09.05.1977. He has <sup>already</sup> completed 27 years of service in P.C.S. with unblemished record but even though <sup>R</sup> only <sup>311/12</sup> 160 vacancies are existing in the state of Uttar Pradesh in promotion quota from State Services to I.A.S. yet no D.P.C. has been convened as a result of



which he has been deprived of his lawful promotion.

3. He has further submitted that since his Date of Birth was 14.03.1950, he has already completed 54 years of age on 14.03.2004 and in view of Regulation 5(3) of the Indian Administrative Services (Appointment by Promotion) Regulations, 1955 his case would not even be considered to I.A.S. on completion of 54 years of age. He has thus, challenged the virus of Rule 5(3) of the I.A.S. (Appointment by promotion) Regulations, 1955 to state that the age of 54 years was earlier stipulated because age of retirement was at that time is 58 years which has now been enhanced to 60 years, therefore as a consequence even the age of 54 year should have been raised to 56 years for consideration for induction to I.A.S. from P.C.S.

4. It is submitted by the applicant that he has already given his representation to the Chief Secretary Government of Uttar Pradesh, Lucknow on 23.02.2004 but since no reply was being given to him he has no other option but to file the present O.A. He has further submitted that even the Uttar Pradesh Civil Service Association has also given a representation to the Secretary, Ministry of Personnel, Public Grievance and Pension, Department of Personnel and Training, Government of India, New Delhi on 15.03.2001 bringing out the grievances of the P.C.S. Officers including their demand that the age should be enhanced from



54 years to 56 years. Even though this representation was given as back as on 15.03.2001 but till date no reply has been given even by the Department of Personnel and Training on the said representation. He, therefore, submitted that the relief(s) as prayed for may be granted in his favour.

5. State of Uttar Pradesh has filed Counter Affidavit taking preliminary objection to the maintainability of the O.A. itself, on the ground that this O.A. is hit by multiple reliefs (Rule 10 of C.A.T. Procedure Rules, 1987). On merits they have submitted that vide notification dated 02.06.2003, Government of India has appointed Sri M.A. Siddiqui and Shri R.N. Tripathi on probation on the basis of J.P.C. convened on 30/31.10.2001 for filling 12 vacancies of I.A.S. of State of Uttar Pradesh for the year 2000. Subsequent vacancies have not yet been determined by the Central Government. They have further explained that the names of P.C.S. Officers are sent to the U.P.S.C. according to eligibility after determination of the vacancy by the Central Government as per rules and applicant can be promoted to the post of I.A.S. Cadre only after he is found suitable as per rules by the U.P.S.C. They have further submitted that promotion in regard to I.A.S. cadre of Uttaranchal State cannot be compared with State of Uttar Pradesh as in each state promotion to I.A.S. Cadre would depend on availability of vacancies subject to

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qualifying the selection as per rules. They have similarly stated that there is no comparison between I.P.S. Cadre and I.A.S. Cadre. They have further stated that pursuant to the representation given by applicant action is going on after determining the vacancies by the Central Government. They have submitted that since applicant had already ~~been~~ given his representation he should have waited for the outcome of the said representation <sup>had</sup> ~~inspite~~ of rushing to the court of law. As far as virus of Regulation 5(3) is concerned it was submitted that once Association has taken up the matter with the Central Government pursuant to the directions given by the Hon'ble Supreme Court, the remedy lies before the Hon'ble Supreme Court and applicant cannot be allowed to agitate the same matter before this Tribunal. They have thus, submitted that this O.A. may be dismissed.

6. Union of India has not filed any reply as their counsel made a statement that they do not wish to file any reply. Even U.P.S.C. has not filed any reply though their counsel are present in the court.

7. We have heard all the counsel and perused the pleadings as well. From the perusal of representation given by the Uttar Pradesh Civil Services Association it is apparent that the said representation has been



given pursuant to the order dated 27.11.2000 passed by Hon'ble Supreme Court in Writ petition no.487/00. Even though copy of the order dated 27.11.2000 has not been placed on record but the same has been quoted in the representation itself which for ready reference reads as under:-

"The U.P. State Civil Service Officers Association aggrieved by the prevailing situation filed Writ Petition No.487/2000-Uttar Pradesh Civil Service Association and another Vs. Govt. of India and other in the Hon'ble Supreme Court. The Hon'ble Supreme Court passed the following order:-

"The case of the petitioners is similar to the one passed in Writ Petition No.135 of 2000, R.L. Meena & Ors. V. Union of India & Ors., 2000(7)SCC 183.

We are of the view that a similar direction is to be issued in this case also. We direct as follows:-

"It will be open to the president of the Secretary representing the Members of the Association to file a detailed representation to the Central Govt. giving all the particulars of the post which they consider are fit to be encadred with a retrospective date and on such representation being made, the Central Government will consider these representations in consultation with the State Government concerned, and take appropriate decisions in this regard preferably within six months from the receipt of those representations. The petitions and appeal are disposed off accordingly. No Costs."

The writ petition is disposed off in terms of the above directions."

Perusal of this representation further shows that the Association has already taken up the matter with regard to lifting of 54 years of age bar under Regulation 5(3) of I.A.S.(appointment by Promotion) Regulations,1997. In case directions was given by the

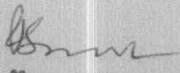
Hon'ble Supreme Court to take up the issue with the Central Government pursuant to which Association has already taken up the matter by giving a representation, naturally at this stage, unless the representation is decided by the D.O.P & T. It would not be open to the applicant to raise the same issue before this Tribunal. Of course, if direction given by the Hon'ble Supreme Court, has not been complied with by the Central Government the Association has their remedy before the Hon'ble Supreme Court but so long the matter is pending before the D.O.P&T, we do not think the same issue can be raised before us.

8. As far as the grievance of applicant with regard to not holding the D.P.C. is concerned, he has already ~~been~~ given a detailed representation to the Chief Secretary, Government of Uttar Pradesh Lucknow on 23.02.2004 which is still pending. Since these are the matters which are to be addressed ~~to~~ at the first instance by the authorities concerned, as they alone have all the figures with them with regard to the current situation of available vacancies, the numbers of officers who are eligible and when they are to be considered for next promotion, therefore, we are of the opinion, that without going into the merits of the case at this stage, it would be better if this case is disposed off by giving direction <sup>to</sup> ~~the~~ the respondent no.1 to apply his mind to the grievances



raised by the applicant in his representation and to decide the same within a period of two months from the date of receipt of a copy of this order by passing a reasoned and detailed order under intimation to the applicant.

9. With the above direction, this O.A. is disposed off with no order as to costs..

  
Member-A

  
Member-J

/ns/