

Central Administrative Tribunal, Lucknow Bench,

Lucknow

Original Application No. 284/2007

This the ^{16th} day of October, 2008

HON'BLE SHRI M. KANTHAIAH, MEMBER (J)

HON'BLE DR. A.K. MISHRA, MEMBER (A)

1. Surya Prakash aged about 50 years son of late Shri Ram Ji Parsed r/o B-70, Secretariat Colony, Mahanagar, Lucknow.
2. Saroj Kumar Yadav, aged about 50 years son of Sri Sajeevan Lal Yadav r/o MIG-75, Sector E , Officers Colony, Aliganj, Lucknow.

Applicants

By Advocate: Sri V.P. Nag

Versus

1. State of U.P. through Secretary, Appointment, Govt. of U.P., Civil Secretariat, U.P., Lucknow.
2. Secretary, Department of Appointment, Govt. of U.P., Civil Secretariat, U.P., Lucknow.
3. Union of India through Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievance and Pensions, Govt. of India, North Block, New Delhi.
4. Union Public Service Commission, through its Secretary, Dhoulpur House, Shajhajah Road, New Delhi.



Respondents

By Advocate: Sri U.N. Mishra for State of U.P.

Sri A.K.Chaturvedi for U.P.S.C.

ORDER

By Hon'ble Sri A.K.Mishra, Member (A)

The applicant has challenged the Office Memorandum (O.M.) dated 1.12.2006 (Annexure-2) of State of U.P. and has made a prayer for issue of a direction to the State Government of U.P. to include the name of the applicant in the list of eligible persons to be considered for selection to the IAS under Non-State Civil Service (NSCS) quota. He has also made a prayer for staying the selection process in respect of 11 vacancies determined in this regard for the year 2006 till finalization of the O.A.

2. A brief background description of the case is required for better appreciation of the rival contentions. The officers to Indian Administrative Services are recruited on the basis of provisions in the Indian Administrative Service (Recruitment) Rules, 1954 (hereinafter referred as the Rules).

There are three streams of recruitment:-

- a) by direct recruitment through a competitive examination;
- b) by promotion of substantive members of a State Civil Service;
- c) by selection, in special cases from amongst 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.

3. Rule 4 (c) deals with the selection of Non State Civil Service Officers. It mentions that such selection is to be made in special case. In other words, officers of outstanding merits, if available in any cadre of the State Govt. other than State Civil Service cadre, should have an opportunity for selection by virtue of the provisions of Rule 4 (c). These Rules were supplemented by the Indian Administrative Service (Appointment by Selection) Regulations, 1977 which provide guidelines in greater details about the selection process of NSCS officers. Regulation 4, which stipulates the conditions of eligibility in this regard, reads as follows:-

"4. xxxxxxxx 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 Govt. 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 and propose the person for consideration of the Committee. The number of*



person 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 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."

4. It shows that the officer has to be of outstanding merit, ability and should hold a gazetted post, and should have completed not less than 8 years of continuous service on the first day of January of the year in which his case is being considered in any post which has been declared as equivalent to the post of Deputy Collector in the State Civil Service. In O.A. No. 362/2006, this Tribunal, while examining the issues relating to selection of NSCS offices, held that the State Govt. has to declare non-SCS posts equivalent to the post of Dy. Collector before taking up the selection process. In that view of the matter, this Tribunal gave a direction to the State Govt. of U.P. to determine the



equivalence of the posts and then begin the process of selection. In pursuance of the specific direction of this Tribunal, the State Govt. issued the impugned order dated 1.12.2006 in which it was declared that all NSCS posts carrying pay scale of Rs. 8000-13,500/- or higher pay scale would be equivalent to the post of Dy. Collector of State Civil Service cadre for the purpose of selection to the IAS. This O.M. is under challenge in this application by the applicant who did not have prescribed 8000-13,5000 pay scale for a continuous period of 8 years in order to be eligible for consideration.

5. In 2006, 11 posts were identified to be filled up by NSCS officers and the process of selection was started for the purpose. The State Screening Committee met on 21.11.2006, but before the select list could be forwarded to the UPSC the impugned order was issued by the respondent No.2. As a result, the names of the applicants were excluded on the ground that they did not have the pay-scale of Rs. 8000-13,500/- for a continuous period of 8 years prior to 1st January, 2006.

6. The applicant has assailed this order mainly on the ground that equivalence of one post to the other cannot be determined by the sole criterion of pay-scale. He relied on the observations of Hon'ble Supreme Court in the case of **Union of India and another Vs. P.K. Roy and others reported in AIR 1968 Supreme Court 850 (V 55 C172)**,



Vice Chancellor, L.N. Mithila University Vs. Dayanand Jha, reported in (1986) 3 Supreme Court Cases 7 and S.I. Rooplal and another Vs. Lt. Governor through Chief Secretary, Delhi and others reported in AIR 2000 Supreme Court 594.

7. In the last judgment, the Hon'ble Apex Court made the following observations:-

"While determining the equation of two posts many factors other than pay will have to be taken into consideration, like the nature of duties, responsibilities, minimum qualification etc. It is so held by this court as far back as in the year 1968 in the case of Union of India Vs. P.K.Roy (1968) 2 SCR 186, (AIR (1968) SC 850. In the said judgment, this court accepted the factors laid down by the Committee of Chief Secretaries which was constituted for settling the disputes regarding equation of posts arising out of the States Reorganisation Act, 1956. These four factors are (i) the nature and duties of a post; (ii) the responsibilities and powers exercised by the officers holding a post; the extent of territorial or other charge held or responsibility discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post, and (iv) the salary of the post. It is seen that the salary of a post for the purpose of finding out the equivalency of posts is the last of the criterion. If the earlier three criteria mentioned above are fulfilled



then the fact that the salaries of the two posts are different, would not in any way make the post 'not equivalent'. In the instant case, it is not the case of the respondents that the first three criteria mentioned hereinabove are in any manner different between the two posts concerned. Therefore, it should be held that the view taken by the Tribunal in the impugned order that the two posts of the Sub Inspector in the BSF and the Sub Inspector (Executive) in Delhi Police are not equivalent merely on the ground that the two posts did not carry the same pay scale, is necessarily to be rejected. We are further supported in this view of ours by another judgment of this Court in the case of Vice Chancellor, L.N. Mithila University Vs. Dayanand Jha (1986) 3 SCC 7: (AIR 1986 SC 1200), wherein at para 8 of the judgment, this court held : "Learned counsel for the respondent is therefore right in contending that equivalence of the pay scale is not the only factor in judging whether the post of Principal and that of Reader are equivalent posts. We are inclined to agree with him that the real criterion to adopt is whether they could be regarded of equal status and responsibility***** The true criterion for equivalence is the status and the nature and responsibilities of the duties attached to the posts."



8. It was submitted that the equivalence sought for is between the post to post not between payscale to payscale. While determining the equivalence, other factors mainly the nature of duties of post, the power exercised by the officer and the extent of territorial or other charge held, minimum qualification prescribed and the salary of the post are to be taken into consideration. But, in the present case, the equivalence has been determined solely on the basis of payscales. This position runs counter to the observation of the Hon'ble Supreme Court which says that in case the other three factors are similar, the equivalence could be granted even if there is a difference in the pay scale.

9. In all the three cases, which were examined by the Hon'ble Supreme Court equivalence, was being sought between posts of similar nature. In S.I.Roop Lal's case (Supra), it was between Sub Inspector of BSF and Sub Inspector of Delhi Police. In P.K.Roy's case, the Hon'ble Supreme Court was dealing with subject of integration of officers coming from different territorial jurisdictions into one cadre. Here again, the integration was in respect of officers belonging to one discipline. The officer of building, roads and Irrigation Branch of the Public Works Department of Madhya Pradesh had questioned the gradation list which was notified. The scope of examination was not in respect of determining equivalence between officers



67 belonging to different cadres/disciplines. Same is also true of Daya Nand Jha's case where controversy was in respect of equivalence between the Principal and a Reader, both belonging to the same education discipline.

10. The four factors which have been mentioned were identified by a Committee of Chief Secretaries which was dealing with the subject of laying down guidelines for integration of officers coming from different regions into a new state at the time of reorganization of the State. In all these cases, the equivalence was being determined between the officers belonging to the same discipline but coming either from different region, or from different organizations, or holding different posts with same pay scales in one cadre.

11. The learned counsel for respondent No. 4 submitted that any attempt at finding equivalence on the basis of four factors mentioned in the guidelines of the Committee of Secretaries and endorsed in the judgment of Hon'ble Supreme Court in S.I. Roop Lal's case in respect of officers coming from diverse disciplines would lead to a chaotic situation in view of the fact that no valid comparison could possibly be made amongst officers coming from disciplines like engineering, architecture, research and development, statistics, education, medicine, veterinary service, Secretariat Service, Revenue and a host of such different cadres where gazetted officers are working in the State Govt.



67 12. It is also a fact that the nature of duties and responsibilities of officers working in different cadres are entirely different. Inter se comparison of the nature of duty and responsibilities of officers coming from such diverse disciplines is well nigh impossible to arrive at any equivalence between a post of one discipline with that of another. As the old adage says one can compare one variety of apple with another, but surely not with orange. Bringing about equivalence between posts of dissimilar categories will be a futile exercise. Although the State Govt. of U.P. have constituted a Committee under the Chairmanship of Chief Secretary to find out equivalence between the post of Dy. Collector and all other gazetted posts such a task would present numerous practical difficulties. Even a simple factor like comparison of minimum education of qualification would not be without problems. For example, an executive engineer who was originally a diploma holder, but because of his meritorious work has been promoted to the rank of Executive Engineer cannot claim to have minimum education of graduation but payscale wise, duties and responsibilities wise, his position is higher than that of a Dy. Collector. These are some of the examples of problems which would beset such a task of bringing about equivalence.

13. It was contended by Shri Chaturvedi, counsel for respondent No. 4 that the Pay Commission takes into



account all these factors while determining relative pay scales of officers belonging to different disciplines working under the State Government. Pay scales are determined by the Commission on the basis of relative equivalence of the posts keeping in view all the factors including the four factors which have been discussed earlier. Therefore, pay scales are a very good indicator about equivalence of posts belonging to diverse disciplines working under the State Govt.

14. He clarified that the Union Public Service Commission only seeks a certificate from the State Government about the equivalence of posts on the basis of which officers are recommended for selection to the IAS from NSCS stream. It was only in U.P. that a declaration had to be made in the impugned Office Memorandum in view of the specific direction of this Tribunal in O.A. No. 362/2006. In the operative portion of the judgment, the Tribunal made the following directions:-

- "i) Before proceedings further with the process of promotion/ selection the respondent should declare through a circular which are the posts identified to be equivalent to Deputy Collector.
- ii) The process of promotion/ selection should go on as per rules without any carry forward from the previous years or to the following year;



iii) if any post amongst the eleven earmarked for non SCS officers remain unfilled the same should be transferred to the share of SCS officers and promotion should be made from among the eligible officers who are already listed from the zone of consideration."

15. The matter is before the Hon'ble High court and the process of selection has been stayed.

16. The learned Counsel for respondent No. 4 further informed that in one or two other States, the equivalence between the post of Dy. Collector and other NSCS posts is derived on the basis of their payscales, as has been attempted in the impugned order of U.P. Govt.

17. We feel that there is a good deal of force in the contentions of Sri Chaturvedi, Learned Counsel for respondent No.4. The directions of the Hon'ble Supreme Court are valid in respect of any exercise about equivalence between the posts belonging to the same disciplines, but it would not be of help in any exercise trying to determine equivalence between the posts of diverse disciplines.

18. The next point which came up for consideration whether the higher payscale granted (on the basis of Assured Career Progression (ACP) Scheme) to an officer belonging to a substantive post carrying a lower payscales would count towards eligibility under Rule 4 of the Regulation. The fact remains that the duties and responsibilities are attached to the post concerned, which



has a regular pay scales. There is no change in the duties and responsibilities of the incumbent even if a higher pay scale is granted under ACP Scheme, which is by way of a compensation to the Govt. servant facing stagnation. Therefore, it cannot be said that the nature of duties change with the grant of higher scale under ACP. Therefore, it would not be correct to say that the experience in a lower post but having higher pay scales under ACP scheme will count towards eligibility for the purpose of Regulation 4 (c).

19. In view of the analysis in the preceding paragraphs, we are of the considered view that the impugned O.M. does not suffer from any illegality. Considering the large strength of gazetted officers available in numerous categories of the State Govt., there has to be some reasonable classification in order to screen out the eligible candidates coming within the zone of consideration for the purpose of Regulation 4 (c) and for such reasons the regulation has prescribed the eligibility condition of 8 years of minimum service in a post equivalent to the post of Dy. Collector and the guidelines prescribed in the impugned order to determine the equivalence in terms of pay scales seems to be a pragmatic and reasonable approach which has a nexus with the object of classification of the gazetted posts to narrow down the field of search only to those which are equivalent to the post of Deputy Collector, such a classification will not be violative of Article 14 of the Constitution.



20. In the result, we find that the impugned order does not suffer from any infirmity. Accordingly this application is dismissed. No costs.



(DR. A.K. MISHRA)
MEMBER (A)



(M.KANTHAIAH)
MEMBER (J)

16.10.2008

Hls/-