

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No.610 of 1996

Date of order 6. 8-1998

Manendra Kumar, son of Shri Rajdeo Verma, at present

Assistant Commissioner of Excise, Govt. of Bihar, Dhanbad.

.. Applicant

-versus-

1. Union of India through the Secretary, Personnel & Administrative Reforms, Govt. of India, New Delhi.
2. Union Public Service Commission through its Secretary, Dholpur House, New Delhi.
3. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
4. The Chief Secretary, Govt. of Bihar, Patna.
5. The Secretary, Personnel & Administrative Reforms Department, Govt. of Bihar, Patna.
6. The Secretary, Department of Excise and Prohibition, Govt. of Bihar, Patna.
7. Shri Rasheed Ahmad Khan

Respondents

CORAM: Hon'ble Mr. Justice V.N. Mehrotra, V.C.

Hon'ble Mr. L.R.K.Prasad, Member (A)

Counsel for the applicant : Mr. P.K.Shah.
Mr. A.Sharma

Counsel for the State of Bihar: Mr. B.N.Yadav.

Counsel for the Union of India: Mr. J.N. Pandey

ORDER

Hon'ble Shri L.R.K.Prasad, Member (A):-

This is an application for issuance of direction to the respondents to consider the case of the

applicant for his recruitment and appointment to Indian Administrative Service(IAS) under the provisions of IAS(Appointment by Selection) Regulations, 1956(hereinafter called "Regulations, 1956") and issuance of direction on the respondents to forward his name for consideration by Selection Committee under the Regulations, 1956.

2. The applicant was appointed to the post of Inspector of Excise in May, 1978 (Annexure-1). In due course he was appointed to the post of Superintendent of Excise and thereafter to the post of Assistant Commissioner(Excise). The Joint Secretary in the Department of Personnel & Administrative Reforms, Govt. of Bihar, vide his Memo dated 18.10.1996(Annexure-2) asked various Departments to recommend two eligible officers for being considered for their appointment to IAS by selection in accordance with Regulations, 1956. In the aforesaid letter it was suggested that in every Department an internal Selection Committee should be constituted for consideration and recommendation of the names who fulfil the requisite qualifications, as stated in the letter (Annexure-2). The applicant has stated that having learnt about the constitution of Selection Committee under Regulations, 1956, he made a representation to the State Govt. through his Deputy Commissioner (Excise) who forwarded it to respondent no.6, i.e., Secretary, Department of Excise and Prohibition, Govt. of Bihar. He has alleged that internal Selection Committee headed by respondent no.6 did not consider his case properly specially on the ground that he was not holding a gazetted post for 8 years, so his name was not recommended to the State Govt. He asserted that the post of Inspector of Excise was a gazetted post in terms of Memo dated 21.12.1971 (Annexure-3) of Govt. of Bihar. In support of this argument,

he has referred to certain documents which are at Annexures-4 and 5. According to the applicant, the post of Inspector of Excise is a gazetted post since 1974. He was appointed to this post in 1978, so he has completed more than 8 years in a gazetted rank before the matter was so considered by internal Selection Committee. He has also stated that in December, 1985 he was promoted to the post of Superintendent of Excise on ad hoc basis and from August, 1988 on regular basis. Therefore, he has claimed that where initial ad hoc appointment is followed by regularisation, the date of appointment shifts back to date of ad hoc appointment and in that view of the matter, he should be deemed to have been substantively promoted to the post of Superintendent of Excise with effect from December, 1985. He has also claimed that he has got outstanding record and no charge-sheet was pending against him. Moreover, in the past cases of Shri Raj Kishore Prasad and Shri Gopal Shankar Prasad have been considered fit for being appointed to IAS even though both of them were appointed as Inspector of Excise and assigned seniority on the basis of their service as Inspector of Excise from 1974. In view of the above facts, the applicant prayed for issuance of direction to respondent no.3 to 6, particularly respondent no.6, to recommend the case of the applicant to the Selection Committee under Regulations, 1956 for being considered for appointment to IAS.

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3. Written statements have been filed by respondents, namely, State of Bihar and Union of India. In the meantime, one Rasheed Ahmad Khan prayed for being impleaded as one of the respondents in this case because the

State Selection Committee included the name of intervener respondent in the list forwarded to the Union Public Service Commission(UPSC). Considering the facts and circumstances of the case Shri Rasheed Ahmad Khan was allowed to be impleaded as one of the respondents in this case. This respondent has also filed written statement.

4. The respondent-State of Bihar has opposed this application. It has been stated by respondent-State of Bihar that it is wrong on the part of the applicant to say that the subject-matter of this application is within the jurisdiction of this Tribunal as this officer belongs to Excise and Prohibition Department of the Govt. of Bihar, whereas the jurisdiction of this Tribunal extends to Officer of all India Services and other Central Government Departments, as defined in section 14 of the Administrative Tribunals Act, 1985, They have further stated that the applicant did not fulfil the requisite qualifications as per law for being considered for appointment to IAS by selection. The applicant did not complete 8 years of minimum qualifying substantive service on the cut off date (01.4.1996) on a gazetted post involving duties comparable in importance and responsibility to that of State Civil Service. The applicant held such a post, i.e., Superintendent of Excise from August, 1988 in substantive capacity and thereby he had completed only about 7 ~~years~~ and 7 months on the cut off date. Prior to 5.8.1988, the applicant was holding the post of Inspector of Excise which though being gazetted but was never equivalent in rank, importance and responsibility to the State Civil Service. While the pay scale of Inspector of Excise is Rs.2000-3500, the same in the State Civil Service is Rs.2200-4000. Nature of job of

Inspector of Excise is similar to that of Police Inspector. It was also pointed out that the post of Inspector of Excise which was not equivalent to the Inspector of Police was made equivalent to the Inspector of Police and gazetted in terms of Memorandum No.4930 dated 9.8.1973. It was argued that Inspector level officers though designated gazetted without any extra privilege or facility are not considered for selection to IAS. It has been asserted that the applicant was promoted to the post of Superintendent of Excise, which is equivalent to Bihar Administrative Service ~~not~~ from December, 1985 but from August, 1988. While referring para 4(xviii), the State respondent stated that Shri R.K.Prasad and Shri G.S.Prasad were recommended for selection to IAS when they had completed 12 years of substantive service in the rank of Superintendent of Excise which is equivalent to Bihar Administrative Service in rank, importance and responsibility.

5. On behalf of respondent no.1(Govt. of India) it has been stated that the State Govt. and the UPSC are primarily concerned with the subject-matter of this application. The applicant is aggrieved against the action of the State Govt. in not including his name in the zone of consideration. This respondent is concerned mainly in the application of rules to the extent of making appointment of the Non-SCS officers included in the State list, after approval by UPSC under Regulation 3 of Regulations, 1956 on receipt of appropriate proposals from the State of Bihar. It has been reiterated that the State Government is wholly concerned in the matter of forwarding the names of Non-SCS officers to UPSC for consideration for appointment to IAS by selection and the Selection Committee set up for the purpose shall consider the proposals of the State Govt. and recommend the names of the officers, if any, as are in their opinion suitable for appointment to the Service.

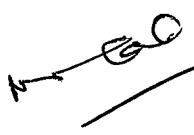
The suitability of a person for appointment to the Service shall be determined by the Committee by a scrutiny of the confidential rolls and also by interviewing the officers concerned. The recommendation of the Selection Committee shall be placed before the concerned State Govt. and the same shall be forwarded by the concerned State Govt. to UPSC for approval along with the confidential record of the officers concerned under recommendation of the Selection Committee. On their finally being approved by UPSC, the appointment of the select list officers to IAS shall be made by the Central Govt. on receipt of suitable proposals to that effect from the State Govt. Therefore, the role of this respondent comes into play at the stage when the list of names of Non-SCS officers forwarded to the UPSC is considered by the Selection Committee, the select list prepared by the Committee is forwarded by the State Govt. to the UPSC along with its observation on the recommendation of the Committee and the final approval to the select list is conveyed by UPSC to the Central Government. Thereafter the respondent is called upon to convey the approval of the UPSC to the select list to the State Govt. concerned and to request for suitable proposals for appointment of the select list officers concerned to the Service on occurrence of the vacancies in a State cadre.

6. Written statement has been filed on behalf of intervenor respondent, namely, Shri Rasheed Ahmad Khan. He has submitted that the relief sought for is not within the jurisdiction of this Tribunal as according to regulation 3 of Regulations, 1956, one acquires claim for consideration only after his or her name is proposed by the State Govt. for appointment to the Service. As the name of the present

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applicant was not sponsored by the State Govt. and his grievance is only against the State Govt. authorities, this Tribunal is not the forum for adjudication. Moreover, the applicant should have impleaded all the ten officers who were sponsored by the State Govt. for consideration. However, this respondent has become one of the parties after intervening in this matter and obtaining order ~~of~~ this Tribunal. The case of the applicant is not covered by the definition of State Civil Services in regulation 2(e)(ii) of Regulations, 1956. The applicant was not holding charge of the post of higher responsibility in substantive capacity. It has been pointed out by respondent no.7 that while the State Civil Service Officers are appointed by promotion, the Non-State Civil Service Officers are appointed by selection. He claimed that he was duly selected and nominated by the State Government for appearing before the Selection Committee of the UPSC in terms of regulation 3 of Regulations, 1956. He further claimed that as his performance was outstanding throughout his career, was regularly graded as 'Outstanding' in his ACRs and based on total evaluation of ACRs and personality test and interview, he was finally selected by UPSC for recruitment to IAS.

7. We have heard the learned counsel for the parties and perused the materials on record. The applicant was appointed to the post of Inspector of Excise in May, 1978. In due course he was appointed to the post of Superintendent of Excise. The allegation of the applicant is that the Departmental Selection Committee headed by respondent no.6 did not consider his case properly and so his name was not recommended to Department of Personnel & Administrative Reforms, Govt. of Bihar for consideration of his case for



appointment to IAS by selection. He has claimed that he fulfilled all the requisite conditions for such a consideration. The respondent-State of Bihar has stated that the applicant did not fulfil the requisite qualifications as per rule for being considered for appointment to IAS by selection. The applicant has not completed 8 years of minimum qualifying substantive service on the cut off date (1.4.1996) in a post involving duties comparable in importance and responsibility to that of State Civil Service. The applicant held such such a post, i.e., Superintendent of Excise from August, 1988 in substantive capacity. Prior to that he was holding the post of Inspector of Excise which though being gazetted but was never equivalent in rank, importance and responsibility to the State Civil Service. We are inclined to agree with this argument of the State respondent. It has also been pointed out by the State respondent as well as private respondent that as the applicant belonged to Excise and Prohibition Department of Government of Bihar, section 14 of Administrative Tribunals Act, 1985 was not attracted to this case. Section 14 of Administrative Tribunals Act, 1985, deals with jurisdiction, powers and authority of the Central Administrative Tribunal. It clearly specifies the categories of cases which can be brought within the jurisdiction of this Tribunal.

8. It is observed that the case of the applicant was not recommended by his Department to the Department of Personnel & Administrative Reforms, Govt. of Bihar, for consideration of his case for appointment to IAS by selection. While IAS (Appointment by Selection) Regulations, 1956 prescribes specific role for the State Government, it does not mention about the role of a Department in a State Government. In the instant case, the name of the applicant was not

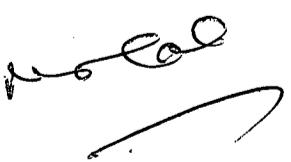
recommended to the nodal Department of the State Government for consideration of his case for appointment to IAS by selection. Moreover, it has been made clear in IAS (Appointment by Selection) Regulations, 1956 that the State Government may from time to time consider the cases of persons not belonging to State Civil Service but serving in connection with the affairs of the State, who are of outstanding merit and ability and have completed not less than 8 years of continuous service under the State Govt. in a gazetted post involving duties comparable in importance and responsibility to that of the State Civil Service. It has also been prescribed that the number of officers proposed for consideration of the Selection Committee shall not exceed five times the number of vacancies to be filled in during the following year. In the instant case, his name was neither considered nor recommended to UPSC/Central Government by the State Government. Moreover, regulation 3(2) of IAS (Appointment by Selection) Regulations, 1956 has to be read with reference to the ruling of the Hon'ble Supreme Court in the case of T. Sham Bhat (reported in 1994 Volume 28 ATC page 400). In this case IAS (Appointment by Selection) Second Amendment Regulations, 1989, which was brought into force with effect from 30.3.1989 was challenged. Regulation 2 of IAS Amendment Regulations was struck down making it clear that IAS Selections which had been amended by IAS Second Amendment Regulations, has been revived and continue to hold the field as before their amendment. Following order/observations of the Hon'ble Supreme Court in this case are relevant:-

"it can be said without any hesitation, whatsoever, that the IAS Recruitment Rules did not envisage making eligible for selection to the Indian Administrative Service officers of non-State Civil Service, if the substantive gazetted posts they held were posts which were lower than that of the posts of Deputy Collectors or Assistant



Commissioners in State Civil Service, such as posts of Tahsildars or of Deputy Tahsildars in State Civil Service. To put it differently, the IAS Recruitment Rules on their very face do not permit non-State Civil Service officers who held substantive gazetted posts which were lower in rank than that of the posts of Deputy Collectors (Assistant Commissioners) in State Civil Service, that is, non-State Civil Service Class II officers to become eligible for selection to the Indian Administrative Service."

"The IAS Recruitment Rules, as is specifically pointed out, by us already, envisage selection for appointment to Indian Administrative Service, from non-State Civil Service officers who held posts comparable in importance and responsibility to that of the posts of Deputy Collectors and above in State Civil Service, that is, from non-State Civil Service Class I officers, and not from non-State Civil Service officers who held posts of Assistant Regional Transport Officers or Senior Inspector of Motor Vehicles in Transport Department of a State, which were far inferior to that of the posts of Deputy Collectors in State Civil Service, as such, posts of Tehsildars or Deputy Tehsildars. If that be so, it cannot admit of any doubt that the Central Government which had made Regulation 2 of the IAS Second Amendment Regulations to make eligible for selection and appointment to the Indian Administrative Service from non-State Civil Service Class II officers, has done so clearly exceeding the parameters or authority conferred upon it in the matter by Rule 8(2) of the IAS Recruitment Rules itself. This circumstance and factual reality in itself is sufficient to expose and demolish the myth that non-State Civil Service Class II officers were brought into the pool of non-State Civil Service officers by the IAS Second Amendment Regulations by classifying them as officers belonging to common class along with non-State Civil Service Class I officers, for achieving the object of the IAS Recruitment Rules- the object of selecting the officers of outstanding ability and merit for appointment to Indian Administrative Service. Even otherwise when in the service set-up of non-State Civil Service,



non-State Civil Service Class II officers are unequal when compared with non-State Civil Service Class I officers, in important matters such as nature of posts held by them, duties and responsibilities to be discharged by them in such posts, scales of pay carried by such posts, it is difficult to comprehend how they can be put in a common class for judging their comparative ability and merit in their respective job performances in the context of their suitability for appointment to the Indian Administrative Service."

9. From the perusal of the materials on record and relevant rules, it is clear that the applicant did not fulfil the requisite qualifications as per law for being considered for appointment to IAS by selection. He did not complete 8 years of minimum qualifying substantive service on the cut off date on a gazetted post involving duties comparable in importance and responsibility to that of State Civil Service. He was promoted as Superintendent of Excise in substantive capacity only from August, 1988. Prior to 5.8.1988 the applicant was holding the post of Inspector of Excise which though being gazetted but was never equivalent in rank, importance and responsibility of the State Civil Service. Moreover, it is also observed that the Department considered his case on his request but did not find him fit for selection. It may also be pointed out that another important prescribed condition for consideration of Non-Civil Service officer for appointment to IAS by selection in accordance with regulation 3 of Regulations 1956 is that such candidate should be of outstanding merit and ability. In other words it may be stated that the main emphasis in the IAS (Appointment by Selection) Regulations, 1956, is on consideration of such persons for appointment to IAS by selection, who are of outstanding merit and ability, which is to be considered along with other prescribed conditions by the

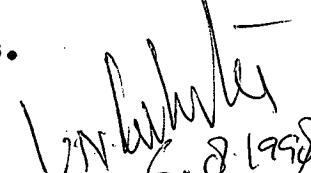
State Government before recommending the names of candidates for interview by UPSC. In view of above, the applicant did not fulfil the requisite qualification required by a Non-Civil Service officer for consideration for appointment to IAS by selection process as per prescribed rules.

10. It is also noted from the written statement filed by respondent no.7(Shri Rasheed Ahmad Khan) that he was duly selected and nominated by the State Govt. for appearing before the Selection Committee of UPSC in terms of regulation 3 of IAS(Appointment by Selection) Regulations, 1956 and after evaluation of his ACRs and personality test in the interview, he was finally selected for recruitment to IAS.

11. As this application has been considered by us on the merit of the case and we feel on careful consideration of the matter that this application is liable to be dismissed in view of the facts and circumstances mentioned above, we have not considered it necessary to go into the merit of the matter relating to jurisdiction of this Tribunal as has been pointed out by the applicant as well as respondents.

12. In view of the above discussion, this O.A. is dismissed with no order as to costs.


(L.R.K. Prasad)
Member(A)


(V.N. Mehrotra)
Vice-Chairman
6-8-1998