

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

O.A.NO.780/2005 &
O.A.NO.336/2006

Dated 30.7.2007

CORAM:

HON'BLE SHRI P.K.SINHA, VICE CHAIRMAN
HON'BLE SHRI AMIT KUSHARI, MEMBER (A)

O.A.NO.780/2005

1. Rai Madan Kishore, S/o Late Butti Lal Rai,
Deputy Secretary, Labour, Employment and Training Department,
Government of Bihar, Patna.
2. Kamta Prasad Pandey, S/o Late Gorakh Nath Pandey,
Director, National Employment Programme, Patna. .. Applicants

By Advocate : Sri Rajendra Prasad Singh, Sr.Advocate

vs.

1. Union of India through Secretary, Ministry of Personnel, Public Grievances
and Administration, Department of Personnel and Training,
Government of India, New Delhi.
2. The Cabinet Secretary, Government of India, New Delhi.
3. The Under Secretary, Ministry of Personnel and Training, Government of India,
New Delhi.
4. The State of Bihar through Chief Secretary, Old Secretariat, Patna.
... Respondents

By Advocate : Sri S.Singh, SC for State of Bihar
Shri M.K.Mishra, SSC for the Union of India
Shri R.K.Choubey, ASC for UPSC

O.A.NO.336/06



1. Umesh Chandra Sharma,
s/o late B.N.Sharma,
at present posted as
Dy.Secretary ,Department of Tourism,
Govt. of Bihar.
 2. Ajit Kumar,
s/o late Umesh Chandra Pd.
At present posted as A.D.M.
(Naxal),Gaya.
 3. Balmiki Prasad,
s/o Ram Pravesh Prasad,
at present posted as
Joint Director, Employment
Department of Labour,Employment & Training,
Govt. of Bihar, Patna.
 4. Sri Krishna Kumar Sinha,
s/o
at present posted as Secretary,
University Service Commission, Patna.
- .. Applicants

By Advocate :Shri Rajendra Prasad Singh,Sr.Advocate

vs.

1. Union of India through Secretary, Ministry of Personnel,Public Grievances & Administration,Deptt. of Personnel & Training, Government of India, New Delhi.
2. The Cabinet Secretary, Government of India, New Delhi.
3. The Under Secretary, Ministry of Personnel, Public "" & Training, Govt. of India, New Delhi.
4. Union Public Service Commission through its Secretary, Dholpur House, New Delhi.
- 5.The State of Bihar through Chief Secretary, Old Secretariat,Patna.

...

Respondents

By Advocate: Sri Shekhar Singh, SC for the State of Bihar
Sri R.K.Tiwary, ASC for the Union of Indian
Sri R.K.Choubey, ASC for UPSC



ORDER

JUSTICE P.K.SINHA,V.C.:-

Issues being the same, this Original Application has been heard along with O.A.No.336/06 (Umesh Chandra Sharma & others vs. Union of India & others) and this order will dispose of the both the applications.

2. Separate petitions filed by the applicants in both the Original Applications to be allowed to prosecute the respective applications jointly is also, in the circumstances of the case, allowed.

3. The applicants have moved this Tribunal for striking down the sub-regulation (3) of Regulation 5 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter to be referred to as "the Regulations"), as also to interpret the aforesaid sub-regulation in such a manner that the members of the State Administrative Service who have attained the age of 54 years in the year of meeting of the committee, for consideration of promotion of the State Cadre officer to the Cadre of Indian Administrative Service, should be kept within the consideration zone.

4. Sub-regulation (3) of Regulation 5 of the Regulations, so far it relates to the grievance of the applicants, is reproduced below:-

"(3) The Committee shall not consider the cases of the members of the State Civil Service who have attained the age of 54 years on the first day of January of the year in which it meets."

5. Sri Rajendra Prasad Singh, learned Senior Advocate appearing on behalf of the applicants in both the cases has argued that discrimination by dint of such arbitrary



regulation is writ large on the very face of it. Learned counsel submitted that everyone who joins the State service in Class II or above has ultimate aspiration to be inducted to the I.A.S. Cadre. But by the fortuitous circumstance of the consideration of their cases by the authorised committee sitting in a particular year would make an officer born on 1st January of that year to be ineligible whereas another officer born on 2nd January of the year would be eligible and within the consideration zone for promotion. Learned counsel in this regard cited the examples of the applicants vide list at Annexure A/1 issued by the Government of Bihar, being the civil list, as on 1.3.2004. It was pointed out that at Sl.No.201 is the name of the applicant Ray Madan Kishore who was born on 1.1.1951, and at Sl.No.219 is the name of the applicant Kamta Prasad Pandey, also born on 1.1.1951, who were thus rendered ineligible from consideration when the authorised committee sat to consider their cases in November, 2005. It was pointed out that Premchandra Choudhary at Sl.No.204 who was born on 6.1.1951 or Kadar Nath Choudhary at Sl.No.205, born on 15.2.1951 and similar other officers could be in the consideration zone.

6. Learned counsel argued that such discrimination can be done away with if, instead of making 1st January of the year to be the cut-off date, the aforesaid regulation was so amended so as to make the eligibility dependent not upon the particular date but on the year as whole. Elaborating this, Shri Singh argued that if the committee which sat in November 2005 had considered the cases of all those officers who were born during the year 1951, such discrimination would not have happened.

7. Thirdly, learned counsel submitted that in Bihar in the earlier days, the



retirement age was 55 years but was increased to 58 years, and then again reduced to 55 years whereafter the retirement age was finally settled, for employees of the State Government, at 58 years, which, however, was enhanced to 60 years sometimes back on the pattern of increase of retirement age of the Central Government employees. Learned counsel submitted that it was now high time that the Government of India, suo motu, in consideration of increase of the retirement age almost all over India, in different States, should have increased the age of eligibility for being considered for promotion to the I.A.S. Cadre.

8. The arguments though attractive, can hardly be allowed.

9. Learned counsel for the respondents, Union of India and State of Bihar, have argued that there was no discrimination at all as the same regulation was applicable to everyone of the State employees and was based on a policy decision of the Government of India, which policy decision, unless shown to be arbitrary or unconstitutional, cannot be interfered with by this Tribunal


10. When a particular cut-off date is given for any purpose there is bound to be complain by those who miss the cut-off date even by a whisker. Making this age criteria dependent on a particular year would not solve the problem because, in that case also, an officer born on 31st December of the year would be considered for promotion but not an officer born on the very next day. If a cut-off date has been fixed under age criteria, the main purpose must be that officers promoted to I.A.S. Cadre, thereby getting opportunity to take up the duties of higher responsibilities, must have a larger tenure to work as such so that their work and experience could benefit the State for a longer period. Such a Regulation cannot be said to be arbitrary or


discriminatory if it is applied to all and everyone aspiring to be in the consideration zone.

11. It will, however, altogether a different matter if the Government of India considers advancing the age criteria further in view of the enhanced age of retirement even for a State Government employee, but for that giving of any particular direction by this Tribunal will not be proper as that would be within the domain of the Government of India to decide a particular age criteria for the officers being eligible to be so promoted to the I.A.S. Cadre.

12. As already seen, this particular Regulation as it stands cannot be said to be discriminatory or ultra vires.

13. In that view of the matter, the reliefs as sought for by the applicants cannot be granted. Both the Original Applications, as aforesaid, stand dismissed. No costs.


(Amit Kushari)
Member(A)


(P.K.Sinha)
Vice Chairman

/njj/