IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 11.1.2002

1.OA No.664/1993

S.S.Tripathi S/o Shri S.G.Tripathi r/o A-12 Van Vihar Colony, Tonk Road, Jaipur presently posted as Deputy Secretary (Election), cum Additional Chief Electroral Officer, Secretariat, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary, Department of Personnel and Administrative Reforms, Government of India, New Delhi.
2. The State of Rajasthan through the Secretary, Department of Personnel and Administrative Reforms, Government of Rajasthan, Secretariat, Jaipur.
3. Union Public Service Commission, Dholpur House, New Delhi.
4. Shri Karni Singh Rathore s/o Shri D.S.Rathore, at present posted as Collector and District Magistrate, Ajmer.

.. Respondents

Mr.Manish Bhandari, proxy counsel to Mr. R.N.Mathur, counsel for the applicant

Mr. U.D.Sharma, counsel for the respondents 1 and 3

Mr. B.N.Purohit, counsel for respondent No.2

Mr. Anurag Kulshrestha, alongwith Mr. Virendra Lodha, counsel for respondent No.4.

2.OA No.671/1993

R.S.Agarwal S/o Shri Ramji Lal Agarwal r/o A-13, Indrapuri Colony, Lal Kothi, Tonk Road, Jaipur, presently posted as Deputy Secretary, Industries, Government of Rajasthan, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary, Department of Personnel and Administrative Reforms, Government of India, New Delhi.
2. The State of Rajasthan through the Secretary, Department of Personnel and Administrative Reforms, Government of Rajasthan, Secretariat, Jaipur.
3. Union Public Service Commission, Dholpur House, New Delhi.
4. Shri K.S. Rathore s/o Shri D.S.Rathore, at present posted as Collector and District Magistrate, Ajmer.

.. Respondents

Mr. Manish Bhandari, proxy counsel to Mr. R.N.Mathur, counsel for the applicant

Mr. U.D.Sharma, counsel for respondents Nos. 1 and 3

Mr. B.N.Purohit, counsel for respondent No.2

Mr. Anurag Kulshrestha, alongwith Mr. Virendra Lodha, counsel for respondent No.4

3.OA No.544/94

Bharat Lal Verma s/o Shri Nandlal Meena r/o Lovekush Nagar-II, Tonk Phatak, Jaipur presently posted as Inspector General (Pensions), Govt. of Rajasthan, Jaipur.

.. Applicant

Versus

1. Union of India through Secretary, Ministry of Personnel, Pensions and Public Grievances, Govt. of India, New Delhi.
2. The State of Rajasthan through Secretary, Department of Personnel, Govt. of Rajasthan, Secretariat, Jaipur.
3. Union Public Service Commission, Dholpur House, New Delhi.
4. Shri Mool Chand Arya presently posted as Officer on Special Duty, Department of Mines, Govt. of Rajasthan, Jaipur.
5. Shri Devi Ram Jodhawat, presently posted as Deputy Secretary, Department of Industries, Govt. of Rajasthan, Secretariat, Jaipur.
6. Shri Yad Ram Gaur, presently posted as Revenue Appellate Authority, Alwar.
7. Shri Jagdish Prasad Vimal, presently posted as Executive Director (Traffic) Rajasthan

.. Respondents

None present for the applicant

Mr. B.N.Purohit, counsel for respondent No.2

Mr. U.D.Sharma, counsel for respondent No.3

None present for other respondents

CORAM:

Hon'ble Mr. Justice B.S.Raikote, Vice Chairman

Hon'ble Mr. N.P.Nawani, Administrative Member

Order

Per Hon'ble Mr. N.P.Nawani, Administrative Member

Common questions of law and facts are raised in these OAs and, therefore, it is proposed to dispose of these OAs by this common order. For the sake of convenience, reference has been made to OA No.664/93, S.S.Tripathi v. Union of India and ors.

2. Applicants are aggrieved by the recommendations of the Selection Committee of the Union Public Service Commission (for short, UPSC) which met on 26.10.1993 and prepared a Select List of officers of the Rajasthan Administrative Service (for short RAS) for promotion to Rajasthan cadre of the Indian Administrative Service (for short IAS) in terms of Indian Administrative Service (Appointment by Promotion Regulations, 1955 (for short Promotion Regulations). The applicants in OA at Sl.No.1 and 2 have also prayed that the overall grading 'Very Good' in their Annual Performance Reports (for short APRs) may be treated as 'Outstanding'. The applicant in OA at Sl.No.3 wants his APR for the year 1991-92 to be treated as 'Very Good' or 'Outstanding' and not 'Average' and also contends that the first part of his APR for 1992-93 was placed before the Selection Committee whereas it was filled by the Reporting Officer who had not seen his work for more than 3 months and the second part of his APR was not placed before the Selection Committee at all. The applicant in OA at Sl.No.1 also contends that the APR for the year 1991-92 which he filled in time, and which as per his understanding had carried 'Outstanding' grading, was misplaced, and no APR of this period was placed before the Selection Committee. The applicant in OA at Sl.No.3 has also

prayed that the Promotion Regulations should contain provisions for reservation in favour of officers belonging to SC/ST communities and in the absence of such reservation the said provision is ultra-vires of Article 16(4) of the Constitution of India. Finally, all the 3 applicants have challenged the action of the respondents in clubbing the unfilled vacancies of the year 1992-93 with the vacancies for the year 1993-94.

2. We have heard Mr. Manish Bhandari, proxy counsel to Mr. R.N.Mathur, counsel for the applicants in OA at Sl.No. 1 and 2, Shri U.D.Sharma, counsel for respondent No.1 (Union of India) and respondent No.3 (UPSC), Shri B.N.Purohit, counsel for State of Rajasthan and Shri Anurag Kulshreshtha, proxy counsel to Mr. Virendra Lodha, counsel for private respondent No.4 in OA No. 671/93. We have also carefully perused all the materiel on record.

3. After giving careful consideration to the arguments advanced by the learned counsel for the parties, we are of the opinion that the core of the controversy in these cases essentially concerns to two issues. First, whether the official respondents have resorted to clubbing of vacancies relatable to two years namely 1992-93 and 1993-94 and if it is so, whether it is permissible under the rules/ regulations. Second, whether the Selection Committee of the UPSC has correctly assessed the performance of the applicants in preparing the Select List after its meeting held on 26.10.1993.

4. As regards the question of clubbing of vacancies, this Bench of the Tribunal had undertaken an in-depth examination of this issue while rendering its decision in OA No. 360 of 1998, Moti Lal Gupta v. Union of India and anr. and OA No. 35 of 1994, Ranjeet Singh Gathala v. Union of India and Ors. on 6.3.2000 and 23.5.2000 respectively. In OA No.35 of 1994, we had also, inter-alia, accepted

the contention of the official respondents, specially that of the State of Rajasthan, that when the Selection Committee meeting was held on 26.10.1993, it had taken into consideration a total of 25 vacancies, the break-up being 12 existing vacancies plus 9 anticipated in the 12 months following the date of meeting of the Selection Committee plus 4 as 20% of the total as reserved/unforeseen vacancies. This by itself is enough to come to the conclusion that the official respondents had resorted to clubbing of vacancies. In any case the official respondents have not denied that the unfilled vacancies of previous year(s) have not been added to the vacancies anticipated during the 12 months following the date of meeting of the Selection Committee. Therefore, the first part of the issue No.1 is answered in the manner that the official respondents have resorted to clubbing of vacancies. As regard the second part i.e. permissibility of clubbing of vacancies for two or more years, this Bench of the Tribunal has already ruled against the clubbing of vacancies of different years in its decisions rendered in OAs mentioned earlier. Instead of going into the controversy all over again, it will suffice to extract the concerned paragraphs of the judgment/order rendered in the case of Ranjeet Singh Gathala (supra) as under:-

> "It has been vehemently argued by the learned counsel for the applicant that separate Selection Committee meetings should be held for the left over vacancies of 1991-92, for the vacancies of the year 1992-93 and the vacancies of the year 1993-94. He has cited the judgment in the case of Vinod Sangal v. Union of India and ors., 1995 (4) SC 246; 1995 SCC (L&S) 963 and Vipinchandra Hiralal Shah's case, 1997 SCC (L&S) 41, in support of his contention that clubbing of vacancies for these three year will be against the priniples laid down in various judgments including the aforementioned cases. The learned counsel for the respondents have equally

vehemently contended that when the meeting of the Selection Committee cannot be held in a particular year for valid reasons, the following Selection Committee will include the vacancies of previous year (s) with the vacancies anticipated in the next 12 months from the date of holding of the meeting of the Selection Committee and such a step was inevitable and may not be called clubbing. They have cited cases like Union of India v. Jwala Prasad and ors, 1998 (2) SCC (L&S) 1227; Kehar Singh v. UPSC and ors., 1995 (4) SLR 543 (CAT); Union of India v. Dr. M.G.Dighe, 1991 (2) SLJ 184 in support of their contentions. We find that the case of Jwala Prasad was regarding the inter-se seniority between direct recruits and promotees in the Indian Forest Service and is, therefore, completely distinguishable. The case of Dr. M.G.Dighe was regarding determination of vacancies for promotion to IAS and has not laid down any principle regarding clubbing of vacancies or otherwise when the meeting of the Selection Committee is not held in previous year(s). Our attention was especially invited to the case of Kehar Singh (supra) in which it has been observed by the Principal Bench of the Tribunal that the Select List prepared for earlier years lapses after the preparation of the Select List for subsequent years. We, however, feel that this case does not help the respondents in view of the law laid down specifically by hon'ble the Supreme Court in the case of Vipinchandra Hiralal Shah (supra), which we will have an occasion to discuss a little later. The respondents can surely find a solution to the difficulty posed in the case of Kehar Singh within the directions issued by the Apex Court in the case of Vipinchandra Hiralal Shah.

18. We have considered the matter very carefully and are of the considered view that on the question of preparation of

separate Select Lists when the Selection Committee cannot meet for any valid reason in a particular year, the law laid down by Hon'ble the Supreme Court in the case of Vipinchandra Hiralal Shah (supra) has to be followed. The said judgment has been delivered by the Apex Court after taking into consideration, inter alia, the cases of Union of India v. Mohan Lal Capoor, (1973) 2 SCC 836 and Syed Khalid Rizvi v. Union of India, 1994 SCC (L&S) 84. This judgment clearly stipulates that the Selection Committee shall meet and prepare Select Lists separately for each year and also lays down the way the entire process is to be undertaken. The relevant portions of the judgment are extracted below:

"7. If clause (1) is read with the other provisions in Regulation 5 referred to above the inference is inevitable that the requirement in clause (1) of Regulation 5 that the Selection Committee shall meet at intervals not exceeding one year and prepare a list of members of the State Civil Service who are suitable for promotion in the Service was intended to be mandatory in nature because of the eligibility of the persons to be considered both in the matter of length of service and age under clause (2) and (3) is with reference to the first date of January of the year in which the Selection Committee meets and the number of members of the State Civil Service to be considered for selection is also linked with the number of substantive vacancies anticipated in the course of the period of twelve months commencing from the date of preparing of the list. We are, therefore, of the view that the requirement prescribed in sub-regulation (1) of Regulation 5 regarding the Committee meeting at intervals not exceeding one year and preparing a list of such members of the State Civil Service who are suitable for promotion to the

Service was mandatory requirement which had to be followed. The earlier decision of this Court also lend support to this view.

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13. Therefore, while upholding the judgment of the Tribunal that the respondent is entitled to seek fresh consideration on the basis that the selection should be made for vacancies occuring in each year separately, but in substitution of the directions given by the Tribunal in that regard, the following directions are given:-

(1) The number of vacancies falling in the quota prescribed for promotion of State Civil Service officers to the Service shall be determined separately for each year in respect of the period from 1980 to 1986.

(2) The State Civil Service officers who have been appointed to the Service on the basis of the impugned Select List of December 1986 January 1987 and were senior to the respondent in the State Civil Service shall be adjusted against the vacancies so determined on yearwise basis.

(3) After such adjustment if all the vacancies in a particular year or years are filled by the officers referred to in para (2), no further action need be taken in respect of those vacancies for the said year/years.

(4) But, if after such adjustment vacancy/vacancies remain in a particular year/years during the period from 1980 to 1986, notional Select List/Lists shall be prepared separately for that year/years on a consideration of all eligible officers falling within the zone of consideration determined on the basis of the vacancies of the particular year.

(5) If the name of the respondent is included in the notional Select List/Lists prepared for any particular year/years during the period 1980 to 1986 and if he is so placed in the

order of merit so as to have been entitled to be appointed against a vacancy of that particular year, he be appointed to the Service against that vacancy of that year with all consequential benefits.

(6) The vacancy against which the respondents is so appointed would be adjusted against the subsequent vacancies falling in the promotion quota prescribed for the State Civil Service officers.

(7) Such appointment of the respondent would not affect the appointments that have already been made on the basis of the impugned Select List of December 1986/January 1987"

19. It is an admitted fact in this case that no Selection Committee meeting could be held during the year 1992-93, albeit for valid reasons and all the available vacancies, including unfilled vacancies from 1992 Select List, were taken into consideration in the meeting of the Selection Committee held on 26.10.1993 followed by preparation of a single Select List. This, we feel, was clearly against the law laid down by the Apex Court in Vipinchandra Hiralal Shah case (supra) and therefore, the Select List prepared by the said Selection Committee is not sustainable in law. The directions given by the Apex Court in para 13 (quoted in preceding paragraph) are no doubt given in the context of that particular case but, in our view, these do serve as guidelines for the respondents when they take up preparation of yearwise Select List for unfilled vacancies of 1991-92 and the vacancies for 1992-93 and 1993-94.

20. In the result, as far as the controversy relating to the Select List prepared after the meeting of the Select List on 26.10.1993 is concerned, we hold that, in view of the discussions in preceding paragraph, the said Select List is not sustainable in law and it will be necessary for the

official respondents to hold a meeting of the Review Selection Committee for preparation of Select Lists separately for the vacancies of the year 1991-92, 1992-93 and 1993-94, keeping in view the law laid down by the Apex Court in the cate of Vipinchandra Hiralal Shah."

A plain reading of portions of our judgment in the case of Ranjeet Singh Gathala as extracted above, will clearly indicate that this Bench of the Tribunal had, relying on the judgment of Hon'ble the Supreme Court in the case of Vipinchandra Hiralal Shah, held that clubbing of vacancies of two or more years is not permissible and separate yearwise Select Lists are required to be prepared. The controversy raised in OAs before us now is also about the same meeting dated 26.10.1993 of the Selection Committee and similar clubbing of vacancies and, therefore, the same finding is required to be followed. We, therefore, answer the second part of the issue No.1 in the manner that the Select List prepared by the UPSC after its meeting on 26.10.1993 by clubbing the vacancies is not sustainable in law and Review Selection Committee meeting is required to be held for preparation of seperate year-wise Select Lists.

5. The second issue relates to assessment of the service records of the applicants made by the Selection Committee of the UPSC in its meeting held on 26.10.1993 for preparing the Select List of RAS officers for promotion to IAS in terms of Promotion Regulations. The contention raised by the applicant in OA at Sl.No. 1 and 3 about non-placement of correct APRs for certain years before the said Selection Committee has been denied by the official respondents and it has been asserted by them that the correct APRs were placed before the Selection Committee for all the years. We have also perused the records produced before us and we find

nothing that can substantiate the allegations made by the applicant. It is not for us to make a roving enquiry about what APR was submitted by the applicants and what APR was finally reported upon by the Reporting Officer followed by remarks of Reviewing and Accpeting Authorities. The role of an individual officer just ends on submitting his APR for a particular year after filling in the details contained in the self appraisal part of the APR form. He cannot, in fact, have authentic information about how his APR was subsequently processed and reported upon/reviewed by the superior officers. We, therefore, accept the contention of the official respondents that proper APRs were placed before the Selection Committee of the UPSC in respect of all the officers whose names figured in the eligibility list.

As regards the allegations made by the applicants in respect of incorrect assessment made by the Selection Committee of the UPSC which met on 26.10.1993, it has been contended on behalf of respondent No.3 (UPSC) that the case of applicants had also been considered alongwith other eligible RAS officers on the basis of overall relative assessment of their service records. it is further contended that since sufficient number of officers senior to the applicants with same or better grading were available, the applicants could not to find a place in the Select List. It has also been stated that the instructions issued by the Govt. of Rajasthan for assessing the suitability of State Government employees are applicable only in respect of assessment to be made by the Departmental Promotion Committees convened by the State Government and, therefore, gradings 'Very Good' and 'Outstanding' could not have been treated as equivalent by the Selection Committee of the UPSC, which is guided by the specific provisions contained in the Promotion Regulations. It has been further stated that for the purpose of making selection to the IAS in terms of

Promotion Regulations, the Selection Committee adopts its own norms and yardstick and makes the assessment on the basis of entries made in the various columns of APRs of the eligible officers and, therefore, the grading given by the Reporting/Reviewing Officer in the APR of an officer may not necessarily be accepted and adopted by the Selection Committee. It is further stated that under the said Regulations, the Selection Committee is required to classify the eligible officers as Outstanding, Very Good, Good or Unfit, as the case may be, on an overall relative assessment of their service records. It has been specifically denied by respondents No.3, the UPSC, that the Selection Committee had committed any illegality or error of fact/law while classifying the officers as Outstanding, Very Good, Good or Unfit in preparing the Select List.

6. We have noted the rival contentions. we do not propose to consider their contentions because we have already found fault with the clubbing of vacancies and held that a Review Selection Committee meeting has to be convened for preparing the Select Lists on the basis of yearwise vacancies. Such Review Selection Committee may consider, these aspects while preparing the fresh Select Lists.

7. The applicant in OA at Sl.No.3 has also contended that Promotion Regulations should contain provisions for reservation in favour of officers belonging to SC/ST communities and in the absence of such reservation, the said provision is ultra-vires of Article 16(4) of the Constitution of India. In support of this averment, all that has been stated is that since promotion from State Civil Service to IAS is an appointment in another Service and mode of recruitment simply provides one additional source apart from direct recruitment and further that while there is a reservation in favour of the SC/ST communities in direct recruitment to IAS, but no reservation has been provided in

promotion quota which is 1/3 of the total cadre strength, therefore the Promotion Regulations must contain provisions for reservation in favour of the officers belonging to SC/ST communities. We are unable to accept such contentions. In any case, we are of the opinion that the desirability or otherwise of reservations comes under the domain of public policy and such public policy can be evolved by the Central Government only after indepth examination of various issues connected with such a policy. We also note that Promotion Regulations have stood the test of the time for all these years and cannot be interfered with by us. We, therefore, reject the prayer made by the applicant in OA at Sl.No.3 that Promotion Regulations of 1955 may be declared as ultra-vires of Article 16(4) of the Constitution of India.

8. In the circumstances, we dispose of these OAs by directing the official respondents to convene a meeting of the review Selection Committee for preparation of separate Select Lists for the vacancies for the years 1992-93 and 1993-94, keeping in view the law laid down by the Apex Court in the case of Vipinchandra Hiralal Shah (supra). We are not laying down any time frame for implementation of the direction but this may be done as expeditiously as possible, after revision of Seniority Lists of RAS officers, which exercise, we are told,, has already been undertaken.

9. Parties to bear their own costs.

(N.P.NAWANI)
Adm. Member

(B.S.RAIKOTE)
Vice Chairman

True Copy ATTESTED
22/1/2001.
Section Officer
Central Administrative Tribunal,
Jaipur Bench JAIPUR