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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. 35/94
T.A. No.

199

DATE OF DECISION 23.05.2000

Ranjeet Singh Gathala **Petitioner**

Mr. Saurabh Purohit, proxy counsel
to Mr. P.S. Asopa **Advocate for the Petitioner (s)**

Versus

Union of India and Ors. **Respondent**

Mr. U.D.Sharma, Mr. B.N.Purohit and
Mr. Virendra Lodha **Advocate for the Respondent (s)**

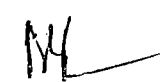
CORAM :

The Hon'ble Mr. JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *X*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *X*


(N.P. NAWANI)
Adm. Member


(B.S. RAIKOTE)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 23.05.2000

OA No.35/94

Ranjeet Singh Gathala S/o Shri Prithvi Singh, aged about 45 years, Managing Director, Rajasthan Rajya Bunkar Sangh, Jaipur.

.. Applicant

Versus

1. The Union of India through the Secretary, Ministry of Personnel, Pension and Public Grievances, New Delhi.
2. Union Public Service Commission through the Chairman, Dholpur House, New Delhi.
3. State of Rajasthan through the Chief Secretary, Govt. Secretariat, Jaipur.
4. Shri J.L.Modi, Deputy Commissioner (Adm.) Commercial Taxes Deptt., Jodhpur.
5. Shri Karni Singh Rathore, Registrar, University of Rajasthan, Jaipur.

.. Respondents

Mr. Saurabh Purohit, proxy counsel to Mr. P.S.Asopa, counsel for the applicant

Mr. U.D.Sharma, counsel for respondent No.2

Mr. B.N.Purohit, counsel for respondent No.3

Mr. Virendra Lodha, counsel for respondent No.4

CORAM:

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

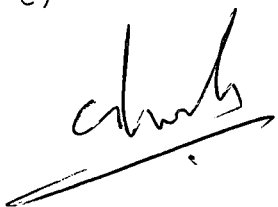
Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

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

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has made following prayers:

- "a) that the respondents 1 to 3 may kindly be directed to appoint the applicant in IAS cadre from 1.7.1993 with all consequential benefits;
- b) that the selection and appointment of the respondents 4 and 5 in IAS in pursuance to meeting of the Selection Committee held on 26.10.1993 may kindly be quashed and set aside.
- c) that the respondents 1 to 3 may kindly be directed to prepare the select list yearwise

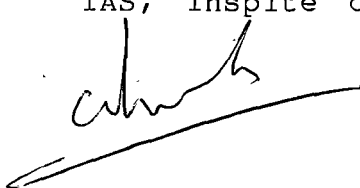


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for the year 1992-93, 1993-94 and 1994-95 on the basis of relevant 8 years record by treating the "Outstanding" grading of ACRs equivalent to grading of ACRs as "very good".

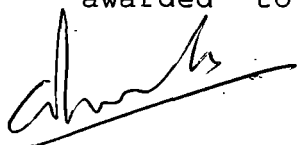
- d) any other appropriate order or direction which may be considered just and proper in the facts and circumstances of the case may kindly be issued in favour of the applicant."

2. The admitted facts of the case are that the applicant was selected for Rajasthan Administrative Service (RAS for short) in 1973 whereas respondent No.4 and 5 (for short pvt. respondents) i.e. S/Shri J.L.Modi and Karni Singh Rathore were so selected in 1974. The applicant got Selection Scale on 21.4.1988 while pvt. respondents got it in the year 1988-89. The applicant was thus senior to respondent No.4 and 5 in the RAS. Meeting of the Selection Committee for the year 1991-92 for 27 vacancies (including 4 under unforeseen category) was held between 23-25 March, 1992. The applicant as well as the pvt. respondents were in the list of suitable officers or zone of consideration. While all the three were graded 'Very Good', the applicant was selected and kept at Sl.No.26 of the Select List but pvt. respondents could not find a place in the Select List, being lower down in the eligibility list. From this Select List, appointment to the Indian Administrative Service (IAS for short) under the provisions of the IAS (Appointment by Promotion) Regulations, 1955 (Promotion Regulations for short) were made upto Sl.No.19 as and when vacancies occurred. No more promotions were made from this Select List because of the order of this Bench of the Tribunal in OA No.100/1993. The meeting of the Selection Committee could not be held for 1992-93. The next meeting of the Selection Committee was held on 26.10.1993 which, as per official respondents, took into consideration 25 vacancies (12 existing + 9 anticipated in next 12 months + 4 as 20% reserve/unforeseen). According to the applicant the vacancies should have been 18 (5 existing + 10 anticipated + 3 as 20% reserve). Applicant as well as the two pvt. respondents were again in the list of suitable officers. This time the applicant was not selected, having been graded 'Very Good' but pvt. respondents were selected, having been graded 'Outstanding'. The applicant is aggrieved on account of not being appointed in IAS, inspite of being in 1991-92 Select List with vacancies



being available and his alleged supersession by his juniors i.e. pvt. respondents in the subsequent Select List of 1993-94. Representations made were of no avail and hence this OA.

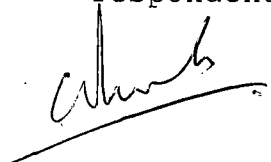
3. The contention of the applicant essentially is that once the 1992 Select List was finalized with 27 names, with the name of applicant at Sl.No.26, in accordance with Regulation 9(2), proviso III to Regulation 7(4) and proviso to Regulation 10 of the Promotion Regulations, the appointments to IAS should have been continuously given till vacancies were available within the validity of the said Select List and he would also have been so appointed. The applicant has claimed that Schedule 'A' filed with the OA will show that after appointment of officer at Sl.No.19 of the Select List, 8 more officers had retired from IAS cadre and, therefore, the entire Select List could have been exhausted and even if the name of Shri G.L.Verma was subsequently inserted at Sl.No.19A as per Court Orders, the applicant could have still been appointed, he being at Sl.No.26 of the Select List. It has also been claimed that the excuse that the respondents were prevented from giving further appointments from the 1992 Select List because of the interim and final orders of the Tribunal in OA No. 100/1993 is not tenable, since it was the duty of the respondents to make the selection of Shri J.P.Chandeliya, who was at Sl.No.20 of the Select List as "provisional" and after keeping a vacancy for Shri Chandeliya as provided in Promotion Regulations, the process of appointment from the Select List should have been continued as required under Promotion Regulation 9(1) and if this was done, all the remaining officers in the Select List, including the applicant, would have been promoted in IAS. In this connection the State Government should have kept in view the case of Ajit Singh Singhvi decided by this Tribunal on 9.3.1993 in TA No. 5 of 1992. As regards the second issue i.e. the subsequent Select List for the year 1993-94 prepared by the Selection Committee during its meeting on 26.10.1993, the contention of the applicant is that it has not been correctly prepared since the unfilled vacancies for the year 1991-92, vacancies for 1992-93 and those for 1993-94 were all clubbed, in contravention of Regulation 2(L), 5(1) and 5(6) of Promotion Regulations, enlarging the zone of consideration, thereby putting the applicant into disadvantage and pvt. respondents were graded 'Outstanding', against the grading of 'Very Good' awarded to him, even though the RAS Rules provide that



'Outstanding' and 'Very Good' categories are treated at par and the applicant and the pvt. respondents should have been treated on par and applicant being senior, he should have been in the 1993 Select List over the pvt. respondents and the pvt. respondents should not have been allowed to supersede as many as 54 to 56 officers, thereby denying them, including the applicant, their rightful place in the Select List of 1993. It has also been alleged that in order to help pvt. respondent No.5, the Committee examined ACRs for only 7 years so that the 'Average' ACR of pvt. respondents No.5 for the year 1985-86 does not come into consideration.

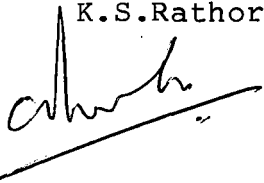
4. Replies have been filed by respondent No.2, the Union Public Service Commission (for short UPSC), respondent No.3, the State of Rajasthan and the pvt. respondent No. 5.

5. The respondents have controverted the averments made by the applicant and it has been contended by them that the Select List for the year 1991-92 prepared by the Selection Committee during its meeting on 23-25.3.1992 could not be operated beyond the appointment given to the officer at Sl.No.19 because Shri J.P.Chandeliya who was at Sl.No.20 of the said Select List, was served with a chargesheet on 9.2.1993 and filed an OA No.100/1993 before this Bench of CAT praying that he be promoted against vacancies occurring on 1.2.1993. Vide its interim order dated 16.3.1993, the Tribunal directed the respondents not to make any appointment prejudicial to the applicant. The said OA was decided on 18.8.1993 directing the answering respondents to consider his case and make necessary reference/recommendation either in view of the third proviso to Regulation 7(4) or under Regulation 9(1), 9(2) and 10 of Promotion Regulations. Action as per the said decision was initiated and a reference was made to the Central Government. The Select List could not be operated for further appointments to the IAS after 25.10.1993 in view of Regulation 7(4). It has been also stressed that 6 persons senior to the applicant in the said Select List (excluding Shri Chandeliya) have not been appointed and hence the applicant has no cause or grievance to approach the Tribunal. In reply to the applicant's averment that the name of Shri Chandeliya could have been made provisional and after keeping a vacancy for him, rest of the Select List could have been operated, it has been stated by the respondents that there was no provision in the Promotion



Regulations for 'deemed provisional' and keeping one vacancy unfilled for a person already having a place in the Select List. It has also been stated that the applicant was at Sl.No.26 in the Select List against 23 anticipated vacancies (excluding unforeseen vacancies) and even if Shri Chandeliya could have been treated as provisional, the applicant could not have been appointed. As regards the judgment of this Tribunal in Ajit Singh Singhvi's case, it was stayed by the Supreme Court and is of no help to the applicant. In any case, no appointment could be made till 18.8.1993 when the OA No.100/1993 was decided and thereafter a reference to Govt. of India was made and before a decision could be taken in the matter, the Select List expired on 25.10.1993, with the meeting of the next Selection Committee.

6. The contentions of the applicant with regard to incorrect preparation of the Select List for the year 1993-94 prepared by the next Selection Committee on 26.10.1993 have been emphatically denied by the respondents. It has been stated that the allegations that the zone of consideration was enlarged (by inflating vacancies and clubbing vacancies of 1991-92, 1992-93 and 1993-94 as alleged by the applicant) for facilitating the appointment of pvt. respondents are baseless and no clubbing of vacancies has been done. Though Regulation 5(1) provides that the Selection Committee shall ordinarily meet at intervals not exceeding one year, the use of word 'ordinarily' indicates that it is not a mandatory provision and there may be special or extraordinary situations, like seniority being sub-judice, stay orders etc., when the meeting cannot be held. Further, there is no specific provision in the Promotion Regulations and, therefore, no requirement for preparing two separate lists of 1992-93 and 1993-94 by the Selection Committee which met on 26.10.1993. As regards the plea that 'Outstanding' and 'Very Good' gradings should have been treated at par, it has been contended that the Selection Committee strictly followed the provisions of Regulation 5(4) by giving the officers appropriate classification like 'Outstanding', 'Very Good', 'Good' or 'Unfit'. The reference made by the applicant to Rajasthan State Rules is, consequently, of no relevance. The allegation that the Selection Committee had decided to consider the CRs of only 7 years with a view to avoid consideration of 1985-86 CR of Shri K.S.Rathore (respondent No.4) has been denied vehemently and it

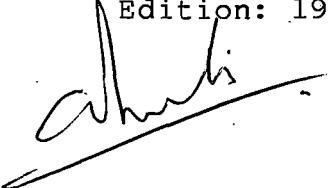


has been stated that the Committee had actually examined the service records as a whole to determine the overall grading. It has been added that in the previous years also, the officers have been graded as 'Outstanding' and assigned higher places in the Select List. Promotion of a junior person who gets higher grading than his senior is not a case of supersession as selection to IAS is purely based on merit and this cannot be called a supersession.

7. We have heard the learned counsel for the parties and have carefully examined the material on record as also the relevant rules/regulations.

8. It is quite clear that the main controversy in this case is whether it was correct for the State of Rajasthan to stop operating the Select List of 1991-92 after having referred the case of Shri J.P.Chandeliya to the Central Government as per directions issued on 18.8.1993 by this Bench of the Tribunal in OA No. 100/1993. The applicant's case is essentially that if a chargesheet was issued to Shri Chandeliya, his selection should have been declared provisional and after keeping a vacancy for Shri Chandeliya, the Select List should have been operated and the remaining officers, including the applicant in the Select List should have been appointed, especially when vacancies were available as shown in the Schedule to the OA. The respondents have controverted this by saying that upto 18.8.1993 the stay dated 16.3.1993 prohibiting the respondents from making any appointments prejudicial to the applicant in that OA was operating. Thereafter, on that OA having been decided on 18.8.1993, a reference was made to the Central Government and a decision was still awaited when the life of the said Select List expired with the meeting of the next Selection Committee on 26.10.1993.

9. We can now turn to the legal position with regard to the operation of the Select List for the year 1991-92. Regulations 5,7,8 and 10 of the Promotion Regulations and Rule 9 of the IAS (Appointment by Promotion) Rules (for short Promotion Rules) provide for the Select List and appointments therefrom. Relevant portions of the provision are extracted below [Source: R.N.Mishra's All India Services Manual, 5th Edition: 1997, Hind Publishing House, Allahabad]



"Regulation 5(5)

The list shall be prepared by including the required number of names, first from amongst the officers finally classified as 'Outstanding' then from amongst those similarly classified as 'Very Good'....

Provided that the name of any officer so included in the list, shall be treated as provisional if the State Government withholds the integrity certificate in respect of such officer or any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Government.

Regulation 7(4):

The Select List shall ordinarily be in force until its review and revision, effected under sub-regulation (4) of Regulation 5, is approved under sub-Regulation (1) or, as the case may be, finally approved under sub-regulation (2):

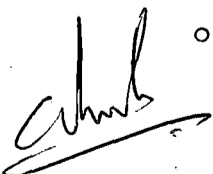
Provided that no appointment to the service under Regulation 9 shall be made after the meeting of the fresh Committee to draw up a fresh list under Regulation 5 is held.

Regulation 8(1):

Appointments of the members of the State Civil Service from the Select List to posts borne on the State Cadre, or the Joint Cadre of a group of States, as the case may be, shall be made in accordance with the provisions of Rule 9 of the Cadre Rules. In making such appointments, the State Government shall follow the order in which the names of such officers appear in the Select List.

Rule 9(1):

Appointment of the members of the State Civil Service to the Service shall be made by the Central Government on the recommendation of the State Government in the order in which



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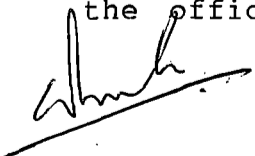
the names of the members of the State Civil Service appear in the Select List from the time being in force.

Regulation 10:

Notwithstanding anything contained in these Regulations or recommendations made by the State Government concerned under Rule 9(1), the Central Government may not appoint any person whose name appears in the Select List, if it is of the opinion that it is necessary or expedient so to do in public interest."

10. A plain reading of the relevant provisions of the Promotion Rules and Promotion Regulations as extracted above will make certain things very clear. First, as provided in Regulation 8(1) that appointments of the members of the State Civil Service from the Select Listshall be made in accordance with the provisions of Rule 9 of the Cadre Rules. In making such appointments, the State Government shall follow the order in which the names of such officers appear in the Select List. Secondly, Regulation 9(1) further provides that the appointments of the members of the State Civil Service to the Service shall be made by the Central Government on the recommendations of the State Government in the order in which the names of the members of the State Civil Service appear in the Select List for the time being in force. Thirdly, the proviso to Regulation 5(5) provides that the name of any officer so included in the Select List, shall be treated as provisional, if the State Government withholds the integrity certificate in respect of such officer or any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State government (emphasis provided).

11. A combined reading of these provisions makes it clear that appointments from the Select List, for the time being in force, have to be made strictly in accordance with the order in which names of State Civil Service officers appear in the Select List, provided that any officer, whose name has been made provisional, will not get appointed unless the UPSC issues an unconditional certificate, meaning thereby that the name of the officer is no longer provisional or conditional. In the



present case, it appears that the name of Shri Chandeliya was in the process of being made provisional but because of the interim order dated 16.3.1993 of the Tribunal, this processing could not take place upto 18.8.1993 and when the final decision was taken in the said OA on 18.8.1993, the State Government was asked to make a reference to the Central Government. The State Government accordingly made a reference but before any decision could be taken on making the name of Shri Chandeliya provisional (or otherwise), the validity of the Select List itself expired within a couple of months on 25.10.1993. On the other hand, we find no specific Regulation that could provide for a contingency like the one in the present case, where the name of an officer whose case is under consideration for being declared provisional and without a decision taken on that case, the next person can be appointed. In the circumstances we agree with the contentions of the official respondents that it was just not possible to further operate the said Select List unless the name of Shri Chandeliya was either declared provisional or cleared. We, therefore, hold that non-operation of the said Select List after appointment of Shri P.C.Balai, who was at Sl.No.19 was inevitable in the peculiar circumstances of this case and we are in no position to issue a direction that the applicant should be appointed to IAS on the basis of the Select List for the year 1991-92.

12. It has also to be noted that the applicant was at Sl.No.26 of the Select List. Appointments had been made upto Sl.No.19. No decision was taken about Sl.No.20. There were, therefore, 6 more officers above the applicant (excluding Shri Chandeliya), who were also not appointed to IAS due to non-operation of the Select List due to interim and final orders of the Tribunal and reference having been made by the State Government to the Central government regarding the case of Shri Chandeliya. Applicant's grievance would have arisen only if his junior i.e. the officer at Sl.No.27 in the Select List had been appointed to IAS with the exclusion of his name or at best if the officer at Sl.No.25 was appointed and the applicant was not being given appointment. In view of this, it makes it even more difficult for us to direct the official respondents to appoint the applicant in IAS from 1.7.1993 as prayed by the applicant and we are not able to persuade ourselves to intervene in the matter, especially when there are six other officers in the said Select List (other than Shri Chandeliya) who could also

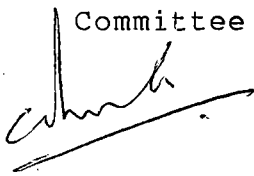


not be appointed to IAS due to expiry of the Select List.

13. The learned counsel for the applicant has cited the decision of this Tribunal in the case of Sri P.K.Lambodaran Nair v. Union of India and ors. reported in 1996 (34) ATC 587 (CAT) in which it was held that it is the obligation of the Central Government to appoint to IPS a Select List candidate recommended by the State Government. This case is of no help to the applicant as in the case cited, appointment was not made by the Central Government inspite of the recommendation having been made by the State Government whereas in the present case, no recommendation regarding appointment of the applicant to IAS was ever made by the State Government. It is well settled law that mere inclusion of the name in the Panel/Select List does not create any right in favour of the concerned person. while dealing with the promotion to Indian Police Service (Promotion Regulations being similar to IAS) in the case of Kehar Singh v. UPSC and ors., 1995(4) SLR 543, the Principal Bench of this Tribunal had held that "The Regulations do not make it obligatory on the part of the State Government to seek appointment of the empanelled officer. Under the Scheme of Regulations, the panel either fully or wholly becomes inoperative after the fresh panel has been formed. In view of these provisions, it is not possible to hold that by mere empanelled (sic empanelment) a right is acquired by the empanellment (sic empanelled) officer for promotion to the IPS".

14. In view of the above discussions, we come to the conclusion that there is no justification for issuing any direction to the official respondents to now resume the operation of the Select List for the year 1991-92 and appoint the applicant to the IAS on the basis of the said Select List.

15. The other controversy in this case relates to the Select List prepared by the Selection Committee which met on 26.10.1993. In this connection, the applicant has raised three issues. Firstly, that the unfilled vacancies for the years 1991-92 and vacancies for the years 1992-93 and 1993-94 could not have been clubbed and the Committee should have prepared separate Select Lists for the left over vacancies of 1991-92 and those of 1992-93 and 1993-94. Secondly, the Committee should not have given the grading of 'Outstanding' to



any officer in view of the provision in the Rajasthan Rules treating 'Outstanding' and 'Very Good' at par. The third is rather an allegation that the Selection Committee considered only 7 years' ACR so that the ACR of the year 1985-86 in respect of pvt. respondent No. 5, which was allegedly 'Average' was not required to be considered by the Selection Committee. We can take the second and third contentions first, for the sake of convenience. In this connection, we must look at Regulation 5(4) of the Promotion Regulations which provides that "The Selection Committee should classify the eligible officers as Outstanding, Very Good, Good or Unfit as the case may be, on an overall assessment of their service records." In the case of R.S.Dass v. Union of India reported in AIR 1987 SC 593, the Apex court has upheld the validity of Regulation 5 of the Promotion Regulations. It has been asserted by the learned counsel for the UPSC that the Selection Committee strictly followed the provision and the procedure laid down and classified the eligible officers accordingly. We are, therefore, satisfied that the Selection Committee did follow the procedure as laid down in the Regulations and hold that it was not required to follow the rules relating to RAS in this regard which are applicable with regard to RAS only. We, therefore, reject the contention of the applicant that nobody could have been given the 'Outstanding' grading. The third contention was that in order to help pvt. respondent No.5, the ACRs of only 7 years have been considered by the Selection Committee. We have on record vehement denial of the UPSC wherein it has been stated that the Selection Committee had considered the case of the eligible officers, including the said respondent strictly in accordance with the provisions of Regulation 5(4) by which the assessment on the basis of overall service records was required to be made. We have no reasons to disbelieve a Constitutional body like UPSC and the allegations made by the applicant in this regard are rejected.

16. We can now come to the issue regarding combining or clubbing of the unfilled vacancies of 1991-92 and those of 1992-93 and 1993-94 for the meeting of the Selection Committee held on 26.10.1993. We must make it clear at this stage itself that the unamended Promotion Regulations, as it stood till 31.12.1997 is applicable as far as the years in contention are concerned. The Government of India, in the



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Ministry of Personnel had amended Regulation 5 of the Promotion Regulations vide their notification No.14015/52/96-AIR (I) A dated 31.12.1997 and brought it into force w.e.f. 1.1.1998. We make it clear that we would not be taking into consideration the amended provisions as those have come into operation only from 1.1.1998 and would be examining the controversy relating to clubbing against the provisions of the unamended Regulation 5 of the Promotion Regulations and the law which has developed in that regard. It will be useful to extract the relevant portions of Regulation 5 as it stood prior to 1.1.1998:

5. Presumption (sic Preparation) of a list of suitable officers- (1) Each Committee shall ordinarily meet at Intervals not exceeding one year and prepare a list of such members of the State Civil Service, as are held by the members of to be suitable for promotion to the Service. The number of members of the State Civil Service to be included in the list shall be calculated as the number of substantive vacancies anticipated in the course of the period of 12 months, commencing from the date of preparation of the list, in the posts available for them under Rule 9 of the Recruitment Rules plus twenty per cent of such number or two, whichever is greater.

(2) The Committee shall consider for inclusion in the said list, the cases of members of the State Civil Services in the order of seniority in that service of a number which is equal to (three) times the number referred to in sub-regulation (1):

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Provided also that the Committee shall not consider the case of a member of the State Civil Services unless on the first day of April of the year in which it meets he is substantive in the State Civil Service and has completed not less than eight years of continuous service

admitted

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(whether officiating or substantive) in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government.


xxx xxx xxx xxx

(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:

xxx xxx xxx xxx

(6) The list so prepared shall be reviewed and revised every year."

17. 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 years will be against the principles 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 Vipin Chandra 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 preparation 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 occurring 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.

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(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 respondent 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."

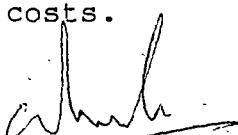
19. It is an admitted fact in this case that no Selection Committee meeting could be held during the year 1992-93, albeit for valid reasons and all the available vacancies, including unfilled vacancies from 1992 Select List, were taken into consideration in the meeting of the Selection Committee held 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 Lists for unfilled vacancies of 1991-92 and the vacancies for 1992-93 and 1993-94.

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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 paragraphs, 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 years 1991-92, 1992-93 and 1993-94, keeping in view the law laid down by the Apex Court in the case of Vipinchandra Hiralal Shah.

21. We, therefore, dispose of this Original Application with a direction to the official respondents to hold Review Selection Committee meeting for preparation of separate Select Lists for the vacancies of the years 1991-92, 1992-93 and 1993-94 as per law laid down by the Apex Court in the case of Vipinchandra Hiralal Shah case (supra). We are not laying down any time frame but this should be done as expeditiously as possible after revision of seniority lists of RAS officers, which exercise, we are told, is already underway.

In the circumstances, there will be no order as to costs.


(N.P.NAWANI)

Adm. Member


(B.S.RAIKOTE)

Vice Chairman