

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR ~~XXXXXX~~ BENCH, ~~XXXXXX~~ JAIPUR

O.A. No. 509/1996
T.A. No.

199

DATE OF DECISION : 3/6/2002

N.R. Yadav

Petitioner

Mr. P.P. Mathur, holding brief .. Advocate for the Petitioner (s)
for Mr. R.N. Mathur

Versus

Union of India and Ors.

Respondents

Mr. R.L. Agarwal, holding brief .. Advocate for the Respondent (s)
for Mr. Bhanwar Bagri Nos. 1.

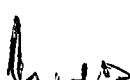
None is present for respondents Nos. 2 and 3.

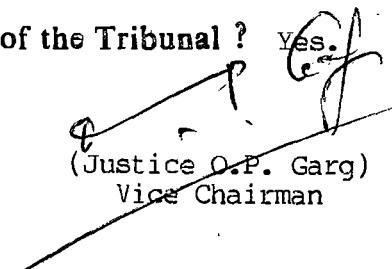
CORAM :

The Hon'ble Mr. Justice O.P. Garg, Vice Chairman

The Hon'ble Mr. A.P. Nagrath, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? No.
2. To be referred to the Reporter or not ? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes.
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes.


(A.P. Nagrath)
Adm. Member


(Justice O.P. Garg)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH : JAIPUR

Date of order : 3/6/2002

O.A. No. 509/1996

N.R. Yadav son of Shri Rawat Ram Yadav aged around 47 years C/o. Shri H.R. Dangi, Civil Lines, Jaipur, presently holding the post of Additional Divisional Commissioner, Udaipur.

... Applicant.

versus

1. Union of India through Secretary, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training, North Block, New Delhi.
2. The State of Rajasthan through Secretary, Department of Personnel, Government of Rajasthan, Secretariat, Jaipur.
3. Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi.

... Respondents.

Mr. P.P. Mathur, Adv., Brief holder for Mr. R.N. Mathur, Counsel for the applicant.

Shri R.L. Agarwal, holding brief for Mr. Bhanwar Bagri, Counsel for the respondent No. 1.

None is present present for respondents Nos. 2 and 3.

CORAM:

Hon'ble Mr. Justice O.P. Garg, Vice Chairman

Hon'ble Mr. A.P. Nagrath, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice O.P. Garg)

The applicant, who was one of the senior members of Rajasthan Administrative Service (RAS, for short), was selected for appointment on promotion to Indian Administrative Service (IAS,



for short) by the Selection Committee which held its meeting at Jaipur on 23.01.95. He is aggrieved on account of the denial by the respondents to promote him and the inaction exhibited by them in his matter. The applicant has, therefore, approached this Tribunal by means of the present O.A. under Section 19 of the Administrative Tribunals Act, 1985, claiming the relief that the circular No. 14015/54/95-AIS(I) dated 12th January, 1996, issued by the Department of Personnel and Training, Government of India, be quashed as being against the statutory provisions and the respondent No. 2, State of Rajasthan, be directed to appoint him in IAS from the select list dated 23.01.95, hereinafter referred to as 1995 select-list.

2. The promotion of the members of the State Civil Service to IAS is governed by the provisions of the **Indian Administrative Service (Appointment by Promotion) Regulation, 1955** (hereinafter called "Promotion Regulations"). It is an indubitable fact that the Committee to make selection as contemplated under Regulation 3 was constituted for the purpose of promotion to Rajasthan Cadre of IAS for the period 1994-95 and its meeting was held at Jaipur on 23.01.95. The select list prepared by the Selection Committee was duly approved by the Union Public Service Commission (UPSC, for short) on 16th March, 1995 pursuant to the provisions of Promotion Regulation 7(2). The Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training (DOP&T, for short), issued a letter dated 22.03.1995 (Annexure A/1) which indicates that 19 officers from the RAS were selected for appointment on promotion to IAS cadre of Rajasthan. The name of the applicant finds place at serial No. 19. The names of the applicant as well as Shri G.L. Verma (shown at sl. No. 6) were included in the select-list "provisionally" subject to clearance of the departmental enquiries pending against them. It

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is common case of the parties that the departmental enquiries which were initiated against the present applicant as well as Shri G.L. Verma terminated in their favour. The officers who occupied their respective positions in the select list from sl. Nos. 1 to 16, including Shri G.L. Verma, whose name was included provisionally, have been appointed to IAS. S/Shri Ramesh Kumar Jain and S.S. Rajvi and the present applicant, Shri Naranga Ram Yadav (SC), were not appointed within a period of twelve months commencing from the date of the meeting of the Selection Committee, i.e. 23.01.95. Shri S.S. Rajvi, who was shown at sl. No. 18, filed O.A. No. 304 of 1996 before this Bench in which certain interim orders were passed. It is not disputed that "no deterioration" certificates in respect of Shri R.K. Jain (at sl. No. 17) and Shri S.S. Rajvi (at sl. No. 18) were issued pursuant to the order dated 06.11.99 passed by this Tribunal in O.A. No. 304/1996. It is common case of the parties that both of them have been appointed to IAS. Thus, the applicant who is the last person in the select list has been left out and process for his promotion to IAS has not been initiated after completing the requisite formalities. The applicant, it appears, made a representation to the Secretary, DOP&T, Government of India, New Delhi, an undated copy of which is Annexure A/2. It did not evoke any response and this is how the applicant is before us for the reliefs mentioned above.

3. The grievance of the applicant projected in the present O.A. and the main plank on which he has rested the relief claimed is that he is entitled to be appointed to IAS against any one of the fortuitous or unforeseen vacancies either occurring within the period of 12 months commencing from the date of the meeting, i.e. 23.01.95 or thereafter as the select list would continue to remain operative till the next meeting is held. His grouse is that



inspite of the fact that no meeting of the Selection Committee has been convened after 23.01.95 and 1995-list still holds good for the purpose of appointment, he has been unlawfully and unjustifiably denied the benefit of promotion even though the result of the departmental enquiries has gone in his favour. According to the applicant, there appears to be no justification why he should not be appointed on promotion to IAS particularly when all other officers though belonging to the reserve or wait list, who were placed above him, have been promoted. He has also made certain averments and put forth challenge about the disturbance of his seniority in RAS.

4. On behalf of Union of India, respondent No. 1, a detailed reply has been filed which is prefaced by the submission that since Union of India had acted only in accordance with the rules on the subject, as clarified in circular No. 14015/54/95/AIS(I) dated 12.01.96, no injustice was meant to be done to the applicant. It is maintained that the grievance of the applicant against non-promotion to IAS cadre from the 1995 select list, in which his name was not included against any substantive vacancies anticipated in the cadre during the period of twelve months of the meeting of the Selection Committee is not governed by the extant rules and regulations on the subject. The reply further went on to state that the number of substantive ~~vacancies~~ vacancies which were reckoned by the Selection Committee for the period of next twelve months, was 16 only; the number of persons to be included in the select list was computed as 19 by virtue of the provisions contained in Regulation 5(1), by adding 20% of the vacancies as waiting list part of the select list. Thus, according to the respondent No. 1, the select list was prepared for filling up only 16 substantive vacancies in the promotion quota of State cadre during the period from 23.01.95 to 22.01.96



and the officers whose names appeared at serial Nos. 17, 18 and 19 were included towards filling up of any unforeseen/fortuitous vacancies that might arise in the State cadre during the relevant period due to voluntary retirement of a senior promotee officer ahead of his normal superannuation/sudden demise of such an officer, or due to upward revision of the promotion quota during the currency of the select list on account of any cadre review that might take place at the instance of the State Government under the Rules. It has further been pleaded that the name of the applicant was included in the list "provisionally" subject to final outcome of the disciplinary proceedings then pending against him. It is asserted that in terms of the second proviso of Rule 9 (1), the applicant could not be considered for promotion to IAS unless and until his name was made "unconditional" in the select list by the UPSC on the recommendation of the State Government after the close of the disciplinary proceedings pending against him. It is further explained that the applicant could have been considered for appointment against the third unforeseen/fortuitous vacancy that might have arisen in the State cadre during the relevant period, but since no such vacancy arose during the relevant period, he could not be appointed. It has been clarified that S/Shri G.L. Verma (at sl. No.6) and K.P. Singhal (at sl. No. 11) were actually appointed on promotion to IAS only by virtue of their position and placement in the 1995 select-list though the deemed date of their appointment was changed. The vacancy that accrued on 31.01.96, i.e., within a period of twelve months of the date of the meeting of the Selection Committee, was utilised for the appointment of Shri Keshri Singh, another RAS officer, who was included in the 1993 select list by the Review Selection Committee for Rajasthan pursuant to the directions of Hon'ble Supreme Court. The right of the applicant for seeking appointment to IAS merely because his name finds place in the select list has been denied

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primarily on the ground that no fortuitous/unforeseen vacancy became available to the applicant within twelve months of the commencement of the 1995 select-list.

5. The State of Rajasthan, respondent No.2, has filed a separate reply, which primarily toes the line adopted by the Union of India. It is asserted that the name of the applicant came to be included against 20% of the substantive vacancies meant for meeting the fortuitous/unforeseen vacancies during the period of 12 months for which a select list was prepared and since no fortuitous vacancies arose during the duration of 12 months, the officers whose names appeared against 20% added vacancies (to be termed as reserve candidates) could not find a berth in IAS. It is, however, admitted that on account of operation of the stay order passed by the High Court in S.B. Civil Writ Petition No. 2545 of 1996 filed by one Shri D.K. Vijay, an RAS officer, against the convening of the meeting, the Selection Committee has not met since after 23.01.95.

6. Shorn of all superfluities, the stand taken by the Union of India as well as the State Government, in short appears to be that the select list was prepared in the meeting of the Selection Committee held on 23.01.95 for filling up 16 substantive vacancies and addition of the three names at sl. Nos. 17, 18 and 19 was to cover up the unforeseen/fortitous eventualities which could arise for variety of reasons during the period of 12 months, i.e., from 23.01.95 to 22.01.96 and since there arose no fortuitous or unforeseen vacancy during the above period of twelve months, the applicant could not be considered for appointment on promotion to IAS and that he cannot be considered for such promotion against the vacancy occurring after 22.01.96.

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7. A rejoinder has been filed by the applicant asserting that S/Shri R.K. Jain and S.S. Rajvi, whose names were shown at sl. Nos. 17 and 18 in the select list (i.e., so called wait-listed or reserve officers), have been promoted to IAS vide order dated 03.12.99. According to the applicant, appointment of S/Shri R.K. Jain and S.S. Rajvi in the year 1999 is against the categorical stand taken by the respondents that appointments to IAS could not be made against the vacancies which occurred after 22.01.96, i.e., after twelve months commencing from the date of the meeting. The applicant has lamented in the rejoinder that there appears to be no reason why his name for promotion to IAS was not processed/recommended after termination of the departmental enquiry in his favour. He has asserted that serious injustice has been done to him by having been discriminated in the matter of promotion, as according to him, his name could also be recommended in the same manner as it was done in the case of S/Shri R.K. Jain and S.S. Rajvi.

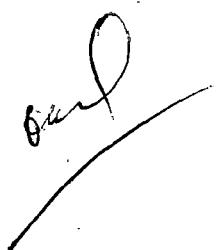
8. We have heard Shri P.P. Mathur appearing on behalf of the applicant and Shri R.L. Agarwal holding brief for Mr. Bhanwar Bagri, Counsel for the Union of India, respondent No. 1, at considerable length. None appeared on behalf of the State of Rajasthan, respondent No. 2 and Union Public Service Commission, respondent No. 3.

9. To begin with, we may clear the decks with regard to the controversy raised by the applicant about his seniority in RAS. The applicant has asserted that the seniority in RAS is arranged on the basis of promotion and an incumbent, who is in the super-time scale, gets precedence in seniority in comparison to those, whose names find place in the selection scale of RAS. The true and correct seniority list of RAS officers, according to the

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applicant, was not placed before the Selection Committee. According to him, if he was given promotion in the super-time scale of RAS, his seniority was to be reckoned over and above those who belong to SC/ST officers who have not gained the experience of 20 years of service. The applicant reiterates that by not convening the DPC for grant of super-time scale, he has been put to a disadvantageous position. Be that as it may, the Selection Committee constituted under Regulation 3 of the Promotion Regulations, met on 23.01.95. It considered the case of the applicant with reference to the list of the members of RAS falling within the zone of consideration as duly forwarded by the State Government. The correctness or otherwise of the placement of the applicant in the seniority list of RAS forwarded to the Commission cannot be disputed or challenged by the applicant at this stage. The dispute of inter se seniority between RAS officers including the applicant is not relevant and germane to the relief claimed in the present O.A. The moot point for consideration and determination involved in the present case is whether on the basis of the fact that the name of the applicant finds place in the 1995 select-list prepared in the meeting of the Selection Committee held on 23.01.95, he is entitled to be promoted to IAS against the vacancy which occurred after 22.01.96. The averments with regard to the seniority in the RAS cannot be sifted or gone into by this Tribunal. The remedy of the applicant, if he is aggrieved of his faulty interpolation in the seniority list of the members of RAS, lies elsewhere. This Tribunal certainly has no jurisdiction or competence to decide the question of seniority of the applicant in RAS. The dispute raised by the applicant with regard to his placement in the seniority list of RAS is uncalled for and otiose.

10. As said above, the whole controversy which has been raised

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in this O.A. has to be gauged and determined with reference to the Promotion Regulations which have come into being with a view to provide avenues and opportunities for advancement and progression in career for the members of the State Civil Service as well as to avoid stagnation and to give due recognition to their merit and excellence in the discharge of their public duties. The promotion regulations are virtually the complete code or apparatus providing a mechanism for appointment on promotion to IAS from amongst the members of the State Civil Service. With a view to make selection, regulation 3 provides for the constitution of the Committee. The manner in which the list of suitable officers is to be prepared has been laid down in promotion regulation 5, which reads as follows:

"5. 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 them 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 percent of such number or two, whichever is greater.

Explanation:

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

Provided

Provided

Provided

Provided

Explanation:

(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 April of the year in which it meets:

Provided



Provided

(4) The Selection Committee shall 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.

(5) The list shall be prepared by including the required number of names, first from amongst officers finally classified as "Outstanding" then from amongst those similarly classified as "Very Good" and thereafter from amongst those similarly classified as "Good" and the order of the names inter-se within each category shall be in the order of their seniority in the State Civil Service.

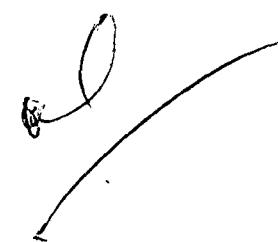
Provided that the name of a officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal, are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government."

Explanation I :

Explanation II :

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

The select list prepared by adopting the procedure provided in regulation 5 by the Selection Committee is required to be forwarded for consultation with the UPSC alongwith records of all the members of the State Civil Services included in the list, records of all the members of the State Civil Services, who are proposed to be superseded and the observations of the State Government on the recommendation of the Selection Committee (Regulation 6). A copy of the list forwarded to the Commission shall also be sent to the Central Government by the State Government and the Central Government in its turn shall send their observations on the recommendations of the Committee to the Commission (newly added Regulation 6-A). How the select list is to be operated, the period during which it is to remain alive and in what circumstances, changes can be made in the select list by removing the name of a selectee are the matters, which are governed by Regulation 7, which runs as follows:



"7. Select List.

(1) The Commission shall consider the the list prepared by the Committee alongwith -

(a) the documents received from the State Government under regulation 6 ;

(b) the observations of the Central Government, and unless it considers any change necessary approve the list;

(2) If the Commission considers it necessary to make any changes in the list received from the State Government, the Commission shall inform the State Government of the changes proposed and after taking into account the the comments, if any of the State Government, may approve the list finally with such modification, if any, as may, in its opinion, be just and proper.

(3) The list as finally approved by the Commission shall form the Select List of the members of the State Civil Service.

Provided that if an officer whose name is included in the select list is, after such inclusion, issued with a charge sheet or a charge sheet is filed against him in a Court of Law, his name in the select list shall be deemed to be provisional.

(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):

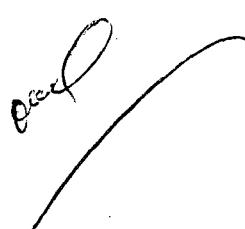
Provided that no appointment to the service under regulation 9 shall be made after the meeting of fresh Committee to draw up a fresh list under regulation 5 is held.

Provided that in the event of any new Service or Services being formed by enlarging the existing State Civil Service or otherwise being approved by the Central Government as the State Civil Service under the clause (j) of sub-regulation (1) of regulation 2, the select list in force at the time of such approval shall continue to be in force until a new list prepared under regulation 5 in respect of the members of the new State Civil Service, is approved under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2):

Provided further that in the event of a grave lapse in the conduct or performance of duties on the part of any member of the State Civil Service included in the Select List, a special review of the select list may be made at any time at the instance of the State Government and the Commission may, if it so thinks fit, remove the name of such members of the State Civil Service from the select list.

(5)"

Appointments to IAS from the select list are governed by Regulation 9. In view of the importance of the provision, this



regulation is extracted as below for the sake of convenience:

"9. Appointments to the Service from the Select List:

(1) Appointment of members of the State Civil Service shall be made by the Central Government on the recommendation of the State Government in the order in which the names of members of the State Civil Service appear in the select list for the time being in force:

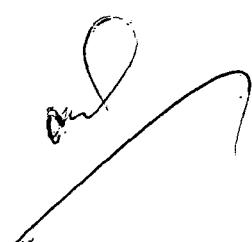
Provided that the appointment of members of the State Civil Service shall be made in accordance with the agreement arrived at under clause (b) of sub-rule (3) of rule 8 of the Recruitment Rules in the order in which the names of the members of the State Civil Service occur in the relevant parts of the select list for the time being in force:

Provided further that the appointment of an officer, whose name has been included or deemed to be included in the select list provisionally under proviso to sub-regulation (5) of Regulation 5 under proviso to sub-regulation (3) of Regulation 7, as the case may be, shall be made after the name is made unconditional by the Commission on the recommendations of the State Government during the period the select list remains in force. While making an appointment of an officer junior to select list officer whose name has been included or deemed to be included provisional in the select list one post will have to be kept vacant for such a provisionally included officer.

Provided also that in case where a select list officer whose turn for appointment has come, has expressed his unwillingness for appointment to the service and the State Government concerned inform the Central Government accordingly, his juniors from the select list shall be appointed without keeping any post reserved for such an officer. He shall have no claim for appointment to the service from that select list.

(2) It shall not ordinarily be necessary to consult the Commission before such appointments are made, unless during the period intervening between the inclusion of the name of a member of the State Civil Service in the select list and the date of the proposed appointment there occurs any deterioration in the work of the member of the State Civil Service or there is any other ground which, in the opinion of the State Government or the Central Government, is such as to render him unsuitable for appointment to the service."

Inspite of the recommendations made by the State Government under regulation 9(1) and unmindful of various provisions made in the Regulations, the Central Government has still the power under Regulation 10 not to appoint any officer whose name appears in the select list, if it is of the opinion that it is necessary or expedient to do so in the public interest. Such a decision,

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however, shall be taken by the Central Government in consultation with UPSC.

11. In the conspectus of the above regulations, now let us examine the facts of the present case. Undoubtedly, a meeting of the Selection Committee as constituted under regulation 3 met on 23.01.95 for preparing a select-list of 19 officers. This figure of nineteen included sixteen substantive vacancies anticipated in the course of the period of twelve months commencing from the date of the meeting. The remaining three were intended to take care of the fortuitous or unforeseen vacancies which may have occurred on account of unexpected events, such as resignation by a senior officer or his untimely death or revision of cadre strength etc. The number of officers in the zone of consideration was three times (i.e., $19 \times 3 = 57$) as contemplated in Regulation 5(2). The learned counsel for the applicant did not challenge or dispute the vacancy position. He, however, made a passing submission that the calculation of the vacancies is to be done with reference to 1st day of April of the year in which the Selection Committee meets. This submission which is perhaps grounded on third proviso to sub-regulation (2) of Regulation 5 has been stated simply to be rejected as the third proviso makes a reference to the 1st day of April with a view to determine the completed continuous service of not less than eight years of a member of the State Civil Service. This proviso simply means that the case of a member of a State Civil Service, who has not completed eight years of continuous service on 1st day of April of the year in which the Selection Committee meets shall be outside the zone of consideration of officers for appointment to IAS. Sub-regulation (3) of regulation 5 further makes the position clear. It provides that the Selection Committee shall not consider the case of the members of the State Civil Service who have attained

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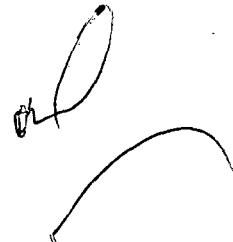
the age of 54 years on the 1st day of January of the year in which it meets. The two provisos to regulation 5(3) are also directed to achieve the above object. They have nothing to do with the question of determination of the number of substantive vacancies by the Selection Committee. Regulation 5(2) third proviso and regulation 5(3) with its two provisos specify the age-requirement as well as prescription of minimum length of continuous service of a member of the State Civil Service.

12. On behalf of the respondent No.1, it was asserted that the select-list should be prepared with reference to the vacancies available on the first day of January of the year concerned as has been held by the Hon'ble Supreme Court in the case of T.N. Administrative Service Organisation vs. Union of India and Ors., AIR 2000 SC Page 1898. We have considered the aforesaid decision and find that in the said case, the amendment notified on 31.12.97, effected in regulation 5(1) of promotion regulations, came to be considered. Under the unamended provision 5(1) as it stood prior to 31.12.97, the number of the members of the State Civil Service to be included in the select-list was to be calculated on the basis of substantive vacancies anticipated in the course of a period of twelve months commencing from the date of the preparation of the list. This proviso was changed by virtue of amendment by providing that the number ^{or} _{of} vacancies shall not exceed the substantive vacancies as on the 1st day of January of the year in which the meeting is held. It was challenged before the Hon'ble Supreme Court in the case aforesaid. It was noted by the Apex Court that the changes have been brought about to avoid the delay in making the selections as it was extremely difficult to ascertain with certainty/finality the number of anticipated vacancies since the State Governments had the power to give extension of service upto six months beyond the retirement



to a number of IAS officers. It was also averred before the Apex Court that many a time such anticipated vacancies did not fructify and a State Civil Service officer included in the select-list could not be sure of his appointment and this ultimately led to a plethora of litigation. The amendment, it was asserted, was brought about with a view to avoid such difficulties that preparation of the select-list is now confined to the vacancies available as on the 1st day of January of the year concerned. After taking into consideration the rival contentions, the Apex Court held that the amendment involved a matter of policy, which would be uniformly applicable after the amendment. Further, the vacancies which are not filled up in one year will automatically get carried forward to the next year if they become actual vacancies by them. Therefore, challenge of the petitioners that the amendment is arbitrary and violative of Articles 14 and 16 of the Constitution of India, was not accepted. From the decision aforesaid, it is clear that the amendment shall be uniformly applicable with regard to the substantive vacancies to be included as on 1st January of the year in which the meeting of the Selection Committee takes place. The amendment has been held to be prospective in nature and does not affect the determination of the vacancy prior to 31.12.97 with reference to the unamended provisions of regulation 5(1). We, therefore, proceed on the clear premise that during the period 1994-95 for which a meeting of the Selection Committee was convened on 23.1.95, the number of substantive vacancies plus 20% of such number was correctly calculated as 19 (16+3) in terms of Regulation 5(1). The applicant was the last candidate in the select list having been placed at the 19th position.

13. The whole controversy revolves round the question whether the applicant can be appointed against the vacancy which occurred after twelve months commencing from the date of meeting. The



stand taken by the respondents, as summarised above, is that the select-list cannot be used to fill up the vacancies that occur outside the period considered by the Selection Committee since the select-list was not designed to fill up such vacancies arising in the State cadre after a period of twelve months from the date of the meeting of the Selection Committee. The fall out of this submission is that the list can be operated during the validity period to fill up only those vacancies that were anticipated and taken into account in the preparation of the list. According to the respondents, the applicant, included in the select list, can aspire to be appointed to IAS against the vacancy which occurred upto 22.01.96 and the vacancies that occurred after the said date cannot be made available to him. This aspect of the matter takes us to resolve the basic question whether the 1995 select-list continues to be operative and embark upon the reason why subsequent Committee(s) has/have not met at yearly intervals as required under Regulation 5(1) which enjoins that each Committee shall ordinarily meet at intervals not exceeding one year and to prepare a list of such members of the State Civil Service as are held by them to be suitable for promotion to the service. A combined study of the provisions of regulations 5 and 7 as extracted above, makes it clear that the Committee has to meet every year for the purpose of preparation of a list of the members of the State Civil Service who are found suitable for promotion to IAS. The Apex Court in the case of Khalid Rizvi vs. Union of India, 1994 SCC (L&S) page 84, has held that it was mandatory to prepare a select-list for the existing year under Regulation 5. This decision resulted in some difficulty with regard to the consequences in the event of not holding the meeting in a particular year. The matter came to be considered again by the Hon'ble Supreme Court in a subsequent decision in the case of H.R. Kasturi Rangan vs. Union of India, (Civil Special Appeal No. 3891



of 1991, decided on 28.07.93). The observation made in Khalid Rizvi's case that the preparation of the select-list every year was mandatory, was some what diluted by holding that it is the statutory duty of the State Government to convene the meeting of the Selection Committee every year and if the meeting is not held every year, the State Government has to specifically account for its failure to convene the meeting to prepare a select-list. The expression "ordinarily" occurring in regulation 5(1) was also noticed by the Apex Court in H.R. Kasturi Rangan's case (supra) and it was held to be meant that ordinarily it is the duty of the State Government to prepare the select-list unless the failure to do so is explained by assigning cogent and satisfactory reason. In the instant case, the State Government in para 8 of the reply has specifically mentioned that the meeting of the Selection Committee has not been convened on account of the operation of the stay order by the High Court of Rajasthan in S.B. Civil Writ Petition No. 2545/96 filed by one Shri D.K. Vijay, a member of RAS. We feel satisfied that the reason assigned by the State Government for not convening a meeting of Selection Committee after the year 1995 is sufficient and justifiable. The fact therefore, remains that the Committee which met on 23.01.95 was the last one and since thereafter, there has been no meeting of the Selection Committee.

14. Now it is the time to consider as to what would be the outcome of non-convening of the meeting of the Selection Committee for justifiable reasons after 23.01.95. Sequel to this, is the vital fact to be determined whether the select-list prepared on 23.01.95, and finally approved by the Commission on 16.03.95 continues to remain operative inspite of the lapse of twelve months commencing from the date of the meeting. On behalf of the Union of India, emphatic reliance was placed on the instructions

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contained in circular dated 12.01.96 issued by the Government of India wherein it is stated that the select-list is prepared on the basis of the number of substantive vacancies anticipated in the course of twelve months commencing from the date of preparation of the select-list and according to these instructions, no appointment out of the select-list could be made against the vacancy which occurs after the period of twelve months, i.e., beyond the validity period of the select-list. It would not be out of place to mention that the Union of India has been taking shelter of the instructions contained in circular letter dated 12.01.96 repeatedly almost in all the cases though time and again it has been held that the said circular could not have been issued by the Government of India as it is clearly in the teeth of the provisions of Regulation 5(1). In this context, a reference is to be made to an earlier decision rendered by a Division Bench of Chandigarh Tribunal in the case of M.S. Rao vs. Union of India and Ors., (1997) 36 ATC page 86, in which it was specifically held that the executive instructions contained in circular letter dated 12.01.96 cannot override the statutory provisions and it is nothing, but an attempt on the part of the executive to over-ride the Regulations 5 and 7. Another Division Bench of Hyderabad C.A.T in the case of V.R.K. Mohan Rao vs. Union of India and Ors., (1998) 38 ATC page 271, did not approve the said circular letter, which according to the Tribunal, reads as if there is an embargo in the rule for considering vacancies for promotion of the wait-listed officers that arise after twelve months period from the date of preparation of the select-list. It was observed that "this interpretation, it appears, to us to be a very restricted view and may not be in consonance with the provisions of Regulation 5 of the said Regulations in view of the word "ordinarily" used in Regulation 5(1). To the same effect are the observations made in a Division Bench decision of this

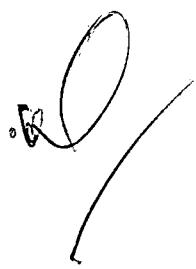


Tribunal (Jaipur Bench) in the case of Motilal Gupta vs. Union of India and Anr., 2001 (2) All India Service Law Journal page 81 (CAT). It was held "that the said letter cannot and does not over-ride the statutory provisions as contained in the Promotion Regulations and which have been upheld by the Apex Court in the case of Nepal Singh Tanwar." The above mentioned three decisions categorically laid down that the circular letter dated 12.01.96 issued by the Government of India runs counter to the provisions of Regulation 5(1) of the Promotion Regulations. The said circular which has been, as a matter of fact, held bad in law cannot be relied upon and implemented by the Union of India. It has to be totally ignored as being non-existent in view of the various judicial pronouncements that the instructions contained are nothing, but an attempt to circumvent or over-reach the statutory provisions. We are firm in our view that repeated reference to circular letter dated 12.01.96 issued by the Government of India is unwarranted and otiose. The validity of the select-list with respect to its duration has to be determined with reference to the provisions contained in the regulations ignoring totally the circular letter dated 12.01.96.

15. The select list prepared by the Selection Committee under the provisions of Regulation 5 is to be transmitted to UPSC for consideration alongwith the relevant documents and the observations of the Central Government as provided in Regulation 7(1). In view of the provisions of Regulation 7(3), the list as is finally approved by the Commission forms the select-list of the members of the State Civil Service for appointment to IAS. Sub-regulation (4) of Regulation 7 provides that 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) of Regulation 7, as the case may be,



finally approved under sub-regulation (2) of Regulation 7. The first proviso to sub-regulation (4) of Regulation 7 further makes the position clear. It provides that no appointment to the service under Regulation 9 shall be made after the meeting of the fresh Committee to draw up fresh list under Regulation 5 is held. The legal position which crystallises is that ordinarily the select-list prepared by the Selection Committee is operative for a period of twelve months and the list so prepared is required to be reviewed and revised every year (Regulation 5(6)). The list acquires the status of final select-list after it is approved by the Commission. Such a list is to remain in force till the date of the next meeting and it is for this reason that it has been provided that no appointment to IAS under Regulation 9 shall be made from the earlier approved select-list after the meeting of the fresh Committee to draw up a fresh list under Regulation 5 is held. In short, the select-list prepared under Regulation 5 and, as approved under Regulation 7 by the Commission, shall remain alive for appointments till such date the next Selection Committee meets. This conclusion in our view, is not res integra as it stands fortified from the decision of the Apex Court in the case of Nepal Singh Tanwar vs. Union of India (Civil Appeal No. 16769-771 of 1996, decided on 09.12.96), which has been followed by the various Tribunals in the decisions in M.S. Rao (Supra), V.R.K. Mohan Rao (Supra) and Motilal Gupta (Supra). It would be profitable to refer to the facts of the case of Nepal Singh Tawar. The name of Nepal Singh Tanwar was included in the select-list for the year 1991-92. No select-lists for the subsequent years 1992-93 and 1993-94 were prepared although the meeting of the Selection Committee was scheduled for 20.03.92, but was postponed. Nepal Singh Tanwar was appointed to IAS on 12.08.92. His appointment was quashed by the Tribunal on the ground that the preparation of the select-list every year was mandatory and, therefore, had the

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select-list for the year 1992-93 been prepared, Nepal Singh could not be appointed against the vacancy which became available after 31.03.1992. Setting aside the judgement of the Tribunal, the Apex Court accepted the reason assigned by the State Government for not preparing the select-list in the subsequent years and held that in view of Regulation 7(4) of the Promotion Regulations, the select-list prepared in the year 1991-92 continued to be in force and, therefore, the appointment of Shri Nepal Singh Tanwar was valid in law. The observations made by the Apex Court which virtually clinch the controversy, read as follows:

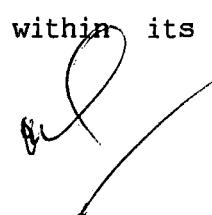
" The Union Public Service Commission in its communication dated 13.9.1996 has stated in regard to the appointment of the appellant that 'so long as the next Selection Committee do not meet, the previous select list continued to be in force'. It would, therefore, appear that under Regulation 7(4) read with Regulation 5 unless the select list is prepared for the succeeding year the previous select list continues. In Rizvi's case, 1993 Supp. (3) SCC 575, it is no doubt true that this Court stated that under Regulation 5 preparation of the select list every year is mandatory. However, this decision was considered in CAs Nos. 3891-94 of 1994, H.R. Kasturirangan vs. Union of India, and it was clarified by the order dated 28.07.1993 that the observations had to be read in the light of the subsequent observation in that very judgement wherein it was stated that dereliction of the statutory duty must be satisfactorily accounted for by the State Government which meant that if the State Government was in a position to satisfactorily account for its failure to prepare a select list as required by Regulation 5 that would be valid ground for its failure to prepare the select list for the subsequent years. The regulation uses the expression 'ordinarily' which means that ordinarily it is the duty of the State Government to prepare the select list unless there are satisfactory reasons to account for its failure to do so. If it is able to show that it failed to prepare the select-list on account of certain reasons and if those reasons are found to be satisfactory by the Court its failure to prepare the select list would be excused. In the instant case, although the meeting was scheduled on 26.03.1992 it was postponed and a new select list was not prepared as required by Regulation 5 for four reasons which we have set out hereinbefore. We are of the opinion that these four reasons gave a satisfactory explanation for the failure to prepare the select list required by Regulation 5. We are, therefore, satisfied that the appointment of the applicant on 12.08.1992 on the premise that the select list continued to be in operation was not violative of Regulation 5 of the Regulations."

Though the word "ordinarily" indicates the anticipated vacancies to be considered, i.e., only those vacancies which may occur in 12



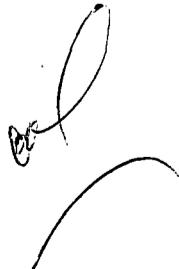
months from the date of meeting of the Selection Committee, it does not categorically prevent inclusion of the anticipated vacancies that occur after 12 months from the date of preparation of the select list and before meeting of the next Selection Committee. The word 'ordinarily' which is emphasised by us in sub-regulation (1) of Regulation 5 is to be read in a manner which will help the candidates kept on waiting list to be promoted and also to enable the Department to fill up vacancies which are essential to run the Department. The very fact that the waiting list is kept for unforeseen vacancies, the vacancies that arise due to any cause that cannot be determined earlier at the time of preparation of the select list are to be filled by the wait-listed candidates in the select list. The unforeseen vacancies may arise due to any cause either due to death or due to resignation. The vacancies arisen due to cadre review also cannot be foreseen at the time of preparation of the select list.

16. Let us now make a concise statement of law. The well established and firm legal position which emerges from the analysis of various observations made by the Apex Court particularly in the case of Nepal Singh Tanwar (Supra), Mohan Singh Rathore (Supra) as well as S.A. Engineer vs. Union of India & Others, (1999) 1 SCC page 304 and the decisions of the various Tribunals in the cases of M.S. Rao (Supra), V.R.K. Mohan Rao (supra) and Motilal Gupta (supra) is that the select-list prepared by the Selection Committee and as finally approved by UPSC holds good and remains operative till the meeting of the next Selection Committee to draw up a new selection panel is held. It is also well embedded proposition of law, beyond the pale of any controversy, that the select-list if otherwise operative, shall not be restricted to the fortuitous/unforeseen vacancies occurring within a period of twelve months commencing from the date of the meeting of the Selection Committee. The operative list shall embrace within its ambit all such fortuitous/



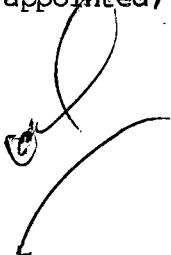
unforeseen vacancies which may occur even beyond the period of twelve months as aforesaid and the appointments from the surviving select list can be made to fill up such vacancies. To put it differently, for the sake of clarity, we lay down that the circular letter dated 12.01.96 issued by the Government of India on which emphatic reliance is placed by Union of India almost in every case, is bad in law as it is aimed at over-reaching the statutory provisions. Law abhors such an executive fiat. The earlier select-list shall remain alive and operative till the date on which a meeting of the next Selection Committee takes place. There is no warrant to restrict the operation of the select-list with reference to the duration of occurrence of the fortuitous/unforeseen vacancies. The select-list shall be operative even in respect of those fortuitous/unforeseen vacancies which may arise even after the expiry of twelve months to be computed from the date of the meeting of the Selection Committee or the date on which the select-list was finally approved by the Commission.

17. In view of the above statement of law, we have no hesitation in arriving at the conclusion that the applicant cannot be denied appointment to IAS merely on the ground that the select-list prepared by the last Selection Committee on 23.01.95 and finally approved by the Commission on 16.03.95 is not operative or that no fortuitous/ unforeseen vacancies occurred during the period of twelve months of the date of the meeting of the Selection Committee or from the date of the final approval of the select-list by the Commission. As a matter of fact, the respondents cannot take a conflicting or contradictory stand in the matter of the applicant as they have already appointed S/Shri Ramesh Kumar Jain and S.S. Rajvi in the year 1999 by virtue of the fact that they held the position at sl. Nos. 17 and 18 of the



same 1995 select-list. The fortuitous/unforeseen vacancies which occurred after the expiry of the period of twelve months of the date of preparation of the select-list or from the date of its final approval by the Commission were assigned to them. The myth created by the respondents stands exploded by their own action. There appears to be no earthly reason or logic for not adhering to that course of action which was applied in the case of S/Shri Ramesh Kumar Jain and S.S. Rajvi to the case of the applicant. The action of the respondents is, therefore, said to be in breach of the acid test of Articles 14 and 16 of the Constitution of India.

18. A short and swift reference may be made to another limb of the arguments of the respondents to negate promotion of the applicant that the regulations do not make it obligatory on the part of the State Government to seek appointment to the empanelled officers as under the scheme of the regulations, the panel either fully or wholly becomes inoperative after the fresh panel is formed. In view of the various provisions of the Regulations, it is not permissible, it was urged, to hold that by mere empanelment, a right is acquired by the empanelled officer for promotion. This submission appears to be founded on the observation made by the Principal Bench of the Tribunal in Kehar Singh vs. Union Public Service Commission, 1995 (4) SLR page 543. The observations made by the Principal Bench are not of universal application. They have to be restricted and confined to the particular set of facts. As a matter of fact, unless the name of the empanelled officer is removed or deleted or his appointment is not found to be in public interest, the State Government on its own volition, cannot deny the benefit of appointment to an officer, whose name has been included in the select-list. The circumstances in which an officer whose name has been included in the select-list, cannot be appointed, are specifically mentioned



in the Promotion Regulations. For example, firstly, if the placement of an officer is 'provisional' as contemplated under the Regulation 5(5), he could not be appointed unless his name is made 'unconditional' by the Commission on the recommendation of the State Government under the first proviso to Regulation 9; secondly, in the event of grave lapse in the conduct or performance of the duties on the part of an officer included in the select-list, a special review of the select-list may be made at any time at the instance of the State Government and the Commission may, if so thinks fit, remove the name of such officer from the select list; thirdly, in view of the Regulation 9(2), during the period intervening between the inclusion of the name of an officer in the select-list and the date of the proposed appointment, there occurs any deterioration in his work or there is any other ground which in the opinion of the State Government or Central Government is such as to render him unsuitable for appointment to IAS; and fourthly, Regulation 10 provides that the Central Government after consultation with UPSC may not appoint any person, whose name appears in the select list if it finds that it would be expedient in public interest. Apart from the above specified circumstances in the Promotion Regulations, an officer whose name is included in the select-list cannot be denied the benefit of appointment to IAS as it is obligatory on the part of the State Government/Central Government to consider his case for appointment to IAS in the light of the placement in the approved select-list and the provisions of the Promotion Regulations. He cannot be said to be at the mercy of the authorities concerned. In the case of V.K. Lambodaran Nair vs. Union of India and Ors., (1996) 34 ATC page 587 (CAT), it was held that it is the obligation of the Central Government to appoint to IPS the selected candidates recommended by the State Government. The State or the Central Government cannot, therefore, take the plea

that the empanelled officer has no right to get appointment to IAS.

19. However, the assertion on behalf of the applicant that now there are no complaints against him and that all the departmental enquiries stand terminated in his favour and, therefore, he should be promoted to IAS as 1995 select-list still survives, though attractive, cannot be accepted for compelling and convincing reasons. There is no doubt about the fact that the promotion is not made on the basis of the absence of the complaint, but on the positive merit, efficiency and unblemished performance of duties etc. Absence of the adverse remarks or of the complaints or dropping of the departmental enquiry, is no criteria of the quality of an officer.

20. It is a stark reality that inclusion of the name of the applicant in the select-list was 'provisional' as some departmental enquiries were pending against him. In view of the proviso to Regulation 5(5), the placement of the applicant in the select-list was 'provisional'. The applicant could not be appointed to IAS from the 1995 select-list till his name was made 'unconditional' by the Commission on the recommendation of the State Government during the period the select-list remains in force, as has been laid down in the second proviso to Regulation 9(1). It is not disputed that the departmental enquiries against the applicant on account of which he was treated as 'provisional' in the select-list have all ended in his favour. Annexures R/4, R/5, R/6 and R/7 to the rejoinder are the orders of the State Government which indicate that in one case the charge sheet itself was cancelled while in ~~an~~ another, the charges were not found to have been established against the applicant and in atleast two cases, the enquiries were closed or dropped. Unless the provisional inclusion of the name of the applicant in the select-list is made 'unconditional' by the Commission on the



recommendation of the State Government during the period the select-list remains in force, the applicant has not acquired any indefeasible right to be appointed to IAS merely on the basis that his name has been included in the 1995 select-list. The procedure provided in the second proviso to Regulation 9(1) is yet to be followed in the case of the applicant. While making the recommendation, the State Government is required to furnish "no deterioration" certificate in respect of the applicant. Issuance of such certificate before appointment is mandatory as has been held by the Apex Court in the case of Union of India vs. Mohan Singh Rathore and Anr., 1997 SCC (L&S) page 103. The reason for requirement of issue of "no deterioration certificate" before appointment of a member of the State Civil Service whose name has been included "provisionally" in the select-list is that the Union Government as well as the State Government should be sure enough that there has been 'no deterioration' in the service of the incumbent in the interregnums as it is mandatory to know the quality, integrity, honesty and efficiency of the officer concerned. The right of the Central Government to know if there had occurred any deterioration in the performance of the officer after his name was included in the select-list, which render him unsuitable for appointment to IAS has further been upheld by the Apex Court in the case of S.R. Engineer vs. Union of India and Ors., (1999) 1 SCC page 304. This aspect of the matter is to be taken care of by the State Government, Union of India and Union Public Service Commission while considering the question of appointment of the applicant to IAS.

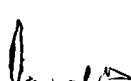
21. In conclusion, we find that the applicant is entitled to be appointed on promotion to IAS on the basis of the inclusion though 'provisionally' in the 1995 select-list which still survives, against any one of the vacancies which has occurred

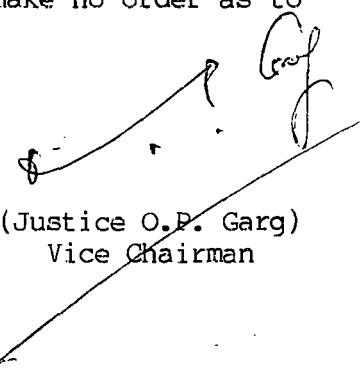
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after 22nd January, 1996, i.e., after the expiry of twelve months commencing from the date of meeting of the Selection Committee, provided the State Government is of the opinion that no deterioration in his work has occurred during the period, i.e., intervening between inclusion of his name in the select-list and the date of the proposed recommendation to the Commission that the name of the applicant be made 'unconditional'. We would do well to clarify that the applicant shall not be denied promotion by appointment to IAS merely on the plea that the 1995 select-list is not operative and that a vacancy occurring after 22.01.1996 cannot be assigned to him. In other respects, the State Government/Central Government shall be at liberty to take their independent decision, uninfluenced by any observations made in the body of this judgement, about the continued quality, integrity, honesty and efficiency of the applicant, in the light of the provisions of Regulations 9 (1) and (2) of the Promotion Regulations.

22. The O.A., in the result, is allowed to the extent that the State Government, respondent No. 2, shall consider the case of the applicant for making appropriate recommendation to appoint him to IAS, keeping in view the first proviso to sub-regulation (1) and sub-regulation (2) of Regulation 9 of the Promotion Regulations. This exercise shall be completed by the State Government and a final decision taken within a period of three months from the date of the production of a certified copy of this judgement before the Chief Secretary, State of Rajasthan.

23. In the circumstances of the case, we make no order as to costs.


(A.P. Nagrath)
Adm. Member


(Justice O.P. Garg)
Vice Chairman

cvr.