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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 8-10-99

OA No.85/98

1. Kum. Laxmi Bairwa D/o Shri Jagnath, presently posted as Dy. Secretary to the Government, Department of Ayurveda, Government of Rajasthan, Jaipur.
2. Shri Ram Meena S/o late Shri J.P.Meena, presently posted as Superintendent, Rajasthan State Motor Garage, Govt. of Rajasthan, Jaipur.

.. Applicants

Versus

1. Union of India through the Secretary, Ministry of Personnel, Public Grievances and Pensions, Government of India, South Block, New Delhi.
2. State of Rajasthan through the Chief Secretary, Government of Rajasthan, Secretariat, Jaipur.
3. Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.
3. Vinod Ajmera S/o Shri J.P.Ajmera, resident of Gandhi Nagar, Jaipur.
5. M.L.Gupta, resident of 24, Kirtinagar, New Sanganer Road, Sodala.
6. G.L.Gupta, resident of 15/50, Malviya Nagar, Jaipur.
7. D.K.Vijay, resident of F-151, Vaishali Nagar, Jaipur.

.. Respondents

Mr. Manish Bhandari, counsel for the applicants

Mr. S.S.Hasan, counsel for respondent No.1

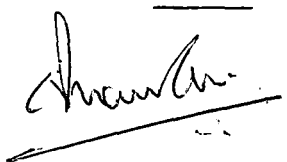
Mr. U.D.Sharma, counsel for respondent No.2

Mr. Sanjay Pareek, counsel for respondent No.3

Mr. R.C.Joshi, counsel for respondent No.4

Mr. Ajay Rastogi, counsel for respondents Nos. 5 to 7

CORAM:



Hon'ble Mr. Gopal Krishna, Vice Chairman

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

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ORDER

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

Applicants have filed this application under Section 19 of the Administrative Tribunals Act, 1985 with a prayer to direct respondents to (i) convene a Selection Committee meeting for preparation of the Select List on the basis of yearwise vacancies of 1996, 1997 and 1998 separately for promotion to Indian Administrative Service (for short, IAS) under provisions of IAS (Appointment by Promotion) Regulations, 1995 (for short, Promotion Regulations), (ii) not to club the vacancies of 1996, 1997 and 1998 for preparation of the Select List and (iii) to convene meeting of the Screening Committee taking into consideration the seniority existing only when vacancies occurred without taking into consideration subsequent promotion in the Super Time Scale of the Rajasthan Administrative Service (for short, RAS).

2. The facts of the case as stated by the applicants are that the applicants were appointed to RAS against the quota of 1978 and are senior enough to be considered for promotion to IAS in accordance with Promotion Regulations. In the case of State of Rajasthan, the last meeting of the Screening Committee for the purpose was held on 23.1.1995 in the year 1995 and thereafter no meeting has been convened so far and when it meets next it will consider the names against vacancies for the years 1996, 1997 and 1998. It has been claimed by the applicants that the respondent State has prepared a combined list of officers who have been placed in the zone of consideration and has not prepared separate lists to fill in the vacancies of different years, whereas according to Regulation 5 of the Promotion Regulations, the list of suitable officers which is required to be placed before the Committee, should be prepared for the vacancies of each year. The applicants apprehend that the State Government is going to club all the vacancies for preparing the Select List. It has also been mentioned that the Government of India, Ministry of Personnel etc. had amended

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Regulation 5 of the Promotion Regulations vide their notification No.14015/52/96-AIS(I)A dated 31st December, 1997 and has brought it into force on the first day of January, 1998. The said Ministry has also issued detailed guidelines vide OM No.F.22011/5/86-Estt.D dated 10.3.1989 which, inter alia, state that where for reasons beyond control, a Departmental Promotion Committee could not be held in an year(s) even though the vacancies arose during the year(s), the first DPC that meets thereafter should determine the actual number of vacancies that arose in the previous year(s), considering in respect of each, those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards and prepare a Select List by placing the Select List of the earliest year over one for the next year and so on. The applicants apprehend that the respondents will club/bunch the vacancies for all the 3 years and increase the zone of consideration and harm the interest of the applicants by making a combined Select List. The applicants had made representations to the respondents but no reply has been forthcoming. Such clubbing will be against the principles enunciated by the Apex Court in various judgments and in Vipin Chandra Hiralal Shah's case [1997 SCC (L&S) 41], the Apex Court has laid down directions under para 13 which clearly require the respondents to determine the vacancies separately for each year and the preparation of the zone of consideration. It has also been stated that in the case of Rajasthan Police Service, the State Government prepared the list of suitable officers separately against the vacancies of different year and on the basis of such lists promotion orders have been issued for their appointment in the Indian Police Service.

3. Notices of the Original Application were sent to the official as well as private respondents. Replies have been filed on behalf of respondent No.1, the Union of India, No.2 the State of Rajasthan, No.3 the Union Public Service Commission and Nos. 5 to 7 (private respondents). No reply has been filed on behalf of respondent No.4 but the counsel on his

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behalf did advance his arguments. We have carefully perused the application, the replies filed by respondents and have also heard the learned counsel for all the respondents. The learned counsel for the parties have agreed that the case may be decided at the admission stage itself.

4. In their reply, the Central Government has stated the procedure that is to be followed under the Promotion Regulations as they stood prior to 31.12.1997. Thereafter, the relevant portion of the amended Promotion Regulations have been stated. It has been mentioned that in the case of Rajasthan, for the purpose of preparation of Selection Lists for the years 1995-96 and 1996-97 towards filling up the anticipated vacancies of 1996-97 and 1997-98, the pre-amended provisions of Regulation 5(1) are applicable. Case law has also been discussed and it has been mentioned that "from the conspectus of the statutory rules position and the settled case law above, it follows that in terms of the pre-amended Regulation 5(1), it is utmost necessary for every State Government to take all possible steps to convene the Selection Committee meeting and to prepare Select Lists for IAS every year. In case there is failure to prepare the Select List in a year due to circumstances beyond the control of the State Government, which are to the satisfaction of the Court then and then only the vacancies of one Select List year could be clubbed with the vacancies of the subsequent year.....". In other words, if there was no impediment to hold the Selection Committee meeting during the relevant period, it cannot be said that the respondents were prevented from holding the meeting of the Selection Committee and consequently the Select List will have to be prepared yearwise. Finally, it has been contended that the application is premature as no decision was taken by the Central Government to club the vacancies of different years for promotion to the IAS, Rajasthan Cadre as alleged by the applicants. It has also been added that the Central Government is presently seized with the preparation of Review Select Lists for the year 1993-94 and 1994-95 pursuant to the

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directions of the CAT, Jodhpur Bench to that effect due to revision in the seniority of the State Civil Service Cadre. Only when this process is completed, the question of preparation of the subsequent Select Lists for promotion to IAS, Rajasthan Cadre may be taken up. The application is premature on this account. The averments made by the applicants regarding clubbing of vacancies is based on apprehension and such apprehension is without any factual basis.

5. The State of Rajasthan in their reply have stated that the process of promotion to Rajasthan cadre of IAS shall be initiated and completed in accordance with the statutory provisions of the Promotion Regulations, as amended w.e.f. 1.1.98. Since the meeting of the Selection Committee is likely to be held in the year 1999, the number of substantive vacancies as available on the first day of January, 1999 will have to be taken into consideration for preparation of the list of suitable officers and the zone of consideration will have to be equal to three times of the number of vacancies. Therefore, the substantive vacancies as available on 1.1.99 will form the basis for preparing the list of suitable officers and the question of clubbing or non-clubbing of the vacancies does not arise and consequently, the question of having taken any decision in the matter by the State Government does not arise. Thus the question of applicants' suffering any loss, much less an irreparable loss does not arise and they are, therefore, not entitled to file this OA simply on the basis of the apprehended injury. The application is accordingly not maintainable at this stage being premature and deserves to be dismissed.

It has also been stated that the meetings of the Selection Committee could not be held after 23.1.1995 due to various litigations relating to disputes about the seniority of the State Civil Service officers and the stay orders having been issued by the Courts, the one issued by Hon'ble the Supreme Court having been vacated only on 24.8.1998. Thereafter, the meeting could not be held as the Hon'ble Jaipur Bench

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issued an interim direction in OA No.360/98 and subsequently more OAs have been filed by various RAS officers in this Bench of the Tribunal wherein interim orders had also been passed. It has also been stated that at the first instance, the Select List for the years 1993 and 1995 are required to be reviewed and only thereafter the selection process for preparing the Select List for the year 1999 will be initiated as per the provisions of the Promotion Regulations as amended w.e.f. 1.1.1998. It is also stated that since the date of the meeting of the Selection Committee has not been fixed, the question of respondent State Government having prepared the eligibility list does not arise.

6. In their reply the Union Public Service Commission (for short, UPSC) has contended that a reading of the Promotion Regulations in totality would indicate that there is no provision for preparation of yearwise Select List when the meeting of the Selection Committee is not held during the preceding one or more years. Had the word "ordinarily" been used with the intention that it is mandatory to convene the meeting every year, then they would not have used the word "ordinarily". It has also been stated that preparation of yearwise list is not feasible under the provisions of Promotion Regulations, as a particular Select List lapses as per the provisions of proviso to Regulation 7(4) of the said Regulations when meeting of the fresh Committee to draw up a fresh list under Regulation 5 is held, Thus, the Select List of a particular year merges with the Select List of the subsequent year and so on. Another practical difficulty in preparing the yearwise Select List relates to whether a cut-off date for determining the eligibility of officers is to be fixed with reference to the year in which the Selection Committee meets or with reference to the year for which the Select List pertains. The reply also corroborates the reasons for delay in holding meetings of the Committee as stated by the State Government in their reply. The reply also discusses the case law with respect to preparation of yearwise Select List and states that regulation 5(1) does not give scope for interpretation advanced by the applicant in preparation of yearwise select list.

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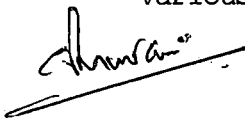
7. In their reply the private respondents S/Shri M.L.Gupta, G.L.Gupta and D.K.Vijay have stated that because of failure on the part of the official respondents, neither the selection to IAS nor in the Super Time Scale of RAS was made in time or on yearwise basis, which has resulted in an erroneous situation leading to filing of this OA. Such failure to have the Selection Committee meeting every year has prejudiced the rights of senior and eligible officers like the present respondents. If timely action would have been taken by the official respondents for promotion to IAS for the vacancies of 1996 as well as 1997 and 1998, the zone of determination of eligibility list would have been prepared only after taking in mind the vacancies to be filled in a particular year. However, on one hand official respondents have utterly failed to undertake the yearwise exercise despite a clear judgment of the Apex Court but at the same time they are adamant to club the vacancies which will result in senior and eligible officers suffering on account of a larger zone and will benefit others who are much junior and would not have come in the zone of consideration for the relevant years. Further, non-promotion to IAS would also mean that resultant vacancies in Super Time Scale of RAS would not be available. An eligible officer will suffer on that account also. This will also create problems for preparing correct eligibility list. The answering respondents had also preferred representations but without any favourable action on the part of the official respondents. It has also been mentioned that the official respondents now intend to apply the amended Rule 5 even though it is well settled law that the vacancies are required to be filled on the basis of the rules as they existed at the time vacancies occurred. However, it seems that some confusion exists in the minds of the official respondents regarding Regulation 5(1) though the same is totally unfounded because when seen in totality, it will be clear that rule has been prepared by the legislature with the objective that Committee should meet every year and if any exception has to be made, there can be no bunching or clubbing of vacancies as no provision exist to

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suggest that.

8. During his arguments, the learned counsel for the applicant seeks to rest his case primarily on the surmise that whereas the pre-amended Regulation 5 (1) would necessarily requires taking up yearwise vacancies and preparation of yearwise select list on account of the law laid down by the Apex Court in very specific terms in Vipinchandra Hiralal Shas's case (supra), the amended Regulation effective from 1.1.1998 will also have to follow the same law and the respondents will have to take up yearwise vacancies and prepare separate yearwise lists for the years during which the meeting of the Select Committee could not take place. In support of this he has essentially put forward the following points:

- a) The very fact that in the Sub-regulation 5(1) the clause "each committee shall ordinarily meet at intervals not exceeding one year" has been replaced by "each committee shall ordinarily meet every year" makes all the more obligatory/mandatory for respondents to ensure that the committee meets every year.
- b) In the amendment to the same Sub-regulation a clause "the number of members of the State Civil Service to be included in the list shall be calculated as a number of substantive vacancies anticipated in the course of the period of 12 months" has been replaced by "the number of members of the State Civil Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year for which meeting is held". It has been done to take away the discretion available with the State authorities in determining the anticipated vacancies and the purpose of this amendment cannot be taken to mean that the Committee will make one Select List for all the vacancies of various years and thus resort to clubbing/bunching.



- c) The proviso to Sub-regulation 1 in three parts has been inserted with an objective to bound the respondents to hold the meeting of the Committee every year and meeting of the Committee shall not be held only if the three conditions a), b) and c) to the said proviso are satisfied.

Thus the amendments as far as they relate to the present controversy have been made to make the procedure more strict and these in no way allow the respondents to club the vacancies. It is, therefore, contended that whether the meeting of the Committee is held under the pre-amended regulations or the amended regulations, the basic requirement for holding meeting for vacancies for each year separately remains and in both cases the detailed procedure laid down by the Hon'ble Supreme Court in Vipinchandra Hiralal Shah's case has to be followed by the respondents.

The learned counsel for the applicant has also argued that clubbing of vacancies would result in prejudice to officers like the applicant, in this OA. Firstly, their rights to be considered in a particular year would be taken away and IAS being an All India Service they would become junior to their counterparts in other States. Even within the State Cadre their chances of reaching the higher positions get adversely effected. Secondly, the applicants will be pitted against the officers who are very much junior to them and such junior officers may supersede them on the strength of their better performance gradings. The reduction of chances of promotion would generate frustration which will neither be in the interest of the morale of the concerned officers nor in the interest of public good. Thirdly, the clubbing will result in unequals being made equals in that an officer who, for example, was of 53 years plus in 1996 as eligible for 1996 would also become eligible for vacancies of 1997 and 1998. On the other hand, an officer who for lack of qualifying service would not have been eligible for 1996 and 1997 but only for 1998

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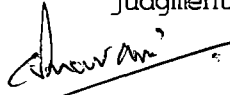
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would also become eligible for vacancies of 1996 and 1997. These, according to the learned counsel for the applicants, are some of the reasons which may have weighed with the Courts, including the Apex Court in insisting that meetings of the Selection Committee must take place every year and if meetings cannot take place in a year(s) for valid reasons and now in the amended Regulations for reasons are given in proviso to Sub regulation 5(1), yearwise vacancies should be taken into consideration and yearwise Select List should be made. He cited the following cases in support of his arguments:

- i) Judgment delivered by the High Court of Judicature at Patna on 5.8.99 in Civil Writ Jurisdiction Cases Nos. 8706, 2298, 3293, 2099, 2024 and 2567 of 1998.
- ii) 1999 (2) SLJ 555 (CAT PB), Radhey Shyam Gupta Vs Union of India
- iii) JT 1998 (6) SC 439, Baidyanath Jena & Anr. Vs. Union of India & Ors.
- iv) 1997 SCC (L&S) 41, Union of India & Ors. Vs. Vipinchandra Hiralal Shah
- v) JT 1996 (6) SC 361, Ramchandra Dayaram Gawande Vs. Union of India and Ors.
- vi) 1995 SCC (L&S) 963; Vinod Kumar Sangal Vs Union of India and Ors.
- vii) 1994 SCC (L&S) 84, Syed Khalid Razvi and Ors. Vs. Union of India and Ors.

9. The learned counsel for respondents No.4, Shri Vinod Ajmera, contesting the arguments put forward by the learned counsel for the applicants stated that the OA has been filed on the basis of an apprehended injury which is not at all borne out from the reply of the State Government and the OA is, therefore, not maintainable being solely based on the apprehended grievances. No meeting of the Selection Committee has yet been held on the basis of amended Regulations brought into force from 1.1.1998. The relief sought in the OA is against some apprehended future actions and is, therefore, purely imaginary. At this stage any judicial review of the amended Regulations is premature. Further, all the judgments cited by the applicants relate to the period when pre-amended



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Regulations was in force, not a single ruling has been cited where the amended Regulations have been under consideration. Therefore, none of those judgments are applicable in this case. Finally, the vires of the amended Regulations have not been challenged in the OA. The Promotion Regulations has force of statute and for making an amendment, the rule making authority has exercised its function and any presumption that the intention of the rule making authority was this or that cannot be accepted. The application should, therefore, be considered as premature and should be dismissed.

10. The learned counsel for respondent No.2, the State Government, made a preliminary objection that the application does not conform to the provisions of the Administrative Tribunals Act. The applicants must have a grievance before an application can be admitted. A person has to be aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal and then only he can make an application to the Tribunal for redressal of his grievances. The very fact that the applicants have mentioned certain facts which have not yet taken place at all, such as the decision taken by the State Government [para 1 of OA]; State has prepared a combined list of officers who have been placed in the zone of consideration [para 4(5)]; respondent State has clubbed all the vacancies (para [4(6)], apprehended that the respondents will club/bunch the vacancies of all the 3 years and create problems for the applicants [para 4(10)] etc. establish that this application is premature and is based on apprehended grievances. It is only when the Select List is prepared after the meeting of the Committee then and then only cause of grievance may, if at all, arise. Further, the amended Regulations only talk of vacancies as on first day of January and the applicants cannot presume what exactly is meant by that. It is only the rule making bodies that know the intention of a Regulation and it has been held by the Courts that rule making bodies are expected to know what the rule means. In the amended Regulations the vacancies have been linked to the first day of January of the year in

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which the meeting is held and, therefore, the question of vacancies separately for the years 1995, 1996 and 1997 does not arise. It has also to be kept in mind that no Select List survives for next year; only one Select List can exist at a moment of time and as soon as the next list is prepared the earlier one lapses. This practical difficulty was not considered by the Apex Court in Vipinchandra Hiralal Shah's case (supra). The learned counsel for the State Government has contested the applicability of Department of Personnel's OM No.F.22011/5/86-Estt.D dated 10.3.1989 referred to by the applicants and stated that the said OM is not applicable to All India Services as matters relating to promotions etc. of All India Services are governed by the self contained Rules and Regulations issued by or under the All India Services Act. The said OM is applicable only to the Civil Services and posts other than All India Services. As regards the question of delay in holding the meeting of the Selection Committee, he pointed out that a larger Bench of the Apex Court in the case of H.R.Kasturirangan had clarified the scope of expression "ordinarily" appearing in Regulation 5 of the Promotion Regulations. Even in the case of Vipinchandra Hiralal Shah, the Apex Court has observed that 'ordinarily' means that unless there are good reasons for doing so, the Selection Committee shall meet every year. Finally, the view taken by the Apex Court in the said case for preparing the Select List yearwise was on the basis of the provisions of Regulation 5(1) as they stood before the amendment by 1997 Amendment of the said Promotion Regulations. As regards the averment of the applicants that yearwise Select List has been prepared for IPS, he clarified that it was done pursuant to the directions issued by the Hon'ble Tribunal and as such this action cannot be cited as a precedent. The Select List will be prepared as per the amended provisions of Regulation 5 of the Promotion Regulations. Some of the cases on which the learned counsel for the State Government relied in support of his contention are:

- i) AIR 1999 SC 798, V.C.Perumal Vs. Union of India

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- ii) 1998 (2) SCC (L&S) 1227, Union of India Vs. Jwala Prasad and Ors.
- iii) 1996(2) SLR SC 620, Ramanand Singh Vs. Union of India.
- iv) 1992 (8) SLR 392, Narender Narain Yadav Vs. Union of India and Ors.
- v) 1991 (3) SLJ 184, Union of India Vs. Dr. M.G.Dijhe
- vi) AIR 1985 SC 798, V.C.Perumal Vs. Union of India
- vii) 1991 (3) SLJ 184, Union of India Vs. Dr. M.G.Dijhe

11. The learned counsel for respondent No.3 (UPSC) also stressed on the point of the application being premature. He stated that the applicants were not aggrieved persons within the provisions of Section 19 of the Administrative Tribunals Act. He also stated that the reasons for which the Selection Committee meeting could not be held for 3 years have already been mentioned in their written reply and they are perfectly justified reasons. He stated that the judgment in R. Dayal Vs. State of Rajasthan [1997 (10) SCC 419] was not applicable as that case was regarding the State Service where the rules specifically provided for holding the meeting every year. He also emphasised that the applicants are not getting prejudiced in any manner as their chances will neither get reduced nor their right for being considered for the vacancies will be taken away. He also stated that the application is based on apprehension and which legal right has been infringed has not been shown. Existence of legal rights is a condition precedent to such an apprehension and no one can ask a mandamus without a legal right. The applicants have only a right to be considered but more chances of promotion is not a condition of service. The learned counsel for the UPSC has cited a number of rulings in this regard, some of which are AIR 1996 SC 578, AIR 1997 SC 276, AIR 1981 SC 1990, AIR 1964 SC 685 and AIR 1960 SC 828. Some of the judgments cited by him in support of his contentions relating to Regulation 5 of the Promotion Regulations are mentioned hereunder:

- i) 1998 (1) SCALE (SP) 7, Nepal Singh Tanwar Vs. Union of India
- ii) 1998(1) SCALE (SP) 11, H.R.Kasturirangan Vs. Union of India

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- iii) 1997 SCC (L&S) 41, Union of India Vs. Vipinchandra Hiralal Shah
- iv) (1996) 10 SCC 420, Ramchandra Dayaram Gowande Vs. Union of India and Ors.
- v) 1993 Supp.(3) SCC 575, Syed Khalid Rizvi and Ors. Vs. Union of India and Ors.
- vi) AIR 1974 SC 87, Union of India Vs. M.L.Kapoor

He concluded by stressing that the OA is premature and may be dismissed.

12. The learned counsel for respondent No.1, the Union of India, also stressed on the point that the OA is premature as has been detailed in para 1 of their reply. Further, the arguments that vacancies are going to be clubbed is only based on apprehension of the applicants. He reiterated that the reasons for not being able to hold the meeting in the preceding 3 years were valid and beyond the control of the respondents.

13. The learned counsel for respondents Nos. 5 to 7, S/Shri M.L.Gupta, G.L.Gupta and D.K.Vijay, stressed that the rights of members of the service should not be defeated by either intentional or un-intentional interference in the implementation of rules. Regulation 5 of the Promotion Regulations alongwith its Sub-regulation makes a complete core and talks of yearly selection and no interference by the State Government is allowed if for any reason a selection is not held, the rights of concerned members of the service should still be available to them and that is why the word "every year" has been used in the amended Regulations. The contention of the respondent State that the exceptions in the proviso give them a right to defer the meeting of the Committee and then club the vacancies is nowhere available to them. In fact, the amended Regulations only curtail the discretion and bound the respondents to hold the meeting every year except when conditions a) to c) are satisfied. However, even this will not disturb a member's right to be considered in the year when the vacancy was available and cyclic process of holding meeting and

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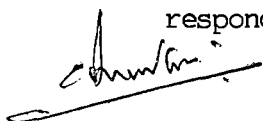
preparing the Select List for each year should continue. It will neither be in the interest of service nor public that an ineligible but influential officer/group of officers keeps selection process at bay and allows the Selection Committee to meet only when he/they become eligible. This will mean that up-right officers can be damned. If clubbing of vacancies is permitted it will introduce certain amount of flexibility to be exploited by interested but ineligible officers. The amended Regulation is prospective and vacancies occurring after that date will only be filled up in accordance with the amended Regulations. Vacancies up to 31.12.1997 will have to be filled up under the provisions of pre-amended Regulations. The learned counsel for the private respondents also stated that the OA can be said to be premature only if the respondents' intention is not clear but in this case the State Government has indicated that they were competent to club the vacancies, therefore, the relief sought in the OA should be granted. Some of the judgments cited by him in support of his contentions are 1999 WLC (1) 1, 1998 (2) L&J 1013, 1989 (9) ATC 546, 1987 (3) ATC 7, 1983(3) SCC 285, 1976 (1) SCC 671, AIR 1971 SC 1731 and AIR 1959 SC 725.

14. The learned counsel for the applicants in reply to the arguments put forward on behalf of the respondents stated that the objections about the maintainability of the OA have no force because the respondent State has indicated that vacancies can be clubbed. Further, IAS is an All India Service and if promotions of officers of similar seniority in the State Civil Service are given in other States but not in Rajasthan because of delay in holding the meeting, there is a violation of Articles 14 and 16 of the Constitution of India. Thus if fundamental rights of the applicants are violated, the OA should be admitted. Some of the rulings cited by him in this regard are 1998 (2) L&J 1013, 1990(1) SC 321, 1989 (4) ATC 546, 1987 (3) ATC 7, 1976 (1) SCC 671, AIR 1971 SC 1731 and AIR 1959 SC 725. The respondent State has already stated that as and when the Selection Committee meets, the vacancies as on first day of January in the year of

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such meeting will be the basis for selection but if that be so why the framers of Promotion Regulations have used the word "every year". This clearly indicate that Select List has to be prepared for the vacancies of each year. It has also been pointed out by him that the proviso to the amended Regulations uses the expression "provided that no meeting of the Committee shall be held and no list for the year in question shall be prepared". Here, the very fact that word 'year' has been used in singular form also indicate that the intention of the framers of the Regulation was that each year of the gap in holding the meetings of the Committee should be taken up as a separate year and a separate Select List to be prepared for each of the years. He concluded his arguments by stating that the judgment of Hon'ble the Supreme Court in Vipinchandra Hiralal Shah's case is the only judgment which covers the situation when the Selection Committee does not meet for certain number of years and lays down law as to how the Selection Committee will prepare the Select List for each of the year during which the meetings of the Selection Committee were not held. The judgment is applicable both for pre-amended Regulations as also for the amended Regulations brought in operation from 1.1.1998. In view of this, the OA should be allowed.

15. We have carefully considered the rival contentions. The Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) is the authority which is vested with the powers to make the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 and which, by its notification dated 31st December, 1997 (Ann.A5), has amended the said Regulations and brought the amended Regulations in force on the first day of January, 1998. It is a well accepted principle that the rule making bodies are expected to know what the rule means. We have been told at the Bar that no promotions by appointment in IAS from the State Civil Service have taken place in any State under the amended Regulations. We have to, therefore, take note of what averments have been made in this case by respondent No.1, the Union of India. In its reply, the Union of India has



stated that "no decision was taken by this Respondent to club the vacancies of different years for promotion to the Indian Administrative Service, Rajasthan Cadre as alleged by the applicant. The application is premature on this account. This Respondent is presently seized with the preparation of Review Selection Lists for the year 1993-94 and 1994-95 pursuant to the directions of the Hon'ble CAT, Jodhpur Bench to that effect due to revision of seniority in the State Civil Service Cadre. Only when the process of 1993-94 and 1994-95 Review Select Lists are completed, the question of preparation of the subsequent Select Lists for promotion to IAS, Rajasthan Cadre may be taken up." Any assertion on the part of the applicants and the respondents Nos. 5 to 7 that the respondents are going to club/bunch vacancies of the years 1996, 1997 and 1998, and of 1999 also, does not appear to be tenable at this juncture in view of what has been stated by the framer of the Promotion Regulations i.e. the Union of India in their reply. We are also of the opinion that as of date, no fundamental rights of the applicants have been violated, even the right to being considered for promotion has not been infringed upon. The case law cited by the learned counsel for the applicants and the private respondents Nos. 5 to 7 does not extend any help to them. The plea of the applicants that we should adjudicate on this application on the basis of their apprehensions cannot, therefore, be accepted. In view of this, we are of the opinion that this application has to be treated as premature.

16. We have narrated, in quite some details, the contentions and arguments put forward by various parties and have enumerated some of the judgments referred to by the learned counsel for all the parties without, of course, going into the merits of such arguments. This narration, we thought might be useful for the official respondents, especially the Union of India, and help them in deciding whether clubbing of vacancies should be resorted to or not.

17. We also hope that respondent No.2 will take urgent steps to remove

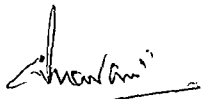
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the obstacles, including the cases in the Courts/Tribunals and clear the way for holding of the meeting of the Selection Committee. Regular meetings of the Committee is the foundation for promotions of State Civil Service Officers and any delay puts the officers of the State Civil Service of Rajasthan in a disadvantage vis-a-vis their counterparts in other States who may become members of an All India Service like IAS earlier than them. Even within the State Cadre of IAS, the delay will impinge upon their chances of promotions to higher posts in the Cadre. Non-promotion of RAS officers for such a long period of four years is also bound to enhance the feeling of demoralisation and frustration amongst them generally, leading to a likely downsliding in their efficiency and commitment levels. This is neither in the interest of officers of the RAS Cadre as a whole nor in public interest, because in such a situation the delivery of services by this important instrument of the State is likely to be adversely effected.

18. In view of the foregoing discussions, we find this application to be premature. However, we dispose ~~it of~~ with a direction to the respondents to take urgent steps to convene a meeting of the Selection Committee as expeditiously as possible and prepare the Select List keeping in view the relevant provisions contained in the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, the decisions of Hon'ble the Supreme Court in this regard and the discussions recorded in this Order. Interim direction issued on 17.3.1998 stands discharged.

19. No order as to costs.


(N.P.NAWANI)

Adm. Member


(GOPAL KRISHNA)

Vice Chairman