

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

29

O.A. No. 360/98  
T.A. No.

199

DATE OF DECISION 06.03.2000

Moti Lal Gupta Petitioner  
Mr. Ajya Rastogi Advocate for the Petitioner (s)  
Versus  
Union of India and Anr. Respondent  
Mr. S.S.Hasan and Mr. U.D.Sharma Advocate for the Respondent (s)

**CORAM :**

The Hon'ble Mr. S.K.AGARWAL, JUDICIAL MEMBER

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

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

*N.P. NAWANI*  
(N.P. NAWANI)

Adm. Member

*S.K. AGARWAL*  
(S.K.AGARWAL)  
Judl. Member

GA

Date of order: 06.03.2000

OA No.360/98

Moti Lal Gupta S/o Shri Banwari Lal Gupta, resident of Kirti Nagar, Sodala, Jaipur presently posted as Deputy Secretary to Chief Minister, Government of Rajasthan, Jaipur.

.. Applicant

Versus

1. Union of India through its Secretary, Ministry of Personal, Government of India, North Block, New Delhi.
2. The State of Rajasthan through its Secretary, Department of Personnel, Government of Rajasthan, Jaipur.

.. Respondents

Applicant present in person

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

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

CORAM:

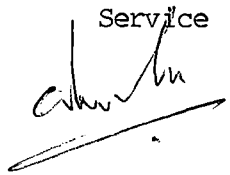
Hon'ble Mr. S.K.Agarwal, Judicial Member

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

ORDER

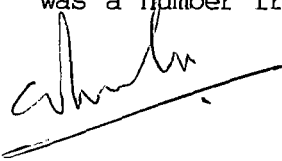
Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant prays that the respondents may be directed to fill up 19 substantive vacancies from the select list of 1993 and further that respondents be directed to prepare the select list for 1995 from amongst the eligible persons falling within the zone of consideration on the basis of 20 substantive vacancies plus 20% of this i.e. a total of 24 vacancies and consider candidature of the applicant, if found suitable, for appointment in the Indian Administrative Service (for short, IAS) under the IAS (Appointment by Promotion)



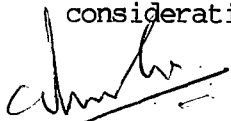
Regulations, 1955 (for short, Promotion Regulations) with all consequential benefits.

2. The facts of the case, as stated by the applicant, are that the applicant is a member of Rajasthan Administrative Service (for short, RAS) and has been promoted to the selection grade of RAS against the quota of 1991-92 vide orders dated 10.2.1992/23.2.1996 (Ann.A1). The vacancies determined by the respondent State Govt. for promotion from RAS to IAS in the year 1993 and 1995 are 25 and 19 respectively. The Selection Committee for 1993 met on 26.10.1993 and prepared a select list of 25 officers. The vacancies upto next 12 months i.e. upto 25.10.1994 were taken into account and the select list was designed to fill up vacancies that occurred up to 25.10.1994. As per provisions, scheme and structure of Promotion Regulations, the vacancies which occurred upto 25.10.1994 could only be filled up from the select list prepared on 26.10.1993 and as such out of 21 vacancies only 19 officers could have been appointed to IAS as two officers S/Shri S.S.Bhandari and G.L.Verma were recommended provisionally subject to clearance of inquiry pending against them. The State Govt., however, appointed 23 officers from the said select list and the posts which fell vacant even after 25.10.1994 were also filled up from out of select list for 1993 in violation of Promotion Regulations and the clarification issued by the Govt. of India dated 12.1.1996 (Ann.A2). The next meeting of the selection committee was held on 23.1.1995. The vacancies that occurred after 25.10.1994 and before 22.1.1996 i.e. within 12 months from the date of Selection Committee meeting are within the ambit of the Selection Committee for the year 1995. During this period 18 vacancies occurred plus two vacancies of S/Shri S.S.Bhandari and G.L.Verma which had also to be carried out from 1993 to 1995 as their selection in 1993 was provisional and thus a total number of 20 vacancies plus 20 % of this number i.e. 24 was a number from which the select list of 1995 should have been prepared,



as per details given in Schedule-A. The clarifications dated 12.1.1996 issued by the Govt. of India makes it clear that the select list cannot be operated to fill up vacancies occurring beyond the period of 12 months commencing from the date of the meeting of the Selection Committee and the date of preparation of the select list and the vacancies occurring after expiry of the period of 12 months should go within the ambit of the next Selection Committee. Subsequently, the Govt. of India issued a memorandum dated 17.9.1997 (Ann.A3) asking the officers who have been appointed from the select list of 1993 as well as 1995 to make representations since it was decided to hold the review of the promotions to IAS (Rajasthan Cadre) made from 1993 and 1995 select list in view of the orders of the Supreme Court. The applicant also submitted his representation and requested that Selection Committee while making the review of select list of 1993 and 1995 should take into consideration vacancies up to 25.10.1994 and from 26.10.1994 to 21.1.1996 respectively and should not take into consideration for preparing 1993 select list the vacancies becoming available after 25.10.1994 as such vacancies should be considered for 1995 select list in terms of Govt. of India circular dated 12.1.1996.

The case of the applicant is thus based primarily on the contention that appointments from out of select list of 1993 can be made in respect of vacancies which occurred within 12 months from the date of the meeting i.e. within 25.10.1993 and any appointments made against vacancies occurring after that date were not in terms of the statutory rules as also the circular issued by the Central Govt. dated 12.1.1996. Two vacancies arising after 25.10.1994 should have been taken into consideration by the next Selection Committee meeting which was held on 23.1.1995 and if those two vacancies were included for consideration of the meeting of the Selection Committee held on 23.1.1995 the zone of consideration would have been enlarged and the applicant could have come into the zone of consideration and could have been considered for promotion in IAS and if

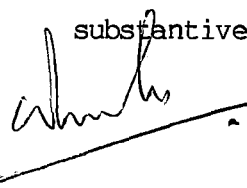


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found eligible could have come into the select list for 1995.

3. Notice of this Original Application were given to the respondents who have filed their replies. The applicant has also filed a rejoinder and an additional reply have been filed by respondent No.2 to the rejoinder filed by the applicant. These have been taken on record and have been perused by us.

4. In their reply, the respondent No.2, the State Govt., has stated that the scope of Review Selection Committee is very limited in that only officers coming within the zone of consideration are changed on the basis of the revised seniority list and in place of the earlier select list which shall stand revoked, a fresh select list will come into existence containing names of new officers. <sup>example,</sup> For/ if the earlier select list was prepared for 20 vacancies and 25 persons were placed on the select list of which only 15 officers were appointed to IAS, a new select list will also contain names of 25 officers and out of this new select list only 15 officers will be appointed to IAS from the dates the earlier appointments had been made. Therefore, the Review Selection Committee for 1993 and 1995 for preparing a fresh select list for 25 and 19 vacancies respectively is in full conformity with the Promotion Regulations. It has also been stated that the Review Selection Committee is being convened because the seniority of RAS officers had undergone substantial changes retrospectively pursuant to the judgment of Hon'ble the Supreme Court but there cannot be any re-determination of the vacancies for the year 1993 and 1995. It has also been contended that the present OA is hopelessly barred by limitation. It has been filed in 1998 and the challenge is to the excess appointments made from the select list of 1993. It has been clarified that the Selection Committee for the year 1993 which met on 26.10.1993 had prepared a list of suitable officers containing names of 25 officers in respect of 21 substantive vacancies plus 4 vacancies at 20% thereof as required under



regulation 5(1) of the Promotion Regulations and that regulation 7(4) of the Promotion Regulations, a select list ordinarily remains in force until its review and revision and as per provisions of regulation 9(1), appointment of members of State Civil Service to IAS is made in the year in which the names of members of the State Civil Service appears in the select list for the time being in force. Thus the select list remains in force until another select list comes into existence and during the period a select list remains in operation and in force, it is legally permissible to appoint by promotion an officer from the said select list. This position has been affirmed by the Apex Court in Nepal Singh Tanwar's case which has been followed by the Chandigarh Bench of this Tribunal in M.S.Rao v. Union of India, reported in 1997 (36) ATC 86 and also by the Hyderabad Bench in V.R.Mohan Rao v. Union of India, 1998 (38) ATC 271. It is, therefore contended on behalf of respondent No.2 that allegations made by the applicant that the posts which fell vacant after 25.10.1994 had also been filled up from the select list of 1993 are devoid of merit as the said two appointments had been made on 17.11.1994, within the validity of select list of 1993. Further, the said select list was approved by the Union Public Service Commission on 28.12.1993 and on the said approval it became the approved select list of 1993 and two appointments made on 17.11.1994 have, therefore, been made within a period of 12 months from 28.12.1993, the date of approval by the UPSC and viewed from this angle also, the said two appointments are justified, legal and constitutional. It has also been stated that the applicant has not specifically challenged the said two promotions of S/Shri Jagdish Prasad Vimal and Amar Chand Bhatt made on 17.11.1994 and no prayer for quashing the said promotions has been made in the OA and the said officers have also not been impleaded as respondents and, therefore, the applicant has no locus-standi to challenge the said two promotions and the challenge made by the applicant in this regard is untenable. As regards the contention of the applicant that in terms of Govt. of India OM dated 12.1.1996, the vacancies occurring after 12 months

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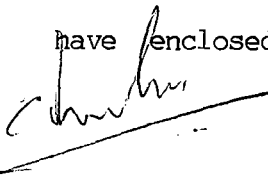
of the date of the Selection Committee meeting on 26.10.1993 could not have been utilised for promoting the officers from the select list of 1993, it has been stated that when the proposal to promote S/Shri Vimal and Bhatt against the said two vacancies was sent to the Government., the said OM was not in existence at all and, therefore, the question of its applicability does not arise. As regards S/Shri S.S.Bhandari and G.L.Verma, it has been clarified that their names were included as Sl.Nos. 4 and 8 in the select list of 1993 on provisional basis due to pendency of departmental inquiry against them. Shri Bhandari retired on 31.8.1994 and since the proceedings were still pending against him, he could not have been given promotion to the IAS and against the said vacancy, Shri Mool Chand Arya at Sl.No.21 has been promoted on 30.9.1994. As regards Shri G.L.Verma, since the proceedings continued against him till expiry of the validity period of 1993 select list, he could also not been promoted against the said vacancy which was carried over for being filled up in the next Selection Committee. However, 3 more vacancies have occurred due to voluntary retirement taken by S/Shri B.L.Saraswat, N.S.Bhandari and S.D.Dadheech on 19.8.1994 against which 3 officers namely S/Shri Tara Chand, Rajendra Bhanawat and J.P.Sharma whose names appeared at Sl.No.18, 19 and 20 in the 1993 select list came to be promoted w.e.f. 8.9.1994. Shri Jagdish Prasad Vimal and Shri Amar Chand Bhatt whose names appeared at Sl.No.24 and 25 came to be promoted on 17.11.1994 on the retirement of Shri P.C.Agarwal and Shri N.D.Khanna and the factum of their retirement had been taken into consideration while determining the number of vacancies for preparing the select list of 1993. It has, therefore, been contended that all the 25 vacancies for which select list has been prepared in 1993, have been filled up and the said list has been fully utilised during its validity period except for Shri G.L.Verma, that vacancy having been carried over to next DPC.

4. Reply of respondent No.1, the Govt. of India is more or less on the lines of the reply filed by respondent No.2, the State Govt. It has

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been stated that respondents are required to review the select list prepared on 26.10.1993 and 23.1.1995 with reference to the revised seniority in the RAS as per orders of the Jodhpur Bench of the CAT. The order did not envisage any change in the number of vacancies reckoned with by the original Selection Committees. The change is effected by the State Govt. only in the consideration zone placed before the Selection Committee for the reason that the zone is entirely based on the seniority list of the State Civil Service officers. It has also been stated that in terms of regulation 5(1) of the Promotion Regulations, the vacancies are computed as those existing and anticipated during the period of 12 months from the date of meeting of the Selection Committee plus 20% thereof subject to a minimum of two. It has also been stated that the clarification dated 12.1.1996 only clarifies a purport and intent of regulation 5(1) of the Promotion Regulations and does not lay down any new principle of computation of vacancies for the purpose of preparation of select list. As regards the prayer of the applicant for re-calculation of the vacancies and changing the number of persons to be included in the select list of 1993 and 1995, it is stated that it is absolutely untenable for the reason that number of vacancies for which select list was prepared and operated during 1993-94 and 1994-95 cannot be changed in retrospect. The recommendations of the Review Selection Committee has the effect of replacement of names and the process cannot be construed to be a process of ab-initio preparation of the select list. The applicant's presumption that proposed review comprises of a change not only in the list of officers but also a change in every other aspect/factor including the number of vacancies is absolutely baseless, misconceived and untenable.

5. In the rejoinder filed by the applicant, the pleadings have been reiterated. In their additional affidavit in reply to the rejoinder, respondent No.2 has also reiterated the position taken in their reply and have enclosed statement A to D. In statement-A details of existing



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vacancies as on 26.10.1993 and the appointments made from the select list against the said vacancies has been given. In statement-B the details of anticipated vacancies and appointment made from the select list against the said vacancies has been given. In statement-C details of unforeseen vacancies and appointment made against these have been given and in statement-D the vacancy falling with the ambit of 1995 Selection Committee have been shown vis-a-vis the Schedule-B annexed to the OA.

6. We have heard the applicant in person and the learned counsel for respondent No.1 Shri S.S.Hasan and respondent No.2 Shri U.D.Sharma and have carefully examined the material on record.

7. The main issue that remains to be decided is whether it is open to the State Govt. to appoint officers who were included in the select list in the year 1993 on the basis of recommendations of the Selection Committee which met on 26.10.1993, even after expiry of the period of 12 months i.e. even after 25.10.1994. As regards the computation of vacancies for preparation of the select list for 1993 and 1995, we have examined the statement given by the applicants as also the respondent No.2 and we are satisfied that the vacancies as computed by the State Government and as taken into consideration by the earlier DPC are correct. We also agree with the contention of the State Govt. that the Review DPC which is required to meet on account of changes in the seniority of RAS officers is not required to change the number of vacancies on the basis of which earlier DPCs had prepared the select lists. Reverting back to the <sup>controversy</sup> ~~issue~~, we note that the applicant's case is primarily based on the argument that in terms of the clarificatory letter dated 12.1.1996 issued by the Govt. of India, the State Govt. could not have appointed two officers namely S/Shri Jagdish Prasad Vimal and Amar Chand Bhatt from the select list of 1993 after expiry of 12 months i.e. after 25.10.1994 and the two vacancies on which the abovementioned officers were appointed were required to have been carried

admitted

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over for consideration by the next DPC.

8. Before we go into the question of applicability of the clarificatory order issued by the Govt. of India on 12.1.1996 (Ann.A2), it will be useful to consider the relevant provisions of the Promotion Regulations. Sub-regulation (3) of regulation 7 of the Promotion Regulations provides that "The list as finally approved by the Commission shall form the Select List of the members of the State Civil Service." Further under the Sub-regulation (4) of the same regulation it is provided that "The Select List shall ordinarily (emphasis added) 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)." The rule position, therefore, is quite clear that the select list remains in force till its review and revision. This position has been upheld by Hon'ble the Supreme Court in the judgment rendered in Nepal Singh Tanwar (supra) decided on 9.12.1996, a copy of which has been annexed by the respondents as Ann.R2/1. The relevant portions of the judgment are extracted as under:

"under the relevant regulation 7(4) the select list was to continue till its review and revision effected under regulation 5(4) is approved under sub-regulation (1) or as the case may be, finally approved under sub-regulation (2)".

"as a result of this postponement (of the DPC) the select list continued."

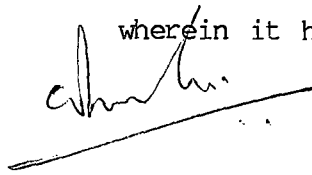
"the regulation uses the expression "ordinarily" which means that ordinarily it is the duty of the State Govt. to prepare the select list (every year) unless there are satisfactory reasons to account for its failure to do so."

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The legal position is, therefore, crystal clear and we have no hesitation in holding that the select list of the year 1993 which was prepared on the basis of the meeting of the DPC held on 26.10.1993 would still be valid and operative even after expiry of 12 months i.e. after 25.10.1993 till a new select list was prepared under the provisions of the Promotions Regulations.

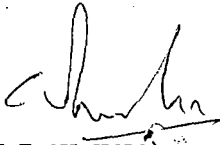
9. The contention of the applicant that the letter dated 12.1.1996 (Ann.A2) issued by the Govt. of India prohibits utilisation of any vacancies arising after the expiry of 12 months from the date of holding of the meeting of DPC and since it was of the nature of a clarificatory letter, it cannot be argued that its operation will be only prospective and this being the case the contents of the letter were applicable even retrospectively and the Review DPC should take this letter into consideration while determining the vacancies for the years 1993 and 1995. The applicant has also argued that the very same State Govt. respondents in OA No. 304 of 1996, S.S.Rajvi v. Union of India and ors. had, in their reply, inter alia, stated that in terms of the letter dated 12.1.1996, those vacancies occurring in a state cadre, after a period of 12 months from the date of meeting of the Selection Committee, will come within the ambit of consideration of the next Selection Committee and the respondents cannot now have a different stand. However, in view of the legal position which had been discussed in the preceding paragraph, we are of the opinion that it will be a futile exercise to go into the question of applicability of the said letter since we are quite clear in our mind that the said letter cannot and does not override 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. We are further supported in arriving at such an opinion with regard to the said letter in view of the decision rendered by the Chandigarh Bench of this Tribunal in the case of M.S.Rao (supra) wherein it has been unambiguously held that the instructions issued by the



Govt. of India cannot override the statutory rules. We also take note of the fact that as per the statement of respondent No.2 the select list for the year 1993 which was prepared on the basis of the meeting of the DPC held on 26.10.1993 got the final approval of the Commission on 28.12.1993 and the promotion orders in respect of S/Shri Jagdish Prasad Vimal and Amar Chand Bhatt issued on 17.11.1994 and were thus within 12 months of the date of final approval of the select list by the Commission and cannot also be faulted on this count. In view of this, the contention of the applicant that the two vacancies against which the aforementioned two officers were promoted should not have been utilised for them and should have been taken into consideration for preparing the zone of consideration for 1995 select list, is not sustainable and has to be rejected.

10. In view of the facts and circumstances of the case and the legal position as discussed above, the OA does not succeed and is dismissed with no order as to costs.

11. The interim direction issued on 21.10.1998 also stands vacated.

  
(N.P. NAWANI)

Adm. Member

  
(S.K. AGARWAL)

Judl. Member