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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 339/98, 318/98 & 199
T.A. No. 393/98

DATE OF DECISION 7.1.2000

Umesh Joshi, R.K.Sood & Petitioner
Babu Lal Jain

Mr. Rejandra Soni, Mr. P.S.Asopa Advocate for the Petitioner (s)
Miss Ashish Joshi
Versus

Union of India and Ors. Respondent

Mr. V.S.Gurjar, Mr. U.D.Sharma, Advocate for the Respondent (s)
Mr. L.N.Boss and Mr. A.K.Bhandari

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 ? *yes*
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.
(N.P.NAWANI)
Adm. Member

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

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 7.1.2002

OA No. 339/1998

Umesh Joshi S/o Shri Ram Karan, aged about 50 years, R/o Near Maharashtra Mandal, C-Scheme, Jaipur.

.. Applicant

Versus

1. Union of India through its Secretary, Home Department, Central Secretariat, New Delhi.
2. State of Rajasthan through its Chief Secretary, Govt. of Rajasthan, Jaipur.
3. Secretary, Department of Personnel, Govt. of Rajasthan, Jaipur.
4. Union Public Service Commission through its Chairman, Dholpur House, New Delhi.
5. Prem Singh Chundawat, S.P., Distt. Baran, Rajasthan
6. Madhu Sudhan Singh, S.P., Distt., Sawai Madhopur, Rajasthan.
7. Sunil Mathur, AIGP-I, Police Headquarter, Jaipur.

.. Respondents

Rajendra Soni, counsel for the applicant

Mr. V.S.Gurjar, counsel for respondents No.1

Mr. U.D.Sharma, counsel for respondents Nos. 2 and 3

Mr. L.N.Boss, counsel for respondent No.4

Mr. A.K.Bhandari, counsel for respondent No. 5 to 7

OA No.318/1998

R.K.Sood S/o Shri B.P.Sood, aged about 52 years, r/o C-363, Malviya Nagar, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary to the Government of India, Home Department, South Block, New Delhi.

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2. Union Public Service Commissioner through its Secretary, Dholpur House, Shahjahan Road, New Delhi.
3. The State of Rajasthan through the Chief Secretary, Government of Rajasthan Secretariat, Jaipur.
4. The Director General of Police, PHQ, Jalebi Chowk, Jaipur.

.. Respondents

Mr. P.S.Asopa and Miss Ashish Joshi, counsel for the applicant

Mr. V.S.Gurjar, counsel for respondent No.1

Mr. L.N.Boss, counsel for respondent No.2

Mr. U.D.Sharma, counsel for respondent Nos. 3 and 4

OA No. 393/1998

Babu Lal Jain S/o Shri Badri Prasad Jain, aged about 51 years, resident of Plot No.15, Kailashpuri, New Sanganer Road, Sodala, Jaipur.

.. Applicant

Versus

1. Union of India through its Secretary, Home Department, Central Secretariat, New Delhi.
2. State of Rajasthan through its Chief Secretary, Govt. of Rajasthan, Jaipur.
3. Secretary, Department of Personnel, Govt. of Rajasthan, Jaipur.
4. Union Public Service Commission through its Chairman, Dholpur House, New Delhi.
5. Prem Singh Chundawat, S.P., Distt. Baran, Rajasthan.
6. Madhu Sudhan Singh, S.P. Distt. Sawai Madhopur, Rajasthan.
7. Sunil Mathur, AIGP-I, Police Headquarter, Jaipur.
8. B.R.Gwala, Commandant, R.A.C., Kota.
9. B.N.Yougeshwar, S.P. (Headquarter), PHQ, Jaipur.

.. Respondents

Mr. Rajendra Soni, counsel for the applicant

|| Mr. V.S.Gurjar, counsel for respondent No.1

Mr. U.D.Sharma, counsel for respondent Nos. 2 and 3

Mr. L.N.Boss, Counsel for respondent No.4

Mr. A.K.Bhandari, counsel for respondent No.5 to 7

None present for other respondents

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

These Original Applications raise similar question of law and seek similar relief and have accordingly been heard together and are proposed to be disposed of through this common order. For the sake of convenience, reference has been made to the case file of Shri Umesh Joshi i.e. OA No.339/1998.

2. The relief sought by the applicants is essentially to quash the impugned orders dated 24.8.1998 and 31.3.1998 in so far as these concern the determination of vacancies in the promotion quota of IPS, Rajasthan cadre for the period 1995-96 to 1998 and selection of persons junior to the applicants.

3. The case of the applicants is that it was incorrect for the respondents to have determined Nil vacancies for the year 1995-96 and 9 vacancies for the year 1998 (there being no dispute about 2 vacancies for 1996-97), whereas according to them as per details given in their pleadings, vacancies should be 2 for 1995-96, 2 for 1996-97, 6 for the period 1.4.1997 to 31.12.1997 of the financial year 1997-98 and 3 as on 1.1.1998 for the calendar year 1998 under the provisions of the amended Indian Police Service (Appointment by Promotion) Regulations, 1955 (for short, Promotions Regulations) brought into force w.e.f. 1.1.1998; that by clubbing the vacancies on 1.1.1998 and by enlarging the zone of consideration as per details given in their applications, the respondents

have illegally selected persons junior to them and that the Selection Committee ought to meet for preparing yearwise select lists for vacancies of each of the year and consider eligible persons yearwise separately but the respondents by clubbing the vacancies are making non-eligible officers eligible, thereby, adversely effecting the chances of the applicants which is violative of the Articles 14 and 16 of the Constitution of India. It has also been averred that the service record of the applicants is totally neat and clean throughout, in fact their work was appreciated from time to time and there were no reasons for they being not selected for promotion to IPS whereas their juniors have been so selected.

4. Notices were sent to all the respondents and replies have been filed. The applicants have also filed a rejoinder to the reply made by respondents Nos. 5 to 7 while an additional reply has also been filed by respondent No.2. These replies/rejoinder/additional reply have been taken on record and perused.

5. Briefly stated, the respondents in their replies have vehemently rebutted the averments made by the applicants. They have explained as to how the two vacancies claimed by the applicants for being considered for 1995-96 have actually to be taken into consideration for 1994-95. The Selection Committee had met on 24.4.1995 and in view of the statutory provisions requiring vacancies anticipated within the ensuing 12 months i.e. within 23.4.1996, considered these two vacancies. It was also argued that the vacancies occurring during the truncated period of 1.4.1997 to 31.12.1997 could not be considered as vacancies occurring in the financial year starting from 1.4.1997 and ending on 31.3.1998, in view of the pre-amended Regulations not being applicable to one part of financial year i.e. between 1.1.1998 to 31.3.1998 and the amended Regulations in the meantime coming into force w.e.f. 1.1.1998. They have, therefore, contended that everything i.e. vacancy determination, followed by

preparation of the zone of consideration and selection by the Selection Committee, has been done strictly as per the prevailing statutory provisions and the applicants were duly considered but they being found not more meritorious than their juniors cannot give them any right to be taken on the select list.

6. We have heard the learned counsel for the parties at length and have gone through the material on record carefully.

7. There is a development we have to take note of before we can adjudicate on the reliefs sought by the applicants. We have been told at the Bar that Hon'ble the Supreme Court has given certain directions to the State Government of Rajasthan in the case of Shri B.K.Sharma, reported in 1998 (2) WLC 583, regarding revision of seniority of officers in the Rajasthan Police Service. It has been stated by the learned counsel for the applicants that the directions of the Apex Court might result in revision of seniority of officers in SPS and if such a thing is done, the State Government also have to modify the material it sends to the UPSC/ Central Government for finalising the list of SPS officers to be included in the list of officers to be considered by the Selection Committee for promotion to IPS.

8. The controversy in these cases is basically about the determination of yearwise vacancies in the promotion quota of IPS cadre of Rajasthan for the year 1994-95, 1995-96, 1996-97, 1997-98 (upto 31.12.1997) and the calendar year 1998, the preparation of the zone of consideration based on vacancies so determined and finally the alleged supersession of the applicants by their juniors in the appointment to the Indian Police Service.

9. / As regards the determination of the vacancies, it appears from

the contentions made by the applicants that according to them there were 2 vacancies for the year 1995-96, 2 for the year 1996-97, 6 vacancies for the period 1.4.1997 to 31.12.1997 within the purview of the un-amended Regulations and 3 vacancies as on 1.1.1998 for the year 1998 falling under the amended Regulations. However, it has been clarified by the respondents that the meeting of the Selection Committee for considering promotions for the year 1994-95 was held on 24.4.1995 and, therefore, vacancies upto 23.4.1996 were required to be taken into consideration and since due to retirement of S/Shri B.R.Suri and H.C.Sharma on 30.4.1995 and 31.7.1995 vacancies occurred on 1.5.1995 and 1.8.1995 respectively, these have rightly been included in the number of anticipated vacancies for the year 1994-95 and were accordingly filled up out of the select list for 1994-95. Accordingly, there were no vacancies at all for filling up during the year 1995-96 as averred by the applicants. As regards vacancies for the year 1996-97, there is no dispute between the parties that there were two vacancies to be filled up. As regards the vacancies for the period 1.4.1997 to 31.12.1997, the applicants have contended that there were a total of 6 vacancies to be filled up, one due to retirement of Shri Randheer Singh in July, 1997 and 5 vacancies on account of revision of cadre strength. The respondents, on the other hand, have stated that such an assessment by the applicants is not correct because of the fact that prior to the amendment of the Promotions Regulation by the IPS (Appointment by Promotion) (Amendment) Regulations, 1997, the year was defined as the financial year but on account of the said amendment, the year is now defined as a calendar year and vacancies are now required to be determined as on the first day of the January of the year in which the meeting of the Selection Committee held and, therefore, the truncated period from 1.4.1997 to 31.12.1997 cannot be construed as the whole financial year of 1997-98 and in view of the aforesaid statutory provisions, the said 6 vacancies which have arisen on 1.6.1997 and 19.9.1997 cannot be considered as the vacancies for the financial year

1997-98 and will have to be considered as substantive vacancies available as on first day of January 1998 and in the aforesaid truncated period the vacancies will have to be considered as Nil. Consequently the vacancies as on 1.1.1998 would become 9, six being required to be considered as substantive as on 1.1.1998, one on account of retirement of Shri M.S. Punia on 31.12.1997 and two on account of allocation on the basis of cadre review.

10. The learned counsel appearing for applicants S/Shri Umesh Joshi and Babu Lal Jain and the learned counsel appearing for the applicant Shri R.K. Sood, while strongly arguing and amplifying the averments made on behalf of the applicants stressed that due to wrong determination and clubbing of vacancies the applicants were put into a dis-advantageous position and the vacancies occurring during the truncated period i.e. 1.4.1997 to 31.12.1997 should have been filled up during that period itself specially, in the absence of any repeal provision in the amended Promotions Regulations and by the carry over of these vacancies to 1998, the zone of consideration had been enlarged which enabled their juniors, who otherwise might not have been come into the zone of consideration at all, to compete with them and got selected over them. For this purpose a Review DPC needs to be constituted but it was added that meeting of such Review DPC has to be held only after the seniority of SPS officer is revised following the directions given in the case of B.K. Sharma reported in 1998 (2) WLC 583. They cited a number of judgments in support of their contentions. Some of which are - Ram Prasad etc. etc. Vs. D.K. Vijay and Ors., JT 1999 (6) 631; AIR 1999 SC 2148; U.P. Jal Nigam case, 1996 (1) JT 641; Union of India and Ors. Vs. Vipinchandra Hiralal Shah 1996 (9) JT 686; Vinod Kumar Sangal Vs. Union of India and Ors., 1995 (3) SLJ 143; Ashok Kumar etc. Vs. Union of India and Ors, 1999 LAB I.C. 3477; Krishna Behari Srivastava Vs. State of U.P. and Anr., 1993 Supp/ (3) SCC 576 and P. Ganeshwar Rao and Ors. Vs. State of Andhra Pradesh

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and Ors., 1998 (Supp) SCC 740. These cases are distinguishable because the controversy in the present cases is regarding the determination of vacancies in various years which depends on the factual position of vacancies occurring due to retirement or on account of addition to promotion quota as a consequence of cadre review and the respondents have stated that select list has been prepared yearwise.

11. The learned counsel for respondents also expanded their respective contentions during arguments and cited a number of judgments in support of their contentions. Some of these are - V.C.Perumal Vs. Union of India, 1999 SCC (L&S) 962; 1998 (2) SLR 148; 1997 (1) SLR 153; 1996 (1) SLR 774; 1995 (2) SLR 760; 1995 (4) SLR 68; AIR 1987 SC 593 and 1986 (4) SLR 75. These cases generally relate to primacy of the assessment made by the Selection Committee.

12. On careful consideration of the matter, we feel that the vacancies as determined by the respondents are correct. As stated by the respondents, the Selection Committee for considering promotions for the year 1994-95 was held on 24.4.1995 and anticipated vacancies upto 23.4.1996 were required to be taken into consideration. The contention of the applicants that simply because S/Shri B.R.Suri and H.C.Sharma retired on 30.4.1995 and 31.7.1995, the vacancies have to be taken into consideration for the period 1995-96, is not tenable. As regards the truncated period from 1.4.1997 to 31.12.1997, there is an important factor which needs to be kept in view. The pre-amended Regulations were in force upto 31.12.1997. As per Regulation 5(1) "the number of members of the State Police Service to be included in the list shall be calculated as the number of substantive vacancies anticipated in the course of a period of 12 months commencing from the date of preparation of the list". The language of Regulation 5(1) is very clear and it talks about the anticipated vacancies in the coming 12 months and not any part of the

year. If the Selection Committee had met on or before 31.12.1997, following the statutory pre-amended provisions which required the Selection Committee to anticipate vacancies for the period of 12 months, commencing from the date of preparation of the select list and the period covering such 12 months would have gone beyond the period starting 1.1.1998, whereas from 1.1.1998, an entirely different system of determining the vacancies would have come into effect as per the amended Regulations. Such action, if undertaken would palpably be against the statutory provisions as contained in the pre-amended Promotions Regulations. On the other hand, if the Selection Committee had considered vacancies either as existing on the date of the meeting of the Selection Committee or for a period of only as many months as would expire on 31.12.1997 from the date of its meeting, the action of the Selection Committee or the respondents which would have placed the material on such determination before it, would also have not been in conformity with the pre-amended Regulation as was existing on the date of such meeting. The balance of consideration, therefore, in our opinion, lies in what has been contended by the respondents i.e. consider the vacancies available during the truncated period from 1.4.1997 to 31.12.1997 as substantive vacancies as on 1.1.1998. We have sought support for this view from a recent judgment of Hon'ble the Supreme Court of India in the case of V.C.Perumal Vs. Union of India reported in AIR 1999 SC 789. This case also involved promotion to IPS and it was held that number of candidates to be put on the select list has to be determined with respect to the anticipated vacancies for the coming year only (meaning 12 months from the date of meeting), existing vacancies at the time of Selection Committee meeting are not to be considered. We, therefore, are of the opinion that the period between 1.4.1997 and 31.12.1997 has to be considered more or less as a grey zone, void in another word, facilitating the change over from the pre-amended Regulations applicable upto 31.12.1997 to the Regulations as amended and brought into force w.e.f. 1.1.1998. As a necessary

corollary, we hold that there were no vacancies to be filled up during the period 1.4.1997 to 31.12.1997 and consequently such vacancies have to be considered as a substantive vacancies available as on 1.1.1998 to be filled up by the Selection Committee which meets for the calendar year 1998. To sum up we hold that the determination of vacancies i.e. Nil during 1995-96, 2 during 1996-97, Nil during the period 1.4.1997 to 31.12.1997 and 9 as on 1.1.1998 has been correctly done by the respondents and the consequential action, subsequent to such determination taken by the respondents has to be upheld as being intra-vires.

13. As regards the question of applicants being senior and yet having been not promoted vis-a-vis their juniors, the matter was argued by the learned counsel for the applicants during the hearing. We find that the question of so called supersession was not specifically mentioned in the reliefs by the applicant and it was just stated that the panel dated 24.8.1998 for IPS cadre, Rajasthan alongwith entire selection proceedings needs to be revised. Having found that the determination of vacancies was correctly done by the respondents followed by determination of the zone of consideration and preparation of yearwise select list, ~~xxxxx~~, we are really not required to go into the question of the so called supersession of the applicants by their juniors in view of the settled legal position to the extent that even the Apex Court itself did not wish to sit over the assessment made by the DPC as an appellate authority. It was held by the Apex Court in *Nutan Arvind Vs. Union of India and Ors.* (1996) 2 SCC 488, that "When a high level Committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, this court cannot sit over the assessment made by the DPC as an appellate authority". In fact there are catena of judgments of the Apex Court which prohibit this Tribunal to make its own assessment of the overall performance of the candidates within the zone of consideration and try and substitute its own assessment over the assessment made by the

Selection Committee. We, therefore, refrain from making any effort to call for the records and try and make our own assessment of the relative merits of the candidates in the zone of consideration for promotion to the IPS. We are, therefore, not going to interfere with the selections made by the Selection Committee under Sub-regulations (4) and (5) of the Regulation 5 of the Promotions Regulations.

14. As regards the contention of the applicants that determination of 9 vacancies as on 1.1.1998 amounted to clubbing of vacancies, we would like to remain ^{within} the parameters of our order delivered on 8.10.1999 in the case of Kum. Laxmi Bairwa and Anr. Vs. Union of India and Ors. in OA No. 85/98. We do not feel it necessary, at this juncture, to adjudicate on the larger issue whether with the coming into force of the amended Promotion Regulations w.e.f. 1.1.1998 the vacancies will be considered each yearwise or get bunched as on first January of the year in which the meeting of the Selection Committee takes place. We feel that we are not required to go into this question at all in the present Original Applications. The controversy here is confined to the truncated period between 1.4.1997 and 31.12.1997. As discussed earlier, this period of the financial year 1997-98 is really a grey zone wherein the pre-amended Regulations which require a period of 12 months from the date of the meeting of the Selection Committee to be taken into account cannot be applied. The vacancies occurring during this period had to be, therefore, necessarily considered as substantive vacancies available on 1.1.1998 and this could not be construed as clubbing of the vacancies of two years. Such an eventuality is bound to arise when the reference year has changed from financial year to the calendar year. Out of a number of cases cited by the learned counsel for the applicants with regard to non-permissibility of clubbing of vacancies, the case of Vipinchandra Hiralal Shah reported in 1996 (9) JT 686 appears to be most relevant but even this case is distinguishable in view of the fact that the Apex Court was looking at preparation of a

consolidated select list for 7 years from 1980 to 1986. As already discussed, the limited question in these cases before us is whether it was correct for respondents to consider vacancies arising in the truncated period from 1.4.1997 to 31.12.1997 as vacancies not for the complete financial year 1997-98 but substantive vacancies as on 1.1.1998 on account of coming into force of the amended Promotions Regulations w.e.f. 1.1.1998. On the same analogy the judgment delivered by the Patna High Court in the case of Ashok Kumar reported in 1993 LAB I.C. 3477 is also not applicable so far as the controversy in these Original Applications is concerned. We, therefore, find no force in the contention of the applicants that it was incorrect for respondents to consider vacancies which arose during the period between 1.4.1997 to 31.12.1997 as substantive vacancies available on 1.1.1998. We, therefore, are of the considered opinion that the action of the respondents in considering the vacancies that occurred during the incomplete financial year i.e. between 1.4.1997 and 31.12.1997 as substantive vacancies available on 1.1.1998 cannot be termed as clubbing of the vacancies of two years and is not, therefore, in contravention of the Promotions Regulations.

15. In view of above discussions, the applications do not succeed and the Original Applications are accordingly dismissed. Let a copy of this order be also placed in the files of the other two Original Applications.

Parties to bear their own costs.

(N.P.NAWANI)

Adm. Member

(S.K.AGARWAL)

Judl. Member

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in file no 318/98 R.K.San
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