

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 25th day of May, 2011

Original Application No.400/2010

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

Om Prakash Sharma
s/o Shri Narottam Lal Sharma,
aged 55 years, r/o 101/67, Sector-10,
Meera Marg, Agarwal Farm,
Mansarovar, Jaipur, at present posted as
Addl. Superintendent of Police,
Jaipur City (East), Jaipur.

.. Applicant

(By Advocate: Shri S.P.Sharma)

Versus

1. State of Rajasthan through Secretary, Department of Personnel, Government of Rajasthan, Secretariat, Jaipur
2. Union of India through Secretary, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Government of India, New Delhi.
3. Secretary, Ministry of Home Affairs, Government of India, New Delhi.
4. Union Public Service Commission through its Secretary, Dholpur House, Shahajahan Road, New Delhi.

.. Respondents

(By Advocate: Shri V.D.Sharma and Shri Mukesh Agarwal)

ORDER (ORAL)

Present OA is directed against the order dated 1.2.2010 passed by respondent No.3 whereby the persons junior to the applicant have been promoted to India Police Service (IPS) by not considering candidature of the applicant for promotion to IPS for the year 2008.

2. Brief facts of the case are that the applicant was initially appointed in Rajasthan Police Service (RPS) in the year 1982 and he joined on 1.12.1982. The applicant was further promoted in the Senior Scale as Additional Superintendent of Police against the vacancies for the year 1995-1996 and thereafter Selection Scale against the vacancies for the year 2004-2005 and further promoted in the Super Time Scale vide notification dated 2.3.2009. The applicant is presently posted as Additional Superintendent of Police (East), Jaipur City, Jaipur.

3. The learned Senior Counsel Shri S.P.Sharma submits that the applicant has outstanding record of service and he has been sent on deputation with United Nations Mission in Kasovo for one year. He was awarded Police Medal for meritorious services by the President on the Independence Day, 2008 for outstanding performance.

4. The date of birth of the applicant is 11th October, 1954 but due to wrongful interpretation of Rule 5(3) of Indian Police Service (Appointment by Promotion) Regulations, 1955 (IPS Promotion Regulations) the applicant has been placed out of zone of



consideration treating him as having become overage. Regulation 5(3) reads as under:-

"The Committee shall not consider the cases of members of the State Civil Service who have attained the age of 54 years on the first day of January of the year for which the select list is prepared."

5. The applicant preferred a D.B. Civil Writ Petition No.2900/2009 before the Hon'ble High Court at Jaipur Bench and Hon'ble High Court while disposing of the application for interim relief directed that ~~that~~ ^{the} promotion, if any made, shall be subject to the final outcome of the writ petition. Ultimately, the said Writ Petition was disposed of vide order dated 22.10.2010 as the respondents have raised question of maintainability of the Writ Petition before the High Court in view of the judgment of the Hon'ble Apex Court in the case of L.Chandra Kumar vs. Union of India and Ors., reported in AIR 1997 SC 1125. In the aforesaid Writ Petition, the petitioner has prayed for declaring the provisions of Regulations 5(3) of the IPS (Appointment by Promotion)Regulations, 1955 to be bad in law and ultra vires to the Constitution of India. The Hon'ble Division Bench of the High Court having considered the judgment rendered by the Apex Court in the case of L.Chandra Kumar (supra) observed that the petitioner has to approach the Central Administrative Tribunal at the first instance and the Writ Petition was dismissed as not maintainable with liberty to the petitioner to approach the Central Administrative Tribunal and further observing that the petitioner may be entitled for exclusion of time spent in this writ proceedings since



its was admitted and the interim order dated 25.11.2009 was made operative for a period of six weeks. Pursuant to the direction and liberty provided by the Division Bench of the High Court, the applicant preferred OA No.483/2010, which is still pending consideration before this Tribunal.

6. In the seniority list of RPS which has been published on 8.7.2008, the name of the applicant finds place at No.20. When Board met in the year 2008 for making promotions to the IPS for the vacancies of the year 2007, the applicant was placed at No.11 in the select list. This select list was named as Select List of 2008 and since the age of applicant is 11.10.1954, he was considered for the said vacancies, however, on account of there being only six vacancies available the applicant could not be selected.

7. The grievance of the applicant is that his case was not considered thereafter for the vacancies of the subsequent year in view of Regulation 5(3) of IPS Promotion Regulations treating him as having become overage and persons junior to the applicant from the same list have been promoted vide order dated 1.2.2010 (Ann.A/1). Further submitted that as per provisions of Regulations, the Committee has to meet every year and prepare a list of such members of the State Police Services as are considered by the Government to be suitable for promotion to IPS. However, in the State of Rajasthan, for the year 2007, the Committee made its recommendations in the year 2008 and considered the case of the applicant as per the eligibility as on 1.1.2008 and treating that as per the cut off date, considered the candidature of the applicant



for the vacancies which arose in 2007 i.e. in between 1.1.2007 to 31.12.2007 whereas the applicant was also entitled to be considered for the vacancies which arose in between 1.1.2008 to 31.12.2008 since he would attain the age of 54 years only on 11.10.2008. The applicant submits that so far as the Regulations are concerned, it has been provided under Regulation 3 that the age of 54 years is required to be determined as per Regulation 2(1)(1) of the IPS Promotion Regulations read with amended Regulation 5(3) of the said Regulations.

8. Regulation 2(1)(1) defined the expression year means 'the period commencing on the first day of January and ending on 31st day of December of the same year'. Thus, the eligibility with regard to the age of applicant for inclusion in the select list is to be seen from 1.1.2008 because the vacancies on which the promotions have been made in 2010 relate to the period which arose in between 1.1.2008 to 31.12.2008 and, therefore, the age of 54 years ought to be treated as on 1.1.2008 when the applicant was less than 54 years of age. Thus, it is clear that the applicant would have been considered and promoted having been already placed in the select list of the earlier year above the persons who have been given the said promotion and there has been a wrongful denial of consideration as the case of the applicant was not considered at all for the vacancies which arose in between 1.1.2008 to 31.12.2008.

9. Feeling aggrieved and dis-satisfied with the order impugned Ann.A/1, the applicant submitted the present OA on the ground that while considering the select list for the vacancies which arose



in the year 2008, the respondents have wrongfully taken the date of eligibility of age with respect to 1.1.2009 instead of 1.1.2008 as the applicant would have been within age as on 1.1.2008 for consideration for the vacancies which arose in the year 2008 as the right of consideration is fundamental right and the same cannot be taken away if the person is otherwise found eligible.

The applicant claims that his date of birth be counted from 1.1.2008 as the vacancies arose in the year 2008 as held by the Hon'ble Punjab and Haryana High Court in the case of Praveen Kumar vs. Union Public Service Commission and ors., rendered in CWP No.15798/2009 dated 1.2.2010 and refers to para 20 and 21 of the judgment, which thus reads:-

"20. The sole question which emerges for determination of this Court is whether the age of eligibility is required to be considered with reference to January 1st of the year for which the select list is prepared or any other date. A plain reading of the expression 'year' in Regulation 2(1)(l) shows that a year would mean the period commencing on January 1st and ending on December 31st of the same year. A further perusal of Regulation 5(3) would make it evident that the Committee is debarred from considering the cases of such officer of the State Civil Service who have attained the age of 54 years. The Regulation further says that the age of 54 years is required to be determined on January 1st of the year for which the select list is prepared. In the present case, 4 vacancies are of the year 2006 and one vacancy of earlier years became available in the year 2006 on account of non-joining of Shri Joginder Lal Jain, PCS. It has been rightly contended that the emphasis in Regulation 5(3) is on the expression 'the year for which the Select List is prepared', which would mean that



meeting of the Committee may be held in a subsequent year but the eligibility of the officer in so far his age is concerned would remain intact. It has to be judged with reference to the year for which the select list is prepared.

21. We find substantive support to the aforesaid submission in un-numbered proviso to Regulation 5(1). According to the aforesaid proviso if no meeting of the Committee could be held during a year then whenever the Committee meets again, the select list has to be prepared separately for each year during which the Committee could not meet as on December 31st of each year. The aforesaid proviso is consistent with the definition of expression 'year' in Regulation 2(1)(l). Therefore, the vacancies for the year 2006 i.e. from 1.1.2006 to 31.12.2006 have to be determined as on December 31st of that year. The select list, which has been erroneously styled as 'Select List of 2007'. In fact is the select list for the year 2006. Therefore, the age of the petitioner has to be determined as on 01.01.2006. Accordingly, he would be eligible."

10. The Hon'ble Apex Court upheld the judgment passed in the case of Praveen Kumar (supra) in the Special Leave Petition filed by the Union of India vide order dated 31st May, 2010. Thus, the applicant submits that he is entitled to be considered against the vacancies upto 31st December, 2008.

11. The applicant also challenged the notification dated 1.2.2010 (Ann.A/1) in which select list has been made and vacancies from 1.1.2008 to 31.12.2008 were considered, but the respondents did not consider the name of the applicant in the zone of consideration for promotion for the year 2008. The applicant submits that as per the law laid down by the Punjab and Haryana High Court in the case of



Praveen Kumar (supra), he cannot be denied benefit of promotion as the vacancies arose at the time when the applicant was eligible but the exercise was conducted at a belated stage for which the applicant is not at fault.

12. Further placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of Ajit Singh and ors. (ii) vs. State of Punjab and Ors, reported in (1999) 7 SCC 209, wherein the question was raised with regard to applicability of R.K.Sabarwal's case reported in (1995) 2 SCC 745 and Ajit Singh Januja's case reported in (1996) 2 SCC 714 wherein the Apex Court held that the roster point is exhausted and has worked out itself once the vacancies are filled. Furthermore the application of the roster system shall come into picture once the vacancy arises.

13. It is not disputed that in view of the judgment rendered in the case of Praveen Kumar (supra) the respondents have issued memorandum dated 25th August, 2010 in compliance of the judgment in which in para 4, sub clause (iv) it has been stated that "the eligibility of State Service Officers in cases of Review Selection Committee meeting would be reckoned on the basis of Regulation/interpretation prevailing in that year unless otherwise directed by a Court of Law".

14. The impugned order Ann.A/1 has been challenged by the applicant on the ground that question of eligibility is required to be considered with reference to January 1st of the year for which the select list is prepared or any other date. On reading of the



expression 'year' in Regulation 2(1)(i) shows that a year would mean the period commencing on January 1st and ending on December 31st of the same year. The learned counsel appearing for the applicant also referred to Regulation 5(3) of IPS Promotion Regulations by which it is evident that the Committee is debarred from considering the cases of such officers of the State Civil Service who have attained the age of 54 years. The Regulation further says that the age of 54 years is required to be determined on January 1st of the year for which the select list is prepared. This is further strengthened from the fact that according to the aforesaid rules, if no meeting of the Committee could be held during a year then whenever the Committee meets again, the select list has to be prepared separately for each year during which the Committee could not meet as on December 31st of the year. Therefore, the vacancies for the year 2008 i.e. from 1.1.2008 to 31.12.2008 have to be determined as on December 31st of that year and by doing so, the age of the applicant has to be determined as on 1.1.2008 instead of 1.1.2009.

15. By way of MA No.126/11, the applicant has placed rejoinder to reply filed by respondents No.3 and submitted that the respondents have placed on record the Office Memorandum dated 25.08.2010 issued by the Govt. of India, although the said circular is applicable in the facts and circumstances of the case, however, by way of abandoned caution, seeks to submit rejoinder to the reply in relation to new facts brought by respondents in their reply relating to aforesaid office memorandum. The MA is allowed



and rejoinder to the reply is taken on record. it is further submitted that the office memorandum has been issued on 25.8.2010 whereas and impugned order is of 1.2.2010 and the judgment of the Hon'ble Punjab and Haryana High Court is also of 1.2.2010 therefore, even otherwise the notification dated 1.2.2010 is directly affected by the judgment passed in Praveen Kuarm (supra) and therefore, the memorandum cannot come in the way of the applicant for getting his redressal.

16. In response to the reply submitted by the respondents that it will open Pandora box, the applicant has stated that it is wholly misconceived and if a rightful claim of an individual has been taken away wrongfully, redressal of his grievance has to be done as and when the law is interpreted in his favour and the person cannot be rendered remediless merely because of afflux of time. Moreover, so far as the applicant is concerned, in his case the respondents themselves had communicated to the counsel for the applicant on 4.3.2010 that the notification dated 1.2.2010 by which the 2009 select list has been prepared, is for the appointment against the vacancies which came into existence in the year 2008 as per letter dated 4.3.2010 (Ann.A-I). It is also submitted that the State Government has accepted this fact that the applicant has been wrongfully deprived of his promotion to IPS. This fact is borne out from the minutes of the record file which has been received by the applicant under Right to Information Act on 4.2.2010.

17. The respondent Union of India in their reply submits that the process for appointment of State Police Service officers to the IPS



under IPS (Appointment by Promotion) Regulations, 1955 is initiated by the State Government with determination of year-wise vacancies. Once the vacancies are determined, the State Government is required to make available the relevant service records of eligible State Police Service officers who fall within the zone of consideration to the Union Public Service Commission (UPSC). The Commission convenes a meeting of the Selection Committee. The role of Union of India i.e. Ministry of Home Affairs in finalizing the selection is restricted to the functional requirement of nominating two Joint Secretary level officers as its representatives. After the select list is approved by the UPSC only thereafter the appointment of those State Police Service officer who are included unconditionally in the select list are notified by Government of India, Ministry of Home Affairs.

18. It is further stated that under the All India Service Act, 1951 particularly Section 3 of the said Act, the Central Government is empowered to make rules to regulate the recruitment and conditions of the service of persons appointed to the IPS, which reads as under:-

"3(1) The Central Government may, after consultation with the Governments of the State concerned (including the State of Jammu and Kashmir) (and by notification in the Official Gazette) make Rules for the Regulation of recruitment and conditions of service of persons appointed to an All India Service....."

19. In pursuance of section 3(1) of All India Service Act, 1951 the Central Government has framed the IPS (Recruitment) Rules, 1954 and IPS (Appointment by Promotion) Regulations, 1955. Under Rule

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4 of the Recruitment Rules a person is recruited to IPS by one of the two sources i.e. a) through competitive examination (direct recruitment) and by promotion of substantive members belonging to the State Police Services.

20. In the process of preparation of the select list by the UPSC, the Ministry of Home Affairs, as Cadre Controlling Authority in respect of the IPS is concerned with determination of vacancies in consultation with the State Government concerned and nomination of two officers not below the rank of Joint Secretary as Members of the Selection Committee and thereafter in making appointments of the officer included in the Select List to the IPS subject to and in accordance with the provisions contained in Regulation 9 of promotion regulations. The applicant is a State Police Service officer of Rajasthan and his date of birth is 11.10.1954 and he was appointed in Rajasthan Police Service on 1.12.1982 and as per Regulation 5(3) of IPS (Appointment by Promotion) Regulations, 1955 which provides that committee shall not consider the case of the member of the State Police service for promotion to IPS if he has attained the age of 54 years on the first day of January of the year.

21. With regard to the claim of relief on the basis judgment of Punjab and Haryana High Court that the date of birth of the applicant is 11.10.1954 and as per the said guidelines he has not crossed the age of 54 years as on 1.1.2008 and as such he is eligible for consideration against the promotion quota of vacancies arising between 1.1.2008 to 31.12.2008, in this regard the learned counsel



appearing for the respondent referred to Regulation 5(3) of IPS (Appointment by Promotion) Rules, 1955 according to which the Committee shall not consider the case of the members of the State Police Service for promotion to IPS who have attained the age of 54 years on the first day of January of the year for which select list is prepared. The Punjab and Haryana High Court in the case of Praveen Kumar (supra), interpreted the said provisions as under:-

"The sole question which emerges for determination of this Court is whether the age of eligibility is required to be considered with reference to January 1st of the year for which the select list is prepared or any other date. A plain reading of the expression 'year' in Regulation 2(1)(I) shows that a year would mean the period commencing on January 1st and ending on December 31st of the same year. A further perusal of Regulation 5(3) would make it evident that the Committee is debarred from considering the cases of such officer of the State Civil Service who have attained the age of 54 years. The Regulation further says that the age of 54 years is required to be determined on January 1st of the year for which the select list is prepared. In the present case, 4 vacancies are of the year 2006 and one vacancy of earlier years became available in the year 2006 on account of non-joining of Shri Joginder Lal Jain, PCS. It has been rightly contended that the emphasis in Regulation 5(3) is on the expression 'the year for which the Select List is prepared', which would mean that meeting of the Committee may be held in a subsequent year but the eligibility of the officer in so far his age is concerned would remain intact. It has to be judged with reference to the year for which the select list is prepared. We find substantive support to the



aforesaid submission in un-numbered proviso to Regulation 5(1). According to the aforesaid proviso if no meeting of the Committee could be held during a year then whenever the Committee meets again, the select list has to be prepared separately for each year during which the Committee could not meet as on December 31st of each year. The aforesaid proviso is consistent with the definition of expression 'year' in Regulation 2(1)(I). Therefore, the vacancies for the year 2006 i.e. from 1.1.2006 to 31.12.2006 have to be determined as on December 31st of that year. The select list, which has been erroneously styled as 'Select List of 2007'. In fact is the select list for the year 2006. Therefore, the age of the petitioner has to be determined as on 01.01.2006. Accordingly, he would be eligible."

22. It is not disputed by the respondents that the Hon'ble Supreme Court dismissed the SLP filed by the Union of India and the judgment in the case of Praveen Kumar has become final and in compliance of the directions issued by the Hon'ble High Court, the following decision has been taken by the competent authority:-

- "(i) the said order would be implemented w.e.f. 1st February, 2010, i.e. date of the High Court order.
- (ii) Wherever meeting of the Selection Committee in respect of any All India Service have not been held or meeting have been held but minutes of the meeting have not been approved by the Commission, the same will be held in accordance with the interpretation of Regulations given by Hon'ble High Court and confirmed by Hon'ble Supreme Court.



(iii) Where meetings have already been held and minutes have been approved the same will not be opened unless and until there is a specific direction from a Court of Law.

(iv) The eligibility of State Service officers in case of Review Selection Committee meeting would be reckoned on the basis of Regulations interpretation prevailing in that year unless otherwise directed by the Court of Law.

(v) Select List will henceforth be styled coinciding with the year of vacancies. In case there are two overlapping Select Lists for a particular year the same will be distinguished by styling the Select List of that year (correspondent to the year in which vacancies have arisen) and the other select list will be named by adding 'A" to that year."

23. Same objection has been raised by respondent No.3 as has been raised on behalf of respondent No.2. In addition to the submissions made on behalf of respondent No.2, respondent No.3 submitted that the Department of Personnel and Training, Govt. of India is the nodal authority for framing, interpretation and interpolation of various rules and regulations governing All India Services, including the rules and regulations for appointment to the All India Services through different streams. The Ministry of Home Affairs is the cadre controlling authority in respect of only one service of All India Service i.e. the India Police Service. This ministry is involved only in the process of implementation of the rules and regulations framed by the Department of Personnel and Training in respect of the India Police Service. The appointment from the State Police Service to IPS is solely governed by and made under the provisions of the IPS (Appointment by Promotion) Regulations, 1955 as amended from time to time.



24. The learned counsel appearing for the respondents also referred to Regulation 5(3) of IPS (Appointment by Promotion) Regulations, 1955 and further submitted that the committee constituted under Regulation 3 of IPS Promotion Regulations for preparation of the select list of 2008 for appointment to the IPS by promotion from Rajasthan Police Service was held on 27.6.2008 and the select list was notified by the Ministry of Home Affairs through notification dated 16.2.2009. Again a meeting of the selection committee constituted under Regulation 3 of IPS Promotion Regulations for preparation of select list of 2009 for appointment to the IPS by promotion from Rajasthan Police Service was held on 9.12.2009. The number of vacancies for the select list was determined to be six. As such, the zone of consideration comprised of 18 names. The name of the applicant was not included in the zone of consideration as he became ineligible for consideration of his name pursuant of Regulation 5(3) of IPS (Appointment by Promotion) Regulations. The learned counsel also placed reliance on the judgment of the Punjab and Haryana High Court in the case of Praveen Kumar (supra) and submitted his defence on behalf of respondent No.2 stating that the decision in the case of Praveen Kumar would be implemented w.e.f. 1.2.2010 , the date of the High Court's order. Further, it is decided that whenever meetings of the selection committee in respect of any All India Service have not been held or meeting have been held but minutes of the meeting have not been approved by the Commission, the same will be held in accordance with the interpretation of Regulations given by the



Hon'ble High Court and confirmed by the Hon'ble Supreme Court and where meetings have already been held and minutes have been approved, the same will not be opened unless and until there is a specific direction from the Court of Law and eligibility of State Service officers in cases of Review Selection Committee meeting would be reckoned on the basis of regulations/interpretation prevailing in that year unless otherwise directed by the Court of Law. As per the decision of the Department of Personnel and Training, the select list will henceforth be styled coinciding with the year of vacancies. In case there are two overlapping select lists for a particular year the same will be distinguished by styling the select list of that year (corresponding to the year in which vacancies have arisen) and the other select list will be names by adding 'A' to that year.

25. The State of Rajasthan in their reply raised preliminary objection and submitted that the meeting of the selection committee for preparation of the select list of 2009 has held and its recommendations stand approved by the UPSC as well as appointments are made on its basis by the Ministry of Home Affairs in the Govt. of India. Therefore, the issue of preparation, finalization and action over the select list of 2009 has been completed and closed. In view of the fact that select list of 2009 has already been prepared and acted upon, the relief as prayed for by the applicant, if acceded to, would mean unsettling the settled position and opening a Pandora's Box thereby having an adverse impact upon appointments to all India Service by promotion. Thus, the



present OA has become infructuous and the same deserves to be dismissed on the count alone.

26. The learned counsel appearing for respondent No.1 relied upon the provisions of Regulation 5(3) of the IPS (Appointment by Promotion) Regulations and the judgment rendered in the case of Praveen Kumar (supra) and also referred to the OM dated 25th August, 2010 (Ann.R/1) by which in pursuance to the direction issued in the case of Praveen Kumar certain decision has been taken by the competent authority. The learned counsel has also placed reliance on the judgment in the case of Managing Director ECIL, Hyderabad vs. B.KArunakar and Ors., reported in (1993) 4 SCC 727 and also in the case of Babu Ram vs. CC. Jacob and Ors., in CA No.10658-59/96 decided on 18.3.1999.

27. Having heard the rival submissions of the respective parties and upon careful perusal of the rules, regulations referred as well as the judgments referred by the respective parties. The present OA is directed against the order dated 1.2.2010 issued by the Under Secretary, Ministry of Home Affairs, New Delhi whereby persons junior to the applicant have been promoted to IPS by not considering candidature of the applicant for promotion to the IPS for the vacancies of the year 2008. As all the respective counsels appearing on behalf of the parties place reliance on the judgment of the Hon'ble Punjab and Haryana High Court in the case of Praveen Kumar (supra), where the sole question for determination was whether the age of eligibility is required to be considered with reference to January 1st of the year for which the select list is



prepared or any other date. The Hon'ble High Court has also considered the expression 'year' in Regulation 2(1)(1) and observed that a plain reading of expression 'year' shows that a year would mean the period commencing on January 1st and ending on December 31st of the same year.

28. The Hon'ble High Court has also thoroughly considered regulation 5(3). Upon perusal of Regulation 5(3) it is evident that the Committee is debarred from considering the cases of such officer of the State Civil Service who have attained the age of 54 years. In the case before the High Court four vacancies are of the year 2006 and one vacancy of earlier year became available in the year 2006 on account of non-joining of Shri Joginder Lal Jain. It has been contended that emphasis in Regulation 5(3) is on the expression of 'the year for which the select list is prepared' which would mean that meeting of the committee may be held in subsequent year but the eligibility of the officers in so far his age is concerned would remain intact and it has to be judged with reference to the year for which the select list is prepared. The Hon'ble Court has also considered the provisions of the Regulations and as per the provisions the Committee has to meet every year and prepare a list of such member of the State Govt. Service as are considered by the Government to be suitable to promotion in the IAS and in para 5 observed as under:-

"5. As per the provisions of the Regulations, the Committee has to meet every year and prepare a list of such members of the State Civil Service as are



considered by the Government to be suitable for promotion to the IAS. However, in the State of Punjab, in the year 2006 neither the select was prepared nor the meeting of the Committee was held, when the petitioner became eligible to be considered for promotion to the IAS. On 7.8.2008 a Combined Eligibility List was prepared for filling up 4 posts of the IAS for the year 2006 and 5 posts for the year 2007. It has been asserted that one consumed vacancy has been wrongly shown for the year 2007 instead of 2006. According to the petitioner the aforementioned vacancies are to be filled up by promotion from amongst members of the State Civil Service during the year 2007 and 2008 respectively (P-4)."

29. This aspect has also been considered by the High Court and also that during the pendency of the OAs the respondents have finalized the selection process and on 13.8.2009 a notification was issued making appointment to the IAS and perusal of the notification show that five officers have been appointed against the Select list for the year 2007 and four appointments have been made against the Select List for the year 2008. However, these appointments have been made subject to outcome of OA.

30. We have also considered the Regulation 2(1)(i) and Regulation 5 of the Promotion Regulations which reads as under:-

Regulation 2(1)(i)

"2(1) In these regulations, unless the context otherwise requires

(a) to (k) xxx xxx xxx



(I) "year" means the period commencing on the first day of January and ending on 31st day of December of the same year.

Regulation 5

"5. PREPARATION OF A LIST OF SUITABLE OFFICERS:-

5(1) Each Committee shall ordinarily meet every 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 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 in which the meeting is held, in the posts available for them under Rule 9 of the Recruitment Rules. The date and venue of the meeting of the Committee to make the selection shall be determined by the Commission;

Provided that no meeting of the Committee shall be held, and no list for the year in question shall be prepared when;

(a) there are no substantive vacancies as on the first day of January of the year in the posts available for the members of the State Civil Service under Rule 9 of the Recruitment Rules, or

(b) the Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for the members of the State Civil Service under Rule 9 of the Recruitment Rules.



Provided further that where no meeting of the Committee could be held during a year for any reason other than that provided for in the first proviso as and when the Committee meets again, the Select List shall be prepared separately for each year during which the Committee could not meet as on the 31st December of each year.

EXPLANATION:- In case of Joint Cadres, a separate select list be prepared in respect of each State Civil Service.

5(2) The Committee shall consider for inclusion to the said list, the cases of members of the State Civil Services in the order of seniority in that service of a number which is equal to three times the number referred in sub-regulation (1).

Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times the maximum permissible size of the Select List and in such a case the Committee shall consider all the eligible officer.

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulation (3) shall be excluded.

Provided also that the Committee shall not consider the case of a member of the State Civil Service unless on the first day of January of the year for which the Select List is prepared, he is substantive in the State Civil Service and has completed not less than eight year of continuous service (whether officiating or substantive) in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government.



Provided also that in respect of any released Emergency Commissioned or Short Service Commissioned officers appointed to the State Civil Service, eight years of continuous service as required under the preceding proviso shall be counted from the deemed date of their appointment to that service, subject to the condition that such officers shall be eligible for consideration if they have completed not less than four years of actual continuous service, on the first day of January of the year for which the Select List is prepared, in the post of Deputy Collector or in any other post of posts declared equivalent thereto by the State Government.

EXPLANATION:- The powers of the State Government under the third proviso to the sub-regulation shall be exercised in relation to the members of the State Civil Service of constituent State, by the Government of that State.

5(2A) Deleted

5(3) The Committee shall not consider the cases of the member of the State Service who have attained the age of 54 years on the first day of January of the year for which the Select List is prepared.

Provided that a member of the State Civil Service whose name appears in the Select List prepared for the earlier year before the date of the meeting of the Committee and who has not been appointed to the service only because he was included provisionally in that Select List shall be considered for inclusion in the fresh list to be prepared by the Committee even if he has in the meanwhile, attained the age of fifty four years.

Provided further that a member of the State Civil Service who has attained the age of fifty four years on



the first day of January of the year for which the Select List is prepared shall be considered by the Committee, if he was eligible for consideration on the first day of January of the year or any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year or years under item (b) of the proviso to sub-regulation (1).

5(3A) The Committee shall not consider the case of such member of the State Civil Service who had been included in an earlier select list and-

- (a) had expressed his unwillingness for appointment to the service under regulation 9.

Provided that he shall be considered for inclusion in the Select List, if before the commencement of the year, he applies in writing, to the State Government expressing his willingness to be considered for appointment to the service.

- (b) was not appointed to the service by the Central Government under regulation 10.

5(4) The Selection Committee shall classify the eligible officer as 'Outstanding', 'Very Good' and 'Unfit' as the case may be on an overall relative assessment of their service records.

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



Provided that the name of an 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.

Provided further that while preparing year -wise select list for more than one year pursuant to the 2nd proviso to sub-regulation (1), the officer included provisionally in any of the Select list so prepared, shall be considered for inclusion in the Select List of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis, such inclusion shall be in addition to the normal size of the Select List determined by the Central Government for such year.

EXPLANATION I : The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a Court as the case may be

EXPLANATION II : The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the service shall be treated as having come to the notice of the State Government only if the details of the same have been communicated to the Central Government and the Central Government is satisfied that the details furnished by the State Government have a bearing on the suitability of the officer and investigation thereof is essential.

5(6) Omitted



5(7) Deleted."

31. Having considered the aforesaid provisions, as observed by the Hon'ble High Court and upheld by the Hon'ble Supreme Court, the sole question for determination before this Tribunal is whether the age of eligibility is required to be considered with reference to the January 1st of the year for which the select list is prepared or any other date. As discussed hereinabove, the expression 'year' in Regulation 2(1)(l) shows that year means the period commencing on the first day of January and ending on 31st day of December of the same year. Further perusal of Regulation 5(3) makes it clear that the Committee is debarred from considering the cases of such officers of the State Civil Service who have attained the age of 54 years and age of 54 years is required to be determined on January 1st of the year for which the select list is prepared. In the present case the number of vacancies were six, as such, the zone of consideration comprises 18 names and name of the applicant was not included in the zone of consideration as he has become overage in view of the provisions of Regulation 5(3) of the IPS (Appointment by Promotion) Regulations. The aforesaid vacancies were admittedly for the year 2008 i.e. from 1.1.2008 to 31.12.2008 and have to be determined as on December 31st of the year. Admittedly, the date of birth of the applicant is 11.10.1954 and if age of the applicant is determined as on 1.1.2008, the applicant is eligible as per the ratio decided by the Hon'ble Punjab and Haryana High Court in the case of Praveen Kumar (supra) by observing as under:-



"22. It is true that for the vacancies of the year 2006, the Committee would meet in the year 2007. It does not follow that if meeting of the Committee is held in 2007 then it would alter the eligibility in so far age of a candidate is concerned, which is provided by Regulation 5(3). The effect of any contrary interpretation would be that the officers like the petitioners would be deprived of entering the zone of consideration without any fault of theirs. For example, the petitioner would not be eligible in respect of the vacancies, which have arisen in January, 2006 although he was not yet 54 years of age nor he would be eligible for vacancies of the year 2007 because he would cross 54 years of age. The consideration of all eligible candidates annually in respect of vacancies which have arisen during that year is to avoid any such anomaly. It is also to facilitate the work of the Committee so that all vacancies of that year are considered in one meeting instead of holding a meeting for every single vacancy and then determining eligibility."

32. It is also not disputed by the respective parties that the judgment passed by the Hon'ble High Court has attained finality and direction issued by the Hon'ble High Court has been considered and for future promotion on the post of IAS following decision has been taken by the competent authority:-

"4. In view of above, the order of the Hon'ble High Court has become absolute. Accordingly, the following decisions have been taken by the competent authority:-

- (i) The said order would be implemented w.e.f. 1st February, 2010, i.e. date of the High Court order.
- (ii) Wherever meetings of the Selection Committee in respect of any All India Service have not been held or meetings have been held but minutes of the meeting



have not been approved by the Commission, the same will be held in accordance with the interpretation of Regulations given by Hon'ble High Court and confirmed by Hon'ble Supreme Court.

- (iii) Where meetings have already been held and minutes have been approved the same will not be opened unless and until there is a specific direction from a Court of Law.
- (iv) The eligibility of State Service officers in cases of Review Selection Committee meeting would be reckoned on the basis of Regulations/interpretation prevailing in that year unless otherwise directed by a Court of Law.
- (v) Select List will hence forth be styled coinciding with the year of vacancies. In case there are two overlapping Select Lists for a particular year the same will be distinguished by styling the Select list of that year (correspondent to the year in which vacancies have arisen) and the other select list will be named by adding "A" to that year.

33. That as per Para 4 of the decision taken by the competent authority vide Memorandum dated 25th August, 2010, eligibility of the State Service officers in cases of Review Selection Committee meeting would be reckoned on the basis of regulation/interpretation prevailing in that year unless otherwise directed by a Court of Law.

34. We have examined this aspect also. It is not disputed that the eligibility of the candidates for determining the age of 54 years is for the period of vacancies and in the instant case admittedly the vacancies of the year 2008 and for determination of age of the applicant, vacancies occurring from 1.1.2008 to 31.12.2008 are



required to be taken into consideration and admittedly, if the age is determined between the aforesaid period, the applicant is eligible for consideration to IPS.

35. Now the question before us for determination is whether the applicant is entitled to get the benefit as per the ratio decided by the Punjab and Haryana High Court in the case of Praveen Kumar (supra) and on the basis of the Office Memorandum dated 25th August, 2010 ?

36. It is not disputed that direction issued in the case of Praveen Kumar (supra) has been complied with and vide clarification in the wake of Punjab and Haryana High Court's order dated 1st February, 2010 as confirmed by the Hon'ble Supreme Court in SLP 14002/2010 in the matter of DOPT vs. Praveen Kumar and Ors., the competent authority inviting attention to Regulation 5(3) of IAS (Appointment by Promotion) Regulations, 1955 as against the aforesaid provisions Shri Praveen Kumar has filed CWP No.15798/2009 before the High Court of Punjab and Haryana and in view of the interpretation of Regulation 5(3) of IAS (Appointment by Promotion) Regulations, has taken certain decision as mention in the Office Memorandum dated 25th August, 2010.

37. For the purpose of applying the ratio decided by the Hon'ble Punjab and Haryana High Court as confirmed by the Hon'ble Supreme Court and decision taken by the competent authority, the question is whether the case of the applicant falls under the category (decision) as mentioned in the Office Memorandum dated 25th August, 2010 or not.



38. At the time of issuing the Office Memorandum dated 25th August, 2010, OA No.483/2009 preferred earlier by the applicant was pending as the same has been acknowledged by the official respondents vide Ann.A/5 dated 4th March, 2010 and with regard to CAT-Jaipur Bench order dated 18.11.2009, the Under Secretary to the Government of India vide the aforesaid letter addressed to the counsel for the applicant expressed as under:-

"I am directed to refer to your letter No. 'nil' dated 25.2.2010 on the subject cited above and to say that that vide order referred above, the Hon'ble Court had directed to keep the appointments subject to the outcome of the case in respect of those two vacancies which came into existence because of the cadre review carried out in the year 2009. It is to be pointed out in this regard that through this Ministry's notification No.I.14011/9/2009-IPS.I dated 01.02.2010, this Ministry has given effect to the appointments against the vacancies which came into existence in the year 2008 and the vacancies which have come into existence because of the cadre review finalised in the year 2009 will be filled up in the year 2010. The aforementioned order of the Hon'ble CAT will be taken care of at that point of time."

39. Since the case of the applicant was not considered as the same was subject to the outcome of OA No.483/2009 in respect of those two vacancies which came into existence because of the cadre review carried out in the year 2009, the applicant preferred the present OA. Thus, before issuing the Office Memorandum dated 25th August, 2010 by the respondents, the applicant has agitated his grievance by way of filing OA which was pending consideration.



40. As discussed hereinabove, in view of the judgment of the Punjab and Haryana High Court and upheld by the Hon'ble Supreme Court and the Office Memorandum dated 25th August, 2010 it is admitted position that for determination of age, the year of vacancy will be considered. In the present case, the vacancy arose in the year 2008 and for the entitlement to be considered for the vacancies which arose between 1.1.2008 to 31.12.2008, the age of 54 years is required to be determined as per Regulation 2(1)(l) read with amended Regulation 5(3) of the IPS Promotion Regulations in view of the ratio decided by the Hon'ble Punjab and Haryana High Court. Thus, in view of the ratio decided by the Hon'ble High Court, the applicant is eligible and deserves to be considered for the vacancies arose in the year 2008 as the 'year' means the period commencing on the 1st day of January and ending on 31st day of December of the same year. As per Para 4 sub para (i) of Office Memorandum dated 25th August, 2010, the order of the High Court would be implemented w.e.f. 1st February, 2010 i.e. date of the High Court order, but as per sub para (iv), the eligibility of State Service officers in cases of Review Selection Committee meeting would be reckoned on the basis of Regulation/interpretation prevailing in that year unless otherwise directed by a Court of Law.

41. In the light of decision taken vide sub-para (iv) of Para 4 of the Office Memorandum dated 25th August, 2010, we have examined the present case. As already discussed hereinabove, in the earlier OA preferred by the applicant it was made clear by the Tribunal that appointments will be made subject to outcome of



the OA and since we have held that the applicant is eligible and he falls within the zone of consideration as per his seniority and was also within the age limit i.e. less than 54 years of age but he has not been included in the zone of consideration by wrong interpretation of the provisions despite of the fact that his age has to be determined as on 1.1.2008 qua the vacancies occurring between 1.1.2008 to 31.12.2008, as per the decision taken by the competent authority vide sub-para (iv) of Para 4 of Office Memorandum dated 25th August, 2010, the applicant is eligible for consideration for the post of IPS.

42. Accordingly, we find that this is a fit case to be interfered by this Tribunal and we deem it proper to allow this OA as per the ratio decided by the Hon'ble Punjab and Haryana High Court in the case of Praveen Kumar (supra) which has been upheld by the Hon'ble Supreme Court vide order dated 31.5.2010 and in view of the decision taken by the competent authority vide Office Memorandum dated 25th August, 2010 and direct the respondents to reconsider name of the applicant for the post of IPS treating him within the age limit, as discussed hereinabove, against the vacancies arose in the year 2008. The needful shall be done within a period of two months from the date of receipt of a copy of this order.

43. With these observations, the OA stands disposed of with no order as to costs.

Anil Kumar
(ANIL KUAMAR)
Admv. Member

K.S.Rathore
(JUSTICE K.S.RATHORE)
Judl. Member