

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 04th day of April, 2013

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. ORIGINAL APPLICATION NO. 810/2012.

1. Bhanwar Lal Kandoi son of Late Shri Babulal Kandoi, aged about 58 years, resident of 115, Girnar Colony, Gandhi Path, Vaishali Nagar, Jaipur. Deputy Secretary Higher education, Jaipur.
2. Chunni Lal Kayal son of Shri Gopi Ram Kayal, aged about 56 years, C-209, Mahesh Nagar, 80 Feet Road, Jaipur. Deputy Secretary Medical & Health, Jaipur.
3. Purushottam Biyani son of Shri Banshidhar Biyani, aged about 55 years, resident of B-2/23, Chitrakoot Scheme, Gandhi Path, Vaishali Nagar, Jaipur, Deputy Secretary Industries, Jaipur.
4. Ajay Singh son of Shri Sher Singh Chittora, aged about 56 years, resident of Chittora House, Bani Park, Jaipur. Director Mahila Bal Vikas, Jaipur.
5. Satya Prakash Baswala son of Shri Kherati Lal Baswala, aged about 56 years, resident of D-105, Kewat Marg, Pawan Path, Hanuman Nagar, Jaipur. Deputy Secretary Finance, Jaipur.

... Applicant

(By Advocate: Mr. G.K. Garg, Sr. Advocate assisted by
Mr. Yash Sharma)

Versus

1. Union of India through its Secretary, Department of Personnel & Training, Government of India through its Secretary, North Block, New Delhi.
2. Principal Secretary to Government, Department of Personnel, Government of Rajasthan, Secretariat, Jaipur.
3. Union Public Service Commission, New Delhi through its Secretary.

... Respondents

(By Advocate: Mr. Mukesh Agarwal – Respondent nos. 1 & 3.
Mr. S.N. Kumawat, Additional Advocate General,
assisted by Mr. V.D. Sharma – Respondent no. 2.
Mr. C.B. Sharma, Counsel as Intervener

2. ORIGINAL APPLICATION NO. 80/2013

1. Loknath Soni aged about 56 years son of Shri Mahaveer Prasad Soni, resident of C-194, Vaishali Nagar, Jaipur. Presently working as Director, Public Relations.
2. Chhaya Bahtnagar, aged about 57 years, wife of Shri Shrawan Sawhney, resident of &-8, JDA Flats, Shiv Marg, Sethi Colony, Jaipur. Presently working as Secretary State Information Commission, Jaipur.
3. Kamlesh Kumar Singhal, aged about 58 years, son of Ramji Lal Singhal, Collector & District Magistrate, Dholpur.

... Applicant

(By Advocate: Mr. S.P. Sharma, Sr. Advocate assisted by Mr. Gaurav Sharma)

Versus

1. Union of India through its Secretary, Department of Personnel & Training, Government of India through its Secretary, North Block, New Delhi.
2. Chief Secretary, Government of Rajasthan, Secretariat, Jaipur.
3. Union Public Service Commission, New Delhi through its Secretary.

... Respondents

(By Advocate: Mr. Mukesh Agarwal – Respondent nos. 1 & 3.
Mr. S.N. Kumawat, Additional Advocate General, assisted by Mr. V.D. Sharma – Respondent no. 2.
Mr. C.B. Sharma, Counsel as Intervener)

ORDER (ORAL)

Since the facts & law point in these two OAs are similar, therefore, they are being disposed of by a common order. For the sake of convenience, the facts of OA No. 80/2013 are being taken as a lead case.

2. The learned counsel for the applicants in both these OAs submitted that they are limiting their prayer to the extent that the respondents may be directed to prepare afresh year-wise select

list after dynamically re-determining the substantive vacancies year wise taking into consideration which have remained unfilled in the previous years on account of retirement of the officers who were selected against the vacancies of the previous years.

3. The brief facts, as stated by the learned counsel for the applicants are that the applicants are the members of the Rajasthan Administrative Services (in short, RAS). That in RAS, there has been a protracted litigation relating to inter-se seniority of officers. The respondents prepared the seniority list of officers on the basis of the notification dated 11.09.2011 (Annexure A/4).

4. That the applicants, therefore, in view of the aforesaid seniority list had become eligible for consideration for promotion to the IAS against the vacancies from 1997 onwards as per Regulations of 1955.

5. That the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 were framed in terms of Sub-Rule 1 of Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954 (in short, the Rules of 1954). Rule 8 and Rule 9 of the Rules of 1954 read as under:-

"8. Recruitment by promotion or selection for appointment to State and Joint Cadre:- (1) The Central Government may, on the recommendations of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make, recruit to the Service persons by promotion from amongst the substantive members of a State Civil Service.

8(2) The Central Government may, in special circumstances and on the recommendation of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Government and the Commission, from time to time, make recruit to the Service any person of outstanding ability and merit serving in connection with the affairs of the State who is not a member of the State Civil Service of that State [but who holds a gazetted post in a substantive capacity].

8(3)(a) Where a vacancy occurs in a State Cadre which is to be filled under the provision of this rule, the vacancy shall be filled by promotion of a member of the State Civil Service or, as the case may be, by selection of any other officer serving in connection with the affairs of that State.

(b) Where a vacancy occurs in a Joint Cadre which is to be filled under the provision of this rule, the vacancy shall subject to any agreement in this behalf, be filled by promotion of a member of the State Civil Service of any of the States constituting the group or as the case may be, by selection of any other officer serving in connection with the affairs of any such State(s).

9. Number of persons to be recruited under Rule 8

9(1) The number of persons recruited under Rule 8 in any State or group of States shall not, at any time, exceed $33 \frac{1}{3}$ per cent of the number of senior posts under the State Government, Central Deputation Reserve, State Deputation Reserve and Training Reserve in relation to that State or to the group of States, in the Schedule to the Indian Administrative Service (Fixation of Cadre strength) Regulations, 1955.

Provided that the number of persons recruited under sub-rule (2) of the Rule 8 shall not at any time exceed fifteen per cent of the number of persons recruited under Rule 8.

Explanation: For the purpose of calculation of the posts under this sub-rule, fractions, if any, are to be ignored.

9(2) Notwithstanding anything contained in this rule, in relation to the State of Jammu and Kashmir, the number of persons recruited under sub-rule (1) shall not upto 30 April 2002, exceed at any time, fifty per cent of the number of senior posts under the State Government, central deputation reserve, state deputation reserve and the training reserve in relation to that State in the Schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955.

6. The learned counsel for the applicants submitted that UPSC, All India Services Branch also laid down guidelines vide their letter No. 4/3/2005-AIS dated 27.02.2012. Para 2.1 of the guidelines provides as under:-

"For preparing the Select Lists, the crucial date for reckoning the eligibility of officers is to be taken as the 01st January of the year (Vacancy year) in which the promotion quota vacancies arise. The Selection Committee normally meets in the year following the vacancy year (SCM year). In case of preparation of year-wise Select Lists, the year in which the Selection Committee actually meets is to be considered as SCM year. The notional date for reckoning the availability of eligible officers in the State Services for consideration for promotion is to be taken as 31st December of the vacancy year."

7. That the UPSC was required to conduct exercise for making promotions in terms of Regulation 5 second proviso and a selection list was required to be prepared year-wise as per regulation 7 third proviso. Regulations 5 and 7 of Indian Administrative Service (Appointment by Promotion) Regulation, 1955 are quoted as under:

"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 the case of joint cadres, a separate select list shall 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 a 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 officers:

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 years 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 the January of the year for which the select list is prepared, in the post of Deputy Collector or in any other

post or posts declared equivalent thereto by the State Government.

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

5(2A) [Omitted]

5(3) The Committee shall not consider the cases of the members of the State Civil Service who have attained the age of 54 years on the first day of 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 of 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 officers as 'Outstanding', 'Very Good', 'Good' or '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 any 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 lists for more than one year pursuant to the second 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 1: 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 only if 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."

"7. Select List: (1) The Commission shall consider the list prepared by the Committee along with –

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

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

7(2) If the Commission considers it necessary to make any changes in the list received from the State government, the Commission shall inform the State Government and the Central Government of the changes proposed and after taking into account the comments, if any, of the State Government [and the Central Government] may approve the list finally with such modification, if any, as may, in its opinion, be just and proper.

7(3) The list as finally approved by the Commission shall form the Select List of the members of the State Civil Service.

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

7(4) The Select List shall remain in force till the 31st day of December of the year in which the meeting of the selection committee was held with a view to prepare the list under sub-regulation (1) of regulation 5 or upto sixty days from the date of approval of the select list by the Commission under sub-regulation (1) or, as the case may, finally approved under sub-regulation (2), whichever is later:

Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the select list as "unconditional", to the Commission during the period when the select list was in force, the Commission shall decide the matter within a period of forty five days or before the date of meeting of the next selection committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the select list as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government under regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the select list ceased to be in force.

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

Provided also that where the select list is prepared for more than one year pursuant to the second proviso to sub-regulation (1) of regulation 5, the select lists shall remain in force till the 31st day of December of the year in which the meeting was held to prepare such lists or upto sixty days from the date of approval of the select lists by the Commission under this regulation, whichever is later.

7(5) Omitted."

8. The learned counsel for the applicant further submitted that the applicants and colleagues submitted representations to the respondent no. 1 dated 10.02.2010 and also to the Chief Minister, Rajasthan wherein it was specifically requested that year-wise promotion exercise should be conducted from the year 1995-96 onwards and unfilled vacancies be carried forward to the subsequent respective calendar year before proceeding for further meeting of selection Committees. Copies of the representations are being placed on record and marked as Annexures A/5 and A/6 respectively.

9. The Chief Secretary also wrote a letter on 25.10.2011 (Annexure A/7) suggesting that there is no provision for clubbing together all substantive vacancies that were not filled.

10. The Chief Minister, Rajasthan also wrote letters on 30.04.2012 (Annexure A/8) and 18.09.2012 (Annexure A/9) to the Minister of State, Prime Minister's Office, Personnel, Public Grievances & Pension, Government of India pointing out that the vacancies are not to be clubbed.

11. Learned counsel for the applicants submitted that however, inspite of the above, the respondents have illegally clubbed unfilled vacancies in the year 2012 while conducting the meeting of the selection committee for the year 1995-96 upto the year 2011 resultantly, the applicants who would have been otherwise promoted against the vacancies of the year 2008 and 2010 have been ousted.

12. The applicants in Para No. 9 of the OA have given the chart which gives details of year wise number of substantive vacancies filled vide notification dated 31.12.2012 and year-wise existing substantive vacancies, which is quoted below:-

S.No.	Year	Number of substantive vacancies	Number of substantive vacancies filled vide Notification issued by DOP&T dated 31.12.2012	Existing substantive vacancies
1.	1995-96	07	Nil	7
2	1997	11	03	08
3.	1998	04	02	02
4.	1999	05	01	04
5.	2000	01	Nil	01
6	2001	04	Nil	04
7	2002	Nil	Nil	Nil
8.	2003	03	03	Nil
9.	2004	Nil	Nil	Nil
10	2005	03	02	01
11	2006	03	02	01
12	2007	12	12	Nil
13	2008	05	05	Nil
14	2009	02	02	Nil
15	2010	12	12	Nil
16	2011	03	03	Nil
	Total	75	47	28

13. Learned counsel for the applicants argued that decision taken by the Government of India for select list to be prepared taking into consideration the vacancies already been determined earlier against each year is bad in law and contrary to Articles 14 and 16 of the Constitution of India because senior most and eligible officers have been deprived of their fundamental right of being considered for promotion as against the determined substantive vacancies of the IAS cadre.

14. The learned counsel for the applicants further submitted that an officer, who has already ceased to be a member of the State Civil Service, cannot be included in select list as per Third Proviso to Regulation 5(2) which, inter alia provides that the Committee shall not consider the case of a member of State Civil Service unless on the 1st day of January of the year, for which the select list is prepared, he is substantive in the State Civil Service. Though for the year for which the Select Committee meeting is held the said officer may have been a substantive officer of the State Civil Service, but on account of his subsequent retirement he ceased to be a serving and substantive member of the State Civil Service within the ambit of Rule 8 of the Rules of 1954 which mandates that no officer, who is not a substantive member of the State Civil Service, can be recruited.

15. The learned counsel for the applicants argued that respondents have failed to hold regular and annual meetings and have omitted to fulfill their obligations in law thereby depriving the senior most and eligible officers of their right of consideration for

promotion to IAS. He submitted that there was no stay for holding the selection committee meeting year wise. The respondents can carry forward the substantive vacancy to the next year on account of officers of the State Civil Service having subsequently retired but the respondents are not doing so. This tantamount to clubbing/bunching of all the 28 substantive vacancies in 2012, contrary to and based on misinterpretation of the Regulations of 1955. In fact, these 28 substantive vacancies have accrued within 11 years from 1995-96 to 2006. There is no provision in Rules/Regulations wherein the clubbing/bunching of substantive vacancies is provided for.

16. The learned counsel for the applicants further submitted that the vacancies have to be determined year wise. The already determined substantive vacancies of earlier years should have been dynamically re-determined each year instantly in the meetings of the Select Committee itself.

17. The learned counsel for the applicant further argued that in the case of **Syed Khalid Rizvi & others vs. Union of India & Others**, 1993 Supp (3) SCC 575, it has been held by the Hon'ble Apex Court that the preparation of the select list every year is mandatory as it subserves the object of the Act and the Rules and affords an equal opportunity to the promotee officers to reach higher echelons of the service.

18. He also submitted that in case the selection committee does not meet in the concerned year, then equity requires that it is

deemed that it is meeting in the concerned year and the list prepared by it is required to be reviewed and revised every year as per Regulation of 1955. In the instant case no select lists have been prepared for the years 1995-96, 2000 and 2001, therefore, there is a breach of the said Regulations.

19. He further submitted that contrary to the provisions of Rules/Regulations all these 28 substantive vacancies are being taken to the year 2012, as actual meeting of the selection Committee was held in 2012 for the years 1995-96 to 2011. In such a eventuality, most of the senior most and eligible officers would be deprived of their fundamental right to be considered for promotion to IAS as they have crossed the age limit of 54 years in 2012. This illegality would facilitate that junior officer would be considered for promotion superseding the senior most and eligible officers, who are still in service.

20. The learned counsel for the applicant referred to the judgment of the Hon'ble Supreme Court in the case of **T.N. Administrative Service Officers Association vs. Union of India**, 2000 (5) SCC 728. Para No. 32 of this judgment is quoted below:-

"32. We think that this is a matter of policy which will be uniformly applicable after the amendments. Further, vacancies which are not filled up in one year will automatically get carried forward to the next year if they become actual vacancies by then. Therefore, the challenge of the petitioners that this amendment is arbitrary and violative of Article 14 of the Constitution, cannot be accepted."

21. He argued that the Hon'ble Supreme Court has thus held that substantive vacancies, which are not filled up in a particular year will automatically get carried forward to the next year if they become actual vacancy by then. Thus the substantive vacancy have to be re-determined yearwise after taking such substantive vacancy under consideration, which could not be filled in a particular year and such substantive vacancy have to be carried forward in the next year.

22. The learned counsel for the applicant further submitted that Hon'ble Supreme Court in the case of **Jagdish Prasad vs. State of Rajasthan & Others**, 2011 (7) SCC 789 has held, inter-alia, that the clubbing of vacancies is in violation of the statutory rules. In the instant case also, the clubbing of vacancies is not provided anywhere in the Rules or Regulations:

23. He also referred to the case of **Union of India & Another vs. Hemraj Singh Chauhan & Others**, 2010 (4) SCC 290. Para 38 of the judgment is quoted below:-

"38. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion have been defeated by the acts of the Government and if not of the Central Government, certainly the unreasonable inaction on the part of the Government of State of Uttar Pradesh stood in the way of the respondents' chances for promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. Now the question which is weighing on the conscience of this Court is how to fairly resolve this controversy."

In the present case also, the applicants legitimate right for consideration for promotion is being denied by clubbing the vacancies.

24. The learned counsel for the applicants further submitted that the Government of India has observed in the letter of 15.11.2011 that the number of vacancies, which might remain unfilled from various year wise select list, would be known only after select list are drawn and likely appointment from respective select lists are ascertained. It is further mentioned that such unfilled vacancies of retirement of SCS officers shall be carried forward and would be available for filling as per Regulations of 1955. The said letter further states that to carry forward such vacancies to the next year would imply that some SCS officers would be considered for promotion in the select list year, in which they would, in any case, not have been eligible, if the meeting had taken place in time. These observations are bad in law for the sheer reason that the meetings could not take place for a long period of 17 years due to fault of the respondents. Presumption or assumption on the part of the respondents that had the meeting been held in earlier years, the Applicants would not have gained the chance of consideration is fallacious and not sustainable in law because the meetings were, in fact, not held. It is humbly submitted that if these 28 vacancies of earlier years of 1995-96 to 2006 are filled in 2012, from amongst officers junior to the Applicants, it would lead to promotion of junior RAS officers against substantive vacancies of earlier years in which years they would, in any case, not have been considered if the meeting had taken place in time.

25. The learned counsel for the applicants argued that law and the legal position settled in the aforesaid judgment squarely needs to be applied in the present case. The respondents be directed to redetermine the vacancies yearwise and progressively filling up the 28 substantive vacancies, which have remained unfilled upto 1995-95 to 2006 and thereafter prepare a fresh year-wise select list.

26. The learned counsel for the applicants in OA No. 810/2012 (Bhanwar Lal Kandoi & Others vs. Union of India & Others) further argued that the Regulation 5(1) as applicable today prescribes, inter alia, that the promotion would be considered as against substantive vacancies of the year in which the meeting is held. The substantive vacancy includes the vacancies which have earlier been determined as anticipated vacancies on account of officers retiring. However, the substantive vacancy is to be determined only after taking into consideration the vacancy remained unfilled in a particular year on account of officers who have been selected but no appointment order could be issued since they had subsequently retired. Thus meaning thereby that such vacancies which remained unfilled would have to be carried forward and added to already determined vacancies so as to find out the total vacancies as on 1st January of the year for which the selection committee is meeting. The Government of India committed a mistake by not taking into consideration the meaning of substantive vacancies as arising in Regulation 5 and intends to club such vacancies in a bunch and carry forward in the year 2012 when the selection committee is meeting.

27. He further drew our attention to Annexure A/2 of OA No. 810/2012, which is a letter written by the Chief Minister of Rajasthan on 30.04.2012 to the Minister of State, Prime Minister's Office, Personnel, Public Grievances & Pension, Government of India, New Delhi and also Annexure A/3, which is again a letter from the Chief Minister dated 18.09.2012 to Minister of State, Prime Minister's Office, Personnel, Public Grievances and Pensions, Government of India, New Delhi. In these letters, Chief Minister had categorically mentioned that there is no provision in the promotion regulation for clubbing of unfilled up substantive vacancies. He had suggested that selection committee meeting be held year wise and immediately redetermine the vacancies of the subsequent years, determining of number of retired officers selected for promotion. He also wrote that the selected list has to be prepared after taking into consideration of the substantive vacancies falling vacant upto 31st December of the previous year.

28. He also referred to the letter written by the Chief Secretary, Government of Rajasthan dated 25.10.2011 (Annexure A/4) to the then Secretary, DOPT, Ministry of Personnel, Public Grievances & Pensions, Government of India, New Delhi. In this letter also, Chief Secretary had categorically written that there is no provision in regulations for clubbing together of substantive vacancies that were not filled up. If the vacancies are clubbed together and carried forward to the current year in violation of the doctrine of reasonableness then:

- (a) senior and more experienced SCS officers, eligible in the year 2000 to 2010 would be deprived of their right of being considered for promotion to the IAS and
- (b) Officers, junior to them, would be promoted to the IAS.

He further stated that the determination of vacancies by the Central Government is not final as the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 do not bar re-determination of vacancies. Therefore, he had proposed that vacancies for the year 2000 to 2010 be redetermined.

29. Learned counsel for the applicants also reiterated that there is no provision/regulation wherein clubbing/bunching of vacancies is provided, particularly, when there is omission on the part of the respondents to hold year-wise selection committee meeting. He argued that the vacancies have to be determined year-wise. In support of his arguments, he also referred to the judgment of the Hon'ble Supreme Court in the case of **Syed Khalid Rizvi & Others vs. Union of India & Others**, 1993 Supp. (3) SCC 575 where the Hon'ble Apex Court has held that preparation of the select list year wise is mandatory as it sub-serve the object of the Act and the Rules and afford an equal opportunity to the promottee officers to reach the higher echelons of the service.

30. He also referred to the judgment of the Hon'ble Supreme Court in the case of **Vijay Singh Charak vs. Union of India & Others**, 2007 (9) SCC 743. Para 14 of the judgment is quoted below:-

"14. It is obvious, therefore, that clubbing is illegal. Since clubbing has been done for vacancies arising between 1991-1995 in IFS, this was clearly illegal in view of the decision of

Union of India v. Vipinchandra Hiralal Shah, 1997 SCC (L&S) 41."

31. To support his averments, he also referred to the following judgments of the Hon'ble Supreme Court:-

- (1) Vinod Kumar Sangal vs. Union of India & Others
1995 (4 SCC 246
- (2) State of Haryana & Another vs. S.K. Khosla & Ors.
2007 (15) SCC 777
- (3) UPSC vs. K. Rajaiah & Others
2005 (10) SCC 23
- (4) State of Haryana & Others vs. O.P. Gupta & Others
1996 (7) SCC 533

He further submitted that according to the provisions of Indian Administrative Service (Recruitment) Rules, 1954 and the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, there is no provision of clubbing of the vacancies. On the contrary, provision to Regulation 5 provides as under:-

"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."

Therefore, he submitted that the respondents be directed to prepare year-wise select list after re-determining the vacancies year-wise, taking into consideration the vacancies remained unfilled in the previous year on account of retirement.

32. On the other hand, learned counsel for respondent no. 1 that is Union of India raised the preliminary objection that this OA is not maintainable because the selection have already been made

and notification for appointment has been issued on 31.12.2012 and none of the persons who have been appointed as IAS have been made party in this case. He also argued that the present OA is barred by limitation. Further there are multiple prayer in the OA. Therefore, on this ground also it is not maintainable.

33. The learned counsel for respondent no. 1 submitted that the process for appointment of State Civil Service Officers to the IAS under IAS (Appointment by Promotion) Regulations, 1955 initiates 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 Civil Service Officers who fall within the zone of consideration to the Union Public Service Commission. The Commission convenes a meeting of the Selection Committee. The role of Union of India 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 Union Public Service Commission, only thereafter the appointments of those State Civil Service Officers who are included unconditionally in the Select List are notified by Government of India.

34. Learned counsel for the respondents further submitted that the Department of Personnel and Training in the Government of India administers the provisions contained in the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 and is, therefore, concerned with the interpretation of any of the statutory provisions laid down in the said Regulations as the

cadre controlling authority in respect of the Indian Administrative Service.

35. He also submitted that in the process of preparation of the Select List by the UPSC, the answering respondent, as Cadre Controlling Authority in respect of the Indian Administrative Service, is concerned with determination of vacancies in consultation with the State Government 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 officers included in the Select List to the IAS subject to and in accordance with the provisions contained in Regulation 9 of the Promotion Regulations.

36. The learned counsel for the respondent no. 1 submitted that after the preparation of the Select List of 1994-95, there was a long gap of period during which no select list could be prepared for Appointment by Promotion of the State Civil Service officers of Rajasthan to IAS, primarily because of the non finalization of the seniority list of the State Civil Service Officers, pending several rounds of litigation in that regard.

37. He submitted that the matter regarding the seniority of the State Civil Service Officers of Rajasthan got resolved in the year 2012.

38. He also submitted that in the meantime, i.e. after the preparation of the Select List of 1994-95, the Central Government

had been determining the number of vacancies to be filled up from various Select Lists to be prepared on year wise basis thereafter. The details in this regard are as under:-

Year	No. of Vacancies
1995-96 (now styled as 1994-95 A)	Nil
1996-97 (now styled as 1995-96)	07
1998 (now styled as 1997)	11
1999 (now styled as 1998)	04
2000 (now styled as 1999)	05
2001 (now styled as 2000)	01
2002 (now styled as 2001)	04
2003 (now styled as 2002)	Nil
2004 (now styled as 2003)	03
2005 (now styled as 2004)	Nil
2006 (now styled as 2005)	03
2007 (now styled as 2006)	03
2008 (now styled as 2007)	12
2009 (now styled as 2008)	05
2010 (now styled as 2009)	02
2011 (now styled as 2010)	12
2012 (now styled as 2011)	03
Total	75

39. Learned counsel for respondent no.1 further submitted that a meeting of the Selection Committee took place on 26th December, 2012 to review the Select List of 1993-94 and 1994-95 and to prepare the year wise Select Lists from 1995-96 onwards. It is will be relevant to submit here that because of the issuance of this Department's OM No. 22012/99/200-AIS (I) dated 25.8.2010 in pursuance to the orders dated 31.05.2010 of the Hon'ble Supreme Court of India in SLP No. 14002/2010 the nomenclature of the above Select Lists got pre-poned by one year, which has been indicated in the brackets in the above table.

40. The respondent No. 1 in Para No.5.9 of their reply have given the names of the officers who were recommended for select

list for the different years under Regulation 7(3) of IAS (Appointment by Promotion) Regulations, 1955. This list has been given from 1993-94 onwards upto 2011.

41. In Para No. 5.10, they have given the list of the officers, whose appointment notification was issued by the Central Government. This list is also year wise from 1994-95 upto the year 2011. Subsequently on the communication received from UPSC, the respondent no. 1 issued a notification No. 14015/19/2012-AIS(I) dated 04.01.2013 stating that :-

"In partial modification to this Department's Notification No. 14015/19/2012-AIS (I)-B dated 31st December, the name of Sh. J.C. Desai (Date of Birth: 02.02.1958) at S. No. 7 included in the Select List of 2010, stands deleted."

42. He further submitted that it was not possible to ascertain year wise vacancies after taking into account the retirements, cases of non-availability of integrity certificate in one sitting. The select list is valid for a period of 60 days from the date of its approval by the UPSC. It is possible that one person who is included provisionally in a Select List is appointed within that period or otherwise. He referred to Regulation 7(4), which is quoted below:-

"7(4) The Select List shall remain in force till the 31st day of December of the year in which the meeting of the selection committee was held with a view to prepare the list under sub-regulation (1) of regulation 5 or upto sixty days from the date of approval of the select list by the Commission under sub-regulation (1) or, as the case may, finally approved under sub-regulation (2), whichever is later:

Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the select list as "unconditional", to the Commission during the

period when the select list was in force, the Commission shall decide the matter within a period of forty five days or before the date of meeting of the next selection committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the select list as unconditional and final, the appointment of the concerned officer shall be consider by the Central Government under regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the select list ceased to be in force."

43. He further stated that DOPT could determine the number of vacancies keeping in view only those facts which were available on the date of taking such decision/determination. The meeting of the Selection Committee took place after a long gap in the year 2012 whereas DOPT as per obligation casted by the statutory provisions kept on determining the number of vacancies to be filled up through various select list in the intervening period. It should be appreciated that on the date of determining the number of vacancies, the Department could not have anticipated as to who will be actually selected from which select list and from which year he/she will retire. The implication is that there was no flaw with the action of the department to determine the number of vacancies as required by the statutory provisions.

44. He further submitted that the selections have already taken place and the DOPT has issued the final notification in this regard. He further submitted that there is no provision in the promotion regulation for a suo-moto review of a select list.

45. He further argued that there is no clubbing of vacancies since the selection committee meeting was held in the year 2012,

therefore, all the unfilled vacancies are being rightly treated as vacancies of 2012.

46. He further argued that as per Regulation 5(1) of the IAS (Appointment by Promotion) Regulation 1995 and further as per second proviso to the said Regulation, it is manifest that the select lists are to be prepared for each year separately against the vacancy already determined. Further in view of the fact that some of the officers in the zone of consideration have already retired, the number of vacancies which might remain unfilled from various year wise select list proposed to be prepared, would now be clear only after such select list are drawn. If the vacancies are carried forward to the next year then it would imply that some SCS Officers would be considered for promotion in the select list in which they would in any case not have been, if the meeting had taken place in time. Therefore, the request of the applicants to re-determine the vacancies is not in consonance with the provisions of the promotion regulation. Learned counsel also argued that there is no clubbing of vacancies in this case as these 28 vacancies were the outcome of the selection committee meeting held on 26.12.2012 and subsequent notification dated 31.12.2012. Therefore, the averment of the applicants that 28 vacancies are being clubbed together is not correct. Hence he submitted that there is no merit in the OA and it should be dismissed with costs.

47. On behalf of respondent no. 2, learned Additional Advocate General, submitted that Regulation 5(1) of the IAS (Appointment

by Promotion) Regulations, 1955 stipulates that the Selection Committee meeting shall ordinarily be held every year and provides for determination of year-wise vacancies in consultation with the State Government. Further, the second proviso to the said regulations provides that Select List shall be prepared separately for each year during which meeting could not take place. It is manifest from the above rule position that the Select Lists are to be prepared for each year separately against the vacancies already determined. Further, in view of the fact that some of the officers in the zone of consideration have already retired, the number of vacancies which might remain unfilled from various year wise Select Lists proposed to be prepared for each year during which meetings could not take place. It is manifest from the above rule position that the Select Lists are to be prepared for each year separately against the vacancies already determined. Further, in view of the fact that some of the officers in the zone of consideration have already retired, the number of vacancies which might remain unfilled from various year-wise Select Lists proposed to be prepared now would be considered for promotion in the Select List year in which they would in any case not have been, if the meeting had taken place in time.

48. He further stated that State Government vide their letter dated 07.02.2008, 25.10.2011, 30.04.2012, 28.06.2012, 06.09.2012 and 18.09.2012 has suggested to the DOPT, Government of India that year wise Selection Committee meeting may be held and immediately re-determine the vacancies of the subsequent years, depending on the number of retired officers

selected for promotion. But keeping in view of existing provisions of IAS (Appointment by Promotion) Regulations, 1955, DOPT, Government of India has not accepted the proposal of the State Government.

49. In reply to the contents of Para 4(8) of OA No. 80/2013, the respondent no. 2 (State Government) has stated that there is no provision in the Promotion and Regulation for clubbing of unfilled substantive vacancies.

50. He further submitted that due to litigation regarding the seniority dispute amongst the RAS officers, selection committee meeting for the years 1994-95 to 2011 could not be held in time.

51. He further submitted that the selection committee meeting was convened on 26.12.2012 to prepare yearwise select list for the year 1994-95 A to 2011 for filling up 75 vacancies from Rajasthan Administrative Service to Indian Administrative Service. He further stated the names of the SCS Officers who were not a substantive member of State Civil Service on the date of issuance of notification i.e. on 31.12.2012, were not appointed to the Indian Administrative Service by the DOPT, Government of India vide their notification dated 31.12.2012.

52. The respondent no. 2 in Para No. 4(9) of their reply have given the details of year wise vacancies- filled and unfilled, which are quoted as under:-

S.No.	Select List of the year	No. of vacancies	Filled	Unfilled Vacancies
1.	1994-95 A	Nil	00	00
2.	1995-96	07	00	07
3.	1997	11	03	08
4.	1998	04	02	02
5.	1999	05	01	04
6.	2000	01	00	01
7.	2001	04	00	04
8.	2002	Nil	00	00
9.	2003	03	03	00
10.	2004	Nil	00	00
11.	2005	03	02	01
12.	2006	03	02	01
13.	2007	12	12	00
14.	2008	05	05	00
15.	2009	02	02	00
16.	2010	12	12	00
17.	2011	03	03	00
		40	47	28

He further submitted that the promotion from State Civil Service to Indian Administrative Service is governed by the Promotion Regulation of 1955.

53. Respondent no. 3 in OA No. 810/2010, UPSC, have submitted their written reply. In their written reply, they have stated the rule position and procedure regarding the promotion of the State Civil Service to the Indian Administrative Service. In Para No. 7.2 of their reply, it has been stated that selection for promotion to the Indian Administrative Service is made against substantive vacancies and not against anticipatory vacancies. The Selection Committee which is constituted as per Regulation 3 of the Promotion Regulation 1955 has the power only to consider the eligible officers and select suitable officers for promotion to IAS against the vacancies already determined by the Government of India (DOPT). The said Committee does not determine the

vacancies for the next year after preparation of the Select List of a particular year.

54. Learned counsel for the intervener stated that in the instant matter there is no case of clubbing of vacancies. There were 75 posts available to be filled by appointment by promotion of members of Rajasthan Administrative Service. As a result of selection committee meeting dated 26.12.2012, only 47 officers got appointed in the IAS and 28 officers were those before who retired before the date of meeting of Selection Committee on 26.12.2012. Therefore, there is no clubbing of vacancies as such. He further argued that contrary to the averments of the applicant, the fact is that these 28 vacancies are outcome of the select committee meeting on 26.12.2012 and subsequent notification and order dated 31.12.2012 issued in compliance of its recommendations. To support his averments, he referred to the case of **Mr. Praveen Kumar vs. Union Public Service Commission & Others in CWP No. 15798/2009 decided on 01.02.2010**. He further submitted that Hon'ble Supreme Court upheld the judgment of the Hon'ble High Court vide its order dated 31.05.2010. Thus he argued that the OA has no merit and it should be dismissed.

55. Heard the learned counsel for the parties, perused the documents on record and the case law referred to by the learned counsel for the parties. While hearing the case on 22.03.2013, we directed the applicants as well as the respondents to assist this Tribunal on the following points:-

- "(1) What is the rule regarding clubbing of vacancies?
- (2) Which authority determines the year-wise vacancies, whether Union of India, State Government or UPSC?
- (3) As to how the substantive vacancies are determined, whether calendar year-wise or financial year-wise?
- (4) If some officer retires on attaining the age of superannuation, whether such vacancy is filled up in the same year of retirement or in the next year of retirement?

56. In compliance to our directions, no written clarification was submitted either by the applicants or by the respondents. However, learned counsel for intervener has given his written submissions on these points.

57. During the course of arguments, the learned counsel for the applicants in both the OAs have categorically stated that there is no provision of clubbing of the vacancies either in the Indian Administrative Service (Recruitment) Rules, 1954 or in the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. The learned counsel for the respondent no. 2 also stated that there is no provision of the clubbing of the vacancies either the Rules of 1954 or Regulations of 1955. The learned counsel for respondent no. 1 (Government of India) also submitted that there is no provision for clubbing of the vacancies either in the Rule of 1954 or Regulations of 1955. The learned counsel for Intervener in his written submissions has also clearly mentioned that there is no provision for clubbing of vacancies in the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. The second proviso of the Regulations 5(1) says-

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

Thus there is unanimity at the point that there is no provision for clubbing of the vacancies in the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. However, the learned senior standing counsel for respondent no. 1 and the learned counsel for intervener argued that in the present OAs there is no case of clubbing of vacancies.

58. With regard to point no. 2 regarding the authority which determines the year wise vacancies, whether Union of India, State Government or UPSC, it was agreed by all the parties that according to the provisions of Regulation 5(1), the Department of DOPT as a cadre controlling authority in respect of Indian Administrative Service is concerned with determination of the vacancies in consultation with the State Government.

59. With regard to point no. 3 that is how the substantive vacancies are determined, whether calendar yearwise or financial year wise, the learned counsel for the parties (applicants, respondents and intervener) submitted that as per Regulation 2(1)(I) " 'Year' means the period commencing on the first day of January and ending on the thirty first day of December of the same year." Thus according to this provision, vacancies are determined calendar year wise.

60. With regard to point no. 4 i.e. if an officer retires on attaining the age of superannuation, whether such vacancy is

filled up in the same year of retirement or in the next year of retirement, it was agreed between the parties that as per provision of 5(1) of the Regulation 1955, the number of Members of the State Civil Service to be included in the list shall not exceed the number of substantive vacancies as on the first day of January in which the meeting is held. Thus it is clear that if vacancy exists, by retirement during a year, will be considered a vacancy for that particular year only.

61. Learned counsel for respondent no. 1 had submitted that the present OA is not maintainable because the notification for appointment by promotion to the IAS has already issued on 31.12.2012 and none of the persons who have been appointed to the IAS have been made party in this case, the learned counsel for the applicants argued that they are not challenging the notification dated 31.12.2012, therefore, they have not made those officers who have been included in the notification dated 31.12.2012 as party. They are not necessary party in the present OA. They have only challenged the legal position with regard to determination of vacancies year wise. We have given careful consideration to the averments made by the learned counsel for the respondent no. 1 as well as learned counsel for applicants and we are inclined to agree with the averments made by the learned counsel for the applicants. Therefore, on the point of non joinder of parties, the present OA cannot be dismissed.

62. The learned counsel for respondent no. 1 had also raised preliminary objection that the present OA is barred by limitation

as the applicants in OA No. 810/2012 have challenged the letter of Government of India dated 15.11.2011 while the OA has been filed on 05.12.2012 i.e. after more than one year, the learned counsel for applicants submitted that since they are limiting their prayer to the extent that the respondents may be directed to prepare a fresh year wise select list after dynamically re-determining substantive vacancies year wise taking into consideration which have remained unfilled in the previous years on account of retirement of officers which were selected against the vacancies of the previous years, therefore, the OAs are not barred by limitation and they should be heard on merit. We are inclined to agree with the averments made by the learned counsel for the applicants that the OA be heard on merit.

63. The learned counsel for respondent no. 1 had also argued that these OAs are not maintainable as there are multiple prayers in these OAs. We are not inclined to agree with the arguments of the learned counsel for respondent no.1 as the learned counsel for applicants have limited their prayer for redetermining of the substantive vacancies year wise, taking into consideration the unfilled vacancies in the previous years on account of retirement of the officers who were selected against the vacancies of the previous years.

64. Provisions of 5(1) of the IAS (Appointment by Promotion) Regulations 1955 provide that each committee shall ordinarily meet every year and prepare a list of such member of the State Civil Service as are held by them to be suitable for promotion to

the Service. This provision clearly provides that the selection committee shall ordinarily meet every year. However, the proviso to this Regulation 5(1) further provides 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 & when committee meets again, the select list shall be prepared separately for each year during which the committee could not meet as on 31st December of each year. This proviso clearly provides that when the Selection committee meeting could not be held during a year for any reason other than that provided for in the first proviso then in such case, the selection committee whenever it meets shall prepare a select list for each year during which the committee could not meet.

65. In the instant case, it is not disputed that the for the State of Rajasthan, the Selection Committee could not meet for filling up the year wise vacancies from 1995-96 up to the year 2011. Therefore, when the selection committee met on 26.12.12, it prepared the Review Select list for 1993-94, Review Select list of 1994-95 and the Select List of the year 1996-97, 1997, 1998, 1999, 2000, 2001, 2003, 2005, 2006, 2007, 2008, 2009, 2010, and 2011 and on the basis of these select lists, the selection committee prepared the select list year wise as provided in the Regulations of 1955 and on the basis of this select list, the Central Government issued appointment notification as per the details given in Para No. 5.10 of the reply of respondent no. 1 in OA No. 80/2013. While issuing the appointment notification, the officers on the select list of the various years who had already retired on

the date of issuance of the notification for appointment were excluded. The respondent No. 1 have given a list of the officers in whose favour appointment notification was issued by the Central Government on 31.12.2012 in Para No. 5.10 of their reply.

66. The case of the applicants is that the respondents be directed to prepare a fresh year wise select list after dynamically re-determining the substantive vacancies year wise and progressively filling up 28 substantive vacancies which remained unfilled from 1995 to 2006.

67. The learned counsel for respondent no. 1 submitted that there was a long gap of period during which no select list could be prepared for appointment by promotion to the State Civil Service Officers of Rajasthan to IAS primarily because of non finalization of seniority list of the State Civil Service Officers. He further submitted that it was not possible to ascertain year wise vacancies after taking into account the retirement case, non availability of integrity certificate in one sitting. He also submitted that respondents could not have anticipated as to who will be actually selected from which select list and in which year he/she will retire.

68. He also argued that to carry forward the vacancies to the next year as is suggested by the applicants would imply that some State Civil Service Officers would be considered for promotion in the select list year in which they would in any case have not been, if the meeting had taken place in time. The Department could determine the number of vacancies keeping in view only those

vacancies which were available on the date of taking such decision /determination since the selection committee meeting took place on 26.12.2012. The appointment notification was issued on 31.12.2012. Therefore, all the unfilled vacancies have been correctly treated as vacancies of 2012 and, therefore, there is no clubbing of vacancies in the present case. Moreover, there is no provision in the promotion regulation for suo-moto review of the select list. The learned counsel for intervener also supported the averment made by learned counsel for respondent no. 1.

69. We are not inclined to agree with the averment made by the learned counsel for respondent no. 1 and the learned counsel for intervener. The Regulation 5(1) clearly provides for holding the selection committee meeting every year. In this case, selection committee meeting could not take place on yearly basis. Therefore, the second proviso 5(1) of the Regulation 1955 would apply in the instant case. Even at the cost of repetition, it is quoted below:-

"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

- (b) available for the members of the State Civil Service under rule 9 of the recruitment rules; or 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 the case of joint cadres, a separate select list shall be prepared in respect of each State Civil Service"

70. The respondent no. 1 has given year wise vacancies determined by them in Para No. 5.7 of their reply. For the year 1995-96 (now styled as 1994-95 A), the number of vacancies has been shown as 'Nil', for the year 1996-97 (now styled as 1995-96), the number of vacancies as been shown as 07, similarly for the year 1998 (now styled as 1997), the number of vacancies has been shown as 11 and so on up to the year 2012. Thus total number of 75 vacancies have been determined from 1995-96 to 2012. In Para No. 5.9 of their reply, the respondents have given the names of the officers who are on select list of the different years. This select list is yearwise, as provided in the Regulation. For the year 1996-97, as against seven vacancies, the name of the following nine officers have been included in the select list.

Select list of the year 1996-97

Sl. NO.	Name (S/Sh.)	Date of Birth
1.	Raj Bhhadur Singh	08.07.43
2.	Amar Singh	27.04.42
3.	Madan Lal Jain	04.07.45
4.	R.S. Agrawal	07.11.49

5.	Chandra Bhushan Sharma	25.08.49
6.	D.K. Vijay	22.08.48
7.	Naringa Ram Yadav (SC)	12.02.50
8.	Ram Prasad (SC)	15.06.47
9.	Ram Niwas Meena (ST)	17.03.51

Similarly for the 11 vacancies of 1998, (now select list of 1997), the names of 9 officers have been included in the select list, which is as under:-

Select List of the year 1997

Sl. No.	Name (S/Sh.)	Date of Birth
1.	B.S. Charan	31.07.50
2.	N.K. Jain	29.12.50
3.	N.N. Chaturvedi	05.09.45
4.	Amar Chand Sharma	15.03.47
5.	Ram Khiladi Meena (ST)	01.10.54
6.	Shriram Meena (ST)	11.10.53
7.	Ms. Laxmi Bairwa (SC)	09.08.52
8.	Lal Chand Aswal (SC)	15.09.54
9.	H.P. Barwad (SC)	20.01.47

Now if we see the notification as given in Para 5.10 of the reply of the respondents, no officer has been notified against the vacancy of 1996-97 and 3 officers were notified against select list 1997 in which 9 names were included.

71. In our opinion, if the selection committee would have met in 1996-97 as provided in the Rules then they would have notified the names of the officers in order of their seniority who were in the list of 1996-97 to fill up the vacancies of that year. The names of seven officers would have been notified by the Government of India. Since their date of birth is given in service record, their date of retirement on superannuation after appointment into IAS could easily be ascertained. For-example, if Shri Raj Bhadur Singh, which is at sr. no. 1 would have been appointed against the select list of 1996-97 then he would have retired on attaining the age of

superannuation in July 2003. Similarly, if Shri Amar Singh would have been appointed to IAS on the basis of select list of 1996-97, he would have retired in April, 2002 and Madan Lal Jain at sr. no. 3 in the list would have retired in July, 2005 and so on. Therefore, there would have been vacancies in 2003, 2002 and 2005 respectively on superannuation of these officers. Similarly if S/Shri B.S. Charan, N.K. Jain and N.N. Chaturvedi from the select list of 1997 would have been appointed to the IAS then there would have been two substantive vacancies in the year 2010 and one vacancy in 2005 respectively on superannuation of these officers. Therefore, we are not inclined to agree with the averment of learned counsel for respondent no. 1 that it is not possible to ascertain year wise vacancies after taking into account the retirement of officers. It is not disputed that the vacancies arising out of retirement on superannuation are substantive vacancies for the purpose of filling up of posts on promotion from State Civil Service to IAS. Thus in our opinion it is only arithmetical calculation which is required to be carried by the respondents for re-determination of the vacancies year-wise.

72. Thus the retirement date of seven officers who would have been given appointment from the select list 1996-97 is known. These vacancies arising out of superannuation of these officers would accrue in different years. Similar exercise is required to be done for each select list year wise.

73. With regard to the arguments of the learned counsel for the respondents no. 1 that the Department could not have anticipated

as to who have actually been selected from which select list, in which year he/she will retire, we are of the view that this argument of learned counsel for respondent no. 1 cannot be accepted. The respondent no. 1 in their reply have given year-wise select lists in Para No. 5.9 of their reply. The officers are promoted in order of their seniority from the select list finalized by the UPSC in consultation with the State Government/Central Government and on the basis of this select list, notification for appointment are issued by the Central Government. Had the selection committee meeting would have taken place as per schedule that is every year when it became due then the officers from the select list of that particular year would have been notified for appointment. Once the names of the officers were notified then their date of superannuation can be easily determined on the basis of their date of birth.

74. With regard to the statement of learned counsel for respondent no. 1 that there is no provision in the Promotion Regulation for a suo-moto review of the select list, we are of the opinion that if the Central Government comes to the conclusion that there has been any irregularity while preparing the select list for any particular year or some officers who should have been considered but were left out from zone of consideration for any reason, there is no bar in the Regulation for holding a Review meeting of the Selection Committee. There has been occasions in the past where UPSC/DOPT/State Government have held Review Selection Committee meeting as & when it was required, may be under the directions of Tribunal/Courts.

75. We are not inclined to agree with the averments made by the learned counsel for the respondent no. 1 that to carry forward the vacancies to the next year would imply that some State Civil Service Officers would be considered for promotion in the select list in which they would in any case not have been, if the meeting had taken place in time. Regulation 5(2) of the Indian Administrative Service (Appointment by Promotion) Regulation 1955 provides for the eligibility of officers whose names would be considered by Selection Committee. The provision 5(2) provides that the case of Members of the State Civil Service in order of his seniority in that service shall be considered by the committee. The eligibility list shall be three times of the number of vacancies of that year but if the total number of eligible officers is less than three times the maximum permissible size of the select list then in such a case, the committee shall consider all the eligible officers. It also provides that committee shall not consider the Members 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 years of continuous service whether officiating or substantive in the post of Deputy Collector or in any other posts or posts declared equivalent there to by the State Government. Provision 5(3) of the Regulation further provides that "the Committee shall not consider the cases of the members of the State Civil Service who have attained the age of 54 years on the first day of January of the year for which Select List is prepared." Therefore, if the selections are made year wise according to the vacancies then

only such officers would be considered as are eligible according to the provisions of Regulation 5(2) and 5(3) of the Indian Administrative Service (Appointment by Promotion) Regulation, 1955. The learned counsel for the applicants argued that it is not the case of the applicants that they may be considered for promotion to the IAS by giving any relaxation either in age or in seniority or in the length of service, as provided in the Regulation. He further submitted that the applicants may be considered for promotion after re-determining of the vacancies year wise if they are otherwise eligible according to the provisions of the Rules & Regulations for promotion from State Civil Service to IAS.

76. The learned counsel for respondent no. 1 and learned counsel for intervener argued that in the present OAs, there is no clubbing of vacancies, as such contrary to the contention of the applicants, the fact is that these 28 vacancies are out come of the selection committee meeting held on 26.12.2012 and subsequent notification for appointment dated 31.12.2012. The learned counsel for the applicants denied the contention of the learned counsel for the respondent no. 1 and learned counsel for Intervener that those 28 vacancies are the outcome of the selection committee held on 26.12.2012 and subsequent notification for appointment dated 31.12.2012. The learned counsel for the applicants pointed out that the proviso of Regulation 5(1) clearly provides 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 & when the Committee meets again, the select list shall be prepared separately for each

year during which the committee could not meet, as on 31st December of each year. They reiterated that these vacancies belong to different years starting from 1995-96 upto 2006. We are inclined agree with the averments made by the learned counsel for the applicants that the 28 vacancies which are being treated by the respondents as vacancies for the year 2012 are in fact not the outcome of the selection committee meeting held on 26.12.2012 and subsequent notification for appointment dated 31.12.2012. In fact these vacancies belong to different years and, therefore, a Review Select List will have to be prepared to fill up these vacancies yearwise after redetermination of these vacancies year wise.

77. In our considered opinion, this provision of the second proviso of 5(1) of the Regulations 1955 applies in the present case. In the case of Rajasthan State, the selection committee meeting could not be held for many years due to seniority dispute of the officers of the Rajasthan Administrative Service. The proviso of Regulation 5(1) provides that whenever the committee will meet, the select list will be prepared for each year during which the committee could not meet, as on the 31st December of each year. The selection committee meets to consider the names of eligible officers for the preparation of the select list for that year against the vacancies available for that year. Therefore, if the selection committee meets to prepare the select list say for 1996-97, it would consider the names of all those officers who were eligible at that point of time as if the selection committee is being held for filling up the vacancies of that year. Thus even if the

selection committee have met on 26.12.2012, as in the present case, it has considered all officers who were in the eligibility list at that point of time and, therefore, they have included the names of nine officers in the select list of 1996-97 though all of them had retired after attaining the age of superannuation by 26.12.2012. But the names of those officers were included in the select list because they were eligible at the relevant point of time for consideration. Taking this provision to the logical conclusion, it would imply that had the Selection Committee meeting took place as per schedule then seven of those officers in order of seniority would have been appointed to the IAS by promotion and they would have retired on different dates according to their date of superannuation. In such an eventuality, the vacancies which would have occurred by their retirement would have been accrued in the year in which they would have retired.

78. As we have stated earlier, the vacancies may have accrued in 2003, 2002 and 2005 and so on. Thus the when the selection committee meeting for those respective years would have taken place for that particular year, these vacancies would have been calculated for the preparation of the select list of that particular year. Therefore, in our view those 28 unfilled vacancies which belongs to different years cannot be clubbed together and said to be vacancies arising out of selection committee held on 26.12.2012 and cannot be said to be the vacancies for the year 2012.

79. We are fully in agreement with the learned counsel for the applicants that if these 28 vacancies are treated to the vacancies of 2012, then many senior State Civil Service Officers who would otherwise be eligible for consideration for promotion to the IAS have to be left out by the time next selection committee meeting would take place because either they would retire or would cross the age of 54 years. Therefore, they would not be considered for promotion to the IAS by the selection committee. We are also in agreement with the averments of the learned counsel for the applicants that though they have no right of promotion but they have right for consideration for promotion, if they are otherwise eligible. If these 28 vacancies are clubbed then senior officers of the State Civil Service would be left out from the zone of consideration and junior will get a chance for consideration for promotion. This will be against the principles of natural justice.

80. We have carefully gone through the judgment of the Hon'ble High Court in the case of Mr. Praveen Kumar vs. Union Public Service Commission & Others (supra), referred to by the learned counsel for the intervener and we are of the view that the facts & circumstances of that case were different than the facts & circumstances of the present case. Therefore, the ratio decided by the Hon'ble High Court would not apply in the present case.

81. On the contrary the Hon'ble Supreme Court in the case of **Syed Khalid Rizvi & Others vs. Union of India & Others** (supra), has held that preparation of the select list every year is mandatory as it subserves the object of the Act and the Rules and

affords an equal opportunity to the promotee officers to reach higher echelons of the service.

82. Similarly, the Hon'ble Supreme Court in the case of **Tamil Nadu Administrative Service Officers Association vs. Union of India** (supra) while upholding the amendment to the Regulation in Para No. 32 of the judgment has stated that vacancies which are not filled up in one year will automatically get carried forward to the next year if they become actual vacancies by then.

83. The Hon'ble Supreme Court, in the case of **Jagdish Prasad vs. State of Rajasthan & Others** (supra) has held that clubbing of vacancies is in violation of the statutory rules. Though issue before the Hon'ble Supreme Court in this case was for the Transport Department of the State Government but the principle laid down by the Hon'ble Supreme Court will squarely applicable in the present case as in the instant case also there is no provision of clubbing of vacancies either in the rules or in the Regulations.

84. We have carefully gone through the judgment of the Hon'ble Supreme Court in the case of **Union of India & Another vs. Hem Raj Singh Chauhan & Others** (supra) and we are of the considered view that the ratio decided by the Hon'ble Supreme Court in this case is squarely applicable in the present case. In our view the applicants in the present OA have a legitimate expectation of being considered for promotion and that would be defeated if the vacancies are clubbed.

85. The Hon'ble Apex Court in the case of **Vijay Singh Charak vs. Union of India & Others** (supra) has held that clubbing is illegal. The ratio decided by the Hon'ble Supreme Court is squarely applicable in the facts & circumstances of the present case.

86. Hon'ble Supreme Court in the case of **Vinod Kumar Sangal vs. Union of India & Others** (supra) has held that selection cannot be made by bunching of vacancies of different years if the rules provide for selection list be prepared for each year starting with the earliest year onwards. Therefore, the ratio decided by the Hon'ble Supreme Court is squarely applicable in the facts & circumstances of the present case.

87. We have carefully perused the judgments of the Hon'ble Supreme Court in the cases of (i) **State of Haryana & Another vs. S.K. Khosla & Ors** 2007 (15) SCC 777 (ii) **UPSC vs. K. Rajaiah & Others** 2005 (10) SCC 23 and (iii) **State of Haryana & Others vs. O.P. Gupta & Others**, 1996 (7) SCC 533, as referred to by the learned counsel for the applicants in OA No. 810/2012, and we are of the view that the ratio decided by the Hon'ble Supreme Court in these cases are not applicable under the facts & circumstances of the present case.

88. Thus on the basis of the facts & legal position, we are of the view that the official respondents be directed to re-determine the vacancies year-wise after taking into consideration the retirement of the officers who have been on select list for various years. As we have explained earlier that the select list for the year 1996-97

has nine names and there were seven vacancies for that year. Thus presuming that officers at sr. nos. 1 to 3 (S/Shri Raj Bahadur Singh, Amar Singh and Madan Lal Jain) would have been appointed to the IAS on the basis of that select list, had that select list be drawn at that point of time then they would have retired in the year 2003, 2002 and 2005 respectively. Thus the vacancies arising out of their retirement on superannuation would be accrued in the year of their retirement. The same exercise will be required to be done for each select list year wise. The vacancies are to be re-determined on the basis of this principle, which is according to the rules & regulation on the subject. The respondents will also look into the promotion quota from State Civil Service to IAS for that year and the number of officers in position for promotion quota, then determine the vacancies yearwise to be filled from appointment by promotion from the State Civil Service Officers. The respondents are also directed to convene the Review Selection Committee Meeting for each of those years for which the vacancies are re-determined and draw a revised/review select list year wise.

89. With these observations, both these OAs are disposed of with no order as to costs. The stay granted on 15.2.2013 stands vacated and the respondents are given liberty to proceed further in accordance with above directions.

90. A copy of this order be kept in file of OA No. 810/2012 (Bhanwar Lal Kandoi & Others vs. Union of India & Others).

(Anil Kumar)
Member (A)

(Justice K.S.Rathore)
Member (J)