

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

**ORIGINAL APPLICATION No. 86/2013**

Jaipur, the 4<sup>th</sup> December, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER  
HON'BLE MR. A.J. ROHEE, JUDICIAL MEMBER

1. S.K. Agarwal son of Shri Manohar Lal Agarwal, aged about 59 years, at present holding the post of District Collector, Bundi.
2. G.P. Shukla son of Shri B.S. Shukla, aged about 59 years, at present holding the post of District Collector, Bharatpur.

... Applicants

(By Advocate: Mr. Anand Sharma)

Versus

1. Union of India through the Secretary, Department of Personnel and Training, Central Secretariat, North Block, New Delhi.
2. State of Rajasthan through Principal Secretary, Department of Personnel, Secretariat, Jaipur.
3. Union Public Service Commission, New Delhi through its Secretary.

... Respondents

(By Advocates: Mr. Mukesh Agarwal – Respondent nos. 1 &3.  
Mr. V.D. Sharma – Respondent no. 2.

**ORDER**

**PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

The applicant has filed this OA claiming for the following reliefs:-

"(i) by way of issue appropriate order or direction notification dated 31.12.2012 (Annexure A/1) may kindly be held arbitrary and illegal and be quashed and set aside to the extent to which it does not include the names of the applicants. The respondents may further be directed to consider the names of the applicants for promotion to IAS cadre against the vacancies for the year 2006-2007 or against any other subsequent vacancies and in case they are found suitable they may be promoted in IAS cadre along with all other consequential benefits as granted to the Juniors of the applicants and;

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- (ii) Or in the alternative, in case need arises, the Regulation 5(3) of IAS (Appointment by Promotion), 1955 may kindly be held unguided, arbitrary and unconstitutional and same kindly be struck down. The applicant may be held to be eligible and entitled for consideration for promotion on the post of IAS as prayed hereinabove and;
- (iii) Any other order or direction which this Hon'ble Tribunal deems fit in favour of the applicants may kindly be issued."

2. The brief facts of the case, as stated by the learned counsel for the applicants, are that the applicants by way of this OA are challenging the impugned order dated 31.12.2012 (Annexure A/1) passed by the respondents by which junior persons to the applicants were appointed as IAS and name of the applicants was not included. The applicants were entitled for promotion against the vacancies of the year 2006-2007 but on account of Regulation 5(3) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, their case was not considered. The respondents while considering the cases for appointment have also appointed many persons who have already retired from service.

3. The learned counsel for the applicants further submitted that the applicants are also challenging Regulation 5(3) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 which provide that person of State Service should not exceed age of 54 years on 01<sup>st</sup> January of the year. The aforesaid Regulation is absolutely arbitrary and has no reasonable nexus with the object sought to be achieved.

4. The learned counsel for the applicants further submitted that the similar controversy has already been decided by this Tribunal in

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OA No. 810/2012 (Bhanwar Lal Kandoi & Others vs. Union of India & Others) and OA No. 80/2013 (Loknath Soni & Others vs. Union of India & Others) by a common order dated 04.04.2013 and, therefore, this OA can also be disposed of in terms of the order passed in the above two OAs.

5. The learned counsel for the respondents submitted that in this OA the applicants are also praying that the Regulation 5(3) of IAS (Appointment by Promotion) Regulation, 1955 may be declared as unconstitutional and, therefore, it may be struck down. Therefore, in view of the additional prayer, this OA need to be heard on merits. However, with regard to the prayer 8(i), he admitted that the controversy is covered by the common order dated 04.04.2013 passed by this Tribunal in OA No. 810/2012 (Bhanwar Lal Kandoi & Others vs. Union of India & Others) and OA No. 80/2013 (Loknath Soni & Others vs. Union of India & Others).

6. Learned counsel for the applicants submitted that at this stage, he is not pressing relief 8(ii) which is with regard to declaring Regulation 5(3) of IAS (Appointment by Promotion) Regulation, 1955 as unconstitutional and, therefore, the present OA may be decided in terms of the common order dated 04.04.2013 passed in OA No. OA No. 810/2012 (Bhanwar Lal Kandoi & Others vs. Union of India & Others) and OA No. 80/2013 (Loknath Soni & Others vs. Union of India & Others).

7. The learned counsel for the respondents submitted that both the applicants in the present OA have since retired and, therefore,

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they cannot be considered for promotion from Rajasthan Administrative Service to IAS. However, he further submitted that in view of the submission made by the learned counsel for the applicants that he is not pressing for relief 8(ii) which is with regard to declaring Regulation 5(3) of IAS (Appointment by Promotion) Regulation, 1955 as unconstitutional, therefore, this OA can be decided in view of the order passed by this Tribunal in OA No. 810/2012 (Bhanwar Lal Kandoi & Others vs. Union of India & Others) and OA No. 80/2013 (Loknath Soni & Others vs. Union of India & Others).

8. We have carefully gone through the common order dated 04.04.2013 passed by this Tribunal in OA No. OA No. 810/2012 (Bhanwar Lal Kandoi & Others vs. Union of India & Others) and OA No. 80/2013 (Loknath Soni & Others vs. Union of India & Others) and we are of the opinion that the controversy involved in the present OA is squarely covered by the common order dated 04.04.2013 passed by this Tribunal in OA No. OA No. 810/2012 (Bhanwar Lal Kandoi & Others vs. Union of India & Others) and OA No. 80/2013 (Loknath Soni & Others vs. Union of India & Others) [supra].

9. Para Nos. 88 & 89 of the order dated 04.04.2013 passed in OA No. OA No. 810/2012 (Bhanwar Lal Kandoi & Others vs. Union of India & Others) and OA No. 80/2013 (Loknath Soni & Others vs. Union of India & Others) [supra] are quoted below:-

"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."

10. The respondents in the present OA are directed to proceed in accordance with the directions already issued to them in OA No. 810/2012 (Bhanwar Lal Kandoi & Others vs. Union of India & Others) and OA No. 80/2013 (Loknath Soni & Others vs. Union of India & Others) [supra].

11. With these observations, the OA is disposed of with no order as to costs.

  
(A.L. Rohee)  
Member (J)

  
(Anil Kumar )  
Member (A)

AHQ