

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**O.A No. 79/2012
O.A No. 81/2012 &
O.A No. 84/2012**

New Delhi this the 5th day of February, 2016

Hon'ble Shri A. K. Bhardwaj, Member (J)
Hon'ble Shri. V. N. Gaur, Member (A)

(1) O.A 79/2012 :

Ram Naresh Prasad Singh
S/o. Late Ramashray Prasad Singh
R/o. Village-Gopi Dhanwat, PO Giddha
PS Saraiya, Dist. Muzaffarnagar
Bihar

.....Applicant

(By Advocate : Mr. Anil Kumar Mishra)

Versus

1. Union of India
Through The Secretary, Govt. of India,
Ministry of Personnel,
Public Grievance & Pension,
Department of Personnel & Training,
North Block,
New Delhi.
2. The Under Secretary,
Govt. of India
Ministry of Personnel,
Public Grievance & Pension,
Department of Personnel & Training,
North Block, New Delhi.
3. UPSC,
Through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi.
4. The Chairman
UPSC,

Dholpur House, Shahjahan Road,
New Delhi.

5. The State of Bihar
Through the Principal Secretary
Department of General Administration
Govt. of Bihar,
Old Secretariat,
Patna, Bihar.
 6. The Chief Secretary,
Govt. of Bihar,
Old Secretariat,
Patna, Bihar.
 7. Girish Nandan Singh
Through the Department of General Administration
Govt. of Bihar, Old Secretariat,
Patna Bihar.
 8. Gopal Prasad Singh
Through the Department of General Administration
Govt. of Bihar, Old Secretariat,
Patna Bihar.
 9. Devendra Nath Sharma
Through the Department of General Administration
Govt. of Bihar, Old Secretariat,
Patna Bihar.
 10. Nagendra Pathak
Through the Department of General Administration
Govt. of Bihar, Old Secretariat,
Patna Bihar.
-Respondents

(By Advocate : Mr. R. N. Singh for R-1 & 2 and Mr. Sanjay Kumar Shandilya for R-5 & 6)

(2) O.A 81/2012 :

Prabhat Kumar
S/o. Late Mahabir Prasad
R/o. Mohalla – Mirazpur,
Vindwara Road, PO Munger
Munger, Bihar

.....Applicant

(By Advocate : Mr. Anil Kumar Mishra)

Versus

1. Union of India
Through The Secretary, Govt. of India,
Ministry of Personnel,
Public Grievance & Pension,
Department of Personnel & Training,
North Block, New Delhi.
2. The Under Secretary,
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Patna Bihar.
9. Devendra Nath Sharma
Through the Department of General Administration
Govt. of Bihar, Old Secretariat,
Patna Bihar.

10. Nagendra Pathak

Through the Department of General Administration
Govt. of Bihar, Old Secretariat,
Patna Bihar.

.....Respondents

(By Advocate : Mr. R. N. Singh for R-1 & 2 and Mr. Sanjay Kumar Shandilya for R-5 & 6)

(3) O.A 84/2012 :

Madhu Gupta

D/o. Late S P Gupta

R/o. Village LF-1/3,

SK Puri, PS SK Puri,

Dist. Patna, Bihar

.....Applicant

(By Advocate : Mr. Anil Kumar Mishra)

Versus

1. Union of India
Through The Secretary, Govt. of India,
Ministry of Personnel,
Public Grievance & Pension,
Department of Personnel & Training,
North Block, New Delhi.
2. The Under Secretary,
Govt. of India
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Public Grievance & Pension,
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Through the Principal Secretary
Department of General Administration
Govt. of Bihar, Old Secretariat,
Patna, Bihar.

6. The Chief Secretary,
Govt. of Bihar,
Old Secretariat,
Patna, Bihar.
 7. Gopal Prasad Singh
Through the Department of General Administration
Govt. of Bihar, Old Secretariat,
Patna Bihar.
 8. Nagendra Pathak
Through the Department of General Administration
Govt. of Bihar, Old Secretariat,
Patna Bihar.
 9. Mr. Umesh Kumar Verma
Through the Department of General Administration
Govt. of Bihar, Old Secretariat,
Patna Bihar.
 10. Pratap Narayan Singh
Through the Department of General Administration
Govt. of Bihar, Old Secretariat,
Patna Bihar.
 11. Mr. Shailendra Kumar Pandey
Through the Department of General Administration
Govt. of Bihar, Old Secretariat,
Patna Bihar.
-Respondents

(By Advocate : Mr. R. N. Singh for R-1 & 2 and Mr. Sanjay Kumar Shandilya for R-5 & 6)

O R D E R (ORAL)

Mr. A. K. Bhardwaj, Member (J):

The applicants in these three Original Applications have assailed the non-inclusion of their names in the select list prepared for the years 2006-A and 2007 for promotion to the IAS prepared by the selection committee met on 08.08.2011 at 10.30 a.m. According to Mr. A. K. Mishra, learned counsel for the applicants, once integrity of the four candidates included in the

list prepared for the year 2006 A and two candidates included in the list prepared for the year 2007 had not been certified, the next below eligible officers who were in the zone of consideration should have been assessed. To buttress his plea, he relied upon the order of this Tribunal in O.A No. 1137/2006. According to him, these are the names of the candidates whose selection is made provisional, which need to be carried forward to the next year and not the vacancies. Para 58 of the judgment specifically relied upon by him reads thus :-

" In our opinion, the preparation of year-wise lists for promotion of SCS officers for filling up of vacancies determined for them every year is unambiguously mandated in the relevant rules and regulation. It, therefore, naturally follows that if after the exercise undertaken to fill up the vacancies, for one reason or another, certain vacancies remain unfilled, it is incumbent upon the authorities to fill, them up through a review DPC/Selection Committee meeting, by treating them as vacancies for the respective years. Thus, as far as the vacancies for the years 2001 and 2002 are concerned, as argued by the learned counsel for the applicants, the select list prepared under Promotion Regulations *ibid.* remained in force till the 31st day of December of the year in which the meeting of the Selection Committee was held or, at the most, up to a maximum of 60 days from the date of approval of the Selection List by the Commission, in terms of Regulation 7 (4) of the Promotion Regulations *ibid.* If certain individuals were selected in a particular year but, on account of non-availability of integrity certificate etc., their names had to be carried forward in terms of second proviso to Regulation 5 (2) of the Promotion Regulations *ibid.*, it is the names of the persons so selected that will be so carried forward and not the vacancies against which they were selected."

2. In sum and substance the plea of the learned counsel for the applicants is that the available vacancies could be filled up during the same year and should not have been carried forward.

3. Learned counsel for the respondents submitted that once separate select list need to be prepared for each year and the number of candidates to be included in the select list cannot exceed the number of vacancies and even such candidates whose integrity is not certified need to be included in the select list, the inclusion of name of any candidate whose name fall beyond the available number of vacancies would be violation of the regulation 4 & 5 of All Indian Administrative Services (Appointment by Promotion), Rules, 1965. The learned counsel also referred to the order of Division Bench of this Tribunal passed in a batch of O.As and submitted that after having taken note of the order passed in **Union of India and Others vs. Vipinchandra Hiralal Shah** (1996) 6 SCC 721, this Tribunal could take a view that the regulations do not permit preparation of the panel beyond the available number of vacancies and the candidature of such candidates whose inclusion is made provisional during the current year need to be assessed during subsequent years even when they cross the upper age limit.

4. In rejoinder, learned counsel for the applicants could not distinguish the order dated 24.08.2015 passed in O.A. No.1137/2006.

5. We have heard the learned counsel for the parties and perused the record.

6. In O.A No. 1137/2006 the applicants had prayed for quashing and setting aside the notification dated 25.08.2005 whereby the IAS (Fixation of cadre strength) Regulation 1955 had been amended and the increased number of vacancies were considered available only from prospective date i.e., from 25.08.2005.

7. In sum and substance, the issue in the said case was that once the increase in cadre strength could be delayed as the cadre review could not take place by a particular date, i.e., 30.04.2003 the vacancies could have been considered as vacancies for the past years also. The order was rightly distinguished by the Division Bench of the Tribunal in O.A No. 170/2013 in Uma Kant Choubey V/s. UOI & Ors. decided on 24.08.2015, wherein the issue involved was "when the candidature of certain candidates included in the select list is made provisional, whether the vacancies, remained unfilled during the year, could be carried forward to the subsequent years." Paras 5 and 61 to 72 of the judgment read thus :

"5. The applicant has, however, himself pointed out that this Tribunal had, in the case of Hemraj Singh Chauhan & Ors. vs. Union of India & Ors. in the order dated 15.12.2006 in OA No.1097/2006 with OA No.1137/2006, later affirmed by the Hon'ble Delhi High Court in W.P. (C) No.1106/2008, in the pronouncement on

05.02.2009, clearly stipulated and forbidden any carry forward of seats from one assessment/select list year to the next assessment/select list year, or reserving of seats due to withholdment of the Integrity Certificate in respect of a few candidates for the year, or for the reason of retirement or death before the final Notification, and the Tribunal had observed as follows:-

"If certain individuals were selected in a particular year but, on account of non-availability of integrity certificate etc. their names had to be carried forwarded in terms of second provision of Regulation 5 (3) of the promotion Regulation, it is the names of the persons so selected that will be so carried forward and not the vacancies against which they were selected.

61. In the result, OA No.1097/2006 is without merit and is accordingly dismissed. OA No.1137/2006 is partly allowed and the respondents are directed to convene the meetings of review DPC/Selection Committee to fill up the posts, which ultimately remained unfilled in the years 2001, 2002 and 2004 to consider all eligible SCS Officers in the zone of consideration in the respective years, including the officers who were put on the Select List of those years, but could not be appointed due to want of the integrity certificate, etc. This exercise shall be completed within a period of four months from the date of receipt of a copy of this order. There will be no order as to costs.

(Emphasis supplied).

64. These aspects, when examined by the Hon'ble Delhi High Court in its judgment dated 05.02.2009 in WP (C) No.1106/2008 (supra) did not meet with Honble High Courts approval in full for the conclusions arrived at by the judgment and order of this Tribunal dated 15.12.2006.

65. Rather, on the point of filling up of IAS vacancies from amongst Non-SCS Officers, the Hon'ble High Court had on 05.02.2009 taken notice of Rule-8(2) of 1954 (Appointment by Selection) Rules, and noted that Non-SCS Officers

are to be promoted only when such Officers are of outstanding ability and merit, and further noted that the Tribunal had considered the aspect that Non-SCS Officers of outstanding merit and ability were available in respect of the year 2004. Thereafter, the Honble High Court had gone ahead to hold as follows:-

“In so far as, vacancies of 2001 and 2002 are concerned, these were not filled up only because of non-availability of integrity certificate or non-expunging of adverse remarks. Taking into all these facts, the Tribunal has directed that if certain individuals were selected in a particular year but, on account of non-availability of integrity certificate, etc., their names had to be carried forward in terms section proviso (2) read with first proviso (3) of the Regulations 1955. We do not find any infirmity in these directions in the facts of this case.

Coming to the vacancies of the year 2004, we may first indicate the second factual circumstance which is highlighted by the respondents before us, before going into the legal aspects of this issue. It was pointed out by Mr. Arora, learned Additional Advocate General appearing for the State of UP that in the year 2000, in a similar circumstance three vacancies remained unfilled which were carried forward to the next year. This action of the Government was challenged by one Dr. Vishram Singh Yadav who filed OA No. 80/2002 before the CAT Lucknow Bench, Lucknow. The said bench decided that OA vide judgment dated 09.07.2003 directing that the vacancies of the year 2000 should be filled by conducting review DPC for that year. This judgment of the Tribunal was initially challenged by filing writ petition in the High Court of Judicature at Allahabad, sitting at Lucknow. However, when the Government could not succeed in getting the stay of the aforesaid judgments, the directions contained in that judgment were implemented by holding review DPC. Accordingly, a proposal was submitted vide letter dated 26.12.2004 determining the

vacancies of the year 2000 and 2001. This proposal was submitted by the State of UP to the General Government which was accepted by the Central Government and vacancies of the year 2000 were reverted back to that year and communication in this behalf dated 27.04.2004 was sent by the Central Government to the State of UP. Accordingly the notification dated 15.02.2005 was issued by the Government of India, Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions and the vacancies were filled by holding review DPC for that year. Even this act of the petitioners would, according to us, estopped the petitioner from raising the contention that they cannot now hold review the DPC. Legally also, such a direction is perfectly valid as it is in tune with the principle of law laid down by the Supreme Court in the case of Union of India & others v. Vipinchandra Hiralal Singh reported in (1996) 6 SCC 721 where the Court held that the Selection List for promotion of IAS should be prepared year wise and if there are unfilled vacancies in a particular year, Notional Select List is to be prepared separately for that year and all the eligible officers falling within the zone of consideration in that particular year are to be considered for promotion to the post. This issue, therefore, is no longer res-integra and stands authoritatively answered by the aforesaid judgment.

Thus, we do not find any merit in any of the contentions raised by the petitioner in this petition. The petition is accordingly dismissed.

At this stage, Mr. Arora, appearing for the State of UP informs us that because of the pendency of this writ petition not only the vacancies of the years 2001, 2002 and 2004 but even of subsequent years have not been filled up. He further informs us that as of today there are 106 vacancies which are to be filled under this promotion quota and this is seriously affecting the functioning of the administration. In view thereof, we direct

the petitioner as well as the State Government to carry out exercise of filling up of the vacancies by convening review DPC within a period of two months from today."

66. We have also gone through carefully the orders of this Tribunal in the case of Hemraj Singh Chauhan & Ors. (supra), the orders of the Hon'ble Delhi High Court in the case of Union of India through Secretary, Ministry of Personnel Public Grievances & Pensions Department of Personal & Training vs. State of U.P. through Chief Secretary Govt. of U.P. & Ors. (supra) and the orders of the Hon'ble Apex Court in Union of India & Ors. vs. Hemraj Singh Chauhan & Ors. in Civil Appeal No.2651-52/2010 arising out of SLP (C) No. 6758-6759/2009 dated 23.03.2010. It is seen that the directions for holding Review Selection Committee Meeting were given in the case of Hemraj Singh Chauhan & Ors. (supra) by the Hon'ble Apex Court in exercise of its extra ordinary powers under Article 142 of the Constitution of India, as a one time measure, but the Hon'ble Apex Court itself had put a rider that in the normal cases, the provisions of Rule-4(2) of the IAS Cadre Rules cannot be construed to operate retrospectively. The said Rule 4(2) of the IAS Cadre Rules had been reproduced by the Hon'ble Apex Court in Para-25 of its judgment and analyzed thereafter.

67. The controversy in that case itself was different, as was summarized by the Hon'ble Apex Court in Para-26 of its orders as follows:-

"26. The main controversy in this case is, whether re-examination on the strength and composition of cadre in the State of Uttar Pradesh had taken place in accordance with the mandate of Rule 4 sub-rule (2)."

68. The present cases before us do not concern with this rule. The applicants before us cannot, therefore, seek directions upon the respondents, which are similar or parallel in nature, or in the nature of the extra-ordinary powers of the Hon'ble Apex Court under Article-142 of the Constitution of India, which type of relief this Tribunal cannot certainly provide in its limited powers.

69. The role of this Tribunal is very limited. This Tribunal can only interpret the Rules/Regulations and lay down its interpretation and understanding, and strike down any Act, Rules and Regulations, if they are abhorrent in any manner, except the provisions of the AT Act, 1985, itself, as had been clarified by the Hon'ble Apex Court in S.P. Sampath Kumar vs. Union of India & Ors. (1987) SCC Suppl. 734, and in L. Chandra Kumar vs. Union of India AIR 1997 SC 1125.

70. The rule position which has given rise to the instant cases is clear, but produces a slightly illogical result. The applicants have not challenged the Regulations themselves, and, therefore, we can only analyze and bring forth the dichotomy which arises because of the existing Rules, when read in terms of the judicial pronouncements on those Rules thereafter.

71. In accordance with the judgment of the Hon'ble Apex Court in Union of India v. K.V. Jankiraman, AIR 1991 SC 2010, and numerous other cases, the Selection Committee Meeting is required to consider the cases of those incumbents among the State Civil Service, as well as the Non-State Civil Services, for either appointment by promotion to the IAS, or appointment by selection to the IAS, respectively, who come within the zone of consideration otherwise, but for the disciplinary or criminal proceedings of any kind pending against them on the date of the Selection Committee Meeting. This gives rise to a number of provisionally selected candidates, whose cases cannot be overlooked at all even otherwise.

72. It is well nigh possible that after the Selection Committee Meeting in the instant case had been held on 31.07.2012, and the appointment orders dated 02.11.2012 had been issued, within 60 days of the same, i.e., before 5.00 p.m. or 5.30 p.m. on 31.12.2012 of that year, one or a few of the 07 provisionally selected candidates could have walked in with a representation intimating about his (their) having been absolved in the disciplinary enquiry proceedings, or in the criminal case, or having

been granted the requisite Integrity Certificate by the State Government, and as per the Rules he (they) would then have been entitled for being substantively appointed to the IAS of Bihar State immediately thereafter, on that date of 31.12.2012 itself. Since the stigma of his (or their) provisional selection had got removed before the end of the year in which the meeting of the Selection Committee took place, only on the 1st day of January of the next year, these persons would have been subjected to the Regulation that the vacancies have been carried forward, but their provisional selection in the previous Select List would have made him (them) eligible for being considered in the next year's Select List also.

8. Coming to the relevant Regulations, we note that in terms of Regulation 5 (1) of All India Administrative Service (Appointment by promotion), Regulation 1955, the number of members of State Civil Service to be included in the select list could be determined by the Central Government in consultation with the concerned State Government and should not exceed the number of substantive vacancies as on the first day of January of the year. If the plea of the learned counsel for the applicants is accepted, then in the event of non-availability of certificate for integrity in respect of certain candidates and their candidatures being made provisional, additional candidates equal to the number of candidates made provisional should have included in the select list. In such a situation, the provisions of Regulation 5 (1) would be infringed. In proviso to Regulation 5 (3) it has been specifically provided that a member of the State Civil Service whose name appeared in the select list (prepared for the earlier

year) before the date of meeting of the Committee and who has not been appointed to the Service only because he was included (provisionally in that select list) should be considered in the fresh list to be prepared by the Committee, even when he has in the meanwhile attained the age of 54 years. The proviso to Regulation 5 (1) provides for preparation of the select list of each year. The number of members of State Civil Services to be included in the list should be determined by the Central Government in consultation with the State Government concerned and should not exceed the number of substantive vacancies as on the first day of January of the year for which the meeting is held. 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 should be prepared separately for each year during which the Committee could not meet, as on the 31st December of each year. Besides in Regulation 7 (4) it has been specifically provided that the select list should remain in force till the 31st 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 60 days from the date of approval of the select list by the Commission under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2), whichever is later. Sub-Regulation (1) of Regulation 5 reads thus :-

5(1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Police Service, as are held by them to be suitable for promotion to the Service. The number of members of the State Police 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:

1. 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 Police 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 Police 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.

9. In **Sub Inspector Rooplal & another v. Lt. Governor through Chief Secretary, Delhi & others**, (2000) 1 SCC 644,

Hon'ble Supreme Court ruled that unless we are inclined to take a view different from one taken by the coordinate Bench and refer the matter to Larger Bench, it is not permissible for us to ignore the judgment of the coordinate Bench of this Tribunal. Relevant excerpt of the said judgment reads as under:-

"12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate Court is bound by the enunciation of law made by the superior Courts. A coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. This Court in the case of *Tribhuivandas Purshottamdas Thakur v. Ratilal Motilal Patel*, (1968) 1 SCR 455 :

(AIR 1968 SC 372) while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same Court observed thus (para 11 of AIR) :-

"The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J. in *Pinjare Karimbhai's case* (1962 (3) Guj LR 529) and of Macleod, C.J., in *Haridas's case* (AIR 1922 Bom 149) did not lay down the correct law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by Courts of coordinate authority or of superior authority. Gajendragadkar, C. J. observed in *Lala Bhagwan v. Ram Chand*, (AIR 1965 SC 1767).

"It is hardly necessary to emphasize that considerations of judicial propriety and decorum require that if a learned single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a single Judge, need to be re-considered, he should not embark upon that enquiry sitting as a single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety."

13. We are indeed sorry to note the attitude of the tribunal in this case which, after noticing the earlier judgment of a coordinate Bench and after noticing the judgment of this Court, has still thought it fit to proceed to take a view totally

contrary to the view taken in the earlier judgment thereby creating a judicial uncertainty in regard to the declaration of law involved in this case. Because of this approach of the latter Bench of the tribunal in this case, a lot of valuable time of the Court is wasted and the parties to this case have been put to considerable hardship.

10. In view of the order in **Uma Kumari Dubey Vs. Union of India** (supra) as well as IAS (Appointment by Promotion) Regulation, 1955, we do not find any force in the plea of the applicants that if the integrity of certain candidates has not been certified and their candidature is made provisional, additional select list should have been prepared for the same select year.

11. The O.As are found devoid of any merit and are accordingly dismissed. No costs.

Let a copy of this Order be placed in case file.

(V. N. Gaur)
Member (A)

(A. K. Bhardwaj)
Member (J)

/Mbt/