

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1940/2014

Order reserved on : 26.02.2016
Order Pronounced on : 10.03.2016

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

Vinay Shanker Pandey, aged about 42 years,
S/o Shri Ram Prakash Pandey,
R/o 33/2 Stanley Road, Allahabad,
Presently posted as
Additional Secretary Department of Estate,
Government of Uttarakhand, Dehradun.

...applicant

(By Advocate : Shri Apoorva Tewari with Shri Varun Arora and
Shri Mohit Chadha)

Versus

1. Union of India through,
Secretary,
Ministry of Personnel, Pension & Public Grievances,
Department of Personnel and Training,
New Delhi.
2. Union Public Service Commission,
Through its Secretary,
Shahjahan Road, New Delhi.
3. State of Uttarakhand through
Secretary,
Department of Personnel,
Civil Secretariat,
Dehradun.

...respondents

(By Advocate : Shri Rajinder Nischal)

ORDER

Hon'ble Mr. V.N. Gaur, Member (A) :-

The present OA has been filed with the following reliefs :-

- a) To set aside the order dated 27.07.2012 passed by the Government of India as contained in Annexure P-1;
- b) To direct the respondents to treat the number of vacancies arisen in the year 2010 as 9 and to consider the applicant as having been promoted against the vacancies of the year 2010 notwithstanding the notification dated 21.03.2013;
- c) To set aside the order dated 30.04.2013 passed by the Government of India as contained in Annexure P-2 in so far as it relates to the applicant.
- d) To direct the respondents to re-determine the seniority of the applicant by treating the applicant as having been promoted against the vacancies of the year 2010 notwithstanding the notification dated 21.03.2013.
- e) Such other orders as this Tribunal may deem just, fit and proper be also passed in the interest of justice.”

2. The applicant, earlier a State Civil Services (SCS) Officer of Uttar Pradesh (1997 batch), was allocated to Uttarakhand Cadre after the bifurcation of the State of U.P. He filed a Writ Petition challenging his allocation to Uttarakhand Cadre which was dismissed by Hon'ble High Court of Allahabad on 11.12.2003. He filed an SLP in the Hon'ble Supreme Court, which he finally withdrew on 21.01.2011. According to the applicant, he was included in the zone of consideration for promotion to Indian Administrative Service (IAS) as per Regulation 5 of the IAS (Appointment by promotion) Regulation, 1955. The respondent

No.1 vide letter dated 09.01.2012 (wrongly typed 09.01.2011) determined 9 vacancies for the year 2010 and the name of the applicant was included in the eligibility list of the officers against these vacancies. His name was at Sl. No.12. Four vacancies were determined for the year 2011. Later on by revising its earlier stand taken in the letter dated 09.01.2012, the respondent No.1 by impugned order dated 27.07.2012 determined that 02 vacancies had arisen in the year 2009, 07 vacancies in 2010 and 6 vacancies in the year 2011, thereby reducing the number of vacancies in 2010 from 9 to 7 without assigning any reason or justification. According to the applicant, the transfer of 2 vacancies from 2010 to 2011 was in gross violation of Statutory Rules and the judgment of Hon'ble Supreme Court in ***Union of India Vs. Vipinchandra Hiralal Shah*** (1996) 6 SCC 721 and Hon'ble High Court of Delhi judgment in CWP No.1106/2008 ***Union of India Vs. State of U.P.*** These judgments laid down that if for any reason the Selection Committee is not able to meet during a particular year, the Committee when it meets next, should while making the selection, prepare a list for each year keeping in view the number of vacancies in that year. It has further been held that clubbing of vacancies for two years is not permissible. The meeting of the Selection Committee was finally held on 12.03.2013 and the applicant was appointed in the Indian Administrative Service (IAS), Uttarakhand Cadre vide

notification dated 21.03.2013 against the vacancies which were wrongly shown to have arisen in 2011. The applicant has been given 2008 as the year of allotment but had he been considered against the vacancy year 2010, his year of allotment would have been 2007. The applicant had earlier approached this Tribunal in OA No.2957/2013 which was disposed of by the Tribunal as premature. Though the applicant has served a copy of that order to the Union of India, the respondents have not disposed of his representation dated 15.04.2013.

3. The learned counsel for the applicant challenged the impugned order primarily on the ground of ***Union of India Vs. J.D. Naharwal & Ors.*** WP(C) No.6474/2003, Hon'ble Supreme Court judgment in *Union of India Vs. Vipinchandra Hiralal Shah* (supra), Punjab and Haryana High Court in ***Praveen Kumar Vs. UPSC & Ors.***, WP(C) No.15798/2009, and High Court of Delhi in CWP No.1106/2008 and CWP No.6478/2003. It was argued that it is settled position in law that if for some reason the Selection Committee is not able to meet during a particular year, the Committee has to prepare a yearwise select list and cannot club the vacancies of the preceding years. The respondents had kept 2 vacancies for the non SCS arising during the year 2010, which they later on clubbed with the vacancies of 2011, which was contrary to the law.

4. The learned counsel for the respondents submitted that the vacancies to be filled up by promotion are determined in terms of IAS (Cadre) Rules, 1954 and IAS (Recruitment) Rules, 1954. The IAS (Cadre) Rules allocates 36 posts to be filled up by promotion under Rule 9 of the IAS Rules (Recruitment) 1954, but as can be seen from page 29 of the OA where the cadre strength of the Uttarakhand Cadre has been reproduced that the posts to be filled up by promotion are not to exceed 33 1/3% of item 1,2,3&4, (which adds up to 36). The Rule 8(2) deals with the Selection from non-SCS services of the State and it envisages that in special circumstances and on the recommendation of the State and in consultation with the Commission, the persons belonging to services of the State other than the SCS can be inducted in the IAS. Rule 9 (1) further fixes a limit of 33 1/3% for all such promotions i.e. SCS and non-SCS. Proviso to Rule 9(1) also states that the number of persons recruited under sub-rule (2) of the Rule 8 shall not at any time exceed 15% of the number of persons recruited under Rule 8. Accordingly, the respondent No.1 on the proposal of respondent No.2 had earmarked 2 vacancies for non SCS out of the 9 vacancies available for the year 2010 for promotion. However, the State Government could not furnish the required certificates as stipulated under the Rules within the prescribed time, as a result non-SCS vacancies could not be utilized during the year 2010. It was first decided to club the 2

vacancies for the year 2010 making the total of 9 vacancies for SCS officers, but later a policy decision was taken to club the vacancies with the vacancies arising in the next year, and not the year in which it was to be filled up, making the number of vacancies arising during the year 2011 to 6 instead of 4. With regard to the judgment cited by the applicant, the learned counsel stated that the respondents have implemented the judgment of Hon'ble High Court in J.D. Naharwal (supra) but have not changed its policy because of the administrative complications that it would lead to if implemented in general. With regard to Praveen Kumar Vs. Union Public Service Commission and Ors. CWP No.15798/2009 (supra), the learned counsel stated that the judgment of Hon'ble High Court of Punjab and Haryana was in different context where the main issue was the reference date for determination of the cut off age of the SCS Officers for promotion to IAS. The learned counsel further stated that main argument of the applicant is that 2 vacancies out of the vacancies that arose during the year 2010 which were earmarked for non SCS Officers but could not be filled up, should have been reverted to 2010 and not to 2011. According to the learned counsel, the Rules, as stated earlier, only provide the upper limit of number of vacancies that can be filled up by promotion either from SCS or from non-SCS category officers, but it is not mandatory that all the

vacancies must be filled up and, therefore, the applicant cannot claim a right to be inducted in the year the vacancies had arisen.

5. We have heard the learned counsels for the parties and perused the record. It is observed that at first there were 9 vacancies during the year 2010 and 4 vacancies during the year 2011. The respondent No.1 after consultation with respondent No.2 had earmarked 2 vacancies for promotion from non-SCS Officers during the year 2010 and 7 for promotion from SCS. The State Government was required to furnish some certificates indicating (i) the circumstances necessitating filling up of vacancy under non-SCS category, (ii) availability of non-SCS officers of outstanding merit and ability and; (iii) that such non-SCS officer held gazetted post equivalent to Deputy Collector of SCS. The respondent No.3, however, failed to furnish the certificate before 31.12.2011 which led to the situation where 2 vacancies earmarked for non-SCS category for the year 2010 could not be utilized. At first the respondent No.1 issued a letter on 09.01.2012 communicating its decision to raise the number of SCS vacancies arising during the year 2010 to 9 vacancies in all. The respondent No.1 subsequently, reversed its decision by impugned letter dated 27.07.2012 stating that the number of vacancies for the year 2010 would be 7 and that for 2011 would be 6.

6. The issues before us are whether :

- (i) the respondents are free to decide the vacancy year with which the un-utilized non-SCS vacancies would be clubbed;
- (ii) Rule position in this regard; and,
- (iii) whether the applicant has a right to demand clubbing of the vacancies in a particular manner.

7. According to the procedure contained in the Rule 4(2)(b) of the IAS (Recruitment) Rules, 1954 read with regulation 5(1) of the IAS (Appointment by Promotion) Regulations 1955, the Central Government will determine on each occasion in consultation with the State Government the number of persons to be recruited by each method.

8. The Rule 4(2)(b) of IAS (Recruitment) Rules, 1954 reads as follows :-

“4(2)(b) the number of persons to be recruited by each method shall be determined on each occasion by the Central Government in consultation with the State Government concerned.”

Rule 5 of the IAS (Appointment by promotion) Regulations 1955 reads thus :-

“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;

9. The IAS (Cadre) Rules, 1954 determines the number of posts available in each cadre. The IAS (Fixation of Cadre strength) Regulations, 1955 indicate the cadre strength giving details of the posts. The Column 6 of the table of the cadre strength of Uttarakhand reads thus :-

6. Posts to be filled by promotion under Rule 9 of The Indian Administrative Service (Recruitment) Rules, 1954 not exceeding 33 1/3% of Item 1,2,3 & 4 above

10. It can be seen that the IAS (Fixation of Cadre Strength) Regulations indicate only the upper limit of the posts that can be filled up by promotion including those by promotion from non-SCS category. The IAS (Recruitment) Rules, 1954 also indicate only the upper limit of the senior post that can be filled up by promotion . Rule 8(2) and 9(1) of the IAS (Recruitment) Rules, 1954 are reproduced below :-

“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 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.”

11. From the above provisions of the relevant rules and regulation, it can be seen that it is not necessary that all the posts that can be filled up by promotion under Rule 8 i.e. 33 1/3% of the authorized strength, must be filled up. This is more applicable to the Recruitment for non-SCS category because the Rule 8 (2) of IAS Recruitment Rules, 1954 is a special provision, to be exercised in ‘special circumstances’. It envisages that if there is 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 and the Central Government and State Government decide to fill up the vacancy of the promotion quota by non-SCS officer, they can do so in consultation with the UPSC. In the present case, the State Government apparently had in mind some officers who fulfilled these conditions and, therefore, the recommendation was made to the Central Government to earmark 2 vacancies for promotion to the IAS from non-SCS category officers. After proposing such earmarking of vacancies, the State Government was not able to fulfill the procedural requirement of furnishing certain certificates within the stipulated time on 31.12.2011 and, as a result, the vacancies lapsed. The question that arises is whether the final decision of the Central Government to merge those vacancies with the year 2011 was as per law. From the Rules and Regulations, it can be seen that there is no specific provision in this regard.

12. In **Vipinchandra Hiralal Shah**, the Hon’ble Supreme Court considered the question of clubbing of vacancies of a number of years while preparing the select list for promotion to IAS from the

SCS. It was held that the respondents in that case was entitled to seek fresh consideration on the basis that the selection should be made for vacancies falling in the quota prescribed for promotion of SCS officers determined separately for each year. This case is, however, not relevant in the present case since the question before us is whether unfilled non-SCS vacancies should revert to the year in which it arose or be carried forward to the next year.

13. In J.D. Naharwal (supra), the facts of the case were similar to that in the present case. In the year 2001, out of 4 vacancies earmarked for promotion, 2 vacancies were to be filled up by SCS officers and another 2 by selection from non-SCS officers. The non-SCS vacancies could not be filled up and the UPSC issued a letter declaring that at it was not practicable to hold meeting of the Selection Committee during the relevant year i.e. 2001. After discussing the judgments of Hon'ble Supreme Court in **P.M. Bayas Vs. Union of India & Ors.** (1993) 3 SCC 319; **Tamilnadu Administration Officers Association & Anr. Vs. Union of India & Ors.**, (2000) 5 SCC 728), and Vipinchandra Hiralal Shah (supra) & CWP No.1106/2008, the Hon'ble High Court upheld the direction given by the Tribunal to hold review DPC to fill up more vacancies if remained unfilled on account of non-availability of non-SCS officers.

14. We are of the view that the issues in the present case are squarely covered by J.D. Naharwal (supra). The respondents should have restored the 2 non-SCS vacancies for the year 2010 once the same could not be filled up during the year instead of carrying it forward to the next year. Following J.D. Naharwal, it will be in the fitness of things that the respondents should now

revert 2 vacancies to the year 2010 making a total of 9 vacancies in the SCS quota and conduct a review Selection Committee meeting.

15. One issue that needs to be considered while conducting the review Selection Committee Meeting is that with the change in the number of vacancies available in the year 2010 and in the year 2011, the zones of consideration will change during both the years. Since during the selection from SCS to IAS there can be supersession, from the facts on record it cannot be said as to how the change in the zone of consideration will affect the outcome of the review Selection Committee. In the event of any supersession having taken place in the year 2011 by a person far down the line in the seniority list, it may have implications for the next year Selection Committee meeting also because a person selected in the earlier year would have been taken out of the list for the next year Selection Committee Meeting. There could be a cascading effect on selection made in the subsequent selection Committees. We are elaborating this only to substantiate the point that there can be a possibility of some SCS officers who have been promoted during the subsequent selections and may be affected by this order, but may not be before us in this OA.

16. We therefore direct the respondents that before convening review Selection Committee meeting for the year 2010 to fill up

enhanced number of vacancies, a notice should be given to all the SCS officers in the cadre. The objections received, if any, should be settled. This process of inviting and settling objections may be completed within a period of two months from the date of receipt of a copy of this order. The meeting of the Review Selection Committee for the year 2010 may be held within three months thereafter. The applicant will be entitled to refixation of his seniority on the basis of the outcome of such a review. With these directions, the OA is disposed of. No costs.

(V.N. Gaur)
Member (A)

'rk'

(A.K. Bhardwaj)
Member (J)