

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.4589/2011

This the 30th day of August, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Mayank Bhushan Pathak,
S/o Late Pandit Gopaljee Pathak,
Resident of Village+ P.O.-Majhwari,
P.S. Simri, Distt.-Buxar,
Presently posted as
Additional Secretary,
Department of Planning & Development,
Govt. of Bihar, Old Secretariat,
Patna Bihar. Applicant

(By Advocate: Shri R.K.Mishra through proxy counsel Shri Manish Shekhar)

Versus

1. The Union of India, through 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. The Union Public Service Commission
through its Secretary, Dholpur House,
Shahjahan Road, New Delhi.
4. The Chairman, Union Public Service Commission
Dholpur House,
Shahjahan Road, New Delhi.
5. The State of Bihar through its Principal Secretary,
Department of General Administration Department,
Govt. of Bihar, Old Secretariate,
Patna, Bihar.
6. That Chief Secretary, Govt. of Bihar, having office
at Old Secretariate, Patna.

7. Sri Sanjay Kumar Singh, S/o not known to the applicant.
At present posted as Additional Secretary,
Health, Bihar, Patna.

8. Md. Ifthekar Hasan, S/o not known to the applicant.
At present posted as Chief Executive Officer,
Haj Bhawan, Bihar,
Patna. Respondents

(By Advocate: Shri R.V.Singh for R-1&2, Shri Naresh Kaushik for R-3 &4, Shri Sanjay Kumar Sandilya for R-5 & 6)

ORDER(ORAL)

By Hon'ble Shri K.N. Shrivastava, Member(A)

The grievance of the applicant is that his name has not been included in the select-list for 2007 for promotion to Indian Administrative Service (IAS) by the Selection Committee whereas the names of respondent Nos. 7 and 8, who are his juniors in the Bihar Administrative Service (BAS), have been included. The applicant has, therefore, prayed for declaring the select-list for 2007 as null and void. He has also prayed for a direction to the respondent authorities to consider his case on merit, so that he may be selected/promoted to the cadre of IAS w.e.f. his date of eligibility, with all consequential benefits.

2. The facts of the case are as under:

The applicant was selected to BAS by the Bihar Public Service Commission (BPSC) through the 27th Combined Competitive Examination conducted by BPSC. The officers of State Civil Services (SCS) are eligible for appointment to IAS in terms of All India Service Act, 1951. Section 3 of the said Act empowers the Central Govt. to

make rules to regulate the recruitment and conditions of service of persons appointed to IAS. Section 3 (1) of the Act reads as under:-

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

3. Pursuant to the provisions of Section 3(1) of All India Services Act, 1951, the Central Govt. framed the following rules and regulations:-

- "a) The Indian Administrative Service (Recruitment) Rules, 1954 (herein after referred to in short as the Recruitment Rules)*
- b) The Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to in short as Promotion Regulations)*
- c) The Indian Administrative Service (Appointment by Selection) Regulations, 1997 (hereinafter referred to as Selection Regulations)*

4. Officers to IAS under the rule (4) of IAS Recruitment Rules are recruited through following sources:

- "a) through competitive examination (i.e. direct recruitment);*
- b) by promotion of substantive member belonging to the State Civil Service; or*
- c) by selection of officers who hold in a substantive capacity gazetted posts in connection with the affairs of the State and belong to the service other than Civil Service."*

5. 85% of the seats under the promotional quota of the State in IAS are to be filled up from amongst SCS officers as per the

promotion Regulations, 1955 whereas the remaining 15% of the promotional quota of the State is to be filled up from amongst non-SCS officers of the State possessing outstanding merit and ability and who have rendered at least 8 years of service in a gazetted post equivalent to Deputy Collector. The State Government is required to forward names of SCS and non-SCS officers to UPSC for consideration by the Selection Committee for appointment to IAS. The suitable SCS and non SCS officers who are included in the select-list are eligible for appointment to IAS as per the provisions of the IAS (Appointment by Promotion), Regulations, 1955 and the IAS (Appointment by Selection) Regulations, 1977 respectively.

6. As per the provisions of Regulation 5 of Promotion Regulations, the number of vacancies against which selection is made for a particular recruitment year for promotion to the IAS of a State cadre is determined by the DOP&T in consultation with the State Govt. concerned. The State Govt. thereafter, forwards the proposal to the UPSC along with the seniority list of eligible SCS officers (up to a maximum of 3 times of the number of the vacancies) with their ACR dossiers. A proposal received from the State Govt., after due scrutiny, is placed by the UPSC before the Selection Committee appointed by it for its consideration in accordance with the provisions of Regulation 5(4) of Promotion Regulations. The Selection Committee classifies the eligible SCS officers included in the zone of consideration (list of eligible candidates) as 'Outstanding' , 'Very Good' , 'Good' and 'Unfit' on assessing their service records with a specific reference to their performance during the last five years. The Selection Committee prepares the select-list by including the names of officers first from

amongst the officers finally classified as "Outstanding" and then from amongst those similarly classified as "Very Good" and thereafter from amongst those similarly classified as "Good" and the order of names within each category is maintained in the order of their respective inter-se position in the seniority list in SCS. The relevant part of the regulation 5(4) and 5(5) are extracted below:-

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

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

Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

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

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

7. The Selection Committee under Regulation (3) of IAS (Appointment by Promotion), 1955 met on 20.12.2006 to draw up the select-list for the year 2006. The applicant's name figured at Sl.No.45

of the list of eligible candidates and he was given the grading of 'very good'. He, however, could not find place in the select-list for the year 2006 consisting of 15 candidates prepared by the Selection Committee for the reasons that the candidates included in the said list were either having 'Outstanding' grading or were having 'Very Good' grading but were senior to the applicant in the seniority list. All these details can be seen at Annexure A-1.

8. The Selection Committee again met on 16.12.2008 to draw up the select-lists for the years 2007 and 2008. The applicant was in the zone of consideration for the year 2007. His name had figured at Sl.No.22 in the list of eligible candidates. The applicant was given 'very good' grading. In the year 2007 also he could not make it to the select-list consisting of 10 candidates for the reasons as stated in the para(7).

9. The selection committee did not consider his name for the 2008 for the reason that he had already crossed the age of 54 years by that time and thus was not eligible for consideration.

10. The number of vacancies for promotion of SCS officers of Bihar State to IAS for the year 2007 and 2008 were 10 and 11 respectively. The Punjab and Haryana High Court in WP (C) No.15798 filed by **Praveen Kumar** vide order dated 01.2.2000 held that the crucial date of eligibility in respect of SCS officers for being considered for promotion to IAS is to be reckoned as 1st January of the year in which the promotion quota vacancies arise. The said judgment of the Hon'ble High Court was upheld by the Hon'ble Supreme Court. Pursuant to the said judgment, the DOP&T issued OM dated 25.08.2010 to that effect. Consequently, the number of vacancies for

Bihar State in the year 2007 and 2008, instead of 10 and 11 became 11 and 12 respectively. The DOP&T OM dated 25.08.2010 also clarified that all Selection Committee Meetings (SCMs) held after 01.02.2010 but the minutes of the meetings not approved by the UPSC, would have to be held in accordance with the ratio of the Hon'ble High Court of Punjab Haryana judgment in **Parveen Kumar's** case. The DOP&T further clarified that the select-lists would henceforth be styled coinciding with the year of the vacancies. In case of overlapping select-lists, UPSC decided that the select-lists already acted upon may not be renamed and the second select-list may be named by adding "A" to the year of the select-list.

11. In view of the DOP&T OM dated 25.08.2010, the select-lists for the years 2007 and 2008 were styled as select-lists for 2006-A and 2007 vis-a-vis the vacancies that arose during the years 2006 and 2007.

12. Pursuant to the notice issued, all the official respondents entered appearance and filed their reply. The applicant, thereafter, filed his rejoinder. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties today. Their arguments were heard.

13. Admittedly, prior to the judgment of Hon'ble Punjab and Haryana in **Parveen Kumar** (supra) on 01.02.2010, for the year 2007, the applicant's name was in the list of eligible candidates and he was graded as "very good". He, however, could not make it to the select-list for the year 2007 in terms of merit. The candidates placed in the select-list for 2007 were those having "Outstanding" grading or "very good" grading and were senior to the applicant in the seniority. For the

select-list for 2008, he could not be considered as he had become over-aged having crossed the age limit of 54 years.

14. In accordance with the ratio laid down by Punjab and Haryana High Court in **Praveen Kumar's** case, the earlier the select -lists for the years 2007 and 2008 have been styled as select-lists for 2006-A and 2007 respectively. Obviously, the name of the applicant could have figured in the select-list for 2006-A- as it was nothing else but the old select-list for 2007. Likewise, his name could not have been considered for the new select-list for 2007 which again was nothing else but the old select-list for 2008.

15. In the light of the discussions in the paras (11) & (12), we do not find any substance in the contention of the applicant. Accordingly the OA is dismissed. No order as to costs.

(K.N. Shrivastava)
Member(A)

(Permod Kohli)
Chairman

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