

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.727/2013

New Delhi this the 16th day of August, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

Birchandra Prasad Singh,
S/o late Tej Narayan Singh,
R/o 21/60, Officers Flat, Bailey Road,
Patna, Bihar.

-Applicant

(By Advocate: Shri V.S.R. Krishna with Shri Subodh Kumar Kaushik)

Versus

1. Union of India
Through the Secretary,
Ministry of Personnel, Public Grievances and Pensions,
Department of Personnel and Training,
North Block, New Delhi.
2. The Chairman,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
3. The Principal Secretary,
Department of General Administrative
Department, Govt. of Bihar,
Old Secretariat, Patna, Bihar.
4. The Chief Secretary,
Old Secretariat,
Patna, Bihar.
5. Shri Md. Sohail,
Through
The Principal Secretary,
Department of General Administrative
Department, Govt. of Bihar,
Old Secretariat, Patna, Bihar.

6. Shri Amarendra Prasad Singh,
Through
The Principal Secretary,
Department of General Administrative
Department, Govt. of Bihar,
Old Secretariat, Patna, Bihar.

(By Advocates: Shri Gyanendra Singh (R-1), Shri Ashish Nischal (R-2), Shri Shree Prakash Sinha with Shri Rakesh Mishra and Ms. Mahua Sinha (R-6))

ORDER (Oral)

Justice L. Narasimha Reddy:

The applicant is working as Director (Jails) in the Non State Civil Service Category. For appointment to the State Cadre of Indian Administrative Service there are three methods, viz; (1) by direct recruitment, (2) by promotion of a member of a State Civil Service and (3) appointment by selection in special cases from amongst persons holding substantive capacity gazette post in connection with the affairs of a State and who are not members of the State Civil Service (SCS).

2. The applicant is a non-SCS officer of State of Bihar. He submitted a representation to the State Government as well as the Union Government for consideration of his case under the Appointment by Selection of non-SCS officers, against the vacancies of the year 2012. The Government of Bihar, in turn, addressed a letter dated 21.12.2012 to the Central Government and the Union Public Service Commission (UPSC), forwarding seven names,

including that of the applicant, and making a request that two vacancies be filled up in that category. The name of the applicant figured at serial no.6, whereas the name of respondents no.5&6 figured at serial no.2 and 3 respectively. The DPC met for this purpose and the respondents 2&3 were selected and appointed.

3. The applicant submitted a detailed representation stating that according to Regulation 9 of the IAS (Appointment by Selection) Regulations, 1997, 15% of the vacancies, that are earmarked for promotion from the State Civil Service, are available for appointment by selection of non-SCS officers and though as many as 31 vacancies were available for promotion from State Civil Service for the particular year, only two vacancies were filled through the Appointment by Selection of non-SCS officers under the 1997 Regulations. Complaining that no action has been taken thereon by the respondents, the applicant filed this O.A. challenging the selections/appointments of respondents 5&6.

4. The respondents filed their counter-affidavits. According to them vacancies that were available for the concerned year were only two and the respondents 5&6 were appointed on the basis of selection. It is also stated that the applicant is under a wrong impression as regards the number of vacancies that are available for that year.

5. We heard Shri V.S.R. Krishna with Shri Subodh Kumar Kaushik, learned counsel for the applicant and Shri Gyanendra Singh, Shri Shree Prakash Sinha and Shri Ashish Nishal, learned counsel for the respondents.

6. As observed earlier, three methods of appointment are provided for under the IAS (Appointment by Selection) Regulations, 1997. We are concerned here with the third method, namely, Appointment by Selection of non-SCS officers. It is a matter of record that a list of 7 non-SCS officers was forwarded by the State Government through their communication dated 21.12.2012 and the name of the applicant therein figured at serial no.6.

7. The only controversy before us is as to the number of vacancies that were available in the category for that year. Regulation-9 is to the effect that the vacancies that are to be filled by that process shall be 15% of those which are available to be filled up by way of promotion of the SCS officers. The applicant placed reliance on a letter dated 25.11.2013, addressed by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, which contains the information relating to the three separate categories.

8. The first paragraph of this letter deals with the Select List of 2011 for promotion category for the State of Bihar. The number of vacancies available for that period is said to be 31. The second

paragraph deals with Select List of 2012 for the same category and the vacancies are said to be 12. The third paragraph pertains to the Select List of 2013 of (non-SCS) category. Against this, the number of vacancies mentioned as 02. The applicant is under the impression that the selection in question is for the vacancies of 2011 and, taking clue from first paragraph of the letter, which shows that 31 vacancies are available for promotion of SCS officers, he is taking the plea that 15% vacancies thereof, which works out to 04 must be available for the selection of non-SCS officers.

9. The counter-affidavit filed by the DoP&T in that behalf is not clear. As a matter of fact, reference is made to the cadre of State of Jharkhand. We are of the view that the issue can be clarified by way of reply to the representation made by the applicant. Though a copy of the representation is filed in the OA, the respondents submit that they have not received the same, as yet. The one that is filed in the OA, is a bit elaborate and not to the point.

10. Therefore, we dispose of this OA, leaving it open to the applicant to submit another representation, confined to his version about the vacancies that are available to be filled up for the relevant year, under the category of Appointment by Selection of non-SCS officers, to the respondents within a period of four weeks from today. On receipt of such representation, the respondents shall

pass an order thereon within a period of two months thereafter.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(L. Narasimha Reddy)
Chairman

CC.