

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH
CIRCUIT BENCH AT RANCHI
OA/051/00054/18
with
MA/051/00026/2018

Reserved on: 14.02.2019

Pronounced on: 26.02.2019

C O R A M

HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

1. Pramod Kumar, son of Late Brajendra Prasad Sinha, Executive Engineer, Rural Development Department (Rural Work Affairs), Government of Jharkhand, F.F.P Building, Dhurwa, PO & PS – Dhurwa, District- Ranchi, PIN- 834004.
2. Satish Chandra Choudhary, son of Late Jagdish Chandra Choudhary, Executive Engineer, Central Drawing Organization, Government of Jharkhand, PO & PS – Dhurwa, District – Ranchi, PIN- 834004.
3. Ram Chandra Prasad Barnwal, son of Late Hari Lal Barnwal, Joint Commissioner of Commercial Taxes (Appeal), Government of Jharkhand, Kuchery Road, PO & PS – Lower Bazar & District- Ranchi, PIN- 834001.
4. Vishnu Deo Bhagat, son of Mahendra Bhagat, Assistant Commissioner of Commercial Taxes, Ranchi West Circle, Government of Jharkhand, Kutchery Road, PO & PS- Lower Bazar & District- Ranchi, PIN- 834001.
5. Dr. Subhash Singh, son of Pratap Narayan Singh, Joint Director, Agriculture, South Chotanagpur, Kanke Road, Jharkhand, Ranchi PO & PS – Gonda & District- Ranchi, PIN- 834001.
6. Prabhat Kumar, son of Late Surendra Prasad Singh, Secretary, Jharkhand Building & Other Construction Workers Welfare Board, Ranchi, PO & PS- Doranda & District- Ranchi, PIN- 834001.

..... Applicants.

- By Advocate: - Mr. Praveen Akhori

-Versus-

1. Union of India through its Secretary, Department (Personnel), Administrative Reforms & Public Grievances, Government of India, New Delhi- 110001.
2. Union Public Service Commission, Dholpur House, New Delhi through its Secretary.
3. State of Jharkhand through the Chief Secretary, Project Building, Dhurwa, PO & PS- Dhurwa, District- Ranchi.

4. Principal Secretary, Personnel, Administrative Reforms & Rajbhasha Department, Government of Jharkhand, Project Building, Dhurwa, PO & PS- Dhurwa, District-Ranchi.

..... Respondents.

- By Advocate(s): - Mr. H.K. Mehta for UOI
Mr. R.A. Gupta for State of Jharkhand.
Mr. Fair-ur-Rahman for UPSC.

ORDER

Per Dinesh Sharma, A.M.:- At the outset, the prayer of the applicants to pursue the matter jointly vide MA/051/00026/2018 is allowed.

2. The case of the applicants is that though the State Government had short listed them for consideration of selection against vacancies of IAS to be filled by non-State Civil Service (NCS) quota of the year 2016 and they were given intimation about attending the meeting of the Selection Committee on 23.11.2017, this Committee did not decide anything and deferred the process indefinitely. The applicants have asked for directing the respondents to hold the deferred meeting of the Selection Committee dated 23.11.2017 within a stipulated time frame.

3. The 2nd respondent, UPSC, filed a written statement on 09.04.2018 stating the provisions of rules regarding selection of NCS officers to the IAS and informed that due to various reasons the Selection Committee could not meet and take decision on this matter within the year 2017. Therefore, the Commission invoked Regulation 5(C) of the Selection Regulations vide letter dated 03.01.2018. As per this stipulation, “no meeting of the Committee shall be held and no list for the year in question shall be prepared, where,(c) the Commission, either on its own or

on a proposal made by the Central Government or the State Government, considers that it is not practicable to hold a meeting of the Committee during the year, in the facts and circumstances of each case.”

4. The State of Jharkhand also filed their reply in which they have given reasons for the delay in their complying with the order of this Tribunal in Shiv Kumar Ram’s case (OA/051/00165/17). Besides this, they have also given other details of the process undergone during the selection process to explain why, despite their best efforts, (and not only because of Shiv Kumar Ram’s case) the process of recruitment for Select List 2016 could not be completed within the prescribed time frame which came to an end on 31.12.2017.

5. The applicants have filed an MA (051/00161/2018) under which they have hinted at questioning the constitutional validity of the above-mentioned Rule 5(C) of the IAS (Appointment by Promotion) Regulations, 1997. Based on this and other grounds, they have requested to allow them to amend their prayer to include a prayer to set aside the order of the UPSC dated 03.01.2018. This prayer was allowed vide order dated 08.08.2018.

6. We have gone through the pleadings and heard the arguments of the learned counsels for both sides. The most important issue before us now is whether the meeting of the selection committee for filling vacancies for the year 2016 can be held now. To arrive at this decision, we have to first decide whether the order of the UPSC dated 03.01.2018 can be set aside on ground of constitutional validity of the enabling provision or otherwise. The

grounds taken by the applicants for seeking to set aside this order are reproduced below:-

“(I) For that once the UPSC decided to defer the SCM Scheduled on 23.11.2017 by the order of this court till compliance of the order of this Hon’ble Tribunal dated 22.11.2017, the UPSC could not have passed the impugned order without seeking leave of this Hon’ble Tribunal.

(II) For that the UPSC’s declaration dated 03.01.2018 is hit by Section 19(4) of the Administrative Tribunals Act, 1985 in view of the order dated 20.11.2017 passed in Shiv Kumar Ram case.

(III) For that the UPSC is not at liberty to invoke Regulation 5 (c) retrospectively after lapse of 31st day of December.

(IV) For that the declaration dated 03.01.2018 is also hit by the principle of natural justice for non-reconvening deferred SCM dated 23.11.2017 in respect of applicants in general and the applicant no. 4 in particular.

(V) For that the declaration dated 03.01.18 amounts to violative of the judicial order by an executive order and thus is a contemptuous act.”

7. The advocate for the applicant has strongly argued in favour of reading down this provision since, according to them, there is no constitutional prohibition against the CAT for doing so (quoting L. Chandra Kumar Vs. Union of India & Ors.). However, they could not produce any judicial pronouncement specifically on this rule where this provision has been found ultra vires by this Tribunal or by any other judicial forum. On the other hand, the respondents have cited the decision of CAT, Chandigarh Bench in OA /60/94/2018 where this Tribunal has specifically upheld the validity of this Regulation. Hence, we do not see any reason to read it down.

8. Now we proceed to deal with the grounds taken by the applicant one by one as follows: -

(i) The first ground taken by the applicants for challenging this order is that it should not have been done without seeking leave of this Tribunal since the compliance of the order of this Tribunal (in the Shiv Kumar Ram's case) was still pending. This argument does not appear to be very sound since we are informed that order of the Tribunal had been challenged before the Hon'ble High Court and Hon'ble High Court had stayed taking any coercive action by this Tribunal for forcing implementation of that order. Obviously, in such a situation no purpose could be served by approaching this Tribunal.

(ii) The second ground is regarding the the impugned order being hit by Section 19(4) of the AT Act, 1985. This, too appears to be stretching the interpretation of this provision too far. Section 19 (4) provides for proceedings under any relevant service rules as to redressal of grievances to abate while a matter is pending before a Tribunal. This obviously intended for other grievance redressal process (e.g. appeal/revision before higher authorities) to abate while the Tribunal is seized of the matter. It cannot be intended to abate all actions that is permitted under various other service rules, unconnected with grievance redressal.

(iii) Regarding UPSC not being at liberty to invoke Regulation 5(c) retrospectively, we fail to understand how the applicants have come to raise this argument since in every case this rule would have to be invoked only after the period is over.

(iv) We also do not see any violation of natural justice in this matter since no right accrues to any of the proposed candidates to get themselves selected till the selection process is over.

(v) We also do not see the impugned order as a contemptuous act since it is issued under a provision which empowers the UPSC to

do so under circumstances where the selection process cannot be completed for any reason (mostly beyond their control).

9. Since all the grounds taken by the applicants for setting aside UPSC's decision dated 03.01.2018 are not found to be supported by any strong legal right, we do not see any merit in the relief claimed by the applicants. The OA is, therefore, dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member