

**Central Administrative Tribunal
Principal Bench**

OA No.2033/2017

MA No.2442/2018

MA No.2433/2018

MA No.3557/2017

MA No.3863/2017

New Delhi, this the 11th day of December, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Dr. Jaikesh Kumar Pandey,
S/o Lt. Sri Udai Shankar Pandey,
R/o C-1 Officers Colony, Directorate of Animal Husbandry
Campus,
Badshahbagh, Lucknow UP-226007.
(Deputy Director)

...Applicant

(In person)

Versus

1. Union of India,
Through the Secretary,
Department of Personnel and Training,
Ministry of Pension and Personal Grievances,
Government of India, New Delhi.
2. The Principal Secretary,
State of Uttar Pradesh,
Appointment Department,
Government of Uttar Pradesh,
Civil, Secretariat, Lucknow, U.P.
3. The Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road, New Delhi.

...Respondents

(By Advocate : Shri Rajeev Kumar for R-1
Shri Nikhil Majithia for R-2
Shri Vibhakar Mishra for Shri Prabhanshu
Kumar Srivastava)

ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman :-****MA No.2433/2018**

This MA is filed with a prayer to restore the MA No.3863/2017, which was dismissed in default on 19.04.2018. For the reasons mentioned therein, this MA is ordered, and MA No.3863/2017 is restored.

MA No.3863/2017

2. This Application is filed with a prayer to implead the applicant herein, as one of the respondents in the OA. It is stated that adjudication that may be undertaken in the OA would adversely affect the applicant herein. There is no serious opposition from the applicant in the OA. The MA is, accordingly, ordered.

OA No.2033/2017

3. The applicant was appointed as Veterinary Officer, by the State of Uttar Pradesh, in the year 1989. He was promoted to the post of Deputy Director, Animal Husbandry, in the year 2012. The Government of India,

Ministry of Personnel, Public Grievances and Pensions, DOP&T addressed a letter dated 06.01.2017 to the Chief Secretary of Government of Uttar Pradesh, for initiating the process for determination of vacancies in promotion quota of UP cadre of IAS, for the year 2016. It was mentioned that 20 vacancies have been provisionally determined for preparing the select list of 2016 for State Civil Services (SCS) and Non-SCS, for recruitment by promotion/selection to the UP cadre of IAS. Acting on that, the Government of UP, the 2nd respondent herein, addressed a letter dated 01.03.2017, sending the proposals for filling up the vacancies in the State Cadre of IAS, for that particular period, by way of promotion. In the letter, it was mentioned that all the vacancies are proposed to be filled up by promotion of SCS officers and that there are NIL vacancies of Non SCS officers. The applicant challenges both the letters in this OA.

4. He contends that the Indian Administrative Service (Recruitment) Rules, 1954 (for short, the Recruitment Rules) specifically provide for selection of the Non SCS officers under certain circumstances and consistently for the past more than two decades, not a single Non SCS officer was promoted to IAS. He submits that though he

was interviewed by the Selection Committee, in the year, 2006, it did not lead to selection and the proceedings ended half way through. The applicant placed reliance upon the Indian Administrative Service (Appointment by Selection) Regulations of 1997 (for short, the Regulations). He seeks direction to the respondents to determine the vacancies for selection of Non-SCS officers, as per Clause 3 of the Regulations, for the post available under proviso to Rule 9(1) of Recruitment Rules. It is also prayed that the determination of the vacancies for State Civil Service officers for the year 2016, and for subsequent years, be stalled till the ratio for Non SCS officers is also fixed.

5. All the respondents filed separate counter affidavits opposing the OA. According to them, the issue as to whether the Non SCS officers of a State have any vested right to be considered for promotion to IAS, has been finally decided through series of judgments and that the case of the applicant does not warrant any consideration. They submit that it is for the State and the Central Government to be satisfied that there exist several circumstances as provided for under the Rules and that if one takes into account, the purport of Rule 4(1)(c) of the Recruitment Rules, 1954 read with Rule 8(2) thereof or the

purport of clause 4 of the 1997 Regulations, the inescapable conclusion is that it is for the State Government to satisfy itself as to whether there exist any “special cases” and that no officers of Non SCS can insist on being considered for selection. According to them, the plea that there exists Non SCS officer quota in this behalf is a misnomer and that except that it is an enabling provision, and no special right is created in favour of officers of such category.

7. We heard the applicant who argued in person and Shri Rajeev Kumar and Shri Nikhil Majithia, learned counsel for respondents.

8. Rule 4 of the Rules provides for the method of appointment to IAS. The first is by way of competitive examination and the second is by way of promotion of [substantive] members of SCS. A subsidiary to the second method is provided for under Sub-rule 1(c), viz by way of selection in “special cases”, from among the persons, who hold the post other than the SCS. The provision reads as under :-

“4. Method of recruitment of the Service:-

(1) Recruitment to the Service after the commencement of these rules, shall be by the following methods, namely:-

(a) By a competitive examination;

(aa) Omitted.

(b) By promotion of a [substantive] member of a State Civil Service;

[(c) by selection, in special cases from among persons, who hold in a substantive capacity gazetted posts in connection with the affairs of a State and who are not members of a State Civil Service.]

4(2) Subject to the provisions of these rules,

(a) the method or methods of recruitment to be adopted for the purpose of filling up any particular vacancy or vacancies as may be required to be filled during any particular period of recruitment, shall be determined by the Central Government in consultation with the Commission and the State Government concerned;

(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.

4(3) Notwithstanding anything contained in sub-rule (1), if in the opinion of the Central Government the exigencies of the service so require, the Central Government may, after consultation with the State Government and the Commission, adopt such methods of recruitment to the Service other than those specified in the said sub-rule, as it may by regulations made in this behalf prescribe.

4(4) Notwithstanding anything hereinbefore contained in this rule, in relation to the State of Jammu & Kashmir, recruitment to the

State Cadre on its initial constitution shall be made by such method as the Central Government may after consultation with the State Government and the Commission, prescribe.

9. Rule 8(1) deals with the promotion of SCS officers to IAS and 8(2) thereof, enables the State Government to recommend cases of Non SCS officers also. The provision reads as under :-

“8. Recruitment by promotion or selection for appointment to State and Joint Cadre:-

(1) Central Government may, on the recommendations 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 Governments and the Commission, from time to time, make, recruit to the Service persons by promotion from amongst the [substantive] members of a State Civil Service.

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 24[but who holds a gazetted post in a substantive capacity].”

10. If a State Government decides to recommend any Non SCS officer, on finding that there exists “special circumstances”, the procedure to be followed therefor is provided under the Regulations. It is required to follow the procedure prescribed in Clause 4 of the Regulations which reads as under :-

“4. State Government to send proposals for consideration of the Committee :-

1. The State Government shall consider the case of a person not belonging to the State Civil Service but serving in connection with the affairs of the State who,
 - (i) is of outstanding merit and ability; and
 - (ii) holds a Gazetted post in a substantive capacity; and
 - (iii) has completed not less than 8 years of continuous service under the State Government on the first day of January of the year in which his case is being considered in any post which has been declared equivalent to the post of Deputy Collector in the State Civil Service and propose the person for consideration of the Committee. The number of persons proposed for consideration of the Committee shall not exceed five times the number of vacancies proposed to be filled during the year:

Provided that the State Government shall not consider the case of a person who has attained the age of 54 years on the first day of January of the year in which the decision

is taken to propose the names for the consideration of the Committee.

Provided also that the State Government shall not consider the case of a person who, having been included in an earlier Select List, has not been appointed by the Central Government in accordance with the provisions of regulation 9 of these regulations.”

11. Though arguments at some length have been advanced as regards the fixation of vacancies to be filled in by promotion for each year, and the ceiling which is kept, as regards the Non SCS officers, we do not feel the necessity to deal with the same in detail, in this case. Suffice it to mention that at any given point of time, the officers to be appointed by way of promotion shall not exceed 1/3 of the strength, as mentioned in Rule 9(1) of the Recruitment Rules and within that category, at any point of time, the strength of Non-SCS officers to be promoted shall not exceed 15% thereof.

12. The basic question is as to whether the Rules and Regulations referred above confer any right, at all, upon the Non SCS officers. The issue was dealt with in detail in several judgments and it will be beneficial to refer to the discussion undertaken by the Hon'ble Delhi High Court in ***Raj Narain Singh Vs. Dr. Ashok Kumar Sharma & Ors.***

in WP(C) No.2395/2012, which was delivered on 18.10.2012. After referring to various decided cases, it was held as under :-

“It is apparent from the above extract that rule 4(1)(c) provides recruitment to IAS "by selection, in special cases from among persons, who hold in a substantive capacity gazetted posts in connection with the affairs of a State and who are not members of the State Civil Service". The Supreme Court held that the expression "in special cases from among persons" meant the selection as special cases of the persons who have established their outstanding merit and ability while serving the State. It is only an outstanding officer who would be eligible. And it is the outstanding merit and ability of such a person which would make him a 'special case' in terms of Rule 8(2) of the said Rules. What is also discernable from the above extract is that it is first the State Government which has to be 'satisfied' and it is the State Government which has to make the recommendation and it is then for the Central Government to arrive at its own satisfaction that the special circumstances exist. This is a condition precedent for making the 'special recruitment'.

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....Insofar as the satisfaction of the State government and the Central Government is concerned, the courts have a very limited role to play and we cannot substitute our views in place of the administrative decisions of the State Government and the Central Government who are to determine

whether a special case has arisen or not so as to invoke rule 4(1)(c) of the said Rules. It is for the State Government and the Central Government to decide as to whether any selection has to be made by invoking rule 4(1)(c) of the said Rules or not, in a deserving case.

16. We may make it clear that the learned counsel for the respondent Nos. 1 & 2 has fairly stated that there is no question of malafides in the present case. The learned counsel for the said respondents has also fairly stated as we have already pointed out above, that no 'higher' claim is being made except to seeking 'implementation' of the directions given by the Division Bench of this High Court in Hemraj's case as approved by the Supreme Court . We have already indicated that the understanding of the order as represented by the learned counsel for the respondent Nos. 1 & 2 does not appeal to us and, in our view, is not a correct understanding of the case. The Division Bench in Hemraj's case directed that a cadre review as on 30.04.2003 be conducted keeping in mind the vacancy position on 01.01.2004. It did not say that the Non-SCS officers had any right to seek recruitment under the said Rule 4(1)(c). The Division Bench had directed that once the exercise of cadre review and vacancy position is carried out the further consequential steps of considering which of the 'petitioners' are eligible for promotion and which, if any, of the Non-SCS officers are qualified for selection should be completed within a period of four-weeks thereafter. This only meant that once the cadre review is done and the vacancy position is determined the recruitment by 'promotion' or by 'special selection' be concluded within the stipulated time. Neither did the Division Bench grant any right to the Non-SCS officers (including the respondent Nos. 1 & 2, herein) nor did it 'recognize' or 'save' any such right. The manner and type of

recruitment through the 'special' route of rule 4(1)(c) has already been explained by the Supreme Court in P.M. Bayas (supra), a case which though cited before the Tribunal was not even discussed by it and, this is why the Tribunal fell into error. After the directions of the Division Bench in Hemraj's case had been approved by the Supreme Court, the cadre review as on 30.04.2003 with reference to the vacancies as on 01.01.2004 was done. 29 vacancies fell for 2004 and the State Government decided to allocate all of them to the UPSCS and none to the Non-SCS as according to them no special circumstances prevailed so as to also involve the special recruitment method of Rule 4(1)(c) of the said Rules from among Non-SCS officers. This was approved by the Central Government. We do not find any fault with the course adopted by the State Government and Central Government in not allocating any vacancy to the Non-SCS Officers. There is no quota for them and the learned counsel for the respondent Nos. 1 and 2 had fairly stated that he is not making any such claims.”

13. Ultimately, the Writ Petition was allowed and the order passed by the Tribunal, which was under challenge in the Writ Petition, was set aside. The same situation exists in the present case also.

14. Howsoever meritorious the accomplishments of the applicant or other officers similar to him may be, it is ultimately for the State Government to satisfy itself, whether there exists any “special circumstances” to

recommend the names of Non-SCS officers for promotion to IAS and if so, to identify persons duly applying parameters prescribed under the relevant Rules and Regulations. When the State Government emphatically and in categorical terms states that it does not find any “special case”, the question of compelling it to choose anyone, in that category, much less the applicant, does not arise. The exercise to be undertaken to decide whether “special case” as provided for in Rule 4(1)(1) of the Recruitment Rules, on the one hand the identification of a Non-SCS officer for this purpose in accordance with Clause 4 of the Regulations, on the other hand are independent and distinct. It is only when positive decision is in the former, that the necessity to search for suitable candidates under the latter would arise.

15. We, do not find any merit in the OA. The same is accordingly, dismissed.

All pending MAs, if any, stand disposed of.

There shall be no orders as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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