

**Central Administrative Tribunal
Principal Bench**

**OA No.3699/2018
MA No.4665/2018**

New Delhi, this the 13th day of August, 2019

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

Bhagwanti Jethwani,
Presently Revenue Appellate Authority, Kota,
W/o Dr. J.N. Jethwani,
Aged 56 years,
R/o 6-C Nursery, Talwandi,
Kota-324005.

...Applicant
(By Advocate : Shri A.K. Behera)

Versus

1. Union of India,
Through its Secretary,
Ministry of Personnel, Public Grievances & Pension,
Department of Personnel & Training,
North Block, New Delhi-110001.
2. State of Rajasthan,
Through its Chief Secretary,
Rajasthan Secretariat,
Jaipur.
3. Secretary,
Department of Personnel,
Government of Rajasthan,
Rajasthan Secretariat,
Jaipur.
4. Union Public Service Commission,
Through its Secretary,
Dhopur House,
Shahjahan Road,
New Delhi-110011.

...Respondents

(By Advocate : Shri R.K. Sharma, Shri Paritosh Anil
and Shri Anuj Bhandari.

ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman :-**

The applicant is an officer of Rajasthan State Civil Service (RSCS for short) of 1989 batch. She came within the zone of consideration for promotion to IAS under Rule 4(1)(b) of IAS (Recruitment) Rule, 1954. However, for want of vacancies or otherwise, she was not selected for IAS.

2. The applicant contends that 17 vacancies were available for promotion to IAS from the category of RSCS officers and despite that only 15 were earmarked for them, keeping aside two posts of non RSCS officers. The applicant contends that very allocation of two vacancies for non RSCS officers is contrary to the scheme under the Rules and, in particular, the procedure prescribed under Rule 4 and 8 thereof. It is also his case that had these two vacancies been made available for consideration of RSCS officers, there would have been a chance of her being selected. It is in this context, that the applicant has challenged the letter dated 09.01.2018, through which the Chief Secretary of the State of Rajasthan has forwarded the profiles of the non RSCS officers to the Central Government.

3. On behalf of the respondents No.2&3, the State of Rajasthan, a detailed counter affidavit is filed. It is stated that selection and appointment to IAS cadre of Rajasthan by promotion has been taking place strictly in accordance with the Rules and that the OA is not maintainable in law. It is also submitted that once the applicant has been considered and was not promoted to IAS, she cannot have any grievance. It is also stated that in the context of consideration of the cases under Rule 4(1)(c) i.e. outstanding officers of non State Civil Service (SCS for short), the prescribed procedure is followed. Respondents state that except that the profiles of the officers of that category with outstanding record were forwarded to the cadre controlling authority, no decision has been taken by the State Government. It is further stated that existence or otherwise of the “Special Case” is to be determined by the cadre controlling authority on an evaluation of the profiles of non SCS officers, and that in the instant case, the cadre controlling authority, did not find existence of any such “Special Case” in respect of the officers of that cadre.

4. We heard Shri A.K. Behera, learned counsel for applicant and Shri R.K.Sharma, Shri Paritosh Anil and Shri Anuj Bhandari, learned counsel for respondents.

5. It is fairly well known that the recruitment to IAS is through competitive examination as well as by promotion of a substantive Member of SCS, and by the selection in special cases from amongst the persons holding the positions in non SCS. Rule 4(1) of the Rules 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.]”

6. The method of selection to be undertaken in this behalf is provided under Rule 8(2) and 9(1). They read as under :-

“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].

9(1) The number of persons recruited under rule 8 in any State or group of States shall not, at any time, exceed $33\frac{1}{3}$ 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.”

7. From the above, it becomes clear that while $33\frac{1}{3}$ % of the vacancies shall be filled with officers holding senior posts under the SCS and, the posts to be filled by officers of Non SCS shall not exceed 15% of the said $33\frac{1}{3}$ %. In terms of figures, 95 vacancies are available in the State of Rajasthan, to be filled by way of promotion under Rule 4(1)(b) and (c). Out of this, the promotions under 4(c) shall not exceed, at any given point of time, the figure of 14 being the 15% of 95. When the selection in question was taking place, 12 officers of that category were in IAS.

8. The applicant was within the zone of consideration for promotion to IAS in the year 2017 and she was included in the select list of 2017. An exercise in this behalf was taken in the year 2018. While RSCS officers

were considered against the 15 vacancies, the Chief Secretary of the State addressed a letter dated 09.01.2018, as regards two vacancies referable to Rule 4(1)(c). It reads as under :-

“The Indian Administrative Service (Recruitment) Rules 1954 provide for limited promotion of officers to the IAS from amongst those who are holding gazetted posts in the substantive capacity. Such officers should be members of State Services other than Rajasthan Administrative Service, Rajasthan Police Service, Rajasthan Forest Service or Rajasthan Judicial Services and serving in connection with affairs of the State.

Two vacancies are available for the Select List of the year 2017 (arisen during 01.01.2017 to 31.12.2017) for such selection. Only those Non-State Civil Service officers are eligible for promotion to Indian Administrative Service who possess outstanding record and have **completed 18 years of actual and continuous regular service in the respective State Service** (i.e. 10 years to become equivalent to the post of Deputy Collector and further 8 years to become eligible for promotion to IAS) in a State Service and who have not attained the age of **56 years on the 1st day of January, 2017**. The nominated officers should also be clear from vigilance angle.

I shall be grateful if you could kindly recommend **not more than three** names of officers of outstanding merit from the Non-State Civil Service **for which you are the cadre controlling authority** after screening all eligible officers. The officer who was recommended in the past can also be recommended again subject to his/her suitability & eligibility.

The following information/documents in respect of the officers recommended by you may kindly be sent in the enclosed proforma :-

- (i) Particulars of the officer.
- (ii) A certificate indicating that officer of outstanding service records only have been recommended.
- (iii) Bio-data of the officer.
- (iv) Details of penalties imposed on aforesaid officer during the last 10 years.
- (v) Copy of Statement submitted by officer in Department of Personnel (A-I/ACR Cell) regarding his immovable property.
- (vi) Declaration of family, consent for termination of lien and unconditional willingness, for appointment to the Indian Administrative Service submitted by officer.
- (vii) Their confidential roll, if not sent to Department of Personnel (A-I/ACR Cell) earlier, should also be sent to me immediately.

Your recommendation, along-with necessary information/documents should reach this department latest by **31.01.2018.**

9. The exercise mentioned in the letter is referable to Rule 4(1)(c) and 8. Except that he has forwarded the profiles of the Non RSCS officers, whose records were found to be outstanding, that too after semblance of

filtering, the Chief Secretary did not undertake any selection process, by himself. He wanted the cadre controlling authority to examine the feasibility of the promotion of non RSCS officers against two vacancies, subject to their fitting in the “Special Case”. It so happened that the cadre controlling authority i.e. the Union of India did not find any non RSCS officers forwarded through the letter dated 09.01.2018, as being a “Special Case”. The matter ended on that.

10. The grievance of the applicant is that no allocation ought to have been made at all to the non RSCS officers. This argument starts on a wrong premise that such posts were allocated. In the context of considering the case of non RSCS officers, the available vacancies, in contradistinction to their entitlement, was taken note of. Having done that, the profiles were forwarded.

11. The manner in which the exercise is to be undertaken in the matters of this nature, was examined by the Hon'ble Supreme Court in **P.M. Bayas Vs. Union of India & Ors.** 1993 (3) SCC 319. After taking note of the relevant provisions of the rules, their Lordships observed as under :-

“10. Reading Rule 8(2) and the Regulations together it is further clear that the process of selection has to be initiated by the State Government and as such it is for the State Government in the first instance to be satisfied regarding the existence of the “special circumstances” as culled out by us in the para above.

11. It is the State Government which proposes the names of suitable officers under the Regulations for appointment by selection to the IAS. The proposals of the State Government are considered by the Selection Committee and its recommendations are placed before the State Government. Thereafter the State Government sends the recommendations along with its observations, if any, to the Union Public Service Commission for approval. When finally approved by the Commission the appointments are made by the Central Government. Regulation 3(4-A) further provides that the Central Government may not appoint any person if it is of the opinion that, during the period intervening between the final approval by the Commission and the date of proposed appointment, there occurs any deterioration in the work of such officer or there is any other ground which renders him unsuitable for appointment or it is necessary and expedient so to do in public interest. It is, thus, obvious that the “special circumstances” as required under the Rules and the Regulations have to be seen by the State Government. The Central Government being the appointing authority has to finally approve the State Government's proposals which reach the Central Government through the process of selection.”

(underlining added)

12. From this, it becomes clear that the State Government does have a role, albeit very limited in nature, in the context of forwarding the profiles of non State Administrative Service Officers to the Cadre Controlling Authority. It is just an initiation. What is important to note here, is the stage at which the existence of “Special Case” is to be considered. It is only on examining the outstanding performance of an officer of the said cadre, that the existence of “Special Case” mentioned in the relevant rules is to be decided. It is not the other way. The plea of the applicant that the State Government must make out a case as to the existence of “Special Case” and thereafter to forward the profiles, does not accord with the interpretation placed on the relevant rules by the Hon’ble Supreme Court. Added to that, it is the prerogative and function of the Cadre Controlling Authority, and not that of the State Government.

13. Reference is also made to the notings that preceded the forwarding of the list. We do not find anything in those office notings, which is contrary to the relevant provisions of law. Further in ***Raj Narain Singh & Ors. Vs. Dr. Ashok Kumar Sharma & Ors.*** WP(C) No.2395/2012, the Hon’ble High Court explained the

purport of exercise by referring to the judgment in **P.M.**

Bayas. 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’.”

14. We are of the view that the issue is no longer *res-integra* and it has been clinchingly decided by the Hon’ble Supreme Court and followed by the Hon’ble Delhi High Court.

15. Learned counsel for applicant advanced arguments to the effect that since the exercise undertaken for

promotion of non RSCS officers did not fructify, the 2 vacancies ought to have been available for the promotion of RSCS officers. This was not the plea in the OA and we do not propose to address that in the absence of any pleadings. Further, this picture emerged as a result of the selection process, during the pendency of the OA. The exercise is not a continuous one. Curtains are drawn once the selection takes place. There is nothing like residuary exercise.

16. We do not find any merit in the OA and the same is accordingly, dismissed.

Pending MAs, if any, stand disposed of.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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