

SUPREME COURT OF INDIA

Parmeshwar Prasad

Vs.

Union of India

C.A.No.173 of 1999

(S. Rajendra Babu and Doraiswamy Raju JJ.)

30.10.2001

JUDGMENT

Doraiswamy Raju, J.

1. The appellant, who joined the Bihar Statistical Service in a Class-II gazetted post on 22.8.1968, was promoted to Class-I post in July, 1992 and again in July, 1994 he was given the Senior Selection Grade. His name was said to have been recommended on 15.11.1994 for appointment by selection to the I.A.S. by his Parent Department. But since no meeting of the State Committee for short-listing of candidates took place for the years 1994-95 and 1995-96 for officers of the said category, the proposal by his Parent Department did not materialize. On 12.12.1996, it appears that the name of the appellant was again recommended by his Parent Department for being considered for appointment by selection to the post of I.A.S. The State Scrutiny Committee, whose task is to short-list the names of such candidates received from various Departments of the Government other than the State Civil Service for further consideration by the Select Committee as per the Regulations, seems to have not favourably considered the claim of the appellant since he was above 54 years as on 1.4.1996, i.e., the relevant cut-off date for consideration of claims for the year 1996-97. Apparently, on coming to know that he was not one of the persons called for interview while others had been, the appellant moved the Central Administrative Tribunal, Patna Bench at Patna, by filing O.A. No.213 of 1997. In the said application, interim orders of stay appear to have been obtained also, which came to be ultimately vacated by the Tribunal on 18.9.1997 on being brought to its notice that the appellant was over aged as on 1.4.1996. The High Court also declined to interfere at its instance at that stage, in CWJC No.9334 of 1997.

2. The main O.A. No.213 of 1997 itself was subsequently taken up for consideration and by an Order dated 14.9.1998, the same came to be dismissed rejecting the plea of the appellant for a different cut-off date and that so far as his claim was concerned, it could be anything other than 1.4.1996 for the reason that there was no meeting of the Scrutiny Committee held for the years 1994-95 and 1995-96 at the State level in respect of appointment to I.A.S. through selection method. The Tribunal has meticulously analysed the difference between the consideration of claims of State Civil Service Officers as envisaged under I.A.S.

(Appointment by Promotion), Regulations, 1955 on the one hand and I.A.S. (Appointment by Selection) Regulations, 1956 on the other, by highlighting the fact that unlike the statutory obligation to have an annual selection for appointment by promotion, no such duty was cast under the Regulations, for obvious reasons, for such annual consideration in respect of appointment by selection method. Not satisfied, the appellant has come before this Court.

3. Heard the learned senior counsel on either side. Shri A. Sharan appearing for the appellant sought to draw inspiration based on proviso to Regulation 5(3) of the *I.A.S. (Appointment by Promotion) Regulations, 1955* and also the decisions reported in *Union of India & Ors. Vs. Vipinchandra Hiralal Shah*¹, *Syed Khalid Rizvi & Ors., etc. Vs. Union of India & Ors., etc.*², *T. Sham Bhat Vs. Union of India & Anr.*³ and *Sant Ram Sharma Vs. State of Rajasthan & Ors.*⁴ to project the claim of the appellant besides placing strong reliance upon the Circular dated 18.10.1996 issued by the Government of Bihar and the Letter dated 19.9.1996 of the Union Public Service Commission. Per contra, Shri N.N. Goswami, learned senior counsel for the Union of India, and Shri B.B. Singh, learned counsel for the State of Bihar, adopted the reasoning of the Tribunal and submitted that the decision of the Tribunal calls for no interference since they are quite in accordance with the Regulations and the procedure governing the selection for appointment by selection method from the category of Non-State Civil Service Officers.

4. We have carefully considered the submissions made by the learned counsel on either side. In our view, the reasons assigned by the Tribunal below accord with the relevant Rules and Regulations governing the selection for appointment of Non-State Civil Service Officers by selection method. The reliance placed on the decision reported in *Sant Ram Sharma* (supra) is inappropriate for the reasons that the Circulars issued by the Government of Bihar cannot be considered as those which could fill up even the assumed gaps, though, in our view, there is none such, for the simple reason that it is only the authority which had the competency to make the Rules or Regulations that could said to have even such powers. The communication of the Union Public Service Commission, noticed above, also does not lend any support to the claim of the appellant. The decision of this Court in *T. Sham Bhat* (supra) has no relevance whatsoever to the issue raised before us; nor could the reasons, which weighed with this Court in arriving at the decision therein, be stretched to the extent of obliterating all differences and distinctions specifically envisaged in the respective Regulations providing for different manner or procedure of consideration in respect of appointment by promotion of State Civil Service Officers and appointment by selection of Non-State Civil Service Officers. The decision in *Syed Khalid Rizvi* (supra) as well as the one reported in *Vipinchandra Hiralal Shah* (supra) related to appointment by promotion of State Civil Service Officers and they cannot be of any assistance for considering the claims and rights of the appellant under the *I.A.S. (Appointment by Selection) Regulations*. This Court in explaining the meaning of the word ordinarily in Regulation 5 of *I.A.S. (Appointment by Promotion) Regulations* had come to the particular conclusion having regard to the mandate contained in clause (1) of Regulation 5 that the Selection Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Civil Service, as are held by them to be suitable for promotion to the Service. So far as *I.A.S. (Appointment by Selection) Regulations, 1956* is concerned, clause (1) of Regulation 3 only

envisages that the State Government may, from time to time, consider by way of selection the cases of persons not belonging to the State Civil Service but serving in connection with the affairs of the State. The provisions contained therein also interdict the State Government from considering cases of persons, who have attained the age of 54 years on the first day of April of the year in which the cases of the persons are considered and consequently, no claims can be asserted in derogation of such stipulation. So far as the case on hand is concerned, the factual details disclosed show and that there is no controversy over the same, that the vacancies being only two, the number of officers proposed for the consideration of the Selection Committee by the State Government shall not exceed five times the number of vacancies and that as a matter of fact, ten eligible persons under the said category have been proposed by the State Government. The omission or lapse, if any, on the part of the State Scrutiny Committee, which is meant to short-list the candidates proposed by the Heads of various Departments of the Government, is purely an internal working arrangement and such a selection cannot be equated to consideration and selection by the Select Committee envisaged under the Regulations. Consequently, we see no infirmity whatsoever in the findings of the Tribunal in non-suiting the appellant, so as to call for our interference.

5. The appeal, therefore, fails and will stand dismissed. No costs.

¹(1996)6 SCC 721

²1993 Supp.3 SCC 575

³1994 Supp.3 SCC 340

⁴AIR 1967 SC 1910