

(2015) 02 RAJ CK 0071

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 7118, 7136, 7472, 9686 and 20819/2013

Chhaya Bhatnagar and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 02-02-2015

Acts Referred:

All India Services Act, 1951 — Section 3

Citation : (2015) LabIC 1604

Hon'ble Judges : Veerender Singh Siradhana, J.;Ajay Rastogi, J.

Bench : Division Bench

Advocate : Ashok Gaur, G.K. Garg, Senior Counsels Assisted by Ashvini Jaiman for Anita Agarwal, for the Appellant; R.D. Rastogi, Addl. Solicitor General and B.S. Chhaba, Asstt. Solicitor General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—These writ petitions involve common question of fact and law and are directed against order of the Id. Central Administrative Tribunal dt. 04.04.2013, were taken up for hearing together and are being disposed of by this common judgment.

2. This court can take a judicial notice that perpetual rivalry for seniority and promotion are two salient conditions of service which the officer during the time of his induction remains with the pragmatic view that he will get his promotion and consequential seniority in terms of the service Rules regulating his service conditions but the fact is that these two are on going disputes in service jurisprudence and despite the provisions of the scheme of Rules/Regulations being interpreted by the Hon'ble Apex Court and the High Courts from time to time, still such disputes could not be settled since long.

3. In the instant writ petitions, multiple grievances have been raised by the group of officers for our consideration but primarily the question for consideration is that whether in terms of R. 8(1) of the Indian Administrative

Service (Recruitment) Rules, 1954, the Officer is to be a substantive member of State Civil Service on the date of meeting of the selection committee or on first day of January of the year of substantive vacancy against which candidature of the officer has to be considered for appointment by promotion to IAS under Rules, 1954 read with the Indian Administrative Service (Appointment by Promotion) Regulations, 1955.

4. Brief facts of the case are that the appointment to the Indian Administrative Service (Promotion Quota) under the scheme of Rules, 1954 could not be held for a sufficient long period of 16 years to be specific for the vacancies of the period 1996-97 to 2011 and seniority list was finalized on 11.09.2011, the selection committee held its meeting on 26.12.2012 and after determining the vacancies of each year, considered the eligible Officers who were member of State Civil Service in terms of R. 8(1) of the Rules, 1954 and falling in the zone of consideration as contemplated u/Reg. 5(2) of the Reg. 1955 against three times of the number of vacancies and the officers who were found to be suitable were placed in the approved select list prepared separately for each year by the committee, indisputably for the years in question i.e. from 1996-97 to 2011 but when the stage came for their appointment obviously good number of officers stood retired from service on attaining age of superannuation on the date of meeting of the committee i.e. 26.12.2012, thus appointments were notified of such of the officers vide notification dt. 31.12.2012 who were substantive member of service on the date of meeting of the committee i.e. on 26.12.2012 and at the same time appointments of other officers are withheld on the premise that such officers are not substantive member of State Civil Service on the date of meeting of the selection committee i.e. on 26.12.2012, which was basically a grievance in different form by the interested parties, brought to notice by filing Original Application before the Id. Central Administrative Tribunal.

5. It will be appropriate for better appreciation to reproduce the approved select list of the officers prepared for the year 1996-1997 to 2011 onwards u/Reg. 7(3) of the Regulations, 1955 which read ad infra:--

6. At the same time, such of the officers alone were offered appointment being a substantive member of State Civil Service on the date of meeting of the selection committee i.e. 26.12.2012 u/R. 8(1) of the Rules, 1954, vide notification dt. 31.12.2012, which read ad infra:--

7. A notification came to be issued by the DOPT, Ministry of Personnel, Public Grievance and Pensions on dt. 31.12.2012 whereby the Government of India has notified the appointment through promotion to IAS in Rajasthan Cadre and against 75 vacancies available upto the selection of 2011, only 47 officers could be appointed, leaving following 28 substantive vacancies unfilled on the basis of interpretation of official respondents of R. 8(1) of Rules, 1954 holding that such of the officers alone could be considered for appointment who are substantive member of service, on the date of meeting of the selection committee i.e. 26.12.2012:--

8. Indisputably, the table clearly indicates that the unfilled 28 vacancies belong to the earlier years i.e. years beginning from 1996-97 to 2006 and the original applicants, who approached the Id. Tribunal, raised grievance that the vacancies, which according to them remain unfilled for the reason that such of the officers whose names were placed in the select list but as they were not substantive member of service on the date of meeting of the committee, as provided u/R. 8(1) of the Rules, 1954, could not be clubbed with the vacancies of the year 2012 and according to the original applicant Ajay Singh, Chhaya Bhatnagar and few others, in terms of Reg. 5 of the Reg. 1955, the vacancies which remain unfilled in a particular year has to be carried-forward in the next subsequent year and to be filled as per the prescribed procedure. However, they were with the common voice that the procedure for carry forward of the vacancy is inbuilt in the scheme of Reg. 1955 but only such of the officers who are substantive member of State Civil Service on the date of meeting of the committee could alone be considered and those who retired and not substantive member of service and even if placed in the approved select list of the year of vacancy, no service benefit is contemplated for them under the scheme of Rules, 1954 read with Reg. 1955.

9. The Original Applications came to be filed by applicants before the Id. Tribunal primarily with the contention that 28 vacancies, which remain unfilled due to retirement of the officers on the date of meeting of the selection committee should be carried forward on year to year basis but should not be clubbed with the vacancies of 2012, otherwise senior and eligible officers, will be deprived from being considered for promotion to IAS under Reg. 1955. Their further grievance was that if appointments to the Rajasthan Cadre of IAS by promotion of the officers of State Civil Service would have been made at their due point of time, there would have been certain number of vacancies specially in the later year available on retirement of the officers appointed to IAS from the approved select lists and in that case they would have got a fair chance of consideration for appointment to IAS against vacancies of the earlier years.

10. But as noticed by the Id. Tribunal in its order impugned, all the original applicants, at the time of making submissions, confined their prayer to the extent that the official respondents may be directed to prepare a fresh year-wise select list after dynamically re-determining the substantive vacancies year-wise taking into consideration which remain unfilled in the previous years on account of retirement of the officers who were selected against the vacancies of the previous years.

11. The Id. Tribunal after examining the scheme of Rule, 1954 and Reg. 1955 disposed of the original applications vide order impugned in the proceedings dt. 04.04.2013 and directed ad infra:--

"88. Thus on the basis of the facts and legal position, we are of the view that the official respondents be directed to re-determine the vacancies year-wise after taking into consideration the retirement of the officers who have been on select

list for various years. As we have explained earlier that the select list for the year 1996-97 has nine names and there were seven vacancies for that year. Thus presuming that officers at sr. Nos. 1 to 3 (S/Shri Raj Bahadur Singh, Amar Singh and Madan Lal Jain) would have been appointed to the IAS on the basis of that select list, had that select list be drawn at that point of time then they would have retired in the year 2003, 2002 and 2005 respectively. Thus the vacancies arising out of their retirement on superannuation would be accrued in the year of their retirement. The same exercise will be required to be done for each select list year wise. The vacancies are to be re-determined on the basis of this principle, which is according to the rules and regulations on the subject. The respondents will also look into the promotion quota from State Civil Service to IAS for that year and the number of officers in position for promotion quota, then determine the vacancies yearwise to be filled from appointment by promotion from the State Civil Service Officers. The respondents are also directed to convene the Review Selection Committee Meeting for each of those years for which the vacancies are re-determined and draw a revised/review select list year-wise.

89. With these observations, both these OAs are disposed of with no order as to costs. The stay granted on 15.2.2013 stands vacated and the respondents are given liberty to proceed further in accordance with above directions."

12. In D.B. Civil Writ Petition No. 7118/2013 (Jassaram Choudhary and Anr. v. Union of India and Ors.) and No. 7119/2013 (Nannu Mal Pahadia and Ors. v. Union of India and Ors.), petitioners are the officers who were allowed supertime scale/higher supertime scale on 16.04.2013 are not the parties in the proceedings before the Id. Tribunal but have assailed order of the Id. Tribunal after seeking leave of the court vide order dt. 23.05.2013 on the premise that the select list of the State Civil Service Officers for each year was prepared by the selection committee of last 16 years during which the meeting could not be held and such of the officers are appointed vide notification dt. 31.12.2012 who were substantive member of State Civil Service u/R. 8(1) of Rules, 1954 on the date of meeting of the selection committee and it has been prayed that unfilled 28+4 vacancies of earlier years which arose due to retirement upto the year 2012 may be considered as available vacancies of 2012 and be filled from amongst the substantive member of State Civil Service and if found suitable be considered for appointment under Rules, 1954 read with Reg. 1955.

13. At the same time, Union of India has also preferred writ petition and their solitary grievance is that they are under obligation to prepare the select list of each year after adjudging suitability of the officers and exercise has been undertaken by the selection committee in its meeting held on 26.12.2012 but u/R. 8(1) of the Rules, 1954 such of the officers who are substantive member of the State Civil Service on the date of meeting of the selection committee i.e. 26.12.2012 alone could be considered for appointment. According to the official respondents, such of the officers who were member of service on the first day of

year of vacancy against which candidature of the officer has been considered and placed in the approved select list prepared of each year but cannot be considered for appointment to IAS u/R. 8(1) of Rules, 1954. According to the official respondents, the Id. Tribunal has committed an error in directing the authorities to treat such officers who were in the approved select list, eligible for appointment against year of vacancies for which their suitability has been adjudged and the corresponding year in which such officers stood retired from service, a substantive vacancy may arise on account of retirement of officer. Thus, according to the official respondents, the order impugned in the instant proceedings is not the correct interpretation of the scheme of Rules, 1954 and Reg. 1955.

14. At the same time, two separate writ petitions are filed; one by Ajay Singh and another by Chhaya Bhatnagar, who were applicants before the Id. Tribunal and their grievance is that clubbing of the vacancies is impermissible, as held by the Hon'ble Supreme Court in catena of decisions and their submission, in sum and substance, before the Id. Tribunal and before this court as well, is that the vacancy of each year is to be determined but the candidature of such of the eligible officers who are substantive member of State Civil Service on the date of meeting of the Committee alone is to be considered for appointment and the select list prepared by the committee against the earlier year vacancies separately of officers who stood retired from service on the date of meeting of the committee is not in conformity with the scheme of Rules, 1954 and such vacancies, which remain unfilled of a particular year, be carried forward to the next subsequent year and this is an inbuilt procedure under the scheme of Reg. 1955 but they too are supporting the view expressed by the petitioner-Jassaram Choudhary and also by the official respondents that only such of the officers alone could be considered for appointment, even if their names find place in the approved select list, who are substantive member of State Civil Service on the date of meeting of the selection committee in terms of R. 8(1) of the Rules, 1954.

15. However, the respondent Nos. 5 and 6 Loknath Soni and K.K. Singhal, represented by Mr. S.P. Sharma, Senior Advocate, supports order of the Id. Tribunal and their contention is that in the State of Rajasthan the meeting of committee for a sufficient long period of 16 years i.e. from 1996-97 to 2011 could not be held and the officers who were never at fault but became a sufferer and one should be considered substantive member of service in relation to the year of vacancy for which his candidature has been considered for appointment by promotion under the scheme of Rules, 1954 read with Reg. 1955 and substantive member of service on the date of meeting of the committee or on the date of his consideration for appointment is not the touchstone and is never the intent and purport of the scheme of Rules, 1954.

16. However, all are common on the issue that clubbing of the vacancies is impermissible under the scheme of Rules, 1954 read with Reg. 1955 and from the perusal of the year-wise select list prepared after examining the service

record of the individual Officer, who are considered eligible and ultimately found suitable against the year of vacancy, there is no clubbing of vacancies or carry forward of vacancies in the present procedure adopted by the selection committee in its meeting held on 26.12.2012 and even the scheme of Rules, 1954 read with Reg. 1955 does not approve clubbing or carry forward of vacancies.

17. We have heard counsel for the parties and with their assistance perused the material available on record and so also order of the Id. Central Administrative Tribunal dt. 04.04.2013, which is impugned in the instant proceedings.

18. Few facts which are not in dispute and may be noticed are that the Selection Committee under the IAS (Appointment by Promotion) Reg. 1995 met on 26.12.2012 taking note of year-wise substantive vacancies of good 16 years available in each year and after considering the members of State Civil Service, who were eligible and fall within the zone of consideration with reference to the year of vacancy for selection to IAS, select list of each year was separately notified for the year 1996-97 to 2011 and approved by the commission but only such of the officers alone are notified for appointment u/R. 8(1) of the Rules, 1954 read with Reg. 9(1) of the Reg. 1955 vide notification dt. 31.12.2012 who according to the official respondents were "substantive member of service on the date of meeting of the Selection Committee i.e. dt. 26.12.2012 and this fact can be noticed that for the year 1997, nine officers were placed in the select list but only three, being substantive member of service on the date of meeting of the Committee, as alleged, alone were appointed vide notification dt. 31.12.2012 and that became the subject matter of challenge before the Id. Tribunal on several grounds, as already noticed by us, and the Id. Tribunal after taking note of multi-fold grievances raised by the group of officers finally under order impugned observed that there should be re-determination of vacancies year-wise after taking into consideration the retirement of the officers who have been placed in the select list of previous years and directed that such of the officers whose names find place in the approved select list be deemed to be appointed to IAS and on the date of retirement or on superannuation, the vacancy would accrue in the year of retirement and this exercise be repeated on year-wise basis and such of the vacancies accordingly be re-determined and revised and the select list of each year may be prepared accordingly.

19. In the ordinary course, there could not be any occasion to have any grievance if the vacancies of earlier 5-6 years could have been considered by the Selection Committee after determination of vacancies each year in terms of Reg. 5(1) of the scheme of Reg. 1955 for the reason that such of the officers who are member of State Civil Service and have not attained the age of 54 years on the first day of January of the year of substantive vacancy are eligible officers for consideration and the age of superannuation being 60 years, at least the officer will remain a substantive member of service, as alleged by the official respondents, as contemplated u/R. 8(1) of the Rules, 1954 for another five to six

years but in the instant case where an unprecedented situation created and for the last 16 years the Selection Committee could not meet and good number of officers who were finally found suitable and placed in the select list against the vacancies determined for the year 1997 to 2011 and in the subsequent years stood retired from service on attaining the age of superannuation on the date when the Selection Committee met on 26.12.2012 in a given situation/exigency according to the procedure which has been adopted by the respondents that against total 75 notified vacancies in the cadre only 47 could be filled from the year 1996-97 to 2011 and 28 substantive vacancies belonging to the earlier years of 1996-97 to 2006 remained unfilled vacancies to be considered substantive vacancies of year 2012 to avoid clubbing of vacancies which is impermissible under the scheme of Rules, 1954, the officers affected made several and joint representations to the State Government to find out a reasonable solution in giving appointment to such of the officers who were placed in the approved select list against the year of substantive vacancies for which the officer has been found to be suitable but may not be given appointment u/R. 8(1) of the Rules, 1954 read with Reg. 9(1) of the Reg. 1955.

20. Taking note of their cause and to see that vacancies of earlier years could be filled by the officers who are found suitable and placed in the select list, when such representations were made, the State Government also took cognizance and sent DO letters to DOPT, Government of India and requested to hold meeting of the selection committee year-wise and to re-determine vacancies of subsequent years based on number of retired officers selected for promotion and various communications were sent not only from the office of the Chief Secretary, State of Rajasthan but also from the office of the Chief Minister, State of Rajasthan suggesting that meeting of selection committee year-wise be held and re-determine the vacancies of the subsequent years as early as possible, depending on the number of retired officers selected for promotion. The DO letter dt. 25.10.2011 written by the then Chief Secretary, State of Rajasthan is reproduced hereunder:--

"Dear Ms. Sirohi,

Please refer to Secretary, DoPT's, GoI letter No. 14015/19/2008-AIS (1) dated 26.02.2008 on the determination of year-wise vacancies of the SCS promotion quota in the Rajasthan cadre of the IAS.

Promotion of SCS officers to the IAS has not taken place in the State since 1996 due to seniority related disputes pending in different courts. The Selection Committee meeting for preparing the select list for the years 1995-96 - 2008 was held in July, 2009. A notification could not however be issued because of a court injunction. The State Government has now amended the seniority rules of the SCS officers and the seniority list should be finalized very soon.

In the meantime, some of the SCS officers coming in the zone of consideration for the vacancies of earlier years have retired. They would however still be

included in the select lists for the relevant years. As a result, there will be several vacancies even after the Selection Committee meets. It should be noted that the retirement age in the State was 58 years till May, 2004. It was revised to 60 years thereafter.

SCS vacancies in the State for the years 1995-96 - 2011 have been determined by the Department of Personnel and Training, Government of India as follows:

Regulation 5(1) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, provides that the number of officers of the State Civil Service to be promoted to the IAS shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held i.e. the Select List has to be prepared after taking into consideration all the substantive vacancies falling vacant upto 31st December of the previous year. It should be mentioned here that it is a well established service principle that a substantive vacancy comes into existence on the retirement of an officer. Moreover there is also no provision in the Promotion Regulations for clubbing together all substantive vacancies that were not filled up. If the vacancies are clubbed together and carried forward to the current year in violation of the doctrine of reasonableness then: (a) senior and more experience SCS officers, eligible in the years 2000 to 2010, would be deprived of their right of being considered for promotion to the IAS and

(b) officers, junior to them, would be promoted to the IAS.

May I request that the IAS (Appointment by Promotion) Regulations, 1955 should not be construed in such a manner as to be seen to be "unfair to SCS officers. Government of India have themselves taken into account occurrence of vacancies on the basis of actual retirements in their letter No. 14015/5/2002-AIS(I) dated 10.4.2003. In view of this, the substantive vacancies of the retired officers should be treated as substantive vacancies of the year of their actual retirement and not beyond that year. I should like to add here that the determination of vacancies by the Central Government is not final as the IAS (Appointment by Promotion) Regulations, 1955 do not bar redetermination of vacancies. May I, therefore, propose that we redetermine the vacancies of the year 2000-2010.

A solution could be to hold year-wise Selection Committee meetings and immediately re-determine the vacancies of the subsequent years, depending on the number of retired officers selected for promotion. The way to do this is to authorize the representative of Government of India in the Selection Committee to re-determine the number of vacancies as the meeting of the selection committee proceeds from year to year. Government of India can give suitable directions regarding the year in which these vacancies should be included.

This position in Rajasthan is a peculiar one. Promotions could not be held for 16 years and I do hope that therefore you will consider the request positively. I understand that other State (where meetings for a number of years have been

held regularly) are also facing a similar problem. It is, therefore, expedient that Government of India find a solution to the issue.

Yours sincerely Sd/- (S. Ahmad)

Ms. Alka Sirohi, Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievance and Pensions, Government of India, New Delhi"

21. In continuation thereof, a letter was further sent from the office of the Chief Minister, State of Rajasthan on 30.04.2012 and followed vide communication dt. 18.09.2012. It will be relevant to quote the last letter sent from the office of the Chief Minister to the Minister of State, Prime Minister's Office, Personnel, Public Grievances and Pensions, Government of India, New Delhi dated 18.09.2012, which reads ad infra:--

"Dear Shri V. Narayanasamy Ji,

Kindly refer to your DO letter dated 28.06.2012. In my earlier DO letter of even number dated 30.04.2012, I had mentioned that promotions of SCS officers to the IAS have not taken place in the State since 1995-96 due to the seniority related disputes pending in different courts. The Selection Committee meeting for preparing the select list for the year 1995-96 to 2008 was held in July 2009, however, the notification could not be issued because of the court injunction.

Recently, the Hon''ble Supreme Court has resolved the seniority issue and has directed the State Government to fill up the promotion quota posts within two months. Due to the extremely long litigation, some of the SCS officers coming in the zone of consideration for the vacancies of earlier years have already retired. They would, however, still be included in the select lists for the relevant years. As a result, there would be several vacancies even after the Selection Committee meetings. Hence, less number of officers will actually become available in those years

Due to the fact that there would be a fewer incumbencies as compared to the selections made, it has become imperative that the Government of India takes into consideration the consequential vacancies which shall become available from the years 2000 to 2010 due to the actual retirements of SCS officers. It was earlier proposed by the State government to the Union Government to hold the year-wise meetings of the Selection Committee after re-determining the year-wise vacancies on the spot by authorising the representative of Government of India present in the Selection Committee meeting. In view of the above, it is proposed that the substantive vacancies of the retirees should be treated as the substantive vacancies of the year of the actual retirement and not beyond that year.

SCS Vacancies in the State for the years 1995-96 to 2012 have been determined by the Department of Personnel and Training, Government of India as follows:--

I would like to draw your kind attention towards the regulation 5(1) of the Indian

Administrative Service (Appointment by Promotion) Regulations, 1955, which provides that the number of officers of the State Civil Service to be promoted to IAS shall not exceed the number of substantive vacancies as on the first day of January of the year in which the Meeting is held, i.e. the Select List has to be prepared after taking into consideration all the substantive vacancies falling vacant upto 31st December of the previous year. It may be mentioned here that it is a well established principle that a substantive vacancy comes into existence upon retirement of an officer-Moreover there is no provision in the Promotion Regulations for clubbing of unfilled substantive vacancies.

May I, therefore, again request that the IAS (Appointment by Promotion) Regulations, 1955, should not be construed in such a manner so as to be seen to be unfair to SCS officers.

It will be pertinent to hold the year-wise Selection Committee meetings and immediately re-determine the vacancies of the subsequent years, depending on the number of retired officers being selected for promotion. The best way to do this would be to authorize the representative of the Government of India present in the Selection Committee to re-determine the number of vacancies as the meeting of the Selection Committee proceeds from year to year. The Government of India can issue suitable directions regarding the year in which these vacancies should be included.

I would like to reiterate that the position in Rajasthan is an extraordinary one as the promotions from the SCS cadre to IAS cadre could not be held for the last 17 years. Looking to the singular and exceptional circumstances of the State of Rajasthan, one time relaxation in the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 may kindly be considered.

I shall be grateful if you would consider this request positively.

With best wishes,

Yours sincerely, Sd/- (Ashok Gehlot)

Shri V. Narayanasamy Minister of State Prime Minister's Office, Personnel, Public Grievances and Pensions, Government of India, North Block, New Delhi - 110001."

22. The DOPT did not accept the proposal of the State Government keeping in view their own interpretation of R. 8(1) of Rules, 1954 and it is the stage from which the dispute arose and came for adjudication before the Id. Tribunal. Even comparative table which is indicated above clearly indicates that good number of substantive vacancies of the year 1996-97 to 2011 despite the officers being finally selected obviously after their suitability being adjudged and found suitable on the basis of merit and placed in the approved select list are not given appointment only for the reason that they are not the substantive member of State Civil Service, as alleged u/R. 8(1) of the Rules, 1954 on-the date of meeting of the Committee i.e. 26.12.2012.

23. As it has already been noticed that the eligibility of an officer to be considered for promotion is upto 54 years against the year of vacancy for which his candidature is to be considered and since the age of superannuation in the State is 60 years, at least if any promotion years vacancies of 5-6 years, there appears no reason to examine and remain academic as to whether the officer should be a substantive member of service against year of vacancy for which he has been considered or the officer should be substantive member of service, as interpreted by the official respondents of R. 8(1) of the scheme of Rules, 1954 on the date of meeting of the Selection Committee or the date of notification of appointment and that remains totally insignificant but the rule making authority never visualized that there could be an unprecedented situation where the authority to whom legal obligation has been casted to meet every year and prepare the select list of members of State Civil Service, as held to be mandatory but if the selection committee failed to discharge its legal obligation, as the controversy arose in the given facts and circumstances what will be the fate of the officers who were finally placed in the approved select list against the year of vacancy for which their suitability has been adjudged but retired from service on the date when the committee met. The question arise if names of the officers have been finally placed in the select list, which is approved by the competent authority, what will be the justification not to consider them for appointment u/R. 8(1) of Rules, 1954 read with R. 9(1) of Reg. 1955.

24. Before we may examine the judgments of the Apex Court, it will be appropriate to first take glance of the scheme of the Indian Administrative Service (Recruitment) Rules, 1954 and the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, which are relevant for the present purpose.

25. In exercise of the powers conferred by sub-sec.(1) of S. 3 of the All Indian Services Act, 1951, the Central Government after consultation with the Government of the States concerned framed the Rules namely "The Indian Administrative Service (Recruitment) Rules, 1954" and R. 4 provides the method of recruitment to the service. At the same time, R. 6 envisages appointment to the service and R. 8, in particular, provides the procedure to be followed for recruitment by promotion or selection for appointment to State and Joint Cadre. Rules 4(1), 8(1) and 9(1) of the Rules, 1954 which are relevant for the present purpose are reproduced ad infra:--

"4(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.

8(1). The 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.

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

Explanation: For the purpose of calculation of the posts under this sub-rule, fractions, if any, are to be ignored."

26. At the same time, in pursuance of sub-rule (1) of R. 8 of the Indian Administrative Service (Recruitment) Rules, 1954, the Central Government in consultation with the State Government and the Union Public Service Commission made the Regulations namely "The Indian Administrative Service (Appointment by Promotion) Regulations, 1955" for laying down the procedure to be followed while making appointments by promotion to Indian Administrative Service in enforcement of the object of the scheme of Rules, 1954.

27. Reg. 2(1)(I) defines "Year" commencing on the first day of January and ending on the thirty first day of December of the same year. Reg. 5 (1) provides preparation of the list of suitable officers of each year separately and the selection committee is required to meet every year for the purpose of making selection from amongst the State Civil Service Officers who fulfill the conditions regarding eligibility on the first day of January of the year of vacancy and fall within the zone of consideration, as prescribed in sub-Reg. (2) of Reg. 5. Unless there are good reasons for not doing so, as contemplated under second proviso to Reg. 5(1), the committee is under obligation to prepare a separate select list of each year keeping in view the number of substantive vacancies available in that year considering the State Civil Service Officers who are eligible and fall within the zone of consideration for selection in that year. The Regulations 5, 7 and 9, being relevant for the present purpose, are reproduced ad infra:--

"5. Preparation of a list of suitable officers:- 5(1) Each Committee shall ordinarily meet every 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. The number of members of the State Civil Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under rule 9 of the recruitment rules. The date and venue of the meeting of the Committee to make the selection shall be determined by the Commission;

Provided that no meeting of the committee shall be held, and no list for the year in question shall be prepared when,

(a) there are no substantive vacancies as on the first day of January of the year in the posts available for the members of the State Civil Service under rule 9 of the recruitment rules; or

(b) the Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for the members of the State Civil Service under rule 9 of the recruitment rules:

Provided further that where no meeting of the committee could be held during a year for any reason other than that provided for in the first proviso, as and when the Committee meets again, the select list shall be prepared separately for each year during which the Committee could not meet, as on the 31st December of each year;

Explanation- In the case of joint cadres, a separate select list shall be prepared in respect of each State Civil Service;

5(2) The Committee shall consider for inclusion to the said list, the cases of members of the State Civil Services in the order of a seniority in that service of a number which is equal to three times the number referred in sub-regulation (1):

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Provided also that the Committee shall not consider the case of a member of the State Civil Service unless, on the first day of January of the year for which the Select List is prepared he is substantive in the State Civil Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government.

5(3) The Committee shall not consider the cases of the members of the State Civil Service who have attained the age of 54 years on the first day of January of the year for which the Select List is prepared:

Provided that a member of the State Civil Service whose name appears in the Select List [prepared for the earlier year] before the date of the meeting of the

Committee and who has not been appointed to the Service only because he was included [provisionally in that Select List] shall be considered for inclusion in the fresh list to be prepared by the Committee, even if he has in the meanwhile attained the age of fifty four years:

Provided further that a member of the State Civil Service who has attained the age of fifty-four years on the first day of January of the year for which the select list is prepared shall be considered by the Committee, if he was eligible for consideration on the first day of January of the year or of any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year or years under item (b) of the proviso to sub-regulation (1).

5(4) The Selection Committee shall classify the eligible officers as "Outstanding", "Very Good", "Good" or "Unfit", as the case may be, on an overall relative assessment of their Service records.

5(5) The list shall be prepared by including the required number of names, first from amongst the officers finally classified as "Outstanding" then from amongst those similarly classified as "Very Good" and thereafter from amongst those similarly classified as "Good" and the order of names inter-se within each category shall be in the order of their seniority in the State Civil Service.

Provided that the name of any officer so included in the list, shall be treated as provisional, if the State Government, withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal, are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

Provided further that while preparing year-wise select lists for more than one year pursuant to the second proviso to sub-regulation (1), the officer included provisionally in any of the select list so prepared, shall be considered for inclusion in the select list of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis, such inclusion shall be in addition to the normal size of the select list determined by the Central Government for such year.

Explanation I: The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a Court, as the case may be.

Explanation II: The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the Service shall be treated as having come to the notice of the State only if the same have been communicated to the Central Government and investigation thereof is essential.

7. Select List:- (1) The Commission shall consider, the list prepared by the committee along with-

"(a) the documents received from the State Government under regulation 6;

(b) the observations of the Central Government and, unless it considers any change necessary, approve the list."

7(2) If the Commission considers it necessary to make any changes in the list received from the State Government, the Commission shall inform the State Government and the Central Government of the changes proposed and after taking into account the comments, if any, of the State Government and the Central Government may approve the list finally with such modification, if any, as may, in its opinion, be just and proper.

7(3) The list as finally approved by the Commission shall form the Select List of the members of the State Civil Service.

Provided that if an officer whose name is included in the Select List is, after such inclusion, issued with a charge-sheet or a charge-sheet is filed against him in a Court of Law, his name in the Select List shall be deemed to be provisional.

9. Appointments to the Service from the Select List- 9(1) Appointment of a member of the State Civil Service, who has expressed his willingness to be appointed to the Service, shall be made by the Central Government in the order in which the names of the members of the State Civil Service appear in the Select List for the time being in force during the period when the select list remains in force:

Provided that the appointment of members of the State Civil Service shall be made in accordance with the agreement arrived at under clause (b) of sub-rule (3) of rule 8 of the Recruitment Rules in the order in which the names of the members of the State Civil Service occur in the relevant parts of the Select List for the time being in force.

Provided further that the appointment of an officer, whose name has been included or deemed to be included in the select list provisionally under the proviso to sub-regulation (5) of regulation 5 or under the proviso to sub-regulation (3) of regulation 7, as the case may be, shall be made within sixty days after the name is made unconditional by the Commission in terms of the first proviso to sub-regulation (4) of regulation 7:

Provided also that in case a select list officer has expressed his unwillingness for appointment to the service, he shall have no claim for appointment to the service from that select list unless he informs the Central Government through the State Government before the expiry of the validity period of the select list, revoking his earlier expression of unwillingness for appointment to the service."

28. It can be noticed that Reg. 5(1) of the Reg. 1955 was amended vide notification dt. 31.12.1997 and under the pre-amended Reg. 5(1) while preparing the list of suitable officers, the committee was to ordinarily meet every year but while determining the number of vacancies, vacancies (anticipated) in the course of 12 months commencing from the date of preparation of the list could have been taken into consideration but after the amendment was made,

the obligation of the committee remain the same to meet every year and prepare the list of eligible officers of State Civil Services against the substantive vacancies (anticipated) in the course stood deleted by the amended notification dt. 31.12.1997 and that was the subject matter of challenge and examined by the Apex Court in Tamil Nadu Administrative Service Officers Association and Another Vs. Union of India and Others, and the question for consideration was that since 33-1/3 percent of the State IAS cadre is reserved for selection by promotion of the State Civil Service Officers and if the selection is confined to the substantive vacancies alone, available on the first day of January of the year, that will invariably take a considerably long time and as a consequence thereof timely selection may become impossible, by excluding the anticipated vacancies and the contention of the writ petitioners was that there will be further delay in selection of the officers to IAS and that might deprive them of their fair consideration for appointment to IAS. To support the amendment, where anticipated vacancy was deleted vide amendment notification dt. 31.12.1997, the defence of the State was that in the pre-amended situation it was difficult to ascertain the number of anticipated vacancies as there were so many contingencies which remain unnoticed to determine the number of anticipated vacancies while the process of selection is being initiated by the committee and to avoid such difficulties, the amendment has been made so that select list is confined to the substantive vacancies available as on the first day of January of the year concerned and there is a clear mandate of holding the meeting of the selection committee every year and for exceptional circumstances alone, reasons are to be recorded in writing, and the decision could be taken to defer the meeting of the selection committee but that will be open for judicial review. It will be appropriate to quote para Nos. 30, 31 and 33 of the judgment delivered by Hon'ble Supreme Court in T.N. Administrative Service Officers Association (supra) which read ad infra:--

"30. This leaves us now to consider the challenge made to the constitutionality of the amendments effected in Regulation 5(1) of the Appointment by Promotion Regulations. The petitioners in this regard contend that under the old provision, the Selection Committee was required to calculate the anticipated substantive vacancies for preparation of select list which is now being changed to vacancies not exceeding the substantive vacancies as on the first day of January of the year in which the meeting is held. They contend that by this change in procedure large number of vacancies which should have been available for selection of promotees will be left out. They state that there is always considerable delay in completing the process of promotion by selection and this delay will be further extended by virtue of the amendments and consequently the promotion of the petitioners will get delayed and some of them may even lose the chance of getting selected to the IAS. They say that the unamended provisions were in existence for decades and there was no need for effecting this amendment.

31. In reply thereto, the respondents contend that these changes have been brought about to avoid the delay in making the selections. They say that by the

existing Rules, it was extremely difficult to ascertain with certainty/finality the number of anticipated vacancies since the State Governments had the power to give extension of service up to 6 months beyond the date of retirement to a number of IAS officers. It is also stated that many a time such anticipated vacancies did not fructify and a State civil service officer included in the select list could not be sure of his appointment and this ultimately led to a plethora of litigation. It is with a view to avoid such difficulties that preparation of select list is confined to the vacancies available as on the first day of January of the year concerned. We have carefully gone through the pleadings of the petitioners and the respondents in this regard and we do not find any arbitrariness in this amendment.

33. The next contention that by the amendment the respondents are given a unilateral and arbitrary power to hold the Selection Committee proceedings or not, is also denied by the respondents. They state that under the amended Rules there is no unfettered or uncanalised power and discretion given regarding the authority to hold Selection Committee meetings. On the contrary, they plead that there is a clear mandate for holding the meeting of the Selection Committee every year but in view of the exceptional exigencies given in the Rule itself, the Committee could not be constituted and that too only on the basis of a conscious decision taken by the respondents. They further contend that the Rules have been framed with inbuilt safeguards to keep at bay the eventuality of non-convening the Selection Committee meeting by default on the part of the State Government etc. They also contend that under the amended Rules in exceptional situations alone and for reasons to be recorded in writing, a meeting of the Selection Committee could be deferred."

(Emphasis supplied.)

29. From the amendment notification dt. 31.12.1997, one thing was made clear by the rule making authority that it became mandatory to hold meeting of the selection committee every year and in exceptional situations alone and for reasons to be recorded in writing, a meeting of the selection committee could be deferred but that is open for judicial review. It is indeed settled that the committee is under obligation to determine the substantive vacancies and to hold its meeting every year and to consider the eligible officers falling within the zone of consideration on the first day of January of the year in which the meeting is held and if the selection committee is not able to meet during a particular year, the committee whenever it meets next, is under obligation to prepare the select list for each year separately keeping in view the number of substantive vacancies in that year, considering the members of State Civil Service who are eligible and falling within the zone of consideration for selection in that year.

30. It can be noticed that when the validity of amendment notification dt. 31.12.1997, deleting anticipated vacancies, came to be examined by the Apex Court, question came up for consideration was that if the substantive vacancies alone are to be determined and the meeting of the Selection Committee has to

be held every year, how far it will be possible to achieve the object and in avoiding litigation, the Apex Court noticed in para-33 of the judgment in T.N. Administrative Service Officers Association (supra) and observed that the mandate of scheme of Reg. 1955 for holding the meeting of Selection Committee but on account of certain exigencies, as provided under proviso second to Reg. 5(1) of the Reg. 1955, the Selection Committee could not meet, that too on the basis of conscious decision, the scheme has been framed with inbuilt safeguards to keep at bay the eventuality of non-convening the Selection Committee meeting by default on the part of the State Government and even in the scheme of Rules, there could be exceptional situations alone and for the reasons to be recorded in writing, a meeting of the Selection Committee could be deferred and the amended scheme has taken into consideration the exigencies which may arise in implementing the scheme of Regulations in its true spirit to the extent possible but as already observed, the situation which is so chaotic in the instant case where for good 16 years the Selection Committee could not meet and the vacancies from 1996-97 to 2011 have been determined year-wise and select list of suitable officers has been prepared by the Committee met on 26.12.2012, on that day indisputably the officer who stood retired, 28 vacancies indisputably remain unfilled despite the name of the eligible officers find place in the approved select list. It was considered by the Apex Court in Union of India (UOI) and Others Vs. Vipinchandra Hiralal Shah, , the relevant portion of the judgment reads ad infra:--

"11. It must, therefore, be held that in view of the provisions contained in Regulation 5, unless there is a good reason for not doing so, the Selection Committee is required to meet every year for the purpose of making the selection from amongst the State Civil Service Officers who fulfill the conditions regarding eligibility on the first day of January of the year in which the Committee meets and fall within the zone of consideration as prescribed in Clause (2) of Regulation 5. The failure on the part of the Selection Committee to meet during a particular year would not dispense with the requirement of preparing the Select List for that year. If for any reason the Selection Committee is not able to meet during a particular year, the Committee when it meets next, should, while making the selection, prepare a separate list for each year keeping in view the number of vacancies in that year after considering the State Civil Service Officers who were eligible and fell within the zone of consideration for selection in that year." 31. The judgment of the Apex Court in Vipinchandra Hiralal Shah (supra) further came up for consideration before the Apex Court in Union of India (UOI) and Another Vs. Hemraj Singh Chauhan and Others, . The relevant portion of the judgment is reproduced ad infra:--

"44. In a somewhat similar situation this Court in Union of India v. Vipinchandra Hiralal Shah while construing Regulation 5 of the I.A.S. (Appointment by Promotion) Regulations, 1955 held that the insertion of the word "ordinarily" does not alter the intendment underlying the provision. This Court in that case was considering the provision of Clause (1) of Regulation 5 of the IPS

(Appointment by Promotion) Regulations along with other provisions of Regulation 5. The interpretation which this Court gave to the aforesaid two Regulations was that the Selection Committee shall meet at an interval not exceeding one year and prepare a list of members who are eligible for promotion under the list. The Court held that this was mandatory in nature.

45. It was urged before this Court in Hiralal Shah case that insertion of the word "ordinarily" will make a difference. Repelling the said contention, this Court held that the word "ordinarily" does not alter the underlying intendment of the provision. This Court made it clear that unless there is a very good reason for not doing so, the Selection Committee shall meet every year for making the selection. In doing so, the Court relied on its previous decision in Syed Khalid Rizvi v. Union of India.

46. In Syed Khalid Rizvi the Court was considering Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955 which also contained the word "ordinarily". In that context the word "ordinarily" has been construed as:

"9. ...since preparation of the select list is the foundation for promotion and its omission impinges upon the legitimate expectation of promotee officers for consideration of their claim for promotion as IPS officers, the preparation of the select list must be construed to be mandatory. The Committee should, therefore meet every year and prepare the select list and be reviewed and revised from time to time as exigencies demand. The same logic applies in the case of cadre review exercise also."

32. Thus, it is clear from the scheme of Rules, 1954 and Reg. 1955 that unless there is good reasons for not doing so, the selection committee is required to meet every year for the purpose of making selection from amongst the State Civil Service Officers who fall within the zone of consideration and fulfill the conditions of eligibility on the first day of January of the year in which the meeting is held and if at all there is any failure on the part of the Selection Committee to meet during a particular year, that would not enable the authority to dispense with the requirement of preparing the Select List for that year unless good reasons are recorded in writing and it is still open to judicial review. Taking note of the scheme of Reg. 1955, which has been framed in pursuance of sub-rule (1) of R. 8 of the Indian Administrative Service (Recruitment) Rules, 1954, the Committee has to meet every year and prepare a list of such officers who are member of State Civil Service having not attained the age of 54 years on the first day of January of the year for which the select list is prepared and examined the overall suitability for appointment, as envisaged under sub-reg.(5) of Reg. 5 of the Reg. 1955.

33. The Committee has to classify the officers in the category of Outstanding, Very Good, Good or unfit based on overall assessment of their service records and inter-se list within each category has to be prepared in the year of their

seniority in the State Civil Service and to meet out the exigencies where no meeting of the Selection Committee held during the year for any reason other than provided under first proviso to Reg. 5(1), as and when the Selection Committee meets again, is under obligation to prepare the select list separately for each year during which the Committee could not meet as on 31st December of each year and under third proviso to Reg. 5(2), the officer should be substantive in State Civil Service and has completed not less than 8 years of continuous service as on first day of January of the year for which the select list is prepared and the final select list is to be prepared of the officers u/Reg. 7 of the Reg. 1955 who are finally found suitable after undergoing cumbersome scrutiny of their service records by adjudging overall suitability and the list after approved by the Commission, shall form the select list of the members of State Civil Service, as envisages u/Reg. 7(3) of the Reg. 1955 but the scheme has taken further care that in a given case where the officer has been selected for earlier year vacancy and placed in the select list and approved by the Commission but after such inclusion if there is any change in his service record or charge-sheet has been issued or any judicial proceedings are initiated against him in a court of law, the name of such officer even if finally approved by the Commission and placed in the select list, still it shall be deemed to be provisional for all other practicable purposes. The officer whose name has been finally placed in the select list becomes eligible to be considered for appointment and in the instant case neither the official respondents nor the contesting parties have any grievance about the procedure which was followed by the Selection Committee in its meeting held on 26.12.2012 in preparing the select list of the eligible officers who were members of State Civil Service and after their suitability being adjudged, the officer found suitable has been placed in the approved select list against the year of vacancy for which his suitability has been adjudged.

34. The grievance starts after the composite select list came to be published of 16 years but when appointments were notified u/R. 8(1) of the Rules, 1954 read with Reg. 9(1) of the Reg. 1955 vide notification dt. 31.12.2012 only of such officers who, as alleged, were member of State Civil Service on the date of holding of meeting of the Committee i.e. 26.12.2012 on account of which such of the officers whose names find place in the select list and approved-by the Commission, as contemplated u/Reg. 7(3) of the Reg. 1955 are not considered for appointment on the premise that they stood retired from service and 28 vacancies remain unfilled, details whereof have been furnished above and the rival claims come forward as to whether these unfilled 28 vacancies will be considered to be the available vacancies of the year 2012 or may be carried forward on year to year basis or the officers who have been placed in the approved select list be considered for their appointment and the vacancies will be available on the year of their retirement can be noticed from the scheme of Regulations and indisputably there is no provision of clubbing or carry forward of the vacancies and as already noticed the officer remains a member of service at least for good six years as his eligibility for consideration is upto the age of 54

years on the first day of January of the year for which his candidature to be considered, as referred to u/Reg. 5(3) of "the Reg. 1955, as such, if there is a consideration of earlier year vacancies of 5-6 years, the question may not arise as to what will be the effect of substantive member of service, as contemplated u/R. 8(1) of the Rules, 1954 which as an impediment being taken note of by the official respondents in denial of appointment to the officers who were finally placed in the select list against the year of vacancies for which their suitability has been adjudged and approved from the Commission and approved select list, as provided u/Reg. 7(3) of the Reg. 1955.

35. As regards officer to be a substantive member of service, contemplated u/R. 8(1) of the Rules, 1954, it should refer to substantive member of State Civil Service and that is the Rajasthan Administrative Service Rules, 1954 of which the officer is the member and it separately defines as to who could be a member of service and when the appointment of officer is to be considered as substantive appointment u/R. 4(j) and 4(n) of the Rajasthan Administrative Service Rules, 1954 of which one should be a member of service while being considered for promotion under the scheme of Reg. 1955. The R. 4(j) and 4(n) of the Rajasthan Administrative Service Rules, 1954, being relevant for the present purpose are quote ad infra:--

"4(j) "Member of the Service" means a person appointed in a substantive capacity to a post in the cadre of the Service under the provisions of rules or of any rules or orders superseded by rule 2;

4(n) "Substantive Appointment" means an appointment made under the provisions of these Rules to a substantive vacancy after due selection by any of the methods of recruitment prescribed under these Rules and includes an appointment on probation or as a probationer followed by confirmation on the completion of the probationary period."

36. Appointment made under the provisions of the Rules, 1954 to a substantive vacancy after due selection by methods of recruitment prescribed under the scheme of Rules become a substantive appointment and such of the officer appointed in substantive capacity will become member of service and indisputably the officers who were considered for promotion under the scheme of Reg. 1955, they all were substantively appointed and become members of service of the Rajasthan Administrative Service Rules, 1954 which is the feeder service for consideration for appointment to IAS under the scheme of Reg. 1955 and substantive appointment has also been defined u/R. 7(34-A) of the Rajasthan Service Rules, 1951 and that too defines that appointment of a Government servant on a permanent post and on which he gets a lien is considered to be a substantive appointment and indisputably, all the officers who are considered for promotion against the earlier year of vacancies under the scheme of Reg. 1955 they all are substantive and member of service against the year of vacancies for which they have been considered for promotion to IAS under the Rules, 1954 read with Reg. 1955 and it can be further noticed from the

scheme of Reg. 1955 that there is no mandate as to when the committee has to meet but there is a clear requirement that committee must meet every year and after due determination of vacancies considered the candidature of eligible officers who fall within the zone of consideration for promotion to IAS and even if in the year in which the committee, for any reasons other than that provided for in the first proviso of Reg. 5(1) as and when the committee meets again is under obligation to prepare the select list separately for each year and to consider members of service who are eligible for consideration are fall in the normal zone against the year of vacancies for promotion to IAS.

37. Indisputably, under the scheme of Reg. 1955, the crucial date to consider the eligibility of an officer and to adjudged his suitability is based on his preceding five years service record to the year of vacancy, which the committee is supposed to examine u/Reg. 5(4) for final empanelment in the select list after approved by the Commission and as should not be making authority that there could be a situation where for good 16 years, the Selection Committee, upon whom legal obligation is casted to meet every year, failed to meet and at the same time delay of its kind could not be attributable to the officer who was never at fault but became victim of inaction of official respondents and as noticed that the officer remains a member of service at least for another six years as his eligibility for consideration is upto the age of 54 years and if the earlier vacancies are determined for the preceding six years, this question noticed by this court, such situation could not be visualized by the rule remains irrelevant and may not arise for consideration as to whether the officer should be substantive member of State Civil Service on the date of meeting of the Committee or against the year of vacancy for which his candidature has been considered and after adjudging suitability has been placed in the approved select list against the year of substantive vacancy in fulfillment of the mandate of scheme of Reg. 1955.

38. The golden rule of interpretation of the statute, it is well settled principles of law that a plain meaning must be attributed to the statute and the statute must be construed according to the intention of the legislature and the statute has to be given its literal and natural meaning and the intention of the legislature must be found out from the language employed in the statute itself. Keeping golden rule of interpretation of statute into consideration and the fact that the approved select list prepared in terms of scheme of Reg. 1955 of last 16 years has to be taken to its logical conclusion and in meeting out the exigency which has come before us and the conjoint reading of the scheme of Reg. 1955 and the requirement of R. 8(1) of the Rules, 1954 that officer must be substantive member of State Civil Service in the context referred to herein can be safely considered to the year of substantive vacancy for which the officer's eligibility has been considered and placed in the approved select list and the present interpretation alone will serve the purpose and fulfill the object with which the scheme of Reg. 1955 has been framed by the rule making authority in exercise of powers conferred u/R. 8(1) of the Rules, 1954 and any other interpretation of R. 8(1) of the Rules, 1954 will leave a manner of doubt for the reason, as

already observed, that under the present scheme of Reg. 1955, there is no provision of clubbing or carry forward of the vacancies and if these 28 vacancies remain unfilled after the officer is placed in the approved select list notified for the years 1996-97 to 2006, such unfilled vacancies either could be considered for carrying forward in the next year or may be clubbed and be considered to be the vacancies of 2012 but as already observed that there is no provision of clubbing or carry forward of the vacancies and in our considered view officers who are placed in the approved select list against the year of earlier vacancies of 1996-97 to 2006 are substantive member of service in terms of R. 8(1) of Rules, 1954 and are eligible for appointment and since retired on attaining age of superannuation entitled for all notional benefits flowing thereof which alone will meet the ends of justice and that is further supported by an affidavit filed by the Union of India furnishing details to this court where the State Civil Service Officers were given appointment in the IAS after retirement but by courts order. It will be relevant to refer to such officers who are eleven in number of different States who were given appointment at various point of time after they are retired from service, which are ad infra:--

39. The submission of Mr. G.K. Garg, Senior Counsel who is appearing for the petitioner-Ajay Singh in D.B. Civil Writ Petition No. 96.86/2013 is that the officer (Ajay Singh) has already been appointed as IAS against the vacancy of 2007 but his grievance is that such of the vacancies which remain unfilled in a particular year on account of the fact that appointment could not be given to the selected officer as not being substantive member of service, such unfilled vacancies be carried forward in the subsequent year but if the existing substantive vacancy remains unfilled and carried forward that will tantamount to clubbing of vacancies in the year 2012 and that is not permissible in law.

40. We find no substance in the submission made for the reason that those who have been placed in the approved select list for each year, as already considered by us under the scheme of Reg. 1955 read with Rules, 1954, have to be considered for deemed appointment for notional benefits flowing thereof and that being so there is no occasion to carry forward the vacancies in the next subsequent year and that may also avoid the clubbing of vacancies, which as alleged remained unfilled in the year 2012.

41. As regards submissions made by Mr. Ashok Gaur, Senior Counsel in D.B. Civil Writ Petition Nos. 7118/2013 and 14779/2013, whose client still has not been considered but his grievance is that all the 28 unfilled substantive vacancies from the year 1996-97 to 2011 may be considered to be the vacancies of 2012 and his client may be considered for appointment in accordance with the scheme of Reg. 1955.

42. The submission made is without substance for the reason that clubbing of vacancies is otherwise not permissible under the scheme of Reg. 1955 and once the officer who is substantive member of service and after his suitability being adjudged and finds place in the approved select list cannot be left aside from

being considered for appointment and this what has been considered by us and there remains no vacancy D.B. Civil Writ Petition No. 7472/2013 is that the unfilled vacancies of unfilled of the preceding 16 years and thus, the occasion of available vacancies of the earlier years from 1996-97 to 2011 which as alleged to be filled in 2012 may not be made available to be considered as vacancies of 2012.

43. As regards submissions made by Mr. Mahendra Shah, Advocate who too is appearing for one of the petitioner Chhaya Bhatnagar in at the each year be carried forward to the next subsequent year and that may enlarge the number of vacancies and that may consider the petitioner to be eligible for consideration. However, the name of the officer (Chhaya Bhatnagar) did not find place in the select list of the preceding 16 years, appears for the reason that for the earlier years i.e. 1996-97, she was lower in seniority and for the vacancies of subsequent years, she has crossed the age of 54 years, could not be considered eligible and that being so, at least the submission made by Mr. Shah is to carry forward the vacancies to the next subsequent year is without substance and deserves outright rejection.

44. As regards submission made by Mr. R.D. Rastogi, Additional Solicitor General; Mr. J.M. Saxena, Additional Advocate General; and Mr. B.S. Chhaba, Assistant Solicitor General appearing in D.B. Civil Writ by Petition No. 20819/2013, the question posed by this court for consideration that if the vacancies have been determined for each year and select list has been prepared of substantive vacancies of last 16 years in fulfillment of the object of scheme of Reg. 1955, what will be the justification in not giving appointment to such officers.

45. The only submission made by counsel is that as they are not substantive member of service on the date of meeting of the committee and as per their interpretation of R. 8(1) of Rules, 1954, they could not be offered appointment. This court does not find substance in the submissions made and as already observed that once the officer who is a member of State Civil Service after adjudging his eligibility is found suitable by the selection committee and after the list being approved by the Commission placed in the select list, prepared in terms of Reg. 7(3) of the Reg. 1955, it has to be taken to its logical conclusion taking into consideration the intent and purport of R. 8(1) of Rules, 1954 and as his eligibility has been considered as on first day of January of the year of substantive vacancy, he fulfills the mandate of R. 8(1) of the Rules, 1954 on first day of January of the year for which his suitability has been adjudged, the officer deserves to be appointed u/R. 8(1) of the Rules, 1954 and became entitled for notional benefits flowing thereof.

46. It further supports when the State Government sent DO letters to the DOPT, Government of India requesting time and again to hold meeting of selection commission year-wise and to re-determine vacancies of subsequent years based on the number of retired officers selected for promotion and there is no provision in the promotion Regulations for clubbing of the substantive vacancies if remain

unfilled and in a given situation if the vacancies are clubbed and carried forward to the current year that will certainly jeopardize the rights of the officers who were due for promotion against the vacancies of the earlier year for which their suitability has been adjudged under the scheme of Reg. 1955 and who were never at fault but became victim of inaction of the official respondents in not convening meeting of the Selection committee which the official respondents are under obligation to hold in fulfillment of mandate of the scheme of Reg. 1955.

47. The Id. Tribunal has also considered the scheme of Rules, 1954 and Reg. 1955 and arrived to a conclusion that the officers whose name find place in the select list of the preceding 16 years, that certainly has to be taken to its logical conclusion and cannot be left in midst only for the reason that they are not substantive member on the date of meeting of the committee which could never be the intent and purport of the rule making authority in divesting the right of the officers who has been finally placed in the approved select list in contradistinction of the interpretation as taken note of by the official respondents of R. 8(1) of the Rules, 1954 and as already observed by us, such officers are eligible for appointment and since retired on attaining the age of superannuation entitled for notional benefits flowing thereof, the vacancies will certainly occur on the retirement and that is the available substantive vacancy which could be considered for selection under the scheme of Reg. 1955 and this what the Id. Tribunal considered under the order impugned dt. 04.04.2013.

48. We find no substance in either of the writ petitions preferred and are accordingly stand dismissed with observations as indicated above. The official respondents shall ensure compliance and pass necessary orders within three months.

49. No costs.