
(2018) 06 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : SWP No. 1290 OF 2013, CPSW No.423 OF 2014

DEV LATA

APPELLANT

Vs

STATE OF JAMMU & KASHMIR AND OTHERS

RESPONDENT

Date of Decision : 05-06-2018

Acts Referred:

Citation : (2018) 06 J&K CK 0010

Hon'ble Judges : SANJEEV KUMAR

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Pursuant to the combined competitive examination conducted by the Jammu & Kashmir Public Service Commission, the petitioner came to be

appointed directly in the gazetted cadre of the State services and joined her services as such in the year 1984. By dint of her merit and seniority the

petitioner reached the super time scale of the J&K Administrative Service and was holding the rank of Commissioner/Secretary to Government at the

time when this petition came to be filed. The petitioner on the basis of her seniority of the KAS officers working in the State and other eligibility

conditions as laid down in the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as "the

Regulations"), became entitled to be considered for appointment by promotion to the Indian Administrative Service against the slots allocated to the

State of Jammu & Kashmir for the year 2010.

2. The Central Government in consultation with the State Government had determined and allocated six vacancies for the year 2010 which is evident

from communication of DOPT issued vide No.14015/09/2011 dated 31.05.2011.

At the request of State Government, three out of the six vacancies were kept reserved for three officers of Jammu & Kashmir Administrative Service who had filed some writ petitions in this High Court. The officers for whom three vacancies were decided to be kept reserved were a) Abdul Majid Wani, b) Ajay Kumar Khajuria, and c) Farooq Ahmed Renzu. As a consequence of the decision to reserve three vacancies aforesaid, the respondent No.5 vide its letter No.GAD(Ser.)IAS/48/2010 dated 21.06.2012 requested the respondent No.4 to re-determine the vacancies for the year 2010 to six only, setting apart three vacancies to be reserved for aforementioned officers of the J&K Administrative Service.Â

3. Respondent No.4 vide its subsequent communication issued vide No.14015/9/2012-AIS.I dated 05.07.2012, however, determined eight posts for recruitment by promotion to IAS from amongst the members of the State Civil Service for the year 2010. The three out of the aforesaid eight vacancies were kept reserved at the request of the State Government made in view the litigation filed by three persons. The name of the petitioner amongst others was included in the zone of consideration and was placed at serial No.6. The Selection Committee on the basis of overall relative assessment, graded the petitioner as â??very goodâ? for her placement in the select list. Accordingly, she could not be included in the select list of 2010 which was restricted to five due to availability of officers senior to her with similar grading. The petitioner was placed at serial No.6 in the eligibility list and therefore, could not be recommended for appointment by promotion to the IAS. She could not be considered for the select list of 2011, for, by that time she had crossed the age of 54 years provided for induction into IAS.

4. The short grievance of the petitioner is that had the respondents made selection against all the eight posts allocated to the State of Jammu & Kashmir for the year 2010, the petitioner who was at serial No.6 of the eligibility list could have been recommended and appointed to the Indian Administrative Service.

5. The petitioner when confronted with the aforesaid situation filed an application under Right to Information Act seeking, inter alia, the reasons for keeping back three vacancies for the year 2010. In response to her application, the respondent No.4 provided information supported by the directions

issued by this Court pursuant to which three slots had been reserved. The information revealed that two vacancies were reserved by the State for Sh.

Ajay Khajuria and Abdul Majid Wani though their claim was pertaining to the year 2008.

6. From the perusal of order dated 05.09.2011 passed by a Division Bench of this Court in CMP Nos.346/2011 & 347/2011 whereby earlier order

passed by the Division Bench on 02.06.2011 in LPA No.106/2011 was clarified, it is apparent that one post was directed to be kept reserved relating

to the year 2010. So far as the case of Sh. Ajay Khajuria is concerned, he had filed SWP No.967/2004 in this Court praying, inter alia, to direct the

respondents to consider his case for induction in the IAS cadre. The aforesaid writ petition was disposed of on 06.05.2011 by providing as under:-

“In these circumstances, I find substance in the grounds taken by the petitioner in the present petition. I accordingly allow this petition and direct

the respondents to re-consider the case of the petitioner. It would be appropriate if the State Government constitute a three member committee

comprising of three senior members from the Tourism Department, General Administration Department and the Finance Department who will look

into the pleas taken by the petitioner in the present writ petition and pass appropriate orders in respect of release of grade and fixation of his proper

placement in the seniority list in terms of the directions of the Division Bench in LPA No/203/01 as also in view of the fact that a similar benefit has

been accorded to respondent No.4 in terms of the orders of the Court.”

7. Mr. Ajay Khajuria later filed a review petition seeking the review of the judgment dated 06.05.2011 (supra). Vide order dated 06.09.2011 passed in

the review petition, a Bench of this Court directed the respondents to keep one post reserved in the IAS cadre. Consequently, the State Government

vide its letter dated 26.07.2011 requested the respondent No.4 for reservation of one post in the IAS relatable to the year 2010 and in the

meantime, the State Government challenged the order of the Writ Court dated 06.05.2011 in LPA No.237/2011. The Division Bench vide order dated

28.08.2012 set aside the judgment of the Writ Court and thereby the direction of the Court to keep one post relatable to the year 2010 reserved for

Mr. Ajay Khajuria ceased to be in operation. Being dissatisfied with the judgment of the Division Bench, Sh. Ajay Khajuria moved the Supreme Court

by way of Special Leave Petition but no interim order for reserving any slot/vacancy in favour of aforesaid person was issued by the Apex Court.

Similarly, the Government of its own had requested the respondent No.4 to keep one post relatable to the vacancies of the year 2010 reserved for

Mr.Farooq Ahmed Renzu, though, there was no direction from any Court to do so.

8. From the narration of aforesaid events, it is abundantly clear that out of the three posts reserved, only one was pursuant to the directions passed by

this Court. It is important to note that the Union Public Service Commission approved the select list of 2010 only on 22.05.2013.

9. The petitioner vehemently represented her case before the State Government for de-reservation of the vacancies relatable to the year 2010 and for

consideration of her case for induction into IAS. It appears that the State Government took up the matter with respondent No.4 but by the time the

matter came up for consideration before respondent No.4, it was found that the select list of the year 2010 had ceased to be in operation as its validity

period had expired.

10. Feeling aggrieved of the failure on the part of the respondents to consider the case of the petitioner for induction into IAS by de-reserving the

vacancies relatable to the year 2010, the petitioner filed the instant petition on 04.06.2013. This Court on 04.06.2013 while issuing notice passed the

following interim order:-

â??Respondent No.2,3 and 4 are directed to consider the case of the petitioner for induction into IAS on the basis of the select panel forwarded by

the State Govt. strictly in accordance with rules and regulations applicable on the subject. The decision be taken within a period of six weeks.â??

11. The petitioner also filed a contempt i.e. COA(SWP) No.423/2014Â for initiating the contempt proceedings against the Secretary to Government

of India, DOPT and Chairman, Union Public Service Commission, New Delhi for not complying with the directions issued by this Court on 04.06.2013.

The respondents appeared in the contempt petition and filed their affidavits. Consideration order dated 18.06.2014 passed in compliance to the

directions of this Court was also placed on record. As per the consideration order, the respondents claimed that the order of this Court had been fully

complied with and the petitioner could not be recommended for induction into IAS on the basis of her placement at serial No.6 for the reason that the

select list pertaining to the year 2010 had ceased to be in operation as its validity period was over. It was submitted that in the absence of any specific

provision in the Regulations, the respondents are not in a position to review the select list on their own particularly when it has ceased to be in

operation by efflux of time. This exactly is the stand taken by respondent No.4 in the writ petition.Â

12. The state-respondents in their reply have conceded that three vacancies relatable to the year 2010 were kept reserved in view of the litigation and

the claims of three individuals. It is fairly conceded by the State Government and its stand is supported by other respondents that there was no interim

direction to reserve any post for Farooq Ahmed Renzu and the order of the Writ Court directing reservation of one slot relatable to the year 2010 in

favour of Mr. Ajay Khajuria too had ceased to be in operation in view of the judgment of the Division Bench of this Court setting aside the order of

the Writ Court. It is also not in dispute that in the SLP filed by Sh. Ajay Khajuria there was no direction by the Supreme Court to keep any slot

reserve for him, much less a slot relatable to the year 2010. It is also gatherable from the record that the intimation with regard to the judgment of the

Division Bench setting aside the order of the Writ court passed in favour of Sh. Ajay Khajuria, had been made to the Union Public Service

Commission and DOPT before finalization of the select list of the year 2010.Â

13. In view of the aforesaid admitted facts, learned senior counsel appearing for the petitioner contends that the petitioner has been penalized for no

fault of her. It is submitted that she was at serial No.6 of the select list and therefore, was entitled to be recommended for induction into IAS for

induction into IAS as there were in as many as eight slots determined for the year 2010. He further urges that had the State and the DOPT not kept

any slot reserved for Farooq Ahmed Renzu and withdrawn the reservation made in favour of Ajay Khajuria after the decision of the Division Bench,

the petitioner would have made it to the induction into IAS. It is important to note that insofar as Farooq Ahmed Renzu is concerned, he was

subsequently recommended by the Government to be considered for induction into IAS against the vacancies of the year 2007, thus, demonstrating

that the Government had without any justification reserved one vacancy for the year 2010 for him, which obviously was at the cost of the petitioner.

14. Having heard learned counsel for the parties and perused the record, I am of the considered opinion that the petitioner has been wronged for no

fault of her.Â The petitioner could not be inducted into IAS despite the fact that she was at serial No.6 of the select panel prepared by the Union

Public Service Commission for the year 2010. As noted above, the slots determined by the UPSC in consultation with the State Government for the

year 2010 were eight. Had the respondents reserved only one slot which they were required to do in compliance to the directions issued by the

Division Bench of this Court on 06.09.2011 in CMP Nos.346/2011 and 347/2011 titled State of J&K v. Abdul Majid Wani and allowed the two other

posts which were illegally reserved to be utilized, the petitioner who was at serial No.6 would have definitely made it to the select list.Â

15. It is true that respondent No.1 took up the matter with the DOPT and requested for de-reservation of the posts earlier reserved for Sh. Ajay

Khajuria on the basis of the judgment of the Division Bench dated 06.05.2011 (supra) but by that time the process of selection was at final stage. It

appears that when the matter came up for consideration before DOPT, as per its understanding, the life of the select panel prepared for the year 2010

had already expired. The UPSC and the DOPT, accordingly, took a stand that the case of the petitioner, though admittedly, genuine on facts cannot be

considered after the expiry of the life of the panel, particularly when there is no specific provision in the Regulations providing for operation of the

panel even after its expiry.

16. In the backdrop of aforesaid peculiar facts and circumstances of this case, following questions call for determination in this case:-

i) As to whether the UPSC/DOPT is not competent to reconvene special review meeting of the select committee to consider the case of the petitioner

for her induction into IAS against the available slots for the year 2010 under any circumstances in the absence of specific provision in this regard in

the Regulations?

ii) Whether in the absence of any provision in the Regulations, this Court can direct the UPSC or DOPT, as the case may be, to consider the case of

the petitioner for her induction into IAS, if it is found that the petitioner was illegally denied consideration when the select list for the year 2010 was

prepared?

17. Before embarking upon determination of aforementioned questions, it would be appropriate to take note of salient features of the Regulations. The

job of selection of the eligible officers for their appointment by promotion to the IAS is entrusted to a Committee constituted in terms of Regulation

No.3 of the Regulations. Ordinarily, the Committee is required to meet every year and prepare a list of such members of State Civil Service as are

held by it to be suitable for promotion to IAS. Year-wise vacancies to be filled up in each year under the Regulations are to be determined by the

Central Government in consultation with the State Government. The eligible members of the State Civil Service in the order of seniority equivalent to

three times the number of vacancies allocated to the particular year are to be considered by the Committee.

18. The Regulations also provide the eligibility of the members of the State Service for consideration to be appointed by promotion to the IAS. Besides

others, candidates to be considered must not have attained the age of 54 years on the first day of January of the year for which the select list is

prepared. The selection committee classifies the eligible officers as 'outstanding', 'very good', 'good' or 'unfit', as the case may

be, on an overall assessment of their service records. The select list shall be prepared by including required number of officers. The officers classified

as 'outstanding' are to be put on top followed by those classified as 'very good' and at the bottom those classified as 'good'. This is so

provided in Regulation 5. The number of candidates in the aforesaid select list which corresponds to the number of vacancies available in a particular

year constitutes final select list. This is so provided in Regulations 5, 6 and 7.

19. In terms of Regulation No.9, appointment of member of State Civil Service to the IAS is made by the Central Government in the order in which

names of the members appear in the select list for the time being in force during the period when the select list remains in force. The select list

remains in force till the 31st day of December of the year in which the meeting of the selection committee is held to prepare the list under Sub

Regulation 1 of Regulation 5 or upto sixty days from the date of approval of the select list by the Commission under Sub Regulation No.1 of

Regulation 5 or, as the case may be, finally approved under Sub Regulation 2 of Regulation 7, whichever is later.

20. In the instant case, the meeting of the selection committee for filling up the vacancy for the year 2010 was held on 13.03.2013, as such, under

Regulation 7(4), the select list was to remain in force till 31st December, 2013 and not till 21.07.2013 as is contended by the respondent No.4. In this

context the reproduction of Regulation 7(4) becomes necessary. Regulation 7(4) of the Regulations reads as under:-

7(4) The Select List shall remain in force till the 31st day of December of the year in which the meeting of the selection committee was held with

a view to prepare the list under sub-regulation (1) of regulation 5 or upto sixty days from the date of approval of the select list by the Commission

under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2), whichever is later:Â

Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the select list as

unconditional, to the Commission during the period when the select list was in force, the Commission shall decide the matter within a period of

forty-five days or before the date of meeting of the next selection committee, whichever is earlier and if the Commission declares the inclusion of the

provisionally included officer in the select list as unconditional and final, the appointment of the concerned officer shall be considered by the Central

Government under regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the select list ceased to be in

force.Â

Provided further that in the event of any new Service or Services being formed by enlarging the existing State Civil Service or otherwise being

approved by the Central Government as the State Civil Service under Clause (j) of sub-regulation (1) of regulation 2, the Select List in force at the

time of such approval shall continue to be in force until a new select list prepared under regulation 5 in respect of the members of the new State Civil

Service, is approved under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2).Â

Provided also that where the select list is prepared for more than one year pursuant to the second proviso to sub-regulation (1) of regulation 5, the

select lists shall remain in force till the 31st day of December of the year in which the meeting was held to prepare such lists or upto sixty days from

the date of approval of the select lists by the Commission under this regulation, whichever is later.Â??Â?Â?Â?Â?Â?

21. The stand of respondent No.4 that the validity of the select panel expired on 21.07.2013 i.e. after the expiry of sixty days from the date of

approval of the select list is totally untenable. The respondent No.4 has not understood Regulation 7(4) correctly. There is no dispute that meeting of

the selection committee to consider the candidates for induction into IAS from the State Civil Service for the year 2010 was held on 13.03.2013, as

such, the select list was to remain valid and in force till 31st December, 2013 and not upto sixty days from the date of approval. The expression

â??whichever is laterâ?? used in Regulation 7(4) and its third proviso, makes the things abundantly clear.Â?

22. As is apparent from the reply of the State-respondents, particularly the communication of the General Administration Department of the State

issued vide No.GAD(Ser) IAS/48/2012 dated 04.07.2013, a request was made by the State Government to de-reserve one vacancy out of the

vacancies for the year 2010 earlier reserved for consideration of induction of Mr. Farooq Ahmed Renzu and to consider the case of the petitioner

against the aforesaid vacancy by convening a special meeting well before the expiry of panel of selection. Had the UPSC considered the case of the

petitioner in the light of the communication of the General Administration Department dated 04.07.2013 (supra), by convening a special meeting of the

committee, the name of the petitioner could have been recommended within the period of validity of the select panel prepared by the UPSC for filling

up the slots for the year 2010.Â?Â?

23. The communication of respondent No.4 issued by Under Secretary to the Government dated 03.09.2013 in response to the communication of the

State dated 04.07.2013 (supra) makes an interesting reading. On one hand, the request of the State to consider the case of the petitioner against the

post earlier reserved for Farooq Ahmed Renzu was declined by respondent No.4 on the ground that the validity period of the select panel in terms of

the Regulations was over. This, as already stated, was factually incorrect. The validity period was to expire on 31st December, 2013 and on the other

hand, citing some contempt petition filed by Farooq Ahmed Renzu the request was declined. Though, respondent No.4 was well aware and the same

had also been made clear by the State respondents that there was no order from the competent Court of law for reserving any post for the year 2010

for Sh. Farooq Ahmed Renzu. The respondent No.4 arbitrarily delayed the consideration on one pretext or the other and meted out injustice to the

petitioner on the premise which was factually incorrect.Â

24. It is shocking to note that the respondent No.4 could not understand Regulation 7(4) of the Regulations in correct perspective. It is not in dispute

that first the select list is prepared and thereafter it is approved. The period of validity of select list, I am reiterating, as per Regulation 7(4) as also

third proviso appended thereto is to remain in force till 31st December of the year in which the meeting of the select committee is held to prepare the

list or upto sixty days from the date such list is approved by the Commission, whichever is later. In the instant case, I am stating at the cost of

repetition, the meeting of the selection committee to prepare the select list was held on 13.03.2013 and the approval to the select list was granted on

22.05.2013. Accordingly, in terms of Regulation 7(4), the select list was to remain in force till 31st December, 2013 and not upto 21.07.2013 i.e. upto

sixty days from the date of approval. This is so because 31st December, 2013 comes later than 21st July, 2013. I failed to understand how respondent

No.4 could commit such a glaring mistake and take stand which is ex-facie de hors the Regulations.

25. Be that as it may, the fact remains that when the request for convening of the special meeting of the selection committee was received by

respondent No.4 in terms of communication of the General Administration Department of the State dated 04.07.2013 (supra), the validity of the select

list had not yet expired.

Apart from the vacancy which had been illegally reserved for Farooq Ahmed Renzu despite there being no order from any competent Court of law,

the fact that another vacancy earlier reserved for Ajay Khajuria too had become available, there was no reason or justification for the respondent

No.4 not to convene the special meeting of the selection committee as requested by the State Government and consider the case of the petitioner for

her induction into IAS.Â

26. For the aforesaid reasons, even the questions formulated hereinabove are not required to be determined. Otherwise also, it is well settled that

Rules of procedure cannot be so interpreted to occasion failure of justice. In a case, if it is established that a particular candidate who was eligible to be considered and recommended for appointment by way of promotion to IAS but was not so considered and recommended for the reasons which are not sustainable in law, such person cannot be deprived of his right on the ground that the select panel in which such candidate could have been considered and recommended has expired by efflux of time. Consideration of such candidate, even if actually taken up after the expiry of the panel shall always be deemed to have taken place on the date he was entitled to be considered but was ignored illegally and without any reasonable cause.

27. Accordingly, answer to the first question is that, though the select committee or for that matter DOPT may not ordinarily operate a select panel after the expiry of its validity but nothing prevents the DOPT or the select committee to consider and recommend a candidate for induction into IAS, if it is demonstrably established point of such candidate, though eligible and entitled to be recommended at the relevant time had been ignored on the considerations not countenanced by law, the expiry of panel notwithstanding. Such candidate, as submitted above, shall be deemed to have been considered during the period of validity of the select panel. Similarly, in appropriate cases where the respondents fail to perform their statutory duty and trample the rights of the citizens by taking shelter to technicalities of law, constitutional Court is not powerless to issue such directions which are necessary to do complete justice between the parties and to undo the wrong caused to a person without any reason or justification.

28. For the aforesaid reasons, I find merit in this petition, hence same is allowed. Respondent No.4 is directed to convene a special meeting of the

select committee for considering and recommending the name of the petitioner for her appointment by promotion to IAS against the slot of the year

2010. It could be either against the vacancy which had been wrongly reserved for consideration of induction of Sh. Farooq Ahmed Renzu or against

the vacancy which had earlier been reserved for consideration of induction of Ajay Khajuria. The respondent No.4 shall convene a special meeting of

the selection committee to consider the case of the petitioner, as stated above, within a period of four weeks from today. On the basis of deliberation

of the Selection Committee, Union Public Service Commission shall make appropriate recommendations in favour of the petitioner to respondent No.4

within two weeks thereafter. Based on the recommendations of the selection committee/UPSC, the respondent No.4 shall issue appropriate orders of appointment/induction of the petitioner into IAS against the slot of the State for the year 2010 within two weeks thereafter. Needless to say that upon her formal induction into IAS, the petitioner shall be entitled to all consequential benefits.Â

CPSW No.423/2014

This is a petition seeking initiation of contempt proceedings against the respondents for alleged willful disobedience and non-compliance of the interim order dated 22.04.2014. In view of the disposal of the main writ petition itself, no orders are required to be passed in this contempt petition. Hence proceedings are closed.