
(2012) 10 DEL CK 0353

In the Delhi High Court

Case No : Writ Petition (C) 2395 of 2012 and CM No's. 5145 and 8727 of 2012 and W.P. (C) 5846 of 2012 and CM No. 12022 of 2012

Raj Narain Singh and Others

APPELLANT

Vs

Dr. Ashok Kumar Sharma and Others
 State of U.P. Vs
Ashok Kumar Sharma and Others

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Constitution of India, 1950 — Article 142

Citation : (2012) 10 DEL CK 0353

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : G.D. Gupta with Mr. Piyush Sharma in W.P. C 2395/2012 and CM Nos. 5145 and 8727/2012, Mr. Jitendra Mohan Sharma, Mr. P.S. Patwalia, with Mr. Piyush Sharma in W.P. C 2396/2012 and CM Nos. 5148/2012, 8730/2012, Mr. Rakesh Dwivedi with Mr. Upendra Mishra and Mr. Ajit Sharma in W.P. C 5846/2012 and CM No. 12022/2012, for the Appellant; Neeraj K. Jain, with Mr. Saurav Agarwal and Mr. Vipul Sharda, for R-1 and 2, Mr. Sumeet Pushkarna with Mr. Varun Dubey for R-3/UOI, Mr. Naresh Kaushik for R-4/UPSC in W.P. (C) 2395/2012 and CM Nos. 5145 and 8727/2012, W.P. (C) 2396/2012 and CM Nos. 5148/2012, 8730/2012 and W.P. (C) 5846/2012 and CM No. 12022/2012, Mr. Rakesh Dwivedi, with Mr. Upendra Mishra and Mr. Ajit Sharma for R-5, Mr. R.N. Singh, A.S. Singh in W.P. (C) 2395/2012 and CM Nos. 5145 and 8727/2012 and W.P. (C) 2396/2012 and CM Nos. 5148/2012, 8730/2012, Mr. P.S. Patwalia, with Mr. Piyush Sharma for R-5 to 13 and Ms. Sweetie Manchanda, CGSC in W.P.(C) 5846/2012 and CM No. 12022/2012, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—These three writ petitions are directed against the order dated 07.03.2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. No. 3605/2010. W.P. (C) 2395/2012 and W.P. (C) No. 2396/2012 have been filed by persons belonging to the U.P. State Civil Services who were also respondents before the Tribunal in the said O.A. W.P.(C)

5846/2012 has been filed by the State of U.P. being aggrieved by the above mentioned impugned order. The dispute is actually between the officers of the U.P. State Civil Services (UPSCS) and those of the Non-State Civil Services (NSCS). The dispute is with regard to appointment to the Indian Administrative Service in terms of the Indian Administrative Service (Recruitment) Rules, 1954 (hereinafter referred to as "the said Rules"). The respondent Nos. 1 and 2 in these petitions belong to the Non-State Civil Services (NSCS) and they are claiming recruitment to the Indian Administrative Service under rule 4(1)(c) of the said Rules. Before we proceed further it would be appropriate to set out the relevant rules. They are as follows:-

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

(a) By a competitive examination;

(aa) Omitted.

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

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

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

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

(b) the number of persons to be recruited by each method shall be determined on each occasion by the Central Government in consultation with the State Government concerned.

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

4. (4) Notwithstanding anything hereinbefore contained in this rule, in relation to the State of Jammu & Kashmir, recruitment to the State Cadre on its initial constitution shall be made by such method as the Central Government may after consultation with the State Government and the Commission, prescribe.

[4(5) & 4 (6)]

x x x

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

8(2) The Central Government may, in special circumstances and on the recommendation of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Government and the Commission, from time to time, make, recruit to the Service any person of outstanding ability and merit serving in connection with the affairs of the State who is not a member of the State Civil Service of that State [but who holds a gazetted post in a substantive capacity].

8(3) (a) Where a vacancy occurs in a State Cadre which is to be filled under the provision of this rule, the vacancy shall be filled by promotion of a member of the State Civil Service or, as the case may be, by selection of any other officer serving in connection with the affairs of that State.

(b) Where a vacancy occurs in a Joint Cadre which is to be filled under the provision of this rule, the vacancy shall, subject to any agreement in this behalf, be filled by promotion of a member of the State Civil Service of any of the States constituting the group or as the case may be, by selection of any other officer serving in connection with the affairs of any such State(s).

9. Number of persons to be recruited under rule-8

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 per cent 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.

9(2) Notwithstanding anything contained in this rule, in relation to the State of Jammu and Kashmir, the number of persons recruited under sub-rule (1) shall not upto 30th April, 2002, exceed at any time, fifty per cent of the number of senior posts under the State Government, central deputation reserve, state deputation reserve and the training reserve in relation to that State in the

Schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955.

9. (2A) & 9(3)[Omitted]

2. The said respondent Nos. 1 and 2 had approached the Tribunal by way of the said O.A. challenging the recommendations of State of U.P. dated 27.03.2010 whereby the said State of U.P. recommended that all the 29 vacancies consequent upon the cadre review of 2003 but with reference to 01.01.2004 ought to be filled up from the UPSCS leaving no vacancy for the NSCS. A letter dated 22.05.2010 was also sent by the State of U.P. to the Central Government reiterating the recommendations in the earlier letter dated 27.03.2010. This was followed by the Central Government notification of 17.05.2010 issued by the DoPT indicating the cadre strength based upon the cadre review as on 31.03.2003. By a letter dated 01.06.2010, the Central Government informed the State of U.P. that it has been decided to keep 11 vacancies of 2004 in abeyance in view of the pendency of a writ petition before the Lucknow Bench of the Allahabad High Court and to re-determine the remaining vacancies as proposed by the State Government as per details given therein which indicated that for the year 2004 the vacancies for the UPSCS were 18. No vacancies were indicated insofar as the NSCS was concerned. Though, 11 vacancies were kept in abeyance.

3. On 06.09.2010 the Lucknow Bench of the Allahabad High Court decided Writ Petition No. 1718/2006 (Mahesh Chand v. Union of India & Ors. and other connected petitions). Paragraph 2 of the said decision is as under:-

At the outset it would be appropriate to mention that in view of quashing of the proposal of the State Government dated 6.1.06, by which eleven vacancies were proposed to be filled in by selection from amongst Non State Civil Service Officers (Non-SCS officers) by Delhi High Court vide order dated 14.11.08 along with quashing of the notification dated 1.2.06 by means of which the aforesaid eleven vacancies were notified to be filled in by selection from amongst Non-SCS officers and the said judgment having been upheld by the Supreme Court, the plea of the petitioner of Writ Petition No. 1718 (SB) of 2006, Mahesh Chand and that of Sri Upendra Mishra appearing for the State Government is that all these petitions have become infructuous and merely for academic interest, no findings are required to be given on other issues, which are involved in the writ petition as no selection now can take place nor can it proceed with when the notification determining vacancies aforesaid itself has been quashed.

Ultimately the court observed as under:-

The Court is not supposed to decide an issue only for academic reason but it is only when an action is taken, such a plea can be raised and of course, by a person who feels aggrieved by such determination. There is no challenge to the determination of vacancies made.

Once the notification regarding determination of vacancies has been quashed,

there remains nothing for the Court to decide in the present proceedings, with respect to validity of such a selection, which has not attained finality, in as much as the result of the selection has not been declared nor the same could now be given effect to.

Merely because certain Non-SCS officers feel that they stand selected in the final select list without even declaration of result, they cannot claim any right, treating them to have been selected, particularly when this challenge to the order passed by the Delhi High Court failed before the apex court.

So far the determination of equivalence of posts is concerned, a plea which has been raised in the writ petitions of Surya Prakash and U.P. Civil Services Association, we are informed by the learned counsel for the State that the process of redetermination of equivalence is on and the equivalence has actually been predetermined but in view of the interim orders passed by this Court, final effect has not been given.

Submission is that equivalence of posts has been done strictly in accordance with the proposition laid down in the case of Sub-Inspector Rooplal and another (supra).

We thus, do not find any reason to restrain the State Government from determining the equivalence of the posts of that of the post of Deputy Collector, in terms of the Rules.

If any person feels aggrieved by such determination of vacancies and/or by the equivalence of posts, he will be at liberty to challenge the same, in the appropriate forum.

Even otherwise, when a fresh selection is to be made, the State Government could very well issue a fresh notification regarding equivalence of posts and we do not find any ground for looking into the validity of such determination, even if it suffers from any illegality, as the same would not persuade us to uphold the selection process, which is incomplete till date and which now cannot be finalized, for the aforesaid reason of quashing of notification of determination of vacancies, and the freshly determined equivalence of posts will not have any hearing upon the present selection.

In the writ petition of Ashok Kumar Sharma, the main grievance is that all three directions issued by the Central Administrative Tribunal, Lucknow Bench should be quashed.

In fact, the said judgment has lost its efficacy and does not require any adjudication by us in the present petitions, as the selection, for which the present directions were issued, itself cannot be given effect to.

We thus, are of the considered opinion that the present writ petitions have lost their efficacy and importance and rather, they have become infructuous, which do not require any further orders to be passed.

We, however, made it clear that we have declined to enter into any of the pleas, which have not been decided by the Delhi High Court, for the reason that the present selection cannot be finalized for the aforesaid reason of quashing of the notification of determination of vacancies and the proposal sent by the State Government for the said determination and also in view of the fact that equivalence of the posts is being redetermined or has been redetermined.

The question, "whether Rule 8 (2) of (sic) Rule 9 (1) and proviso of the Rules 1954 read with Regulation-3, Regulation-5 of Regulations, 1997 would mean selection of Non-SCS officers to be decided by taking into account 15% of 33.33% posts of the entire cadre strength under Rule 8 or it would mean 15 % of the total Officers recruited under Rule 8 (2)" and how it is to be interpreted and whether the redetermination of vacancies made by the Central Government on the proposal of the State Government has rightly been made or not, and whether equivalence of posts has been correctly determined, are such issues which can be agitated by the aggrieved persons, afresh, if they feel aggrieved by any such decision or notification issued by the State Government or the Central Government, as the case may be.

Any observation made, finding recorded or directive issued by the Central Administrative Tribunal, Lucknow Bench, in this regard, would not be binding nor shall effect the claim of any person aggrieved, to which he may be otherwise entitled under law.

All the petitions have, therefore, become Infructuous and are hereby dismissed as such.

(underlining added)

4. We may point out at this stage itself that the NSCS officers preferred a SLP before the Supreme Court against the said decision of the Lucknow Bench of the Allahabad High Court. That SLP (Civil) No. 27592/2010 was dismissed by the Supreme Court on 08.10.2010. The order passed by the Supreme Court was as under:-

Permission to file SLP is declined. SLP is dismissed. It is, however, open to the petitioners to challenge the orders dated 27.3.2010 of the State Government or the consequential order dated 10.9.2010 of the Government of India.

It is obvious that although the Supreme Court dismissed the Special Leave Petition, it granted liberty to the petitioners therein (Non-SCS Officers) to challenge the order dated 27.03.2010 and the consequential order dated 10.09.2010. We may also note that in the meanwhile, on 08.09.2010, the State of U.P. wrote to the Central Government requesting that, consequent upon the decision of the Lucknow Bench of the Allahabad High Court, instead of 18 vacancies for the year 2004 for the promotion quota from UPSCS officers, all the 29 vacancies (including 11 vacancies which were earlier kept in abeyance) be re-determined for the UPSCS officers so that the amended proposal for the selection

committee meeting could be sent to the Union Public Service Commission.

5. This proposal of the State Government was approved by the Central Government by virtue of its communication dated 10.09.2010 which is to the following effect:-

No. 14015/22/2010-AIS-1

Government of India

Ministry of Personnel Public Grievances & Pensions

Department of Personnel & Training

New Delhi, 10th September, 2010

To

The Chief Secretary

Government of Uttar Pradesh

Lucknow

(Kind attn: Shri Yogeshwar Ram Joint Secy.)

Sub: High Court Allahabad Lucknow Bench order Dated 6th September, 2010 in WP No. 1718 (SB)/2006 in the matter of Mahesh Chand vs. UOI & Ors.- reg.

Sir,

I am directed to refer to your proposal contained in the letter No. 4123(1)/KTwo-1/2010 dated 8th September, 2010 on the subject cited above and to convey herewith that the competent authority has approved the re-determination of Promotion Quota vacancies of IAS as 29 in place of 18 for the Select List year 2004 in the light of the following observations of the Hon"ble High Court, Lucknow Bench in their order dated 6th September, 2010.

Once the notification regarding determination of vacancies has been quashed, there remains nothing for the court to decide in the present proceedings, with respect to validity of such a selection, which has not attained finality in as much as the result of the selection has not been declared nor the same could now be given effect to. Merely because certain Non-SCS officers feel that they stand selected in the final select list without even declaration of result they cannot claim any right treating them to have been selected particularly when this challenge to the order passed by the Delhi High Court failed before the apex court.

2. It is requested that the State Government may take further necessary action to send requisite proposal to UPSC for convening of the Selection Committee Meetings for the Select List Years 2004 onwards.

Yours faithfully,

S.S. Shukla

Under Secretary to the Govt. of India

Ph. 23092695

6. In view of the liberty given by the Supreme Court, two of the Non-SCS Officers filed the said O.A. No. 3605/2010 before the Central Administrative Tribunal which has been allowed by virtue of the impugned order dated 07.03.2012. The petitioners are aggrieved by that order and are before us.

7. Before we discuss the rival contentions, it would be necessary for us to point out that in an earlier writ petition titled Hemraj Singh Chauhan & Ors. v. Union of India & Ors: W.P. (C) 19103-04/2006, a Division Bench of this court had, inter alia, made the following observations:-

46. At this juncture, it would be useful to notice the proviso to Rule 5(1) of the Promotion Regulations which mandates the yearly preparation of the select list. It would not be justified for the governments at the Centre and the State to delay the exercise of cadre review and then present the affected parties with a fait accompli by saying that the exercise cannot be carried out retrospectively even if admittedly there was a failure on their part to carry out such exercise in time. As far as the present case is concerned, there should be no difficulty in undertaking the cadre review exercise as indicated hereinabove. It is made clear that the exercise that preceded the issuance of the impugned notification dated 1st February 2006, including determining the vacancies available to those whom the interveners represent, should be undertaken as if it was taking place on 30th April 2003 and with reference to the date of 1st January 2004.

Thereafter, the said Division Bench came to the following conclusion and gave the following decision:-

47. Accordingly, the impugned judgment dated 15th December 2006 of the Tribunal is set aside. The impugned notification dated 1st February 2006 as well the letter dated 6th January 2006 and notification dated 25th August 2005 on which it is based are hereby set aside. It is clarified that the Cadre Review for the State of Uttar Pradesh was due on 30th April 2003. The Central Government and the State Government will now proceed to undertake the cadre review exercise which fell due as on that date with reference to the vacancy position as on 1st January 2004 in the manner indicated hereinabove within a period of eight week from today. The further consequential steps of considering which of the petitioners are eligible for promotion and which if any of the non SCS officers (selectees) are qualified for selection should be completed within a further period of four weeks thereafter. We clarify that we have not expressed any opinion on the issue (as mentioned in para 25 of this judgment) pending consideration by the Allahabad High Court, Lucknow Bench

(underlining added)

8. It should be made clear that in that writ petition, the main issue was whether the cadre review ought to have been held in 2005 or 2003. This was in the backdrop of the fact that the previous cadre review had been held in 1998 and that, normally, cadre review is a 5-yearly process. The Division Bench directed that the cadre review be held as on 30.04.2003 with reference to the vacancy position of 01.01.2004.

9. The Union of India went up to the Supreme Court by way of a SLP in which the Supreme Court granted leave and after hearing the matter disposed of the Civil Appeal No. 2651-52/2010 on 23.03.2010 (reported as Union of India (UOI) and Another Vs. Hemraj Singh Chauhan and Others,) directing as under:-

47. Therefore, this Court accepts the arguments of the learned counsel for the appellants that Rule 4(2) cannot be construed to have any retrospective operation and it will operate prospectively. But in the facts and circumstances of the case, the Court can, especially having regard to its power under Article 142 of the Constitution, give suitable directions in order to mitigate the hardship and denial of legitimate rights of the employees.

48. The Court is satisfied that in this case, for the delayed exercise of statutory function the Government has not offered any plausible explanation. The respondents cannot be made in any way responsible for the delay. In such a situation, as in the instant case, the directions given by the High Court cannot be said to be unreasonable. In any event, this Court reiterates those very directions in exercise of its power under Article 142 of the Constitution of India subject to the only rider that in normal cases the provision of Rule 4(2) of the said Cadre Rules cannot be construed retrospectively.

10. Thus, while the Supreme Court did not agree with the Division Bench of this court that rule 4(2) of the said Rules could be construed to have retrospective operation, in the facts of the present case, the Supreme Court was satisfied that the direction given by the High Court could not be said to be un-reasonable and the Supreme Court said so in exercise of its power under Article 142 of the Constitution of India.

11. With this background, let us now examine the rival submissions. The learned counsel appearing on behalf of the petitioners submitted that the impugned order passed by the Central Administrative Tribunal cannot be sustained inasmuch as the Non-SCS Officers had no right to be considered for recruitment to the IAS. They placed reliance on the Supreme Court decision in the case of P.M. Bayas Ors. Vs. Union of India and others, . The observations of the Supreme Court relevant for the present case are as under:-

9. We may examine the scheme of the Rules and Regulations. Rule 4(1) of the Rules provides four sources of recruitment to the IAS. The competitive examination and by promotion of substantive members of the State Civil Service are the two main sources of recruitment. Rule 4(1)(c) provides recruitment to IAS "by selection, in special cases from among persons, who hold in a

substantive capacity gazetted posts in connection with the affairs of a State and who are not members of the State Civil Service". "In special cases from among persons" means the selection as special cases of the persons who have established their outstanding merit and ability while serving the State. Members of the State Civil Service who are not "outstanding" but are only "good" and "very good" are also eligible to be considered for appointment to IAS but under Rule 8(2) of the Rules, it is only an "outstanding" officer who is eligible. It is the outstanding merit and ability which makes him a "special case" in terms of Rule 8(2) of the Rules. Rule 8(2) of the Rules read with Regulation 3 of the Regulations lays down the procedure for making the special selection provided under Rule 4(1)(c) of the Rules. The Central Government, being the appointing authority to the IAS, has to be finally satisfied about the existence of the "special circumstances" as a condition precedent for making special recruitment. The "special circumstances" are to be spelled out from Rule 8(2) of the Rules read with Regulation 3 of the Regulations. Rule 8(2) which talks of "outstanding ability and merit" when read with Regulation 3(1) and 3(4-A) of the Regulations makes it clear that the "special circumstances" required to be seen are (i) the existence of officers with 12 years of continuous service in a gazetted post under the State Government -- other than State Civil Officers -- who are of outstanding merit and ability and (ii) the satisfaction of the State Government that, in public interest, it is necessary to consider such officers for promotion to the IAS.

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

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

(underlining added)

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

12. It is, therefore, clear that there is no right as such which has been spelt out in favour of the Non-SCS Officers.

13. It should also be noted that the Non-SCS Officers who had intervened in the Delhi High Court in Hemraj Singh Chauhan (supra) had also filed a SLP being SLP (C) 6758-59/2009, which, after leave was granted got converted to (Civil Appeal No. 2651-52/2010). The said civil appeals were disposed of by the Supreme Court by virtue of its judgment dated 23.03.2010 in the following manner:-

15. However, before the High Court the stand of the Central Government was that the cadre review of the IAS of Uttar Pradesh cadre was due in 2003 but unfortunately it was held in 2005 when the State of Uttar Pradesh had sent its proposal. Such review was made effective from 25-8-2005 when the revised cadre strength of the IAS cadre of Uttar Pradesh was notified in the Official Gazette in terms of the statutory provisions. The further stand of the appellants was that the cadre review undertaken in 2005 cannot be given retrospective effect.

16. However, before the High Court the stand of the Uttar Pradesh Government was slightly changed and it filed a "better affidavit" and took the stand that they have no objection to any direction for exercise of cadre review to be undertaken with reference to the vacancy position as on 1-1-2004.

17. The High Court after hearing the parties was pleased to set aside the judgment of CAT dated 15-12-2006 and the Notifications dated 1-2-2006 and 25-8-2005 were set aside. The State Government and the Central Government were directed that the cadre review exercise should be undertaken as if it was taking place on 30-4-2003 with reference to the vacancy position as on 1-1-2004.

18. In order to resolve the controversy in this case, the relevant statutory provisions may be noted. The respondents being SCS officers, are seeking promotion to IAS in terms of Rule 4(1)(b) of the relevant recruitment rules. Rule 4(1)(b) of the Indian Administrative Service (Recruitment) Rules, 1954 is set out:

4. Method of recruitment to the Service.--(1)* * *

(b) by promotion of substantive member of a State Civil Service;

19. In tune with the said method of recruitment, substantive provisions have been made under Rule 8 for recruitment by promotion. Rule 8(1) of the Recruitment Rules in this connection is set out below:-

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

x x x

22. Another regulation relevant in this connection is the Indian Administrative Service (Cadre) Rules, 1954 (hereinafter referred to as "the Cadre Rules"). Under Rule 4 of the said Cadre Rules, the strength and composition of the cadres constituted under Rule 3 shall be determined by regulations made by the Central Government in consultation with the State Government and until such regulations are made, shall be as in force immediately before the commencement of those Rules.

23. Rule 4(2) has come up for interpretation in this case and to appreciate its true contents, the said Rule 4(2) is set out below:

4. (2) The Central Government shall ordinarily at the interval of every five years, re-examine the strength and composition of each such cadre in consultation with the State Government or the State Governments concerned and may make such alterations therein as it deems fit:

Provided that nothing in this sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any other time:

Provided further that the State Government concerned may add for a period not exceeding two years and with the approval of the Central Government for a further period not exceeding three years, to a State or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts.

24. The main controversy in this case is, whether re-examination of the strength and composition of cadre in the State of Uttar Pradesh had taken place in accordance with the mandate of Rule 4 sub-rule (2).

x x x

42. Concurring with the aforesaid interpretative exercise, we hold that the statutory duty which is cast on the State Government and the Central

Government to undertake the cadre review exercise every five years is ordinarily mandatory subject to exceptions which may be justified in the facts of a given case. Surely lethargy, inaction, an absence of a sense of responsibility cannot fall within the category of just exceptions.

43. In the facts of this case neither the appellants nor the State of Uttar Pradesh has justified its action of not undertaking the exercise within the statutory time-frame on any acceptable ground. Therefore, the delayed exercise cannot be justified within the meaning of "ordinarily" in the facts of this case. In the facts of the case, therefore, the Court holds that there was failure on the part of the authorities in carrying out the timely exercise of cadre review.

14. The learned counsel appearing for the respondent Nos. 1 & 2 (Non-SCS Officers) submitted that he is not making a claim for a quota for Non-SCS Officers and that was not his claim before the Tribunal although the Tribunal virtually has gone on to hold as such. According to the learned counsel, his limited claim was that the directions given by the Delhi High Court and confirmed by the Supreme Court in Hemraj Singh Chauhan (supra) have not been followed. According to the learned counsel for the respondent Nos. 1 & 2, the direction was that the said respondents, who were included in the group of officers who were being considered for the said 11 vacancies, ought to be considered for selection in view of the developments which had taken place in 2005-2006. But, we fail to understand as to how the learned counsel for the said respondents can make such a submission, once the letters dated 01.02.2006, 06.01.2006 and the notification dated 25.08.2005 had all been set aside by the Division Bench in Hemraj Singh Chauhan's case and that had not been disturbed by the Supreme Court. It is apparent that the direction in Hemraj's case was to have a cadre review as on 30.04.2003 with reference to the vacancy position as on 01.01.2004. It is in this light that a proposal for cadre review was submitted by the State Government to the Central Government. The Central Government accepted the proposal and issued the notification dated 17.05.2010 wherein it was indicated that the posts to be filled by promotion under rule 8 of the said Rules (not exceeding 33.33%) would be 163 as against the posts to be filled by direct recruits which was indicated at 374. Subsequent thereto, the vacancy position was indicated in the letters dated 27.03.2010 and 22.05.2010 whereby 29 vacancies were indicated for 2004. We have already seen above that the Central Government in response thereto by virtue of its letter dated 01.06.2010 had indicated that there should be a re-determination of the promotion quota vacancy in view of the fact that the matter with regard to the 11 vacancies was sub-judice with the Lucknow Bench of the Allahabad High Court and that the matter in that respect should be kept in abeyance. However, as we have indicated above, the Lucknow Bench dismissed the writ petition as having become infructuous. That being so, the 11 vacancies also got released and subsequently the entire 29 vacancies were allocated to the U.P. State Civil Services Officers. The U.P. government had taken a conscious decision not to allocate any vacancy to the Non-SCS Officers. That recommendation has been

accepted by the Central Government. Insofar as the satisfaction of the State government and the Central Government is concerned, the courts have a very limited role to play and we cannot substitute our views in place of the administrative decisions of the State Government and the Central Government who are to determine whether a special case has arisen or not so as to invoke rule 4(1)(c) of the said Rules. It is for the State Government and the Central Government to decide as to whether any selection has to be made by invoking rule 4(1)(c) of the said Rules or not, in a deserving case.

15. We may make it clear that the learned counsel for the respondent Nos. 1 & 2 has fairly stated that there is no question of malafides in the present case. The learned counsel for the said respondents has also fairly stated as we have already pointed out above, that no "higher" claim is being made except to seeking "implementation" of the directions given by the Division Bench of this High Court in Hemraj's case as approved by the Supreme Court. We have already indicated that the understanding of the order as represented by the learned counsel for the respondent Nos. 1 & 2 does not appeal to us and, in our view, is not a correct understanding of the case. The Division Bench in Hemraj's case directed that a cadre review as on 30.04.2003 be conducted keeping in mind the vacancy position on 01.01.2004. It did not say that the Non-SCS officers had any right to seek recruitment under the said Rule 4(1)(c). The Division Bench had directed that once the exercise of cadre review and vacancy position is carried out the further consequential steps of considering which of the "petitioners" are eligible for promotion and which, if any, of the Non-SCS officers are qualified for selection should be completed within a period of four-weeks thereafter. This only meant that once the cadre review is done and the vacancy position is determined the recruitment by "promotion" or by "special selection" be concluded within the stipulated time. Neither did the Division Bench grant any right to the Non-SCS officers (including the respondent Nos. 1 & 2, herein) nor did it "recognize" or "save" any such right. The manner and type of recruitment through the "special" route of rule 4(1)(c) has already been explained by the Supreme Court in P.M. Bayas (supra), a case which though cited before the Tribunal was not even discussed by it and, this is why the Tribunal fell into error. After the directions of the Division Bench in Hemraj's case had been approved by the Supreme Court, the cadre review as on 30.04.2003 with reference to the vacancies as on 01.01.2004 was done. 29 vacancies fell for 2004 and the State Government decided to allocate all of them to the UPSCS and none to the Non-SCS as according to them no special circumstances prevailed so as to also involve the special recruitment method of Rule 4(1)(c) of the said Rules from among Non-SCS officers. This was approved by the Central Government. We do not find any fault with the course adopted by the State Government and Central Government in not allocating any vacancy to the Non-SCS Officers. There is no quota for them and the learned counsel for the respondent Nos. 1 and 2 had fairly stated that he is not making any such claims. In view of the foregoing discussion, the writ petitions, that is, W.P. (C) 2395/2012, W.P. (C) 2396/2012

and W.P. (C) 5846/2012, are allowed and the impugned order of the Tribunal is set aside. All pending applications also stand disposed of.