

(2011) 11 J&K CK 0019
In the Jammu And Kashmir High Court
Case No : LPA OW No. 15 of 2005

R.C. Gupta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Citation : (2011) 4 JKJ 25

Hon'ble Judges : Virender Singh, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ibrahim Kalifulla, CJ.

1. The appellant is aggrieved by the order of the learned Single Judge dated 31.12.2009 passed in OWP No. 772/2000.

2. The appellant entered the government service in non-gazetted cadre in the year 1956. He was promoted as Under Secretary in 1983. In 1986

he was promoted as Deputy Secretary on proforma basis and was posted in the General Administration Department. He claims to have held

additional assignments as Registrar of Competent Authority of Entrance Examinations of Jammu and Kashmir. Secretary of Jammu and Kashmir

Backward Classes Commission, Secretary to Puri Commission for MBBS (Female) Reservation, and that he retired on 30.04.1996. The

appellant also claims that in the Annual Confidential Reports, in particular from the year 1985-86 onwards, his performance was rated as Out

Standing/Exemplary in respect of his ability, merit as well as honesty and integrity. He is stated to have submitted representations in the year 1993-

94 for his induction into Indian Administrative Services from Non-State Civil

Service i.e. non-KAS cadre by relying upon Rule 4 (1) (c) of the Rules framed under the Indian Administrative Service Rules 1956. Since there was no response to his representations, the appellant preferred a writ petition in the year 1995 in WP No. 229/1995 for a direction to the State Government to discharge the statutory and constitutional obligation enjoined under Rule 4 (1) (c) and Rule 8 (2) of the Indian Administrative Service Rules read along with Regulation 3 of the Indian Administrative Service Regulations, 1956.

3. At the time when the said writ petition was moved for admission on 27.03.1995 it was contended that the Review Committee for induction into Indian Administrative Service was meeting on that date and, therefore, the State Government should be directed to place the credentials and service record of the appellant before the said Committee for consideration. By interim order dated 27.03.1995 a direction was issued to that effect. Nevertheless it was stated that the said direction was not complied with. On the next date i.e. on 28.03.1995 another interim order was passed to the effect that if the Review Committee Meeting was continued on 28.03.1995 also, the direction contained in the order dated 27.03.1995 should be complied with.

4. Subsequently by order dated 28.04.1995 directions were issued to the State Government to reserve two posts unfilled in IAS cadre till the matter is finally considered by the Court and appropriate orders are passed in the writ petition. The said writ petition was filed by the appellant along with another officer, by name, Dr. Abdul Ahad. The interim order was subject matter of challenge before the Division Bench. The Division Bench in its order dated 02.06.1995 permitted the respondent-State to complete the selection process for all the posts available with them. The State Government was also directed to consider the appellant and the other officers for induction to IAS in terms of Rule 4 (1) (c) of the Indian Administrative Service Recruitment Rules, 1954 and if they decide to use the source for recruitment as laid down in Rule 4(1) (c), they should also consider all the persons who were eligible in terms of the said Rules along with appellant and the co-petitioner. It was also directed that any selection made to the Service should be provisional to the extent of 15% subject to the final out come of the writ petition.

5. Subsequently the Appeal itself was disposed of on 24.04.1997 with a direction to the Writ-Court to dispose of the writ petition SWP No.

229/1995 before 26.05.1997. The writ petition was disposed of on 24.12.1999 with a direction that the claim of the appellant be examined for

appointment to IAS cadre and such consideration should be in relation to the vacancy when it occurred. The appellant was also given liberty to

prefer a representation. The State Government was directed to convey its decision on the representation within a period of three months from the

date the copy of the order was made available. By the said order dated 24.12.1999 as well as modified order dated 21.02.2000 it was noted that

the post of IAS cadre was lying vacant for a period of three months i.e. with effect from February, 1996 to the date of retirement of the appellant,

namely, 30.04.1996.

6. The appellant submitted his representation dated 12.03.2000. The said representation was disposed of on 05.06.2000 by the

Commissioner/Secretary to Government of the General Administration Department by which the State Government regretted to accede to the

claim of the appellant for appointment to the IAS and grant of consequent pension relief on that basis.

7. Challenging the order dated 05.06.2000, the appellant came forward with the present writ petition in OWP No. 772/2000.

8. In the present writ petition the appellant based his claim mainly on Rule 4 (1) (c) read along with Rule 8 (3) (a) and Rule 9 (1) of the Rules as

well as Rule 3 of IAS (Appointment by Promotion) Regulations, 1955 and Rule 1 of IAS (Appointment by Selection) Regulations, 1956.

9. The learned Single Judge having declined to grant any relief to the appellant the present appeal has been preferred challenging the order of the

learned Single Judge.

10. We heard Mr. Ashok Parihar, learned counsel for the appellant, Mr. Gagan Basotra, AAG, for the State Government and Mr. K. K.

Pangotra, Assistant Solicitor General for Union of India.

11. Mr. Parihar, learned counsel for the appellant in his submissions contended that under Rule 4 (1) (b) and (c) read along with Rule 8 (2) and

Rule 9(1), it was incumbent upon the State Government to consider Non-State Civil Service Officers of the State in the 33.13% quota of posts

earmarked for the States in the IAS Cadre, that for those categories of Non-State Civil Service Officers falling under Rule 4(1) (c), 15% of the

posts out of 33.13% should be separately earmarked and in that quota the appellant's claim ought to have been considered. According to the

learned counsel, since the appellant was admittedly rated as an Outstanding/ Exemplary Officer as per the Annual Confidential Reports, without

considering his case by the Selection Committee the State Government ought not to have proceeded with the selection of even candidates falling

under Rule 4 (1) (b), namely, the members of the State Civil Service Officers. According to the learned counsel, since the proviso to Regulation 1

(ii) of IAS (Appointment by Selection) Regulations, 1956 states that the State shall not ordinarily consider the persons who have attained the age

of 54 years, on the ground of attaining 54 years the case of the appellant cannot be straightaway rejected. Learned counsel also contended that

merely because appellant was the only Outstanding Officer, falling under the category of Special circumstances, his claim could not have been

rejected on the simple ground that there was no other Outstanding Officer available for considering the relative merits. The learned counsel further

contended that the order of the learned Single Judge in having accepted the stand of the respondent-State on the above grounds was liable to be

set aside.

12. Mr. Gagan Basotra, learned AAG in his submissions, by relying upon the decision of the Hon'ble Supreme Court reported in P.M. Bayas Ors.

Vs. Union of India and others, , submitted that in the absence of any special circumstances warranting consideration of candidates falling under

Rule 4 (1) (c), it was not obligatory for the State Government to consider any Outstanding candidate under Rule 4 (1) (c) as a matter of course.

Learned AAG than contended that when in the year 1992 itself the appellant crossed the age of 54 years, his claim could not be considered for

induction when the Selection Committee met in the year 1995. It was further contended that since the appellant was the sole officer under the

category of Outstanding Officer, and since there was no other officer in that category, the State Government was not in a position to make a

comparative study in order to consider his claim under Rule 4(1) (c). Learned Additional Advocate General strenuously contended that it was for

the State Government to decide whether or not any one candidate should be considered falling under the category of Rule 4(1) (c). It was lastly

contended that in the light of the law laid down by the Hon'ble Supreme Court in P.M. Bayas Ors. Vs. Union of India and others, , it is always

open to the State to decide whether or not a candidate not belonging to State Civil Service should be considered for induction in public interest.

13. Having heard the learned counsel for the appellant as well as learned AAG and learned Assistant Solicitor General for the respondents and

having bestowed our serious consideration to the relevant rules, Regulations and the material papers placed before us, we feel it appropriate to first

set out the legal position as prescribed under the relevant Rules and Regulations before considering the contentions of the appellant and the

respondents.

14. The relevant rules which are required to be noted are Rule 4 (1) (c), Rule 8 (1), (2) and 3(a), Rule 9 (1) with its proviso of the Indian

Administrative Service (Recruitment) Rules, 1954 and Regulation 3 (2) of the Indian Administrative Service (Appointment by Promotion)

Regulations 1955 and Regulation 1 of the Indian Administrative Service (Appointment by Selection) Regulations, 1956, which reads as under:-

4. Method of recruitment to 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).....

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

(c) By selection, in special cases from among persons, who hold in a substantive capacity of a State and who are not members of a State Civil

Service.

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 Government 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.

(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 Governments 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 or that State *[but who holds a gazetted post in a substantive capacity].

(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)....

9. Number of persons to be recruited under rule 8.- (1) the number of persons recruited under rule 8 in any State or group of States shall not, at

any time, exceed $33 \frac{1}{3}$ per cent of the number of (those posts as are shown against items 1 and 2 of the cadre 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 rule 8 shall not at any time exceed 15 per cent of the total number of posts

calculated in the manner laid down in sub-rule (3) for filling up by such promotion and selection.

IAS (Appointment by Promotion) Regulations, 1955:

1, Rule-3 (2): 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 in which it meets.

Provided that a member of the State Civil Service whose name appears in the select list in force immediately before the date of the meeting of the

Committee shall be considered for inclusion in the fresh list, to be prepared by the Committee even if he IAS (Appointment by Selection)

Regulations, 1956:

1. In accordance with the provision contained in sub-rule (2) of rule 8 of the Recruitment Rules, the State Government may, from time to time,

consider the cases of persons not belonging to the State Civil Services but serving in connection with the affairs of the State or States in case of

Joint Cadres, who-

(i) are of outstanding merit and ability, and

(ii) have completed not less than 8 years of continuous service under the State Government or in the case of a joint cadre, under any one of the

State Governments constituting a Joint cadre, in a gazetted post having duties comparable in importance and responsibility to that of the State Civil

Service and who is holding that post in a substantive capacity and propose the name of officer suitable for appointment to the service.

Provided that the State Government shall not ordinarily consider the cases of persons who have attained the age of 54 years.

(underlining is ours)

15. Rule 4 (1) prescribes three channels of recruitment to the service. Rule 4(1) (a) relates to the direct induction into IAS by holding a competitive

examination. Rule 4(1) (b) provides for promotion of substantive members from amongst the State Civil Service and in the case of Jammu and

Kashmir State it is from the members of Kashmir Administrative Services (in short KAS). Under Rule 4 (1) (c) recruitment can also be made by

selection in special cases from amongst the officers who hold substantive gazetted posts in connection with the affairs of the State and who do not

belong to KAS. In respect of cases falling under Rule 4 (1) (c) i.e. persons holding substantive gazetted posts in the employment of the State other

than members of KAS, further prescriptions have been set out in Rule 8 (2) and 8 (3) (a) as well as Rule 9.

16. In Rule 9 the maximum number of persons who can be recruited from amongst the officers in KAS and Non-KAS falling under Rule 4 (1) (b)

and (c) and Rule 8(1) and (2) have been prescribed. As per the said Rule, such recruitment from amongst those two categories should not at any

time exceed 33.13% of the available posts in relation to that State. The Proviso to Rule 9(1) further stipulates that number of persons who can be

inducted from the category of Officers covered by Rule 4(1) (c) read with Rule 8 (2), should not at any time exceed 15% of the total number of

posts calculated in the manner laid down in Sub-Rule 3 of Rule 8 for filling up for such promotion and selection.

17. Here and now we wish to make it clear that the said prescription contained in proviso to Rule 9 (1) only means that from out of 33.13%

earmarked under Rule 9(1), any selection from amongst the persons covered by Rule 8(2) cannot exceed 15% of the said 33.13%. To be more

precise, the stand of the appellant's counsel that the proviso to Rule 9(1) provides for a specific quota of 15% to be earmarked for those category

of persons to be recruited falling under Rule 8(2), cannot be accepted. On the other hand it only means that any recruitment from that category

falling under Rule 8(2) cannot exceed 15% of 33.13%.

18. As far as Rule 8(2) is concerned, when the said Rule is read along with Rule 4(1) (c), it provides for recruitment of officers to be inducted into

IAS from amongst persons who hold gazetted posts in connection with the affairs of the State and who do not belong to State Civil Service,

namely, KAS but could be considered as a special case in special circumstances on the recommendations of the State Government. Such

recruitment can be made in consultation with the Union Public Service Commission. Rule 8 (2) itself indicate what would be the special

circumstances by stating that those officers falling in the said category, who display Outstanding ability and merit on their service in connection with

the affairs of the State, though they do not belong to KAS.

19. Therefore, reading the expression ""special cases"" in Rule 4 (1) (c) and ""special circumstances"" used in Rule 8(2), the question for consideration

is whether it would only mean certain special circumstances existing in the situation of a State or would warrant consideration of an officer falling

under the said category or such special case/special circumstances would be relatable to the officer himself.

20. In this respect it will be worthwhile to be guided by the decision of the Hon'ble Supreme Court reported in P.M. Bayas Ors. Vs. Union of

India and others, , wherein this very Rule 4 (1) (c) and Rule 8(2) came up for interpretation and the Hon'ble Supreme Court have laid down the

manner in which those rules are to be read and applied. Paragraph nos. 8, 9 and 10 of the said decision throws sufficient light on this aspect which

can be usefully referred to and which reads as under:-

8. 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 ""be 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 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 Regulations 3(1) and 3(4A) 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 Service 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.

9. 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 called out by us in

the para above.

10. 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(4A) 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 and 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.

21. When we apply the said ratio vis-à-vis Rule 4(1) (C) and Rule 8(2), it is crystal clear that the special cases from amongst persons would only

refer to those officers who establish their Outstanding merit and ability while serving the State and who are not members of the State Civil Service,

namely, in the case on hand KAS. The Hon'ble Supreme Court made it clear that it is the outstanding merit and ability which makes the officer a

special case in terms of Rule 8(2) and as well as Rule 4(1) (C). The Hon'ble Supreme Court, however, made it clear by referring to Regulation

3(1) that the special circumstances required to be seen are the requirement of prescribed number of years of continued service in a gazetted post in

the State Government other than KAS and who possess outstanding merit and ability, coupled with the satisfaction of the State Government that in

public interest it is necessary to consider such officers for promotion to the IAS.

22. Having thus analyzed the implication and the requirement while invoking Rule 4(1) (C) read along with Rule 8(2), one other relevant factor to

be kept in mind is even if an officer can be said to fall under the prescription contained in Rule 4(1) (C) read along with Rule 8(2), namely, that

belonging to a Non-KAS cadre, serving in the State as a gazetted officer continuously having served for the required number of years of service

with outstanding merit and ability and also in the consideration of the State in public interest there was a need to consider such an officer for

induction into IAS, by virtue of the proviso to Rule 1(ii) of the Indian Administrative Service (Appointment by Selection) Regulations, 1956, the

State Government cannot ordinarily consider such persons if they have attained the age of 54 years. Though under the said proviso it is stated that

such age restriction would be applicable in the ordinary circumstances, it will have to be held that what are the extra ordinary circumstances can

only be in the exclusive consideration and conclusion of the State Government. In the first place such extra ordinary situations should be prevalent

and that should be to the satisfaction of the State Government in order to give a go-bye to the prescription of age restriction of 54 years. It will not

be for any one individual officer to state that his case would fall within the category of extra ordinary situation and thereby the age restriction of 54

years should not be applied to his case. In this context it will be appropriate to note the legal principles set out by the Hon'ble Supreme Court. In

the decision reported in AIR 2010 SC 1682, Union of India and anr. v. Hemraj Singh Chauhan and others, the Hon'ble Supreme Court has held

as under in paragraph nos. 42 and 43:-

42. This Court is not very much impressed with the aforesaid contention. The word 'ordinarily' must be given its ordinary meaning. While

construing the word the Court must not be oblivious of the context in which it has been used. In the case in hand the word 'ordinarily' has been

used in the context of promotional opportunities of the has to be construed in order to fulfill the statutory intent for which it has been used.

43. The word 'ordinarily', of course, means that it does not promote a case Iron rule, it is flexible (See Jasbhai Motibhai Desai Vs. Roshan Kumar,

Haji Bashir Ahmed and Others, , at page 682 (para 35): (AIR 1976 SC 378). It excludes something which is extraordinary or special [Eicher

Tractors Limited, Haryana v. Commissioner of Customs, Mumbai (2001) 1 SCC 315: (AIR 2001 SC 196 : AIR 2000 SCW 4080), at page 319

(para 6)]. The word 'ordinarily' would convey the idea of something which is done 'normally' Krishan Gopal Vs. Sri Prakashchandra and Others,

and 'generally' subject to special provision Mohan Baitha and Others Vs. State of Bihar and Another, .

(Underlining is ours)

23. Therefore, when it would be within the realm of State Government to come

to a conclusion that in the case of a particular officer an extra ordinary situation would warrant consideration of his induction into IAS irrespective of the concerned officer crossing the age bar of 54 years, certainly it will not be for the Court to either direct the State Government to consider the case of an officer on the footing that his case would fall within the ambit of extra ordinary situation in order to consider his case in spite of he having crossed the age bar of 54 years. Once the said limitation of this Court is ascertained, keeping all the above statutory prescriptions in mind the following principles can be laid down on a reading of Rule 4(1) (C), Rule 8(2) and Rule 9(1) of the Indian Administrative Service Recruitment Rules, 1954 read along with Regulation 3 (1) and (2) of the Indian Administrative Service (Appointment by Promotion) Regulations 1955 and Rule 1 of the Indian Administrative Service (Appointment by Selection) Regulations 1956:-

(a) While Rule 4(1) (a) provides recruitment for induction into IAS directly by holding a competitive examination, under Rule 4(1) (b) and (c) such recruitment can also be made from amongst the officers serving in the State Civil Service, namely, KAS in the Jammu and Kashmir State and also from amongst gazetted officers with prescribed number of years of service who served as such continuously with outstanding merit and ability and thereby falling within the expression of ""special cases/special circumstances"".

(b) The cases falling under Rule 4(1) (b) and (c) could be a category for which Rule 9(1) provides for a maximum of 33.13% of the number of posts of the cadre strength in relation to that State.

(c) Even amongst such maximum percentage of posts within which the officers falling under Rule 4(1) (b) and (c) could be considered, those falling under Rule 4(1) (c) cannot exceed 15% of the said 33.13%.

(d) Even if an officer would be eligible for consideration as a special case/special circumstances covered by Rule 4 (1) (c) but yet it should be based on the satisfaction of the State Government that in public interest it is necessary to consider such officer for promotion to the IAS.

(e) Even if the criteria of special case/special circumstances as well as the satisfaction of the State Government in public interest in relation to that

officer also exists, again it is for the State Government to reach a conclusion that in the case of that officer an ordinary rule of attainment of 54

years of age can be relaxed.

(f) Going by Rule 4(1) (b) and (c) read along with Rule 8 (2) and Rule 9(1), it will have to be held that there is no necessity that there should be

more than one officer in the category of special case/special circumstances, namely, possessing outstanding merit and ability, for the State

Government to consider any one in that category. In other words, even if one officer of outstanding merit and ability is available, the State

Government should consider his case if he is otherwise eligible and the State is satisfied in public interest to consider his case subject to its further

satisfaction of the officer satisfying the age requirement or in the State's satisfaction irrespective of crossing 54 years he was an extra ordinary

officer to be considered for induction into IAS.

24. Keeping all the above principles in mind, when we examine the case on hand, at the very outset it will have to be noted that in April 1992 the

appellant crossed the age bar of 54 years. The fact remains that the appellant came forward to challenge his non-selection for the first time in

March, 1995, by which time the appellant was in the age group of 56-57 years. Therefore, unless the case of the appellant was an extra ordinary

one in the mind of the State in order to relax his age for being considered to be inducted under Rule 4(1)(c), there was no vested right in the

appellant to claim consideration of his case in that category.

25. The contention of the appellant that in the case of some other officers the State Government has even included their names in the panel for

consideration by the Union Public Service Commission at the age of 56 years or 57 years, cannot be a ground to accede to his claim for issuing

any direction to the State Government to consider his case for inclusion in the panel for selection. On this ground itself the appellant's claim made in

the writ petition should fail. However, we are obliged to examine the correctness of the order of the learned Single Judge on other aspects since

we are of the considered opinion that the conclusion of the learned Single Judge on certain other grounds while rejecting the case of the appellant,

cannot be allowed to stand as we find that such conclusions are not in conformity with Rule 4(1) (c) read along with Rule 8(2) and Rule 9(1) of the

Rules.

26. The respondent-State, while rejecting the appellant's representation in its

proceedings dated 05.06.2000 has set out four circumstances for such rejection. In the first place it is stated that prior to 01.01.1998, as per Rule 3(1) of Indian Administrative Service (Appointment by Selection) Regulations, 1956, in respect of cases falling under Rule 4(1) (b) there was no obligation for the State Government to even venture to undertake the said method of recruitment and, therefore, the appellant cannot insist for consideration of his case as falling under Rule 4(1) (c). It was then stated that by virtue of the ratio laid down by the Hon'ble Supreme Court in P.M. Bayas Ors. Vs. Union of India and others, , the State Government was not inclined to follow the said method of recruitment. It was further stated that since other than the appellant, there was no other comparable officer, the State Government was not in a position to consider his case. Lastly it was stated that since the appellant was over-aged, and, therefore, he was not eligible to be considered.

27. As far as the first and second circumstances stated by the respondent-State are concerned, having regard to our conclusions and the principles laid down in paragraph No. 23 of this order, we hold that the understanding of the State Government of Rule 4(1)(c) was not correct and that if an officer would fall under category of special case/special circumstances as per Rule 4(1) (c), it was obligatory on the part of the State to have considered such an officer though it was always open to the State Government not to proceed further on other grounds such as not being satisfied in public interest or due to crossing of the age bar of 54 years and there being no extra ordinary situation warranting consideration of the case of the appellant.

28. Even going by the decision of the Hon'ble Supreme Court reported in P.M. Bayas Ors. Vs. Union of India and others, , while non-consideration may be due to other circumstances, the consideration on the basis of special case/special circumstances would be a rule, non-inclusion can be only on other grounds.

29. As far as the third circumstance is concerned, as has been set out in the principles laid down in paragraph No. 23 of this order, even if a single case of one officer falling under special case/special circumstances, namely, based on outstanding merit and ability, merely because there was no other officer available in the said category, the case of such an officer could not

have been excluded from consideration. Such a stand of the State, to say the least, was fallacious (containing a fallacy - one founded on false reason).

30. As far as the fourth reason, namely, that the appellant had crossed the age of 54 years is concerned, the said stand of the State cannot be found fault with.

31. In the light of our above findings, the conclusion of the learned Single Judge, that the rule is couched in such a manner that it is not necessary to

resort to this method of recruitment, namely, selection, cannot therefore stand. Therefore, the reasoning of the learned Single Judge that the Rule

does not make it imperative for the State to identify person belonging to this category and make recommendation in every selection, would virtually

nullify the existence of Rule 4 (1) (c) if really one such officer is available for consideration, satisfying all the eligibility requirements, warranting

consideration. If such a conclusion of the learned Single Judge is allowed to stand that would provide scope for arbitrariness and without any

rhyme or reason the State Government would be invested with authority to totally ignore an officer falling under Rule 4(1) (c), which cannot be

accepted. In fact the opening words of Rule 4(1) states that "Recruitment to the Service after the commencement of these Rules, shall be by

following methods" and thereby giving a mandate to the Recruitment Authorities to resort to the methods prescribed therein. Therefore, the said

part of the order of the learned Single Judge is set aside. Similarly the conclusion of the learned Single Judge that, there was no other officer

available in order to enable the State Government to consider the relative merit of the officers, cannot also be a ground for non-consideration of the

claim of the appellant since he was the only officer in the category of special case/special circumstances, namely, outstanding merit and ability. The

said part of the order of the learned Single Judge is also set aside. But since the appellant crossed the age bar of 54 years as early as in the year

1992 and there was no extra ordinary situation available to consider his case, there is no scope to grant any relief to him in the writ petition as well

as in this appeal. We are not, therefore, inclined to interfere with the ultimate conclusion of the learned Single Judge while rejecting the writ petition.

32. The appeal, therefore, fails except to the extent to which we set aside the

order of the learned Single Judge, as indicated in the penultimate paragraph of this order and same is dismissed.

33. No costs.