

(2010) 08 DEL CK 0203

In the Delhi High Court

Case No : Writ Petition (C) 6474 of 2003

Union of India (UOI)

APPELLANT

Vs

J.D. Naharwal and Others

RESPONDENT

Date of Decision : 11-08-2010

Acts Referred:

Administrative Service (Appointment by Selection) Regulations, 1997 — Regulation 3, 5, 5(1)
Administrative Service (Fixation of Cadre Strength) Regulations, 1955 — Regulation 3, 3(1), 3(4A), 5
Administrative Service (Recruitment) Rules, 1954 — Rule 2, 4(1), 4(2), 4(2), 5, 5
Constitution of India, 1950 — Article 14

Citation : (2010) 5 SLR 214

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : Atul Nanda, in W.P. C 6474/2003 and L.R. Khatana, in W.P. C 7220/2003, for the Appellant; G.D. Gupta S.K. Sinha, for R-1 in W.P. (C) 6474 and 7220/2003, Naresh Kaushik, for UPSC in W.P. (C) 6474/2003, Yashpal Rangi, for R-3/State of Haryana in W.P. (C) 6474/2003, Atul Nanda, for R-2, Naresh Kaushik, for R-3/UPSC and Yashpal Rangi, for R-4/State of Haryana in W.P. (C) 7220/2003, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—We are concerned in this writ petition with the issue of filling up of the vacancies in the Indian Administrative Service by promotion which is to be filled in accordance with the provisions contained in the Indian Administrative Service (fixation of Cadre Strength) Regulations, 1954. The Central Government has also framed the Indian Administrative Service (Recruitment) Rules, 1954 which provides that there are three methods of recruitment to the IAS; i.e.:

(a) By a competitive examination;

(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.

2. As per Clause (a) of sub Rule 1 of Rule 4, the recruitment is by competitive examination. Clause (b) provides for recruitment by promotion of a substantive member of the State Civil Service. Clause (c) stipulates following mode:

By selection, in special cases from among persons, who hold in a substantive capacity gazette posts in connection with the affairs of a State and who are not members of a State Civil Service.

3. In so far as recruitment by promotion or selection for appointment to State and joint cadre is concerned it is regulated by Rule 8 of 1954 Rules, which reads as under:

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 23[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 24[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).

4. Central Government has also framed the Indian Administrative Service (Appointment by Promotion) Regulations, 1995 (herein referred to as "the Promotion Regulations, 1995"). Appointment by selection is governed by the Indian Administrative Service (Appointment by selection), Regulations, 1997 (herein referred to as Regulations 1997).

5. In the year 2001 four vacancies were earmarked in the State quota for inclusion in Indian Administrative Service from the State of Haryana two posts were earmarked for officials who were members of State Civil Service whereas the other two were earmarked for Non-State Civil Services in accordance with Sub-clause (c) Sub-rule 1 of Rule 4 of 1954 Regulations as aforesaid. Sh. J.D.Naharwal, respondent No. 1 was a member of the Haryana State Civil Service (Executive Branch) having joined the service in September, 1983 and was an aspirant to be included in Indian Administrative Service. Sh. Jai Paul Singh Dahiya was another aspirant who wanted his inclusion from category of Non-SCS officers.

6. However, on account of the deficiency in supply of information regarding eligible candidates to be considered in the category of Non-SCS officers, UPSC in exercise of the powers available with it as per Regulations 5 (1) (c) of the Regulations of 1997 declared that it was not practicable to hold a meeting of the Selection Committee during the relevant year i.e. in the year 2001 in the circumstances explained in the letter dated 04.02.2002 and accordingly Union of India decided to carry forward those two vacancies in the next year 2002. It may be observed here that Shri J.D.Naharwal who was not even in the zone of consideration in the year 2001 if the vacancies meant for State Civil Service were to be confined only to two made a representation assailing the aforesaid decision to carry forward the vacancies to the next year as it was his stand that those vacancies remaining unfilled with respect to the category of Non-SCS officers were then required to be considered available for SCS officers of the State cadre in the year 2001 itself and if that would have been done the said Shri Naharwal being member of State Civil Services would have been in the zone of consideration if vacancies stood increased to 4.

7. As his representation was not considered, Shri J.D.Naharwal aggrieved from the aforesaid, declaration and decision taken by Union of India, arrayed as the first respondent in both the aforesaid writ petition, and one Jai Paul Singh Dahiya who filed a separate writ petition bearing No 3414/2003 which now stands dismissed in default vide order dated 03.08.2010 assailed the aforesaid declaration before the Central Administrative Tribunal to set aside the aforesaid action of the Union of India and to direct inclusion of these 2 posts as part of the State Civil Services officers cadre for the year 2001 itself and to fill them up by holding a review DPC. Sh. Jai Paul Dahiya on the other hand wanted carrying forward of these vacancies in the quota of Non-SCS officers for the next year.

8. The application filed by Shri Jai Paul Singh Dahiya was registered as OA No. 115/2003 while that of Shri J.D.Naharwal was registered as OA No. 2042/2002 and both these applications were decided by a common order by the Central Administrative Tribunal Principal Bench vide order dated 02.05.2003.

9. Vide impugned order the Tribunal dismissed the application filed by Sh.Jai Paul Singh Dahiya but allowed the application of Shri J.D.Naharwal the first respondent and gave the following directions:

28. O.A. No. 2042/2002 in the case of J.D.Naharwal is allowed and it is directed that:

(a) the decision to fill up the vacancies in the Indian Administrative Service of Haryana Cadre from amongst nonState Civil Service Officers during the year 2001 is quashed;

(b) the decision to carry forward two vacancies earmarked for non-State Civil Service officers is also quashed;

(c) the vacancies, if any would revert back to the State Civil Service Officers eligible for the year 2001; and

(d) a review Departmental Promotion Committee should be held to prepare the revised list of the remaining eligible State Civil Service officers who may be within the zone of consideration.

10. Aggrieved by the aforesaid directions UOI has filed Civil Writ Petition No. 6474/2003 praying for setting aside the order passed by the Tribunal and to permit them to carry forward the aforesaid 2 vacancies to the year 2002. Praveen Kumar, the second writ petitioner has filed CWP No. 7220/2003 without having approached the Central Administrative Tribunal and coming directly to this Court for seeking a similar direction as prayed for by Union of India. According to him, if vacancies are carried forward to the next year, he would come in the zone of consideration for the next year as a member of Haryana State Civil Service, even though he was not in the zone of consideration for the year 2001 and even if the vacancies are considered as part of the quota meant for State Civil Service for the said year.

11. It is the submission of both the petitioners that the directions given by the Tribunal could not be given as they are in the teeth of Regulation 5 of the 1955 Regulations. Submissions were that after the vacancies earmarked for Non-SCS Officers for the year 2001 are not filled up and if they are filled up from amongst those Officers who belong to SCS Cadre it will disturb the ratio/quota maintained between the Non-SCS Officers and SCS officers. It is also contended that there is no provision in the Rules for holding year wise DPC. It is also contended of the petitioner that there is also no provision for holding review DPC with reference to the particular year.

12. According to the petitioners the system of carrying forward of vacancies is inbuilt into Regulation 5 of the aforesaid Regulations, vacancies of each year are determined with reference to substantive vacancies of 1st January of the year. It is also submitted that first proviso of Regulation 5(1) provides that no meeting of the Committee shall be held and the selected list for the year in question shall be prepared when there are no substantive vacancies or the Central Government in consultation with the State Government decides that recruitment shall be made during the year to substantive vacancies. This Rule clearly indicates that it is not necessary that determination of vacancies and preparation of the Select List

must be done for each of the year. It is further argued that the vacancy which is not filled up in a particular year gets merged with the pool of vacancies to be determined for the subsequent year(s) and there is no concept of wait list and review DPC in the Rules or in the Regulations. Learned Counsel further argues that method of recruitment to be adopted for the purpose of filling up particular vacancy or vacancies during particular year is to be determined by the Central Government in consultation with the Commission and the State Government concerned. Where a vacancy occurs in a State Cadre which is to be filled under the provisions of Rule 8, the vacancy shall be filled by promotion of the member of State Civil Service or as the case may be, by selection of any other office serving in connection with the affairs of the States. This is the position contained in Rule 4(2) (a)(b) and Rule 8(3) (a) of the IAS Recruitment Rules, 1955.

13. To support their contentions they also relied upon a judgment of the Hon''ble Supreme Court in the case of Tamil Nadu Administrative Service Officers Association and Another Vs. Union of India and Others, of the judgment it has been held:

32. We think that this is a matter of policy which will be uniformly applicable after the amendments. Further, vacancies which are not filled up in one year will automatically get carried forward to the next year if they become actual vacancies by then. Therefore, the challenge of the petitioners that this amendment is arbitrary and violative of Article 14 of the Constitution cannot be accepted.

14. The Tribunal however having considered the matter in detail in the light of the rule position did not find favour with the Union of India who was a party before the Tribunal. The Tribunal has observed:

17. We have already referred to above that the term "year" means the period commencing on the first day of January and ending on the 31st December of the same year. The Regulations of 1955 prescribe that no meeting of the Committee shall be held and no list for the year shall be prepared if substantive vacancies do not exist or the Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies. But it is mandatory that the select has to be prepared separately for each year from the date the Committee could not meet as on the 31st December of each year. To this extent, there is little controversy. The Supreme Court in the case of P.M. Bayas Ors. Vs. Union of India and others, was considering the Recruitment Rules of 1954 particularly the expression "in special cases from among persons" in Rule 4(1)(c) of the said Rules and the expression "In special circumstances" in Rule 8 (2) of the said Rules. The relevant rules were interpreted and it was held:

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(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.

18. Similarly in the case of Union of India (UOI) and Others Vs. Vipinchandra Hiralal Shah, the controversy was about the failure of the selection committee to meet during a particular year to prepare the select list for promotion to the Indian Administrative Service. The Supreme Court held that if for any reason the selection committee is not able to meet during a particular year, the committee when it meets next, should while making the selection, prepare a separate list for each year keeping in view the number of vacancies in that year. In paragraph 11, the findings returned were:

11. It must, therefore, held that in view of the provisions contained in Regulation 5, unless there is a good reason for not doing so, the Selection Committee is required to meet every year for the purpose of making the selection from amongst State civil Service officers who fulfil the conditions regarding eligibility on the first day of the January of the year in which the Committee meets and fall within the zone of consideration as prescribed in Clause (2) of Regulation 5. The failure on the part of the Selection Committee to meet during a particular year would not dispense with the requirement of preparing the Select List for that year. If for any reason the Selection Committee is not able to meet during a particular year, the Committee when it meets next, should, while making the selection, prepare a separate list for each year keeping in view the number of vacancies in that year after considering the State Civil Service officers who were eligible and fall within the zone of consideration for selection in that year.

19. From the aforesaid decisions, it is clear that the clubbing of vacancies per year is not permissible. As a general rule, the promotion to the Indian Administrative Service has to be made from the State Civil Service officers and the persons not belonging to the State Civil Service come as an exception. They can only be taken into service as per their fixed quota but subject to their satisfying the necessary norms which we have already referred to above and require no repetition.

20. The Regulations of 1997 explicitly deals with this controversy. At the risk of repetition, we mention that term "year" means the period commencing on the first day of January and ending 31st December of the same year. Rule 4 of the Regulations of 1997 specifically deals with the cases of persons not belonging to the State Civil Service but serving in connection with the affairs of the State.

21. Regulation 5 refers to the representation of a list of suitable officers by the committee. Necessarily, the selection of suitable officers has to be made and meeting held for the year in question but an important aspect of the same is that no meeting of the committee has to be held and no list of any non- State Civil Service officers is to be prepared if there are no substantive vacancies and the Commission declares that it is not practicable to hold a meeting of the Committee during that year. This declaration of the Union Public Service Commission is a very important act because once such a declaration is issued, no meeting should be held to fill up the vacancies from the non- State Civil Service officers. In the case of J.D.Naharwal, our attention has been drawn towards an order issued by the Union Public Service Commission dated 09.01.2002 which reads as under:

I am directed to refer to the subject mentioned above and to say that a proposal for convening the selection committee meeting for selection of Non-SCS Officers for appointment to the IAS of Haryana Cadre during the year 2001 was received from the Govt. of Haryana on 26.12.2001. The Govt. of India had determined the number of vacancies available for Non-SCS officers as 2 (two). The State Govt. had recommended the names of four officers against the two vacancies.

2. Since the proposal of the State Govt. was incomplete, a letter was issued on 27.12.2001 requesting the State Govt. to furnish the deficient information and records. They were also requested to furnish some more names since a maximum of 10 officers could be considered against two vacancies. The State Govt. vide their Fax message dated 27.12.2001 & 28.12.2001 furnished some of the deficient information and records. However, the clarification furnished by them regarding the eligibility of some of the officers was not complete. The proposal of the State Govt. having been received in the Commission's office only a few days before the end of the year, the deficiencies could not be made good by the State Govt. within the stipulated time. As per the provisions of the IAS (Appointment by Selection) Regulations, 1997, the Select List for the year 2001 for appointment of Non-SCS officers was to be prepared latest by 31.12.2001. In the circumstances explained above, the meeting of the selection committee for

preparation of a Select List of Non-SCS officers (IAS- Haryana Cadre) could not be held during the year 2001.

3. Accordingly, in exercise of the powers conferred by Clause (c) of Regulation 5(1) of the IAS(Appointment by Selection) Regulations, 1997, the Commission declare that it was not practicable to hold the meeting of the Selection Committee for selection of Non-SCS officers for appointment to the IAS of Haryana Cadre during the year 2001.

In other words, the Union Public Service Commission specifically declared that it was not practicable to hold the meeting of the selection committee for selection of non-state Civil Service officers for appointment to the Indian Administrative Service of Haryana Cadre during the year 2001.

22. Can we say that this declaration by the Union Public Service Commission is meaningless? The answer would be that it is meaningful. The purpose of making such a provision is obvious. Once such a declaration is issued, the right of consideration by the non-State Civil Service officers is lost. The exercise if any is, therefore, in futility. This is for the added reason that the primary right for consideration is that of the State Civil Service officers and consideration of non-State Civil Service officers is an exception. There is no provision to carry forward the said vacancies for the non-State Civil Service officers. It cannot be so carried forward particularly when such a declaration as referred to above had been issued. The clubbing of vacancies otherwise is not permitted.

25. It is unfortunate that a different stand is being taken by the State of Haryana. In fact, the letter of 13.12.2000 written by the Ministry of Personnel, Public Grievances and Pensions addressed to the Chief Secretary, Government of Haryana States otherwise and supports the applicants' view which reads:

I am directed to refer to the communications from the Govt. of India 1st and 2nd cited and the State Government response thereto third cited regarding determining the vacancies for recruitment by promotion to the State IAS cadre during the year 1998, 1999 and 2000 as for posts for each year and to say as follows:

2. In view of the position explained by the State Government, in slight modification of para 4 of the letter 1st cited, it has been decided that recruitment by promotion form among the State Civil Service officer of Haryana to IAS Haryana Cadre may be considered upto 2 posts during 1998, upto 4 posts during 1999 and upto 4 posts during 2000.

3. In terms of the provisions contained in the selection regulations, the decision in regard to the recruitment from this channel is to be taken during the calendar year itself and there is no provision for carry over of vacancies or preparation of year- wise select lists in the subsequent year. In view of the proposal of the State Government to defer recruitment by selection from Non-SCS during the year, in terms of the provisions contained in Rule 4(2)(b) of the IAS(Recruitment) Rules,

1954, read with the provisions contained in Regulation 3 of the IAS (Appointment by Selection) Regulations, 1997, it has been decided that the number of posts against which recruitment may be considered to IAS Haryana cadre from among Non-State Civil Service officers of Haryana during 2000 is NIL."

In other words, it was stated that there is no provision for carrying forward of vacancies to the subsequent years. We find ourselves in agreement with the same keeping in view the rules on the subject and, therefore, it must be held that two vacancies regarding which declaration was given under Regulation 5 of the Regulations of 1997, the respondents cannot carry forward the vacancies and in the case of J.D.Naharwal, they would revert back to the same year to State Civil Services Officers.

15. Sh.L.R.Khatana, Advocate who appears for Sh.Praveen Kumar reiterates the submission made by the Union of India before the Tribunal and submits that in view of Regulation 5 of Regulations of 1997, the vacancies which remain unfilled in the year 2001 though would revert back to the quota of Haryana State Civil Services officials but would have to be carried forward to the next year.

16. The first respondent opposes the aforesaid arguments relying upon the judgment of the Supreme Court in Vipinchandra Hiralal Shah, relied upon by the Tribunal in para 18 of the impugned decision, and the judgment delivered by a Division Bench of this Court in the case of Union of India v. State of U.P. Thr. Chief Secretary Govt. of U.P. CWP 1106/2008 decided on 05.02.2009 wherein the entire issue has been discussed threadbare.

17. We have already noted the judgment of the Supreme Court in Vipinchandra Hiralal Shah's case in para 18 of the order of the Tribunal above. We may now also refer to some of the paragraphs of Justice A.K. Sikri's judgment wherein the issue has been fully gone into while dealing with State Civil Service officers of the State of U.P. It has been held by the Division Bench that the vacancies which remained unfilled in the year 2001 earmark for Non-SCS officers will revert back to the State Civil Services officers and will have to be filled up from amongst the eligible candidates in that very year by holding a review DPC.

18. The relevant paragraphs of this judgment are reproduced hereunder:

We are concerned in this writ petition with the issue of filling up of the vacancies in the Indian Administrative Service by promotion which is to be filled in accordance with the provisions contained in the Indian Administrative Service (fixation of Cadre Strength) Regulations, 1955. The Central Government has also framed the Indian Administrative Service (Recruitment), 1954 which provide that there are three methods of recruitment to the IAS. As per Clause (a) sub Rule 1 the recruitment is by competitive examination. Clause (b) provides for recruitment by promotion of a substantive member of the State Civil Service. Clause (c) with which we are concerned stipulates following mode:

By selection, in special cases from among persons, who hold in a substantive

capacity gazette posts in connection with the affairs of a State and who are not members of a State Civil Service.

As per this clause, non State Civil Service personnel can also be recruited by selection, Rule 2 (g) defines State Civil Service. Appointment to the service as per Rule 6, in so far as recruitment by promotion or selection for appointment to State and joint cadre is concerned, is regulated by Rule 8 of 1954 Rules. As per this promotions are to be made from amongst the substantive members of State Civil Service. However, sub rule (2) of Rule 8 provides another channel as well, namely, selection from non State Civil Service and this provision specifically mentions that it would be from amongst those persons who are of outstanding ability and merit serving in connection with the affairs of the State but not the member of the State Civil Service. We shall refer to this regulation at length at the appropriate stage, as it is the interpretation of this rule which is material for determining the controversy that we are faced with in this writ petition.

Coming back to the rule position for making appointment to the IAS by the promotion method from amongst State Civil Service employees, the Central Government has also framed the Indian Administrative Service (Appointment by Promotion) Regulations, 1995 (herein referred to as "the Promotion Regulations, 1995"). Appointment by selection is governed by the Indian Administrative Service (Appointment by selection), Regulations, 1977 (herein referred to as Regulations 1977).

In the State of UP the selection to the IAS service by promotional method was to be made in the year 2001, 2002, 2004 and onwards. For certain reasons, to be stated herein after, certain vacancies for these years could not be filled up i.e. one vacancy for the year 2001, 2 vacancies for the year 2002 and 7 vacancies for the year 2004. All these vacancies were carried forward by the Central Government to the year 2005 to be filled up along with the vacancies of 2005. Some officers who were eligible for consideration in the previous year challenged this action of the petitioner herein. In so far as this writ petition is concerned, it may be mentioned that two OAs , namely, OA No. 1097/2006 and OA No. 1137/2006 were filed by some such officers (Respondent Nos. 3 to 7 herein) . The action of the petitioner/Central Government was challenged on the ground that vacancy of a particular year should have been filled in that year only and even if it could not be filled for certain reasons, there should be a review DPC for that year to fill up the said vacancy. It was also argued that even if the vacancies to be filled up are related to SCS Cadre and candidates from said cadre were not available, then the vacancies should have been filled from the employees belonging to the officers of State Civil Service. The Tribunal found favour with these submissions of respondent Nos. 3 to 7 (applicants in the said OAs). OA No. 1137/2006 has accordingly been allowed vide judgment dated 15.12.2006. In this judgment various aspects are argued by learned Counsel for either side which have been discussed by the Tribunal in detail with the aid of various judgments of the Supreme Court. Some of them, which are relevant for which

purposes, would be adverted to at the appropriate stage.

19. The Division Bench after taking note of Rule 5 of the Regulations of 1954 further observed:

It is the submission of the petitioner (UOI) that aforesaid directions could not be given which are in the teeth of Regulation 5 of the 1955 Regulations. Submission was that after the vacancies earmarked for Non-SCS Officers for the year 2004 are filled up from amongst those Officers who belong to SCS Cadre it will disturb the ratio/quota maintained between the Non-SCS Officers. It is also contended that there is no provision in the Rules for holding year wise DPC. It is also the contention of the petitioner that there is also no provision for holding review DPC with reference to the particular year. Since these arguments are predicated on the position contained in Rule 5 of the Regulations 1955, we deem it appropriate to reproduce that Rule which is as under:

5. PREPARATION OF LIST OF SUITABLE OFFICERS:

5(1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Civil Service as are held by them to be suitable for promotion to the service. The number of members of the State Civil Service to be included in the list shall be determined by the Central Government in consultation with the State Government, concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under Rule 9 of the Recruitment Rules. The date and venue of the meeting of the Committee to make the selection shall be determined by the Commission;

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

(a) There are no substantive vacancies as on the first day of January of the year in the posts available for the members of the State Civil Service under Rule 9 of the Recruitment Rules; or

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

(c) The Commission, either on its own or on a proposal made by the Central Government or the State Government, considers that it is not practicable to hold a meeting of the Committee during the year, in the facts and circumstances of each case. Provided further that where no meeting of the Committee could be held during a year for any reason other than that provided for in the first proviso as and when the Committee meets again, the Select List shall be prepared separately for each year during which the Committee could not meet as on 31st December of each year.

EXPLANATION: In case of Joint Cadres, a separate select list shall be prepared in respect of each State Civil Service.

The submission of learned Counsel for the petitioner (UOI) is that the system of carry forward of vacancies is inbuilt into Regulation 5 of the aforesaid Regulations, vacancies of each year are determined with reference to substantive vacancies of 1st January of the year. It is also submitted that first proviso of Regulation 5(1) provides that no meeting of the Committee shall be held and the selected list for the year in question shall be prepared when there are no substantive vacancies or the Central Government in consultation with the State Government decides that recruitment shall be made during the year to substantive vacancies. This Rule clearly indicates that it is not necessary that determination of vacancies and preparation of the Select List must be done for each of the year. It is further argued that the vacancy which is not filled in a particular year gets merged with the pool of vacancies to be determined for the subsequent year(s) and there is no concept of wait list and review DPC in the Rules or in the Regulations. Learned Counsel further argues that method of recruitment to be adopted for the purpose of filling up particular vacancy or vacancies during particular year is to be determined by the Central Government in consultation with the Commission and the State Government concerned. Where a vacancy occurs in a State Cadre which is to be filled under the provisions of Rule 8, the vacancy shall be filled by promotion of the member of State Civil Service or as the case may be, by selection of any other office serving in connection with the affairs of the States. This is the position contained in Rule 4(2)(a)(b) and Rule 8(3)(a) of the IAS Recruitment Rules, 1955.

Though the aforesaid arguments may appear to be attractive in the first blush, it loses its sheen and force when we consider these arguments with reference to other provisions of the relevant Rules and Regulations and the manner they are interpreted by the Supreme Court. We observe that all these aspects are considered by the Tribunal in greater details and therefore, it would not be necessary to unnecessarily burden this judgment by repeating the same, more so when after reading the judgment of the Tribunal, we are in agreement with those reasons and the conclusions of the Tribunal. Therefore, we would be indicating our reasons in brief to support the conclusion arrived at by the learned Tribunal.

20. Thus the Division Bench held that the directions given by the Tribunal to hold a review DPC to fill up those vacancies if remained unfilled on account of non-availability of Non-SCS officers in that particular area from amongst the members of service who were within the zone of consideration was legal and valid as it was in the tune with principles of law laid down of the Supreme Court in the case of Union of India and Ors. v. Vipinchandra Hiralal Shah (supra)

21. In the present case also there was no nomination of Non-SCS officers as no list could be prepared because the meeting of the selection Committee could not take place for considering the nomination of NonSCS officers in the year 2001 in the State of Haryana also.

22. This is also the view taken by the Tribunal in the case before us. Accordingly, we hold that directions given by the Tribunal which are in accordance with a decision of the Division Bench of this Court and the issue is no more res integra. In so far as Praveen Kumar is concerned, in addition to the reasons as aforesaid we also find that he having approached this Court directly is not even otherwise entitled to maintain the writ petition. Further the Hon''ble Supreme Court in Civil Appeal No. 2653-54 of 2010 arising out of SLP (C) No. 7686-7687/2009 in the case of Rajeev Kumar and Anr. v. Hemraj Singh Chauhan and Ors. has observed:

12. The Constitution Bench explained the said statement of law by reiterating in the next sentence:

...By this, we mean that it will not be open for litigants to directly approach the High Court even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

13. On a proper reading of these two sentences, it is clear:

(a) The Tribunals will function as the only Court of first instance in respect of the areas of law for which they have been constituted.

(b) Even where any challenge is made to the vires of legislation, excepting the legislation under which Tribunal has been set up, in such cases also, litigants will not be able to directly approach the High Court overlooking the jurisdiction of the Tribunal''.

14. The aforesaid propositions have been repeated again by the Constitution Bench in the penultimate paragraph 99 at page 311 of the report in the following words:

...The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned....

15. In view of such repeated and authoritative pronouncement by the Constitution Bench of this Court, the approach made to the High Court for the first time by these appellants in respect of their service disputes over which C.A.T. has jurisdiction, is not legally sustainable. The Division Bench of the High Court, with great respect, fell into an error by allowing the appellants to treat the High Court as a Court of first instance in respect of their service disputes, for adjudication of which C.A.T. has been constituted.

23. Before parting with the case, we may note that in the case which was decided by our co-ordinate bench in respect of the employees of U.P. State on account of carrying forward the vacancies of the year 2001, 2002 and 2004 this

Court has observed that not only the vacancies were carried forward but they were not even filled up. As on the date of the judgment delivered by the coordinate bench on 05.02.2009 there were 106 vacancies which were to be filled up under the promotion quota thereby seriously affecting the functioning of the administration and denying the dues of the State Services Officers in the quota of Indian Administrative Services. The case of Haryana also appears` to be no exception.

24. Accordingly, both the writ petitions are dismissed with no orders as to costs.