

Before : Gokal Chand Mital & Amarjeet Chaudhary, JJ.

K. S. YADAV AND ANOTHER,—Petitioners.

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 3583 of 1990.

29th May, 1990.

*Indian Administrative Service (Recruitment) Rules, 1954—Rls. 4 & 8—Indian Administrative Service (Appointment by Selection) Regulations, 1956 as amended by second amendment regulations, 1989—Regl. 3—Rule 8(2) of 1954 Rules—Nature of provisions—Rule is directory—Selection of non-State Civil Service to Indian Administrative Service.*

*Held*, that a close look on the provisions of rule 8 of the 1954 Rules, would show that for the members of the State Civil Service, the appointment to I.A.S. is a promotional avenue whereas for the non-State Civil Service officers, it is only in special circumstances that the Central Government may recruit to the I.A.S. any non-State Civil Service officer of outstanding ability and merit serving in connection with affairs of the State and holding a gazetted post in a substantive capacity. The words under-lined above are important to clinch the matter and impel us to reach a conclusion that if owing to situational demand and exigencies of the administration the State Government decided to offer the services of the State Civil Service officers to the I.A.S. in strict compliance of the rules, there is no reason to hold the action of the State Government in not recommending the non-State Civil Service officers was in any way discriminatory. Otherwise also, the provisions of rule 8(2) of the 1954 Rules are simply directory and not mandatory. It is not incumbent on the Central Government to make recruitment to I.A.S. of the person who are not the members of the State Civil Service.

(Paras 8 & 9)

*Petition under articles 226 and 227 of the Constitution of India praying that the record of the case be summoned and after perusing the same :*

- (i) *a writ of Mandamus be issued directing the respondents to place on record the order cancelling the decision taken in pursuance to letter Annexure P-1 and after perusing the same, issue a writ of Certiorari quashing the same ;*
- (ii) *issue a writ of Mandamus directing the respondents to fill up the two posts of IAS Cadre out of non-State Civil Service Officer as decided,—vide Annexure P-1 ;*
- (iii) *issue a writ of Mandamus directing the respondents to consider the cases of the petitioners for promotion to IAS Cadre in pursuance to order Annexure P-1 ;*

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- (iv) *issue a writ of Prohibition restraining the respondents from recommending the names of State Civil Service officers to the two posts reserved for non-State Civil Service officers ;*
  - (v) *issue any other order, writ or direction as this Hon'ble Court deems fit under the circumstances of the case ;*
  - (vi) *filing of advance copies of notice of motion and certified copy of Annexure P-1 may kindly be dispensed with ;*
  - (vii) *cost of this petition be awarded in favour of the petitioners.*

*It is further prayed that during the pendency of this writ petition, the respondents be directed to interview the petitioners also against the recommendations already made to the State Government OR in the alternative the interview to be held on 24th March, 1990 be ordered to be stayed.*

*Vinod Sharma, Advocate, for the Petitioners.*

*S. C. Mohunta, A.G. Haryana and Ram Chander D.A.G., Haryana.  
J. L. Gupta, Sr. Advocate with Mrs. Nirmaljit Kaur, Advocate,  
for the Respondents.*

#### ORDER

*Amarjeet Chaudhary, J.*

(1) The recruitment to the Indian Administrative Service which is the backbone of the administrative machinery of the country, is made by different methods viz. by a competitive examination, by selection of substantive member of a State Civil Service; and 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. The petitioners in their endeavour to hold the Indian Administrative Service (IAS for short), post have instituted this writ petition clamouring for issuance of a direction to the official respondents to send their names of the Selection Committee after quashing the State Government's decision transferring the non-State Civil Service posts to the State Civil Service.

(2) A brief narration of facts to the extent necessary to get hang of the issue is that petitioner No. 1 is a confirmed Deputy

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Excise and Taxation Commissioner, with effect from 1st September, 1977 and presently holding the post of Additional Excise and Taxation Commissioner. He is an ex-Serviceman having served the Indian Army from 30th July, 1963 to 10th January, 1968, i.e. during the period of emergency and after release from the Army initially joined as Excise and Taxation Officer on 20th June, 1972. Subsequently, on being given the benefit of military service rendered by him, he stood confirmed as Joint Excise and Taxation Commissioner with effect from 18th March, 1983. Petitioner No. 2 is a direct recruit and on being appointed initially as the District Food and Supplies Controller and having been promoted on various promotional posts is presently holding the post of the Additional Director Food and Supplies. Both the petitioners claim to have unblemished outstanding/excellent service record. They also claim to have been holding the highest posts to which a non-State Civil Service Officer can be appointed.

(3) In exercise of powers conferred under Rule 8(2) of the Indian Administrative Service (Recruitment) Rules, 1954 (hereinafter to be referred as the 1954 Rules), the State of Haryana decided to fill up two posts of IAS by considering the cases of eligible non-State Civil Service Officers having excellent service career. The State Government issued a circular No. 15/3/89-S(1) dated 22nd June, 1989, copy of which is Annexure P-1, calling upon all the Financial Commissioner and the Administrative Secretaries of the State of Haryana, to recommend two names of non-Haryana Civil Service officers including officers of Technical Service by 24th July, 1989, who fulfilled the following conditions :

- (i) Outstanding merit and ability;
- (ii) Who had worked for at least 12 years in the State Government on gazetted posts and should be holding a substantive post; and
- (iii) should be less than 54 years of age.

The date stipulated for fulfillment of the aforesaid conditions was 1st January, 1989. In pursuance of circular, Annexure P-1, the names of the petitioners were recommended, along with other eligible officers, by their respective departments, after getting approval of the Minister Incharge which further got approval of the Chief Minister of Haryana. But before the names of the recommended

officers could be forwarded for consideration by the Selection Committee, the new Chief Minister was enthroned and he too, after due deliberations, approved the names of the officers so recommended, including the petitioners.

(4) The petitioners' allegations are that the State Government after abruptly reviewing its decision, Annexure P-1, decided not to consider the names of the petitioners and other non-State Civil Service Officers. It is this action of the State Government which has been subjected to judicial scrutiny in the instant petition, on grounds, viz. the State Government is exercising its powers in an arbitrary manner to accommodate the officers of its liking and is not giving due representation to the non-State Civil Service Officers; the State Government is failing to invoke the provisions of Rule 8(2) of the 1954 Rules which has resulted in discriminatory treatment to the non-State Civil Service Officers.

(5) Shri Vinod Sharma, counsel for the petitioners while raising ancillary argument to demonstrate discrimination, urged that once the State Government having decided to provide, of course, a realistic opportunity to move upward to the non-State Civil Service Officers and their names having been duly recommended on being found to be the possibly-best-incumbents duly green flagged by two Chief Ministers, could not subsequently retract its decision and this action of the Government is arbitrary and cannot, therefore, be sustained.

(6) Since a good deal of the argument centres round the selection of State Civil Service and non-State Civil Service Officers to I.A.S., it would be pertinent to extract here the material portions of various Rules and Regulations to know as to how and from what source, such selection is made. Rule 4 of the 1954 Rules deals with the methods of recruitment to the I.A.S. It reads thus :

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) by selection of persons from among the **Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces of the Union, who**

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were commissioned on or after the 1st November, 1962 but before the 10th January, 1968 or who had joined any pre-commission training before the later date, but who were commissioned on or after that date;

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

(2) **Subject to the provisions of these rules, the method or methods of recruitment to be adopted for the purpose of filling any particular vacancy or vacancies in the Service as may be required to be filled during any particular period or recruitment, and the number of persons to be recruited by each method, shall be determined on each occasion by the Central Government in consultation with the Commission :**

Provided that where any such vacancy or vacancies relate to an **State Cadre or a Joint Cadre, the State Government shall also be consulted."**

Rule 8 of the 1954 Rules, depicts the criterion to be adopted for promotion or selection to the I.A.S. This rule is reproduced :

"8. *Recruitment by promotion or selection for appointment to the 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 among 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 of 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.

- (3) (b)

The Central Government, in exercise of powers conferred under sub-rule (2) of Rule 8 of the 1954 Rules, framed the Indian Administrative Service (Appointment by Selection) Regulations, 1956 (hereinafter to be referred as the 1956 Regulations) and Regulation 3 thereof, which envisages the eligibility, mode of selection and appointment to the I.A.S. was amended,—*vide* notification, dated 30th March, 1989. Regulation 3, as amended, by Second Amendment Regulations, 1989, reads as under :

3. *Eligibility, mode of selection and appointment to the Service*—(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 Service but serving in connection with affairs of the State in the case of Joint Cadre who—

- (i) are of outstanding merit and ability; and

- (ii) have completed not less than 12 years of continuous service in a gazetted post under the State Government or in the case of Joint Cadre, under any one of the State Governments constituting the Joint Cadre, holding that post in a substantive capacity and purpose the names of officers suitable for appointment to the Service :

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Provided that the State Government shall not ordinarily consider the cases of persons who have attained the age of 52 years. (The conditions regarding length of service and age referred to in the sub-regulation shall be determined with reference to the 1st day of January of the year in which the cases of the persons are considered.)

Provided further that the number of officers proposed for the consideration of the Selection Committee under sub-regulation (2) shall not exceed five times the number of vacancies to be filled in during the following years.

(7) Before embarking on any discussion on the main legal issue, which is of course of a deep import, we might mention that we have also noticed a feeble grievance of the petitioners that according to 1954, Rules, number of persons recommended under rule 8 are not to exceed 33-1/3 per cent of the post in the cadre and that the persons recruited under sub-rule (2) of rule 8 of the aforesaid Rules are not to exceed 15 per cent of the total number of posts. According to the petitioners' counsel, the intention of the Rules *ibid* is that representation to the persons appointed under Rule 8(1) and (2) is to be given so as to make the ratio of 33-1/3 per cent. On these premises, it was urged that the State Government has given discriminatory treatment to the non-State Civil Service Officers by not invoking the provisions of Rule 8(2) of the Rules *ibid*. On the contrary, the State of Haryana and the added respondent No. 3—R. P. Singh, took a strong stand that as an adequate number of eligible State Civil Service Officers were available, there was hardly any necessity to fill up any post from the officers of the non-State Civil Service Officers. This decision owing to the aforesaid situation does not in any manner infringe their right. Shri Jawahar Lal Gupta, counsel for the added respondent focussed our attention to various provisions, which we have already reproduced above, and submitted that it is only the Central Government which has power to fix the source of persons and number of posts to be filled up.

(8) Having given the matter our careful consideration, to begin with, it would be worthwhile to notice that under sub-section (1) of section 3 of the All-India Services Act, 1951 the Central Govern-

ment framed the 1954 Rules, after consultation with the Governments of the States. In pursuance of sub-rule (2) of rule 8 of the 1954 Rules, the Central Government in consultation with the State Governments and the Union Public Service Commission, framed the Indian Administrative Service (Appointment by Selection) Regulations, 1956. A close look on the provisions of rule 8 of the 1954 Rules, would show that for the members of the State Civil Service, the appointment to I.A.S. is a promotional avenue whereas for the non-State Civil Service officers, it is only in special circumstances that the Central Government may recruit to the I.A.S. any non-State Civil Service officer of outstanding ability and merit serving in connection with affairs of the State and holding a gazetted post in a substantive capacity. The words under-lined above are important to clinch the matter and impel us to reach a conclusion that if owing to situational demand and exigencies of the administration the State Government decided to offer the services of the State Civil Service officers to the I.A.S. in strict compliance of the rules, there is no reason to hold the action of the State Government in not recommending the non-State Civil Service officers was in any way discriminatory. Therefore, we find no hole in the aforesaid action of the State Government.

(9) Further-more, the names of the petitioners as recommended by their respective departments in pursuance of the decision dated 22nd June, 1989, Annexure P-1, were only considered and they were not recommended to the Central Government. Otherwise also, the provisions of rule 8(2) of the 1954 Rules are simply directory and not mandatory. It is not incumbent on the Central Government to make recruitment to I.A.S. of the persons who are not the members of the State Civil Service. Therefore also, the petitioners have no legitimate grievance.

(10) Under sub-rule (2) of rule 4 of the 1954 Rules which deals with the method of recruitment to I.A.S., it is envisaged that the method or methods of recruitment to be adopted for the purpose of filling any particular vacancy or vacancies in the Service as may be required to be filled during any particular period of recruitment, and the number of persons to be recruited by each method, shall be determined on each occasion by the Central Government in consultation with the Commission. It is, however, provided thereunder that where any such vacancy or vacancies relate to a State Cadre or a Joint Cadre the State Government concerned shall also be consulted. Rule 4 of 1954 Rules nowhere empowers the



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State Government to fill up the vacancy of I.A.S. The proviso simply envisages that where any vacancy relating to a State Cadre or Joint Cadre is to be filled up, the State Government is to be consulted. The upshot of the above discussion is that it is only the Central Government which has to fix the source and number of persons to be selected to the I.A.S.

(11) As per rule 9 of the 1954 Rules, the number of persons recruited under rule 8 in any State or group of States shall not, at any time, exceed 33-1/3 per cent of the number of posts 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. But there is no provision in rule 8 of the 1954 Rules, that the representation has necessarily to be given to the non-State Civil Service Officers to the extent of 50 per cent as urged by the petitioner's counsel. It will be worthy of mention that the petitioners were under mistaken belief that it is only the State Government which has power under the Regulations to fix the source and number of posts to be selected to I.A.S. The Regulations are to be read in context of the Rules and not independently. Regulations are not intended to and do not confer any right on any member of the non-State Civil Service unlike some other rules which do confer or create rights in them and mere breach of Regulations, if any, furnishes no cause of action to any non-State Civil Service Officers on the ground that they are holding the highest posts on which one non-State Civil Service Officer could reach or that they cannot be promoted to any higher post having achieved the maximum and there will be stagnation in their service career. The principal object of the selection system as enumerated in the Regulations is to find out the best-possible incumbents. The Regulations are subordinate to Rules.

(12) On perusal of the petition, we have also noticed an allegation that by mis-interpreting rule 8(2) of the 1954 Rules, the State Government is accommodating the persons of its liking who are not of outstanding merit and ability as one of the conditions envisaged under the Rules. Whatever truth there may be in this allegation, but it is explicit on the record that the recommendations of the persons to be selected to I.A.S. by the State Government were strictly made in accordance with the Rules and do not licence any deviation to favour the individual officers.

(13) In view of the aforesaid observations and discussion, we find no merit and the petition is hereby dismissed. The parties shall bear their own costs.

S.C.K.

Before : S. S. Sodhi, J.

VIJAY SINGH,—Appellant.

versus

HARYANA ROADWAYS AND ANOTHER,—Respondents.

First Appeal from Order No. 541 of 1984.

14th July, 1989.

*Motor Vehicles Act, 1939 (Act IV of 1939)—S. 110-A—Accident caused by over hanging electric wires—Passenger travelling on roof of bus injured—Contributory negligence—Such passenger whether liable—Duty of bus driver stated.*

*Held*, that there is a duty of care that rests upon the driver of bus towards all persons travelling in it which covers not only those in it, but extends also to passengers travelling on the roof of it, even though it may not have been permissible in law for them to be there. When there are passengers on the roof, *extra-caution* is imperative. (Para 6)

*Held*, that no contributory negligence can be fastened upon a passenger travelling on the roof of a bus, who sustains injuries on account of the negligent driving of the bus-driver, merely on the ground that he had been travelling on the roof of the bus and not inside it. (Para 7)

*First Appeal from the Order of the Court of Shri Shiv Dass Tyagi, Motor Accident Claims Tribunal, Hissar dated 1st March, 1984 granting an awarded of Rs. 4,000 to the petitioner with costs against the respondents.*

*Claim* :—*Claim petition u/s 110-A of Motor Vehicles Act.*

*Claim in Appeal*:—*For reversal of the order of the lower Court.*

R. A. Yadav, Advocate, S. V. Rathee, Advocate, for the Appellant  
Madan Dev, Advocate, for A.G. Haryana.