

*Before M.M. Kumar & Jitendra Chauhan, JJ.*

**PARVEEN KUMAR—Petitioner**

*versus*

**UNION PUBLIC SERVICE COMMISSION AND OTHERS—  
Respondents**

**CWP No. 15798 of 2009**

1st February, 2010

*Constitution of India, 1950—Art. 226— Indian Administrative Service (Appointment by Promotion) Regulations, 1955—Regs. 3, 5 to 7—Petitioner attaining age of 54 years on 1st January, 2007—Non-consideration of petitioner for appointment to IAS—Expression ‘year’ in Reg. 2(1)(I) shows that a year would mean period commencing on January 1st and ending on December 31st of same year—Regulation 5(3) provides that Committee is debarred from considering cases of such officer of State Civil Service who have attained age of 54 years and age of 54 years is required to be determined on January 1st of year for which select list is prepared—Emphasis in Regulation 5(3) is on the expression ‘the year for which Select List is prepared’, which mean that meeting of Committee may be held in a subsequent year but eligibility of officers in so far his age is concerned would remain intact—It has to be judged with reference to year for which select list is prepared—Tribunal committing a grave error by presuming that age of eligibility has to be determined in respect of year when Committee is supposed to meet—Findings of Tribunal not sustainable—Petition allowed, order of Tribunal quashed.*

*Held*, that a plain reading of the expression ‘year’ in Regulation 2(1)(I) shows that a year would mean the period commencing on January 1st and ending on December 31st of the same year. A further perusal of Regulation 5(3) would make it evident that the Committee is debarred from considering the cases of such officers of the State Civil Service who have attained the age of 54 years. The Regulation further says that the age of 54 years is required to be determined on January 1st of the year for which

the select list is prepared. In the present case, 4 vacancies are of the year 2006 and one vacancy of earlier years became available in the year 2006 on account of non-joining of Shri Joginder Lal Jain, PCS. It has been rightly contended that the emphasis in Regulation 5(3) is on the expression 'the year for which the Select List is prepared', which mean that meeting of the Committee may be held in a subsequent year but the eligibility of the officers in so far his age is concerned would remain intact. It has to be judged with reference to the year for which the select list is prepared.

(Para 20)

*Further held*, that the intention of the framers of the Regulations further become discernible from the reading of unamended Regulations, which have linked the age of 54 years to the 1st of April of the year of meeting. The framers of the Regulations must have found that the year of meeting has no relationship for determination of the age of eligibility as it was wholly fortuitous. Therefore, to keep the eligibility intact in respect of the year for which the select list is prepared, amendment has been incorporated in the year 2000 and an effort has been made to link the age of eligibility to the occurrence of vacancies and to de-link the same from the year of meeting. If we construe the Regulation 5(3) to mean that age has to be determined by reference to the year of meeting then the mischief which is sought to remedied would perpetuate and amendment would loose its object. The aspirations of a brilliant and meritorious officer working in the State cannot be defeated by any arbitrary method of fixing the age of eligibility, which got nothing to do with the basic principles of service jurisprudence, namely, occurrence of vacancy. Therefore, we find that the Tribunal has committed a grave error by presuming that the age of eligibility has to be determined in respect of the year when the Committee is supposed to meet, which is wholly unsustainable.

(Para 24)

A.R. Takkar, Advocate, *for the petitioner*.

N.S. Virk, Advocate, *for respondent No. 1*.

Suvir Sehgal, Additional Advocate General, Punjab *for respondent No. 2*.

O.S. Batalvi, Advocate, *for respondent No. 3*.

Gurminder Singh, Advocate, *for respondent Nos. 5 to 10*.

**M.M. KUMAR, J.**

(1) This petition filed under Article 226 of the Constitution challenges combined eligibility list of the State Civil Services Officers, dated 7th August, 2008 (P-4), notification dated 13th August, 2009, issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel & Training), making appointments of the members of the State Civil Service of Punjab to the Indian Administrative Service (IAS) for the Select List years 2007 and 2008 (P-14) as also order dated 4th September, 2009 (P-13), passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity, 'the Tribunal'). A further prayer has been made for directing the respondent State of Punjab to include the name of the petitioner in the list of eligible candidates for filling up the vacancies in the Indian Administrative Service arising in the year 2006 as also to direct the Union Public Service Commission (for brevity, 'UPSC') to consider his name for promotion to IAS.

(2) Brief facts of the case are that the date of birth of the petitioner is 17th February, 1952. On 23rd April, 1986, he was inducted in the Punjab Civil Service (Executive Branch). He attained the age of 55 years on 17th February, 2007 and his date of superannuation is 28th February, 2010. In the Gradation and Distribution list of PCS (Executive Branch) as it stood on 1st January, 2008, the name of the petitioner figures at Sr. No. 12 (P-1).

(3) It is pertinent to mention that selection promotion from the Punjab Civil Service (Executive Branch) to the IAS is governed and regulated by the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (for brevity, 'the Regulations') [P-2]. Regulation 3 provides for constitution of the Committee to make selection ; Regulation 5 deal with preparation of a list of suitable officers ; Regulation 6 talks about consultation with the Commission, whereas Regulation 7 deals with the Select List. These provisions would be discussed later in detail in the subsequent paras of this order.

(4) The petitioner has claimed that the officers upto Sr. No. 7 of the Gradation List (P-1) have already been considered for being appointed to IAS against the vacancies which were available prior to 2006. In the year 2006 i.e. with effect from 1st January, 2006 to 31st December, 2006,

4 vacancies were available for promotion to the IAS, as is evident from the letter dated 3rd March, 2008, whereby information has been supplied under the Right to Information Act, 2005 (P-3). Against the aforementioned vacancies the officers of the PCS (Executive Branch) mentioned at Sr. No. 8 onwards, were to be considered. During the year 2007, five vacancies were available. It has been submitted that one consumed vacancy, which has been shown for the year 2007, has to be considered/shown for the year 2006, inasmuch as, one Shri Joginder Lal Jain, PCS, who stood retired on 31st March, 2001 and had been included in the Select List of 1996-97 by the Review Selection Committee in its meeting held on 25th February, 2008 on the basis of his rank in the revised seniority, was not taken into consideration. In this regard, the petitioner has placed on record copy of letter dated 7th August, 2008 (P-4). In the aforementioned letter the Government of India has intimated that a retiree is not given appointment to the IAS even if his name figures in the select list and such a vacancy is carried forward to the current year for which determination of vacancies is to take place. It has, thus, been claimed that the aforementioned consumed vacancy is also required to be filled up along with other 4 vacancies of the year 2006. In other words, according to the petitioner during the year 2006, five vacancies were available instead of four.

(5) As per the provisions of the Regulations, the Committee has to meet every year and prepare a list of such members of the State Civil Service as are considered by the Government to be suitable for promotion to the IAS. However, in the State of Punjab, in the year 2006 neither the select list was prepared nor the meeting of the Committee was held, when the petitioner became eligible to be considered for promotion to the IAS. On 7th August, 2008 a Combined Eligibility List was prepared for filling up 4 posts of the IAS for the year 2006 and 5 posts for the year 2007. It has been asserted that one consumed vacancy has been wrongly shown for the year 2007 instead of 2006. According to the petitioner the aforementioned vacancies are to be filled up by promotion from amongst members of the State Civil Service during the year 2007 and 2008 respectively (P-4).

(6) The name of the petitioner was not included in the aforementioned Combined Eligibility List, therefore, he approached the Tribunal by filing Original Application No. 118-PB of 2009. Another officer, namely,

Shri Harmesh Singh Pabla also filed OA No. 134-PB of 2009. The Tribunal has dismissed the aforementioned OAs,—*vide* impugned order dated 4th September, 2009 (P-13), by holding as under :—

- “18. As per provisions of Regulation 5(3) of the Promotion Regulation, the Selection Committee shall not consider the cases of members of the State Civil Service Officers who have attained the age of 54 years on the first day of January of the year for which the Select List is prepared. Respondents are right in doing so as the Select List has to be prepared after taking into consideration all the vacancies falling vacant upto 31st December of the previous year. So, the first day of January of the year has rightly been taken as a cut-off date.
19. In the instant case, the Select Lists upto year 2006 have been prepared and acted upon that an officer should not have attained the age of 54 years as on 1st January, 2007 and 1st January, 2008 respectively for becoming eligible for consideration by the Selection Committee for the years 2007 and 2008. Since the date of birth of the applicant Shri Parveen Kumar is 17th February, 1952, he had attained the age of more than 24 years on 1st January, 2007. As such, the contention of the applicant that for the Select List of the year 2007 the Selection Committee has to consider the cases of all the eligible members of the State Civil Service, including this applicant, is wrong, thus, not sustainable.....
20. Further, the contention of the applicants that there should have been 5 vacancies calculated for the Select List for the year 2006 is admitted by the respondents and we find that action has been taken to prepare the Select List for the year 2007 on this premise. This objection raised by the applicants, therefore, no longer subsists. Insofar as the contention of the applicants regarding preparation of Combined Eligibility List for the 10 vacancies i.e. 5 each for the years 2007 and 2008 is concerned, as pleaded and argued, we find the Select Lists have been prepared yearwise by the Selection Committee and only those officers have been considered who were found eligible & qualified

to be appointed to the IAS in the relevant years, therefore, no fault can be found with the recommendations made by it with regard to the Select Lists for the said years. Such a plea appears to be the result of some misconstrued thinking and misunderstanding in the minds of the applicants and is not accepted.

21. This Court further finds that due observance of the rules, orders of the Courts and law has been made by the Selection Committee in making recommendations as per the Select List of 2007 and 2008 and no procedural or legal flaw is found by this Court in the same. Consequently, both these cases are found to be bereft of any merit.”

(7) It is also relevant to mention here that during the pendency of the OAs, the respondents finalized the selection process and on 13th August, 2009 a notification was issued making appointments to the IAS. A perusal of the notification shows that five officers have been appointed against the Select List for the year 2007 and four appointments have been made against the Select List for the year 2008. However, these appointments have been made subject to the outcome of O.A. No. 118/PB/2009, which was filed by the petitioner (P-14).

(8) Mr. A.R. Takkar, learned counsel for the petitioner has vehemently argued that the petitioner cannot be kept out of the consideration zone on the ground that he had attained the age of 54 years on 1st January, 2007, having been born on 17th February, 1952. According to the learned counsel, the age of 54 years is required to be determined as per Regulation 2(1)(I) of the Regulations read with the amended Regulation 5(3) of the Regulation (P-2). The expression ‘year’ has been defined to mean ‘the period commencing on the first day of January and ending on 31st day of December of the same year’. In order words, the eligibility with regard to the age of the petitioner for inclusion in the select list has to be seen from 1st of January, 2006 because the vacancies have arisen in the year 2006. Learned counsel has emphasised that the Committee has been debarred from considering the cases of the Members of the State Civil Service who have attained the age of 54 years on the 1st day of January of the year for which the select list is prepared. According to the learned counsel it is

conceded as a fact that 4 vacancies for the select list had arisen in the year 2006 and, therefore, on the language of Regulation 2(1)(I) read with Regulation 5(3), the age of 54 years is required to be determined on the 1st day of January of the year for which the select list is prepared. Mr. Takkar has referred to the un-amended Regulation as it stood before 25th July, 2000, which envisaged the determination of age of 54 years on the 1st April of the year in which the Committee meets. The amendment has been brought about to avoid unfair treatment to those eligible like the petitioner in the years of occurrence of vacancy, especially when the Committee fails to meet ordinarily in that year. Therefore, the pre-amended Regulation 5(3) has made eligibility dependent on the meeting of the Committee whereas by the amendment, the eligibility of a candidate is sought to be protected.

(9) For the aforesaid submission, Mr. Takkar has also drawn support from the proviso of Regulation 5(1). According to the learned counsel, the proviso mandates the State Government to prepare a separate select list for each year as on December, 31 of that year during which the meeting of the Committee could not be held. The every purpose of preparing separate lists for each year is to avoid any ambiguity and anomaly and to provide fair opportunity to all Members of the State Civil Service (Executive Branch) for promotion to IAS based on their eligibility in the relevant year in which the vacancy has fallen vacant. He has highlighted that the Committee could not meet for filling up the vacancies of the IAS for the year 2006 and according to proviso to Regulation 5(1), the State Government was required to prepare a separate select list for each year, as on December 31 of that year for which the Committee could not meet. Learned counsel has condemned apathy of the Tribunal to expressly interpret Regulation 5(3) by taking into account the amendment carried in the year 2000 and comparing the same with the un-amended Regulation 5(3). Had it been so done then it would have interpreted the Regulation as per the prayer made by the petitioner.

(10) Mr. Gurminder Singh, learned counsel for respondent Nos. 5 to 10 has submitted that only 4 vacancies of IAS for promotion quota of the State Civil Service, under Rule 9 of the Indian Administrative Service (Recruitment) Rules, 1954 (for brevity, 'the Rules') had arisen. The 5th vacancy had occurred due to non-appointment of one Shri Joginder Lal

Jain. PCS. in the year 1996-97. The Review Select Committee meeting for the years 1992-93 to 2006 was held on 17th April, 2008, however, the petitioner did not fall within the zone of consideration in respect of two vacancies which became available for the year 2006. The meeting for the select lists for the years 2007 and 2008 was held in 2009, which were notified on 13th August, 2009 by the Central Government and the petitioner, in fact, is claiming consideration against the select list of 2007. On the legal issues, learned counsel has made the following submissions :—

(11) The scheme of the Regulations only contemplate the process starting from the determination of vacancies by the Central Government in consultation with the State Government which, *inter alia*, determines number of officers to be included in the select list for that year. The number of these vacancies is not to exceed the substantive vacancies that are available on 1st of January of the year in which the meeting is held/ordinarily required to be held. Thus, the number of officers to be included could only be known once the number of substantive vacancies is available. This would certainly be on or after 1st of January of a given year. The date and venue of the meeting is to be decided by the UPSC, not by the State Government, and the same has to be ordinarily before 31st December of that year.

(12) Regulations 5(2) to 5(3A) provide for the eligibility of the officers for inclusion in the list as per the parameters provided therein. Regulation 5(3) creates a bar on consideration of members of the State Civil Service who have attained the age of 54 years on the 1st of January of the year for which the select list is prepared. This takes care of the situation where the Committee could not meet in the preceding years but as and when it meets, it considers the eligibility for each year separately and no prejudice is caused to an officer, who though would have been eligible had the meeting been ordinarily held in the same year as to which's relevance the vacancies are determined but has crossed the age of 54 years in the meanwhile before the actual holding of the meeting. This means that the date/year of availability of vacancies for which select list is to be prepared is the same as on which the age of 54 is to be determined, which in this case is 1st January, 2007. The un-amended Regulation 5(3) led to discretion in the hands of the authorities to delay the meeting and non-suit the officers who were otherwise eligible in a given year but had attained the age of 54 years on the 1st of January of the year in which the Committee actually met. The word 'in',



appearing in the Regulation was, thus, amended to 'for'. The amendment in Regulation 5(3) cured the aforementioned defect. According to the learned counsel, the word 'for', thus, only refers to the 'year' for which the select list was required to be prepared particularly when select lists for more than one year are being prepared year wise in a common meeting.

(13) For a harmonious reading of the Regulations it has to be seen that the process from determination of the number of officers to be included in the list, through consideration of the officers in the zone of consideration, classification and finalisation of the names has to be done by the Select Committee in the year following 1st of January on which the substantive vacancies were determined. The list as finally approved by the UPSC under Regulation 7(3) forms the select list for that year. Any select list, though prepared in subsequent year, shall relate back to the year in which it should have been prepared but could not be prepared due to the Committee not being able to meet. It would, thus, be a select list of that year.

(14) In support of the aforementioned submission, learned counsel has placed reliance on the judgments of Hon'ble the Supreme Court rendered in the case of **Ramanand Prasad Singh versus Union of India (1)**. Learned counsel has submitted that the eligibility has to be determined with reference to the year for which the select list is prepared, which in the present case is 1st January, 2007. Reliance has also been placed on another judgment of Hon'ble the Supreme Court rendered in the case of **Government of India versus G. Limbadri Rao, (2)**, where their Lordships' has interpreted the Indian Administrative Service (Appointment by Selection) Regulations, 1997. It has been submitted that the aforesaid judgment fully support the case of the respondents.

(15) He has then argued that harmonious interpretation to the Regulations should be preferred which has been adopted by the State Government, Government of India and UPSC as against the one propounded by the petitioner. According to the learned counsel, such an interpretation, as desired by the petitioner, would result into chaos and that the amendment in the Regulations made in the year 2000 cannot in any manner be read to mean that the person who has attained the age of 54 years on 1st January

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(1) (1996) 4 S.C.C. 64

(2) (2004) 7 S.C.C. 702

of the year for which the select list is prepared, would remain eligible even after becoming over-age because the number of vacancies are to be determined on the 1st of January of that year.

(16) Mr. Suvir Sehgal, learned Additional Advocate General, Punjab appearing for respondent No. 2, has argued that no exception could be taken to the view expressed by the Tribunal. He has pointed out that if vacancies are to be determined for the list to be prepared on 1st January, 2007 then to make a person eligible by reference to 1st January, 2006, would be an anomaly. According to the learned counsel, it would result into making eligible a person of more than 54 years of age, which is against the spirit of Regulation 5(3). He has maintained that the Central Government-respondent No. 3 as well as UPSC-respondent No. 1 have adopted the interpretation which has been given by the Tribunal.

(17) Mr. O.S. Batalvi, learned counsel for respondent No. 3, has adopted the arguments of Mr. Suvir Sehgal, learned State counsel and Mr. Gurminder Singh, learned counsel for respondent Nos. 5 to 10.

(18) In order to appreciate the contour of the controversy, it would first be imperative to read Regulation 2(1)(I) and Regulation 5 of the Regulations, which are as under :—

“2(1) In these regulations, unless the context otherwise requires :

Regulation 2(1)(I) :

(a) to (k) xxx      xxx      xxx

(I) ‘Year’ means the period commencing on the first day of January and ending on 31st day of December of the same year.”

**Regulation 5 :**

“5. PREPARATION OF A 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 :

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 the 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.

5(2) The Committee shall consider for inclusion to the said list, the cases of members of the State Civil Services in the order of seniority in that service of a number which is equal to three times the number referred in sub-regulation (1) :

Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three

times the maximum permissible size of the Select List and in such a case the Committee shall consider all the eligible officers :

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulation (3) shall be excluded :

Provided also that the Committee shall not consider the case of a member of the State Civil Service unless on the first day of January of the year for which the Select List is prepared, he is substantive in the State Civil Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government :

Provided also that in respect of any released Emergency Commissioned or Short Service Commissioned officers appointed to the State Civil Service, eight years of continuous service as required under the preceding proviso shall be counted from the deemed date of their appointment to that service, subject to the condition that such officers shall be eligible for consideration if they have completed not less than four years of actual continuous service, on the first day of January of the year for which the Select List is prepared, in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government.

Explanation :—The powers of the State Government under the third proviso to the sub-regulation shall be exercised in relation to the members of the State Civil Service of constituent State, by the Government of that State.

5(2A) Deleted.

5(3) 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 for which the Select List is prepared :

Provided that a member of the State Civil Service whose name appears in the Select List prepared for the earlier year before the date of the meeting of the Committee and who has not been appointed to the service only because he was included provisionally in that Select List shall be considered for inclusion in the fresh list to be prepared by the Committee, even if he has in the meanwhile, attained the age of fifty four years :

Provided further that a member of the State Civil Service who has attained the age of fifty four years on the first day of January of the year for which the Select List is prepared, shall be considered by the Committee, if he was eligible for consideration on the first day of January of the year of any or the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year or years under item (b) of the proviso to sub-regulation (1).

5(3A) The Committee shall not consider the case of such member of the State Civil Service who had been included in an earlier select list and—

- (a) had expressed his unwillingness for appointment to the service under regulation 9 :

Provided that he shall be considered for inclusion in the Select List, if before the commencement of the year, he applies in writing, to the State Government expressing his willingness to be considered for appointment to the service :

- (b) was not appointed to the service by the Central Government under regulation 10.

5(4) The Selection Committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good' and 'Unfit' as the case may be on an overall relative assessment of their service records.

5(5) The List shall be prepared by including the required number of names first from amongst the officers finally classified as

'Outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names *interse* within each category shall be in the order of their seniority in the State Civil Service :

Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government :

Provided further that while preparing year-wise select lists for more than one year pursuant to the 2nd proviso to sub-regulation (1), the officer included provisionally in any of the Select List so prepared, shall be considered for inclusion in the Select List of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis, such inclusion shall be in addition to the normal size of the Select List determined by the Central Government for such year.

*Explanation I* : The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a Court as the case may be.

*Explanation II* : The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the service shall be treated as having come to the notice of the State Government only if the details of the same have been communicated to the Central Government and the Central Government is satisfied that the details furnished by the State Government have a bearing on the suitability of the officer and investigation thereof is essential.

5(6) Omitted.

5(7) Deleted".

(19) It would also be necessary to read the un-amended Regulation 5(3) as it stood before the year 2000, which is reproduced as under :—

**Pre-amended Regulation 5(3) :**

“5(3)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 April of the year in which it meets.”

(20) The sole question which emerges for determination of this Court is whether the age of eligibility is required to be considered with reference to January 1st of the year for which the select list is prepared or any other date. A plain reading of the expression ‘year’ in Regulation 2(1)(I) shows that a year would mean the period commencing on January 1st and ending on December 31st of the same year. A further perusal of Regulation 5(3) would make it evident that the Committee is debarred from considering the cases of such officer of the State Civil Service who have attained the age of 54 years. The Regulation further says that the age of 54 years is required to be determined on January 1st of the year for which the select list is prepared. In the present case, 4 vacancies are of the year 2006 and one vacancy of earlier years became available in the year 2006 on account of non-joining of Shri Joginder Lal Jain, PCS. It has been rightly contended that the emphasis in Regulation 5(3) is on the expression ‘the year for which the Select List is prepared’, which would mean that meeting of the Committee may be held in a subsequent year but the eligibility of the officers in so far his age is concerned would remain intact. It has to be judged with reference to the year for which the select list is prepared.

(21) We find substantive support to the aforesaid submission in un-numbered proviso to Regulation 5(1). According to the aforesaid proviso if no meeting of the Committee could be held during a year then whenever the committee meets again, the select list has to be prepared separately for each year during which the committee could not meet as on December 31st of each year. The aforesaid proviso is consistent with the definition of expression ‘year’ in Regulation 2(1)(I). Therefore, the vacancies for the year 2006 i.e. from 1st January, 2006 to 31st December, 2006 have to be determined as on December 31st of that year. The select list, which has

been erroneously styled as 'Select List of 2007', in fact, is the select list for the year 2006. Therefore, the age of the petitioner has to be determined as on 1st January, 2006. Accordingly, he would be eligible.

(22) It is true that for the vacancies of the year 2006, the Committee would meet in the year 2007. It does not follow that if meeting of the Committee is held in 2007 then it would alter the eligibility in so far age of a candidate is concerned, which is provided by Regulation 5(3). The effect of any contrary interpretation would be that the officers like the petitioners would be deprived of entering the zone of consideration without any fault of theirs. For example, the petitioner would not be eligible in respect of the vacancies, which have arisen in January 2006 although he was not yet 54 years of age nor he would be eligible for vacancies of the year 2007 because he would cross 54 years of age. The consideration of all eligible candidates annually in respect of vacancies which have arisen during that year is to avoid any such anomaly. It is also to facilitate the work of the Committee so that all vacancies of that year are considered in one meeting instead of holding a meeting for every single vacancy and then determining eligibility.

(23) To better understand, another hypothetical situation could be considered. Let us assume that the date of birth of an officer is 31st December, 1952. As on 1st January, 2006, he would be less than 54 years of age but on 1st January, 2007 he would certainly cross the age of 54 years. Therefore, if the reasoning adopted by the Tribunal and the respondents is applied then such an officer would never enter the zone of consideration for the vacancies of year 2006.

(24) The intention of the framers of the Regulations further become discernible from the reading of un-amended Regulations, which have linked the age of 54 years to the 1st of April of the year of meeting. The framers of the Regulations must have found that the year of meeting has no relationship for determination of the age of eligibility as it was wholly fortuitous. Therefore, to keep the eligibility intact in respect of the year for which the select list is prepared, amendment has been incorporated in the year 2000 and an effort has been made to link the age of eligibility to the occurrence of vacancies and to de-link the same from the year of meeting. It we construe



the Regulation 5(3) to mean that age has to be determined by reference to the year of meeting then the mischief which is sought to be remedied would perpetuate and amendment would lose its object. The aspirations of a brilliant and meritorious officer working in the State cannot be defeated by any arbitrary method of fixing the age of eligibility, which has got nothing to do with the basic principles of service jurisprudence, namely, occurrence of vacancy. Therefore, we find that the Tribunal has committed a grave error by presuming that the age of eligibility has to be determined in respect of the year when the Committee is supposed to meet, which is wholly unsustainable.

(25) The argument of Mr. Suvir Sehgal that such an interpretation of Regulation 5(3) read with Regulation 2(1)(I), linking the age with the year of vacancy, would defeat the very purpose of prescribing the age of 54 years because a candidate like the petitioner would be more than 54 years of age. The aforesaid argument ignores the content and substance of the language used by the amendment made in Regulation 5(3), which has support from un-numbered second proviso to Regulation 5(1). If the intention of the framers of the Regulations was to link the age of eligibility to the year of annual meeting of the Committee then un-amended Regulation 5(3) could have continued and no amendment was necessary which has de-linked the same and has linked the age with the year of vacancy. Therefore, such an argument does not commend itself to us. Thus, we have no hesitation to reject the same.

(26) Likewise, the arguments of Mr. Gurminder Singh have also no legs to stand. It may be logically correct that for the vacancies occurring from 1st January to 31st December, 2006, the Committee may have to meet in the year 2007. But it would not follow that the 1st January of the year of the meeting of the Committee would be considered as the cut off date for determining the age of eligibility of 54 years because it would again link the year of meeting with eligibility of age. The other argument based upon the judgment of Hon'ble the Supreme Court in **Ramanand Prasad Singh's case** (*supra*) would also not require any detailed examination as it was a judgment rendered in respect of un-amended Regulation. Likewise, the

judgment in the case of **G. Limbadri Rao** (*supra*) would also not be relevant to decide the issue because it deals with the Regulations in respect of non-State Civil Service Officers, which are known as the Indian Administrative Service (Appointment by Selection) Regulations, 1997. The last argument of Mr. Gurminder Singh for adopting harmonious interpretation is wholly misplaced as we fail to understand what would be more harmonious interpretation of Regulation 5(3), which after amendment has brought proximity to the age of eligibility with that of the occurrence of vacancy, de-linking the age of eligibility from the month and year of meeting as was the situation operating in the pre-amended Regulation. Therefore, we do not find any substance in the last submission made by Mr. Gurminder Singh.

(27) For the reasons aforementioned, this petition succeeds. The order of the Tribunal dated 4th September, 2009 (P-13) is hereby quashed. As a consequence, the combined eligibility list of the State Civil Service Officers, dated 7th August, 2008 (P-4) and the notification dated 13th August, 2009 (P-14) in respect of so called select list for the year 2007 is also quashed. However, it is made clear that respondent Nos. 5 to 10 would continue to work on their present postings till the fresh decision is taken by the Committee to make selection as per Regulation 3. Accordingly, respondent Nos. 1 to 3 are directed to re-consider the names of all the eligible candidates by determining the age of 54 years as on 1st January, 2006 *qua* the vacancies occurring from 1st January, 2006 to 31st December, 2006 by including the name of the petitioner. The needful shall be done within a period of one month from today and the petitioner shall not be debarred from entering Indian Administrative Service merely because he would retire in February 2010, because all the proceedings of the Select Committee up to the issuance of impugned notification, has always remained subject to the result of the OA, which was filed by the petitioner well in time.

(28) The instant petition is disposed of in the above terms.

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**R.N.R.**