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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9721/2015

KU. SHASHIKALA KHATRI Petitioner

Through: Mr. Vishwendra Verma, Advocate

versus

UNION OF INDIA AND ORS. Respondents

Through: Ms. Bharthi Raju, CGSC

Mr. Naresh Kaushik, Advocate for
UPSC

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **02.02.2017**

This writ petition arises out of second round of litigation.

The petitioner herein had earlier filed OA Nos.885/2011 and 1093/2011 before the Jabalpur Bench of the Central Administrative Tribunal, which was disposed of vide order dated 12.12.2012.

The petitioner, who belongs to Madhya Pradesh State Civil Services, had challenged allocation of four vacancies in the IAS Cadre to non-State Civil Services Officers on the ground that it exceeds 15% quota. As there were 11 vacancies, the submission was only 1 or 2 vacancies would be filled-up from the non-SAS Officers.

The contention of the respondents was that 15% quota is not to be computed with reference to the vacancies, but with reference to officers

from SAS and non-SAS cadre officers working in the IAS Cadre. On this basis, posts in the IAS Cadre were to be filled up from non-SCS officers. The Tribunal partly allowed the OA after referring to the judgment of the Delhi High Court in ***Union of India v. J.D. Naharwal***, 2010(5) SLR 214, and had issued the following directions:-

“In the instance case also we find that the UPSC has declared vide their letter dated 17.01.2012 that in exercise of the powers conferred by clause (c) of Regulation 5(1) of the Selection Regulations “it is not practicable to hold the meeting of the selection committee during the year 2011 for selection of non-SCS officers for appointment to the IAS of Madhya Pradesh Cadre.” Thus, no selection can now be held against the four vacancies determined for recruitment through selection from non-SCS officers for select list year 2010. These vacancies shall revert back to the pool of promotion quota vacancies, which may be used for enhancement in the number of 2010 available for filling through recruitment by promotion from SCS Officers under the Promotion Regulations, if Government of India decides to revise the determination of vacancies for 2010, in consultation with State Government and UPSC and UPSC, as per the applicable rules and regulations. Accordingly, both the Original Applications are disposed of with the above directions. No costs.”

We perceive that the aforesaid directions of the Tribunal required and mandated the respondents' authorities to calculate the number of SAS vacancies as they existed on 1.10.2010. Thereafter, the authorities had to undertake necessary exercise to notify and fill up the vacancy (ies) in the manner and as per the Rules and Regulations, i.e., by the Central Government in consultation with the State Governments and the UPSC.

This order did not give unfettered and absolute discretion to the authorities not to fill-up SAS posts/vacancies if they existed, on recalculation. The respondents had to first ascertain correct factual position and if vacancies did exist, then they were to be filled.

The order dated 14.1.2013 passed by the respondent authorities indicates that they did not carry out and verify the correct vacancy position. The authorities proceeded that they have the right to decide whether or not to fill-up the vacancies in a particular year. This is, no doubt, the correct position but the exercise of that power has to be in accordance with law. Consideration cannot be arbitrary and capricious and certainly not to deny relief to the petitioner, who had succeeded before the Tribunal. The power must be exercised reasonably and for good and cogent reasons. Secondly, the position that existing vacancies cannot be carried forward, but are pooled

in the next year, by itself, cannot be a ground to deny relief. If this argument is to be accepted, then, in no case, an employee can succeed, even in cases of wrong calculation of vacancies. The mistake made has to be corrected and rectified. This would be just and fair. The respondents cannot take advantage of the mistake if they have made a wrong calculation, in view of the earlier order of the Tribunal dated 12.12.2012.

In these circumstances, we would direct the Union of India to file an affidavit, within six weeks from today, pointing out the correct position regarding to SAS vacancies as they existed on 1.1.2010. The affidavit would indicate whether the number of vacancies were 7/8 or more. In case there were more than 7/8 vacancies, then the respondents would state whether the petitioner was within the zone of consideration.

Relist on 25.4.2017.

Dasti.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

FEBRUARY 02, 2017

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