

(1993) 03 SC CK 0011

Supreme Court of India

Case No: Civil Appeal No's. 1414 and 1415 with 1416 of 1993 (arising out of S.L.P. (C) No's.
17028 and 18624 of 1991 with 6136 of 1992

P.M. Bayas Ors.

APPELLANT

Vs

Union of India and
others

RESPONDENT

Date of Decision: March 23, 1993

Acts Referred:

- Administrative Service (Appointment by Selection) Regulations, 1956 - Regulation 3
- Administrative Service (Recruitment) Rules, 1954 - Rule 4(1), 8(2), 9

Citation: AIR 1994 SC 1281 : (1993) 2 JT 496 : (1994) 1 LLJ 79 : (1993) 2 SCALE 228 : (1993) 3
SCC 319 : (1993) 2 SCR 567 : (1993) 2 UPLBEC 1254

Hon'ble Judges: N.M. Kasliwal, J; Kuldip Singh, J

Bench: Division Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Kuldip Singh, J.

Leave granted in both the Special Leave Petitions.

2. We are called upon to interpret the expression "in special cases from among persons" in Rule 4(1)(c) and the expression "in special circumstances" in Rule 8(2) of the Indian Administrative Service (Recruitment) Rules, 1954 (the Rules).

3. S.H. School and three others (Civil Service Officers) who are substantive members of the Maharashtra Civil Service challenged before the Central Administrative Tribunal, New Bombay Bench the selection of W.G. Gurde and P.M. Bayas to the Indians Administrative Service by way of special selection under the Rules. They also sought quashing of the appointment of five other persons (respondents 4 to 8 before the Tribunal) who had already been appointed to the Indian Administrative

Service (IAS) by way of special selection. The Tribunal dismissed the application of School and others so far as the five persons already appointed to the IAS, respondents 4 to 8, on the ground that the application was belated and barred by limitation. The Tribunal, however, allowed the application so far as Gurde and Bayas were concerned and quashed their selection to the LAS. These two appeals by way of special leave are by Bayas and the State of Maharashtra against the judgment of the Tribunal dated July 19, 1991.

4. The case of the Civil Service Officers before the Tribunal was that they were substantive members of Maharashtra Civil Service for about 22/25 years and their names were placed on the select list for promotion to IAS since the years 1986/1988 but they could not be appointed to the LAS because the vacancies occurring in the State of Maharashtra were being filled by resorting to special selection and appointing persons like the appellant Bayas and others.

5. We may at this stage notice the relevant Rules. Rules 4(1) and 8(2) of the Rules are reproduced hereunder:

4. Method of recruitment of 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 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.

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 Governments and the Commission, from time to time, make, recruit to the Service any person of outstanding ability and merit serving in connection with the affairs of the State who is not a member of the State Civil Service or that State but who holds a gazetted post in a substantive capacity.

6. In exercise of the power under Rule 8(2) of the Rules the Central Government has framed the Regulations called "Indian Administrative Service (Appointment by Selection) Regulations, 1956 (the Regulations).

7. Regulations 3(1), 3(2), 3(2A), 3(3), 3(4) and 3(4A) of the Regulations which are relevant are reproduced hereunder:

3(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 the affairs of the State or States in the case of Joint Cadres, 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 propose the names of officers suitable for appointment to the service.

3(2) the Selection Committee set up in accordance with regulation 3 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, shall consider the proposals of the State Government made in Sub-regulation (1) and recommend the names of such of these officers, if any but not exceeding the number of vacancies sought to be filled up by the State Government concerned under these regulations, during the next 12 months, as are in their opinion, suitable for appointment to the Service.

3(2A) the suitability of a person for appointment to the Service shall be determined by a scrutiny of his confidential roll and by interviewing him.

3(3) The recommendations of the Selection Committee made under Sub-regulation (2) shall be placed before the State Government concerned and the latter shall forward those recommendations to the Commission for approval along with -

(i) the confidential record of the officers concerned; and

(ii) the observations, if any, of the State Government on the recommendations of the Selection Committee.

3(4) On their being finally approved by the Commission, appointments of such officers to the Service shall be made by the Central Government.

3(4A) Notwithstanding anything contained in Sub-regulation (4), the Central Government may not appoint any person to the service under these regulations if it is of the opinion that, during the period intervening between the final approval by the Commission and the date of proposed appointment there occurs any deterioration in the work of such officer or there is any other ground which renders him unsuitable for appointment to the service or, it is necessary and expedient so to do in public interest:

Provided that no such decision shall be taken by the Central Government without consulting the Commission.

8. Special selection was held in the year 1990 under the Regulations and Bayas and Gurde, on the criteria of outstanding merit and ability, were selected to the IAS and their names were brought on the select list. The Civil Service Officers challenged their selection primarily on the ground that there was no material on the record to show that there were "special circumstances" to the satisfaction of the Central Government. The Tribunal accepted the contention and set aside the selection of Gurde and Bayas.

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.

10. Reading Rule 8(2) and the Regulations together it is further clear that the process of selection has to be initiated by the State Government and as such it is for the State Government in the first instance to be satisfied regarding the existence of the "special circumstances" as culled-out by us in the para above.

11. It is the State Government which proposes the names of suitable officers under the Regulations for appointment by selection to the IAS. The proposals of the State Government are considered by the Selection Committee and its recommendations are place before the State Government. Thereafter the State Government sends the recommendations alongwith its observations, if any, to the Union Public Service

Commission for approval. When finally approved by the Commission the appointments are made by the Central Government. Regulation 3(4A) further provides that the Central Government may not appoint any person if it is of the opinion that, during the period intervening between the final approval by the Commission and the date of proposed appointment, there occurs any deterioration in the work of such officer or there is any other ground which renders him unsuitable for appointment or it is necessary and expedient so to do in public interest. It is, thus, obvious that the "special circumstances" as required under the Rules and the Regulations have to be seen by the State Government. The Central Government being the appointing authority has to finally approve the State Government's proposals which reach the Central Government through the process of selection.

12. The Tribunal allowed the application of the Civil Service Officers on the short ground that the Central Government failed to show the existence of "special circumstances" for making the recruitment under Rule 4(1)(c) read with Rule 8(2) of the Rules and the Regulations. The Tribunal held as under:

As we are of the view that no "special circumstances" existed and that the special circumstances, if any, have not been pointed out by the Central Government which has kept mum apart from taking the plea that "special circumstances" existed and that there was not violation of rules, this method of selection adopted by the respondents in selecting respondent Nos. 8 & 10 is violative of rules in the absence of condition precedent for their selection.

13. We have given our thoughtful consideration to the reasoning and the conclusions reached by the Tribunal. We are of the view that the Tribunal fell into patent error in setting aside the selection of Gurde and Bayas.

14. The State Government in its written reply filed before the Tribunal stated as under:

It is, therefore, clear that these are the special cases where the officers of outstanding merit and ability are only held eligible for consideration by the Selection Committee unlike in case of S.C.S. Officers who are to be graded "outstanding", "very good", "good" and "unfit" and even an officer in "good" category can be appointed to I.A.S.... The respondent Nos. 4 to 10 have been found to be the officers of outstanding ability and merit by the Selection Committee and, therefore, the averments made by the applicants in this paragraph that these officers are less meritorious is their own presumption....It is only in these special circumstances when such officers become available, that recruitment to the I.A.S. is made by the method of selection. Appointments have been made to the I.A.S. under the I.A.S. (Appointment by Selection) Regulations, 1956 only when outstanding Officers could become available.

15. The State Government in its written reply before the Tribunal justified the recruitment under the Regulations by stating as under:

It is submitted that the need of the officers having experience in the fields other than the field of Revenue Administration is ever increasing with the multiplicity of welfare scheme of Government and Government, therefore, feels the need to utilise the services of experienced and outstanding officers from the fields other than the S.C.S. Officers

16. We are satisfied that there were "special circumstances" before the State Government to make recruitment under the Regulations. In the face of clear pleadings on the record the Tribunal was not justified in holding that there was no material on the record to show the existence of "special circumstances". The Tribunal was wholly unjustified in asking the Central Government to show the existence of "special circumstances" in terms of Rule 8(2) of the Rules. As interpreted by us the scheme of the Rules and the Regulations clearly show that it is the State Government which has to be satisfied regarding the existence of "special circumstances". The Central Government comes into the picture at the last stage when it makes the appointment under Regulation 3(4) and 3(4A) of the Regulations.

17. Learned Counsel for the respondents-Civil Service Officers invited our attention to the proviso to Rule 9(1) read with Rule-9(3)(a)(ii) of the Rules and argued that in terms of these Rules no vacancies are made available for the special recruits and as such appellant Bayas and Guide cannot be offered appointments to the IAS. The point as such was not raised before the Tribunal. We have no material on the record to support the contention of the learned Counsel. On the other hand, the stand of the State Government before the Tribunal clearly shows that he vacancies were available for the appointment of Bayas and Gurde in terms of Rule 9 of the Rules. The relevant extract is reproduced hereunder:

In fact, rules clearly provide that upto 15% of the promotion posts can be filled up by appointment of the non-SCS Officers by selection. This limit has not been exceeded by the appointment of the Respondents Nos. 4 to 8 and also if the Respondent Nos. 9 and 10 are also appointed. Respondent Nos. 9 and 10 have been selected by the Selection Committee against the vacancies which are within the limit prescribed under Rule 9 of the Recruitment Rules.

18. We, therefore, allow the appeals, set aside the impugned judgment of the Tribunal dated July 19,1991 and dismiss the application of the Civil Service Officers before the Central Administration Tribunal. No costs.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1416 of 1993.

19. Special leave granted.

20. In view of the our judgment in Civil Appeal No. 1414 of 1993 arising out of SLP (civil) No. 17028 of 1991 dated March 23,1993 this appeal is allowed and the interim

order dated September 9, 1991 in O.A. No. 530 of 1991 pending before the Central Administrative Tribunal, Bombay is quashed. No costs.