

Bihar Administrative Service Association

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Memo No 46

Date 10.04.2020

To,
The Additional Chief Secretary,
General Administration Department,
Government of Bihar, Patna

Sub: Prayer for not recommending for promotion of Non-SCS officer to IAS by selection under Rule 4 (1) © and 8 (2) of IAS (Recruitment) Rules, 1954 and IAS (Appointment by Selection) Regulations, 1997 as neither special case/special circumstances exist nor is there any exigency to recruit Non-SCS officers as the officers of SCS of outstanding merit and ability, having even more than 20 years of substantive service, are available for promotion in large number.

Ref. : BASA letter no. 10 dated 21.01.2020

Sir,

With reference to our earlier letter, we further draw your kind attention to the captioned subject and submit that Rule 4 (1) of IAS (Recruitment) Rules, 1954 provides for the following methods of recruitment;

- By competitive examination
- By promotion of substantive member of State Civil Service.
- By selection, in the special case 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 State Civil Service.

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Rule 8 (2) of IAS (Recruitment) Rules, 1954 provides that the Central Government may, in special circumstances and on the recommendations of the State Government concerned and in consultation with the Commission and accordance with 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 State Civil Service of that State but who holds a gazetted post in a substantive capacity.

Rule 9 (1) of IAS (Recruitment) Rule, 1954, further stipulates that the number of person recruited under sub-rule (2) of rule 8 shall not at any time exceed 15% of the total number of posts calculated in the manner laid down in sub Rule (3) for filling up by such promotion and selection.

Regulation 4 of IAS (Appointment by Selection) Regulations, 1997 prescribes the condition for considering a person for promotion of IAS (Appointment by Selection) that he

- is of outstanding merit and ability and
- holds a Gazetted post in a substantive capacity and
- has completed not less than eight years of continuous service under the State Government on the 1 day of January of the year in which his case is being considered on any post which has been declared equivalent to the post of Deputy Collector in State Civil Service.

It may kindly be noted that Rule 4 (1) (c) of IAS (Recruitment) Rules, 1954 has emphasized the words 'In special cases' and Rule 8 (2) on the word 'In special circumstances'. Quite amazingly, the State Government, and even the Central Government, continue to fail in their duty to properly examine if the proposals being sent by them for determining the post/s for Non-SCS officers at all fulfil the requirement of the provision of 'In special cases' and 'In special circumstances'. It has been held by the Hon'ble Apex Court in **P.M. Bays Case, (1993, SCC, 319)** while interpreting Rule 4(1) (c) and Rule 8 (2) of IAS (Recruitment) Rules, 1954 that before taking in a decision regarding making an appointment by the selection, **the State Government must have evidence on record to**

- (i) the existence of Non-SCS officers with eight years of service in a gazetted post under the State Govt. who are outstanding merit and ability and
- (ii) the satisfaction of the State Government that, in the public interest, it is necessary to consider such officers for promotion of IAS.

The special circumstances in a real sense would necessarily mean that the State Government does require Non-SCS officers having specialization in the fields of I.T., Medical Science, Engineering, Management and Agriculture and whose contributions in his department are commendable and acknowledge. This condition precedent has hardly ever been met. **Available data indicate that nowadays quite large number candidates from different specialized discipline like Finance, Engineering, Medical Science, Law and Management are recruited both to the SCS and AIS** but strangely their specialized knowledge is not being effectively utilized to the public good.

As per information available with the Association, the State Government takes decisions to recommend for filling up crucial posts from the Non-SCS officers brushing aside the requirement to fill up such posts by seasoned SCS officers only to accommodate the Non-SCS officers having no outstanding merit or ability, and without even recording the reasons as to what special case, special circumstances and public interest warrant such choice of Non-SCS officers. Even the Central Government, while accepting such proposals from the State Government, does not satisfy itself as to the condition precedent, of a special case and special circumstances, least to say of public interest, as laid down by the Hon'ble Apex Court in the case already referred to above.

In another judgment delivered by the Hon'ble Apex Court in **T. Sham Bhat case, (1994, Supp, SSC, 340)**, it has been laid down that in IAS (Appointment by Selection) Regulations 1956, only officers of Non-SCS holding substantive gazetted post involving duties comparable in importance and responsibilities to that of the post held by a class-I officer of SCS were eligible for selection. To put it differently, the IAS Recruitment Rules on their very face do not permit Non-SCS officers who held substantive Gazetted posts which were lower in rank than that of the post of Deputy collector in SCS. The

circular no.4900 dated 02.04.2012 of equivalence issued by Bihar Government is violative of the basic principle of 'Involving duties comparable in importance and responsibilities to that of the post held by class-I officers of SCS' as laid down by the Hon'ble Apex Court. Most surprisingly, GAD has issued the said circular of equivalence declaring posts based on the pay scale and not based on duties attached to the post as laid down by the Apex Court.

The Hon'ble Apex Court has further laid down that Class-I and Class-II posts cannot be pooled together to make them eligible for selection, under the promotion Regulations, only Class-I SCS officers are considered for promotion whereas Bihar government has, with the help of above mentioned circular, declared indirectly some of the Class-II Non-SCS officers equivalent to that of Deputy Collector in SCS while issuing Notification of equivalence. This is against the basic spirit of Selection Regulations and in gross violation of the law laid down in T. Sham Bhat case by the Apex Court.

Given the facts and circumstances as explained hereinabove, it can be reasonably concluded that the State Government in particular and the Central Government in generally have deliberately failed to follow the provisions of Rule 4(1) © and 8 (2) of IAS (Recruitment) Rules, 1954 and IAS (Appointment by Selection Regulations, 1997. Therefore, there appears to be no convincing ground **for recommending for promotion of Non-SCS officer to IAS by selection** and this unethical policy rather needs a decent burial forthwith.

The following grounds also sufficiently justify the requirement of not following the Rule 4(1) (c) and 8 (2) of IAS (Recruitment) Rules, 1954 as neither special case, special circumstances exist nor is there any exigency to recruit Non-SCS officers as the SCS officers of outstanding merit and ability, having even more than 20 years of substantive service is available for promotion in good number.

- (i) Most importantly, when the IAS (recruitment) Rule, 1954 and IAS (Appointment by selection) Regulations, 1956 were framed, the SCS officers in most of the States with the minimum of eight years of service were not available in good number. Therefore, at that point of time, there might have been some justification for drawing Non-SCS officers for promotion to IAS. But as on date, there appears to be no reason/justification to invoke this provision

to select Non-SCS officers for IAS, especially when SCS officers of outstanding ability and merit, having service of more than 20 years are available in good number in comparison to the vacancy available under promotion quota.

(ii) Under Rule 8 (2) of the Recruitment Rules, the word 'may' has been prescribed. The Central Government may, in a special circumstance and on the recommendation of the State Government concerned and in consultation with the Commission and by 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 the State (but who holds a gazetted post in substantive capacity). **Therefore, the provision is in no way mandatory in nature. In practice, State Government goes for the selection of such Non-SCS officers mechanically taking the Regulation and obviously for some no-transparent and inexplicable reasons and that, too, when the officers of SCS having more than 20 years of service and outstanding merit and ability are available for promotion in good number.**

(iii) Under the provision of Rule 9 (1) of IAS (Recruitment) Rules, 1954, the State Government in consultation with Central Government may appoint Non-SCS officers to IAS up to 15% of the promotion posts (33.1/3%), meaning thereby that the **promotional avenues of SCS officers are further shrunk** to that extent whereas the SCS officers are gripped with the problems of acute stagnation, it is pertinent to mention that in a the State, the only promotional avenue available to SCS officers is a promotion to IAS, whereas the Non-SCS officers are promoted to the post of Additional Director/Commissioner in some cases.

(iv) The State Public Service Commission holds a combined competitive examination for recruitment to the State Civil Service and other Allied Services. **The persons of outstanding merit and ability are usually recruited to the State Civil Service,** whereas, persons of comparatively lower merit and lesser ability are recruited to other Allied Services of the State. Under the Selection Regulation, the persons of lesser ability and inferior

merit belonging of the Allied Services, as clinching evidence shows in recent times, have managed to get into IAS, much earlier than the SCS officers of outstanding ability and merit, This because of the reason that under Selection Regulations, minimum qualifying period is of eight years, whereas, under Promotion Regulations, though the qualifying period is eight years, SCS officers are considered in the promotion zone in order of seniority and most of the SCS officers of outstanding merit and ability and with more than twenty years of service experience languish in the waiting queue. In Bihar, Non-SCS officers of 1996 batches have been appointed to the IAS under Selection Regulations whereas SCS officers of exceptional, merit and proven efficiency of 1990 batch are waiting for promotion. Such a scenario only speaks of the blatant violation of the principles of equality, fairness and natural justice.

(v) The State Government has failed to declare posts of Non-SCS equivalent to the post of Deputy Collector in SCS in terms of law laid down by Hon'ble Apex Court in T. Sham Bhat case.

(vi) Rule 8 (2) of IAS (Recruitment), 1954 was a stop-gap arrangement but over the years, the State Government has been found to have been invoking this provision as a matter of right to favour only their chosen few, may be his/her relatives or friends. Suffice it say, this provision only breeds nepotism and manifest favouritism to the Non-SCS officers of lesser ability, merit and junior in comparison to SCS officers of outstanding abilities, higher merit, seniority and having rich and varied experiences in administrative and developmental fields.

(vii) This provision also promotes unfair practices. The candidates seeking entry through this channel, approach different authorities at different levels, to get into IAS, while not being officers of outstanding merit and ability but by using invisible power.

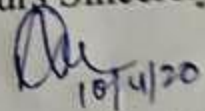
(viii) These selection Regulation which is generally called 'back door entry' has been misused and abused bizarrely and blatantly to select the officers proximate to the powers-that-be and or political executives or powerful bureaucrat, which amounts to favouritism. This has resulted in unsavoury criticism and unwarranted litigations in the state.

- (ix) In IPS and IFS, only the officers to State Police Service and State Forest Service are considered for promotion to Indian Police Service and Indian Forest Service respectively.
- (x) In context of above view of the matter, we stoutly hold that there is no justification of IAS (Appointment by Selection) Regulations, 1997, for considering the appointment of Non-SCS officers to IAS. These Regulations read with Rule 4 (1) (c) and Rule 8 (2) of IAS (Recruitment) Rules, 1954 need not to be adhered with. This will, on the one hand, increase the promotional avenue of the SCS officers to IAS, address the problem of acute stagnation to some extent and on the other hand substantially contribute to the process of cleansing the administration of unfair practices, nepotism and favouritism.

Therefore, Bihar Administrative Service Association, urges the Government of Bihar to take immediate affirmative decision in the above context and do full justice to the needs of the time as well as to favourably respond to the aspiration to the SCS of Bihar.

Looking forward to your favourable consideration and with warm regards.

Yours Sincerely



(Anil Kumar)