

\$~13

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

Reserved on: 21st September, 2020

Date of decision: 9th October, 2020

+

W.P.(C) 3509/2020 and CM APPL. 12452/2020

SHRI AKUL BHARGAVA & ORS.

..... Petitioners

Through: Mr. P.S. Patwalia, Sr. Advocate with
Mr. Shiv Mangal Sharma & Mr.
Kartikey Bhatt, Advocate. (M:
7042700133).

versus

UNION PUBLIC SERVICE COMMISSION & ORS..... Respondents

Through: Mr. Arun Bhardwaj, CGSC.
Dr. Manish Singhvi, Sr. Advocate
with Mr. D.K. Devesh, Adv. for R-3.
Mr. Naresh Kaushik, Adv. for UPSC.
Mr. Tanveer Ahmed and Mr. Prateek
Gupta, Advs. for intervenor R.P.
Sharma.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The judgment is pronounced through video-conferencing.
2. The present writ petition has been filed by 20 Petitioners, who are Non-State Civil Service Officers (*hereinafter*, “Non-SCS”) of the State of Rajasthan and are all aspirants for appointment to the Indian Administrative Service (*hereinafter*, “IAS”) of Rajasthan Cadre, for the year 2018, in the Non-SCS Category. They have challenged the letter dated 31st December 2019 issued by the Union Public Service Commission (*hereinafter*, “UPSC”)/ Respondent No.1, vide which, their interviews scheduled to be

held on 31st December 2019 and 1st January 2020, by the Selection Committee, were cancelled.

3. The stand of the Petitioners is that two members of the Selection Committee who were to be nominated by the Government of India, according to Regulation 3 of the IAS (Appointment by Promotion) Regulations, 1955, were not nominated, because of which, the interviews, that were fixed for 31st December 2019 and 1st January, 2020, had to be cancelled. Thereafter, no steps have been taken to hold these interviews, and the four vacancies, which were declared by the State of Rajasthan, have been subsumed in the vacancies for the next year.

4. Preliminary objections have been raised by the Respondents that this Court does not have the territorial jurisdiction to hear the present petition and that the Central Administrative Tribunal, Jaipur (*hereinafter*, “CAT”) is the appropriate forum to deal with the dispute in hand, in view of Section 14 of the Administrative Tribunals Act, 1985 (*hereinafter*, “the Act”).

Submissions

A. Petitioner’s Submissions

5. Mr. Patwalia, Id. Senior Counsel appearing on behalf of the Petitioners has raised various objections in respect of the manner in which the entire process of recruitment is being stultified. He submits that as per the Indian Administrative Services (Recruitment) Rules, 1954, there are three methods of recruitment. One is by competitive examinations, second, by promotion and third, by selection in special cases. He submits that for the third category, the State Department concerned sends recommendations of number of persons amounting to five times the number of vacancies, and

accordingly, in the present case, 20 candidates were recommended by the State of Rajasthan for consideration, to fill the 4 vacancies with respect to the Non-SCS Officers in the IAS, Rajasthan Cadre.

6. Mr. Patwalia further submits that the UPSC had initially fixed the date for interviews on 31st December 2019, however, looking at the number of candidates, it had extended the said date for interviews to 1st January 2020. According to him, the candidates reached the UPSC on 31st December 2019, however, to their utter shock and surprise they were told that the Selection Committee had not convened, as two Members, who were to be appointed by the Government of India, were not appointed.

7. Ld. Senior Counsel, then relies upon the counter affidavit filed by Union of India to argue that the entire process of appointments is being set at naught by disgruntled officers belonging to the State Civil Services (*hereinafter*, “SCS Officers”), who are not only writing representations to various Members of Parliament but are also seeking political intervention in this matter. He submits that once the vacancies were finalized, the date of 31st December 2019 is not sacrosanct as the interviews were to even be held on 1st January 2020. Accordingly, the prayer of the Petitioners is that the Government of India should be directed to nominate its two Members to hold the interviews and the selection process should be allowed to proceed further, at the earliest.

8. Mr. Patwalia, further dealing with the submissions on maintainability of this writ petition, with respect to the availability of an ‘alternate remedy’ urges as under:

- i) First, he fairly concedes that approaching the CAT is always an option available to the Petitioners. However, in spite of the said remedy being

available, it is his submission that there is a considerable urgency in this matter and expediency demands that the petition under Article 226 ought to be entertained. He submits three reasons as to why this prayer is being sought before this Court:

- (a) The CAT is functioning at sub-normal levels during the pandemic and only 2-3% of cases are being heard;
- (b) As a consequence of the pandemic, decision making in the CAT is considerably delayed;
- (c) The power of this Court under Article 226 is plenary in nature and existence of the alternate remedy does not take away the jurisdiction of this Court from dealing with the issue.

Ld. Sr. counsel relies upon the order of this Court in ***Pramod Babanrao Yadav v. Union of India & Ors.*** [W.P.(C) 3173/2020] passed by the Id. Division Bench on 19th May 2020. He submits that in the said case, the question of promotion of the SCS Officers to the IAS promotional cadre in the State of Maharashtra was under consideration. This case was decided during the COVID-19 lockdown. The Court heard the State of Maharashtra, the UPSC and all concerned and finally directed that the UPSC would hold the Selection Committee Meeting within a period of three months, hence assuming jurisdiction.

ii) Secondly, reliance is placed by Id. Sr. Counsel, upon the holding in ***Assam Civil Service Officer's Association v. Union of India*** [W.P.(C) No. 1149/2018] wherein vide judgment dated 26th April, 2018, a Id. Single Judge of the High Court of Guwahati at Assam, on similar facts, held that the power of a writ Court under Article 226 cannot be ousted, even when an alternative remedy or forum is available. Specific reliance

is placed on paragraphs 7, 24 and 29 of the said judgment.

iii) Finally, reliance is also placed on the judgment of the Supreme Court in *L. Chandra Kumar v. Union of India* [(1997) 3 SCC 261] which has also been relied upon in *Assam Civil Service Officers (supra)* by the Guwahati High Court. Specifically, paragraphs 76 to 78 and 80 are relied upon by the Id. Senior Counsel, to argue that the existence of an alternative remedy is only an issue of discretion, and there is no bar and ouster to writ jurisdiction under Article 226 of the Constitution.

9. Insofar as the “lack of jurisdiction” is concerned, it is submitted by Mr. Patwalia that if a part of the cause of action arises in Delhi, this Court would have the jurisdiction to hear this writ petition. He submits that no part of the cause of action arises in Rajasthan inasmuch as:

- i) the Petitioners do not have any *lis* with the State of Rajasthan, which has sent the list of candidates and has also rejected the complaint of the third party;
- ii) the main *lis* is with the Union of India, which failed to send the names of the two nominees for the Selection Committee;
- iii) the UPSC is only an agency responsible for holding the Selection Committee Meeting. It has no say on the merits. However, UPSC, which is to hold the meeting, is located in Delhi.

10. With respect to the challenge upon the allocation of vacancies made by the SCS officers before the CAT, Jaipur Bench, Id. Sr. counsel submits that no challenge was raised when the list was sent in January 2019 itself. He submits that the filing of the said petition before the CAT, Jaipur Bench, is nothing but victimization of non-SCS officers with the sole intention to ensure that the Selection Committee does not meet and hold the selection

from the category of Non-SCS officers. He concludes by saying that it has been four years since non-SCS candidates have been considered for the promotion of IAS, and hence this Court ought to entertain the petition under Article 226 and direct the Union of India to nominate the two members so that the Selection Committee can meet and complete the selection process on an early date.

11. On merits, ld. Sr. Counsel, submits that the legal position is settled, on the basis of three judgments i.e. *Syed Khalid Rizvi & Ors. v. Union of India & Ors.* [1993 Supp (3) SCC 575], *Union of India & Ors. v. Vipinchandra Hiralal Shah* [(1996) 6 SCC 721], and *Vijay Singh Charak v. Union of India & Ors.* [(2007) 9 SCC 743]. He submits that the stand of the State of Rajasthan and the Government of India that vacancies of 2018 have been subsumed in the subsequent years, is contrary to law. It is his submission, on the strength of these three judgments, that it is impermissible for the list of one year to be clubbed with the list of the next year, as the list for each year would be distinct and separate. He submits that clubbing and subsuming of vacancies is not permissible.

12. Ld. Sr. counsel thereafter takes this Court to two letters i.e. a letter dated 21st January 2020 and a letter dated 29th May 2020 – both of which have been annexed with the counter Affidavit of the State of Rajasthan. It is his submission that in their counter Affidavit, the State of Rajasthan takes a stand that the list of the year 2018 has lapsed. However, a perusal of the two letters dated 21st January 2020 addressed by the UPSC and 29th May 2020 by the Principal Secretary to the Government of Rajasthan does not show that the list has lapsed. He further submits that UPSC's letter merely concludes that it was not practicable to hold a meeting of the Selection

Committee for the select list of 2018. It does not, however, say that the list has lapsed.

13. Relying upon Regulation 5(c) of the Indian Administrative Service (Appointment for Selection) Regulations, 1997, ld. Sr. counsel submits that the Regulation mandatorily requires the Selection Committee to meet every year, in order to consider the proposals of State Governments for appointment to the IAS. He further submits that the Regulation merely provides that if it is not practicable, the Committee Meeting need not to be held. However, the effect of not holding a meeting is not prescribed in the Regulations. He submits that the reliance on these Regulations by the Respondents, to argue that the list has lapsed, would be untenable.

14. Ld. Sr. counsel further urges that for the last four years, from 2017 till 2020, the selections via the Non-SCS Officers route for promotion to the IAS are not being held or have been getting postponed for one reason or other. However, on the other hand, the selection for the SCS Officer's promotion to the IAS is being held continuously. He submits that the dispute between the SCS and non-SCS officers has resulted in this log jam due to which the non-SCS candidates are being put at a considerable disadvantage. It is further submitted that the letter dated 7th February, 2020 written by the State of Rajasthan, in response to the complaint by Rajasthan Prasasnik Sewa Parishad, clearly shows that the State itself is of the opinion that the complaint is baseless. He therefore submits that when the State of Rajasthan itself takes the position that the complaint is baseless, there is no reason why the UPSC or Government of India should, in any way, have any hesitation in holding the meeting of the Selection Committee.

B. Respondents' Submissions

15. The submissions of Dr. Manish Singhvi, Id. Senior Counsel, appearing for the State of Rajasthan, are four-fold. Firstly, he submits that the main order dated 21st January 2020, which constitutes the real cause of action for the Petitioners, has not been challenged in the present petition. Secondly, he submits that Section 14 of the Act would bar this court from entertaining this present writ petition. Thirdly, he submits that even if the matter is examined from the point of view of *forum conveniens*, since all the Officers belong to the State of Rajasthan and their appointment would be to the Rajasthan Cadre, coupled with the fact that the State of Rajasthan is also a party to this petition, the CAT situated in Rajasthan is the appropriate forum. Finally, he submits that a similar matter, which has been filed by one Mr. Rajendra Prasad Sharma, who is a SCS Officer of Rajasthan, being petition OA No. 291/138/2020, is pending before the CAT, wherein the issue of selection in respect of the same four vacancies is being heard.

16. Id. Senior Counsel, further submits that the judgment in ***L. Chandra Kumar*** (*supra*) is extremely clear on the aspect of maintainability. He submits that judicial review has been restored by the said judgment, however, it is not open to litigants to approach the High Court directly. Specific reliance is placed by him upon paragraph 94 of the said decision of the Supreme Court. It is further urged that in so far as this case is concerned, all the affected parties are based in Rajasthan, and therefore this Court would not be the *forum conveniens*. He submits that the main grievance of the Petitioners is against the State of Rajasthan and in any event, on the ground of *forum non conveniens*, this writ is liable to be dismissed.

17. Mr. Arun Bharadwaj, Id. CGSC, appearing for the Union of India, has

reiterated the submissions made by Dr. Singhvi and has further submitted that this petition ought to be heard with the OA No. 291/138/2020 pending before the CAT.

18. Ld. CGSC submits that in terms of the order of the Division Bench, dated 28th August 2020, in **LPA 227/2020**, the question of maintainability needs to be addressed first in this petition. In any event, he relies upon the judgment of the Id. Single Judge of this Court in **Prabhat Ranjan Deo v. UPSC [WP(C) 3334/2019, decided on 13th July, 2020]** to argue that this Court cannot be approached at the first instance in a case where the CAT has jurisdiction to deal with the subject matter of the dispute.

19. Mr. Naresh Kaushik, Id. counsel appearing for the UPSC, submits that the question as to whether this Court can entertain the present writ is no longer *res integra* in view of various judgments, including the latest judgment of a Coordinate Bench of this Court in **Prabhat Ranjan Deo (supra)** wherein the Id. Single Judge has held that, in respect of service matters, there is an ouster of jurisdiction of the High Court, and the CAT is not just an alternative, but the only forum of first instance, where grievances can be raised. He further submits that the categorical finding in the said judgment is that, the High Court can only exercise jurisdiction in terms of a judicial review before a Division Bench, once the CAT has rendered the order/judgment in the matter, in the first instance.

20. Mr. Kaushik further submits that in so far as the case of **Pramod Babanrao Yadav (supra)** is concerned, the said case was entertained by the Id. Division Bench of this Court at a time when the CAT had not yet started functioning fully. He submits that though the question of jurisdiction was raised in the said case, the same was not dealt with in the final judgment,

and since the proposal itself in the said case was pending with the UPSC, the Division Bench was dealing with a situation which can completely be distinguished from the facts of the present case at hand.

21. Ld. counsel, lastly submits, that in terms of the judgment in ***L. Chandra Kumar (supra)***, High Courts can only exercise the power of judicial review and jurisdiction under Article 226 and 227, after the CAT has dealt with the matter at the first instance. He submits that since the ***Pramod Babanrao Yadav (supra)*** decision does not deal with jurisdiction in substance, it cannot be cited by the Petitioners in support of their case on the question of maintainability.

22. Lastly, Mr. Tanveer Ahmed, ld. counsel for the intervenor, submits that the CAT Jaipur Bench is fully functional. He further submits that in cases where there is an urgency, the hearing is being held through video conferencing, and only when parties do not demonstrate any urgency, the matter is being adjourned. Thus, according to him, the present dispute can be easily dealt with by the CAT, Jaipur Bench, where a similar matter is already said to be pending.

Analysis and Findings

23. Heard ld. counsel for the parties and perused the record. The contentions raised on behalf of the Respondents in this petition is that the present petition is not maintainable before this Court. The said issue has three-fold arguments on behalf of the Respondents.

- First, that an alternate remedy exists under Section 14 of Administrative Tribunal Act, 1985, under which the Petitioners, in a service dispute, are supposed to approach the CAT, and not this Court

by way of writ petition.

- Secondly, that the Delhi High Court would be a *forum non-conveniens* as the recruitment is related to the IAS of the Rajasthan cadre.
- Thirdly, that this Court lacks territorial jurisdiction to entertain and hear the present writ petition.

24. Vide order dated 12th June 2020, this Court had observed that the question of maintainability would have to be determined first, as also the question of territorial jurisdiction. One of the intervenors in this matter also approached the Division Bench in **LPA 227/2020** praying that the first issue that ought to be determined in this petition is on maintainability of this writ petition. Accordingly, vide order dated 28th August 2020, the Division Bench of this court had directed as under:

“7. In view of the foregoing and with the consent of the learned counsel appearing on behalf of the parties, including the learned counsel appearing on behalf of the original petitioners, the learned Single Judge is requested to determine the maintainability of the subject writ petition, as also the question, whether this Court has subject matter and territorial jurisdiction in the present writ petition, as a preliminary issue before proceeding further with the merits of the subject writ petition.”

Initially the Petitioners' Sr. Counsel had argued on maintainability and on merits. Counsels for the Respondents have made submissions on maintainability. The Court, however, proceeds to decide only upon the issue of maintainability at this stage, though some of the submissions made have been recorded above.

25. In order to understand the nature of the dispute and whether the writ is

maintainable, some background facts are essential. The recruitment to the IAS is by two routes. One by a competitive examination and secondly by selection. Insofar as the latter category is concerned, the same is governed by the IAS (Appointment by Selection Regulations), 1997 (*hereinafter*, “1997 Regulations”), which are framed under the All India Services Act, 1951 and the Rules framed thereunder. As per Rule 4 of the Indian Administrative Services (Recruitment) Rules, 1954 (*hereinafter*, “1954 Rules”), insofar as the 3 streams of recruitment are concerned, the SCS Officers can be considered for appointment to the IAS by promotion, and if Non-SCS Officers are to be considered for the IAS, there is a complete mechanism which is provided. Rule 4 of the 1954 Rules reads as under:

“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) Omitted

(b) By promotion of a 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

(a) the method or methods of recruitment to be adopted for the purpose of filling up any particular vacancy or vacancies as may be required to be filled during any particular period of recruitment, shall be determined by the Central Government in consultation with the Commission and the State Government concerned;

(b) the number of persons to be recruited by each method shall be determined on each occasion by

the Central Government in consultation with the State Government concerned.

(3) Notwithstanding anything contained in sub-rule (1), if in the opinion of the Central Government the exigencies of the service so require, the Central Government may, after consultation with the State Government and the Commission, adopt such methods of recruitment to the Service other than those specified in the said sub-rule, as it may by regulations made in this behalf prescribe.

(4) Notwithstanding anything hereinbefore contained in this rule, in relation to the State of Jammu & Kashmir, recruitment to the State Cadre on its initial constitution shall be made by such method as the Central Government may after consultation with the State Government and the Commission, prescribe.”

From the above provisions, it is clear that recruitment to the IAS is through three methods-

- (i) Direct recruitment
- (ii) By promotion of SCS officers
- (iii) By selection from among Non-SCS officers

26. The present petition relates to the Petitioners, who would be covered by the category prescribed under Rule 1(c) of Rule 4 above i.e. selection from among Non-SCS Officers. In the case of Non-SCS Officers, the following relevant provisions of the 1997 Regulations would be applicable:

“3. Determination of vacancies to be filled: -

The Central Government shall, in consultation with the State Government concerned, determine the number of vacancies for which recruitment may be made under these regulations each year. The number of vacancies shall not exceed the number of substantive vacancies, as on the first day of January of the year, in which the

meeting of the Committee to make the selection is held.

4. State Government to send proposals for consideration of the Committee: -

1. The State Government shall consider the case of a person not belonging to the State Civil Service but serving in connection with the affairs of the State who,

- i. is of outstanding merit and ability; and
- ii. holds a Gazetted post in a substantive capacity; and
- iii. has completed not less than 8 years of continuous service under the State Government on the first day of January of the year in which his case is being considered in any post which has been declared equivalent to the post of Deputy Collector in the State Civil Service and propose the person for consideration of the Committee. The number of persons proposed for consideration of the Committee shall not exceed five times the number of vacancies proposed to be filled during the year:

Provided that the State Government shall not consider the case of a person who has attained the age of 54 years on the first day of January of the year in which the decision is taken to propose the names for the consideration of the Committee.

Provided also that the State Government shall not consider the case of a person who, having been included in an earlier Select List, has not been appointed by the Central Government in accordance with the provisions of regulation 9 of these regulations.

5. Preparation of a list of suitable officers by the Committee: -

The Committee shall meet every year to consider the proposal of the State Government made under regulation 4 and recommend the names of the persons, not exceeding the number of vacancies to be filled under regulation 3, for appointment to the service. The suitability of a person for appointment to the service shall be determined by scrutiny of service records and personal interview: -

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 recruitment of persons under sub-rule (2) to rule 8 read with proviso to sub-rule (1) to 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 recruitment under sub-rule (2) to rule 8 read with proviso to sub-rule (1) to rule 9 of the recruitment rules; or*
- c. the Commission, either on its own or on a proposal made by the Central Government or the State Government, considers that it is not practicable to hold a meeting of the Committee during the year, in the facts and circumstances of each case.*

Explanation: In case of Joint Cadres, a separate Select List shall be prepared in respect of each constituent having a State Civil Service.

6. Consultation with the Commission: -

- 1. The recommendations of the Committee made under regulation 5 shall be placed before the State Government concerned which shall forward the same to the Commission for approval along with*
 - i. the confidential records of the officer concerned; and*
 - ii. the observations, if any, of the State Government and the recommendations of the Committee.*
- 2. The State Government shall also forward the recommendations of the Committee and its observations, if any, to the Central Government. The Central Government shall forward their observations, if any, on the recommendations of the Committee, to the Commission.*

7. Preparation of Select List by the Commission: -

1. *The Commission shall consider the list prepared by the Committee, the observations, if any, of the Central Government and the State Government concerned on the recommendations of the Committee and approve the list subject to the provisions of sub-regulation (2) which shall be termed as a Select List.*
2. *If the Commission considers if necessary to make any amendment in the list, it shall consult the Central Government and the State Government concerned and after taking into account the comments, if any, of the Central Government and the State Government concerned, may approve the list which such amendments, if any, as are in its opinion, just and proper.*

8. Appointment to the service from the Select List: -

1. *Appointment of persons who are included in the Select List, and are willing to be appointed to the service, shall be made by the Central Government, within a period of sixty days, in the order in which the names of such persons appear in the Select List;*

Provided that the appointment of persons who are included in the Select List shall be made in accordance with the agreement arrived at under clause (b) of sub-rule (3) of rule 8 of the recruitment rules in the order in which the names of such persons appear in the relevant parts of the Select List;

Provided also that in case a Select List officer has expressed his unwillingness for appointment to the service, he shall have no claim for appointment to the service from that Select List unless he informs the Central Government through the State Government before the end of the year in which the meeting of the Committee is held to prepare the Select List or within sixty days of the date of the letter conveying his expression of unwillingness to be appointed to the

service whichever is later, revoking his earlier expression of unwillingness for appointment to the service.”

27. As per the above scheme, under Regulation 3, the first step would be to determine the number of vacancies for each year. After the vacancies are determined, the State Government sends proposals to the Screening Committee appointed under Regulation 3. The Screening Committee would, thereafter, prepare the list of suitable officers, which would not exceed the number of vacancies for appointment to the service. Under Regulation 5, the appointments would then be made on the basis of a scrutiny of records, and thereafter, a personal interview. The recommendations, which are made by the Screening Committee under Regulation 5 are then sent to the UPSC for approval, along with the confidential records and the observations of the State Government. A Selection Committee then conducts interviews under the aegis of the UPSC. The UPSC then prepares the select list as per the recommendations of the Selection Committee. Finally, the Central Government officiates the appointments of the selected candidates, to the IAS. Thus, there are two Committees – the Screening Committee at the State level and the Selection Committee under the UPSC. The final selection is made by the Selection Committee constituted under Regulation 3 of the IAS (Appointment by Promotion) Regulations, 1955, the members of which are:

“a) Chairman of the UPSC (where the Chairman is unavailable, any other member of the Commission);

b) Chief Secretary of the State Government;

c) the senior-most officer of the Cadre serving in the State, other than the Chief Secretary;

d) Head of General Administration

Department/Personnel /Revenue Department of the State Government not below the rank of Secretary to the State Government; and

e) two nominees of Government of India not below the rank of Joint Secretary.”

28. In the present case, the Union of India, on 16th January 2019, determined four vacancies for selection of Non-SCS Officers in the IAS (Rajasthan Cadre) for the year 2018. It informed to this Court, in the counter affidavit, that the State of Rajasthan, vide letter dated 5th September 2019, in turn requested all its Departments to recommend five names each, for the vacancies. The intention was to have at least 20 candidates for the four vacancies which were determined, i.e. 5 times the number of vacancies. After, collating the recommendations of various Departments, a Screening Committee meeting was held on 22nd November 2019 to select 20 officers. The Petitioners in the present writ petition are the 20 officers, who were selected by the Screening Committee. Their names were forwarded by the State of Rajasthan to UPSC, for holding the Selection Committee meeting in order to finally prepare the select list to fill up the vacancies, after holding personal interviews.

29. Parallely, the State of Rajasthan also informed all the Petitioners on 4th December 2019 that their names were included in the panel and were forwarded to the UPSC. On 10th December 2019, the UPSC fixed the Selection Committee meeting to conduct interviews of the 20 candidates, for 31st December 2019 at 10:00 am, at the UPSC, Dholpur House, New Delhi. All the candidates i.e. the Petitioners, were communicated the date of the interviews. Thereafter, the schedule was slightly changed, and the interviews

were rescheduled to be held on 31st December 2019 and 1st January 2020. This information was also conveyed to all the Petitioners vide a letter dated 23rd December 2019.

30. The Petitioners arrived in Delhi for their interviews on 30th December 2019. However, late in the evening, at around 9:00 pm, they were unceremoniously informed that the interviews had been postponed indefinitely. The Petitioners reached the UPSC office and they were denied entry. On 31st December 2019, the UPSC sent a letter to the State of Rajasthan that the interviews could not be held as the Union of India had not sent its two nominees, as required under Regulation 3 of the IAS (Appointment by Promotion) Regulations, 1955, to sit in the Selection Committee. For holding the interviews on 31st December 2019, members (a) to (d) above were available, however, the two nominees of the Central Government were not available. This led to the cancellation of the interviews.

31. The Petitioners, thereafter, wrote a representation to the Principal Secretary, State of Rajasthan on 6th January 2020, informing about the inconvenience caused by the cancellation of the said interviews and also demanding a revised schedule at the earliest, although, to no avail. The UPSC then also informed the State of Rajasthan, vide letter dated 21st January 2020, that *“it was not practicable to hold the meeting of the Selection Committee”*.

32. It has now been revealed in the Counter Affidavit, that the Union of India did not appoint its nominees, to sit in the Selection Committee, in view of certain representations received from SCS Officers stating that the vacancies were not properly determined, and persons with allegations of

corruption against them had been selected for the interviews by the Selection Committee. It is stated in the Counter Affidavit that:

“7.2.....

(ii) Almost simultaneously at the time of meeting notice, influx of several representations / complaints /references from Hon'ble Members of Parliament, Rajasthan Administrative Association, Advocates etc alleging inter-alia the following:

- a) Wrong determination of vacancies for Non SCS in the case of Rajasthan for the Select List of 2018, by clubbing the vacancies of previous year.*
- b) Absence of any extra ordinary circumstance and non-justification by the State Government while proposing to recruit through Selection; and*
- c) Forwarding the names of Non SCS Officers facing corruption charges by the State Government.”*

33. The State of Rajasthan, however, vide a letter dated 7th February 2020 informed the Union of India, that all the complaints are baseless and have no substance. The Union of India has in its Counter Affidavit, averred to this effect, stating that:

“6.1.....

Letter dated 07.02.2020 received from the Government of Rajasthan informing that the representations/ references/ complaints forwarded by DoPT, Government of India (referred to in preceding points) have been examined by the State Government and it has been observed (by the State Government) that there is no substance in above complaints. Further the Non SCS Officers recommended by the State Government are of outstanding merit and ability. All the recommended officers are clear from vigilance angle and that full transparency has been

maintained by the State Government regarding nomination of Non SCS Officers.”

Thereafter, on 29th February 2020, the State of Rajasthan started the process for creation of a select list for the year 2019, for filling the 4 vacancies from the Non-SCS services to the IAS, Rajasthan cadre.

34. In view of the stalemate that has occurred with respect to the 2018 appointments, the Petitioners have preferred the present writ petition.

35. At this stage, this Court is only considering the question of maintainability of this writ petition, and three aspects of maintainability i.e. (i) territorial jurisdiction of this court to hear this writ petition, (ii) *forum non conveniens* and (iii) the availability of an alternate remedy in the form of CAT under Section 14 of the Central Administrative Tribunals Act, 1985.

Territorial jurisdiction:

36. From the narration of facts, it is clear that the primary grievance of the Petitioners is against the Central Government and the UPSC and not the State of Rajasthan. The Selection Committee meeting was to be held in Delhi. It is relevant to note that the interviews in this case were to take place in Delhi. The UPSC, which was to conduct the interviews and draw up the selection list, is located in Dholpur House, New Delhi. Further, the two nominees who were to sit in the Selection Committee were to be appointed by the Central Government. Also, the letter dated 31st December 2019, cancelling the Selection Committee meeting and interviews, which is sought to be quashed by the Petitioners, was sent by the UPSC in Delhi, and served upon the Petitioners who were in Delhi for attending the interviews. Therefore, this Court has territorial jurisdiction to entertain the present petition as the cause of action has arisen within the territory of Delhi, and

further because of the fact that both the UPSC, which was to conduct the interviews for drawing up the select list, and the Central Government, which failed to send the nominees for the Committee for holding interviews in Delhi, are within the jurisdiction of this Court.

Forum non conveniens:

37. Insofar as *forum non conveniens* is concerned, the said principle is merely applied in order to determine the most convenient forum, with respect to the dispute. In the case of ***(India TV) Independent News Service Pvt. Ltd. v. India Broadcast Live LLC and ors. (2007 (35) PTC 177 Del)***, this Court had held that:

“59. A perusal of the aforesaid shows that the legal position as regards forum non conveniens is that a stay on the ground of forum non conveniens would be granted where a court is satisfied that there is another available forum having jurisdiction. Also, the plaintiff's choice of forum is usually not disturbed unless the balance of convenience is strongly in favour of the defendant. In determining whether a more appropriate forum exists, connecting factors, such as those effecting the convenience of parties, expenses involved and the law governing the relevant transactions are to be looked into. The mere fact that a part of the cause of action has arisen within the jurisdiction of the court may itself not be considered to be a determinative factor compelling the court to decide the matter on merits. In determining which of the available forums is the forum conveniens in a given matter, the convenience of all the parties had to be seen.”

38. The principles of *forum non conveniens* are well settled during normal times and regular circumstances. However, the present petition is now being heard during the times of a pandemic, when almost all Courts and Tribunals

are holding hearings only through virtual platforms. The convenience of the parties is not to be determined on the basis of their capability to travel, or the feasibility for records to be produced from one territory to another territory. Therefore, due to hearings and transmission of records being virtual in any case, because of the pandemic, this Court does not feel compelled to reject this writ petition on the ground of *forum non-conveniens*. The said principle, in any event, is discretionary rather than requiring mandatory application as held in *Horlicks Limited and Anr. v. Heinz India Pvt. Ltd.* ((2009) 156 DLT 330). The relevant part of this judgment is set out below:

“28. The term ‘forum non conveniens’ is a general power to stay actions and not entertain litigation on the ground that some other Court or Forum having jurisdiction is the appropriate Forum for trial of the action. It is applied in the interest of both parties and when the ends of justice require that the cause should be tried in a different Forum. The said principle is generally applied in cases of Private International Law. It requires two stage inquiry. In the first stage, we are concerned whether there is an alternative competent Forum, which is more appropriate and second stage requires answer to the question, whether it is in the interest of justice and equity to relegate the parties to the said Forum [See Chesire and North's Private International Law, 13th Edition, Part III, Chapter 13 at Page 336].

29. The second requirement indicates the discretionary character of the said principle. The principle can be only invoked when the alternative Forum is clearly and distinctly more appropriate than the Forum of which jurisdiction is invoked. The principle has to be rarely invoked and when Court is fully satisfied that the discretion should be exercised.”

Availability of alternate remedy:

39. Coming to the question of the availability of an alternate remedy under Section 14 of the Administrative Tribunal Act, 1985, the submission of the Respondents is that under Section 14 of the Act, the exclusive jurisdiction to deal with all service matters at the first instance vests with CAT and its different benches and that, in this case the appropriate forum would be the CAT, Jaipur bench.

40. There are two dimensions to the question of alternative remedy. One being Section 14 of the Act, and the second being that the SCS Officers have also filed an OA No. 291/138/2020 before the CAT, Jaipur bench, which is pending. The submission of the Respondents and the Intervenor SCS officer in this petition is that SCS officers would be affected by any orders that may be passed by this Court as against the OA already filed before the CAT, Jaipur bench, and hence the appropriate forum to hear this dispute would only be the CAT, Jaipur bench.

41. Before proceeding to decide upon the question of maintainability due to the existence of an alternate remedy, it is important to note the admitted position that the Non-SCS Officers' appointment to the IAS cadre has persistently been postponed, cancelled or left into a stalemate since the year 2017 due to various reasons, which are not currently to be gone into. The Petitioners submission is that for the last 3 to 4 years on one ground or the other, the posts of Non-SCS Officers have not been filled up and that there is an intentional campaign against the appointment of Non-SCS Officers to the IAS (Rajasthan cadre). Further, the fact that Non-SCS category Officers have not been appointed to the IAS Rajasthan cadre since 2017 is not even disputed by the Respondents. The plea in the Petitioners' common Rejoinder

to the counter affidavits filed by the State of Rajasthan and Union of India reads:

“23. That it is also submitted that frivolous complaints and applications are filed every year by the RAS officers and related persons in order to stall the process of Selection of the Non- SCS Officer with the intent to claim the seats determined for the Non SCS and therefore, since, 2017 no selection has been made under the IAS (Appointment by Selection) Regulation, 1997 despite vacancies were determined every year together for both SCS and Non SCS and Select List for the former was prepared every year...”

This is further clear from a perusal of the reply filed by the Petitioners to the impleadment application and the rejoinder thereto. The relevant portions are extracted. The Reply by the Petitioners to the Impleadment Application states as under:

“4. Para wise Reply

...

H..... However, it is humbly submitted that since past three years the Applicant and other officers of the Rajasthan Civil Services have been filing frivolous applications and complaints before the courts, tribunals and other authorities with the intent to stall the process of selection of Petitioners Non-SCS officers for appointment to the Indian Administrative Services. However, no relief whatsoever have been granted to them by any court or tribunal till date.”

The Rejoinder to the Reply to the Impleadment Application states as under:

“Rejoinder to Para wise Reply

....

8. That the contents of Para H of the Para-wise reply to application are not admitted and hence denied. It is respectfully submitted that firstly the applicant and RAS Association have preferred respective original

applications against the grievance regarding determination of promotion quota which includes Non SCS for which arbitrarily few vacancies have been earmarked for years 2018 and 2019, by carrying forward vacancies of previous years i.e. 2017 and 2018, which in no manner can be termed frivolous and moreover when the same is being contested by the respective parties and is still pending before the Hon'ble Central Administrative Tribunal, Jaipur bench.

Secondly, at the cost of repetition, it is submitted that the earlier the petitioners in their reply had stated about being unaware of the pendency of litigation before the Hon'ble Central Administrative Tribunal, Jaipur Bench and thereafter in this Para, have went on to state that in the past three years different frivolous applications have been filed by the applicant and other officers of RAS Association. That the contradictory stand of the Petitioners in their reply to the application sufficiently shows that they have misled this Hon'ble Court and have deliberately not impleaded the applicant as a party respondent in the present writ petition despite of being aware that any order passed in the writ petition is directly going to affect the interest of the applicant and he is the necessary party to the proceedings involved therein."

Moreover, during oral submissions, the fact that the selection of non-SCS officers has not taken place since 2017, was urged by Mr. Patwalia, Id. Sr. Counsel for the Petitioners, and was not even disputed by any of the Respondents. It is in this backdrop that the question of maintainability is to be considered by this Court as also the fact that the reasons for cancellation of the interviews may impinge on the principles of Natural Justice.

42. The jurisdiction of the High Court under Article 226 has been settled conclusively in the case of ***L. Chandra Kumar v. Union of India (supra)***.

The said judgment of the Supreme Court, while holding that the CAT would be the forum of first instance in relation to service matters, has also observed that Article 226 forms a part of the basic structure of the Constitution. High Courts have been vested with a responsibility to ensure that the executive does not transgress its limits and acts in accordance with law. The observations of the Supreme Court in are set out herein below:

“20. The Act and its provisions will be analysed in the course of this judgment. However, a preliminary appraisal of the framework of the Act would indicate that it was intended to provide a self-contained, almost wholly exclusive (the exceptions being specified in Section 28) forum for adjudication of all service-related matters. The Tribunals created under the Act were intended to perform a substitution role as opposed to - and this distinction is of crucial significance-a supplemental role with regard to the High Courts.

xxx xxx xxx

77. We find that the various factors mentioned in the test evolved by Chandrachud, J. have already been considered by decisions of various Benches of this Court that have been referred to in the course of our analysis. From their conclusions, many of which have been extracted by us in toto, it appears that this Court has always considered the power of judicial review vested in the High Courts and in this Court under Articles 226 and 32 respectively, enabling legislative action to be subjected to the scrutiny of superior courts, to be integral to our constitutional scheme. While several judgments have made specific references to this aspect [Gajendragadkar, C.J. in Keshav Singh case, Beg, J. and Khanna, J. in Kesavananda Bharati case, Chandrachud, C.J. and Bhagwati, J. in Minerva Mills, Chandrachud, C.J. in Fertilizer Kamgar, K.N. Singh, J. in Delhi Judicial Service Assn. the rest have

made general observations highlighting the significance of this feature.

78. The legitimacy of the power of courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the

superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.

80. However, it is important to emphasise that though the subordinate judiciary or Tribunals created under ordinary legislations cannot exercise the power of judicial review of legislative action to the exclusion of the High Courts and the Supreme Court, there is no constitutional prohibition against their performing a supplemental-- as opposed to a substitution - role in this respect. That such a situation is contemplated within the constitutional scheme becomes evident when one analyses Clause (3) of Article 32 of the Constitution which reads as under:

32. Remedies for enforcement of rights conferred by this Part--

(1) ...

(2) ...

(3) Without prejudice to the powers conferred on the Supreme Court by Clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under Clause (2). (Emphasis supplied)

xxx xxx xxx

94. Before moving on to other aspects, we may summarize our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions is questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional setup, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts' even in cases where they question the vires of

statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.”

43. This seminal judgment has been repeatedly considered by the Supreme Court and various High Courts including the Delhi High Court. The question of alternate remedy was also considered in ***M.P. State Agro Industries Development Corporation Ltd. and Anr. v. Jahan Khan***, ((2007) 10 SCC 88), where the Supreme Court observed as under:

“10. Before parting with the case, we may also deal with the submission of learned counsel for the appellants that a remedy by way of an appeal being available to the respondent, the High Court ought not to have entertained his petition filed under Articles 226/227 of the Constitution. There is no gainsaying that in a given case, the High Court may not entertain a writ petition under Article 226 of the Constitution on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. The rule of exclusion of writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of the availability of an alternative remedy, a writ court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In these circumstances, an alternative remedy does not operate as a bar.”

44. In ***TK Rangarajan v Government of Tamil Nadu and ors.*** ((2003) 6 SCC 581), the Supreme Court was dealing with an appeal from the Madras

High Court wherein the Division Bench had dismissed the writ petition on the ground that the Petitioner ought to exhaust the alternative remedy of approaching the CAT. In the said case, the Court was dealing with a situation which involved large scale termination of government employees from service. The Supreme Court then observed as under:

“5. At the outset, it is to be reiterated that under Article 226 of the Constitution, the High Court is empowered to exercise its extra-ordinary jurisdiction to meet unprecedented extra-ordinary situation having no parallel. It is equally true that extra-ordinary powers are required to be sparingly used. The facts of the present case reveal that this was most extra-ordinary case, which called for interference by the High Court, as the State Government had dismissed about two lacs employees for going on strike.

6. It is true that in L. Chandra Kumar v. Union of India and others [(1997) 3 SCC 261], this Court has held that it will not be open to the employees to directly approach the High Court even where the question of vires of the statutory legislation is challenged. However, this ratio is required to be appreciated in context of the question which was decided by this Court wherein it was sought to be contended that once the Tribunals are established under Article 323-A or Article 323B, jurisdiction of the High Court would be excluded. Negating the said contention, this Court made it clear that jurisdiction conferred upon the High Court under Article 226 of the Constitution is a part of inviolable basic structure of the Constitution and it cannot be said that such Tribunals are effective substitute of the High Courts in discharging powers of judicial review. It is also established principle that where there is an alternative, effective, efficacious remedy available under the law, the High Court would not exercise its extra-ordinary jurisdiction

under Article 226 and that has been reiterated by holding that the litigants must first approach the Tribunals which act like courts of first instance in respect of the areas of law for which they have been constituted and therefore, it will not be open to the litigants to directly approach the High Court even where the question of vires of the statutory legislation is challenged.

xxx xxx xxx

10. There cannot be any doubt that the aforesaid judgment of larger Bench is binding on this Court and we respectfully agree with the same. However, in a case like this, if thousands of employees are directed to approach the Administrative Tribunal, the Tribunal would not be in a position to render justice to the cause. Hence, as stated earlier because of very very exceptional circumstance that arose in the present case, there was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy provided under the statute.”

45. In the case of **Satwati Deswal v. State of Haryana**, ((2010) 1 SCC 126), the Supreme Court has held that:

“4. Admittedly, in this case, no show-cause notice was issued to her nor the order of termination was passed by initiating any departmental proceeding after giving opportunity of hearing to the appellant. This order of termination was challenged by the appellant by way of a writ petition before the High Court, which was dismissed by it on the ground that the appellant had an alternative remedy to file an appeal under the rules before the appellate authority against the order of termination.

5. In our view, the High Court had fallen in grave error in rejecting the writ petition on the aforesaid ground. First, such an order of termination was passed

without issuing any show cause notice to the appellant and without initiating any disciplinary proceedings by the authorities and without affording any opportunity of hearing. It is well settled that a writ petition can be held to be maintainable even if an alternative remedy available to an aggrieved party where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right; or if there had been a violation of a principle of natural justice; or where vires of the act were in question.”

46. In the light of these decisions, the question before this Court is as to whether the Petitioners ought to be relegated to CAT, Jaipur Bench, to avail of their remedies under Section 14 of the Act. The Delhi High Court has, previously, considered the question of maintainability of writ petitions in the context of Section 14 of the Administrative Tribunals Act, 1985. In ***Savitur Prasad v. Union of India and ors. (2017 SCC OnLine 12297)***, the Id. Division Bench has observed as under.

“6. The Parliament in its infinite wisdom promulgated the Administrative Tribunal Act, 1985, whereby all the jurisdiction, powers and authority exercisable by all Courts immediately prior to the coming into effect of the said Act, in so far as it relates to service matters concerning a civilian, not being a member of All India Services, which the appellant admittedly is, are conferred exclusively on the Central Administrative Tribunals under the said Act.

7. It is also trite to state that the scope of interference by a High Court in service matters and disciplinary proceedings under Article 226 of the Constitution of India, is permissible only in cases of demonstrable lack of jurisdiction and perversity.

8. In view of the foregoing, in our view, the present order dated 21.11.2017 does not suffer prima

facie from a demonstrable lack of jurisdiction so as to entitle the appellant to maintain proceedings under Article 226 of the Constitution of India, particularly when an efficacious statutory remedy is available to him in law.”

47. In **Shri Ashok Kumar Aggarwal Vs. UOI & Ors.** [W.P. (C) 9339/2019 decided on 28th August, 2019], a ld. Single Judge of this Court, while relegating the Petitioner therein to approach the CAT, observed as under:

“ ...

5. Constitution does not place any fetter on the exercise of extraordinary jurisdiction of the High Court as enshrined under Article 226 and it is left to the discretion of the High Court to exercise such jurisdiction and the power, as and when a situation so warrants. Exercise of such jurisdiction is thus discretionary. Suffice it would be to say, it is exercised to enforce the rule of law. Seen in that context, does the subject matter invite invocation of the extraordinary jurisdiction by this court, when, for both the reliefs prayed for, alternative remedies under law are available to the petitioner, gets the moot question to ponder upon. More so, when the petitioner insists to maintain the petition in toto and is not prepared to severe one relief from the other.

6. Without adverting to the serious adverse observations made by the courts against the various actions taken by the respondents against the petitioner, last of which is of 13.01.2016, when, the Division Bench of this court decided WP(Crl.) 1401/2002 Ashok Kumar Aggarwal vs. CBI & Ors. etc. and quashed the sanction orders dated 21.06.2002 and 26.11.2002 and the ensuing criminal proceedings etc. against the petitioner, pertinently and, in effect, the instant petition is the outcome of the impugned order dated 10.06.2019 passed under Section 56(j) of the Fundamental Rules.

Challenge to this order, undisputedly, lies before Central Administrative Tribunal. In other words, to assail such order, a statutory remedy is available to the petitioner. Similarly, for any claim of damages, a civil action by way of suit is available to the petitioner under Section 9 of the Code of Civil Procedure. In the given situation, when alternative remedies under law are available to the petitioner for both the reliefs, what is so extraordinary in the claim for damages to maintain the instant petition and thereby, attract challenge to the orders passed under Rule 56(j) of Fundamental Rules, cannot be understood. More so, when, nothing has come to be pointed out that the order passed under Rule 56(j) was so patently erroneous or perverse, which invites interference by this court. Needless to say, the order passed under Rule 56(j) of Fundamental Rules cannot be adjudicated on the premise of inferences. In view of the foregoing, because the writ jurisdiction is unfettered, it does not invest a legal right in anyone to maintain it for all purposes.....”

48. The Respondents have relied upon the judgment in ***Prabhat Ranjan Deo v. UPSC and Ors. (2020 SCC OnLine Del 738)***, has held, following ***L. Chandra Kumar (supra)*** and various other judgments, that there is no choice but to relegate a Petitioner to approach the Tribunal, especially in the context of service matters. The observations of the Court are as under:

“13. The Constitution Bench of the Supreme Court in L. Chandra Kumar (supra) laid down that the Tribunals created pursuant to Article 323-A or under Article 323-B of the Constitution of India are competent to hear matters entrusted to them and will continue to act as only Courts of 'first instance' in respect of the areas of law for which they have been constituted. Supreme Court categorically observed that it will not be open for litigants to directly approach the

High Court even in cases where there is a challenge to the vires of statutory Legislation, by overlooking the jurisdiction of the concerned Tribunal, with a cautious caveat that the Tribunal shall not entertain a challenge regarding the vires of the Parent Statute, following the settled principle that a Tribunal, which is a creature of an Act, cannot declare that very Act to be unconstitutional. In the latter case alone, Supreme Court observed, that the High Court concerned may be approached directly. This observation of the Supreme Court made in para 93 of the judgment was reiterated in the penultimate paragraph 99, holding that the Tribunals will continue to act as Courts of 'first instance' and will have the competence and jurisdiction to test the constitutional validity of Statutory provisions and Rules.

xxx xxx xxx

16. It is clear that after the authoritative pronouncement of the Constitution Bench of the Supreme Court, this Court cannot entertain the present petition and remedy of the Petitioner lies only before the Central Administrative Tribunal. The principles laid down in L. Chandra Kumar (supra) are binding on this Court in view of Article 141 of the Constitution of India.

17. Learned Senior Counsel for the Petitioner has strenuously argued that alternate remedy cannot be a bar to entertain a petition under Article 226 of the Constitution of India. Reading of the judgment in L. Chandra Kumar (supra) and Section 14(1) of the Act makes it clear, in the opinion of this Court, that in relation to service matters covered under the Act, there is an ouster of jurisdiction of the High Court as a Court of 'first instance' and the Tribunal is not an 'alternative', but is the 'only' Forum available to the Petitioner. It is neither a matter of 'choice' for the Petitioner to approach the Tribunal, nor is it a matter of discretion with this Court to entertain the petition.

xxx xxx xxx

20. *The common thread that runs in the judgments relied upon by the Petitioner in Maharashtra Chess Association (supra), Whirlpool Corporation (supra) and State of Uttar Pradesh (supra), is that the existence of an Alternate remedy in an Alternate Forum, where the aggrieved party may approach for a relief, does not itself create a legal bar on a High Court exercising its writ jurisdiction. Supreme Court in Whirlpool Corporation (supra) held that the power to issue prerogative Writs under Article 226 of the Constitution of India is plenary in nature and can be exercised for issuing writs in the nature of mandamus, prohibition, certiorari, quo-warranto etc. as well as for enforcement of Fundamental Rights contained in Part III of the and 'for any other purpose'. However, none of these judgments deal with the power of the High Court to entertain a writ petition enforcing rights with respect to 'service matters' covered under Section 14 read with Section 3(q) of the Act and thus cannot advance the case of the Petitioner.*"

49. As against this judgment, the Petitioners have relied upon a judgment by the 1d. Division Bench of this court in ***Pramod Babanrao Yadav v. Union of India (WP 3173/2020)***, wherein during the pandemic, the Division Bench dealing with a similar case where the UPSC had not drawn up the select list, directed the UPSC to hold the meeting of the Committee through video conferencing. The question of maintainability due to applicability of Section 14 has not been ruled upon in the said judgment. However, the fact that during the pandemic, a Division Bench of this Court has entertained the petition and passed substantive orders under similar circumstances, shows that the rule of alternate remedy is not an absolute rule.

50. Another judgment relied upon by the Petitioners is ***Assam Civil***

Service Officer's Association v. Union of India (2018 SCC Online Gau 317) passed by the Id. Single Judge of the Guwahati High Court. This judgment held that the exercise of Article 226 would be permissible in service matters, as the High Court would be a more appropriate forum when the State Government decides to confer undue benefit to Non-SCS category incumbents. This judgment, however, has been stayed by the Division Bench of the Guwahati High Court vide an order dated 4th June 2018.

51. A perusal of the above judgements would show that there is unanimity in the view that High Courts have power to exercise jurisdiction, even if there is an alternative remedy *inter alia*, on several grounds:

- (i) If there is a violation of the Principles of Natural Justice;
- (ii) If there are unprecedented or extraordinary circumstances that warrant exercise of jurisdiction under Art.226;
- (iii) The need to render substantial justice;
- (iv) If the act complained against is patently erroneous or perverse;
- (v) If there is demonstrable lack of jurisdiction or perversity;
- (vi) If relegating the parties to CAT would not render substantial justice.
- (vii) The exercise of power under Art. 226 is discretionary and depends on the question whether circumstances warrant;

While applying these principles, the decisions of different courts are disparate and depend on the facts and circumstances of each case.

52. Thus, on the objection of maintainability and the exercise of jurisdiction under Article 226, exceptions have been carved out in judicial decisions, with respect to the principle of alternate remedy under Section 14 of the Administrative Tribunals Act, In the present case, there are certain

unusual and extraordinary circumstances. These are:

- a. Non-SCS category Officers have not been promoted to the IAS since the last 3 to 4 years and there are repeated litigations being filed before the CAT in this regard.
- b. Repeated challenges are being raised by SCS Officers to the selection of Non-SCS candidates, as is evident from the filing of OA No. 291/138/2020, in which no effective proceedings have taken place.
- c. Since March 2020, there has been a lockdown owing to the COVID-19 pandemic, which has caused a disruption in the functioning of Tribunals and Courts.
- d. While on the one hand, the 2018 selection for the IAS Rajasthan Cadre was underway, at the very last minute the same was cancelled and it has been argued by the State of Rajasthan that these posts have now been subsumed in the vacancies for the subsequent year i.e. 2019. Thus, the passing of time is working to the detriment of the Petitioners.
- e. The Petitioners were not given any opportunity to deal with the allegations, which are contained in the representations given by certain SCS category of officers to a Member of Parliament, leading to the Union of India not nominating its representatives to the Selection Committee and the subsequent cancellation of the interview. Thus, there is an allegation of breach of Principles of Natural Justice, which the Respondents would have to meet when the matter is heard on merits.
- f. There is divergence on the current functioning of CAT, Jaipur

Bench which is stated to be currently hearing 2016 matters. It is argued that only 3 to 5 matters are being heard on a sporadic basis in the CAT, Jaipur Bench.

53. There is no dispute that in the present case, the meeting of the Selection Committee was cancelled due to the Union of India not sending its two nominees to the Selection Committee. The reasons for the same have been set out in the counter affidavit by the Union of India.

54. The chronology of events as set out in the counter affidavit shows that the Union of India justifies its conduct of not sending its two nominees to the Selection Committee, on the basis of certain representations and a letter written by a Member of Parliament. None of the allegations contained in these so-called representations or communications were put to the Petitioners. On the basis of the said communications, the Petitioners were left to suffer as the interviews were cancelled less than 24 hours before the scheduled time. Thus there appears to be some merit in the allegation of breach of Principles of Natural Justice as the Petitioners were never given an opportunity to deal with the allegations. As it turns out, as per the Counter Affidavit itself, the State of Rajasthan has already informed the Central Government that the allegations were baseless. The effect of the same would have to be examined when the case is heard on merits, as at present only maintainability of the petition is being considered. The Petitioners have never had the opportunity to rebut the allegations raised against them. However, the allegations had the consequence of cancellation of the meeting of the Selection Committee. This coupled with the admitted position that Non-SCS Officers have not been appointed in the IAS, Rajasthan cadre for last 3 to 4 years shows that this would be an appropriate case for exercise of

jurisdiction under Article 226.

55. Moreover, it is the settled position that the alternate remedy has to also be an efficacious remedy. During the pandemic, almost all the Courts and Tribunals are functioning at a very bare minimum. Relegating the Petitioners to approach CAT would lead to further delays in their candidature being considered for selection to the IAS. Though the CAT may be functioning during the pandemic, there is no doubt that the same is through video conferencing, at a bare minimum level. Under such circumstances, to reject the prayer of the Petitioners would cause substantial injustice as the Petitioners may be left completely into an uncertain arena, insofar as the selection is concerned. The cancellation of the meeting of the Selection Committee deserves to be examined in writ jurisdiction.

56. The Supreme Court has in its recent decision on 7th October, 2020, in ***Commissioner of Police & Anr. v. Umesh Kumar [Civil Appeal No.3334/2020 arising out of SLP (C) No.3335/2019]*** observed that irregularities in public recruitment have become a bane, leading to litigation in both Courts and Tribunals across the country. The present case is one such instance. The observations of the Supreme Court read:

“...Such irregularities have become a bane of the public recruitment process at various levels resulting in litigation across the country before the Tribunals, the High Courts and ultimately this Court as well. Much of the litigation and delay in carrying out public recruitment would be obviated if those entrusted with the duty to do so carry it out with a sense of diligence and responsibility.”

57. Selection to the civil services, especially the IAS – a coveted service, cannot be a whimsical process. It has to follow certain norms, procedures

and discipline. When the State or any instrumentality thereof fails to follow the said discipline, it can lead to misgovernance and misuse by vested interests. The cancellation of interviews as in the present case is not to be viewed solitarily as a one-off incident. It represents a deeper malaise in selection, which ought to be conducted fairly and in a transparent manner. When the Court finds that the selection mechanism is being impeded, successively, it cannot turn a blind eye. Such a case would require interference by the exercise of writ jurisdiction in order to examine as to whether the prescribed norms for selection were adhered to, and if not, then, to consider the remedial measures. The circumstances in the present case accordingly warrant interference under Article 226 of the Constitution. Under these circumstances, this Court holds that the present writ petition is maintainable under Article 226 of the Constitution of India.

58. List for arguments on merits on 27th November, 2020. Interim order dated 12th June 2020, to continue in the meantime.

PRATHIBA M. SINGH
JUDGE

OCTOBER 9, 2020/dk/ak/rc