



2026:DHC:8112-DB



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

CNR No. DLHC010375872026

+ **W.P.(C) 11674/2026 and CM APPLs.54052-54054/2026**

UNION PUBLIC SERVICE COMMISSIONPetitioner

Through: Mr. R V Sinha, Mr. A S Singh,
Ms. Shriya Sharma, Mr. Harsh Verma,
Advocates with Mr. Mukul Sahdev, Section
Officer

versus

KRISHNA MUKUND AND ORSRespondents

Through: Mr. Mananjay Kumar Mishra,
with Mr. Bhanu Raj and Mr. K.K. Shukla,
Advs. for R-1

Mr. Kamal Kant Goel, SPP with Ms. Jyoti
Goel, Advs. for CBI

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT (ORAL)

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18.09.2026

C. HARI SHANKAR, J.

1. The short issue, which arises for consideration in the present writ petition, is whether the panel drawn up by the Union Public Service Commission¹, in respect of appointments to the post of Public Prosecutor in the Central Board of Intelligence², had expired, before

¹ "UPSC", hereinafter

² "CBI", hereinafter



the vacancy, against which Respondent 1³ stakes his claim, had arisen.

2. It is well settled, in law, that ordinarily no mandamus can issue to any selecting or appointing authority to operate a panel beyond its life. An exception may be made in a case where eligible candidates have been wrongly excluded from the panel owing to the fault with the selecting authority, but we are not concerned in the present case with any such instance. Equally, however, if a panel cannot be operated beyond its life, there has to be cogent reason for not selecting candidates who are available in the panel against vacancies which have arisen during the life of the panel.

3. From the facts in the present case, and the stand taken by the petitioner UPSC both before the Central Administrative Tribunal⁴ and before this Court, it becomes apparent to us that, during the life of the concerned panel, 6 OBC vacancies had arisen for consideration, against which communications had been addressed by the Department of Personnel & Training⁵ to the UPSC *before the expiry of the panel*, requiring the UPSC to forward the dossiers of 6 OBC candidates from the reserve list against the said 6 vacancies. In as much as these 6 vacancies arose during the life of the panel – which even as per the UPSC, expired on 16 January 2017 – there was no justification for the UPSC not forwarding the names of 6 OBC candidates against the 6 vacancies. However, the UPSC forwarded the names of only 5 OBC candidates. The case of the respondent is that he was the next OBC

³ “the respondent” hereinafter

⁴ “the Tribunal” hereinafter

⁵ “DOPT”, hereinafter



candidate in the reserve list and that, had the UPSC forwarded the names of 6 candidates in response to the requisition of the DOPT, his name would also have been forwarded and he would have secured appointment.

4. On perusing the record, and having heard learned Counsel, we are convinced that the stand of the respondent is correct.

5. This being the limited issue arising for consideration, we may briefly state the facts, which are relevant to the *lis*, as under.

6. In 2013, a Notification was issued by the UPSC for recruitment against 85 posts of Public Prosecutor in the CBI. The respondent appeared in response to the Notification. He cleared the written test and was interviewed in February 2014.

7. The final result of the selection was released in 2015. 84 candidates were recommended against 85 notified vacancies with 44 candidates in the reserve list of which the respondent was at Serial No. 17. The case of the respondent before the Tribunal was that, despite the existence of vacancies, the reserve list was not operated, and that, as a consequence, the respondent did not secure appointment as Public Prosecutor.

8. The UPSC contended *per contra* that the panel had expired before the vacancies were forwarded by the DOPT and that, therefore, no names could be forwarded against an expired panel. Para 5 of the counter affidavit filed by the UPSC before the Tribunal, before whom



the *lis* arose for adjudication, specifically stated as under :

“5. That the guidelines regarding operation of Reserve List are as follows :

(i) Reserve List will be operated up to 18 months from the date of finalization of the Interview Board Report under normal circumstances.

(ii) In exceptional cases, it could be extended up to 2 years (Among other reasons, some of the ground for such extension could be where the candidate joins but resigns or dies within or after one year of his joining).”

9. Thus, as per the guidelines of the UPSC, the reserve list would be operated upto 18 months from the date of finalization of the Interview Board Report⁶ and could, in exceptional cases, be extended upto two years.

10. Learned counsel for the parties are *ad idem* before us that, in the present case, the reserve list drawn up in respect of the selection in question was alive till 16 January 2017. In other words, in respect of vacancies which arose prior to 16 January 2017, and in respect of which requisitions were sent by the DOPT to the UPSC, the UPSC was bound to send the names from the reserve list to fill up the said vacancies.

11. Before the Tribunal, the UPSC pointed out that it had initially recommended 75 candidates on 24 July 2015, 5 more candidates on 13 October 2015, 2 more candidates on 6 January 2016, 1 more candidate on 23 March 2016 and 1 more candidate on 16 June 2016.

⁶ “IBR” hereinafter



12. Though the IBR had originally been finalized on 25 March 2014, the UPSC stated, in its counter affidavit, that, owing to the staggered reporting of the number of the vacancies by the DOPT, a decision was taken to extend the date for finalization of the IBR to 17 July 2015 and, therefore, to reckon the period of 18 months, for the purposes of clause 5(i) of the UPSC Guidelines (extracted in para 8 *supra*), with effect from the said date, i.e. 17 July 2015. Thus reckoned, the period of 18 months would come to an end on 16 January 2017.

13. Learned counsel before us are, in fact, *ad idem* that the aforesaid period of 18 months, which was the period during which the panel and the reserve list drawn up by the UPSC would continue to remain alive, expired on 16 January 2017.

14. The only issue which arises for consideration is, therefore, whether UPSC forwarded dossiers equivalent to the number of vacancies which had arisen, and in respect of which requisitions were sent by the DOPT to the UPSC on or before 16 January 2017.

15. Needless to say, learned counsel for the parties have joined the issue on this aspect.

16. Mr. Sinha, learned counsel for the UPSC, asserts that only 5 OBC vacancies had been forwarded by the DOPT to the UPSC on or before 16 January 2017 and the names of 5 OBC candidates from the reserve list had, therefore, been sent by the UPSC to the DOPT by



2026:DHC:8112-DB



way of response. The respondent, who was the sixth OBC candidate in the reserve list has, therefore, no enforceable right.

17. We, however, on a perusal of the documents find that in fact, requisitions had been sent by the DOPT to the UPSC, sending dossiers not against 5 but against 6 OBC vacancies, prior to 16 January 2017. The UPSC was, therefore, required to send the names of 6 replacement candidates against the 6 vacancies which had arisen and, therefore, in sending only 5 names, the UPSC erred on fact and in law. If 6 names had been sent, it is not in dispute that the name of the respondent would have been the sixth name which would have been sent by the UPSC to the DOPT.

18. We may now explain how we have arrived at such conclusion by referring to certain communications.

19. On 5 February 2016, the DOPT addressed the following communication to the UPSC :

“Dated : the 5th February, 2016

To,

The Secretary
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.

Sub: Recruitment to the 85 posts of Public Prosecutor in C.B.I.
under Direct Recruitment quota

Sir,

I am directed to refer to your No.F.1/181(28)/2013-R.II dated 24.07.2015 and No.F.1/181(28)/2013-R.II dated 13 October 2015 recommending a list of 75 candidates and 05 candidates for



recruitment of Public Prosecutors in CBI under Direct Recruitment quota respectively.

2. Now, CBI vide its ID No.DPPERS.12015/5001/10/1/2013 dated 09.09.2015, DPPERS.12015/5635/10/1/2013 (Pt) dated 02.11.2015, No. DPPERS.12015/6088/10/1/2013 (Pt.), dated 14.12.2015, No.DPPERS.12015/6127/10/1/2013(Pt). dated 17.12.2015 and No.DPPERS.12015/0008/10/1/2013(Pt.II) dated 01.01.2016 has stated that 14 candidates (7+2+2+1+2 respectively) have submitted their unwillingness to join the post of PP in CBI. The names of the 14 candidates are as under :

SN	Name of the candidate	Roll No	Category
1	Shri K. Nambaurajan	1193	OBC
2	Shri EsalKumar V	1793	SC
3	Shri Somdatt Sharma	777	General
4	Shri A Mohammad Ali	915	OBC
5	Smt. Nirmala V	2188	ST
6	Shri Krishna Mohan Arya	1844	SC
7	Shri Ram Sawroop	1421	OBC
8	Shri Ravinder Singh Yadav	1443	OBC
9	Shri Bodugula Brahmaiah	1060	OBC
10	Shri Arpit Anant Mishra	111	General
11	Shri Rakesh Kumar Yadav	1412	OBC
12	Shri Naga Raju M	1895	SC
13	Shri Neel Kamal	435	General
14	Shri Pradeep Kumar	497	General

3. CBI has forwarded the dossiers along with written unwillingness in respect of the above 14 candidates. CBI has requested that their candidature to the post of PP in CBI may be cancelled and returned to UPSC with a request to provide 14 fresh dossiers from the Reserve Panel in lieu of the unwilling candidates.”

20. Thus, in the table of vacancies which had been forwarded by the DOPT to the UPSC *vide* the above letter dated 5 February 2016, there were 6 OBC candidates, namely K. Nambaurajan, A. Mohammad Ali, Ram Sawroop, Ravinder Singh Yadav, Bodugula Brahmaiah and Rakesh Kumar Yadav.



2026:DHC:8112-DB



21. The UPSC, on 30 March 2016, responded as under to the DOPT:

“F. No.1/181(28)/2013-R-II/Part
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi-110 069

Dated 30th March, 2016

To

The Secretary to the Govt. of India,
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel & Training,
North Block, New Delhi 110 001

(Kind Attn: Shri Susheel Kumar, Under Secretary)

Sub: Recruitment to 85 posts of Public Prosecutor in CBI in the Ministry of Personnel, Public Grievances and Pensions, Deptt. of Personnel and Training – Regarding.

Sir,

I am directed to refer to the Ministry of Personnel, PG & Pensions, DOP&T's letter No.202/23/2013-AVD-II dated 5th February, 2016 (copy enclosed) on the subject mentioned above and to say that “written unwillingness along with original application dossiers” in respect of the following 14 recommended candidates stated to have been sent has not been received in this Commission: -

Sl. No.	Name of the candidate (S/Shri/Smt.)	Roll No.	Category
1	K. Nambaurajan	1193	OBC
2	Esalkumar V	1793	SC
3	Somdatt Sharma	777	General
4	A Mohamad Ali	915	OBC
5	Smt. Nirmala V	2188	ST
6	Krishna Mohan Arya	1844	SC
7	Ram Swaroop	1421	OBC
8	Ravinder Singh Yadav	1443	OBC
9	Bodugula Brahmaiah	1060	OBC
10	Arpit Anant Mishra	111	General
11	Rakesh Kumar Yadav	1412	OBC
12	Naga Raju M	1895	SC
13	Neel Kamal	435	General
14	Pradeep Kumar	497	General



2026:DHC:8112-DB



2. In view of the above, it is requested that copies of **written unwillingness letters, original application dossiers and copies of the order regarding cancellation of candidature** in respect of the above mentioned 14 recommended candidates may be sent to this Commission urgently for taking necessary action on your part.

Yours faithfully,

(H. P. Ghoshai)

Section Officer

Union Public Service Commission”

22. It is significant to note that the name of A. Mohamad Ali figured in both these communications. This is pivotal to the resolution of the dispute. In fact, it would not be far from the truth to state that the dispute resolves essentially around the vacancy which had arisen out of the failure, on the part of A. Mohamad Ali, to join despite being selected.

23. Following the aforesaid communication dated 30 March 2016 from the UPSC to the DOPT, and by way of response thereto, the DOPT wrote thus to the UPSC on 13 January 2017:

“Dated : January 13, 2017

To,

The Secretary
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.

Sub: Recruitment to the 85 posts of Public Prosecutor in C.B.I.
under Direct Recruitment quota – reg.



2026:DHC:8112-DB



Sir,

The undersigned is directed to refer to this Department's letter of even number dated 5th February 2016 vide which dossiers of 14 unwilling candidates were forwarded to the UPSC on 31.3.2016, and to forward herewith further 04 application dossiers in respect of the following 04 unwilling candidates for the post of Public Prosecutors in CBI on direct recruitment basis :

SN	Name of the candidate	Roll No.	Category
1	Shri Allen J. Royan	942	OBC
2	Shri Surendra Kumar	2102	SC
3	Shri P.K.B. Gaikwad	1940	SC
4.	Shri Sanjiv Kumar Tiwari	679	Gen.

2. Besides, undersigned is also directed to convey the approval of the competent authority to the cancellation of candidature for the post of Public Prosecutor on Direct Recruitment basis in CBI in respect of the following 15 unwilling candidates and to send their original written letters of unwillingness :

SN	Name of the candidate	Roll No	Category	Unwillingness (Original / Mail / Fax / Copy)
1	Shri K. Nambaurajan	1193	OBC	Original
2	Shri EsalKumar V	1793	SC	Original
3	Shri Somdatt Sharma	777	General	Original
4	Shri Krishna Mohan Arya	1844	SC	Original
5	Shri Ram Sawroop	1421	OBC	Original
6	Shri Ravinder Singh Yadav	1443	OBC	Original
7	Shri Bodugula Brahmaiah	1060	OBC	Original
8	Shri Arpit Anant Mishra	111	General	Original
9	Shri Rakesh Kumar Yadav	1412	OBC	Original
10	Shri Naga Raju M	1895	SC	Original
11	Shri Pradeep Kumar	497	General	Original
12	Shri Allen J.	942	OBC	Original



2026:DHC:8112-DB



	Royan			
13	Shri Surendra Kumar	2102	SC	Original
14	Shri PKB Gaikwad	1940	SC	Original
15	Shri Sanjeev Kumar Tiwari	679	General	Original

3. UPSC is requested to provide 15 fresh dossiers from the Reserve Panel in lieu of the above mentioned 15 unwilling candidates. The receipt of the 15 original letters of unwillingness and 04 application dossiers being sent as mentioned above may kindly be acknowledged.

Yours faithfully

(SPR Tripathi)

Under Secretary to the Government of India ”

24. A. Mohammad Ali's name, no doubt, does not figure in the Table in para 2 of the communication dated 13 January 2017. However, the said Table merely enlists the candidates in respect of whom the original unwillingness documents had been forwarded by the DOPT to the UPSC, as required by the UPSC *vide* its communication dated 30 March 2016 *supra*. The fact that the original unwillingness document of A. Mohammad Ali had not been forwarded by the DOPT to the UPSC *vide* the letter dated 13 January 2017 cannot derogate from the position that A. Mohammad Ali in fact had not joined after he had been selected, or result in removal of his name from the list of candidates in the earlier requisition dated 5 February 2016.

25. Apparently under the impression that there were only 5 OBC vacancies against which names were required to be sent, the UPSC, on



2026:DHC:8112-DB



10 March 2017 wrote to the DOPT, enclosing a table of candidates from the reserved list, whose names were being forwarded against the vacancies requisitioned by the DOPT vide above communication. The said list refers only to 5 OBC vacancies against which names were sent. No dossier, of any of the empanelled reserve list candidates, was sent against the vacancy arising from the failure of A. Mohammad Ali to join service.

26. Mr. Sinha has drawn our attention in this context to a subsequent communication dated 2 June 2017 addressed by the DOPT to the UPSC, which we may reproduce as under:

“F. No. 202/23/2013-AVD-II (Part-II)

Government of India

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel & Training

North Block, New Delhi

Dated: 2nd June, 2017

To

The Secretary
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi

Subject: Recruitment to 85 posts of Public Prosecutor in CBI under Direct Recruitment quota – reg.

Sir,

I am directed to refer to this Department's letter of even number dated 5th February 2016 vide which dossiers of 14 unwilling candidates were forwarded to the UPSC on 31.3.2016, and to forward herewith after 01 application dossier in respect of Shri Dev Dutt for the post of Public Prosecutors in CBI on direct recruitment basis:

2. Besides, the approval of the competent authority is hereby also conveyed to the cancellation of candidature for the post of Public Prosecutor on Direct Recruitment basis in CBI in respect of



2026:DHC:8112-DB



the following 03 unwilling candidates and to send their original written letters of unwillingness:

SN	Name of the candidate	Roll No.	Category	Unwillingness (Original Main letter / fax / copy)
1	Smt V Nirmala	2188	ST	Original
2	Shri A Mohammad Ali	915	OBC	Original
3	Shri Dev Dutt	216	General	Original

3. UPSC is requested to provide 03 fresh dossiers from the Reserve Panel in lieu of the above mentioned 03 unwilling candidates. The receipt of the 03 original letters of unwillingness and 01 application dossiers being sent may kindly be acknowledged.

Yours faithfully,

(S.P.R. Tripathi)

Under Secretary to the Government of India”

27. Mr. Sinha submits that, therefore, the requisition in respect of A. Mohammad Ali was sent by the DOPT to the UPSC only on 2 June 2017, which was after the expiry of the panel on 16 January 2017 and, therefore, the UPSC committed no error in not sending any name from the reserve list against the vacancy which had arisen consequent on failure of A. Mohammad Ali to join.

28. Having heard learned Counsel for the parties and perused the documents, we regret that we find ourselves unable to accept the submissions advanced by Mr. Sinha.

29. The name of A. Mohammad Ali specifically figures in the list of candidates who did not join after they were selected, as forwarded by the DOPT to the UPSC *vide* letter dated 5 February 2016 *supra*.



The UPSC, in its communication dated 30 March 2016, addressed to the DOPT by way of response, also included, in the list of the candidates, against whom names from the reserve list were to be sent, the name of A. Mohammad Ali.

30. The absence of A. Mohammad Ali's name in the subsequent communication dated 13 January 2017 was only because the original documents relating to his unwillingness were not sent by the DOPT under cover of the said letter. Those original documents came to be sent subsequently under cover of letter dated 2 June 2017.

31. The mere fact that there was a delay on the part of the DOPT in sending the original unwillingness documents of A. Mohammad Ali to the UPSC, and that the said documents were sent only after 16 January 2017 when the panel expired, cannot derogate from the position, that, *in fact, much before the panel expired, on 5 February 2016 itself, the DOPT had written to the UPSC pointing out that A. Mohammad Ali had not joined and calling upon the UPSC to send a candidate from the reserve list against his name. Thus, the vacancy consequent to the failure of A. Mohammad Ali to join having arisen much before the expiry of the panel, and the DOPT having also notified the UPSC accordingly calling for a dossier from the reserve list against the said vacancy, the failure of the UPSC to do so cannot sustain in fact or in law.*

32. We reiterate that, had the dossier in respect of a candidate from the reserve list been sent by the UPSC to the DOPT against the vacancy which arose consequent on the failure of Mr. A. Mohammad



Ali to join, the respondent would have also been included with the candidates who would have been entitled to be selected and appointed.

33. As such, the stand of Mr. Sinha and the UPSC before the Tribunal, to the effect that the panel could not be operated after it had expired, does not in any way affect the right of the respondent. To reiterate,

- (i) as both sides, before us as well as before the Tribunal, acknowledge that the panel expired only on 16 January 2017,
- (ii) the requisition was sent by the DOPT to the UPSC to send dossiers against 6 OBC vacancies which had arisen owing to failure of the candidates to join, prior to 16 January 2017, and
- (iii) the UPSC, perhaps *bona fide* believing that A. Mohammad Ali was not one of the said candidates, sent dossiers only in respect of 5 candidates,

the failure of the UPSC to send the sixth dossier, which would have been that of the respondent, cannot sustain.

34. In that view of the matter, in so far as the respondent is concerned, the decision of the Tribunal directing that his candidature should also have been considered for appointment as Public Prosecutor following the aforesaid selection, deserves to be upheld.

35. However, we clarify that the impugned judgment is sustained only to the extent of the respondent. The further directions that other names should also have been forwarded etc. cannot be sustained by us as it is only one extra vacancy which, according to us, was missed out by the UPSC while sending names.



2026:DHC:8112-DB



36. We make it clear that our decision is based on para 5 of the UPSC Guidelines read with our finding on facts that, in fact, 5 OBC vacancies had arisen, in respect of which requisition was sent by the DOPT before the expiry of the panel drawn up by the UPSC.

37. The writ petition is disposed of, in the aforesaid terms.

38. Let consequential orders be passed in respect of the respondent within eight weeks from today.

C. HARI SHANKAR, J.

VINOD KUMAR, J.

SEPTEMBER 18, 2026/yg