

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH**

Original Application No. 060/409/2020

This the 7th day of August, 2020

**THE HON'BLE MR. JUSTICE L.NARASIMHA REDDY, CHAIRMAN
THE HON'BLE MRS. AJANTA DAYALAN, ADMINISTRATIVE MEMBER**



Surender Singh Dahiya, (Age-52) (Group-A),
Additional Director, Agriculture Department,
Government of Haryana (Panchkula).

... Applicant

(By Advocate: Mr.Rakesh Dhiman and Mr.Rajesh Garg, Sr. Counsel)

Vs.

1. Union of India, through Secretary,
Ministry of Personnel, Public Grievances and Pensions,
Department of Personnel & Training,
New Delhi – 110001.
2. State of Haryana, through the Chief Secretary,
Haryana Civil Secretariat, Sector 1, Chandigarh – 160001.
3. Union Public Service Commission, through its Secretary,
Dholpur House, Shahjahan Road, New Delhi, Delhi – 110069.
4. Haryana Public Service Commission, Sector 4, Panchkula,
through its Secretary – 134112.

... Respondents

(By Advocate : Mr. Sanjay Goyal, for respondent no.1

Mr. D.S.Nalwa, for respondent no.2.

Mr. B.B.Sharma, for respondent no.3.

Mr. Rajiv Atma Ram, Sr. Advocate with Mr. Aditya
Gautam, for respondent no.4.

ORDER

{As per Hon'ble Mr. Justice L Narasimha Reddy, Chairman}



The applicant is working as Additional Director, Agriculture Department, Government of Haryana in a substantive capacity, Gazetted post, which is not part of State Civil Services. The Indian Administrative Service (Recruitment) Rules, 1954, (herein after referred to as 'Rules') provide for recruitment for IAS, through three methods viz., (a) competitive examination (b) by promotion of a (substantive) member of a State Civil Service; and (c) by selection, in special cases from among the persons who hold the gazetted posts in connection with the affairs of the State but are not members of the State Civil Service. The manner in which the recruitment to the 3rd method referred to above is to be made, is provided for under the Indian Administrative Service (Appointment by Selection) Regulations, 1997 (for short the Regulations). For the select list year of 2019, the Union of India - the 1st respondent herein, in consultation with the State of Haryana – the 2nd respondent, has determined 5 vacancies for the officers of Non State Civil Service (SCS) category.

2. The 2nd respondent issued an order dated 09.06.2020 prescribing the method of deciding the outstanding merit and ability of the candidates, to be considered under the non-SCS category, for recruitment to IAS. The order provides inter alia, for written examination by the Haryana Public Service Commission – the 4th respondent. The applicant filed this OA challenging the order dated 09.06.2020 as being ultra vires

the All India Service Act, 1951, the Rules and Regulations framed thereunder.



3. The applicant contends that the entire matter pertaining to the appointment to the All India Service (for short Act) is governed by the All India Service Act, 1951 and the Rules and Regulations made thereunder, and that the State of Haryana has absolutely no role to play in this regard. It is stated that the impugned order was issued in exercise of executive power of the State; and under Article 162 of the Constitution of India, the executive power of the State would extend only to the matters upon which the State legislature has the power to make laws. According to him, under entry 70 of List I of the VII schedule of the Constitution, the Union Public Services, All India Service and UPSC are completely in the realm of the Union of India and not of State Legislature. It is also pleaded that Article 320 maintains a clear distinction between the powers of the Union Public Service Commission on the one hand and the State Public Service Commission on the other hand and hardly any role is assigned to the State Public Service Commission as regards the selection and appointment to the All India Services. Attention is also drawn to the other provisions of Constitution of India.

4. The Government of Haryana – Respondent No.2 and the Haryana Public Service Commission – Respondent No. 4 filed separate counter affidavits. The gist of their counter affidavits is that the State Government is assigned the role under Regulation 4 of the Regulations to

decide whether or not a candidate to be considered under the Non SCS category is of 'outstanding merit and ability' and it is only in that context, that the impugned order was issued to ensure that the determination is done purely in an objective manner. They contend that the practice hitherto for determining the eligibility of candidates of this category was with reference to the ACRs of certain period, and faced with the recording of ACRs at outstanding level for substantial number of eligible candidates, it is proposed to conduct the written test, so that the actual performance of the officer is assessed. The respondents 2 and 4 further submit that the limited role assigned to the State Government is to send a list of candidates with outstanding merit and ability, 5 times the available vacancies and the ultimate selection is done by the UPSC – Respondent No.3 and UOI – Respondent No.1. They contend that the impugned order was not at all to encroach the area which is earmarked for the Respondents 1 or 3.



5. The arguments on behalf of the applicant are advanced by Mr.Rajesh Garg, learned Senior Advocate. He submits that the Act is the principal legislation dealing with the selection and appointment to the All India Services. Rules and Regulations are framed in exercise of powers there under. He submits that the Act does not assign any role to the State Government or State Public Service Commission and in that view of the matter, the impugned order is a clear encroachment into the powers of the Central Government. He has drawn our attention to various provisions

of Constitution of India including Article 162, Article 320, entry 70 in List I of VII schedule and certain other provisions. Learned counsel submits that the written test, in the context of selection of candidates for appointment to All India Services, if at all, is conducted by the UPSC and the question of any State Government or State Public Service Commission conducting such a test does not arise. He further submits that the Rules and Regulations are a self contained code and in the entire process, there was no legal or actual basis for the second respondent to issue the impugned order. He has also cited certain precedents.



6. The main contest in the OA is by the State of Haryana through their counsel Sri D.S.Nalwa and Sri Rajiv Atmaram, Senior Advocate of Haryana Public Service Commission. Sri Sanjay Goel, learned counsel appeared for Respondent No -1, and Sri B.B.Sharma, learned counsel appeared for Respondent No-3.

7. The plea of the respondents 2 and 4 is that the number of eligible candidates under the Non SCS category for the State of Haryana is quite considerable and for a vast majority of them, the ACRs are recorded as 'outstanding'. They contend that it was becoming very difficult, and sometimes impossible, to determine the relative merit from such a large group of officers and in that view of the matter, the objective method of conducting a written test is evolved. They submit that once the participation in the proposed examination is restricted to the eligible

candidates, there cannot be any plausible objection for it. They flatly deny the plea of the applicant that the exercise sought to be undertaken through the impugned order would encroach into the area covered by the various provisions of Constitution of India, the Act, the Rules and the Regulations.



8. Except stating that the applicant is working as an Additional Director (General), Department of Agriculture, he did not furnish any other particulars, nor did he take the trouble of stating that he is eligible to be considered for recruitment to IAS under the Non SCS category of State of Haryana. We, however, take it that he is eligible.

9. The Act is the parent legislation for appointment to All India Services having been enacted in the year 1951. It is brief in its content, and the details are provided under the Rules and Regulations made thereunder. Rule 4 of the Rules indicates the method of Recruitment to the Indian Administrative Service, it 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.]”



Rule 8 (1) deals with the appointment of the members of State Civil Service. Rule 8 (2) deals with the appointment of the members of the Non SCS, it reads as under :

‘8(2) The Central Government may, in special circumstances and on the recommendation of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Government and the Commission, from time to time, make, recruit to the Service any person of outstanding ability and merit serving in connection with the affairs of the State who is not a member of the State Civil Service of that State [but who holds a gazetted post in a substantive capacity].’

10. The manner in which the selection is to be made as provided for under Rule 8 (2) of the Rules is elaborated under the Regulations of 1997. Regulation-3 of the Regulations stipulates the method of determination of vacancies and that is to be done by the Central Government, in consultation with the State Government. It has already been mentioned that for the year 2019, the vacancies of this category for the State of Haryana is fixed at 5. There is no controversy about it. Regulation 4 and 5 of Regulations read as under:

'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 affair 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 person 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 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) of the rule 8 read with provision 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.'

11. A perusal of the provisions extracted above discloses that Regulation 4 of the Regulations confers power upon the State Government to send proposal in respect of the members of Non SCS. The factors to be taken into account are mentioned. They are to the effect that the officer must be of outstanding merit and ability. As regards the eligibility, he must hold a gazetted post in a substantive capacity and must have completed 8 years of continuous service under the State Government. Another factor is that he must not have crossed the age of 54 years (later revised to 56 years) , and once a candidate has been included in an earlier select list, but not appointed by the Central Government under Regulation 9, he shall not

be considered again. We find hardly any role assigned to the Union of India or UPSC on these aspects. Further, aspects such as whether or not an officer is holding a gazetted post or has completed 8 years of service, or whether he has crossed the age of 54/56 years, are matters of record.



The application of mind by the State Government under this provision is mainly on the aspect as to whether an officer who is to be included in the list of proposed candidates is of 'outstanding merit and ability'. It is a common practice that the outstanding nature of the merit of candidates of this category is mostly decided on the basis of entries in the ACRs.

12. The list of departments with officers who are included in the Non SCS category is fairly big and obviously for that reason the list of candidates who become eligible on completion of 8 years of service is quite large.

13. The second respondent issued the impugned order dated 09.06.2020. After extracting the Regulation 4 and the categories of officers that are eligible under this, the order proceeds to provide for conducting the written examination. The crucial provisions are in paras – 3 to 6, which read as under:

"3. The Governor of Haryana is pleased to allow the Haryana Public Service Commission (Commission) to recommend such candidates under the provisions of The Indian Administrative Services (Appointment by Selection) Regulations, 1997 and State Government Notification No.66/6/2001-6S(I) dated 11.03.2011 after taking the written

examination provisionally subject to the fulfilment of all eligibility conditions. Following categories of candidates shall be considered ineligible to appear in the examination :-



(i) who is convicted of a crime on criminal or corruption charges; or

(ii) whose period of currency of major penalty in disciplinary matter, if any, is in flow; or

(iii) who have any adverse remarks relating to integrity in his/her ACRs during the last 10 years of service which have attained finality.

4. Candidates shall apply online for written examination on the portal provided by Haryana Public Service Commission and shall also submit an application to their parent department in the Annexure-A who shall further forward the same to the Haryana Public Service Commission after verifying the details given therein by the candidate along with Annexure-B regarding eligibility of the candidate.

5. The pattern and syllabus for the written examination is given in Annexure-C.

6. The Commission, purely on the basis of marks obtained in the written examination, shall recommend, in order of outstanding merit and ability, names of candidates not exceeding five times the number of vacancies to the State Government for onward submission of their names to the Union Public Service Commission, as accepted candidates, in order in which they are recommended by the Commission. After the receipt of such recommendation from the Commission, the Chief Secretary (Personnel Department) shall obtain summary of ACRs of the said candidates from their respective departments in the prescribed proforma

along with CR dossier of the candidates for onward submission to the Union Public Service Commission.

In the case of bracketed candidates, following tie-breaking principles shall be followed :-



- (i) Age-Tie elder candidate shall be considered senior.*
- (ii) Name – If Date of Birth is same, then the candidate whose name in English comes first alphabetically, shall be considered senior.*
- (iii) Father's Name - If the tie is still not broken the candidate whose Father's name in English comes first alphabetically shall be considered senior."*

From the above, it is clear that the written examination is proposed to be conducted for determining the outstanding merit and ability of the candidates.

14. It is true that under entry 70 of List I of VII schedule of the Constitution of India, the Parliament alone is competent to make laws in respect of appointment to All India Services. If any attempt is made by the State Government in that area, it straightaway becomes ultra vires. What, however, we find in the instant case is that the exercise proposed to be undertaken through the impugned order is squarely in respect of a role assigned to a State Government, under Regulation- 4 of Regulations. As observed earlier, the task of determining whether or not a candidate is of "Outstanding merit and ability" is assigned to State Government alone. Under Section 3 of the Act, the power to recruit is specifically conferred upon the Central Government. It is only the Central Government that has

framed the Rules and Regulations. Regulation 4 empowers the State Government to consider and propose the names of the persons for consideration of the Committee. There is no limitation or restriction imposed in the Rules or the Regulations on the State Government regarding the manner of such consideration – thus leaving the field free for the State Government to decide.



15. The real recruitment process comprises of the consideration of the proposal of the State Government forwarded under Regulation 4 and making recommendation of the names not exceeding the number of vacancies which is done by the Committee constituted by the UPSC. This is provided under Regulation 5 of the Regulations. And the ultimate authority to make appointment is Central Government. At the most, the role assigned to the State Government can be termed as the one of short listing of the candidates up to the extent of 5 times the number of vacancies. Several parameters stipulated in this behalf are matter of record and the one where an element of subjectivity is involved is that of determining the “outstanding merit and ability” of the candidates.

16. Faced with the difficulty in arriving at a conclusion in this behalf, certain States have chosen not to fill the vacancies under this category for years together. As regards State of Haryana itself, an OA was filed in relation to the recommendations made by the State Government for the year 2017 under this category. The principal allegation was of

nepotism in recommending candidates, and initially stay was granted by this Tribunal. This OA was finally dismissed as having become infructuous. It is in this background that the 2nd respondent wanted to be as objective as possible, in the context of determining the “outstanding merit and ability” and proposed to conduct a written examination.



17. The applicant could have a genuine apprehension in case he is required to compete in the written examination with fresh candidates. However, here it is only officers who have put in 8 years of service and are not facing any disciplinary proceedings that are eligible to apply and appear in the written examination. Further, within that category also, those who have been considered on earlier occasions and included in Select List, but not appointed IAS under Regulation 9, are to be excluded. When such is the restricted nature of participation in the examination, it cannot be said that an individual candidate is put to disadvantage of any nature.

18. The plea of the applicant that the order exceeds the legislative competence of the State, is difficult to accept. It is fairly well known that the legislative activity is a complex process and law does not provide for it exhaustively. The VII schedule determines the subjects on which the Parliament on one hand and the legislature of the State on the other hand can act. There are also common areas. What is proposed in the impugned order is purely an executive exercise, not amounting to legislation. Just as there is no legislative background for determination of the ‘outstanding merit and ability’ of the candidate with reference to the

ACRs, there need not be any such legislative basis for conducting a written examination. It may be first of its kind. At the same time, it is a continuous process which needs improvement depending on the past exercise.



19. The precedent relied upon by the learned counsel for the applicant (2009 (1) SCC 768) is in relation to the entitlement of candidates who have put in 8 years of service in the Non SCS category to be considered. The attempt made by the State Government to fix another parameter was found fault with by the Hon'ble Supreme Court. There is no such effort here. The argument advanced on the touchstone of the Article 320 of the Constitution of India becomes untenable for the reasons assigned above. By no stretch of imagination the Haryana Public Service Commission i.e. the 4th respondent is entering the realm of Central Government or UPSC. It is only to conduct a written examination and purely on the basis of marks obtained therein, forward the list of 25 meritorious candidates for 5 vacancies, to the Chief Secretary, who in turn will forward it to the UPSC. The Haryana Public Service Commission is not assigned any other role whatsoever.

20. We do not find any merit in this OA and accordingly the same is dismissed. There shall be no order as to costs.

(AJANTA DAYALAN)
MEMBER (A)

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN

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