



CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A.N0.060/00505/2020
 (Reserved on: 06.08.2020)
 Pronounced on: 07.08.2020

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

Dr. Rajesh Koth,

aged about 44 years,

S/o Sh. Devi Lal,

R/o 88, ADC Colony, Barnala Road,

Sirsa Haryana (125055).

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Petitioner/Applicant

(BY ADVOCATE: MR. HARKESH MANUJA)

VERSUS

1. State of Haryana

through Chief Secretary,

Civil Secretariat,

Haryana, Sector-1, Chandigarh.

2. Haryana Public Service Commission through its Secretary,

Bays No.1-10, Block-B, Sector-4, Panchkula,

Haryana.

Respondents

(BY ADVOCATES: MR. D.S. NALWA)



ORDER (ON INTERIM RELIEF)
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The Petitioner had initially filed CWP No. No.10930 of 2020 in jurisdictional High Court (which on transfer to this Tribunal has been registered as O.A. No. 060/00505/2020) seeking issuance of a direction to the respondent no.1 to forward his application to Respondent no.2 for consideration for recruitment to 5 posts of IAS of Haryana Cadre from Non-SCS Officers through appointment by selection for the select list year 2019, pursuant to advertisement dated 20.6.2020 and as an interim relief, it is prayed that he be allowed to appear in the selection process provisionally.

2. The petitioner, while working as District Development and Panchayat Officer (DDPO) in state of Haryana, was appointed to HCS (Executive Branch) for Register-C vide letter dated 26.8.2019. An advertisement No.01-2020 dated 20.6.2020 (Annexure P-6) was published for recruitment to 5 posts of IAS of Haryana Cadre from non-SCS officers through appointment by selection for the Select List Year 2019 and last date was 28.06.2020. Respondent No.2 invited online applications in terms of regulation 4 of IAS (Appointment by Selection) Regulations, 1997 (for short "Regulations, 1997). The eligibility conditions for non-SCS officers are mentioned in Regulation 4 of Regulations, 1997 (and as amended vide DoPT notification dated 31.12.1997) which provide as under:-

"4. The State Government to send proposal 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
- (ii) Holds a gazetted post in a substantive capacity;
- (iii) Has completed not less than 8 years of continuous service under the State Government on the first day of January of the year (i.e. 01.01.2019) 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 numbers of the vacancies proposed to be filled during the year; and
- (iv) Below the age of 56 years on the first day of January of the select list (i.e. 01.01.2019".

3. The applicant, claiming himself to be eligible, submitted his application form after filling Annexure-A and also gave it to his parent department, prior to cut off date, for forwarding it to the concerned quarters. He was informed by Respondent No.1 that his application has not been forwarded to the Respondent No.2 on the ground that he has joined HCS (Executive Branch) and vacancies are to be filled from Non-SCS officers. Against this, the Petitioner submitted a representation dated 22.6.2020 and then filed CWP No.10930 of 2020 in the Hon'ble Punjab and Haryana high Court. When the case came up for motion hearing



on 30.7.2020, Hon'ble high Court was of the view that representation dated 22.6.2020 submitted by Petitioner be decided and decision on the same be placed on record by conveying it to the petitioner, prior to next date i.e. 5.8.2020. When the case came up for hearing on 5.8.2020, the parties raised a plea qua maintainability of the petition in the Hon'ble High Court in the light of Section 14 of the Administrative Tribunals Act, 1985 and as such the Hon'ble Court ordered that the matter be placed before this Tribunal and it may also look into the aspect with regard to the interim relief, prayed for by the petitioner and as such on transfer, the case has registered as O.A.No.060/00505/2020.

4. The respondents have filed reply in which they have submitted that in terms of the orders of the Hon'ble High Court, the representation of the Petitioner has been considered and rejected by the competent authority on 2.8.2020 (Annexure R-1/2). It has further been submitted that in terms of Regulation 4 of 1997 Regulations, only non-SCS Officers are to be considered against the notified vacancies for appointment by selection. Since the Petitioner has already been promoted to the HCS (Executive Branch), thus he is ineligible for participating in the pointed selection. It has further been submitted that the plea raised by the Petitioner that since he has been appointed to HCS (EB) and put on probation period and has lien on earlier post and therefore on the cut off date as on 1.1.2019, he was eligible and his case has to be considered for selection to the IAS against non-SCS quota in terms of Regulation 4 of 1997 Regulations, is not tenable in terms of rule 8 (2) of IAS (Recruitment) Rules, 1954, as it is a specific quota for non-SCS



officers, against which Petitioner or likes of him who are members of HCS, are not eligible.

5. We have heard the learned counsel for the parties.

6. Mr. Harkesh Manuja, learned counsel for the Petitioner vehemently argued that the action of the respondents in not considering and forwarding the application of the Petitioner for selection to IAS against non-SCS quota is illegal, arbitrary and against the regulations. He submitted that during the course of his service the Petitioner was promoted as DDPO on 22.4.2010 and was appointed, after due selection to HCS (Executive Branch), vide letter dated 26.8.2019 and was put on probation. His lien in the parent office is retained till he is confirmed as HCS (EB). He drew attention of the Court to Annexures P-3 and P-4 and submitted that these clearly indicate that he was put on probation for a period of one year under rule 22 (1) (b) of the Haryana Civil Service (Executive Branch) Rules, 2008 and his lien is retained in the parent department till he is confirmed in HCS (EB). Thus, his plea is that on the date of consideration i.e. on 1.1.2019, the relevant date for considering the eligibility of a candidate, the Petitioner has to be considered under Non-SCS quota and eligible in terms of regulation 4 of Regulations, 1997 and case of the petitioner has to be considered by directing the respondents to forward his name to the Commission for selection process as he is substantive non-SCS officers on cut off date.

7. The learned counsel for the Petitioner pressed into service decision of the Hon'ble Apex Court in the case of **BALESHWAR DASS VS. STATE OF U.P.** 1981 AIR 9SC) 41, to argue that substantive capacity refers to a capacity in which the



person holds the post and not necessarily to the nature or character of the post. A person is said to hold a post in a substantive capacity when he holds it for an indefinite period especially of long duration in contra distinction to a person who holds it for a definite or temporary period or holds it on probation subject to confirmation. He then referred to

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(4) SCT 234 to argue that regulations have to be read properly and the eligibility has to be determined as on cut off date to avoid any complications.

8. Per contra, Mr. D.L. Nalwa, learned counsel for the respondents submitted that the O.A. deserves to be dismissed outrightly as the advertisement itself specifies that only non-SCS officers are to be considered against 5 notified vacancies of the IAS of Haryana Cadre and Petitioner being a member of HCS (EB) is not eligible for the post. He also submitted that in terms of Regulation 4 of Regulations, 1997, only those officers are to be considered who do not belong to State Civil Services. The Petitioner having already been appointed to HCS (EB), ceases to be a Non-State Civil Service officer. He also placed reliance on Rule 8(2) of the Indian Administrative Service (Recruitment) Rules, 1954, which clearly provides as follows :

"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".

Therefore, claim of the Petitioner cannot be considered against the notification dated 20.6.2020.

9. We have given our thoughtful consideration to the entire matter and gone through the material on file, with the able assistance of learned counsel for the parties.

10. Before advertiring to the legal position, the brief methodology of appointment of non-SCS Officers in IAS and the rules and regulations involved therein are to be highlighted.

11. All India Services Act, 1951 constitutes All India Services. Rule 8 of the IAS (Recruitment) Rules, 1954 provides for recruitment by promotion or selection for appointment to State and joint cadre and Regulation 8(2) empowers the Central Government, in special circumstances, on recommendation of the State Government in consultation with the UPSC, as per the Regulations, to recruit to the Service any person of outstanding ability and merit serving in connection with the affairs of the State, **who is not the member of a State Civil Service.** Accordingly, IAS (Appointment by Selection) Regulations, 1956 have undergone a change and were modified as IAS (Appointment by Selection) Regulations, 1997. Regulation 3 empowers the Central Government in consultation with the State Government to determine the number of vacancies for which recruitment may be made each year and the number of



vacancies shall not exceed the number of substantive vacancies as on 1st day of January of the year, in which meeting of the Committee to make selection is held.

12. As per Regulation 4 of Regulations 1997, State Government has to consider the case of a person not belonging to the State Civil Service who is of outstanding merit and ability and has not less than 8 year of continuous service. Number of persons proposed for consideration of the Committee is not to exceed 5 times the number of vacancies. There is an embargo on attainment of 56 years on the 1st day of January of the year. A perusal of the Regulations, 1997 leaves no manner of doubt that a person not belonging to the State Civil Service but serving in connection with the affairs of the State is eligible. Meaning thereby, non SCS officers are only eligible subject to fulfilment of other conditions in Regulation 4 of Regulations, 1997.

13. The plea taken by the learned counsel for the Petitioner that since the Petitioner was on probation in HCS (EB) and his lien was kept in earlier cadre, therefore it has to be taken that he was non-SCS officer on the relevant cut off date and as such he is eligible to be considered under the relevant quota is too farfetched and cannot be accepted at all. He has been kept on probation and his lien stands retained in earlier cadre only for the purpose of meeting unforeseen circumstances like if he has to be reverted for any reasons and the protection given for this limited purpose, cannot be used to amplify in the manner sought to be projected by the learned counsel for the petitioner.



14. To conclude, it seems from Rule 8(2) of the IAS (Recruitment) Rules, 1954, that Central Government can make appointment by selection only of officers holding substantive posts, who are not members of the State Civil Service. Thus, the Rule contains a negative clause prohibiting consideration of SCS officers. The Petitioner is a member of HCS (EB) and has been put on probation only for the limited purpose of testing his work and conduct in new service. It is not an officiating or ad-hoc appointment and may not normally warrant reversion. He cannot have claim for consideration both as a SCS officer against appointment by promotion and as a non SCS officer against appointment by Selection. The HCS officers have their own quota of appointment to IAS and the Petitioner would be eligible to be considered against that quota in due course. It is not disputed even by applicant's counsel that as on date, the Petitioner is a member of HCS (EB). In any case, it is a question to be determined as and when pleadings are complete. Presently we are considering this matter for the limited purpose of interim relief asked for by the applicant.

15. We find that the Petitioner has not been able to make out a *prima facie* case in his favour for grant of interim relief. The balance of convenience does not lie in his favour. Third element of irreparable loss and injury too is found to be missing in this case. Thus, we are not inclined to grant any interim relief in favour of the applicant.

16. The claim of the Petitioner has been rejected by the respondents vide order dated 2.8.2020, which has not yet been challenged by the applicant.



17. The decisions relied upon by the learned counsel for the petitioner do not support his contention in view of observations made above.

18. However, it is made clear that the observations made hereinabove would not prejudice any of the parties in so far as merit of the case is concerned and issue would finally be decided upon completion of pleadings.

19. Respondents may file reply to O.A. within four weeks with copy in advance to the other side who may file rejoinder within one week thereafter.

20. List on 22.09.2020.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(AJANTA DAYALAN)
MEMBER (A)**

Place: Chandigarh
Dated: 07.08.2020

HC*