



CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.NO.060/00524/2020
(CWP no.11255 of 2020)
(Reserved on: 24.11.2020)
Pronounced on: 28.11.2020

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)

1. Dr. Anil Kumar Yadav, aged about 41 years, S/o Sh. Hukam Singh Yadav, designation Medical officer at Civil Hospital, Rewari, resident of H.No. 130, Sector-4, Rewari (Haryana).
2. Dr. Sumit Dhankhar, aged about 35 years S/o Sh. Dgharamvir Dhankhar, designation: Medical officer at Civil Hospital, Gurugram, resident of H.No. 9/5, Block-D, Ardee City, Gurugram (Haryana).
3. Dr. Lalit Kumar Saini, aged about 36 years, S/o Sh. Ram Kishan, Designation: Medical officer at Civil Hospital, Ambala Cantt, Resident of H.no.98/7, New Milap Nagar, Ambala City (Haryana).

....

Applicants

(BY ADVOCATE: MR. ADITYA YADAV)

VERSUS

1. The State of Haryana through Chief Secretary, Govt. Of Haryana, Civil Secretariat, Chandigarh.
2. Addl. Chief Secretary, Govt. Haryana, health Department, Civil Secretariat, Chandigarh.
3. Director General Health Services, Haryana, Sector-6, Panchkula.
4. Haryana Public Service Commission through its Secretary, Bays No. 1-10, Block-B, Sector 4, Panchkula, Haryana.

**(BY ADVOCATE: MR. D.S.NALWA, AAG, FOR 1 TO 3.
MR. ADITYA GAUTAM, FOR R.NO.4.
MR.G.S. WASU, IN M.A.NO.1254/2020)**

Respondents



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

The applicants had initially filed C.W.P.No.11255/2020 in the Hon'ble High Court of Punjab and Haryana seeking issuance of a writ of certiorari quashing the action of respondents vide which their application forms were not forwarded for selection to Indian Administrative Service (I.A.S), of Haryana Cadre from Non-SCS (Non-State Civil Service) officers in pursuance of Advertisement No.1/2020 dated 20.6.2020 on the ground that they had not completed eight years of continuous service on a Group 'A' post, in view of Notification dated 9.4.1992 etc.

2. The CWP, on transfer to this Tribunal, has been registered as O.A.No.060/00524/2020.

3. Before touching upon the issues raised in this case, let us have a bird's eye view of the relevant facts culled out from the pleadings of the parties. The applicants were appointed as Medical Officers (MO) (Haryana Civil Medical Services) on 21.2.2009, 23.4.2010 and 8.7.2009. At that time they were governed by Haryana Medical Civil Services (Class-II) Rules, 1978 (For short "Rules of 1978"). In short, the post of MO under Rules of 1978 was Class-II post. Vide notification dated 18.7.2014, the Rules of 1978 were replaced with Haryana Civil Medical (Group-A) Service Rules, 2014 (to be referred to as "Rules of 2014")(Annexure P-4). In other words, post of MO was converted into Class-I post under Rules of 2014.



4. The respondents issued a notification/order dated 9.6.2020 (Annexure P-6) for recruitment to the posts of IAS of Haryana Cadre from Non-State Civil Service (Non-SCS) Officers through appointment by selection for the select list 2019. Pursuant to this decision, Haryana Public Service Commission (HPSC) (Respondent No.4) issued Advertisement No.1/2020 inviting applications for the same. The appointment is to be made in accordance with Indian Administrative Service (Appointment by Selection) Regulations, 1997 (for short "Regulations of 1997"). Regulation 4 of the Regulations of 1997 contains eligibility which reads as under:-

"4. The 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;

(ii) Holds a gazette post in a substantive capacity;

(iii) Has completed not less than 8 years of continuous service under the State Govt. 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 number 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 year (i.e. 01.01.2019)".

5. The applicants claim that since they were eligible for the post in question, so they submitted their applications but their candidature was rejected orally on the ground that they had not completed eight years of continuous service on Group-A post as on cut off date of 1.1.2019, whereas they had been appointed to



the service in 2009-2010 and as such were eligible. On being denied consideration, they immediately approached the Court.

6. When the case came up for motion hearing on 7.8.2020, a Division Bench of this Tribunal directed the respondents to allow the applicants to participate provisionally in the selection process on 9.8.2020, if they fulfil the other eligibility criteria and submitted their applications online before the cut-off date. Their provisional participation was, however, made subject to the outcome of the O.A.

7. The case set up by the applicants in short is that the department has considered their eligible service from the date of confirmation in view of notification dated 4.3.1992, which has been repealed by Rules of 2014 which declares post of MO as Group-A/Class I. In other words, this declaration of post of MO as Group-A/Class I would relate back to date of their initial appointment as MO and not prospectively from 2014 onwards only.

8. Respondents have resisted the O.A. Respondent No.4 (HPSC) has filed a reply pleading that as per Regulations, a person has to have 8 years service under the State government on the first day of the January of the year in which his case is being considered. The applicants completed their probation and confirmed in service on 3.3.2011, 22.8.2012 and 14.7.2011 and prior to 1.1.2019, they did not possess 8 years of experience and as such were not eligible.

9. Respondents No.1 to 3 have filed a joint reply. They submit that applicants initially joined as MO (Group 'B' Officers) under the Rules of 1978 and were subsequently declared as Class I Officers but under the Rules of 2014. Thus, they did not have 8



years Group-A service as on 1.1.2019 and as such their candidature was rightly rejected. They submit that Rules of 2014 clearly indicate that they shall come into force from the date of their publication in the Official Gazette which event has happened on 18.7.2014.

10. We have heard the learned counsel for the parties at length and examined the pleadings on file with their able assistance.

11. The learned counsel for the applicants vehemently argued that the applicants are Class I Officers by virtue of Rules of 2014 and their status would relate back to their initial date of appointment and their service as MO under Rules of 1978 cannot be washed out for the purpose of eligibility as it would be unfair to them and as such they be declared as eligible for appointment to IAS. On the other hand learned counsel for the respondents submitted that the applicants were not even eligible under Rules of 1978 being Class-II/Group B post holder and became Group-A/Class I holder only after coming into force of Rules of 2014. Thus, their candidature has rightly been rejected by the authorities.

12. We have considered the submissions made by both sides minutely.

13. The facts of the case are not in dispute at all. Their service particulars like date of appointment as MO in Group B, total service as on 1.1.2019 in Group A & B etc. have been



summed up by the respondents in a tabulated form which is reproduced as under:-

| Name of applicant & place of posting | Date of joining MO (Group-B) | Total length of service (Group-B & A) as on 01.01.2019) | Date of completion of probation & date of eligibility of Group-A Service | Total service of Group-A as on 1.1.2019 i.e. date of eligibility |
|---------------------------------------|------------------------------|---|--|--|
| Dr. Anil Kumar Yadav CH Rewari | 04.03.2009 | 9 Y 9 Months | 03.03.2011 | 7 Y 9 Months |
| Dr. Sumit Dhankar CH Gurugram | 23.04.2010 | 8 Y 4 Months | 22.08.2012 | 6 Y 4 Months |
| Dr. Lalit Kumar Saini CH Ambala Cantt | 14.07.2009 | 9 Y 5 Months | 13.07.2011 | 7 Y 5 Months |

It is admitted at all hands that the applicants were appointed as MO during 2009-2010 under the Rules of 1978 under which the post was classified as Group-B. A Group B Officer is not eligible for induction into IAS under non-SCS quota. The post of MO, held by the applicant was declared as Group-A only under the Rules of 2014. The Rules of 2014 (Annexure P-4) clearly indicate that they shall come into force from the date of their publication in the official gazette. Section 2 (f) of these Rules clearly indicates that “service” means the Haryana Civil Medical (Group-A) Service. The applicants are trying to read these Rules of 2014 into Rules of 1978 which cannot be done. These new Rules have repealed the Rules of 1978 as is apparent from Rule 20 thereof. Thus, service rendered by them under Rules of 1978, as Group B officers cannot be treated as eligible service for the purpose of appointment to the IAS against non-SCS quota.

14. The case can be examined from another angle. The acquisition of status from Group-B to Group-A can be compared to a qualification. The question is as to whether, experience gained



prior to earning of a qualification can be counted as eligible or not was answered in the celebrated case of **INDIAN AIRLINES LTD V. S.GOPALAKRISHNAN** (2001) 2 SCC 362. That was a case dealing with the qualifications prescribed for the post of Junior Operator in Indian Airlines Limited, in which the Hon'ble Supreme Court held that when in addition to qualification, experience is prescribed, it would only mean acquiring experience after obtaining the necessary qualification and not before obtaining such qualification. This was followed by the Hon'ble Supreme Court in **SHAIENDRA DANIA V. S.P.DUBEY** (2007) 5 SCC 535. Though that was a case of promotion in the Delhi Development Authority, the Apex Court concluded that the diploma-holder Junior Engineers, who have obtained a degree in Engineering while in service, shall be required to complete three years' service on the post after having obtained a degree to become eligible for promotion to the higher post. The Apex Court in **K.K.DIXIT & ORS. V. RAJASTHAN HOUSING BOARD**, JT 2014(10) SCC 118, has again held that when graduation in Engineering with 3 years experience is prescribed for promotion in graduate quota, the candidate should have gained experience after graduation. Taking a cue from these decisions, we can safely conclude that the service rendered as Group-B Officer, cannot be counted as eligible service with Group-A as Medical Officer by the applicants for determination of their eligibility for induction into IAS from non-SCS quota.

15. Not only that, it is clear from the information provided to the Bench that out of three applicants who had participated in the



selection process, only applicant No.1 has been able to qualify the same. Other two applicants have failed the examination. Thus, their challenge even otherwise has become otiose.

16. In view of the above discussion, this O.A. turns out to be devoid of any merit and is dismissed. The parties are, however, left to bear their own costs. Connected M.As also stand disposed of as such.

(SANJEEV KAUSHIK)
MEMBER (J)

(ANAND MATHUR)
MEMBER (A)

Place: Chandigarh
Dated: 28.11.2020

HC*