

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
ORIGINAL APPLICATION NO.60/705/2020**

ORDER RESERVED ON 21.12.2020

DATE OF ORDER: 15.01.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

(On video conference from Central Administrative Tribunal, Bangalore Bench at Bangalore)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

(On video conference from Central Administrative Tribunal, Bangalore Bench at Bangalore)

Vijender Singh

Age about 42 years

(Haryana Forest Services)

Son of Sh. Bani Singh

Resident of Gandhi Nagar

CharkhiDadri now posted as

Divisional Forest Officer (T)

Nuh-Mewat (Haryana)

Class-II post (PIN 122107).

....Applicant

(By Advocate Shri Gagandeep Singh Wasu – through video conference)

Vs.

1. State of Haryana

Through Chief Secretary

Government of Haryana

Civil Secretariat

Chandigarh PIN-160001.

Email cs_haryana@gov.in.

2. State of Haryana

Through Principal Secretary
Department of Personnel
Government of Haryana
Civil Secretariat
Chandigarh PIN-160001.
Email cs_haryana@gov.in.

3. The Additional Chief Secretary
Government of Haryana
Department of Forest & Wild Life
Haryana Civil Secretariat
Chandigarh PIN-160001.
Email cs_haryana@gov.in.
4. Haryana Public Service Commission
through its Secretary
Bays No.1-10
Block-B, Sector-4
Panchkula PIN-134112.
Email hpsc@gov.in.
5. The Union Public Service Commission
Dholpur House
Shahjahan Road
New Delhi
Through its Chairman
PIN – 110069.
www.upsc.gov.in
6. The Union of India
Through the Secretary
Ministry of Home Affairs
Government of India
North Block, New Delhi
PIN – 110001.
www.mha.gov.in

....Respondents

(By Advocates Shri D.S.Nalwa, Additional Advocate General, Haryana for R1, R2 & R3, Shri Sanjay Goyal, SCGSC for R6, Shri B.B.Sharma for R5& Shri Aditya Gautam for R4 – through video conference)

ORDER

PER: RAKESH KUMAR GUPTA, MEMBER (A)

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

- i. To set-aside clause 2 of the impugned Haryana Government orders dated 11.03.2011 (A-6) and 09.06.2020 (A-2) and as also the consequent Advertisement No.1/2020 dated 20.06.2020 (A-3) to the extent of ousting the members of the State Forest Service from being considered for selection and appointment to the IAS (Haryana Cadre) in terms of Regulation 4 of the Indian Administrative Service (Appointment by Selection) Regulation, 1997 and to consequently quash the entire selection process being vitiated by malafide and being bad in law;
- ii. Further to set-aside clause 1 of the Impugned Advertisement (A-3) to the extent that it limits the definition of ‘gazetted officer’ as enshrined in the opening paragraph of Regulation 4 of the Indian Administrative Service (Appointment by Selection) Regulation, 1997 by illegally and arbitrarily stipulating that only the gazetted group A posts are eligible for being equated with the post of ‘Deputy Collector’ which runs contrary to the mandate of Regulation 4 of the Indian Administrative Service (Appointment by Selection) Regulation, 1997;
- iii. To declare the impugned advertisement No.1/2020 Annexure-A3 as null and void and to quash the same having been issued on account of malafide, arbitrariness and deliberate design of the official respondents to oust eligible and meritorious offices like the present applicant from being considered for Selection and Appointment to the Indian Administrative Services from the Non-State Civil Services category;

- iv. To declare the applicant as well as the members of the Haryana State Forest Service equivalent to the post of Deputy Collector in the State Civil Service for the limited purpose as specified in the clause 4 of the Indian Administrative Service (Appointment by Selection) Regulation, 1997 and further to thus, direct the official-respondents to consider the candidature of the applicant being eligible in all aspects for Selection and Appointment to the Indian Administrative Service (Haryana Cadre) and accordingly forward his name to the UPSC for further necessary action.
- v. Any other relief to which this Hon'ble Tribunal deems fit in the peculiar facts and circumstances of present case may also be granted in favour of the applicant.

2. The facts of the case, as pleaded by the learned Counsel for the applicant, Shri, Gagandeep Singh Wasu, are as follows:

- a. The applicant was selected and appointed as Extra Assistant Conservator of Forest in Haryana Forest Services Class-II on 11.12.2004. The applicant belongs to the regular cadre of the Haryana State Forest Service. The service record of the applicant has been outstanding throughout his career since the date of his appointment i.e. 11.12.2004 till date i.e. about more than 15 years.
- b. The applicant fulfils all the criterion as enshrined by the 1997 Regulations issued by the Central Government for Selection to the IAS and wishes to apply and be considered for being selected and appointed to the IAS by the official respondents.

c. The Government of Haryana issued an order dated 09.06.2020 whereby members of the Non-State Civil Service category viz. the State Forest Service have been ousted from the zone of eligibility and have further whittled down and narrowed the scope and intent of the opening clause of Regulation 4 of the Indian Administrative Service (Appointment by Selection) Regulation, 1997. The State Government has stipulated that only members of group A post (previously Class-I post) are equal to the post of Deputy Collector in the State Civil Service. Thereafter, in pursuance to the order dated 09.06.2020 by the Haryana Government Department of Personnel, the respondent No.3 i.e. Haryana Public Service Commission issued advertisement No.1/2020 dated 20.06.2020 whereby the present applicant was rendered ineligible to even apply for selection to the 5 vacancies advertised for selection and appointment to the Indian Administrative Service.

d. The essential requirements of Clause 4 of the Indian Administrative Service (Appointment by Selection) Regulation, 1997 are as follows:

The State Government has to consider the case of every person not belonging to the State Civil Service but serving in connection with the affairs of the State who,

- i. holds a gazetted post in a substantive capacity
(it is not necessary that the gazetted post has to be a class-I only as has been illegally and arbitrarily stipulated in the impugned order/Advertisement);

- ii. has completed not less than 8 years of continuous service under the State Government on the 1st day of January of the year in which his case is being considered
(Whereas the applicant has completed more than 15 years of continuous service on gazetted post being higher/equivalent to the post of Deputy Collector in State Civil Services), and;
 - iii. is below the age of 56 years on the 1st of January of the select list year; whereas the present applicant is only 42 years of age.
- e. The Indian Administrative Service (Appointment by Selection)

Regulation 4 of 1997 is 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 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.”

f. Contrary to these regulations, the Government of Haryana vide instructions/orders dated 11.03.2011, has issued instructions as under:

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

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 proposed 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 and;*

In fulfilment of the requirements of the above provision and also in order to meet the eligibility condition with regard to recommendations made in respect of Non State Civil Service officer and in exercise of powers conferred by clause (iii) of Sub-Regulation (I) of the Regulation 4 of the Indian Administrative Service (Appointment by Selection) Regulation 1997 and in supersession of Haryana Government Services Department order dated the 9th April 2002 published in Haryana Government, Gazetted Extraordinary dated the 9th April, 2002 the Governor of Haryana hereby declares all group-A posts (previously class-I posts) in all the departments under the Government of Haryana equivalent to the post of Deputy Collector in the

state civil service for the limited purpose as specified in the regulation ibid. However, this shall exclude officer from:

- (i) State Police Service*
- (ii) State Forest Service*
- (iii) Haryana Civil Service (Judicial Branch) and*
- (iv) All boards corporations and other autonomous bodies which are not covered in the definition of state government.*

g. The applicant has been holding a post equivalent to the Deputy Collector in the State. The orders dated 09.11.1995 of Haryana Government, Revenue Department and Clause 1.9 and 1.14 of the Haryana Forest Manual Volume 2 are reproduced as under:

“No.1297-R-II-95/16933 – In exercise of the powers conferred by clause (a) of section 2 of the Haryana Public premises and Land (Eviction and Rent Recovery) Act, 1972, the Governor of Haryana hereby appoints all the Divisional Forest Officers in the State as Collectors for performing the functions of the Collector under the said Act, within the limits of their respective Divisions.”

“1.9 – Normally the charge of a division is held by a Deputy Conservator of Forests. In emergencies an Assistant Conservator of Forests or Extra Assistant Conservator of Forests who has passed the prescribed departmental examination may be posted as in charge of a division.”

“1.14 – Normally the charge of a cadre post of Forest Division is held by Indian Forest Service officer in the rank of Deputy Conservator of Forests. In emergencies if a senior duty cadre officer is not available then an Assistant Conservator of Forests or Extra Assistant Conservator of Forests, who has passed the prescribed Departmental Examinations may be posted as in-charge of a Forest Division, if, a cadre officer is not available then an Assistant Conservator of Forests from the State Forest service, who

has passed the prescribed Departmental examinations and are in the Select list may be posted as in-charge of a Forest Division for a period of three months under Rule 9 of the Indian Forest Service (Cadre) Rules, 1966. For further continuation of the State Forest Officers on cadre post, permission of Central Government must be obtained. Non cadre posts of Forest Divisions are normally held by the State Forest Service officers.”

- h. The State Government vide order No.66/6/2001-6S(1) dated 11.03.2011 has only declared all Group A posts (previously Class-I) posts in all departments under the Government of Haryana equivalent to the post of Deputy Collector in the State Civil Service after excluding Non-SCS services like the Haryana Forest Service which is also a gazetted post and, therefore, eligible for appointment by selection to the Indian Administrative Services under regulation 4 of the 1997 Regulations.
- i. The State Government has excluded the members of the non-State Civil Service i.e. the Haryana Forest Services and certain other categories from being eligible to apply for selection and appointment on the post of IAS. This is contrary to the doctrine of legitimate expectation and also illegal and without jurisdiction or legitimate competence of the State Government specifically when the subject appointment to the post of Indian Administrative Service (Non-State Civil Services) by selection is the exclusive domain of the Union Parliament, the source of power being entry No.70 of the Union List of Schedule VII of the Constitution of India. The State of Haryana has not given any justified reasons or rational

nor does it have the jurisdiction or legitimate competence to exclude the HFS, State Police Services and employees of Board and corporation as well as other autonomous bodies for appointment by selection to the Indian Administrative Services under the 1997 Regulations.

- j. The Government of Odisha vide its General Administration and Public Grievance Department notification dated 10.01.2018 had circulated a letter addressed to all Additional Chief Secretaries, Principal Secretaries and Commissioner-cum-Secretaries to Government, Department of Government of Odisha requesting for names of not more than three eligible and willing Non State Civil Service officers working in the concerned department for consideration for selection in a Non State Civil Services quota of IAS. This letter does not exclude members of the State Forest Services from the zone of eligibility.

3. The Learned counsel for the respondents in their reply have averred as follows:

- a. As far as Indian Administrative Service is concerned, the recruitment and conditions of service to IAS is governed by the All India Services Act, 1951. Under Section 3 of 1951 Act, the Central Government has powers to frame rules in regard to recruitment to All India Services. Under the provisions of the Act, the Central Government framed rules for the purpose of recruitment to All India Services called as 'The Indian

Administrative Services (Recruitment) Rules, 1954. As per Rule 10 of these rules, if any question arises to the interpretation of rules, the Central Government shall decide the same. The Government of India had, vide letter dated 14.08.1958, taken a decision that the members of State Police Service, the Indian Police Service or any other All India Service that may be constituted in future and its feeder services, shall not be eligible for appointment to the IAS under the said rules.

- b. The Indian Forest Service (IFS) was declared by the Government of India as All India Service in the year 1966. The Haryana Forest Service is a feeder service to this AllIndia Service i.e. IFS. After taking into consideration the above said decision taken by the Government of India, the officers of Haryana Forest Service are not eligible for the recruitment to the IAS, since this is a feeder cadre to the IFS. Hence, the applicant, being a member of Haryana Forest Service, which is a feeder service for the recruitment to the All India Service of IFS, is not eligible for consideration, in view of the Government of India decision taken vide letter dated 14.08.1958.
- c. As per the Indian Administrative Service (Appointment by Selection) Regulations of 1997 (1997 regulations), in order to become eligible for consideration, an officer has to complete at least 8 years of continuous service under the State Government on any post which has been declared

equivalent to the post of Deputy Collector in the State Civil Services. In terms of these regulations, the Government of Haryana vide order dated 11.03.2011 has declared all Group 'A' posts equivalent to the post of Deputy Collector in the State Civil Services. The above order was passed only for the limited purpose in terms of clause III of sub Regulation 1 of Regulation 4 of the 1997 Regulations.

- d. The applicant is working on the post of Extra Assistant Conservator of Forest in Haryana Forest Services which is a Group 'B' post. Since the applicant does not have 8 years of continuous service on the post which has been declared equivalent to the post of Deputy Collector for the purpose of recruitment to IAS, hence, the applicant is clearly not eligible on this ground as well for the purpose of consideration for recruitment to the IAS.
- e. The applicant has relied on the notification issued by the Revenue Department on 09.11.1995 where the post on which the applicant is working is deemed to have been declared as equivalent to the post of Collector.
- f. The respondents have averred that the notification dated 09.11.1995 does not declare the post of Extra Assistant Conservator of Forests/DFO equivalent to the post of Collector/Deputy Collector in the State Civil

Service. The above notification only specifies that the DFOs in the State are entitled to perform the duties of Collector under the Haryana Public Premises and (Land Eviction) and Rent Recovery Act, 1972. It is totally wrong to say that the post held by the applicant is declared equivalent to the post of Deputy Collector in the State Civil Service and is therefore eligible for consideration for recruitment to IAS.

- g. A perusal of clause III of sub Regulation 1 of Regulation 4 of 1997 Regulations would show that it does not mention anything in regard to nature of duties to be performed by the officer in order to become eligible for recruitment to IAS. The regulations only refer to posts which have been declared equivalent to the post of Deputy Collector for the purpose of 8 years continuous service under the State Government. Hence, the notification dated 09.11.1995 does not help the case of the applicant in any manner for the purpose of recruitment to IAS as the post held by the applicant has not been declared equivalent to the post of Deputy Collector in the State Civil Service for the purpose of recruitment to IAS in terms of 1997 Regulations.
- h. The applicant has not challenged the decision of the Government of India as referred in the letter dated 14.08.1958. It is a well settled law that the Hon'ble Court will certainly not pass an order against the orders passed by the State of the Central Government until and unless, the same is

challenged before the Hon'ble Court. Since the applicant has not challenged the decision of the Government of India as referred in the letter dated 14.08.1958 and since the members of feeder service to All India Services are not eligible for recruitment to IAS, hence the present OA is liable to be dismissed on this ground as well.

- i. The letter dated 19.01.2018 issued by the Government of Odisha does not apply in the case of recruitment to IAS in the State of Haryana. The Government of India had already taken a decision in the year 1958 that the members of feeder service to All India Services shall not be eligible for appointment to IAS under the Rules. This decision is equally applicable to the State of Odisha and as such the decision taken by the Government of India on 14.08.1958 has to be read with the letter dated 19.01.2018 issued by the Government of Odisha since the Central Government is an Appointing Authority for appointment to IAS. The letter dated 19.01.2018 also indicates that an officer having 8 years continuous service on Group-A post is eligible for consideration for recruitment to the post of IAS. Hence, as per the above-mentioned letter also, the applicant is not eligible for recruitment to IAS as the applicant is working on a Group-B post. Therefore, the above said letter does not help the case of the applicant and as such he cannot take the benefits on the basis of the above-mentioned letter.

4. After hearing the learned counsel for the applicant as well as the respondents, it is apparent that the primary contention of the applicant is that he is eligible to be considered for consideration of appointment to IAS (Non-SCS quota) on the grounds that he is a gazetted officer who is functioning on posts which have been conferred the powers of Collector under specific Acts. Hence, he should be considered to be working on a post equivalent to that of a Deputy Collector in the State Civil Services and, would, therefore, be eligible to be considered under the existing 1997 regulations of Government of India.
5. A careful reading of IAS Recruitment Rules 1954 indicates that for the purpose of recruitment by promotion or selection for appointment to State and Joint Cadre, the following rules have been made:

“8(1) The Central Government may, on the recommendations 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 Governments and the Commission, from time to time, make, recruit to the Service persons by promotion from amongst the substantive members of a State Civil Service.

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”.

6. In pursuance of these rules, the IAS(Appointment by Selection) Regulations 1997 had been notified by the Central Government in consultation with the State Government and Union Public Service Commission. Under Clause 4 of the Regulations, the following provisions have been made relating to appointments from officers of the State who do not belong to the State Civil Service:

“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.”

7. As per these regulations, it is abundantly clear that apart from holding a gazetted post in a substantive capacity and having outstanding merit and ability, the person should have completed not less than 8 years of continuous service under the State Government on a post which has been declared equivalent to the post of Deputy Collector in the State Civil Service. It is obvious from these regulations, which have been framed by the Central Government after consulting the States as well as the Union Public Service Commission, that the zone of eligibility has been restricted to those Government servants under the State who have at least 8 years' service on a post declared as equivalent to the post of Deputy Collector under the State Civil service. The upper age limit 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, specified under these regulations further restricts the zone of eligibility. In any case, the number of persons to be proposed by the State Government for consideration of the Committee are limited to five times the number of posts. Keeping this in view, the restrictions on the zone of eligibility are fully justified.
8. These regulations clearly imply that the power to declare any post equivalent to the post of Deputy Collector in the State Civil Service has been entrusted to the State Government concerned. Under the authority of these regulations, the State Government of Haryana had issued orders dated 11.03.2011 vide which

only the officers in the State of Haryana holding Group-A posts (previously class-1 posts) in all departments under the Government of Haryana were declared equivalent to the post of Deputy Collector under the State Civil Services, for the limited purpose as specified under the Regulations, excluding the officers belonging to the (i) State Police Service (ii) State Forest Service (iii) Haryana Civil Service (Judicial Branch) and (iv) All Boards, Corporations and other autonomous bodies which are not covered in the definition of State Government.

9. The State Police Service and the State Forest Service are feeder services for the All India Services viz. the Indian Police Service and the Indian Forest Services, respectively. Hence, as per the Government of India decision taken vide letter dated 14.08.1958, the members of these two feeder services are rightly excluded by the State Government from eligibility for consideration for appointment in the IAS under the Non-SCS quota. The order issued by the State Government cannot be said to be arbitrary since it includes all Group-A posts in all departments under the State Government, and excludes only those posts which are either acting as feeder services for some other All India Service posts or are not considered as posts under the State Government. The applicant is admittedly not a Group-A officer. He is a Group-B officer, currently working in the Haryana Forest Service, which is a feeder service to the IFS. On these

two grounds, he has rightly been considered ineligible for consideration for appointment to the Indian Administrative Service in Non-SCS quota.

10. The powers granted to the applicant to function as Collector under the Haryana Public Premises and (Land Eviction) and Rent Recovery Act, 1972 relate to performance of his duties and functions under the said Act. The grant of powers to function as a Collector under the Haryana Public Premises and (Land Eviction) and Rent Recovery Act, 1972, are in no way related to declaring the post of DFO as equivalent to the post of Deputy Collector in the State Civil Service, by the State Government, for the purpose of Regulation 4 of the Indian Administrative Service (Appointment by Selection) Regulation, 1997.

11. The applicant has made reference to a letter dated 19.01.2018 issued by the Government of Odisha in this regard. A careful reading of this letter shows, that it is nowhere mentioned in the letter that the State Forest Services Officers of Odisha State are considered eligible for appointment to the IAS under Non SCS category. It is simply a circular asking all State Govt. departments to nominate three persons each for consideration by the State Government. The Government of India decision in the year 1958, that the members of feeder service to All India Services, shall not be eligible for appointment to IAS under the Rules, is applicable to the State of Odisha as well. The letter dated 19.01.2018 also indicates that only Group-A officer having 8 years continuous service are eligible for consideration for recruitment to the post of IAS. Hence,

even on the basis of this letter issued by State Government of Odisha the present applicant cannot claim parity and is not eligible, as the applicant is working on a Group-B post.

12.The OA, therefore, being devoid of any merits, is dismissed.

13.There shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)

/ps/