

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH



- (i) O.A.N0.060/00297/2020
- (ii) O.A.N0.060/00305/2020
- (iii) O.A.N0.060/00306/2020

Orders pronounced on: 9th July, 2020
 (Orders reserved on: 02.06.2020)

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

(A) O.A.N0.060/00297/2020

1. Balbir Singh Khokha, HFS (Retired), Aged 59 years, S/o Sh. Tika Ram, R/o House No. 880, Sector-12, Panchkula-134109, Group 'A'.
2. Rajesh Kumar Chugh, HFS (Retired), Aged 59 years S/o Sh. Ram Chand Chugh, R/o House No. 1071, Sector-39, Gurugram-122001, Group 'A'.

(B) O.A.N0.060/00305/2020

1. Rajesh Kumar Gulia, HFS (Retired), Aged 61 years, S/o Sh. Ran Singh, R/o House No. B120, Ansal Town, Sector-20, Jagadhari.
2. Om Parkash Sharma, HFS (retired), Aged 65 years, S/o Sh. Brij Bhushan, R/o House no. 739, VPO Barara, District Ambala.

3. Ram Karan Sharma, HFS (Retired), Aged 64 years S/o Sh.



Ravi Dutt Sharma, House no. 227, Sector-27, Gurugram.

4. Raj Kumar Bhatia, HFS (Retired), Aged 60 years, S/o Sh.

Hans Raj Bhatia, R/o House No. 1176, Urban Estate No.2, Hisar.

(C) O.A.N0.060/00306/2020

Satyavir Singh Sheoran son of Shri Birsala Ram, aged 62 years, Divisional Forest officer (Retired), R/o House No. 145, Defence Colony, Hisar-125001. Group 'A'.

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Applicants

Versus

1. Union of India through Secretary to Government of India, Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhawan, 6th Floor Prithvi Block, Jor Bagh, Ali Ganj, New Delhi-110003.

(BY ADVOCATE : MR. SANJAY GOYAL, SR.CGSC)

2. Union Public Service Commission through Secretary, Dholpur House Shahjahan Road, new Delhi-110069.

(BY ADVOCATE : MR. B.B. SHARMA)

3. State of Haryana through Additional Chief Secretary to Government Haryana, Forest & Wild Life Department, Haryana Civil Secretariat, Sector-1, Chandigarh-160001.

(BY ADVOCATE : MR. KIRAN PAL SINGH, AAG)

.....Respondents



ORDER
[HON'BLE SANJEEV KAUSHIK, MEMBER (J)]

1. The above mentioned Three Original Applications involve similar questions of law and facts and, as requested by learned counsel for the parties, these have been taken up for decision by a common order. The facts are, however, being taken from O.A.No.060/0297/2020 (**BALBIR SINGH KHOKHA** **ETC. VS. UNION OF INDIA & OTHERS**).
2. The applicants have approached this Tribunal, inter-alia, for issuance of direction to the respondents to consider their case for appointment to the Indian Forest Service (I.F.S) in pursuance of Notification dated 18.3.2020 (Annexure A-1) read with notification dated 15.5.2020 (Annexure A-2), issued by Respondent No.1, at par with other appointees, as per select lists for the years 2008-2015, being selected for the select list of 2012, with all the consequential benefits w.e.f. due date. In O.A. No.060/00305/2020, prayer is for appointment against select lists of 2008 and 2009 and in O.A.No.060/00306/2020, relief claimed is qua Select List for the year 2008.



3. The issue raised in these cases has a chequered history qua inter-se seniority of direct and promotee HFS officers in Punjab & Haryana High Court and induction as IFS, in this Tribunal as well as in High Court. The applicants in the case of Balbir Singh Khokha (supra), joined Haryana Forest Department as Forest Rangers in the year 1982 and were inducted to Haryana Forest Service (HFS) w.e.f. 12.1.2001 and 1.4.2001 and confirmed as such w.e.f. 1.11.2008 and 1.12.2009 respectively.

4. The next channel of promotion from HFS is to the Indian Forest Service (IFS), which is governed by the Indian Forest Service (Appointment by Promotion) Regulations, 1966 (for short "Regulations of 1966"), a per which, an SFS Officer becomes eligible for induction into IFS against promotion quota, after rendering 8 years of service and being confirmed. The induction is subject to availability of vacancies and recommendations by the Selection Committee. The applicants claim that despite availability of vacancies and their eligibility, recruitment to IFS by way of promotion could not be finalized for the years 2008-2015 for one or the other reason and primarily due to disputed seniority lists and court cases etc. The applicants No.1 & 2 retired from SFS on attaining age of superannuation of 58 years on 31.7.2019 and



31.7.2018 respectively. Had they been inducted into IFS, they would have continued in service upto 31.7.2021 and 31.7.2020 respectively. Consequent upon direction of the Hon'ble Jurisdictional High Court, confirmation order/seniority list of HFS officers was issued on 21.4.2015, as modified on 4.1.2017 as endorsed on 14.2.2017.

5. A meeting of the Selection Committee for induction of SFS Officers into IFS was convened on 31.12.2018 for the years 2008 to 2015. The number of vacancies is as under :-

Year	No. Of vacancies
2008	4
2009	3
2012	4
2013	2
2015	3

The applicants submit that SFS officers, who were within the zone of consideration against relevant vacancies were considered by the Selection Committee. The names of the applicants No.1&2 were recommended for the select list of 2012 at Sr. No.1&3 (O.A.No.060/00297/2020). The names of applicants No.1 to 3 were considered against select list of 2008



and applicant no.4 at Sr. No.1 against select list of 2009 (O.A.No.060/00305/2020). Similarly, Applicant in O.A.no.060/00306/2020 was kept at Sr. No.4 against Select List of 2008. The select list was issued vide notification dated 18.3.2020 (Annexure A-1). The State of Haryana (Respondent no.3) recommended and proposed to Union of India (Respondent no.1) that all the 16 HFS officers (including applicants) in select lists of 2008 to 2015 may be appointed to IFS.

6. The applicants further plead that retirement of a SFS officers is no hindrance for his/her induction into IFS from due date when he/she was in service and his/her case has to be considered against vacancies of relevant years. However, the respondents have issued notification dated 15.5.2020 (Annexure A-2) appointing various persons to IFS but names of applicants are missing presumably on the premise that they stood retired from service. However, names of **S/Shri Malkit Singh and Ved Parkash**, who are similarly situated like applicants and stood retired from SFS, have been included on the ground that there is direction by this Tribunal in their favour, vide order dated 29.10.2018 in O.A.No.060/00099/2018. The applicants have claimed that they are entitled to



similar treatment as in the case of Malkit Singh and Ved Parkash, hence the O.A.

7. Union of India (Respondent No.1) has filed a reply, stating that since applicants were not members of SFS at the time of issuance of final notification having been retired, hence their names were not included in the notification (Annexure A-2). The State of Haryana (Respondent No.3) has filed a separate reply. It is submitted that State of Haryana sent proposal for reconvening of Selection Committee Meeting (SCM) for promotion of HFS officers to IFS officers for select list 2008-2009 and 2012, 2013 and 2015 including the names of the applicants. The UPSC held the SCM on 31.12.2018 and minutes were issued on 4.2.2020 recommending officers suitable for promotion to IFS for the select lists 2008, 2009, 2012, 2013 and 2015. The applicants were also recommended for induction into IFS against relevant years. State of Haryana also requested Respondent No.1 to appoint all the applicants to IFS against relevant years. However, their names were not included in the notification, Annexure A-2.

8. Mr. R.K. Sharma, learned counsel for the applicant vehemently argued that once the law has been settled



that the retirement of an SFS officer for induction into IFS would not be a bar, if he or she was in service in the year against which his/her name has been considered, then the respondent No.1 cannot deny induction of applicants to IFS against relevant years. To substantiate his plea, learned counsel argued that this Tribunal in the case of *Malkiat Singh* (supra) had disposed of the O.A. with direction to the respondents that if the applicants (therein) were found suitable for promotion to the IFS, they will be entitled to the consequential benefits too. Pursuant thereto, the applicants (therein) have been granted due benefits and as such denial of similar benefit to the applicants only on the ground that there is no direction of a court of law in that relevant connection is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India.

9. Reliance is also placed upon decision of Hon'ble Punjab and Haryana High Court in the case of **C.L. LAKHANPAL VS. UPSC**, 1998 (3) SLR, 436, decisions of this Court in **MAYA RAM VS. UNION OF INDIA & OTHERS**. O.A. No. 899/HR/2005 decided on 13.12.2005, O.A. No. 813/HR/2006 decided on 15.11.2007, as upheld by Hon'ble High Court in **CWP No.200931 / 2008** decided on 14.1.2009, decision by this Tribunal in O.A. No. 191 /HR/ 2009 titled **LAJVIR**



SINGH VS. UOI ETC. rendered on 27.4.2009. Reliance is also placed on decision dated 16.10.2014 of Hon'ble Supreme Court in Writ Petition (C) No.844 of 2013 titled **MAHESH CHAND VS. UOI ETC.** and by this Tribunal in O.A.No.060/484/2019 titled **VIRENDER SINGH HOODA VS. UOI ETC.** decided on 10.5.2019.

10. Mr. Sharma, learned counsel for the applicants also urged that the SCM has been conducted pursuant to the directions as contained in common order dated 4.4.2014 in a bunch of Civil Writ petitions titled **R.K. SHARMA ETC. VS. STATE OF HARYANA ETC.** CWP No.4891/2013 etc. of the Hon'ble High Court of Punjab and Haryana, in which direction was issued that recommendations of the Select Committee dated 4.5.2011 are required to be accepted by the State and Union Governments, subject to consideration of claim of Mr. Birthal, from the date his junior was so recommended. He submits that not only this, the respondents have also taken into consideration observations of this Court in order dated 29.10.2018 in the case of Malkit Singh (supra), in which direction was to expedite the meeting of the DPC for making promotion of eligible officers and if they are found suitable for promotion, they would be entitled to consequential benefits too, as reiterated in



M.A.No.859/2019 on 28.1.2020. Thus, he submits that since State Government itself has recommended and proposed that 16 HFS officers for relevant select lists may be appointed to IFS under rule 9 of the Regulations of 1966, then denial of appointment to the applicants is not unsustainable.

11. On the other hand, Mr. Sanjay Goyal, learned counsel for Respondent No.1 stated that since the applicants stood retired as SFS officers, so their names could not be included in the notification for appointment to IFS, Annexure A-2. There is no objection to the O.A. on the part of the State of Haryana or the UPSC.

12. We have heard the learned counsel for the parties at length and examined the material on the file minutely.

13. The short point for consideration is as to whether, an SFS Officer, who has retired from service and his name comes to be empanelled for appointment to IFS against a year, in which he was in service, can be denied appointment or not.

14. The facts are not at all in dispute. The only objection taken by the Union of India for denial of relevant benefit to the applicants despite



recommendation by State of Haryana to grant them induction into IFS, is not sustainable in the light of the decision of this Tribunal in the case of Malkiat Singh (supra) rendered on 29.10.2018, which stands implemented by the respondents. It is not in dispute at all that applicants are similarly situated like Malkiat Singh and Ved Parkash (two applicants) in indicated case, which was disposed of with direction to the UPSC to expedite the matter by convening a DPC for making promotion of the eligible officers at the earliest and if the applicants (therein) are found suitable for promotion to the indicated service, they will be entitled to the consequential benefits too. The directions are in regard to appointment of SFS Officers (colleagues of the applicants) to the IFS in respect of SCM for the Select List 2008-2009. Those two individuals, who were also retired SFS officers like the applicants have been granted the promotion from due date. The relevant portion of order is reproduced as under :-

"2. Learned counsel for the applicants, at the very outset, fairly submitted that this Court, in the case of P.S. Birthal Vs. Union of India & Others (C.P. No. 060/7/2018 in O.A. No. 060/1124/2017), vide order dated 13.08.2018 directed the respondents to forward the names of the eligible officers, as recommended by the SCM, to the UPSC for induction into the IFS, under promotion quota, and since the names of the applicants have already been cleared by the SCM for the Select List 2008-09, therefore, their cases are to be considered along with the case of Mr. P.S. Birthal.

3. Mr. Samarvir Singh, Deputy Advocate General (Hr.) for Respondent No. 3 to 5 submitted that the names of the applicants have already been recommended and sent to the UPSC for induction into IFS. In support of his argument, he has



produced a communication dated 22.10.2018, which is taken on record. He prays that the recommendations of the SCM dated 04.05.2011 have been accepted and the names of the applicants have been recommended, therefore, the O.A. has been rendered infructuous and may be disposed of as such.

4. Learned counsel for the applicants, at this stage, prayed that since the proposals with regard to the induction of the applicants to the IFS have been forwarded by the State of Haryana, the UPSC may be directed to accept the recommendations and make appointments expeditiously, keeping in view the fact that the applicants are going to retire on 31.10.2018.

5. Learned counsel for Respondent No. 2 submitted that the UPSC will accept the recommendations in case there is no discrepancy in the proposal sent by the State of Haryana and take further action as per the rules.

6. In the wake of above noted facts, the present O.A. is disposed of as having been rendered infructuous. The UPSC is directed to expedite the matter by convening a DPC for making promotion of the eligible officers at the earliest. If the applicants are found suitable for promotion to the indicated service they will be entitled to the consequential benefits too. No costs."

15. Not only that another O.A.No.060/00484/2019

titled **VIRENDER SINGH HOODA VS. UNION OF INDIA & OTHERS**, was decided by this Bench on 10.5.2019. That case related to induction of HCS Officer to IAS. His name was not included only on the premise that he stood retired on 28.2.2019, prior to the issuance of notification on 8.5.2019 relating to induction into IAS. However, this Court directed respondent no.1 to consider his claim for induction into IAS in view of judicial pronouncements. The relevant portion of the order is reproduced as under :-

"7. The grievance of the applicant, in short, is that his name stands recommended for promotion against select list for the year 2015, but the respondents while issuing notification dated 8.5.2019 relating to appointment of HCS officers to IAS, have not included his name of applicant in the list presumably because he stood superannuated on 28.2.2019.

8. The learned counsel for the applicant vehemently argued that even if a member of HCS retires from service but is considered for induction into IAS from an earlier year, then he would be entitled to appointment to the service disregarding



the fact that he stands retired. He places reliance on a decision of this Tribunal in O.A. No. 180/00403/2016 titled **DR. P. SURESH BABU VS. UOI ETC.** decided on 23.5.2016 in which it was clearly held that the retirement from stat service will not preclude the department from considering State Service officers for appointment to IPS. Similar view as taken in O.A.No. 180/00121/2017 titled **A.K. JAMALUDEEN VS. UOI & OTHERS**, decided on 13.2.2017. Reliance is also placed on Hon'ble supreme Court decision dated 16.10.2014 in Writ petition © No. 844 of 2013 titled **MAHESH CHAND VS. UOI & ANOTHER**, in which it was held that "petitioner shall be deemed to have been appointed to Indian Administrative Service, cadre of Uttar Pradesh with all consequential benefits on the basis of inclusion of his name in the Select List of 2006".

9. The learned counsel argues that his claim that even a retired State Civil Service officer is entitled for appointment to IAS, in terms of aforesaid judicial pronouncements, has not even been considered by them and he would be satisfied if a direction is issued to them to take a call on his claim and take a view in the matter. He also refers to some other decisions. The Apex Court in **SYED KHALID RISWI VS. UNION OF INDIA AND OTHERS**, 1993 (Suppl) 3 SCC 575, and **UNION OF INDIA VS. MOHAN LAL KAPOOR**, 1973 (2) SCC 836, held that preparation of the select list every year is mandatory under Rule 5(1) of Regulations. Following the above declaration of law, the Hon'ble Supreme Court in **UNION OF INDIA VS. VIPIN CHANDRA HIRALAL SHAH**, (1996) 6 SCC 721, held that if for any reason the Selection Committee is not able to meet during a particular year, the Committee when it meets next, should, while making the selection, prepare a separate list for each year keeping in view the number of vacancies in that year after considering the State Service Officers who were eligible and fell within the zone of consideration for selection in that year.

10. The learned counsel also places reliance on a decision of our own jurisdictional High Court in the case of **CHAMAN LAL LAKHANPAL VS. UNION PUBLIC SERVICE COMMISSION & OTHERS**, 1998(3) SLR, Page 436, in which Shri Chaman Lal Lakhpal, a senior member of State Civil Service of Haryana, approached this Tribunal by O.A. No.717-CH-98 seeking a direction to the State Government and Union of India to convene a meeting of the Selection Committee to prepare a select list of State Civil Service Officers for promotion to IAS against the promotion quota of the year 1994-95 and thereafter. O.A. was dismissed by this Tribunal on 9.9.1998. He filed Civil Writ Petition No. 14526 of 1998 which was allowed by a Division Bench of the Hon'ble High Court by orders dated 23.11.1998. During the pendency of the Writ Petition Shri Lakhpal retired on 30th September, 1998. The Hon'ble High Court allowed the writ petition by making the observation that: "It was then urged that the petitioner has since retired from service. Even this cannot be a ground for refusing to consider his claim. The right to be considered had accrued in the year 1994-95. The respondents had failed to consider his claim. They had not discharged their duty as enjoined upon them by law. The wrong done to the petitioner can only be remedied by one method viz. directing the respondents to do the needful on the hypothesis that he was in service at the relevant time. If the petitioner is found suitable for inclusion in the select list and if his turn for appointment comes against an available post in the promotion quota, he will be deemed to have been promoted with effect from the due date. Consequential reliefs shall ensue in accordance with the rules". His claim was thus allowed and the petitioner was also granted costs of Rs. 5,000/-. He thus, argued that even a retired member of HCS, if found fit by



Selection Committee for induction into IAS, can be appointed to the service.

11. Issue notice.

12. At this stage, Mr. Sanjay Goyal, Sr.CGSC present in court accepts notice on behalf of Respondent No.1. He does not oppose disposal of the O.A. in the requested manner.

13. In view of the ad-idem between the parties, this O.A. is disposed of, at admission stage itself, with direction to respondent No.1 (competent authority) to take a call and consider the claim of the applicant for induction into IAS, considering the judicial pronouncements relied upon by him, within a period of one month from the date of receipt of a copy of this order.

14. Needless to mention that the observations made herein above may not be taken as an expression of any opinion on the merits of the case. No costs."

16. The law is crystal clear as is apparent from the various decisions relied by the learned counsel for the applicant and as noticed in the extracted portion of the orders particularly in the case of **CHAMAN LAL** **LAKHAN PAL** (supra) that if the right to be considered had accrued in a particular year of an officer for induction into IAS or IFS, but the authorities fail to consider such claim and do not discharge their duty as enjoined upon them by law, then wrong done such an officer can be remedied by only one method and that is to direct the concerned respondents to do the needful on the hypothesis that he or she was in service at the relevant point of time. If upon such consideration an officer is found to be suitable for induction into the select list and if his or her turn for appointment comes against an available post in the promotion quota, then he or she would be deemed to have been promoted



with effect from the due date and would also be entitled to consequential reliefs as well.

17. The issue can be examined from another example as well. It is not in dispute that Malkiat Singh (supra) was colleague of the applicants of same cadre. Once he has been extended benefit, then similar treatment cannot be denied to the applicants herein as it would amount to discrimination which is not permissible on the touch stone of Article 14 of the Constitution of India. In the case of **SATBIR SINGH VS. STATE OF HARYANA ETC**, 2000(2) SCT 54, the Hon'ble jurisdictional High Court has held that when a judgment attains finality, the State is bound to grant relief to its employees who are similarly situated even though they are not party to the litigation. A final decision of the Court must not only be respected but should also be enforced and implemented evenly and without discrimination in respect of all the employees who are entitled to the benefit which has been allowed to the employees who have obtained orders from the Court. The matter is one of principle and should not depend upon who comes to the court and who does not.

18. In addition to above, it is clear from the pleadings more particularly, Annexure R-II dated 7.5.2020, the



letter written by the State of Haryana to Respondent No.1 that indeed the meeting of the Selection Committee has taken place after taking into consideration the observations / directions of the Hon'ble Jurisdictional High Court in order dated 4.4.2014 in the case of **R.K. SHARMA** etc. (supra). In that case, it was clearly indicated that the recommendations dated 4.5.2011 of SCM were to be accepted by the concerned authorities, subject to the consideration of claim of Mr. Birthal, from the date his junior had been so recommended. The observations made by this Court in order dated 29.10.2018 in the case of Malkit Singh (supra) for making promotion of eligible officers and grant of consequential benefits thereupon, were also considered. It is undisputed that the State of Haryana has specifically recommended that 16 HFS officers (including the applicants) may be inducted to IFS. It is also not in dispute that at the relevant point of time the applicants were eligible, available and within the zone of consideration. The delay has taken place on the part of the authorities. Thus, the applicants cannot be made to suffer on the part of the delay caused by the authorities, particularly in view of the principle of deeming fiction that on the relevant date they were in employment and as such



they cannot be denied appointment to IFS. Therefore, the non-grant of appointment to the applicants to IFS, on the indicated premise, which has not been accepted by courts in the past, is not unsustainable and cannot be approved of by a court of law.

19. In the conspectus of the aforesaid discussion, these O.As are disposed of by directing the respondents to consider the claim of the applicants for grant of benefit of induction into IFS against relevant Select Lists in the same terms as has been granted to Malkiat Singh (supra), with all the consequential benefits, within a period of three months from the date of receipt of a copy of this order. The parties are, however, left to bear their own costs.

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

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

Place: Chandigarh
Dated: 09.07.2020

HC*