



CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.No. 060/0384/2018

Chandigarh, this the 21.8.2020.

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)

Pankaj Chaudhary, HCS, Special Secretary, Public Health Engineer Department, Haryana, r/o H.No.270, Sector 16, Chandigarh.

Applicant

(BY ADVOCATE: Mr. Raman B.Garg)

Versus

1. Union of India through its Secretary, Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, North Block, Central Secretariat, New Delhi.
2. Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi, through its Chairman.
3. State of Haryana through its Chief Secretary, Haryana Civil Secretariat, Chandigarh.

BY ADVOCATE: Mr. Mukesh Kaushik, for respondent no.1.
 Mr. B.B.Sharma, for respondent no.2.
 Mr. Kiran P. Singh, for respondent no.3.

.. Respondents

ORDER

HON'BLE MRS. AJANTA DAYALAN, MEMBER(A).

1. The present Original Application has been filed by the applicant Pankaj Chaudhary seeking directions to the



respondents to consider her case for promotion to Indian Administrative Service of Haryana cadre by issuing requisite Integrity Certificate. The applicant has also prayed that in the alternate, the respondents be directed to reserve one post of Indian Administrative Service of Haryana cadre for her.

2. The facts of the case are largely undisputed. The applicant was a member of Haryana Civil Services at the time of filing of OA and was the senior most member. She was also eligible for promotion to Indian Administrative Service of Haryana cadre for vacancies from the year 2012 onwards. However, two charge-sheets were issued to her. First charge-sheet was dated 18.12.2015 and related to selection of anganwari workers. It was felt that cutting/tampering was done in the interview list on which the signature of the applicant was found and the selected candidate was not allowed to join. The second charge-sheet was dated 19.12.2016 on the allegation that she over-stepped her powers and decided 203 cases of occupancy rights of various tenants beyond her jurisdiction to adjudicate the same whereas only Civil Courts have powers to adjudicate such suits. Both the charge-sheets were for imposing major penalty. Besides, there were criminal proceedings pending against the applicant and the charge-sheet was filed before the Court on 18.12.2015. Sanction for prosecution in this case was accorded under sections



406, 420, 467, 468 & 471 of IPC and Section 7/12 of the Prevention of Corruption Act, 1988.

3. While these cases were still pending, proposal/material of 32 eligible officers including the applicant of Haryana cadre was sent by respondent no.3 State of Haryana to respondent no.2 Union Public Service Commission for convening the Selection Committee meeting to prepare Select Lists for the vacancy years 2012-2016 for appointment by promotion from State Civil Services to the Indian Administrative Service. The Selection Committee meeting was held on 22.3.2018, but the proceedings were kept in sealed cover in compliance of order dated 27.11.2017 passed by the Hon'ble Supreme Court in Special Leave Petition(Civil) No.16049/2017. The Hon'ble Supreme Court had ordered for keeping the proceedings of the meeting in sealed cover due to some LPAs related to seniority of Haryana Civil Services (Executive Branch) officers and some other matters pending adjudication in Punjab & Haryana High Court. While forwarding the name of the applicant for consideration, Integrity Certificate was with-held as one criminal case under CrPC and two disciplinary cases under IPC & PCA were pending against her.
4. Subsequently meeting of the Selection Committee was again convened on 12.4.2019 for preparing the Select Lists for the vacancy years 2014 to 2018. Again, the



name of the applicant was included for the years 2014 to 2018 provisionally subject to clearance in disciplinary/criminal proceedings pending against her and subject to grant of Integrity Certificate by the State of Haryana. Integrity Certificate was again with-held by the State of Haryana due to pendency of two disciplinary cases and one criminal proceeding against her. However, even the vacancies of IAS against which the applicant was considered provisionally stood lapsed on 31.12.2019 and there were no vacancies for promotion of HCS officers to IAS cadre. Consequently, the applicant was not promoted to Indian Administrative Service and retired on attaining the age of 58 years on 31.7.2020.

5. The case of the applicant is that two disciplinary cases initiated against her were frivolous and unfounded. Even the criminal case in which the applicant was charge-sheeted was false. In this case, the FIR was initially lodged against another officer namely Suchi Bajaj way back on 6.9.2012 which was cancelled on 3.12.2012 itself by Judicial Magistrate, Sirsa. However, later on, the applicant was dragged in the said case without any wrong on her part. She also pleaded that the incident related to the period 2011 and there was no need to reopen the case after such a long time specially when the earlier FIR was cancelled by the Judicial Magistrate. She also pleaded that the process for



making appointment to Indian Administrative Service for Haryana cadre was initially for the years 2012 to 2016 when admittedly no disciplinary or criminal case was pending against her till 18.12.2015 and as such, withholding of Integrity Certificate for the vacancy years 2012 to 2015 was wholly unjustified. That being so and she being the senior most should have been promoted.

6. The applicant has also pleaded that even otherwise pending finalisation of the cases against her, respondent no.3 should have kept one post reserved for her and she could be appointed against that post once the disciplinary and criminal cases are finally decided.

7. The respondents have strongly contested the claim of the applicant. They have relied upon the judgment dated 27.8.1991 passed by the Hon'ble Supreme Court in the case of **Union of India** versus **K.V.Jankiramana**, wherein it was held as follows:-

"An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is therefore, no discrimination when in the matter of promotion, he is treated differently".



The respondents have argued that it is clear from above that an employee has no right for promotion. He/she only has a right to be considered for promotion. That the applicant was considered for promotion in all the vacancy years right from 2012 onwards is not disputed. She could not be promoted due to pending disciplinary cases and criminal proceedings against her because of which the Integrity Certificate in her case was withheld by the State Government. But the fact is that she was considered and was even included provisionally in the Select List by the Selection Committee subject to grant of Integrity Certificate or clearance in departmental/ criminal proceedings by the State Government. As the Integrity Certificate could not be issued to her during the life of the Select List, she could not be promoted, and has since retired on attaining the age of superannuation (58 years) as Haryana Civil Service Officer.

8. Regarding withholding of Integrity Certificate, respondent no.2 namely Union Public Service Commission has heavily relied on Regulation 5 of the IAS (Appointment by Promotion) Regulations, 1955. Relevant portions of Regulation 5(5) are quoted below :-

" 5 (5) The List shall be prepared by including the required number of names first from amongst the officers finally classified as 'Outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in



the order of their seniority in the State Forest Service.

Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

Provided further that while preparing year-wise select lists for more than one year pursuant to the 2nd proviso to sub-regulation (1), the officer included provisionally in any of the Select List so prepared shall be considered for inclusion in the Select List of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis such inclusion shall be in addition to the normal size of the select list determined by the Central Government for such year.

Explanation I: The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a Court as the case may be.

Explanation II: The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the service shall be treated as having come to the notice of the State only if the details of the same have been communicated to the Central Government and the Central Government is satisfied that the details furnished by the State Government have a bearing on the suitability of the office and investigation thereof is essential."

Thus, the name of an officer included in the Select List is to be treated as provisional if the State Government withholds the integrity certificate or any proceedings departmental or criminal are pending against him and or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.



9. In this regard, respondent no.2 Union Public Service Commission has further stated that even after inclusion of name of an officer in the Select List, if a charge-sheet is subsequently issued or charge-sheet is filed in a court of law, his name in the Select List is deemed to be provisional. The relevant provisions are Regulation 7(3) & 7(4) of the Promotion Regulations, which are quoted below:-

" 7 (3) The list as finally approved by the Commission shall form the Select List of the members of the State Civil Service.

Provided that if an officer whose name is included in the Select List is, after such inclusion, issued with a charge sheet or a charge sheet is filed against him in a Court of Law, his name in the Select List shall be deemed to be provisional"

" 7 (4) The Select List shall remain in force till the 31st day of December of the year in which the meeting of the Selection Committee was held with a view to prepare the list under sub-regulation (1) of Regulation 5 or upto 60 days from the date of approval of the select list by the Commission under sub-regulation (1) or as the case may be finally approved under sub-regulation (2) whichever is later :

Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the select list as 'Unconditional' to the Commission during the period when the select list was in force, the Commission shall decide the matter within a period of forty five days or before the date of the next Selection Committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the select list as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government..."

In view of all above and also as per law laid down by the Hon'ble Supreme Court in the case of



K.V.Jankiramana (supra), the respondents have averred that the Regulations do not debar an officer from being considered for promotion from State Civil Service to Indian Administrative Service due to departmental enquiry or criminal proceedings pending/initiated against an eligible officer. But the Regulations also provide that name of an officer, whose integrity certificate has been withheld by the State Government or against whom departmental or criminal proceedings are pending, is included provisionally in the Select List by the Selection Committee subject to grant of integrity certificate or clearance in the departmental or criminal proceedings by the State Government, if the Selection Committee finds the officer otherwise suitable for promotion on the basis of an overall assessment of ACRs. In view of above, the applicant was considered by the Selection Committee which met on 22.3.2018, but the proceedings were kept in sealed-cover and later the life of the panel lapsed and as such, the applicant could not be promoted. There are no provisions in the Regulation for keeping the post reserved till finalisation of the disciplinary or criminal case in respect of an officer who is to be considered for promotion.

Similarly, later the case of the applicant was again considered on 12.4.2019 and her name was included provisionally, but the same could not be cleared as the integrity certificate in respect of the applicant was again



withheld due to pendency of two disciplinary cases and one criminal case. This Select List also lapsed on 31.12.2019. The respondents have also contended that integrity certificate should not ipso facto be withheld as per instructions issued by the Government of India vide letters dated 26.5.1970 & 27.10.1999. The State Government should examine each case with reference to the nature/gravity of the charges, the evidence available on the basis of the investigation made upto that time, the known argument of defence, if any, the views of the Head of the Department, the general reputation of the officer etc. and then decide whether they would like to include him in the list of officers in respect of whom the integrity certificate is withheld. Accordingly, after examining the disciplinary/criminal proceedings pending against the applicant and other factors, her integrity certificate was withheld by the respondents.

10. The respondents have also distinguished the case of Jai Krishan Abhir, HCS Officer, in whose case integrity certificate was issued, from the case of the applicant. In that case, the disciplinary matter was finalized and punishment of only "warning to be careful in future" was imposed upon him. There were no criminal proceedings pending against Shri Jai Krishan Abhir. As such, integrity certificate in his case was forwarded to UPSC by the State Government and he was promoted to IAS. In



view of above submissions, the respondents have concluded that the OA has no merits and needs to be dismissed.

11. We have heard the learned counsel for the opposing parties and have perused the pleadings of the case. We have given our thoughtful consideration to the entire matter.
12. We find that the facts of the case are undisputed. It is true that the applicant was senior most member of Haryana Civil Services and was otherwise eligible for promotion for appointment to Indian Administrative Service of Haryana cadre. It is also true that her name was forwarded by the State Government in the list of eligible candidates for consideration by the Selection Committee. It is also true that the applicant was considered by the Selection Committee in the year 2018 against the vacancies for the years 2012 to 2016. The proceeding of the Selection Committee was kept in sealed cover as per orders of the Hon'ble Supreme Court and the life of the panel expired. As the whole proceedings were kept in sealed cover, the findings of the Selection Committee are not known.
13. We also find that the applicant was again considered in April 2019 by the Selection Committee for the vacancy years 2014 to 2018. But integrity certificate in her favour was withheld. We note that clearly a criminal



case involving integrity issue was pending against her besides the two disciplinary cases. We also note that one of the disciplinary case related to over-stepping her jurisdiction and favouring 203 tenants by granting them occupancy rights, which was beyond her jurisdiction as this power rested only with the Civil Courts. Even in the disciplinary case relating to anganwari workers, the allegation was that the selected candidates was not allowed to join and in her place another candidate was allowed to join with the complexity of the applicant as her signatures are statedly found on the interview list where cutting/tampering was done. We also find that even the Hon'ble Apex Court in the case of K.V.Jankiramana (supra) has held that the least expected of an employee is to have an unblemished record. An employee found guilty of misconduct cannot be placed at par with the other employees and his case has to be treated differently. Therefore, there is no discrimination when in the matter of promotion, he is treated differently. We find that there was adequate reason for the State Government to withhold integrity certificate against the applicant especially in view of criminal proceedings against her, and the charges involved doubtful integrity on her part. It is true that the disciplinary cases should have been finalized by the department within the time frame laid down by DOPT, but in the instant case, finalization of disciplinary



proceedings have been delayed beyond the requisite time schedule. However, even this point does not give much relief to the applicant as criminal case is still pending against her in which charge-sheet has been filed in the Court of Law. In the matter of Indian Administrative Service which is a highly responsible post at the top most level of bureaucracy and to ensure public interest, only persons with unquestionable integrity and honesty are to be posted at such places. We also note that Regulations, as seen from the provisions quoted above, clearly provide for withholding of integrity certificate in such cases. Thus, withholding of integrity certificate in her case by the State Government was justified.

14. We also find that the argument of the applicant regarding parity with Shri Jai Krishan Abhir is not valid as in the case of Shri Abhir, the sole proceedings pending against him were finalized and a penalty of only a warning to be careful in future was imposed on him. Also, there was no criminal proceedings pending against him. As such, the parity being sought by the applicant with him is not valid.
15. Another argument by the applicant that one post should have been kept reserved for her is not valid as there is no provision in Regulation to this effect. The applicant has also not quoted any such provision.



16. We also note that the judgments relied upon by the applicant are not directly relevant in the present case due to peculiar facts and circumstances of the case and the observations made herein above.
17. We also observe that the applicant has already retired on 31.7.2020 on reaching the age of superannuation of 58 years as HCS officer.
18. In view of all above, we find that the relief claimed by the applicant is not justified. OA is, therefore, dismissed. No costs.

(Ajanta Dayalan)
Member (A)

(Sanjeev Kaushik)
Member(J).

Place: Chandigarh
Dated: 21.8.2020.

KKS