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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No.      1169/      1986  
P.A. No.

DATE OF DECISION 17th Sept., 1987.

Shri I.D. Kaushik      Petitioner Applicant.

Shri S.M. Asri with Shri C.S.      Advocate for the Petitioner(s)  
Asri      Applicant.

Versus

The Haryana State and others      Respondent

Shri M.L. Verma and Shri S.D.      Advocate for the Respondent(s)  
Sharma,

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether to be circulated to other Benches? *No*

*(Signature)*  
(KAUSHAL KUMAR)  
MEMBER (A)  
17.9.1987.

*(Signature)*  
(K. MADHAVA REDDY)  
CHAIRMAN  
17.9.87.

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1169/1986.

DATE OF DECISION: 17th Sept., 1987.

Shri I.D. Kaushik

....

Applicant.

V/s.

The Haryana State and  
others

....

Respondents.

For the applicant

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Shri S.M. Asri with  
Shri C.S. Asri, Advocates.

For the respondents

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Shri M.L. Verma and  
Shri S.D. Sharma, Advocates.

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman.  
Hon'ble Mr. Kaushal Kumar, Member (A).

(Judgment of the Bench delivered by  
Hon'ble Mr. Kaushal Kumar, Member)

JUDGMENT

The applicant belongs to the Haryana Civil Service (Executive Branch), having been appointed to the Service as a direct recruit in 1969. On 17.11.1975, he was promoted to the Selection Grade of the State Civil Service and confirmed in the said Grade with effect from 1st September, 1978. His grievance is against non-inclusion of his name in the Select List for promotion to the Indian Administrative Service cadre of Haryana State, which was prepared in November, 1986. The relief sought for in this application filed under Section 19 of the Administrative Tribunals Act, 1985 is for issue of a direction for appointing one more officer from the old Select List of 1985 to the 44th post falling in the promotion quota and for inclusion of the name of the applicant in the select List of 1986.

2. A preliminary objection was taken by the learned counsel for the Union of India (Respondent No.2) that the present application is barred under the doctrine of res-sub-judice as the matter is pending on the same cause

*h. Kumar*

of action among the same parties in the Hon'ble Supreme Court of India. The learned counsel for the applicant stated that the petition filed in the Supreme Court had been withdrawn by him on 6.1.1987. The learned counsel for the Union of India, Shri M. L. Verma, referred to the ruling of the Supreme Court in Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior and others (AIR 1987 S.C. 88) and relied on the following observations:

"8. The question for our consideration is whether it would or would not advance the cause of justice if the principle underlying R. 1 of O. XXIII of the Code is adopted in respect of writ petition filed under Art. 226/227 of the Constitution also. It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the Court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel, to permit the petitioner to withdraw from the writ petition without seeking permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition. It is plain that when once a writ petition filed in a High Court is withdrawn by the petitioner himself he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court. He may as stated in Daryao v. State of U.p. (1962) SCR 574: (AIR 1961 SC 1457) in a case involving the question of enforcement of fundamental rights file a petition before the Supreme Court under Art. 32 of the Constitution because in such a case there has been no decision on the merits by the High Court. The relevant observation of this Court in Daryao's case (supra) is to be found at page 593 and it is as follows:

"If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Art. 32, because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other."

"9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Art. 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case (supra) is of no assistance. But we are of the view that the principle underlying R.1 of O. XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution once again. While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art. 32 of the Constitution since such withdrawal does not amount to res judicata, the remedy under Art. 226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on the writ petition when he withdraws it without such permission."

From the above observations, it is clear that a petitioner after withdrawing a writ petition filed by him in the High Court under Art. 226 without the permission to institute a fresh petition cannot file a fresh writ petition in respect of the same cause of action in the High Court under that Article. This pronouncement itself makes it clear that

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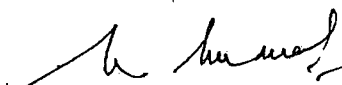
another remedy is not barred. In the present case, however, since the applicant had withdrawn his petition from the Supreme Court, the preliminary objection in regard to maintainability of the present application cannot be sustained.

3. Coming to the merits of the case, promotion of State Civil Service Officers to the cadre of Indian Administrative Service pertaining to that State is regulated by the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 and Rule 5 of the said Regulations envisages the preparation of a select list of suitable officers each year by a Selection Committee as prescribed in Regulation 3 of the said Regulations.

Sub-clause (1) of Regulation 5 reads as follows: -

"Each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Civil Service as are held by them to be suitable for promotion to the Service. The number of members of the State Civil Service included in the list shall not be more than twice the number of substantive vacancies anticipated in the course of the period of twelve months, commencing from the date of preparation of the list, in the posts available for them under rule 9 of the Recruitment Rules, or 5 per cent of the Senior posts shown against items 1 and 2 of the cadre schedule of each State or group of States, whichever is greater."

4. In the case of State of Haryana, as per Notification G.S.R. No.....dated 28th November, 1983, regarding the Indian Administrative Service (Fixation of Cadre Strength) Ninth Amendment Regulations, 1983, the number of senior duty posts under item No.1 has been shown as 94, the Central Deputation Reserve under item No.2 thereof as 38, the total being 132 and the promotion quota being 33-1/3% works out to 44. The Direct Recruitment posts in the said schedule



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has been shown as 170 and the total authorised strength as 214. 5 Per cent of the Senior Posts against items No.1 and 2 works out to 6.6 and thus the size of the Select List is restricted by the upper ceiling of six, or twice the number of substantive vacancies anticipated in the course of the period of twelve months commencing from the date of preparation of the list. In the year 1985, a Select List of six persons was prepared. Two officers belonging to the Indian Administrative Service from out of the promotion quota retired after the preparation of the Select List in 1985 - Shri N.K. Tandon retired on 31.12.1985 and Shri O.P. Bhardwaj retired on 28.2.1986. However, from the select list which was prepared in 1985, only the first person viz., Shri Zile Singh Khobra was appointed against the promotion quota and the second vacancy in the promotion quota caused by the retirement of Shri O.P. Bhardwaj on 28.2.1986 was not filled up by the appointment of the next officer from the select list prepared in 1985. As a result, five officers continued to remain in the Select List and only one name was added when the Selection Committee again met in November, 1986.


5. The case of the applicant is that if one more person had been promoted from out of the Select List of 1985, only four names would have continued to remain on the said list and carried forward to the select List of the next year and, therefore, two more names would have been added to the Select List which was prepared in 1986. In the seniority list of the State Civil Service (Executive) of Haryana, the applicant happens to be the next seniormost eligible State Civil Service officer after Smt. Manju Gupta, who was the only new officer included in the Select List prepared in 1986. It is contended by the learned counsel for the applicant that the action of the respondents resulted in reducing the promotion quota from 44 to 43, which was arbitrary and against the provisions of the rules.



6. The above facts are not in dispute and the point for determination in this case is whether one more officer from the Select List of 1985 should have been promoted against the second vacancy caused by the retirement of a promotee IAS officer, so that one more name would have been added to the Select List of 1986.

7. The case of respondent No.2, viz., the Union of India, is that no order had been passed by the Union of India reducing the number of Indian Administrative Service posts in Haryana cadre which can be filled up by the State Civil Service officers. It is further stated in the counter-affidavit that the promotion quota as shown in item No.3 of the schedule of the cadre strength cannot be changed except by way of an amendment to the I.A.S. (Fixation of Cadre Strength) Regulations, 1955. It is further added in the counter "There are 94 posts under item 1 and 38 posts under item 2 of the IAS Cadre Schedule of Haryana and since the State Government had kept one cadre post in abeyance for a period exceeding six months, the effective promotion posts were calculated as not exceeding  $33 \frac{1}{3}$  of  $(94 + 38 - 1)$  i.e.  $\frac{1}{3} \times 131 = 43.66$ , since the fractions are to be ignored for such calculations, the effective promotion posts, at that point of time, were 43 only. This does not mean that there was a reduction in the promotion posts, as stipulated under the Rules." The case of respondent No.1 viz., the Haryana State, as spelt out in the counter affidavit is that "At the time of preparation of select List in the year 1986, the effective promotion posts were 43 only. This was due to the fact that one of the posts included in the cadre schedule i.e., "Deputy Secy., Planning-cum-Director Small Savings" was not filled by the State Government for administrative reasons."

7. The promotion quota of 44 posts in the Haryana cadre of the Indian Administrative Service was fixed through a



statutory Notification and there can be no doubt whatsoever that any reduction in the said quota can only be through a statutory amendment. Admittedly no amendment was issued after the Notification dated 28th November, 1983 and, therefore, any reduction in the promotion quota by the State Government was arbitrary having no legal basis. The contention put-forth on behalf of the State Government that since one post of Deputy Secretary, Planning-cum-Director Small Savings had not been filled up for administrative reasons, the effective promotion quota stood reduced to 43 cannot be sustained because no post as such is identified as relating to promotion quota or direct recruitment quota. It has not been explained as to why keeping in abeyance of a particular post should have the effect of reducing one quota and not the other quota. Since retirement of two promotee officers had taken place after the preparation of the Select List for the year 1985, the first two officers from the Select List for the said year should have been promoted to officiate against senior duty posts of I.A.S. If this were done, then only four names from out of the Select List of 1985 would have been carried over to the Select List of 1986, and subject to their being found otherwise fit by the Selection Committee, two more names would have been added in the Select List of 1986. The action of the State Government in promoting only one officer from out of the Select List of 1985 has no sanction either in rules and regulations or can be justified on the basis of one particular post having been kept in abeyance. While the applicant has no legal right as such for inclusion in the Select List, he has only the right for consideration for such inclusion and this right has certainly been affected by addition of only one name in the Select List of 1986 since he happened to be the next seniormost

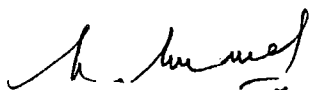
*h. Kumar*




eligible officer after Smt. Manju Gupta, whose name was included in the Select List of 1986.

9. In the circumstances of the case, a direction shall issue for holding a meeting of the Review Selection Committee for preparing a fresh Select List for the year 1986 and notwithstanding the provision of sub-clause (1) of Regulation 5 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, one more name shall be added to the Select List of 1986 after considering the cases of all eligible officers including that of the applicant. It is further directed that the officer whose name is so added to the Select List of 1986 by the Review selection Committee in pursuance of this direction, shall be deemed to have started officiating against a Senior duty post of the Indian Administrative Service from the same date as Smt. Manju Gupta, the last incumbent already included in the said Select List, and the year of allotment of the said officer in the I.A.S. shall also be determined accordingly. The application is allowed as indicated above. This order shall be complied with within a period of two months of the date of receipt of this order by the Respondents.

10. There shall be no order as to costs.

  
(KAUSHAL KUMAR)  
MEMBER (A)  
17.9.1987

  
(K. MADHAVA REDDY)  
CHAIRMAN  
17.9.87.