

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
ORIGINAL APPLICATION NO.60/74/2021**

ORDER RESERVED ON 25.02.2021

DATE OF ORDER: 19.04.2021

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)

Rakesh Kumar

Son of Sh. Dina Nath

Age 45 years

Working as District

Development & Panchayat Officer

Faridabad, Haryana-121002.

....Applicant

(By Advocate Shri D.R.Sharma – through video conference)

Vs.

1. State of Haryana

Through its Addl. Chief Secretary
to Government of Haryana
Department of Personnel
Haryana Civil Secretariat
Chandigarh-160001.
(cs@hry.nic.in)

2. Chief Secretary

Government of Haryana
Civil Secretariat
Chandigarh-160001.
(cs@hry.nic.in)

3. Additional Chief Secretary

Government of Haryana

Development and Panchayats
 Department
 Haryana Civil Secretariat
 Chandigarh-160001.
 (psdpharyana@gmail.com)

4. Haryana Public Service Commission

Through its Secretary
 Bays No.1-10, Block-B
 Sector 4, Panchkula
 Haryana-134112
 (info.hpsc@gmail.com)

5. Union Public Service Commission

Dholpur House
 Shahjahan Road
 New Delhi-110069
 Through its Secretary
 (oracell-upsc@nic.in)

....Respondents

(By Advocates Shri D.S.Nalwa, Additional Advocate General, Haryana, for R1, R2 & R3, Shri B.S.Sangwar for R4 & Shri B.B.Sharma for R5 – through video conference)

ORDER

PER: RAKESH KUMAR GUPTA, MEMBER (A)

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunal's Act 1985 seeking the following relief:

- a. The action of the respondents in not considering the applicant for interview for appointment by selection to IAS in view of Advertisement dated 09.06.2020 be declared as wholly illegal.
- b. It be declared that applicant being eligible and within the zone of consideration having secured 3rd position in the written examination cannot be denied consideration for appointment by selection.

2. The applicant has prayed for the following interim relief:

“The respondents be directed to recommend the name of applicant for consideration for selection to the selection committee and applicant be allowed for interview provisionally being in merit during pendency of OA.”

3. The facts of the case, as pleaded by the applicant through his learned Counsel, Shri D.R.Sharma are as follows:

- a) The applicant joined service of the respondents as Block Development & Panchayat Officer (BDPO) on 11.09.2002 which is a Group-B Gazetted post.
- b) The applicant was promoted to the post of District Development & Panchayat Officer (DDPO) which is a Group-A post vide order dated 22.04.2010. The applicant has thus rendered more than 17 years Gazetted service with the respondent department as on 1.1.2019.
- c) The respondents issued an Advertisement dated 09.06.2020 inviting applications for filling up 5 posts of IAS Officer from amongst Non State Civil Services Quota with the following eligibility conditions:-
 - i. Is of outstanding merit and ability;
 - ii. Holds a gazetted post in a substantive capacity;
 - 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 the 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.

d) Since the applicant had completed more than 8 years continuous service under the State Government on first day of January of the year in which his case is being considered, on a post which is equivalent to the post of Deputy Collector in the State Civil Service, he applied for consideration for filling up the post of IAS officer.

e) Haryana Public Service Commission was to conduct the written examination in which the applicant was allowed to appear and he was issued the admit card by the Haryana Public Service Commission, Panchkula. The written examination was conducted on 9.8.2020. Subsequently, the result of the examination was declared by the HPSC and the name of the applicant appears at Sl.No.3 at the merit list. Since the applicant had more than 8 years of continuous service under the State Government on a post equivalent to the post of Deputy Collector in the State Civil Service and also since 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 the officer is below the age of 56 years, hence the applicant was fully entitled to be

considered by the Committee set up for selection of the candidates. However, the applicant has obtained information under RTI which only transpires that the name of the applicant has not been sent by the State Government to the UPSC for considering his case in the meeting of Selection Committee for appointment by Selection of Non-State Civil Service Officers to the IAS Haryana Cadre for the Select List of 2019. In pursuance of the aforesaid letter the UPSC is now going ahead to hold interview on the basis of proposal sent by the State Government to the UPSC in which the name of the applicant is not figured. Hence, he has filed the present OA before this Tribunal praying for the relief mentioned aforesaid.

4. The respondents No.1, 2 & 3 have filed their reply wherein the following pleadings have been made:

- a. The State Government vide its order dated 09.06.2020 decided to fill up five vacancies of IAS of Haryana Cadre from non-State Civil Services(SCS) officers in terms of Regulation 4 of the 1997 Regulations of the IAS (Appointment by Selection) Regulations, 1997. As per these Regulations, the State Governments 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 Gazetted post in a substantive capacity;
 - 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.

- b. In pursuance of order dated 09.06.2020, respondent No.4 i.e. Haryana Public Service Commission (HPSC), issued an advertisement dated 20.06.2020 for filling up these five vacancies. As per the said advertisement, the non-SCS officer who holds a Gazetted post in a substantive capacity is eligible for consideration.
- c. The Administrative Department of the applicant i.e. Development & Panchayat Department sought an advice from the answering respondents that since the confirmation order has not been issued till date, in favour of the applicant, Sh. Rakesh Kumar and others, so are they eligible for appearing in examination or not. The Administrative Department of the applicant was advised vide U.O.No.66/3/2020-6S(I) dated 07.08.2020 that Sh. Rakesh Kumar does not fulfil the eligibility conditions required to be considered for appointment by selection to IAS in terms of Indian Administrative Service (Appointment by Selection) Regulations, 1997. Therefore, he is not eligible for appearing in written examination being conducted by HPSC on 09.08.2020. Thereafter, the Administrative Department of the applicant conveyed to the respondent No.4 i.e. HPSC vide its memo dated 04.09.2020 that Sh. Rakesh Kumar is ineligible to be considered for appointment by selection to IAS as he does not fulfil the

conditions laid down in the Regulations, 1997. Thereafter, respondent No.4 sent the result of written examination to the answering respondents vide letter dated 29.10.2020 and has intimated that Sh. Rakesh Kumar had appeared in the examination held on 9.8.2020 and pursuant to the intimation dated 4.9.2020 of the Administrative Department of the applicant that he is not eligible, therefore, respondent No.4 has decided not to consider his candidature while sending the recommendation of eligible candidates.

- d. One of the conditions of eligibility for consideration for appointment by selection to IAS is that a person should be holding a Gazetted post in a substantive capacity i.e. confirmed in service. Word 'substantive capacity' means that a person has earned a rank on a permanent basis. In service jurisprudence, 'confirmation' also amounts to permanency. Taking into consideration the relevant provisions of the regulations, only person confirmed in service can be considered for appointment by selection to IAS. As the applicant was not confirmed in service till the date of consideration therefore, he is not eligible for recruitment to IAS and the present Original Application is liable to be dismissed.
- e. It is well settled law that a person has to be eligible either on the last date of submission of application or cut-off date mentioned in the advertisement. It is an admitted fact that the applicant was not eligible on 1.1.2019 as he was not a confirmed officer on that date.

f. It was further averred by respondent No.3 in his reply that the applicant has now been confirmed vide order dated 19.01.2021, a copy of which is attached as Annexure-A/2. Hence, the action of respondent No.2 in not recommending the name of the applicant to the UPSC is legal and valid.

g. Annexure-A/2 enclosed by respondent No.3 is an order issued by the Governor of Haryana confirming the applicant against the permanent post of District Development and Panchayat Officer(DDPO) in the pay scale of 9300-34800+5400 Grade Pay w.e.f. 22.04.2010 which is the date on which he was promoted as DDPO. This order of confirmation is dated 19.01.2021.

5. Heard the oral arguments of the learned counsels of the parties.

6. The learned counsel for the respondents Shri DS Nalwa has argued that the applicant is ineligible for consideration as he was not holding the post of District Development and Panchayat Officer in a substantive capacity on the crucial date of 1.1.2019, since he was not confirmed in service as on 01.01.2019. Since the applicant was not confirmed on the post of District Development and Panchayat Officer, on the crucial date of 1.1.2019, he cannot be considered as holding a gazetted post in Substantive Capacity on that date. Hence, he has rightly been considered as not eligible for consideration for recruitment to the IAS.

7. The learned counsel for the respondents has cited various judgments of the Hon'ble Supreme Court, Principal Bench & Madras Bench of this Tribunal in

support of his contention. The Hon'ble Supreme Court in *Government of India vs. G.Limbadri Rao & others*, reiterates that the State Government while considering the proposals is required to consider the case of the person not belonging to the State Civil Services but serving in connection with the affairs of the State who is of outstanding merit and ability, and holding a Gazetted post in a substantive capacity, and 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 he has been declared equivalent to the post of Deputy Collector in the State Civil Services. The Madras Bench of this Tribunal in the cases of *M.Viruthagiri vs. Government of Tamil Nadu & others* and *S.Sattanathan vs. The Government of Tamil Nadu & others* decided on 03.05.2006, has again reiterated the conditions as laid down under Regulation 4 of the IAS (Appointment by Selection) Regulation 1997. The Principal Bench of this Tribunal in *Dr.Sulekha Chakraborty vs. Union of India & others* decided on 24.08.2007 has also reiterated the position that the State Government while considering the proposals is required to consider the case of a person not belonging to the State Civil Services but serving in connection with the affairs of the State who is of outstanding merit and ability and holding gazetted post in a substantive capacity and has completed not less than 8 years of continuous service under the State Government. These judgments support the contention of the respondents that a candidate should be holding a gazetted post in a substantive capacity on the crucial date of consideration, besides 8 years of continuous service in a post declared equivalent to the post of Deputy Collector.

8. The learned counsel for the applicant Shri DR Sharma has argued that he has been holding a gazetted post in substantive capacity since his appointment as Block Development & Panchayat Officer (BDPO) on 11.09.2002, which is a gazetted post under Group “B”. His appointment was as a direct recruit officer based on the recommendations of Haryana Public Service Commission. He was subsequently promoted to the post of District Development and Panchayat Officer (DDPO) on 22.4.2010 which is a Group “A” level post. He has served on this post continuously since 22.4.2010 till date. The State Government has also confirmed him on the post of DDPO with effect from the date of his promotion i.e. 22.4.2010. The confirmation orders have been issued on 19.1.2021 where it is clearly mentioned that the confirmation is with effect from 22.4.2010. The State Government is required to normally issue the confirmation orders after satisfactory completion of probation on the promoted post. However, this was not done on time and was delayed by the Government for no plausible reason. Hence the applicant cannot be held responsible for this delay and penalised by withholding of his name for consideration for induction to the IAS under Non SCS quota. Moreover, the applicant has served continuously on the post of District Development and Panchayat Officer since 22.4.2010. Hence, he has served for around eight years and eight months on this post as on the crucial date of 1.1.2019 from which the eligibility is considered. He has also cleared the written examination conducted by the HPSC and in fact stood third in the merit list prepared by the HPSC out of the twenty five candidates selected by the HPSC. Hence, he is fully eligible to be

considered and recommended by the State Government to the UPSC/Selection Committee for consideration for appointment to the IAS.

9. After hearing both the learned counsels for the parties, and going through the pleadings available on record, the following facts emerge. The applicant had joined the service in Haryana Government as Block Development & Panchayat Officer (BDPO) on 11.09.2002 which is a Group-B Gazetted post. This appointment has been made pursuant to the recommendation of the Haryana Public Service Commission (HPSC) vide its order dated 09.09.2002. The applicant was promoted to the post of District Development & Panchayat Officer (DDPO) which is a Group-A post vide orders dated 22.04.2010. Therefore, the applicant has rendered more than 16 years of Gazetted service with the Government as on 01.01.2019.

10. 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”.

11. 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 come under rule 8(2), and 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.”

12. 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.

13. Under these regulations 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.

14. The three conditions mentioned under Clause-4 of IAS Regulations 1997 for being considered for appointment to IAS under Non-SCS quota but serving in connection with the affairs of the State, are as follows:

The person for being eligible for consideration should be:

- (i) of outstanding merit and ability
- (ii) hold a gazetted post in a substantive capacity
- (iii) should have 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.

15. The applicant is holding a gazetted post since 11.09. 2002. This includes the post at Group-B level as a Block Development and Panchayat Officer (BDPO) since 11.09.2002, and the post at Group-A level, subsequent to his promotion, as District Development and Panchayat Officer, since 22.04.2010. He had been appointed on the gazetted post (BDPO) as a direct recruit officer based on the recommendations of the Haryana Public Service Commission in 2002.

16. In the case of Baleshwar Dass and Others versus the State of UP and Others, dated the 19th August, 1980, (1981 AIR 41, 1981 SCR (1) 449), the Honourable Supreme Court has observed as follows:

“If the appointment is to a post and the capacity in which the appointment is made is of indefinite duration, if the Public Service Commission has been consulted and has approved, if the tests prescribed have been taken and passed, if probation has been approved, one may well say that the post was held by the incumbent in a substantive capacity.”

17. The applicant has held the gazetted post of BDPO since his first appointment on 11.9.2002, as a direct recruit gazetted officer based on the recommendations of the Haryana Public Service Commission. He was also promoted to the higher post of DDPO since 22.4.2010. The very fact that he was promoted after around eight years of service on the post of BDPO, implies that he had successfully completed his probation period subsequent to his appointment as BDPO. Keeping all these facts in view, there is no doubt that the post held by the applicant as Block Development & Panchayat Officer can be considered to be held in substantive capacity. Hence, the second criteria prescribed in the regulations that the person

should be holding a gazetted post in substantive capacity is more than adequately met by the applicant.

18.The contention of the respondents is that the applicant is ineligible for consideration since he is not holding the post of District Development and Panchayat Officer in a substantive capacity, since he was not confirmed in service as on 01.01.2019 which was the date for consideration of his eligibility. He cannot be therefore, considered as holding a gazetted post in Substantive Capacity on that date and consequently he is not eligible for consideration for recruitment to the IAS.

19.The applicant has been holding a gazetted post of Block Development and Panchayat Officer (BDPO), in substantive capacity, prior to his promotion to the post of District Development & Panchayat Officer. The respondents have not disputed his substantive status on the post of Block Development & Panchayat Officer. Their only contention is that he is not eligible for consideration, since he was not confirmed on the post of District Development & Panchayat Officer on 1.1.2019 and consequently not holding a gazetted post in substantive capacity on that date.

20. This contention of the State Government cannot be accepted since this would amount to saying that a person holding a lower gazetted post in substantive capacity, loses that status of holding a gazetted post in substantive capacity, on his promotion to a higher post unless he is again confirmed on the higher post by the Government. Even if the person is not confirmed on the higher post, subsequent to

his promotion, he would maintain a lien on the lower post and, on reversion, would go back to the lower post which he has held in substantive capacity. Hence it is obvious that he would continue to enjoy the status of holding a gazetted post in substantive capacity after his promotion to the higher post, even if he has not been confirmed on the higher post.

21.A careful reading of Regulation-4, indicates, that it is stated nowhere, that the person should have 8 years of *continuous service in a substantive capacity* under the State Government on a post which has been declared equivalent to the post of Deputy Collector in the State Civil Service. The requirement is only eight years of *continuous service*. The post of District Development and Panchayat Officer is a Group-A post under the State Government. As per the declaration made by the State Government vide its orders dated 11.03.2011, all Group-A posts (barring certain specified exceptions) in all the Departments under the Government of Haryana, are considered equivalent to the post of Deputy Collector for the limited purpose as specified in the Regulations. The applicant has been holding this post continuously from the date of his appointment as District Development and Panchayat Officer, since 22.04.2010 for around eight years and eight months. This exceeds the minimum prescribed period of eight years as on 1.1.2019. The requirement under the regulations is to have not less than 8 years of *continuous service* on a post declared equivalent to the post of Deputy Collector in the State Civil Service. This has been adequately met by the applicant. Hence, there is no force in the contention of the State Government that the applicant is ineligible to be

considered for appointment to IAS under Non-SCS quota since he has not been confirmed in the service as DDPO on the crucial date of 1.1.2019.

22. It is also noticed that the State Government has subsequently confirmed the applicant in the post of District Development and Panchayat Officer retrospectively w.e.f. 22.04.2010 vide its orders dated 18.01.2021. As per the general principles concerning confirmation issued by the Ministry of Home Affairs vide their OM dated 15.04.1959:

‘a person appointed against a permanent post as a direct recruit with definite conditions of probation is to be confirmed in the grade with effect from the date on which he successfully completes the period of probation. The decision whether he should be confirmed or his probation extended should be taken soon after the expiry of the initial probationary period i.e. ordinarily within 6 to 8 weeks and communicated to the employee together with the reasons in case of extension. There are no general orders providing for convening of Departmental Promotion Committees at specified intervals to consider cases of confirmation of direct recruits placed on probation. However, even though the meetings of the DPC may be held after the termination of the period of probation of direct recruits, a person appointed against a permanent post with definite conditions of probation is to be confirmed in the grade with effect from the date on which he successfully completes the period of probation. A probationer who is not making satisfactory progress or who shows himself to be inadequate for the service should be informed of his short-comings well before the expiry of the original probationary period so that he can make sincere efforts at self improvement. Promotees placed on probation are also required to be assessed similarly with a view to determining whether they have successfully completed the period of probation. If so, they become eligible for confirmation from or after the date of completion of probation satisfactorily in the post to which they were promoted. Actual confirmation of such persons would, however, depend upon various factors, such as availability of permanent posts. eligibility of persons concerned for confirmation, their seniority and suitability’.

23. Hence, as per these general principles, the applicant should have been confirmed in service within a reasonable period after successful completion of probation and there is no plausible reason given by the State Government as to why there was a

delay of around 9 years in his confirmation order on the post of DDPO. The applicant cannot be allowed to suffer for the inexplicable delay by the State Government for his confirmation, over which he had no control, more so, when the State has consequently deprived him, of his right for consideration for appointment to the IAS under rules.

24. To sum up, the applicant has been holding a gazetted post in a substantive capacity under the State Government. He has also been working on a post declared equivalent to the post of Deputy Collector in the State Civil Service, continuously for more than 8 years. He has also obtained adequate merit in the examination conducted by the HPSC for the purpose of determining merit by obtaining the 3rd position in the said examination. He is, therefore, as per the regulations (Clause-4 of IAS Regulations 1997), eligible to be considered for appointment to the IAS by the Selection Committee.

25. The OA is accordingly allowed. The State Government is directed to consider the case of the applicant and, if he is found suitable as per his service records, forward his name to the Selection Committee, set up for appointment by selection of Non-State Civil Service officers to the IAS cadre, for the select list of 2019 of Haryana Cadre.

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

(RAKESH KUMAR GUPTA)
MEMBER (A)

/ps/

(SURESH KUMAR MONGA)
MEMBER (J)