

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
ORIGINAL APPLICATION NO.60/967/2020**

ORDER RESERVED ON 01.03.2021

DATE OF ORDER: 16.04.2021

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)

Om Parkash son of Shri Mukhram, aged 45 years, resident of village Gindran, P.O. Ghoranwali, Tehsil Rania, District Sirsa.

....Applicant

(By Advocate Shri Vinod S. Bhardwaj – through video conference)

Vs.

1. State of Haryana through its Chief Secretary to the Government of Haryana, Haryana Civil Secretariat, Chandigarh.
2. The Additional Chief Secretary to the Government of Haryana, Department of Agriculture, Haryana New Civil Secretariat, Sector 17, Chandigarh.
3. Haryana Public Service Commission through its Secretary, Bays No.1-10, Block-B, Sector 4, Panchkula.
4. Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi-110069.

....Respondents

(By Advocates Shri D.S. Nalwa, Addl. Advocate General, Haryana for R1 & R2,
Shri Balwinder Sangwan for R3 & Shri B.B. Sharma for R4)

ORDER**PER: RAKESH KUMAR GUPTA, MEMBER (A)**

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

- i. To direct the respondents to send the name of the petitioner for recruitment to 5 posts of IAS of Haryana Cadre from Non-SCS category for the select list year 2019 wherein the petitioner qualified the test conducted by the Haryana Public Service Commission and was recommended amongst the shortlisted candidates, however, the name of the petitioner is not being sent to the UPSC.
- ii. To direct the respondents to provisionally interview the petitioner in the ongoing recruitment process, and
- iii. To issue any other appropriate order or direction, which this Hon'ble Tribunal may deem fit and proper in the fact and circumstances of this case.

2. The applicant, in his pleadings, has averred as follows:

- a. The petitioner is employed as Senior Analyst with the Quality Control Laboratory (Fertilizer) at Karnal. The petitioner was recruited in the Soil Conservation Cadre on 18.06.2004 and was confirmed on 17.06.2006.
- b. The respondent No.3, Haryana Public Service Commission (HPSC), issued advertisement No.1 of 2020 dated 20.06.2020 for recruitment to 5 posts of IAS of Haryana Cadre from non-SCS Officers through appointment by selection for the Select List year 2019.

- c. The aforesaid advertisement was with respect to the vacancies that had arisen between 01.01.2019 to 31.12.2019 in terms of Rule 4 of the Indian Administrative Service (Appointment by Selection) Regulations, 1997.
- d. For the purpose of making recommendations, the candidates had to appear in the written examination being conducted by respondent No.3 and that the names were to be shortlisted by respondent No.3 (HPSC) purely on the basis of the marks obtained in the written examination in order of merit.
- e. Respondent No.3 was allowed to recommend the candidates under the Regulation of 1997 after conducting a written examination. The petitioner appeared in the said examination on 09.08.2020. Subsequently, respondent No.3 (HPSC) recommended a list of 25 candidates to respondent No: 1, on the basis of merit who were shortlisted for recruitment pursuant to the aforesaid advertisement. The petitioner was at Sl.No.14 in this shortlist.
- f. The petitioner has now come to know that the respondents have sent a letter to respondent No.4 (UPSC) dated 11.11.2020. A copy of the aforesaid letter, however, has not been furnished to the petitioner. However, the petitioner has reliably learnt that even though the name of the petitioner is in the shortlisted candidates of the respondent No.3, however, in the memo dated 11.11.2020 sent by the respondents to the respondent No.4(UPSC), the name of the petitioner has been deleted and in his place name of some other person has been added. The petitioner has qualified the test conducted by the Haryana Public Service Commission and was recommended amongst the

shortlisted candidates by the Commission. However, the name of the petitioner is not being sent to the UPSC by Respondent No: 1 in an illegal and arbitrary manner and without conveying any decision to the petitioner.

- g. The respondents are not divulging any information to the petitioner. However, the petitioner has been conveyed through reliable sources that some adverse remark has been made by the reporting officer for the year 2017-18 wherein the integrity of the petitioner has been reported as doubtful.
- h. Although the petitioner does not have any means to verify the said information, however, believing it to be true, the eligibility of the petitioner had to be seen as on the date of submission of the application form. There was no adverse comment of any nature whatsoever with respect to the ACRs of the petitioner even until 29.10.2020. Seemingly, the ACR has now been manipulated in order to oust the petitioner for his right of consideration.
- i. As per the instructions bearing No.61/01/2013-3GSIII dated 1/17.07.2018 (Annexure-A9), it has been specifically conveyed in the said instructions that the ACRs have to be recorded in a time bound manner and, in case, the ACR for a financial year is not recorded by 31st December of the year in which the financial year ended, no remark shall be recorded thereafter and the officer shall be assessed on the basis of the overall record and self-assessment for the year at the time of his/her promotion to the higher grade/post. The ACR for the financial year 2017-18 was to be submitted up to 31.12.2018 and any ACR being submitted after such inordinate delay

cannot be taken into consideration by the office of Chief Secretary as the same is in violation of the instructions issued by the office of Chief Secretary himself.

- j. It is also submitted that no adverse remarks have been communicated to the petitioner so far and there is no information to the petitioner with respect to any adverse comments. There was no complaint of any nature whatsoever with respect to work and conduct of the petitioner during the period in question and as such, there was no reason for recording adverse comments with respect to integrity of the petitioner, that too after a lapse of more than 3 ½ years since the ending of the Financial Year.
 - k. The adverse remarks are not only belated but are perpetuated by malice and premeditated bias, in order to oust the petitioner from consideration for the recruitment to 5 posts of IAS of Haryana Cadre from non-SCS category.
3. The respondents, in their reply statements, have averred as follows:
- a. Respondent No.3 (Haryana Public Service Commission) has averred that the applicant had applied for the post in question through the State Government. He appeared in the written examination. Thereafter, his name along with other 24 qualified candidates was sent to the State Government for its consideration. The reason for not sending his name to the Union Public Service Commission and non-communication of remarks regarding doubtful integrity in the ACR for the year 2017-18 can be answered only by the State Government i.e. respondent No.1 and 2.

- b. Respondent No: 1 (State of Haryana, through Chief Secretary) has averred that subsequent to the recommendations made by respondent No.3 of 25 names on merit, in alphabetical order, to the State Government, in which the name of the applicant was figured, record of these 25 candidates had been sought from their concerned departments, including the applicant, so that the same could be sent to UPSC for convening Selection Committee Meeting.
- c. It is relevant to reiterate here that the first and foremost eligibility condition in Selection Regulations, 1997, for induction into IAS by selection, is that a person who is of outstanding merit and ability shall be considered and at the time of sending the proposal of the eligible officers to UPSC, the Chief Secretary has to certify the integrity of the Non-SCS officers and also certify that the Non-SCS officers are of outstanding merit and ability. Initially, the respondent No.2 i.e. the Administrative Department of the applicant, had forwarded the name of the applicant to Haryana Public Service Commission (respondent No.3) for participating in the examination held on 09.08.2020 by certifying his integrity as per conditions laid down by respondent No.3 i.e. HPSC. After conducting the examination, respondent No.3 (HPSC) vide letter dated 29.10.2020, sent 25 names including the name of applicant on merit on the basis of written examination held on 09.08.2020. Pursuant to this, a request had been made by the respondent No: 1 to the respondent No: 2, to send proposal/material along with integrity certificate issued in favour of the applicant. Respondent No.2 vide their letter dated 30.10.2020 sent the proposal/material along with integrity certificate issued in favour of the

applicant but while sending integrity certificate, it has also been intimated that an FIR has been registered against him and intimated that the disciplinary proceeding against him have also been initiated. The department of the applicant, instead of sending original ACRs of Shri OM Parkash for the year 2017-18 and 2018-19, had sent the photocopies. After finding such deficiencies, the applicant's department was requested to furnish the detailed report of criminal and disciplinary matters in respect of Shri Om Parkash and also the original ACRs for the year 2017-2018 and 2018-2019.

- d. Vide letter dated 06.11.2020, the administrative department of the applicant has intimated that FIR No.20 dated 27.07.2013 has been registered against the applicant under Sections 201, 409, 420, 467, 468, 471 & 120B IPC and 13(1)(D) of Prevention of Corruption Act, 1988 but challan has not been filed. The applicant was arrested on 01.01.2016 and remained in police custody till 04.02.2016. The disciplinary matter has also been contemplated, but no charge sheet has been served to the applicant.
- e. Respondent No.2 (Additional Chief Secretary, Department of Agriculture, Govt. of Haryana), vide his letter dated 09.11.2020 intimated that integrity certificate has been withdrawn in respect of the applicant as integrity has been doubted by the Reviewing Authority in his ACR for the period 2017-2018 with the specific comments as '*integrity doubtful as court case under PC Act is still pending*'.

- f. Accordingly, since the integrity certificate has been withdrawn, as such, case of the applicant was not sent to UPSC in terms Indian Administrative Service (Appointment by Selection) Regulations, 1997 on 11.11.2020. It is pertinent to mention here that for the ACR for the period 2017-2018, the Accepting Authority has also agreed with the comments of reviewing authority, and the same will be conveyed to the applicant shortly.
 - g. Consequent upon withdrawal of integrity certificate by the administrative department of the applicant, it has been construed that an officer whose integrity has not been certified by his administrative department cannot be considered to be a person of outstanding merit and ability. As per the guidelines of UPSC available on its website mentioned as Frequently Asked Questions, it has been mentioned at point No.25 that an officer whose integrity certificate is withheld by the State Government or against whom disciplinary/criminal proceedings are pending is not eligible to be considered for selection to IAS.
 - h. The remarks recorded by any authority in the ACR of an officer will sustain until the same have been expunged or washed out by the subsequent authority. The name of the applicant has, therefore, not been included in the eligibility list, which has now been sent to respondent No.4.
4. In his rejoinder to the written statements filed by respondents, the applicant has averred as follows:

- a. As per the instructions issued by the Chief Secretary on 06.07.2018, it has been specifically pointed out in the said instructions that the ACR which is recorded after the 31st December of the year in which the financial year ended, no remarks shall be recorded and the officer shall be assessed on the basis of the overall record.
- b. The integrity withdrawal dated 09.11.2020 pertains to downgrading of the ACR for the year 2017-2018 from Very Good to Average and to raising doubts about the integrity on 09.11.2020. Invariably, in view of the instructions issued by the Chief Secretary the ACR ought to have been submitted on or before 31.12.2018. The remark recorded now cannot therefore be taken into consideration.
- c. As far as FIR No.20 dated 27.07.2013 is concerned, the petitioner is not an accused in the said FIR. The petitioner has not been named as an accused in the final report filed by the vigilance bureau under Section 173 Cr.P.C. upon conclusion of investigation. The reviewing authority has recorded the remark of doubtful integrity in the ACR of 2017-18, on account of a case registered in 2013. Significantly, the ACR for the year 2012-2013 records the petitioner as an honest and upright officer and a certificate in that regard was also attached. Even the ACRs for the period 2013-14 and 2014-15 again record the petitioner to be honest and upright.
- d. The respondents state that the FIR No.20 dated 27.07.2013 has been registered against the applicant under Section 201, 409, 420, 467, 468, 471

& 120B IPC and 13(1)D of Prevention of Corruption Act, 1988 but neither a challan has been filed nor a charge sheet has been served upon the applicant till date. As a matter of fact, a cancellation report in the matter had been filed by the State Vigilance Bureau after conclusion of investigation along with an application for discharge of the accused. Cancellation report was received in the Court of Sessions Judge and has been registered as CMR-124-2017 and notice was issued to the complainant on 12.10.2017. The said matter is still pending for arguments on the cancellation report as per the court orders dated 14.1.2021.

- e. No charge sheet for disciplinary proceedings has been served on the petitioner even after 7 years and no final report naming the petitioner as an accused has been filed. On the other hand, in the case of one Dr. Brahamjeet Singh Rangi from the department of Animal Husbandry, he was booked in case FIR No.0051 dated 16.07.2018 at Railway Police Station Sonapat under Section 306/34 IPC. The said employee has been named as an accused in the investigation conducted in the aforesaid case involving moral turpitude. A case proposal for suspension and disciplinary proceedings against Dr. B.S. Rangi was also moved to the competent authority vide Memo 6234 dated 08.11.2020. The said officer had also appeared in the examination conducted by Haryana Public Service Commission and his name appears at Sl.No.5 in the list of shortlisted candidates based on their performance in the examination conducted by Haryana Public Service Commission. An opinion about the candidature of the said officer was sought from the office of the

Advocate General Haryana which opined that in the absence of a charge being framed in the criminal proceedings, it cannot be suggested that criminal proceedings are pending. It was also opined that unless a charge sheet is served upon a delinquent no disciplinary proceedings can be stated to be pending. Reliance is placed on the judgment of the Hon'ble Supreme Court of India in the case titled *Union of India V/s K.V. Janakiraman AIR 1991 SC 2010*. It is clearly a malicious act and the action of the Government is arbitrary since it victimizes the petitioner in order to extend undue benefit to whom the Government wants to extend favours.

- f. The averments made by the respondents that any remarks recorded by any authority in ACR of an officer will sustain unless it is expunged or washed out by the subsequent authority, run contrary to the orders issued by the Chief Secretary that remarks cannot be recorded since they were subsequent to the timeframe fixed by the authorities.
5. After going through the pleadings made by the parties, and hearing the arguments put forth by their respective learned counsels, it is apparent that the following issue needs to be adjudicated in this case:

Whether the Chief Secretary (Respondent No.1) has rightly withheld the Integrity Certificate of the petitioner and consequently denied his name from being proposed to the UPSC/Selection Committee for consideration for promotion to the IAS under the Non SCS category in Haryana State.

6. The recruitment to IAS from the Non State Civil Service category of officers working under the State Government is covered under Rule 8(2) of the Indian Administrative Service (Recruitment) Rules, 1954. The provisions under these rules are as follows:

8. Recruitment by promotion or selection for appointment to State and Joint Cadre:-

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.

7. In pursuance of sub-rule (2) of rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954, the Central Government, in consultation with State Governments and the Union Public Service Commission, has framed the Indian Administrative Service (Appointment by Selection) Regulations, 1997. Rule 4 under these regulations is the relevant clause which authorizes the State Government to send proposals for consideration of the Committee set up under regulation 3 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. The specific provisions under Rule 4 and Rule 5 of these regulations, are relevant to the case in hand, and are as follows:

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 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.

5. Preparation of a list of suitable Officers by the Committee:-

The committee shall meet every year to consider the proposal of the State Government made under regulation 4 and recommend the names of the persons, not exceeding the number of vacancies to be filled under regulation 3, for appointment to the Service. The suitability of a person for appointment to the service shall be determined by scrutiny of service records and personal interview.

8. Under these Regulations, the State Government was required to consider the cases of eligible persons not belonging to the State Civil Services, working in gazetted posts in substantive capacity who were of outstanding merit and ability. The State Government of Haryana, in this case, decided to hold an

examination to be conducted by the Haryana Public Service Commission, in order to shortlist eligible officers, who were then considered by the State Government for sending their names for consideration of the Committee/UPSC. The primary purpose of holding this examination was to determine the inter-se merit from amongst the eligible and willing officers who had applied for such consideration. Under these regulations, the number of persons proposed for consideration of the Committee should not exceed five times the number of vacancies proposed to be filled during the year. Since the number of posts proposed to be filled was five, hence a total of twenty five names of eligible and meritorious officers were required to be forwarded by the State Government to the UPSC/Committee for consideration.

9. As per the UPSC instructions given in the FAQs on their website, the following documents are required to be sent by the State Government while sending the proposal of the names for convening the Selection Committee Meeting:

- a) Eligibility List(s) of Officers to be considered.*
- b) Integrity Certificate duly signed by the Chief Secretary.*
- c) Statement of Disciplinary/Criminal proceedings pending against the Officers with date of issue of charge sheet/filing in the Court of law.*
- d) Statement of adverse remarks in the ACRs – which are yet to be communicated; ACRs communicated but the time limit to represent is not yet over; a representation against the adverse remarks is submitted but decision of the State Government is pending.*
- e) Statement of penalties imposed during the last 10 years with brief particulars, date of penalty and the currency period of penalty.*
- f) Statement of Court cases having a bearing on the preparation of the Select List.*
- g) Complete ACR dossiers containing original ACRs with 'Non Recording Certificates' indicating valid reasons for missing ACRs.*
- h) A statement of available ACRs with reasons for missing ACRs.*

10.It is not disputed that the candidate's name figures in the list of candidates which have been shortlisted by Haryana Public Service Commission on the basis of his performance in the examination held for this purpose by the Commission. However, as per the UPSC instructions, the entire service record of all the proposed officers has to be forwarded by the State Government to the UPSC/Selection Committee. Before sending these names, the State Government/Chief Secretary is required to get the complete service records of these officers from their respective administrative departments, and has to ensure that they are of outstanding merit and ability as is evident from their service records. He is also required to certify their integrity based on the records made available to him.

11.The FAQs/Guidelines issued by the UPSC, further stipulate that officers whose integrity certificate is withheld by the State Government cannot be considered to be eligible officer. Similarly, officers against whom disciplinary proceedings/criminal proceedings are pending are not eligible to be considered for induction to the IAS.

12.In this particular case, the respondents have averred that the Chief Secretary has withheld the integrity certificate of the applicant on the ground of adverse entry in the ACR of 2017-18 where the Reviewing Officer has stated that the integrity of the officer is doubtful as court case under Prevention of Corruption Act is still pending.

13. The respondents have also averred that the Accepting Authority has also agreed with the comments of the Reviewing Authority in this ACR and the same will be conveyed to the applicant shortly. The respondents have further averred that FIR 20 dated 27.7.2013 was registered against the applicant under Section 201, 409, 420, 467, 468, 471 and 120B IPC and 13(1)D of Prevention of Corruption Act, 1988. The applicant was arrested on 01.01.2016 and remained in police custody till 04.02.2016. Disciplinary proceedings have also been contemplated against the applicant, but no charge sheet has been served to the applicant so far.
14. It has been argued by the applicant that the adverse remark, relating to his integrity being doubtful, made by the Reviewing Authority, should not be taken into consideration, since these have been made after the date on which such remarks should have been entered by the Reviewing Authority. However, this adverse remark is presently on record and it is also based on the fact that a case under the Prevention of Corruption Act is still pending against the applicant before the relevant Court. The applicant has stated that a cancellation report has been filed before the court in this case on 12.02.2017. However, even after more than 3 years, the matter has not yet been concluded by the court. It cannot, therefore be construed, that a court case under the PC Act is not currently pending against the applicant. The respondents have further stated that they are contemplating disciplinary proceedings against him in the matter. Hence, keeping all these facts in view, it cannot be concluded that the Chief Secretary

has erred in declining the integrity certificate to the applicant based upon the existing personal records of the applicant.

- 15.The applicant has further averred that integrity certificate has been granted by the same authority to another person, who is also a candidate for consideration for appointment to the IAS under Non SCS category, namely Dr. B.S. Rangi, even though he is facing serious criminal charges under Section 306/34 IPC.
- 16.The contention of the petitioner that someone else has been recommended for consideration, despite having serious criminal charges pending against him, without the same yardstick being extended to the petitioner, cannot be accepted. The doctrine of equality is a positive concept. However, it cannot be extended to a case wherein, due to an alleged irregularity or illegality committed by the administrative authorities, if any benefit is obtained by some other person, then the same could be extended to others as well.
- 17.There are a number of judgments of the Supreme Court on this aspect, as to how the concept of equality enshrined under Article 14 of the Constitution of India, has to be applied.
- 18.In *Gursharan Singh vs. New Delhi Municipal Committee* reported in (1996 SCC (2) 459), it has been held as follows:-

"There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State so far such petitioners are

concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination."

19. In *Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit, Indore v.*

President, Indore Development Authority, reported in (2006) 2 SCC 604, it has been held as follows:-

.....Two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters, there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the appellant cannot strengthen its case. It has to establish strength of its case on some other basis and not by claiming negative equality.

20. In *Directorate of Film Festivals v. Gaurav Ashwin Jain*, reported in (2007) 4

SCC 737, the Supreme Court has held as follows:-

"When a grievance of discrimination is made, the High Court cannot just examine whether someone similarly situated has been granted a relief or benefit and then automatically direct grant of such relief or benefit to the person aggrieved. The High Court has to first examine whether the petitioner who has approached the court has established a right, entitling him to the relief sought on the facts and circumstances of the case. In the context of such examination, the fact that some others, who are similarly situated, have been granted relief which the petitioner is seeking, may be of some relevance. But where in law, a writ petitioner has not established a right or is not entitled to relief, the fact that a similarly situated person has been illegally granted relief, is not a ground to direct similar relief to him. That would be enforcing a negative equality by perpetuation of an illegality which is impermissible in law.

21. In the case of *Chandigarh Administration versus Jagjit Singh*, (1995 AIR 705, 1995 SCC (1) 745) the Hon. Apex Court has observed as follows:

Generally speaking, the mere fact that the respondent Authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent Authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent Authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent Authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course barring exceptional situations would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles."

22. This tribunal cannot go into the merit of another person's case in his absence. It has to examine the case of the applicant who is present before us and seeking relief. We have to examine the entitlement of the applicant to the relief asked for, in the facts and circumstances of his case, rather than to enquire into the

correctness of the action taken in another person's case. Hence, without going into the merits of the case concerning grant of integrity certificate to Dr. Rangi by the Chief Secretary/ State Government, it can only be said that, that particular case cannot be used, as a basis, for grant of integrity certificate to the applicant.

23. Rule 5 of the IAS (Appointment by Selection) Regulations 1997, contains the following provision:

5. Preparation of a list of suitable Officers by the Committee:-

The committee shall meet every year to consider the proposal of the State Government made under regulation 4 and recommend the names of the persons, not exceeding the number of vacancies to be filled under regulation 3, for appointment to the Service. The suitability of a person for appointment to the service shall be determined by scrutiny of service records and personal interview.

24. The Selection Committee, therefore, is entrusted with the task of preparation of a list of the suitable officers for appointment to the IAS after a careful scrutiny of service records and personal interview. It has, therefore, the obligation of carefully examining the suitability of all persons proposed by the State Government for such consideration. As per the Union Public Service Commission's instructions, which are available as a part of FAQ's on their website, the documents required to be sent by the State Government while sending the proposal of names for convening the Selection Committee Meeting, inter alia, should include all documents relating to Statement of disciplinary/criminal proceedings pending against the officers and any charge

sheet filed in the Court of Law as well as any adverse remarks made in the ACRs.

25. It is the duty of the respondent No: 4 (UPSC), to carefully examine the personal records of all officers under consideration, and come to a conclusion regarding their eligibility and suitability for appointment on the basis of their entire service records. We have no doubt in our mind, that the UPSC (respondent No.4) would therefore, in accordance with the rules, carefully scrutinize the service records of all officers, including Dr. Rangi, whose names have been proposed by the State Government (Respondent No.1), and satisfy itself regarding their eligibility and suitability, based on their entire service records, including the status of disciplinary/criminal proceedings pending against any officer, before they are considered/interviewed by the Selection Committee.

26. Keeping the above points in view, the present OA, being devoid of any merits, is dismissed.

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

(RAKESH KUMAR GUPTA)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)